

Italian Regionalism and the Federal Challenge

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ABSTRACT

This thesis takes as its point of departure the debate on federalism that emerged in Italy in the years preceding the unification of 1861 and that resumed in the early 1990s, a debate mainly revolving around the profound socio-economic differences between the North and the South of the country. Torn between continuous centripetal and centrifugal forces, but not characterized by ethnic connotations, the Italian regional model implemented with the 1948 constitution and strengthened in 2001 elicits questions that intersect with topical debates engaging scholars across the globe, and displays features that have the potential to stimulate fruitful discussions both inside and outside Italian borders. While the present state of Italian regionalism remains ambiguous, the Italian regional model distils lessons coming from different theoretical experiences, including federalism, sub-state nationalism, and the European unification process. Therefore, it can be seen as an innovative experiment crafted by those who were looking for a compromise between unitary and federal schemes. Adopting a theoretical framework combining literature on federalism, regionalism and sub-state national theory, this thesis addresses a number of questions that help fill a gap in scholarship. The thesis discusses the relationship between federalism and regionalism, arguing that regionalism is an overarching term that incorporates diverse experiences; consequently, the regional state paradigm to which Italy is usually associated is just one of the many shapes that regionalism can take. The research also identifies the elements enabling us to differentiate between a federal and a regional model, as well as the advantages of opting for a regional scheme (as opposed to a federal one). The socio-economic tensions between the North and the South of Italy offer the ideal basis to discuss *non-national* differences, an expression used to indicate political and socio-economic communities located within a geographical territory displaying some *de facto* asymmetries compared to the state-wide community, seeking some form of acknowledgement of their specificity. The thesis argues that *national* differences (e.g. differences based on linguistic, religious or other cultural issues) are not the only ones requiring attention, and it identifies a number of legal and constitutional stratagems that could be used to address *non-national* difference. Also, the recognition of *non-national* difference may also help find a solution to issues regarding sub-state *national* recognition. Finally, the thesis tries to find a point of reconciliation between federalism and solidarity, particularly in the context of *non-national* difference. The Italian regional experience serves once again as the point of departure to discuss whether federalism and solidarity are conflicting ideas, and to open a discussion regarding the exact contours of solidarity, especially in its horizontal understanding.

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Eigentlich weiß man nur, wenn man wenig weiß; mit dem Wissen wächst der Zweifel

Johann Wolfgang von Goethe

If at first the idea is not absurd, then there is no hope for it

Albert Einstein

*Considerate la vostra semenza: fatti non foste a viver come bruti,
ma per seguir virtute e canoscenza*

Dante Alighieri

Learning never exhausts the mind

Leonardo da Vinci

Docendo discimus

Lucius Annaeus Seneca

INTRODUCTION

1. Interest and relevance of the topic

The early 1990s were a time overflowing with momentous developments at both the international and domestic level, and Italy was on the forefront of this transformation. In the international sphere, the dream of a more united Europe was finally taking a well-defined shape, with the implementation of the Treaty of Maastricht, or Treaty of the European Union (signed in 1992), and a single currency that was well in prospect (the Euro would be introduced in 2002). The Cold War had ended in 1991, effectively lowering the Iron Curtain that had separated the East from the West for so many years. Yugoslavia found itself trapped in a ferocious civil war whose significance went beyond its borders, thus drawing much attention towards this territory, and Italy was especially concerned because of the geographical vicinity. Globalization and a new way of understanding world trade began to appear. But profound changes were happening also at the local (Italian) level. First, the whole political system was crumbling, with traditional political parties like *Democrazia Cristiana* (the Christian Democrats or “DC”), *Partito Socialista Italiano* (the Italian Socialist Party or “PSI”) and *Partito Comunista Italiano* (the Italian Communist Party or “PCI”) directly under attack in courts. Longstanding political players were accused, one after the other, of corruption and bribery, thus forcing these coalitions to drastically change names, programs, and people (the infamous *Mani Pulite* and *Tangentopoli* scandals¹). It was the end of the First Republic.²

¹ *Mani Pulite* means “clean hands” while *Tangentopoli* could be translated as “city of bribes”.

² See, *ex multis*, C. Desideri, “A Short History of Regionalism in Italy Since the Republican Constitution. Italian Regionalism and Its Evolution” in S. Mangiameli, ed., *Italian Regionalism: Between Unitary and Federal Processes* (Cham: Springer, 2014), p. 44.

It was against this backdrop of intense and rapid radical changes that a new political party known as *Lega Nord* (i.e. the Northern League, or “LN”) emerged, initially almost unnoticed, but later quickly acquiring national visibility and prominence. Certainly, it was an unconventional party if compared to the traditional ones that were under attack in courts: in fact, its leaders seemed to be very distant from the splendors of Rome and closer to the needs of the people (at least those located in a certain part of the territory). The LN seemed to directly touch people’s emotions, a fact that was helped by the relative intelligibility of its political propaganda, in contrast with most of the other coalitions’ political platforms. Most importantly, especially in terms of the genesis of this thesis, this party was propounding something innovative (and, in my opinion, captivating) for Italy: a federal system. Very shortly, federalism became the pivotal concept around which all political discussions were revolving, although for the great majority of individuals outside academic or political circles it was an entirely new and unfamiliar concept.

It seemed that a new wind was blowing, filled with expectations, optimism and fresh promises of hope and honesty. This inspired an unprecedented number of students to flock to law schools and contribute, in one way or the other, to this new sense of the possibility of justice that was rapidly emerging. I was part of this cohort, this new generation of individuals who decided to pursue legal studies, motivated by those heroic judges who were still fighting in courts against corrupt politicians and the old way of doing politics. While not directly implicated at a political level, I was fascinated by federalism, and thought that it would be the ideal solution for my country.

A few years have passed since then, but unfortunately the ideals that were guiding and inspiring the choices of so many young individuals in the early 1990s have not led to the changes

sought. The end of the First Republic has not meant an improvement in Italian politics, as new scandals tainted the reputation of so many members of the political class, irremediably compromising the international credibility of Italy. The federalization process started in the early 1990s has gone through contradictory and conflicting phases: initially opposed, it was subsequently endorsed in one way or the other by most political actors, leading to what resulted in an anomalous and ambiguous decentralized (or regional) system. The enlargement of the EU, coupled with an ever-increasing globalization and the financial crisis of the late 2000s, put a great deal of pressure on the shoulders of national governments, especially in countries characterized by less stable systems like Italy. In other words, the hope that marked the early 1990s has been replaced by a new sense of discouragement and disillusionment.

In any event, in spite of the gloomy perspectives of the current situation, I have remained very intrigued by federalism and the federal prospect for Italy,³ although I am aware that these federal ambitions have been significantly reshaped. Specifically, I was fascinated by the unorthodox and conflicting relationship that Italy has always maintained with federalism; more generally, I believe that there are several aspects of the federal debate in Italy that are worth exploring more thoroughly, not so much for their practical application (as many of the federal-based mechanisms introduced in the Constitution are dormant, as we shall see) but as examples of federal experimentation that can have a valuable interest and be applied or inspire other federal or federal-like polities facing dilemmas similar to those internal to Italy.

Some readers may wonder why a federal or decentralized system should look at the Italian regional model for lessons. Besides my Italian roots and personal interest in Italian

³ As we shall see, in this thesis the terms *federal* and *federalism* are used to include a variety of decentralized experiences (including regionalism), and not simply a classic form of federation shaped on the US constitution.

federalism, what is valuable in my opinion is that the Italian experience lies at the intersection of different perspectives, namely regionalism, federalism, and sub-state nationalism, which have all played, to a more or less extent, a key role in informing the recent constitutional reforms. As a result, the constitutional structure currently in place in Italy, as well as the political and institutional debates that led to it, might represent a source of discussion, elaboration and inspiration in other federal or federal-like systems.

As a result, my interest is not necessarily limited to Italy, as I am willing to situate the specific Italian experience within the broader Western discourse on federal theory.

Consequently, while the approach used in this research is not comparative (further details on the methodology are illustrated in the dedicated section), I have selectively adopted comparative cross-references to other federal or decentralized systems to help clarify or illustrate certain concepts. In this way, it was possible to unveil unexpected perspectives and angles of federal, regional and sub-state national theory. The Italian regional state represents an innovation in and of itself, as it embraces a number of federal elements without creating a *pure* federation as traditionally intended by scholarship. Consequently, some of the questions raised and the strategies introduced into the Italian regional model are certainly worth exploring for their potential application to other realities.

2. The research topic

If we look at the time frame spanning from 1861 (Italian unification) to the 1970s (implementation of regional governments), the constitutional history of Italy has been marked by a tradition of state centralization. Interestingly enough, however, federal ideas have always been the object of debates and discussions among constitutionalists, politicians, historians, and

intellectuals in general since the decades preceding unification, although these same ideas have never produced strong enough roots so as to begin to sprout. On the contrary, federalism has often been construed as antithetical to the principle of solidarity among territories and of unity and indivisibility of the nation, as if a state could not be united and federal at the same time. It was only with the constitutional reform of 2001 (which will be extensively detailed in this thesis) that Italy was able, at least partially, to move towards a more decentralized constitutional structure.

As I will constantly reiterate throughout my work, the whole debate on federalism and federal reforms in Italy has mainly revolved around the socio-economic cleavage between the (wealthier and more developed) North and the (poorer and less developed) South of the country, a condition that has endured unchanged for centuries, and which has prompted a generous amount of scholarly work.⁴ This certainly represents a unique aspect if compared to other realities where federal or federal-like structures have been discussed or implemented. In fact, federalism or federally-inspired systems are traditionally employed to soften conflicts that are rooted in ethno-linguistic or cultural-religious differences (Canada, Spain, United Kingdom, Belgium, are all notable examples in this sense) rather than in diverse socio-economic patterns, though the latter are not entirely absent. One of the peculiarities of Italy is that federalism was discussed as one possible way to mediate between the competing interests and priorities of these two territorial areas; however, the implementation of a *pure* or *classic* federal model⁵ was firmly

⁴ The *Questione Meridionale*, or “Southern Question” has constituted a preferred subject matter of economists and sociologists alike at least since the 1800s. In this thesis, I will be referring to some of the work done in this area (specifically, the work of Salvemini and Mingione). References to this topic will be constant throughout the thesis.

⁵ With the expressions *pure*, *classic*, or *fully-fledged* federal model or federation (here used interchangeably) I refer to a constitutional pattern shaped on the US federal constitution of 1787, and whose main features will be thoroughly detailed in chapter I of the thesis.

rejected also for the fear or belief that, by vesting individual regions with more powers, especially in the fiscal ambit, the wealthier areas of the North would become even wealthier to the detriment of the poorer regions in the South, severely penalized in such a context.

Furthermore, this scenario would also jeopardize the solidarity-based relationships among the various territories of the country, representing the foundations on which the Italian institutional system reposes, as richer regions would begin to think more in terms of profit increases rather than of fairness and equity. By mildly strengthening the regional system already in place, the constitutional reform of 2001 has not, in my opinion, been able to concretely address the problems that were at the core of the discussion, as the whole political and institutional debate preceding and following the reform has been very careful in not perturbing the fragile balance among competing interests.

In any event, the constitutional reform of the 2000s has been momentous in the recent constitutional history of Italy, and it has triggered an enormous body of scholarly work that carefully analyzed the changes brought to the constitutional text by a variety of angles and perspectives. Yet, to the best of my knowledge, I think there are at least two specific aspects that this debate has left unanswered: the first pertains to strategies and mechanisms that could help better address the competing and different interests and priorities of the various areas of the country (in case of failure of a federal reform), while the second revolves around the issue of whether a federal reform would actually jeopardize solidarity among regions. These aspects have thus become the key research questions of this thesis, as I will more thoroughly explain below in the section dedicated to the research questions.

3. Theoretical framework or research context

The theoretical framework for this thesis combines three main strands of literature which are closely linked the one to the other: federalism, regionalism, and sub-state nationalism. Constitutional law and theory, as well as federal, regional and sub-state national theory are among the subject matters covered by this research, although the thesis could also be partially traced back to the general debate on multi-level governance and on the increasing complexity of the relations among different layers of government. In fact, traditional *pure* federal or unitary models are apparently no longer in a position to fully address the challenges posed by multi-level governance, thus it becomes almost a necessity to find alternative, more articulated, *hybrid* solutions that can better acknowledge this multifaceted reality.

Italian regionalism is very peculiar, almost unique, when compared to other experiences in Europe and elsewhere, the first striking difference being that it is almost completely free from ethno-nationalist traits. In fact, it was mainly invoked as a palliative to the malfunctioning, clientelistic and corrupt central state, incapable of efficiently addressing the (mainly) economic interests of the industrialized regions in the North, which were trying to compete at European and global level, but were trapped in a system that was too slow, too bureaucratic, and too busy with political games benefitting only a limited number of players. In this context, linguistic, social, or ethnic issues played only a very marginal role, also because these issues had already found a constitutional embedding in the provisions recognizing the special status of the five autonomous regions, as it will be explained. In any event, while still partially flawed, the Italian regional model currently in place intersects with topical debates engaging scholarly discussions around the globe, while at the same time it displays interesting features that might elicit

provocative discussions on a variety of topics and that can equally benefit other federal, regional or otherwise decentralized models. Suspended between federalism and centralism, but not marked by ethno-linguistic connotations, the Italian regional model represents, in my opinion, an ideal point of departure to stimulate fruitful debates. In fact, some of the tensions identified within a regional model are often very similar to those existing in (multinational) states or federations. Consequently, it might become intriguing to look at systems like Italy that blend together various institutional experiences for solutions and strategies, a testimony to the immense, and partially unexplored, potentialities of federalism.

4. Research questions and arguments developed

As stated earlier, the theoretical framework of this thesis blends federal, regional and sub-state national theories, and looks at the Italian regional model for lessons and solutions that could potentially be applied to other federal or decentralized states facing similar dilemmas. More specifically, the point of departure of the discussion will be the socio-economic cleavage between the North and South of the country, which prompted the whole debate on federalism in Italy. While scholars have extensively analyzed the origins and rationale behind this cleavage, as well as the constitutional and institutional reforms discussed or implemented to face this dilemma, a number of issues have, in my opinion, been ignored by literature or addressed only superficially, as anticipated above. Below are the queries that have most intensely fueled my intellectual interest, along with the arguments I developed for each of them.

a. First research question: what is the relationship between federalism and regionalism?

In revisiting the intellectual history of federalism, regionalism, and sub-state national theory, part I of this thesis (chapters I-III) not only paints the theoretical framework of the research, but sheds light on the relationship between federalism and regionalism as well. In fact, for a federal (or federal-like) state to draw lessons from the Italian regional paradigm, we need to first show in which ways federalism and regionalism are related.

The question is less banal than it might seem at first sight. In fact, while most scholars agree that regionalism can be construed as a hybrid form of federalism, or that regionalism is part of the same family of federalism, in real life the exact contours of each experience are not so clearly distinct, also because scholarship on regionalism is fairly recent and still evolving. I will thus argue that the distinction between regionalism and federalism should be disregarded and that regionalism can be traced back to the broad federal experience, being a hybrid expression of it, although regionalism is an overarching umbrella-term that can incorporate diverse experiences and situations at national and international levels. Consequently, the regional state paradigm to which Italy is usually associated is just one of the many shapes that regionalism can take at national level, even though the two terms (regionalism and regional state) are often employed as synonyms. Also, it should be noted how the expression “regional state” can be seen as a fictitious or imaginary one, as none of the regional constitutions (i.e. Italian or Spanish) uses it to define the particular state model it refers to (differently than what happens in several federal constitutions).

With specific regards to the regional state, I will then identify the three elements which, in my opinion, enable us to differentiate a federal and a regional model, although the difference between the two is subtle and there is a natural trend of reciprocal influence. First, in a regional

state, the so-called “federal culture” (i.e. self-rule and shared rule) is less evident than in a *classic* federation; second, the constituent units in a regional state are not “sovereign” in their constitutionally recognized spheres of competence as is the case in *fully-fledged* federations; third, the constitutions of regional states usually recognize the existence of multiple levels of government in addition to the duality “national-local” typical of most *pure* federations. In light of the above, I will argue that a regional state is more appropriate for areas which are not so geographically vast and where there is a longer history, tradition and closer connection between local territories, as in the case of Spain and Italy. Consequently, one of the key advantages of a regional model, as opposed to a *pure* federation, is its resiliency: rather than being rigidly anchored to the plainly vertical or horizontal dynamics typical of centralist and federal paradigms, it espouses a more cross-sectional relationship between the center and the periphery that takes into account additional levels of government (i.e. local autonomies such as municipalities and/or provinces). In this way, it is a model that is more prone to adapt to the fast-paced changing reality, and thus sometimes preferable to the *classic* federal paradigm.

b. Second research question: how can we define the present state of Italian regionalism, especially in relation to the federal model?

While revisiting the Italian federal thought starting from the years preceding the unification of 1861, Part II of the thesis (chapter IV-VI) comprehensively depicts the Italian regional model sanctified in the 1948 constitution and later perfected and strengthened with the constitutional reforms of the 2000s.

My argument is that, while federalism was rejected at the time of unification, federal ideas were not completely foreign to the political class of the time, and they help explaining the

rationale behind certain institutional choices. The Italian regional model distils the lessons learned from a number of theoretical experiences such as federalism (including the influential role played by visionary intellectuals like Cattaneo and Salvemini), sub-state nationalism, the European unification process, and the unitary and centralized state. In fact, the Italian model emerged as the consequence of the profound socio-economic tensions existing between the North and the South, but abstracted from ethnic connotations, the Italian regional scheme can be conceived as an innovative experiment crafted by those who were looking for a compromise between the federal and the unitary paradigm, both of which were rejected as less than ideal ways to address the unique conflicts typical of the Italian state.

I will also argue that the present state of Italian regionalism is not easily identifiable, especially in relation to the federal model, as constitutional and institutional reforms in this country often coexist with other, more stringent priorities and initiatives (i.e. economic and financial crisis) and with a certain myopic way of doing politics. Consequently, reforms are frequently the result of compromises between opposing political forces and ideologies rather than the product of well-reasoned projects.

c. Third research question: how can we define political and socio-economic communities characterized by *non-national* differences, which lack the unity of the sub-state nation but which have an important identity nonetheless, and how can we acknowledge their interests without posing a threat to the unity and integrity of the state?

In Part III of the thesis (chapters VII-IX) my attention turns to two specific aspects of the broad federal-regional-sub-state nationalism debate that I believe have not been fully explored

and, consequently, theorized by existing scholarship: political and socio-economic societies characterized by *non-national* differences (the subject matter of the present research question), and the relationship between solidarity and federal theory (discussed in the next research question). In addressing these two specific queries, the Italian regional experience will serve once again as a case study.

In chapter III, I will illustrate how a vast scholarly literature already explores, also comparatively, the particular reality of nationalism and nations within plurinational or multinational states. However, I argue that *national* differences are not the only ones that need attention and, perhaps, asymmetrical treatment. In fact, the whole debate regarding federal and regional solutions in Italy has revolved not so much around ethnic or *national* aspects, but on the reconciliation of the profound differences characterizing the socio-economic fabric of the North and of the South, a legacy of decades of exposure to diverse foreign domination and, consequently, culture, which has resulted in a radically different approach to economic development and liberty. Here, the federal model which was initially suggested to address the different needs and interests of these two areas of the country could not be implemented, also because of a long-standing skepticism towards federalism. The regional model, introduced in 1948 and strengthened after the 2001 constitutional amendment, still leaves, in my opinion, the issue partially open. While the Italian reality is quite unique in this sense, other examples can be offered of sub-state realities where a strong sense of identity exists, although not traceable back to the traditional literature on sub-state nationalism (mainly emphasizing linguistic, religious or other forms of ethnic distinction). For example, Texas in the United States, Alberta in Canada or Rio Grande do Sul in Brazil all display a strong identity without being *nations* for sub-state

nationalism scholarship. I therefore develop the expression political and socio-economic societies or communities characterized by *non-national* differences to refer to these groups.⁶

In other words, both in federal and non-federal states there might be territories or societies sharing feelings of diversity vis-à-vis the state wide community, which are not identifiable with *nations* in the sense construed by mainstream scholarship on sub-state nationalism, as their sense of diversity is less related to an identity component (which can nonetheless be present) and more reflective of specific socio-economic patterns suggesting specific acknowledgement. Furthermore, these communities may have strong enough governance, social cohesion and economic vitality to contemplate statehood. The issue then becomes: how does this look like from a constitutional perspective? How can this difference be recognized in situations where differences are not encapsulated within one of the recognized models (e.g. sub-state national entities)? This discussion also elicits another sub-question: how does that look in a state where the rest of the country does not understand or accept this *non-national* sense of distinction or difference?

This complex and multifaceted question offers the opportunity to develop a number of arguments. First I offer a definition of political and socio-economic societies characterized by *non-national* differences located within a given geographical territory which display (or at the very least claim) some *de facto* and well rooted asymmetrical traits⁷ (mainly, but not exclusively, bearing a political, social and economic nature) compared to the state-wide community, and which seek some form of acknowledgement of their specificity. These communities, however,

⁶ Throughout the thesis, the expression “political and socio-economic societies characterized by *non-national* differences” will at times be replaced by the shorter “*non-national* societies or communities” or, more simply, “*non-national* differences”.

⁷ The distinction between *de iure* and *de facto* asymmetry will be illustrated *infra*.

are neither *nations* nor minority groups: they do not qualify as *nations* because members do not necessarily share an identity-related trait such as a different language, religion or any specific ethnic backgrounds; but they do not qualify as minority entities either, as members are not simply individuals seeking full integration into the legal framework of the host state. Another interesting feature that partially singles out *non-national* societies is that their members often belong to privileged circles of the state: in fact, they live in wealthy and developed territories, and are fully socially and politically active and integrated. Yet, while not disadvantaged compared to the rest of the population, for a multiplicity of reasons they feel neglected, ignored, sometimes even mistreated by institutions, the latter often accused of remaining indifferent to their specific interests.

Some readers might be wondering why this issue needs to be addressed at all, as federalism is also designed to allow scope for *non-national* differences (in fact, federalism may even breed this sense of *non-national* difference). I believe that deciding whether this sense of difference is real or imaginary is a futile exercise: in fact, so long as an entity in the state itself perceives this difference (in particular a powerful entity), the issue presents itself, either to be dealt with or ignored. My argument is that, by exploiting some of the flexibility that federalism/regionalism presents to deal with *non-national* differences, one may unlock the solution for achieving constitutional recognition for national societies. Likewise, by finding ways to remind *non-national* societies of their solidarity obligations towards the whole, one appropriates a powerful rhetoric that is also available when speaking to *national* societies.

Next, I argue that there are a number of federal-based stratagems that could be exploited to meet the specific interests of these communities. In the case of Italy, these strategies (which

include asymmetrical solutions and subsidiarity) are already part of the constitutional or legal system, although they are not always employed to the fullest advantage of political and socio-economic societies characterized by *non-national* difference. As stated above, I argue that meeting the interests of *non-national* societies serves a number of reasons, most importantly the fact that this recognition may help unlock the key to making the necessary constitutional changes to solve the recognition issues for sub-state *national* recognition.

This research question certainly presents quite a few challenges since, to the best of my knowledge, the reality of *non-national* differences has never been fully theorized yet: consequently, the novel perspective I am suggesting is necessarily still embryonic and certainly needs to be perfected. In this sense, a critical challenge would be to offer a satisfactory definition of *non-national* differences, as this concept might be new to most readers or, even when it is not, they might be skeptical towards it. Thus, explaining the importance of acknowledging the existence and interests of political and socio-economic communities characterized by *non-national* differences becomes a key objective. Another challenge that I am faced with is that of dealing with this topic in as constructive a way as possible, thus avoiding to fall into the trap of what could be regarded as a type of racism. In fact, at least in Italy, the North-South debate has constantly been tainted by racist allegations that have prevented a serene and positive exchange of ideas. I hope the tenor used in my narrative will succeed in this objective of avoiding that taint.

d. Fourth research question: how can we reconcile federalism with concepts like equality, fairness and solidarity, particularly in the context of *non-national* differences?

Chapter VIII of the thesis touches upon the relationship between federalism and solidarity, to deal with the acknowledgement of *non-national* differences in ways that do not pose a threat to the integrity of the state. Along with equality and fairness, solidarity is a constant concern that invariably emerges in a variety of socio-economic, political, legal, philosophical and religious debates, and whose meaning is, to a more or less extent, clear to almost any reader: in fact, solidarity refers to positive values such as generosity, justice, justness, equal distribution of resources, etc. However, in the specific legal context, and in federal theory in particular, the contours of solidarity become less precise. In other words, what does solidarity entail within a federal or decentralized system? In which ways can the principle of solidarity be expressed in such a context? More importantly, are federal theory and solidarity conflicting or antithetical ideas, to the point that the one excludes the other?

The relationship between federal theory and solidarity is an issue intimately connected with the previous one relating to *non-national* (but also with *national*) differences. In fact, when acknowledging the specific and different interests of political and socio-economic societies characterized by *non-national* differences, a possible reaction of the state-wide community would probably to question such acknowledgement as against the natural spirit of solidarity that should infuse the rapports among and between the various territories composing the state.

Once again, the Italian regional model will serve as the ideal point of departure to contribute to this discussion, since this same question has been a focal concern in Italian regionalism because of the socio-economic cleavage between the North and the South. In fact, in the Italian experience detractors of federalism and federal reforms have repeatedly contended that a federal scheme for Italy would seriously jeopardize solidarity among Italian regions.

After retracing (also comparatively) the meaning of solidarity in legal and federal theory (an exercise that helps outlining the exact meaning and scope of the principle), I try to rebut the aforementioned argument by contending that federalism and solidarity are not antithetical or competing concepts, as they serve very different purposes; in this sense, they can be seen as complementary the one to the other. In fact, federalism brings together unity and diversity, while solidarity fortifies the family-like relationships interconnecting the various actors of the complex federal model.

In federal systems solidarity may be present in two main connotations: *vertical* (i.e. from the center to the periphery) and *horizontal* (i.e. among peripheral units). The former is a well-known concept to academic scholarship on federalism, as a vast literature already exists on *vertical* solidarity-based mechanisms such as equalization payments, common to most federal or decentralized states, but little has been written with regards to the *horizontal* aspect of the principle. To buttress my argument, I will thus focus on the less theorized *horizontal* solidarity to investigate how it could be more exploited by policy-makers. Consequently, if and when solidarity becomes an issue, I propose to strengthen the *horizontal* sphere of solidarity through the introduction of strategies whose purpose is to balance unity and diversity and the various conflicting interests coming into play. This *horizontal* solidarity is important in the Italian context where *non-national* differences are concerned, but its relevance is equally strong where *national* units are present. Furthermore, the two contexts may well be conjoined.

5. Importance and originality of the research. Beneficiaries of the thesis.

With regards to the contribution of this research, a variety of primary and ancillary reasons justify and support the importance and originality of my thesis, especially from a

theoretical perspective, as some of the themes discussed here have the potential of being further explored and elaborated upon by other scholars. As noted, this thesis lies at the intersection of federalism, regionalism, and sub-state national theory, thus implicitly positioning itself within the wide-ranging debate on multi-level governance and on the current complexity of the relations among and between various layers of a composite polity. As *pure* federal systems continue to search for solutions to seemingly intractable problems, this thesis supports the view that the search for such solutions should extend beyond the classic federation into quasi-federal polities in which similar if not identical issues arise.

Where might this potential lie? First, as noted, this work tries to theorize the concept of political and socio-economic societies characterized by *non-national* differences which has so far received very little attention from scholars, although the existence of these groups is not completely unknown to commentators. This theorization is relevant because it offers the opportunity to be more attentive to the distinct and often very diverse interests of the various communities that constitute the social fabric of a state, by looking at ways to better conciliate these realities and to create a more constructive environment for individuals and groups to flourish.

Second, always building upon the unique Italian regional experience, this thesis elaborates on the legal aspect of solidarity by explicitly studying the interconnectedness of solidarity (specifically, *horizontal* solidarity) and federalism. While the relation between solidarity and federalism is not new (there are several examples of *vertical* solidarity-based mechanisms that have been implemented and developed in federal states and extensively studied by scholars), the *horizontal* aspect of solidarity and federalism is much less explored and

theorized. Through my suggestions and examples, I hope to fuel a new debate that has virtually unlimited potentialities.

My research, however, also presents ancillary original contributions to knowledge. In fact, by retracing the history of Italian federal ideas, I implicitly fill a gap in (English) scholarship since I accentuate the inputs coming from the Italian federal and constitutional tradition to scholarly literature on federalism and regionalism. Likewise, because of its recent experience with constitutional amendments, Italy can be seen as a state under transformation, a laboratory to experiment new mechanisms and strategies which can be potentially applied to a variety of situations also outside of its geographical borders.

Finally, the accent on Italy as a case-study is useful to elaborate on the regional state as a federal-inspired model, since this scheme is less known and theorized outside European frontiers. In fact, when it comes to the regional state construed as a quasi-federal model, scholarship is mainly European. The more traditional literature on federalism, of North American vintage, tends to neglect this paradigm. Also, by delving so much into federal theory, I hope to draw attention to the flexibility of federal-based tools and on how these can easily “infiltrate” systems that are not intrinsically federal. In other words, certain federal-inspired strategies can be extended also to realities that are not federal, and vice versa.

As far as the beneficiaries of this research are concerned, I drafted this thesis with a rather broad readership in mind. My first, natural beneficiaries would obviously be students of federalism and federal theory. In fact, not only do I retrace the intellectual history of federalism, but most importantly I try to paint the key traits of a regional model and illustrate in great detail the interconnectedness between federal and regional schemes. In doing so, I contribute to the

existing literature on the subject, particularly because regional models are often undefined and less theorized, as already noted. Similarly, by insisting on the Italian federal thought (both at the time of *Risorgimento* and in more contemporary times), I hope to fuel the interest of federal scholarship towards this specific strand of literature, which is often neglected.

The thesis also targets students of sub-state nationalism because of the original perspective I am trying to offer with a theorization of *non-national* differences and the consequent reverberations that this might have towards this theory.

Finally, with this work I wish to trigger the intellectual interest of comparative law and political studies scholars: in fact, while the thesis does not embrace a purely comparative approach, the occasional cross-references to other legal systems serve the purpose of situating the Italian regional experience within the broader general context. Also, I try to paint a comprehensive picture of certain aspects of Italian public law through the narrative of a number of significant political events that took place both at the time of unification and more recently starting from the early 1990s.

6. Methodological and bibliographical choices

Because of the themes discussed, the methodology adopted in this thesis blends a number of different approaches. For some chapters I have adopted the *historical* method. This is evident particularly in those sections whose main objective is to retrace the history of federalism both in general terms and in the specific Italian context, such as chapters I and IV. This approach was chosen as particularly appropriate to paint the historical and doctrinal background in which I situate this work. The same *historical* methodology is also used, although sporadically, in other

sections of the thesis when offering some historical perspective, such as when describing the intellectual history of the principles of subsidiarity and solidarity.

Another approach extensively used in this research is the *interdisciplinary* method, that is to say a method combining at least two different disciplines. Federalism as a theory could in fact be explored and studied from a variety of perspectives (political, legal, philosophical, historical, theological, etc.) and the same is true for some concepts and principles directly linked to it (for example, solidarity and subsidiarity, extensively discussed in the research). In this thesis, I have specifically focused on the legal and political understandings of federal theory, thus employing an *interdisciplinary* method that blends together law and political science. The close connection existing between these two disciplines is particularly evident when we think of the influence that the one has on the other, i.e. how a certain political thought or intuition can shape and forge a legal or constitutional scheme. One of the potential challenges arising from the adoption of an *interdisciplinary* approach is that sometimes it prevents a thorough analysis of concepts, principles or solutions: in fact, by concentrating on the close relationship and reciprocal influence between two different disciplines, the risk is that the analysis remains at a rather superficial level. Nonetheless, the *interdisciplinary* method is certainly valuable because it offers an opportunity to emphasize the interplay existing between certain legal and political choices.

This thesis also adopts an *analytical/doctrinal* approach, which is particularly evident in those sections outlining certain potential strategies and methods, drawn from the Italian regional model, which could be potentially applied to other decentralized realities. The reader will also notice that, in some analytical sections (i.e. solidarity and subsidiarity), I also resort to a number of decisions of the Italian Constitutional Court (“ItCC”) to better clarify certain concepts,

although the thesis does not revolve around the role of the ItCC in Italian regionalism. This choice is justified by the fact that, while Italy is not a common law jurisdiction, the ItCC has played a pivotal role in elucidating the meaning and extent of the 2001 constitutional reform, sometimes apparently betraying the original intentions of the constitutional framers (as in the case of subsidiarity).⁸

In a number of situations, this thesis also adopts a *comparative* approach, whose purpose is mainly explicatory or illustrative. In fact, I occasionally make cross-references to other federal or decentralized states to help clarifying some points (such as in chapter II on regionalism and in chapter VIII on solidarity). For instance, I have looked at Spain as its regional system closely mirrors the Italian one, both conceptually and historically. Germany and Canada have also been used for comparative purposes: the former, because its legal system shares the same historical roots with Italy, but also because of the common belonging to the European Union, while Canada is chosen because it is seen by many as a fruitful laboratory of federal experimentation, due to the complexity of its federal system. In any event, all comparative cross-references are made with countries located in the Western world (Europe and North America): in fact, although federal systems exist or are being implemented also in other continents (i.e. Ethiopia, Nepal, India, Malaysia, etc...), I preferred to limit my investigation to a very specific geographical

⁸ When resorting to the ItCC jurisprudence, I have adopted a very simple method to select the pertinent decisions: a keyword search run on the website of the Court (www.cortecostituzionale.it), focusing on a specific time frame (years 2002-2014). Incidentally, I found these jurisprudential contributions particularly illuminating for topics such as subsidiarity and solidarity, but the interpretative activity of the ItCC has not had the same extensiveness for all themes (in other words, constitutional judges have not thoroughly scrutinized certain topics, so their contributions in some specific subject matters are minimal and, therefore, I disregarded them). Finally, one last important point to note is that, since all the ItCC jurisprudence available on the website is in Italian, all quotations from these decisions are entirely translated by me.

ambit because of the historical and cultural proximity of the legal experiences and common background of the countries considered.

Because one of the main protagonists of this thesis is Italy, an entirely *comparative* approach could have been contemplated, but such a choice would immediately elicit some concerns: for example, one challenge would be to identify a suitable term of comparison, something that might raise disagreement and criticism, especially in light of the uniqueness of Italian regionalism. This is why I preferred not to go in this direction, except for occasional cross-references to facilitate the positioning of the Italian experience within the broader federal picture.

By opting for the aforementioned research methods, other approaches have necessarily been rejected. For example, while I try to theorize *non-national* differences, I am not necessarily talking about underprivileged or oppressed groups deprived of basic equal opportunities (i.e. national minorities, specific ethnic groups, sectors of the labor market, women); while liberal and social democracy theories usually attempt to approach these situations, it is not the direction I am taking here. My goal was to complete a study in which federal-based tools can be employed to address the interests of *non-national* communities and mediate with solidarity issues. Consequently, liberal theory on individual rights was not ideal for this purpose.

I also chose not to embrace a *law and economics* methodology in spite of the numerous references to economic cleavages and *fiscal* federalism. In fact, such an approach requires specific technical competences (i.e. economic, financial or fiscal) that I simply do not possess at the moment. Similarly, because of the emphasis put on social differences and strategies to accommodate them, an entirely *socio-legal* method could have been a viable alternative for me

to consider. This approach has not been employed because I preferred to draw the attention of the reader to the flexibility of federalism and federal-based tools as possible mechanisms to be used in critical situations like those described in the thesis. Finally, I chose not to adopt an *empirical* method either, as in my opinion it would hardly help addressing and discussing the research questions proposed.

As a final point, I would like to briefly comment on the bibliography consulted to set out the theoretical framework, address the research questions and develop the arguments emerging from them. I resorted to a variety of primary and secondary sources such as textbooks, journal articles and court decisions authored in English, Italian and, to a lesser extent, French. Furthermore, because of the extension of the themes tackled in this work, my bibliography could be subdivided into three main themes: the intellectual history of federalism and regionalism, including the Italian strand; sub-state national theory; and the 2001 constitutional reform in Italy and ensuing debates. In order to select the sources I wanted to use, I started from the fundamental contributions coming from scholars such as Kymlicka, Elazar, Watts, Burgess, or Tierney, who have authoritatively published on topics like federalism, federal theory and sub-state nationalism. Insofar as the Italian constitutional reform of 2001 and Italian federal thought, most of the scholarly literature available is in Italian. In this regard, I extensively resorted to a number of open access websites as sources of documents. Among the websites consulted, I have www.federalismi.it, an online review of Italian public law (as well as comparative and EU law) where most Italian public law scholars regularly publish; the website also allows the consultation of a valuable database, where it is possible to run keyword searches on specific issues. Another valuable resource consulted online is www.forumcostituzionale.it where it is possible to refer to a variety of papers on public law subjects authored by prominent scholars. Finally, I also resorted

to the contributions available on www.amministrazioneincammino.luiss.it, an online review on public law, law and economics and public governance edited by the Research Centre on Public Administration “Vittorio Bachelet” of the LUISS University in Rome.⁹

7. Objective(s) of the thesis

In writing this thesis, I set both primary and secondary goals or objectives that I expect to pursue. The first and most important goal is to address and elaborate on the research questions: building upon the Italian experimentation with federalism, regionalism, sub-state national theory, and unitary experience, I theorize the idea of political and socio-economic societies characterized by *non-national* differences, while at the same time discussing the contested relationship that might emerge between federal theory and solidarity in certain specific contexts. The other important goal I intend to reach is to distil as clearly as possible the lessons that can be learned from the complex reality represented by the Italian regional model and that could be “exported” to other federal or decentralized states confronted with identical or similar dilemmas. More precisely, I am looking at how federalism and federal-based mechanisms can be developed to meet the interests of *non-national* communities, while at the same time trying to find a common contact point or mediation between these tools and issues of solidarity. Because of the scarce attention that legal and political scholarship has so far devoted to *non-national* differences, I also expect my thesis to encourage a new intellectual debate, thus triggering the curiosity of other scholars having similar interests to start looking at things from a new perspective. However,

⁹ Similarly for the ItCC decisions mentioned above, for all the literature published in Italian, all citations present in the thesis are translated by me.

seeing that this debate on *non-national* differences is still at an initial stage, I do not necessarily have all the answers at this point.

This thesis also offers an ideal opportunity to try to define certain concepts or expressions such as regionalism and political and socio-economic societies characterized by *non-national* differences. Defining concepts is always a very important objective, as it permits us to situate the narrative within a specific theoretical framework, and thus better define the scope of the specific investigations. Obviously, this is not an easy goal to achieve: in fact, reaching a unanimous agreement on certain definitions is often impossible, and readers may not necessarily concur on the prospected solutions.

Finally, by using the Italian case study as the main basis for discussion, this thesis aspires to reach two related goals. On one side, retrace the intellectual history of Italian federal thought, an aspect that comparative scholars of federalism may be less familiar with. At the same time, I hope to encourage scholars to look with fresh interest at the vicissitudes of Italian regionalism. In fact, during my research, I noted the superficial attention that comparative scholars generally display towards the past and recent institutional and constitutional perspectives of the Italian regional model, while Italian students are very prolific in analyzing in depth the various angles and potential flaws of the institutional debates revolving around the centre-periphery relationship. Interestingly enough, I am not alone in this predicament, as other scholars have lamented the widespread neglect, beyond Italian national borders, regarding Italian public law in general, and regionalism in particular. For example, Grottanelli de' Santis acknowledges how

non-Italian jurists (particularly in the Anglo-Saxon world) tend to ignore Italian regionalism.¹⁰

How can this be explained? One possible reason is the nature of Italian regionalism, which is the direct consequence of the peculiar Italian modern history and of the deep and longstanding socio-economic cleavage between the North and the South. As a result, it is less impregnated with nationalism issues and thus less appealing to that part of scholarship that focuses on sub-state nationalism and which, for obvious reasons, prefers to turn its attention to realities like Spain, Canada or the United Kingdom. Likewise, because the Italian regional model is not entirely comparable to a *fully-fledged* federation, comparative literature on federalism might look somewhat skeptically to the present Italian scheme, as it is not tantamount to the more traditional subjects of analysis (i.e. the United States, Germany, Australia, or the other American models). Furthermore, Grottanelli de' Santis notes how the Italian legal theory and political world may be impenetrable to foreign students (although, he adds, no more unintelligible than the French and German equivalents).¹¹ In fact, the unstable and unpredictable political situation in Italy, coupled with the difficulties that non Italians (but often Italians too) might have in fully grasping the rationale of certain Italian moves, might dissuade scholars from further adventuring into too complex political and constitutional arrangements riddled with ambiguities, particularly given the lack of defined frontiers of the present arrangement.¹² An additional deterrent might be the language. In effect, but for a limited number of exception, most Italian constitutional scholars

¹⁰ G. Grottanelli de' Santis, "The Italian Variant of Federalism" in J. Fedtke & B. S. Markesinis, eds., *Patterns of Regionalism and Federalism: Lessons for the UK* (Oxford & Portland: Hart, 2006), p. 3 [Grottanelli de' Santis, *The Italian Variant of Federalism*].

¹¹ Grottanelli de' Santis, *The Italian Variant of Federalism*, cit., p. 3.

¹² In this sense, see W. Swenden, *Federalism and Regionalism in Western Europe. A Comparative and Thematic Analysis* (New York: Palgrave, 2006), p. 16.

publish only in Italian, thus making their work inaccessible to non Italian speakers.¹³ Therefore, I think that scholars who neglect the Italian reality, preferring to sail safer waters, are missing an opportunity, as there are quite a few interesting lessons that the current Italian scheme can offer to comparative scholarship, as it blends together variegated experiences coming from federalism, regionalism, sub-state nationalism and the unitary state model, without forgetting that for a long time Italy has been the cradle of some of the finest jurists and constitutional minds who have brought inspiration across the world.

8. Structure of the thesis

This thesis is structured in three main parts, each of them further subdivided in three chapters. The objective of Part I is to set out an accurate narrative of the theoretical framework of my research, in particular by condensing the existing literature on federalism (chapter I), regionalism (chapter II) and sub-state national theory (chapter III), which constitute the foundation on which I build my subsequent analysis. More specifically, in chapter I, I will illustrate how federalism can be construed as an umbrella term including profoundly different experiences. In fact, while the federation emerged in the United States in 1787 has inspired and forged most federal models that have come into existence until WWII (thus creating the quintessential *pure, classic* or *fully-fledged* federation), more recently we have witnessed a certain creativity in adapting the federal elements to specific situations. Regional states are just one example of how federal traits have been adjusted to forge specific models that can be construed as variants of the more *classic* federal paradigm. Consequently, chapter II is devoted to a depiction of the elements that characterize a regional system, and in which ways it

¹³ Grottanelli de' Santis somehow ironically notes how the Italian language is usually spoken by English and American art historians, but not by jurists: Grottanelli de' Santis, *The Italian Variant of Federalism*, cit., p. 3.

differentiates from a *pure* federation, while at the same time preserving some important traits of it. Finally, the discussion on federal theory is often linked to sub-state nationalism. In fact, experience has proved that federal-inspired schemes are very apt to accommodate the various needs and exigencies of nations within multinational states and federations, so chapter III will be dedicated to an overview of the main traits of sub-state national theory. This scholarship plays an indirect role with regards to Italy, especially when considering the attempts made by the Northern League to resort to an “invented” *Padanian* nationalism to explain, or justify, the socio-economic differences between the North and the South, an attempt that was unsuccessful because of the absence of historical roots of this form of nationalism. While these three chapters are meant to keep the discussion at a very general level, there will be periodic cross-references to Italy to better assess certain aspects, and/or help clarify certain concepts.

Part II entirely revolves around Italy, as it represents a case study of the Italian regional model and Italian federal theory. The recent Italian experience with federal-based constitutional change directly builds upon the various theoretical perspectives illustrated in Part I to design what scholars have dubbed the “Italian way” to federalism.¹⁴ More specifically, in chapter IV I will delve into the debate on federalism before and after unification, to show how federal ideas have played an indirect role in forging the unitary state emerged in 1861, although federalism was eventually repudiated by the fathers of the Kingdom of Italy. In chapter V I will discuss how federal ideas have powerfully re-emerged in the early 1990s in the political propaganda put

¹⁴ See, *ex multis*, G. C. De Martin, “I nodi della via italiana al federalismo” (2009) *Amministrazione in Cammino* (available online at <http://amministrazioneincammino.luiss.it/wp-content/uploads/2010/04/AREL-I.pdf> ; M. Nardini, “La ‘via italiana al federalismo’ tra vincoli di bilancio, giurisprudenza costituzionale e riforme istituzionali” (2013) *Amministrazione in Cammino*, p. 8 (available online at http://www.amministrazioneincammino.luiss.it/wp-content/uploads/2013/04/Nardini_Federalismo.pdf).

forward by the Northern League, leading to the constitutional reform of 2001. Pursuant to this reform, what has emerged is a strengthened regional model, to the point that now Italy, along with Spain and, to a certain extent, Poland (although the latter is not considered in this work) can be considered as the quintessential models of regional states. Finally, chapter VI speculates on the present and future state of Italian regionalism, by emphasizing some of the shortcomings of the current constitutional scheme and the debate always ongoing at political level. The ultimate objective of Part II is to show the interconnectedness of federal, regional, and nationalism theories in creating the current Italian regional model, as it includes elements borrowed from all these different theories.

Parts I and II pave the way to Part III, which represents the most original contribution to scholarship of this thesis, as it details what I believe are some of the lessons coming from Italian regionalism that could be exported or applied to other federal or decentralized schemes. More specifically, in chapter VII I will see how the very unique experience with regionalism and federalism in Italy can lead to a theorization of what I refer to as political and socio-economic communities characterized by *non-national* differences, and how it is possible to find strategies to help better meet the interests of these societies. In chapter VIII I will open up a discussion on legal solidarity, a principle that can be employed particularly to solidify the relationships between constituent units of a federal or decentralized system to limit potential threats to the integrity of the state. Finally, by bringing together federalism, regionalism and sub-state nationalism, chapter IX concludes on the importance of recognizing the specific asymmetrical interests of *non-national* societies.

PART I

THE THEORETICAL FRAMEWORK

FEDERALISM, REGIONALISM AND SUB- STATE NATIONAL THEORY

CHAPTER I

AN INTELLECTUAL HISTORY OF FEDERAL THEORY AND NEW FEDERAL ARRANGEMENTS

Introduction

Part I of this thesis (chapters I-III) is devoted to setting out the theoretical framework of my narrative, positioned at the intersection of federal theory, regionalism and sub-state nationalism, with elements of these three theories overlapping. In the following chapters, I will retrace the history of these theoretical strands and carve out some definitions of basic concepts that will be used throughout the thesis, aware of the fact that not all readers might necessarily agree regarding the definitions proposed here. More specifically, in this first chapter I am going to briefly retrace the intellectual history of federalism and federal theory and then explore how the federal principle can be translated in practice into viable constitutional and political models.

Federalism shall be construed as an umbrella term that includes profoundly different experiences. In fact, while the federation that emerged in the United States in 1787 has, for a long time, inspired and forged most federal models that have come into existence until WWII (thus creating the quintessential *pure*, *classic* or *fully-fledged* federation¹) in recent years we have witnessed a certain creativity in adapting the federal elements to a variety of situations, blending together centripetal and centrifugal forces, federal and non-federal experiences, in a reciprocal process leading to novel experimentations. These variations on the federal theme will be examined in this thesis.

¹ Throughout this thesis, the expressions *pure*, *fully-fledged* and *classic* federation are used interchangeably to refer to the most traditional federal scheme shaped on the US federal constitution of 1787.

Federations can be regarded as one of the possible options that can be used to shape state models, along with unitary (or centralized), regional or confederal schemes.² However, regional states are also construed as variants of the more traditional federal model, whereas there currently seems to be no *pure* examples of confederation, as it will be more thoroughly illustrated in the course of this work.³ Therefore, the main dichotomy remains that between a federation and a unitary state.

The characteristics of a federation as opposed to a unitary, regional, and confederal state will be carefully detailed in the present as well as in the next chapters. For now, it suffices to say that, in very general terms, federations usually emerge from the fusion of pre-existing sovereign entities, although they could also originate from the fragmentation of a once unitary state.⁴ Also, in a federal state, the three fundamental powers (legislative, executive and judiciary) are usually shared between the central and the peripheral governments.⁵ Conversely, unitary states mainly

² P. Caretti & G. Tarli Barbieri, *Diritto Regionale*, 3rd ed., (Torino: Giappichelli, 2012), p. 2 [Caretti & Tarli Barbieri, *Diritto Regionale*]. In the present work, the adjectives *unitary* and *centralized* will be considered as synonyms and, therefore, used interchangeably.

³ According to some scholars, however, the European Union can still be seen as an example of confederation. See for instance N. Duplé, *Droit Constitutionnel: Principes Fondamentaux*, 5th ed. (Montréal: Wilson & Lafleur, 2011), p. 328 [Duplé, *Droit Constitutionnel*]; H. Brun, G. Tremblay & E. Brouillet, *Droit constitutionnel*, 5th ed. (Cowansville, QC: Editions Yvon Blais, 2008), p. 403 [Brun Tremblay, *Droit constitutionnel*].

⁴ A federal scheme emerging from the fusion of pre-existing sovereign entities (like the United States of America) is also referred to as federalism by “association”. Conversely, a federal model that is formed from the fragmentation of a unitary state can be referred to as federalism by “segregation” or by “dissociation” (as in the case of Belgium). See, *ex multis*, Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 2; Duplé, *Droit Constitutionnel*, cit., p. 325, fn 1 & 2; A. Benz & F. Knüpling, “Introduction” in A. Benz & F. Knüpling, eds., *Changing Federal Constitutions* (Opladen, Berlin & Toronto: Barbara Budrich, 2012), p. 14 [Benz & Knüpling, *Introduction*]; Y. Blank, “Federalism, subsidiarity, and the role of local governments in an age of global multilevel governance” (2010) 37 *Fordham Urban Law Journal* 526 [Blank, *Federalism & Subsidiarity*]; R. Watts, “Typologies of federalism”, in J. Loughlin, J. Kincaid & W. Swenden, eds., *Routledge Handbook of Regionalism and Federalism* (London & New York: Routledge, 2013), p. 27 [Watts, *Typologies of federalism*].

⁵ All the distinguishing elements of a federal state will be thoroughly analyzed and explained later in this chapter. This introduction only serves the purpose to present the discussion to the reader. However, for a general introduction on the theme, see *ex pluris*: Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 3; Duplé, *Droit Constitutionnel*, cit., pp. 325 et seq.; Brun Tremblay, *Droit constitutionnel*, cit., pp. 399 et seq.; T. Hueglin & A. Fenna, *Comparative*

originated from the absolute monarchies that had developed in Europe between the XVI and the XVIII centuries (particularly, the French monarchical state). Within this model, powers are not fractioned or dispersed among different levels, but are concentrated in the hands of the sovereign, with a military, bureaucratic, and fiscal apparatus that is also rigidly controlled at the center.⁶ Because the three aforementioned powers converge towards the center, local governments (if any) simply enjoy less significant administrative powers.⁷ Consequently, what distinguishes a unitary from a federal state is that in the former the “ultimate political authority” or “sovereignty” lies with the central government and all administrative, legislative or financial decentralization, if any, “occurs at the discretion or will of the central government, which may, if so determines, overrule constituent units on any matter”.⁸ A regional model is a decentralized form of an otherwise unitary state arrangement that presents some, but not all, the federal elements; this scheme will be thoroughly discussed in chapter II. Finally, a confederation is a form of supra national arrangement, composed of independent, sovereign states. Cyr frames this distinction in the following terms: “[p]rovinces are not the mere delegates of the central power – as in a decentralized unitary State. Nor is the central government a mere delegate of the provinces – as in a confederation”.⁹ I will revert to these features later in my discussion.

Federalism. A Systematic Enquiry (Peterborough, ON: Broadview Press, 2006) [Hueglin & Fenna, *Comparative Federalism*].

⁶ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 2; J. Loughlin, “Reconfiguring the nation-state. Hybridity vs uniformity” in J. Loughlin, J. Kinkaid & W. Swenden, eds., *Routledge Handbook of Regionalism and Federalism* (London & New York: Routledge, 2013), p. 6 [Loughlin, *Reconfiguring the nation-state*].

⁷ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 3.

⁸ Watts, *Typologies of federalism*, cit. p. 20.

⁹ H. Cyr, “Autonomy, Subsidiarity, Solidarity: Foundations of Cooperative Federalism” (2014) 23 *Constitutional Forum constitutionnel* 21 [Cyr, *Foundations of Cooperative Federalism*]. Cyr refers to Canadian provinces, but the definition provided can be extended to all *pure* federal states, even if the sub-units are called differently (e.g. states, cantons, *Länder*, etc.).

The core purpose of this chapter is to set part of the theoretical framework of my work by retracing the intellectual history of federalism and federal theory, and by illustrating the most recurrent themes that scholars identify when sketching such account. This chapter is divided in two sections. The first is devoted to the intellectual origins of federalism as mainstream scholarship commonly understands it. I will begin with a definition of federalism, and then proceed to a description of its initial elaboration in modern times both in Europe and North America, with a specific emphasis on the Constitution of the United States of America of 1787, still regarded as the exemplary federal constitution, by virtue of the fact that it has significantly influenced all subsequent federal constitutions across the globe. In the second section, I will primarily focus on contemporary federations and their usual distinguishing features. However, I will also elaborate on the various forms of federation (symmetrical vs asymmetrical; single-national vs multinational, etc...) as well as on “new federal arrangements” (an “umbrella” expression that helps describing all political and constitutional arrangements which present some, but not all, federal elements).

It is important to point out at this stage that the existing literature on the origins of federalism and federal theory is truly gigantic. Consequently, my purpose is not to review this voluminous scholarship in its entirety; rather, my more modest ambition is to condense the information already available and briefly identify what I believe are the milestones of federal theory, and I will do so by mainly drawing from scholars such as Daniel Elazar, Ronald Watts and Michael Burgess, who are universally regarded as leading experts in this field. The reader who is interested in analyzing more in detail certain specific aspects of federal history will find additional sources in the bibliographical section.

Section I – An intellectual history of federal theory

1. Defining concepts and historical framework

First and foremost, it is important to emphasize that it is not a simple task to provide a univocal and universally accepted definition of broad concepts like federalism. Etymologically speaking, the term federalism derives from the Latin *foedus* which means agreement, bargain, covenant, compact, or contract.¹⁰ Yet, the term *foedus* is also linked to the Latin word *fides*, meaning faith or trust. By reverberating this double etymological root, federalism could therefore generally refer to an agreement or contract based upon reciprocal trust or faith.¹¹

But while the etymological derivation of the term is uncontested, the real and practical significance of federalism is slightly more controversial. Scholars have defined federalism as a philosophical or ideological concept that advocates federal principles, according to which “authority shall be divided, and powers shall be dispersed, among and between different groups and organizations in society”.¹² This division of authority is also referred to as “joint action and

¹⁰ See, *ex multis*, D. Elazar, *Exploring Federalism* (Tuscaloosa, AL: The University of Alabama Press, 1987), p. 5 [Elazar, *Exploring Federalism*]; M. Burgess, *Federalism and European Union: The Building of Europe* (London & New York: Routledge, 2000), p. 13 [Burgess, *Federalism and European Union*]. Baker and McCoy consider the terms *federal* and *covenantal* as “closely related” and “virtually interchangeable” to the point that a “federal order is covenantal” and a “covenantal order is federal”: W. Baker & C. McCoy, *Fountainhead of Federalism. Heinrich Bullinger and the Covenantal Tradition* (Louisville, KY: Westminster/John Knox Press, 1991), pp. 11-12 [Baker & McCoy, *Fountainhead of Federalism*]. Interestingly enough, Loughlin explains that *foedus* is also the etymological root of *feudalism*, i.e. the system which characterized Medieval Europe resting on the idea of “a personal relationship between ‘fiefs’ (lords) and ‘vassals’ (subjects), where the latter provided services of various kind in return for protection by the former”: Loughlin, *Reconfiguring the nation-state*, cit., p. 4.

¹¹ Burgess, *Federalism and European Union*, cit., p. 13. See also R. Schütze, *From Dual to Cooperative Federalism. The Changing Structure of European Law* (Oxford: Oxford University Press, 2009), p. 14 [Schütze, *From Dual to Cooperative Federalism*]; P. King, *Federalism and Federation* (Baltimore, MD: The Johns Hopkins University Press, 1982), p. 56 [King, *Federalism and Federation*].

¹² Burgess, *Federalism and European Union*, cit., p. 27.

self-government”¹³ or “self-rule and shared rule”.¹⁴ Blank effectively depicts federalism as a “political theory translated into an elaborate legal regime” in which

sovereignty is composed of two layers of government, each of which is only partly sovereign, with a constitution that protects the division of powers between the two layers. The building blocks of the federal structure are the state (or province) and the federation, both recognized by the constitution, but also limited in their powers by it [...] [T]he federal government is not necessarily superior to the states: the functions of the federation are not inherently more important or more basic than those of the states [...].¹⁵

One of the challenges encountered in retracing the intellectual history of federalism is that there are very few clear historical landmarks guiding us in this task, federalism being more than anything else the result of a process of elaboration of philosophical and political ideas inextricably interwoven with religious thinking.¹⁶ And while it was only with the Constitution of the United States of America of 1787 and the ensuing US federal model that our understanding of federalism was more clearly delineated (at least according to contemporary standards), scholars concur regarding the idea that the ideology and political thought behind federalism “exists from time immemorial”.¹⁷ In fact, Elazar observes that the concept behind federalism was first used for theological purposes, in order to define the partnership between man and God as described in the Bible.¹⁸ Consequently, the history of federalism can be traced back to the first

¹³ R. Watts, “Multinational Federations in Comparative Perspective” in M. Burgess & J. Pinder, eds., *Multinational Federations* (London & New York: Routledge, 2007), p. 226 [Watts, *Multinational federations*].

¹⁴ Elazar, *Exploring federalism*, cit., pp. 5 and 12. See also Watts, *Typologies of federalism*, cit., p. 20, where he defines “shared rule” as “collaborative partnership” and “self-rule” as “constituent-unit autonomy”.

¹⁵ Blank, *Federalism & Subsidiarity*, cit., p. 524. For similar definitions, see Elazar, *Exploring Federalism*, cit., p. 5.

¹⁶ M. Burgess, *Comparative Federalism. Theory and Practice* (Florence, KY: Routledge, 2006), p. 167 [Burgess, *Comparative Federalism*].

¹⁷ Burgess, *Comparative Federalism*, cit., p. 73. For a list of pre-modern federal and proto-federal systems, see Elazar, *Exploring federalism*, cit., p. 118.

¹⁸ Elazar significantly elaborated on this idea and indicated that the partnership between man and God also influenced the relationship between individuals and families, then leading to the formation of a body politic, in a federal or covenantal fashion. See D. Elazar, *Federalism and the Way to Peace* (Kingston, ON: Institute of

communities of Israel (3000 B.C.).¹⁹ These communities could be considered federal because their relationships between individuals and families mimicked the biblical covenant that defined the relationship between God and human beings.²⁰

Similarly, the first leagues of Greek city-states and the Roman Empire also offered examples of federal organizations. For instance, Watts explains how the Roman Republic had established certain asymmetrical arrangements “according to which Rome was the main federal power and the weaker cities were linked to Rome as partners.”²¹ Other examples come from Imperial Rome, which utilized the *foedus* (in the form of a treaty or alliance) to guarantee and protect its expansion: as Schütze clarifies, the “confederate” or political communities sworn into alliance “would promise help in times of emergencies and crisis”.²² Other examples of ancient arrangements presenting some federal features are represented by the confederations of Bedouin tribes and those of the North American indigenous peoples.²³ With regards to this last example, evidence shows that North American Indians (particularly the Iroquois, with whom the Americans were allied) employed a (con)federal system, and it seems that the United States

Intergovernmental Relations, 1994), p. 21 [Elazar, *Federalism and the Way to Peace*]; see also Elazar, *Exploring Federalism*, cit., p. 5. Elazar also illustrates the four main ideas enshrined in the Bible: (i) each human being is “holy” and “has a soul” since he or she “is created in the image of God”; (ii) the individual in the community has the task “to strive to be holy” both by observing “religious rituals” and “by doing justice, providing for the poor, maintaining human freedom and dignity” among other things; (iii) each human being is “morally autonomous” and his consent “is required for all acts”; and (iv) human beings “act together through covenants and covenanting, beginning with [...] the covenant with God, whereby God enters into a partnership with humans for the fulfillment and governance” of the world. See Elazar, *Federalism and the Way to Peace*, cit., pp. 37-38.

¹⁹ R. Watts, *Comparaison des régimes fédéraux* (Montréal & Kingston: Institut des relations intergouvernementales. École des études politiques publiques de l’Université Queen’s par les presses universitaires McGill-Queen’s, 2002), p. 2 [Watts, *Comparaison des régimes fédéraux*]; see also Elazar, *Exploring Federalism*, cit., p. 4.

²⁰ Elazar, *Federalism and the Way to Peace*, cit., p. 21. The “covenantal” idea of federalism found in Heinrich Bullinger one of the principal advocates. His federal thought is explained later in this chapter.

²¹ Watts, *Comparaison des régimes fédéraux*, cit., pp. 2-3. Although Watts uses the term *federal* it is probably more correct to read it as *central*.

²² Schütze, *From Dual to Cooperative Federalism*, cit., p. 14 (of the e-book).

²³ Watts, *Comparaison des régimes fédéraux*, cit., p. 2.

Constitution was in part modeled upon this type of arrangement, as will be further explained later in the chapter.²⁴ Furthermore, according to part of the scholarship, especially in Germany, also the Holy Roman Empire can be construed as a “federalistic organization”.²⁵ Baker & McCoy also maintain that a federal (or covenantal) structure characterized the organization of the Germanic tribes which invaded Western Europe. The Hanseatic League that bound together a number of German northern towns is a good example of “medieval” federalism.²⁶ For these two scholars, even the Church as it was structured until modern times offered examples of federal elements in the “conciliarist argument that the papacy was a limited monarchy, subject to the representative council of the church”.²⁷

However, in spite of these important examples, no theory of federalism as we presently understand it was formulated in the ancient or medieval world.²⁸ federalism in its contemporary terms is in fact the product of modern political theory. The rise of the “European State System”²⁹ (also referred to as Westphalian system) is regarded by scholars as momentous in the development of modern federal thought. In fact, the Treaty of Westphalia of 1648 terminated the Thirty Years’ War and all the other religious wars that had plagued Europe over several decades, and this historical event helped the transition from a medieval model resting on “states, guilds, ethno-religious communities, family-ruled territories, and various forms of communal self-

²⁴ See *ex multis* D. Lutz, “The Iroquois Confederation Constitution: An Analysis” (1998) 28 *Publius* 99 [Lutz, *The Iroquois Confederation*], although not all academics agree on the fact that the US Articles of Confederation first, and the US Constitution after, were partially shaped on the Iroquois (con)federal model, as Lutz points out.

²⁵ H. Eulau, “Theories of Federalism under the Holy Roman Empire” (1941) 35 *The American Political Science Review* 643 [Eulau, *Theories of Federalism*]. This article offers an historical account of the political nature of the Empire. See also Elazar, *Exploring Federalism*, cit., p. 4.

²⁶ Baker & McCoy, *Fountainhead of Federalism*, cit., pp. 15-16; Loughlin, *Reconfiguring the nation-state*, cit., p. 5, explaining that the Hanseatic League was “a group of cities engaged in trade from the North Sea to the Baltic”.

²⁷ Baker & McCoy, *Fountainhead of Federalism*, cit., p. 16; Elazar, *Exploring Federalism*, cit., p. 4.

²⁸ Schütze, *From Dual to Cooperative Federalism*, cit., p. 14 (of the e-book).

²⁹ Schütze, *From Dual to Cooperative Federalism*, cit., p. 14 (of the e-book).

government” and “connected through a corporatist system of power-sharing and allocation of authority” to an idea of indivisible sovereignty reposing on the state.³⁰ However, even before Westphalia, modern federal ideas had already timidly sprouted within the religious circles at the time of the Reformation (XVI century), and specifically in countries like Switzerland, Germany and Holland, as confirmed by the fact that at least two of the founding fathers of modern federal thought, Althusius and Bullinger, were theologians who, through their work, significantly contributed to the debate on the relationship between church, state and religion.³¹

After these preliminary remarks, it is now time to adventure into the narrative of the rise of federalism in modern times. Some federal theorists (e.g. Burgess and Schütze) prefer to distinguish the continental European federal tradition from the Anglo-American federal tradition, and treat them separately as if they were independent the one from the other. In this work, however, I prefer to proceed in a strict chronological order, following the timing of history regardless of where the events take place.

2. The emergence of federalism in modern times

a. Pre-modern federal tradition

As I have noted in the previous paragraphs, while federalism was theorized between the XVI and XVII century in continental Europe, with the Constitution of the United States of America of 1787 representing the first federal constitution, rudimentary federal arrangements

³⁰ Loughlin, *Reconfiguring the nation-state*, cit., p. 5. Among other things, the Treaty of Westphalia adopted the principle known as *cuius regio, eius religio* (“the religion of the ruler shall be the religion of the state”) (*ibid.*).

³¹ Baker & McCoy, *Fountainhead of Federalism*, cit., p. 19. Later in their work, the two scholars note that “the relation between the theological and political elements in that earlier time is not always clear” (*ibid.*, p. 45). Incidentally, it should be pointed out how this close interconnectedness between federal and religious thought is further evidenced by the fact that social catholic theory in the XIX and XX centuries would play a significant role in the elaboration of modern federal thought, as will be explained later in the chapter.

could be found in state models dating back to the ancient world. However, in the pre-modern world it existed only one type of federal-like form, the confederation, where sovereign states were linked together by a “perpetual treaty” and enjoyed “equal and independent” status, as Schütze contends.³² But this primordial federal pact belonged to international law and, consequently, confederations were construed as “international organizations”.³³ The United Provinces of Netherlands and the Swiss Confederation (prior to 1848) are usually indicated as the most classic examples of these pre-modern federal schemes,³⁴ but the Confederacy that emerged in the United States linking the first 13 colonies can also be traced back to this tradition.³⁵

b. The XVI century: Heinrich Bullinger and the covenantal theory of federalism

Because of my choice to proceed in chronological order, I begin to describe the mosaic of intellectuals who have informed the origins and evolution of federalism in Europe with the work of the Swiss theologian Heinrich Bullinger (1504-1575). The revival and importance of this thinker for federal political theory is fairly recent; in fact, scholarly research around this figure

³² Schütze, *From Dual to Cooperative Federalism*, cit., p. 18 (of the e-book).

³³ Schütze, *From Dual to Cooperative Federalism*, cit., p. 15 (of the e-book).

³⁴ Schütze, *From Dual to Cooperative Federalism*, cit., p. 17 (of the e-book).

³⁵ Schütze, *From Dual to Cooperative Federalism*, cit., p. 17 (of the e-book). As I have explained, a confederation is a supra-national structure composed of sovereign states, based on an international treaty rather than on a constitution. Each member state of the confederation is sovereign and “legally equal to each other member state.” Usually, the underlying treaty contains also a clause allowing a member state to withdraw from the confederation. See Duplé, *Droit constitutionnel*, cit., p. 327. Brun, Tremblay & Brouillet interestingly note how it is a tradition in Canada to refer to the system established in 1867 with the term “confederation” while the *Constitution Act, 1867* creates a federal union. See Brun Tremblay, *Droit constitutionnel*, cit., p. 403. Similar remarks can be made for Switzerland which, while a classic example of *fully-fledged* federation, is also referred to as *Confederatio Helvetica* (hence, the abbreviation “CH” as the international code of Switzerland).

was initiated by American academics Baker and McCoy only in 1991.³⁶ Bullinger, who was a leader of the Reformed church of Zurich from 1531 to his death,³⁷ is identified as the father of the “covenantal” theory of federalism, usually associated with the Anglo-American (rather than European) federal tradition, although its origins are clearly European.³⁸

The essence of Bullinger’s thought is contained in the work *The One and Eternal Testament or Covenant of God* (also known as the *Testament*), authored in 1534³⁹ and construed by Baker & McCoy as the “fountainhead of federalism”, meaning the “basic source of federal thought among theologians, political philosophers and practicing leaders in church and state.”⁴⁰ The *Testament* bears a distinct religious and theological signature where the author attempts to unveil to the reader the meaning hidden behind the *pact* or *covenant* concluded by God with Abraham as described in the Old Testament (Genesis) and later confirmed in the New Testament. It begins with an account of the etymology of the term *testament*, used in the document not as synonym of *will* but of *pact* or *covenant*.⁴¹ Next, directly citing the Old Testament (Genesis), Bullinger details the content of the covenant,⁴² as well as its conditions (what God promised and offered in the pact and the duties of the human beings bound by the covenant).⁴³ An interesting passage in the *Testament* is the one where Bullinger parallels civil

³⁶ Baker & McCoy, *Fountainhead of Federalism*, cit.

³⁷ Baker & McCoy, *Fountainhead of Federalism*, cit., p. 17.

³⁸ Burgess, *Federalism and European Union*, cit., p.4; Baker & McCoy, *Fountainhead of Federalism*, cit., p. 17.

³⁹ The original title of the work was *De testamento seu foedere Dei unico et aeterno*. An English translation of this work can be found in Baker & McCoy, *Fountainhead of Federalism*, cit., pp. 101-138.

⁴⁰ Baker & McCoy, *Fountainhead of Federalism*, cit., p. 12.

⁴¹ H. Bullinger, *De testamento seu foedere Dei unico et aeterno*, as translated by Baker & McCoy and included in *Fountainhead of Federalism*, cit., pp. 101-103 [Bullinger, *Testament*].

⁴² Bullinger, *Testament*, cit. p. 104.

⁴³ Bullinger, *Testament*, cit. pp. 108-11.

and judicial laws as part of the conditions of the covenant between God and human beings.⁴⁴

Bullinger further clarifies why this covenant should be considered both as “one” and “everlasting” (the reason being the same formulation of the pact),⁴⁵ the sacraments related to it,⁴⁶ as well as the documents of the *pact*.⁴⁷ As Baker and McCoy also explain, for Bullinger the covenant was conceived as “the divine framework of human life, both religious and civil, from the beginning of the world until the last judgment.”⁴⁸ The concept of covenant, however, was not limited to the *Testament*; in fact, several other works by Bullinger were infused with this idea.⁴⁹

Being in first place a theologian, Bullinger did not come up with a federal (or political) theory, as his reflections on the covenant were mainly religious and philosophical, although with some implications for real life. However, he probably contributed to plant a seed that would later sprout; in fact, Baker and McCoy note how the influence of Bullinger’s work was “immense” to the point that it “began a movement that made federal thought a hallmark of the Reformed tradition both on the Continent and in England and Scotland by the end of the sixteenth century” and it was “this federal tradition, with explicit theological, ethical, and political dimensions, that was taken to the new world by the Puritans and used as the model for the colonies of New England.”⁵⁰

⁴⁴ Bullinger, *Testament*, cit., p. 113. In this passage, the author defines judicial or civil laws as the laws who provide “rules for the maintenance of peace and public tranquility, for punishing the guilty, for waging war and repelling enemies, for the defense of liberty, of the oppressed, of widows, of orphans, and of the fatherland, and for the making of laws of justice and equity relating to the purchase, the loan, possessions, inheritance, and other legal subjects of this sort.” (*ibid.*, p. 113).

⁴⁵ Bullinger, *Testament*, cit., p. 117.

⁴⁶ Bullinger, *Testament*, cit., pp. 130 et seq.

⁴⁷ Bullinger, *Testament*, cit., pp. 132 et seq.

⁴⁸ Baker & McCoy, *Fountainhead of Federalism*, cit., p. 20.

⁴⁹ Baker & McCoy, *Fountainhead of Federalism*, cit., p. 19.

⁵⁰ Baker & McCoy, *Fountainhead of Federalism*, cit., pp. 21-22, but this is a recurrent theme throughout the book (see also pp. 29 and 39).

c. The XVII century: Johannes Althusius and the German federal tradition

Inspired by the work of Heinrich Bullinger, the German Calvinist Johannes Althusius (1563-1638) is commonly regarded as the main intellectual and theoretical “godfather” of continental European federalism.⁵¹ The gist of his philosophy is sketched in his major work, *Politica Methodice Digesta* (also referred to as *Politica*), first published in 1603,⁵² and usually regarded by students of federalism as the first, systematic articulation of modern federal ideas.⁵³ Among the most important sources of Althusius’ thought, scholars have identified the political ideas of the Reformed communities, the Bible (constructed by Althusius not only as the basis of Christian faith, but also as a work of political philosophy), Roman law and the work of philosophers and thinkers of the ancient world.⁵⁴

In the next paragraphs, I will try to distil the main ideas contained in Althusius’ *Politica*, since they bear some considerable relevance for the history of federalism. First of all, Althusius begins his narrative by propounding politics as the “art of associating (*consociandi*) men for the purpose of establishing, cultivating, and conserving social life among them”.⁵⁵ The “subject matter of politics” was therefore “association” where the components “pledge themselves each to the other, by explicit or tacit agreement” to what was “useful and necessary for a harmonious

⁵¹ Elazar, *Federalism and the Way to Peace*, cit., p. 41. Academic literature on Althusius and his embryonic federal thought is massive and comprehensive. The reader who is interested in learning more about the core of Althusius’ thought can refer to the bibliography for more scholarly works on the subject. Here, my purpose is to simply outline the main aspects of Althusius’ philosophy which are pertinent to the *naissance* of modern European federal thought. Incidentally, it is interesting to note that Althusius’ *Politica* has also been regarded as “[t]he most sophisticated attempt to build a theory of the state on the foundation of fundamental law.” See M. Loughlin, *Foundations of Public Law* (Oxford: Oxford Scholarship Online, 2010), p. 95 [Loughlin, *Public Law*].

⁵² J. Althusius, *Politica* (Indianapolis: Liberty Fund, 1995) (abridged and translated version of the original work of 1603) [Althusius, *Politica*].

⁵³ Burgess, *Federalism and European Union*, cit. p. 7; Baker & McCoy, *Fountainhead of Federalism*, cit., p. 62.

⁵⁴ Baker & McCoy, *Fountainhead of Federalism*, cit., pp. 53-54.

⁵⁵ Althusius, *Politica*, cit., ch. I, §1, p. 17.

exercise of social life”.⁵⁶ In this sense, it seems that, with this conception of politics, Althusius’ introduces a first, federal element in his narrative: the idea of “horizontal” subsidiarity.⁵⁷

Next, Althusius focused on men in their dynamic interaction with others, since they are necessary to live “comfortably and well”.⁵⁸ He then moves to the description of the various forms of associations in which human beings express themselves: (a) families; (b) collegia; (c) cities; (d) provinces, and (e) the commonwealth.⁵⁹ As Elazar notes, it is through these associations that citizens could operate, be represented, and maintain their liberties.⁶⁰ Baker and McCoy also observe that in this way Althusius “articulates a political structure with increasingly comprehensive levels” thus rejecting the “dichotomy between the individual and the social whole” which was very popular at the time,⁶¹ and in this articulation of society resides another important federal element of his narrative. While families and collegia were simple and private associations, cities, provinces and the commonwealth were mixed and public ones.⁶² Simple and private associations were societies initiated by a “special covenant” (or *pactum*) linking together all the members sharing a particular interest.⁶³ An underpinning element of federalism, this idea of a covenant is a recurrent theme throughout the whole work of Althusius.⁶⁴ Families are

⁵⁶ Althusius, *Politica*, cit., ch. I, §2, p. 17. See also J. Althusius, “Politics as the Art of Associating” in D. Karmis & W. Norman, eds., *Theories of Federalism. A Reader* (New York: Palgrave MacMillan, 2005), p. 27 [Karmis & Norman, *Theories of Federalism*].

⁵⁷ The principle of subsidiarity, a basic federal principle, will be extensively discussed (both in its “vertical” and “horizontal” components) in Part III of this thesis, especially in chapter VII. Here, it suffices to say that “horizontal” subsidiarity usually refers to the sharing of competences between public and private actors, and to the fact that institutional bodies should promote the initiative of private citizens.

⁵⁸ Althusius, *Politica*, cit., ch. I, §4, pp. 17-18.

⁵⁹ Althusius, *Politica*, cit., ch. II-III, §1, p. 27 and fn. 1-3.

⁶⁰ Elazar, *Federalism and the Way to Peace*, cit., pp. 41-42.

⁶¹ Baker & McCoy, *Fountainhead of Federalism*, cit., p. 57.

⁶² Althusius, *Politica*, cit., ch. II-III, §1, p. 27. See also Elazar, *Federalism and the Way to Peace*, cit., pp. 41-42.

⁶³ Althusius, *Politica*, cit., ch. II-III, §2, p. 27.

⁶⁴ Baker & McCoy, *Fountainhead of Federalism*, cit., pp. 55-56.

construed as “private and natural symbiotic associations” composed of married persons and relatives,⁶⁵ also referred to as the “conjugal” and “kinship” associations.⁶⁶ *Collegia* are civil associations composed by “assembled persons according to their own pleasure and will to serve a common utility and necessity in human life.”⁶⁷ In Althusius’ theorization, *collegia* are similar to Medieval professional guilds, since its members (called colleagues, associates, or brothers) are united “for the purpose of holding in common such things they jointly profess as duty, way of life, or craft.”⁶⁸

As for mixed and public associations, Althusius first describes cities as communities of citizens “dwelling in the same urban area (*urbs*), and content with the same communication and government (*jus imperii*).”⁶⁹ Each city is administered by a “prefect” or “superior” (sometimes also referred to as “consul”) assisted by “counselors” and “senators” constituting the “senatorial collegium.”⁷⁰ The senate is composed of “wise and honest select men” entrusted with the “care and administration of the affairs of the city” and representing the entire city.⁷¹ Insofar as provinces are concerned, they are composed of “villages, towns, outposts, and cities united under the communion and administration of one right (*jus*).”⁷² The “secular and political order” of a province includes “three secular estates”: nobility (whose main role is for defense), burghers and agrarians (the main role of the two latter orders being that of procuring necessary things for civil

⁶⁵ Althusius, *Politica*, cit., ch. II-III, §14, p. 28.

⁶⁶ Althusius, *Politica*, cit., ch. II-III, §37, p. 29. This chapter contains a detailed description of the types of ideal relationships and dynamics between members of these associations.

⁶⁷ Althusius, *Politica*, cit., ch. IV, §1, p. 33. As for the previous ones, also chapter IV is devoted to a detailed illustration of the different interactions within members of *collegia*.

⁶⁸ Althusius, *Politica*, cit., ch. IV, §4-5, p. 34.

⁶⁹ Althusius, *Politica*, cit., ch. V-VI, §48, p. 42.

⁷⁰ Althusius, *Politica*, cit., ch. V-VI, §49-50, p. 42.

⁷¹ Althusius, *Politica*, cit., ch. V-VI, §54-56, p. 43.

⁷² Althusius, *Politica*, cit., ch. VII-VIII, § 1, p. 52. Provinces are also known as regions, districts, dioceses or communities (*ibid.* § 2).

life in the province).⁷³ The administration of the province and of provincial matters is entrusted in a “superior.”⁷⁴ Finally, with regards to the commonwealth, Althusius explains that it is the result of cities and provinces coming together to promote the right of the realm.⁷⁵ It is a “polity in the fullest sense”⁷⁶ yet its members are not the private individuals but cities, provinces and regions agreeing on “mutual union and communication.”⁷⁷ In addition to describing the various forms of association allowing human beings to express themselves, in the remainder of his work Althusius touches upon other aspects such as secular administration, tyranny, or the supreme magistrate, among other things.⁷⁸

Similarly to Bullinger, neither Althusius elaborated a complete federal theory at this time. What is remarkable in his work, which is still interspersed with theological and philosophical ideas, was a new way of conceiving society as a multilayered compound built up from the family, which was thus construed as the primordial form of association; in this new conception of multilayered society we can see the seed of an embryonic federal idea. Nonetheless, Althusius’ work was far from earth shattering, at least in his time. His *Politica* did not receive the attention and consideration it probably deserved. As Hueglin notes, his work was “described as *error pestilent et turbando orbis aptus*” and still in 1787 instructions were given to burn his

⁷³ Althusius, *Politica*, cit., ch. VII-VIII, § 40-41-45, pp. 60 and 61.

⁷⁴ Althusius, *Politica*, cit., ch. VII-VIII, § 50, p. 61. Incidentally, Althusius also explains that is preferable that the administration of the various provincial orders be performed by one single person, since a group of individuals would most likely have different opinions and therefore dissent on important issues (*ibid.*, §52, p. 62).

⁷⁵ Althusius, *Politica*, cit., ch. IX, § 1-2, p. 66.

⁷⁶ Althusius, *Politica*, cit., ch. IX, §3, p. 66.

⁷⁷ Althusius, *Politica*, cit., ch. IX, §5, p. 67.

⁷⁸ See chapters XXIX-XXXVII, XXXVIII and XXXIX, respectively.

books.⁷⁹ Neglected also throughout the French Revolution, Althusius' ideas remained unnoticed until the XIX century, when he was eventually appreciated by Otto von Gierke.⁸⁰

d. The contrasting idea: the unitary state

As noted, in spite of the immense influence on European, and especially American federalism, the work of both Althusius and Bullinger had remained unknown and peripheral for a long time in Europe, their ideas being overshadowed by those intellectuals who defended an idea of statism, nation-state, and sovereignty, like Bodin in France, or Hobbes in Britain.⁸¹ Before continuing with the narrative of the intellectual history of federalism, it is therefore useful to pause for a moment and briefly explain the rival idea of a strong central model that was so much successful in the pre-Revolution time.

Althusius and Bullinger offered a view of the state that was conflicting with the strong and centralized vision theorized by Jean Bodin (1530-1596), whose *Les Six Livres de la République* of 1576 became the “classic rationalization” of the unitary, monarchical, and strongly centralized state which, as pointed out by scholars, would dominate the European culture for centuries.⁸²

Bodin's proposal has been summarized as follows: on one side, the “absolute,” “centralized,” and “indivisible” authority of the State and, on the other, a “supreme” and

⁷⁹ T. Hueglin, “Johannes Althusius: Medieval Constitutionalist or Modern Federalist” (1979) 9 *Publius* 17-18 [Hueglin, *Johannes Althusius*].

⁸⁰ Elazar, *Federalism and the Way to Peace*, cit., p. 58; Hueglin, *Johannes Althusius*, cit., p. 18 (incidentally, Hueglin observes that Gierke was the first to refer to Althusius' political scheme as a “federal system” (*Ibid.*, p. 38)).

⁸¹ Burgess, *Federalism and European Union*, cit. p. 9.

⁸² See, among many, Burgess, *Federalism and European Union*, cit. p. 2. The reader who is interested in learning more about Bodin and his political philosophy can consult Loughlin, *Public Law*, cit., chapter 2 (pp. 50 et seq.).

“sovereign power” residing in a monarch and responsible only to God and natural laws.⁸³

Theorists explain that, without such a rigid scheme, anarchy and civil war would be inevitable; therefore, Bodin’s scheme (originally meant for France) was necessary for the achievement of order, stability, and security in a world that was dangerous and uncertain.⁸⁴ Bodin’s ideas deeply influenced his contemporaries. For example, Hobbes’s *Leviathan* is a direct descendant of Bodin’s project, whilst Locke’s *Treatise on Civil Government* exemplified the passage from “absolutism” and “divine right” to the idea of “consent” and “limited government.”⁸⁵

It was only during the Enlightenment that a new idea of federalism as a “mechanism for international peace” was acknowledged, thanks to the thought of minds like Immanuel Kant and l’Abbé de St. Pierre.⁸⁶ With specific regards to Kant, he maintained that peace “cannot be instituted or assured without a pact of nations among themselves (...) so there must be a league of a special kind, which can be called a *pacific league* (*foedus pacificum*), and what would distinguish it from a *peace pact* (*pactum pacis*) is that the latter seeks to end only *one* war whereas the former seeks to end *all war* forever.”⁸⁷

Insofar as l’Abbé de St. Pierre is concerned, he propounded the idea of a federal government to “unite nations by bonds similar to those which already unite their individual members.”⁸⁸ Furthermore, this form of government “combines the advantages of the small and

⁸³ Burgess, *Federalism and European Union*, cit. p. 2.

⁸⁴ Burgess, *Federalism and European Union*, cit. p. 2.

⁸⁵ Burgess, *Federalism and European Union*, cit. p. 3.

⁸⁶ Karmis & Norman, *Theories of Federalism*, cit. pp. 53 and 54. In particular, the authors refer to the Abbé de St. Pierre’s work *Project for Settling an Everlasting Peace in Europe* of 1712 and to Kant’s work *Toward Perpetual Peace* of 1795.

⁸⁷ I. Kant, “Toward Perpetual Peace” in Karmis & Norman, *Theories of Federalism*, cit. p. 90. Kant also suggests that, in order to achieve perpetual peace, “this idea of a *federalism*” should be extended to all states (*ibid.*, p. 90).

⁸⁸ Abbé de St. Pierre, “Project for Settling an Everlasting Peace in Europe” in Karmis & Norman, *Theories of Federalism*, cit. p. 60 [Abbé de St. Pierre, *Project*].

the large State, because it is powerful enough to hold its neighbors in awe, because it upholds the supremacy of the Law, because it is the only force capable of holding the subject, the ruler, the foreigner equally in check.”⁸⁹ In more recent times, Elazar has also adhered to this idea that federalism represents an effective way to enhance and achieve peace within a nation.⁹⁰

e. The Anglo-American federal tradition

It is now time to resume the recounting of the intellectual history of federal thought. In the previous sections, I noted how, throughout the XVI and XVII centuries, the work of Bullinger and Althusius remained mainly unnoticed, in the sense that their embryonic federal theories did not find any concrete realization in Continental Europe. However, in spite of the general indifference for the work of these two authors on the European continent, their ideas were able to travel across Europe and, especially in the case of Bullinger, penetrated the circles of the Puritans⁹¹ where they found a particularly fertile soil; eventually, the Puritans “exported” them to colonies west of the Atlantic Ocean.⁹² This is why my attention will now turn to North America, to try to reveal the origins of federalism in the new world. However, also in this case, one cautionary remark is needed. While the Constitution of the United States of America of 1787 represents the culminating point of the evolution of modern federal ideas, as I have already

⁸⁹ Abbé de St. Pierre, *Project*, cit. p. 60. The author propounded the constitution of a “Commonwealth of Europe” formed of 19 states (the Empires of Germany and Russia; the kingdoms of France, Spain, England, Denmark, Portugal, Prussia, Naples, Sardinia; the Netherlands; Sweden; Poland; the Papal State and the ecclesiastical electorate; the Electorates of Bavaria and Palatine; Switzerland; the Republic of Venice (*ibid.*, pp. 69-70).

⁹⁰ It shall be noted how other scholars have tried to demystify this positive image of federal theory as furthering peace, as contradicted by reality: according to this vision, in fact, in most historical federal states, the federation was able to consolidate only after a civil war (the examples given include the United States, Germany and Switzerland). See R. Bin & G. Falcon, *Diritto Regionale* (Bologna: Il Mulino, 2012), p. 47 [Bin & Falcon, *Diritto Regionale*].

⁹¹ As explained by Baker & McCoy, the Puritan movement “emerged as a Reformed and reforming impulse within the Church of England” whose main purpose was “to purify Anglicanism of its undesirable elements held over from Roman Catholicism.” Baker & McCoy, *Fountainhead of Federalism*, cit., p. 84.

⁹² Baker & McCoy, *Fountainhead of Federalism*, cit., p. 81.

emphasized, the preceding events that helped shaping federalism in North America are not so distinctly identifiable; in other words, also American federalism is the product of a combination of various experiences. As Baker & McCoy note, “[t]he major sources of federalism in America were the federal theology, the federal political philosophy, and the federal practice in societal institutions brought by groups coming from Europe to establish colonies.”⁹³ Perhaps, a less explored strand of societal practices that probably contributed to forge federal ideas in North America is represented by the encounter with the quasi-federal (or confederal) model embodied by the Native American polities.⁹⁴ This component, however, will not be analyzed in this work.⁹⁵

As I have just noted, federalism arrived in New England through the Puritans, and then expanded to the other British colonies, eventually framing a “distinctive tradition” that shaped society in the United States of America.⁹⁶ In fact, according to part of academic literature, the covenantal idea of biblical origin as a form of polity organization (initially elaborated by Bullinger and Althusius) was brought to North America by the Pilgrim Fathers in the XVII century;⁹⁷ the covenant concluded on the Mayflower on November 11, 1620 (leading to the

⁹³ Baker & McCoy, *Fountainhead of Federalism*, cit., p. 89.

⁹⁴ Burgess, *Comparative Federalism*, cit., p. 52; Baker & McCoy, *Fountainhead of Federalism*, cit., p. 87; Lutz, *The Iroquois Confederation*, cit., pp. 99-127.

⁹⁵ The influence of Native constitutional arrangements on the shaping of the US (con)federal model is a fascinating topic that has fuelled the interest of historians, political scientists and jurists alike. Scholars like Lutz contend that the Iroquois confederation, while not directly influencing the US Articles of Confederation, nonetheless was an example of a “successful, independent constitutional system that had significant consequences for North American history.” Based on an “oral text” the Iroquois Constitution gave birth to the “first constitutional system” in North America. See Lutz, *The Iroquois Confederation*, cit. p. 100. For reasons of space, however, I have chosen not to investigate more deeply into the subject. The reader who is interested in knowing more about the subject, can resort to the literature already existing on the topic, e.g. Lutz, *The Iroquois Confederation*, cit., *ex multis*.

⁹⁶ Baker & McCoy, *Fountainhead of Federalism*, cit., p. 30 and 81.

⁹⁷ The Pilgrims belonged to a movement having its roots in Puritanism. However, at some point, a more extreme fringe of the Puritans decided to separate because of their more orthodox rejection of the Catholic tendencies of the Church of England. But this separate congregation was prosecuted in England and was forced to “exile” in the Continent, particularly in the liberal cities of the Netherlands (Amsterdam and Leiden). It was a group of the Leiden congregation that eventually set sail to Cape Cod in 1620. In other words, the Pilgrims were “a group of religious

foundation of the first British colonies in North America), remains the earliest document in the history of American constitutional tradition,⁹⁸ with the covenant theme appearing in the text of the document as the basis of the political and religious organization of the new settlement.⁹⁹

But the Puritan experience was not the only aspect that contributed to the sprouting of federal ideas in North America; the British imperial dimension also played a certain role. In fact, it should be recalled that the first American colonies were linked to the mother country on the basis of standard British colonial custom,¹⁰⁰ although direct control over these colonies by the mother country was not always easy, due to a variety of reasons, including logistics and geographic distance. In other words, as Burgess indicates, the relationship between the mother country and the American colonies was “one of the superordinate and the subordinate.”¹⁰¹

and social dissenters who had been forced to leave England and go to the Netherlands.” See Baker & McCoy, *Fountainhead of Federalism*, cit., pp. 82-83.

⁹⁸ Elazar, *Federalism and the Way to Peace*, p. 112. See also Baker & McCoy, *Fountainhead of Federalism*, cit., pp. 82-83. The text of the covenant, adapted to contemporary English language, reads as follows: “In the name of God, Amen. We whose names are underwritten, the loyal subjects of our dread Sovereign Lord King James, by the Grace of God of Great Britain, France and Ireland King, Defender of the Faith, etc., Having undertaken, for the Glory of God and advancement of the Christian Faith and Honor of our King and Country, a Voyage to plant the First Colony in the Northern Parts of Virginia, do by these present solemnly and mutually in the presence of God and one another, Covenant and Combine ourselves together into a Civil Body Politic, for our better ordering and preservation and furtherance of the ends aforesaid; and virtue hereof to enact, constitute and frame such just and equals Laws, Ordinances, Acts, Constitutions and Offices, from time to time, as shall be thought most meet and convenient for the general good of the Colony, unto which we promise all due submission and obedience. In witness whereof we have hereunder subscribed our names at Cape Cod, the 11th of November, in the year of the reign of our Sovereign Lord King James, of England, France and Ireland the eighteenth, and of Scotland the fifty-fourth, Anno Domini 1620.” [emphasis added]. The text of the covenant is reproduced from Baker & McCoy, *Fountainhead of Federalism*, cit., pp. 82-83.

⁹⁹ Elazar, *Federalism and the Way to Peace*, p. 112. Examples of covenant-like or federal agreements in the early colonies can be found in Baker & McCoy, *Fountainhead of Federalism*, cit., pp. 87-88.

¹⁰⁰ Burgess, *Comparative Federalism*, cit., p. 51.

¹⁰¹ Burgess, *Comparative Federalism*, cit., p. 51.

However, scholars also maintain that Britain was open to constitutional and political “experimentation” and “adjustment” if required to keep a certain order within the colonies.¹⁰² This is why many consider that relations among the various members of the British Empire in the XVII and XVIII centuries were “a fertile policy arena” to experiment “quasi-federal political ideas.”¹⁰³ In fact, since the beginning, the American colonies were authorized to govern their own communities, the only condition being that the laws passed in these territories could not conflict with the laws issued by the Parliament of Westminster.¹⁰⁴ This means that, by the time of the Declaration of Independence, American colonies had at least 200 years of substantial experience in local self-government, though on the centralized-devolved rather than the federal model (though American wishes had for a long time aimed at the latter).

f. The Constitution of the United States of America

After declaring their independence from the British Empire in 1776, most of the thirteen colonies drafted their own constitutions, a process that was completed between the 1770s and 1780s.¹⁰⁵ These Constitutions, which some scholar has defined as “experiments,”¹⁰⁶ served as

¹⁰² Burgess, *Comparative Federalism*, cit., p. 51.

¹⁰³ Burgess, *Comparative Federalism*, cit., p. 52, although this openness towards new political and constitutional arrangements was not sufficient to prevent the loss of the American colonies in 1776 (*ibid.*, pp. 51-52).

¹⁰⁴ Burgess, *Comparative Federalism*, cit., p. 52.

¹⁰⁵ J. Dinan, “State Constitutions and American Political Development” in M. Burgess & A. Tarr, eds., *Constitutional Dynamics in Federal Systems: Sub-national Perspectives* (Montreal & Kingston: McGill-Queen’s University Press, 2012), p. 48 [Dinan, *State Constitutions*]. The author also points out that the State of Massachusetts still retains the original constitution of 1780, although the text has been amended over a hundred times (*ibid.* p. 46). For this reason Elazar observes that the Constitution of Massachusetts of 1780 is still regarded as the oldest written constitution in effect today (Elazar, *Federalism and the Way to Peace*, p. 121).

¹⁰⁶ Dinan, *State Constitutions*, cit., p. 48.

the basis for the delegates to the Federal Convention when called to draft first the Articles of Confederation of 1777 and later the new Federal Constitution of 1787.¹⁰⁷

In 1787 a conference was called in Philadelphia to discuss the opportunity to revise the confederal union as set up in the Articles of Confederation, still rooted in the “classic” view of (con)federation that, it will be recalled, was construed as an agreement among sovereign states under international law.¹⁰⁸ The conference, however, led to the proposal of a new constitutional arrangement whose essence was outlined in great detail in the *Federalist Papers*, a collection of essays authored by Alexander Hamilton, John Jay, and James Madison under the pseudonym *Publius*.¹⁰⁹ The purpose of the essays was to persuade the delegates to the convention to ratify the new US Constitution and replace the Articles of Confederation.¹¹⁰ Hamilton, in particular, described the confederal system then in place as “radically vicious and unsound” so that an amendment was not sufficient, and “an entire change in its leading features and characters “was needed.¹¹¹ The novelty of the Philadelphia compromise of 1787 was that it placed the United States in a position somewhere between an international and a national structure,¹¹² where sovereignty was shared between the Union and the states.¹¹³ As Madison famously summarized,

¹⁰⁷ Burgess, *Comparative Federalism*, cit., p. 53; Dinan, *State Constitutions*, cit., p. 48. For example, Dinan observes that the creation of a system of separation of powers and a strong and independent executive was termed in a similar fashion as the Massachusetts Constitution; the same establishment of a bicameral Congress was following the trajectory taken by several other state constitutions who had envisioned bicameral state legislatures (*ibid.*, p. 48).

¹⁰⁸ Burgess, *Comparative Federalism*, cit., pp. 54-55.

¹⁰⁹ Burgess, *Comparative Federalism*, cit., p. 55.

¹¹⁰ Introduction to A. Hamilton, J. Madison & J. Jay, *The Federalist Papers* (New York & London: Pocket Books, 2004), p. vii [Publius, *Federalist papers*].

¹¹¹ A. Hamilton, “Federalist no. 22” in Publius, *Federalist Papers*, cit., p. 155. See also “Federalist no. 23” where Hamilton reiterates this concept by saying that there is “an absolute necessity for an entire change in the first principles of the system” (*ibid.*, p. 159).

¹¹² Schütze, *From Dual to Cooperative Federalism*, cit., p. 23 (of the e-book).

¹¹³ Schütze, *From Dual to Cooperative Federalism*, cit., p. 27 (of the e-book).

the proposed Constitution defended in the *Federalist Papers* was “neither a national nor federal Constitution, but a composition of both.”¹¹⁴

For example, among the novelties introduced by this Constitution, there was the proposal of a union not only of states but of citizens as well. In fact, the federal government would represent states in the Senate (the “federal” element), while citizens would be represented in the House of Representatives (the “national” element).¹¹⁵ Also, the new Constitution was to be ratified by each state people (e.g. the people of the several states), not by the American peoples.¹¹⁶ Sovereignty, in other words, was divided between two levels of government, State and Union.¹¹⁷

In conclusion, Burgess notes that, by drawing a system of government based on popular sovereignty, embedded in a written constitution, with a political authority divided and shared “between various levels of government in separate territorial spheres”, the Constitution of the United States of 1787 quickly became the “archetypal model” of a federation, in spite of the fact that the terms federal or federation did not appear anywhere in the document, as Wheare interestingly observes.¹¹⁸

¹¹⁴ By “federal” he was probably referring to “confederal”. See James Madison, “Federalist no. 39” in Publius, *Federalist papers*, cit., p. 276. Madison explains the new US Constitution in the following terms: “[t]he proposed Constitution therefore is in strictness neither a national nor a federal constitution; but a composition of both. In its foundation, it is federal, not national; in the sources from which the ordinary powers of the Government are drawn, it is partly federal, and partly national: in the operation of these powers, it is national, not federal: In the extent of them again, it is federal, not national: And finally, in the authoritative mode of introducing amendments, it is neither wholly federal, nor wholly national.” See also Burgess, *Comparative Federalism*, cit., p. 55.

¹¹⁵ Karmis & Norman, *Theories of Federalism*, cit., p. 103. See also Schütze, *From Dual to Cooperative Federalism*, cit., pp. 40-41 (of the e-book).

¹¹⁶ Schütze, *From Dual to Cooperative Federalism*, cit., p. 24 (of the e-book).

¹¹⁷ Schütze, *From Dual to Cooperative Federalism*, cit., p. 28 (of the e-book).

¹¹⁸ K. Wheare, *Federal government*, 4th ed. (Oxford: Oxford University Press, 1963), p. 1 [Wheare, *Federal government*]; Burgess, *Comparative Federalism*, cit., p. 185.

f. Federalism in the XIX and XX centuries: Proudhon and catholic social theory

With the United States Constitution of 1787 all the federal ideas that had blossomed in Europe with Bullinger and Althusius found for the first time a tangible and concrete institutional design. Because of its innovative features, the American federal experience fuelled the intellectual interest and curiosity of students of political science and constitutionalism not only in the United States but also across Europe throughout the XIX century.¹¹⁹ However, I would now like to focus the discourse on two different strands of federal philosophy that helped shaping federal ideas in Europe: Pierre-Joseph Proudhon and Roman Catholic social theory.

i. Pierre-Joseph Proudhon

The French philosopher Pierre-Joseph Proudhon (1809-1865) was a major player who considerably added to the evolution of continental European federal thought in the XIX century.¹²⁰ Similarly to Althusius, Proudhon recognized a “multi-layered” society that was “built-up from below via families, groups, economic units and local communities”¹²¹ and in this composite structure of society it is possible to easily detect a federal seed, one that favors groups and organizations closest to citizens.

¹¹⁹ Just as an example, I would recall A. de Tocqueville and his *Democracy in America* published in 1835, whose main purpose was to explore the new institutional scheme devised across the Atlantic Ocean and to explain it to the Europeans. Other intellectuals who are often cited as major contributors to the debate on the new federal arrangement in Europe include J. S. Mill with his work *Consideration on Representative Government* of 1861; E. Freeman with his *History of Federal Government in Greece and Italy* of 1863; or J. Bryce with his *The American Commonwealth* of 1888. See Burgess, *Comparative Federalism*, cit., p. 10-14.

¹²⁰ Incidentally, Proudhon is also considered the father of anarchism and libertarian socialism. See Burgess, *Comparative Federalism*, cit., p. 172.

¹²¹ Burgess, *Federalism and European Union*, cit., p. 10. See also Burgess, *Comparative Federalism*, cit., p. 172; P. –J. Proudhon, *The Principle of Federation*, translated and introduced by Richard Vernon (Toronto: University of Toronto Press, 1979), p. p. 49 [Proudhon, *Principle of Federation*].

The gist of Proudhon's thought is contained in the work *Du principe fédératif* of 1863. In defining the federal principle, Proudhon seems to draw from the covenantal ideal of Bullinger and Althusius, since he argues that "it is the idea of contract that we must take to be the principal idea in politics."¹²² The federal contract is then defined as "a bilateral and commutative contract concerning one or more specific objects, having as its necessary condition that the contracting parties retain more sovereignty and a greater scope of action than they give up."¹²³ Furthermore, the essence of the federal contract is to "reserve more powers for the citizens than for the state, and for municipal and provincial authorities than for the central power."¹²⁴ Proudhon also convincingly asserts that the federal idea is "beyond doubt the highest to which in our time political genius has attained."¹²⁵ For him, a federation is "an agreement by which one or more heads of family, one or more towns, one or more groups or towns or states, assume reciprocal and equal commitments to perform one or more specific tasks, the responsibility for which rests exclusively with the offices of the federation."¹²⁶ And the "essential characteristic" of this federal covenant is that "the contracting parties, whether heads of family, towns, cantons, provinces, or states, not only undertake bilateral and commutative obligations, but in making the pact reserve for themselves more rights, more liberty, more authority, more property than they abandon."¹²⁷ A federal system is one where society is governed by a hierarchy that is not "imposed from the top

¹²² Proudhon, *Principle of Federation*, cit., p. 36.

¹²³ Proudhon, *Principle of Federation*, cit., 43. Incidentally, for Proudhon, this contract is "an immense step forward" capable of offering the long sought after solution (*ibid.*, p. 43). The federal contract is also at the opposite of democratic or monarchical constitutional systems, where individuals and groups give up their sovereignty to "an imposed or elected authority" but where the rights and duties overshadow their gains, securities and independence (*ibid.*, p. 43).

¹²⁴ Proudhon, *Principle of Federation*, cit., p. 45.

¹²⁵ Proudhon, *Principle of Federation*, cit., p. 66.

¹²⁶ Proudhon, *Principle of Federation*, cit., p. 38.

¹²⁷ Proudhon, *Principle of Federation*, cit., p. 39.

down” but where power “rests securely on its base.”¹²⁸ The “policy of federation” is, for Proudhon, the “policy of progress.”¹²⁹ The type of society proposed by Proudhon was concerned with the “liberty and justice of men and women principally in their economic relations.”¹³⁰

In his conception of federalism, Proudhon construed human beings as social and moral persons, rather than isolated individuals, and this theory was later followed by writings belonging to the school known as “personalism.”¹³¹ As Burgess illustrates, personalists sought to “restore man as a whole person,” one who is in touch with his life and with himself.¹³² They also propounded a world that is “societal” instead of “state-based,” that is “concerned to bring political authority back to human beings as complex, responsible members of society.”¹³³ Burgess further explains that personalists wanted to “rescue man from the anonymity associated with the dominant materialistic values of capitalist states and societies.”¹³⁴ They also wanted to “restore man’s identity [...] as a whole human person in order to reconnect him with his own social life, his family and [...] himself.”¹³⁵

Proudhon also suggests why the federal idea, at least during his time, was not very successful in Europe, although it is an idea “as ancient as the ideas of monarchy and

¹²⁸ Proudhon, *Principle of Federation*, cit., pp. 48-49.

¹²⁹ Proudhon, *Principle of Federation*, cit., p. 49.

¹³⁰ Burgess, *Federalism and European Union*, cit., p.10.

¹³¹ Burgess, *Comparative Federalism*, cit., p. 173.

¹³² Burgess, *Comparative Federalism*, cit., p. 173.

¹³³ Burgess, *Comparative Federalism*, cit., p. 173.

¹³⁴ Burgess, *Federalism and European Union*, cit., p.171.

¹³⁵ Burgess, *Federalism and European Union*, cit., p.172. Incidentally, in the late twentieth century, personalism played a role in influencing “communitarianism” and the personalist philosophy of Emmanuel Mounier, who deeply inspired the founding fathers of the peculiar form of federalism embraced by the European Union (see *infra*) (*ibid.*, p. 172). The same Proudhon suggested the creation not only of a political federation, but of an *agro-industrial* federation in Europe. See Proudhon, *Principle of Federation*, cit., p. 70 and 74.

democracy”.¹³⁶ In his opinion, the reason for the “eclipse” of the federal idea rested on the “initial incapacity of nations and the need to form them by means of stern discipline”.¹³⁷ European states like France, Austria, England, Russia or Prussia “resist federation because their principles are contrary to it and will set them against any federal compact, and because they would have to abandon some part of their sovereignty and recognize an arbiter set above them [...] Their nature is to command, not to compromise or obey.”¹³⁸

ii. Roman Catholic social theory

The core of Roman Catholic social theory, which has played a certain role in forging European federalism, is spelled out in a series of papal encyclicals written between the 1880s and the 1960s (namely, *Rerum Novarum*, *Quadragesimo Anno* and *Pacem in Terris*).¹³⁹

The first encyclical worth mentioning is *Rerum Novarum* authored by Pope Leo XIII in 1891.¹⁴⁰ The purpose of the encyclical was to defend the interests and conditions of the working classes,¹⁴¹ but at the same time to protect and cherish the idea of private property, the latter being “one of the chief points of distinction between man and the animal creation”¹⁴² and “in accordance with the law of nature”¹⁴³ and therefore conducive “to the peace and tranquility of human existence”.¹⁴⁴ Also, in defending families, Pope Leo XIII defined them as true societies

¹³⁶ Proudhon, *Principle of Federation*, cit., p. 50.

¹³⁷ Proudhon, *Principle of Federation*, cit., p. 50.

¹³⁸ Proudhon, *Principle of Federation*, cit., p. 41.

¹³⁹ Burgess, *Comparative Federalism*, cit., p. 174.

¹⁴⁰ Encyclical of Pope Leo XIII on Capital and Labor (*Rerum Novarum*). The English version of the document is available online at: http://www.vatican.va/holy_father/leo_xiii/encyclicals/documents/hf_l-xiii_enc_15051891_rerum-novarum_en.html [*Rerum Novarum*]; Burgess, *Comparative Federalism*, cit., p. 174.

¹⁴¹ *Rerum Novarum*, cit., para 2.

¹⁴² *Rerum Novarum*, cit., para. 6.

¹⁴³ *Rerum Novarum*, cit., para. 9.

¹⁴⁴ *Rerum Novarum*, cit., para. 11.

“older than any State” with rights and duties “quite independent of the State”¹⁴⁵ and which are “prior to those of the community”.¹⁴⁶ Therefore, the contention made by Socialists that “the civil government should at its option intrude into and exercise intimate control over the family (...) is a great and pernicious error”.¹⁴⁷ The State should in fact intervene only when a family finds itself in “exceeding distress” so public aid should help meeting the needs since “each family is part of the commonwealth”.¹⁴⁸ But, Pope Leo XIII warns, “the rulers of the commonwealth must go no further”.¹⁴⁹ Pope Leo XIII also indicates the “proper scope of wise statesmanship” should be “to realize public well-being and private prosperity”.¹⁵⁰ In other words, it seems that, following the tradition initiated with Althusius a few centuries before, with this encyclical Pope Leo XIII reaffirmed the relevance of the family as the very basic, almost primordial component of a society, in which the individual members find the ideal environment to blossom and develop, and with state institutions playing the role of promoting the common good.¹⁵¹ This vision of the relationship between families and state institutions seems to anticipate the idea of “vertical” subsidiarity that will be cemented in subsequent encyclicals, as I will explain in a moment.¹⁵² For Burgess, however, the importance of this encyclical also rests on the fact that it adopted social Catholicism, and defined the direction of catholic social teaching, which defended the view that

¹⁴⁵ *Rerum Novarum*, cit., para 12.

¹⁴⁶ *Rerum Novarum*, cit., para. 13.

¹⁴⁷ *Rerum Novarum*, cit., para. 14.

¹⁴⁸ *Rerum Novarum*, cit., para. 14.

¹⁴⁹ *Rerum Novarum*, cit., para. 14.

¹⁵⁰ *Rerum Novarum*, cit., para. 32.

¹⁵¹ *Rerum Novarum*, cit., para. 32.

¹⁵² As already recalled, subsidiarity as a fundamental federal principle will be extensively discussed in chapter VII. Here, it suffice to say that “vertical” subsidiarity suggests that powers are left with the level of government closest to citizens, with central institutions only playing a subsidiary role and coming into play when lowers levels of government cannot effectively carry out a given task, or when a uniform discipline is needed.

society had an objective common good that went beyond the private goods of individual members of any social class.¹⁵³

In 1931, Pope Pius XI wrote the encyclical *Quadragesimo Anno*.¹⁵⁴ This encyclical was authored to commemorate the fortieth anniversary of the publication of Leo XIII's previous work *Rerum Novarum*.¹⁵⁵ While confirming and elaborating on many of the position of his predecessor on ownership and private property, socialism, and social order in general, its importance rests on the fact that the encyclical called upon the principle of subsidiarity to rein in the excessive centralism of the State.¹⁵⁶ The gist of subsidiarity in this encyclical can be identified in the following passage:

“Just as it is gravely wrong to take from individuals what they can accomplish by their own initiative and industry and give it to the community, so also it is an injustice and at the same time a grave evil and disturbance of right order to assign to a greater and higher association what lesser and subordinate organizations can do (...). The supreme authority of the State ought, therefore, to let subordinate groups handle matters and concerns of lesser importance, which would otherwise dissipate its efforts greatly. Thereby the State will more freely, powerfully, and effectively do all those things that belong to it alone because it alone can do them: directing, watching, urging, restraining (...). Therefore, those in power should be sure that the more perfectly a graduated order is kept among the various associations, in observance of the principle of ‘subsidiary function,’ the stronger social authority and effectiveness will be happier and more prosperous condition of the State.”¹⁵⁷

Subsidiarity keeps decision-making processes as close as possible to citizens; it thus means that responsibility for implementing any given law should rest, whenever possible, with the lowest level of government, since a higher level of government should come into play only

¹⁵³ Burgess, *Federalism and European Union*, cit., pp. 225-226.

¹⁵⁴ Encyclical of Pope Pius XI on Reconstruction of the Social Order (*Quadragesimo Anno*). English version of the document available online at: http://www.vatican.va/holy_father/pius_xi/encyclicals/documents/hf_p-xi_enc_19310515_quadragesimo-anno_en.html [*Quadragesimo Anno*].

¹⁵⁵ *Quadragesimo Anno*, cit., para. 1.

¹⁵⁶ Burgess, *Comparative Federalism*, cit., pp. 175-176.

¹⁵⁷ *Quadragesimo Anno*, cit., paras 79-80.

when the lowest level is not in a position to carry out the task.¹⁵⁸ As I already noted in commenting on Althusius' philosophy, subsidiarity is important to this discussion since this principle is intimately related to federalism. Burgess clarifies this relationship and explains that, in a certain way, subsidiarity encourages a "pluralist conception" implying "the dispersion of power both territorially and functionally".¹⁵⁹ Accordingly, a federation is structured based on this pluralist view, building itself "from the ground upwards, constructing its tiers of authority and decision-making according to the principle of subsidiarity".¹⁶⁰ It shall be noted incidentally how the principle of subsidiarity as explained in these encyclicals has acquired an immense relevance since its incorporation into the Treaty of Maastricht (or Treaty of the European Union) of 1993, thus becoming one of the most notable principles of European Union law.

Finally, the encyclical *Pacem in Terris* of Pope John XXIII of 1963¹⁶¹ "elevated" the principle of subsidiarity to a "universal principle" to be adopted also in the ambit of international relations and the world order.¹⁶² In fact, Pope John XXIII suggests that

"[t]he same principle of subsidiarity which governs the relations between public authorities and individuals, families and intermediate societies in a single State, must also apply to the relations between the public authority of the world community and the public authorities of each political community. The special function of this universal authority must be to evaluate and find a solution to economic, social, political and cultural problems which affect the universal common good. These are problems which, because of their extreme gravity, vastness and urgency, must be considered too difficult for the rulers of individual States to solve with any degree of success."¹⁶³

¹⁵⁸ U. Amoretti, "A new look at federalism: Italy decentralizes" (2002) 13 *Journal of Democracy* 127.

¹⁵⁹ Burgess, *Comparative Federalism*, cit., pp. 175-176.

¹⁶⁰ Burgess, *Federalism and European Union*, cit., p. 228.

¹⁶¹ Encyclical of Pope John XXIII on Establishing Universal Peace in Truth, Justice, Charity and Liberty (*Pacem in Terris*). English version of the document available online at:

http://www.vatican.va/holy_father/john_xxiii/encyclicals/documents/hf_j-xxiii_enc_11041963_pacem_en.html

¹⁶² Burgess, *Comparative Federalism*, cit., p. 176 [*Pacem in Terris*].

¹⁶³ *Pacem in Terris*, cit., par. 140.

The remainder of the document is devoted to encouraging how to pursue universal peace and how to establish a divine order for the entire world.¹⁶⁴ In particular, the focus is, among other things, on the establishment of order between men (with their rights and duties),¹⁶⁵ of relations between individuals and public authorities,¹⁶⁶ of relations between states,¹⁶⁷ and of relationships between men and political communities with the world community.¹⁶⁸

h. Federalism in contemporary times: an overview

From a practical standpoint, the federal model which emerged in Philadelphia in 1787 greatly inspired other constitutional experiences across the globe. For example, the federal models implemented in some Latin American countries (notably Mexico, but also Argentina, Brazil, Venezuela) all followed, to a more or less extent, the Constitution of the United States.¹⁶⁹ In the 1800s, federal constitutions were also adopted in Switzerland and Canada,¹⁷⁰ and this trend continued throughout the XX century, when new states enacted federal constitutions: Australia in

¹⁶⁴ *Pacem in Terris*, cit., para. 1.

¹⁶⁵ *Pacem in Terris*, cit., paras 8-45.

¹⁶⁶ *Pacem in Terris*, cit., paras 46-79. In particular, at par. 51, John XXIII reminds that governmental authority “derives from God.”

¹⁶⁷ *Pacem in Terris*, cit., paras 80-129.

¹⁶⁸ *Pacem in Terris*, cit., paras 130-145.

¹⁶⁹ The federal constitution of Mexico dates 1817; the federal constitution of Argentina dates 1860; the federal constitution of Brazil dates 1889. See B. Caravita, *Lineamenti di diritto costituzionale federale e regionale* (Torino: Giappichelli, 2009), p. 71 (fn. 93) [Caravita, *Lineamenti*].

¹⁷⁰ Switzerland became a federation in 1848, thus transforming its constitutional model from a confederation, whereas Canada adopted the *British North American Act* creating a federal union in 1867 (at that time, however, Canada was still a colony, or dominion, of the British Empire). With specific regard to the Canadian federation, however, it shall be pointed out that it was certainly not an imitation of the US one (except for the idea of divided sovereignty), and many of its features were purportedly departing from the US model, because the Founding Fathers chose to maintain the link with the British Empire: see for example the way legislative powers were divided between the centre and the periphery in sections 91 and 92 of the *British North American Act, 1867*, or the fact that residual powers were vested with the central government, or that the Senate was not intended to be truly “federal” but inspired by the House of Lords, or the absence of a Bill of Rights in the *British North American Act, 1867*.

1901, Austria in 1920, Germany in 1949, India in 1950, and Malaysia in 1963.¹⁷¹ More recently, federal arrangements have been seriously taken into account as viable alternatives to be introduced in territories torn by internal racial, ethnic, linguistic or religious cleavages (see Ethiopia, Iraq, Nigeria, or Nepal).¹⁷²

Despite its undeniable success, federalism has also encountered moments of intellectual *impasse* to the point of being seriously questioned, with federal ideas at times deemed obsolete or unpopular. For example, in the late 1930s the English intellectual Harold Laski concluded that, at least in the United States, “the epoch of federalism” was “over,” and that only centralized state systems could effectively confront the problems of the new time.¹⁷³ In fact, for Laski, federalism was suitable for thriving capitalist systems, but it was not appropriate in times of economic recession.¹⁷⁴ However, after the end of the Second World War and again following the collapse of communism in Eastern Europe, interest in both the theory and practice of federalism blossomed once again.¹⁷⁵

Besides its influence on polities that are considered *fully-fledged* federations, federalism has also extensively informed the European integration process started in the 1950s. I noted earlier in this work how, already in the XVIII and XIX centuries, thinkers like Kant and l’Abbé de St. Pierre had propounded the creation of a federal union for Europe. In the XIX century, the Milanese Carlo Cattaneo emerged as one of the most fervent advocates of federal solutions,

¹⁷¹ With regards to Austrian and German federalism, however, an important role was played by the Holy Roman Empire and the Habsburg Empire experiences. See Burgess, *Comparative Federalism*, cit., pp. 93-95.

¹⁷² H. E. Hale, “Divided We Stand. Institutional Sources of Ethnofederal State Survival and Collapse” (2004) 56 *World Politics* 165 [Hale, *Divided We Stand*].

¹⁷³ H. Laski, “The Obsolescence of Federalism” in Karmis & Norman, *Theories of Federalism*, cit., p. 193 [Laski, *Obsolescence of Federalism*].

¹⁷⁴ Laski, *Obsolescence of Federalism*, cit., p. 193. See also Burgess, *Comparative Federalism*, cit., p. 25.

¹⁷⁵ Karmis & Norman, *Theories of Federalism*, cit., p. 3.

pushing towards a European federation as the only possible alternative for peace (one of his most often quoted assertion was that “[w]e will have true peace only when we will have the United States of Europe”¹⁷⁶). However, the times were not ripe to carry out such an ambitious scheme. In the XX century, the idea of a federal Europe was still shared by intellectuals suggesting a federal union as the only possible solution for the continent (notably, Maritain in France and Spinelli in Italy).¹⁷⁷ The creation of the first European Communities in the 1950s can be seen as the product of this philosophical and political thought.

Besides the European integration process, scholars have noted that there is presently a steady transition towards a model whereby states’ sovereignty diminishes to leave room to various forms of agreements among states having certain (but not all) federal characteristics.¹⁷⁸ It is also estimated that, at the beginning of the XXI century, over 40% of the earth’s territory (and around 50% of the world population) is governed by one form or another of federal arrangement.¹⁷⁹

In conclusion, federalism as a philosophical idea was born in Europe at the beginning of the XVII century, but it was only with the American experience of the late XVIII century that these ideas were translated and adapted into a fully functioning political system. Nowadays,

¹⁷⁶ C. Cattaneo, *Corollarii*, 1849, as reprinted in C. Cattaneo, *A nessun popolo più che all’italiano è concomitante la forma federale*. Antologia di scritti politico-istituzionali con prefazione di Emilio R. Papa (Torino: Celid, 2002), p. 44. But see also N. Bobbio, “Introduzione” in C. Cattaneo & N. Bobbio, *Stati Uniti d’Italia* (prefazione di N. Urbinati) (Roma: Donzelli, 2010), p. 27.

¹⁷⁷ See J. Maritain, *L’Europe et l’idée fédérale*, textes publiés par le Cercle d’études Jacques et Raïssa Maritain (Paris : Mame, 1993). The work of Altiero Spinelli, especially the relevance of his *Manifesto of Ventotene* authored with Ernesto Rossi, will be detailed in Chapter IV.

¹⁷⁸ Watts, *Comparaison des Régimes Fédéraux*, cit., p. 4. The constituting elements of a *fully-fledged* federation are detailed in section II of this chapter.

¹⁷⁹ S. Wiessner, “The Movement Toward Federalism in Italy: a Policy-Oriented Perspective (2002-2003) 15 *St. Thomas Law Review* 302.

thanks to their elasticity, federal solutions continue to be praised, particularly in the case of multinational or multicultural nations, as will be further explained in chapter III.¹⁸⁰

Section II – Exploring federalism and federal schemes

1. Federalism as a spectrum of federal possibilities

Thus far, I have briefly retraced the intellectual history of federalism and attempted to explain how the federal idea has evolved in the course of the past few centuries. It is now time to investigate whether the federal principle is a single coherent one or, in the alternative, whether it represents a spectrum of federal possibilities. Before delving more into the issue, I can anticipate a conclusion whereby the spectrum of federal possibilities is quite ample, so the federal principle is far from univocal. In other words, there is no coherent principle of federalism, because the notion of federalism encompasses a large array of federal possibilities sharing common characteristics.

This conclusion is also buttressed by the fact that scholars usually differentiate between the terms *federalism* and *federation* which, therefore, should not be seen as synonyms. In fact, as Burgess notes, the former can be read as a “philosophical statement” or “ideological position” that promotes a form of government where powers are dispersed among various levels of government.¹⁸¹ In this sense, federalism can take various forms: historical, intellectual, socio-economic, philosophical, or legal, and is, of course, the “animating force” of a federation.¹⁸² Federations, on the other hand, are tangible institutions, or “institutional arrangements, taking the form of a sovereign state” and distinct from other states (e.g. unitary states) because their central

¹⁸⁰ Elazar, *Federalism and the Way to Peace*, cit., pp. 17 and 31.

¹⁸¹ Burgess, *Federalism and European Union*, cit. p. 26; King, *Federalism and federation*, cit., p. 76.

¹⁸² Burgess, *Comparative Federalism*, cit., p. 102; King, *Federalism and federation*, cit., pp. 74-76.

governments incorporate local constituent units in its decision-making procedures on a constitutionally embedded basis.¹⁸³ In other words, the constituent units of a federation, which can take different names (for example, *provinces* in Canada; *states* in the United States; *cantons* in Switzerland or *Länder* in Germany) are not local entities subordinate to the central power (as it happens in unitary states), but are units having state-like powers. For purposes of this discussion, I will use the term *federation* to refer to the sovereign entity, and *constituent units* to identify the local, or peripheral, sub-units.¹⁸⁴ A federation can thus be seen as representing the most complete and concrete realization of the federal principle. Burgess further explains that the distinction between federalism and federation was initiated by King, but not everyone agreed on it (for instance, Wheare preferred to keep the two concepts united).¹⁸⁵

As Elazar famously posited, the essence of federations is to express “self-rule” (e.g. the delegation of powers from the center to the periphery) and “shared rule” (e.g. local governments participating and having a role in central politics) through a “constitutional distribution of powers” between the central government (usually for purposes of common interest to the state as

¹⁸³ Burgess, *Federalism and European Union*, cit., p. 25; King, *Federalism and federation*, cit., pp. 74-76.

¹⁸⁴ Because of the significant variety of federal models, in federal theory the use of appropriate or inappropriate terms can constitute an issue. Because each federation designates the constituent units in a different way, it might be challenging sometimes to coin a neutral term that can be used generally. I chose to use *constituent unit* but often *sub-units* is also used. However, some scholars have noted how this expression is not neutral, since it implies a hierarchy of power, with a central level situated above all local governments. But this would be a contradiction on the federal idea, since in a *pure* federal system the central and the local governments are not subordinate the one to the other, but they are equally sovereign in their own spheres of competences. See W. Norman, *Negotiating Nationalism: Nation Building, Federalism, and Secession in Multinational States* (Oxford: Oxford University Press, 2006), p. 77 [Norman, *Negotiating Nationalism*].

¹⁸⁵ Burgess, *Federalism and European Union*, cit., p. 24; King, *Federalism and Federation*, cit., p. 20. In this work, King clearly distinguishes these two concepts by consecrating one section of the book to federalism as “ideology” and another section of the book to federalism as “institution.” But King acknowledges that in fact, at least at the time he was writing, very few scholars used to make the distinction between federalism and federation. For King, federalism has a primary “ideological” connotation, whereas a federation refers to a “descriptive, institutional arrangement of fact.” (*Ibid.*, p. 21); Wheare, *Federal government*, cit., pp. 2 et seq.

a whole) and the constituent units (for purposes of local autonomy).¹⁸⁶ It is also important to reiterate once again how, in a federation, neither the central government nor the governments of the constituent units are subordinate the one to the other;¹⁸⁷ rather, each of them is sovereign in its own jurisdiction, since these two levels of government “operate *directly* upon the people”.¹⁸⁸ This is why citizens of a federation are at the same time citizens of both the constituent unit and of the larger federation.¹⁸⁹

In addition to the classification between federalism and federation, scholars also distinguish between federation and confederation. As already noted, unlike a federation, the confederation is a form of “international organization” where sovereign states join together on the basis of an international treaty, but without a transfer of sovereignty.¹⁹⁰ Furthermore, differently than *fully-fledged* federations, confederal arrangements usually allow the secession of constituent units without constitutional formality (see below).¹⁹¹ Similarly, in a confederation, decisions are usually taken with the unanimous consent of all constituent units.¹⁹² I have already mentioned that pre-modern Europe knew only the confederal arrangement; it was only in the late XVIII century, with the United States Constitution of 1787, that the new federal model was formalized and then exported to other realities (like Switzerland, Canada, Australia, Austria,

¹⁸⁶ Burgess, *Comparative Federalism*, cit., p. 136, citing Elazar. See also Watts, *Typologies of federalism*, cit., p. 20.

¹⁸⁷ Norman, *Negotiating Nationalism*, cit., p. 78. This is probably the most distinguishing element between a *fully-fledged* federation and other quasi-federal schemes like regional states (see Chapter II).

¹⁸⁸ Wheare, *Federal government*, cit., p. 2.

¹⁸⁹ D. Karmis & W. Norman, “The Revival of Federalism in Normative Political Theory” in Karmis & Norman, *Theories of Federalism*, cit., p. 3; Wheare, *Federal government*, cit., p. 2.

¹⁹⁰ See, among others, Bin & Falcon, *Diritto Regionale*, cit., p. 47; W. Swenden, *Federalism and Regionalism in Western Europe* (New York: Palgrave, 2006), p. 13 [Swenden, *Federalism and Regionalism*].

¹⁹¹ Swenden, *Federalism and Regionalism*, cit., p.13.

¹⁹² Swenden, *Federalism and Regionalism*, cit., p. 13.

Germany, and India, among others).¹⁹³ As clear as it might appear, the elusiveness of this distinction should not be underestimated, since it is often a source of confusion or misunderstanding, especially in the ambit of the European Union.

2. Common elements of federations

Being the first in its genre to be known to the modern society, the Constitution of the United States of America of 1787 is universally construed as the archetypal model of a *pure* or *classic* or *fully-fledged* federation, as already noted at the beginning of this chapter. Therefore, when looking at the common elements of a *pure* federation, the US Constitution represents the main point of reference which has informed, to a greater or lesser extent, all other *classic* federations.

Following the classification elaborated by Watts,¹⁹⁴ a *classic* federation usually presents two levels of government each having a direct relationship with its citizens and each being independent and sovereign with respect to its own sphere of competences.¹⁹⁵ Next, a federal constitution usually entrenches a division of legislative powers between the center and the constituent units. This division of powers in a federal system is “crucial”, as Wayne observes.¹⁹⁶ The federal constitution might also delineate the division of revenues between the various levels

¹⁹³ As for the EU, I noted that scholars are divided as whether to consider it a confederation or not. Certainly, the EU was created as a confederation, but it has progressively lost some of the salient facets (for example, decisions are now taken at qualified majority vote and not unanimously). See Swenden, *Federalism and Regionalism*, cit., p. 13.

¹⁹⁴ Watts, *Comparaison des Régimes Fédéraux*, cit., p. 8; see also Watts, *Typologies of federalism*, cit., pp. 25 et seq. It is interesting to note that not all scholars agree on the utility of these classifications: for instance, King considered it an exercise that is “in some degree arbitrary” (King, *Federalism and federation*, cit., p. 71), although he eventually admit that there are some features common to all federations (*ibid.*, pp. 88-95).

¹⁹⁵ In the words of Wheare, a federal government exists when “there is a single independent authority for the whole in respect of some matters” as well as “independent regional authorities for other matters” but each set of authorities is “co-ordinate with and not subordinate to the others within its own prescribed sphere”: Wheare, *Federal government*, cit., p. 35.

¹⁹⁶ Norman, *Negotiating Nationalism*, cit., p. 107.

of government: in fact, having their own revenues makes each level of government autonomous from the other. Finally, a federal constitution is written, supreme and amendable only with the approval of both the central and local representatives acting together,¹⁹⁷ and can be construed as a “compact” or “covenant”.¹⁹⁸

Another important characteristic of a *pure* federation is the presence of a second, or Upper chamber (usually called the Senate) which represents the interests of the constituent units at central level. This gives constituent units a forum where they can advance their claims at national level and participate in federal legislation.¹⁹⁹ Furthermore, a *classic* federation always contemplates a mechanism (in other words, a Constitutional Court or a Supreme Court) to settle the disputes between the various levels of government, as well as some form of process facilitating the intergovernmental cooperation in the division of powers.²⁰⁰ With specific regards to this Constitutional or Supreme Court, and because of the delicate role it plays in settling disputes on division of powers, it is usually thought desirable that the constituent units of a federation participate in the selection or appointment of judges, although this is not always the case.²⁰¹

¹⁹⁷ With regards to the supremacy (and, consequently, written character) of the federal constitution, see also Wheare, *Federal government*, cit., pp. 53-54. Furthermore, Wheare also emphasizes the importance that in a federal government, the power to amend the constitution (particularly with regards to the division of powers) “should not be confided exclusively either to the general governments or to the regional governments” (*ibid.*, p. 55); for a comparative analysis of federal constitutions, see Benz & Knüpling, *Introduction*, cit.

¹⁹⁸ The fact that a federal constitution can be construed as a “compact” or “covenant” would distinguish it from a “regional” constitution, which would simply be a law.

¹⁹⁹ Brun Tremblay, *Droit constitutionnel*, cit., pp. 407 et seq.

²⁰⁰ In this sense, see also Wheare, *Federal government*, cit., p. 58.

²⁰¹ In addition to the basic distinguishing elements just enumerated, *fully-fledged* federations might present other important characteristics. For example, central and peripheral governments in a federal state are “democratic” in the sense that their members are “directly elected in a free and open election process” as Swenden notes (Swenden, *Federalism and Regionalism*, cit., p. 10). Furthermore, federal constitutions usually do not contain provisions allowing for the secession of one or more constituent units, and this is one of the important differences between a

However, it is important to emphasize that, while all *fully-fledged* federations fall one way or the other within the description outlined above, there is no uniformity among them, as geographical, historical, economic, ecologic, linguistic, cultural, intellectual, demographic, international and security factors may deeply impact the way a federation is shaped.²⁰² For instance, Watts suggests that the more the polity in question is homogeneous, the more the powers attributed to the central government are considerable, while the more the diversity, the more the powers are devolved.²⁰³ Consequently, the manner powers are divided between the various levels of government varies on a case-by-case basis, with some federations that are more decentralized (Canada is one example, although in the intention of the Founding Fathers the *Constitution Act, 1867* was supposed to create a centralized federation) as opposed to others that are more centralized (like Austria or India).²⁰⁴ Differences exist also insofar as division of powers: in fact, in some federations residuary powers (e.g. powers not explicitly assigned by the Constitution to any level of government) are vested in the central government, whereas in others they are vested in the local governments.²⁰⁵ Furthermore, powers can be assigned exclusively to

federation and a confederation (Swenden, *Federalism and Regionalism*, cit., pp. 10-11). As Wheare explains, what is usually denied is “the right of a regional government acting alone to leave a federation or for the general government acting alone to expel a member government” the rationale being that “if such actions are permitted the general government is subordinated to the regional government or vice versa and that is an end of federalism.” Wheare, *Federal government*, cit., p. 86. Very illuminating in this regard is a decision of the Supreme Court of Canada (“SCC”) of 1998, where the judges, confronted with the question whether Quebec or any other province could (under Canadian or international law) unilaterally secede from Canada, observed that there is no such right, and that a secession of a province could occur only through a negotiation followed by constitutional amendment. See Reference re Secession of Quebec, [1998] 2 S.C.R. 217, §84.

²⁰² Watts, *Comparaison des Régimes Fédéraux*, cit., p. 37; Benz & Knüpling, *Introduction*, cit., pp. 16.

²⁰³ Watts, *Comparaison des Régimes Fédéraux*, cit., p. 37.

²⁰⁴ Watts, *Typologies of federalism*, cit., pp. 29-31. See also Norman, *Negotiating Nationalism*, cit., pp. 107-108. With regards to Austria, however, scholars not always agree on it being a *fully-fledged*, although centralized, federation. See Swenden, *Federalism and Regionalism*, cit., p. 11.

²⁰⁵ Swenden, *Federalism and regionalism*, cit., pp. 51-52. Without this being an absolute rule, the scholar interestingly observes that in those federations resulting from the coming together of previously separated entities,

each order of government, or they can be concurrent. In any event, as Wheare warns, in order to have a true federal system, “[t]here must be some matter, even if only one matter, which comes under the exclusive control, actual or potential, of the general government, and something likewise under the regional governments. If there were not, that would be the end of federalism.”²⁰⁶

Federations also vary depending on how representation is framed in the Upper Chamber (or Senate). To a certain extent, it could be argued that the Senate (e.g. its composition and overall role) is the element that presents the most significant (and often contested) variations from one federation to the other. For example, in some federations like the United States, senators are directly elected by the citizens, whereas in federations like Canada they are appointed by the Prime Minister, and do not necessarily represent the interests of the provinces (thus making the Canadian Senate a weak and controversial institution by virtue of its relative lack of legitimacy).²⁰⁷ Furthermore, representation in the Senate can be based on equal representation or on population. For instance, in the United States each state has two senators representing local interests in the Upper Chamber, despite the profound political, economic and demographic differences that exist between one state and the other. In Canada, on the other hand, each province has a different number of senators depending to a great extent on the population size of the same province.²⁰⁸

residual powers are most likely reserved to local governments, whilst in the case of federations emerged from the disaggregation of a once unitary state residuary powers are usually assigned to the central government. *Ibid.*, p. 52.

²⁰⁶ Wheare, *Federal government*, cit., p. 75.

²⁰⁷ Duplé, *Droit Constitutionnel*, cit., pp. 202 et seq.; Brun Tremblay, *Droit constitutionnel*, cit., pp. 336 et seq.

²⁰⁸ See also Wheare, *Federal government*, cit., p. 86.

Economic and social disparities between federations also play a role in the way each federal model is engineered, as do the number and size of component units or the natural resources available in each territory.²⁰⁹

Federations diverge also in their internal structure. In fact, some polities present a Westminster parliamentary model, based on a representative and responsible government (this is the case of Canada or Australia), while others have a presidential model (like the United States) or a hybrid system (as Germany, Austria or Switzerland).²¹⁰ Watts also emphasizes how the presence of a common law (i.e. US or Australia), civil law (i.e. Germany, Austria, and most European federations) or a mix of both traditions (i.e. Canada) can affect the way federalism is interpreted.²¹¹

Finally, Watts classifies federations also based on their level of maturity, thus identifying four groups: (a) mature federations that have existed for at least fifty years or more (as the US, Switzerland, and all traditional federations); (b) emergent federations, meaning those that have emerged over the past fifty years and are still in search of an internal balance (i.e. Spain and Belgium, *ex multis*); (c) post-conflict federations, meaning those federal experiments that have been devised to settle internal conflicts (i.e. Bosnia and Herzegovina, Iraq); and (d) failed federations, a broad group that includes both former communist federations (i.e. USSR, Yugoslavia) and post-colonial federations which did not last long (i.e. Indochina, Burma).²¹²

²⁰⁹ Watts, *Comparaison des Régimes Fédéraux*, cit., p. 6; Watts, *Typologies of federalism*, cit., p. 27.

²¹⁰ Burgess, *Comparative Federalism*, cit., p. 136.

²¹¹ Watts, *Typologies of federalism*, cit., p. 30 and 87.

²¹² Watts, *Typologies of federalism*, cit., p. 26. Exercises of classification are numerous among scholars of federalism. For example, Burgess has divided what he calls “federal democracies” into six main models. In addition to *classic* and mature federations such as US, Switzerland, Canada, Germany, etc., he identifies “flawed federal democracies” in formally federal states who are “highly defective and deficient in terms of federal political practices

The various classifications just outlined cement the thesis that federalism as a model is difficult to identify through a mere list of elements present in a constitution because, as Livingstone noted, federalism is a function of societies.²¹³ As such, I agree with that part of the literature asserting that “there are “as many ‘federalisms’ as there are ‘national’ histories and cultures of individual countries,”²¹⁴ so that the federal principle can be used in multiple ways.²¹⁵

3. New federal arrangements

Notwithstanding all the different connotations that characterize what I have defined *fully-fledged* or *classic* federations, all federations mentioned in the previous paragraphs can be traced back to the modern idea of federalism as emerged between 1787 (enactment of the Constitution of the United States of America) and the Second World War. Yet, for the history of federalism, the mid-1950s can be considered momentous since new models of federal arrangements have progressively emerged and developed across the world. For Watts, the emergence of these “hybrid” forms of state can be explained by the fact that “statesmen, faced with a variety of factors relating to economic and strategic issues and the need to recognize and accommodate internal territorial diversity, have often been more interested in pragmatic political solutions than

[...] and executive abuses of power in terms of the rule of law, human rights, corruption and the intimidation of legitimate political opposition” (i.e. Russia, Mexico, Venezuela, Nigeria, Ethiopia, Malaysia, Pakistan); “incomplete federal democracies” in situations where there is a “pronounced gap between constitutional theory and practice” but where states, while not formally federal, practically operate in federal terms (i.e. Spain, Italy and the EU); “emergent federal democracies” (i.e. Iraq) and “transitional federal democracies” (i.e. Bosnia-Herzegovina, Nepal, Cyprus) who share the common trait that both rely upon the international community to manage a model that is imposed; finally, “aspiring federal democracies” (i.e. Somalia, Sudan, Afghanistan, Democratic Republic of Congo). See M. Burgess, “The penumbra of federalism. A conceptual reappraisal of federalism, federation, confederation and federal political system” in J. Loughlin, J. Kincaid & W. Swenden, eds., *Routledge Handbook of Regionalism and Federalism* (London and New York: Routledge, 2013), pp. 55 et seq.

²¹³ W.S. Livingston, “A note on the nature of federalism” (1952) 67 *Political Science Quarterly* 88.

²¹⁴ M. Rogoff, “Federalism in Italy and the relevance of the American experience” (1997) 12 *Tulane European and Civil Law Forum* 72, citing Pizzetti [Rogoff, *Federalism in Italy*].

²¹⁵ Elazar, *Federalism and the Way to Peace*, cit., p. 22.

in theoretical purity.”²¹⁶ Similarly, according to Elazar, after the Second World War there was a shift from statism to federalism, with a consequent move from centralized nations to increased power-sharing among states for the achievement of specific tasks considered to be beyond the capabilities of single states.²¹⁷

Accordingly, in addition to *classic* or *fully-fledged* federations, Elazar classified these new arrangements in the following categories:²¹⁸

- (a) *Federacy*, which is the result of an asymmetrical link in a federal pact between a larger power and a smaller polity. In such a model, the smaller polity has greater autonomy compared to the component units of the larger power, but a reduced role in the government of the larger polity. Furthermore, this type of link can be dissolved only by mutual agreement. Examples of this model include: Denmark and the Far Oer Islands, the United States and Puerto Rico, Finland and Aaland, or the United Kingdom and Jersey.²¹⁹
- (b) *Associated state*, which are similar to a federacy, but they can be dissolved unilaterally; consequently, as Elazar clarifies, the associated states play a lesser role.²²⁰ Among the various examples that can be given of this type of arrangement, we can think of Italy and the Republic of San Marino, France and Monaco, India and Bhutan, or New Zealand and the Cook Islands.

²¹⁶ Watts, *Typologies of federalism*, cit., p. 19.

²¹⁷ D. Elazar, “Contrasting Unitary and Federal Systems” (1997) 18 *International Political Science Review* 238 [Elazar, *Unitary and Federal Systems*].

²¹⁸ See Elazar, *Federalism and The Way to Peace*, cit., pp. 22-23 for a description of each model. See also Watts, *Comparaison des Regimes Federaux*, cit. pp. 9 et seq.; Watts, *Typologies of federalism*, cit., pp. 21 et seq.; Elazar, *Exploring Federalism*, cit., p. 55 et seq.; Norman, *Negotiating Nationalism*, cit., pp. 77-78 for more examples.

²¹⁹ For concurring definition of a *federacy*, see also Elazar, *Exploring federalism*, cit., p. 7.

²²⁰ Elazar, *Exploring federalism*, cit., p. 7.

- (c) *Common Market*, a model that mainly focuses on shared economic (rather than political) functions among the component members, thus emphasizing only on a specific aspect. MERCOSUR (the Common Market of South America) is an example of this type of arrangement, but also the first European Communities can be traced back to this model.²²¹
- (d) *Consociational polity*, whereby non-territorial federations are divided into religious, cultural, ethnic, or ideological groupings. It is worth noting that the expression “consociational democracy” was first devised by Arend Lijphart to explain the mechanisms of political stability in societies with deep social cleavages. The four identified characteristics of consociational democracies are: (i) government by grand coalition; (ii) mutual veto; (iii) proportionality; (iv) autonomy for each segment.²²²
- (e) *Union*, which is a compounded polity where the constituent units maintain their integrity through the common organs of the general government (though possibly with some degree of devolution granted by the general government). The United Kingdom and the Netherlands are examples of this arrangement.²²³
- (f) *League*, which can be defined as an association of independent polities for specific purposes, often functioning through a common secretariat, and

²²¹ See also Elazar, *Exploring federalism*, cit., p. 7.

²²² A. Lijphart, *Democracy in plural societies* (New Haven: Yale University Press, 1977). See also Elazar, *Exploring federalism*, cit., p. 7. Additional details on consociationalism will be offered in chapter VII.

²²³ See also Watts, *Typologies of federalism*, cit., p. 21. McEwen & Lecours further explain that, in a Union like the United Kingdom, some territories are incorporated “by negotiation and treaty” so that pre-union identities might be preserved. See N. McEwen & A. Lecours, “Voice or Recognition? Comparing Strategies for Accommodating Territorial Minorities in Multinational States” (2008) 46 *Commonwealth and Comparative Politics* 233 [McEwen & Lecours, *Voice or Recognition*]. See also Elazar, *Exploring federalism*, cit., p. 8.

allowing the unilateral withdrawal of member states. ASEAN (Association of Southeast Asian Nations) falls within this group.²²⁴

- (g) *Condominium*, an arrangement involving the joint rule by two powers over a shared territory, as in the case of Andorra, jointly ruled by Spain and France.²²⁵
- (h) *Regional states or regional arrangements*, which participate from the same theoretical foundations than federalism and which will be discussed more in depth in chapter II. Here, it suffices to say that Spain and Italy (and to a certain extent Poland) are usually considered as the leading examples of this model.²²⁶

As part of this exercise of classification, more recent scholarship has also coined the expression *multilevel governance* (also referred to as “MLG”) as an “umbrella term” which should embrace all decentralized forms of government.²²⁷ Originally, the term was invented to better define the EU system of governance emerged in the late 1980s, whereby national governments were no longer the only political actors at EU level, as other players such as EU institutions, local governments and also business groups, were increasingly acquiring some prominence within the wider scheme;²²⁸ the expression was later extended to all types of schemes with “multiple territorial tiers of government.”²²⁹ As scholars explain, *multi-level*

²²⁴ See also Elazar, *Exploring federalism*, cit., p. 8.

²²⁵ See also Elazar, *Exploring federalism*, cit., p. 8.

²²⁶ For Watts, the real classification of Italy and Spain (as well as the UK) as unitary or federal “has become a matter of debate” as they mix both federal and unitary elements and therefore their real nature is difficult to define. See Watts, *Typologies of federalism*, cit., p. 19.

²²⁷ Swenden, *Federalism and Regionalism*, cit., p. 18.

²²⁸ Loughlin, *Reconfiguring the nation-state*, cit., p. 13.

²²⁹ Multilevel governance was theorized by L. Hooghe & G. Marks, *Multi-level Governance and European Integration* (Lanham: Rowman & Littlefield, 2001); L. Hooghe & G. Marks, “Unraveling the central state, but how?” (2003) 97 *American Political Science Review* 233-243. See also Swenden, *Federalism and Regionalism*, cit., pp. 18-19.

governance should be construed as the prism through which to address “complex economic and social problems which occur simultaneously at different levels” as it “deals with the existence of overlapping competences.”²³⁰ In this work, however, I will use the expression quasi-federal arrangement to identify more generally all polities which, in one way or the other, offer some sort of division of legislative powers or other forms of constitutionally recognized autonomy between the center and the periphery inspired by federal ideas, but that cannot be totally identified with a *classic* or *fully-fledged* federation.

Commentators have also noted how, over the past few decades, there has been an increased tendency on the part of federations (but also of nation states in general) to adhere to even bigger *supranational* systems. For example, Germany, Austria, Belgium, United Kingdom, Spain and Italy are all members now of the EU, but also the United States, Canada, and Mexico are part to NAFTA (North America Free Trade Agreement), while Brazil and Argentina are components of the aforementioned MERCOSUR, as Malaysia is of ASEAN.²³¹

Probably building upon the classification of federations made by Watts based on their level of maturity and described above, other scholars identify three models of federal arrangements that have evolved over time. The first model emerged from the “original overcoming of European federalism” (end of XVIII century-beginning of XX century). Because it was impossible to recreate the same European model, a federal model was created on the vast territories taken away from the motherland. This is the case of the United States, Australia,

²³⁰ A. Cygan, “The regions within multi-level governance: enhanced opportunities for improved accountability?” (2014) 21 *Maastricht Journal of European and Comparative Law* 268 [Cygan, *Multi-level governance*].

²³¹ Watts, *Comparaison des Regimes Federaux*, cit., p. 7.

Argentina, Brazil, Mexico and Canada.²³² This “original” federal model was also adopted during the “second” post-colonialism (subsequent to the Second World War) and extended for instance to India (1947), Nigeria (1961), Ethiopia (1995), and South Africa (1996).²³³ However, Caravita explains that there is a significant difference between the first and second post-colonial federalism: while in the first post-colonial period federalism was adopted by the local white elites, in the second post-colonial period federal models were implemented by autochthonous elites, with the hope that federalism could help solving internal conflicts of various nature (cultural, ethnic, linguistic, etc...).²³⁴ The third federal model identified by Caravita is the European model, although still *in fieri* and somehow imperfect. With specific regards to Europe, this federal model took the form of the “functionalist” approach envisioned by Jean Monnet, one of the founding fathers of the European integration. For Monnet a European federation could be attained only through the creation of “functional links” or bonds among states, primarily represented by economic activities, without challenging national sovereignty.²³⁵ This is how the first community (the European Coal and Steel Community) was forged.²³⁶ Within this European federal model, all national states are trying to implement some form of “subsidiary model” whereby the “old” Westphalian state is surrendering powers both up and down. In other words, for Caravita, the “true” European federalism is not the model internal to this or that country, but the European model, so that all federal or decentralized schemes conceived within the single

²³² B. Caravita, “Federalismi, Federalismo Europeo, Federalismo Fiscale” (2011) (available online at http://www.federalismi.it/AppOpenFilePDF.cfm?dpath=document\editoriale&dfile=EDITORIALE_04052011095337.pdf&content=Federalismi,+federalismo+europeo,+federalismo+fiscale&content_auth=Beniamino+Caravita) [Caravita, *Federalismi*]. This idea is reiterated in Caravita, *Lineamenti*, cit., p. 63.

²³³ Caravita, *Federalismi*, cit.

²³⁴ Caravita, *Federalismi*, cit. In fact, as noted above, a federal model was recommended by the US for post-Saddam Iraq, and by the UN for Sri Lanka, Cyprus and Palestine (*ibid.*).

²³⁵ Burgess, *Comparative Federalism*, cit., p. 230.

²³⁶ Burgess, *Comparative Federalism*, cit., p. 230.

member states should be seen as “process of subsidiary (re)articulation of competences.”²³⁷ In fact, for Caravita, only subsidiarity can explain the “role of municipal and local autonomies” since “the traditional federal states (USA, Canada, Australia) do not foresee a constitutional guarantee for local authorities in the Federal Constitutions, being local autonomies [a] matter of State Constitutions, whereas the European federalism and regionalism [...] offer a constitutional guarantee also to the sub-regional autonomies.”²³⁸ And this is true for most of EU countries: traditional federations like Germany, Austria or Belgium; the autonomous communities of Spain; Italian regionalism; the asymmetric regionalism implemented in the United Kingdom; French and Polish regions entrusted with more political and administrative powers; experiences of regional schemes as “intermediate level between State and local authorities” (like in Portugal, Sweden, Finland, Greece and Romania) or “municipal authority” (the Netherlands and Denmark).²³⁹

4. Asymmetrical federations

Within the same federation, the level of homogeneity among the constituent sub-units might differ due to economic, social, linguistic, or religious disparities. Scholars have identified these particular situations as examples of “asymmetrical federalism.”²⁴⁰ In other words, in its original theorization, symmetrical federalism referred to the situation whereby component units

²³⁷ Caravita, *Federalismi*, cit., Caravita includes in this trend also Swiss federalism, although Switzerland is not part of the European Union.

²³⁸ B. Caravita, “The Italian Challenge between Federalism and Subsidiarity” (2010) (available online at http://www.federalismi.it/AppOpenFilePDF.cfm?dpath=document\editoriale&dfile=The+italian+challenge+between.pdf&content=The+italian+challenge+between+federalism+and+subsidiarity&content_auth=Beniamino+Caravita) [Caravita, *The Italian Challenge*].

²³⁹ Caravita, *The Italian Challenge*, cit.

²⁴⁰ Swenden, *Federalism and regionalism*, cit., p. 63; Watts, *Typologies of federalism*, cit., p. 28; C. Tarlton, “Symmetry and Asymmetry as Elements of Federalism: A Theoretical Speculation (1965) 27 *Journal of Politics* 861 et seq. [Tarlton, *Symmetry and Asymmetry*].

of the same federation “share in the conditions and thereby the concerns more or less common to the federal system as a whole.”²⁴¹ This is the case of the fifty states composing the United States federation. Asymmetry, on the other hand, expressed the extent to which component units “do not share in these common features.”²⁴² Rather, each unit “would separate its interests in important ways from those of any other state or system considered as a whole.”²⁴³ Examples of asymmetrical federations include Canada, Belgium, and Spain.

As Gagnon posited, asymmetry can take different forms and shapes, but the most traditional forms of asymmetry relate to the sharing of authority in a federation, the so-called political and constitutional asymmetry.²⁴⁴ Watts further elaborated on this topic, arguing that typically political asymmetry refers to the various cultural, economic, social, and political conditions that distinguish one sub-unit from the other, while constitutional asymmetry refers to the non-uniform fashion in which powers are attributed by constitution to the federal sub-units.²⁴⁵ And while a certain degree of political asymmetry exists within all federations, it can be a problem when it becomes “disproportionate.”²⁴⁶ In any event, scholars agree on the idea that asymmetrical solutions are a good way of managing conflicts within democratic federal countries.²⁴⁷ I will revert to asymmetry and thoroughly explain it in chapters VII and IX.

²⁴¹ Tarlton, *Symmetry and Asymmetry*, cit. 861. See also Burgess, *Comparative Federalism*, cit., p. 212.

²⁴² Tarlton, *Symmetry and Asymmetry*, cit. 861. See also Burgess, *Comparative Federalism*, cit., p. 213.

²⁴³ Burgess, *Comparative Federalism*, cit., p. 213.

²⁴⁴ A. Gagnon, “The moral foundations of asymmetrical federalism: a normative exploration of the case of Quebec and Canada” in A. Gagnon & J. Tully, eds., *Multinational Democracies* (Cambridge: Cambridge University Press, 2001), p.323 [Gagnon, *Asymmetrical federalism*].

²⁴⁵ Watts, *Comparaison des Regimes Federaux*, cit., p. 65.

²⁴⁶ Watts, *Comparaison des Regimes Federaux*, cit., p. 67.

²⁴⁷ Gagnon, *Asymmetrical federalism*, cit., p. 322.

5. Multinational federations

Besides internal differences, another classification that is usually made within the universe of federal possibilities is that between “single-nation” federations as opposed to “multinational” federations. For purposes of this discussion, I will use the term *nation* to define people who “share the same culture, where culture (...) means a system of ideas and signs and associations and ways of behaving and communicating”, and who “recognizes each other as belonging to the same nation”; nations see themselves as distinct societies and demand various forms of autonomy or self-government to ensure their survival as distinct societies.²⁴⁸ A multinational federation is distinct from a “polyethnic” state. In the former, nations seek various forms of self-government, whereas in the latter the various ethnic groups (i.e. immigrants) mainly seek accommodation of cultural differences through the laws of the hosting state.²⁴⁹ As Kymlicka notes, immigrants are not national minorities because they are not nations, as their distinctiveness “is manifested primarily in their family lives and in voluntary associations, and is not inconsistent with their institutional integration.”²⁵⁰ Similarly, in the case of a single-nation federation, none of the component sub-units show an interest in external sovereignty. This is why some scholars have explained that the federation becomes just one possible way to ensure decentralized government rather than to defend a unique sub-unit culture.²⁵¹ The United States,

²⁴⁸ J. Pinder, “Multinational federations” in M. Burgess & J. Pinder, eds., *Multinational Federations* (London & New York: Routledge, 2007), pp. 3-4. For other definitions of *nation* see, *ex multis*, Watts, *Multinational federations*, cit., p. 227; W. Norman, *Negotiating Nationalism: Nation-Building, Federalism, and Secession in Multinational States* (Oxford: Oxford Scholarship Online, 2006); S. Tierney, *Constitutional Law and National Pluralism* (Oxford & New York: Oxford University Press, 2004), p. 13; W. Kymlicka, *Multicultural Citizenship. A Liberal Theory of Minority Rights* (Oxford: Clarendon Press, 1995), p. 11 [Kymlicka, *Multicultural Citizenship*].

²⁴⁹ Watts, *Multinational federations*, cit., p. 227. Kymlicka also elaborates on the distinction between multinational and polyethnic state. See Kymlicka, *Multicultural Citizenship*, cit., pp. 11 et seq.

²⁵⁰ Kymlicka, *Multicultural Citizenship*, cit. p. 12.

²⁵¹ Pinder, *Multinational federations*, cit., p. 6.

Austria, Germany and Australia are all examples of single-nation or mononational federations.²⁵² Within multinational federations, on the other hand, there is at least one sub-unit that can be identified as a “distinctive nation” that demands various forms of self-government.²⁵³ Usually, nations within a federation see themselves as co-founders of the federal state.²⁵⁴ Examples of multinational federations include Canada, Belgium, India, or Malaysia. Watts questions whether the federal model is actually capable of effectively dealing with multinational situations, considering that the *fully-fledged* federation emerged with the 1787 United States Constitution was conceived to accommodate the reality of a mono-national country.²⁵⁵ Kymlicka also explains that multinational states come to existence in a variety of ways: for instance, they can emerge voluntarily, as in the case of “different cultures [that] agree to form a federation for their mutual benefit”;²⁵⁶ and also involuntarily, as when “one cultural community is invaded and conquered by another, or is ceded from one imperial power to another, or when its homeland is overrun by colonizing settlers.”²⁵⁷ The concepts of *nation* and sub-state nationalism will be more extensively explored in chapter III.

²⁵² See *ex multis* R. Simeon & D.-P. Conway, “Federalism and the management of conflict in multinational societies” in A.-G. Gagnon & J. Tully, eds., *Multinational Democracies* (Cambridge: Cambridge University Press, 2001), p. 338. There is disagreement, however, on whether the United States can be truly considered mononational. In fact, Kymlicka argues that in the United States there are a number of national minorities such as American Indians, Puerto Ricans, descendants of Mexicans living in the US Southwest, native Hawaiians, and various Pacific Islanders (including the Chamorros of Guam). See Kymlicka, *Multicultural Citizenship*, cit. p. 11.

²⁵³ Pinder, *Multinational federations*, cit., p. 4.

²⁵⁴ J. McGarry & B. O’Leary, “Federations and managing nations” in M. Burgess & J. Pinder, eds., *Multinational Federations* (London & New York: Routledge, 2007), p. 181.

²⁵⁵ Watts, *Multinational federations*, cit., p. 227. In fact, as Kymlicka explains, when the US federation came to life, “a deliberate decision was made not to use federalism to accommodate the self-government rights of national minorities ... [and] not to accept any territory as a state unless these national groups were outnumbered.” As a result, self-government was achieved through other means, such as “political institutions located inside existing states” (i.e. Indian reservations) or “entirely outside the federal system” (i.e. Guam or Puerto Rico). See Kymlicka, *Multicultural Citizenship*, cit., pp. 28-29.

²⁵⁶ Kymlicka, *Multicultural Citizenship*, cit. p. 11.

²⁵⁷ Kymlicka, *Multicultural Citizenship*, cit. p. 11.

When defining multinational federations, it is also important to recall ethnofederalism, conceived as a “federal political system” where at least one component territorial governance unit is associated with “specific ethnic category” (as it happens in Canada or India, for example).²⁵⁸ Ethnofederal solutions are particularly recommended for countries torn by ethnic conflicts, and they have been suggested as viable alternatives in the re-building processes of “post-Taliban Afghanistan” or “post-Saddam Iraq.”²⁵⁹ Nepal is also considering whether to federate on ethnic lines.²⁶⁰

6. Dynamics of federalism

As exemplified by all the existing “species” of the federal “genus,”²⁶¹ federal arrangements are not static. Scholars have noted that the relationship between societies, their constitutions, and their political institutions is characterized by a continuous interaction.²⁶² Federal arrangements continually evolve to allow political systems to *adapt* to the ever changing social, economic, and political needs, and to the “altered societal values and perspectives” of a given country.²⁶³

For example, in the ambit of division of powers between central and peripheral governments, there has been a shift across federal models from “dual” to “cooperative” federalism. Dual federalism is based on the traditional idea of “watertight compartments” and

²⁵⁸ Hale, *Divided We Stand*, cit., p. 165.

²⁵⁹ Hale, *Divided We Stand*, cit., p. 165.

²⁶⁰ For the reader who might be interested in further exploring the relationship between ethnic conflict and federalism, the following article offers an illuminating distillate of pertinent literature: J. Erk & L. Anderson, “The Paradox of Federalism: Does Self-Rule Accommodate or Exacerbate Ethnic Divisions? (2009) 19 *Regional and Federal Studies* 193 et seq.

²⁶¹ Elazar, *Federalism and the Way to Peace*, cit., p. 22.

²⁶² Watts, *Comparaison des Régimes Fédéraux*, cit., p. 17.

²⁶³ Rogoff, *Federalism in Italy*, cit., p. 77.

“dual sovereignty,” whereby federal and local governments were seen as “co-equals” and “operated independently” the one from the other within their “separate spheres.”²⁶⁴ Dual federalism can also be used to indicate a precise separation of legislative and executive functions between the center and the periphery.²⁶⁵ However, in the wake of the economic downturn of the 1930s, awareness emerged that overlapping between the two spheres of government was inevitable. This leads to the elaboration of the theory of cooperative federalism, according to which sovereignty overlaps and is “shared”²⁶⁶ and federal and local governments “work together in the same areas, sharing functions and therefore powers,”²⁶⁷ as long as these powers and functions do not conflict.²⁶⁸ Grodzin used the metaphor of “marble cake” to illustrate the idea behind cooperative federalism.²⁶⁹ The image of a “marble cake” would well depict an idea of “functional interpenetration”, “policy entanglement” and more in general “intergovernmental relations” that characterize cooperative federalism.²⁷⁰ With regards to this distinction between dual and cooperative federalism, scholars have noted how federations characterized by a cooperative approach between the levels of government usually adopt constitutions with a predominance of concurrent legislative powers, whereas dual federations are most likely to have constitutions prevalently specifying exclusive federal or local powers.²⁷¹

²⁶⁴ Schütze, *From Dual to Cooperative Federalism*, cit., p. 5 (of the e-book).

²⁶⁵ Swenden, *Federalism and regionalism*, cit., p. 49.

²⁶⁶ Schütze, *From Dual to Cooperative Federalism*, cit., p. 5 (of the e-book).

²⁶⁷ Schütze, *From Dual to Cooperative Federalism*, cit., p. 5 (of the e-book), quoting Reagan.

²⁶⁸ Schütze, *From Dual to Cooperative Federalism*, cit., p. 5 (of the e-book).

²⁶⁹ Burgess, *Comparative Federalism*, cit., p. 39. As Burgess recalls, Grodzin outlined this idea with specific reference to US federalism in his work *The American System: A New View of Government in the United States*, edited by Elazar and published in 1966 (*ibid.*).

²⁷⁰ Burgess, *Comparative Federalism*, cit., p. 39. Some scholars use also the expression “organic federalism” to denote federations characterized by this marked cooperation between federal and local institutions. See Swenden, *Federalism and regionalism*, cit., p. 49.

²⁷¹ Swenden, *Federalism and regionalism*, cit., p. 50.

The concept of cooperative federalism has become particularly relevant in Canada over these past fifty or so years. In fact, in the decisions of the Supreme Court of Canada (“SCC”) there has been a clear move from the idea of “watertight compartments” (particularly successful especially in the 1920s) to a greater awareness of overlapping between the two orders of government. Nowadays, there is a tendency in the SCC to accept intrusions of one level of government into the other as long as there is no frustration of purpose, or clear conflict in operation. As a general rule, if provincial and federal legislation do not conflict, they can coexist.²⁷²

At the European Union level, the cooperative federalism approach has by now been accepted, as Schütze points out; in fact, EU powers are shared competences between Brussels and the member states, and the EU and national governments can “co-legislate in the same area at the same time.”²⁷³

Because federations continuously evolve and need to be adjusted and adapted to the changed conditions of a given country, there might be a need to negotiate “new bargains.”²⁷⁴ This is what happened for example in 1978 in Switzerland with the creation of the Jura canton,

²⁷² B. McLachlin, “The Place of Federalism in Canadian Constitutional Law” Remarks of the Right Honourable Beverly McLachlin, P.C. Chief Justice of Canada at the Scottish Law Group, Edinburgh, Scotland, June 6, 2012, available at: <http://splg.co.uk/wp-content/uploads/2012/01/Chief-Justice-of-Canada-Remarks-6.6.12.pdf?>. Further elaboration of cooperative federalism in Canadian constitutional law can be found in J.-F. Gaudreault-DesBiens, “Cooperative Federalism in Search of a Normative Justification: Considering the Principle of Federal Loyalty” (2014) 23 *Constitutional Forum constitutionnel* 1; Cyr, *Foundations of Cooperative Federalism*, cit. Incidentally, this trend towards a more cooperative approach in the Canadian federal scheme is also buttressed by the resort the SCC has had to the principle of subsidiarity in division of powers issues as a fundamental principle of Canadian federalism. See *ex pluribus*, 114957 Canada Ltée (Spraytech, Société d’arrosage) v. Hudson (Town), [2001] 2 S.C.R. 241, 2001 SCC 40 [Spraytech]. As already noted, the principle of subsidiarity will be explained in subsequent chapters of this work.

²⁷³ Schütze, *From Dual to Cooperative Federalism*, cit., pp. 237-238.

²⁷⁴ Burgess, *Comparative Federalism*, cit., p. 107.

or in 1999 in Canada with the creation of the new territory of Nunavut and the recognition of self-government for the Inuit.²⁷⁵

Conclusion

As indicated at the outset, the goal of this first chapter was two-fold. On one side, I wanted to briefly retrace the intellectual history of federal theory from its origins to modern times, by looking both at the European and the North American experiences. On the other hand, I wanted to delve more deeply into the *classic* federal scheme, and identify the common elements of a *fully-fledged* federation as well as the possible variants of it (symmetrical vs asymmetrical federations; multinational vs single-national federations, etc.) in an attempt to show the interconnectedness existing between federal and federal-like models.

However, whereas the word federation has a tolerably clear meaning, what I tried to point out throughout this chapter is that federalism is becoming less and less a “scientific fact”: it was 1940 when Greaves pointed out that it was not always possible to “draw clear and uncontested distinctions” when studying federalism, since “alliances shades into league, league into confederation, confederation into federal state, and federal state into unitary state.”²⁷⁶ This seems to buttress the idea that there is no clear standard federal model or principle, and sometimes it is also difficult to see the boundaries of each federal model, since its borders might be blurred. Federalism continuously evolves, as do federal experiments, especially after WWII, as we have seen with the EU and with new quasi-federal arrangements. Federal theory is also constantly evolving. Among the various quasi-federal models that I outlined in this chapter there is regionalism, and it is to this scheme that chapter II will be devoted.

²⁷⁵ Burgess, *Comparative Federalism*, cit., p. 107.

²⁷⁶ Burgess, *Comparative Federalism*, cit., p. 26, quoting H.R.G. Greaves’ *Federal Union in Practice*.

CHAPTER II

THEORIES OF REGIONALISM. THE REGIONAL STATE AND THE ITALIAN CASE- STUDY

Introduction

In chapter I, I have briefly retraced the intellectual history of federal theory, and noted how the 1787 Constitution of the United States is generally regarded as the archetypal example of *pure* or *classic* or *fully-fledged* federation, thus implicitly informing all federal systems emerged afterwards.¹ The federal model was clearly antithetical to the unitary state schemes predominating in Europe at that same time; in fact, while the origins of federal theory are evidently European, modern federalism was in practice developed in North America,² because in continental Europe the unitary model of French tradition remained prevalent, as “either imposed on states following conquest during the Napoleonic Wars as in the Iberian peninsula, the Low Countries and southern Germany or adopted freely as a result of nationalist revolutions as in Greece in 1821 or Italy in 1860-1870”.³

¹ As in the previous one, also in this chapter the expressions *pure*, *classic*, and *fully-fledged* are used indistinctively, as synonyms, to indicate the prototypal type of federation against which all “quasi-federal” models are measured.

² This statement could be partially contested on the grounds that the Swiss Confederation dates back to the XIII century, thus precedes of a few centuries the US federal constitution. However, I noted in chapter I that Switzerland became “federal” according to modern standards only with the constitution of 1848.

³ J. Loughlin, “Federalism, regionalism and local government: comparative perspectives on transforming the nation-state” (2008) 7 *European Political Science* 473 [Loughlin, *Federalism, regionalism and local government*]. In this regard, Caravita interestingly observes how those elements that, throughout the XVI and XVII centuries, allowed the formation of the nation state in Europe (i.e. a religious, cultural, ethnic and historic union) were absent elsewhere. This is why the United States (and later all the other states) had to look for alternative, and more suitable, solutions. See B. Caravita, *Lineamenti di diritto costituzionale federale e regionale* (Torino: Giappichelli, 2009), p. 63 [Caravita, *Lineamenti*].

For a long time, the federal and unitary models would represent, at least in the Western world, the two only known schemes that could be implemented. The main traits that commonly differentiate a *pure* federal from a unitary state have been already discussed in chapter I. Here, I would just reiterate how in a unitary state “decision-making is firmly located at the centre of the state system” so that all “peripheral units have [...] little or no influence on its exercise, because the centre has had exclusive veto power over their demands”.⁴ Conversely, in federal states, “decision-making power is shared between the centre and the peripheral units, because the latter also have a constitutional veto power if their preferences are not considered by and within the decision-making process”.⁵ Furthermore, in a *pure* federation, “self-rule and shared-rule are constitutionally (or otherwise) enshrined”.⁶ Finally, a *fully-fledged* federation “involves the sharing or division of sovereignty between the federal and sub-federal governments in such a way that neither level of government may intervene within the sovereign sphere of the other”⁷ something that does not exist in a unitary state, where sovereignty is firmly anchored at the centre.

However, while the *classic* or *fully fledged* federation is the constitutional scheme that better than anything else incarnates federal principles, at the same time they are not the only way to utilize federal principles, as there are other schemes that clearly build upon federalism without necessarily creating a *classic* federation. In fact, it is possible to assemble under the broad

⁴ S. Fabbrini & M. Brunazzo, “Federalizing Italy: The Convergent Effects of Europeanization and Domestic Mobilization” (2003) 13 *Regional and Federal Studies* 103 [Fabbrini & Brunazzo, *Federalizing Italy*]. See also W. Swenden, *Federalism and Regionalism in Western Europe* (New York: Palgrave, 2006), p. 15 [Swenden, *Federalism and Regionalism*].

⁵ Fabbrini & Brunazzo, *Federalizing Italy*, cit., p. 103. By “veto power” the two scholars refer to the “ability to halt, or seriously obstruct, that process to the detriment of the centre’s preferences” (*ibid.*, p. 103).

⁶ J. Erk & L. Anderson, “The Paradox of Federalism: Does Self-Rule Accommodate or Exacerbate Ethnic Divisions?” (2009) 19 *Regional and Federal Studies* 192 [Erk & Anderson, *The Paradox of Federalism*].

⁷ Loughlin, *Federalism, regionalism and local government*, cit., p. 476.

umbrella-term of federalism various models of state organization that are not *pure* federations yet present some (but not all) of the elements that characterize a *fully-fledged* federation; for this reason, the distinction between *federation* and *federalism* originally made by King in 1982 and detailed in Chapter I could become particularly useful now: while a federation can be defined as an “established federal system”, federalism refers to “the conceptual and normative basis – its philosophy – that underlies a federation”.⁸ Consequently, “although all federations are based on some concept of federalism, the latter may also exist in unitary states”.⁹

I observed above how, for quite some time the “unitary vs federal” dyad was basically the only option available for state governance, to the point that states were either unitary or *purely* federal. But because of the ever increasing complexity and evolution of governance both at local and international level, scholars almost unanimously agree on the fact that “the federal/unitary distinction is too crude to capture the complexity of contemporary governance”¹⁰ to the point that, over the past few decades, “new types of relationships among the constituent territorial units have been developing at the supranational, the sub-national and the international levels”.¹¹ As Swenden notes, if there is a sort of “continuum” with traditional *fully-fledged* federations and uncontested unitary states, in between these two opposite poles there is “a range of other configurations with greater or lesser degrees of centralization, regionalization and decentralization”¹² and whose contours are not always easily identifiable. In this regard, Burgess talks about a “penumbra of federalism” to indicate all these emerging federally-inspired models

⁸ Loughlin, *Federalism, regionalism and local government*, cit., p. 475.

⁹ Loughlin, *Federalism, regionalism and local government*, cit., p. 475, but see also Tierney, who talks about the paradox of federalism in a unitary state: S. Tierney, “Federalism in a unitary state: a paradox too far?” (2009) 19 *Regional and Federal Studies* 237 [Tierney, *Federalism in a unitary state*].

¹⁰ Loughlin, *Federalism, regionalism and local government*, cit., p. 476

¹¹ Loughlin, *Federalism, regionalism and local government*, cit., p. 474.

¹² Loughlin, *Federalism, regionalism and local government*, cit., p. 476.

whose frontiers “are not always sharp and precise [...] so that one concept shades off into another” to create new hybrids.¹³ In chapter I, I listed some of these hybrid or “quasi-federal” schemes (i.e. federacies, unions, common markets, etc.) but most devolved or somewhat decentralized models can be traced back to this broad category.¹⁴ A regional state, generally construed as a “quasi-federal” or federally-inspired model, can certainly be added to the group, although its exact contours are not so distinct.

This chapter will thus be devoted to analyzing regionalism and the regional state. A number of reasons support the choice to devote an entire chapter to this subject. First, while regionalism can be traced back to the broad federal experience, at the same time it is an all-encompassing term incorporating diverse experiences both at national and international levels. Because it can mean different things to different readers, it is important to clarify the exact scope that I am giving to this concept, although it might become a rather challenging task to provide a universally acceptable and accepted definition of broad concepts whose contours cannot be easily carved out. In any event, the regional state paradigm to which Italy is usually associated is just one of the many shapes that regionalism can take at national level, although the two terms, regionalism and regional state, are often employed as synonyms.

¹³ M. Burgess, “The penumbra of federalism. A conceptual reappraisal of federalism, federation, confederation and federal political system” in J. Loughlin, J. Kincaid & W. Swenden, eds., *Routledge Handbook of Regionalism and Federalism* (London & New York: Routledge, 2013), p. 59 [Burgess, *Penumbra of federalism*].

¹⁴ For reasons of space, I will not extensively discuss devolution. However, it has been defined as a “top-down grant of powers from the centre”. See Tierney, *Federalism in a unitary state*, cit., p. 239. The same scholar has also explained that one of the main differences between devolution and federalism is that “whereas devolution might bring autonomy for sub-state national societies, it is only in formal federal arrangements (...) [that] sub-state representation at the centre is formally guaranteed and structured”. See also S. Tierney, *Constitutional Law and National Pluralism* (Oxford & New York: Oxford University Press, 2004), p. 473 [Tierney, *Constitutional Law & National Pluralism*]. Devolution is also seen as a “peculiar case of decentralization”; see G. Baldini & B. Baldi, “Decentralization in Italy and the Troubles of Federalization” (2014) 24 *Regional and Federal Studies* 90 [Baldini & Baldi, *Decentralization*].

While literature on regionalism (construed broadly) is not as vast and long-standing as is the case of federalism, I have noted a growing interest and attention on this topic on the part of scholars, to the point that important works have started to circulate in academia.¹⁵ The problem with this existing body of scholarship, in my opinion, is that it takes a rather Euro-biased or Euro-centric approach, meaning that it explores regionalism through the specific prism of European Union law and experience, which is just one of the many forms that regionalism can assume. Furthermore, this scholarship mainly resorts to methodologies and approaches typical of social sciences, which might be very different from the one a legal scholar is familiar with, and is looking for.

But when we talk more specifically of the regional state model, the literature available is even more scarce, as this is still seen as a rather geographically-limited phenomenon: in fact, I noted already how Italy and Spain (and to a certain extent Poland, which is not discussed here) are considered as the quintessential, but also the sole, regional state models known to this date, at least in the Western world. This implies that the attention granted to this specific quasi-federal scheme is limited and not always accessible to students who are not familiar with the Italian or Spanish systems. For this reason, I will try to categorize the main elements that permit us to identify a decentralized state as regional as opposed to federal or unitary, although the difference is subtle and there is a natural trend of reciprocal influence. This is the first, important

¹⁵ *Ex multis*, see R. Fitjar, *The Rise of Regionalism. Causes of regional mobilization in Western Europe* (London & New York: Routledge, 2010) [Fitjar: *Regionalism*]; R. Scully & R. Wyn Jones, eds., *Europe, Regions and European Regionalism* (Houndmills, Basingstoke, Hampshire, New York: Palgrave Macmillan, 2010) [Scully & Wyn Jones, *European Regionalism*]; J. Loughlin, J. Kincaid & W. Swenden, eds., *Routledge Handbook of Regionalism and Federalism* (London & New York: Routledge, 2013).

contribution of this thesis to scholarship on the subject, as this exercise of classification is rarely done and, even if it is done, it is often superficial and imprecise, as we shall see.

Once the similarities and differences between a federal and a regional scheme are clearly detailed, it will be easier to understand why I have included the regional model within the broad category of federalism. Being part of the same family, regional states and federations can influence each other: in fact, as a regional state model builds upon the federal experience, at the same time there are lessons that federal states can learn from their regional counterparts. Consequently, it makes sense to look at the Italian regional state as a case-study, and as the base upon which drawing some lessons that can be applied to other federal or decentralized systems across the globe. Closing the doors to a comparative analysis between regional and *pure* federations is ill advised if there is at least one criterion that can be identified and that is worth comparing.

This chapter is divided into two sections. Section I is devoted to an exposition of the various theories of regionalism, and proceeds with a rather detailed illustration of one specific expression of regionalism, i.e. the regional state, including a critical appraisal of what scholars identify as common elements of a regional state. Section II focuses on some peculiar traits of the Italian debate on the regional state.¹⁶ I will also use some examples drawn from the Italian experience to make some general observations about quasi-federal models. The key purpose of this chapter is to offer the reader a comprehensive assessment of the various questions

¹⁶ Part II of this thesis (chapters IV-VI) will be entirely devoted to the history of the Italian experience with regionalism and federalism and relevant constitutional modifications. In the present chapter, the discourse on regionalism is developed on a more theoretical level.

surrounding regionalism, both in general (theoretical) and in more specific (practical) terms, as well as a speculation on when and why a regional model may be preferable to a *pure* federation.

Section I – Theories of regionalism

1. Preliminary remarks

As noted, in this thesis the terms regionalism and regional state will not be construed as synonyms, although they can both be traced back to the all-embracing family of federalism. In this sense, regionalism can be understood as a general term or concept that defines a variety of experiences, the regional state (i.e. a polity characterized by certain elements typical of a *pure* federation, such as decentralization of legislative and/or administrative powers, without constituting a *classic* federal model) being just one of them. Consequently, as it happens with federalism, the exact contours of this expression are not always so clear, and often scholars talk about regionalism to refer to both the regional state and other forms of regional organization. This is why I believe it is important to be clear about the exact meaning we want to give to regionalism and regional state.

While Italy and Spain currently represent the most notable examples of regional state, scholars have noted that, since the 1970s, regional governments across the globe have progressively strengthened and increased in number,¹⁷ while throughout the XIX century “the idea of regionalism in politics was condemned by most contemporaries as leading to a regressive politics”.¹⁸ The growing of regional experiments can be in part explained or justified by the

¹⁷ A. Henderson, “Why Regions Matter: Sub-state Polities in Comparative Perspective” (2008) 20 *Regional and Federal Studies* 439, citing Hooghe et al. 2008 [Henderson, *Why Regions Matter*].

¹⁸ A. Spektorowski, “Ethnoregionalism: the Intellectual New Right and the Lega Nord” (2003) 2 *The Global Review of Ethnopolitics*. 56 [Spektorowski, *Ethnoregionalism*].

activity of the European Parliament, adopting a “Charter of Regionalization” intended to encourage “member states to institutionalize regional identities within them”.¹⁹ Similarly, regionalism was promoted by a concomitant crisis regarding both the “unitary versus federal” dichotomy (which is no longer adequate to fully encapsulate all the existing possible models of government, as already emphasized) and the nation-state paradigm. In fact, in an essay challenging the “adequacy of the nation-state paradigm”, Hopkins takes a rather critical approach towards the “nation-centric” concept of “territorial governance” whereby the “principal unit of territorial government” over these past few centuries has always been the “sovereign nation-state” and the consequent assumption that “legal systems can be organized either on a national or on a international basis, but always with reference to the national unit”.²⁰ Because of this “dominance of the nation-state paradigm”, when studying territorial governance Hopkins contends that all “other modes of governance are generally examined in the nation-state context”.²¹ This paradigm is based on the idea of “nation”, so that “[e]ach nation-state is the territorial representation of such a nation”.²² But without nationhood, “the present territorial configuration loses normative legitimacy”.²³ Within this critical perspective, Hopkins reiterates the importance of rediscovering regions and regionalism to better address contemporary challenges faced by governance.

¹⁹ Spektorowski, *Ethnoregionalism*, cit., p. 56.

²⁰ W. Hopkins, *Devolution in Context: Regional, Federal & Devolved Government in the Member States of the European Union* (London & Sydney: Cavendish Publishing, 2002), pp. 3-4 [Hopkins, *Devolution in context*].

²¹ Hopkins, *Devolution in Context*, cit., pp. 3-4.

²² Hopkins, *Devolution in Context*, cit., p. 5.

²³ Hopkins, *Devolution in Context*, cit., p. 5.

2. Defining regionalism

My first task will thus be to try to define regionalism, bearing in mind once again that the regional state (as a quasi-federal system of governance) is just one of the many expressions of the concept of regionalism. In other words, I argue that the relationship between the regional state and regionalism is very similar to the one that exists between a *classic* federation and federalism: while a federation is just one of the many ways federal principles are translated in real practice (although its *purest* expression), the regional state is one of the various forms that regionalism can assume.

Regionalism broadly construed implies the existence of a “local” dimension. However, defining regionalism is a task riddled with ambiguities, further complicated by the fact that scholars tend to be heavily influenced (and biased) by the specific context in which words are used: in fact, the meaning that concepts like regionalism, region or regional government can assume for an Italian jurist or political scientist, for instance, might be radically different than that envisioned by a North American counterpart, as I am going to better illustrate in this and in the subsequent chapters.

There are quite a few reasons that explain the emergence of regionalism. For instance, Fitjar has enumerated the following: cultural explanations (i.e. the “defence of cultural identity”); globalization; European integration; changes in party systems (i.e. in regions where there is a difference between local and national party systems, “conflicts between the regional and national governments can serve as a basis for regional mobilization”).²⁴ Linguistic differences and

²⁴ Fitjar, *Regionalism*, cit., pp. 15 et seq.

historical sovereignty are also important variables in opting for regionalization,²⁵ although the same might be true for federalism.

From the above discussion, it emerges that, when talking about regionalism, there are at least two levels of governance that come into play: the international and the national one. However, this basic classification is not sufficient to capture all the variables of regionalism. In fact, additional sub-divisions can be made within these broad categories, as we will see in a moment. In fact, as theorists explain, the region is a “rubbery concept stretching above and below the national state”.²⁶ I will explain both, but my focus will obviously be on the national dimension of regionalism.

a. Regionalism at the international level (*above the national state*)

At the international level, regionalism is construed by scholars as “a policy whereby states and non-state actors cooperate and coordinate strategy within a given region”.²⁷ In this sense, regionalism aims at promoting “common goals in one or more issue areas”.²⁸ Among them, there can be activities such as “promoting a sense of regional awareness or community” or “consolidating regional groups and networks” or “pan- or subregional groups formalized by interstate arrangements and organizations”.²⁹ Although regionalism is a “global” phenomenon, Europe and the “North Atlantic” are indicated as the “greatest and most durable successes” of

²⁵ Fitjar, *Regionalism*, cit., pp. 53-54.

²⁶ G. Marks, L. Hooghe & A. H. Schakel, “Measuring regional authority” (2008) 18 *Regional and Federal Studies* 113 [Marks et al., *Regional authority*].

²⁷ L. Fawcett, “Exploring regional domains: a comparative history of regionalism” (2004) 80 *International Affairs* 433 [Fawcett, *Exploring regional domains*].

²⁸ Fawcett, *Exploring regional domains*, cit., p. 433.

²⁹ Fawcett, *Exploring regional domains*, cit., p. 433.

regionalism.³⁰ Furthermore, scholars note how, since the mid-1980s, “there has been an explosion of various forms of regionalism on a global scale. The widening and deepening of the EU is the most pervasive example, but regionalism is also made visible through the revitalization or expansion of many other regional projects around the world” with the European integration process representing the quintessential example, especially during the 1960s and 1970s.³¹ In this regard, some commentators would talk of a specific “Euro-regionalism” to indicate the importance that the European integration process has granted to regions and regional governments within member states of the European Union.³² Other scholars have offered more general definitions of regionalism as “the politicization of regional identity”³³ where “regional identity” refers to the “feeling of belonging in a particular region”.³⁴ Both definitions, however, require a careful assessment of what a region is, something that is not as obvious as it might seem at first sight.

b. Regionalism as a variant of federalism (*below the national state*)

With regards to regionalism at the national state level, scholars have noted how “projects for modernization and reform of government across Europe in recent years have almost invariably included a territorial dimension. The regional [...] level of government, between the central state and the municipalities, has proved an important one”.³⁵ In fact, as I have already

³⁰ Fawcett, *Exploring regional domains*, cit., p. 435.

³¹ P. De Lombaerde, F. Söderbaum, L. van Langenhove & F. Baert, “The problem of comparison in comparative regionalism” (2010) 36 *Review of International Studies* 732-733 [De Lombaerde et al., *Comparative regionalism*].

³² R. Wyn Jones & R. Scully, “Introduction: Europe, Regions, and European Regionalism” in R. Scully & R. Wyn Jones, eds., *Europe, Regions and European Regionalism* (Houndmills, Basingstoke, Hampshire; New York: Palgrave Macmillan, 2010), p. 8 [Jones & Scully, *Introduction*].

³³ Fitjar, *Regionalism*, cit., p. 5.

³⁴ Fitjar, *Regionalism*, cit., p. 3.

³⁵ M. Keating & A. Wilson, *Reforming Italy: Institutional Change and the Federal Option*, Edinburgh Europa Paper Series, available online at <http://ssrn.com/abstract=1691608> [Keating & Wilson, *Reforming Italy*].

indicated with regards to Europe, the unitary state model (shaped on the French or Napoleonic experience) prevailed until the 1950s, and within this model local autonomies had difficulty thriving.³⁶ It was only recently that we have witnessed the regionalization of quite a few countries which were once centralized.³⁷ This was in part due to the creation of the European Union and of its “cohesion policies” which moved towards a “subsidiary-oriented” form of federalism.³⁸ Similarly, “the Europeanization process has legitimized the tendency to regionalism, particularly in those countries (like Italy) where this tendency has been justified by the poor performance of the unitary state model.”³⁹

In favor of this type of regionalism, Hopkins has explained that “regions have often been seen as another type of local authority, merely operating within the national paradigm and regarded as inferior to it”.⁴⁰ However, he criticizes this approach, arguing that a region “is a *sui generis* form of non-sovereign authority, filling a gap in the territorial organization of government which the nation-state cannot fill”.⁴¹ He also suggests that the principle of subsidiarity gives the region “a form of legitimacy independent of, and untarnished by, the nationalist myth”.⁴² Similar arguments are made by Blank, who contends how local governments “are increasingly becoming major actors in the emerging global legal order” to the point that the “traditional legal focus on state actors is shifting on to local governments, giving them

³⁶ P. Caretti & G. Tarli Barbieri, *Diritto Regionale*, 3rd ed. (Torino: Giappichelli, 2012), p. 3 [Caretti & Tarli Barbieri, *Diritto Regionale*].

³⁷ G. Delledonne & G. Martinico, “Legal Conflicts and Subnational Constitutionalism” (2010-2011) 42 *Rutgers Law Journal* 890 [Delledonne & Martinico, *Legal Conflicts*].

³⁸ Delledonne & Martinico, *Legal Conflicts*, cit., p. 891.

³⁹ Fabbrini & Brunazzo, *Federalizing Italy*, cit. p. 113. I should also point out how EU funds are distributed on a regional basis; this means that requesting parties have to present themselves as a region to get this money.

⁴⁰ Hopkins, *Devolution in context*, cit., p. 30.

⁴¹ Hopkins, *Devolution in context*, cit., p. 30.

⁴² Hopkins, *Devolution in context*, cit., p. 30. For a more in depth discussion on subsidiarity, see chapter VII.

independent legal status in the new global order” as they obtain “international duties, powers, and rights”.⁴³

Always with regards to regionalism at the national level, a further classification has been made between “state-regionalism” and “regional-regionalism”, whereby the former refers to “regionalizing pressures emanating from the state-level itself” while the latter refers to a “bottom-up pressure for regionalism [...] whereby the main pressure for an enhanced role of the region emanates from within the region itself”.⁴⁴

c. What is a region?

As noted, a preliminary problem encountered when discussing regionalism is that of providing a definition of region. As scholars contend, the term *region* is “polysemous” or a “‘container-concept’ with multiple meanings”⁴⁵ and the challenge is that there is “no generally accepted definition that will produce a set of homogeneous units for cross-national comparison”.⁴⁶ In fact, the same word *region* can be used to refer to different phenomena, such as the EU, North-Rhine Westphalia, or the Euregio, as scholars explain.⁴⁷ Other scholars have pointed out how many works on regionalism tend to avoid any attempt to define what a region is, in light of the complexities in doing so, preferring to “stress the flexibility and ambiguity of the term ‘region’”.⁴⁸ Furthermore, pursuant to the classification made above between the national and the *supra* national dimension of regionalism, theorists have distinguished between micro-

⁴³ Y. Blank, “Localism in the New Global Legal Order (2006) 47 *Harvard International Law Journal* 263 [Blank, *Localism*].

⁴⁴ Jones & Scully, *Introduction*, cit., p. 8.

⁴⁵ De Lombaerde et al., *Comparative regionalism*, cit., p. 736.

⁴⁶ Marks et al., *Regional authority*, cit., p.113.

⁴⁷ De Lombaerde et al., *Comparative regionalism*, cit., p. 736.

⁴⁸ Jones & Scully, *Introduction*, cit., p. 6. See also Fitjar, *Regionalism*, cit., p. 2, pointing out to the “confusion among analysts and policymakers alike of what constitutes a region”.

regions (or sub-national regions) and macro-regions: the former refer to the “space between the national and the local within a particular state” whereas the latter are “larger territorial [...] units or sub-systems, between the state level and the global system level”.⁴⁹

In any event, by looking at the national level, sometimes regions are geographically recognizable⁵⁰ as in the case of Italy, where the local sub-units that compose the geo-political skeleton of the state are called *regions* and are clearly identifiable by their geographical borders and by each having a capital city. Consequently, because regions are the territorial sub-units that compose the Italian state, regionalism for an Italian scholar neatly identifies the Italian system of local self-government.⁵¹ Other times, the term *region* can refer to historical borders no longer existing.⁵² But it is also possible to use the term *region* to indicate a geographical area that is not so well and clearly defined, neither on a geo-political nor on a historical basis. In other words, the term *region* could refer to a “cluster” of regions or otherwise termed geo-political sub-units who simply share similar interests or other traits (for example, economic).⁵³

d. The regional state

Focusing now on that particular form of regionalism represented by the regional state as a “quasi-federal” model, scholars recall how, from a historical standpoint, the regional state was first introduced by the Spanish republican constitution of 1931, which is commonly considered

⁴⁹ De Lombaerde et al., *Comparative regionalism*, cit., p. 736; Marks et al., *Regional authority*, cit., p. 113, where subnational regions are described as “*intermediate* between local and national governments” [*italics in the original*].

⁵⁰ Hopkins, *Devolution in context*, cit., p. 19.

⁵¹ In Spain, the equivalent for regions is *comunidades autónomas* (autonomous communities).

⁵² Italy abounds with examples of historical regions that are not politically recognized but only retain a historical importance. For instance: Carnia in the North East, Lucania and Salento in the South, just to name a few.

⁵³ An example in this sense could be the “West of Canada”.

as the “pioneer text of European regionalism”.⁵⁴ The 1931 Spanish Constitution was later used by the Italian constituents as the model for the regional state created in 1948.⁵⁵ However, due to the short life of the 1931 Spanish constitution,⁵⁶ scholars tend to agree on the fact that the regional state is an “invention of Italian constituents”,⁵⁷ who wanted to find an alternative route to the traditional “unitary versus federal state” dyad (which had marked the Italian constitutional and political history since unification, as we will see in chapters IV and V).⁵⁸ In fact, Italy is commonly identified as the quintessential “regional model”.⁵⁹

Bin and Falcon interestingly note how the expression “regional state” was coined by Gaspare Ambrosini, a member of the Italian Constituent Assembly, who had thoroughly studied the 1931 Spanish constitution which created autonomous communities endowed with legislative powers, as well as the Soviet Union model and the extinct Austro-Hungarian scheme;⁶⁰ Swiss federalism and the Weimar Republic were also comparatively studied.⁶¹ Spanish regionalism and German federalism thus played a fundamental role in shaping the Italian regional model created

⁵⁴ R. Bin & G. Falcon, *Diritto regionale* (Bologna: Il Mulino, 2012), p. 26 [Bin & Falcon, *Diritto regionale*]; A. Barbera, “Da un federalismo “insincero” ad un regionalismo “preso sul serio”? Una riflessione sull’esperienza regionale” (2012) *Forum di Quaderni Costituzionali* (available online at http://www.forumcostituzionale.it/wordpress/images/stories/pdf/documenti_forum/paper/0340_barbera.pdf) [Barbera, *Riflessione sull’esperienza regionale*].

⁵⁵ Bin & Falcon, *Diritto Regionale*, cit., p. 26.

⁵⁶ Because of the civil war that broke up in the country, this constitution was never actually applied. See Bin & Falcon, *Diritto Regionale*, cit., p. 48.

⁵⁷ Bin & Falcon, *Diritto Regionale*, cit., p. 48.

⁵⁸ Bin & Falcon, *Diritto Regionale*, cit., p. 48.

⁵⁹ Barbera, *Riflessione sull’esperienza regionale*, cit.

⁶⁰ Bin & Falcon, *Diritto Regionale*, cit., p. 48; A. D’Atena, “Between Spain and Germany: The Historical Models of Italian Regionalism”, in S. Mangiameli, ed., *Italian Regionalism: Between Unitary Traditions and Federal Processes* (Cham: Springer, 2014), p. 68 [D’Atena, *Historical Models of Italian Regionalism*].

⁶¹ S. Mangiameli, “The Regions and the Reforms: Issues Resolved and Problems Pending” in S. Mangiameli, ed., *Italian Regionalism: Between Unitary Traditions and Federal Processes* (Cham: Springer, 2014), p. 3 [Mangiameli, *Regions and Reforms*]; D’Atena, *Historical Models of Italian Regionalism*, cit., 68, who argues that constitutional lawyer Costantino Mortati was a prominent student of the German model.

in 1948.⁶² Inspired by these experiences, Ambrosini not only invented the expression “regional autonomy” but he also conceived a new entity enjoying legislative powers: the region.⁶³ More recently, other European states started to adopt a regional constitution: Portugal (1976); Spain (1978); the Netherlands (1984), and several former Eastern European states after the collapse of communism at the end of the 1980s.⁶⁴ Eventually, also the system of “devolution of powers” to Scotland and Wales, adopted by the United Kingdom, can be construed as a variant of the regional paradigm.⁶⁵ However, as I will better explain in chapter IV, the project of creating a regional state, at least in Italy, can be traced back to the XIX century, with the suggestion made by statisticians like Minghetti and Cavour to create an intermediate level of government between the central and the municipal and provincial spheres with limited administrative functions, although this project was never carried out. The idea of regions as intermediate entities to foster administrative decentralization was also recommended by Salvemini and Sturzo, among others.⁶⁶

From what I have just outlined, it seems quite uncontested that the regional state has emerged in the aftermath of WWII as an alternative to the existing dichotomy between central and federal models, but beyond that there is still a certain disagreement on what distinguishes a regional model from a federal or unitary one.⁶⁷ I have already emphasized the challenge scholars have in providing a definition of region. In the next paragraphs, I will attempt to identify the key elements of the regional state, and in which ways it differs from a *pure* federation. One question that I would like to raise at this point is why there is a need to create this “new” arrangement

⁶² D’Atena, *Historical Models of Italian Regionalism*, pp. 67-68.

⁶³ Bin & Falcon, *Diritto Regionale*, cit., p. 48. The two authors also note that, at least with regards to Italy, regions and their powers were conceived in an abstract way, absent a concrete model to imitate. *Ibid.*

⁶⁴ Barbera, *Riflessione sull’esperienza regionale*, cit.

⁶⁵ Barbera, *Riflessione sull’esperienza regionale*, cit.

⁶⁶ See chapter IV for more details.

⁶⁷ Fabbrini & Brunazzo, *Federalizing Italy*, cit., p. 103.

suspended between federal and unitary models. Put otherwise, the issue becomes: in which ways regionalism addresses problems and questions that neither a federal nor a unitary state can solve? I will try to provide an answer to the question in the next paragraphs.

3. Elements identifying a regional state

While both federal and regional states are characterized by the fact that they display “forms of territorial partition of power”⁶⁸ the category of regional states is not homogeneous, since it comprises “structurally different types of relationships between the centre and the peripheral units”.⁶⁹ In fact, in some cases, regions enjoy some legislative and administrative powers, although these peripheral units cannot be compared to the federal counterparts, since some form of “central supervision” is always present.⁷⁰ In other cases, regions are nothing but articulations of central state institutions, with powers of administration of central policies, but without “decision-making authority”.⁷¹ This phenomenon is also known as *deconcentration* of powers.⁷²

In general terms, a distinguishing feature of the regional state is the recognition, in one way or the other, of the importance of local autonomies (e.g. regions, but also municipalities or

⁶⁸ G. Grasso, “Costituzione e federalismo. Nell’Italia delle Regioni e dell’Unione Europea” (2010) *Amministrazione in Cammino* (available online at <http://amministrazioneincammino.luiss.it/wp-content/uploads/2010/04/Costituzione.pdf>) [Grasso, *Costituzione e federalismo*].

⁶⁹ Fabbrini & Brunazzo, *Federalizing Italy*, cit., p. 103. See also W. Norman, *Negotiating nationalism: nation building, federalism, and secession in the multinational state* (Oxford: Oxford University Press, 2006), pp. 97 and 98 [Norman, *Negotiating nationalism*]. The author attempts to draw a line between federal and non-federal institutions, but admits the challenges in this type of exercise, as “it will not always be entirely clear when we are dealing with a ‘federal’ element and when it is a ‘democracy’ element.”

⁷⁰ In addition to other elements like, for example, the lack of fiscal autonomy or of a regional Senate, as we will see. See Fabbrini & Brunazzo, *Federalizing Italy*, cit., p. 103.

⁷¹ Fabbrini & Brunazzo, *Federalizing Italy*, cit., p. 103. Examples of this model include France or pre-2001 Italy.

⁷² J. Loughlin, “Reconfiguring the nation-state. Hybridity vs uniformity” in J. Loughlin, J. Kinkaid & W. Swenden, eds., *Routledge Handbook of Regionalism and Federalism* (London & New York: Routledge, 2013), p. 13 [Loughlin, *Reconfiguring the nation-state*].

provinces), with peripheral governments enjoying mild legislative and executive powers, while judicial authority rests with the centre.⁷³ Another feature of a regional constitution, already emphasized in Chapter I, is that it is interpreted as a “law” and not as a “covenant” or “compact” as it happens in federal states. Other scholars contend that as long as there is a constitution recognizing powers to the region, we are presented with a true federation. But students of the regional state prefer to look at other elements that, in their opinion, help clarify this classification, such as: formation of a regional state, division of powers, regional Senate, participation of the regional units to constitutional amendment procedures, presence of a court settling the conflicts of attribution between the centre and the periphery, fiscal powers, treaty-making powers of the regional sub-units, judicial powers, and sovereignty of the constituent units.⁷⁴ I will look at each of them separately, critically testing them especially with regards to Italy, and conclude that none of them is as decisive as some scholars contend. The distinction between regional and federal state should therefore be searched for in other elements.

a. Formation of a regional state

The way a regional state comes to existence is sometimes used by scholars as one of the criteria to distinguish it from federal or unitary models. Regional states can be seen either as variables of *fully-fledged* federations or of unitary states. For example, Pinelli distinguishes the regional from the federal model in that the latter usually presupposes the merger of former independent states into a federation,⁷⁵ whereas regional states commonly emerge from the

⁷³ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 3.

⁷⁴ The reader might notice at this point that these elements are similar to those usually taken into account when classifying federal from unitary states.

⁷⁵ C. Pinelli, “The 1948 Italian Constitution and the 2006 Referendum: Food for Thought” (2006) 2 *European Constitutional Law Review* 333 [Pinelli, *The 1948 Italian Constitution*].

decentralization of a unitary state.⁷⁶ Other scholars explain that the regional state is “part of a bottom-up process” which may have “socio-economic, political or cultural driving force or may be a combination of all these factors”⁷⁷ whilst some other theorists take the opposite approach, contending that, differently than a federal model, a regional state develops “through a top-down dynamic, without a true federal motivation”.⁷⁸ Finally, insofar as state formation is concerned, Caravita interestingly observes that a common trait that connects federal and regional states is that they are particularly successful models in countries that have emerged from colonialism or from nationalism.⁷⁹

I have some reservations with regards to this “state-formation” dynamic. In fact, while for example it is undeniable that both Italy and Spain emerged from a process of decentralization of a once unitary state, the opposite can also be true, since decentralization could also lead to the formation of a *fully fledged* federation (as in the case of Belgium). Similarly, not all federations have materialized from the merger of formerly independent states, since history is filled with examples that prove just the opposite: not all 50 states in the United States were independent at the time they joined the Union, as it is for Canadian provinces. Furthermore, socio-economic, political or cultural driving forces lurk behind not only regional states but also federations.

⁷⁶ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 3. Decentralization is just another one of those terms that can acquire different meanings depending on the prisms through which they are scrutinized. In fact, decentralization in unitary states is construed as “a process that transfers authority, responsibilities and resources from central government to lower levels of government” thus strengthening the authority of all local governments” (Baldini & Baldi, *Decentralization*, cit., p. 90). In this sense, decentralization “aims at improving governmental capabilities” but does not require “a constitutionally entrenched legislation” nor “legislative (self-rule) power” (*ibid.*, p. 90).

⁷⁷ Swenden, *Federalism and Regionalism*, cit., p. 14.

⁷⁸ Baldini & Baldi, *Decentralization*, cit., p. 91.

⁷⁹ Caravita, *Lineamenti*, cit., p. 71. The author lists the US, Canada, Mexico, Argentina, Brazil, Nigeria, India and Australia as federations emerged from the colonial experience, while Germany, Austria, Spain and Italy are regional or federal states formed in the aftermath of a strong nationalist experience.

Consequently, this first criterion can be used for some, but certainly not all, the trajectories followed by regional and federal states when they came to existence.⁸⁰

b. Division of powers

Another critical element commonly used by scholars to distinguish federal and regional schemes is how powers are divided between the centre and the periphery, including the type of powers left to the periphery (i.e. residual powers).⁸¹ According to Caretti & Tarli Barbieri, in a federal state the central government enjoys certain powers specifically enumerated in the constitution, while peripheral governments only have a general competence in areas not listed in the constitution; conversely, in regional states the opposite happens (general competences are enjoyed by the central state and enumerated competences belong to the regions).⁸²

Yet, I contend that this distinguishing feature can also be critically (con)tested. In fact, this classification seems to directly build upon the US federal experience, where in fact federal powers are enumerated and state powers are residual. But this is just one example of division of powers, and each federal system differs in the way powers are shared between the centre and the periphery; some federal states are more centralized (or decentralized) than others, or fluctuate between periods of more or less intense centripetal (or centrifugal) trends. Similarly, regional and federal systems can share parallel ways of division of powers. For instance, Canada (a traditional *fully-fledged* federation) and Spain (a regional state) both present in their constitutions

⁸⁰ Caravita also agrees with this conclusion. See Caravita, *Lineamenti*, cit., p. 64.

⁸¹ Grasso, *Costituzione e federalismo*, cit. See also Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 5. In Chapter I, I recalled how, according to Wheare, in order to have a federal system, “[t]here must be some matter, even if only one matter, which comes under the exclusive control, actual or potential, of the general government, and something likewise under the regional governments. If there were not, that would be the end of federalism.” K. Wheare, *Federal government*, 4th ed. (Oxford: Oxford University Press, 1963), p. 75 [Wheare, *Federal government*].

⁸² Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 5.

a list of subject matters belonging to the centre and a list of subject matters belonging to the periphery. Furthermore, as it will be explained more thoroughly in the remainder of this thesis (specifically, chapters IV and V), division of legislative powers is one of the few elements allowing a comparison between the Italian system and a federation, since article 117 of the constitution, as amended in 2001, now lists powers of exclusive jurisdiction of the central state, shared competences between the centre and the periphery, as well as residual matters left to regional jurisdiction. Thus, this criterion cannot be considered as decisive enough in this exercise of classification.

c. Regional Senate (or Upper Chamber representing territorial sub-units)

Another element utilized by scholars to distinguish a federation from a regional state is the presence, in federal states, of a second Chamber (usually the Senate) representing “in a direct, complete, and strong fashion” the interests of the periphery or of local territories.⁸³

Once again I have some reservations with this criterion. In fact, even in *fully-fledged* federations there have been discussions on the precise capacity of the Senate to effectively act as a real territorial Chamber. Canada is a good example of this controversy, considering that the role of the Senate (and especially the appointment of senators) has been a very contentious issue since Confederation.⁸⁴ In Canada, senators (who are not democratically elected, but are appointed by the Prime Minister) do not seat in the Upper Chamber in representation of the interests of the various provinces, although they are chosen on a provincial basis. This makes the

⁸³ Grasso, *Costituzione e federalismo*, cit. See also Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 6.

⁸⁴ Probably, one of the few “pure” examples of a true territorial chamber is that of Germany, with the *Bundesrat* representing the governments of the 16 *Länder*. See Caretti & Tarli Barbieri, *Diritto Regionale*, cit., pp. 6-7.

Canadian Senate a rather “weak” federal chamber.⁸⁵ Likewise, in Italy article 57(1) Const. dictates that the “Senate of the Republic is elected on a regional basis”. But this reference to the “regional basis” has a different meaning than that showcased in truly federal Upper chambers: here, it only refers to electoral districts from which senators are elected, since in practice they represent the whole nation.⁸⁶ Consequently, once elected, they do not sit in the Upper chamber representing the interests of their territories of provenance.⁸⁷ The absence of a territorial (or regional) senate has been repeatedly identified in Italy as one of the major obstacles in the path to federalism.⁸⁸

However, it has become a common practice in states with “weak” regional representation in the Upper Chamber to seek alternative solutions. For instance, in Italy, the “Permanent Conference for the Relations among State, Regions and Autonomous Provinces” (“Permanent Conference”) somehow tries to act as a substitute for the regional chamber. This institution was created in 1983 and received its first legislative discipline in 1988 (with Law 400). Presently, it is governed by legislative decree 281/1997.⁸⁹ This institution is composed by regional presidents, by the presidents of the autonomous provinces of Trento and Bolzano, and by the president of the Council of Ministers (who acts as the chair).⁹⁰ Other individuals (e.g. Ministers or representatives of various public entities) can be invited from time to time to attend the meetings,

⁸⁵ See, among many, H. Brun, G. Tremblay & E. Brouillet, *Droit Constitutionnel*, 5 ed. (Cowansville: Yvon Blais, 2008), pp. 336 et seq. and 420 [Brun Tremblay Brouillet, *Droit Constitutionnel*].

⁸⁶ In fact, article 67 Const. mandates that each member of Parliament (House of Representatives and Senate) “represents the Nation”. See also Caravita, *Lineamenti*, cit., p. 55.

⁸⁷ Grasso, *Costituzione e federalismo*, cit.

⁸⁸ At the time we are writing, a reform of the Senate is under discussion within the Italian Parliament. The details of this discussion are illustrated in chapter VI.

⁸⁹ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 388.

⁹⁰ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 388.

based on the specific subject matter in agenda.⁹¹ The Conference meets at least every six months (and each time the President of the Council deems it appropriate).⁹² As for its tasks, the Conference is the privileged seat where regions and autonomous provinces participate in all decisional processes having a regional, interregional, and intraregional interest.⁹³

A legislative decree (281/1997) also disciplines the “State-Cities and local autonomies Conference” representing the preferred venue for cooperation between the State and intraregional local autonomies.⁹⁴ The composition of this institution is more complex and includes the President of the Council of Ministers (who acts as the Chair), a number of Ministers (economy and finance; infrastructures; health; transportation), the President of the National Association of Italian municipalities, the President of the Union of Italian Provinces, the President of the National Union of municipalities, mountain communities and entities, fourteen mayors and six provincial presidents. Other individuals can also be invited to participate to the meetings.⁹⁵

Legislative decree 281/1997 also introduces the so called “Unified Conference” which reunites the members of the two aforementioned Conferences to discuss subject matters and tasks of common interest.⁹⁶

⁹¹ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 389.

⁹² Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 389.

⁹³ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 389. See also article 2 of legislative decree 281/1997. Specifically, among the various tasks, Caretti & Tarli Barbieri recall the promotion and conclusion of agreements and understandings; the coordination of regional and state programming; the decision on the distribution of financial resources; the formulation of opinions on the law proposals on subject matters having a direct impact on regions; and participation to the formulation and implementation of EU law (*ibid.*).

⁹⁴ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 390.

⁹⁵ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 390.

⁹⁶ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 390.

Finally, I would also like to note that, because of the presence of a “weak” senate, also in Canada there has been the emergence of similar “federal-provincial” or “interprovincial” conferences.⁹⁷

From the above, I can therefore conclude that the presence or absence of an Upper chamber is not a decisive element in distinguishing between a federal and a regional state.

d. Participation of territorial sub-units in the constitutional amendment process

A fourth element commonly used to distinguish a federal from a regional state is the involvement of territorial entities in the revision process of the Constitution.⁹⁸ In fact, in a *fully-fledged* federation, the Constitution would not be amendable unilaterally, e.g. by the central (or federal) government only, since the participation of the federated entities is required, while the same is not necessarily true in regional states. This participation is important in many ways, but especially because the Constitution spells out how competences are distributed between the centre and the periphery, and thus it directly affects the interests of the territorial sub-entities.⁹⁹ Also, requiring the participation of both levels of government corroborates the fact that both levels are equally important and sovereign in their own sphere of competences.

Yet, neither is this element entirely convincing, since even in regional systems like Italy regions can play a role, although very limited, in constitutional amendment procedures.¹⁰⁰ In fact, article 138 Const., which details the rules to be followed to amend the Constitution, provides that regions can participate in the process by requesting a *referendum* in the event the

⁹⁷ This practice was dubbed “executive federalism”. See Brun Tremblay Brouillet, *Droit Constitutionnel*, cit., p. 421.

⁹⁸ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 7. Grasso, *Costituzione e federalismo*, cit.; Bin & Falcon, *Diritto regionale*, cit., p. 50.

⁹⁹ Grasso, *Costituzione e federalismo*, cit.

¹⁰⁰ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 7.

constitutional law is approved by both chambers by absolute majority (and not by two-thirds) of the members.¹⁰¹

e. A Court settling conflicts of attribution between the centre and the periphery

As noted in chapter I, a distinguishing element of federal systems is the presence of an umpire (usually, a Constitutional or Supreme Court) that settles conflicts of attribution of powers between central and peripheral governments.¹⁰² Yet, such an umpire is not an exclusive privilege of federations. In fact, article 134(2) of the Italian constitution indicates that, among the various powers enjoyed by the Italian Constitutional Court (“ItCC”), there is also the settlement of conflicts of attributions between State and regions, therefore such devices can be found in “quasi-federal” states as well.

f. Fiscal autonomy

For some commentators, in an ideal federal system each level of government should be financially autonomous (although rarely is the case),¹⁰³ whereas regions in a regional state often lack fiscal autonomy.¹⁰⁴ This assumption, however, is once again contradicted by real life. In fact, in the case of Italy, article 119(1) Const. now grants “financial autonomy of revenues and expenditures” to all local sub-entities (municipalities, provinces, metropolitan cities and regions), whereas article 119(2) dictates that the aforementioned local sub-units enjoy “autonomous resources,” although it is fair to say that these provisions have not been fully implemented yet.

¹⁰¹ Grasso, *Costituzione e federalismo*, cit., See also Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 7.

¹⁰² Also, in an ideal federal system, some of the justices of the Supreme or Constitutional Court should be appointed by the peripheral entities. Yet, with a few exceptions (e.g. Germany), this rarely happens. See Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 7.

¹⁰³ Caretti & Tarli Barbieri, cit., p. 8.

¹⁰⁴ Fabbrini & Brunazzo, *Federalizing Italy*, cit. p. 103.

Similar considerations can be made for Spain. In practice, even within regional states the constituent units might enjoy a certain amount of fiscal autonomy.¹⁰⁵ Maybe, this fiscal capacity is not as extended as in federations, but nonetheless it is constitutionally entrenched.

g. Local sub-units and the so-called “treaty-making power”

The expression “treaty-making power” (or “foreign power”) refers to the “activity of drawing up international treaties” based on the directives given by foreign policy.¹⁰⁶ In federal states, constituent units occasionally enjoy some power to stipulate international agreements (a prerogative usually vested in central governments), and this is usually identified as another distinguishing element between a federal and a regional state.¹⁰⁷ But, once again, this element is not so decisive as it might seem, at least for two reasons. First, even in a federation, this treaty-making power is very limited, or in some cases not existent and, second, regions in a regional state can also enjoy some mild form of treaty-making power.

In Italy, especially after the constitutional amendment of 2001, regions have acquired significant treaty-making powers. As Caretti & Tarli Barbieri illustrate, the Italian constitution (articles 80 and 87) divides these functions among the executive (for the drawing up of the treaty), the legislative (authorization to ratify the treaty) and the President of the Republic (for the actual ratification).¹⁰⁸ Also, pursuant to article 117(2)(a), the State enjoys exclusive

¹⁰⁵ The two autonomous communities of Navarre and the Basque Country can collect “all taxes except customs duties and the taxes on petroleum products and tobacco, including non-social security income and other major taxes within their own borders and submit a formula-based amount to the national government to reimburse it for their [...] share of national expenses”. R. Agranoff, “Intergovernmental Relations and the Management of Asymmetry in Federal Spain” in R. Agranoff, ed., *Accommodating Diversity: Asymmetry in Federal States* (Baden-Baden: Nomos, 1999), p. 99.

¹⁰⁶ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 359.

¹⁰⁷ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 8.

¹⁰⁸ Caretti & Tarli Barbieri, *Diritto Regionale*, cit. p. 359.

legislative competence in areas such as foreign policy and international relations of the State. As one of the most typical functions of the “central” state, until some time ago this “treaty making power” was reserved to the State even in subject matters that belonged to the regional sphere.¹⁰⁹ This implied that regions did not enjoy any “treaty-making power” whatsoever, but they were also excluded from any form of participation to the exercise of this power by the central state.¹¹⁰ Things have started to change in the 1970s when, after the actual implementation of the Italian regional model, these territorial entities initiated promotional activities (but not only) abroad, entertaining direct relations with similar foreign bodies or with other States.¹¹¹ In 1987, a decision of the ItCC crystallized this role of the regions.¹¹² In fact, while on one side the ItCC confirmed that “treaty-making power” is exclusive State competence, for the first time it allowed regions to perform “foreign” activities promoting various forms of collaboration with foreign entities and subject to governmental assent, as long as these activities do not engage the international responsibility of the State.¹¹³

Presently, article 117(9) Const. provides that, “[i]n the areas falling within their responsibility, Regions may enter into agreements with foreign States and local authorities of other States in the cases and according to the forms laid down by State legislation.” Scholars contend that the expression “agreements with foreign States” unequivocally refers to agreements falling within the jurisdiction of international law.¹¹⁴ Therefore, it seems that now the legislator

¹⁰⁹ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., pp. 359-360.

¹¹⁰ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 360.

¹¹¹ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 360.

¹¹² See decision 179/1987.

¹¹³ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 361.

¹¹⁴ Cesare Pinelli, “Regioni e rapporti internazionali secondo l’art. 117 Cost.” (available online at <http://www.federalismi.it/ApplOpenFilePDF.cfm?artid=107&dpath=document&dfile=ACF165A.pdf&content=Regi>

has granted some form of “treaty-making power” to regions as well, although subject to significant limitations coming from the centre.¹¹⁵ Law 131/2003 has further detailed the contents of article 117(9) Const.¹¹⁶ Moreover, an important ItCC decision has also attempted to shed light on the “treaty-making power” granted to regions by article 117(9) Const., and explained that the exercise of this power shall be coordinated with the exclusive competence enjoyed by the State in the ambit of foreign policy.¹¹⁷ In other words, the “treaty-making power” of the Regions shall be included in the overall constitutional scheme in a “harmonious” and “non-contradictory” fashion, for exigencies of protection of the unity of the State, as Dickmann explained.¹¹⁸ To further complicate this scenario, I recall that article 117(3) Const. lists, among the subject matters falling within the “concurrent” or “shared” jurisdiction of State and regions, the area of “international relations” of regions. So we can see, as before, that treaty making powers are not determinative when distinguishing federal and regional state models.

h. Judicial power of local sub-units

Usually, in *fully-fledged* federations, local sub-units enjoy not only legislative and executive functions but also judicial ones, whereas a similar judicial power is not enjoyed by local sub-units in regional systems, at least according to some scholars.¹¹⁹ In fact, in regional states, there are no “regional” courts akin, for example, to the US State Courts (as opposed to the

[oni+e+rapporti+internazionali+secondo+l%27art.+117+Cost+-+stato+-+dottrina+-+](#)) [Pinelli, *Regioni e rapporti internazionali*].

¹¹⁵ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 362. See also Pinelli, *Regioni e rapporti internazionali*, cit., who explains that analogous powers are provided for by the Constitutions of other federal states.

¹¹⁶ This law is also known as “La Loggia” law. For further details on this law, see Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 363; R. Dickmann, *Osservazioni in tema di limiti al “potere estero” delle regioni e delle province autonome alla luce del nuovo Titolo V della parte seconda della Costituzione e della legge “La Loggia”*, June 2002, available online at www.federalismi.it [Dickmann, *Potere estero*].

¹¹⁷ See decision 238/2004. Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 365.

¹¹⁸ Dickmann, *Potere estero*, cit., p. 3.

¹¹⁹ Caretti & Tarli Barbieri, *Diritto Regionale*, cit. p. 3.

Federal courts), but there is only one, national judicial system, similarly to what happens in unitary states. This structure would corroborate the idea that, within a federal state, constituent units are completely autonomous and functional on a legislative, executive and judicial level, mirroring the configuration existing at central level.

Yet, once again, things are not always so clearly defined. In a traditional federation like Canada, for example, while there is a provincial court system, its jurisdiction is very limited, with provincial judges of general jurisdiction appointed by the federal government and all part of a centralized court system leading up to the Supreme Court. In this sense, the Canadian court's system is often said to be non-federal.

i. Constitution-making powers

Scholars often note that, in a *fully-fledged* federation, the constituent units enjoy “full constitution-making powers” whereas regions in a regional state can only draft “charters containing a mere frame of government”.¹²⁰ This means that, in a regional state, the national constitution is the *only* existing constitution, one that has not emerged from a covenant, and that is not “competing” with other constitutions existing within each component unit.¹²¹ However, I can only *partially* agree with this allegation. In fact, this conclusion is once again biased by a US-centric federal vision, as in the US experience each of the 50 states composing the Union effectively has its own constitution. But this is not necessarily true for all *classic* federations, as in the case of Canada.¹²² Similarly, also regions in regional states can have documents that, while

¹²⁰ Delledonne & Martinico, *Legal Conflicts*, cit., p. 889. See for example article 123 of the Italian Constitution, explained below.

¹²¹ Bin & Falcon, *Diritto Regionale*, cit., p. 62.

¹²² The case of Canada on this point is curious. In fact, strictly speaking, Canadian provinces lack a formal (or codified) document that officially qualifies as “provincial constitution” as in the United States. Yet, the entire part V

not entirely identifiable to a sub-national constitution, certainly present interesting features (as in the case of Italian *statuti* or of Spanish *estatutos de autonomía*).¹²³ The case of Italian *statuti* will be more thoroughly explained later in the thesis.

j. Sovereignty of constituent units

Probably, a more convincing element that helps distinguishing a regional from a federal state is the one that refers to original sovereign powers. In fact, as Grosso explains, in federal states the territorial sub-units enjoy “original sovereign power”.¹²⁴ This implies that both the central and the peripheral members share the “nature of state” meaning that they all enjoy the whole bundle of functions and state powers.¹²⁵ Conversely, in a regional state like Italy for instance, sovereignty belongs to the central state, while territorial sub-units (like regions) do not enjoy an original sovereignty but only a “constitutionally protected autonomy”.¹²⁶ Similarly, with regards to division of powers, in regional states sovereignty remains “undivided” and is “firmly anchored” with central institutions, in spite of the fact that the constitution provides for a division of legislative powers.¹²⁷ This would be a direct consequence of the fact that the national constitution is the only constitution of the State, as noted above, and local autonomies are

of the *Constitution Act, 1867* is devoted to provincial constitutions, as is part V of the *Constitution Act, 1982* (on the amending formula). But references to the existence of a provincial constitution can be found in various other sections of the document, such as s. 5 of the *Canadian Charter of Rights and Freedoms* or s. 133 of the *Constitution Act, 1867*. See M. Burgess & G. A. Tarr, “Introduction: Sub-national Constitutionalism and Constitutional Development” in M. Burgess & G. A. Tarr, eds., *Constitutional Dynamics in Federal Systems: Sub-national perspectives* (Montreal, QC: McGill-Queen’s University Press, 2012), pp. 4-5 [Burgess & Tarr, *Introduction*]. However, scholars find it challenging to offer a clear definition of “provincial constitution” and usually refer to it when talking of those parts of the federal constitution focusing on the organization and functioning of provincial institutions. See Brun, Tremblay & Brouillet *Droit constitutionnel*, cit., pp. 217-218.

¹²³ Burgess & Tarr, *Introduction*, cit., p. 5.

¹²⁴ Grasso, *Costituzione e federalismo*, cit.; see also Bin & Falcon, *Diritto Regionale*, cit., p. 51.

¹²⁵ Bin & Falcon, *Diritto Regionale*, cit., p. 51.

¹²⁶ Grasso, *Costituzione e federalismo*, cit. In the case of Italy, article 1 Const. provides that sovereignty belongs to “the people”.

¹²⁷ Bin & Falcon, *Diritto Regionale*, cit., p. 62.

“delimited” by this Constitution.¹²⁸ This is similar to the position maintained by the ItCC when explaining Italian regionalism. In fact, in a recent decision, the Court argued that “the internal sovereignty of the State keeps intact its own essential structure, as it is left untouched by the strengthening of the multiple functions that the Constitution grants to the regions and local self-governments”.¹²⁹ Consequently, the idea of “divided sovereignty” between federal and peripheral units, entrenched for the first time in the US Constitution of 1787, can be regarded as the main legal feature distinguishing a federal from a regional state (although political sovereignty in the latter model may amount to the same).

k. Constitutional recognition of constituent units

If we read the constitutional texts of some *pure* or *classic* federations (i.e. the US, Canada, Switzerland, or Germany) we will notice that only two levels of government are usually recognized: the federal and the local (i.e. state, province, canton, etc...). In fact, as Blank observes, “federalism is *a theory of only two recognized types of jurisdictions* – the federal and the constituent units [...] of the federation”.¹³⁰ Regional constitutions, on the other side, tend to constitutionally acknowledge more than these two levels of government, as they recognize also the sphere that is closest to the citizens (usually, municipalities and/or provinces), and they usually do so in connection with the principle of subsidiarity. This is what happens with article

¹²⁸ Bin & Falcon, *Diritto Regionale*, cit., p. 62.

¹²⁹ ItCC decision 365/2007, par. 6.

¹³⁰ Y. Blank, “Federalism, subsidiarity, and the role of local governments in an age of global multilevel governance” (2009) 37 *Fordham Urban Law Journal* 525 (*italics* in the original) and 549 (for similar statements) [Blank, *Federalism and subsidiarity*]. In chapter I, I underlined how scholars like Caravita argue that only subsidiarity can explain the “role of municipal and local autonomies” since “the traditional federal states (USA, Canada, Australia) do not foresee a constitutional guarantee for local authorities in the Federal Constitutions, being local autonomies [a] matter of State Constitutions, whereas the European federalism and regionalism [...] offer a constitutional guarantee also to the sub-regional autonomies”. See B. Caravita, “The Italian Challenge between Federalism and Subsidiarity” (2010) (available online at

http://www.federalismi.it/AppOpenFilePDF.cfm?dpath=document\editoriale&dfile=The+italian+challenge+between.pdf&content=The+italian+challenge+between+federalism+and+subsidiarity&content_auth=Beniamino+Caravita).

114(1) of the Italian constitution, mandating that “[t]he Republic is composed of the Municipalities, the Provinces, the Metropolitan Cities, the Regions and the State. Municipalities, provinces, metropolitan cities and regions are autonomous entities having their own statutes, powers and functions in accordance with the principles laid down in the Constitution.”¹³¹ Similarly, article 137 of the Spanish constitution mandates that “[t]he State is organised territorially into municipalities, provinces and the Self-governing Communities that may be constituted. All these bodies shall enjoy self-government for the management of their respective interests.”¹³² Of course, this is not an absolute truth, as there are certain federal constitutions like the German *Grundgesetz* and the Brazilian one that nonetheless mention municipalities, although a third level of government is not explicitly recognized as in the regional constitutional texts mentioned above. I will revert to this aspect in chapter V when scrutinizing article 114 Const.

I. Federal culture

Another element that can help distinguishing between a federal and a regional system is the presence of a so-called “federal culture” or, otherwise said, “thinking federal”.¹³³ Being a very broad concept, there is of course much discussion about what federal culture really means, yet scholars tend to acknowledge the fundamental importance of this idea of “power sharing” in order to have a truly *pure* federation.¹³⁴ When, for a variety of reasons, there is resistance towards the federal idea, it is very unlikely that a *fully-fledged* federation be implemented. As a result, the eventual decentralization that is being put in place might resemble something less than

¹³¹ The English version of the Italian constitution is available at the following link:

https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf

¹³² The English version of the Spanish constitution is available at the following link:

http://www.congreso.es/portal/page/portal/Congreso/Congreso/Hist_Normas/Norm/const_espa_texto_ingles_0.pdf

¹³³ D. Elazar, *Exploring Federalism* (Tuscaloosa: The University of Alabama Press, 1987), pp. 192 et seq. [Elazar, *Exploring Federalism*].

¹³⁴ Elazar, *Exploring federalism*, cit., p. 192.

federal, i.e. a regional state. This element, however, can also be tricky: in fact, if a “federal culture” is needed in order to have a federation, I have also argued that regionalism is one way to express federal ideas construed in a broad sense. Consequently, also in the case of a regional state, some level of “thinking federal” must be present, although not as developed as in the presence of a *fully-fledged* federation.

4. The regional state as a “quasi-federal” model

The previous sections have certainly revealed the difficulties that scholars encounter when trying to categorize the regional state model. As happens in federal systems, regional models also “reflect the individual circumstances of each Member State and its regions” so there is not a “one size fits all” model, as Hopkins suggests.¹³⁵

As indicated, one of the first issues is whether to consider regionalism as a variant of a centralized state or of a federal model. Assuming that a regional state presents more similarities with the federal scheme, due to the increased decentralization of powers and the undeniable relevance of local sub-units, the next task is to identify the factors that allow scholars to discern the difference between the two schemes. The problem is that most of the elements commonly identified by theorists to distinguish between a federation and a regional state, and detailed so far, are not in my opinion decisive ones, as they are more helpful in assessing the differences between a unitary and a federal model. Consequently, it is perhaps safer to acknowledge that the distinction between federal and regional models is very subtle and is becoming more and more blurred, with a resulting “contamination” of one model with features and characteristics of the

¹³⁵ Hopkins, *Devolution in Context*, cit., p. 37.

other.¹³⁶ Quite interestingly, instead of seeing it as an “intermediate form” between the unitary and the federal state, some scholars have argued that the regional model has become the “common model” that both unitary and federal states tend to create.¹³⁷

As I reiterated a few times in the present work, the expression “quasi-federal” model is often used to label regional states (as well as other decentralized state models). Before providing a definition of what I believe a regional state is, I would like to pause for a moment on the real meaning of the expression “quasi-federal” through another exercise of classification, in the hope to shed some light on the terminology commonly used. In fact, similarly to the challenges encountered while attempting to provide a definition of regional state, difficulties also arise when an explanation of “quasi-federal” is sought.

If we break the expression “quasi-federal” in two, and analyze each term individually, the first two obvious conclusions are as follows: the use of the term “quasi” suggests that the model presents only some (but not all) elements of a given scheme, while the use of the term “federal” infers that this model resembles more a federal system than a unitary one (otherwise the word *unitary* would have been preferred). Accordingly, a regional model could be defined as a federal system short of some distinguishing elements of a *classic* federation. Once established the meaning of “quasi-federal,” the next issue I want to address is whether the terms “quasi-federal” and regional are synonyms. The answer is almost certainly that they are not, since the regional scheme can be considered as just one example among many of a “quasi-federal” pattern.¹³⁸

¹³⁶ At least, this is the position of Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 9.

¹³⁷ Barbera, *Riflessione sull'esperienza regionale*, cit..

¹³⁸ A state model characterized by devolution of powers (like the United Kingdom) is another example of “quasi-federal” state, as it the case for other decentralized systems.

Another aspect that can be explored at this point is to investigate which, and how many, of the various elements distinguishing a *fully-fledged* federation would have to be missing in order to declassify a given state model from federal to quasi-federal. Is it enough that just one element be missing? Or do we need more than one? But the question could also be reversed. If one state model presents only one constituting element typical of a federation, is it enough to consider it quasi-federal or is it still falling within the broad umbrella of unitary states? As we can see, this exercise of categorization is more complex than we might expect, since different variables can come into play.

One could also question whether this exercise of cataloguing might actually serve some practical purpose or utility. After all, the same adjective *regional* seems a fictitious one, if we consider that nowhere in the constitutional texts of Spain and Italy (the two regional states *par excellence*) is it indicated that they are regional states (differently than what happens in some federal constitutions, where the federal nature of that specific state is clearly spelled out).¹³⁹ Thus, it could be said that the term *regional* is the product of an intellectual exercise only. Yet, I believe that this exercise of classification does matter, especially if we want to understand to what extent certain constitutional experiments implemented in regional systems can be instructive for other federal or quasi-federal models, this being one of the goals of this thesis.

From the analysis just outlined, I would propose the following definition of regional state. While a regional state falls within the broad category of federal schemes, there are some

¹³⁹ For example, the preamble of the *Constitution Act, 1867* of Canada reads: “Whereas the Provinces of Canada, Nova Scotia, and New Brunswick have expressed their Desire to be federally united into One Dominion under the Crown of the United Kingdom of Great Britain and Ireland [...]” (emphasis added); similarly, s. 20(1) of the German Basic Law reads: “The Federal Republic of Germany is a democratic and social federal state” (emphasis added); also, s. 1 of the Belgian Constitution says: “Belgium is a federal State, composed of communities and regions” (emphasis added).

important differences between a regional and a *pure* federal model. First, and most importantly, in a *classic* federation the constituent units usually mirror, in their own structure, the central model, thus enjoying sovereign legislative, executive and judicial powers on given areas or subject matters over which the federal government has no say; because of this peculiarity, they also participate in the constitutional amendment process. Conversely, the constituent units of a regional state do not necessarily mimic the model present at the centre, as they cannot be seen as sovereign units as the federal counterparts. Furthermore, unlike a *classic* federation, in a regional state the federal culture is less developed. Finally, a regional constitution might recognize a multi-level system of local governments (i.e. municipalities, provinces, etc.) in addition to the classic dyad (federal and local spheres) of federal tradition. For this reason, a regional model of state organization is probably a better fit for countries which are not so geographically vast and sparsely populated but which, on the contrary, present a profound radicalization of, and a longstanding tradition and connection with local self-government (i.e. at municipal, or provincial, level), as it happens in states like Italy and Spain. For everything else, however, regional states and federations share several similarities.

But in which ways can a regional state address problems that neither a federal nor a unitary state can solve? This question, which I presented before, is open to a variety of responses. I would argue that both a central state and a *pure* federal model would be in a good position to deal with regional questions. However, as I reiterated a few times, there is an increasing trend to move away from the “unitary vs federal” dyad as it seems not entirely adequate to fully capture the variables and issues offered by contemporary society. In my opinion, one of the key advantages of a regional model is its resiliency: rather than being rigidly anchored to the plainly vertical or horizontal dynamics typical of central and federal paradigms,

it espouses a more cross-sectional relationship between the centre and the periphery that takes into account additional levels of government (i.e. local autonomies such as municipalities and/or provinces). In this way, it is a model that is more prone to experimentation and adaptability to the fast-pacing changing reality, without forgetting the proximity to individual citizens.¹⁴⁰

To conclude, I believe it is possible to compare regional states and *pure* federations as both belong to the same broad federal group and despite some fundamental differences. In fact, as I will better illustrate through the analysis of the Italian case-study, regional states share tensions that are very similar to those of many *classic* federal states, therefore mechanisms and strategies applied in one model can be easily “exported” to the other. In chapters IV and V, we will see in which ways the Italian regional system resembles other *pure* federations. However, before doing so, in the following section I will make some general considerations on Italian regionalism.

Section II – The Italian debate on the regional state

1. Preliminary remarks

One of the goals of this thesis is to look at Italy as an example of “quasi-federal” or regional arrangement, and to identify strategies and lessons that can be applied to other federal or decentralized systems, especially in the ambit of *non-national* difference. Before doing so, however, it was necessary to clarify in which ways a “quasi-federal” model (like the Italian one) is comparable to a *pure* federation.

¹⁴⁰ In this regard, however, it shall be pointed out that, while federal constitutions are certainly more difficult to amend, there is always the possibility even in federal states to implement non constitutional arrangements (conventions, practices, etc...) that have the advantage of being very flexible (but, perhaps, for the disadvantage of uncertainty).

In Chapter I, I argued that there are “as many federalisms as there are national histories and cultures of individual countries”¹⁴¹ meaning that each federal arrangement is shaped on the contingent traits and attributes of the given society, so that it is possible to always experiment new ways to divide power between the centre and the periphery. This elasticity of the federal principle is corroborated by the Italian experience with regionalism. Italy is also a good example of the reciprocal infiltration of elements discussed above, and it is not accidental that the Italian system of local self-governments has been described as a system “suspended between regionalism and federalism”.¹⁴² In fact, as we will see, it presents characteristics that are typical of federal systems (subsidiarity, division of powers, fiscal autonomy – at least on paper – of local self-governments) with others that are more traditionally characteristic of the centralist experience (no devolution of judiciary powers for example). Italy has also been defined as “a more decentralized state with some federal features yet nested within a bureaucratic organization and political culture that remains highly centralized”;¹⁴³ as a “loose federation of autonomous regions”¹⁴⁴ a scheme later imitated by Spain, Belgium, and Poland, among others;¹⁴⁵ or even as a “federal country without federalism”.¹⁴⁶

¹⁴¹ M. Rogoff, “Federalism in Italy and the relevance of the American experience” (1997) 12 *Tulane European and Civil Law Forum* 72, citing Pizzetti [Rogoff, *Federalism in Italy*]

¹⁴² Massimo Nardini, “La ‘via italiana al federalismo’ tra vincoli di bilancio, giurisprudenza costituzionale e riforme istituzionali” (2013) *Amministrazione in Cammino* (available online at http://www.amministrazioneincammino.luiss.it/wp-content/uploads/2013/04/Nardini_Federalismo.pdf), p. 8 [Nardini, *Via italiana al federalismo*]. But similar considerations can be made with regards to Spain, whose regional model constantly appears in comparative works on federalism, although Spain is, technically, not a classic example of *fully-fledged* federation.

¹⁴³ F. Palermo & A. Wilson, “The Dynamics of Decentralization in Italy: Towards a Federal Solution?” (2013) *European Diversity and Autonomy Papers*, EDAP 04/2013 (available online at www.eurac.edu/edap), p. 5 [Palermo & Wilson, *Dynamics of Decentralization*].

¹⁴⁴ T. Groppi & N. Scattone, “Italy: The Subsidiarity Principle” (2006) 4 *International Journal of Constitutional Law* 132 [Groppi & Scattone: *The subsidiarity principle*].

¹⁴⁵ Groppi & Scattone, *The Subsidiarity Principle*, cit., p. 132. This model, mirrored by the 1948 Constitution before the amendment, was characterized by the following elements: (a) both the national and the regional governments

Italy has always maintained a very conflicting and controversial rapport with federalism, the federal paradigm often being repelled for its disturbing and disrupting force for the unity of the State, as if unity and integrity of the state were identical concepts. Yet, whilst federalism was rejected, other forms of decentralization were embraced, like the constitutional recognition of local autonomies in article 5 of the Constitution. Even if the 2001 constitutional amendment, which will be thoroughly illustrated in chapter V of this thesis, was not capable of transforming Italy into a *fully-fledged* federation, federalism has remained for a long time one of the most abused, despised, yet current terms in political and intellectual circles, with continuous cross-references by scholars and the ItCC to *fully-fledged* federal institutions, especially of German and US tradition. This explains why the 2001 constitutional reform was often dubbed the “Italian way to federalism”¹⁴⁷ and there were also commentators who invoked the implementation of a “unitary federalism”¹⁴⁸ for Italy. These only apparently innocuous expressions prompt, in my opinion, quite a few queries: (a) why are we talking about an “Italian way” to federalism? Or, if we wish, in what ways is the Italian experiment with federalism different than other federal experiences? (b) is there a *federal* seed hidden somewhere in Italian constitutionalism? (c) if this

enjoy legislative powers, but the supremacy of the central state limits the powers of the regions; (b) regions could legislate only in those subject matters listed by the constitution; (c) administrative functions were distributed to national, regional, and local governments; (d) there was no devolution of judicial power; (e) self-governing authorities were subject to the control of the state; and (f) the national government was entrusted with reviewing regional statutes before their implementation; additionally, regional statutes had to pass the constitutional pre-screen by the ItCC (*ibid.*).

¹⁴⁶ F. Palermo, “Italy: A Federal Country without Federalism” in M. Burgess & G. A. Tarr, eds., *Constitutional Dynamics in Federal Systems: Sub-national perspectives* (Montreal, QC: McGill-Queen’s University Press, 2012) [Palermo, *Federal Country without Federalism*].

¹⁴⁷ G. C. De Martin, “I nodi della via italiana al federalismo” (2010) *Amministrazione in Cammino* (available online at <http://amministrazioneincammino.luiss.it/wp-content/uploads/2010/04/AREL-I.pdf>) [De Martin, *I nodi*]; Massimo Nardini, *Via italiana al federalismo*, cit., pp. 17 and 22.

¹⁴⁸ G. C. De Martin, “Riforme autonomistiche incomplete e problemi culturali (2013) *Amministrazione in Cammino* (available online at http://www.amministrazioneincammino.luiss.it/wp-content/uploads/2013/01/GCDeMartin_studi-onoreN_Greco.pdf), p. 2 [De Martin, *Riforme autonomistiche*].

Italian way to federalism is different than other experiences, then does it still make sense to analyze it through the same lenses of classic literature on federalism, still deeply permeated by the US federal experience? (d) what impact can the alleged lack of federal culture in Italy have on the “Italian way to federalism”? (e) to what extent is it possible to talk about a unitary federalism? Is this expression an oxymoron? These are not easy questions to answer. However, I will try to offer some explanatory considerations in the paragraphs that follow.

2. The “Italian way” to federalism

De Martin employed the expression “Italian way to federalism” to refer to a model “based on a solid strengthening of the role of territorial institution”, a model that is still unaccomplished and that needs to be perfected.¹⁴⁹ Scholars and the ItCC also used the odd expression “so-called federalism”¹⁵⁰ to identify the debate and reforms ongoing in Italy. In my opinion, this expression implies the use of a term not in its originally intended sense, otherwise we would not need to add “so-called” to the term federalism. In any event, for De Martin, *classic* federalism should be construed as “a polysemous term” that can be used not only to identify “a compound State” but for other purposes as well.¹⁵¹ What does this mean?

The main features of the Italian regional model will be detailed in Chapter V, and won’t be described here. But, on a more theoretical level, I can assert that Italian federalism is strongly grounded, and directly draws, from the system of autonomies inaugurated with the 1948 constitution, and powerfully influenced by the regional experience. This is why some theorist

¹⁴⁹ De Martin, *I nodi*, cit., p. 1.

¹⁵⁰ The expression in Italian is “c.d. federalismo”.

¹⁵¹ De Martin, cit., p. 1.

argues that federalism in Italy is a “new way to construe regionalism”.¹⁵² But the understanding of federalism in Italy was also forged by the animated discussions on the alleged disruptive force for the unity of the State, an obsessive idea in the minds of the fathers of the Italian unification, and one which never completely vanished, as we will see. In Italy we see a federal model rejected as unpopular but whose distinctive elements (or at least some of them) were always present in the choices of constitutional legislators. In fact, it is very common to find, both in the literature and in the jurisprudence, expressions like: *fiscal* federalism or *administrative* federalism. How could we talk about *fiscal* federalism (referring, with this expression, to the provisions contained in article 119 Const.) without having a federal (or, at least, a “quasi-federal”) system? Could federal principles and theory be applied only to one article of the Constitution? This is unlikely, unless we infuse the term *federalism* with a sense that is different than the meaning under classical federal theory. Consequently, with the expression “Italian way to federalism” I usually construe the particular regional model that has been implemented over these past few decades which, short of creating a *pure* federation, has nonetheless forged a system profoundly inspired by federal principles. Once again, this demonstrates that federalism and regionalism are directly connected.

3. Is there a federal “seed” in the Italian Constitution?

The second issue I proposed for discussion is whether there is a federal seed somewhere in the Italian constitutional experience with regionalism. A similar question was already raised by Nardini, and I share his conclusion that article 5 Const. represents a theoretical basis to embed

¹⁵² Nardini, *Via italiana al federalismo*, cit., p. 11.

all federal ambitions in Italy.¹⁵³ In chapter IV, I will narrate the history of federal thinking in Italy starting from the time of *Risorgimento*. Here, I argue that article 5 Const., can be seen as the basis for all federal claims in Italy. Specifically, the article spells out that, although “one and indivisible” Italy “recognizes and promotes local autonomies”, implements “the fullest measure of administrative decentralization” and adapts the “principles and methods of its legislation to the requirements of autonomy and decentralization”.¹⁵⁴

In other words, not only have federal ideas penetrated (without much success, indeed) political and intellectual circles since the *Risorgimento*, but the same 1948 Constitution, without explicitly using the term federalism or a derivate thereof, suggests that decentralization was encouraged at constitutional level. Therefore, this provision would not have been in contrast with a federal solution; on the contrary, I believe it could have offered (and still offers today) a solid ground on which to justify a twist in real federal terms, although it blends two apparently contrasting principles: indivisibility and decentralization. I do not believe that the wording “one and indivisible” would hinder a federal choice. Differently than confederations of states, all *fully-fledged* federations are “indivisible”, including those whose federal experiments were often designed to promote unity and diversity, as mentioned in Chapter I.¹⁵⁵

¹⁵³ Nardini, *Via italiana al federalismo*, cit.

¹⁵⁴ Article 5 closely resembles article 2 of the Spanish Constitution, dictating that “[t]he Constitution is based on the indissoluble unity of the Spanish nation, the common and indivisible country of all Spaniards; it recognizes and guarantees the right to autonomy of the nationalities and regions of which it is composed, and the solidarity amongst them all. See <http://www.boe.es/legislacion/enlaces/documentos/ConstitucionINGLES.pdf>.

¹⁵⁵ In this regard, it is important to clarify that this is a very general statement which can be contradicted in real life. In fact, while federal constitutions rarely entrench “secession clauses” (thus distinguishing them from confederal arrangements), this does not mean that *pure* federations never break up: an extensive literature covers examples of “failed federations” (USSR, Yugoslavia, Thechoslovakia, etc.) and even the Supreme Court of Canada has recognized the possibility of secession through formal constitutional amendment.

4. The use of classical federal literature to analyze the Italian experiment

As indicated in Chapter I, the modern understanding of federalism is based on the United States Constitution of 1787, and US federalism is usually regarded as the first example of modern model of *pure* federation. Until a few decades ago, US scholars were among the most prolific students of federalism, and most federations around the world were subject to comparative analysis to the US archetypal scheme. In other words, federal scholarship has been marked by a strong US federalism centric bias. While certainly highly influential, the US federal model was an experiment in and of itself and, similarly to other federal schemes, the product of very specific circumstances. With a constitution dating back to the XVIII century, the US federal system is a very old one, a system that has remained rigid in its precepts. Furthermore, it derives from the merger of thirteen former British colonies which had already granted themselves their own constitutions before joining together. And while this model had some influence on Italian intellectuals during the *Risorgimento* (since, with Switzerland, it was the only federal scheme existing at the time), we should be very careful in critically assessing the Italian experiment through the prism of US federalism only, considering that the debate on, and the same understanding of federalism in Italy has a completely different foundation or rationale. Thus, while comparative studies between the two models could certainly be helpful to better understand the functioning of certain institutions or principles, we should be cautious in assessing Italian federalism only in light of US literature, or of the literature inspired by US federalism, since in doing so we might get a rather distorted view of it.¹⁵⁶

¹⁵⁶ On a more general way, similar concerns are raised by other scholars, who note how the rise of novel state schemes inspired by federal thought lead to a necessary reassessment of “the relevance of the traditional federations

5. The lack of “federal culture” in Italy

Italian scholars have frequently maintained that one of the reasons that helps explain the failure of a clear and unanimous federal choice is the lack of a “federal culture” in the people.¹⁵⁷ In other words, Italy is unlikely to become a *fully-fledged* federation because Italian people do not know the basics of managing local autonomies, and the recent malfunctioning of certain regional governments is a testimony to this (see Chapter VI). I noted in previous sections of this chapter how a federal culture is usually regarded as fundamental to create a federation and that, when missing, federalism has difficulties to root. But can a federal culture be learned? Can the basic skills of local self-government be perfected with time and practice? Are people born with the federal seed already planted in their DNAs? And if the federal seed is not present, are these peoples doomed to be forever excluded from the federal perspective?

I have already indicated that article 5 Const. could be considered as the constitutional basis that justifies a federal approach in Italy. But even without this provision, by comparatively looking at other *classic* federations, we can observe that federal experiments were usually started by a limited number of constituent sub-units; it was only at a later stage that other local entities joined. This is the case, for example, of the United States and Canada, but also of Germany, especially after the unification of the Eastern and Western sides in the 1990s. Even at EU level, the European Communities started with 6 member states in the 1950s, to reach the number of 28 at the time I am writing. Both in the case of the EU and of the other aforementioned federations, the sub-units that have joined later were not necessarily “trained” in federal practices; actually,

such as the USA, and Switzerland as the yardstick against which emerging federal states should be measured.” See Swenden, *Federalism and Regionalism*, cit., p. 1.

¹⁵⁷ See for example Palermo, *Federal Country without Federalism*, cit., p. 248, on the absence of a political culture on federalism in Italy.

some of the component units did not even exist when the federation was created. Yet, they succeeded in learning the federal secrets.

In Italy, it is fair to say that there has never been a real federal culture, although if we look back at the *Risorgimento*, it is undeniable that there were areas (like Lombardy, Venetia, or Piedmont) more economically and institutionally developed than areas like the South. Some of them (e.g. Lombardy) already had some rudimentary local self-government skills acquired from their being part of the Austrian Empire, while other areas (e.g. Veneto) were once part of the Most Serene Republic of Venice, an independent and powerful entity for the time. Furthermore, because of a well-rooted and centuries-old tradition of *comuni* and small cities, which have constituted the basic fabric of the socio-political framework of Italy, this *localistic* culture is very strong, almost a hallmark in the Italian tradition. This is why the experience with regionalism is so unique. Thus, I conclude by saying that a federal culture can be learned if there are good models to follow, and there is every reason why this could have happened in Italy as well.¹⁵⁸

6. Unitary federalism: an oxymoron?

As anticipated above, De Martin insinuates that Italian federalism should be “unitary” and also infused with the spirit of solidarity.¹⁵⁹ At first sight, if the term “unitary” is construed as a synonym of “centralized”, then the expression “unitary federalism” might look like an oxymoron. In fact, in political theory, federal states are at the antipodes of unitary or centralized

¹⁵⁸ Of course, there will probably be scholars who do not agree with the above conclusion. For example, in exploring the birth of Germany and Italy in the XVIII century, and specifically why one state (Germany) emerged as a federation while the other (Italy) emerged as a unitary system, Daniel Ziblatt concludes that, differently than in Germany, in the case of Italy what was totally missing was the presence of decentralized/federal institutions already in place. This did not help the creation of a federal culture. See D. Ziblatt, *Structuring the State: the formation of Italy and Germany and the puzzle of federalism* (Princeton: Princeton University Press, 2006).

¹⁵⁹ De Martin, *Riforme autonomistiche*, cit., p. 2.

states. However, I believe that the main preoccupation of De Martin is to conjugate the first part of article 5 Const. (Italy as “one and indivisible”) with the second part of the same article (the recognition and promotion of local autonomies), while at the same time being careful in not infusing Italian federalism with the disruptive forces that may lead to secession. In other words, he probably tries to reconcile the differences that have always existed among and between regions and that are constitutionally cemented in article 5 (and that a federal scheme could help addressing) with the need to keep these regions together under a solidarity-based spirit. If construed in this way, the expression is not an oxymoron. However, similar preoccupations exist not only in Italy, but in most federations, especially in multinational ones.

Conclusion

In this chapter, I outlined what are in my opinion the key differences existing between federations and regional states. I also noted how scholars have adopted a variety of factors to draw the line between the two models. Yet, I proved that the great majority of these factors are not decisive elements, as they often refer to aspects that are present also within *fully-fledged* federations. Accordingly, I suggested that a regional scheme falls within the broad category of federalism as regional states and federations share several important similarities (most importantly, a division of legislative powers between the centre and the periphery entrenched in the constitution). Rather, the discriminating factor rests on the fact that the constituent units of a regional state do not necessarily mimic, from an institutional standpoint, the same structure existing at the centre, as it happens in federations. Accordingly, they are not located on the same level as the central government (this is reflected, for example, in the fact that they do not play a role in the amending process of the constitution). However, because the determinative indicators

listed above are quite numerous, it is also possible to speak of a spectrum, where the greater the number of these criteria is satisfied, the more the system is federal, with less approximating regional, and none amounting to unitary.

In the remainder of the chapter, I made some general remarks on regionalism by looking at the Italian experience, and emphasized some of the peculiarities of this model, including the fact that it is common in Italy to talk about “unitary federalism” as if unity and federalism were otherwise conflicting concepts. The Italian model was dubbed regional or “quasi-federal” for two main reasons: on one side, the historical discomfort (or even awkwardness) of the term *federal*; on the other side, the constitutional entrenchment of a division of powers between the centre and the periphery does not prevent a pervasive control from the centre, so that the use of the term *federal* could be inappropriate. Yet, this is just a linguistic exercise, as regional, quasi-federal or even unitary federal systems are all ascribable to federalism, being mere variants thereof. These examples also confirm all the resilience of federalism. From the late 1700s to date, we have witnessed a departure from the pure federal scheme contained in the US constitution to forge new models better addressing and reflecting the specific needs of a given reality.

In the next chapter, I will conclude this overview of federal-based schemes by specifically addressing issues of sub-state nationalism. Once again, the Italian case-study will constitute an intriguing model for further discussion.

CHAPTER III

THEORIES OF SUB-STATE NATIONALISM. PADANIAN NATIONALISM

Introduction

In the previous chapters, I have retraced the intellectual history of federalism and federal theory as opposed to the unitary model, and explored one example of decentralized or quasi-federal system, e.g. regionalism. The purpose of this exercise was to illustrate the complexities encountered when attempting to contextualize certain models within the rigid and, in light of what we have seen, perhaps obsolete “unitary vs federal” dichotomy. Particularly, in addition to the undeniable difficulties in offering a universally accepted definition of regionalism, I noted its defining traits and situated it in a “limbo” suspended somewhere between a unitary model and a *fully-fledged* federation. But while regional schemes present elements belonging to both traditions, I argued that they can still be construed as variants of the more *classic* federal paradigm.

In the present chapter, I am going to consider another situation where the classic “unitary vs federal” dyad does not always help the contextualization exercise: plurinational (or multinational) states. I briefly introduced this debate in chapter I when I made a distinction between single nation and multinational federations. Following the classification made by Pinder (but similar definitions were offered by other scholars), I defined a *nation* as “people who share the same culture, where culture means a system of ideas and signs and associations and ways of behaving and communication, and who recognizes each other as belonging to the same nation”.¹

¹ Incidentally, a quite intriguing definition of *nation* is offered by Anderson, who describes it as “an imagined political community – and imagined as both inherently limited and sovereign”. See B. Anderson, *Imagined Communities. Reflections on the Origin and Spread of Nationalism* (London, New York: Verso, 1991), p. 6

Furthermore, nations “see themselves as distinct societies and demand various forms of autonomy or self-government to ensure their survival as distinct societies”.² Also, more than one nation within a federation can be identified as “co-founder” and “co-owner” of the federation.³ As a synonym of “culture” or “people”, a nation not only shares “identity-related features” like language, history, or culture, with members identifying and recognizing themselves as belonging to it;⁴ in fact, differently than “racial-based” (or immigrant) groups (who might claim “policy changes” for enhanced equal respect or affirmative action),⁵ nations look for “authority

[Anderson, *Imagined Communities*]. In fact, in his opinion, the political community is “imagined” because most of the members belonging to the specific nation do not know (and would never know) the rest of the members of the group. Furthermore, the nation is “limited” because “even the largest of them [...] has finite, if elastic, boundaries, beyond which lie other nations”. Similarly, it is “sovereign” because “the concept was born in an age in which Enlightenment and Revolution were destroying the legitimacy of the divinely-ordained, hierarchical dynastic realm”. Finally, it is a “community” because the nation “is always conceived as a deep, horizontal comradeship”. See Anderson, *Imagined Communities*, cit., pp. 6-7.

² Among the other definitions of *nation* provided, see in particular J. Habermas, “Struggles for Recognition in the Democratic Constitutional State” in A. Gutman, ed., *Multiculturalism. Examining the Politics of Recognition*, (Princeton, NJ: Princeton University Press, 1994), p.118 [Habermas, *Struggles for recognition*], who defines *nations* as “ethnically and linguistically homogeneous groups against the background of a common historical fate and who want to protect their identity not only as an ethnic community but as people forming a nation with the capacity for political action”. Requejo defines nations as “territorially concentrated collectives with a basic national identity that does not coincide, at least for a significant number of their members, with the national identity of the majority group of the polity. These collectives display distinguishing features, such as a different history from the rest of the state, a specific language, a different religious culture, etc. Some of them may even have been independent powers sometime in the past. They also express a will to be recognized as a different collective and a clear desire for self-government”. See F. Requejo, “Plurinational federalism and political theory” in J. Loughlin, J. Kincaid & W. Swended, eds., *Routledge Handbook of Regionalism and Federalism* (London & New York: Routledge, 2013), p. 34. Furthermore, Kymlicka says that “communities qualify as nations when they think of themselves as nations. And as it turns out, these groups tend to be historical communities, more or less institutionally complete, occupying a given territory or homeland, and sharing a distinct language and mass culture”. W. Kymlicka & W. Norman, “Citizenship in Culturally Diverse Societies: Issues, Contexts, Concepts” in W. Kymlicka & W. Norman, *Citizenship in Diverse Societies* (Oxford: Oxford University Press, 2000), p. 19; W. Kymlicka, *Multicultural Citizenship. A Liberal Theory of Minority Rights*, (Oxford: Clarendon Press, 1995), p. 11 [Kymlicka, *Multicultural Citizenship*].

³ J. McGarry & B. O’Leary, “Federation and managing nations” in M. Burgess & J. Pinder, eds., *Multinational federations* (London & New York: Routledge, 2007), p. 181 [McGarry & O’Leary, *Federation*].

⁴ H. De Schutter, “Nations Beyond Nationalism” (2007) 50 *Inquiry* 379 [De Schutter, *Nations Beyond Nationalism*].

⁵ As an example, immigrant groups can demand the right to freely express their uniqueness “without fear of prejudice or discrimination in the mainstream society”. See Kymlicka, *Multicultural Citizenship*, cit., p. 30. An extreme example made by Kymlicka in this regard is the demand of exemption from certain laws and regulations

changes” and other forms of self-government.⁶ The territorial aspect is very relevant as well, as I will indicate later in the chapter. Canada and Belgium are usually identified as two relevant examples of multinational federations, since “there is at least one sub-unit that can be identified as a ‘distinctive nation’ that demands various forms of self-government”⁷ (these “distinctive nations” are Quebec and Flanders, respectively).

This review of multinational states is relevant to my discussion since, as Tierney observes, the “unitary vs federal state” dichotomy fails to fully capture the distinctiveness of the plurinational model.⁸ Consequently, in recent years, sub-state nationalities have repeatedly challenged the “traditional models of constitutionalism and constitutional theory”⁹ and argued for the “institutional accommodation of their respective sub-state national society”¹⁰ without necessarily having “different political values from other territorial spaces within the state”.¹¹

However, while federally-inspired schemes are apt to accommodate the various needs of *nations* within multinational states or federations, this accommodation is not a prerogative of federal states: in fact, also in unitary or otherwise decentralized states, sub-state national societies have acquired a certain degree of autonomy, even though the so-called self-rule, typical of federations, may not be officially embedded in the constitution of that specific state.¹² Notable examples of “quasi-federal” systems experiencing these issues include Spain and the United

because of their religious beliefs, such as in the event of Jews and Muslims seeking exemption from “Sunday closing” or “animal slaughtering”. For this and other examples, see Kymlicka, *Multicultural Citizenship*, cit., p. 31.

⁶ De Schutter, *Nations Beyond Nationalism*, cit., p. 392-392, fn. 2; Kymlicka, *Multicultural Citizenship*, cit., p. 31.

⁷ J. Pinder, “Multinational federations” in M. Burgess & J. Pinder, eds., *Multinational federations* (London & New York: Routledge, 2007), p. 4 [Pinder, *Multinational federations*].

⁸ S. Tierney, *Constitutional Law and National Pluralism* (Oxford & New York: Oxford University Press, 2004), p. 13 [Tierney, *Constitutional Law & National Pluralism*].

⁹ Tierney, *Constitutional Law & National Pluralism*, cit., p. 12.

¹⁰ Tierney, *Constitutional Law & National Pluralism*, cit., p. 31.

¹¹ Tierney, *Constitutional Law & National Pluralism*, cit., p. 31.

¹² Tierney, *Constitutional Law & National Pluralism*, cit., p. 87.

Kingdom, with the claims advanced by nations such as Catalonia (and the Basque Country) and Scotland, respectively.

This chapter is divided in two sections. The first will delve into sub-state nationalism and the most common claims advanced by sub-state nations, in order to determine how they seek accommodation within the larger state.¹³ In doing so, I will mainly draw from the work of Stephen Tierney, a scholar who has extensively researched this area and who has elaborated significant theories on the topic. The main objective in this first section is not to offer a thorough and detailed analysis of sub-state national theory with all its different nuances and angles, as there is an already abundant and always flourishing scholarship in this area. The more modest ambition is to present a synthesis of what is sub-state nationalism, specifically by looking at the main claims raised by sub-state nations and how they are usually accommodated. This is sufficient to help tracing a comparison between sub-state nations and political and socio-economic societies characterized by *non-national* differences¹⁴ in the chapters that follow, but this scholarship also plays an indirect role with regards to Italy, particularly when considering the attempts made by the Northern League (“LN”) to forge a brand new *Padanian* nationalism grounded on the socio-economic differences between the North and the South. In fact, section II can be regarded as a case-study with a clear focus on Italy and an investigation of the unsuccessful *Padanian* nationalism. I will explain how in the mid-1990s a wave of ethno-nationalism emerged and developed in Italy as part of the novel political propaganda elaborated

¹³ With regards to the larger state, some scholars use the expression *Staatsvolk*. See, *ex multis*, B. O’Leary, “An iron law of nationalism and federation? A (neo-Diceyan) theory of the necessity of a federal *Staatsvolk*, and of consociational rescue (2001) 7 *Nations and Nationalism* 273 [O’Leary, *Iron law of nationalism*].

¹⁴ As already mentioned in the Introduction to this thesis, in this work the expression “political and socio-economic societies characterized by *non-national* differences” is sometimes replaced by “*non-national* societies” or “*non-national* communities” or, more simply, by “*non-national* differences”.

by the LN. While *Padanian* nationalism was only a meteor crossing the skies of sub-state national movements, quickly dissolving soon after, its appearance elicited the intellectual curiosity of scholars in spite of the differences that marked the *Padanian* movement as opposed to more rooted experiences in Europe or North America (e.g. Catalanian, Scottish, Flemish or Quebec movements): in fact, first and foremost, *Padanian* nationalism was created (or invented) by a political party to justify the socio-economic differences between the North and the South of Italy, and thus try to solve the tensions between the two areas. In other words, before the constitutional amendments of the 2000s, ethno-nationalism was one of the proposed solutions for the North-South cleavage: however, this attempt failed mainly because it was not historically rooted in the territory, as I am going to better illustrate in the remainder of the chapter.

This chapter shall be read in relation with the two previous ones, as the originality of the whole Part I of the thesis rests on the fact that the various experiences analyzed are actually more interlaced than one might expect; furthermore, these experiences can easily cohabit or coexist, thus cementing the idea that, under the supple umbrella term *federalism* it is possible to assemble various models, reciprocally shaping each own features.

Section I - Theories of sub-state nationalism

1. Some preliminary remarks

As was seen in previous attempts to univocally define concepts such as federalism and regionalism, the exercise of finding a universally accepted definition of sub-state nationalism can also be particularly challenging. Nationalism and nation(s) are two closely interlaced concepts. I have already offered a general definition of *nation* both in Chapter I and in the introduction to the present chapter. In political theory, the conceptual definition of nation is less disputed than

that of nationalism.¹⁵ As Norman indicates, almost all contemporary definitions of nation agree on certain common elements that are present in all situations: for instance, nations can be assimilated to human communities, distinct both from a state and an ethnic group, and while there is no established and fixed set of common traits that can identify a nation, most of them share similar language, memories, myths or homeland (or territorial boundaries).¹⁶

Conversely, it might become more complex to provide universally accepted definitions of nationalism.¹⁷ Norman recalls how nationalism “can refer to several distinct sorts of things, properties, mental states, abstract entities, and processes”.¹⁸ Similarly, nationalism “has been used to refer to a *process*, a kind of *sentiment* or *identity*, a *form of political rhetoric*, an *ideology*, a *principle* or set of principles, and a kind of *social-political movement*”.¹⁹ Béland and Lecours also agree on the intricate nature of the task of defining nationalism, indicating that “nationalism is a complex and multifaceted phenomenon that takes different forms in different societies and whose specific nature is still the subject of debate”.²⁰

With this cautious disclaimer in mind, I can then proceed with the identification of what most scholars consider as the two main components of nationalism.²¹ The first is its “identity dimension” in the sense that nationalism features an “identity” that comes “from the sharing of

¹⁵ W. Norman, *Negotiating Nationalism: Nation-Building, Federalism, and Secession in the Multinational State* (Oxford: Oxford University Press, 2006), p. 5 [Norman, *Negotiating Nationalism*]. However, some scholars indicate that concepts like nation, nationalism or nationality “all have proved notoriously difficult to define, let alone to analyze”. See Anderson, *Imagined Communities*, cit., p. 3 [Anderson, *Imagined Communities*].

¹⁶ Norman, *Negotiating Nationalism*, cit., p. 4.

¹⁷ Anderson argues that nationalism, as well as nationality, is a “cultural artifacts of a particular kind”. See Anderson, *Imagined Communities*, cit., p. 4.

¹⁸ Norman, *Negotiating Nationalism*, cit., p. 5.

¹⁹ Norman, *Negotiating Nationalism*, cit., p. 6 (*italics in the original*).

²⁰ D. Béland & A. Lecours, “The Politics of Territorial Solidarity. Nationalism and Social Policy Reforms in Canada, the United Kingdom and Belgium” (2005) 38 *Comparative Political Studies* 678 [Béland & Lecours, *The Politics of Territorial Solidarity*].

²¹ Béland & Lecours, *The Politics of Territorial Solidarity*, cit., p. 678.

common markers such as language, religion, or ethnic origins”.²² Incidentally, people belonging to nations usually have a dual national identity, that of the national community and that of the nation-state.²³ The second feature of nationalism is that of “territorial mobilization” in the sense that “it seeks to gain or maintain for a group – the nation – a measure of self-government most often in the form of autonomy or independence”.²⁴ In the words of O’Leary, nationalism could thus be summarized as “a political philosophy that holds that the nation ‘should be collectively and freely institutionally expressed, and ruled by its co-nationals’”.²⁵

2. Definition of a plurinational state

As Swenden explains, plurinational or multinational states “are states that are marked by the presence of at least two territorially distinct communities. Their territorial distinctiveness can be linked to the presence of a particular language, religion, tribe, a shared history, but above all a shared *understanding* of being part of a separate *political community* with a distinctive *identity* separate from or in addition to that of the state as a whole”.²⁶ The voluminous body of literature on sub-state nationalism usually identifies Canada, the United Kingdom, and Spain as prominent examples of plurinational or multinational states in the Western world.²⁷ In fact, in these three states, we encounter societies (or *nations*, such as Quebec, Scotland, Ireland, Wales or Catalonia and the Basque Country, respectively) which occupy a clearly defined territory and distinguish

²² Béland & Lecours, *The Politics of Territorial Solidarity*, cit., p. 678.

²³ N. McEwen & A. Lecours, “Voice or Recognition? Comparing Strategies for Accommodating Territorial Minorities in Multinational States” (2008) 46 *Commonwealth and Comparative Politics* 223 [McEwen & Lecours, *Voice or Recognition*].

²⁴ Béland & Lecours, *The Politics of Territorial Solidarity*, cit., p. 678.

²⁵ O’Leary, *Iron law of nationalism*, cit., p. 277.

²⁶ W. Swenden, “Territorial strategies for managing plurinational states” in J. Loughlin, J. Kincaid & W. Swenden, eds., *Routledge Handbook of Regionalism and Federalism* (London & New York: Routledge, 2013), p. 61 [Swenden, *Territorial strategies*]; see also Kymlicka, *Multicultural Citizenship*, cit., pp. 11 et seq.

²⁷ See, among many, Tierney, *Constitutional Law and National Pluralism*, cit.; Kymlicka, *Multicultural Citizenship*, cit., pp. 11 et seq.

themselves for their culture, language or other historical elements which have been able to thrive through the implementation of modern societal, governmental and legal institutions.²⁸ As indicated above, Belgium is also considered a multinational state due to the Flanders/Wallonia dichotomy, but other examples of plurinational states, perhaps less frequently explored by Western scholars, include India and Malaysia.²⁹ Among the various examples of multinational states, most of them are federations; in fact, the federal paradigm “provide[s] effective ways of giving these different identities opportunities for collective and free institutional expressions”.³⁰ However, the United Kingdom and Spain are not *classic* federations, although they fall within the broad category of “quasi-federal” arrangements, though they are first order plurinational states. In any event, the existence of a multinational or plurinational state or federation is easily identifiable, as the number of nations that respond to the classic definition are limited, or at least the interest of most academics in the West focuses on restricted traditional examples like the ones listed above.

Following the end of the Second World War, however, there has been a burgeoning of nationalist movements of different nature around the globe. Tierney has identified at least three movements: first, nationalist movements evolving from the process of decolonization that affected Asian and African countries in their attempt to “emancipate” from Europe; second, nationalist movements originating from the disintegration of communism and socialism in

²⁸ Tierney, *Constitutional Law & National Pluralism*, cit., p. 26.

²⁹ For example, see H. Bhattacharyya, “Federalism and competing nations in India” in M. Burgess & J. Pinder, eds., *Multinational Federations* (London & New York: Routledge, 2007), pp. 50 et seq.; I. Bakar, “Multinational federation: the case of Malaysia” in M. Burgess & J. Pinder, eds., *Multinational Federations* (London & New York: Routledge, 2007), pp. 68 et seq.; H. Bhattacharyya, “India & Switzerland as multinational federations” in M. Burgess & J. Pinder, eds., *Multinational Federations* (London & New York: Routledge, 2007), pp. 212 et seq.; A. Khan, “Federalism and Nonterritorial Minorities in India” in A. Tarr, R. Williams & J. Marko, eds., *Federalism, Subnational Constitutions, and Minority Rights* (London & Westport, CT: Praeger, 2004), pp. 199 et seq.

³⁰ O’Leary, *Iron law of nationalism*, cit., p. 278.

Eastern Europe; third, and most importantly for my purposes, he singles out sub-state nationalism.³¹ In order to distinguish sub-state nationalism from other forms of nationalism, the term “neo-nationalism” has also been coined.³² The communal feature that can be found in all three otherwise distinct movements is the fact that they all seek better accommodation for the national societies that can be encountered in each specific situation.³³

One important clarification that scholars like Tierney make at this point is that sub-state nationalism (or neo-nationalism) should be differentiated from ethnic nationalism, since the latter is more “reactionary” and “exclusivist” and focuses more on the “common ethnicity or bloodlines of a particular group”.³⁴ Conversely, sub-state nationalism is more associated with “civic nationalism”, one that fosters “a progressive, liberal and inclusive vision of a shared national identity based upon common political values, and largely blind to biological differences such as race, color and ethnicity”.³⁵ In saying this, Tierney is most likely referring to situations where ethnic nationalism was brought to extreme consequences entailing disastrous civil wars and cruel ethnic cleansing. In this sense, sub-state nationalism takes a milder (or more civic) approach. However, this cannot be seen as a universal truth either: in fact, in some instances, sub-state nationalism can also be associated with drastic, violent or ethnicity-directed actions,

³¹ Tierney, *Constitutional Law & National Pluralism*, cit., p. 28. Incidentally, an interesting recount of various nationalist movements around the world, and not necessarily contemporaries, can be found in Anderson, *Imagined Communities*, cit.

³² Tierney, *Constitutional Law & National Pluralism*, cit., p. 30.

³³ Tierney, *Constitutional Law & National Pluralism*, cit., p. 28.

³⁴ Tierney, *Constitutional Law & National Pluralism*, cit., p. 23; Norman, *Negotiating Nationalism*, cit., p. 4.

³⁵ Tierney, *Constitutional Law & National Pluralism*, cit., pp. 23 and 30. See also Norman, *Negotiating Nationalism*, cit., p. 4.

such as ETA in the Basque Country or the more recent debate over the *Charte des valeurs québécoises* in Québec.³⁶

It is also worth reiterating that, as sub-state national societies closely resemble the state hosting them (since they are in a position to play many of the “functional” and “identificatory” roles usually played by a nation state), are “territorially concentrated” and are usually characterized by a historically settled population in addition to “an elaborate set of social, cultural, and (...) governmental networks and institutions which make the possibility of self-government for the sub-state national society a feasible option”, they differ from minority groups like immigrant communities.³⁷ In fact, in most cases, minorities such as immigrant communities are not interested in self-government;³⁸ rather, they aspire to “integrate within the receiving society” instead of creating “constitutionally autonomous units”.³⁹ In other words, sub-state national societies are different than other groups in two main aspects: (a) “societal or cultural distinctiveness” (territorial concentration, common history, language, religion, and societal

³⁶ As it is well known, ETA is the acronym for *Euskadi Ta Askatasuna*, a nationalist and military organization claiming the independence of *Euskadi*, the Basque Country. As for the *Charte des valeurs*, I refer to a bill proposed in 2013 (Bill 60) by the Quebec government which would have set out a Charter “affirming the values of State secularism and religious neutrality and of equality between women and men, and providing a framework for accommodation requests”. For more information, see <http://www.institutions-democratiques.gouv.qc.ca/laicite-identite/charte-valeurs-en.htm>.

³⁷ Tierney, *Constitutional Law & National Pluralism*, cit., pp. 5 and 33. See also Kymlicka, *Multicultural Citizenship*, cit., p. 27.

³⁸ Tierney, *Constitutional Law & National Pluralism*, cit., p. 33. See also Kymlicka, *Multicultural Citizenship*, cit., pp. 30-31 and De Schutter, *Nations Beyond Nationalism*, cit., p. 392-392, fn. 2.

³⁹ Tierney, *Constitutional Law & National Pluralism*, cit., p. 33. See also De Schutter, *Nations Beyond Nationalism*, cit., p. 392-392, fn. 2; Kymlicka, *Multicultural Citizenship*, cit., pp. 30-31, who further argues that, differently than national minorities, immigrants seek “equal access to the mainstream culture(s)”. In fact, since they have “uprooted themselves from their old culture, they are expected to become members of the national societies which already exist in their new country” (*Ibid.*, p. 114).

institutions, to indicate the elements identified by Tierney); and (b) potential for self-government.⁴⁰

Nations within multinational states and federations also differ from regions within a regional state. In fact, to paraphrase Tierney, regions are not inclined to engage in a conflictual relationship with the state (construed as “one national society”).⁴¹ At the same time, however, sub-national societies and regions share traits such as “sub-state, territorially-demarcated, collective identities; political, economic or cultural cleavages between sub-state territories and the centre; and the social generation of discrete political identities and political organizations at sub-state level”.⁴² This association between regions and sub-state national communities is particularly useful for my purposes, as it offers an opportunity to note my argument seeking to find a common substance gluing together federal, regional and sub-state nationalism theories; I will revert to this association in Part III of this thesis when discussing political and socio-economic societies characterized by *non-national* differences.⁴³

I noted above that sub-national societies closely mimic the host state in that they represent a site for functional and identificatory roles which the state also plays in the everyday life of the citizens. It is now time to revert to and elaborate on this aspect. Certain states, most

⁴⁰ Tierney, *Constitutional Law & National Pluralism*, cit., p. 34.

⁴¹ Tierney, *Constitutional Law & National Pluralism*, cit., p. 8. However, as I will explain in subsequent chapters (particularly in chapters VII-IX), and with specific regards to the Italian case study, even regions can sometimes develop a conflictual relationship with the central state.

⁴² Tierney, *Constitutional Law & National Pluralism*, cit., p. 8.

⁴³ The definition and nature of *non-national* differences will be extensively offered in Part III of the thesis, particularly in Chapter VII. Here, I can briefly anticipate that I construe political and socio-economic societies characterized by *non-national* differences as communities located within a given geographical territory which display some *de facto* and well rooted asymmetrical traits (mainly, but not exclusively, bearing a socio-economic nature) compared to the state-wide community (construed as that segment of population that is not asymmetrical), and which seek some form of acknowledgement of their specificity, as this specificity entails a more or less strong feeling of identity.

notably Canada, Spain and the UK, are not only multicultural but also multinational in composition, because of the presence of more than one “national society” within them.⁴⁴ Yet both national societies (the sub-national and the dominant) have engaged in the nation-building project; in this sense, they both participate in, and make possible, the development and success of an identity, through their activity in the civil society and governmental bodies.⁴⁵ But, because of the values they embrace, sub-state national societies play a central role also with regard to individuals.⁴⁶ Although the level of entrenchment of a given sub-state national society as the ideal environment for the individual differs based on many variables, still it represents a vital environment where similar values are shared.⁴⁷

Finally, it should be mentioned that there is a conflict within nationalist liberal theory in that some contend that in each plurinational or multinational state there is a “dominant” or “hegemonic” society which can have lethal effects on sub-state national societies, while others assert that plurinational societies are in fact “culturally neutral”.⁴⁸ This aspect will be further elaborated in the remainder of the chapter.

⁴⁴ Tierney, *Constitutional Law & National Pluralism*, cit., p. 31. It shall be noted that these are not the only examples; Kymlicka points out that “[m]any Western democracies are multinational” and offers a list of national minorities in the United States as well, such as American Indians, Puerto Ricans, Chicanos, native Hawaiians, Chamorros of Guam and other Pacific Islanders as well as Alaskan Eskimos. See Kymlicka, *Multicultural Citizenship*, cit. pp. 11-12.

⁴⁵ In other words, both groups felt they have contributed to the formation of the national state, as in the case of Canada, where both French and English peoples actively participated in the creation of the new state. Tierney, *Constitutional Law & National Pluralism*, cit., p. 32.

⁴⁶ Tierney, *Constitutional Law & National Pluralism*, cit., p. 48.

⁴⁷ Tierney, *Constitutional Law & National Pluralism*, cit., p. 50.

⁴⁸ Tierney, *Constitutional Law & National Pluralism*, cit., p. 52.

3. Challenges of a nation state

Scholars like Tierney argue that the longstanding idea of state sovereignty is currently undergoing some serious challenges coming from three parallel directions.⁴⁹ On one side there are “supra-state political and legal orders” such as the European Union that are currently emerging and affirming themselves on a territorial basis; next, there is globalization, construed as a form of economic questioning of state sovereignty, usually characterized by an “extra-territorial” or a “deterritorialised” dimension; finally, and most importantly for this scholar, there is sub-state nationalism which, like the first challenge, is “territorially based” because it operates mainly within the state.⁵⁰ As we will see more in detail in the next paragraphs, sub-state national societies, and the political parties through which they are represented, seek constitutional change as they are convinced that “their national status is not properly recognized within the state as a consequence of the privileged position enjoyed by the dominant society of the state”.⁵¹ In other words, they seek to respond to what they see as “injustices of existing nation-states” even if the tone or the specific trait of the request changes from one case to the other,⁵² and although the “host state” does not always share this view of being conceived of “in terms of such societal preference”.⁵³

⁴⁹ Tierney, *Constitutional Law & National Pluralism*, cit., p. 83.

⁵⁰ Tierney, *Constitutional Law & National Pluralism*, cit., pp. 83-84. The challenge to the nation state by sub-state nationalism can take different shapes, the most dramatic of which would be secession, as will be clarified in a moment. I will revert to this aspect in chapter IX when discussing the importance of acknowledging the interests of political and socio-economic societies characterized by *non-national* difference; in this sense, it will become clearer that there are some common aspects between *national* and *non-national* communities.

⁵¹ Tierney, *Constitutional Law & National Pluralism*, cit., p. 99.

⁵² B. Giordano & E. Roller, “A comparison of Catalan and ‘Padanian’ nationalism: more similarities than differences” (2001) 3 *Journal of Southern Europe and the Balkans* 111 [Giordano & Roller, *Catalan and ‘Padanian’ nationalism*].

⁵³ Tierney, *Constitutional Law & National Pluralism*, cit., p. 99.

Disregarding at this point the threats coming from “supra-state political and legal orders” and from globalization, what are the specific challenges that sub-state national societies make to traditional constitutional arrangements or settings?⁵⁴ These challenges (or threats) mainly include the questioning of the “traditional monistic conceptions of internal constitutional sovereignty” and, in exchange, offer solutions that go in the direction of a re-designing of the existing authority patterns.⁵⁵ Yet, the challenge is not only towards *internal* sovereignty and the constitutional models that express it. In fact, they challenge also *external* sovereignty and the ways in which it is manifested.⁵⁶ As Tierney further explains, the purpose of this double attack on state sovereignty is itself two-fold: on the one hand, an aspiration to leave the state; and, on the other, the intention to rebuild the relationships with the host state through some form of accommodation, without arriving to the extreme solution of secession.⁵⁷ Secession⁵⁸ is certainly the most “threatening” and less desired solution⁵⁹ at least on the part of the host state. Secession also implies a reduction of the state size, and in this sense it differs from revolution, which entails the bringing down of a government while retaining the former state.⁶⁰ Therefore, secession is not construed as a menace to the state’s constitutional authority over the rest of the state and, besides recognition of the seceding party (and possible consequent adjustment to the constitutional amending formula), it does not require any other significant constitutional

⁵⁴ Tierney, *Constitutional Law & National Pluralism*, cit., p. 91.

⁵⁵ Tierney, *Constitutional Law & National Pluralism*, cit., pp. 91-92.

⁵⁶ Tierney, *Constitutional Law & National Pluralism*, cit., p. 92. This can be explained in the case of Quebec, and the attempts made not only to increase, or diversify, the powers at domestic (Canadian) level, but also with the attempts to establish itself autonomously outside of Canada, mainly (but not exclusively) in the Francophone world.

⁵⁷ Tierney, *Constitutional Law & National Pluralism*, cit., p. 92.

⁵⁸ Tierney defines secession as the situation occurring “when a group removes itself and a piece of territory from the jurisdiction of the state”. See Tierney, *Constitutional Law & National Pluralism*, cit., p. 96. Norman defines secession as the “ultimate dream for hard-core minority nationalists”: Norman, *Negotiating Nationalism*, cit., p. 119.

⁵⁹ Tierney, *Constitutional Law & National Pluralism*, cit., p. 92. As I will explain in chapter IX, secession is often perceived as a last-resort solution, and rarely dealt with in a serene way, especially on the part of the nation state.

⁶⁰ Tierney, *Constitutional Law & National Pluralism*, cit., p.97 citing Buchanan.

change.⁶¹ Secession is obviously a threat for the state in other ways and, as McEwen & Lecours illustrate, there are a number of reasons that explicate why secession is so much resisted by the host state.⁶² First, a territorial loss would greatly reduce the international prestige and power of the state; furthermore, it might exacerbate cultural or ethnic based conflicts among the various communities, which at some point might also turn towards secession; finally, secession entails a “blow” to one of the shared identities within the state.⁶³ For these reasons, accommodation or other forms of recognition are usually preferred.⁶⁴ In this regard, one strategy that is often used to minimize the threat of secession is nurturing citizens’ loyalty and attachment to the state, as McEwen and Lecours explain.⁶⁵ In fact, I indicated above how sub-state national societies usually feel a sense of belonging both to the national group and the host state.⁶⁶ By strengthening the attachment to the host state, the risk of secession should be greatly contained.⁶⁷ Incidentally, I will briefly revert to the idea of secession in chapter IX, when discussing the reasons that suggest to attentively listen to the distinctive interests of political and socio-economic societies characterized by *non-national* difference.

The second aspiration mentioned above is represented by the requests of sub-state national society for improved “autonomy and representation” within the state, as well as “better recognition” by it.⁶⁸ Among the several reasons whereby solutions other than secession are (or should be) preferred, Tierney indicates the “identity and loyalty ties” that bind the sub-state

⁶¹ Tierney, *Constitutional Law & National Pluralism*, cit., p. 97.

⁶² McEwen & Lecours, *Voice or Recognition*, cit., p. 221.

⁶³ McEwen & Lecours, *Voice or Recognition*, cit., p. 221.

⁶⁴ McEwen & Lecours, *Voice or Recognition*, cit., p. 221.

⁶⁵ McEwen & Lecours, *Voice or Recognition*, cit., pp. 223-224.

⁶⁶ McEwen & Lecours, *Voice or Recognition*, cit., p. 223.

⁶⁷ McEwen & Lecours, *Voice or Recognition*, cit., pp. 223-224.

⁶⁸ Tierney, *Constitutional Law & National Pluralism*, cit., p. 92.

national society and the host state.⁶⁹ Likewise, solutions not implying secession are often preferred because the constitutional dialogue between the host state and the sub-state national society can be revamped through the existing schemes of constitutional accommodation.⁷⁰

Thus far, I have repeatedly emphasized how sub-state national societies seek accommodation within the host state and how this perspective is by far preferred to extreme and drastic solutions like secession. In the next paragraphs, I am going to illustrate which are the most common strategies followed by nations in seeking accommodation, at least in the West. These illustrations may help us later in the thesis (specifically, in part III) when discussing *non-national* difference.

4. How sub-state nations seek accommodation

a. Judicial accommodation

As Tierney indicates, one possible method that can be used by sub-state nations to seek accommodation is the involvement of actors such as courts, as “it is before the courts that some of the most highly charged constitutional disputes have been played out in plurinational states”.⁷¹

Certainly, one of the most notable and celebrated examples of court involvement in sub-state national accommodation is the decision rendered by the Supreme Court of Canada (“SCC”) known as the Secession Reference of 1998.⁷² With this decision, the SCC was called upon by the federal government to express its opinion on the “legality of any future attempt by Quebec to

⁶⁹ Tierney, *Constitutional Law & National Pluralism*, cit., p. 93.

⁷⁰ Tierney, *Constitutional Law & National Pluralism*, cit., p. 96.

⁷¹ Tierney, *Constitutional Law and National Pluralism*, cit., p. 247.

⁷² Reference re Secession of Quebec, [1998] 2 S.C.R. 217.

secede unilaterally from Canada”⁷³ after the Quebec referendum on sovereignty of 1995. The decision was rendered at a time when many Quebecers felt estranged from the Canadian constitutional setting emerged after the Patriation of the Constitution in 1982, especially in light of the failed attempts of Meech Lake (1987) and Charlottetown (1992) to remedy at this situation which, in their opinion, was an assertion of “the dominance of English Canada within the federation”.⁷⁴ In the decision, the SCC denied the existence of a right for Quebec to unilaterally secede from the rest of Canada. However, the SCC continued, if a will to secede was supported by a clear majority in a referendum, this “would confer legitimacy on demands for secession, and place an obligation on the other provinces and the federal government to acknowledge and respect that expression of democratic will by entering into negotiations and conducting them in accordance with the underlying constitutional principles already discussed”.⁷⁵ Without entering into the various twists of this hallmark decision, I just wanted to offer an example of how the court can intervene on issues pertaining to the accommodation of national claims (in the specific case, by filling a gap on the right of a nation like Quebec to secede from Canada). More recently, another example of court intervention in matters pertaining to *national* societies is offered by the case of the Constitutional Court of Spain which halted the referendum for the independence of Catalonia originally scheduled for early November 2014 after the Spanish government’s challenge to it.⁷⁶

⁷³ Tierney, *Constitutional Law and National Pluralism*, cit., p. 248.

⁷⁴ Tierney, *Constitutional Law and National Pluralism*, cit., p. 252.

⁷⁵ Supreme Court of Canada, Reference re Secession of Quebec, 2 R.C.S. 1998, at 88.

⁷⁶ See The Economist, online at <http://www.economist.com/news/europe/21625800-referendum-vote-still-result-confusion-mas-observation> (last checked: 29 October 2014).

b. Referendum

The referendum is another mechanism or tool that can be used in the settlement of the relationship between host state and sub-state national society and that has acquired more and more prominence especially over these past few years.⁷⁷ In fact, the use of referendum as a tool for sub-national groups to seek constitutional accommodation is now accepted both for constitutional reforms and for dissolution of plurinational states.⁷⁸ Tierney contends that the importance of referendum as a mechanism to bring “constitutional change” is two-fold: ⁷⁹on one hand, it is usually employed when key constitutional decisions capable of bringing major changes to the same nature of state are sought,⁸⁰ while on the other hand referendums usually imply a direct engagement of the citizens, so that they can play a significant role when important decisions on the polity in which they are part are made.⁸¹ But referendums can be used for any of the main aspirations usually sought by sub-national states when looking for enhanced constitutional accommodation, i.e. autonomy, representation and recognition.⁸²

⁷⁷ Tierney, *Constitutional Law and National Pluralism*, cit., p. 284. Tierney has recently authored a work on referendum as a democratic tool. Readers who are interested in the topic can refer to S. Tierney, *Constitutional Referendums: The Theory and Practice of Republican Deliberation* (Oxford: Oxford University Press, 2012).

⁷⁸ Tierney, *Constitutional Law and National Pluralism*, cit., p. 285.

⁷⁹ Tierney, *Constitutional Law and National Pluralism*, cit., p. 284.

⁸⁰ Tierney, *Constitutional Law and National Pluralism*, cit., p. 284. In more or less recent times, Quebec, Scotland and Catalonia have tried (or at least attempted) to seek full independence by way of referendum.

⁸¹ Tierney, *Constitutional Law and National Pluralism*, cit., p. 284. Incidentally, it shall be noted that there are different types of referendums available, most notably the advisory and the mandatory. In the first case, peoples are called to express an opinion on a question, but the result is not binding for the government, while in the second case the opinion expressed by the citizens is binding at central level. Furthermore, some constitutions expressly provide for this tool, while others (like Canada) do not contain any referendum clause. In general, referendums are more popular in countries not belonging to the British legal and political tradition. See H. Brun, G. Tremblay & E. Brouillet, *Droit Constitutionnel*, 5^{me} ed. (Cowansville, QC: Yvon Blais, 2008), pp. 97 et seq.

⁸² Tierney, *Constitutional Law and National Pluralism*, cit., p. 287.

c. Constitutional change and individual participation in the process

Tierney observes that the three main aspirations indicated above (i.e. autonomy, representation and recognition) can become significant within the program of sub-state national societies only to the extent that these groups have the possibility to participate in, or be part of, the constitutional amendment process, so that they can discuss and debate with other actors the changes they seek to bring about.⁸³ However, the degree of involvement of sub-state national societies in the amending process significantly varies based on the model of the host state. For example, the role played by territorial sub-units in constitutional amendment procedures in federations like Canada is necessarily more considerable than in unitary or “quasi-federal” states like the UK, Spain or Italy.⁸⁴

In addition to the constitutional amendment procedures, Tierney suggests that another element to consider is represented by the opportunities given to individual citizens to influence constitutional change.⁸⁵ One example of this individual participation is identified in the “activity of discussing and finding identity”.⁸⁶ The significance of this individual contribution in the constitutional change process is improved if the citizen “is able to participate, influence debate, make choices, change opinions, and develop his identity(ies) within the context of his own

⁸³ Tierney, *Constitutional Law and National Pluralism*, cit., p. 131.

⁸⁴ Tierney, *Constitutional Law and National Pluralism*, cit., p. 138. Incidentally, the reader might recall that I have already briefly discussed the participation of sub-units to the constitutional amendment process in Chapter II as one of the distinguishing features between a regional and a federal state model. By the way, it is possible for a unitary state to agree to the holding of a referendum, as in the case of the recent Scottish referendum, in which the UK was a willing partner in the referendum, while remaining opposed to Scottish independence. Yet, we saw the risks with a unitary state opposing a referendum in the case of the Catalonia referendum, which the Spanish government has opposed. This formal opposition may have fuelled Catalanian independence flames.

⁸⁵ Tierney, *Constitutional Law and National Pluralism*, cit., p. 166.

⁸⁶ Tierney, *Constitutional Law and National Pluralism*, cit., p. 168.

national society”.⁸⁷ Furthermore, this individual participation lets the citizens of sub-state national societies better distill the details of the best ways to achieve constitutional accommodation for the whole group.⁸⁸ And this participation is important within the sub-state national society and at host state level.⁸⁹ As a result, an “open” and “free” (in the sense of “not coerced”) constitutional participation of the individual is certainly critical for sub-state national societies.⁹⁰

5. Constitutional accommodation

When seeking better constitutional accommodation within a plurinational or multinational state, the aspirations of sub-state national societies touch upon both legal and political elements.⁹¹ One example of the former is the amendment (or the “re-interpretation”) of the formal constitution, whereas the political elements can be identified in the refinement of constitutional conventions, practices and principles, or the political culture and value system informing the given constitution.⁹² There are three major areas to which sub-state national societies aspire regarding constitutional accommodation: “autonomy,” “representation at the centre,” and “recognition of their national status”.⁹³ Given their importance, I propose to analyze each of these traits in greater detail in the following paragraphs.

⁸⁷ Tierney, *Constitutional Law and National Pluralism*, cit., p. 170. As we will see later in the thesis (particularly, in chapter VII), participation of citizens in associations and political parties is seen as an expression of the *horizontal* principle of subsidiarity, the latter being a basic federal principle.

⁸⁸ Tierney, *Constitutional Law and National Pluralism*, cit., p. 172.

⁸⁹ Tierney, *Constitutional Law and National Pluralism*, cit., p. 172.

⁹⁰ Tierney, *Constitutional Law and National Pluralism*, cit., p. 170.

⁹¹ Tierney, *Constitutional Law and National Pluralism*, cit., p. 185.

⁹² Tierney, *Constitutional Law and National Pluralism*, cit., p. 185.

⁹³ Tierney, *Constitutional Law and National Pluralism*, cit., p. 188.

a. Autonomy

As Tierney observes, it is in the context of autonomy that sub-state national societies demand asymmetry⁹⁴ or, otherwise said, “self-governing rights”.⁹⁵ In fact, tensions can emerge if the host state “resist(s) decentralization” or supports it, but without recognition of “the state’s national pluralism”.⁹⁶ Autonomy means that sub-state national societies might seek additional or distinctive powers in comparison to the rest of the country, and these powers shall be constitutionally entrenched. These powers usually allow sub-state national societies to autonomously manage specific issues that are of particular interest to them and that are limited to “domestic policy areas” (from education to social policies, economic development, cultural aspects, immigration, etc.), while national policy areas such as defense or foreign affairs remain within the jurisdiction of the central governments.⁹⁷ In other words, these groups demand “some form of political autonomy or territorial jurisdiction, so as to ensure the full and free development of their cultures and the best interest of their people”.⁹⁸ Some scholars have talked in this regard of strengthening the minorities’ voice “at the periphery”⁹⁹ and this can be done through different tools, including *devolution* of powers or a federal system (in cases where a

⁹⁴ Tierney, *Constitutional Law and National Pluralism*, cit., p. 189. Asymmetry (both *de iure* and *de facto*) will be extensively discussed in other chapters of this thesis. However, as already anticipated in chapter I, this term usually refers to situations when the *nation* within a multinational state claims different, more specific powers, than the rest of the state. As for the concept of self-government, it can be retraced to that of autonomy. As Cyr explains, the etymological roots of the term are “the ‘self’ (auto) having its own ‘law’ (nomos).” The opposite of autonomy is the “subjection to external law, the dependence on external power”: in other words, heteronomy. See H. Cyr, “Autonomy, Subsidiarity, Solidarity: Foundations of Cooperative Federalism” (2014) 23 *Constitutional Forum constitutionnel* 21.

⁹⁵ Kymlicka, *Multicultural Citizenship*, cit., p. 27. See also Norman, *Negotiating Nationalism*, cit., pp. 106 et seq.

⁹⁶ Tierney, *Constitutional Law and National Pluralism*, cit., p. 189.

⁹⁷ McEwen & Lecours, *Voice or Recognition*, cit., p. 226.

⁹⁸ Kymlicka, *Multicultural Citizenship*, cit., p. 27.

⁹⁹ McEwen & Lecours, *Voice or Recognition*, cit., p. 226.

federal structure is not yet in place).¹⁰⁰ In both cases, this solution might entail a significant change in the structure of the state.¹⁰¹

There are a number of arguments that scholars usually advance to refute asymmetrical treatment for national societies.¹⁰² According to the first theory or idea, a modern developed government should be more concerned with “political efficiency” rather than with “cultural or national recognition”.¹⁰³ The second argument resists asymmetry on the ground that it might endanger the “mono-national” vision of the state; consequently, symmetrical solutions are encouraged so that sub-state national societies are not perceived as distinctive.¹⁰⁴ Finally, according to the third idea, asymmetry should be discouraged since it might help promoting secessionist tendencies inside the given territory,¹⁰⁵ or create “first- and second-class citizens”.¹⁰⁶ While some of these concerns are legitimate, I cannot entirely share them. On the contrary, I value asymmetry greatly, and in fact I will extensively analyze it in chapter VII as one of the possible solutions to deal with *non-national* differences. Certainly, asymmetrical solutions are not always easy to implement, and at times they might not be easily accepted by the rest of the country: in fact, one other problem that can emerge, in addition to the three described above, is that asymmetry might fuel sentiments of jealousy and resentment among those communities who do not belong to the sub-state nation. Again, I will revert to this point in chapter IX.

¹⁰⁰ McEwen & Lecours, *Voice or Recognition*, cit., p. 226.

¹⁰¹ McEwen & Lecours, *Voice or Recognition*, cit., p. 226.

¹⁰² Tierney, *Constitutional Law and National Pluralism*, cit., p. 190.

¹⁰³ Tierney, *Constitutional Law and National Pluralism*, cit., p. 190.

¹⁰⁴ Tierney, *Constitutional Law and National Pluralism*, cit., p. 190.

¹⁰⁵ Tierney, *Constitutional Law and National Pluralism*, cit., p. 190.

¹⁰⁶ W. Kymlicka & W. Norman, “Citizenship in Culturally Diverse Societies: Issues, Contexts, Concepts” in W. Kymlicka & W. Norman, eds., *Citizenship in Diverse Societies* (Oxford: Oxford University Press, 2000), p. 3. In this regard, Kymlicka & Norman explain that those who generally disfavor minority rights do so because they believe that state institutions should be “color-blind”. Consequently, granting different rights to citizens just because they belong to a certain group is arbitrary and discriminatory, leading to the creation of first and second class citizens.

b. Representation

Representation refers to situations where the national pluralism inherent in the specific state is “reflected within central institutions”; in other words, the presence of representatives of the different nations within central institutions is enhanced.¹⁰⁷ In this regard, McEwen & Lecours talk about enhancing the voice of minority groups “at the centre”¹⁰⁸ so that the state is no longer construed of as a single national community, but is perceived as a “union state” or “compact of peoples”.¹⁰⁹

Traditionally, this form of recognition occurs in different ways. There can be the creation of a “ministerial or bureaucratic position designed to speak on behalf of the national minority” as McEwen and Lecours suggest.¹¹⁰ It can also occur with the creation of an Upper Chamber (or Senate) representing the interests of the peripheral governments and therefore of the sub-state national society,¹¹¹ or through some form of representation within the Constitutional (or Supreme) Courts, which deal with allocation of powers. It might also take the shape of a “share of parliamentary seats for minority representatives, in excess of their population share”.¹¹² Furthermore, it is worth observing that, with the development of supra-national institutions such as the European Union or NAFTA, recognition is progressively being affirmed and sought also

¹⁰⁷ McEwen & Lecours, *Voice or Recognition*, cit., p. 225. In this regard, the authors talk about “expression of voice”. See also Kymlicka, *Multicultural Citizenship*, cit., pp. 32-33 and 131 et seq.; Norman, *Negotiating Nationalism*, cit., pp. 110 et seq.

¹⁰⁸ McEwen & Lecours, *Voice or Recognition*, cit., p. 225.

¹⁰⁹ Tierney, *Constitutional Law and National Pluralism*, cit., p. 208.

¹¹⁰ McEwen & Lecours, *Voice or Recognition*, cit., p. 225.

¹¹¹ McEwen & Lecours, *Voice or Recognition*, cit., p. 225. I will reiterate throughout the thesis how the Senate or Upper Chamber is traditionally the preferred tribune to voice the interests of peripheral units in federal or decentralized states, and remains one of the basic elements that distinguish a federal from a unitary state, although exceptions exist.

¹¹² McEwen & Lecours, *Voice or Recognition*, cit., p. 225.

“beyond the state” to see which role these societies can play at supra-national level.¹¹³ This phenomenon is also known as “proto-diplomacy”,¹¹⁴ a trend well known within European Union law.¹¹⁵

Yet, Tierney points out that there are at least two obstacles that need to be overcome in this search for influence through representation. The first impediment is within the “host state” whereas the second lies at the level of the “supranational organization”.¹¹⁶ At the level of host state, the capacity of sub-state national societies to develop “sub-state external relations” can be restricted by constitutional limitations, since the central state tends to discourage these types of relations.¹¹⁷ Insofar as the impediments at the level of supranational organizations, the experience shows that it has not been easy for these sub-state national societies to affirm themselves beyond state borders.¹¹⁸ Accordingly, unless the constitution of the host state guarantees some role to be played by these societies at international level, their involvement beyond the state of sub-national groups, including proto-diplomacy, can easily be frustrated by the central state.¹¹⁹

¹¹³ Tierney, *Constitutional Law and National Pluralism*, cit., p. 227.

¹¹⁴ Tierney, *Constitutional Law and National Pluralism*, cit., p. 227.

¹¹⁵ In the ambit of EU law, this phenomenon led to two main consequences. On first place, with the introduction of the Treaty of Maastricht of 1992 and the growing importance given to European regions (not only federated entities of EU federal states, but historical regions in general) also with the creation of a Committee of the Regions, some of them started opening “representation offices” in Brussels to facilitate their promotion and cultural or trade exchanges. Second, proto-diplomacy also entailed a resurgence of regional sentiments across all Europe, as I will further explain in Part II of the thesis while discussing federal ideas in Italy in the early 1990s.

¹¹⁶ Tierney, *Constitutional Law and National Pluralism*, cit., p. 229.

¹¹⁷ Tierney, *Constitutional Law and National Pluralism*, cit., p. 229.

¹¹⁸ Tierney, *Constitutional Law and National Pluralism*, cit., p. 231.

¹¹⁹ Tierney, *Constitutional Law and National Pluralism*, cit., p. 234.

c. Recognition

The struggle of sub-state national groups for enhanced or better recognition is an issue that is “intimately linked” to autonomy and representation.¹²⁰ Usually, with this notion, scholars refer to the aspiration of constitutional recognition of the language of the sub-state national society or of some other symbolic issues such as flags, anthems or other totems.¹²¹ In multinational states or federations, where the linguistic cleavage is a major component, official bi- or multi-lingualism is actually a preferred tool to give minorities a platform to express their voice at the centre, and this type of policy can also increase “minority representation in such institutions such as parliament, the courts, the army and the bureaucracy, as it facilitates advancement for linguistic minorities”.¹²² In other words, recognition is intimately related to the very essence of the alleged distinctiveness of the sub-state national group, its behaviors, traditions, and traits that allow clearly identifying and singling out one sub-state national group from the others. In very general terms, Taylor praises recognition as it partially shapes one’s identity; consequently, “[n]onrecognition or misrecognition can inflict harm, can be a form of oppression, imprisoning someone in a false, distorted, and reduced mode of being”.¹²³ Due recognition becomes for Taylor a “vital human need”.¹²⁴

¹²⁰ Tierney, *Constitutional Law and National Pluralism*, cit., p. 234.

¹²¹ Tierney, *Constitutional Law and National Pluralism*, cit., p. 235, but see also McEwen & Lecours, *Voice or Recognition*, cit., p. 227; Swenden, *Territorial strategies*, cit., p. 71; Norman, *Negotiating Nationalism*, cit., pp. 120 et seq.

¹²² McEwen & Lecours, *Voice or Recognition*, cit., p. 225; Kymlicka, *Multicultural Citizenship*, cit., pp. 134 et seq.

¹²³ Charles Taylor, *The Politics of Recognition*, in Amy Gutman (ed.) “Multiculturalism. Examining the Politics of Recognition”, Princeton, NJ: Princeton University Press, 1994, p. 25 [Taylor, *Politics of Recognition*].

¹²⁴ Taylor, *Politics of Recognition*, cit., p. 26.

However, as some scholars point out, “it is never a ‘simple’ matter to know what will constitute an appropriate form of recognition”.¹²⁵ Similarly, the same way recognition can be “encoded” in the constitution can significantly vary from one situation to another.¹²⁶ This also means that “there is no *particular form* of recognition for minorities (...) that can be identified as a basic condition of justice or legitimacy for all multinational federal constitutions”.¹²⁷

Norman has tried to identify possible “principles of recognition” that could be encoded in a multinational federal constitution.¹²⁸ In first place, a possibility would be that of a “partnership” agreement, so that the national minority group can be seen as “a full partner in the federation”.¹²⁹ This has important consequences for the sub-national society, especially insofar as “decisions about both symbolic and concrete aspects of the federal architecture”.¹³⁰ A second way towards grand recognition would be by “collective assent” through the recognition of the “legitimacy of a federal constitution for national minorities”.¹³¹ Norman adds that “[s]ince multinational states were founded without the collective assent of the constituent communities, it is important that at some stage there is occasion for the assent to be formally given” as in Spain, for example, where there has been a formal ratification of the 1978 Constitution.¹³² But this is not the case of Quebec, which has never signed the 1982 Constitution and therefore has never officially “recognized” it, a perceived wound for Quebecers that for some of them is still open and has never fully healed. As a third way of recognition, Norman lists “commitment and

¹²⁵ Norman, *Negotiating Nationalism*, cit., p. 157.

¹²⁶ Norman, *Negotiating Nationalism*, cit., p. 158.

¹²⁷ Norman, *Negotiating Nationalism*, cit., p. 161.

¹²⁸ Norman, *Negotiating Nationalism*, cit., p. 163 et seq.

¹²⁹ Norman, *Negotiating Nationalism*, cit., p. 163.

¹³⁰ Norman, *Negotiating Nationalism*, cit., p. 163.

¹³¹ Norman, *Negotiating Nationalism*, cit., p. 164.

¹³² Norman, *Negotiating Nationalism*, cit., p. 164.

loyalty”.¹³³ Similarly to the “collective assent” (which “constitutes a form of commitment and loyalty to the federal project (...), one that cannot be shirked”¹³⁴), Norman explains that “[t]he language of loyalty or solidarity is also likely to figure in the wording of a fair multinational constitution”.¹³⁵ The importance of this element lies in the fact that, when the majority asks a sub-national society to “demonstrate its loyalty” absent any form of recognition, this would not constitute a form of recognition.¹³⁶ “Anti-assimilationism” is listed by Norman as the fourth way to secure recognition to sub-state national societies. This demands that it should be accepted at all levels that “the state contains more than one ‘people’ and more than one national culture, language, religion” etc.¹³⁷ One way to implement this principle is to reconsider the distribution of certain powers seen to have “assimilationist effects” by sub-state national societies from the centre to the periphery (as mentioned before, especially powers in areas such as culture, immigration or language policies).¹³⁸ A fifth way to grant constitutional recognition is “territorial autonomy”.¹³⁹ Norman acknowledges that this is “[o]ne of the most concrete ways” to entrench the aforementioned anti-assimilation principle into the constitution.¹⁴⁰ At times, this territorial autonomy is granted asymmetrically.¹⁴¹ Furthermore, Norman identifies that “equal right of nation building” can be seen as a sixth way to grant constitutional recognition to minorities, although it might be unlikely that a similar wording appears in the preamble of a multinational

¹³³ Norman, *Negotiating Nationalism*, cit., p. 164.

¹³⁴ Norman, *Negotiating Nationalism*, cit., p. 164.

¹³⁵ Norman, *Negotiating Nationalism*, cit., p. 164. I will revert to this notion of solidarity and its importance in the relevant discussion in chapter VIII of this thesis.

¹³⁶ Norman, *Negotiating Nationalism*, cit., p. 164.

¹³⁷ Norman, *Negotiating Nationalism*, cit., pp. 164-165.

¹³⁸ Norman, *Negotiating Nationalism*, cit., p. 165.

¹³⁹ Norman, *Negotiating Nationalism*, cit., pp. 165-166.

¹⁴⁰ Norman, *Negotiating Nationalism*, cit., p. 165.

¹⁴¹ Norman, *Negotiating Nationalism*, cit., p. 165.

constitution.¹⁴² However, this principle is somehow linked to the previous ones, especially when I discussed the peripheral powers over culture or language.¹⁴³ Finally, the seventh and last element identified by Norman is that of “multiple and nested national identities”: in other words, it should be “widely recognized in the political culture that national identities are not mutually exclusive”.¹⁴⁴

6. Conclusion

Mainly building upon prominent scholars like Tierney (but also, to a certain extent, Kymlicka, Taylor, Lecours, Beland and Norman), in the previous paragraphs I have tried to condense the main points of debate emphasized by the abundant and very thorough literature on sub-state nationalism when discussing the accommodation of nations within multinational states and federations, especially those located in the Western world. The utility of this analysis is two-fold. First, it will allow us, later in the thesis, to draw some parallel between sub-state national communities and political and socio-economic societies characterized by *non-national* differences, something that will constitute the main topic of discussion in part III. Second, it also helps to transition to section II of this chapter, where I will discuss the very unique example of *Padanian* nationalism. More specifically, I will try to emphasize the difficulties that emerge when a national movement like the *Padanian* one is entirely “created” or “invented” by politicians without having deep historical roots as in the case of the more traditional European nationalist movements usually described by scholars. We will see how some of the traditional claims and requests made by sub-state national movements (as detailed in Part I above) bore

¹⁴² Norman, *Negotiating Nationalism*, cit., p. 166.

¹⁴³ Norman, *Negotiating Nationalism*, cit., p. 166.

¹⁴⁴ Norman, *Negotiating Nationalism*, cit., pp. 166-167.

some similarities with those advanced by *Padanian* nationalists. However, I will also argue that it might be very challenging to analyze *non-national* differences through the same theoretical prism used by traditional sub-state nationalism theory, as the premises on which *national* and *non-national* difference rest are radically different.

Section II - An Italian case study: *Padanian* nationalism

As noted, when debating sub-state nationalism most Western scholarship revolves around four main pivotal case studies: (a) Canada-Quebec; (b) Spain-Catalonia and Spain-Basque Country; (c) Belgium-Flanders; and (d) the United Kingdom-Scotland. These four experiences represent the most traditional and common examples, although not the only ones, of sub-state nationalism in the Western world. It is no doubt significant that they all belong to states which enjoy outstanding levels of economic and democratic development. Because of the facility in undertaking comparative analysis, scholars have extensively researched and investigated these experiences through several prisms: legal, political, social, or interdisciplinary. Yet, to a certain extent, in the recent past Italy has also dealt with nationalism issues, although for a very limited period of time and in a rather distinctive way. In fact, in the mid-1990s, a political party called Northern League (“LN”) advanced secessionist claims and invoked some sort of *Padanian* nationalism to back and promote these claims in the eyes of public opinion.¹⁴⁵ For this reason, some scholars have contended that the LN is “an example of a new and as yet under-theorised form of nationalism whereby rich peripheries aspire to liberate themselves of the shackles of

¹⁴⁵ C. Desideri, “A Short History of Regionalism in Italy Since the Republican Constitution. Italian Regionalism and Its Evolution” in S. Mangiameli, ed., *Italian Regionalism: Between Unitary and Federal Processes* (Cham: Springer, 2014), p. 45 [Desideri, *History of Regionalism*].

national solidarity”.¹⁴⁶ In the next chapters devoted to Italian regionalism, the role of the LN will be more thoroughly discussed to clarify how this political party had the merit to introduce federalism and federal reforms for Italy in its political agenda for the first time in Italian history. For now, the discussion on the LN will mainly concentrate on the alleged *Padanian* nationalism it invoked, to help drawing the political trajectory of this party as well as its failed nationalist claims. I believe this discussion is important for the thesis because, as noted, *Padanian* nationalism was one of the many ways fashioned by the LN to try to address the North-South divide, although this attempt failed, absent solid historical roots for this form of nationalism.

1. The origins of the Northern League

The political success of the LN is certainly one of the most intriguing events that took place in Italy between the late 1980s and early 1990s, something that prompted a certain resonance also in the European context.¹⁴⁷ In fact, the political success of this party triggered the scholarly interest of several observers from different disciplines, not only in Italy but also abroad. This is not the place to revisit the voluminous literature already existing on the topic. As I have just mentioned, what I would like to do is to simply retrace the political rise of the LN to later illuminate the alleged *Padanian* nationalism it advocated, to see how this party tried to address the North-South cleavage under the aegis of sub-state national theory.

From a political standpoint, Cavatorta suggests that the rise of the LN in that particular period of time was strictly interlaced with the changes occurring in the Italian party system: in

¹⁴⁶ M. Huyseune, “Landscapes as a symbol of nationhood: the Alps in the rhetoric of the Lega Nord” (2010) 16 *Nations and Nationalism* 355.

¹⁴⁷ Spektorowski defines the LN as a “federalist, autonomist or separatist (depending on the political situation) movement that could be ranked as one of the most politically important regionalist movements in Europe”. See A. Spektorowski, “Ethnoregionalism: the Intellectual New Right and the Lega Nord” (2003) 2 *The Global Review of Ethnopolitics* 55.

fact, he recalls how, until the early 1990s, Italy was characterized by a “stable party system” which made it particularly difficult for new parties to affirm themselves as “credible alternatives” in spite of the enormous “influence” of traditional parties such as the Christian Democrats (“DC”), the Socialist party (“PSI”) and the Communist party (“PCI”).¹⁴⁸ For this reason, the political success of the LN was unexpected and revolutionary at the same time since, under the smart leadership of Umberto Bossi, in a few years this political coalition became one of the major and innovative pawns within the Italian political chessboard.

As observed above, between the end of the Second World War and the early 1990s the Italian political system had remained rather stable. Its transformation occurred only when major international changes took place and therefore subverted this equilibrium.¹⁴⁹ As Cavatorta suggests, the system maintained a certain stability since it was moved by the need to keep the Communist party outside of power, thus allowing Italy to remain “anchored” to the western world.¹⁵⁰ Yet, since the mid-1960s, a coalition between the Christian Democrats, the Socialist party and other minor formations took power and, to preserve this dominant position, they put in place a system that closely controlled the state apparatus and that fostered “a network of patronage and clientelism”.¹⁵¹ As a direct consequence, there was a progressive increase and development of corruption, mismanagement of public resources, ties to organized crime (e.g. *mafia*), with a resulting “lack of national conscience”.¹⁵² All this notwithstanding, however, the

¹⁴⁸ F. Cavatorta, “The role of the Northern League in transforming the Italian political system: from economic federalism to ethnic politics and back” (2001) 7 *Contemporary Politics* 27 [Cavatorta, *The role of the LN*].

¹⁴⁹ Cavatorta, *The role of the LN*, cit., p. 27.

¹⁵⁰ Cavatorta, *The role of the LN*, cit., p. 27.

¹⁵¹ Cavatorta, *The role of the LN*, cit., pp. 27-28.

¹⁵² Cavatorta, *The role of the LN*, cit., p. 28.

system succeeded in keeping the Communists out of power while at the same time “guaranteeing strong economic growth” for Italy.¹⁵³

Things began to change when major political transformations occurred at the international level; first of all, the disintegration of Communism in Eastern Europe, which immediately disrupted the delicate equilibrium existing in Italy. In fact, Cavatorta alleges that one of the major reasons that the DC used to justify the system they contributed to create was the “ideological confrontation with the Marxist sub-culture”.¹⁵⁴ Once Communism crumbled, the DC “was unable to produce an innovative project to lead Italy forward”.¹⁵⁵ But the DC was not the only party that suffered from these major transformations. In fact, the fall of the Soviet Union with its ideology, along with the collapse of the Berlin Wall, had consequences also on the ideology and structure of the PCI, to the extent that it broke up in 1991.¹⁵⁶ Consequently, these two parties (the DC and the PCI) “were left without any ideological legitimacy and stood accused of having led the country to ruin”.¹⁵⁷ It was against this climate that the LN thrived.¹⁵⁸

Yet, this “ideological crisis” was not the only element that determined the success of the LN. In fact, also the changes that occurred in the “international economic order” (with the consequent transformation of “structures and modes of production”) since the late 1980s should be taken into account.¹⁵⁹ The elimination of the “alternative economic models” coupled with

¹⁵³ Cavatorta, *The role of the LN*, cit., p. 28.

¹⁵⁴ Cavatorta, *The role of the LN*, cit., p. 28.

¹⁵⁵ Cavatorta, *The role of the LN*, cit., p. 28.

¹⁵⁶ Cavatorta, *The role of the LN*, p. 28; B. Giordano, “The Continuing Transformation of Italian Politics and the Contradictory Fortunes of the Lega Nord” (2003) 8 *Journal of Modern Italian Studies* 217 [Giordano, *Transformation of Italian Politics*].

¹⁵⁷ Cavatorta, *The role of the LN*, cit., p. 28.

¹⁵⁸ Cavatorta, *The role of the LN*, cit., p. 28; E. Massetti & S. Toubeau, “Sailing Northern Winds: Party Politics and Federal Reforms in Italy” (2013) 36 *West European Politics* 360 [Massetti & Toubeau, *Sailing Northern Winds*].

¹⁵⁹ Cavatorta, *The role of the LN*, cit., p. 29.

globalization, the “acceleration of the technological revolution” and the importance of the “financial economy” also played a relevant role that pushed economic players to voice new “issues and demands”.¹⁶⁰ Specifically, the “inability to manage the political and economic crisis of the late eighties and early nineties was particularly evident in the ‘deep north’”¹⁶¹ which has traditionally been the most dynamic and industrialized area of Italy.¹⁶² The LN was quick in “understanding the demands of this new productive class” and this allowed the party to become “the spokesperson for the richest area of the country”.¹⁶³

At first, the LN was perceived as nothing more than a “protest group” which was insisting and exploiting the “corrupt clientelistic practices” so widespread among political players in Italy.¹⁶⁴ And for some time, even after its first electoral successes in the late 1980s and early 1990s, the LN continued to be seen only as a minor player, one that “would eventually dissipate” as a meteor, although it was quite effective in voicing a certain “dissatisfaction with the political class”.¹⁶⁵ In fact, the LN exploited widespread “feelings of mistrust and discontent” against a variegated crowd that included not only the political class, the inefficient bureaucratic apparatus, or the fiscal system, but eventually absorbed southerners and foreign immigrants as well.¹⁶⁶

In any event, it was thanks to the LN if, for the first time, federalism and federal proposals were put on the agenda as a solution for the Italian struggles. Also, the LN quickly

¹⁶⁰ Cavatorta, *The role of the LN*, cit., p. 29.

¹⁶¹ Cavatorta, *The role of the LN*, cit., p. 29.

¹⁶² Cavatorta, *The role of the LN*, cit., p. 29.

¹⁶³ Cavatorta, *The role of the LN*, cit., p. 30. See also Massetti & Toubeau, *Sailing Northern Winds*, cit., p. 360.

¹⁶⁴ Giordano & Roller, *Catalan and ‘Padanian’ nationalism*, cit., p. 116, citing Pileri, Schmidtke and Ruzza.

¹⁶⁵ Giordano & Roller, *Catalan and ‘Padanian’ nationalism*, cit., p. 116, citing Pileri, Schmidtke and Ruzza.

¹⁶⁶ Cavatorta, *The role of the LN*, cit., p. 30. However, as Passarelli notes, after twenty years or so since its first electoral victory, “the LN is [...] the oldest of the newly formed Italian political parties” and participated in three Italian governments, plus other regional governments and some provinces and cities in various parts of Northern Italy. See also G. Passarelli, “Extreme right parties in Western Europe: the case of the Italian Northern League” (2013) 18 *Journal of Modern Italian Studies* 56 [Passarelli, *Extreme right parties*].

became “a territory-based political organization” whose main objective and purpose was the representation of the interests of the people living in Northern Italy.¹⁶⁷ But the innovation of the federal proposal was not the only merit of this party. The LN was in fact the first faction which critically questioned contested but accepted behaviors and situations, usually neglected by more traditional parties, such as “excessive state spending, the poor performance of public services, the lack of decentralized decision-making, the increasing gap between North and South, the low international status of the country, the waste, and the corruption”.¹⁶⁸ However, as we shall now see, the political agenda of the LN was not limited to federalism, but adapted over the years to the transformed political pulse, and stretched from federalism to secession of *Padania*, from devolution of powers to the regions (a model similar to the UK) to a simple fiscal federalism.¹⁶⁹ I will now turn my attention to *Padanian* nationalism.

2. *Padanian* nationalism

While the fundamentals of the LN agenda and political project mainly rested on economic and social performances,¹⁷⁰ ethnic and linguistic differences were exploited by the party to “strengthen its political discourse”.¹⁷¹ In fact, in order to “delegitimize the country’s centralist constitutional structure” the LN adopted a certain pervasive sentiment of “mistrust” toward people coming from the South of the country, along with a selection of stereotypes and clichés, which were strategic in creating a feeling of “diversity” between the North and the South.¹⁷² The

¹⁶⁷ Cavatorta, *The role of the LN*, cit., p. 33.

¹⁶⁸ Cavatorta, *The role of the LN*, cit., p. 36.

¹⁶⁹ See, *ex multis*, Giordano, *Transformation of Italian Politics*, cit., pp. 216-230; Massetti & Toubeau, *Sailing Northern Winds*, cit., pp. 360 et ff.

¹⁷⁰ Cavatorta, *The role of the LN*, cit., p. 30.

¹⁷¹ Cavatorta, *The role of the LN*, cit., p. 30.

¹⁷² Cavatorta, *The role of the LN*, cit., p. 30.

rich and industrialized North (later identified as *Padania*) was seen and marketed as the home of “hardworking, wealth-producing and tax-overburdened people” who, with their industrial activities, were “sustaining the entire Italian economy” thus distinguishing itself from the South, more devoted to “subsidies” coming from the central government and “wasteful money transfers”.¹⁷³

Were these allegations true? While there are different ways this question can be tackled, it is undeniable that similar sentiments have always characterized the relationships between the North and the South, at least since the time of unification, as I will also explain in Chapter IV. Through the eyes of a Northerner, the South often appears backward and underdeveloped. But Northern Italy had the advantage of a favorable geographical position, closer to Central Europe and to a certain mentality; conversely, the South had been oppressed for a long time by the power of an absolute monarchy, which seemed to discourage (or at least not favor) a certain industrial development, preferring to keep this part of the country under a quasi-medieval rule. And even after WWII the situation seemed not to evolve. In fact, instead of putting into place serious development policies for the South, the central government preferred to choose an alternative way, that of linking itself with local criminal groups and highly subsidizing the territory, without creating the conditions for a real economic and industrial development of the South.

Similar to other nationalist parties in Europe (e.g the Catalan *Convergència i Unió*, or CiU), the LN also displayed strong sentiments against the centralization of the state, the latter

¹⁷³ Cavatorta, *The role of the LN*, cit., p. 30.

perceived as “inefficient, bureaucratic, and a burden on the economic growth”.¹⁷⁴ As already noted, one of the favorite targets of the LN was in fact the national fiscal system, heavily criticized and portrayed as “iniquitous and harmful” for the northern economy, jeopardized by the “high levels of bureaucracy and taxation” and by the enormous deficit of the public sector.¹⁷⁵

The LN identified in the South of Italy (and in Rome as the capital city and centre of political power) “the cause for all that is wrong with Italian society and politics”.¹⁷⁶ For this reason, it proposed the introduction of federalism and the elimination of state aid, so that the South would be forced to “find its own road to economic and social development”.¹⁷⁷ In other words, the LN represented “the northern question” or “the malaise of the north”¹⁷⁸ as opposed to the more famous “Southern question” (or *questione meridionale*) which had been on the political agenda of all political parties since the time of unification, without ever finding an effective way to be dealt with.¹⁷⁹ But this gap has never disappeared. In fact, the economic “miracle” of the 1960s touched the South only marginally, where the “[v]ast-scale industrialization” that marked the Northern economy did not take place, and organized crime (e.g. *mafia* or similar organizations) disfavored private investments; in such a scenario, the public money that continued to be funneled down South served to nothing but advance clientelism.¹⁸⁰ And this occurred while the northern regions quickly developed “thanks to a mix of favorable geographic

¹⁷⁴ Giordano & Roller, *Catalan and ‘Padanian’ nationalism*, cit., pp. 119-120.

¹⁷⁵ Giordano & Roller, *Catalan and ‘Padanian’ nationalism*, cit., p. 124; Passarelli, *Extreme right parties*, cit., p. 55.

¹⁷⁶ B. Giordano, “Italian regionalism or ‘Padanian’ nationalism – the political project of the Lega Nord in Italian politics” (2000) 19 *Political Geography* 454 [Giordano, *Italian regionalism*]; see also M. Hoppe, “Sub-state nationalism and European integration: constructing identity in the multi-level political space of Europe” (2005) 1 *Journal of Contemporary European Research* 20 [Hoppe, *Sub-state nationalism*].

¹⁷⁷ Cavatorta, *The role of the LN*, cit. p. 30.

¹⁷⁸ A. Destro, “A new era and new themes in Italian politics: the case of Padania” (1997) 2 *Journal of Modern Italian Studies* 358 [Destro, *The case of Padania*]; Giordano, *Transformation of Italian Politics*, cit., cit., p. 220.

¹⁷⁹ Cavatorta, *The role of the LN*, cit., p. 31.

¹⁸⁰ Cavatorta, *The role of the LN*, cit. p. 31.

position, good local political administration, entrepreneurial spirit, and cheap southern immigrant labor”.¹⁸¹

In the early 1980s the situation underwent another change, when the considerable public deficit forced an increase in the fiscal pressure, with the consequent exacerbation of the feelings of dissatisfaction of the Northerners towards the central government, which seemed to once again turn to the most productive part of the country to seek a way to solve a critical situation that it contributed to create with its well known questionable behaviors.¹⁸² The fact that state bureaucracy was mainly composed by southerners did not help the cause. In fact, the Northerners, who traditionally had privileged the private sector, felt they were working just to support the “inefficient and corrupt bureaucracy”.¹⁸³ Small and medium sized firms demanded “more infrastructures, a sharp decrease in taxation, and less regulation”¹⁸⁴ while workers demanded “lower taxes and better services”.¹⁸⁵

Among other things, the mid-1990s were characterized also by the need that Italy meet the criteria set by the EU for the single currency and thus enter the “Eurozone”. This is why the LN charismatic leader, Umberto Bossi, insisted on the idea that the North could be saved only if it entered the Eurozone independently from the South (and, thus, only as independent *Padania*).¹⁸⁶ The gist of Bossi’s propaganda always rotated around the fact that the riches of the North were wasted by the rest of the country, especially by the South, incapable of standing on

¹⁸¹ Cavatorta, *The role of the LN*, cit. p. 31.

¹⁸² Cavatorta, *The role of the LN*, cit., p. 31.

¹⁸³ Cavatorta, *The role of the LN*, cit., p. 31.

¹⁸⁴ Cavatorta, *The role of the LN*, cit., p. 31.

¹⁸⁵ Cavatorta, *The role of the LN*, cit., p. 31.

¹⁸⁶ Destro, *The case of Padania*, cit., p. 365. See also Giordano, *Transformation of Italian Politics*, cit., p. 221; Massetti & Toubeau, *Sailing Northern Winds*, cit. p. 363. For the pro-Europe position of the LN see Hoppe, *Sub-state nationalism*, cit., pp. 22-23.

its own feet and heavily relying on central assistance.¹⁸⁷ And, of course, the central state seemed to ignore or neglect these profound cultural divergences.¹⁸⁸

In order to strengthen its positions, and make its claims more legitimate in the eyes of the public opinion and the central government, in the mid-1990s the LN started to add some ethnic traits to its purely economic and political discourse. This recourse to the ethnic component was supposed both to help the visibility of the LN and to better connect with the local fabric. Accordingly, the LN began to use “local dialect”, a supposedly “common ethnic background” and, obviously, the shared “attitude toward hard work and respect for basic civic rules”¹⁸⁹ as the main components of its revamped agenda.

As I have noted, one of the most important factors that contributed to the birth of the regionalist claims voiced by the LN was economic in nature, and referred to the economic differences existing between the rich North and the poor South. Accordingly, part of the political project of the LN was the protection of “regional economic performance” in the North of the country.¹⁹⁰ For the LN, these economic differences had to be linked to an “alleged contrast in culture, mentality and attitude on the part of the majority of people in the South of Italy”.¹⁹¹ The LN contended that Northern Italian society was arranged and functioned in a different way than the South, and there was also a difference in value systems and culture of the Northern people.¹⁹²

¹⁸⁷ Destro, *The case of Padania*, cit., p. 365.

¹⁸⁸ Destro, *The case of Padania*, cit., p. 365.

¹⁸⁹ Cavatorta, *The role of the LN*, cit. p. 31.

¹⁹⁰ Giordano & Roller, *Catalan and ‘Padanian’ nationalism*, cit., p. 118.

¹⁹¹ Giordano & Roller, *Catalan and ‘Padanian’ nationalism*, cit., p. 119.

¹⁹² Giordano & Roller, *Catalan and ‘Padanian’ nationalism*, cit., p. 119.

Accordingly, the economic differences were nothing but the mirror of two contrasting cultures and mentalities.¹⁹³

In order to strengthen its positions and claims, Bossi and the LN began differentiating themselves not only by the political agenda, but also by the language used in their propaganda, a language that was sometimes vulgar, colored, racist, with references to local dialects, a language that was certainly very distant from the sophisticated and refined political jargon used in Rome by central authorities, but which was often obscure to the majority of the people. Conversely, Bossi and its group talked the same language of the people.¹⁹⁴

In any event, it is worth pointing out that the LN was not the first party to voice ethnic claims in Italy, although these other parties were usually smaller in size and territorially located in areas characterized by the presence of linguistic minorities.¹⁹⁵ Major examples of these parties were *Union Valdostaine* and *Sud-Tirol Volkspartei*, both capable, in the aftermath of WWII, to contribute to grant special status to regions such as Valle D'Aosta and Trentino Alto Adige respectively, where there existed French and German speaking minorities.¹⁹⁶ These parties aspired to increase the autonomy of these regions grounded on local differences.¹⁹⁷ These claims were justified on the basis of "local dialects", "local cultural traditions" and "ethnicity".¹⁹⁸

¹⁹³ Giordano & Roller, *Catalan and 'Padanian' nationalism*, cit., p. 119.

¹⁹⁴ For an interesting analysis of the language used by the LN, see P. McCarty, "Italy: a new language for a new politics?" (1997) 2 *Journal of Modern Italian Studies* 337-357. See also A. Cento Bull, "Ethnicity, Racism and the Northern League" in C. Levy, ed., *Italian regionalism: history, identity and politics* (Oxford & Washington DC: Berg, 1996), p. 171.

¹⁹⁵ Cavatorta, *The role of the LN*, cit., p. 34.

¹⁹⁶ Cavatorta, *The role of the LN*, cit., p. 34. The meaning and distinguishing features of special or autonomous regions will be detailed in part II of this thesis.

¹⁹⁷ Cavatorta, *The role of the LN*, cit., p. 34.

¹⁹⁸ Cavatorta, *The role of the LN*, cit., p. 34.

But also within regions not marked by the presence of linguistic minorities there were regional parties known as “leagues” that furthered local autonomy although with the support of a very limited portion of the population (notoriously, the *Lombard League* and the *Venetian League*). In fact, before becoming a national party, the LN emerged in the late 1980s from the fusion of these local and regional leagues.¹⁹⁹ However, while the emphasis of these local leagues was more on ethno-linguistic and cultural differences,²⁰⁰ the LN took a different approach and embraced the federalist claim, at least in the beginning.²⁰¹ At the outset of its political life as a key player, in fact, the LN’s federal project pivoted around the division of Italy into three macro-regions, corresponding to the North, the Centre and the South of the peninsula.²⁰²

As noted, one of the most distinguishing features of the LN was that it was perhaps the first political party to ever include federalism and federal reforms into its political agenda. This gave great visibility to the faction and allowed it to differentiate itself from more traditional and historical parties.²⁰³ However, after a few years, most of the existing political parties had acknowledged the necessity for a reform in federal terms (or at least for more autonomy to the peripheral entities).²⁰⁴ In this way, the LN lost the major distinctive connotation that had characterized it since its beginnings. Therefore, in order to keep differentiating itself from traditional parties, the LN embraced another vision, that of ethno-nationalism and the

¹⁹⁹ Giordano, *Italian regionalism*, cit., p. 455; Giordano & Roller, *Catalan and ‘Padanian’ nationalism*, cit., p. 116; Massetti & Toubeau, *Sailing Northern Winds*, cit., p. 361; Hoppe, *Sub-state nationalism*, cit., p. 16; Desideri, *History of Regionalism*, cit., p. 45.

²⁰⁰ Giordano, *Italian regionalism*, cit., p. 455.

²⁰¹ Giordano, *Italian regionalism*, cit., p. 455; Giordano & Roller, *Catalan and ‘Padanian’ nationalism*, cit., 116.

²⁰² Giordano & Roller, *Catalan and ‘Padanian’ nationalism*, cit., p. 116; Giordano, *Italian regionalism*, cit., p. 455; Hoppe, *Sub-state nationalism*, cit., p. 20.

²⁰³ Giordano, *Italian regionalism*, cit., p. 466.

²⁰⁴ Destro, *The case of Padania*, cit., p. 359.

independence of *Padania*, which had been abandoned at the initial stage of its activism.²⁰⁵ In fact, by the mid-1990s, the LN had acquired stronger ethnic connotations. This turn in the political agenda was also propitiated by some political facts strictly connected to the existing relationship between the LN and the centre-right wing. In fact, in the late 1994, Bossi withdrew the LN support to the government led by Berlusconi, because of its proposals of implementing a federal reform in Italy had been neglected.²⁰⁶ To face this situation, a *Padanian* national identity was created, with political projects of declaring the “secession and independence of *Padania* from the rest of Italy”.²⁰⁷ It shall be noted at this point that *Padania* has never existed as an independent region in Italy. The name *Padania* comes from the area of the Po valley, which stretches across most northern regions from west to east. According to this invented *Padanian* nationalism, all northerners living in the Po Valley “were held to have a common Celtic ethnic background” different and “opposite to southerner’s ethnic composition”²⁰⁸ although in real life Italians share “common mixed ethnic origin” with the exception of linguistic minorities.²⁰⁹

Based on this assumed or imaginary common ethnicity, the LN advocated for a right of self-determination to be achieved through federalism or secession.²¹⁰ The building of this *Padanian* identity occurred through “the creation of a northern parliament, the formation of a secessionist government, the organization of a referendum for independence in the north, the

²⁰⁵ Giordano, *Italian regionalism*, cit., p. 466; Destro, *The case of Padania*, cit., 360; Hoppe, *Sub-state nationalism*, cit., p. 20.

²⁰⁶ Cavatorta, *The role of the LN*, cit., p. 35; Giordano, *Italian regionalism*, cit., p. 456; Massetti & Toubeau, *Sailing Northern Winds*, cit., p. 363.

²⁰⁷ Giordano, *Italian regionalism*, cit., p. 456; Destro, *The case of Padania*, cit., p. 359; Giordano & Roller, *Catalan and ‘Padanian nationalism*, cit., p. 117.

²⁰⁸ Cavatorta, *The role of the LN*, cit., p. 35; Hoppe, *Sub-state nationalism*, cit., pp. 17-18.

²⁰⁹ Cavatorta, *The role of the LN*, cit., p. 35; Hoppe, *Sub-state nationalism*, cit., pp. 17-18.

²¹⁰ Cavatorta, *The role of the LN*, cit., p. 35.

launch of *Padanian* television and radio stations, and the promotion of annual Celtic Games”.²¹¹

In terms of symbolism, Alberto da Giussano (legendary character of the medieval Lombard League in the fight against Barbarossa and the Holy Roman Empire) was replaced by the “Sun of the Alps”. Similarly, the color green became the symbol of *Padania*, which also gave the name to the whole Northern Italy,²¹² and a *Padanian* “army” was also put in place (usually referred to as *Camicie Verdi* or “green shirts”) to protect and defend the *Padanian* territory.²¹³

There was also a declaration of the sovereignty and independence of *Padania* which took place along the River Po on 15 September 1996, which was then considered as the “symbolic birthday of Padania”.²¹⁴ A “rather undefined divinity” called “Po God” was also improvised to legitimize the birth of the new state.²¹⁵ The proclamations made along the river came with a variety of symbols, including armors, swords, samples of “carroccio” (some sort of medieval wagon bearing the *Padanian* flag), the “green shirts” (to attest that *Padania* was endowed with an army) accompanying the whole parade.²¹⁶ The symbolic meaning of this demonstration was strengthened by the fact that Bossi reached the source of the Po River to collect its waters into a Murano glass and transported to Venice, elected to be the place where the independence of *Padania* would be proclaimed.²¹⁷ There, there was the reading of the “Declaration of

²¹¹ Cavatorta, *The role of the LN*, cit., p. 35. In a country like Italy, still attached to certain old traditions such as beauty contests (e.g. the annual election of Miss Italy, broadcasted for several days on national TVs at the beginning of September), the LN countered with the election of Miss Padania as well, in order to strengthen its national identity claims. See Hoppe, *Sub-state nationalism*, cit., p. 18.

²¹² Cavatorta, *The role of the LN*, cit., p. 35.

²¹³ Giordano, *Italian regionalism*, cit., p. 467.

²¹⁴ Destro, *The case of Padania*, cit., p. 360; Giordano, *Italian regionalism*, cit., p. 457.

²¹⁵ Destro, *The case of Padania*, cit., p. 360.

²¹⁶ This list of symbolic elements is from Destro, *The case of Padania*, cit., p. 361.

²¹⁷ Destro, *The case of Padania*, cit., pp. 362-363.

Independence and Sovereignty of Padania” and the “Bill of Rights of Padanian Citizens”.²¹⁸

Also, in an ultimate symbolic act, the Italian national flag was lowered and replaced with the “Flower of the Alps”.²¹⁹ Similarly, the LN drafted also a Constitution for *Padania*,²²⁰ and later changed its name from “Northern League” to “Northern League for the Independence of Padania”.²²¹

Giordano interestingly notes the uniqueness of the LN’s political project in the fact that “it is not based in an area that has historic claims to nationhood”.²²² And this clearly distinguishes the LN from other regionalist or nationalist parties such as those located in Quebec, Catalonia, Scotland or Flanders, where claims to nationhood are historically well rooted. Furthermore, what distinguished the LN from other nationalist movements was the fact that this sense of *Padanian* nationalism was totally invented by the LN, and before it this idea of *Padania* was practically unknown.²²³ In other words, Giordano continues, the LN invented “an ethnicity for the North of Italy in order to justify its political claims for the protection of the economic interests of the region”.²²⁴ The *Padania* that the LN wanted to create as a separate state from Italy “has never existed geographically or historically”.²²⁵

²¹⁸ Destro, *The case of Padania*, cit., p. 367.

²¹⁹ Destro, *The case of Padania*, cit., p. 367.

²²⁰ Giordano, *Italian regionalism*, cit., p. 457.

²²¹ Giordano, *Italian regionalism*, cit., p. 458, citing Biorcio.

²²² Giordano, *Italian regionalism*, cit., p. 446; Giordano & Roller, *Catalan and ‘Padanian’ nationalism*, cit., p. 111; Hoppe, *Sub-state nationalism*, cit., pp. 17-18.

²²³ Giordano, *Italian regionalism*, cit., p. 468; Hoppe, *Sub-state nationalism*, cit., pp. 17-18.

²²⁴ Giordano, *Italian regionalism*, cit., p. 446; Giordano & Roller, *Catalan and ‘Padanian’ nationalism*, cit., p. 111; Hoppe, *Sub-state nationalism*, cit., pp. 17-18.

²²⁵ Giordano, *Italian regionalism*, cit., p. 446; Giordano & Roller, *Catalan and ‘Padanian’ nationalism*, cit., p. 112 and fn 4; Hoppe, *Sub-state nationalism*, cit., pp. 17-18.

As Destro observed, “the Italian republic had trouble finding a myth to oppose that put forth by the Lega, and (...) the founding fathers and political forces had, through their battles, been weakening the unitary state for decades”.²²⁶

In any event, the trajectory of *Padanian* nationalism quickly dissolved and at the time we are writing the same LN is not recurring to nationalist claims to support its political ideology. Yet, the events that led to the birth of this *Padanian* nationalism are worth describing since they testify to the fallacies of a form of nationalism that has no historical or cultural roots.

Conclusion

In this chapter, I have extensively discussed sub-state national literature to illustrate how mainstream scholarship usually defines nations within multinational states and federations and how the latter seek accommodation of their distinctiveness in the host state, at least in the Western world. I emphasized that, as a general rule, the uniqueness of nations rests in some linguistic, religious or cultural traits intimately interwoven with ancestral features whose historical roots are well grounded and accepted by most members of the community. This narrative served to introduce the very unique case of *Padanian* nationalism. In this specific case, what (allegedly) distinguishes *Padanians* from *non Padanians* is not a primordial attribute like language or religion; rather, the cleavage is mainly socio-economic. The attempts made by the LN to create *ex novo* a *Padanian* nationalist movement to justify the North-South divide, and thus the need for institutional action, were unsuccessful and evidenced all the difficulties that emerge when the nationalist sentiment does not arise naturally within the members of the community, but is created *ad hoc* by a political party to advance its own political agenda. The

²²⁶ Destro, *The case of Padania*, cit., p. 363

LN attempted to create a whole *Padanian* symbolism and also claim for autonomy (and eventually secession) based on ethno-national divisions between the North and the South. But the *Padanian* case study also emphasized the challenges encountered when applying the same theoretical pattern used for sub-state national societies to the reality of communities that are not *national* in this sense. In other words, *Padanian* nationalism failed also because the Italian North does not share the same characteristics as more historical sub-state nations in the West (i.e. Catalonia, Quebec, Basque Country, etc.), although a sentiment of (socio-economic) diversity undeniably exists. Consequently, even if *Padanian* nationalism was a sham, can we say that there is some relevance, or need, to recognize communities that perceive themselves as different, even if this difference is not of the *national* type?

My argument is that there is some relevance in recognizing these communities, and in fact I forged the expression political and socio-economic societies characterized by *non-national* differences to refer to them. Not falling within the description of sub-state national society, the Italian North (but the same is true for the South) can be seen as an example of *non-national* society or community. I believe that *non-national* differences exist both in federal and non federal states, thus they are more common than we might think. Yet, to the best of my knowledge, existing scholarship overlooks this specific reality and, consequently, this phenomenon is largely understudied. I will revert to this concept later in Part III of the thesis (chapters VII-IX), where I will try to offer a theorization of *non-national* differences, and how federal theory can help meeting their distinctive interests. For now, I will proceed to part II of my work on Italian regionalism.

PART II

THE ANALYTICAL FRAMEWORK

CASE STUDY: PAST, PRESENT AND FUTURE OF ITALIAN REGIONALISM

CHAPTER IV

HISTORY OF THE ITALIAN FEDERAL THOUGHT FROM THE *RISORGIMENTO* TO

THE 1948 CONSTITUTION

Introduction

Part II of this thesis (chapters IV-VI) entirely revolves around Italy, as it represents a case study of the past, present, and future of the Italian regional model. More specifically, in this chapter I will revisit the history of the Italian federal thought starting from the years preceding the unification of 1861, since federal ideas played an indirect role in forging the state emerged at the time, although the Fathers of the Kingdom of Italy repudiated a *pure* federation, seen as a vector of national disaggregation. I will also devote some time to delving into the federal philosophy of Carlo Cattaneo, a central character who contributed to the political and institutional debate of the time.

In fact, as it will be better illustrated in the remainder of the chapter, the relationship between Italy and federalism is an old one, and to fully understand the seeds of the constitutional reform of 2001¹ we cannot ignore the events that took place in Italy in the years that led to the political and geographical unification of the peninsula in the 1860s. While at that time Italy was nothing more than a fragmented territory composed of small states of various sort and subject to foreign domination (as famously stated, “Italy was hardly more than a geographical expression”²), federal ideas had already started to sprout in certain elite circles based in Milan,

¹ The 2001 constitutional reform will be detailed in Chapter V.

² R. Putnam, *Making Democracy Work. Civic Traditions in Modern Italy* (Princeton, NJ: Princeton University Press, 1993), p. 121, quoting the Austrian statesman Metternich [Putnam, *Making Democracy Work*]. See also U. Amoretti, “A New Look at Federalism. Italy Decentralizes” (2002) 13 *Journal of Democracy* 129 [Amoretti, *Italy Decentralizes*]; U. Amoretti, “Italy: Political Institutions and the Mobilization of Territorial Differences” in U.

mainly thanks to the visionary ideas of the Milanese intellectual Carlo Cattaneo, who was an inexhaustible source of federal ideas and solutions for Italy in its path towards unification. Regarded by many as one of the most versatile and multi-faceted intellectuals of the Italian *Risorgimento*, a great thinker, patriot, and political scientist, his writings cover a large array of subjects, including economics, history, sciences, literature, and philosophy.³ However, he is particularly renowned for his federal ideas and for his vision of a federal Italy within a larger European federation. Although the Italian *Risorgimento* was filled with many other key players such as Mazzini (who is nonetheless mentioned in the thesis), I chose to specifically focus on Cattaneo as he was a convinced advocate of local self-government and direct democracy, and always rejected the Italian unification project as realized in 1861.⁴

When Italy was eventually unified, however, the federal solution was dismissed, but certainly not ignored by the fathers of unification. The decision to opt for a centralized rather than a federal state was triggered by reasons that are still debated and have prompted some scholarly interest. In my opinion, the federalist wave that hit Italy in the early 1990s has some roots in Cattaneo's ideas as elaborated in the course of the XIX century. In retracing the intellectual history of the Italian federal thought since the time of *Risorgimento*, this chapter is divided in three main sections. In section I, I will focus on the pre-unitary period and how federalism was perceived at the time, with particular emphasis on the life and work of Cattaneo; section II will concentrate on the salient points of unified Italy and the centralist state that was

Amoretti & N. Bermeo, *Federalism and territorial cleavages* (Baltimore, MD: Johns Hopkins University Press, 2004), p. 182 [Amoretti, *Political Institutions*].

³ F. Sabetti, *The Search for Good Government. Understanding the Paradox of Italian Democracy* (Montreal, McGill-Queen's University Press, 2000), p. 55 [Sabetti, *Good Government*].

⁴ C. Cattaneo & N. Bobbio, *Stati Uniti d'Italia* (Roma: Donzelli, 2010), back cover [Cattaneo & Bobbio, *Stati Uniti d'Italia*]. Incidentally, it shall be noted that Cattaneo and Bobbio are not contemporary writers, so the abridged title only reflects the title of this edited book].

implemented, while section III will highlight the changes in regional terms brought by the 1948 constitution in the aftermath of WWII. In general terms, the objective of this chapter is to show that, although a minority view, federalism was not entirely foreign to Italian statesmen: rather, federal ideas somewhat help explaining the rationale behind certain institutional choices, although there has always been some confusion between political unity (sought by everyone) and administrative unity (not necessary to achieve the former).

Section I – Federalism in the pre-unitary period

1. The historical context

Italy has a longstanding tradition of deep political, socio-economic, and linguistic fragmentation. In fact, Eva explains how, over the last 2800 years, Italy “has had only 700-800 years of ‘unified’ history: 500-600 years under the Roman Republic and Empire, from the grant of the Roman citizenship to the Italic peoples (89 B.C.) to the fall of the Empire (476 A.D.) and the period since Unification (1861-1870)”.⁵

In the aftermath of the Congress of Vienna of 1815, Italy as a peninsula was divided in eight states: the Kingdom of Piedmont and Sardinia (under the rule of the House of Savoy); Lombardy-Venetia (a province of the Austrian Empire); the Dukedom of Modena and Reggio Emilia (under the rule of Frances IV); the Dukedom of Parma and Piacenza (administered by Mary Louise – the daughter of the Austrian Emperor and Napoleon’s widow); the Grand-Duchy of Tuscany (governed by Leopold II of Lorraine – nephew of the Austrian Emperor); the Princedom of Lucca (governed by the Bourbons); the Papal State (which included part of Emilia, the Romagna, Marche, Umbria, and Latium); and finally, the Kingdom of the Two Sicilies

⁵ F. Eva, “Deconstructing Italy: (Northern) Italians and their new perception of territoriality” (1999) 48 *GeoJournal* 102 [Eva, *Deconstructing Italy*].

But Italy was also heterogeneous linguistically. In fact, the Italian language, derived from Latin, was spoken only by intellectuals, while the majority of the population communicated almost exclusively in dialect, thus creating a true linguistic mosaic in the peninsula.⁸ With specific regards to linguistic divisions, Eva explains how Latin could not function as a homogenizing linguistic factor since “[a]fter the fall of the Roman Empire, [...] Latin became the property of the educated, the powerful, and of religious ceremony. It was used, recited, or repeated from memory, but was not understood by the vast majority of the population”.⁹

⁸ For an illustration of Italian linguistic variety, see *ex multis* A. L. Lepschy, G. Lepschy and M. Voghera, “Linguistic Variety in Italy” in Carl Levy, ed., *Italian Regionalism. History, Identity and Politics* (Oxford & Washington, DC: Berg, 1996), pp. 69 et seq. Linguistics professor Martin Maiden explains that “this lack of linguistic unity is a reflection of the lack of a politically unified Italy from the end of the Roman empire until the late nineteenth century”. See M. Maiden, “The Definition of Multilingualism in Historical Perspective” in A.L. Lepschy & A. Tosi, eds., *Multilingualism in Italy. Past and Present* (Oxford: Legenda/European Humanities Research Centre: in conjunction with the Modern Humanities Research Center, 2002), p. 32 [Maiden, *Multilingualism*]. Maiden, however, also points out that what is known as Italian was just one of the many dialects spoken in Italy (a Florentine variety of the Tuscan dialect). Therefore, Italian dialects are not variants of Italian, but of Latin, the latter being the “mother” of all dialects spoken in the peninsula, including Italian. And because the “common ancestor” is old, enormous differences exist between the various dialects (the greater the geographic distance, the greater the difference)(*ibid.*).

⁹ Eva, *Deconstructing Italy*, cit., p. 102. In the same line, Eva also explains how, at the time of unification, “less than three per cent of Italians spoke the Tuscan dialect – the basis of modern Italian – and many noble families preferred French as their main language. By 1955 still only some thirty per cent of the population spoke Italian habitually or often. And even in 1987, 28% of Italians still used some dialect as their everyday language, although with an acceptable level of proficiency in Italian” (*ibid.*). Maiden effectively depicts the situation in the following terms: “[i]n the world of counterespionage one technique of unmasking suspected foreign spies is (...) to throw a bucket of icy water over them while they are asleep, the language of their (...) protestations revealing their true country of origin. Yet if this sinister ruse had been (...) perpetrated on the entire population of Italy in 1860 (...) it is unlikely that anybody at all (...) would have woken up yelling in Italian. Camillo Cavour was famously incapable of sustaining a parliamentary address in Italian without lapsing into his native Piedmontese dialect (or French)(...)”. See Maiden, *Multilingualism*, cit., 31.

2. Federalism in the XIX century¹⁰

As already noted, federal ideas in Italy in the XIX century are almost entirely related to the work and thought of Carlo Cattaneo, whose federalism will be detailed in the next paragraphs. Cattaneo should not be regarded as the first European federalist, however. In Chapter I, I have retraced the intellectual history of federalism both in Europe and in North America and explained how Althusius is unanimously considered as the founding father of European federalism, although his work and ideas were ignored for centuries before being rediscovered in the XIX century.

In Chapter I, I also pointed out how it took quite some time for federal ideas to fully sprout. In fact, across Europe, the French Revolution and its ideals heavily contributed to strengthen the thought of a state characterized by central government and administration that allowed the regime to dominate politics,¹¹ and this ran counter all ideas of distribution of powers advocated by federalists. The impact of this model, which reached its highest peak with Napoleon, was so pervasive that more than half of the European population was administered pursuant to the centralism of the Napoleonic system, and even after the fall of Napoleon, the administrative institutions survived the breaking up of the empire.¹² The influence of Napoleonic ideas of a centralized nation state certainly played a role also in Italy in the years of unification, when it was opted for a centralized rather than a federal state.

¹⁰ Incidentally, these historical sections do not have the purpose of replicating the work of Ziblatt on the formation of Germany and Italy in the XIX century, as the methodology and scope of the research used by this scholar are different than mine. See D. Ziblatt, *Structuring the State. The Formation of Italy and Germany and the Puzzle of Federalism*, (Princeton, NJ: Princeton University Press, 2006).

¹¹ F. Sabetti, *Civilization and Self-Government. The Political Thought of Carlo Cattaneo* (Lanham, MD: Lexington Books, 2010), p. 125 [Sabetti, *Civilization and Self-Government*].

¹² Z. Ciuffoletti, *Federalismo e regionalismo: da Cattaneo alla Lega* (Roma: Laterza, 1994), p. 14 [Ciuffoletti, *Federalismo e regionalismo*].

Debates over the best institutional solution for Italy (specifically, whether to adopt a federal or a unitary model) began decades before the actual unification. For example, in 1796 the French administration based in Milan (at the time the territory was under Napoleonic control), issued a contest for the best essay on the ideal constitutional structure to adopt in Italy.¹³ The contest was won by the economist, intellectual and politician Melchiorre Gioia, an advocate of the centralized model; for him, a unitary solution was preferable, since it would give the possibility to overcome local disunity and alliances, it would help ensuring uniformity, and reducing inequalities by guaranteeing the same treatment for everybody.¹⁴ Conversely, in those same years the Swiss economist, historian and critic Sismonde de Sismondi suggested the Italian Republics of the Middle Ages as the basis of liberty, and federalism as the alternative option “to the pluralism of absolute states and as a tool to prevent war”.¹⁵

The end of the Napoleonic regime and the fall of the French democracy in Italy stimulated more discussions on the institutional assets to give to Italy.¹⁶ Federal solutions were advocated mainly by intellectuals living in Lombardy: they sought to maintain a Kingdom in the North within an Italian confederation of states.¹⁷ Italian liberal and catholic thinkers also dealt

¹³ Ciuffoletti, *Federalismo e regionalismo*, cit. p. 11.

¹⁴ Ciuffoletti, *Federalismo e regionalismo*, cit. p. 11; Sabetti, *Civilization and Self-Government*, cit., p. 151. It is worth mentioning that this perception of federalism as potential carrier of inequalities and inconsistencies has remained quite rooted in the Italian political thought even to these days.

¹⁵ N. Urbinati, “La federazione come politica di unità” preface to C. Cattaneo & N. Bobbio, *Stati Uniti d’Italia*, (Roma: Donzelli, 2010), p. x [Urbinati, *Federazione*]. This idea of federalism as a way to prevent wars is very recurrent. As noted in chapter I, the German philosopher Immanuel Kant (1724-1804) championed a project for perpetual peace offering a view of federalism as the negation of war and international anarchy, which prevented the development of the human being and the progress of history. See Ciuffoletti, *Federalismo e regionalismo*, cit., p. 8. See also I. Kant, *Perpetual Peace: A Philosophical Essay* (New York: Garland Pub., 1972). Among contemporary scholars, the idea of federalism as a way to peace has been thoroughly explored and elaborated by Daniel Elazar. See for example D. Elazar, *Federalism and a Way to Peace* (Kingston, ON: Institute of Intergovernmental Relations, Queen's University, 1994).

¹⁶ Ciuffoletti, *Federalismo e regionalismo*, cit., p. 17.

¹⁷ Ciuffoletti, *Federalismo e regionalismo*, cit., p. 18.

with the federal question. According to Antonio Rosmini (1797-1855), for example, a strongly centralized state would invade the spaces of civil society and of the Church; consequently, federal states were the organizations that better respected human beings and their associative forms (i.e. families, corporations, communes); furthermore, a federal solution would better respond to the peculiar geographic, political, and economic configuration of Italy.¹⁸

3. Carlo Cattaneo and his federal vision

I will now explore more in detail Cattaneo's federal thought. Carlo Cattaneo was born in Milan in 1801, at a time when the city was under French control. He received a law degree from the University of Pavia, but he never practiced the legal profession. More than a jurist, Cattaneo was an example of a true intellectual, captivated by all facets of knowledge. At his death in 1869, he left an extensive scholarly heritage ranging over a wide variety of topics, including for example languages and literature, history, philosophy, economics, politics, law, infrastructures, and chemistry.¹⁹ Cattaneo was also the main editor of *Il Politecnico*, a review he founded in 1839, which comprised articles on several areas of knowledge. In spite of this kaleidoscopic erudition, one of the subjects that most fascinated Cattaneo was federalism, and the constitutional model to ideally recommend for Italy undergoing unification.

As Bobbio explains, Cattaneo was a liberal, and his liberalism repudiated all forms of despotism and dictatorship; instead, he preferred a republican (rather than a monarchical) form of government, since he believed that monarchy could not be reconciled with peoples' liberties.²⁰

¹⁸ Ciuffoletti, *Federalismo e regionalismo*, cit., pp. 28-29.

¹⁹ Sabetti, *Good Government*, cit., p. 55.

²⁰ Cattaneo & Bobbio, *Stati Uniti d'Italia*, cit., p. 17. See also D. G. Rowley, "Giuseppe Mazzini and the democratic logic of nationalism" (2012) 18 *Nations and Nationalism* 50 [Rowley, *Giuseppe Mazzini*], where the author emphasizes how Mazzini, differently than Cattaneo, "was no liberal" and "opposed passionately the

Cattaneo in fact believed that the true nature of Italy was “republican”.²¹ As a liberal, he also advocated federalism, both for Italy and for each European state, in addition to federalism for Europe in general: his ultimate obsession was the creation of the so called “United States of Europe”.²² Cattaneo also defined federalism as “the law of the *peoples*” which should have its own place along with the “law of the *nation*” and the “law of *humanity*”.²³

In the federal theory suggested by Cattaneo, freedom assumed the utmost importance. In fact, in his view, the federal state was the only political formula that allowed the reconciliation between unity and freedom, the latter being construed as a double limitation of political power, both at national and international levels.²⁴ In fact, federalism (and consequently freedom) implied decentralization among the component units of a federation, as well as the subordination of these federal states to a supranational entity.²⁵ In 1851, Cattaneo explained in a letter that federalism is the “theory of freedom, the only possible theory of freedom”.²⁶ Italy could be truly free only within a free Europe. Cattaneo also used to say that “we will have true peace only with the United States of Europe”²⁷ and that the day that Europe could “become all similar to Switzerland or to America, the day when Europe would print on its forehead: United States of

philosophy of individual rights upon which liberalism is based”. In fact, Mazzini’s primary concern was “the wellbeing of the community” and not of the individual (*ibid.*).

²¹ C. Cattaneo, “Per la Sicilia” as reprinted in Cattaneo & Bobbio, *Stati Uniti d’Italia*, cit., p. 61.

²² C. Cattaneo, “Dell’insurrezione di Milano nel 1848 e della successiva guerra. Memorie” Lugano, 1849. The conclusions (*Corollarii*) of this book are partially reprinted in C. Cattaneo, *A nessun popolo più che all’italiano è concomitante la forma federale*, Antologia degli scritti politico-istituzionali con prefazione a cura di E. Papa (Torino: Celid, 2002), p. 44 [Cattaneo, *A nessun popolo*]. See also N. Bobbio, “Introduzione” in Cattaneo & Bobbio, *Stati Uniti d’Italia*, cit., p. 27.

²³ C. Cattaneo, “Il diritto federale” as reprinted in Cattaneo & Bobbio, *Stati Uniti d’Italia*, cit., p. 71.

²⁴ Ciuffoletti, *Federalismo e regionalismo*, cit. pp. 46-47; N. Bobbio, “Introduzione” in Cattaneo & Bobbio, *Stati Uniti d’Italia*, cit., pp. 18-19.

²⁵ Ciuffoletti, *Federalismo e regionalismo*, cit. pp. 46-47.

²⁶ Cattaneo & Bobbio, *Stati Uniti d’Italia*, cit., p. 19, quoting a letter sent to L. Frapolli on December 29, 1851.

²⁷ See also Ciuffoletti, *Federalismo e regionalismo*, cit., pp. 46-47; N. Bobbio, “Introduzione” in Cattaneo & Bobbio, *Stati Uniti d’Italia*, cit., pp. 26-27.

Europe: not only Europe would be spared from the mourning need of war, fires and gallows, but it would also make hundred thousand millions”.²⁸ Cattaneo insisted a great deal on this concept of freedom, intended not only as independence from foreign power, but also as a possibility to enjoy, within one state, institutions that allowed autonomy and capacity to decide.²⁹

Cattaneo’s federalism was also deeply rooted in his Lombard origins, and partially emerged from the political and historical conflict existing between Lombardy and Piedmont at the time.³⁰ Yet his federalism did not have any ethnic or geographical foundation: Cattaneo was certainly aware of the existence of very diverse laws and traditions across Italy and Europe, but for him federalism went beyond these differences to embody a “political idea of freedom”.³¹ In his view, a unitary state could only be authoritarian and despotic, because unity would suffocate autonomies, the free initiative, and freedom, while a plurality of political centers could protect and foster this freedom.³² Cattaneo used an effective metaphor to describe this: “[w]hen huge wealth and power and honors are collected in the hands of a central authority, it is too easy to build or acquire the majority within a single parliament. Freedom thus becomes only a name: everything is done as between masters and servants”.³³

Another critical element in Cattaneo’s federal theory based on freedom is family, intended as the primordial and fundamental level of domestic organization: in fact, in his view, the human being was at the centre of a series of “concentric circles” departing from the family

²⁸ C. Cattaneo, “Considerazioni al primo volume dell’Archivio triennale delle cose d’Italia dall’avvenimento di Pio IX all’abbandono di Venezia” published in 1850 and reprinted in Cattaneo, *A nessun popolo*, cit., p. 68.

²⁹ Ciuffoletti, *Federalismo e regionalismo*, cit., p. 41.

³⁰ A. Lepre, *Italia, Addio? Unità e disunità dal 1860 a oggi* (Milano, 1994), p. 25 [Lepre, *Italia? Addio*].

³¹ Urbinati, *Federazione*, cit., p. xx.

³² Cattaneo & Bobbio, *Stati Uniti d’Italia*, cit., p. 21.

³³ C. Cattaneo, “L’ordinamento del regno” as reprinted in Cattaneo & Bobbio, *Stati Uniti d’Italia*, cit., p. 84.

and expanding further and further up to local communities, the State and the nation.³⁴ This “vision of a progressive polity”, with a constant interplay among regions, cities and universities leading to “a shared truth and a common good”, certainly contrasted with the French unitary model so in vogue at the time.³⁵

a. Cattaneo’s federal moments

Cattaneo’s federal vision was not frozen in time, but continuously evolved to adjust to the historical events taking place at the time. In fact, the philosopher and historian Norberto Bobbio (1909-2004), who extensively studied Cattaneo’s life and work, identified three crucial phases of this intellectual evolution, which I am now going to analyze in detail.³⁶

The first federal moment coincided with Cattaneo’s younger age and ended with the insurrections of 1848.³⁷ At this stage, federalism mainly took a cultural nuance, since his political involvement was almost absent.³⁸ Because it was illegal in Lombardy to freely engage in political activism at that time, it is difficult to fully retrace Cattaneo’s political ideas during this first phase.³⁹ However, he opposed the despotic and centralized regime of the Habsburgs

³⁴ Sabetti, *Civilization and Self-Government*, cit., p. 93. In this sense, Cattaneo’s federal theory reminds that of Johannes Althusius, even if there is no evidence proving that Cattaneo knew Althusius. In any event, in his *Politica Methodice Digesta* of 1604, Althusius contended that the political organization should be structured in permanent associations such as families, *collegia*, cities, provinces, and then the state and the republic. Moreover, through these associations, citizens could function, be represented, and preserve their freedoms (see Chapter I).

³⁵ M. Thom, “City and language in the thought of Carlo Cattaneo” (2000) 5 *Journal of Modern Italian Studies* 7 [Thom, *City and language*].

³⁶ Cattaneo & Bobbio, *Stati Uniti d’Italia*, cit., p. 25.

³⁷ Cattaneo & Bobbio, *Stati Uniti d’Italia*, cit., p. 25. The Lombard insurrection of 1848 and the notorious Five Days of Milan erupted as a rebellion against the Austrian control over the territory.

³⁸ Thom, *City and language*, cit., p. 1.

³⁹ G. Salvemini, “Cattaneo’s Life and Work” in C. Lacaita & F. Sabetti, eds., *Civilization and Democracy. The Salvemini Anthology of Cattaneo’s Writings* (Toronto: University of Toronto Press, 2006), p. 56 [Salvemini, *Cattaneo’s Life*].

which, in his opinion, alienated citizens from institutions and prevented Lombardy to further develop.⁴⁰ While the region was already enjoying a relative well-being and prosperity, Cattaneo thought that Lombardy could continue to flourish only if the Austrian Empire would turn into a federation.⁴¹ At least in theory, the Kingdom of Piedmont could represent for Lombardy a viable alternative to Austria; however, Cattaneo believed that it mirrored the French unitary model too closely so at the end it was as despotic as the Austrians.⁴² Similarly, it was heavily bureaucratized and the clergy was very intrusive, therefore Cattaneo thought that these facts would not help to advance Lombardy's socio-economic development.⁴³ The Austrian federation recommended by Cattaneo was devised as the first step towards the full independence of Lombardy.⁴⁴ Federalism was thus broadly construed as an ideology to apply to European politics at large,⁴⁵ without talking about a federal solution for Italy yet.

With the failure of the 1848 uprisings and the return of Lombardy under direct Austrian control, Cattaneo's federalism entered a second phase, which would last until about 1860.⁴⁶ At this stage, Cattaneo's federal project shifted towards the foundation of an *Italian* federation

⁴⁰ Cattaneo, *A nessun popolo*, cit., p. 14. Cattaneo used to refer to Vienna (the capital of the Empire) as the "home of slavery." See C. Cattaneo, "Programma del Cisalpino" as reproduced in Cattaneo & Bobbio, *Stati Uniti d'Italia*, cit., p. 57; in another document, Cattaneo alleged that "any order that Austria can establish in Italy, is anarchy". C. Cattaneo, "Dell'insurrezione di Milano nel 1848 e della successiva guerra. Memorie" Lugano, 1849. The conclusions (*Corollarii*) of this book are partially reprinted in Carlo Cattaneo, *A nessun popolo*, cit., p. 35. See also Salvemini, *Cattaneo's Life*, cit., pp. 56-57.

⁴¹ C. M. Lovett, *Carlo Cattaneo and the politics of Risorgimento, 1820-1860* (The Hague, 1972), p. 30 [Lovett, *Carlo Cattaneo*]; N. Bobbio, "Introduzione" in Cattaneo & Bobbio, *Stati Uniti d'Italia*, cit., p. 26.

⁴² Thom, *City and language*, cit., p. 2; Salvemini, *Cattaneo's Life*, cit., p. 57.

⁴³ Cattaneo, *A nessun popolo*, cit., p. 14; Salvemini, *Cattaneo's Life*, cit., p. 57.

⁴⁴ Cattaneo & Bobbio, *Stati Uniti d'Italia*, cit., p. 25.

⁴⁵ Cattaneo & Bobbio, *Stati Uniti d'Italia*, cit., p. 25.

⁴⁶ Salvemini, *Cattaneo's Life*, cit., pp. 60 et seq.

composed of all formerly independent entities.⁴⁷ This federal scheme was viewed as the best way to achieve the Italian unification. Because the two only models of *classic* federation existing at the time were the United States (with the 1787 Constitution) and Switzerland (which had become a federation in 1848),⁴⁸ Cattaneo looked at these two schemes to elaborate a federal theory for Italy.⁴⁹ In fact, he used to say that “unity and liberty can be achieved only following the Swiss or US model”.⁵⁰

Cattaneo, however, was not only interested in pursuing political federalism, but he also promoted some sort of administrative federalism for Italy; in fact, he was convinced that excessive administrative centralization would lead to overwhelming bureaucracy.⁵¹ In a system that was too centralized, Cattaneo contended that it would be very difficult for a Piedmontese or for a Lombard to understand how to resolve certain issues arising in Sicily or Sardinia, and wondered how a Parliament would find the time to discuss all the questions that administrative and legislative centralization had taken away from the periphery to direct to the centre: only the creation of the highest number of local autonomies and locally elected public servants, while

⁴⁷ Cattaneo argued that “[e]ach Italian State shall remain free and sovereign (...) each population shall be at home, under the protection and supervision of the others. This is what America teaches us”. See C. Cattaneo, “Dell’insurrezione di Milano nel 1848 e della successiva guerra. Memorie” Lugano, 1849. The conclusions (*Corollarii*) of this book are partially reprinted in C. Cattaneo, *A nessun popolo*, cit., p. 37.

⁴⁸ The Canadian federation dates 1867, the German federation dates 1871, and the Australian one dates 1901.

⁴⁹ Sabetti, *Civilization and Self-Government*, cit., p. 131.

⁵⁰ C. Cattaneo, “Per la Sicilia” as reprinted in Cattaneo & Bobbio, *Stati Uniti d’Italia*, cit., p. 61. In another document, Cattaneo reiterates the idea that “the supreme condition of freedom was understood only by the Swiss and the Americans”. See C. Cattaneo, “Considerazioni al primo volume dell’Archivio triennale delle cose d’Italia dall’avvenimento di Pio IX all’abbandono di Venezia” published in 1850 and reprinted in Cattaneo, *A nessun popolo*, cit., p. 68.

⁵¹ Salvemini, *Cattaneo’s Life*, cit., p. 68.

reserving to the national parliament only issues of national concern, could effectively impede the formation of a bureaucratic caste.⁵²

The third moment of Cattaneo's federal thought begins after the unification of Italy under the Piedmontese, with the extension to the whole territory of the laws and bureaucratic apparatus of the Kingdom of Piedmont (the so called "Piedmontization" of Italy that Cattaneo so much abhorred)⁵³ and the dismissal of all federal solutions. With the failure of the federal project, from 1860 until his death Cattaneo focused exclusively on the idea of devolution and decentralization.⁵⁴ In other words, while still believing that federalism was the only possible way to unify Italy, he acknowledged the failure of this idea and worked towards some form of legislative and administrative autonomy of local self-entities.⁵⁵

b. The failure of Cattaneo's federal ideas

Many scholars have tried to identify the reasons for the defeat of Cattaneo's federal project for Italy. In reality, the failure of his ideas seems to be the result of a concatenation of different causes.

In the first place, scholars argue that Cattaneo's project contrasted with the widespread idea that federalism was synonymous with the disaggregation and weakening of the unity of the

⁵² Lacaita & Sabetti, *Civilization and Democracy*, cit., p. 69. See also C. Cattaneo, "Il diritto federale" as reprinted in Cattaneo & Bobbio, *Stati Uniti d'Italia*, cit., p. 71, where he alleges that "a parliament assembled in London will never satisfy America; a parliament assembled in Paris will never satisfy Geneva; laws discussed in Naples will not resurrect [...] Sicily and a Piedmontese majority [...] could not expect to have its provisions tolerable in Venice or Milan".

⁵³ See Thom, *City and language*, cit., p. 2; Salvemini, *Cattaneo's Life*, cit., pp. 63 et seq. In one essay, Cattaneo criticized this *Piedmontization* and said that "among all our peoples there is an awareness that the present system, conceived for one state and not for a plurality of united states, is not sufficient to satisfy their needs (...)." C. Cattaneo, "Prefazione", *Il Politecnico*, vol. IX, July 1860, as reprinted in Cattaneo, *A nessun popolo*, cit., p. 83.

⁵⁴ Cattaneo & Bobbio, *Stati Uniti d'Italia*, cit., p. 40.

⁵⁵ Urbinati, *Federazione*, cit., p.xxii.

Italian territory that was to be unified: in fact, Mazzini and other patriots strongly believed that a federal structure for Italy would lead to civil wars or to the conquest through external wars.⁵⁶ Because of this conviction, Cattaneo and federalists in general were accused of “municipalism” as the opponents of federal ideas (the majority at the time) construed federalism as the equivalent of destruction of the nation and antechamber of civil war.⁵⁷ This probably prevented a correct interpretation of federal theories, thus condemning Cattaneo’s project to defeat.⁵⁸ Similarly, Cattaneo was very critical towards the creation of a unitary state, therefore his federal vision was seen as inappropriate and dangerous, especially in light of the efforts that the Kingdom of Piedmont first, and the Kingdom of Italy later, was making to unify the territory.⁵⁹ Hence, Cattaneo was quickly labeled as the opponent of the unitary state, and the same concept of federalism assumed this negative connotation of anti-unitary and anti-state principle, one that perpetuated a feudal system of state-nations that the *Risorgimento* was trying to eliminate.⁶⁰ In

⁵⁶ Ciuffoletti, *Federalismo e regionalismo*, cit., p. 45.

⁵⁷ Ciuffoletti, *Federalismo e regionalismo*, cit., p. 45. See also D. Hine, “Federalism, Regionalism and the Unitary State: Contemporary Regional Pressures in Historical Perspective” in C. Levy, ed., *Italian Regionalism. History, Identity and Politics* (Oxford & Washington, DC: Berg, 1996), p. 110 [Hine, *Federalism & Regionalism*]; Rowley, *Giuseppe Mazzini*, cit., p. 50, where the author explains how Mazzini “hoped for a unified and independent Italy.”

⁵⁸ L. Colucci, *Carlo Cattaneo nella Storiografia: Studi sul Risorgimento e Federalismo dal 1869 al 2002* (Milano, 2004), p. 61 [Colucci, *Carlo Cattaneo*].

⁵⁹ Cattaneo & Bobbio, *Stati Uniti d’Italia*, cit., p. 50.

⁶⁰ Colucci, *Carlo Cattaneo*, cit., pp. 30-31. Cattaneo often complained that in Italy there was a lack of true understanding of federalism and, since it was frequently opposed to unity, it was construed as a principle of isolation and separation and, as such, running counters the ideals of *Risorgimento*. Furthermore, at the time, there was some confusion in the language adopted. In fact, the terms “federation” and “confederation” were used as synonyms, when in reality they refer to two very distinct things. See *ibid.*, p. 61. See also Cattaneo & Bobbio, *Stati Uniti d’Italia*, cit., p. 50. Even Salvemini (see *infra*) lamented that the federal idea was “perfectly unknown” in Italy even by those who were supposed to have a good knowledge of it (like constitutional law and administrative law scholars). See G. Salvemini, “L’autonomia comunale e il congresso di Parma” in G. Salvemini, ed., *Scritti sulla Questione Meridionale (1896-1955)* (Torino: Einaudi, 1955), p. 135 [Salvemini, *Autonomia comunale*].

fact, the supporters of the unitary and centralized state believed that the federal model advocated by Cattaneo for Italy would restore the “system of the old small republics”.⁶¹

According to scholars, another reason that helps explaining the failure of Cattaneo’s federal ideas for Italy was the way the Italian unification process was carried out: the urge to complete the national unification as soon as possible, and the need to quickly take advantage of the favorable international situation, pushed Cavour to proceed without delay to the annexation of the various territories of the peninsula (a process dubbed the “Piedmontization” of Italy, as recalled above).⁶² And even if Cavour was aware of the differences existing in Italy at the time, regions were feared for their anti-national forces and pressures they attempted to feed.⁶³ In other words, the creation of an *ex novo* federal state was perceived as an endeavor that required lots of time and energy, as well as economic and institutional efforts, in addition to training the personnel. And since there was no time to wait to implement all that, all territories were quickly annexed by the Kingdom of Piedmont, which was then renamed Kingdom of Italy.⁶⁴

Scholars also pointed out how Cattaneo’s federalism failed because it lacked an active organization and structure. It was certainly supported by intellectuals, but not by politicians or men of action,⁶⁵ and it was never elaborated into a theory of federalism that could be used by

⁶¹ C. Cattaneo, “Il diritto federale” as reprinted in Cattaneo & Bobbio, *Stati Uniti d’Italia*, cit., p. 71. In Italian, the expression used by Cattaneo was *sistema delle vecchie repubblicette*, the latter term being a diminutive and a pejorative of the word *repubbliche*. In particular, the patriot Giuseppe Mazzini was against this federal scheme since he believed that, by giving predominance to local autonomies, Italy would move back to the small republics of the middle ages (*ibid.*, fn. 14, p. 137).

⁶² Ciuffoletti, *Federalismo e regionalismo*, cit. pp. 49-50.

⁶³ Ciuffoletti, *Federalismo e regionalismo*, cit., pp. 49-50.

⁶⁴ D. Ziblatt, “Rethinking the Origins of Federalism: Puzzle, Theory, and Evidence from Nineteenth-Century Europe” (2004) 57 *World Politics* 86 [Ziblatt, *Rethinking the Origins of Federalism*].

⁶⁵ Cattaneo & Bobbio, *Stati Uniti d’Italia*, cit., p. 49.

jurists or politicians.⁶⁶ Cattaneo had a very negative idea of politics, seeing it as “hatred” and “perpetual fight”⁶⁷ and deliberately chose to keep himself far from power and political activism, convinced that he could better serve his country through his intellectual and critical research.⁶⁸ Certainly this did not help the federal cause for Italy, as there was nobody ready to support it politically. Thus, Cattaneo’s lack of political activism made Italian federalism an idea too abstract to be realized concretely.⁶⁹

Finally, beyond a general exposition of his federal thought, and despite his legal training, Cattaneo did not leave behind any written work dealing with specific “federal” issues, like division of powers or jurisdictional conflict, which would clearly condense in one single document his federal vision for Italy.⁷⁰ In other words, Cattaneo’s federal project was too indefinite and theoretical to be practically realized. Thus, the fathers of unification could not rely on any written document clearly detailing how federal Italy should be designed.

Incidentally, besides Cattaneo’s writings, it is worth mentioning a question that is commonly raised particularly in North America: whether the break out of the US civil war between 1861 and 1865 (practically, the same time frame as the Italian unification) could have played any deterrent role in the implementation of a federal model in the peninsula. This is a legitimate concern, especially because of the continuous cross-references to federalism as a vector of disruption of the unity of the state and carrier of internal fights. However, I do not believe that the particular unfolding of events in America played any major role in the

⁶⁶ Cattaneo & Bobbio, *Stati Uniti d’Italia*, cit., p. 30.

⁶⁷ Cattaneo & Bobbio, *Stati Uniti d’Italia*, cit., p. 43.

⁶⁸ Urbinati, *Federazione*, cit., p. xix.

⁶⁹ Cattaneo & Bobbio, *Stati Uniti d’Italia*, cit., pp. 49-50.

⁷⁰ Cattaneo, *A nessun popolo*, cit., p. 13.

(mis)fortunes of federalism in Italy. As I have already mentioned, after centuries of foreign conquest and division into small entities, the *Risorgimento* was the time when Italians began dreaming of a strong, unitary and unified state, in the tradition of other European sovereign state systems. Anything that would imply an internal division into smaller units (like a federation or a confederation) was seen by many as a return to a past where foreign domination and local fights were the rule. Cattaneo's ideas were probably too sophisticated and visionary to be fully grasped at the time.

In conclusion, it should be noted how, regardless of the defeat of Cattaneo's federalism, federal ideas found obstacles across all Europe, because of the presence of national states of ancient tradition, of multinational empires, and of strong social tensions within each state. Advocates of federalism were seen as conspirators in a model that was against the idea of nation, and therefore defenders of feudal *particularism* and of aristocratic privileges. The conspirators were therefore seen to work against the idea of "nation".⁷¹

Section II – The 1861 unification and the formation of the Italian state

1. The unification process: administrative unification

As anticipated above, the Italian state that was formed in the early 1860s mirrored the Piedmontese scheme which, of all pre-existing states, and also because of the geographical location in Northwestern Italy, "was the most affected by the centralist policies of Napoleonic

⁷¹ Ciuffoletti, *Federalismo e regionalismo*, cit., p. 10. While still quite strong in Italy, this perception has progressively faded in Europe (federal states were implemented in Germany, Austria and, most recently, Belgium), but they have never fully disappeared, and can be seen as the major obstacles to the creation of a *fully-fledged* federal Europe.

France”.⁷² Scholars have noted how, since at least 1858, “few inside Italy still held to federalism. Indeed, the democratic federalist argument was generally caricatured, with its adversaries depicting it as a narrow municipalism or [...] as neo-Guelph”.⁷³ Consequently, all federal or regional proposals were abandoned, so that “the united Italy of 1861 immediately took the form of a centralized system hostile to territorial specificities, impermeable to claims to autonomy, and intolerant of municipal and regional ‘particularism’”.⁷⁴

Similarly to what happened with the failure of Cattaneo’s federal vision, several reasons have been advanced to explain this centralistic choice. In the first place, the newly created Kingdom of Italy was facing too many problems that called for a centralized structure: banditry, regional separatism (coming from certain regions both in the North and in the South), the fear of jeopardizing a national unity that was still incomplete and precarious, and lack of trust for the self-governing capacities of local groups.⁷⁵ Also, the Piedmontese model was extended to the whole peninsula because of the poverty of the economic, social, and civil infrastructures and texture of most of the country, because of the incompetence and unreliability of peripheral administrative personnel, and because of the hostility of the rural masses towards the new legal

⁷² G. Grottanelli de’ Santi, “The Italian Variant of Federalism” in J. Fedtke & B. Markesinis, eds., *Patterns of Regionalism and Federalism. Lessons for the UK* (Oxford & Portland: Hart Publishing, 2006), p. 4 [Grottanelli, *The Italian Variant*].

⁷³ Thom, *City and language*, cit., p. 2. Incidentally, neo-guelphism was a cultural and political movement that emerged in Italy in the first half of the XIX century as an expression of liberal Catholicism. Vincenzo Gioberti was one of the main representatives of this movement: his vision was to create an Italian confederation of princes under the leadership of the Pope. See Enciclopedia Treccani, available online at: <http://www.treccani.it/enciclopedia/neoguelfismo/> (last checked: 10 October 2014).

⁷⁴ S. Fabbrini & M. Brunazzo, “Federalizing Italy: The Convergent Effects of Europeanization and Domestic Mobilization” (2003) 13 *Regional and Federal Studies* 104 [Fabbrini & Brunazzo, *Federalizing Italy*]. See also Hine, *Federalism & Regionalism*, cit., p. 110.

⁷⁵ Ciuffoletti, *Federalismo e regionalismo*, cit., p. 57.

system, as if most of the population did not identify itself, or recognize, the system implemented by the Piedmontese, and felt rebellious toward it.⁷⁶

The unification process was practically realized in two ways: first, with the “Laws for the administrative unification of the Kingdom”⁷⁷ of 1865, through which the Piedmontese administrative model was extended to the whole peninsula. In particular, while the territory was divided into municipalities and provinces, these local autonomies were subject to a rigid state control. In fact, mayors were appointed by the King, the provincial administration was governed by a “prefect” (e.g. a representative of the central government), and more in general the activities of local autonomies were subject to a series of controls.⁷⁸

2. The *Statuto Albertino*

Second, and most importantly, the *Statuto Albertino* inherited from Piedmont became the Basic Law that unified Italy. Cassese, a former judge of the Italian Constitutional Court, has explained the limitations of the extension of the *Statuto Albertino* to the whole country after unification.⁷⁹ First, the *Statuto Albertino*, which was in force in unified Italy from 1861 to 1944, owes the name to Carlo Alberto, the King of Piedmont-Sardinia who first granted it in 1848, in the aftermath of the European insurrections.⁸⁰ Accordingly, it pre-dates Italian unification, being the “constitution” of the Kingdom of Piedmont-Sardinia.⁸¹

⁷⁶ Ciuffoletti, *Federalismo e regionalismo*, cit., p. 58. See also P. Caretti & G. Tarli Barbieri, *Diritto Regionale*, 3rd ed. (Torino: Giappichelli, 2012), p. 14 [Caretto & Tarli Barbieri, *Diritto Regionale*].

⁷⁷ In Italian, *Leggi di unificazione amministrativa del Regno*: Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 14.

⁷⁸ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 14. In Italian, prefects are called *prefetti*.

⁷⁹ S. Cassese, “The Italian constitutional architecture: from unification to the present day” (2012) 17 *Journal of Modern Italian Studies* 2-9 [Cassese, *Italian constitutional architecture*].

⁸⁰ Cassese, *Italian constitutional architecture*, cit., p. 3.

⁸¹ Cassese, *Italian constitutional architecture*, cit., p. 3.

Also, the *Statuto* was not a real constitution since, as Cassese emphasizes, “[i]t had not been enacted by a popular elected assembly. It had not been put forth to the representatives of the people for their approval”.⁸² Nor had it achieved the legitimacy that comes from long use, as was the case in the British and British Imperial tradition. In other words, it was simply conceded, or granted, to the people by the King.⁸³ This implied that Italians “did not participate in the choice of the structure that its new State was to assume”⁸⁴ and this was in sharp contrast with what had happened in France and Germany a few years before.⁸⁵ Also, it was a “flexible” document, meaning that it did not contain any procedure detailing its amendment, so it could be modified by ordinary laws.⁸⁶

Another weakness was that the *Statuto Albertino* was not called *constitution*. In fact, the term *constitution* “evoked the French Revolution and traumatic events such as the constituent assemblies that were being convened in Paris in those very months”⁸⁷ so the term *statute* was seen as more “neutral” and “recalled Italian municipal tradition”.⁸⁸

Cassese also outlines that, out of the 84 articles that composed the *Statuto*, 22 sought to “ensure the King’s supreme position” while only 8 were “devoted to regulating [...] citizens’ rights and freedoms”.⁸⁹ Moreover, the *Statuto* did not identify the judiciary as one “form of a State power”; in fact judicial functions were granted to civil servants who enjoyed “special

⁸² Cassese, *Italian constitutional architecture*, cit., p. 3.

⁸³ The *Statuto Albertino* was in fact *octroyé* by the King. See Cassese, *Italian constitutional architecture*, cit., p. 3.

⁸⁴ Cassese, *Italian constitutional architecture*, cit., p. 4.

⁸⁵ Cassese, *Italian constitutional architecture*, cit., p. 4.

⁸⁶ Cassese, *Italian constitutional architecture*, cit., p. 3.

⁸⁷ Cassese, *Italian constitutional architecture*, cit., p. 3.

⁸⁸ Cassese, *Italian constitutional architecture*, cit., p. 3. With regards to this, Cassese also explains that the content of the *Statuto* drew inspiration from the French Charter of 1814, the French Constitution of 1830 as well as the Belgian Constitution of 1831.

⁸⁹ Cassese, *Italian constitutional architecture*, cit., p. 4.

guarantees”.⁹⁰ Finally, the *Statuto* did not indicate “which State body had policy-making powers and did not regulate the relationship between the legislative and executive branches”.⁹¹ In other words, “[u]nited Italy did not give itself a Constitution. Rather, it inherited the document” that had been in force in the Kingdom of Piedmont-Sardinia.⁹²

In any event, as one scholar noted, the Piedmontese model, initially adopted out of necessity, offered at least two reasons for being imposed to the rest of the peninsula: first, the Kingdom of Piedmont was the only regime existing in Italy at the time having some institutional and administrative structure and, second, the Piedmontese legislation was among the most advanced.⁹³

3. The debate over the creation of regions

I should however recall that, at least in theory, Cavour (one of the architects of the unification) and his Minister Minghetti were not opposed to the idea of creating a “regional” or “decentralized” scheme. In fact, they suggested the creation of “regions” as a new level of local government in addition to provinces and municipalities which already existed in the structure of the previous Kingdom of Piedmont and Sardinia, enjoying limited administrative functions.⁹⁴ As scholars explain, according to Minghetti, regions would “conciliate (...) the positions of those who wanted to preserve the great variety of trends, traditions, interests of those natural entities,

⁹⁰ Cassese, *Italian constitutional architecture*, cit., p. 4.

⁹¹ Cassese, *Italian constitutional architecture*, cit., p. 4.

⁹² Cassese, *Italian constitutional architecture*, cit., p. 3.

⁹³ Ciuffoletti, *Federalismo e regionalismo*, cit., p. 56. See also Ziblatt, *Rethinking the Origins of Federalism*, cit., pp. 70-98.

⁹⁴ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 13. See also A. Lyttleton, “Shifting Identities: Nation, Region and City” in C. Levy, ed., *Italian Regionalism. History, Identity and Politics* (Oxford & Washington, DC: Berg, 1996), p. 34 and also 38, where the author argues that, in the beginning, Cavour was “sympathetic to Lombard claims for the recognition of their distinctive traditions in administration”.

and of those who dreamt of an administrative unification”⁹⁵ without putting in jeopardy the “unity and forces of the nation”.⁹⁶ However, especially after the death of Cavour, these proposals were withdrawn, since there was a palpable fear that a regionalization would compromise the unity of the state which was still too fragile and needed to be solidified. Consequently, the Parliament approved Law 2248/1865 on the municipal and provincial unification of the Kingdom of Italy, thus modeling the Italian state over the French scheme.⁹⁷

4. The aftermath of Italian unification

For the reasons explained above, the years following the Italian unification presented complex and thorny issues. According to most scholars, one of the reasons explaining the weakness of the newly formed state was that it had not emerged as a result of a popular revolution, but it was imposed by the Piedmontese from the top.⁹⁸ Therefore, even after the unification, the various peoples that composed the mosaic of the Italian social fabric were the same as before, with their habits and vices, linked to local traditions, and with the same prejudices and aversion for those that came from other geographical areas.⁹⁹ Also, the new political class that came to power in Italy after unification (including both representatives from the North and the South) lacked administrative skills, and a massive number of inexperienced people invaded the administrative roles of the newly formed state.¹⁰⁰ And because there had been

⁹⁵ R. Bin & G. Falcon, *Diritto Regionale* (Bologna: Il Mulino, 2012), p. 69 [Bin & Falcon, *Diritto Regionale*].

⁹⁶ Bin & Falcon, *Diritto Regionale*, cit., p. 69.

⁹⁷ Bin & Falcon, *Diritto Regionale*, p. 69.

⁹⁸ Amoretti, *Italy Decentralizes*, cit., p. 129.

⁹⁹ Lepre, *Italia? Addio*, cit., p. 75. As Salvemini explained in 1900, forty years of unification only helped developing the aversion of the Northerners towards the Southerners and vice-versa, a situation that has never been fully resolved to this date. See G. Salvemini, “La Questione Meridionale e il Federalismo” in G. Salvemini, *Scritti sulla Questione Meridionale (1896-1955)* (Torino: Einaudi, 1955), p. 69 [Salvemini, *Questione Meridionale*].

¹⁰⁰ Lepre, *Italia? Addio*, cit., p. 31. I will revert to these ideas in chapter VI.

no popular revolution to swipe away the “old” political generation of bureaucrats, there was no replacement of the administrative class with new forces and ideas.¹⁰¹

When Cattaneo died in 1869, an economic and political crisis was plaguing the new State and the whole centralized system was seriously challenged, since it appeared weak and incapable to validly face all these problems.¹⁰² Since unification and for several decades afterwards, requests for increased decentralization were put on the table each time the liberal and centralized state created in 1861 was facing a crisis. From Stefano Jacini to Alberto Mario and Giuseppe Colombo, they all borrowed from Cattaneo’s ideas to propose some form of decentralization and increase local autonomy that would help revitalize the state. But this never resulted in a relaxation of the centralized form of state.¹⁰³

5. Gaetano Salvemini and the “Southern question”

Until the 1890s, the thrust towards a broader decentralization was essentially coming from the North of the country, mainly from Lombardy and Veneto, which were the most industrialized geographic areas and whose needs and priorities were different than those in the South, which was still anchored to a quasi-medieval and rural economy. But towards the end of the XIX century, decentralization became a driving force in the discussion of the *Questione Meridionale* (the Southern Question).¹⁰⁴ In fact, the idea that the economic and social backwardness of the South was caused by the strong centralism of the state, which implied the exploitation of the poorer South by the richer North, was becoming more and more popular, and

¹⁰¹ Lepre, *Italia? Addio*, cit., p. 32.

¹⁰² Ciuffoletti, *Federalismo e regionalismo*, cit., p. 60.

¹⁰³ Ciuffoletti, *Federalismo e regionalismo*, cit., pp. 61 et seq.

¹⁰⁴ Ciuffoletti, *Federalismo e regionalismo*, cit., p. 81. See also J. A. Davis, “Changing Perspectives on Italy’s ‘Southern Problem’” in C. Levy, ed., *Italian Regionalism. History, Identity and Politics* (Oxford & Washington, DC: Berg, 1996), pp. 53 et seq.

many considered the forced unification of 1861 under the Piedmontese rule a grave error for Italy. An increased autonomy for Southern regions, if not some form of federal arrangement, was thus proposed by many as the solution to the problems.¹⁰⁵ In some way, this can be seen as an initial attempt to theorize political and socio-economic societies characterized by *non-national* difference, a discussion that, as noted, will be resumed in part III of the thesis (chapters VII-IX).

Inspired by the work and ideas of Cattaneo, Gaetano Salvemini (1873-1957)¹⁰⁶ delved into the concept of “region” as an intermediate step between municipalities and (federal) state: all the work produced by Salvemini on the *Questione Meridionale* revolves around the idea that only a federal solution could solve the problems faced by the centralized state.¹⁰⁷ Salvemini recognized that federalism had the merit of favoring the education of rural masses, and the growth of political awareness among Southern farmers.¹⁰⁸ Also, a federal scheme would allow the creation of solidarity-based relationships among the various regions, inspired by a sense of justice which was guaranteed by the detachment of federal institutions from local issues.¹⁰⁹ Even corruption, so pervasive in that part of the state, was for him a “necessary consequence of

¹⁰⁵ Ciuffoletti, *Federalismo e regionalismo*, cit., pp. 83-84.

¹⁰⁶ Gaetano Salvemini was born in Apulia in 1873 and appointed professor of medieval and modern history at the University of Messina (Sicily) in 1901. He was also lecturer at King’s College in London on Italian foreign policy, and later moved to the United States, where he taught at Harvard University. See Lacaita & Sabetti, *Civilization and Democracy*, p. 46-48. See also F. Barbagallo, “Gaetano Salvemini e il problema del Mezzogiorno” (2007) 48 *Studi Storici*, pp. 636 and 639 [Barbagallo, *Gaetano Salvemini*].

¹⁰⁷ For Salvemini, federalism was the only administrative system that could eliminate all economic and financial unbalances between the various territories in Italy. See G. Salvemini, “La Questione Meridionale e il Federalismo” in G. Salvemini, *Scritti sulla Questione Meridionale (1896-1955)* (Torino: Einaudi, 1955), p. 86. See also Ciuffoletti, *Federalismo e regionalismo*, cit., pp. 87-88.

¹⁰⁸ Barbagallo, *Gaetano Salvemini*, cit., p. 640.

¹⁰⁹ Salvemini argued that in spite of the fact that a federal system would create a fragmented administrative model, Italians from the North and the South alike would still find in the central (federal) institutions a tribune to meet, as these bodies represent and protect the national unity both internally and externally. However, the conditions that allow this exchange of ideas would be completely different, as Northerners and Southerners would not fight one against the other to subtract the most financial quotas, but would be more ready to cooperate with each other. See Salvemini, *Questione Meridionale*, cit., p. 93. See also Colucci, *Carlo Cattaneo*, cit., p. 89.

centralism”.¹¹⁰ Furthermore, a federal solution for Salvemini would help resolving all issues of “distributive justice” between the North and the South.¹¹¹

Salvemini identified the centralized state as one of the three “illnesses” that afflicted Southern Italy, along with its “semi-feudal structure” that prevented the people to develop their skills at self-government and the economic oppression coming from the North.¹¹² Therefore, only a drastic reform of Italian politics would help solving the problem,¹¹³ so that the priority was to implement the following: (a) a federalist structure in the form of an “administrative autonomy”¹¹⁴ and (b) universal suffrage, so that rural and middle class masses, alike, could take part in public life.¹¹⁵ In fact, he was strongly convinced that federalism and universal suffrage

¹¹⁰ G. Salvemini, “La Questione di Napoli” in G. Salvemini, *Scritti sulla Questione Meridionale (1896-1955)* (Torino: Einaudi, 1955), p. 116 [Salvemini, *Questione di Napoli*].

¹¹¹ G. Salvemini, “Federalismo, Regionalismo, Autonomismo” in G. Salvemini, *Scritti sulla Questione Meridionale (1896-1955)* (Torino: Einaudi, 1955), p. 597.

¹¹² G. Salvemini, “La Questione Meridionale” in *Scritti sulla Questione Meridionale (1896-1955)* (Torino: Einaudi, 1955), pp. 32 et seq. [Salvemini, *La Questione Meridionale*]. With regards to the centralizing state, Salvemini argues that this illness is obviously common to all Italians, from North to South. As for the second illness, e.g. the economic oppression of the South, Salvemini argues that the fight between the industrialized North and the *Mezzogiorno* would never end unless and until the unitary state is replaced by a federation (*ibid.*, p. 34). See also Lacaita & Sabetti, *Civilization and Democracy*, cit., p. 30.

¹¹³ Salvemini, *La Questione Meridionale*, cit., pp. 36 et seq.

¹¹⁴ For Salvemini, as a result of this “radical administrative decentralization” the central government would exclusively deal with issues like foreign policy, monetary policy, civil, criminal and commercial legislation, while areas like education, army, police, and financial administration should fall within regional and municipal competences. See G. Salvemini, “Risposta ad un’inchiesta” in G. Salvemini, *Scritti sulla Questione Meridionale (1896-1955)* (Torino: Einaudi, 1955), pp. 62-63 [Salvemini, *Risposta*]. In another work, Salvemini reiterated these ideas and said that it is important to leave to municipalities and regional governments the control over roads, waters, judicial system, education, public order, and finance and in general all subjects not related to foreign policy, customs policy, monetary policy and items of very general interest. See G. Salvemini, “La Questione Meridionale e il Federalismo” in G. Salvemini, *Scritti sulla Questione Meridionale (1896-1955)* (Torino: Einaudi, 1955), p. 85 [Salvemini, *Questione Meridionale*].

¹¹⁵ G. Salvemini, “Nord e Sud nel partito socialista italiano” in G. Salvemini, *Scritti sulla Questione Meridionale (1896-1955)* (Torino: Einaudi, 1955), p. 153 [Salvemini, *Nord e Sud*]. See also G. Salvemini, “Il suffragio universale e le riforme” in G. Salvemini, *Scritti sulla Questione Meridionale (1896-1955)* (Torino: Einaudi, 1955), p. 232 [Salvemini, *Suffragio universale*]; G. Salvemini, “Socialisti e suffragio universale” in G. Salvemini, *Scritti sulla Questione Meridionale (1896-1955)* (Torino: Einaudi, 1955), p. 309 et seq.; G. Salvemini, “Che fare?” in G. Salvemini, *Scritti sulla Questione Meridionale (1896-1955)* (Torino: Einaudi, 1955), p. 350 et seq.; G. Salvemini,

could educate the masses, as in a federal system citizens are educated to public life, counting upon their own initiative and not on a distant authority.¹¹⁶

Salvemini believed that a renaissance of the South of Italy would be possible only through the dismantling of a centralized public administration. Yet, his encounter with Giustino Fortunato (an important intellectual of Southern origins) undermined his belief.¹¹⁷ In fact, for Fortunato, the backwardness of the south as opposed to the rest of the country was linked to its natural (i.e. physical, geographical, climatic) traits that would be difficult to change without some form of state intervention. Moreover, Fortunato believed that the remedy for ancient ills could not be federalism *per se*, since whatever form of local autonomy granted by the Italian state would pave the road for local elites to gain new powers of domination.¹¹⁸ Therefore, while still emphasizing the democratic value of autonomy, Salvemini started to believe that federalism

“Un pranzo alle otto di mattina” in G. Salvemini, *Scritti sulla Questione Meridionale (1896-1955)* (Torino: Einaudi, 1955), p. 400 et seq.

¹¹⁶ G. Salvemini, “La Questione di Napoli” in G. Salvemini, *Scritti sulla Questione Meridionale (1896-1955)* (Torino: Einaudi, 1955), p. 119 [Salvemini, *Questione di Napoli*].

Salvemini also noted that, in a federal system, sovereignty is exercised by the people, and masses are moved by their own daily interests to take charge of the local reality. This daily exercise of sovereignty allows educating the masses to politics and local administration. Conversely, in a unitary state, peoples just vote for a certain number of representatives that are unknown to them and who, eventually, enjoy immense powers. In order to vote well, it is necessary to have the finest education, something that only a few have. See Salvemini, *Questione Meridionale*, cit., p. 19. See also Lacaita & Sabetti, *Civilization and Democracy*, cit., pp. 30-31.

¹¹⁷ Salvemini himself was well aware of his change of attitude towards decentralization, to the point that, in 1949, he acknowledged that “[s]everal experiences have forced me to pour some water in my federalist wine of half a century ago.” See G. Salvemini, “Federalismo e regionalismo” in G. Salvemini, *Scritti sulla Questione Meridionale (1896-1955)* (Torino: Einaudi, 1955), p.612. He also admitted that, with time, he had lost his faith in the political capacity of people in the South (*ibid.*).

¹¹⁸ According to Salvemini, Fortunato (who was an ardent unitarist) did not believe that people in the South were equipped to emerge with their own strengths from the chasm in which they found themselves because of historical and natural events. He therefore hoped to receive help from the North. See G. Salvemini, “Federalismo e regionalismo” in G. Salvemini, *Scritti sulla Questione Meridionale (1896-1955)* (Torino: Einaudi, 1955), p.612.

as a system of government and process would take a longer time to realize, so it could best be promoted and implemented at different stages.¹¹⁹

Salvemini also believed that there was a lack of “sound current of federal thought” in Italy, and federalism had to be seen and adopted not just as an *objective*, but also as a *method* consistent with the ends being pursued.¹²⁰ However, even Salvemini had to eventually admit that, at the time of unification, a federal system of public administration would not be viable, because various parts of the country needed bureaucratic protection in order to be moved in the direction of modern civilization.¹²¹ Unfortunately, the central administration was deaf to these claims, and attempted to solve the problems plaguing the South with *ad hoc* interventions,¹²² a practice that would become very popular also in the decades to come.

In conclusion, it is possible to emphasize some differences and similarities between Cattaneo and Salvemini in the way they conceived federalism. For one thing, Cattaneo’s federal vision was more overarching, in the sense that his focus was not limited to Lombardy or Italy, but extended to the rest of European countries and to a “United States of Europe” project. Conversely, and because of his research interests, Salvemini focused more on the South of Italy and on the benefices that a federal pattern would bring to that specific area of the country. Another difference is that, for Cattaneo, federalism was the vector to achieve freedom

¹¹⁹ Lacaita & Sabetti, *Civilization and Democracy*, cit., p. 35.

¹²⁰ Lacaita & Sabetti, *Civilization and Democracy*, cit., p. 36. In fact, Salvemini argued that “it is not enough that the federal idea be affirmed in the pages of a book; it shall become part of the political program of democratic parties”. See Salvemini, *Questione Meridionale*, cit., p. 106.

¹²¹ Lacaita & Sabetti, *Civilization and Democracy*, cit., p. 42.

¹²² Drawing from Fortunato, Salvemini admitted that all “special” laws for the *Mezzogiorno* were nothing but “sterile deceit” and that special laws for the South should be replaced by an “Italian campaign” and by a “general political reform” as any general reform would benefit the South. See G. Salvemini, “Le leggi speciali” in G. Salvemini, *Scritti sulla Questione Meridionale (1896-1955)* (Torino: Einaudi, 1955), p.589. See also Ciuffoletti, *Federalismo e regionalismo*, cit., p. 91.

(federalism as a “theory of freedom”), both for the individual and for the public sphere, whereas for Salvemini federalism was the vector for the rural masses in the South to emancipate and become more active (and, consequently, less passive) to the events directly affecting them and, more in general, for the emancipation of the South. However, this last difference bears also an important similarity, in the sense that, for both, federalism is seen as a way to enhance the human being both as individual and as part of a larger community.

6. Catholic Church and local self-government

Also some Catholic thinkers of the time favored some form of regional decentralization. Pursuant to the teaching contained in the encyclical *Rerum Novarum* authored by Pope Leo XIII in 1891, they advocated a greater autonomy for civil society.¹²³ The Sicilian priest Don Luigi Sturzo (1871-1959) was the promoter of a regional administrative decentralization for Sicily and for the whole South, so that this part of the country could find its own way to overcome the economic and social crisis that was afflicting it.¹²⁴ Sturzo’s regionalist movement needed to meet certain requirements.¹²⁵ First, regional institutions should be elected by universal and direct suffrage, and not appointed by the central government. Second, the regional entity should not become a state entity with delegated powers from the centre, but should be autonomous within the limits of the laws. Third, regional institutions should enjoy a certain fiscal autonomy, in the sense that they should be able to levy their own taxes, manage the funds, and be able to have regulatory and legislative powers to legislate locally and within its territory.¹²⁶ In this way,

¹²³ Ciuffoletti, *Federalismo e regionalismo*, cit., p. 93.

¹²⁴ Ciuffoletti, *Federalismo e regionalismo*, cit., p. 94.

¹²⁵ Bin & Falcon, *Diritto regionale*, cit., p. 70, citing an excerpt of Sturzo’s speech given at the third national congress of the People’s Party in 1921.

¹²⁶ Bin & Falcon, *Diritto regionale*, cit., p. 70, citing an excerpt of Sturzo’s speech given at the third national congress of the People’s Party in 1921.

regions would not be simple decentralized peripheral entities, but autonomous administrative units.¹²⁷

7. The first post-war period

More than federal proposals, regional and autonomy petitions constantly resurfaced each time there was a situation of crisis in the relationship between the state and the society, not only within Italy, but at European level as well. For example, after the outbreak of WWI, between 1913 and 1914, the presentiment of an accelerating war revived the federal discourse as the ideal mean to defuse nationalist and imperialist discourses.¹²⁸ And even if several thinkers and intellectuals in the past (i.e. Kant and Cattaneo) had already advocated it, the idea of a European federation was becoming more and more popular as a way to peacefully settle the often conflicting relationships among European nation states. Most thinkers of the time agreed on the fact that post-war Europe had to be rebuilt pursuant to economic integration and with the abolition of internal customs barriers.¹²⁹

In addition to this European aspect, the first postwar period saw a renewal of federal (or regional) ideas in Italy too. The impact of this disastrous war, and the consequent rise of fascism and dictatorship, led many intellectuals to question the structure and origins of the Kingdom of Italy during *Risorgimento*.¹³⁰ However, several historians of the post-war period were convinced that the political disasters occurred throughout the whole XX century were the foreseeable and inevitable consequence of some flaws or imperfections of the liberal state established throughout

¹²⁷ Bin & Falcon, *Diritto regionale*, cit., p. 70, citing an excerpt of Sturzo's speech given at the third national congress of the People's Party in 1921.

¹²⁸ Ciuffoletti, *Federalismo e regionalismo*, cit., p. 101.

¹²⁹ Ciuffoletti, *Federalismo e regionalismo*, cit., pp. 102-105.

¹³⁰ Lovett, *Carlo Cattaneo*, cit., p. 2.

the XIX century.¹³¹ Moreover, the annexation to Italy of new territories having diverse administrative traditions (i.e. Trentino-Alto Adige, Trieste, Gorizia, Istria, Carinzia, and Carniola) was another reason why mild federal-oriented forces timidly appeared in the country.¹³²

Another thorny issue that Italy was facing in the first postwar period was bureaucracy. In fact, since unification, Italy had transformed into a highly complex bureaucratic system which was hindering the development of the territory, since each region or geographic area (particularly the newly annexed territories) was confronted with diverse problems that a strongly centralized and bureaucratic system could not efficiently face.¹³³ Accordingly, claims for increased autonomy were raised by the newly annexed regions and by the linguistic and minority cultural groups, as well as by those regions in the South (mainly, Sicily and Sardinia) where there was a resurgence of autonomy movements.¹³⁴

Yet, while the time seemed ripe for a reform in regional/federal terms, the advent of fascism in the 1920s suffocated these programs, suppressing all autonomous claims and reiterating the authority of a strong centralized state.¹³⁵ In fact, the 1926 fascist reform deeply changed the functioning of municipalities and provinces, as all municipal administrative powers were concentrated in the hands of a *podestà* (an official appointed by the king),¹³⁶ with a parallel

¹³¹ Lovett, *Carlo Cattaneo*, cit., p. 3.

¹³² Ciuffoletti, *Federalismo e regionalismo*, cit., p. 113.

¹³³ Ciuffoletti, *Federalismo e regionalismo*, cit., p. 115.

¹³⁴ Ciuffoletti, *Federalismo e regionalismo*, cit., p. 117.

¹³⁵ Ciuffoletti, *Federalismo e regionalismo*, cit., p. 135; Fabbrini & Brunazzo, *Federalizing Italy*, cit., p. 104.

¹³⁶ Bin & Falcon, *Diritto regionale*, cit., p. 70.

extension of the powers of the *prefetto*, so that the latter became “the interpreter within the province of the political program of the State”.¹³⁷

8. The post-fascism period

A significant, yet minority, part of the anti-fascism culture embraced federal and autonomy ideas until the time called *Resistenza*,¹³⁸ and even later, within the *Assemblea Costituente* (Constituent Assembly).¹³⁹ Specifically, some bordering regions had opposed fascism and the Mussolini’s regime (particularly, his “Italianization” policies) and there was a genuine threat that these regions might seek independence.¹⁴⁰ However, until WWII Italy retained a very centralized constitutional system, with ministers based in Rome and “local peripheral structures on a hierarchical basis”¹⁴¹ where each province had a prefect vested with considerable powers to execute the orders coming from the central government, similar to the French system.¹⁴²

On a side note, with the end of fascism most Italian federalists preferred to concentrate on the supranational, rather than on the national, aspect of federalism.¹⁴³ As founders of the Italian and European federal movement, Altiero Spinelli (1907-1986) and Ernesto Rossi (1897-1967)

¹³⁷ Bin & Falcon, *Diritto regionale*, cit., p. 70.

¹³⁸ *Resistenza* (Italian Resistance movement) is a generic term that refers to those broad military and political movements formed in Italy after September 8, 1943 (date of the armistice between Italy and the Allied forces which were occupying the South of Italy at the time), and opposed to nazi-fascism.

¹³⁹ As will be explained later in the chapter, the Constituent Assembly for Italy was a parliamentary chamber that existed and worked between June 1946 and January 1948. The main task of the Assembly was to compile a Constitution that would replace the old *Statuto Albertino* for the newly created Republic of Italy, after the defeat of the Kingdom of Italy after WWII and the referendum of June 2, 1946. See also Ciuffoletti, *Federalismo e regionalismo*, cit., p. vii; Bin & Falcon, *Diritto regionale*, cit., pp. 72-73.

¹⁴⁰ W. Hopkins, *Devolution in Context: Regional, Federal and Devolved Government in the Member States of the European Union* (London-Sydney: Cavendish Publishing Ltd, 2002), p. 102 [Hopkins, *Devolution in Context*].

¹⁴¹ Grottanelli, *The Italian Variant*, cit., p. 4.

¹⁴² Grottanelli, *The Italian Variant*, cit. p. 4.

¹⁴³ Ciuffoletti, *Federalismo e regionalismo*, cit., p. vii.

drew inspiration from Cattaneo for their political ideas.¹⁴⁴ Their *Manifesto di Ventotene*,¹⁴⁵ authored in 1941 (but revised in 1944), is regarded by many as “the most important theoretical and planned contribution expressed by Italian federalism since Cattaneo”.¹⁴⁶ In the *Manifesto*, they criticized the system of “nation-states” that was, in their opinion, the principal cause of wars.¹⁴⁷ In fact, they alleged that “[t]he absolute sovereignty of national States has led to the desire of each of them to dominate, since each feels threatened by the strength of the others”.¹⁴⁸ Therefore, the first thing to do was “the definite abolition of the division of Europe into national, sovereign States”.¹⁴⁹ They also fostered the “disappearance of some of the most important dynasties” which represent “a serious obstacle to the rational organization of the United States of Europe, which can only be based on the republican constitution of federated countries”.¹⁵⁰ A “European Federation” became for them “the only conceivable guarantee ensuring that relationships with American and Asian peoples will work on the basis of peaceful co-operation”.¹⁵¹ However, they continued, in order to have a solid federal State, it would be required to have a “European armed service instead of national armies” and it would be necessary for the new organization to have “sufficient means to see that its deliberation for the maintenance of common order are executed in the individual federal states, while each State will

¹⁴⁴ D. Karmis & W. Norman, eds., *Theories of Federalism. A Reader* (New York: Palgrave, 2005), p. 191 [Karmis & Norman, *Theories of Federalism*]. Pages 199-202 contain excerpts in English of the *Manifesto*.

¹⁴⁵ Spinelli and Rossi wrote the document while interned in Ventotene, a small island off the shores of Latium, in central Italy. Karmis & Norman, *Theories of Federalism*, p. 192.

¹⁴⁶ Ciuffoletti, *Federalismo e regionalismo*, cit., p. vii. More in general, all European federalists looked at the federal work of Carlo Cattaneo to elaborate ideas for a unified Europe.

¹⁴⁷ Karmis & Norman, *Theories of Federalism*, p. 192.

¹⁴⁸ A. Spinelli and E. Rossi, “The 1944 Ventotene Manifesto”. English excerpts available in Karmis & Norman, *Theories of Federalism*, p. 199 [*Manifesto*]. The original (Italian) version of the document can be found online at http://www.sinistraliberale.org/files/Manifesto_di_Ventotene_1944.pdf.

¹⁴⁹ *Manifesto*, cit., p. 200.

¹⁵⁰ *Manifesto*, cit., p. 200. The use of *United States of Europe* directly draws from Cattaneo.

¹⁵¹ *Manifesto*, cit., p. 201.

retain the autonomy it needs for a plastic articulation and development of political life according to the particular characteristics of the various peoples”.¹⁵²

An enduring riddle: why do states emerge as federations?

Before moving to the next section, which will illustrate the formation of a regional state in Italy in the second post-war period, I would like to pause for a moment and reflect upon the reasons why states emerge as federations. This is not a novel question, since it is a riddle that has troubled the minds of scholars across the world for decades. What I would like to do now is to see if the trajectory of the Italian state formation can be situated within the context canvassed by the literature on the subject.

In his work entitled *Federal Government*, Kenneth Wheare presents his readers with this question: what are the circumstances that favor the adoption of a federal government?¹⁵³ His first suggestion is that there must be a desire on the constituent units “to be under a single independent government for some purposes” coupled with a desire “to retain or to establish independent regional governments in some matters”.¹⁵⁴ The desire to unite can emerge from a variegated array of reasons, which Wheare identifies in the need for common defense or for independency from foreign powers; economic advantages for the union; geographical vicinity; similarity of political institutions.¹⁵⁵ Also, among the reasons that might produce a desire to separate for certain purposes, Wheare indicates a previous history (or experience) of independence among the constituent units of a federation and, consequently, their divergent

¹⁵² *Manifesto*, cit., p. 201.

¹⁵³ K. Wheare, *Federal government* (Oxford: Oxford University Press, 1963), p. 35 [Wheare, *Federal government*].

¹⁵⁴ Wheare, *Federal government*, cit., pp. 35-36.

¹⁵⁵ Wheare, *Federal government*, cit., p. 37.

economic interests, which would call for more local power, geographic factors (vastness of the territory, presence of mountain barriers, etc...), and divergence of nationality.¹⁵⁶

However, in addition to this “desire” a second element that would favor the creation of a federal government is identified by Wheare as the capacity to “work” or “operate” the system desired (e.g. independent regional governments and independent general government).¹⁵⁷ But which are the necessary conditions to support the capacity of implementing a federal government? A very important condition is identified by Wheare in the similarity of social and political institutions.¹⁵⁸ Also, the previous experience of independent and distinct governments creates not only a desire but also a capacity of independently administering certain aspects inside the union.¹⁵⁹ In fact, an already existing system of government allows the single composite units to effectively carry out their functions.¹⁶⁰ This aspect is probably similar to what Elazar has referred to as “federal culture” or “thinking federal” as I noted in Chapter II.

The aspect just explained has probably played a key role in the decision not to proceed with a federal scheme in Italy in the wake of unification. With the exclusion of certain territories in the North, which had a rather established tradition of self-government (specifically, the Lombardy-Venetia and Piedmont), the rest of the peninsula had been for decades under the yoke of absolute monarchies which had tyrannically dominated the territory and subjugated the population to the dominion of a foreign ruler, without creating infrastructures or administrative

¹⁵⁶ Wheare, *Federal government*, cit., pp. 40-41.

¹⁵⁷ Wheare, *Federal government*, cit., p. 36.

¹⁵⁸ Wheare, *Federal government*, cit., p. 45.

¹⁵⁹ Wheare, *Federal government*, cit., p. 48.

¹⁶⁰ Wheare, *Federal government*, cit., pp. 35-36.

and political institutions which could help the development of skills of self-government, a gap that has not been fully filled to this date.

Section III – The 1948 constitution and the regional state

1. The Constituent Assembly

In the aftermath of WWII, on 2 June 1946 Italians were called to vote on a referendum to choose between a republican and a monarchical form of State. They were also called to select the members of the Constituent Assembly. The republican front won the confrontation by a slight majority, so monarchy was rejected and a republican form of State was implemented.¹⁶¹

One of the main objectives of the Constituent Assembly was to create a completely new democratic and republican state which valued local self-government and individual values. Once again, a discussion ensued on the option of creating regions.¹⁶² However, there was no uniformity of positions on this issue, and members of the Constituent Assembly were divided on the structure to give to the newly-born Republic. On one side, there were the Communists and Socialists, who required “strong State intervention and planned nationalizations in the economic field”.¹⁶³ Christian Democrats, on the other side, advocated ideals of “freedom and dignity” and favored a development of the “territorial dimension” of the peoples, among other things.¹⁶⁴ The

¹⁶¹ C. Pinelli, “The 1948 Constitution and the 2006 Referendum: Food for Thought” (2006) 2 *European Constitutional Law Review* 330 [Pinelli, *Food for Thought*]. Incidentally, it is worth noting that, in this occasion, Italian women were allowed to vote for the first time.

¹⁶² Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 15.

¹⁶³ Pinelli, *Food for Thought*, cit., p. 330; Hopkins, *Devolution in Context*, cit., p. 102; Bin & Falcon, *Diritto regionale*, cit., pp. 72-73.

¹⁶⁴ Pinelli, *Food for Thought*, cit., p. 330; Hopkins, *Devolution in Context*, cit., p. 102; Bin & Falcon, *Diritto regionale*, cit., pp. 72-73.

debate also focused on issues such as the extent of legislative powers enjoyed by the regions or the opportunity to grant them financial autonomy.¹⁶⁵

It should also be recalled that special forms of decentralization had already been implemented in certain territories in the years preceding the Constituent Assembly (1944-1945).¹⁶⁶ This situation was dictated by the fact that some areas of the territory (particularly, Sicily and Sardinia) were islands and therefore geographically disadvantaged, and/or were characterized by a certain social and economic backwardness and, probably more importantly, were marked by the presence of strong separatist or autonomist pushes (like in the case of Valle d'Aosta).¹⁶⁷ For this reason, in 1944, Sicily and Sardinia were provided with temporary institutions, such as a high commissioner (nominated by the Prime Minister) along with a regional chamber representative of the various political, economic, union and cultural organizations.¹⁶⁸ However, with specific regards to Sicily, this solution was not sufficient, and in 1946 the *statuto* of Sicily was approved, recognizing ample legislative powers for this region.¹⁶⁹ Similarly, in order to face the linguistic (but also geographical and economic) conditions of the people living in Valle d'Aosta, in 1945 the territory was transformed into an “autonomous district” enjoying particular forms of administrative autonomy in specific subject matters.¹⁷⁰

¹⁶⁵ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 16. See also S. Mangiameli, “The Regions and the Reforms: Issues Resolved and Problems Pending” in S. Mangiameli, ed., *Italian Regionalism: Between Unitary Traditions and Federal Processes* (Cham: Springer, 2014), p. 2 [Mangiameli, *Regions and Reforms*].

¹⁶⁶ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 16.

¹⁶⁷ Bin & Falcon, *Diritto regionale*, cit., p. 71.

¹⁶⁸ Bin & Falcon, *Diritto regionale*, cit., p. 71.

¹⁶⁹ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., pp. 16-17; Bin & Falcon, *Diritto regionale*, cit., p. 71; A. Ferrara & D. Scarpone, “The Special Regions and the Autonomous Provinces” in S. Mangiameli, ed., *Italian Regionalism: Between Unitary Traditions and Federal Processes* (Cham: Springer, 2014), p. 114 [Ferrara & Scarpone, *Special Regions*]; Mangiameli, *Regions and Reforms*, cit., p. 2.

¹⁷⁰ Bin & Falcon, *Diritto regionale*, cit., p. 72; Ferrara & Scarpone, *Special Regions*, cit., p. 114. Valle d'Aosta/Vallée d'Aoste is a region characterized by the presence of French speaking minorities. Salvemini was particularly fond of the autonomy granted to Valle d'Aosta, and contended that the same autonomy granted to this

Finally, in 1946, thanks to the so-called “De Gasperi-Gruber” understanding, special conditions of autonomy were granted by the Italian and Austrian governments to the German speaking communities living in the province of Bolzano.¹⁷¹

2. The 1948 Constitution. The regional state

A new Constitution for Italy was implemented in 1948 creating a regional state¹⁷² – a compromise between centralism and federalism – with the aim to remedy the excessive centralization existed until that moment.¹⁷³ As one scholar argued, this Constitution was “the product of hard times, the most genuine reaction to a moral disaster. It was also written “in a vacuum” as, differently than Japan and West Germany, “Western Allies did not intervene in Italy’s decision-making process”.¹⁷⁴

region-province should be extended to the rest of Italy. See G. Salvemini, “Federalismo e regionalismo” in G. Salvemini, *Scritti sulla Questione Meridionale* (Torino: Einaudi, 1955), p. 608.

¹⁷¹ Bin & Falcon, *Diritto regionale*, cit., p. 72; Ferrara & Scarpone, *Special Regions*, cit., p. 114.

¹⁷² The 1948 Constitution of Italy is seen by many as one of the “best products of 20th century’s European constitutionalism”. See Pinelli, *Food for Thought*, cit., p. 331.

¹⁷³ Ciuffoletti, *Federalismo e regionalismo*, cit., p. 166. As I noted in chapter II, the Italian regional model of 1948 substantially borrowed from Spanish regionalism and German federalism: A. D’Atena, “Between Spain and Germany: The Historical Models of Italian Regionalism” in S. Mangiameli, ed., *Italian Regionalism: Between Unitary Traditions and Federal Processes* (Cham: Springer, 2014), pp. 67-68 [D’Atena, *Historical Models of Italian Regionalism*].

¹⁷⁴ Pinelli, *Food for Thought*, cit., p. 331. As Gorlani further explains, “the Italian constitution shall be read in light of the Universal Declaration of Human Rights [...]; of the European Convention on Human Rights [...]; of the German Constitution of 1949; of the French Constitution of 1946. In other words, in the years immediately following WWII and after the conclusion of a period of thirty years that saw two world wars, the explosion of Nazi and fascist dictatorships and the terrible tragedy of the Holocaust, the entire world had decided to turn the page, engraving in the bronze of the constitutional tables the commitment of peoples, of all peoples, not to oppress fundamental human rights, to consider human freedoms as inalienable endowment of every society and every country in the world”. See M. Gorlani, “I cattolici e la costituzione: un confronto che continua” (2008) *Forum costituzionale*, available online at http://www.forumcostituzionale.it/wordpress/images/stories/pdf/documenti_forum/paper/0091_gorlani.pdf [Gorlani, *Cattolici e costituzione*].

With the postwar constitution, Italy was divided into twenty regions, five of them having special status, while the remainders were considered ordinary regions. As noted by D’Atena, the same term “region” used to identify the territorial units so created was a direct consequence of the influence of Spanish regionalism, although this *nomen* was already used at the time of unification, as observed above.¹⁷⁵ Pursuant to article 116 Const., these five regions enjoyed “particular forms and conditions of autonomy, according to their *statuti* adopted with constitutional law”.¹⁷⁶ The five special regions are: Friuli Venezia Giulia, Sardinia, Sicily, Trentino-Alto Adige/Südtirol and Valle d’Aosta/Vallée d’Aoste. As anticipated above, the rationale behind this special status rested on the fact that these regions were either islands (like Sicily and Sardinia) with strong (and more or less recent) separatist or autonomist movements,¹⁷⁷ or “ethnically-mixed border areas” with linguistic minorities and also separatist tendencies.¹⁷⁸ Their special status allowed them to have “immediate autonomy reflective of comparative geographic isolation, prior legislative and administrative self-sufficiency, and linguistic minorities”.¹⁷⁹

¹⁷⁵ D’Atena, *Historical Models of Italian Regionalism*, cit., p. 68. Readers will recall that Spanish regionalism played a significant role in the formation of the Italian state in 1948, as explained in chapter II.

¹⁷⁶ For a more detailed analysis of article 116 (pre and post 2001 reform), see *infra*. D’Atena argues that also the creation of the five special regions builds upon the Spanish regional experience. See D’Atena, *Historical Models of Italian Regionalism*, cit., p. 68.

¹⁷⁷ V. Ottaviani, “Tendances dans l’évolution des régions italiennes à statut spécial” (1971) 37 *International Review of Administrative Sciences* 28 [Ottaviani, *Évolution des régions italiennes*].

¹⁷⁸ M. Rogoff, “Federalism in Italy and the Relevance of the American Experience” (1997) 12 *Tulane European & Civil Law Forum* 68 and fn. 8 [Rogoff, *Federalism in Italy*]; Ottaviani, *Evolution des régions italiennes*, cit., p. 28; Ferrara & Scarpone, *Special Regions*, cit., pp. 112-113. French minorities are present in Valle d’Aosta/Vallée d’Aoste, German minorities are present in Trentino-Alto Adige/Südtirol, and Slovenian minorities are present in Friuli Venezia Giulia.

¹⁷⁹ L. Del Duca & P. Del Duca, “An Italian Federalism? – The State, its Institutions and National Culture as Rule of Law Guarantor” (2006) 54 *American Journal of Comparative Law* 807 [Del Duca & Del Duca, *An Italian Federalism*]; Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 44.

In 1948 the *statuti* of Sicily, Sardinia, and Valle d'Aosta were already in force. The *statuto* of Trentino-Alto Adige was approved after the reception of the “De Gasperi-Gruber” agreements, while the *statuto* of Friuli Venezia Giulia was approved only in 1963, mainly because of the delay defining the *status* of the city of Trieste after the war.¹⁸⁰ Among the five special regions, the treatment reserved to Trentino-Alto Adige/Südtirol was certainly unique. Once part of the Austrian Empire, almost entirely nestled in the Alps, this wealthy territory has been characterized by a strong antagonism between Italian and German speaking communities.¹⁸¹ Therefore, starting from the first regional *statuto* approved in 1948 and again in 1971 with constitutional law 1/1971, in order to protect these ethno-linguistic groups a decision was made to share legislative, administrative and financial powers between the Region and the two autonomous provinces of Trento and Bolzano/Bozen,¹⁸² a rather distinctive arrangement since no other Italian region is characterized by the presence of autonomous provinces. This is practically translated in the existence of both regional and provincial laws,¹⁸³ again a unique feature of this territory because in the rest of Italy only Regions and the central Parliament are vested with legislative powers, while provinces only enjoy administrative powers. As a matter of fact, these two autonomous provinces enjoy most legislative, administrative and financial

¹⁸⁰ Ferrara & Scarpone, *Special Regions*, cit., p. 114 and fn. 12; Caretti & Tarli Barbieri, *Diritto Regionale*, cit., pp. 16-17. The capital city of Friuli Venezia Giulia is Trieste. Pursuant to the Peace Treaties ending WWII, Trieste and its province should become a “free territory”. In the aftermath of the “memorandum of understanding” between Italy, United Kingdom, United States, and Yugoslavia signed in London in 1954, however, Italy was granted the administration of zone A, whilst Yugoslavia was granted the administration of zone B. See Ottaviani, *Évolution des régions italiennes*, cit., p. 28, ft. (1). See also Bin & Falcon, *Diritto regionale*, cit., pp. 75-76. Pertaining to Trentino-Alto Adige/Südtirol, the “Gruber-De Gasperi Agreement” (signed in 1946 as part of the Paris Peace Conference) granted autonomous legislative and administrative powers to the province of Bolzano/Bozen and to the municipalities of the province of Trento having mixed population. See Ottaviani, *Évolution des régions italiennes*, cit., p. 32, ft. (8). See also Bin & Falcon, *Diritto regionale*, cit., p. 75.

¹⁸¹ Ferrara & Scarpone, *Special Regions*, cit., p. 114 and fn 11. However, it shall be noted that, besides the German-speaking minority, also Ladin-speaking communities are present in the territory.

¹⁸² Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 44.

¹⁸³ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 44.

powers.¹⁸⁴ Another distinctive feature that was chosen to protect ethno-linguistic minorities was the fact that the regional council is composed by the total of the two provincial councils, with councilors separated not only based on their political membership, but also on their linguistic belonging.¹⁸⁵

Ordinary regions, on the other hand, were either “originally independent states before Italian unification” or “laid out according to different criteria” (e.g. the “geographical definition of railway areas”).¹⁸⁶ In any event, all regions were basically “the creation of politicians and jurists of the Constituent Assembly and not a constitutional response to a pressing popular demand, nor were they the negotiated result of a compromise to reach a new constitutional settlement.”¹⁸⁷

3. Special and ordinary regions

But what are the main differences between special and ordinary regions? One difference pertains to their *statuti* or charters. In fact, as already noted, the *statuti* of special regions were approved by constitutional law, because they granted additional and distinct powers compared to the ordinary regions to reflect the peculiar needs of these territories.¹⁸⁸ Also, special charters

¹⁸⁴ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 44.

¹⁸⁵ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 44.

¹⁸⁶ Grottanelli de' Santi, *The Italian Variant*, cit., p. 5; Bin & Falcon, *Diritto regionale*, cit., p. 79. For D'Arena, the creation of the fifteen ordinary regions is a legacy of the influence of German federal tradition within the Constituent Assembly. See D'Arena, *Historical Models of Italian Regionalism*, cit., p. 68.

¹⁸⁷ Grottanelli de' Santi, *The Italian Variant*, cit., p. 5. This is why, in the words of this scholar, “the establishment of the Regions has no deep roots in the consciousness of the people” and therefore “the concept of Regions as administrative units and centers of constitutional autonomy has less impact on the public consciousness than that of the *comune* (ie municipality), which is well (...) rooted in the history of [the Italian] peninsula and which arouses deep, even passionate, feelings.” *Ibid.*

¹⁸⁸ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 44.

govern the various organs and functions attributed to the regions.¹⁸⁹ Conversely, ordinary charters are deliberated by the respective regional councils and approved by national (but not constitutional) law. Also, they shall be framed “in harmony” with the Constitution and with ordinary national laws.¹⁹⁰ With regards to the powers and functions of ordinary regions, unlike special regions, these items find their discipline directly in the Constitution.¹⁹¹ Consequently, ordinary regional charters only discipline the internal organization of the region: the right to initiate legislation, the right to *referendum*, and the publication of regional laws and provisions.¹⁹²

Another feature that differentiated special from ordinary regions was the legislative power. In fact, on one side, special regions enjoyed broader powers than those listed in article 117 Const., including exclusive legislative powers on certain subject matters that were not shared by ordinary regions (who only enjoyed concurrent legislative powers).¹⁹³ It shall be noted, however, that, in the areas of exclusive competence, special regions were always subject to important limitations, e.g.: limitations imposed by the Constitution, by general principles contained in the legislation, by international obligations, by national interest, and by fundamental norms of economic and social reforms of the Republic.¹⁹⁴

¹⁸⁹ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., pp. 18-19; Ottaviani, *Évolution des régions italiennes*, cit., p. 28.

¹⁹⁰ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., pp. 18-19.

¹⁹¹ For example, article 117 Const. disciplines regional legislative powers; article 118 articulates regional administrative powers; article 119 governs regional financial autonomy; article 121 identifies regional bodies and their powers; article 122 illustrates the way regional councils shall be elected; articles 125 and 127 define how controls are exercised over regional legislative and administrative acts; finally, article 127 illustrates the forms of control on regional bodies. See Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 19.

¹⁹² Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 19.

¹⁹³ Ferrara & Scarpone, *Special Regions*, cit., pp. 122-123; Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 19; Ottaviani, *Évolution des régions italiennes*, cit., p. 29.

¹⁹⁴ Ottaviani, *Évolution des régions italiennes*, cit., p. 29.

Insofar as administrative powers, special and ordinary regions enjoyed the same autonomy. In fact, the 1948 Constitution introduced the so-called “principle of parallelism” whereby all regions (through municipalities and provinces) were vested with all administrative functions in subject matters falling within their legislative powers.¹⁹⁵

In the ambit of fiscal autonomy, however, the 1948 Constitution acknowledged all regions full autonomy with regards to expenditures, and a much more limited autonomy with regards to revenues. Yet, *statuti* of special regions might provide for broader “financing channels”¹⁹⁶ to the point that they “receive much more favorable financial treatment”.¹⁹⁷ In other words, the *statuti* of special regions and of the two autonomous provinces can identify “the taxes from which a proportion is attributed to the Region, the differential rates for each type of tax, the computation base, and the attribution modality.”¹⁹⁸

In any event, it should be noted that, while maintaining the classification between special and ordinary regions, the 2001 constitutional reform (detailed in Chapter V) has reduced the gap between them.¹⁹⁹

Some scholars were skeptical with regards to the regional structure as it had emerged in the aftermath of the 1948 Constitution. For example, Piras outlined how the provisions on regions contained in the Constitution lacked a clear and well-defined scope of the regional

¹⁹⁵ Ferrara & Scarpone, *Special Regions*, cit., p. 127; Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 20. Administrative powers are governed by article 118 Const. It shall be noted, however, that this provision underwent significant changes in the aftermath of the 2001 Constitutional reform. See chapter V for more details.

¹⁹⁶ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 20. Fiscal autonomy is disciplined by article 119 Const. Similarly to the previous provision, however, also this discipline was deeply changed by the 2001 Constitutional reform. See *infra* for more details.

¹⁹⁷ D’Atena, *Historical Models of Italian Regionalism*, cit., p. 75.

¹⁹⁸ Ferrara & Scarpone, *Special Regions*, cit., p. 130.

¹⁹⁹ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 44.

structure, and therefore there was no organic project articulated in the provisions on regionalism.²⁰⁰ Similarly, commentators noted how the 1948 regions did not correspond to homogeneous historical realities, being neither the “seven entities from which Italy was unified in the 1860s, nor do they correspond in any comprehensive way to prior entities”.²⁰¹ Therefore, these regions “have not joined to create a State. Rather, the State through its institutions continues to birth and shape its Regions as meaningful political and governmental units”.²⁰² Other scholars talked about regions as “artificial constructions” and “imposed from the top”.²⁰³

The one just outlined was the arrangement contained in the 1948 Constitution, and it is commonly referred to as regional State, or a “compromise between the centralized State, which had existed in Italy since unification, and a looser federal State”.²⁰⁴ In addition to the twenty regions, the territory was further divided into provinces (which are subdivisions of regions) and municipalities, composed of towns and urban and rural districts, which represent the “basic governmental unit[s]”.²⁰⁵ At the time I am writing, there are 110 provinces and less than 8,100

²⁰⁰ A. Piras, “Les régions italiennes à statut ordinaire” (1971) 37 *International Review of Administrative Sciences* 35 [Piras, *Les régions italiennes*].

²⁰¹ Del Duca & Del Duca, *An Italian Federalism*, cit., p. 807.

²⁰² Del Duca & Del Duca, *An Italian Federalism*, cit., pp. 807-808. Salvemini disfavored the creation of artificial regions by the Constituent Assembly (see G. Salvemini, “Federalismo, Regionalismo, Autonomismo” in G. Salvemini, *Scritti sulla Questione Meridionale (1896-1955)* (Torino: Einaudi, 1955), p. 593) and contended that “[i]f Carlo Cattaneo and Alberto Mario had not lived in vain, if their thought had been studied more thoroughly and attentively (...), republicans (...) would have never voted for a “region” without having a crystal clear description of what they were talking about” meaning that, before creating this entity, the Constituent Assembly should agree on its definition and nature. See G. Salvemini, “Federalismo e Regionalismo” in G. Salvemini, *Scritti sulla Questione Meridionale (1896-1955)* (Torino: Einaudi, 1955), p. 605.

²⁰³ C. Desideri, “A Short History of Regionalism in Italy Since the Republican Constitution. Italian Regionalism and Its Evolution” in S. Mangiameli, ed., *Italian Regionalism: Between Unitary and Federal Processes* (Cham: Springer, 2014), p. 36 [Desideri, *History of Regionalism*]. Desideri also explains that the geographic definition of regions was based on “territorial divisions established for purely statistical purposes in 1864, with no attempt to conduct a detailed survey of the Region’s actual economic, social and cultural dimension and without any involvement by the local population” (*ibid.*).

²⁰⁴ Rogoff, *Federalism in Italy*, cit., p. 68.

²⁰⁵ Rogoff, *Federalism in Italy*, cit., p. 68 and fn. 8.

municipalities,²⁰⁶ although a reform of the number of provinces is under discussion, as we will see more thoroughly in chapter VI. What follows is a graphical description of Italian regions with their provinces:²⁰⁷



4. The actual implementation of the regional model in the 1970s

As I have already indicated, the purpose of the regional design contained in the 1948 Constitution was to depart from the strong centralized model existing since the time of

²⁰⁶ The status of metropolitan areas is discussed *infra*.

²⁰⁷ Source Wikipedia.

unification and strengthened during the Mussolini dictatorship. The 1948 Constitution clearly aimed at recognizing the importance of local self-government, especially in light of the cultural, economic, linguistic, and social fragmentation that had characterized Italy over the centuries.²⁰⁸

To do so, the 1948 Constitution was (and still is) grounded on a “pluralist principle”.²⁰⁹ As a fundamental tenet, this principle can be showcased in various fashions, such as, for example, the “recognition and promotion of local autonomy”.²¹⁰ The principle can also be construed both restrictively and widely, depending on the level and extent of the independence granted to local autonomies.²¹¹ As already indicated in chapter II, one very important provision contained in the 1948 Constitution is enshrined in article 5, mandating that:

The Republic is one and indivisible. It recognizes and promotes local autonomies, and implements the fullest measure of administrative decentralization in those services which depend on the State. The Republic adapts the principles and methods of its legislation to the requirements of autonomy and decentralization.

In light of the most recent debate on federal reforms, constitutional scholars have repeatedly questioned the meaning behind the first part of article 5 Const., especially where it mandates that the Italian republic is “one and indivisible”. Particularly, two issues have been raised: (a) does article 5 “preclude the establishment of a true federal state, one with legislative, fiscal, and administrative competence” shared between central and peripheral governments?; and (b) how can we reconcile the fact that the Italian republic is indivisible with the recognition and

²⁰⁸ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 21.

²⁰⁹ C. Mirabelli, “Local Autonomies, Regionalism and Federalism: Italy” in J. Fedtke & B. Markesinis, eds., *Patterns of Regionalism and Federalism. Lessons for the UK* (Oxford & Portland: Hart Publishing, 2006), p. 249 [Mirabelli, *Local Autonomies*].

²¹⁰ Mirabelli, *Local Autonomies*, cit., p. 250. For Gorlani, the pluralist principle was one of the contributions to Italian constitutionalism by the Christian Democrats, and it can be illustrated not only through the “territorial articulation of the State” but also by looking at “the role of social groups” and the “acknowledgment of the family as the basis of the new society”. See Gorlani, *Cattolici e costituzione*, cit.

²¹¹ Mirabelli, *Local Autonomies*, cit., p. 250.

promotion of local self-governments?²¹² These concerns are certainly legitimate, and I have already noted in chapter II how article 5 Const. can be seen as the place where to find a federal seed in the Italian constitution.²¹³

In any event, in spite of the provisions on regionalism contained in the Constitution, the Italian territorial organization continued to be characterized by a “strong centralist thrust”.²¹⁴ In fact, although the Constitution granted legislative powers on matters such as agriculture, public works, tourism, and urban planning also to ordinary regions, these were “little more than paper entities” while they had no powers to levy taxes and depended entirely on the central state.²¹⁵

More importantly, the provisions on regionalism contained in the newly implemented Constitution needed the legislative action of the Parliament. But this action from the Parliament was missing for a long time.²¹⁶ In fact, with the exception of the five special regions (whose *statuti*, except for Friuli Venezia Giulia, were quickly approved by the Constituent Assembly, as I have already explained above), the regional State as provided for in the post-war constitution became a reality only in the early 1970s, when the implementing legislation was enacted by the Parliament and financial resources were transferred from the centre to the periphery for the functioning of these entities.²¹⁷ In the years immediately subsequent its first election, the Italian Parliament was clearly reticent in actualizing the regional state.²¹⁸ In addition to a political clash

²¹² Rogoff, *Federalism in Italy*, cit., p. 81.

²¹³ Incidentally, D’Atena argues that article 5 Const. inspired other European constitutions, namely article 2 of the Spanish constitution of 1978 (combining the autonomy of *comunidades autónomas* with the principle of “indissoluble and indivisible unity”) and article 6 of the Portuguese constitution of 1976 (recognizing the autonomous regions of Madeira and the Azores). See D’Atena, *Historical Models of Italian Regionalism*, cit., p. 69.

²¹⁴ Fabbrini & Brunazzo, *Federalizing Italy*, cit., p. 104.

²¹⁵ Del Duca & Del Duca, *An Italian Federalism*, cit. p. 808.

²¹⁶ Caretti & Tarli Barbieri, *Diritto Regionale*, , p. 22.

²¹⁷ Rogoff, *Federalism in Italy*, cit., pp. 68-69 and p. 75.

²¹⁸ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 22.

existing in the post-war period between the two major party coalitions (the Christian Democrats and the Communists), which had opposite views on regionalization,²¹⁹ other elements help explaining this delay in implementing the model prescribed in the Constitution. Among these elements, there was the need to rebuild the country, significantly devastated after WWII; the necessity to put in place economic and social measures that needed strong central action; and the failed reform of central state entities and organs.²²⁰ As a consequence, not only the implementation of ordinary regions was not seen as a priority, but also the already existing special regions found themselves “reshaped” and their privileges reduced by the central government.²²¹ Only in 1970 regional councils of the ordinary regions were elected, so that the regional model envisaged in the 1948 Constitution became operative. This change of attitude was probably due to a transformed stance by political parties towards regions and local governments.²²²

Yet, once again, in spite of the creation of regional governments in the 1970s, the system remained quite centralist, also because article 127 Const. contained a “national interest” clause that was often used by the national government to justify legislation on subject matters supposedly assigned to the regions.²²³ However, it is undeniable that the advent of regions marked a “radical innovation in the local administration” of the State.²²⁴ In fact, until the early 1970s, local administration was nothing but the “expression of a public administration conceived

²¹⁹ Del Duca & Del Duca, *An Italian Federalism*, cit., p. 802.

²²⁰ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 23.

²²¹ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 23.

²²² Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 24. This changed attitude is also referred to as “constitutional thaw.” *Ibid.*

²²³ T. Groppi & N. Scattone, “Italy: The Subsidiarity Principle” (2006) 4 *International Journal of Constitutional Law* 132 [Groppi & Scattone, *The Subsidiarity Principle*].

²²⁴ G. Berti, “Les nouvelles tendances dans l’organisation des administrations locales en Italie” (1971) 37 *International Review of Administrative Sciences* 41 [Berti, *Administrations locales en Italie*].

in a unitary fashion”²²⁵ and State power “completely dominated the public administration scene”.²²⁶

Conclusion

In this chapter, I have retraced the intellectual history of Italian federalism and regionalism and proved that, while characterized by a strong unitary state for most of its history, Italy was not foreign to federal ideas, especially at the time of the Italian unification as summarized by the work of Carlo Cattaneo and his followers. Certainly, Cattaneo’s ideas were not fully understood and were eventually rejected by the founding fathers of unification, since they opted for the opposite approach (a unitary rather than a federal state). Yet, I believe that it is important to emphasize the work of Cattaneo who, while isolated from the rest of the political elite, certainly contributed to the diffusion of a certain “federal” idea across the peninsula. In the next chapter, I will delve more thoroughly into the analysis of the resurgence of federal ideas in the 1990s and the fact that led to the constitutional reforms of the 2000s.

²²⁵ Berti, *Administrations locales en Italie*, cit., p. 41.

²²⁶ Berti, *Administrations locales en Italie*, cit., p. 41.

CHAPTER V

THE 2001 CONSTITUTIONAL REFORM: BEFORE AND AFTER

Introduction

In this chapter, I am going to depict the Italian regional model sanctified in the 1948 constitution and later perfected by the constitutional amendments of the 2000s, as a consequence of the resurfacing of federal ideas heralded by the Northern League (“LN”). I will argue that the Italian regional model distils lessons learned from a number of experiences such as federalism, sub-state nationalism, the European unification process, as well as the unitary and centralized scheme. Emerged from the profound socio-economic tensions between the North and the South, but abstracted from all ethnic connotations, Italian regionalism can be seen as the quintessential model of regional state, an innovative experiment crafted by those who were looking for a compromise between the federal and the unitary paradigms, both rejected in their purest forms as not ideal to address the unique complexities of the Italian social fabric. In particular, some features that clearly belong to the federal tradition (such as subsidiarity) have been embedded in the constitution after the amendments of 2001.

In fact, as discussed in Chapter III, the resurgence of federal ideas in the early 1990s is the result of a process started some years earlier and led by the LN; although other motives exist, the roots of this revival are mostly political and economic, and this makes the trajectory of Italian regionalism very unique if compared to other experiences, which were mainly pushed by linguistic and ethnic reasons (see Spain, Belgium, United Kingdom and Canada, among others).

In the next sections, I will comprehensively retrace this process: in section I, I will look at the major events that took place in the late 1990s under the leadership of the contested LN, including the creation of a bicameral commission entrusted with the redrafting of a significant portion of the constitution and the restructuring of public administration. Next, I will detail the most important provisions regarding the functioning of regional governments pursuant to the changes added in 1999 which led to the important constitutional amendment in 2001 of Title V, to which the subsequent section II will be devoted. In this regard, I will thoroughly examine both the relevant provisions concerning the bodies and functioning of the regions (articles 121-126 Const.) and the provisions on division of powers, subsidiarity, fiscal federalism, etc. (articles 114-120 and article 127 Const.). Finally, I will take a quick look at the attempts to further amend certain relevant sections of the constitution that occurred after 2001, as well as at the overall relations between regions and the EU. In the conclusion, I will highlight some of the shortcomings of this reform.

Section I – Before the 2001 constitutional reform

1. A new federal vision: the resurgence of federal ideas in Italy

From a political standpoint, between the end of WWII and until the 1970s (when regionalism was actually implemented, as explained in chapter IV), the Italian political scene had been mainly dominated by two parties: the Christian Democrats (“DC”) on one side, and the Communist Party (“PCI”) on the other,¹ with the former being in power throughout most of the period in question. These two parties switched their views on regionalism and decentralization. In fact, in the aftermath of WWII, the Christian Democrats were strongly in favor of a regional

¹ U. Amoretti, “A New Look at Federalism. Italy Decentralizes” (2002) 13 *Journal of Democracy* 131 [Amoretti, *Italy decentralizes*].

state,² while the PCI rejected it. Later on, however, the PCI took a more regional stance hoping to increase their political visibility, since they had been systematically excluded from power for almost two decades.³ The DC's response to this ideological shift was to become more centralist.⁴ For the left wing party, things changed only after the fall of communism in Eastern Europe, with the consequent rebirth in 1996 of the *Partito Democratico della Sinistra* ("PDS" or Democratic Party of the Left) from the ashes of the old PCI.⁵

With the creation of the regional governments in the early 1970s, however, some of the limitations of the regional system conceived by the 1948 constitution started to emerge. This invigorated the belief that the unsuccessful regionalization was mainly due to the centripetal trends of the State.⁶ Similarly, the weaknesses of the two historical coalitions (DC and PCI) also started to materialize, with a consequent loss of votes to other political parties, including regional forces.⁷

The appearance of regional or local parties was stronger in the more developed North of the country, where "urbanization and postwar prosperity had created a new middle class that no longer identified with either the Communist or the Catholic political subcultures".⁸ These

² This should not come as a surprise: in fact, the principle of subsidiarity, which is one of the pillars of federal theory, has its historical roots in Catholic social teaching. For a more thorough discussion on subsidiarity, see Chapter VII.

³ Since the PCI was *de facto* excluded from political power, although it could count on a faithful electorate, scholars have pointed out how "the same political class governed Italy from 1948 through 1992". See L. Del Duca & P. Del Duca, "An Italian Federalism? – The State, its Institutions and National Culture as Rule of Law Guarantor" (2006) 54 *American Journal of Comparative Law* 802 [Del Duca & Del Duca, *An Italian Federalism*].

⁴ Amoretti, *Italy decentralizes*, cit., p. 133. See also Del Duca & Del Duca, *An Italian Federalism*, cit., p. 802.

⁵ Del Duca & Del Duca, *An Italian Federalism*, cit., p. 802.

⁶ P. Caretti & G. Tarli Barbieri, *Diritto Regionale*, 3rd ed. (Torino: Giappichelli, 2012), p. 28 [Caretti & Tarli Barbieri, *Diritto Regionale*].

⁷ Amoretti, *Italy decentralizes*, cit., p. 133.

⁸ Amoretti, *Italy decentralizes*, cit., p. 134.

regional parties (the most notable of which were the Venetian League and the Lombard League⁹) were initially small and poorly funded, but they quickly grew, and in 1987 the Lombard League succeeded in winning enough votes to send one of its representatives (Umberto Bossi, who later became the leader of the LN) to the Senate in Rome.¹⁰ Obviously, this resurgence of regionalism and regional sentiments caused a disturbance in the traditional assessment of established national parties.¹¹

Alongside this political revolution, economic causes also help to explain the resurgence of federal ideas in the early 1990s, as indicated above. From an economic standpoint, the evolution closely mirrors the political changes just described. In fact, scholars note how, for a few decades after WWII, “both the north and the south gained substantial economic advantage from national integration”.¹² In other words, the economic miracle was also made possible thanks to generations of workers originally from Southern Italy who had moved to the large industrial centers in the North in search of a better future. Parallel to this, there was the expansion of the consumer market in the South. But this fragile equilibrium started to fail in the 1970s. A combination of factors, including economic recession, increase of global competition matched by a reduction of employment in manufacturing concerns, alongside the necessity of economic regulatory schemes at supranational level, slowed the migratory flow from the *Mezzogiorno*.¹³ As a result, the North began to suffer from what commentators dubbed the

⁹ In Italian, *Liga Veneta* and *Lega Lombarda*, respectively.

¹⁰ Amoretti, *Italy decentralizes*, cit., p. 134.

¹¹ Amoretti, *Italy decentralizes*, cit., p. 134.

¹² E. Mingione, “Italy: the resurgence of regionalism” (1993) 69 *International Affairs* 316 [Mingione, *The resurgence of regionalism*].

¹³ Mingione, *The resurgence of regionalism*, cit., p. 317.

“burden of the South”:¹⁴ while the political system at central level became more and more oriented towards the South, it consequently lost its prestige in the North in favor of local parties.¹⁵

However, as already noted, the relation between the North and South of Italy has often been a thorny one. In fact, at the time of unification in the early 1860s, the rapport between these two geographic areas was already configured as one between civilization (represented by the North) and barbarism (represented by the South).¹⁶ For a long time, many saw in the South a true “plague” in the “body” of Italy, and this sentiment was common not only among the Northerners, but also among the Southerners who lived in the North.¹⁷ As I mentioned in chapter IV, Gaetano Salvemini was very sensitive to this issue, and offered a number of reasons in an attempt to explain the backwardness of the South as opposed to the North. However, also in more recent times, this peculiar situation has triggered the intellectual interest of experts (especially economists) outside of Italy, intrigued by this unique and longstanding situation that is so difficult to resolve.¹⁸ In the same line as Salvemini, Holland argues that scholarship generally agrees in the sense that the Italian South “suffered from integration”, by being exposed to the “more advanced Piedmontese competition”.¹⁹ Furthermore, after WWI, the South “suffered from the fascist national economic policy of autarchy, and the assumption that it should be the granary

¹⁴ Mingione, *The resurgence of regionalism*, cit., p. 317.

¹⁵ Mingione, *The resurgence of regionalism*, cit., p. 317.

¹⁶ A. Lepre, *Italia? Addio. Unità e disunità dal 1860 ad oggi* (Milano: Mondadori, 1994), p. 4 [Lepre, *Italia? Addio*].

¹⁷ Lepre, *Italia? Addio*, cit., p. 5.

¹⁸ See S.K. Holland, “Regions Under-development in a Developed Economy: The Italian Case” (1971) 5 *Regional Studies* 71, for a list of relevant works on the topic [Holland, *The Italian Case*].

¹⁹ Holland, *The Italian Case*, cit., p. 71.

of the new Italian empire rather than participate in national industrial expansion”.²⁰

Industrialization in this area began only after WWII.²¹

As indicated above, in addition to political and economic reasons, various other factors played an ancillary role in accelerating the progressive detachment from historical parties and the revival of regional sentiments. For instance, Eva identifies two key aspects: the end of the Cold War and, consequently, of the “ideological confrontation between East and West”, and the *Tangentopoli* scandals of the early 1990s, i.e. a series of scandals caused by political corruption that implicated several representatives of the political parties, causing a loss of credibility in the national coalitions by the electorate.²²

The European integration process (or “Europeanization process”²³) also played a major role in mutating the overall socio-political and economic landscape. In fact, in the years that led to the creation of the European Union with the Treaty of Maastricht of 1992, not only was European regionalism encouraged, but political parties were also required to limit the use of public money in order to build their political support. While the Italian traditional parties openly disregarded these directives, voters located especially in the North reacted to this state of things, with a consequent escalation of support for regional parties.²⁴ As explained by one commentator,

[t]he decision taken at Maastricht in December 1991 to institute a European Union endowed with a common currency (...) had major consequences on the Italian

²⁰ Holland, *The Italian Case*, cit., p. 71.

²¹ Holland, *The Italian Case*, cit., p. 71.

²² F. Eva, “Deconstructing Italy: (Northern) Italians and their new perception of territoriality” (1999) 48 *GeoJournal* 103 [Eva, *Deconstructing Italy*]. With regards to the end of the Cold War, I have already noted how this had a major impact in the Italian political system with the dissolution of the historic communist party and the formation of the less orthodox PDS.

²³ S. Fabbri & M. Brunazzo, “Federalizing Italy: The Convergent Effects of Europeanization and Domestic Mobilization” (2003) 13 *Regional and Federal Studies* 105 et seq. [Fabbri & Brunazzo, *Federalizing Italy*].

²⁴ Amoretti, *Italy Decentralizes*, cit., p. 135.

territorial system. Together with the crisis of the traditional party system that exploded between 1991 and 1993, Italy was at risk of outright financial bankruptcy in the summer of 1992 (...). The model of the decentralized unitary state controlled by a broad centrist coalition reached the end of its long historical experience. Italy's inefficient and corrupt centralism had placed the country in danger of exclusion from the process of European monetary integration (...). Simultaneously, the more developed regional areas of the country (the north-east in particular) saw the mobilization of various territorial leagues (which joined forces as the Lega Nord in 1994) against the power of central political and administrative class (...). [T]he Northern League ended up in voicing an (albeit confused) request for territorial devolution of the powers of the national state."²⁵

According to Fabbrini & Brunazzo, the effect of Maastricht on the Italian territorial system was to emphasize its “centralist inefficiency”²⁶ and to show the failures of the model framed in the aftermath of WWII.²⁷

But the implementation of the Treaty of Maastricht had significant consequences across all Europe. Shaken by the world crisis of 1992 due to globalization, Maastricht entailed a decoupling of tasks, formerly concentrated in the hands of national governments. In fact, upper national interests became the concern of European institutions, while day-to-day services to citizens were progressively transferred to sub-state entities, also entrusted to address the political needs of the territory.²⁸ In other words, we witnessed a gradual decentralization within European states, matched by an increased integration among national states.²⁹

Furthermore, the increased importance acquired by regions across Europe was buttressed by the complex system of EU funds made available to local sub-entities, which required the

²⁵ Fabbrini & Brunazzo, *Federalizing Italy*, cit., p. 105.

²⁶ Fabbrini & Brunazzo, *Federalizing Italy*, cit., p. 105.

²⁷ Fabbrini & Brunazzo, *Federalizing Italy*, cit., p. 106.

²⁸ G. Mazzola, “Le Regioni fra riforme costituzionali, crisi finanziarie e federalismo” (2012) *Amministrazione in Cammino*, available online at http://www.amministrazioneincammino.luiss.it/wp-content/uploads/2012/06/Mazzola_Regioni_riforme-Cost_crisi_federalismo.pdf [Mazzola, *Le Regioni*].

²⁹ Fabbrini & Brunazzo, *Federalizing Italy*, cit., p. 106.

establishment of “direct relations” between regional and EU institutions.³⁰ Similarly, the European cohesion policies required a direct involvement of regions.³¹ Consequently, Italian regions began to open their own offices in Brussels, thus strengthening their lobbying and networking activities at the European level.³² This favored the formation of a web of contacts and collaboration among actors at regional level.³³ In other words, “the Europeanization process has legitimated the tendency to regionalism, particularly in those countries (like Italy) where this tendency has been justified by the poor performance of the unitary state model”.³⁴

In any event, the move towards a larger decentralization was a slow process that took place in different steps and culminated with the amendment in 2001 of Title V, Part II, of the Italian Constitution. The details of this process are illustrated in the next sections.

2. The Bicameral Commission

After the LN introduced federalism in the political agenda in the early 1990s, the first reaction of other political actors was very negative, especially because federalism was associated with the anti-state and anti-national approach maintained by the LN; particularly critical of the LN federal project were the right-wing party MSI (“Movimento Sociale Italiano” or “Italian Social Movement” which later became “Alleanza Nazionale” or “National Alliance” or “AN”) and the left-wing PDS, both concerned with the potential disruptive force of federalism for the

³⁰ Fabbrini & Brunazzo, *Federalizing Italy*, cit., p. 106.

³¹ Fabbrini & Brunazzo, *Federalizing Italy*, cit., p. 106.

³² Fabbrini & Brunazzo, *Federalizing Italy*, cit., p. 110.

³³ Fabbrini & Brunazzo, *Federalizing Italy*, cit., p. 110.

³⁴ Fabbrini & Brunazzo, *Federalizing Italy*, cit., p. 113.

unity of Italy.³⁵ However, after the initial ostracism, all other parties embraced federal ideas to a greater or less extent, to the point that federalism became some sort of “political obligation for all political forces” in this transition process.³⁶ Yet, scholars agree on the fact that the 2001 constitutional reform cannot be fully understood and appreciated without analyzing the initiatives that, more or less successfully, were taken before 2001, including the (failed) Bicameral Commission and the (successful) reorganization of public powers of 1997 (specifically, Law 59/1997) and the regional financial position under Law 56/2000. These important legislative provisions paved the way towards the constitutional reform.³⁷

In January 1997, the Italian Parliament established a Commission charged with the implementation of constitutional reforms under the guidance of Massimo D'Alema.³⁸ Specifically, the role to be played by the Commission was all-encompassing, since it was entrusted not only with a reframing of the whole idea of local self-government, but also with the “preparation of proposals for the revision of Part II of the Constitution, in particular with respect

³⁵ M. Mazzoleni, “The Italian regionalization: a story of partisan logics” (2009) 14 *Modern Italy* 142 [Mazzoleni, *Italian regionalization*]; A. Lecours & E. Arban, “Why Federalism Does Not Always Take Shape: the Cases of Italy and Nepal” (2015) 25 *Regional & Federal Studies* 189 [Lecours & Arban, *Italy and Nepal*].

³⁶ C. Roux, “Italy’s path to federalism. Origins and paradoxes” (2008) 13 *Journal of Modern Italian Studies* 332 [Roux, *Italy’s path to federalism*]; Mazzoleni, *Italian regionalization*, cit., p. 143.

³⁷ G. F. Cartei & V. Ferraro, “Reform of the Fifth Title of the Italian Constitution: A First Step Towards a Federal System?” (2002) 8 *European Public Law* 446 [Cartei & Ferraro, *Reform*].

³⁸ The Commission was also known as “Bicameral Commission” since it was composed of both senators and deputies (35 per group). The law that established the Commission was Constitutional Law n. 1 of 1997. See M. Rogoff, “Federalism in Italy and the Relevance of the American Experience” (1997) 12 *Tulane European & Civil Law Forum* 69 and fn. 15 [Rogoff, *Federalism in Italy*]. It shall be noted that, before the Bicameral Commission of 1997, the debate on institutional reform in Italy was not new. In fact, in 1976, the then secretary of the Italian Socialist Party, Bettino Craxi, proposed a “Great Reform” of the Constitution, followed by other attempts in 1983-85 with the Bozzi Commission and in 1992-1994 with the De Mita/Iotti Commission. See M. Bull & G. Pasquino, “A Long Quest in Vain: Institutional Reforms in Italy” (2007) 30 *West European Politics* 671 [Bull & Pasquino, *Institutional Reforms in Italy*].

to [the] form of State, [the] form of government and bicameralism, [and] the system of [constitutional] guarantees”.³⁹

The establishment of the Commission was fuelled by “rising demands for more regional autonomy, particularly in the north”⁴⁰ as voiced by the LN, but reforms in federal terms were supported also by Forza Italia (“FI”), the party founded by Silvio Berlusconi in 1993 and well rooted in Northern Italy (especially Lombardy) as well.⁴¹

Among the reforms studied and recommended by the Bicameral Commission, there was the direct, popular election of the President of the Republic⁴² and the development of local autonomy by granting regions residuary legislative powers. The Bicameral, however, rejected the proposal of transforming the Senate into a Chamber representing regional governments (in other words, some sort of *federal* Senate).⁴³

Eventually, however, the reforms suggested by the Bicameral Commission were seen as poor and not fully satisfactory,⁴⁴ and the work of the Commission failed, also because of the withdrawal of the support to the project of the centre right coalition.⁴⁵

³⁹ Constitutional Law n. 1 of 1997, para. 4. See also Rogoff, *Federalism in Italy*, cit., pp. 69-70. See also Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 28.

⁴⁰ See Rogoff, *Federalism in Italy*, cit., p. 77.

⁴¹ Roux, *Italy's path to federalism*, cit., 330.

⁴² Pursuant to article 83 of the Italian Constitution, the President of the Republic is elected by Parliament in joint session, with the participation of three delegates from each region (elected by the regional council), so as to ensure the representation of minorities. A majority of two-thirds of the assembly is required (or an absolute majority at the third ballot).

⁴³ C. Pinelli, “The 1948 Constitution and the 2006 Referendum: Food for Thought” (2006) 2 *European Constitutional Law Review* 337 [Pinelli, *Food for Thought*].

⁴⁴ Bull & Pasquino, *Institutional Reforms in Italy*, cit., p. 673. For a detailed description of the content of the reform proposed by the Bicameral Commission, see Rogoff, *Federalism in Italy*, cit., p. 80 et seq.

⁴⁵ Pinelli, *Food for Thought*, cit., p. 337. See also Bull & Pasquino, *Institutional Reforms in Italy*, cit., p. 673.

3. The restructuring of public administration

Law 59/1997, also known as the First Bassanini Law (Bassanini was the name of the Minister for Regional Affairs and Public Administration at the time, who proposed the bill), transferred administrative powers to regions and local authorities.⁴⁶ Specifically, the law conferred to regions, provinces, and municipalities “all functions and administrative duties relative to the care of the interests and promotion of the respective communities’ development”.⁴⁷ The propelling force that triggered the implementation of Law 59/1997 was the European Union law principle of subsidiarity.⁴⁸ Based on the principle as spelled out in article 4a) of the aforementioned law, the Government should grant all administrative tasks and functions to municipalities, provinces and mountain communities, with the exception of those tasks and functions that are incompatible with local dimensions. This principle applies both to the State and the regions, meaning that the latter might defer its own functions to local autonomies unless a unitary action is needed, in which case the region will act.⁴⁹ This

⁴⁶ Fabbrini & Brunazzo, *Federalizing Italy*, cit., p. 112.

⁴⁷ Del Duca & Del Duca, *An Italian Federalism*, cit., p. 809. See also R. Bin & G. Falcon, *Diritto regionale* (Bologna: Il Mulino, 2012), p. 87 [Bin & Falcon, *Diritto regionale*].

⁴⁸ Cartei & Ferraro, *Reform*, cit., p. 446. Subsidiarity became one of the fundamental principles of EU law when enshrined in the Treaty of Maastricht (or Treaty of the European Union) of 1991. Since then, it has become one of the guidelines of EU action. As already indicated, subsidiarity means that action should be taken, whenever possible, at the lowest appropriate level of government, since an upper level of government should come into play only if the former cannot carry out the task. Scholarly literature on subsidiarity, particularly at EU level, is massive. See E. Arban, “Subsidiarité en Droit Canadien et en Droit de l’Union Européenne: une perspective comparée” (2013) 56 *Canadian Public Administration* 219 [Arban, *Subsidiarité*]. Incidentally, the article offers an analysis of the origins of subsidiarity and its inclusion in EU law, as well as in Canadian law. Subsidiarity in Italian law will be extensively discussed in chapter VII.

⁴⁹ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 29. As it is explained below, the Bassanini reform was also known as the reform on “administrative federalism”. See *ex multis* S. Mangiameli, “I processi di riforma in itinere. Considerazioni sul riflusso della riforma federale in Italia” (2006) *Forum di Quaderni Costituzionali*, available online at http://www.forumcostituzionale.it/wordpress/images/stories/pdf/old_pdf/1108.pdf, p. 1 [Mangiameli, *Riforma in itinere*].

administrative reform was dubbed “federal reform with unchanged Constitution” or “administrative federalism with unchanged Constitution”.⁵⁰

In the same year, Law 127 (also referred to as Second Bassanini Law) was passed, with the goal of simplifying administrative practices, decision-making and control procedures.⁵¹

According to commentators, these reforms had two main purposes: (a) redefine the administrative and financial relationship between the centre and the periphery; and (b) specify the role of the Italian regions in determining regional policies.⁵² At this time there was also the institution of the “State-Regions-Autonomous Provinces Conference” (i.e. *Conferenza Stato-Regioni*), whose traits have been partially detailed in Chapter II.⁵³

4. Other pre-2001 reforms

While the aforementioned reforms did not give regions any “meaningful budgetary autonomy” or “tax power”,⁵⁴ several other provisions were approved to implement some of the basic principles contained in Law 59/1997. For example, administrative functions in the area of healthcare and cultural matters were transferred to regions with Law 112/1998; a complex reorganization of the ministerial system, including the reduction of the number of state

⁵⁰ This means that the law in question introduced some federal elements into the Italian legal system without amending the Constitution. See, *ex multis*, Bin & Falcon, *Diritto regionale*, cit., p. 88; C. Desideri, “A Short History of Regionalism in Italy Since the Republican Constitution. Italian Regionalism and Its Evolution” in S. Mangiameli, ed., *Italian Regionalism: Between Unitary and Federal Processes* (Cham: Springer, 2014), p. 48 [Desideri, *History of Regionalism*]. The reader shall recall from chapter IV that the idea of *administrative* federalism is an old one, as it borrows from the ideas of Cattaneo, Salvemini and Don Sturzo, all advocating some form of administrative decentralization as a way to simplify public administration and promote local self-government.

⁵¹ Fabbrini & Brunazzo, *Federalizing Italy*, cit., p. 112.

⁵² Fabbrini & Brunazzo, *Federalizing Italy*, cit., p. 112.

⁵³ Fabbrini & Brunazzo, *Federalizing Italy*, cit., p. 112; Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 30.

⁵⁴ Del Duca & Del Duca, *An Italian Federalism*, cit., p. 810.

structures, was brought by Laws 300/1999 and 303/1999.⁵⁵ Also very important was the introduction of the direct election of the presidents of the regions with constitutional law 1/1999, which was preceded by a 1993 reform introducing the direct election of mayors.⁵⁶ The direct appointment of mayors and regional governors caused these regional political leaders to challenge

the national political leaders, none of whom could claim to have been ‘personally’ elected to govern (...). [T]he leaders of the peripheral executives mobilized their political resources and public opinion to pressure parliament to compete with the national leaders. The latter, no longer supported by nationally rooted political parties, perceived their power position as increasingly weak (...). [T]his new regional political elite has become an influential actor in the national game”.⁵⁷

Constitutional law 1/1999 also amended articles 122 and 123 Const. bringing significant changes to election powers and to *statuti* (i.e. charters or statutes) of ordinary regions. In the next section, I will describe more in detail the provisions on the functioning of regions.

Finally, another significant step in the process towards the 2001 constitutional reform was taken with Law 56/2000, granting new and broader financial competences to the regions.⁵⁸

5. Provisions on the functioning of regions

Articles 121-126 Const. include the provisions regulating the way regions are institutionally organized. These articles were significantly altered in 1999 by constitutional law n. 1, which granted more powers and discretion to these entities and anticipated the constitutional amendments brought in 2001 to Title V by constitutional law n. 3. We will now take a quick look at these provisions.

⁵⁵ Cartei & Ferraro, *Reform*, cit., p. 446.

⁵⁶ Fabbri & Brunazzo, *Federalizing Italy*, cit., p. 115; Bin & Falcon, *Diritto regionale*, cit., p. 89; Desideri, *History of Regionalism*, cit., p. 47.

⁵⁷ Fabbri & Brunazzo, *Federalizing Italy*, cit., p. 115.

⁵⁸ Cartei & Ferraro, *Reform*, cit., p. 448.

a. Regional bodies and their functions (article 121 Const.)

Article 121 Const. identifies the official bodies of the region as well as their main functions and spheres of competence. Article 121(1) was not amended by constitutional law 1/1999, since the “old” version was also designated in the same way. In any event, the bodies of the region are: the regional Council (*Consiglio regionale* in Italian, e.g. the elected legislative assembly), the regional Executive (*Giunta* in Italian, e.g. the executive body) and the President of the Region (who is the President of the *Giunta*) (article 121(1)). As indicated by scholars, however, the rationale of this paragraph is not to dictate “a peremptory list” of regional bodies, but only to identify “the *necessary* bodies of the Region” so that regional charters and laws enjoy the possibility to create other, additional entities.⁵⁹

More specifically, the role of *Consiglio Regionale* is to perform the legislative functions of the region, as well as “the other functions attributed to it” by the constitution and laws. Moreover, it can also present bills (e.g. law proposals) to the national parliament (article 121(2)). Interestingly enough, although the *Consiglio Regionale* enjoys legislative functions, the Italian Constitutional Court (“ItCC”) strongly banned the possibility that a regional charter can change the name of the body having legislative functions to “Parliament”. In fact, the ItCC explains, the Italian constitution adopted the term “Parliament” only to indicate the *national* legislative assembly, but used the expression “Regional Council” to indicate the regional body enjoying legislative functions. This terminology choice is not accidental since, for the ItCC, “the *nomen*

⁵⁹ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 191.

Parliament (...) enjoys a qualifying value, indicating, with the organ, the exclusive position that it [the organ] occupies within the constitutional organization”.⁶⁰

As for the *Giunta Regionale*, article 121(3) simply indicates that it is the executive organ of the Regions. Finally, article 121(4) elucidates on the role of the Regional President (sometimes also – informally – referred to as “governor”, thus borrowing a terminology deriving from US constitutionalism⁶¹). The Regional President enjoys a variety of roles. In fact, he or she represents the Region, supervises, directs and is responsible for the politics of the *Giunta*, promulgates regional laws, enacts regional regulations and supervises the administrative functions that the State delegates to the Regions, abiding by the instructions received by the Italian Government. Italian theorists noted that, with this provision, the Regional President has been vested with some sort of “primacy” compared to the other members of the regional executive.⁶²

b. The regional form of government (article 122 Const.)

Articles 122 (first and last par.), 123(1) and 126 (last par.) delve into the regional “form of government” and “electoral legislation”.⁶³ Pursuant to article 122(1) Const., the election procedures and the cases of incompatibility and ineligibility of the Regional President and of the members of the *Giunta* and *Consiglio* are determined by regional law (and not by regional charters), whereas the duration of the mandate for each body is established by national law.

⁶⁰ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., pp. 192-193 and ItCC decision 106/2002.

⁶¹ Desideri, *History of Regionalism*, cit., p. 47.

⁶² Caretti & Tarli Barbieri, cit., p. 161.

⁶³ M. Nardini, “La “via italiana al federalismo” tra vincoli di bilancio, giurisprudenza costituzionale e riforme istituzionali” (2013) *Amministrazione in cammino*, available online at http://www.amministrazioneincammino.luiss.it/wp-content/uploads/2013/04/Nardini_Federalismo.pdf, p. 16 [Nardini, *Via italiana al federalismo*].

With regards to this first paragraph, scholars observed that the significant novelty is that the whole ambit of election system and situations of ineligibility and incompatibility are now determined by regional laws, thus reserving to the national legislator only the indication of the “fundamental principles”.⁶⁴ Before the amendment, in fact, the election system and the cases of incompatibility and ineligibility were determined by national law. Similarly, it is now possible for regions, at least in theory, to contemplate (and explore) different solutions.⁶⁵

Some situations of incompatibility, valid for all regions, are indicated in article 122(2) Const. In fact, this paragraph excludes the possibility that a member of the *Consiglio* or *Giunta* be, at the same time, a member of the national Parliament, of the *Consiglio* or *Giunta* of another region, or of the European Parliament.⁶⁶ This reference to the European Parliament was introduced only with the 1999 amendment.

Pursuant to article 122(3) Const., the President of the *Consiglio Regionale* and the Office of the President are elected among its own members. These are the only bodies internal to the Council that are mentioned by the Constitution.⁶⁷

Article 122(4) Const. indicates that the members of the *Consiglio Regionale* cannot be pursued for the opinions expressed and the votes given while in office. As explained by commentators, the rationale of this provision, that mimics the treatment reserved to members of

⁶⁴ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 179.

⁶⁵ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 179.

⁶⁶ Other causes of incompatibility are dictated by other parts of the Constitution. For example, articles 104(7) and 135(6) provide that a member of the regional council cannot be, at the same time, a member of the Upper Judicial Council (*Consiglio Superiore della Magistratura*) and of the ItCC, respectively. See Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 186.

⁶⁷ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 203.

the national parliament,⁶⁸ is two-fold. On one side, it aims at protecting the “autonomy” and “independence” of the *Consiglio Regionale* and, on the other side, that of the single member of the body.⁶⁹

Finally, article 122(5) Const. provides that the Regional President is elected by direct and universal suffrage, unless otherwise stated in the regional charters. Once elected, he or she will appoint and remove the members of the *Giunta*. This final paragraph contains a significant novelty since, before the 1999 amendment, the Regional President was not directly elected but appointed (along with the other members of the *Giunta*) by the *Consiglio Regionale* among its members.

c. Regional charters (or *statuti*) (article 123 Const.)

Article 123 Const. details the form and content of “fundamental regional charters”⁷⁰ (*statuti* in Italian) of ordinary regions. According to par. 1, the scope of regional *statuti* is to determine, in compliance with the Italian constitution, the “form of government” and the “fundamental principles of the organization and functioning” of the Region. Two aspects are worth noting with respect to this article in its current and former versions, as theorists emphasize. On one side, the provision is now more far-reaching than the one contained in the “old” par. 1, which merely talked about the “internal organization of the Regions”.⁷¹ Furthermore, the scope of the compliance requested is reduced, since the “old” version required these documents to

⁶⁸ See article 68(1) Const.

⁶⁹ In these terms, Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 198.

⁷⁰ G. Delledonne & G. Martinico, “Handle with Care! The Regional Charters and Italian Constitutionalism’s ‘Grey Zone’” (2009) 5 *European Constitutional Law Review* 219 [Delledonne & Martinico, *Regional Charters and Italian Constitutionalism*].

⁷¹ G. Delledonne & G. Martinico, “Legal Conflicts and Subnational Constitutionalism” (2010-2011) 42 *Rutgers Law Journal* 892 [Delledonne & Martinico, *Legal Conflicts*].

comply not only with the Constitution, but also with “the laws of the Republic”.⁷² Scholars have also illustrated that this choice of the constitutional legislator was made to allow for “greater differentiation between Regions”.⁷³

In the years immediately following the 1999 amendments, some commentators construed regional *statuti* as examples of “regional constitutions” intended to define “the identity of each Region in a State which is becoming more and more complex and plural”.⁷⁴ Similarly, some *statuti* in fact detailed what they dubbed “the founding principles” and “the fundamental rights” of their residents”.⁷⁵ However, similarly to the use of the expression “regional parliament” illustrated above, in 2004 the ItCC denied any assimilation between *statuti* and “regional constitutions”; accordingly, the provisions contained therein were merely “cultural statements” and their functions only “political” and “cultural” but not “legal”.⁷⁶ In fact, for the ItCC, the 1948 Constitution is the “highest source of law” in Italy, thus regional charters are nothing but “sub-constitutional sources whose scope is determined by the Constitution itself”.⁷⁷ Thus, if a *statuto* contains a statement of “rights and principles”, this cannot be construed as a piece of “legislation” but only as “cultural statement”, that is, the expression of “the Region’s cultural and historical values”.⁷⁸ Furthermore, pursuant to par. 1, *statuti* also discipline the exercise of the right to legislative initiative and of referendum on regional laws and administrative provisions, as well as the publication of regional laws and regulations. Par. 2 implies that a *statuto* takes the

⁷² Delledonne & Martinico, *Regional Charters and Italian Constitutionalism*, cit., pp. 219-220.

⁷³ Delledonne & Martinico, *Regional Charters and Italian Constitutionalism*, cit., p. 220.

⁷⁴ Delledonne & Martinico, *Regional Charters and Italian Constitutionalism*, cit., p. 219. Here, scholars refer in particular to the changes brought to Title V of the Constitution by the 2001 amendment analyzed above.

⁷⁵ Delledonne & Martinico, *Regional Charters and Italian Constitutionalism*, cit., p. 220.

⁷⁶ Delledonne & Martinico, *Regional Charters and Italian Constitutionalism*, cit., p. 223, citing ItCC decision 372/2004.

⁷⁷ Delledonne & Martinico, *Regional Charters and Italian Constitutionalism*, cit., p. 224.

⁷⁸ Delledonne & Martinico, *Regional Charters and Italian Constitutionalism*, cit., p. 228.

form of a regional law,⁷⁹ and is approved and modified by the *Consiglio Regionale* by law approved by absolute majority of its components, in two subsequent deliberations at an interval not inferior to two months. These charters are construed as regional sources bound by the respect of the provisions contained in the Constitution,⁸⁰ after the elimination of all references to the respect of national laws.⁸¹ No stamp by a commissioner of the national government is required for this law, but the national government can challenge the constitutional legitimacy of *statuti* before the ItCC within thirty days from the publication. Pursuant to the “old” version of this paragraph, regional *statuti* needed the approval by national law. This requirement was eliminated with the 1999 amendment. As per par. 3, regional *statuti* are subject to popular referendum if, within three months from their publication, such request is made by one fiftieth of the voters of the Region, or by one fifth of the components of the *Consiglio regionale*. Also, the statute subjected to popular referendum will not be promulgated if it is not approved by a majority of the valid votes. Finally, the last paragraph indicated that the regional *statuti* also govern the so-called Council of Local Self-Governments, an entity performing consultative functions between the State and local self-governments. Interestingly enough, at the time I am writing more than ten years have passed since the approval of Constitutional Law 1/1999, and there are still a couple of ordinary regions which have not yet adopted new *statuti*.⁸²

⁷⁹ Delledonne & Martinico, *Legal Conflicts*, cit., p. 891.

⁸⁰ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 55. In Italian, the constitutional text talks about charters required to be in “harmony with the Constitution”. Following the interpretation offered by the Constitutional Court, this means that charters are bound to respect not only the constitutional principles and precepts, but also the “spirit” of the Constitution, e.g. all the non-written constitutional principles that can be deduced by interpretation. *Ibid.*

⁸¹ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 65.

⁸² Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 66.

d. The abolished article 124 Const.

Article 124 Const. has been removed from the constitution by Constitutional Law 3/2001. The “old” version of the article provided that “[a] commissioner of the government, residing in the region capital city, supervises the administrative functions exercised by the State and coordinates them with those exercised by the Region”.

e. Bodies of administrative justice (article 125 Const.)

Pursuant to article 125 Const., within each region there are bodies of administrative justice of first instance, pursuant to the system established by national law. Sub-sections of these institutions can also be established outside of the region’s capital city. Constitutional Law 3/2001 eliminated all forms of control over the legality of administrative acts of the Region by an organ of the State, as previously required by par. 2, now abolished.

f. Dissolution of regional bodies (article 126 Const.)

Article 126 Const., dealing with the dissolution of *Consiglio regionale* and the no-confidence to the Regional President, was also radically modified by Constitutional Law 1/1999. Pursuant to article 126(1) Const. (as amended), the termination of the *Consiglio* and the removal of the Regional President can be decided for acts contrary to the Constitution, other serious infringements of the law, or for national security reasons. The termination and removal are ordered by motivated decree of the President of the Republic, adopted after hearing a Commission of deputies and senators created for regional issues pursuant to national law.

According to par. 2, the *Consiglio Regionale* can express its no-confidence towards the Regional President by motivated motion, signed by at least one fifth of its components and approved by nominal appeal by absolute majority of the components. The motion can be questioned only three days after its presentation.

The approval of the motion of non-confidence of the Regional President, as well as his or her removal, permanent obstacle, death or voluntary resignation, cause the resignation of the *Giunta* and the dissolution of the Council as well. Similar consequences occur in the event of contextual resignation of the majority of the members of the *Consiglio*. This last paragraph introduces a principle dubbed *simul stabunt, simul cadent* (as they stay together, they will fall together).⁸³ The rationale behind this choice was explained by scholars as an attempt of the constitutional legislator to introduce an element of “rigidity” in order to pursue the objective of stability.⁸⁴ However, scholars criticized this choice, in the sense that it may influence the capacity of regions to choose their form of government.⁸⁵ Also, it runs counter the classic idea of “presidentialism” whereby, because of a rigid separation of powers, it is impossible for the Assembly to remove the President and, similarly, it is impossible for the President to dissolve the Assembly, except in special circumstances.⁸⁶

⁸³ Nardini, *Via italiana al federalismo*, cit., p. 17. See also Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 45; G. Grottanelli de’ Santi, “The Italian Variant of Federalism” in J. Fedtke & B. Markesinis, eds., *Patterns of Regionalism and Federalism. Lessons for the UK* (Oxford & Portland: Hart, 2006), p. 10 [Grottanelli, *Italian Variant of Federalism*].

⁸⁴ Nardini, *Via italiana al federalismo*, cit., p. 17.

⁸⁵ Nardini, *Via italiana al federalismo*, cit., p. 21.

⁸⁶ Nardini, *Via italiana al federalismo*, cit., pp. 17 and 22.

Section II – The 2001 constitutional reform (articles 114-120 and 127 Const.)⁸⁷

1. Introduction

The 2001 reform, approved under the leadership of the center-left majority then in power,⁸⁸ implemented with constitutional law 3/2001, continued the decentralization process begun in 1997.⁸⁹ The bill that contained the reform was approved by the House of Representatives in February 2001 and by the Senate in March 2001. It was then subject to “confirmative” referendum pursuant to article 138 Const.⁹⁰ The referendum was held on October 7, 2001 approving the constitutional amendment.⁹¹ I will now look in detail at the content of this reform, also emphasizing the differences existing with the previous constitutional arrangement.

Title V of Part II of the constitution (articles 114-133) pertains to the relationship between central and peripheral entities, and is entitled “Regions, Provinces, Municipalities”. The core of the constitutional amendment, however, is represented by articles 114 to 120 and by

⁸⁷ In this work, I am analyzing the reform mainly from a legal perspective. For a good summary of the 2001 constitutional reform from a political standpoint, see F. Bassanini, “Federalizing a Regionalized State. Constitutional Change in Italy” in A. Benz & F. Knüpling, eds., *Changing Federal Constitutions* (Opladen, Berlin & Toronto, 2012), pp. 229-248; see also Mazzoleni, *Italian regionalization*, cit., who well retraces the political dynamics and the main political players behind the regionalization of Italy since WWII; Lecours & Arban, *Italy and Nepal*, cit.

⁸⁸ Lecours & Arban, *Italy and Nepal*, cit., p. 190.

⁸⁹ Cartei & Ferraro, *Reform*, cit., p. 449.

⁹⁰ Pursuant to article 138 Const. if a constitutional law or a law amending the constitution has not passed with a majority of two-third in each of the two Chambers at the second voting, a referendum can be requested either by a fifth of the members of one house, or half a million voters, or five regional councils. See Bull & Pasquino, *Institutional Reforms in Italy*, cit., p. 684.

⁹¹ Bull & Pasquino, *Institutional Reforms in Italy*, cit., p. 684; Pinelli, *Food for Thought*, cit., p. 329; Desideri, *History of Regionalism*, cit., p. 52 (and fn 72). The turnout at the referendum was very low, as only 34,1% of the voters participated in the consultation, with 65% voting in favor of the reform.

article 127.⁹² Portions of the constitutional reform of 2001 were implemented through law 131/2003 (“La Loggia” Law).⁹³

2. The component units of Italian regionalism (article 114 Const.)

This article provides that Italy is composed of municipalities, provinces, metropolitan cities, regions, and the state.⁹⁴ It also provides that municipalities, provinces, metropolitan cities, and regions are “autonomous entities having their own statutes, powers and functions in accordance with the principles laid down in the Constitution”. Furthermore, it mandates that the status of Rome, as capital city of Italy, shall be regulated by national (state) law.⁹⁵

Article 114 Const. is innovative in many ways. First, it creates a new level of local government, i.e. the metropolitan city, collocated between municipalities and provinces.⁹⁶ It is also interesting to compare the current text with the pre-2001 wording, since the “old” version of article 114 simply provided that Italy was “divided” into Regions, Provinces, and Municipalities. This means that, after 2001, not only there has been an increase in the number of the component units and a change in terminology (Italy is no longer “divided” but “constituted” of the listed

⁹² Fabbrini & Brunazzo, *Federalizing Italy*, cit., p. 100.

⁹³ Bin & Falcon, *Diritto Regionale*, cit., p. 94.

⁹⁴ De Martin notes that this articulation on three different levels (e.g. municipalities, provinces, and regions, leaving aside for purposes of simplification metropolitan cities) corresponds to a general trend that is common to many other EU member states. See G. C. De Martin, “Un ente strategico, ancorché misconosciuto: la provincia” (2009) *Federalismi.it*, available online at <http://www.federalismi.it/AppOpenFilePDF.cfm?artid=13973&dpath=document&dfile=09092009121821.pdf&content=Un+ente+strategico,+ancorch%C3%A9+misconosciuto:+la+provincia+-+stato+-+dottrina+-+>, p. 5 [De Martin, *La provincia*].

⁹⁵ See, among many, Bin & Falcon, *Diritto Regionale*, cit., pp. 100-101.

⁹⁶ Usually, a metropolitan city comprises a large city plus the municipalities that, for economic or other reasons, are closely linked to it. At least in theory, a metropolitan city enjoys the functions normally attributed to the province, as well as functions pertaining to sovra-municipal interests normally granted to the municipality. Some of the discipline relating to metropolitan cities is contained in Law 42/2009. Significant changes to metropolitan cities have been brought by Law 56/2014 (“Del Rio”). These changes will be discussed in chapter VI.

component units),⁹⁷ but the order is reversed, starting from the entity that has a long-standing and established history and tradition in Italy and that is also closest to the citizens (municipality), in compliance with the emphasis put on subsidiarity.⁹⁸ De Martin dubbed this choice “polycentrism without institutional hierarchies among the component units of the Republic”.⁹⁹ However, we should be cautious about this apparent lack of hierarchy among the various components of the state. In fact, in its decision 274/2003, the ItCC noted how the various levels of government indicated in article 114 Const. are vested with powers that are profoundly different; therefore, these levels cannot be entirely equated.¹⁰⁰ Similarly, in decision 365/2007, the ItCC emphasized that the autonomy enjoyed by these different levels of government does not entail the creation of a federal or confederal state in Italy.¹⁰¹

Furthermore, this provision is certainly quite unique among federal or decentralized systems, which rarely recognize in the constitution the presence of levels of government other than the state and the federal sub-units (states, provinces, cantons, etc...). In fact, as Blank argues, federalism “does not theorize cities (or local governments); it leaves them to be the internal business of each state (or whatever the basic political unit may be), thus respecting the autonomy of it to decide its own internal structure”.¹⁰² In fact, according to this scholar,

⁹⁷ Mazzola, *Le Regioni*, cit.

⁹⁸ G. M. Salerno, “Le autonomie e la repubblica” (2006) *Federalismi.it*, available online at http://www.federalismi.it/ApplOpenFilePDF.cfm?dpath=document\editoriale&dfile=SALERNO.pdf&content=Le+autonomie+e+la+Repubblica&content_auth=Giulio+M.+Salerno, p. 7 [Salerno, *Le autonomie*].

⁹⁹ G. C. De Martin, “La regionalizzazione dell’ordinamento degli enti locali” (2013) *Amministrazione in Cammino*, available online at http://www.amministrazioneincammino.luiss.it/wp-content/uploads/2013/02/De-Martin_regionalizzazione-enti-locali.pdf [De Martin, *La regionalizzazione*].

¹⁰⁰ Bin & Falcon, *Diritto Regionale*, cit., p. 101 and ItCC decision 274/2003 at par. 2.1.

¹⁰¹ Bin & Falcon, *Diritto Regionale*, cit., p. 101 and ItCC decision 365/2007 at par. 7.

¹⁰² Y. Blank, “Federalism, subsidiarity, and the role of local governments in an age of global multilevel governance” (2009) 37 *Fordham Urban Law Journal* 549 [Blank, *Federalism and subsidiarity*]. For instance, it shall be noted that article 137 of the Spanish constitution mandates that “[t]he State is organized territorially into municipalities, provinces and the Self-governing Communities that may be constituted. All these bodies shall enjoy self-

federalism “is a theory of only two recognized types of jurisdictions – the federal and the constituent units [...] of the federation”.¹⁰³ In fact, even if in theory federalism acknowledges three spheres of government, usually only two of them are recognized at constitutional level.¹⁰⁴ I also indicated in chapter II how the constitutional recognition of levels of government other than the national and the local sub-units might be seen as a key distinguishing element between a federal and a regional constitution.

Before further proceeding with the analysis of the 2001 reform, it might be helpful to illustrate some of the key elements of the various tiers listed in article 114, particularly municipalities and provinces. Municipalities have a very local, or city-based, dimension, and are “the first and traditional level of the political organization of a local community”.¹⁰⁵ Their origins can be traced back to the Middle Ages, where citizens of a municipality (or *commune*) “regarded themselves as a community that formed a political and administrative body which exercised public functions of authority, of government and of jurisdiction”.¹⁰⁶ Provinces, on the

government for the management of their respective interests”. Spanish Constitution, English version available at the following link:

http://www.congreso.es/portal/page/portal/Congreso/Congreso/Hist_Normas/Norm/const_espa_texto_ingles_0.pdf.

Article 18 of the Brazilian constitution contains a similar provision: “The political and administrative organization of the Federative Republic of Brazil comprises the Union, the states, the Federal District and the municipalities, all of them autonomous, as this Constitution provides.” Brazilian Constitution, English version available at the following link:

http://www.stf.jus.br/repositorio/cms/portalStfInternacional/portalStfSobreCorte_en_us/anexo/constituicao_ingles_3ed2010.pdf. Article 28 of the German Basic Law recognizes the autonomy of municipalities. English version of the

German Basic Law available at the following link: <https://www.btg-bestellservice.de/pdf/80201000.pdf>. Neither the Swiss, the Australian, the Canadian nor the US constitutions embed local self-governments in their provisions.

¹⁰³ Blank, *Federalism and subsidiarity*, cit., p. 525.

¹⁰⁴ Blank, *Federalism and subsidiarity*, cit., p. 538.

¹⁰⁵ C. Mirabelli, “Local Autonomies, Regionalism and Federalism: Italy” in J. Fedtke & B. Markesinis, eds., *Patterns of Regionalism and Federalism. Lessons for the UK* (Oxford & Portland: Hart Publishing, 2006), p. 250 [Mirabelli, *Local Autonomies*].

¹⁰⁶ Mirabelli, *Local Autonomies*, cit., pp. 250-251. This explains why citizens have strong bonds with their *commune* and the sense of belonging is very solid (*ibid.*). This also explains why, traditionally, the offices of the *commune* are often located in the same building which was historically the seat of government during the Middle Ages, usually

other side, are “administrative districts created by law”¹⁰⁷ and, particularly after a reform occurred in the 1990s, they started to enjoy increased powers and autonomy, including the power to establish “freely the fundamental rules of their organization and financial autonomy”.¹⁰⁸ Specifically, Law 142/1990 on local autonomies delineated the institutional role and functions of provinces, and defined this body as “government entity of vast areas, representing the general interests of the relative territorial community, entrusted with the coordination of local development”.¹⁰⁹ In general, as explained by Mirabelli, municipalities and provinces are “political authorities” representing their own communities.¹¹⁰ They also ensure that the interests of the communities they represent are taken care of, and work towards the enhancement and development of these same communities.¹¹¹ However, differently than regions, municipalities and provinces only enjoy administrative functions, not being vested with any legislative power.¹¹²

3. The abrogation of article 115 Const.

The constitutional reform of 2001 abrogated article 115 Const., whose terms were incorporated in article 114(2) Const. In fact, the “old” version of article 115 provided that regions are autonomous entities with their own powers and functions, according to the principles laid down in the constitution.

located in the centre of the city, with a prominent and dominant position, as scholars recall. See Grottanelli, *The Italian Variant*, cit., p. 5.

¹⁰⁷ Mirabelli, *Local Autonomies*, cit., p. 251.

¹⁰⁸ Mirabelli, *Local Autonomies*, cit., p. 251.

¹⁰⁹ In these terms, see De Martin, *La provincia*, cit., p. 4, and quoting articles 13-14 of Bill 142/1990.

¹¹⁰ Mirabelli, *Local Autonomies*, cit., p. 251.

¹¹¹ Mirabelli, *Local Autonomies*, cit., p. 251.

¹¹² With the exceptions of the two autonomous provinces of Trento and Bolzano, as detailed in chapter IV. See also Mirabelli, *Local Autonomies*, cit., p. 251. Similarly to the case of metropolitan cities, significant changes to the organization of provinces have been brought by Law 56/2014 (“Del Rio”); these changes will be discussed in chapter VI.

4. Differential regionalism (article 116 Const.)

The first two paragraphs of article 116 Const. focus on regions enjoying special status, while par. 3 pertains to what has been dubbed “differential regionalism”¹¹³ or “regionalism having a variable geometry”¹¹⁴ or also “asymmetric federalism”.¹¹⁵ More specifically, article 116(1) Const. explains that Friuli Venezia Giulia, Sardegna, Sicilia, Trentino-Alto Adige/Südtirol, and Valle d’Aosta/Vallée d’Aoste enjoy “special forms and conditions of autonomy pursuant to the special charters adopted by constitutional law”.¹¹⁶ The first paragraph does not offer any novel perspective, as it mimics the terms already contained in the “old” version of the same provision.¹¹⁷ Article 116(2) Const., on the other hand, specifies that Trentino-Alto Adige/Südtirol is composed of the autonomous provinces of Trento and Bolzano/Bozen.¹¹⁸

But the most interesting innovation is certainly contained in article 116(3) Const., mandating that additional and special forms and conditions of autonomy can be granted to

¹¹³ C. Dapelo, “The Trends towards Federalism in Italy” (2002-2003) 15 *St. Thomas Law Review* 346 [Dapelo, *Trends towards federalism*].

¹¹⁴ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 34.

¹¹⁵ A. Barbera, “Da un federalismo “insincero” ad un regionalismo “preso sul serio”? Una riflessione sull’esperienza regionale” (2012) *Forum di Quaderni Costituzionali*, available online at http://www.forumcostituzionale.it/wordpress/images/stories/pdf/documenti_forum/paper/0340_barbera.pdf [Barbera, *Riflessione*].

¹¹⁶ A. Ferrara & D. Scarpone, “The Special Regions and the Autonomous Provinces” in S. Mangiameli, ed., *Italian Regionalism: Between Unitary Traditions and Federal Processes* (Cham: Springer, 2014), p.118 [Ferrara & Scarpone, *Special Regions*].

¹¹⁷ For D’Atena, the retention of the five special regions is a testimony of the enduring influence of Spanish regionalism; conversely, the retention of the fifteen ordinary regions shall be seen as a confirmation of the legacy of German federalism. See A. D’Atena, “Between Spain and Germany: The Historical Models of Italian Regionalism” in S. Mangiameli, ed., *Italian Regionalism: Between Unitary Traditions and Federal Processes* (Cham: Springer, 2014), p. 70 [D’Atena, *Historical Models of Italian Regionalism*].

¹¹⁸ Ferrara & Scarpone, *Special Regions*, cit., p.118.

ordinary regions by national law if certain requirements are followed.¹¹⁹ This option, however, is granted only for the specific subject matters listed at article 116(3), namely: (a) all matters of shared jurisdiction between the state and the regions, as specified by article 117(3); specific subject matters normally falling within the exclusive legislative jurisdiction of the central state, such as: organizational requirements of the justice of the peace (article 117(2)(l)); general norms on education (article 117(2)(n)); and protection of the environment, eco-system, and cultural heritage (article 117(2)(s)).¹²⁰ In other words, article 116(3) now allows ordinary regions to “negotiate with the state particular forms and conditions of autonomy” in the ambit of organization of the offices of justices of peace, education, environment and cultural heritage; however, the forms and conditions of this enhanced autonomy have to be approved by state law, on the basis of an agreement between the state and the regions itself.¹²¹ Some scholars have identified in this provision the creation of a third, new form of region (in addition to the traditional classification between ordinary and special regions).¹²² I will discuss this article more thoroughly in chapter IX of this thesis.

¹¹⁹ Ferrara & Scarpone, *Special Regions*, cit., p.118. Pursuant to article 116(3) it is the region concerned that has to initiate the request for these additional and special forms of autonomy, “after consultation with the local authorities, in compliance with the principles set forth in art. 119”. Furthermore, the law granting additional autonomy shall be “approved by both Houses of Parliament with the absolute majority of their members, on the basis of an agreement between the State and the Region concerned”.

¹²⁰ A. Zanardi, “Il federalismo differenziato nell’articolo 116 della costituzione: una breve nota” (2006)

Federalismi.it, available online at

<http://federalismi.it/AppOpenFilePDF.cfm?artid=6309&dpath=document&dfile=14112006015318.pdf&content=Il+federalismo+differenziato+nell%E2%80%99articolo+116+della+Costituzione:+una+breve+nota+-+autonomie+locali+-+dottrina+-+> [Zanardi, *Federalismo differenziato*].

¹²¹ Dapelo, *Trends towards federalism*, cit., p. 346. See also Bin & Falcon, *Diritto Regionale*, cit., pp. 101-102.

¹²² Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 34.

5. The division of legislative powers (article 117 Const.)

Certainly, article 117 Const. enshrines the most innovative content of the 2001 reform. Deeply changing the original provisions, it begins by mandating that legislative powers are now exercised by the State and the regions, in compliance with the principles laid down in the Constitution, with EU legislation and with international obligations.¹²³ Furthermore, article 117(2) lists in a very detailed fashion all subject matters falling within the exclusive legislative powers of the State, which now include:¹²⁴

- Foreign policy and international relations of the state; relations between Italy and the European Union; asylum rights and legal status of non-EU citizens
- Immigration
- Relations between the Italian state and religious denominations
- Defense and armed forces; national security; armaments, ammunitions and explosives
- Currency; savings protection and financial markets; competition protection; foreign exchange system; state taxation and accounting systems; equalization of financial resources
- State bodies and relevant electoral laws; state *referenda*; election of members to the European Parliament
- Legal and administrative organization of the State and of national public agencies
- Public order and security, with the exception of local administrative police
- Citizenship, civil status and register offices

¹²³ Among the several works on the subject, see T. Groppi & N. Scattone, “Italy: The Subsidiarity Principle” (2006) 4 *International Journal of Constitutional Law* 133 [Groppi & Scattone, *The Subsidiarity Principle*]

¹²⁴ This listing was amended with constitutional law 1/2012, increasing the number of exclusive subject matters. See chapter VI of Caretti & Tarli Barbieri, *Diritto Regionale*, cit., pp. 34 et seq.

- Jurisdiction and procedural law; criminal and civil law; administrative judicial system
- Determination of the basic levels of benefits relating to civil and social entitlements to be guaranteed across the national territory
- General provisions on education
- Social security
- Electoral legislation, governing bodies and fundamental functions of municipalities, provinces, and metropolitan cities
- Customs, protection of national borders, and international prophylaxis
- Weights, measures, and standard time; intellectual property law; statistical and computerized coordination of data of state, regional and local administrations
- Protection of the environment, the eco-system, and cultural heritage

Similarly, article 117(3) details those subject matters of shared jurisdiction between the state and the regions. As specified in the paragraph, in these areas of concurrent jurisdiction, “legislative powers are vested in the Regions, except for the determination of the fundamental principles, which are laid down in State legislation”.¹²⁵ The following is the list of subject matters of shared or concurrent jurisdiction:

- International relations of the regions with other states and with the European Union
- Foreign trade
- Work safety and protection

¹²⁵ This scheme mimics the working of EU directives, whereby EU institutions set the general framework legislation of a given subject matter, and member states have the task to implement the framework into their legal systems. See also W. Swenden, *Federalism and Regionalism in Western Europe* (New York: Palgrave, 2006), p. 51 [Swenden, *Federalism and Regionalism*].

- Education, except for vocational education and training and subject to the autonomy of educational institutions
- Professions
- Scientific and technological research and innovation support for productive sectors
- Health care
- Nutrition
- Sports
- Disaster relief
- Land-use planning
- Civil ports and airports
- Large transport and navigation networks
- Communications
- National production, transportation and distribution of energy
- Complementary and supplementary social security
- Harmonization of public accounts and coordination of public finance and taxation system
- Enhancement of cultural and environmental properties, including the promotion and organization of cultural activities
- Savings banks, rural banks, regional credit institutions, regional land and agricultural credit institutions

Article 117(4) mandates that regions enjoy residuary powers (i.e. legislative powers on subject matters not specifically listed in the previous paragraphs). Finally, another novelty

introduced by article 117(6) is the recognition to regions of full regulatory powers in all subject matters that are not exclusive competence of the State.¹²⁶

As anticipated above, article 117 represents a true innovation especially in comparison to the previous arrangement. In fact, the “old” text listed those areas or subject matters where regions were authorized to legislate, assuming that all other competences belonged to the state.¹²⁷ Also, as argued by some scholars, the list contained in the “old” article 117 was in some respect “ill-defined”, meaning that “the state was able to claim competences in areas which at first sight might seem to have been granted to the regions”.¹²⁸ With regards to residuary powers, article 117 now reverses the previous arrangement, which reserved to the state (as the “entity pre-existing the Regions”¹²⁹) all “non-enumerated” powers. Italian scholars, however, are cautious about overrating the scope of these residuary powers. In fact, while they note how, at first reading, this residuary clause bears clear similarities with other residuary clauses entrenched in the constitution of other federal systems (in particular, the US Constitution, the German *Grundgesetz* and the European Union Treaty), in real life the scope of the Italian clause is much more limited.¹³⁰ In effect, among the subject matters reserved to the national legislator, we have the civil and criminal systems and procedural law. Also, among the subject matters reserved to the state, there are both specific sectors of competence as well as a competence of principle in

¹²⁶ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 35.

¹²⁷ For D’Atena, this inversion in the enumeration of legislative powers testifies once again to the influence of German federalism in the Italian regional model. D’Atena, *Historical Models of Italian Regionalism*, cit., p. 72.

¹²⁸ Cartei & Ferraro, *Reform*, cit., p. 450.

¹²⁹ Grottanelli, *The Italian Variant*, cit., p. 7.

¹³⁰ Bin & Falcon, *Diritto Regionale*, cit., p. 64. In particular, with regards to the US, these scholars mention the X amendment of the US Constitution, which provides that “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” As for the German *Grundgesetz*, s. 70(1) provides that “[t]he *Länder* shall have the right to legislate insofar as this Basic Law does not confer legislative power on the Federation.” Finally, as for the EU Treaty, s. 5(2) provides that “[c]ompetences not conferred upon the Union in the Treaties remain with the Member States.”

subject matters reserved to the concurrent jurisdiction of regional and central governments.

Accordingly, the scope of the residuary power is very limited.¹³¹

Some scholars have also pointed out how the new wording of article 117 has in fact made it more complicated to fully grasp the scope of the provision. In fact, not only are some of the subject matter listed too vague and generic (land-use planning, professions, etc..) but there are also subject matters that are not true “matters” but fall more in the nature of “constitutional values” (for example, health protection, protection of the environment, or promotion of cultural activities).¹³²

Furthermore, insofar as shared or concurrent competences, regions are bound by some limits. On first place, regional laws are bound by the provisions laid down in the constitution (the so called “constitutional limit”) as per article 117(1).¹³³ Next, there is a “territorial limit” whereby regional laws can only govern activities or services pertaining to the territory of the region and whose beneficiaries are only those individuals having a direct link with the region.¹³⁴ This limit, however, is intrinsic in all federal systems. Another limitation is represented by international and EU obligations, whereby all national and regional laws shall abide by the international and EU law provisions.¹³⁵ Furthermore, regional laws shall abide by the

¹³¹ Bin & Falcon, *Diritto Regionale*, cit., p. 64. It shall be recalled that the ItCC has played an important role in defining the exact contours of regional residuary powers, often going in a direction that would greatly limit these powers. For example, the ItCC has argued that it is impossible to trace back a given subject matter to the residuary power of the regions [...] only because this subject matter is not explicitly listed in article 117(2) and (3) Const. See ItCC decision 370/2003, par. 4. Also, the ItCC has acknowledged that certain powers not specifically mentioned in the first three paragraphs of article 117 Const. (e.g. public works, establishment of public entities, etc.) shall not be seen as “independent” powers falling within the residuary clause, but “instrumental” powers that complement those already granted. See in this regard Bin & Falcon, *Diritto Regionale*, cit., p. 64 and 238.

¹³² Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 72.

¹³³ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 75.

¹³⁴ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 76.

¹³⁵ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 76.

fundamental principles enshrined in the national legislation already in force.¹³⁶ Finally, according to scholars, there is a “national interest” limit which, although not specifically mentioned in article 117, infuses those provisions vesting on the central State some exclusive competences.¹³⁷ Scholars have also identified another limit to regional legislative powers (both in the ambit of concurrent and residual powers), the limit represented by the so-called “attraction in subsidiarity” pursuant to article 118 Const. This limit will be explained in the next section.¹³⁸

In conclusion, I should also point out how, in addition to the list of subject matters of article 117(2) (subject matters of exclusive jurisdiction of the central government), the jurisprudence of the ItCC has identified the so-called cross-cutting powers or subjects.¹³⁹ With this expression, the ItCC refers to “objectives” or “goals” that the central state shall attain, and that might cause an intrusion of the state in areas normally belonging to the regional legislative power, such as: competition, environment and cultural heritage, protection of public policy and security, etc.¹⁴⁰ For instance, the ItCC has argued that cross-subjects such as competition law can “condition other subject matters attributed to the concurrent or residual competences of the Regions, to the point that they can affect the entirety of the material spheres within which they are applied”.¹⁴¹ These cross-subjects as devised by the ItCC seem an attempt made by constitutional judges to broaden the scope of central powers to the detriment of regions.

¹³⁶ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 80.

¹³⁷ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 85.

¹³⁸ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 89 and 94.

¹³⁹ “Materie trasversali” in Italian. See, *ex multis*, Bin & Falcon, *Diritto Regionale*, cit., p. 103; D’Atena, *Historical Models of Italian Regionalism*, cit., p. 73.

¹⁴⁰ Bin & Falcon, *Diritto Regionale*, cit., p. 103.

¹⁴¹ See ItCC decision 2/2014, par. 2.1.

6. The principle of subsidiarity (article 118 Const.)

Article 118 Const. is also particularly relevant, since it introduces for the first time in the constitution the principle of subsidiarity, at least for administrative functions.¹⁴²

Article 118(1) provides that “administrative functions are attributed to municipalities, unless they are conferred to provinces, metropolitan cities, regions or to the state, pursuant to the principles of subsidiarity, differentiation and proportionality, to ensure their uniform implementation.” This is also referred to as principle of *vertical* subsidiarity. Conversely, article 118(4) deals with *horizontal* subsidiarity and provides that “the state, regions, metropolitan cities, provinces, and municipalities shall promote the autonomous initiatives of citizens, both as individuals and as members of associations, relating to activities of general interest, on the basis of the principle of subsidiarity”.¹⁴³ The “old” article 118, on the other hand, was infused with the principle of “parallelism”, meaning that regions enjoyed administrative powers only for those subject matters or areas where they had concurrent or shared legislative jurisdiction.¹⁴⁴

Because of the importance and novelty in the Italian constitutional system of the inclusion of the subsidiarity principle, the ItCC has offered intriguing interpretations of this article. Although article 118 refers to administrative powers, the ItCC has in fact argued that the subsidiarity principle can also be applied to legislative powers. In its decision 303/2003, the Court has maintained that it is not possible to “attract” to the central government certain administrative functions needing unitary discipline, without attracting at the same time the related legislative function. Accordingly, the application of subsidiarity to administrative powers

¹⁴² See, among others, Groppi & Scattoni, *The Subsidiarity Principle*, cit., p. 133.

¹⁴³ Cartei & Ferraro, *Reform*, cit., p. 452.

¹⁴⁴ Cartei & Ferraro, *Reform*, cit., p. 452.

is reflected also on legislative powers that can justify national laws on subject matters that the Constitution grants to the region, if some unitary discipline is needed.¹⁴⁵ Also, in the opinion of the Court, the principle of subsidiarity helps to enhance the flexibility of a model of division of powers based on two separate lists of subject matters and that is, accordingly, too rigid.¹⁴⁶ The subsidiarity principle will be discussed more thoroughly in chapter VII.

7. Fiscal federalism (article 119 Const.)

Article 119 Const. refers to what has been dubbed “fiscal federalism” or fiscal powers belonging to the regions.¹⁴⁷ Based on the “old” version of this article, regional finance comprised income deriving from regional taxes as well as from state grants (although the great majority of regional income derived from the latter). However, the capacity of regional governments to levy taxes was limited; furthermore, the central government could determine both the type of taxes levied and the amount of the tax. In other words, under the “old” article 119, regional financial autonomy was exercised only within the limits set by the state,¹⁴⁸ and state laws coordinated the financial autonomy of the regions with the finances of the State, the provinces and the

¹⁴⁵ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 90.

¹⁴⁶ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 95.

¹⁴⁷ Fiscal federalism is a very technical subject that requires certain specific competences to be thoroughly discussed. In this thesis, I certainly discuss this principle, but without delving into it, as I lack the required knowledge. The reader who wants to know more about this subject, can resort for example to the following texts: W. Oates, “An Essay on Fiscal Federalism” (1999) 37 *Journal of Economic Literature* 1120 et seq.; D. A. Super, “Rethinking Fiscal Federalism” (2005) 118 *Harvard Law Review* 2544 et seq.; T. Ter-Minassian, ed., *Fiscal Federalism in Theory and Practice*, International Monetary Fund (1997); Blank, *Federalism and Subsidiarity*, cit., p. 555; A. Shah, “Fiscal federalism and the political economy of territorial governance” in J. Loughlin, J. Kincaid & W. Swenden, eds., *Routledge Handbook of Regionalism and Federalism* (London & New York: Routledge, 2013), pp. 93 et seq.

¹⁴⁸ Cartei & Ferraro, *Reform*, cit., p. 453. According to the authors, regions could levy the following taxes: state’s concession of public property; regional concession; car registration tax; use of public open spaces; distribution of methane; use of electric light for domestic use; regional oil tax; right to study; and solid waste.

municipalities.¹⁴⁹ Consequently, at least in theory, the new provisions contained in article 119 aims at increasing the financial competences of the regions.

More specifically, article 119(1) provides that municipalities, provinces, metropolitan cities, and regions shall enjoy autonomy of revenues and expenditures. Article 119(2) mandates that municipalities, provinces, metropolitan cities, and regions have “independent financial resources”. Also, they can set and levy their own taxes, according to the provisions contained in the constitution and to the principles of coordination of public finance and taxation system. They also participate in the distribution of state grants for their territory.

Article 119(3) provides for equalization payments, and mandates that “[s]tate legislation shall provide for an equalization fund – with no allocation constraints – for the territories having lower per capita taxable capacity”. This is a very important “solidarity-based” tool that is found also in other federal or decentralized states, as I will further illustrate in chapter VIII.

Article 119(4) explains that “[r]evenues raised from the above-mentioned sources shall enable municipalities, provinces, metropolitan cities and regions to fully finance the public functions attributed to them” whilst, pursuant to article 119(5) the State “shall allocate supplementary resources and adopt special measures in favor of specific municipalities, provinces, metropolitan cities, and regions to promote economic development along with social cohesion and solidarity, to reduce economic and social imbalances, to foster the exercise of the rights of the person or to achieve goals other than those pursued in the ordinary implementation of their functions”. Finally, based on article 119(6), municipalities, provinces, metropolitan cities and regions “have their own properties, which are allocated to them pursuant to general

¹⁴⁹ Fabbrini & Brunazzo, *Federalizing Italy*, cit., p. 101.

principles laid down in State legislation. They may resort to indebtedness only as a means of funding investments. State guarantees on loans contracted for this purpose are not admissible”.

According to some scholars, however, these new provisions on fiscal federalism have only reduced the financial autonomy of the regions,¹⁵⁰ because the fact that regional financial autonomy is subject to the coordination by the state of the principles of public finance (see article 119(2)) may reduce their autonomy rather than granting them more freedom.¹⁵¹ In fact, under the old provision, the state could set “limits” to regional expenditures, while now it has the task of “coordinating” regional autonomy, thus allowing for more control over regional expenditures.¹⁵² Another problem is that, while under the “old” provision regional expenditures could be used only for normal functions, now there are no limits on how regional money can be spent.¹⁵³

Acting upon initiative of the LN (at the time a member of the centre-right coalition in power), the provisions contained in article 119 have been partially implemented with Law 42/2009 on “fiscal federalism”.¹⁵⁴

8. Substitution powers (article 120 Const.)

Article 120 Const. is divided into two paragraphs. According to article 120(1), regions “may not levy import or export or transit duties between regions or adopt measures that in any way obstruct the freedom of movement of persons or goods between regions. Regions may not limit the right of citizens to work in any part whatsoever of the national territory”. These same provisions were contained in the “old” article 120. This limitation is not uncommon in federal

¹⁵⁰ Cartei & Ferraro, *Reform*, cit., p. 453.

¹⁵¹ Cartei & Ferraro, *Reform*, cit., p. 453.

¹⁵² Cartei & Ferraro, *Reform*, cit., p. 454.

¹⁵³ Cartei & Ferraro, *Reform*, cit., p. 454.

¹⁵⁴ See, *ex multis*, Bin & Falcon, *Diritto regionale*, cit., p. 93; Desideri, *History of Regionalism*, cit., p. 56.

systems, as it is one of the elements distinguishing between a federal and a confederal arrangement.¹⁵⁵ This provision might sound somewhat anachronistic, especially if we consider that Italy is a member of the EU, where free movement of people is such an important feature. It is clearly a legacy of the 1948 constitution, drafted at a time when free movement was not as developed as it is now.

Conversely, article 120(2) was added with the 2001 reform to introduce the so called state/regions “substitution powers” whereby the central government

“can act for bodies of the regions, metropolitan cities, provinces and municipalities if the latter fail to comply with international rules and treaties or EU legislation, or in the case of grave danger for public safety and security, or whenever such action is necessary to preserve legal or economic unity and in particular to guarantee the basic level of benefits relating to civil and social entitlements regardless of the geographic borders of local authorities. The law shall lay down the procedures to ensure that subsidiary powers are exercised in compliance with the principles of subsidiarity and loyal co-operation.”

This power is backed up by a similar power enshrined in article 117(5), whereby the State can step in when regions and autonomous provinces fail to implement international agreements and EU measures.¹⁵⁶

9. The so-called “federalist principle” (article 127 Const.)

It has been contended that article 127 Const. introduces a “federalist principle” since it has eliminated the control of the State on regional laws.¹⁵⁷ Under the amended article, only an *ex post facto* (meaning, after the enactment of the legislation at issue) review by the ItCC can be

¹⁵⁵ For Canada, see s. 121 of the *Constitution Act 1867* which provides that “[a]ll Articles of the Growth, Produce, or Manufacture of any one of the Provinces shall, from and after the Union, be admitted free into each of the other Provinces.” In the US, article I (9) of the Constitution mandates that “[n]o tax or duty shall be laid on articles exported from any state” and that “nor shall vessels bound to, or from, one state, be obliged to enter, clear or pay duties in another.”

¹⁵⁶ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 36.

¹⁵⁷ Dapelo, *Trends towards Federalism*, cit., p. 347.

performed on regional laws allegedly infringing upon areas belonging to the state's legislative jurisdiction, and on state laws allegedly infringing upon the legislative jurisdiction of the regions. All references to the "national interest" have disappeared.¹⁵⁸ Under the "old" provision, all regional laws had to pass muster before their implementation and, if the national government deemed that the law infringed upon state's legislative powers or was in contrast with a national interest, it could send the act back to the regional government.¹⁵⁹

10. The "failed" reform of 2006

As recalled above, the LN never fully approved the 2001 constitutional reform, as it considered it not "federal" enough.¹⁶⁰ Upon suggestion of a right-wing coalition formed by the LN, AN and FI ("Forza Italia"), in 2005 the Italian parliament (led by a centre-right majority) passed another reform intending to amend 53 out of 139 articles of the constitution (basically almost the entire second part which details the organization of the Italian Republic).¹⁶¹ Never supported by the left-wing coalition (on the ground that it would break up the country and ran

¹⁵⁸ Groppi & Scatone, *The Subsidiarity Principle*, cit., p. 133. However, as Grottanelli de' Santi illustrates, "the absence of a specific mention in the text would be hardly sufficient to exclude the possibility of state intervention in the 'supreme interest' of the nation" so that "[i]f the state intends to adopt legislation in areas which could (...) be considered regional, it can always find ways to intervene provided it can indicate satisfactory grounds for the exercise of its powers". See Grottanelli de' Santi, *The Italian Variant*, cit., pp. 7-8.

¹⁵⁹ Article 127 currently provides that: "[t]he Government may question the constitutional legitimacy of a regional law before the Constitutional Court within sixty days from its publication, when it deems that the regional law exceeds the competence of the Region. A Region may question the constitutional legitimacy of a State or regional law or measure having the force of law before the Constitutional Court within sixty days from its publication, when it deems that said law or measure infringes upon its competence." The "old" version of article 127(1) Const. provided that: "[e]ach law approved by the regional council shall be notified to a Commissioner [...], who shall stamp it within thirty days from the notification." Furthermore, the "old" version of article 127(3) Const. mandated that: "[i]n the event the national government believes that a law approved by the regional council exceeds the competences of the region or is in contrast with national interests or with the interests of other regions, it can return it to the regional council [...]."

¹⁶⁰ Mazzoleni, *Italian regionalization*, cit., p. 143; Lecours & Arban, *Italy and Nepal*, cit., p. 190.

¹⁶¹ Pinelli, *Food for Thought*, cit., pp. 329-330; Desideri, *History of Regionalism*, cit., p. 51.

counter the principle of solidarity),¹⁶² this proposal was known under the name of “devolution”¹⁶³ and sometimes also referred to as the “Grand Reform”.¹⁶⁴ The main purpose of this reform was to amend certain critical aspects of the previous 2001 one.¹⁶⁵ However, because the proposal was approved by the Parliament only with an absolute majority (and not with two-thirds) of the votes, it was submitted to popular referendum in 2006 and, eventually, rejected by 61,3% of the voters.¹⁶⁶

First, the proposed reform aimed at reintroducing parliamentary scrutiny for regional laws in contrast with national interest.¹⁶⁷ Also, it aimed at transforming the Senate into some sort of “federal Senate” or “Chamber of Regions”.¹⁶⁸ According to the proposal, the Senate should be elected “by direct universal suffrage on a regional basis” along with the “election of the respective regional councils” in order to “guarantee territorial representation on the part of the senators”.¹⁶⁹ The Senate would also be vested with legislative powers on a series of issues

¹⁶² Mazzoleni, *Italian regionalization*, cit., p. 144; Lecours & Arban, *Italy and Nepal*, cit., p. 190; Desideri, *History of Regionalism*, cit., p. 51.

¹⁶³ Del Duca & Del Duca, *An Italian Federalism*, cit., p. 803; Mazzoleni, *Italian regionalization*, cit., p. 144; Lecours & Arban, *Italy and Nepal*, cit., p. 190.

¹⁶⁴ Pinelli, *Food for Thought*, cit., p. 329.

¹⁶⁵ Bin & Falcon, *Diritto Regionale*, cit., p. 95.

¹⁶⁶ Pinelli, *Food for Thought*, cit., p. 330. See also Bin & Falcon, *Diritto Regionale*, cit., p. 95. This attempted constitutional amendment followed the same trajectory (approval of the Parliament and popular vote by referendum) as the 2001 constitutional reform, but with opposite results.

¹⁶⁷ Pinelli, *Food for Thought*, cit., p. 338. See also C. Corsi, “A New Institutional Arrangement for Italy?” (2007) 13 *European Public Law* 231 [Corsi, *New Institutional Arrangement*]; Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 38; Bin & Falcon, *Diritto Regionale*, cit., pp. 95-96.

¹⁶⁸ Corsi, *New Institutional Arrangement*, cit., p. 227; Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 38; Bin & Falcon, *Diritto Regionale*, cit., pp. 95-96.

¹⁶⁹ Corsi, *New Institutional Arrangement*, cit., p. 227; Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 38; Bin & Falcon, *Diritto Regionale*, cit., pp. 95-96.

directly related to regions, thus leaving the Chamber of Deputies with legislative competences on matters of national concerns.¹⁷⁰

With regards to division of powers, the proposed reform was basically aligned with the scheme implemented through article 117 Const. as amended in 2001. The only difference worth noting was the inclusion of the so-called “Bossi draft” which assigned exclusive legislative competences to the regions in the following areas: health services, organization of schools and management of educational and training institutions (except for the autonomy of educational institutions), definition of educational and training programs of specific interest to the regions and local police.¹⁷¹ Similarly, regional powers over “residual” matters (those subject areas not mentioned in the Constitution) were also considered “exclusive”.¹⁷²

Another change that would have been implemented through the 2006 reform would have affected article 120 Const. and the so called “substitution powers”. In fact, the proposed amendment would have allowed the State (and not only the Government) to exercise these powers in case of inaction by local autonomies.¹⁷³

Finally, changes would have been brought to the appointment of members of the Supreme Judiciary Council (“Consiglio Superiore della Magistratura” or “CSM”), of the

¹⁷⁰ Pinelli, *Food for Thought*, cit., p. 338; Bin & Falcon, *Diritto Regionale*, cit., pp. 95-96; Del Duca & Del Duca, *An Italian Federalism*, cit. p. 803. As explained by Corsi, the Chamber of Deputies would approve bills in areas of exclusive competence of the State, although the Senate could propose changes to them. Similarly, the Senate would approve bills in areas of shared or concurrent competences, but the Chamber of Deputies could always propose changes. Finally, for certain specific subject matters, legislative powers would be exercised jointly. See Corsi, *New Institutional Arrangement*, cit., p. 229. See also Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 38.

¹⁷¹ This list is taken from Corsi, *New Institutional Arrangement*, cit., p. 224; see also p. 230; Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 38.

¹⁷² Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 38.

¹⁷³ Corsi, *New Institutional Arrangement for Italy*, cit., p. 231.

Constitutional Court,¹⁷⁴ and to article 138 Const. on judicial review by the Constitutional Court (the proposal being to abrogate the part of the article providing for the possibility of referendum in case a proposed constitutional law is not approved by two-thirds of the members of each house).¹⁷⁵

This bill was highly criticized by constitutional scholars.¹⁷⁶ For example, one criticism that was advanced was the fact that regions and other local autonomies did not play any significant role in the proposed modifications, in spite of the fact that the reform aimed at buttressing the role and functions of local governments.¹⁷⁷ More generally, the reform was criticized for not following a “single logic”¹⁷⁸ and on the basis that the individual provisions “are not the expression of an organic approach within the sphere of a coherent and well-defined picture, but rather constitute the fruit of timely compromises aimed at uniting the same majority in favor of the various proposals.”¹⁷⁹

With regards to the Federal Senate, it is worth noting that, after the “failed” reforms of 2006, there have been at least two other attempts to transform the Italian Upper Chamber into a

¹⁷⁴ Presently, the 15 judges of the Constitutional Court are appointed as follows: 5 by the President of the Republic; 5 by the Upper Judiciary Bodies; and 5 by the Parliament (Chamber of Deputies and Senate). Conversely, based on the 2006 proposed reform, the President of the Republic and the Upper Judiciary Bodies would appoint only 4 members each, whereas the Parliament would appoint 7 members (3 by the Chamber of Deputies and 4 by the Federal Senate with the assistance of Regional Presidents and Presidents of the 2 Autonomous Provinces of Trento and Bolzano). See Caretti & Tarli Barbieri, *Diritto Regionale*, cit., pp. 38-39.

¹⁷⁵ Corsi, *New Institutional Arrangement for Italy*, cit., p. 232.

¹⁷⁶ Pinelli, *Food for Thought*, cit., p. 338; Corsi, *New Institutional Arrangement*, cit., p. 223 et seq.

¹⁷⁷ Corsi, *New Institutional Arrangement*, cit., p. 231.

¹⁷⁸ Corsi, *New Institutional Arrangement*, cit., p. 231.

¹⁷⁹ Corsi, *New Institutional Arrangement*, cit., p. 232. For example, Corsi explains that the “national interest” limit was advocated by the right-wing political party known as *Alleanza Nazionale*, whilst the devolution of certain powers to the regions was supported by the LN.

true Regional Chamber, one proposal in 2008 (but failed because of the early termination of the Parliament) and one other in 2012, still under discussion at the time I am writing.¹⁸⁰

11. Italian regions and their relationship with the European Union

The strengthening of the institutional importance of Italian regions paralleled the development of regionalism at EU level. I have already noted how Italian regionalism was partially encouraged and supported by the institutional recognition, at EU level, of the relevance of regions. However, scholars recall that the European integration process was initiated by “national States” through the conclusion of international treaties (therefore, under the aegis of international law) and governed by the same States.¹⁸¹ At this initial stage, little or no space was reserved to regions or other forms of local self-government as, among the founding member states of the EU Communities, only Italy and Germany presented a multi-level structure, so it was probably perceived as not being a priority.¹⁸² Yet, this disregard at European institutional level for local autonomies continued even when other member states began to join the community (namely, Austria, Spain, Portugal, the United Kingdom which, in one way or the other, all presented decentralized systems with local sub-units).¹⁸³ A first recognition at EU level of the importance of local autonomies occurred with their involvement in the management of

¹⁸⁰ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., pp. 38-39.

¹⁸¹ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 371.

¹⁸² Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 371; A. Iacoviello, “Rules and Procedures for the Participation of Italian Regions in European Policymaking” in S. Mangiameli, ed., *Italian Regionalism: Between Unitary Traditions and Federal Processes* (Cham: Springer, 2014), p. 250 [Iacoviello, *Participation of Italian Regions in EU Policymaking*]. The “founding” states of the first European Communities were: Italy, Germany, France, The Netherlands, Luxembourg, and Belgium. Among them, only Germany had a “federal” Basic Law, whereas Italy was, by Constitution, articulated in regions, thus creating a “regional state” with ordinary and special regions. Belgium became a federal state in 1993, whereas the other three were considered “unitary” states.

¹⁸³ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., pp. 371-372; Iacoviello, *Participation of Italian Regions in EU Policymaking*, cit., p. 250.

European Structural Funds¹⁸⁴ and with the introduction of some forms of partnership among regional levels.¹⁸⁵ But it was only with the creation of the European Union with the Treaty of Maastricht (“TEU”) of 1992 that there was an official “institutional” recognition of local autonomies at EU level.¹⁸⁶ Among other things, the TEU codified for the first time the celebrated and well-known principle of subsidiarity at the demand of member states, worried that the EU institutions might attain too much power to the detriment of the same national states.¹⁸⁷ This progressive recognition of the relevance at EU level of local autonomies was somehow mirrored internally in each national state.

In Italy, the Constitution as amended in 2001 displays various provisions trying to regulate the relationship between regions, central state and the EU. For example, article 117(2) Const. dictates that the national government enjoys exclusive legislative competence with regards to the relationship between the State and the European Union; article 117(3) Const. lists, as a shared power between the centre and the periphery, a legislative power on the relationship between the EU and the Regions; similarly, article 117(5) provides that:

¹⁸⁴ These are European tools aimed at pursuing policies of economic and social cohesion at Community level.

¹⁸⁵ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 372. It should also be pointed out that, since the 1970s, several regions of various EU member states started to open representative offices in Brussels: Pinelli, *Regioni e rapporti internazionali*, cit.; Iacoviello, *Participation of Italian Regions in EU Policymaking*, cit., pp. 250-251 (and fn 5).

¹⁸⁶ Among other things, the TEU set up the so-called *Committee of the Regions* to permanently involve local governments for consultative purposes at the level of the EU Commission. Moreover, pushed by the German *Länder*, the TEU also “modified the requirements needed for the participation to the Council of Ministers [the Legislative power] of the Community.” Caretti & Tarli Barbieri, *Diritto Regionale*, cit., pp. 372-373; Iacoviello, *Participation of Italian Regions in EU Policymaking*, cit., pp. 250-251 (and fn. 5).

¹⁸⁷ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 373. With regards to subsidiarity, I shall recall that the most (chronologically speaking) recent EU Treaty, the Treaty of Lisbon of 2007, introduced a “Protocol on the Application of the Principles of Subsidiarity and Proportionality” that acknowledges an involvement of regional institutions, in addition to national parliaments, in the evaluation of the respect of the subsidiarity principle. For a more thorough discussion on the evolution and development of this principle at EU level see, among others, Arban, *Subsidiarité*, cit. pp. 219-234.

The Regions and the autonomous Provinces of Trento and Bolzano take part in the preparatory decision-making process of EU legislative acts in the areas that fall within their responsibilities. They are also responsible for the implementation of international agreements and EU measures, subject to the rules set out in State law which regulates the exercise of subsidiary powers by the State in the case of non-performance by the Regions and autonomous provinces.

The procedural norms mentioned in the quoted article are spelled out by Law 11/2005, providing for various forms of involvement of regional institutions in EU policy-making, thus strengthening the role played by local autonomies in the overall EU scheme.¹⁸⁸

In summary, the general pattern of the relations between Regions and the international legal order can be summarized as follows. Article 117 Const. articulates international competences between the centre and the periphery in providing (a) an exclusive competence of the national government in the area of foreign policy and international relations of the State (article 117(2) a)); (b) a shared competence between the centre and the periphery in the area of international relations and regional relations with the EU, including international trade (article 117(3)); and (c) a competence of the Regions in concluding agreements with foreign States and understandings with territorial entities of other States in those subject matters of their own competence, pursuant to the forms set by national laws (article 117(9)).¹⁸⁹

In addition to the division of legislative powers between the state and the regions, article 117 also deals with the so called “foreign powers” of the regions. In fact, pursuant to article 117(9), in subject matters falling within their jurisdictions, regions can “sign agreements with foreign States and understandings with local governments of other States”. A national law shall

¹⁸⁸ Caretti & Tarli Barbieri, *Diritto Regionale*, p. 377; Iacoviello, *Participation of Italian Regions in EU Policymaking*, cit., pp. 256 et seq..

¹⁸⁹ See Pinelli, *Regioni e rapporto internazionali*, cit.

determine the cases and the ways this power can be exercised.¹⁹⁰ Moreover, thanks to article 117(5) Const., Regions are vested with the power to participate in the formation of EU law normative acts, implement them as well as international treaties, always in subject matters belonging to their own sphere of competence, and in the respect of procedures determined by a State law.¹⁹¹

Conclusion

This chapter had two main goals. On one side, it aspired to portray the transition of Italy from a centralized state system into a more decentralized regional or quasi-federal scheme, particularly after the 2001 constitutional reform. On the other side, through a detailed analysis of the current Italian regional model, it sought to attest that only a very fine line separates regional from *pure* federal schemes. This is evidenced both by the difficulty encountered in finding a definition of the Italian model (with continuous cross references to federal and regional models), but also by the presence, within the same regional scheme, of features that are clearly borrowed from federal theory. As for the first aspect, some theorists suggested that the 2001 reform “has a federalizing thrust, in the sense that is pushing the Italian once unitary state (1948-70), then decentralized unitary state (1970 onwards) in the direction of “something more than a regional state” but without creating a federal state.¹⁹² Other scholars noted how the tools available to the central state to control regions confirm the idea that Italian regionalism is “a system of Regional autonomy guaranteed by a national constitution” but not a more complete “federal or

¹⁹⁰ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 36

¹⁹¹ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 36.

¹⁹² Fabbrini & Brunazzo, *Federalizing Italy*, cit., pp. 116-117.

supranational union”.¹⁹³ At the same time, however, the fact that regions do enjoy some legislative and budgetary autonomy, as well as significant powers in dealing with the EU, supports the idea that the present institutional and constitutional arrangement is something more than “the mere decentralization of administrative functions evidenced in unitary states”.¹⁹⁴ In any event, while Italian regions enjoy legislative and executive powers, they do not have any judicial power.¹⁹⁵ As for the second aspect, among the *pure* federal traits present in the Italian constitutional text, there is the division of legislative powers between central and peripheral institutions (article 117), the entrenchment, at constitutional level, of the principle of subsidiarity (article 118), of loyal collaboration¹⁹⁶ (article 120), of fiscal federalism (article 119), in addition to asymmetrical federalism (article 116) and the provision of article 114 that equates (at least on paper) municipalities, provinces and regions in the list of component units of the republic. Some of these aspects will be more thoroughly scrutinized in chapter VII, where I will also elucidate on how they can be employed by other federal or decentralized states when dealing with political and socio-economic societies characterized by *non-national* differences.

¹⁹³ Del Duca & Del Duca, *An Italian Federalism*, cit., p. 814.

¹⁹⁴ Del Duca & Del Duca, *An Italian Federalism*, cit., p. 814.

¹⁹⁵ Grottanelli, *Italian Variant of Federalism*, cit., p. 8.

¹⁹⁶ With regards to loyal collaboration, it was entrenched for the first time at constitutional level with the 2001 amendments, although in the 1980s the ItCC had already recognized it as a constitutional principle that should inform the relationships between the centre and the periphery, so that they could cooperate to further the interests of the nation. From an historical standpoint, loyal collaboration originates within the German federal monarchical state of 1871, whereby both the *Reich* and the federated entities were bound, with regard to each other and with regard to the state, to a certain loyalty to the Union (*Bundestreue*): C. Bertolino, “La leale collaborazione quale principio cardine dei sistemi multilivello” (2006) *Centro Studi sul Federalismo*, Paper Series, available online at http://www.csfederalismo.it/attachments/1351_PP_Bertolino_06.pdf, p. 13 and fn 19; J.-F. Gauldreault-DesBiens, “Cooperative Federalism in Search of a Normative Justification: Considering the Principle of Federal Loyalty” (2014) 23 *Constitutional Forum constitutionnel* 3 (for a discussion on *Bundestreue*); Bin & Falcon, *Diritto regionale*, cit., p. 86; C. Salerno, “Note sul principio di leale collaborazione prima e dopo la riforma del titolo V della costituzione” (2010) *Amministrazione in Cammino*, available online at <http://amministrazioneincammino.luiss.it/wp-content/uploads/2010/04/Salerno.pdf>.

The 2001 constitutional reform also triggered the criticism of scholars: one of the main issues emerged after the reform is that is created a “gap” between the approved text and real life, in the sense that not all the provisions contained in the amended text were actually carried out. Also because of this discrepancy between written and real constitution, in the years following 2001 and until today the actual scope of the reform has been under challenge, with serious questioning of the future of Italian regionalism. The next chapter will analyze the future of Italian regionalism.

In conclusion, I share the point of view of Fabbrini & Brunazzo who describe the 2001 constitutional reform as something that “set in motion a federalizing tendency, but [it] did not create a federal state”.¹⁹⁷ They also argue that “the federalist model has never enjoyed the convinced support of Italian parliamentarians and the country’s main political parties. Bound to a centralist culture, alarmed by the possible abolition of the Senate (...) and backed by an equally centralist administrative class, many Italian national leaders and parliamentarians raised silent resistance against pressures for federal reform”.¹⁹⁸ Nonetheless, regardless of the future of Italian regionalism and the general skepticism surrounding it, I reiterate the idea that it contains traits that are very relevant to other federal or decentralized states, so that the lessons that can be learned from it acquire a remarkable significance.

¹⁹⁷ Fabbrini & Brunazzo, *Federalizing Italy*, cit., p. 117.

¹⁹⁸ Fabbrini & Brunazzo, *Federalizing Italy*, cit., p. 114.

CHAPTER VI

CURRENT ISSUES AND FUTURE TRENDS OF THE ITALIAN REGIONAL STATE

Introduction

I devoted chapters IV and V to the study of the history and development of Italian regionalism and to the 2001 constitutional reform that deeply transformed the Italian constitutional and institutional arrangement, at least on paper. While not a *fully-fledged* federation, Italy presents a regional model that can certainly be situated within the wide category of federal schemes, as the differences existing between the two models are minor, as I argued in Chapter II. Therefore, while Italian regionalism reveals some variations compared to more *classic* federations, I believe that there are some lessons that can be learned from, and applied to other decentralized models, especially in the ambit of political and socio-economic societies characterized by *non-national* differences, as I will illustrate in Part III of this thesis (chapters VII-IX). At the end of chapter V, I also noted how the 2001 constitutional amendment still represents the major reform, as subsequent proposals to further change the constitution have failed. At the time I am writing, just over ten years have passed since this cardinal constitutional change, so this might be a good time for a general assessment of the reform and speculate on current issues and debates as well as future trends of Italian regionalism.

In general terms, one obvious consideration is that this past decade has brought with it profound changes that have deeply affected the international, historical, political, economic and institutional landscape. But also internally there have been radical adjustments, so that the Italian reality is profoundly different compared to 2001: the introduction of the Euro, the change of

political players, the economic and financial crisis, etc. Ironically, the only facet that has remained unaltered is a pervasive negative perception of federalism, which contributed to the inaction that has prevented the introduction of additional modifications in federal terms to the constitutional architecture. This is why I am not in a position to anticipate a bright future for Italian regionalism, as I will explain in this chapter.

First of all, Italy is currently facing a profound economic and financial crisis. Although the country is not new to this type of emergency,¹ and while other industrialized and developed countries in the West have experienced similar troubles, especially after 2008, the pressures Italy is facing are certainly heavier than many other states, due to the peculiar political, economic, cultural, and social texture; for this reason, finding a way out might appear more challenging. Groppi explains that the origins of this crisis “can be traced back to some weakness in the economic system dating back to the pre-Republican period” although it was “further exacerbated as the main consequence of the enormous public debt that has seen a continuous and tremendous increase since the early sixties”.² As for public debt, she contends that the consociational political system that distinguished Italian politics since WWII actually “lacked a real political opposition able to control the government majority”.³ Furthermore, since 2008 “the government has had to face [also] the consequences of the international economic crisis, which has resulted in a reduction of the GDP and a consequent decline in tax revenues” in addition to “an increase in public spending in order to deal with the liquidity crisis faced by the banking sector and the

¹ Similar difficulties were in fact experienced also in the early 1990s, as Groppi contends. See T. Groppi, “The Impact of the Financial Crisis on the Italian Written Constitution” (2012) 4 *Italian Journal of Public Law* [Groppi, *The Impact of the Financial Crisis*].

² Groppi, *The Impact of the Financial Crisis*, cit.

³ Groppi, *The Impact of the Financial Crisis*, cit. See also chapters II, IV and V.

difficulties facing the private sector”.⁴ In 2011, “financial speculation led to a marked increase in the interest rates of public debt bonds and in their spread compared with those of other countries” while, in August 2011, the European Central Bank “sent a letter to the Italian Government, in which it asked Italy to adopt policies to deregulate its economy, to introduce more flexibility in employment and to increase privatization”.⁵

Because of its seriousness and gravity, this crisis is frustrating all steps towards further decentralization that began in the early 2000s, as these types of reform are not seen as a priority at the moment.⁶ On the contrary, centripetal measures are proposed, with a consequent questioning of the efficiency and aptness of local self-governments (regions, provinces, and municipalities) to deal with certain issues, especially in the ambit of public finance. This is why scholars argue that Italian regions are presently showing less appeal and enjoy fewer powers than before.⁷ In other words, at this critical time, instead of seeing them as the indispensable

⁴ Groppi, *The Impact of the Financial Crisis*, cit.

⁵ Groppi, *The Impact of the Financial Crisis*, cit. Specifically, EU institutions were concerned with “the lack of political credibility of the Italian Government especially with regard to the reduction of public debt and the adoption of structural reforms necessary to contain public spending” (*ibid.*).

⁶ In fact, Di Folco talks about “freezing the implementation and completion processes of Title V of the Constitution”. See M. Di Folco, “Le Province al tempo della crisi” (2013) *Osservatorio dell’Associazione Italiana dei Costituzionalisti*, available online at <http://www.osservatorioaic.it/le-province-al-tempo-della-crisi.html> [Di Folco, *Le Province*]. See also D. Del Gaizo, “Riforme costituzionali e riorganizzazione territoriale” (2014) *Federalismi.it*, available online at http://www.federalismi.it/AppOpenFilePDF.cfm?dpath=document\editoriale&dfile=EDITORIALE_23072014154705.pdf&content=Riforme+costituzionali+e+riorganizzazione+territoriale&content_auth=Danilo+Del+Gaizo, who argues that “the reorganization of the territorial structure in Italy is changing direction again. The crisis of the regional system, which began in 2012, has imprinted a sharp change of perspective to the federalist process” (*ibid.*, p. 1). Similar concerns are shared by Mangiameli, who alleges that “the forces pushing towards the completion and improvement of the bill reforming Italian regionalism, as initiated in the 1999 and 2001 constitutional laws, seem to have totally disappeared as a result of the economic crisis”. See S. Mangiameli, “The Regions and the Reforms: Issues Resolved and Problems Pending” in S. Mangiameli, ed., *Italian Regionalism: Between Unitary Traditions and Federal Processes* (Cham: Springer, 2014), p. 26 [Mangiameli, *Regions and Reforms*].

⁷ A. Barbera, “Da un federalismo “insincero” ad un regionalismo “preso sul serio”? Una riflessione sull’esperienza regionale” (2012) *Forum di Quaderni Costituzionali*, available online at http://www.forumcostituzionale.it/wordpress/images/stories/pdf/documenti_forum/paper/0340_barbera.pdf

components of the “pluralistic system” embedded in the constitution, local autonomies are scrutinized through the fiscal or financial lens, and are seen as centers of “expenditures” that need to be rearranged or rationalized.⁸ This is also the reason why the present system of local self-government is described as a “diseconomy” that needs to be eliminated through radical decisions, necessary to cope with the [financial] emergency.⁹

Building upon Italian doctrine, this chapter speculates on the present and future of Italian regionalism by emphasizing some of the shortcomings of the existing regional scheme, including an analysis of the “diseconomies” referred to in the previous paragraph, as well as future reforms currently being discussed. I will argue that identifying the present state of Italian regionalism is not always easy, in part because of a certain myopic way of “doing” politics, whereby institutional reforms are often the result of compromises between opposing political forces, and frequently coexist with other, more stringent priorities. More specifically, I will begin with an illustration of the main critiques moved to the 2001 reform of Title V of the constitution: while some of them have already been mentioned in previous chapters, here we are presented with the possibility to explore them more thoroughly. Next, I will provide the details of constitutional law 1/2012 which amended in significant terms some articles of the Constitution and which represents, chronologically speaking, the latest measure adopted by the government and that is clearly imbued with the “centripetal” spirit explained above. I will then look at the doctrinal

[Barbera, *Federalismo insincero*]. Similarly, Di Folco notes that we are currently experiencing a “recessive phase of the autonomist principle” (Di Folco, *Le Province*, cit.).

⁸ Di Folco, *Le Province*, cit.

⁹ Sandro Staiano, “Le autonomie locali in tempo di recessione: emergenza e lacerazione del sistema” (2012)

Federalismi.it, available online at

<http://federalismi.it/AppOpenFilePDF.cfm?artid=20795&dpath=document&dfile=11092012130230.pdf&content=Le+autonomie+locali+in+tempi+di+recessione:+emergenza+e+lacerazione+del+sistema+-+stato+-+dottrina+-+>, p.

1 [Staiano, *Le autonomie locali*].

debate over the “conservation” of local entities (regional, provinces and municipalities). At the end of the chapter, I should be able to shed some light on current issues and future trends of Italian regionalism. As noted, the ultimate goal of the chapter is to emphasize the main shortcomings of the Italian regional state in its present form, and to do so I will extensively resort to the abundant Italian doctrine which has been very active in pointing out what needs to be perfected in the system.

1. Constitutional reform of Title V: some criticism

The constitutional amendment of Title V in 2001 appeared at the time as the prelude to a more radical institutional transformation of Italy. Scholars indulged in coining powerful expressions to effectively illustrate the changes occurring to the Italian institutional scheme. Some theorists talked about the reform as the “first step” towards a federalization of Italy;¹⁰ others talked about an “Italian variant of federalism”¹¹ or of an “Italian way of federalism”¹² or, more simply, of an “Italian federalism”;¹³ some others spoke of a “federal solution”¹⁴ for Italy.

¹⁰ In these terms see G. F. Cartei & V. Ferraro, “Reform of the Fifth Title of the Italian Constitution: A First Step Towards a Federal System?” (2002) 8 *European Public Law* [Cartei & Ferraro, *Reform*]. But see also S. Wiessner, “The Movement Toward Federalism in Italy: A Policy-Oriented Perspective” (2002-2003) 15 *St. Thomas Law Review* 301 [Wiessner, *The Movement*]; L. F. Del Duca & P. Del Duca, “An Italian Federalism? – The State, its Institutions and National Culture as Rule of Law Guarantor” (2006) 54 *American Journal of Comparative Law* 799 and 839, who talk about a “nascent [Italian] federalism combining Regionalization and Supranationalism” since regions enjoy notable autonomy (administrative, financial and legislative) but the State has also “ceded” important powers at EU level (like all EU member states) [Del Duca & Del Duca, *An Italian Federalism*].

¹¹ G. Grottanelli de’ Santis, “The Italian Variant of Federalism” in J. Fedtke & B. Markesinis, eds., *Patterns of Regionalism and Federalism: Lessons for the UK* (Oxford & Portland: Hart, 2006), p. 3 [Grottanelli, *Italian Variant of Federalism*].

¹² G. C. De Martin, “Un ente strategico, ancorché misconosciuto: la provincia” (2009) *Federalismi.it*, available online at <http://www.federalismi.it/AppOpenFilePDF.cfm?artid=13973&dpath=document&dfile=09092009121821.pdf&content=Un+ente+strategico,+ancorch%C3%A9+misconosciuto:+la+provincia+-+stato+-+dottrina+-+>, pp. 1 and 5 [De Martin, *La provincia*].

¹³ See, among others, T. Groppi, “Soppressione delle Province e nuovo Titolo V” (2009) *Federalismi.it*, available online at

However, at the time I am writing, not only does the perspective of a full federalization of Italy seem abandoned, but there seems to be, at least at the political level, a considerable (re)turn towards the centre, thus frustrating the ambitions of Italian local self-governments.¹⁵

I devoted Chapter V to illustrating in great detail the main traits of the 2001 constitutional reform. At that point, I also mentioned how scholars have repeatedly challenged and criticized not only the substance of certain newly introduced provisions of Title V, but also the fact that the reform was carried out in the spur-of-the-moment without some serious thinking on the consequence of certain decisions. Some general censures regarding the 2001 reform were already indicated in Chapter V. I will now continue in this direction by presenting other critical positions taken by scholars in this regard.

a. Article 117 Const. on division of powers

First and foremost, scholars contend that the “living constitution” that has emerged from laws and jurisprudence is “profoundly different” than the 2001 constitutional text,¹⁶ as the division of legislative powers does not follow the text of article 117 Const. For example, some commentators have lamented how, instead of simplifying or clarifying the distribution of powers

<http://www.federalismi.it/AppOpenFilePDF.cfm?artid=13853&dpath=document&dfile=05082009080241.pdf&content=Soppressione+delle+province+e+nuovo+Titolo+V+-+stato+-+dottrina+-+>, p. 5 [Groppi, *Soppressione delle Province*].

¹⁴ F. Palermo & A. Wilson, “The Dynamics of Decentralization in Italy: Towards a Federal Solution?” (2013) European Diversity and Autonomy Papers, EDAP 04/2013, available online at www.eurac.edu/edap [Palermo & Wilson, *Dynamics of Decentralization*].

¹⁵ E. Balboni & M. Carli, “Stato senza regioni e regioni senza regionalismo” (2012) *Federalismi.it*, available online at http://www.federalismi.it/AppOpenFilePDF.cfm?dpath=document\editoriale&dfile=EDITORIALE_06112012132512.pdf&content=Stato+senza+autonomie+e+Regioni+senza+regionalismo&content_auth=Enzo+Balboni,+Massimo+Carli [Balboni & Carli, *Stato senza regioni*].

¹⁶ D. A. Caprio, “La crisi del regionalismo italiano” (2008) *Forum di Quaderni Costituzionali*, available online at http://www.forumcostituzionale.it/wordpress/images/stories/pdf/documenti_forum/paper/0045_caprio.pdf [Caprio, *Crisi del regionalismo italiano*].

between the centre and the periphery, the new provision has dramatically complicated it.¹⁷ Areas like “transportation and navigation networks” or the disciplining of “professions” have been transferred to the shared competences of state and regions (although the scheme has been later re-framed by the intervention of the constitutional court),¹⁸ while these are subject matters that would probably benefit more from a centralized discipline. Moreover, in sectors like tourism, rail services, local public transportation, workplace safety, management of European funds, etc. the observation made by scholars is that “regions aggravate the procedures, are often incapable of carrying out new functions, and feed additional costs and apparatus”.¹⁹ In other words, the “regionalism that has emerged from the reform of 2001 has almost collapsed: full of debts, conflictual, spendthrift, inefficient and contradictory”.²⁰ But also this “rigid” subdivision of powers between State and regions has been seriously questioned, in favor of a more “cooperative” approach in the performance of legislative functions between central and regional institutions.²¹ This trend in the direction of a more “cooperative federalism” has in fact become popular in certain long-standing *pure* federations like Canada.²²

¹⁷ Barbera, *Federalismo insincero*, cit. See also B. Caravita, “Italy. Between the hybrid state and Europe’s federalizing process” in J. Loughlin, J. Kincaid & W. Swenden, eds., *Routledge Handbook of Regionalism and Federalism* (London & New York: Routledge, 2013), p. 298.

¹⁸ Barbera, *Federalismo insincero*, cit.

¹⁹ Caprio, *Crisi del regionalism italiano*, cit.

²⁰ Caprio, *Crisi del regionalism italiano*, cit.

²¹ Barbera, *Federalismo insincero*, cit.; Mangiameli, *Regions and Reforms*, cit., p. 26.

²² See, *ex multis*, J.-F. Gaudreault-DesBiens, “Cooperative Federalism in Search of a Normative Justification: Considering the Principle of Federal Loyalty” (2014) 23 *Constitutional Forum constitutionnel*, 1-19; H. Cyr, “Autonomy, Subsidiarity, Solidarity: Foundations of Cooperative Federalism” (2014) 23 *Constitutional Forum constitutionnel* 20-40.

b. Article 119 Const. on fiscal federalism

Second, the provision on fiscal federalism enshrined in article 119 Const. has remained largely incomplete, at least until the implementation of law 42/2009.²³ Scholars like Caravita contend that, while one of the objectives of this law is to counterbalance the distribution of resources between the North and the South, it is still unclear what the real impact of this redistribution of resources will be.²⁴ The other objectives pursued by this law are, as Caravita notes, the introduction of mechanisms to better control public expenditures and, more generally, a subsidiary-based “adjustment of the distribution of functions” similarly to what happens in other EU member states.²⁵ However, the global financial and economic crisis has changed the rules of the game, thus reducing the scope of regional functions on financial matters also through the introduction of legislative provisions that have re-shaped the overall regional competences.²⁶

Another common concern among scholars regarding the provisions on fiscal federalism is that, while article 119(1) Const. provides for the autonomy of revenue and expenses of all local governments, most of their financing derives from the centre,²⁷ although in the constitutional intention this “co-participation” to the State’s financing should only be “secondary” or “subsidiary” and come into play only when local governments’ own revenues are “wanting”.²⁸

Consequently, since most local revenues “derive” from the State, the full financial autonomy of

²³ Mangiameli, *Regions and Reforms*, cit., p. 26.

²⁴ B. Caravita, “Federalismi, Federalismo Europeo, Federalismo Fiscale” (2011) *Federalismi.it*, available online at http://www.federalismi.it/AppOpenFilePDF.cfm?dpath=document\editoriale&dfile=EDITORIALE_04052011095337.pdf&content=Federalismi,+federalismo+europeo,+federalismo+fiscale&content_auth=Beniamino+Caravita [Caravita, *Federalismi*]. For instance, Caravita questions the real impact of such redistribution of resources on the distribution among productive sectors, or among social groups, or on the nature and quality of public expenditures.

²⁵ Caravita, *Federalismi*, cit.

²⁶ Barbera, *Federalismo insincero*, cit.

²⁷ A. Catelani, “Nuova Legislatura e Riforma delle Autonomie Locali” (2013) *Associazione Italiana dei Costituzionalisti*, available online at www.associazionedeicostituzionalisti.it [Catelani, *Riforma delle Autonomie*].

²⁸ Catelani, *Riforma delle Autonomie*, cit.

the peripheral governments is incomplete.²⁹ But the problem with this extensive resort to “derived finance” is not only constitutional in nature. In fact, in doing so, local administrators feel less responsible in the exercise of their functions, since they do not manage funds that are locally levied but rather live at the expenses of the central government.³⁰ In this way, they also save their popularity in the eyes of the electorate.³¹ As Catelani notes:

All these abuses have been allowed by the absolute inexistence of any form of political liability of the administrators of local governments from the standpoint of public expenses. The guarantee of the freedom of expenses of local governments, and the fact that the burden of their functioning would decisively fall under the province of the central State, these two converging principles, applied together, caused devastating and fatal effects leading to the failure of public finance and the consequent economic crisis, caused by an intolerable fiscal burden that depresses the economy and causes unemployment, stock markets plummet and put at risk the single currency.³²

c. Other provisions under attack: articles 116 and 118 Const.

While articles 117 and 119 Const. are the most fiercely attacked, there are other constitutional provisions contained in the amended Title V that are not immune from criticism. For example, scholars argue that the subsidiarity-based distribution of administrative functions as embedded in article 118 Const. is not always respected in practice. Similarly contested is article 116(1) Const. perpetuating the classification between ordinary and special regions, considered by theorists to be obsolete especially in light of the recent development of Italian regionalism; and this does not necessarily mean an elimination *tout court* of special regions, but a constitutional

²⁹ Catelani, *Riforma delle Autonomie*, cit.

³⁰ Catelani, *Riforma delle Autonomie*, cit.

³¹ Catelani, *Riforma delle Autonomie*, cit.

³² Catelani, *Riforma delle Autonomie*, cit.

readjustment of their status.³³ It is fair to note, however, that while scholars criticize the obsolescence of this classification between ordinary and special regions, there are recurring requests on the part of certain ordinary regions, or of municipalities within ordinary regions, to acquire autonomous status, or to move to special regions, respectively. I will revert to this last aspect later in the chapter.

d. The role played by the Italian Constitutional Court and its composition

Because of the flaws of the constitutional reform mentioned above, Italian regionalism was largely forged by the Italian Constitutional Court (“ItCC”).³⁴ But the strong intervention of the ItCC on several aspects of the reform of Title V has not been exempt from criticism. In fact, scholars have questioned the role played by constitutional judges in this context, since the reframing of the amended portion of the Constitution was done by an entity, the ItCC, whose main role is “adjudicating the legitimacy of the laws and not rewriting [...] the parameters or even assessing [...] the ‘adequacy’ of a given regional or state intervention”.³⁵

Second, concerns exist with regards to the composition of the ItCC, as regions do not presently play any role in selecting the component members of the Court, as happens for Constitutional or Supreme Courts in most federal states. The reason why some regional participation is necessary is due to the fact that Supreme or Constitutional Courts in federal or

³³ G. C. De Martin, “Il sistema delle autonomie locali dopo il Titolo V: quali prospettive?” (2006) *Amministrazione in Cammino*, available online at <http://amministrazioneincammino.luiss.it/wp-content/uploads/2010/04/DE3.pdf>, pp. 3 and 5 [De Martin, *Sistema delle autonomie locali*].

³⁴ S. Staiano, “Mitologie federaliste ed esperienza del regionalismo” (2012) *Federalismi.it*, available online at http://www.federalismi.it/AppOpenFilePDF.cfm?dpath=document\editoriale&dfile=EDITORIALE_23102012144605.pdf&content=Mitologie+federaliste+ed+esperienza+del+regionalismo&content_auth=Sandro+Staiano [Staiano, *Mitologie federaliste*].

³⁵ Barbera, *Federalismo insincero*, cit. See also Palermo & Wilson, *Dynamics of Decentralization*, cit., p. 5.

decentralized systems are also charged with solving the conflicts arising between the central and the peripheral powers, as I explained in chapter I.³⁶

In this regard, however, two remarks are in place. First, article 134(2) Const. vests on the ItCC the power to pass judgments of allocation of powers between central and regional governments; consequently, it is perfectly legitimate for the ItCC to interpret the constitution, even in ways not predicted by politicians. After all, constitutional and supreme courts are the guardians of constitutions, and this is true also in civil law countries like Italy. Second, the fact that regions do not participate in the selection of constitutional judges is not an indispensable element, since even in *pure* federations the periphery plays only a minor role in the process and, once appointed or nominated, judges act with a good amount of independence.³⁷

e. The absence of a “Senate of the Regions”

The absence of a regional senate, meaning an upper chamber allowing regional governments to participate to the national legislative powers, was also identified by scholars as one of the major shortcomings of the 2001 reform, with the German *Bundesrat* acting as the ideal role-model to imitate.³⁸ Certainly, at least from an Italian perspective, German federalism is

³⁶ Amoretti, *Italy Decentralizes*, cit., p. 136. See also Dapelo, *Trends towards Federalism*, pp. 347 and 350, suggesting that also the Senate (in addition to the President of the Republic and the supreme ordinary and administrative magistrates) should contribute to the appointment of the members of the ItCC.

³⁷ For example, US states do not choose Supreme Court judges, and even Senate confirmation hearings are conducted by elected officials not representative of the states. In Canada, Supreme Court justices are appointed by the federal government.

³⁸ Barbera, *Federalismo insincero*, cit. But see also R. Toniatti, “Le prospettive di revisione costituzionale e l’ipoteca neo-centralista sulla riforma dell’ordinamento regionale” available online at www.associazionedeicostituzionalisti.it, [Toniatti, *Prospettive di revisione costituzionale*], which details the content of the report of the Working Group on institutional reforms of 2012, including the recommended features of the Senate of the Regions, inspired by the German *Bundesrat*. In favor of a regional senate, see also Sandro Staiano, *Le autonomie locali*, cit. Furthermore, see C. Dapelo, “The Trends Towards Federalism in Italy” (2002-2003) 15 *Saint Thomas Law Review* 347 [Dapelo, *Trends towards Federalism*]. See also Amoretti, *Italy Decentralizes*, cit., p. 135.

often looked at for inspirational guidance, since both the Italian and the German legal traditions share several similarities.

It is important to note, however, that under the leadership of Prime Minister Matteo Renzi, on March 31, 2014 the Council of Ministers approved a constitutional bill containing a proposal to amend important articles of the constitution, including those pertaining to the Senate.³⁹ Based on what would become the “new” article 57 Const., the Senate would be transformed into a “Senate of Autonomies” whose members would include the presidents of regional governments, the presidents of the autonomous provinces of Trento and Bolzano, the mayors of the municipalities which are also regional capital cities (or autonomous provinces). Furthermore, for each region, there would be two representatives appointed by the regional council among its members, in addition to two mayors elected by an electoral group composed by all the regional mayors. In addition to these members clearly representing the interests of local autonomies, the new article 57 would grant the President of the Republic the possibility to appoint twenty-one citizens who have distinguished themselves for the utmost merits in social, scientific, artistic, or literary fields. The total number of senators would be 143 (including the presidential appointed members). As for the duration of the mandate of the members of the Senate, there would be a difference between regional members and members appointed by the

It is fair to note that, pursuant to article 57 Const., senators are elected on a regional basis, and that the minimum number of senators per regions is 7. Because the distribution of seats among the regions is proportional to the population living in each region, two small regions (Valle d’Aosta and Molise) have 1 and 2 senators, respectively. The election of senators on a regional basis does not mean that senators seat in representation of the regions. However, it can be argued that this allocation of seats according to regional criteria was an unfortunate attempt by the founding fathers of the 1948 constitution to create some sort of “federal-like” senate.

³⁹ The entire text of the bill (“Provisions for the abolition of equal bicameralism, the reduction of the number of members of parliament, the limitation of the institutional operating costs, the abolition of CNEL and the revision of title V, part II of the constitution”) can be found online at the following link:

http://www.governo.it/governoinforma/documenti/DDL_costituzionale_31%20marzo_2014.pdf

President: the latter would be appointed for seven years, while the mandate of the former would coincide with that of the regional entities to which they belong. This proposal would also put an end to Italian “perfect bicameralism” whereby the Senate and the Chamber of Deputies enjoy exactly the same powers and functions.⁴⁰ Pursuant to article 138 Const., “[l]aws amending the Constitution and other constitutional laws shall be adopted by each House after two successive debates at intervals of not less than three months, and shall be approved by an absolute majority of the members of each House in the second voting”. At the time I am writing, the proposed bill has been approved by the Senate, with some changes. The question is thus still open as to whether the constitution will be eventually amended.

Constitutional scholars have commented on this proposed reform by making a common criticism. One of the mostly criticized features is the possibility for the President of the Republic to appoint twenty one senators.⁴¹ For commentators, the most disturbing aspect is the fact that

⁴⁰ A. Baraggia, “The Italian Senate Under Reform: From Disguised Unicameralism to a True Regional Second Chamber?” *International Journal of Constitutional Law Blog* July 16, 2014, available at: <http://www.iconnectblog.com/2014/07/the-italian-senate-under-reform-from-disguised-unicameralism-to-a-true-regional-second-chamber>.

⁴¹ The following is a (non exhaustive) list of articles commenting on the proposed reform: E. Rossi, “Senato delle Autonomie: una composizione da rivedere (è possibile un Senato di dopolavoristi?)” (2014) *Federalismi.it*, available online at [http://www.federalismi.it/AppOpenFilePDF.cfm?artid=24805&dpath=document&dfile=15042014151337.pdf&content=Senato+delle+autonomie:+una+composizione+da+rivedere+\(%C3%A8+possibile+un+Senato+di+dopolavoristi?\)+-+stato+-+dottrina+-+](http://www.federalismi.it/AppOpenFilePDF.cfm?artid=24805&dpath=document&dfile=15042014151337.pdf&content=Senato+delle+autonomie:+una+composizione+da+rivedere+(%C3%A8+possibile+un+Senato+di+dopolavoristi?)+-+stato+-+dottrina+-+) [Rossi, *Senato delle autonomie*]; F. Clementi, “Non un Senato ‘federale’ ma un Senato ‘federatore’. Prime note sul disegno di legge di riforma costituzionale del governo Renzi” (2014) *Federalismi.it*, available online at <http://www.federalismi.it/AppOpenFilePDF.cfm?artid=24817&dpath=document&dfile=16042014100505.pdf&content=Non+un+Senato+%27federale%27,+ma+un+Senato+%27federatore%27+-+stato+-+dottrina+-+> [Clementi, *Prime note*]; G. De Vergottini, “Sulla riforma radicale del Senato” (2014), *Federalismi.it*, available online at <http://www.federalismi.it/AppOpenFilePDF.cfm?artid=24797&dpath=document&dfile=16042014124622.pdf&content=Sulla+riforma+radicale+del+Senato+-+stato+-+dottrina+-+> [De Vergottini, *Riforma del Senato*]; A. Poggi, “Funzioni e funzionalità del Senato delle Autonomie” (2014), *Federalismi.it*, available online at <http://www.federalismi.it/AppOpenFilePDF.cfm?artid=24819&dpath=document&dfile=16042014124333.pdf&content=Funzioni+e+funtionalit%C3%A0+del+Senato+delle+Autonomie+-+stato+-+dottrina+-+> [Poggi, *Funzioni*]; D. Porena, “Nel nuovo senato delle autonomie nasce il ‘partito del Presidente’” (2014), *Federalismi.it*, available online at

the “new” senate should represent the interests of local territories, thus there is no rationale in including in this group of individuals a number of citizens, even with outstanding merits in different fields, but with no connection to local entities.⁴² Other discrepancies that have been emphasized by scholars relate to the presence, within the Senate, of representatives of municipalities. While the necessity to have a representation of local communities is welcomed (since regions and municipalities share different interests and functions, and municipalities have a very long tradition in Italy), what is contested is the number of representatives: in fact, according to the doctrine, prevalence in the composition should be given to regional representatives, as regions (and not municipalities) are vested with a legislative function.⁴³ As for the number of senators assigned to each region, the proposed reform follows in a way the US model, whereby each region would be assigned the same number of senators regardless of the population. Scholars contest this approach and suggest various criteria so that the number of senators would better reflect the economic and social weight of each territorial entity.⁴⁴ Finally, the choice to link the duration of the senatorial mandate with that of the regional function covered is also quite contested: in fact, as senators would be appointed for the same period of

<http://www.federalismi.it/AppIOpenFilePDF.cfm?artid=24798&dpath=document&dfile=14042014103921.pdf&content=Nel+nuovo+Senato+delle+Autonomie+nasce+il+%27partito+del+Presidente%27+-+stato+-+dottrina+-+> [Porena, *Partito del Presidente*]; E. Catelani, “Stato federale o stato regionale nel senato delle autonomie? Note sul progetto di riforma costituzionale del governo” (2014), *Federalismi.it*, available online at <http://www.federalismi.it/AppIOpenFilePDF.cfm?artid=24807&dpath=document&dfile=15042014151317.pdf&content=Stato+federale+o+Stato+regionale+nel+Senato+delle+Autonomie?+-+stato+-+dottrina+-+> [Catelani, *Stato federale o regionale*].

⁴² See *ex multis* Porena, *Partito del Presidente*, cit., p. 2; Poggi, *Funzioni*, cit., p. 2; De Vergottini, *Riforma del Senato*, cit., p. 3; Catelani, *Stato federale o regionale*, cit., p. 4; Clementi, *Prime note*, cit., p. 6.

⁴³ See Catelani, *Stato federale o regionale*, cit., p. 4; Poggi, *Funzioni*, cit., p. 3.

⁴⁴ Rossi, *Senato delle autonomie*, cit., p. 3; Catelani, *Stato federale o regionale*, cit., 3.

time as their regional engagement, this would imply that the Senate would not have a stable composition.⁴⁵

As mentioned, at the time I am writing the proposal just outlined is still under discussion, so I cannot predict whether it would actually change the present constitutional design. In any event, in spite of the necessary adjustments, I believe it certainly represents an important step in the advancement towards an even more decentralized scheme. Obviously, the newly proposed Senate would respond to the very purposes of a federal senate, in a way that is absent even in certain federal states (like Canada). Yet, this would also perpetuate the well consolidated Italian habit of introducing into the constitution very decentralizing features, while at the same time taking a centripetal approach in other ways.

f. The Italian “way” of doing politics

It is also broadly acknowledged that the “Italian way” of doing politics is excessively costly. Caravita (but the same perplexities are voiced by other scholars) argues that at the moment there are “too many MPs”; too many “local and regional councilors”; too much public money that goes to political parties; too many “local public companies”; and too many “uncontrolled and expensive authorities”.⁴⁶ This is reflected in the phenomenon known as “commuters of federalism”.⁴⁷ In fact, while on one side more autonomy for local self-government is sought, on the other side the link with central institutions remains strong, with

⁴⁵ De Vergottini, *Riforma del Senato*, cit., p. 3; Poggi, *Funzioni*, cit., p. 3; Paterniti, *Riflessioni*, cit., p. 8.

⁴⁶ B. Caravita, “Trasformazioni costituzionali nel federalizing process europeo” (2012) *Federalismi.it*, available online at http://federalismi.it/AppOpenFilePDF.cfm?dpath=document\editoriale&dfile=EDITORIALE_11092012204519.pdf&content=Trasformazioni+costituzionali+nel+federalizing+process+europeo&content_auth=Beniamino+Caravita [Caravita, *Federalizing process*].

⁴⁷ Caprio, *Crisi del regionalism italiano*, cit.

regional bureaucrats and representatives continuously traveling between their territories and Rome (with a consequent, huge disbursement of public funding) to discuss “guidelines”, to “uniform and homologate the regional system” or to “agree on opinions and understandings”.⁴⁸

Similarly, Palermo and Wilson contend that, while administrative decentralization has entailed an expansion of regional bureaucracy, the “size” and “scope” of the central government has not been reduced proportionally.⁴⁹ Consequently, the reforms aiming at increasing the decentralization process have resulted to be more expensive than expected, with the central bureaucracy that has continued to “micro-manage” policy areas devolved in theory to regional governments.⁵⁰ In other words, “[t]he central state apparatus has not been reformed in any significant way to take account of regionalization, leading to disputes over policy competences with regional governments, as well as the proliferation and duplication of bureaucracy at all levels”.⁵¹ This disappointing effect is the result of a “combination of a vague political consensus on federal reform and its inevitable subordination to partisan pressures”.⁵²

g. Concluding remarks

In conclusion, there is a widespread belief that Italian regionalism is incomplete, “confused” and “irresponsible”⁵³ with regions that have become nothing more than “voracious machines of public expenses”⁵⁴ and with certain arrangements contained in the reform that “suffer from a lack of legal clarity, contain contradictory elements, and are rarely supported by

⁴⁸ Caprio, *Crisi del regionalism italiano*, cit.

⁴⁹ Palermo & Wilson, *Dynamics of Decentralization*, cit., p. 7.

⁵⁰ Palermo & Wilson, *Dynamics of Decentralization*, cit., p. 7.

⁵¹ Palermo & Wilson, *Dynamics of Decentralization*, cit., p. 5.

⁵² Palermo & Wilson, *Dynamics of Decentralization*, cit., p. 6.

⁵³ Caprio, *Crisi del regionalism italiano*, cit.

⁵⁴ Caprio, *La crisi del regionalism italiano*, cit.

adequate implementing legislation”.⁵⁵ Consequently, scholars have offered various solutions, spanning from the necessity to redraft the distribution of legislative powers between the centre and the periphery, the final implementation of fiscal federalism, or the asymmetric organization on the allocation of functions, as it happens at EU level.⁵⁶

In any event, the above outline is certainly a good indicator of the main weaknesses of the 2001 reform and gives the pulse of current debates revolving around some of the issues of Italian regionalism. Constitutions are not always ideal, and only time and practice offer the best cues to understand what needs to be perfected, especially when the institutional framework of a state undergoes more or less radical changes as in the case of Italy.

I would like to include here some personal reflections. In the same line of thought as the scholars cited above, it is unquestionable that the present wording of article 117 on division of powers is simply not functional or efficient: the classification used is complex and vague at the

⁵⁵ Palermo & Wilson, *Dynamics of Decentralization*, cit., p. 5.

⁵⁶ B. Caravita, “The Italian Challenge between Federalism and Subsidiarity” (2010) *Federalismi.it*, available online at http://www.federalismi.it/ApplOpenFilePDF.cfm?dpath=document\editoriale&dfile=The+italian+challenge+between.pdf&content=The+italian+challenge+between+federalism+and+subsidiarity&content_auth=Beniamino+Caravita [Caravita, *Italian Challenge*]. Among the various recommendations, the proposal sketched by Barbera in 2006 before the Commission for Constitutional Affairs of the Chamber of Deputies and the Senate well condenses some of the key proposals in light of the critiques outlined above: the proposal advocates for the substitution of the existent “rigid” division of powers between the centre and the periphery outlined in article 117 Const. with a more flexible or “cooperative system” as it happens already in other federal or decentralized states. It also purports the elimination of provinces and a general redrafting of article 114 Const. as well as the elimination of provisions on asymmetric federalism (as in article 116 Const.). Interestingly enough, Barbera also suggests to limit the autonomy of the regions in determining the form of government and the legislative process at regional level. In fact, pursuant to the amendment introduced with constitutional law 1/1999 (described in chapter V), each regional *statuto* can now determine its own form of government, so that, at least potentially, regions can considerably diverge one from another, in sharp contradiction with what happens in most federal states, where constituent units usually mirror the form of government of the centre. See A. Barbera, “Il Titolo V tra attuazione e riforma” (2006), *Forum di Quaderni Costituzionali*, available online at http://www.forumcostituzionale.it/wordpress/wp-content/uploads/pre_2006/1158.pdf.

same time, and makes the whole law-making process tremendously (and unnecessarily) burdensome. The world we live in is extremely sophisticated and multifaceted: ideas move instantaneously across cities, countries, continents. Similarly, goods and people circulate rapidly thanks to modern transportation networks. Real and virtual connections fill every instant of our time. Such a complicate reality requires quick and clear answers, also and especially from the legal universe, and even so in places belonging to the European Union, since member states have to take into account an additional tier of government represented by institutions located in Brussels. This is why the rigid inventory of subject matters falling within exclusive or shared jurisdiction of the centre and the periphery detailed in article 117 Const. is outdated and futile, as it does not help to quickly react to the challenges we are constantly faced with. A much simpler, flexible, subsidiarity-based distribution of legislative powers, inspired by the modern idea of cooperative federalism, would probably be a better solution, so long as crucial principles such as subsidiarity and cooperative federalism are precisely defined and understood.

Similarly, it is also self-evident that the constitutional text on fiscal federalism (article 119 Const.) is of no value if not matched by a law implementing it. Yet, the flaws detected particularly in articles 117 and 119 Const. are nothing but a reverberation of the embarrassing and vicious ambiguity that has surrounded the political debate over federal reforms since its inception. The result is a constitution filled with antithetical provisions, torn between the written text, the intentions of the legislator, the understanding of policy makers and doctrine, without finding a common point of agreement. The same constitutional judges, often called to offer their objective and resonated opinion, fuel this general perplexity by returning controversial and contradictory judgments. The only certainty is that there is no certainty, no transparency on what we want, what we have achieved so far, or where we want to go. The unwillingness to assume a

clear stance before the federal challenge on the part of political actors cannot but lead to a confused and confusing situation as the one detailed above.

2. Constitutional law 1/2012

Originated in the pressing need to “improve the credibility of the Italian institutions in the global context”⁵⁷ constitutional law no. 1 of April 2012 has deeply eroded the financial autonomy of regions, with a consequent impact on the whole architecture of local autonomies intended as the constituting entities of the Italian Republic, as spelled out in article 114 Const.⁵⁸ This is why, with reference to the constitutional text as amended in 2001, this law has been dubbed as a “counter-reform of local and regional autonomy”.⁵⁹ The modifications introduced by Constitutional law 1/2012, which have become operative at the beginning of the 2014 fiscal year,

⁵⁷ Groppi, *The Impact of the Financial Crisis*, cit. Fabbrini further details the conditions that led to this constitutional amendment. See S. Fabbrini, “Political and institutional constraints on structural reforms: interpreting the Italian experience” (2013) 18 *Modern Italy* 423-436 [Fabbrini, *Structural reforms*]. He explains that, in 2011, Eurozone institutions and leaders forced Italy to introduce a number of reforms to reduce debt and promote growth. Because the Berlusconi government then in place did not take the necessary actions to move in the direction indicated by EU leaders, in August 2011 the European Central Bank (“ECB”) (in the persons of Jean Claude Trichet and Mario Draghi) sent a letter to the Berlusconi cabinet with a list of reforms that needed to be implemented in order to “receive ECB support for keeping interest rates low on Italian bonds” (*ibid.*, p. 423). The ECB, Fabbrini continues, required two types of action from the Italian government: on one side, actions targeted to “increase the competitiveness of Italian economy” and, on the other, actions intended to “make public finance sustainable” (*ibid.*, pp. 423-424). In particular, the “introduction of a balanced budget by 2013” was seen by many EU partners such as Germany and France as one of the necessary conditions to promote growth, reduce public debt, and protect Eurozone partners from “financial market speculation on Italian bonds”, as Fabbrini explains (*ibid.*, p. 424). For additional details on the above facts and a European perspective of the crisis, see G. Boggero & P. Annicchino, “‘Who will ever kick us out?’: Italy, the balanced budget rule and the implementation of the fiscal compact” (2014) 20 *European Public Law*, 250 [Boggero & Annicchino, *Balanced budget rule*].

⁵⁸ Marcello Cecchetti, “Legge costituzionale n. 1 del 2012 e Titolo V della parte II della Costituzione: profili di contro-riforma dell’autonomia regionale e locale” (2012), *Federalismi.it*, available online at http://www.federalismi.it/AppOpenFilePDF.cfm?dpath=document\editoriale&dfile=EDITORIALE_21122012092949.pdf&content=Legge+costituzionale+n.+1+del+2012+e+Titolo+V+della+Parte+II+della+Costituzione:+profili+di+contro-riforma+dell%E2%80%99autonomia+regionale+e+locale&content_auth=Marcello+Cecchetti [Cecchetti, *Legge costituzionale n. 1 del 2012*].

⁵⁹ Cecchetti, *Legge costituzionale n. 1 del 2012*, cit.

partially (but significantly) amend articles 81, 97, 117 and 119 Const., as I am going to explain now.

a. Article 81 Const.: balanced budget and sustainable debt

Article 81 is very important for two reasons. First, it introduces the principles of “balanced budget” and “sustainable debt” for the national budget. This means that now the State shall guarantee a certain balance between income and expenditures in the budget, also in light of the unfavorable phases of the economic cycle (par. 1), and that it is possible to resort to debt only to the extent of the effects of the economic cycle and in exceptional circumstances (and upon Parliament approval by absolute majority) (par. 2). However, the two aforementioned principles are extended by paragraph 6 to the budgets of all public administration (regions, provinces, municipalities and metropolitan cities). It should be noted that the applicability to all public administration of the principles of “balanced budget” and “sustainable debt” are reiterated by the new article 97(1) Const., which also displays some concern for the respect of EU legislation, in an attempt to reassure EU officers.⁶⁰

Second, article 81 reserves to a procedurally “reinforced” national law the power to set the fundamental norms and criteria to implement the two principles of “balanced budget” and “sustainable debt”. As a result, as scholars have noted, the national legislator is granted an exclusive power in this specific subject matter, including the budget of local governments.⁶¹ In fact, this “reinforced” law shall be approved by an “absolute majority of the components of each

⁶⁰ Cecchetti, *Legge costituzionale n. 1 del 2012*, cit. Article 97(1) as amended mandates that “consistently with the EU legal system, public administrations shall guarantee a balanced budget and a sustainable public debt”; Boggero & Annicchino, *Balanced budget rule*, cit., p. 254 et seq.

⁶¹ Cecchetti, *Legge costituzionale n. 1 del 2012*, cit.; Boggero & Annicchino, *Balanced budget rule*, cit., p. 254 et seq. for additional details.

Chamber in the respect of the principles defined by constitutional law”. In this way, the national legislator is free to impose limitations and obligations to the expenses of local autonomies, as Cecchetti observed.⁶² Also, the ranking of this type of law within the general hierarchy of sources is higher than a national law.⁶³

b. Article 117(2) Const.: harmonization of public accounts

Constitutional law 1/2012 brought some changes also to article 117 Const. on division of legislative powers between the centre and the periphery, and that has become operative at the beginning of the 2014 fiscal year. In fact, the subject matter labeled “harmonization of public accounts” has been separated from that of “coordination of public finance and taxation system”. Therefore, while under the “old” version of article 117(3) (as amended in 2001), the two subjects were listed together under the shared competences of national and regional legislatures, now the item “harmonization of public accounts” has been attracted to the list of subject matters of exclusive competence of the national legislator (article 117(2), Const.).⁶⁴ Scholars have raised the concern that the ItCC has often dealt with these two items together, as if they were one single subject matter; by splitting them, there is a risk that the “coordination of public finance and taxation system” will also eventually be attracted to the exclusive competences of the national legislator, thus extending its competences to the detriment of regions.⁶⁵

⁶² Cecchetti, *Legge costituzionale n. 1 del 2012*, cit.; Boggero & Annicchino, *Balanced budget rule*, cit., p. 254 et seq. for additional details.

⁶³ Cecchetti, *Legge costituzionale n. 1 del 2012*, cit.; Boggero & Annicchino, *Balanced budget rule*, cit., p. 254 et seq. for additional details.

⁶⁴ Cecchetti, *Legge costituzionale n. 1 del 2012*, cit.

⁶⁵ Cecchetti, *Legge costituzionale n. 1 del 2012*, cit.

c. Article 119 Const.: budgetary balance and EU law

Substantial modifications were also brought to article 119 Const. on fiscal federalism. First, while article 119(1) Const. restates that all local self-governments (municipalities, provinces, metropolitan cities and regions) enjoy financial autonomy with regards to revenues and expenses, it also specifies that they shall guarantee their budgetary balance and respect the economic and financial obligations as stated in EU law.⁶⁶ Once again, with this reference to the EU legal architecture, I perceive the need of the 2012 constitutional legislator to reassure EU officials of the observance of basic economic and financial conditions. Yet, once again, this might lead to the fact that the national legislator will be called to exclusively identify the obligations mentioned above.⁶⁷

But article 119 Const. has been amended also in another important aspect. Par. 6 specifies that all local autonomies can now resort to borrowing only if they need to finance investments expenses, upon condition of the respect of the principle of balanced budget. In this way, their fiscal autonomy is further limited.⁶⁸

d. Conclusion

As noted, the common thread that links the aforementioned amendments introduced in 2012 was the emphasis given to the principles of “balanced budget” and “sustainable debt” for all tiers of government and the commitment to the respect of EU obligation by constantly reaffirming it in the constitutional text. These two principles should be the necessary trait of all accounting practices based on transparency. Yet, what seems too “stretched” is the excessive

⁶⁶ Cecchetti, *Legge costituzionale n. 1 del 2012*, cit.

⁶⁷ Cecchetti, *Legge costituzionale n. 1 del 2012*, cit.

⁶⁸ Cecchetti, *Legge costituzionale n. 1 del 2012*, cit.

control power that the new constitutional text grants to the central government in monitoring the financial viability of local entities. In fact, scholars have warned that the scope of constitutional law 1/2012 may be dramatic for the whole system of local self-government, because of the disproportionate “increase in the obligations that the national legislator can unilaterally impose on revenues and expenses of local self-governments”.⁶⁹ And this is not just an “adjustment” of the 2001 reform, but a true “counter-reform” aiming at “drastically shrinking” the whole “regional” system, justified or dictated by the apparent necessity to “fix” the existing financial problems of the whole public apparatus, but that are actually eroding the same existence of local self-governments.

In any case, it is also fair to say that this reaction in centripetal terms to the financial and economic crisis is only partly unexpected. Other federations in the past have gone through periods of necessary “centralization” justified by the need to embrace common policies that would help facing a financial or economic crisis (this is the case of the American “New Deal” measures adopted in the wake of the 1929 economic catastrophe).⁷⁰ Yet, in the specific case of Italy, I wonder whether the particular financial and economic contingency is just the pretext to challenge Italian regionalism in its entirety.

3. The dispute over the existence of regions

In light of the aforementioned discussion, it should not come as a surprise that scholars have dubbed the current phase as one of “declining regionalism” and “confused federalism”⁷¹ to

⁶⁹ Cecchetti, *Legge costituzionale n. 1 del 2012*, cit.

⁷⁰ G. Mazzola, “Le Regioni fra riforme costituzionali, crisi finanziarie e federalismo” (2012) *Amministrazione in Cammino*, available online at http://www.amministrazioneincammino.luiss.it/wp-content/uploads/2012/06/Mazzola_Regioni_riforme-Cost_crisi_federalismo.pdf [Mazzola, *Le Regioni*].

⁷¹ Caprio, *La crisi del regionalismo italiano*, cit.

the point that the same usefulness of the essential components of Italian regionalism, i.e. the regions, has been seriously questioned.⁷²

The attacks on regions have different nature and targets. Scholars like Morrone question the internal function and institutional structure of regional governments, emphasizing in particular the “disproportion” existing between the powers vested in the regional executive and those vested in the legislative assembly, or the “superiority” of the president of the *Giunta* (the regional executive) over any other power; or, more generally, the “uselessness” of several regional organs.⁷³ Other scholars like Caprio focus more on the scandals that over these past few years have implicated certain regional government officials due to corruption or other criminal charges.⁷⁴ These facts, which have received wide press coverage, have certainly not contributed to create a positive environment around regional governing institutions.

At the same time, part of the doctrine remains favorable and supportive of regional governance despite their poor moral and financial performances.⁷⁵ Their existence solidly embedded in the constitutional text, regions are still seen as indispensable units to face the challenges of globalization.⁷⁶ Therefore, the whole system of local self-government could greatly benefit if regions would better address the problems coming from global economy.⁷⁷

As we can see, attitudes and reactions towards regions are not homogeneous. A balancing factor between the centre and the periphery, the suppression of these entities would entail a

⁷² Caprio, *La crisi del regionalismo italiano*, cit.

⁷³ A. Morrone, “Regioni senza futuro?” *Forum di Quaderni Costituzionali*, available online at http://www.forumcostituzionale.it/wordpress/images/stories/pdf/documenti_forum/paper/0182_morrone.pdf [Morrone, *Regioni senza futuro*].

⁷⁴ Caprio, *La crisi del regionalismo italiano*, cit.

⁷⁵ Staiano, *Mitologie federaliste*, cit.

⁷⁶ Barbera, *Federalismo insincero*, cit.

⁷⁷ Barbera, *Federalismo insincero*, cit.

repudiation of the whole regional-based architecture sketched in the 1948 constitution and later cemented by the 2001 reform. I do not expect this to be an option for the foreseeable future, as it would require major constitutional changes that are simply out of question at the moment. The same classification between ordinary and special regions is a guarantee of the constitutional recognition and protection of certain distinctions existing within the territory, and it is very unlikely that special regions would easily give up their additional, and so much cherished, powers. It is also undeniable that certain regions have not given proof of virtuous conduct over the past few years, but these unfortunate events have in my opinion nothing to do with the very nature of regional governments, being more linked to a general lack of ethical standards among public officers at all levels of government.

4. The dispute over provinces and municipalities

Earlier in this chapter, I noted how Staiano talked about the present system of local self-government as a “diseconomy.” Among the elements of this alleged “diseconomy,” the scholar mentioned the uselessness of provinces and the excessive number and fragmentation of municipalities.⁷⁸ I will now take the time to explore this dispute more thoroughly.

a. Provinces (and metropolitan cities)

Regions are not the only local institution under attack. Another very “old” discussion in Italy pertains to the necessity to keep alive institutions like provinces which are often considered obsolete, or the “weak ring” in the “chain of local self-government”.⁷⁹ It will be recalled that,

⁷⁸ Staiano, *Le autonomie locali*, cit., p. 1.

⁷⁹ Di Folco, *Le Province*, cit. I defined this discussion on the elimination of provinces an “old” one since, as Groppi recalls, it goes back to the XIX century at the time of the unification of Italy. In fact, according to Groppi, Cavour defined provinces as a “geographical catastrophe”. In 1880, Crispi (an Italian patriot and one of the “fathers” of the

differently than regions (which were created only with the 1948 constitution), provinces (and municipalities) already existed at the time of unification,⁸⁰ being the product of the French (or Napoleonic) model of state organization borrowed from the Kingdom of Piedmont and later extended to the whole Kingdom of Italy.⁸¹ There is however a difference between municipalities and provinces. In fact, the origins of the former can be traced back to a time when the State did not even exist and can be considered as “the first institutional interlocutor of social demands”.⁸² Conversely, provinces are “less noble” and are a creation of the State.⁸³

But why are provinces so unpopular? Groppi compiled a list of factors explaining this antipathy for the institution, including their artificial nature, the lack of historical rooting and of a specific provincial identity, the inadequacy of provincial circumscriptions (drawn following the Napoleonic model of departments), the lack of connections with the underlying socio-economic realities, the overloading of decisional procedures, the scarce weight of provincial functions, and the “ambiguous relationship” with the Region.⁸⁴ But there are other aspects surrounding provinces that are often discussed: provinces are in fact seen as expensive entities contributing to an unnecessary multiplication of tiers of government, especially in light of the fact that their

Italian unification) referred to provinces as an “artificial entity that can be suppressed” and also in 1902 there was a proposal presented to the Chamber of Deputies to abolish this institution. See Groppi, *Soppressione delle Province*, cit., p. 1 and fn. 1.

⁸⁰ In fact, provinces were “created” by the so-called “Rattazzi Bill” in 1859. See De Martin, *La provincia*, cit., p. 2.

⁸¹ Barbera, *Federalismo insincero*, cit., for a short description of the history of provinces and how they were conceived in geographical terms. Insofar as the connection between Italian provinces and the French model of “departments” Groppi recalls how departments were created based on the distance from the main city. In fact, from all the various points of the department it should be possible to reach the department’s capital city in no more than one-day trip (by horse). See Groppi, *Soppressione delle Province*, cit., p. 1 and ft. 2. Salvemini further noted how almost all Italian provinces existed before unification, as most of them coincided with the *civitates* of Ancient Roman time (as in the case of Florence, Lucca, Pisa, Siena, etc...) or with natural territories (for example, the province of Lecce coincides with the area historically known as Salento). See G. Salvemini, “Federalismo e Regionalismo” in G. Salvemini, *Scritti sulla Questione Meridionale (1896-1955)* (Torino: Einaudi, 1955), p. 607.

⁸² De Martin, *La provincia*, cit., p. 2.

⁸³ De Martin, *La provincia*, cit., p. 2.

⁸⁴ Groppi, *Soppressione delle Province*, cit., p. 2.

number has burgeoned in recent years while, at the same time, the population has shown a scarce interest in the entity considering the limited participation of the electorate in provincial elections.⁸⁵

However, not all commentators and actors are against provinces. As Groppi explains, those who defend these entities argue that they are helpful in containing excessive regional “centralism” in addition to being a necessary, intermediate tier between regions and municipalities, especially in light of the fact that they are now well rooted in the territory, and recent legislation has “valorized” their functions.⁸⁶

Furthermore, municipalities and provinces (for administrative tasks) along with regions (for legislative and planning tasks) are the pivotal components around which the whole 2001 regional scheme orbits, as De Martin appropriately noted.⁸⁷ Consequently, provinces are paramount for the “polycentric vision” of Italy that welcomes and favors local (territorial) autonomies.⁸⁸ And because provinces are the expression of the “polycentrism” embraced by article 5 Const., they are seen as necessary entities with their own “normative political, administrative and financial autonomy, and capable of realizing an effective governance of the local territory representing the provincial community”.⁸⁹ Accordingly, instead of suppressing them, provinces should be (re)qualified as “strategic entities for the definition and implementation of local policies pertaining to the sustainability of socio-economic development,

⁸⁵ Groppi, *Soppressione delle Province*, cit., p. 2.

⁸⁶ Groppi, *Soppressione delle Province*, cit., p. 2.

⁸⁷ De Martin, *La provincia*, cit., p. 1.

⁸⁸ De Martin, *La provincia*, cit., pp. 1-2.

⁸⁹ De Martin, *La provincia*, cit., pp.5- 6.

territorial asset and infrastructures, mobility and connection between employment and training”.⁹⁰

But while I personally share this image of a “polycentric” Italian Republic, I also fear that this vision may lead (and in fact it has led in the past) to an uncontrollable burgeoning of local entities, often addressing (and responding to) not real territorial needs or exigencies, but mere “localisms” and, consequently, unnecessary costs. In other words, whilst I appreciate the provision of the “recognition” and “promotion” of local autonomies contained in article 5 Const., I am cautious in using this norm to uphold (or justify) an unnecessary proliferation of local entities increasing costs and slowing down the system.

Because of this long-standing controversy over provinces, and also in light of the economic and financial crisis outlined at the outset of this chapter, in October 2012 the Council of Ministers approved a reorganization of Italian provinces.⁹¹ According to the proposal, the number of provinces was to be reduced from 86 to 51.⁹² In early July 2013, however, the ItCC declared the “constitutional illegitimacy” of certain sections of law-decrees 201/2011 and 95/2012 for violation of article 77 Const. The so-called “Rescue-Italy decree” (in Italian: *decreto “Salva Italia”*) (law-decree 201/2011) drastically reduced provincial competences and modified

⁹⁰ De Martin, *La provincia*, cit., p. 9.

⁹¹ For a critique of this decision, see F. Fabrizzi, “Riordino delle province: ultimo atto (forse)” (2012), *Federalismi.it*, available online at [http://www.federalismi.it/AppOpenFilePDF.cfm?artid=21136&dpath=document&dfile=06112012131821.pdf&content=Riordino+delle+province:+ultimo+atto+\(forse\)+-+stato+-+dottrina+-+](http://www.federalismi.it/AppOpenFilePDF.cfm?artid=21136&dpath=document&dfile=06112012131821.pdf&content=Riordino+delle+province:+ultimo+atto+(forse)+-+stato+-+dottrina+-+) [Fabrizzi, *Riordino delle province*]. See also A. Pirozzoli, “Sulla legittimità costituzionale del riordino delle province” (2012), *Federalismi.it*, available online at <http://www.federalismi.it/AppOpenFilePDF.cfm?artid=21137&dpath=document&dfile=08112012115130.pdf&content=Sulla+legittimit%C3%A0+costituzionale+del+riordino+delle+province+-+stato+-+dottrina+-+> [Pirozzoli, *Legittimità costituzionale*].

⁹² Pirozzoli, *Legittimità costituzionale*, cit.

their organs of government,⁹³ while the so-called “Spending Review decree” (in Italian: *decreto “Spending Review”*) (law-decree 95/2012) pertained to the re-organization of provinces, and aimed at eliminating those provinces that did not meet certain territorial and population criteria (e.g. 350,000 residents and 2,500 square km of territory), while restoring certain fundamental functions.⁹⁴ Eventually, the ItCC recalled that, pursuant to article 77 Const., a law-decree is a legal tool “destined to address extraordinary situations of necessity and urgency”; thus, it cannot be used to carry out an “organic and system reform” (such as the one on the abolition of certain provinces).⁹⁵ In other words, according to the ItCC, “the abolition of provinces cannot be done through a law-decree”.⁹⁶

Always in this regard, it is important to note that, effective on 8 April 2014, law 56/2014 (“Provisions on metropolitan cities, provinces, union and merger of municipalities”) has “redesigned borders and competences of local self-government”.⁹⁷ Consequently, as of 1 January 2015, the whole institutional structure of local self-government will be deeply renovated.⁹⁸ More specifically, this law will finally create the following metropolitan cities: Torino, Milano,

⁹³ Di Folco, *Le Province*, cit. See also Corriere della Sera, *Province, la Consulta boccia riforma e taglio*, July 4, 2013, available online at www.corriere.it (last checked: July 4, 2013) [C.d.S., *Province*].

⁹⁴ Di Folco, *Le Province*, cit. See also C.d.S., *Province*, cit.

⁹⁵ See Italian Constitutional Court, press release dated July 3, 2013 “Reform and reorganization of Provinces” available online at www.cortecostituzionale.it (last checked, July 4, 2013).

⁹⁶ See La Repubblica, *Abolizione province, Il governo “Lo faremo con legge costituzionale”* (July 4, 2013) available online at www.repubblica.it (last checked: July 4, 2013).

⁹⁷ See the website of the Italian Government at the following link: http://www.governo.it/governoinforma/dossier/legge_province/ (last checked: 21 August 2014). The text of law 56/2014 is available at the following link: <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2014-04-07:56!vig=> (last checked: 21 August 2014).

⁹⁸ *Ibid.*

Venezia, Genova, Bologna, Firenze, Bari, Napoli and Reggio Calabria. Rome, as the Italian capital city, will enjoy a specific category.⁹⁹

Metropolitan cities will enjoy the following tasks: strategic development of the metropolitan territory; promotion and integrated management of services, infrastructures, and communication networks bearing an interest for the metropolitan city; institutional relationships with entities at the same level, including the European stage.¹⁰⁰ As of 1 January 2015, the aforementioned metropolitan cities will replace the provinces having the same name.¹⁰¹ Also, the institutional bodies of the metropolitan cities will be a mayor, a council, and a conference.¹⁰²

b. Municipalities

There has also been a dispute over the idea of “rationalizing” the number of municipalities. Again, this is not new, since recommendations were made in the 1980s to bring down the number of *comuni* to 1,000 so as to focus the whole regional system on regions.¹⁰³ Therefore, in order to proceed with the general financial “recovery” it is necessary to “simplify”

⁹⁹ *Ibid.* See also art. 5, law 56/2014.

¹⁰⁰ *Ibid.* See also art. 1, law 56/2014.

¹⁰¹ *Ibid.*

¹⁰² *Ibid.* See also art. 7, law 56/2014.

¹⁰³ Staiano, *Le autonomie locali*, cit., p. 7, recalling Massimo Severo Giannini in 1988. See also Barbera, *Federalismo insincero*, cit. The article offers some interesting examples of contradictions inherent in certain provincial and municipal competences. Also, Barbera quickly sketches the unfortunate situation of Italian municipalities. The reader might be puzzled to know that, of the 8102 municipalities, 75% count less than 5,000 inhabitants (and 400 municipalities count less than 100 inhabitants). Moreover, only 2% of the municipalities have more than 20,000 inhabitants; 7045 municipalities count less than 10,000 inhabitants, and only 44 municipalities have more than 100,000 inhabitants, where ¼ of the overall Italian population resides. Always with regards to municipalities, Barbera also illustrates that in Italy, between 1971 and 1995, the number of municipalities has slightly increased from 8,056 to 8,102, whereas in other European countries the trend was just the opposite (in the UK, over the last twenty years, municipalities have decreased from 1,400 to 369; in Sweden, from 1037 to 272; in Denmark from 1,278 to 275; and in Germany from 24,282 to 8,505 from 1968 to 1989) (*ibid.*).

the whole system of local self-government by “restricting the number of seats” where local self-government operates and is represented.¹⁰⁴

Among the solutions proposed, there was also the creation of “unions of municipalities” among entities “with a population up to 1,000 residents”¹⁰⁵ thus creating a “dimensional rationalization” of their functions.¹⁰⁶ However, the exact amount of savings that these operations would create for public funding is not clear.¹⁰⁷ Yet, I agree with Staiano when he warns that the “potential savings” that an eventual restructuring of the whole system of local self-government would bring is not decisive. The “real objective” should be a “better exercise of the functions, meaning the overall efficiency of the local system”.¹⁰⁸ In fact, Staiano continues, if these financial measures leading to a reorganization of local self-government were only “oriented” towards the “economic balance” the result would not be a “recovery” of the whole system, but an “impoverishment” of the same system, without any benefit for public finance.¹⁰⁹

5. The dispute over the idea of federalism

From what I have explained so far, it has become evident that the crisis Italy is currently facing is not only financial or economic, but directly implicates its institutional, constitutional and bureaucratic apparatus, in other words what we defined Italian regionalism.

Similarly to the early 1990s, when political scandals crushed most political actors and put an end (at least in theory) to the “old” way of doing politics, the present global economic crisis

¹⁰⁴ Staiano, *Le autonomie locali*, cit., p. 2.

¹⁰⁵ Staiano, *Le autonomie locali*, cit., p. 2.

¹⁰⁶ Staiano, *Le autonomie locali*, cit, p. 3.

¹⁰⁷ Staiano, *Le autonomie locali*, cit. p. 3.

¹⁰⁸ Staiano, *Le autonomie locali*, cit., p. 4.

¹⁰⁹ Staiano, *Le autonomie locali*, cit., p. 5.

has also generated episodes of corruption, maladministration, and misgovernment. For example, at the end of 2012 two key Italian regional governments (Lombardy and Latium) made the national headlines because of episodes of corruption and various other internal disgraces, thus “sweeping away the same idea of regional and local autonomy”.¹¹⁰ These unfortunate events have been used as a double-edged sword to support the idea that the regionalism introduced in 2001 has miserably failed and therefore it is necessary to return to a more centralized structure. In fact, by looking at the acquired decentralization as the cause of all evils, the same federal idea is dismissed.¹¹¹

In previous chapters, I have repeatedly emphasized how federal ideals have constantly been discussed during the most salient moments of recent Italian history, without evolving into a serious and concrete federal project. In fact, as scholars explain, Italian federalism “has existed almost only as ideological projection of those who supported it and of those who opposed it, giving rise to a political contrast without substance”.¹¹² Commentators have also considered whether it would be appropriate to abandon the regional model to embrace a more inclusive federal scheme.¹¹³ This speculation is justified by the particular trajectory, dubbed “disaggregative federalism”¹¹⁴ followed by Italy, whereby a former unitary state is then decentralized (as in the case of Belgium and Spain) rather than creating a federation from the coming together of independent and sovereign states (as it occurred, for instance, in the United States).¹¹⁵ In fact, as I already noted, according to classical liberal theory, in an ideal federal

¹¹⁰ Balboni & Carli, *Stato senza regioni*, cit.

¹¹¹ Staiano, *Mitologie federaliste*, cit.

¹¹² Staiano, *Mitologie federaliste*, cit.

¹¹³ Barbera, *Federalismo insincero*, cit.,

¹¹⁴ Staiano, *Le autonomie locali*, cit., p. 8.

¹¹⁵ Barbera, *Federalismo insincero*, cit.

universe “autonomous communities freely join together to form a new, complex polity from which all will benefit and by which all will be bound” with the constitution representing “federalism’s social contract”.¹¹⁶ But our universe is not always an ideal one, and in fact contemporary practice reveals that “federal solutions are progressively becoming the “reluctant second choice” of communities which are going through intricate domestic situations and thus turn to federal systems in order to render these circumstances more supportable.”¹¹⁷ In other words, “the introduction of a decentralized government is meant to respond to and contain the centrifugal forces the state is experiencing”.¹¹⁸ When arguing this, scholars openly refer to cases of conflicting communities (such as those of Iraq and Sri Lanka) where federal proposals were discussed to determine their suitability to local circumstances. However, nothing impedes to extend by analogy this same reasoning to the situation in Italy, where federal solutions have been constantly debated as a potential alternative to the inadequacies of the centralized state.

An abundant and prominent literature has already investigated the pre-requirements for the existence of a successful federation, although this sort of research has not reached a final and undisputed conclusion.¹¹⁹ It is certainly given that most *classic* or *pure* federations were formed through a process of aggregation of former sovereign entities, with Germany and the US as the most crystal clear examples of this trajectory. But in the realm of federalism, as in many other universes, I am far from holding the key to absolute truth. The fact that most *fully-fledged* federations have come together following a certain path does not imply that there is only one

¹¹⁶ D. Cameron, “The Paradox of Federalism: Some Practical Reflections” (2009) 19 *Regional and Federal Studies* 311 [Cameron, *Paradox*].

¹¹⁷ Cameron, *Paradox*, cit., p 311.

¹¹⁸ Cameron, *Paradox*, cit., p 313.

¹¹⁹ Cameron, *Paradox*, cit., p 313. Specifically, Cameron cites scholars such as K.C. Wheare (“Federal Government”) and Watts (“Federal Co-existence in the Near East: General Introduction”).

way to form a federation. Similarly, the fact that certain recent federations (like Belgium) have emerged out of a “disaggregation” (rather than of an “aggregation”) process, and that these projects have known alternative fortunes to date, does not imply that similar trajectories are necessarily doomed to fail.

I have also noted that, while there are elements common to all federations, each federal state has its own nuances and variables that make it unique when compared to other similar schemes. It is because of this “uniqueness” or “exclusivity” that is so intricate to coherently classify federal states. Each federation is the artifact of a distinctive process and is shaped on the particular needs and contingencies of a specific reality.

As explained in chapter IV, when Italy was first unified in 1861, the various entities that came together to forge the newly born Kingdom of Italy were all territories under direct or indirect control of foreign powers, consequently composing a patchwork of legal and administrative traditions, and of social, economic, and linguistic disparities. Most of these dissimilarities still exist nowadays, buttressing a kaleidoscopic trait of Italy that has never fully disappeared, not even after the creation of a unified and unitary state.¹²⁰ At several stages, the existence of the unitary state in Italy has been seriously questioned, as incapable to efficiently address the assorted needs and priorities of the different territories. Italians might not have any experience with local self-government, thus making the creation of a *pure* federation hard to

¹²⁰ See article 5 Const. Scholars like to note that Italians are not nationalists and do not feel a sincere and profound attachment to their mother country, except for when the Italian soccer team plays (*ex multis*, see U. Amoretti, “Italy: Increasing Decentralization, Decreasing Asymmetry” in F. Requejo & K.-J. Nagel, eds., *Federalism beyond Federations. Asymmetry and Processes of Resymmetrisation in Europe* (Farnham & Burlington: Ashgate 2011), p. 62). Yet, ironically enough, over these past few years, even this element weakly keeping together Italians has started to dissolve. In fact, all the corruption scandals that have affected Italian soccer (especially after 2006) have led to an increased disaffection for the soccer National team on the part of several supporters, feeling “deceived” or “disillusioned” by the system.

achieve, but more than 100 years of unification under one centralized state have not been enough to instill, in the minds of the majority of Italians, a real sense of “national belonging” and respect for the public good (or *res publica*). All the so called “evils” of “centralized” Italy (corruption, excessive bureaucracy, patronage, etc...) are a testimony to it. This might also be caused by the fact that, because of the distinctive history of Italian regions, with medieval *communes* or *cities* as the primordial constituent unit of the society, Italians have with time developed some form of congenital attachment to the local territory. This explains why most Italians identify themselves first with their commune, province or region, and only eventually with the national state. This also explains, at least partially, the choice to administratively subdivide the territory in so many municipalities and provinces, so that all proposals to reduce their numbers are probably destined to fail.

As anticipated in chapter IV, against the full “federalization” of Italy, many have raised the flag represented by article 5 Const. providing that the Italian Republic is “one” and “indivisible” although it promotes and recognizes local self-government. In other words, it was suggested that this provision entails that Italy is a “unitary” yet, at the same time, a “polycentric” system where, along with the “traditional image of the State” the constitution recognizes and protects a complex system of local autonomies contributing to the “achievements of wills, desires and interests having social relevance”.¹²¹ But what does it mean that the Italian Republic is “one” and “indivisible”? Scholars maintain that, because of this provision, local autonomies cannot act as if they were “independent” from the Republic.¹²² Accordingly, local autonomies

¹²¹ G. M. Salerno, “Le autonomie e la repubblica” (2006), *Federalismi.it*, available online at http://www.federalismi.it/AppOpenFilePDF.cfm?dpath=document\editoriale&dfile=SALERNO.pdf&content=Le+autonomie+e+la+Repubblica&content_auth=Giulio+M.+Salerno, p. 18 [Salerno, *Le autonomie*]

¹²² Salerno, *Le autonomie*, cit., p. 20.

are not supposed to “behave as if they were ‘islands’ within the Republic” or to “create systems contrasting with republican principles”.¹²³ In other words, the constitution prevents the secession of one or more regions.¹²⁴

As a student of comparative federalism, I have always found this conclusion somehow imprecise. In fact, *fully-fledged* federations are not necessarily “divisible” or “divided”: I would never think of the United States or Germany (as two examples of *classic* federations) as lacking their “unity”.¹²⁵ Quite the contrary: federalism *per se*, in fact, would not be against the “logic of our Constitution”.¹²⁶ Thus, I have always had problems understanding the use of article 5 Const. against a federal system in Italy, and this is why in chapter IV I identified it as the seat of the “federal seed”. I do not see how the provision of a one and indivisible Republic would run counter federal proposals. In my reading, the constitution does not close the door to some decisive moves towards the periphery. Therefore, I would actually see the inclusion of article 5 as a mechanism that would justify the implementation of a federal system, with the recognition and valorization of local autonomies. Otherwise, I do not fully grasp how this provision would impede a federal system but allow a regional one. And indeed article 5 Const. has often been used to elicit and validate moves towards the periphery.

¹²³ Salerno, *Le autonomie*, cit., p. 20.

¹²⁴ G. Grasso, “Costituzione e federalismo. Nell’Italia delle Regioni e dell’Unione Europea” (2010) *Amministrazione in Cammino*, available online at <http://amministrazioneincammino.luiss.it/wp-content/uploads/2010/04/Costituzione.pdf> [Grasso, *Costituzione e federalismo*].

¹²⁵ Although, as nuanced in previous chapters of the thesis, there are examples of “failed” federations and even the Supreme Court of Canada has acknowledged the possibility of secession under formal constitutional amendment.

¹²⁶ Grasso, *Costituzione e federalismo*, cit.

Conclusion

By entirely focusing on Italian regionalism as a case study, one of the objectives of Part II was to show the interplay between federal, regional, and sub-state national theories in devising the Italian regional model, so as to illustrate the theoretical point made in Part I: that the regional paradigm can be included in the extended family of federalism, being a hybrid form of it. *Pure* federations (and/or multinational states) in search for fresh solutions to their internal tensions can thus look at the regional state model as a viable term of comparison, the latter serving as the basis on which to shape solutions where complex socio-economic realities exist.

It has also been reiterated how the Italian experience with federalism and regionalism is rather unique when compared to the trajectories followed by most other decentralized or federal countries, as it is not marked by ethno-linguistic or nationalist forces as in the case of Quebec, Catalonia, Basque Country, Scotland or Flanders, and in spite of the efforts made by the Northern League to forge a *Padanian* sub-state nationalism; but Italian regionalism is also different from the path followed by *classic* federations like Germany and the US, which had emerged from the coming together of formerly independent states. In fact all discussions in favor and against federalism and regionalism in Italy present a strong socio-economic connotation, and revolve around the (in)efficiency of central and local entities to competently manage economic resources, meet the divergent needs of the territory, and contain the burden represented by excessive bureaucracy and corrupted behaviors. Consequently, all centripetal and centrifugal proposals were driven by the same purpose: how to better handle Italian atavistic evils.

More specifically, the emphasis of chapter VI was on some of the major shortcomings of the current Italian regional model as identified by scholars: as noted, there is a widespread

agreement that the current Italian regional paradigm is too cumbersome and not agile to serve its purposes, and is not consonant with the exigencies of today's society; it thus needs to be reshaped.¹²⁷ One way to do this would be to eliminate provinces, whose functions and powers could be taken over, or absorbed, by regions or municipalities, which would thus remain the sole examples of local self-governments.¹²⁸ In fact, as Groppi interestingly concedes, the model of "Italian federalism" adopted with the 2001 constitutional reform has developed around two basic institutional elements: the region (which shares legislative powers with the central government), and the municipality (privileged by the subsidiarity principle at least with regards to administrative powers);¹²⁹ within this scheme, provinces (which can be seen as a "legacy of the past"¹³⁰) are playing only a very marginal role, and their relationship with regions, municipalities and metropolitan cities is becoming vague and somehow blurred.

Another thorny issue of current Italian regionalism relates to the fiscal autonomy granted to local governments by the 2001 reform, mainly because of a number of abuses and wastes occurred particularly in certain regions.¹³¹ In other words, for some theorists, regions currently enjoy too many fiscal powers, and this has negative consequences on regionalism as a whole, as it leads to mismanagement of public funds. These examples of misgovernment, maladministration, and/or corruption are double-edged swords: widely tolerated and accepted when they happen at the center, they become totally unbearable when occurring at the periphery,

¹²⁷ See, among many, Catelani, *Riforma delle Autonomie*, cit.

¹²⁸ The idea of metropolitan cities is actually interesting and, in my opinion, should be saved. In this sense, see also Groppi, *Soppressione delle Province*, cit., pp. 6 et seq. Similarly, entities known as Mountain Communities (in Italian: "Comunità montane") whose purpose is to take care of certain territories located in mountain areas who might have special needs, should be also maintained.

¹²⁹ Groppi, *Soppressione delle Province*, cit., p. 5.

¹³⁰ Groppi, *Soppressione delle Province*, cit., p. 5.

¹³¹ Catelani, *Riforma delle Autonomie*, cit.

and used as a tool to claim the unreliability of local self-government and the need to bring powers back to the center, without realizing that what is magnified at national level is replicated, with altered intensity, locally (at regional, provincial, and/or municipal level). This becomes a “dead-end” situation, with the periphery accusing the center of inefficiency, and the center accusing the periphery of not having the skills required to administer the territory:¹³² in fact, while until some years ago the strengthening of local self-government was seen as the tool to “reorganize ministerial bureaucracy and central political apparatuses” today there is a “negative judgment” that pervades both central and local institutions, both perceived as devouring public resources, as Staiano argues.¹³³ The general pessimism regarding federalism may also be related to an inability to think positively about the cleavages that characterize Italy.

While there is no evidence proving that a *fully-fledged* federation would have better worked than a centralized or regional system, in light of the spectrum of socio-economic differences that Italy has inherited from history, a more scrupulous discussion on federalism would have been appropriate. Italy should insist on the pathway of decentralization, since that represents its real identity and distinctiveness. But this discussion needs consent and a clear vision, shared by far-sighted administrators who intend to put the needs of the nation in first place. Yet, most decisions taken in Italy during crucial times (e.g. unification in 1861, post-war constitution, 2001 reform) were rather the result of hurried and confused compromises that pleased everyone in the short-term but proved to be disastrous in the long-term.

¹³² Incidentally, it may be useful to point out to the reader that this alleged inability of local administrators to take care of local issues is not something new, as the same arguments were advanced at the time of unification to justify the choice of a centralized state (as opposed to a federal one), as discussed in chapter II and IV.

¹³³ Staiano, *Le autonomie locali*, cit., p. 11.

Even if some sense can be brought to federal arrangements, and even if the present financial situation improves, Italy will still be faced with the North-South cleavage and with the same issues confronting other federations, which could be referred to as the federal or regional understanding: why should one care about the other regions? Why should certain regions be granted asymmetrical treatment? When should one region be able to claim some specific accommodation? Using Italy as a case study, in Part III I will address these issues by developing the narrative of solidarity and *non-national* differences, something that should be of equal interest to Italian and other readers interested in federalism, regionalism and sub-state nationalism. *Pure* federations (as well as multinational states) in search for fresh or alternative solutions can thus look at the regional state model as a viable term of comparison.

PART III

SUBSIDIARITY, SOLIDARITY AND THEORIZING *NON-NATIONAL* DIFFERENCES

CHAPTER VII

NON-NATIONAL DIFFERENCES

Introduction

In part I of this thesis I have explored federalism and federal theory as the most classic way to accommodate unity and diversity; however, I also noted that federalism is a concept that englobes not only *fully-fledged* federations, but also a broader range of constitutional arrangements such as regionalism, which can thus be regarded as one example of a federal-type model revealing many traits common to the federal tradition. Furthermore, one common reason that justifies federalism is sub-state nationalism, e.g. the presence of one or more *nations* within multinational states or federations. Part II mainly focused on a case study of the Italian regional model blending together federalism, regionalism and an alleged sub-state nationalism (despite the absence of the typical *national* characteristics identified by the literature). The Italian case study showed how the list of characteristics that fit into the sub-state national mold does not exhaust the reasons why areas feel distinct: some of the reasons, often having a socio-economic or political nature, are actually *not* national (in the sense of linguistic, religious or, more generally, ethnic). In fact, I reiterated how the whole debate on federalism and regionalism in Italy has revolved around the North-South socio-economic cleavage, to the point that various solutions were discussed to address the different interests and needs of these two areas, a legacy of a century-long history of political and social fragmentation. Yet, while Italian regionalism is *not* national, differences between areas and territories are strongly felt nonetheless, and the solutions put forward so far have not, in my opinion, been effective in addressing the dilemma. How can this be theorized?

As will be more thoroughly explained in this chapter, I use the expression “political and socio-economic societies or communities characterized by *non-national* difference” to specifically address the Italian North-South divide.¹ However, this phenomenon is not unique to Italy, as similar sentiments can be detected elsewhere, such as Alberta in Canada or Texas in the United States. But while *nations* have received a great deal of interest by academic scholarship, *non-national* difference has elicited much less attention, although its existence has been intuited by commentators. In fact, at first blush, political and socio-economic societies characterized by *non-national* difference appear to be less deserving or even undeserving of special analysis and treatment. However, this reaction cannot by itself eliminate its political reality. Therefore, the normative issues surrounding its recognition must be seen to revolve around both the validity of the claims and the value for the state in taking these claims seriously. If the claims of *non-national* societies should be taken seriously, then that is an important point in itself. And it is also important if recognizing their real or perceived difference helps unlock other intractable issues in society, whether they have to do with solidarity (as in Italy) or with accommodating sub-state nationalism (as in Canada, for instance).

The main objective of this chapter and, in general, of part III of the thesis, will be to put all this into perspective and find the point where federal, regional and sub-state national theories converge, not only in Italy, but in the ambit of *non-national* differences everywhere. Specifically, chapter VII will be devoted to exploring Italian regionalism with the precise purpose of discussing political and socio-economic societies characterized by *non-national*

¹ In this thesis, the terms “community” and “society” are indistinctively used as synonyms in conjunction with the adjective *non-national*. Furthermore, as already mentioned in other parts of the thesis, the expression “political and socio-economic societies characterized by *non-national* differences” may be replaced by the shorter “*non-national* societies (or communities)” or “*non-national* differences”.

differences and the acknowledgement of their interests, also in light of the solutions put forward in Italy. Consequently, I will address questions such as: what are political and socio-economic societies characterized by *non-national* differences? Are *non-national* issues real or imagined? Is there some (legal or moral) obligation to acknowledge their diverse interests (or, put otherwise, is there a normative good in recognizing them)? In the affirmative, what types of constitutional answers can be given? Which solutions could be adopted in order to recognize the perceived distinctiveness of *non-national* societies? In the negative, is there any value in taking perceived distinctiveness seriously, especially given the difficulty in resolving related issues such as solidarity and recognition of national societies?

Some of the reasoning and solutions I am proposing therefore bear some relevance also with regards to sub-state nationalism: in fact, sub-state national theory often speaks of the need for constitutional recognition of sub-state national groups; the literature comes to this conclusion with conviction approaching certainty. However, in actual fact, it is often politically difficult to recognize one group, even a distinct sub-national group, when such recognition risks displeasing other groups which feel that recognition is due to them, even if their difference is not of a more easily identified national type. Furthermore, theories of sub-state nationalism can provide some, but not all, of the answers to the dilemma faced by *non-national* communities, since this scholarship mainly focuses on claims originating from *nations*. Also, while federalism offers some flexibility in accommodating *national* and *non-national* societies, it also has its political limitations, especially where asymmetrical solutions are proposed. It may be that a wide variety of administrative tools and other means used to accommodate *non-national* differences in regional polities may provide useful lessons and techniques for polities seeking to balance the

claims of *national* and *non-national* societies. In other words, solutions for accommodating the one may be related to solutions for the other.

Some of the reasoning and solutions I am proposing work in the opposite direction to that just described. In all federal and regional polities there are regions that are better off than others. Pressing questions naturally arise as to why better off regions should share their wealth with less well-off regions. Just as it was possible with regard to sub-state *national* societies to simply observe their difference, it is possible here to simply observe less well-off regions needs. In both cases, however, this may leave a political issue regarding the willingness of wealthier *non-national* regions to act on behalf of or in favor of the other. Part of that political solution may lie in the ability to see difference which is *non-national* and needs which are not bottom-line financial. Accordingly, in this chapter I will focus on the nature of *non-national* differences, given that they are so under-theorized in the literature. In subsequent chapters I will introduce the issue of solidarity.

This chapter is divided into two sections. In the first, I will offer a definition and some examples of political and socio-economic societies characterized by *non-national* differences, and the limits of sub-state national theories in dealing with the issue. Next, I will turn my attention to Italy and to the complex body of literature that combines federalism, regionalism, sub-state nationalism and, more generally, symmetric and asymmetric solutions in order to suggest strategies to address the interests of *non-national* societies. As already noted, some of the solutions designed in Italy may in fact be useful to other polities, federal and non-federal, in trying to accommodate both their *national* and *non-national* difference.

Section I – Outlining the framework

1. Political and socio-economic societies or communities characterized by *non-national* differences

From a chronological perspective, regionalism and sub-state nationalism are relatively recent phenomena, whose academic and intellectual fortunes have waxed only in these past few decades, when regional and nationalist claims have surfaced across the globe. As already noted, they certainly represent a convincing alternative to the “federal vs unitary” dyad.² However, as indicated in chapter III, sub-state nationalism specifically targets *nations*, and a voluminous body of literature has extensively investigated, also in comparative fashion, sub-state *national* groups, their history, and their political and constitutional claims within multinational states or federations. Sub-state national theories thus necessitate the existence of a *nation* in order to be tested and applied.

Building upon or setting off from this scholarship, I would now like to take the debate one step further to discuss the reality of what I have called “political or socio-economic societies characterized by *non-national* differences” (also referred to as “*non-national* societies or communities” or “*non-national* differences”). In fact, I argue that the ethnic distinctiveness which is at the basis of all requests of protection and accommodation of *national* communities is not the only type of asymmetry that can pose problems or suggest different treatment. The

² Scholars note how *pure* or *classic* federations are undergoing a certain criticism, as it was in the past for unitary state, for a variety of reasons, such as “multicultural tensions from within”. See for example Y. Blank, “Federalism, subsidiarity, and the role of local governments in an age of global multilevel governance” (2010) 37 *Fordham Urban Law Journal* 530 [Blank, *Federalism and subsidiarity*]. Furthermore, as already noted in previous chapters, *pure* federations have been criticized also because they “fixate on territorial units which are rather large [...]; it is not flexible or functional enough since it sanctifies the already existing constituent units and does not give the same importance to [...] large cities or other regions” (*Ibid.*, p. 532).

concept of *nation* has already been explored in chapters I and III and will not be repeated. Here, I just wanted to recall that, at least according to most scholarship, *nations* are characterized by two major elements: (a) “societal or cultural distinctiveness” (territorial concentration, common history, language, religion, and societal institutions, to indicate the elements identified by Tierney); and (b) potential for self-government. Societies or communities which, to the outside observer, lack elements of (a) may nonetheless have a clear potential for (b), based on features such as strong governance, strong economy and strong social solidarity. However, it must be acknowledged that offering a satisfactory definition of political and socio-economic societies characterized by *non-national* differences is more problematic than describing nations, as the *raison d’être* of the former is somewhat vague and there is not a clear, distinctive feature (e.g. language, religion, or legal traditions) that helps identifying its members.

a. Definition of a political or socio-economic society characterized by *non-national* differences

I devised a definition of political and socio-economic society characterized by *non-national* differences having in mind the unique reality of the socio-economic cleavage that has plagued the North and the South of Italy for several decades; however, other examples of *non-national* differences exist elsewhere: for instance, Alberta in Canada; to a certain extent Bavaria in Germany (although Bavarians share similarities with a *nation* because of its religious component); Texas in the United States; or Rio Grande do Sul in southern Brazil.³

³ Probably less known to mainstream scholarship, the reality of this prosperous Brazilian state approaches that of other political and socio-economic societies characterized by *non-national* differences, as their inhabitants (usually referred to as *gauchos*) perceive a sense of distinctiveness and detachment from the remainder states of the federation.

As a general rule, I would use the expression “political and socio-economic societies or communities characterized by *non-national* differences” to identify communities located within a given geographical territory which display some *de facto* and well rooted asymmetrical traits⁴ (mainly, but not exclusively, bearing a politico-socio-economic nature) compared to the state-wide community (construed as that segment of population that is not asymmetrical), and which seek some form of acknowledgement of their specificity, as this specificity entails a more or less strong feeling of identity. These communities, however, are neither nations nor minority groups: they do not qualify as nations because members do not necessarily share an identity-related trait such as a different language, religion or any specific ethnic backgrounds (as in the case of Quebec, Scotland, Catalonia or the Basque Country); however, if we go back to the basic definition of *nation* provided above, we can argue that, while the “societal or cultural distinctiveness” is absent, *non-national* societies may fit into the second category (set out as (b) in the previous paragraph), i.e. potential for self-government. In any event, *non-national* communities do not qualify as minority entities either, as members are not simply individuals seeking full integration into the legal framework of the host state. The choice to use the expression *non-national*, however, displays both a negation and an affirmation: in fact, although these communities do not share the same traits as a sub-state *nation* (thus, they are not *national* societies), at the same time it is possible to draw some parallels between the two (and this is why I maintain the adjective *national*).⁵

⁴ The distinction between *de iure* and *de facto* asymmetry will be illustrated *infra*.

⁵ Incidentally, it is perhaps unfair that sub-state nations have appropriated the full semantic power of *national*, limiting it therefore to its cultural, linguistic and other ethnic aspects. In fact, as noted above, *nations* are characterized by (a) a cultural-linguistic aspect, and (b) a state viability aspect. Areas lacking the former may have strong elements of the latter.

Also, an interesting feature that partially singles out *non-national* societies is that more assertive examples of the type often (but not necessarily) belong to privileged circles of the state: in fact, they live in wealthy and developed territories, and are fully socially and politically active and integrated. Yet, while not disadvantaged compared to the rest of the population, for a multiplicity of reasons they feel neglected, ignored, badly governed and sometimes even mistreated by institutions, the latter often accused of remaining indifferent to their specific interests. The veracity of these claims will always be hard to judge, of course. However, unless claims are obviously unfounded (as was the case, for example, with the Northern League's fabrication of *Padanian* nationalism), their existence is a function of the relevant societies' self-perception which, it should be remembered, is also relevant for national societies.

Political and socio-economic societies characterized by *non-national* differences can be the product of a number of variously combined causes, which can be classified as *subjective*, *objective*, *permanent* or *temporary*. A first category is that of *subjective* and *permanent*, if *non-national* societies have emerged mainly because of socio-economic fractures: here the feeling of difference or uniqueness in relation to the state-wide community pertains to specific traits or connotations perceived by the individuals being part of the group. This is the case of Alberta in Canada or of Northern Italy. Another category is that of *objective* and *temporary*, and it includes situations whereby, in a given territory of the state, there is the emergence of specific priorities requiring an asymmetrical, yet transitory, treatment from the rest of the state: here, the sense of uniqueness is more the consequence of external factors that have temporarily changed the fabric of the area. This is the case, for instance, of specific immigration patterns affecting only a given portion of the territory that would require asymmetrical powers for a limited period of time to handle the situation. The *non-national* society could also emerge because of a *subjective* yet

temporary situation, although this is less likely to impinge on national governance. Finally, strong claims are likely to come from *non-national* communities falling into the *objective* and *permanent* category. In any event, *non-national* societies strongly perceive their difference and ask for some level of acknowledgement of their interests; in some way, the claims raised by political and socio-economic communities characterized by *non-national* differences are not unlike those made by sub-state *national* societies, and they can also lead to inequalities and discontent if not appropriately addressed, as I will better explain in chapter IX.

b. The Italian example of *non-national* society

As noted above, I devised the notion of political and socio-economic societies characterized by *non-national* differences having in mind the Italian North-South cleavage, and identified the North as an example of this type of community, perhaps taking a striking “Northern” perspective; however, also the South could fit the description of *non-national* society provided above.⁶ It is often the case, however, that less economically well-off regions, or regions whose governance is less strong, are less likely to mobilize in order to push their distinctive claims. In Italy, the cleavage between the North and the South has a strong socio-cultural-economic connotation, with linguistic traits only playing a very marginal role. This situation is

⁶ In previous chapters of this thesis, I have touched upon the so-called *questione meridionale*, or Southern question, that has haunted scholars and intellectuals alike since unification, and noted how this debate could be construed as an attempt to identify *non-national* difference (see in particular chapter IV and the work of Salvemini). Incidentally, it is worth pointing out how, in the 1950s, the Italian government created the *Cassa per il Mezzogiorno* (Southern Italian Development Agency) to “address Southern Italy’s economic backwardness” as Desideri explains, abolished only in the early 1990s along with other “extraordinary interventions” in the territory. See C. Desideri, “A Short History of Regionalism in Italy Since the Republican Constitution. Italian Regionalism and its Evolution” in S. Mangiameli, ed., *Italian Regionalism: Between Unitary Traditions and Federal Processes* (Cham: Springer, 2014), pp. 39 and 48. See also J. A. Davis, “Changing Perspectives on Italy’s ‘Southern Problem’” in C. Levy, ed., *Italian Regionalism: History, Identity and Politics* (Oxford & Washington DC: Berg, 1996), pp. 53 et seq. The particular needs of the area, dramatically opposed to those in the North, have always been perceived as fundamental.

the result of the peculiar history of Italy, for a long time a mosaic of variegated cultures, languages and social and political realities. Mingione observed that it is “difficult to find elsewhere socio-territorial divisions that are as clear-cut as those in Italy” and that “regional imbalance in Italy [...] constitutes a fundamentally different type of socio-economic division”.⁷ Even if in other plurinational states or federations there is a certain economic component, it is not as overtly pronounced as in Italy, as it is usually sublimated by major linguistic or other ethnic prerogatives. In this sense, we can say the Italian case is unique. Chapter III already illustrated this dilemma: with *Padanian* nationalism, the wealthiest, more developed and geographically privileged North of the country voiced its malaise through the Northern League (“LN”) as it believed that its specific interests were not properly and effectively addressed by central institutions; at the same time, the South seemed to accept the *status quo*. Cento Bull explains the occurrence in the following terms:

[T]he political crisis of the Italian state [...] coincided with a time when many northeastern manufacturing firms were being integrated into a global economy and were having to face increased economic competition and increased pressure to reduce costs and improve efficiency. The crisis of the state, coupled with the traditional inefficiency of state administration and state bureaucracy and a burgeoning state deficit, created a situation in which a sense of collective grievance and self-victimization developed. Many people in the northeastern region, especially small entrepreneurs, artisans, the self-employed, but also anybody working in the private sector, began to harbour strong feelings of discontent, and even rage, towards the state for its inadequacies, its high taxes, its perceived indifference to their needs for greater efficiency. The state was perceived as an entity which was redistributing resources away from them (to the South or to sustain a corrupt political class) and failing to provide services to them. The state was also perceived as a hindrance to, rather than a facilitator of, links between the local and the global economy. In this context, the state lost legitimacy in the eyes of many voters.⁸

⁷ E. Mingione, *Fragmented Societies. A Sociology of Economic Life beyond the Market Paradigm* (Cambridge, MA: Basil Blackwell, 1991), pp. 341-342 [Mingione, *Fragmented Societies*]. See however pp. 318-335 and 340 et seq. for a thorough analysis of Italy.

⁸ A. Cento Bull, “Collective Identities: From the Politics of Inclusion to the Politics of Ethnicity and Difference” (2003) 2 *The Global Review of Ethnopolitics* 44 [Cento Bull, *Collective Identities*].

The LN then strengthened and reinforced the claims using sub-state national theories to improvise *Padanian* nationalism and support in this way the frustrated claims of the North. This entirely invented (in terms of its national claims) phenomenon dissolved before being able to fully attain its goals, mainly because of its lack of historical or cultural roots. Yet, this does not mean that the predicaments of Italians in the North magically disappeared. It could be said that the LN employed the only vocabulary which was then a recognized currency, non-state or *non-national* issues being at that time unnoticed.

The Italian case study proves that, at least in this specific circumstance, neither sub-state nationalism nor the regional model implemented with the 2001 constitutional reform was capable of effectively addressing the complaints of a part of the country that felt different from the rest (or with different needs than the rest). In the remainder of the chapter, I will look at ways to potentially deal with the dilemma, but for now I continue to explore the reality of *non-national* communities.

c. Political and socio-economic societies characterized by *non-national* differences as opposed to other experiences

I noted above how political and socio-economic societies characterized by *non-national* differences are different than sub-state *national* communities and minority groups, but these are not the only distinctions that can be made, as *non-national* communities more or less differ profoundly from other classifications as well. In fact, some readers might argue that the expression political and socio-economic societies characterized by *non-national* differences is just another way to refer to not otherwise specified “regional” groups. While this contention is not wrong in principle (although a certain agreement should be pre-emptively reached on the

exact meaning and scope of the adjective “regional”), I prefer to avoid the use of this expression for two main reasons. First, while regional groups may present some form of asymmetry, it may not be so historically rooted and perceived by the members as in the case of *non-national* societies (incidentally, in the next paragraphs I will revert to this point by discussing “economic regionalism”). Second, the adjective “regional” in this particular context bears close connections with regional systems construed as variables of federal schemes, therefore the expression *non-national* is preferable also to avoid all terminological confusion.

My theorization of *non-national* societies also differs from Lijphart’s doctrine of consociational democracy. Building upon Gabriel Almond’s three types of political systems typical of Western democratic societies (the Anglo-American system; the Continental European system; and an unlabeled type of system typical of Scandinavian countries and the Netherlands), in the late 1960s Lijphart specifically focused on the third model and elaborated his theory of consociational democracy as “government by elite cartels designed to turn a democracy with a fragmented political culture into a stable democracy”; consequently, Lijphart was concerned with finding the ideal *political* tools that would help fragmented democratic societies (because of linguistic, religious or other cultural cleavages) to reach a certain political stability.⁹

⁹ A. Lijphart, “Consociational Democracy” (1969) 21 *World Politics* 207 and 216. See also A. Lijphart, *Democracy in plural societies* (New Haven: Yale University Press, 1977). He identifies four elements that should help the cause: (i) government by grand coalition; (ii) mutual veto; (iii) proportionality; and (iv) autonomy for each segment. As McEwen & Lecours further illustrate, consociationalism (or “power-sharing between groups”) mainly entails “proportionality in cabinet representation and consensual decision-making within the groups (which can be protected by mutual vetoes)” and is usually reserved for “communities with deep ethnic or cultural divisions” as in the case of Northern Ireland. See N. McEwen & A. Lecours, “Voice or Recognition? Comparing Strategies for Accommodating Territorial Minorities in Multinational States” (2008) 46 *Commonwealth and Comparative Politics* 225 [McEwen & Lecours, *Voice or Recognition*]. Accordingly, through his doctrine, Lijphart does not necessarily address the concerns of *non-national* societies.

Third, it could be contended that recognizing *non-national* differences is just federalism in disguise. This argument is certainly well-advised, but it can also be refuted. In fact, while a federal model is a very obvious way to deal with *de facto* asymmetries, sometimes it is not possible to implement a *pure* federal scheme. The Italian case study has well illustrated this: a *classic* federal solution has been repeatedly rejected for a variety of reasons. Consequently, a federation could not really help dealing with the *de facto* asymmetries existing within the territory, especially the North-South cleavage. Yet, an alternative way to deal with the problem could be what I am suggesting here: a theorization of *non-national* communities and federally-based strategies.

Finally, it could also be argued that political and socio-economic societies characterized by *non-national* differences represent nothing but the interests that periodically coalesce at election times around specific themes or issues. But again, while this is a valid argument, the reality of *non-national* communities goes well beyond these shifting interests or issues, as their reality is much more deeply rooted in the specific pattern of the socio-economic fabric of a state.

As we can see, the reality of political and socio-economic societies characterized by *non-national* differences is unique and distinct from other experiences already analyzed by scholarship, and in this rests one of the original contributions of this research.

d. Contributions to the debate coming from existing scholarship

As noted, while academic scholarship on sub-state nationalism is flourishing, less attention has been reserved to *non-national* differences where, to the best of my knowledge, few

attempts have been made to theorize the phenomenon, although more than one commentator has intuited its specific reality.¹⁰

Among the various contributions, I would like to mention in particular Elazar, who generally talked about “cultural” federalism, referring to the idea that “society is made up of a series of interrelated covenants and compacts, which allow the parties to them to unite for common purposes while retaining their respective integrities.”¹¹ In this way, Elazar seemed to refer to the fact that, within a given state, there could be territories who share similar interests that might require an asymmetrical treatment.

Similarly, Burgess and Gress discerned socio-economic factors as pre-conditions of asymmetry.¹² In fact, they look at “large regional economic disparities which lead inevitably to differential demands and expectations within a federation” and name Newfoundland and the Maritime provinces in Canada, Wallonia in Belgium, or the five eastern *Länder* in Germany as examples of these cleavages requiring asymmetrical treatments.¹³ However, they limit this investigation to federal states only and they focus, as we have seen, on the economically worse-off regions. These regions are of course of great importance in federal and regional studies; however, we must go further to complete the picture.

¹⁰ While a fundamental contribution to scholarship, the well-known *Imagined Communities* authored by Anderson will be disregarded here, as it mainly referred to groups whose definition and nature bear a very close resemblance with sub-state national units. See B. Anderson, *Imagined Communities. Reflections on the Origins and Spread of Nationalism* (London, New York: Verso, 1991).

¹¹ D. Elazar, *Exploring Federalism* (Tuscaloosa: The University of Alabama Press, 1987), p. 78 [Elazar, *Exploring Federalism*].

¹² M. Burgess & F. Gress, “Symmetry and Asymmetry Revisited” in R. Agranoff, ed., *Accommodating Diversity: Asymmetry in Federal States* (Baden-Baden: Nomos, 1999), p. 49 [Burgess & Gress, *Symmetry and Asymmetry*].

¹³ Burgess & Gress, *Symmetry and Asymmetry*, cit., p. 49.

With specific regards to Italy, Cento Bull used the expressions “collective identities” or “subcultures” to describe the two main ideologies (the Catholic and the communist) that distinguished the North of Italy from the Centre during the post war period.¹⁴ As she further explains, even before the rise of the LN, the Northeast was marked by the presence of Catholicism and the DC (Christian Democratic Party) whereas the Centre was characterized by the presence of a communist ideology and of the PCI (Communist Party).¹⁵ Although she focuses specifically on the cultural difference between two territories mainly shaped by political views, Cento Bull defines collective identities as

constituted by a shared and interactive sense of ‘we-ness’ [...] associated with a collective agency. Collective identities are fluid and adaptive in order to achieve political recognition, legitimacy or other specific aims. In terms of content, collective identities can be construed around specific traits which are seen to distinguish one group from another: language, ideology, class, ethnicity or religion.¹⁶

Besides the contributions just mentioned, however, the closest theorization of political and socio-economic societies characterized by *non-national* differences comes, in my opinion, from a strand of scholarship known as “economic regionalism” or “new regionalism”.¹⁷ As explained by van Houten, “economic regionalism” is a broad term that refers to “a variety of claims that sub-national territories [...] have gained increased economic importance in recent decades”.¹⁸ Italy, or at least some of the industrial districts located in the North (especially in the North-East) and in the Centre (a phenomenon that

¹⁴ Cento Bull, *Collective Identities*, cit., p. 42.

¹⁵ Cento Bull, *Collective Identities*, cit., p. 43.

¹⁶ Cento Bull, *Collective Identities*, cit., p. 42.

¹⁷ P. van Houten, “Economic regionalism in federal and hybrid systems of government” in J. Loughlin, J. Kincaid & W. Swenden, eds., *Routledge Handbook of Regionalism and Federalism* (London & New York: Routledge, 2013), p. 140 [van Houten, *Economic regionalism*].

¹⁸ Van Houten, *Economic regionalism*, cit., p. 141.

is also referred to as “Third Italy”¹⁹) can be seen as an example of this experience, along with realities such as the industrial districts in Bavaria and Baden-Württemberg in Germany, or the Silicon Valley and the media industry cluster around Los Angeles in California, among many others.²⁰ Van Houten further explains that, as a result of the peculiar economic patterns, “political regionalism” has also emerged to advocate for more powers for certain regions: the LN in Italy is probably the most well-known example, but similar, yet weaker, forms of political regionalism have also emerged in Bavaria and Baden-Württemberg demanding more competitive forms of federalism and federal reforms.²¹ The problem with most of these studies on economic regionalism, however, is two-fold. On one side, they focus on economic asymmetries which may be very recent and are not historically rooted, thus they do not take into account the personal sense of distinction that characterizes people living in these territories. On the other side, they revolve around economic, geographic, social and/or political aspects, disregarding legal solutions and consequences. As a result this thesis tries to offer a new approach to the discussion by exploring legal stratagems to deal with the issue.

¹⁹ Literature on “Third Italy” is massive. As an introduction to the topic, see *ex multis* C. Hadjimichalis, “The End of Third Italy As We Knew It? (2006) 38 *Antipode* 82-106 [Hadjimichalis, *Third Italy*].

²⁰ Van Houten, *Economic regionalism*, cit., p. 141; Hadjimichalis, *Third Italy*, cit.

²¹ Van Houten, *Economic regionalism*, cit., p. 145. Interestingly enough, in the case of Spain, Agranoff indicates that, besides the well-known Basque and Catalan ethnic nationalism, “other regions such as Aragon, Asturias, the Balearic Islands, Galicia, Navarre, and Valencia have always felt some degree of separate identity, and regions like Andalucia and The Canary Islands have historically felt degrees of estrangement from the center. Moreover, many of these areas (Aragon, Basque Country, Catalonia, Navarre and Valencia) experienced degrees of self-rule or distinctive immunities regarding crown taxation and governance during the Habsburg centuries”. Furthermore, the Basque Country and Catalonia “were the early industrial regions and thus economic powers, and their struggles with Madrid over differences in protectionism versus free trade were epic in proportion. Poorer agricultural regions, such as Andalucia, Estremadura, and the two Castiles, formed the core political center”. See R. Agranoff, “Intergovernmental Relations and the Management of Asymmetry in Federal Spain” in Robert Agranoff, ed., *Accommodating Diversity: Asymmetry in Federal States* (Baden-Baden: Nomos, 1999), pp. 94-95 [Agranoff, *Asymmetry in Federal Spain*].

2. Application of sub-state national theory to *non-national* differences

Sub-state nationalism theories investigate the best ways to accommodate the claims raised by *nations* within multinational states or federations in order to have a constitutional recognition of their distinctiveness. In general, it is mainly at the linguistic, religious or cultural level that accommodation is sought, although socio-economic or other traits may come into play. In some way, political and socio-economic societies characterized by *non-national* differences bear some similarities with nations, so that it is possible to draw a parallel between the two in order to identify points of convergence and divergence: in fact, I observed above that, while not necessarily displaying the “societal or cultural distinctiveness” typical of sub-state nations, *non-national* societies do present a “potential for self-government”. Consequently, in the following paragraphs, I am going to spot similarities and differences between the two realities, and determine why sub-state nationalism theory is not always ideal to scrutinize *non-national* differences.

First of all, when the asymmetry of the *non-national* society has a purely economic nature, it could be argued that this is not sufficient to originate a homogeneous sentiment within the community, as not everyone would necessarily identify with this economic disparity. In other words, this type of cleavage is not deeply enough rooted in the group, in contrast with what happens within *national* communities, where most individuals share a pervasive sentiment of belonging and identification supported by linguistic, cultural, historical, or social behaviors and beliefs. Furthermore, economic reasons might be associated to selfish desire that would collide with the spirit of collaboration and solidarity that should characterize the relations between the state and its territorial components, and between territorial components themselves. In fact, pure

economic reasons would only elicit the quest for more economic wealth to the detriment of other, solidarity-based values instilled in the constitution. I will revert to this point in chapter VIII.

Secondly, it could be argued that economic disparities are common to most countries. In fact, in places like Germany, France, Spain, or the United Kingdom the level of industrialization and economic development is not the same across the territory. The United States and Canada also offer patterns of economic asymmetry between different areas: for example, the Canadian province of Alberta has experienced an impressive growth over these past few years, thanks in large measure to its natural resource wealth, to the extent that some claims for more autonomy have been voiced by its inhabitants (in a way that has some resemblance with the Italian experience outlined above). Conversely, in the United States, while different states enjoy different levels of development and industrialization, there have never been claims on the part of richer states to be treated differently than less developed ones. This is probably due to the fact that here, despite the multifaceted composition of the social fabric, there is more elasticity in the management of certain socio-economic questions.²²

Third, when we think of *nations* like Catalonia or Quebec, many members of the group share a similar sense of belonging originating by the same language, history, or cultural and traditional roots. It could be argued that this might not be true in the case of *non-national* communities. If we go back to the Italian case study, while the LN cleverly voiced the malaise of a certain part of the population, not everybody in Northern Italy agreed with the agenda and solutions put forward by the LN. So, absent a *nation*, economic disparities do not necessarily create the same sense of belonging as in other sub-state national societies.

²² Incidentally, however, a geographically vast and socially complex and diverse reality like the US might favor the emergence of other types of cleavages requiring differential, or asymmetrical, treatment.

A fourth key issue pertains to the territorial aspect: while in classic sub-state national societies individuals advocating accommodations are specifically located in a certain geographical area (e.g. Quebec, Catalonia, Flanders, or Scotland), in the case of *non-national* societies this territorial identification could be said to be more complex. For instance, in Italy the LN identified the area surrounding the Po Valley (the territory named *Padania*) as the geographic cradle whose inhabitants supposedly share similar work ethic or wealth (the “socio-economic” aspect) coupled with dedicated civil service, no corruption and, more generally, good governance (the “political” aspect). But these territorial boundaries are not fixated, and can therefore easily fluctuate.²³ In Canada, claims are made by Alberta but also by “the West”, the latter having less clear boundaries.

A fifth question that could be raised is determining who should be entitled to speak for the group and represent the interests of this *non-national* collectivity. As we saw, in the case of *Padania* it was the LN who took over this role. However, while the LN was undoubtedly representing a significant percentage of voters,²⁴ not all the people in the North identified themselves with the political agenda of the LN.²⁵

Sixthly, in addition to autonomy and representation at the centre, *national* societies usually seek accommodation by way of recognition of their distinctiveness, such as the constitutional recognition of their language, or of other elements like flags, totems, etc. For

²³ In fact, also regions that are not technically part of this specific setting could be included. For example, many in the Marche region share the same work ethic and industrial mentality as the rest of the *Padania*, although the region is geographically nested in central Italy, just south of Emilia Romagna. But similar considerations can be done for the South: when we talk about the *questione meridionale*, do we necessarily include all regions located South of Rome, or some of these regions are better off than others?

²⁴ Spanning over a time frame of almost two decades, the LN was often one of the parties of the majority coalition, both at local and national level.

²⁵ Conversely, in the case of Southern Italy, the initiative mainly came from the central government, especially with the *Cassa per il Mezzogiorno* mentioned above and related mechanisms.

instance, official bilingualism is a common strategy adopted in the event of linguistic diversity, thus attaining the dual objective of enhancing the voice of the minorities at the centre and increasing their participation in key institutions such as parliament, courts, army, etc.²⁶ Similarly, multinational states might appeal to the “dual national identity of national minorities” in order to “nurture citizens’ loyalty and attachment to the state” as national minorities usually feel a “sense of belonging” both to the *nation* they belong to and to the host state; this is done mainly to prevent extreme solutions like secession.²⁷ However, these accommodation strategies may not be very helpful when dealing with *non-national* differences, as the ethnic or identity trait is less present.²⁸ In the case of *Padania*, LN militants had created a number of symbols (a flag, an anthem, etc.) in an artificial and improvised attempt to forge a nation (i.e. *Padania*) that had never existed historically. But this was not enough to create a sense of belonging. Even if we look at the trait that allegedly unifies people in the North of Italy as opposed to the South (i.e. a certain work ethic or mentality focused on economic and industrial efficiency and competitiveness, along with a pragmatic and proactive approach to problems²⁹), this cannot be regarded as a universal truth. Consequently, the distinctive identity-based trait of a *non-national* community is less easily detectable than *national* societies (although it should be pointed out that linguistic and cultural attributes are not universal either, even in sub-state national societies).

²⁶ In this sense, see McEwen & Lecours, *Voice or Recognition*, cit., p. 225.

²⁷ See chapter III and McEwen & Lecours, *Voice or Recognition*, cit., pp. 223-224.

²⁸ In fact, they don’t want language recognition but tax powers, devolved administration, etc.

²⁹ Here, the expression work ethic is construed in a very broad sense: work ethic in and of itself, as well as a sense of what gives value to life (i.e. work and earning money that give meaning to life). Furthermore, the reader should note that traits like honesty, hard-work, and simple living were some of the characteristics that the LN celebrated as intimate to being a Northerner. See, *ex pluris*, D. McDonnell, “A Weekend in Padania: Regionalism Populism and the Lega Nord” (2006) 26 *Politics* 127 [McDonnell, *Weekend in Padania*]; M. Huyseune, “Landscapes as a symbol of nationhood: the Alps in the rhetoric of the Lega Nord” (2010) 16 *Nations and Nationalism* 358 who, drawing from Gómez-Reino, argues that, according to LN propaganda, Northern Italians are “productive people, highlighting their work ethics and entrepreneurial qualities and contrasting their honesty and local and regional good governance with the defects of the Italian state”.

At the same time, however, there are some points of convergence between *national* and *non-national* societies. One argument that could be made in this regard is that economic cleavages are indeed rooted in a different culture and mentality, so that the distinctive entrepreneurial and industrial drive is the consequence of a certain way of thinking that usually links together the people of a specific geographical territory. Thus, the economic diversity is the result of social, cultural, or historical differences that are not dissimilar from the one characterizing sub-state national societies.³⁰

Similarly, it could be alleged that Western society values industrialization and economic worth as a criterion to assess not only the political but also the financial and economic influence of a state. Accordingly, an economically viable state is capable of guaranteeing to its people a certain wealth and stability. Industrial well-being might also lead to more employment, more trade exchanges, and more financial activity. In this sense, pursuing economic and industrial well-being is not simply a matter of selfishness, as the economic impulse of one part of the country has positive reflections on the rest. We have perhaps developed a tendency to speak the language of sub-state nationalism and to assume that only those factors explain statehood – language, culture, etc. But even in the case of nations (e.g. Scotland), political and socio-economic aspects (the *non-national* element) are often at work: in fact, Scottish people speak the same language but they see themselves as having a different economic vision, and the same is true of Quebecers and Flemish people; in some way, what is presented as sub-national is often a combination of *national* and *non-national*. For some reason we are inclined to take the former

³⁰ Incidentally, even in classic sub-state national societies the strength of socio-economic factors is regularly acknowledged: in Canada, for example, Quebec follows a more Scandinavian model as compared to the rest of the country.

more seriously than the latter, though it is not clear that citizens feel the same way. Even if the French parts of Belgium or Switzerland were separate, they would not automatically look to join France just because of language. Different socio-economic visions matter to statehood. Consequently, what is presented as a sub-state national issue is often a combination of *national* and *non-national*.

In conclusion, it emerges from the above that, while sub-state national theory can be used as a basis to scrutinize the reality of *non-national* societies, extending the same exact analytical criteria could be more complex than expected. Certainly, some of the risks that might emerge if the interests of *non-national* communities are neglected are similar to those encountered with sub-state *national* societies (as it will be explained in chapter IX), but there are also many significant differences.

In chapter III, I explained how multinational states often take the shape of *fully-fledged* federations because federalism is certainly a common way to cope with nation-based issues deriving from this, although it is not the only answer.³¹ Furthermore, it is not necessary to transform a unitary model into a *pure* federation in order to manage conflicts of any nature, as sometimes certain federally-inspired stratagems can be easily incorporated into a less-decentralized system. In the next sections, I will therefore look at the Italian regional model to identify some potential strategies that might help better dealing with political and socio-economic societies. In exploring the composite literature that combines federal, regional and sub-national theories, I will specifically look at asymmetry and subsidiarity as potential tools to deal

³¹ R. Simeon & D.-P. Conway, "Federalism and the management of conflict in multinational societies" in A.-G. Gagnon & J. Tully, eds. *Multinational Democracies* (Cambridge: Cambridge University Press, 2001), p. 339

with the question, and determine whether these solutions are relevant and applicable to other federal and non-federal schemes.

Section II – Case study: lessons from the Italian experience

1. Italian regionalism

As noted, the regional model implemented in Italy with the 1948 constitution was a compromise, or an intermediate solution, between a *fully-fledged* federation mainly drawing from the German tradition (an option that was rejected) and a centralized state (also rejected in its purest form, especially in the aftermath of fascism), with a particularly strong influence from Spanish regionalism. However, we also noted that, with the exception of the five autonomous or special regions, Italian regionalism became a reality only in the 1970s. But when regions finally became operative, the political wind had changed in the opposite direction, with a consequent reduction of the political and institutional interest to proceed with the completion of the regional model. And while the constitutional amendments of the 2000s were intended to strengthen this scheme and make it the first step towards a more complete federalization of Italy, the implementation laws were delayed to the point that new reforms are presently being discussed, without having fully actualized the previous reform.

In previous chapters, I have also reiterated how the lack of a federal culture and of a true understanding of federal principles in Italy has somehow hindered the option of a *pure* federal model; instead, the direction was taken towards less orthodox solutions which have resulted in a very unique regional pattern, still evolving and adjusting to the ever-changing needs and situations. However, in light of the shortcomings of the present regional model which is, in my opinion, unable to fully respond to the challenges posed by the North-South cleavage, I argue

that alternative solutions would probably be more practicable and better address the tensions elicited by the presence of political and socio-economic societies characterized by *non-national* differences. The two solutions I am going to discuss are already enshrined in the Italian constitution in general terms; however, they could be better adapted and exploited to the advantage of *non-national* societies and of their full recognition at constitutional level. Above all, these solutions would permit maintaining in place the existing model without revolutionizing the whole institutional scheme, and without requiring a radical change in mentality for which the country is not ready, a circumstance that would certainly occur should a more *classic* federal model be implemented.

2. Asymmetrical solutions

a. What is asymmetry

The antithetical concepts of symmetry and asymmetry, especially with reference to federal theory, received worldwide academic attention in the mid-1960s thanks to the work of Charles Tarlton, one of the first scholars who formally tried to define these notions in the ambit of federations.³² In Tarlton's words, "symmetry refers to the extent to which component states share in the conditions and thereby the concerns more or less common to the federal system as a whole".³³ Later in this article, Tarlton defined symmetry as "the level of conformity and commonality in the relations of each separate political unit of the system to both the system as a whole and to the other component units".³⁴

³² C. Tarlton, "Symmetry and Asymmetry as Elements of Federalism: A Theoretical Speculation" (1965) 27 *Journal of Politics* 861 [Tarlton, *Symmetry and Asymmetry*].

³³ Tarlton, *Symmetry and Asymmetry*, cit., p. 861.

³⁴ Tarlton, *Symmetry and Asymmetry*, cit., p. 867.

In the “ideal symmetrical federal system” conceived by Tarlton, there would be “political units comprised of equal territory and population, similar economic features, climatic conditions, cultural patterns, social groupings, and political institutions”³⁵ so that “each of the separate political units would [...] be miniature reflections of the important aspects of the whole federal system”.³⁶ Similarly, there would not be significant differences between one state and the other, since “[e]ach state would [...] be concerned with the solution of the same sorts of problems and with the development of the same sorts of potential”.³⁷ Furthermore, in this “ideal symmetrical federal system” Tarlton suggested that “each state would maintain [...] the same relationship to the central authority” and “[t]he division of power between central and state governments would be [...] the same in every case”³⁸ with equal representation in, and support of the activities of the central government for each sub-unit.³⁹ Consequently, “no significant social, economic, or political peculiarities would exist which might demand special forms of representation or protection”.⁴⁰

Conversely, for Tarlton, “asymmetry expresses the extent to which component states do not share in these common features”.⁴¹ In an asymmetrical federal system, “the diversities in the larger society find political expression through local governments possessed of varying degrees of autonomy and power”.⁴² Therefore, in such a system, “each component unit would have [...] a unique feature or set of features which would separate, in important ways, its interests from those

³⁵ Tarlton, *Symmetry and Asymmetry*, cit., p. 868.

³⁶ Tarlton, *Symmetry and Asymmetry*, cit., p. 868.

³⁷ Tarlton, *Symmetry and Asymmetry*, cit., p. 868.

³⁸ Tarlton, *Symmetry and Asymmetry*, cit., p. 868.

³⁹ Tarlton, *Symmetry and Asymmetry*, cit., p. 868.

⁴⁰ Tarlton, *Symmetry and Asymmetry*, cit., p. 868.

⁴¹ Tarlton, *Symmetry and Asymmetry*, cit., p. 861.

⁴² Tarlton, *Symmetry and Asymmetry*, cit., p. 869.

of any other state or the system considered as a whole”,⁴³ and it would be very difficult “to discern interests that could be clearly considered mutual or national in scope”.⁴⁴ For Tarlton, the component units of a federation significantly vary in size, culture, population, fiscal resources, etc., and this implies a certain asymmetry in the relations among them as well as in the relations with the central state, and the issues emerging from this asymmetry could not be understood through the classic symmetrical arrangement.⁴⁵ In other words, Tarlton observes the intrinsic differences existing among and between the different units of a federation, usually greatly varying because of territorial size, population density, wealth distribution, etc... As Gagnon also argues, these differences “play a role in the exercise of powers”.⁴⁶ It is important to note that the differences he identifies are *national* and *non-national* in nature.

In recent years, the antithetical notions of symmetry and asymmetry initially elaborated by Tarlton have been further perfected by scholars.⁴⁷ As McGarry explains, an “asymmetrical federation is now usually understood as a state in which all parts have constitutionally guaranteed autonomy, but in which at least one part enjoys a different, usually enhanced, level of autonomy than the rest”.⁴⁸ Asymmetry also defines situations in which “at least one part of a

⁴³ Tarlton, *Symmetry and Asymmetry*, cit., p. 869.

⁴⁴ Tarlton, *Symmetry and Asymmetry*, cit. p. 869.

⁴⁵ McGarry, *Asymmetry*, cit., p. 105.

⁴⁶ A.-G. Gagnon, “The moral foundation of asymmetrical federalism” in A.-G. Gagnon & J. Tully, eds., *Multinational Democracies* (Cambridge: Cambridge University Press, 2001), p. 323 [Gagnon, *Asymmetrical federalism*].

⁴⁷ Among the works that have extensively analyzed Tarlton’s revolutionary ideas see, *ex multis*, J. McGarry, “Asymmetry in Federations, Federacies and Unitary States” (2007) 6 *Ethnopolitics* 105 [McGarry, *Asymmetry*]; R. Agranoff, “Power shifts, Diversity and Asymmetry” in R. Agranoff, ed., *Accommodating Diversity: Asymmetry in Federal States* (Baden-Baden: Nomos, 1999), pp. 11 et seq. [Agranoff, *Diversity & Asymmetry*]. For a critical reading of Tarlton’s article, see M. Burgess & F. Gress, “Symmetry and Asymmetry Revisited” in R. Agranoff, ed., *Accommodating Diversity: Asymmetry in Federal States* (Baden-Baden: Nomos, 1999), pp. 44 and 46 et seq. [Burgess & Gress, *Symmetry and Asymmetry*].

⁴⁸ McGarry, *Asymmetry*, cit., p. 105. See also Gagnon, *Asymmetrical federalism*, cit., pp. 323-324.

state enjoys autonomy, but the rest does not”.⁴⁹ Drawing from Tarlton, other theorists have elaborated on the concurrent concepts of *de iure* and *de facto* asymmetry: as von Beyme explains, the former refers to the asymmetry existing in laws and constitutions, while the latter refers to the asymmetry existing at economic, social and political level among the different units and territories of a state.⁵⁰ I have already emphasized in other sections of this thesis how my idea of political and socio-economic societies characterized by *non-national* differences directly builds upon Tarlton’s notion of asymmetry as it elaborates on those cleavages that are the direct consequence of internal (*de facto*) asymmetrical patterns.

Asymmetrical solutions are common to multinational federations, as sub-state national societies (i.e. *nations* within the multinational state) aspire to seek forms of constitutional accommodation that are unique and applied to the specific society only, as I have already pointed out in the case of Canada, Spain, the United Kingdom, or Belgium, for example. However, as Conversi notes, asymmetrical solutions are not a prerogative of federal systems only, as the inclusion of the United Kingdom and Spain in these examples already indicates.⁵¹ In fact, unitary states can also transfer “different degrees of autonomy” to regions or local sub-units, based on their specific demands and claims.⁵² *De iure* asymmetry thus becomes the unavoidable consequence of *de facto* asymmetry. Asymmetry can be therefore considered as one of the

⁴⁹ McGarry, *Asymmetry*, cit., p. 105.

⁵⁰ K. von Beyme, “Asymmetric federalism between globalization and regionalization” (2005) 12 *Journal of European Public Policy* 436. For similar definitions, see also Agranoff, *Diversity & Asymmetry*, cit., p. 16; F. Roquejo, “Decentralization and Federal and Regional Asymmetries in Comparative Politics” in F. Roquejo & K.-J. Nagel, eds., *Federalism Beyond Federations. Asymmetry and Processes of Resymmetrisation in Europe* (Farnham & Burlington: Ashgate, 2011), pp. 5-6.

⁵¹ D. Conversi, “Asymmetry in quasi-federal and unitary states” (2007) 6 *Ethnopolitics* 122 [Conversi, *Asymmetry*].

⁵² Conversi, *Asymmetry*, cit., p. 122.

possible solutions that could be explored in order to address the issue of diversity,⁵³ also outside *pure* federal models. In fact, asymmetry has been celebrated as “the politics of difference”⁵⁴ as well as a “key resource to favor the dynamism of the actors operating in a multi-level context” as it “allows the management of diversity”.⁵⁵

While neither a *fully-fledged* federation nor a multinational or plurinational state, the 1948 Italian constitution embedded insightful examples of asymmetrical solutions, later reinforced with the constitutional reform of 2001. In fact, some of the asymmetrical solutions scattered in the constitutional document could be imitated or adapted by other federal and non-federal states to accommodate their internal tensions, as I am going to explain in the remainder of the chapter.

b. Recognition of regions having special status

In the chapters devoted to Italian regionalism, I explained how the 1948 constitution created twenty regions, five of which enjoyed a special status (Valle d’Aosta, Trentino-Alto Adige, Friuli Venezia Giulia, Sicily and Sardinia), as opposed to the remaining fifteen ordinary regions.⁵⁶ In addition to the presence of separatist movements, I emphasized how a combination of other reasons (mainly linked to geographical and ethno-linguistic aspects) propelled the recognition and grant of a special status to these regions. In fact, while Sicily and Sardinia are islands, Valle d’Aosta, Trentino-Alto Adige and Friuli Venezia Giulia are located in the very

⁵³ McGarry, *Asymmetry*, cit., p. 105.

⁵⁴ Burgess & Gress, *Symmetry and Asymmetry*, cit., p. 44.

⁵⁵ G. Martinico, “Asymmetry and complex adaptive (legal) systems: the case of the European Union” (2014) 21 *Maastricht Journal of European and Comparative Law* 282.

⁵⁶ In Italian, the expression used is *regioni a statuto ordinario*, i.e. “ordinary statute” regions. As already recalled, pursuant to s. 116(1) Const, special regions enjoy “special forms and conditions of autonomy” which are translated in practice with a favorable fiscal treatment, so appealing to bordering territories belonging to ordinary regions.

North of the country, bordering France, Austria and Slovenia, respectively, with the concomitant existence of French, German and Slovenian linguistic minorities.⁵⁷

Influenced by Spanish regionalism, the creation of the five autonomous regions is certainly an example of asymmetry, which is an opportune and proper way to accommodate differences, as it allows modeling the constitutional scheme based on the specific needs and expectations of one or more entities composing the state. Because of the marked centralist thrust developed in Italy since unification, however, the decision to create these five special regions was certainly audacious, also because this asymmetric model was even more accentuated in practice than initially expected: in fact, not only were the five autonomous regions vested with additional, and special, powers (this itself an element of asymmetry), but the governments of these five regions were the only ones fully functioning at the time,⁵⁸ since the governments of the fifteen ordinary regions became operative only in the early 1970s.

c. The socio-economic cleavage between the North and the South

As we have seen, the asymmetry introduced in 1948 in the Italian constitution had the primary objective to arrest and settle separatist or linguistic claims, the latter being particularly strong in the three special regions located in the North. However, these linguistic minority

⁵⁷ French speaking minorities are present in Valle d'Aosta, German speaking minorities exist in Trentino-Alto Adige, whereas Slovenian speaking minorities are specific of Friuli Venezia Giulia. Obviously, with the creation of the European Union, the proximity to the border has progressively lost its importance, since France, Austria and Slovenia are now all member states of the EU and part of the Eurozone. This geographic element might seem anachronistic (in fact, some Italian scholars have repeatedly raised the question whether it still makes sense to maintain this division between ordinary and special regions in light of the recent geo-political transformations, as already noted in chapter VI). However, we need to put this into chronological perspective. In fact, when the 1948 Constitution was implemented, borders were still alive and, particularly with regards to Slovenia (then part of Yugoslavia), this was considered a rather sensitive territory, since it virtually separated the East from the West of Europe.

⁵⁸ Except for Friuli Venezia Giulia, whose government became effective only in 1963, as noted.

communities were relegated to peripheral or bordering regions which, in the aftermath of WWII, had very limited economic or political weight or impact on the rest of the country. Accordingly, managing such tensions and the consequent granting of different powers to the five autonomous regions did not stir any particular reaction on the part of the remaining ordinary regions, at least at the beginning.⁵⁹

Centered as it was on ethno-linguistic and geographical factors, however, this asymmetrical framework failed to take into account the longstanding political, social and economic cleavages between the North and the South. These disparities have endured in time,

⁵⁹ More recently, however, there have been claims on the part of some bordering municipalities, especially in the North, to “migrate” from an ordinary to a special region, attracted by the more favorable economic and fiscal treatment enjoyed by special regions and by the fact that the latter have become among the wealthiest regions in the country. This is constitutionally allowed: in fact, section 132(2) Const. provides that “[t]he Provinces and Municipalities which request to be detached from a Region and incorporated in another may be allowed to do so, following a referendum and a law of the Republic, which obtains the majority of the populations of the Province or Provinces and of the Municipality or Municipalities concerned, and after having heard the Regional Councils”. Di Muccio authored an interesting article on the above constitutional provision. See G. Di Muccio, “La modifica dei confini delle regioni: l’articolo 132 della Costituzione nell’esperienza del legislatore” (2013) *Federalismi.it*, available online at

<http://www.federalismi.it/AppOpenFilePDF.cfm?artid=22658&dpath=document&dfile=11062013121114.pdf&content=La+modifica+dei+confini+delle+regioni:+1%E2%80%99articolo+132+della+Costituzione+nell%E2%80%99esperienza+del+legislatore+-+stato+-+dottrina+-+> . For more details on this “migratory” trend, see *ex pluris* A. D’Atena, “Between Spain and Germany: The Historical Models of Italian Regionalism” in S. Mangiameli, ed., *Italian Regionalism: Between Unitary Traditions and Federal Processes* (Cham: Springer, 2014), p. 75 [D’Atena, *Historical Models of Italian Regionalism*]; A. Ferrara, “Questione settentrionale. Dalla grande alla piccola secessione: la migrazione territoriale dei comuni come istanza di specializzazione in deroga ai principi del federalismo fiscale” (2007), *Federalismi.it*, available online at http://www.federalismi.it/AppOpenFilePDF.cfm?dpath=document\editoriale&dfile=FERRARA3.pdf&content=Questione+settentrionale.+Dalla+grande+alla+piccola+secessione:+la+migrazione+territoriale+dei+comuni+come+istanza+di+specializzazione+in+deroga+ai+principi+del+federalismo+fiscale&content_auth=Antonio+Ferrara; M. Barbero, “Come (non) si risolve la questione delle “secessioni” dei comuni di confine (e dei privilegi finanziari delle autonomie speciali)” (2008), *Federalismi.it*, available online at [http://www.federalismi.it/AppOpenFilePDF.cfm?artid=9865&dpath=document&dfile=24042008175434.pdf&content=Come+\(non\)+si+risolve+la+questione+delle+%27secessioni%27+dei+comuni+di+confine+\(e+dei+privilegi+finanziari+delle+autonomie+speciali\)++-+stato+-+dottrina+-+](http://www.federalismi.it/AppOpenFilePDF.cfm?artid=9865&dpath=document&dfile=24042008175434.pdf&content=Come+(non)+si+risolve+la+questione+delle+%27secessioni%27+dei+comuni+di+confine+(e+dei+privilegi+finanziari+delle+autonomie+speciali)++-+stato+-+dottrina+-+) ; M. Barbero, “Enti locali ‘in fuga’: questioni di “forma” e di “sostanza” (2007) *Federalismi.it*, available online at <http://www.federalismi.it/AppOpenFilePDF.cfm?artid=7646&dpath=document&dfile=30042007074740.pdf&content=Enti+locali+%27in+fuga%27:+questioni+di+%27forma%27+e+di+%27sostanza%27+-+autonomie+locali+-+dottrina+-+>

and have been acknowledged in political circles, without ever being concretely addressed with effective solutions, except for *ad hoc* interventions which have proved to bring no significant benefit to the territories.⁶⁰ It was only in the early 1990s, parallel to the rise of the LN, that more concrete and long-term proposals were put on the table to attempt to solve this thorny question, which had already triggered the frustrations of the industrial middle class based in the North.

With the Italian central state indifferent to the predicaments originating in the North, and a supra-level entity (the European Union) which, conversely, greatly supported regionalism, creative solutions were recommended by the LN: from federalism to devolution, from secession of *Padania* to a milder fiscal federalism. Without repeating the vicissitudes of the LN and its political agenda, as they have been illustrated in previous chapters, here it will suffice to recall that, while federalism was demanded by the wealthier North (through the LN) so as to get more powers, the South was not seeking a federal reform, as if a federal arrangement was not reflective of its unique political and socio-economic position; rather, it was strongly resisted.

None of the aforementioned proposals, however, was incorporated in a *pure* form into the 2001 constitutional reform, which therefore resulted in a patchwork of disparate solutions leading to chaotic and unsatisfactory responses to the arguments propounded by the LN, in addition to fueling the disapproval of constitutional scholars because of its several flaws, as I observed in chapter VI. For instance, fiscal federalism was certainly encapsulated in article 119 Const. but its implementation is still incomplete; federal features are identifiable in the new division of legislative powers of article 117, yet the resulting model is difficult to classify, also in light of the obvious discrepancy between the formal constitution (i.e. the provisions contained in

⁶⁰ More specifically, I am referring here to the Southern Italian Development Agency discussed *supra*.

the constitutional text), the interpretation given to it by constitutional judges and, more generally, its application in real life. In any event, the 2001 constitutional amendment confirmed the asymmetrical classification between ordinary and special regions, but also included an interesting clause on differential regionalism: in fact, article 116(3) Const. now mandates that additional and special forms and conditions of autonomy can be granted to ordinary regions by national law for specific subject matters, thus allowing ordinary regions to “negotiate with the state particular forms and conditions of autonomy” in the ambit of certain issues.⁶¹ Curiously enough, to this date this option has not yet been exploited by ordinary regions, but I will revert to article 116(3) Const. in Chapter IX.

d. Asymmetry as a way to deal with *non-national* differences

Because of its resilience, asymmetry is thus one of the possible strategies that could be explored to address the specific interests of *non-national* societies.⁶² With specific regard to the Italian situation, Caravita contends that “asymmetrical organization could be unavoidable”⁶³ but nothing stops us from affirming that asymmetry would be recommendable for other countries where *non-national* differences exist.

⁶¹ P. Caretti & G. Tarli Barbieri, *Diritto Regionale* (Torino: Giappichelli, 2012), p. 34 [Caretti & Tarli Barbieri, *Diritto Regionale*]. Amoretti makes an interesting classification both with regard to actors in favor and against asymmetry in Italy since 1948, as well as arguments in favor of symmetry. For instance, he correctly argues that, in addition to the LN, regional movements in the North (including the special status regions) have favored asymmetry at least since 1948, whilst “parties drawing electoral support in the whole country” as well as, more recently, the Church, trade unions and the Confederation of Italian Industry had in general supported symmetrical solutions. Among the arguments made in support of symmetry, we have issues of distributive justice, efficiency, preserving the unity of the state, as well as citizenship rights. See U. Amoretti, “Italy: Increasing Decentralisation, Decreasing Asymmetry” in F. Requejo & K.-J. Nagel, *Federalism Beyond Federations. Asymmetry and Processes of Resymmetrisation in Europe* (Farnham & Burlington: Ashgate, 2011), pp. 74-75.

⁶² McGarry, *Asymmetry*, cit., p. 105.

⁶³ B. Caravita, “Italy. Between the hybrid state and Europe’s federalizing process” in J. Loughlin, J. Kincaid & W. Swenden, eds., *Routledge Handbook of Regionalism and Federalism* (London & New York: Routledge, 2013), p. 299.

But how can asymmetry be used for these purposes? In other words, what type of asymmetrical treatment can be reserved to political and socio-economic societies characterized by *non-national* differences? The answer to this question may differ depending on the specific characteristic of the *non-national* society. When the nature of the *non-national* difference rests on socio-economic features as in the case of Italy, one possible way of meeting its unique interests could be to grant it special (or asymmetrical) powers over taxation (the so-called *fiscal* federalism), as the LN suggested as a potential solution for Italy. By devising an autonomous way to levy local taxes, *non-national* societies are certainly in a better position to take charge of local interests. Enhanced control over taxation would also bring significant benefits to the entire economic framework, as taxes are used for different purposes, including a better management of the territory. Increased autonomy in the taxation system might also lead to more control over work relations (so that economically viable areas could enjoy additional flexibility in labor practices) or over infrastructures or natural resources. Finally, more control over immigration policies (so that *non-national* societies could regulate the flows of workforce based on their business needs) could allow a better assessment of economic diversities.⁶⁴

A first critical aspect that could emerge in pursuing this strategy is that asymmetry, especially when it entails a differential fiscal treatment, might deepen the fiscal imbalances that already exist among and between the various territories. In fact, one of the reasons why federalism was resisted when initially proposed was exactly this: increased fiscal autonomy,

⁶⁴ Asymmetrical fiscal arrangements are well known in Spain, because of the financial advantages granted to Basque Country and Navarre, who “collect all taxes except customs duties and the taxes on petroleum products and tobacco, including non-social security income and other major taxes within their own borders and submit a formula-based amount to the national government to reimburse it for their AC’s share of national expenses”. This asymmetry is the “legacy of the *fueros* in the *regimen foral*.” *Fueros* are “charters of immunity” that go back to the Middle Ages. See Agranoff, *Asymmetry in Federal Spain*, cit. p. 99. Asymmetry could also be political: in fact, when a region has excellent history of governance, it could receive more administrative responsibilities.

especially in the North, would exacerbate the North-South cleavage. Consequently, fiscal or economic asymmetry needs to be counterbalanced by some other measures at the national level, so as not to jeopardize the solidarity-based ties between regions and between the regions and the central state. I will revert to this in chapter VIII when discussing solidarity.

Another critical aspect that would emerge with asymmetry is that the latter is traditionally more easily accepted by the state-wide community when it entails cultural or linguistic traits (as it happens in the case of *nations* within multinational states or federations); but when this identity-based factor is missing, so that asymmetry touches purely economic spheres, perplexities may arise, unless this “different” treatment is somehow explained to the rest of the country. I will revert to this important aspect in chapter IX.

3. The principle of subsidiarity

In addition to asymmetry, the principle of subsidiarity could also be used as a strategy to acknowledge the specific interests of political and socio-economic societies characterized by *non-national* differences. As already noted in Chapter I, subsidiarity is a basic principle of federalism and commonly implies that legislative or administrative action should be taken, when possible, at the lowest appropriate level of government at which a given objective can be achieved, with the central authority merely playing a “subsidiary” role, and thus performing only tasks that cannot be better completed at local level.⁶⁵ In other words, this principle mandates that “governments need to delegate their powers, authorities, and duties to the smallest (or to the

⁶⁵ G. Bermann, “Taking subsidiarity seriously: federalism in the European Community and the United States” (1994) 94 *Columbia Law Review* 338 [Bermann, *Subsidiarity*]; R. Schütze, *From Dual to Cooperative Federalism. The Changing Structure of European Law* (Oxford: Oxford University Press, 2009), p. 244.

closest-to-the-citizens) jurisdiction that can efficiently perform them”.⁶⁶ Subsidiarity stresses the importance of local governments and their aptitude at dealing with local matters because of their close proximity to citizens. While an implicit characteristic of most decentralized systems,⁶⁷ the principle of subsidiarity is rarely explicitly entrenched in constitutional texts,⁶⁸ thus this tool is not always exploited to its fullest advantage.

The scholarly debate on subsidiarity has emerged in the specific ambit of EU law, where the principle has first been theorized after its inclusion in the Treaty of Maastricht of 1992, and where, over the years, it has acquired a crucial importance in balancing the various interests of member states and EU institutions. Therefore, a very rich and exhaustive literature already exists detailing the intellectual origins and evolution of this principle at EU level, and the European Court of Justice has also repeatedly elaborated on the principle; the reader who is interested in learning more about the topic can refer to the bibliographical note for more details.⁶⁹ In this

⁶⁶ Y. Blank, “Federalism, subsidiarity, and the role of local governments in an age of global multilevel governance” (2010) 37 *Fordham Urban Law Journal* 533 [Blank, *Federalism & subsidiarity*].

⁶⁷ Bermann, *Subsidiarity*, cit., p. 338.

⁶⁸ To the best of my knowledge, in the EU context only three states entrench subsidiarity in their constitutions: Italy, Poland and Portugal, in addition to EU treaties.

⁶⁹ Without aspiring to be exhaustive in the listing, the following works can be consulted for a better understanding of the intellectual history of the principle of subsidiarity and its development in EU law: E. Arban, “Re-centralizing subsidiarity. Interpretations by the Italian Constitutional Court” (2015) 25 *Regional and Federal Studies* 129-144; E. Arban, “La subsidiarité en droit européen et Canadien: une comparaison” (2013) 56 *Canadian Public Administration* 219-234; G. A. Bermann, “Taking subsidiarity seriously: federalism in the European Community and the United States” (1994) 94 *Columbia Law Review* 331-456; D. Z. Cass, “The Word That Saves Maastricht? The Principle of Subsidiarity and The Division of Powers Within the European Community” (1992) 29 *Common Market Law Review* 1107-1136; J. A. Gardner, “Perspectives in Federalism: in search of Sub-National Constitutionalism” (2008) 4 *European Constitutional Law Review* 325-343; C. Henkel, “The Allocation of Powers in the European Union: A Closer Look at the Principle of Subsidiarity” (2002) 20 *Berkeley Journal of International Law* 359-386; T. Hueglin, “The Principle of Subsidiarity: Tradition – Practice – Relevance” in Ian Peach, ed., *New Perspectives on Canadian Governance* (Winnipeg: University of Manitoba Press, 2007); P. D. Marquardt, “Subsidiarity and sovereignty in the European Union” (1994-1995) 18 *Fordham International Law Journal* 616-640; G. Martinico, “Dating Cinderella: On Subsidiarity as a Political Safeguard of Federalism in the European Union, (2011) 17 *European Public Law* 649-660; R. Schütze, *From Dual to Cooperative Federalism. The Changing Structure of European Law* (Oxford: Oxford University Press, 2009); A. G. Toth, “The Principle of Subsidiarity in

section, I would like to focus on Italy, on the entrenchment of the principle in the constitutional text, as well as on the peculiar reading of subsidiarity made by the Italian Constitutional Court (“ItCC”). Usually construed symmetrically (as a general principle that applies to the level of government closest to the citizens of all sub-national units), nothing impedes it being applied asymmetrically (only to some of the governments of sub-national units, if specific conditions of asymmetry are present).⁷⁰

a. Subsidiarity in the Italian legal system

With the entrenchment of subsidiarity in article 118 Const., this principle entered the Italian constitutional discourse for the first time in 2001.⁷¹ But subsidiarity had already been introduced in the Italian legal system with Law 59/1997 as the condition inspiring the allocation of administrative powers between the centre and the periphery.⁷² While constitutionally embedded as the basis to allocate *administrative* (not *legislative*) powers,⁷³ article 118 is not the only place in the Constitution where subsidiarity is mentioned: article 120(2) Const. also refers to the principles of subsidiarity and loyal collaboration when talking of substitution powers.

the Maastricht Treaty” (1992) 29 *Common Market Law Review* 1979-1105; K. Van Kersbergen & B. Verbeek, “The Politics of Subsidiarity in the European Union” (1994) 32 *Journal of Common Market Studies* 215-234; G. W. Vause, “The Subsidiarity Principle in European Union Law – American Federalism Compared” (1995) 27 *Case Western Reserve Journal of International Law* 61-82.

⁷⁰ An example can better illustrate the point of asymmetrical subsidiarity: when this principle demands more local governance and the quality of existing governance is excellent, then the demands of subsidiarity are more likely to be heeded, whereas those demands may be ignored if the existing governance is very bad.

⁷¹ E. Arban, “Re-centralizing subsidiarity. Interpretations by the Italian Constitutional Court” (2015) 25 *Regional and Federal Studies* 134 [Arban, *Re-centralizing subsidiarity*].

⁷² Pursuant to Law 59/1997, subsidiarity was construed “in favor of administrative simplification” (L. Franzese, “Sussidiarietà vs decentramento” (2003) *Federalismi.it*, available online at <http://www.federalismi.it/ApplOpenFilePDF.cfm?artid=22417&dpath=document&dfile=13052013170622.pdf&content=Sussidiariet%C3%A0+vs+decentramento+-+stato+-+dottrina+-+> p. 2). See also ItCC decision 303/2003, at par. 2.2; Arban, *Re-centralizing subsidiarity*, cit., p. 134.

⁷³ Arban, *Re-centralizing subsidiarity*, cit., p. 134. Incidentally, however, in certain circumstances the ItCC has “extended” subsidiarity to legislative powers as well. See *infra* for more details on this jurisprudential reading.

At least a couple of aspects pertaining to article 118 Const. deserve our attention. First, the constitutional legislator does not refer to the principle of subsidiarity alone, since subsidiarity is mentioned along with the principles of “differentiation” and “adequacy”.⁷⁴ While the Italian constitution does not provide a definition of these two other principles, scholars contend that “differentiation” refers to the fact that “local authorities belonging to the same category can be granted different functions, differentiating the competences according to parameters related to their demographic, territorial and structural characteristics, also considering their associative dimension”.⁷⁵ These actors, therefore, shall not be necessarily treated “equally” since differences (or asymmetries) exist, for instance, between more populated and less populated municipalities.⁷⁶ Conversely, “adequacy” involves “an assessment in actual fact of the tangible ability of a local authority (...) to implement functions that must be assigned”.⁷⁷ Secondly, article 118 Const. contains both the notions of *vertical* subsidiarity (par. 1) and *horizontal* subsidiarity (par. 4),⁷⁸ as I am going to explain more in detail below.

b. Vertical subsidiarity

The concept of *vertical* subsidiarity⁷⁹ refers to “the distribution of powers among different layers of the public sphere”.⁸⁰ Because it is used to “regulate territorial units” *vertical* subsidiarity is sometimes also referred to as *territorial* subsidiarity.⁸¹

⁷⁴ Arban, *Re-centralizing subsidiarity*, cit., p. 135.

⁷⁵ C. Tubertini, “Public Administration in the Light of the New Title V of the Italian Constitution” (2006) 12 *European Public Law* 39 [Tubertini, *Public Administration*]; Arban, *Re-centralizing subsidiarity*, cit., p. 135.

⁷⁶ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 250; Arban, *Re-centralizing subsidiarity*, cit., p. 135.

⁷⁷ Tubertini, *Public Administration*, cit., p. 39; Arban, *Re-centralizing subsidiarity*, cit., p. 135.

⁷⁸ Tubertini, *Public Administration*, cit., pp. 36 & 40.

⁷⁹ This idea of *vertical* subsidiarity has also been referred to by the ItCC as “ascending subsidiarity”. See, *ex pluribus*, ItCC decision 384/2005, par. 8.

Article 118(1) Const. dictates that administrative functions belong to the level of government closest to the citizens (e.g. municipalities), unless they are attributed to a higher level of government (provinces, metropolitan cities, regions, or the State) if there is a need for uniform interpretation in a given subject matter, and pursuant to the principles of subsidiarity, differentiation, and adequacy (or proportionality).⁸² Municipalities are therefore chosen by the constitutional legislator as the preferred level of government for purposes of administrative functions.⁸³ Because they are vested with these powers, municipalities will decide if, when, and to what extent they need help from the upper entities (provinces, metropolitan cities, regions or the State); therefore, in order to have a “subsidiary intervention” from an upper level, the request shall come from the “bottom”.⁸⁴ Consequently, with the “new” article 118(1) Const., the legislator preferred to reserve all administrative functions (regardless of how legislative competences are allotted) to the level of government closest to the citizens, unless there is a prevailing common interest.⁸⁵

⁸⁰ A. Colombo, “The ‘Lombardy Model’: Subsidiarity informed Regional Government” (2008) 42 *Social Policy and Administration* 177—196 [Colombo, *The ‘Lombardy Model’*]; Arban, *Re-centralizing subsidiarity*, cit., pp. 129 & 135.

⁸¹ A. Føllesdal, “Survey Article: Subsidiarity” (1998) 6 *The Journal of Political Philosophy* 196 [Føllesdal, *Subsidiarity*]; Arban, *Re-centralizing subsidiarity*, cit., p. 129.

⁸² Tubertini, *Public Administration*, cit., p. 36.

⁸³ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 258. This constitutional choice was dubbed “charming” yet “pretentious” by former ItCC judge De Siervo. See U. De Siervo, “Il regionalismo italiano fra i limiti della riforma del Titolo V e la sua mancata attuazione” (2007) available online at www.issirfa.cnr.it [De Siervo, *Regionalismo italiano*]; Arban, *Re-centralizing subsidiarity*, cit., p. 135.

⁸⁴ Marcello Fracanzani, “L’insidiosa sussidiarietà nella riforma del titolo V della costituzione” (2006) *Federalismi.it*, available online at <http://federalismi.it/AppOpenFilePDF.cfm?artid=5833&dpath=document&dfile=19092006035808.pdf&content=L%27insidiosa+sussidiariet%C3%A0+nella+riforma+del+Titolo+V+della+Costituzione+-+autonomie+locali+-+dottrina+-+> p. 4 [Fracanzani, *Sussidiarietà*]; Arban, *Re-centralizing subsidiarity*, cit., p. 135.

⁸⁵ Arban, *Re-centralizing subsidiarity*, cit., p. 135. This wording of article 118(1) is rather different than the allotment of administrative powers existing in the Italian Constitution before the 2001 amendment. The approach used in the “old” version was the so called “parallelism” whereby regions enjoyed full administrative functions only

c. Horizontal subsidiarity

Article 118 Const. also defines the less explored *horizontal* aspect of the principle of subsidiarity. *Horizontal* subsidiarity “relates to the sharing of competences and initiatives between public and private actors”⁸⁶ so that, in this sense, “subsidiarity could be conceived like a sort of ‘division of labor’ between public sector and civil society (person, family, non-profit organization, market)”.⁸⁷ Accordingly, as *vertical* subsidiarity refers to the *territorial* aspect of the principle, *horizontal* subsidiarity “applies non-territorially (“horizontally”) to associations, social sectors or social functions”.⁸⁸ Consequently, the State and other local governments “shall promote the autonomous initiatives of citizens, both as individuals and as members of associations, relating to activities of general interest, on the basis of the principle of subsidiarity”.⁸⁹

As explained by scholars, this provision “aims to promote general interests” and is addressed to “public authorities and private bodies”.⁹⁰ However, despite the provision, the implementation of this principle has remained largely incomplete within the Italian legal

in those subject matters reserved to them by article 117 Const. Also, administrative functions having a mere local interest could be allotted to provinces, municipalities, or other local entities.

⁸⁶ Colombo, *The ‘Lombardy Model’*, cit., p. 182; see also Arban, *Re-centralizing subsidiarity*, cit., p. 129.

⁸⁷ Colombo, *The ‘Lombardy Model’*, cit., p. 182; see also Arban, *Re-centralizing subsidiarity*, cit., p. 129.

⁸⁸ Føllesdal, *Subsidiarity*, p. 196; see also Arban, *Re-centralizing subsidiarity*, cit., pp. 129-130.

⁸⁹ Tubertini, *Public Administration*, cit., p. 40; Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 251; Arban, *Re-centralizing subsidiarity*, cit., p. 135. Similar definitions of the principle can be found in article 4 of Law 59/1997 (the *Bassanini Law*), which talks about favoring “the performance of tasks and functions having social relevance by families, associations and communities”. Likewise, article 3(5) of Law 267/2000 (on the system of local self-government) is infused with the spirit of *horizontal* subsidiarity when it dictates that the tasks and functions of municipalities and provinces can be also performed through the activities exercised by the autonomous initiative of citizens and their social groups. See Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 252; G. Arena, “*Il principio di sussidiarietà orizzontale nell’art. 118 u.c. della Costituzione*” (2003) *Amministrazione in Cammino*, available online at <http://amministrazioneincammino.luiss.it/wp-content/uploads/2010/04/arena.pdf> [Arena, *Principio di sussidiarietà*].

⁹⁰ Tubertini, *Public Administration*, cit., p. 40.

system.⁹¹ Scholars have also alleged that, in practical terms, “it rests on the citizens to assume the autonomous initiative in the general interest”⁹² meaning that “the power of initiative belongs to the citizens”.⁹³

While it has referred to this idea of *horizontal* subsidiarity many times in its decisions, ItCC has never provided a definition of this concept that could help defining its scope.⁹⁴ And while the *horizontal* subsidiarity encapsulated in article 118(4) is an undefined concept,⁹⁵ it seems to encourage a return to the original spirit of subsidiarity expressed by catholic social doctrine, as noted in previous chapters of this thesis.⁹⁶

d. Subsidiarity in the interpretation of the ItCC

With the constitutional entrenchment of subsidiarity, the role of the ItCC in interpreting article 118 Const. has become crucial, as certain important decisions have contributed to partially reshape the principle. Looking at a number of decisions of the Italian constitutional judges might therefore help to better understand the scope that subsidiarity has acquired in Italian regionalism.

⁹¹ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 253.

⁹² Arena, *Principio di sussidiarietà*, cit., p. 3.

⁹³ Arena, *Principio di sussidiarietà*, cit., p. 3.

⁹⁴ A. Sterpa “Il principio di sussidiarietà nel diritto comunitario e nella Costituzione” (2010) *Federalismi.it*, available online at <http://www.federalismi.it/ApplOpenFilePDF.cfm?artid=16704&dpath=document&dfile=27072010182328.pdf&content=Il+principio+di+sussidiariet%C3%A0+nel+diritto+comunitario+e+nella+Costituzione+-+stato+-+dottrina+-+> p. 11 [Sterpa, *Principio di sussidiarietà*]; see also Arban, *Re-centralizing subsidiarity*, cit., p. 135.

⁹⁵ Sterpa, *Principio di sussidiarietà*, cit., p. 11.

⁹⁶ Scholars suggest that the principle of *horizontal* subsidiarity articulated in article 118(4) Const., should be read in conjunction with article 3(2) Const., dictating that it is the task of the Italian Republic to “remove all economic and social obstacles that (...) impede the full development of the human being and the effective participation of all workers to the political, economic and social organization” of the nation. It should also be read alongside article 4(2), Const., whereby “it is the duty of each citizen to perform an activity or function that contributes to the material or spiritual progress of the society, based on his or her own possibilities and choice”. See Arena, *Principio di sussidiarietà*, cit., pp. 5-6 and 7.

Decision 303/2003 is certainly one of the most relevant judgments not only on subsidiarity but also on some of the key aspects of the 2001 reform.⁹⁷ With specific regards to subsidiarity, however, this decision sets the scheme to be followed in order to define the scope of the principle in the Italian legal system. Among the issues raised before the ItCC was whether the national legislator could “undertake and regulate the exercise of administrative functions on subject matters in which it does not have an exclusive legislative power, but only a concurrent power” shared with the regions.⁹⁸ The ItCC argued that the unifying role of the State shall not be limited to those areas where it enjoys exclusive powers (article 117(2)), or to the definition of general guidelines in areas of shared or concurrent jurisdiction (article 117(3)).⁹⁹ In fact, the Italian constitutional system contains “flexibility” tools that help derogating from the rigid division of powers termed in article 117, which otherwise would jeopardize the unity and indivisibility of the State. One of the tools the ItCC is referring to is subsidiarity.¹⁰⁰ Consequently, in areas falling within its exclusive or concurrent powers, this tool allows national laws to vest to the State administrative and, consequently, legislative powers if there is a need for a uniform discipline of a given subject matter at national level.¹⁰¹ In practice, this allows the State to derogate from the division of powers set forth in article 117, since subsidiarity can act not only for administrative functions, but for legislative powers as well.¹⁰² In this regard, the ItCC elaborated the notions of “static” and “dynamic” subsidiarity: while the former relates to

⁹⁷ Arban, *Re-centralizing subsidiarity*, cit., p. 135.

⁹⁸ See decision 303/2003, par. 2.1. As explained in other sections of this thesis, pursuant to s. 117 Const., State legislative powers are enumerated, while concurrent and residual powers are left to the regions. In areas of concurrent jurisdiction, the role of the State is to dictate the fundamental principles or guidelines related to the specific subject matter. Conversely, with regards to administrative powers, the subsidiarity principle assigns them, as a general rule, to the governments that are closer to the citizens (usually, municipalities).

⁹⁹ See decision 303/2003, par. 2.1; see also Arban, *Re-centralizing subsidiarity*, cit., p. 136.

¹⁰⁰ See decision 303/2003, par. 2.1; see also Arban, *Re-centralizing subsidiarity*, cit., p. 136.

¹⁰¹ Arban, *Re-centralizing subsidiarity*, cit., p. 136.

¹⁰² Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 90; see also Arban, *Re-centralizing subsidiarity*, cit., p. 136.

the allocation of administrative functions to municipalities as per article 118(1), the “dynamic” dimension pertains to the possibility of identifying an element of flexibility in it, one that allows the satisfaction of unitary (or national) interests,¹⁰³ thus derogating the usual allocation of powers of article 117 Const.¹⁰⁴

In other words, for the ItCC, if the State has “attracted” to itself certain administrative powers because of a need of unitary discipline, then it shall “attract” to itself also the related legislative powers, instead of leaving them to the different legislative frameworks of the individual regions.¹⁰⁵ And while the Constitution separates “legislative” from “administrative” functions, infusing only the latter with subsidiarity, for the ItCC subsidiarity “operates on both sides, the administrative and the legislative”, if certain conditions apply.¹⁰⁶

Next, the ItCC identifies the conditions that a national law should meet in order to grant such administrative and legislative powers to the State. First, the interest of the State to assume administrative functions normally belonging to the regions shall be “proportionate” and “not unreasonable”. Second, there shall be an agreement, or understanding, between the State and the Region(s) concerned.¹⁰⁷ These two conditions are meant to protect the autonomy of regional powers, and thus not to expand the powers of the national government too broadly.

¹⁰³ Decision 303/2003, par. 2.2; see also Arban, *Re-centralizing subsidiarity*, cit., p. 136. This idea of *dynamic* subsidiarity is further elaborated by the ItCC in decision 232/2011, where the ItCC argues that the flexibility element of article 118(1) Const., while directing that administrative functions usually belonging to municipalities can be allocated to a different level of government, it also introduces “a dynamic mechanism (also impacting on the allocation of legislative competences) aimed at overcoming the equation between ownership of legislative functions and ownership of administrative functions”. See ItCC decision 232/2011, par. 5.4.

¹⁰⁴ Decision 303/2003, par. 4.1; see also Arban, *Re-centralizing subsidiarity*, cit., p. 136.

¹⁰⁵ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 90; see also Arban, *Re-centralizing subsidiarity*, cit., p. 136.

¹⁰⁶ Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 254; see also Arban, *Re-centralizing subsidiarity*, cit., p. 136.

¹⁰⁷ Decision 303/2003, par. 2.2; see also Arban, *Re-centralizing subsidiarity*, cit., p. 136.

There are a few aspects of this ItCC judgment that are worth observing through a critical lens. In the first place, the allusion made by the ItCC to some sort of “national interest” or “unitary concern” is not accidental: in fact, the “old” Title V of the Constitution (before the 2001 amendment) contained the equivalent of a “national interest” clause in article 127(3).¹⁰⁸ Since the 2001 reform erased all references to this “national interest,” the ItCC felt the need to reintroduce something that would recall the “national interest” clause, and found it in subsidiarity.

Another aspect worth observing is the reference the ItCC makes to two *classic* federations, Germany and the United States, and to the presence of similar tools in these systems.¹⁰⁹ But while the allusion to the German *Konkurrierendengesetzgebung* might be pertinent, also in light of the influence that German federalism has had on the Italian regional model,¹¹⁰ the reference to the US *Supremacy Clause* is, in my opinion, not entirely appropriate.¹¹¹ The *Supremacy Clause*¹¹² designates the US Constitution as the supreme law of the land, so that all State laws and constitutions shall be bound by it (as well as by US Treaties and US federal laws); yet, whilst the *Supremacy Clause* ensures that the US constitution and federal laws and US treaties take precedence over State laws and constitutions, so that it can be construed as a guarantor of national unity, the US constitution contains another clause, the *Necessary and Proper Clause*¹¹³ which might have also served the purposes of the ItCC.¹¹⁴

¹⁰⁸ Arban, *Re-centralizing subsidiarity*, cit., p. 136.

¹⁰⁹ Arban, *Re-centralizing subsidiarity*, cit., p. 136.

¹¹⁰ In this regard, see also D’Atena, *Historical Models of Italian Regionalism*, cit., p. 73.

¹¹¹ Arban, *Re-centralizing subsidiarity*, cit., p. 136.

¹¹² The *supremacy clause* is enshrined in Art. IV, clause 2, of the US Constitution, and says that: “This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.”

¹¹³ The *necessary and proper clause* is enshrined in Art. I, section 8, clause 18, of the US Constitution, and provides that: “The Congress shall have Power - To make all Laws which shall be necessary and proper for carrying into

Together with the *Commerce Clause*,¹¹⁵ the *Necessary and Proper Clause* has provided the basis for a wide variety of federal laws.¹¹⁶

However, besides these remarks, in this important decision the ItCC has proposed a very articulate interpretation of subsidiarity, one that is certainly original and that shows all the agility and potential of this principle.¹¹⁷ In the course of its subsequent decisions, the ItCC maintained a consistent approach in the interpretation of subsidiarity offered in this judgment, thus limiting its analysis to a clarification of certain aspects presented in this decision.¹¹⁸

For instance, the ItCC elaborates on the conditions to be met in order to have a constitutionally pertinent “subsidiarity call” or “attraction through subsidiarity” as referred to in decision 303/2003: according to the ItCC,¹¹⁹ in those subject matters listed in articles 117(3)(4) Const. (i.e. shared and residual competences),

in order for a state law to legitimately grant administrative functions to the central level and (...) govern their exercise, it is required that, first, the law abides by the principles of subsidiarity, differentiation and adequacy in the allocation of administrative functions, thus addressing the need of a unitary discipline of those functions. Furthermore, such a law shall contain a logically pertinent discipline, apt to regulate such functions, and limited by what is strictly necessary for such a goal. Finally, the law shall be adopted pursuant to procedures that ensure the participation of the levels of government involved, through a loyal collaboration or, otherwise, it shall include cooperation mechanisms for the concrete exercise of administrative functions allocated to the central government.

Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.”

¹¹⁴ Arban, *Re-centralizing subsidiarity*, cit., p. 136.

¹¹⁵ See Art. I, section 8, clause 3 of the US Constitution, whereby “[The Congress shall have Power] To regulate Commerce with foreign Nations, and among the several States, and with the Indian tribes.”

¹¹⁶ Arban, *Re-centralizing subsidiarity*, cit., p. 137.

¹¹⁷ Arban, *Re-centralizing subsidiarity*, cit., p. 137.

¹¹⁸ Arban, *Re-centralizing subsidiarity*, cit., p. 137.

¹¹⁹ Decision 6/2004, par. 7.

The agreement with the regions concerned is also referred to as “understanding” and is a concept that is constantly emphasized in the subsequent ItCC jurisprudence. The above mentioned elements (proportionality, reasonableness, and agreement with the regions concerned) are confirmed in decision 383/2005.¹²⁰

With decision 43/2004, the ItCC further illustrates the correct interpretation that should be given to the new provision of article 118 Const. On one side, it expresses a “generalized preference for the entities that are closer to the citizens” (such as municipalities, provinces, metropolitan cities, regions),¹²¹ while on the other there is the introduction of a “criterion of flexibility” for the “concrete allocation of functions to the various levels of government.”¹²² Next, the ItCC explains that, since the aforementioned allocations can be based only upon the law, it will be a national or regional law that will make all the relevant decisions, based on whether the subject matter in question falls within the legislative powers of the regions or of the state.¹²³

Decision 383/2005 is used by the ItCC to explain, among other things, that the agreement (or understanding) between State and Regions represents the “minimal and unavoidable condition for the constitutional legitimacy of the State law performing the ‘subsidiarity call’ of an administrative function in a subject matter usually belonging to the Regions”.¹²⁴ This is why

¹²⁰ Incidentally, this is one of the first decisions where the ItCC introduces a principle that was dubbed “cooperative regionalism” meaning that, when it is not possible to clearly separate the spheres of competences between levels of government, so that a collaboration and involvement among these levels is needed, mechanisms that favor this collaboration between the center and the periphery are valorized. See Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 256; see also Arban, *Re-centralizing subsidiarity*, cit., p. 137.

¹²¹ Decision 43/2004.

¹²² Decision 43/2004.

¹²³ Decision 43/2004.

¹²⁴ Decision 383/2005, par. 30; see also Arban, *Re-centralizing subsidiarity*, cit., p. 137.

this type of agreement is also referred to as “strong understanding”.¹²⁵ In other words, the agreement (or understanding) shall be bilateral, thus excluding the possibility of a decision taken on one side only (specifically, the State’s side). Accordingly, the two actors (State and Regions) shall have an equal position in the deal. Efforts shall be made so that this type of “strong understanding” is reached. But in the event that, for some reason, this agreement cannot be attained, there is the possibility that “the national legislator identifies procedures aimed at helping the adoption of the final act”.¹²⁶ And if it is still impossible to reach the understanding, the ItCC can come into play to help solving the issue, and use its constitutionally granted powers under article 134 (e.g. powers to solve all conflicts of attribution between the State and the Regions).¹²⁷ By referring to these powers, the ItCC seems to show a concern to defend the role of the Regions and their constitutionally protected legislative powers from intrusions from the centre: in fact, the ItCC warns that it shall always be assured a “permanent guarantee of the equal position of the parties involved”.¹²⁸

Finally, in the recent decision 148/2012, the ItCC shows once again its concern for the autonomy of local sub-entities, and clarifies this point by saying that the State shall abide by the allocation of powers even in exceptional cases. Subsidiarity can be used as a tool to attract to the center certain legislative functions otherwise belonging to the Regions, if certain conditions are met (see previous jurisprudence). Eventually, the ItCC asserts that “[t]he Constitution excludes that a state of necessity is sufficient to legitimate the State to exercise legislative functions in a

¹²⁵ Decision 383/2005, par. 30; see also Arban, *Re-centralizing subsidiarity*, cit., p. 137.

¹²⁶ Decision 383/2005, par. 30. See also Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 255.

¹²⁷ Decision 383/2005, par. 30. See also Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 255.

¹²⁸ Decision 383/2005, par. 30. See also Caretti & Tarli Barbieri, *Diritto Regionale*, cit., p. 255; Arban, *Re-centralizing subsidiarity*, cit., p. 137.

way that suspends the autonomy of local governments protected by the Constitution and provided for [...] by article 117 Const”.¹²⁹

From this overview of the ItCC jurisprudence on subsidiarity, it can be concluded that the initial approach of the constitutional judges was strongly centralist, as expressed by the idea that subsidiarity could be construed as a “flexibility tool” to attract more administrative (and consequently legislative) powers to the centre, almost functioning a “national interest” clause. In subsequent decisions, however, the ItCC seemed to partially depart from this drastic approach and take more into account the regional and local dimension of the principle, making sure that, when used to attract more powers to the centre, the constitutionally protection of local autonomy would not be jeopardized.

e. Concluding remarks on subsidiarity

The primary purpose of this case study of subsidiarity in Italy was to illustrate the flexibility and resilience of the principle, as well as its easy adaptability to the specific needs of *non-national* societies. In fact, subsidiarity (construed as a mechanism implying a “coherent allocation of functions”¹³⁰) may become strategic in my narrative because, by its own nature, it brings the attention closer to the specific interests and needs of citizens.¹³¹ The entrenchment of subsidiarity at constitutional level could therefore offer a safe and convincing stratagem to better serve the requests of political and socio-economic societies characterized by *non-national* differences. As already noted, subsidiarity is usually employed symmetrically, as a principle

¹²⁹ Decision 148/2012, par. 3.

¹³⁰ B. Caravita, “Italy. Between the hybrid state and Europe’s federalizing process” in J. Loughlin, J. Kincaid & W. Swenden, eds., *Routledge Handbook of Regionalism and Federalism* (London & New York: Routledge, 2013), p. 299.

¹³¹ Blank, *Federalism and subsidiarity*, cit., pp. 545, 549 and 551.

informing the whole legal system of a given state; however, nothing impedes to elaborate forms of subsidiarity-based mechanisms that could also be applied asymmetrically. Each state which deals with *non-national* differences will find the best way to employ subsidiarity as to better serve the specific needs.

Conclusion

In this chapter, I tried to theorize the concept of political and socio-economic societies characterized by *non-national* differences to identify those fractures that are not *national* in nature, yet create internal tensions and feelings of distinctiveness. After all, nation states have been built not only around the *national* axis (as in the case of Canada, Spain, Belgium, the United Kingdom, etc.), but also along the *non-national* one (as in the case of South American countries, which are so numerous despite the fact that they share the same language and culture – except of course for Brazil). Consequently, the feeling of difference or asymmetry emerging out of a *non-national* reality should not be plainly discounted only because it is *not* national.

An analogy may help better clarify this aspect. We can imagine a family with more than one child: one of the children has a particular artistic talent (a very distinctive feature that may single him or her out from the rest of the family group), while another child's difference is hard working, well-organized application to law or accountancy (a less distinctive feature). Although the former feature is more distinctive than the latter, it does not mean that the latter should be plainly ignored: a good family will support both, though the means it chooses to do so may require considerable wisdom. Consequently, the willingness to acknowledge *non-national* differences may translate into legal asymmetries, as I have already noted, and considerable statecraft will be required in calibrating the appropriate response.

Another question that I raised when introducing the debate on political and socio-economic societies characterized by *non-national* differences was whether these issues were real or imagined. By looking at the Italian case study, and the different nature of the *non-national* societies identified in the territory, it seems that these issues are real, especially if we consider the whole debate along the federal-regional-subnational axis revolving around their existence. Yet, besides the Italian example, some reader might still be skeptical and think that *non-national* issues are not real; yet, even in this circumstance, the fact that these issues are real to the individual *non-national* group makes them real.

Assuming the reality of *non-national* issues, the next question becomes whether we have a (legal or moral) obligation to acknowledge them, or to provide some constitutional answers. Because *non-national* differences are less self-evident than *national* ones, one way to accommodate them is regionalism, rather than a *pure* federal model. In the Italian example, federalism first, and greater regionalism later, have been pushed for by the LN, with the result that, especially after the 2001 constitutional reforms, a number of stratagems have been generically added to the Italian legal system, not always successfully, to deal with the tensions emerging in the specific *non-national* context; I particularly wanted to focus my attention on a number of them (e.g. asymmetry, subsidiarity, etc.) as examples of constitutional answers to the tensions emerged.

However, even if a conclusion is reached in the sense that *non-national* issues are purely imagined, it may still be appropriate and necessary to take them seriously for at least two reasons: first, to unlock political solutions favoring accommodation of sub-state nations and second, to unlock *non-national* societies' willingness to show solidarity.

One of the problems that emerged at the time the LN was pushing in the direction of an enhanced decentralization was that this was perceived as (and may indeed be) an essentially self-centered move by the party, with the consequence that both the LN and its federal proposals were pushed back, on the grounds that the emphasis on differences that were *non-national* in nature (as in the Italian case) would jeopardize the spirit of solidarity that should inform the relationships among regions. In other words, there seems to be a close interconnectedness between *non-national* recognition and solidarity, as that recognition and support within a federal or regional system includes obligations of solidarity and mutual support. So the next question I want to ask is whether it is truly self-serving to identify differences which are of the *non-national* variety. Otherwise said, how is it possible to reconcile *non-national* societies with general principles such as fairness, equality and solidarity? Chapters VIII and IX will delve more thoroughly into this issue.

CHAPTER VIII

RECONCILING SOLIDARITY AND NON-NATIONAL DIFFERENCES

Introduction

Building upon the Italian experience with federalism and regionalism, I devoted chapter VII to the discussion of political and socio-economic communities characterized by *non-national* differences and the accommodation of their (asymmetrical) interests: I attempted to define these political and socio-economic societies, outlining their main traits and emphasizing how their existence is still partially neglected by mainstream scholarship. The Italian case study allowed the identification of a specific sort of *non-national* difference, one based on the socio-economic cleavage between the North and the South, which the 2001 constitutional reform was supposed to alleviate, with mixed results. I also noted how political and socio-economic communities characterized by *non-national* differences are probably more widespread than one might think, and can be found in unitary and decentralized states alike. Similarly, I anticipated that dealing appropriately with *non-national* differences can be connected with how to deal appropriately with *national* groups, one aspect that will be further elaborated in chapter IX. Finally, always drawing from the Italian experience, I suggested some federal-based mechanisms, both symmetrical and asymmetrical, that could be elaborated in order to serve the interests of *non-national* societies. In the conclusion, I noted how one of the major concerns linked with the theorization of *non-national* differences is the reconciliation of the needs of these communities with general principles of fairness, equality and, particularly, solidarity: in fact, the recognition and support of *non-national* differences within a federal or otherwise decentralized scheme includes obligations of solidarity and mutual support.

These legitimate issues were immediately raised in Italy when federal reforms were concretely proposed for the first time in the early 1990s. In fact, I noted how the 2001 constitutional reform was the result of years of intense political debates carried out under the aegis of federalism, and initially led by the Northern League (“LN”), a political party that achieved electoral success and national visibility by critically questioning established behaviors of the elite class (e.g. excessive state spending, poor performance of public services, waste, corruption). It also voiced the discontent of Northern Italy towards the political attitude of the central government, which seemed to neglect the interests and needs of the most industrialized, fast-paced, and richer area of the country to the advantage of the South. However, because the requests for increased autonomy were voiced by a political party firmly rooted in the wealthiest, *non-national* area of the country, and thus embedded in the economic disparity existing between the richer North and the poorer South, one of the strongest censures made of the LN was that its federalism merely aimed at furthering the economic and financial greed and selfishness of certain regions, while overlooking the needs of the poorer areas of the country; in other words, that part of the country that was seeking federal solutions was believed to want more powers without obligations towards the rest of the country (specifically, the South). Federalism was thus ostracized because of this conviction that it would discourage solidarity among the various areas of the same territory. Thus, the clash between federalism and solidarity became palpable.

Solidarity is a captivating concept. Broadly used at European Union level, it is scarcely studied especially in its purest legal or political substance, probably because of the challenges in clearly separating the legal understanding of the principle from a more moral or religious one, as I will illustrate. Consequently, my main objective in this chapter is to explore the relationship between solidarity and federalism, to engage the reader in an intellectual dialogue on whether

federal theory and solidarity are antithetical concepts (as it has emerged in the Italian experience), and to speculate on possible forms of reconciliation between solidarity and the need for more autonomy, specifically when it comes to the acknowledgement of the interests of political and socio-economic societies characterized by *non-national* difference. This connection between federal theory and *non-national* differences is relevant because, as I explained in chapter VII, solutions borrowed from federalism are helpful to meet the interests of political and socio-economic societies (even if the latter can be found both in federal and non-federal states), and solutions for *national* groups may only be politically viable if solutions are found for *non-national* differences. To help the discussion, I will explore the legal meaning of solidarity particularly in systems characterized by a federal or otherwise decentralized scheme, and inspect which are the main tools or mechanisms that federal or decentralized systems have devised, so that solidarity and federal theory find full harmonization. As noted, this type of reasoning presents some thorny aspects, since it is sometimes difficult to clearly separate the legal side of solidarity from other facets (moral, religious, or spiritual) that characterize this principle. More specifically, this chapter is divided in three sections. In section I, I will offer a brief intellectual history of solidarity, its meaning in the legal sphere, and how the principle is enshrined in a selection of European and North American constitutions; section II will offer a case study of Italy and illustrate how solidarity is encapsulated in the Italian constitution; I will also detail the various sets of issues that have emerged in the Italian experience and that caused an ideological, or virtual, clash between federal ideas and the solidarity principle; finally, in the concluding section III, I will argue that solidarity and federal theory should not be construed as antithetical or opposing concepts, as they serve different purposes. For the same reason, the protection and accommodation of *non-national* differences does not, in and of itself, infringe upon the spirit of

solidarity (and, implicitly, of equality and fairness). However, I will also suggest that, within a federal state and especially in the presence of *non-national* differences, the idea of horizontal solidarity (i.e. solidarity-based relations among constituent units or different groups) should be strengthened through its constitutional entrenchment: this would help reducing the risk of abuse of this principle when issues pertaining to *non-national* differences are raised.

Section I - Solidarity in federal and decentralized state models

1. In general

Solidarity is one of those overarching concepts that can be scrutinized from a multitude of perspectives. In fact, as is the case with similar far-reaching notions like equality and fairness, solidarity displays facets that are of great interest to a variety of disciplines, including religion, law, politics, and philosophy, both individually and at interdisciplinary level. Solidarity can signify different things to different observers: the characterization that a jurist or a political scientist can offer of this principle might considerably differ from the one propounded by a philosopher or a theologian. Furthermore, the same perception of this idea might evolve with time, as the understanding of solidarity in the XVIII century might be radically different from the one existing in present days. In any event, despite the fact that solidarity can assume different nuances based on the different prism through which I analyze the principle, it might be rather complicated to clearly delineate its contours and distinguish one perspective from the other, as they all tend to intersect and overlap. For example, when discussing solidarity from the legal or political perspective, it is inevitable to engage at some point in the more exquisite religious or moral facet of it, as legal texts can also be interspersed with the moral or spiritual nuances of the principle. Therefore, while the underlying essence of solidarity can be easily captured (it usually

triggers positive values such as equality, fairness, mutual help, benevolence, sympathy, compassion, brotherhood, kindness to others, assistance, etc...),¹ it is much more complex to shape a universally accepted definition of solidarity, especially in its legal understanding, and to render or convey solidarity-based principles into real life.

When religious institutions like the Roman Catholic Church assert that a given constitutional scheme does not incarnate the spirit of solidarity, we need to determine whether the perspective of a lawyer or jurist would be identical. In fact, one key distinction between legal and moral or philosophical solidarity is the fact that the former must be “conceptualized in terms of rights”:² in fact, moral solidarity can be construed as a “voluntary act of charity” whilst legal solidarity is an “obligatory act based on legal rights and duties”.³ This is because moral solidarity would probably insist more on values such as mutual assistance, whereas the legal interpretation of solidarity would put more emphasis on economic aspects and the family-like bonds that link together the members of the federation, although some intimate sentiments of mutual assistance might always come into play. However, one problem that immediately emerges when discussing the various meanings of solidarity entails the blurred contours of the principle both in its philosophical/moral and legal connotations, as already observed. Similarly, even legal solidarity can acquire different nuances based on whether it is entrenched at the level of individual states or at the level of supra-national or international law.⁴

¹ J. Ottoman, “The Concept of Solidarity in National and European Law: The Welfare State and the European Social Model” (2008) 1 *Vienna Online Journal on International Constitutional Law* 38 [Ottoman, *Solidarity*].

² Ottoman, *Solidarity*, cit., p. 44.

³ Ottoman, *Solidarity*, cit., pp. 39-40.

⁴ Ottoman, *Solidarity*, cit., pp. 36 et seq.

Some federal constitutions (mainly in Europe) have firmly integrated solidarity as one of the fundamental principles informing their respective legal systems, with solidarity-based provisions surfacing throughout various sections of these basic laws. This is the case of Spain, Germany and Italy, for example, but it is principally in the Treaties of the European Union (“EU”) that the principle of solidarity has emerged as a quintessential component.⁵ Conversely, this principle does not seem to permeate in the same way certain federal constitutions in North America (specifically Canada and the United States), although other legal tools exist that can be traced back to this principle.

In the specific ambit of public law, we will see how is it possible to identify at least three broad categories or areas where the principle of solidarity is mostly expressed. The first sphere, that is common to most legal systems (federal and non-federal), relates to the so-called “socio-economic” rights. The expression “socio-economic rights” is far-reaching, but in practice it incorporates a bundle of rights such as private property, health, education, work, social security, equality of salary between men and women for the same job, but most of all welfare provisions: in fact, it is actually in relation to the national welfare state that the legal acceptance of solidarity has mostly been developed,⁶ with issues of redistribution acquiring a prominent relevance.⁷ Here, the spirit of solidarity infuses those mechanisms or platforms offered by central governments to

⁵ However, with regards to the EU legal system, some important considerations are necessary, as I will indicate.

⁶ Ottoman, *Solidarity*, cit., p. 39.

⁷ In Canada, see ex multis S. Choudhry, J.-F. Gaudreault-DesBiens & L. Sossin, eds., *Dilemmas of Solidarity : Rethinking Redistribution in the Canadian Federation* (Toronto: University of Toronto Press, 2006) [Choudhry et al., *Dilemmas of Solidarity*]. One rather contested aspect regarding socio-economic rights, in Canada but also elsewhere, pertains to their justiciability. While this specific topic falls outside the general scope of this thesis, the reader who is interested in exploring it more thoroughly can resort to the existing literature including, ex multis, the following sources: D. Robitaille, *Normativité, interprétation et justification des droits économiques et sociaux : les cas québécois et sud-africain* (Bruxelles: Bruylant, 2011); N. Dordelli Rosales, *Constitutional Jurisprudence in the Supreme Court of Venezuela*, LL.D Thesis, University of Ottawa, 2013.

help citizens protect and enjoy these rights,⁸ such as national programs providing health and social services on a universal basis. Drawing from theorists like Durkheim, scholars explain that theories of solidarity have been developed within nation states, with community (or nation) members linked by a “social bond” which becomes the basis for “social solidarity”.⁹ Consequently, legal solidarity is inherent in socio-economic rights (or welfare regulations) developed in the ambit of this idea of nation,¹⁰ and solidarity becomes a “common value” linking together member states and the people living in them.¹¹

The second avenue where solidarity-based tools crystallize is more typical of federal or otherwise decentralized systems, and includes mechanisms such as equalization payments from the central government to the constituent units in order to help containing the inevitable fiscal and economic unbalances between richer and poorer areas, and thus foster national unity. Here, solidarity is justified more by an “economic approach to redistribution” rather than an altruistic sentiment.¹²

Finally, a third way solidarity comes into play is in the event of drastic emergencies, such as terrorist attacks or natural disasters. This is probably the most immediate and obvious example of solidarity, most intimately connected with sentiments of mutual aid and assistance (or, as some theorists have indicated, “empathy”¹³) binding actors at all levels: local and national governments and institutions, states in the international community, etc. A similar understanding

⁸ Specifically, at EU level, the debate revolves around the development of the “European Social Model”. See Ottoman, *Solidarity*, cit., pp. 36 et seq. See also G. Martinico, “The Meta-National Dimension of Solidarity in the European Union. A Brief Comparison with Canada and Switzerland” unpublished paper presented at the World Congress of the International Association of Constitutional Law held in Oslo, Norway, June 16-20, 2014 [Martinico, *Solidarity*].

⁹ Ottoman, *Solidarity*, cit., p. 37.

¹⁰ Ottoman, *Solidarity*, cit., p. 37.

¹¹ Ottoman, *Solidarity*, cit., p. 37.

¹² Ottoman, *Solidarity*, cit., p. 45.

¹³ Ottoman, *Solidarity*, cit., p. 45.

of solidarity infuses, both at national and international level, areas like border control, human rights, asylum rights. Incidentally, the energy sector is another field where solidarity-based provisions might come into play.

In the next sections, I am going to delve more into the aforementioned avenues with concrete examples taken from a number of constitutional texts. Furthermore, drawing from the same language used when explaining subsidiarity in chapter VII, I will elaborate on the concepts of *horizontal* and *vertical* solidarity, as this dual categorization acquires some relevance for this discussion. First of all, however, I will retrace a brief intellectual history of the legal meaning of this principle.

2. A (very brief) intellectual history of solidarity in its legal/constitutional understanding

It is not my goal here to retrace a comprehensive and detailed intellectual history of the principle of solidarity, as this exercise has already been done in academic literature.¹⁴ My more modest ambition is to illustrate briefly how this principle has been construed in the ambit of public law, particularly by looking at a selection of federal or decentralized constitutional documents. Because of space constraints, my analysis will be limited to the following examples: first, the EU treaties, because with its multilevel system of governance the EU represents a laboratory of legal and political experimentation; I will then look at Germany, because it can be regarded as the quintessential *pure* federation in Europe, whose patterns have certainly

¹⁴ The reader who is interested in learning more about this idea can resort to the abundant and extensive literature already accessible on the topic. For example, S. Stjernø, *Solidarity in Europe. The History of an Idea* (Cambridge: Cambridge University Press, 2004) [Stjernø, *Solidarity in Europe*]; M. Ross & Y. Borgmann-Prebil, eds., *Promoting Solidarity in the European Union* (Oxford: Oxford University Press, 2010) [Ross & Borgmann-Prebil, *Promoting Solidarity*]. Interesting insights on solidarity and sustainability in law can be also found in M. Morin, M.-C. Cordonier Segger, F. Gélinas & M. Gehring, eds., *Responsibility, Fraternity and Sustainability in Law. In memory of the Honourable Charles Doherty Gonthier* (Markham, ON: LexisNexis Canada, 2012) [Morin et al., *Responsibility, Fraternity and Sustainability in Law*].

influenced other European legal systems; I will next consider Spain, because it is a regional system similar to Italy, also in light of the contamination of ideas and models between the two; and finally, I will look at Canada, because it can offer a North American perspective on solidarity and also because, thanks to its vitality, Canadian federalism is often used for comparative purposes in Europe.

If we look at its literal meaning, the Oxford English Dictionary defines solidarity in these terms: “[t]he fact or quality, on the part of communities, etc., of being perfectly united or at one in some respect, esp. in interests, sympathies, or aspirations; spec. with reference to the aspirations or actions of trade-union members.”¹⁵ Conversely, from a more legal perspective, the Black’s Law dictionary defines solidarity as follows: “[t]he state of being jointly and severally liable (as for a debt).”¹⁶ Therefore, the literal explanation of solidarity focuses on the personal dimension of the principle, which connects individuals sharing similar sentiments and aspirations, whilst the classic legal rendition of solidarity is intimately intertwined with private law aspects, thus leaving no room for a specific implication of this term applicable to the realm of public law.

Solidarity, often associated to the French term *fraternité*, was one of the three linchpins inspiring the French Revolution (along with freedom, or *liberté*, and equality, or *égalité*);¹⁷ to this date, the adage *Liberté, Égalité, Fraternité* remains the official motto of the French

¹⁵ Oxford English Dictionary, Oxford: Oxford University Press (2003) (online version of the Dictionary accessed through the University of Ottawa library system on March 20, 2014).

¹⁶ B.ryan Garner & Henry Black, Black’s law dictionary, 9th edition, St.Paul, MN: West (2009).

¹⁷ C. Gonthier, “Liberty, Equality, Fraternity: the Forgotten Leg of the Trilogy, or Fraternity: the Unspoken Third Pillar of Democracy” (2000) 45 *McGill Law Journal* 572 [Gonthier, *Liberty, Equality, Fraternity*].

Republic, as indicated by article 2 of the French constitution.¹⁸ French jurists consistently used the term *solidarité* throughout the XVI century to refer to the “common responsibility for debts incurred by one of the members of a group”¹⁹ and the term was also included in Napoleon’s *Code Civil* of 1804.²⁰ As scholars note, however, this definition of solidarity has its roots in Roman Civil Law, which first identified solidarity as a legal concept, the *obligatio in solidum*, or “joint liability of multiple creditors or debtors” which still characterizes several legal systems of civil law tradition, not just the French one.²¹ However, the idea of solidarity was not the product of the French Revolution, or of Ancient Romans, as it had already appeared in the work of some of the most prominent ancient Greek philosophers (Plato and Aristotle).²²

Yet, the notion of solidarity as spelled out in the French constitutional document was so powerful and innovative that it was eventually included in the first article of the Universal Declaration of Human Rights.²³ Solidarity also appears prominently in the papal encyclical *Pacem in Terris* of 1963 already discussed in previous chapters of this thesis.²⁴ Here, Pope John

¹⁸ The text of the French constitution is accessible online through the following link: http://www.assemblee-nationale.fr/connaissance/constitution_11-2011.pdf. See also G. Canivet, *La fraternité dans le droit constitutionnel français*, in Morin et al., *Responsibility, Fraternity and Sustainability in Law*, cit., p. 463 et seq. It is worth mentioning at this stage that the French constitution also contains references to solidarity in the preamble of the 1946 constitution (solidarity and equality shall be the values binding all French citizens in the event of a natural disaster) and in article 87 in the section devoted to the *francophonie* (whereby France collaborates to the development of solidarity and cooperation among states sharing French as their language).

¹⁹ Stjernø, *Solidarity in Europe*, cit., p. 27.

²⁰ Stjernø, *Solidarity in Europe*, cit., p. 27.

²¹ Ottoman, *Solidarity*, cit., p. 38.

²² Gonthier, *Liberty, Equality, Fraternity*, cit., p. 572.

²³ Gonthier, *Liberty, Equality, Fraternity*, cit., p. 572. The first article of the Declaration recites that: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” In the French version, “spirit of brotherhood” is translated as “esprit de fraternité.” See http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf

²⁴ Encyclical of Pope John XXIII on Establishing Universal Peace in Truth, Justice, Charity and Liberty (*Pacem in Terris*). English version of the document available online at: http://www.vatican.va/holy_father/john_xxiii/encyclicals/documents/hf_j-xxiii_enc_11041963_pacem_en.html. See also chapter I.

XXIII seems to acknowledge the existence of two understandings of the principle: a religious one, with human solidarity as a synonym of Christian charity in the specific ambit of refugee's rights (par. 107), and a more political one, with active solidarity (paras. 98 and 99). With specific regards to the latter, it might be helpful to entirely reproduce the commands of John XXIII since, as noted, papal encyclicals assume a very important role in the development of federal ideas and federal-based mechanisms such as subsidiarity:

“98. Since relationships between States must be regulated in accordance with the principles of truth and justice, States must further these relationships by taking positive steps to pool their material and spiritual resources. In many cases this can be achieved by all kinds of mutual collaboration; and this is already happening in our own day in the economic, social, political, educational, health and athletic spheres—and with beneficial results. We must bear in mind that of its very nature civil authority exists, not to confine men within the frontiers of their own nations, but primarily to protect the common good of the State, which certainly cannot be divorced from the common good of the entire human family

99. Thus, in pursuing their own interests, civil societies, far from causing injury to others, must join plans and forces whenever the efforts of particular States cannot achieve the desired goal. But in doing so great care must be taken. What is beneficial to some States may prove detrimental rather than advantageous to others.”

Consequently, if we want to summarize the sense of solidarity for John XXIII, we could say that relationships among states shall be informed by sentiments of truth, justice, and mutual collaboration in a variety of ambits (economic, social, political, education, health, and athletics). Furthermore, civil societies shall pursue their own interests without injuring others, and reciprocally helping each other in achieving a desired goal.

Since then, solidarity has progressively become one of the primary principles receiving constitutional recognition in several European legal systems. Specifically, the suggestions enshrined in *Pacem in Terris* were effectively acknowledged within the EU scheme, as I am going to illustrate in greater detail in the following sections.

a. The European Union

It can be argued that the entire legal framework of the European Union is interspersed with solidarity-based provisions, especially after the modifications brought by the Treaty of Lisbon.²⁵ In particular, in the EU treaties, solidarity seems to permeate two broad categories of relationships, those among individuals and those among member states of the Union. In any event, students of EU law note how, within the specific legal system, solidarity is referred to both as a “principle” and as an “objective”, in addition to being one of the criteria binding member states.²⁶ Similarly, scholars see in solidarity one of the “cornerstones of the EU legal system” and an “immanent principle of constitutional nature.”²⁷ We will now take a closer look at what I believe are the most significant provisions on solidarity.²⁸

i. The Treaty on the European Union

The preamble of the Treaty on the European Union (“TEU”) suggests that one of the purposes of the Union is to “deepen the solidarity between their peoples while respecting their history, their culture and their traditions.” Thus, one of the first commitments of the Union is to

²⁵ Although the Treaty of Lisbon has strengthened the notion of solidarity at EU level, it is worth noting that solidarity has informed the EU project since its beginnings. In fact, scholars recall how the Schuman Declaration of 1950 talks about the creation of a “de facto solidarity” in Europe, and also of “solidarity in production” for coal and steel. See P. Corre, “La conception de la solidarité entre États membres par la Cour de Justice de l’Union européenne, obstacle à la fédéralisation?” unpublished manuscript prepared for the World Congress of the International Association of Constitutional Law held in Oslo, Norway, June 16-20, 2014 [Corre, *Solidarité entre États membres*]. The Schuman Declaration, which is the communication with which the French Minister Robert Schuman proposed the creation of a supra-national entity in Europe with the primary intent of regulating the production of coal and steel between France and Germany, is available online at the following link : <http://www.eurotreaties.com/schuman.pdf>

²⁶ Corre, *Solidarité entre États membres*, cit., p. 2 (of the manuscript).

²⁷ Corre, *Solidarité entre États membres* cit., p. 6 (of the manuscript), citing Boutayeb.

²⁸ All references in the chapter are to the consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union. Official Journal of the European Union, C-326, Vol. 55, 26 October 2012, accessible online at the following link: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:326:FULL:EN:PDF>. For a detailed survey of EU provisions on solidarity, see also Ottoman, *Solidarity*, cit., pp. 42 et seq.; Martinico, *Solidarity*, cit., pp. 6 et seq. (of the manuscript).

strengthen solidarity-based relationships among individuals living on the territory of the Union. Likewise, article 2 mandates that solidarity is one of the principles informing the EU society (along with pluralism, tolerance, justice, and equality between men and women). Here, the use of solidarity seems to be more far-reaching, akin to a general political engagement more than a true legal principle.

Article 3(3) TEU reiterates the importance of solidarity-based relationships among individuals or smaller groups by asserting the commitment of the Union to promote “solidarity between generations”. However, the same article restates the notion of solidarity also among the political components of the Union, since the Union shall “promote economic, social and territorial cohesion, and solidarity among Member States”.

Article 3(5) TEU relates to the relationship between the Union and the international community (or the “wider world”). Among the various proclamations, there is a commitment to “solidarity and mutual respect among peoples”. Always with regards to the international engagement of the Union, article 21(1) TEU indicates that the principle of solidarity (along with the principles of equality and respect for international law and the UN Charter) shall guide the Union’s action at international level.

Articles 24(2) and (3) TEU confirm this solidarity-based bond linking individual member states of the Union. More specifically, article 24(2) mandates that the Union shall implement a common foreign and security policy based on “mutual political solidarity among Member States” whereas article 24(3) indicates that the “spirit of loyalty and mutual solidarity” shall inform the action of the member states in their support of the “Union's external and security policy”. The aforementioned idea of mutual political solidarity among member states is again emphasized in article 24(3) TEU in the part mandating that:

The Member States shall work together to enhance and develop their *mutual political solidarity*. They shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations (emphasis added)

The spirit of mutual political solidarity among member states, especially when acting on the international scene, is reiterated in article 32 TEU, which provides that member states “shall show mutual solidarity” and shall “ensure, through the convergence of their actions, that the Union is able to assert its interests and values on the international scene” (amongst other things).

ii. The Treaty on the Functioning of the European Union

The Treaty on the Functioning of the European Union (“TFEU”), as amended by the Lisbon Treaty, also accentuates in different ways the relevance of solidarity for the EU.

First of all, the preamble reinforces the idea that solidarity is the principle that should bind Europe with the rest of the world. Furthermore, article 67 TFEU embraces solidarity as the guiding principle informing the relationships among member states of the Union, especially when it comes to drafting policies on “asylum, immigration and external border control”. Always in the area of border checks, asylum and immigration,²⁹ a very interesting concept is captured in article 80 TFEU, which insists on solidarity-based relationships among member states.

Touching upon the energy sector, article 122 TFEU, identifies solidarity among member states as the guiding principle of their relationships (and this idea of solidarity among member states in the field of energy is reiterated in article 194 TFEU). Article 122 TFEU affirms that:

²⁹ Article 2 (articles 77 to 80 TFEU) is devoted to this topic.

The policies of the Union set out in this Chapter and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. Whenever necessary, the Union acts adopted pursuant to this Chapter shall contain appropriate measures to give effect to this principle.

Perhaps, the most important novelty of the TFEU is Title VII containing the so-called “solidarity clause”. This important provision entails a solidarity-based relationship among member states in the event of a terrorist attack or of a natural or man-made disaster. This solidarity clause also explains how member states shall coordinate among themselves and with central institutions in such an occurrence.³⁰

iii. Other sources

Another often cited source illustrating the relevance of solidarity within the EU legal scheme is contained in the following communication from the Commission:

“Europeans share a commitment to social solidarity: between generations, regions, the better off and the less well off and wealthier and less wealthy Member States. Solidarity is part of how European society works and how Europe

³⁰ I believe it is useful to reproduce the entire text of article 122: The Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster. The Union shall mobilize all the instruments at its disposal, including the military resources made available by the Member States, to: (a) — prevent the terrorist threat in the territory of the Member States; — protect democratic institutions and the civilian population from any terrorist attack; — assist a Member State in its territory, at the request of its political authorities, in the event of a terrorist attack; (b) assist a Member State in its territory, at the request of its political authorities, in the event of a natural or man-made disaster. 2. Should a Member State be the object of a terrorist attack or the victim of a natural or manmade disaster, the other Member States shall assist it at the request of its political authorities. To that end, the Member States shall coordinate between themselves in the Council. 3. The arrangements for the implementation by the Union of the solidarity clause shall be defined by a decision adopted by the Council acting on a joint proposal by the Commission and the High Representative of the Union for Foreign Affairs and Security Policy. The Council shall act in accordance with Article 31(1) of the Treaty on European Union where this decision has defense implications. The European Parliament shall be informed. For the purposes of this paragraph and without prejudice to Article 240, the Council shall be assisted by the Political and Security Committee with the support of the structures developed in the context of the common security and defense policy and by the Committee referred to in Article 71; the two committees shall, if necessary, submit joint opinions. 4. The European Council shall regularly assess the threats facing the Union in order to enable the Union and its Member States to take effective action.

engages with the rest of the world. Real equality of opportunity depends on both access and solidarity. Solidarity means action to help those who are disadvantaged – who cannot reap the benefits of an open, rapidly changing society. It means fostering social inclusion and integration, participation and dialogue and combating poverty. It means giving support to those who are exposed to temporary, transitional problems of globalization and technological change.³¹

Other documents, including the Social Policy Agenda 2000-2005,³² the Green Paper “Confronting demographic change: a new solidarity between generations” of 2005,³³ or the Green Paper “Modernizing labor law to meet the Challenges of the 21st century” of 2006 include explicit references to solidarity.³⁴ As Ottoman explains, “[t]he reference to solidarity in these European legal texts underlines a continuous process of addressing social policy issues in the European Union [...]”.³⁵

Finally, the Charter of Fundamental Rights of the European Union also contains references to solidarity.³⁶ In the preamble, solidarity is again referred to as one of the indivisible and fundamental values on which the Union is founded, along with human dignity, freedom and equality.³⁷ Furthermore, the whole Chapter IV (on socio-economic rights) is devoted to solidarity.

³¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Renewed social agenda: Opportunities, access and solidarity in 21st century Europe. Brussels, 2.7.2008 COM(2008) 412. Available online at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0412:FIN:EN:PDF>. See also Ross & Borgmann-Prebil, *Promoting Solidarity*, cit., p. 1.

³² Document available at the following link:

http://europa.eu/legislation_summaries/employment_and_social_policy/social_agenda/c10115_en.htm

³³ Document available at the following link:

http://europa.eu/legislation_summaries/employment_and_social_policy/situation_in_europe/c10128_en.htm

³⁴ Document available at the following link:

http://europa.eu/legislation_summaries/employment_and_social_policy/eu2020/growth_and_jobs/c10312_en.htm

³⁵ Ottoman, *Solidarity*, cit., p. 43.

³⁶ Charter of Fundamental Rights of the European Union, 18 December 2000, Official Journal of the European Communities, C 364/1.

³⁷ Corre, *Solidarité entre États membres*, cit., p. 2.

In my opinion, this concise synopsis on EU solidarity well illustrates the relevance and maturity that the principle has acquired at EU level. In fact, solidarity is the animating force that should inspire all types of dynamics: among citizens, among member states, among member states and central institutions, and between the Union and the international community at large. However, with specific regard to the EU, scholars note how the concept of community (or nation) that has developed at the level of member states and that constitutes the basis of solidarity-based provisions in the ambit of socio-economic rights is very different at the EU level, as it is a community “united by law” and not “by solidarity”.³⁸ The EU is not a “community in the nation state” as it is “too big and too heterogeneous to consist of *one* European people” as in a nation state.³⁹ Accordingly, in the EU ambit, solidarity relates more to the “cooperation of member states” responding to the “communal diversity” of its peoples.⁴⁰

b. Germany

The German *Grundgesetz*⁴¹ also contains intriguing facets that are valuable for this discussion, especially in light of the fact that Germany is traditionally regarded as one of the most complete and articulated examples of *fully-fledged* federation. Similarly to other federal states, articles 107(1) and (2) of the *Grundgesetz* contain provisions on distribution of tax revenue, financial equalization among *Länder* and supplementary grants. More specifically, article 107(1) provides that:

a federal law requiring the consent of the Bundesrat may provide for the grant of supplementary shares not exceeding one quarter of a Land share to Länder whose per

³⁸ Ottoman, *Solidarity*, cit., pp. 37 and 47-48.

³⁹ Ottoman, *Solidarity*, cit., p. 46.

⁴⁰ Ottoman, *Solidarity*, cit., p. 46.

⁴¹ All references in the chapter are to the official English translation of the German Basic Law, available online at the following link: <https://www.btg-bestellservice.de/pdf/80201000.pdf>. The German official version of the German Basic Law (*Grundgesetz für die Bundesrepublik Deutschland*), is available at the following link: <http://www.gesetze-im-internet.de/bundesrecht/gg/gesamt.pdf>.

capita income from Land taxes, from income and corporation taxes and from taxes under Article 106b ranks below the average of all the *Länder* combined (...)

Furthermore, article 107(2) mandates that:

Such law shall ensure a reasonable equalisation of the disparate financial capacities of the *Länder*, with due regard for the financial capacities and needs of municipalities (associations of municipalities). It shall specify the conditions governing the claims of *Länder* entitled to equalisation payments and the liabilities of *Länder* required to make them as well as the criteria for determining the amounts of such payments. It may also provide for grants to be made by the Federation to financially weak *Länder* from its own funds to assist them in meeting their general financial needs (supplementary grants).

But article 107 is not the only example of solidarity-based provision in the fiscal ambit contained in the German Basic Law. For instance, article 104b provides that “the Federation may grant the *Länder* financial assistance for particularly important investments by the *Länder* and municipalities” in certain specific circumstances, such as when necessary to “avert a disturbance of the overall economic equilibrium” or “equalise differing economic capacities within the federal territory” or “promote economic growth”. Also, always in accordance to article 104b(1), “the Federation may grant financial assistance even outside its field of legislative powers in cases of natural disasters or exceptional emergency situations beyond governmental control and substantially harmful to the state’s financial capacity”.

References to emergencies are also pervasive in the *Grundgesetz*. For instance, article 35 details the legal and administrative type of support that *Länder* shall offer to each other in the event of an adversity. More specifically, article 35(1) spells out a general solidarity-based duty by suggesting that “[a]ll federal and Land authorities shall render legal and administrative assistance to one another.” Furthermore, article 35(2) explicitly refers to a *Land* negatively affected by a natural disaster or other serious occurrence, and indicates that

[i]n order to maintain or restore public security or order, a Land in particularly serious cases may call upon personnel and facilities of the Federal Border Police

to assist its police when without such assistance the police could not fulfill their responsibilities, or could do so only with great difficulty. In order to respond to a grave accident or a natural disaster, a Land may call for the assistance of police forces of other Länder or of personnel and facilities of other administrative authorities, of the Armed Forces, or of the Federal Border Police.

Finally, article 35(3) concludes that

[i]f the natural disaster or accident endangers the territory of more than one Land, the Federal Government, insofar as is necessary to combat the danger, may instruct the Land governments to place police forces at the disposal of other Länder, and may deploy units of the Federal Border Police or the Armed Forces to support the police. Measures taken by the Federal Government pursuant to the first sentence of this paragraph shall be rescinded at any time at the demand of the Bundesrat, and in any event as soon as the danger is removed.

But also article 91(1) deals with solidarity-based provisions in case of internal emergency, and mandates that

In order to avert an imminent danger to the existence or free democratic basic order of the Federation or of a Land, a Land may call upon police forces of other Länder, or upon personnel and facilities of other administrative authorities and of the Federal Border Police.

Similarly to the EU example, we can argue that also the German *Grundgesetz* carves out a well-articulated notion of solidarity, one that binds not only the central institution with the periphery, particularly with equalization payment tools or other supplementary grants, but also the single constituent units (the *Länder*) among themselves, although it does so primarily in the event of an adversity.

c. Spain

Following the European tradition, the Spanish constitution of 1978⁴² also offers interesting insights on solidarity. First, in addition to protect a number of basic socio-economic rights (for example, right to employment (article 35); socio-economic and legal protection of the family (article 39); social security system (article 41); health protection (article 43)), article 40(1) mandates that

The public authorities shall promote favourable conditions for social and economic progress and for a more equitable distribution of personal and regional income within the framework of a policy of economic stability. They shall devote special attention to carrying out a policy directed towards full employment.

Furthermore, article 2 mandates for a general duty of solidarity among the nationalities and regions that compose the Spanish nation, while at the same time acknowledging their right to self-government (“[t]he Constitution [...] recognises and guarantees the right to autonomy of the nationalities and regions of which it is composed, and the solidarity amongst them all”).

Article 138(1) postulates how to implement the solidarity principle of article 2. More specifically, it mandates that

[t]he State guarantees the effective implementation of the principle of solidarity vested in Article 2 of the Constitution, safeguarding the establishment of a just and adequate economic balance between the different areas of the Spanish territory and taking into special consideration the circumstances pertaining to those which are islands.

Finally, article 158 provides for the well-known solidarity-based tool of equalization funds (here referred to as clearing fund) to redress “interterritorial economic imbalances” and implement “the principle of solidarity.”

⁴² All references to the Spanish constitution are taken from the English version of the document available online at the following link: http://www.congreso.es/constitucion/ficheros/c78/cons_ingl.pdf. The original (Spanish) version of the 1978 constitution is available at: <http://www.boe.es/buscar/pdf/1978/BOE-A-1978-31229-consolidado.pdf>.

This brief survey of the Spanish constitution proves that solidarity has acquired a certain prominence within this regional model as well. Particularly interesting for this discussion are the combined provisions of articles 2 and 138, as they constitutionalize the solidarity principle among the various *comunidades autónomas*, but at the same time they spell out how to translate the principle into practice.

d. Canada

In Canada, neither the *Constitution Act, 1867* nor the *Constitution Act, 1982* pinpoint solidarity as one of the fundamental principles of the federation. However, notwithstanding the lack of reference to this principle, the *Constitution Act, 1982* introduces a section (Part III) devoted to “Equalization and regional disparities”. More specifically, section 36(1) refers to a general “commitment to promote equal opportunities” and mandates that:

Without altering the legislative authority of Parliament or of the provincial legislatures, or the rights of any of them with respect to the exercise of their legislative authority, Parliament and the legislatures, together with the government of Canada and the provincial governments, are committed to

- (a) promoting equal opportunities for the well-being of Canadians;
- (b) furthering economic development to reduce disparity in opportunities; and
- (c) providing essential public services of reasonable quality to all Canadians.

Furthermore, section 36(2) creates equalization payments and indicates that:

Parliament and the government of Canada are committed to the principle of making equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation.

While its real scope is still debated among constitutional scholars, section 36(1) of the *Constitution Act, 1982* could be seen as a clear solidarity-based provision binding together the constituent units of the federation (the provinces) and the federal government in helping the furtherance and the promotion of a variety of services and tools that should help containing the

intrinsic inequalities among the various areas that characterize this federation. On the other hand, section 36(2) employs a common solidarity-based legal tool that is usually referred to as equalization payment. In fact, in light of the diversities existing between one region and the other, these payments made by the central government to the provincial level significantly facilitate the reduction of the unbalances.⁴³

However, when it comes to the so-called “socio-economic” rights, the Canadian Constitution (in particular, the Canadian Charter of Rights and Freedoms which constitutes Part I of the *Constitution Act, 1982*) follows the North American tradition whereby more emphasis is given to “individualism” over “communalism” as former Supreme Court Justice Gonthier, a proponent of the idea of fraternity, noted.⁴⁴ Accordingly, other than the general protection assured to the right to life, liberty and security of the person contained in section 7 of the Charter, not much is said in regards to welfare, health, work, personal property or other social rights.⁴⁵

Section II – Solidarity in Italy: a case study

1. The socio-economic cleavage between North and South. Federalism and solidarity as antithetical concepts

In previous chapters, I have persistently reiterated how federalism and federal ideas have always lurked amid Italian intellectual and political circles since the years preceding the

⁴³ As Brun, Tremblay & Brouillet indicate, equalization payments in Canada exist since 1957, but they were “constitutionalized” only in 1982. See H. Brun, G. Tremblay & E. Brouillet, *Droit constitutionnel*, 5eme éd. (Cowansville, QC: Éditions Yvon Blais, 2008), p. 430. For a more detailed analysis of redistribution and Canadian federalism, see Choudhry et al., *Dilemmas of Solidarity*, cit.

⁴⁴ Gonthier, *Liberty, Equality, Fraternity*, cit., p. 569.

⁴⁵ For reasons of space, this analysis has not taken into account the United States. However, I can briefly note how the US Constitution does not refer to solidarity, nor does it contain any solidarity-based tool (akin to the equalization payments outlined above). Similarly, space issues prevent me to look at the extent to which the centre is able to spend money outside its jurisdiction on issues which are relevant to social solidarity, such as health, education, infrastructure and social services.

unification of Italy in 1861.⁴⁶ In fact, because of the deep economic, social, political and linguistic fragmentation that has characterized Italy for a long period of time, a federal structure taking into account these divergences appeared to be a possible solution to accommodate the needs of such a diverse polity.⁴⁷ As noted in chapter IV, the Milanese Carlo Cattaneo, one of the most influential federal thinkers in Europe during the XIX century, was among the first intellectuals to advocate federalism at national (i.e. for Italy and for other European states) as well as at supranational level (i.e. for Europe).⁴⁸ Yet, while federalism was contemplated by the fathers of the Italian unification, the idea of a highly centralized state based on the Napoleonic model eventually won out. In fact, at a time intensely imbued with ideals of state sovereignty inherited from the French Revolution, federal ideas were received rather skeptically because they were viewed as having the potential to disrupt the unity of a state⁴⁹ and consequently as not responding to the spirit of solidarity that should connect together the different areas of the newly formed country. This robust centralization was slightly reversed only with the Constitution of 1948: the newly drafted text created a regional state composed of twenty regions, five of them having a special status while the others being ordinary regions.⁵⁰ In other words, torn between federal and unitary models, the reformers of the Italian state opted for a hybrid path: the regional state.

⁴⁶ A. Lecours & E. Arban, “Why Federalism Does Not Always Take Shape: the Cases of Italy and Nepal” 25 *Regional and Federal Studies* 187 [Lecours & Arban, *Italy and Nepal*].

⁴⁷ Lecours & Arban, *Italy and Nepal*, cit., p. 187.

⁴⁸ N. Bobbio, “Introduzione” in N. Bobbio & C. Cattaneo, *Stati Uniti d’Italia* (Roma: Donzelli, 2010), p. 18 [Cattaneo & Bobbio, *Stati Uniti d’Italia*]; Lecours & Arban, *Italy and Nepal*, cit., p. 187. One of the most famous citations of Cattaneo is: “We will have true peace only when we will have the United States of Europe” (*ibid.*, p. 27).

⁴⁹ Z. Ciuffoletti, *Federalismo e regionalismo: da Cattaneo alla Lega* (Roma-Bari: Laterza, 1994), pp. 5-6 [Ciuffoletti, *Federalismo e regionalismo*].

⁵⁰ Lecours & Arban, *Italy and Nepal*, cit., p. 188.

Federal ideas emerged again as a topical subject of discussion in the early 1990s, when the LN included federalism in its political agenda.⁵¹ No longer relegated to elitist intellectual circles, these ideas became part of the daily political debate when the politically and socio-economic distinct, wealthier and *non-national* North, through the LN, started seeking federalism, while the South, also politically and socio-economic distinct but poorer, resented it and preferred a more protective, centralized arrangement.⁵² Consequently, once again federalism assumed a negative connotation in many parts of Italy. In fact, as we have seen, the LN was a “regional” party, which emerged from the fusion of several local “leagues” (like the Lombard League and the Venetian League), and whose main supporters resided in the Northern Italian regions; it was not a “national” party with an electorate spread across the whole peninsula.⁵³ Therefore, the ideology and rhetoric of the LN, including federalism, was construed as the expression of a certain way of seeing economic and political mindset distinctive of Northern Italy only. By association, federalism was understood, by non-LN voters, as the expression of a regional party, one that would foster the interests of a specific segment of Italy to the detriment of the rest.⁵⁴ This aspect alone strongly contributed to the lack of popularity of federal ideas outside traditional LN strongholds.

But, most importantly, the LN also fed into the North/South divide, rediscovering and exacerbating it, and eventually linking to it federal ideas, as scholars have argued.⁵⁵ According to the LN’s discourse, Rome used money coming from taxpayers in the North to subsidize the

⁵¹ C. Roux, “Italy’s path to federalism. Origins and paradoxes” (2008) 13 *Journal of Modern Italian Studies* 330 [Roux, *Italy’s path to federalism*]; Lecours & Arban, *Italy and Nepal*, cit., p. 188.

⁵² Lecours & Arban, *Italy and Nepal*, cit., p. 188.

⁵³ Lecours & Arban, *Italy and Nepal*, cit., p. 188.

⁵⁴ Lecours & Arban, *Italy and Nepal*, cit., p. 188.

⁵⁵ Roux, *Italy’s path to federalism*, cit., p. 326; Lecours & Arban, *Italy and Nepal*, cit., p. 188.

South, without giving back anything to the most hard-working or industrious part of the country in terms of infrastructures or services.⁵⁶ The LN asserted that each region should be responsible for its own money, and should deal with all local aspects without depending on interventions from the center, thus seeking to implement some form of fiscal federalism.⁵⁷ The consequences of this federal project were seen as dire for the South: the wealthier Northern regions would end up better off than Southern regions.⁵⁸ Hence, the federal ideas advocated by the LN were understood by many as a form of selfishness of the North towards the South and as a lack of solidarity between the richer and poorer regions.⁵⁹ By vesting individual regions with more powers, especially in the fiscal ambit, the wealthier areas of the North would become even wealthier to the detriment of the poorer regions in the South, which would be severely penalized in such a context.⁶⁰ Furthermore, this scenario would also jeopardize the solidarity-based relationships among the various territories of the country, representing the foundations on which the Italian institutional system reposes, as richer regions would begin to think more in terms of profit increases rather than of fairness and equity. This explains why, at some point, the LN's proposals were perceived as "egotistic and secessionist federalism" by certain political fringes.⁶¹

Also the Catholic Church was strenuously against the LN's federal discourse: in fact, it contended that the political vision of the LN would only lead to "disruption, egotistical divisions,

⁵⁶ Lecours & Arban, *Italy and Nepal*, cit., p. 188.

⁵⁷ Lecours & Arban, *Italy and Nepal*, cit., p. 188.

⁵⁸ Lecours & Arban, *Italy and Nepal*, cit., p. 188.

⁵⁹ A. Destro, "A new era and new themes in Italian politics: the case of Padania" (1997) 2 *Journal of Modern Italian Studies* 359 [Destro, *The case of Padania*].

⁶⁰ Lecours & Arban, *Italy and Nepal*, cit., p. 188.

⁶¹ This was the opinion of a left-wing party known as PDS ("Partito Democratico della Sinistra" or "Left Democratic Party"). See *La Repubblica*, 8 February 1994, online at <http://ricerca.repubblica.it/repubblica/archivio/repubblica/1994/02/08/occhetto-sfida-il-cavaliere.html?ref=search>; see also Lecours & Arban, *Italy and Nepal*, cit., pp. 188-189.

racial segregation, in other words, to apartheid”.⁶² The Pope and the Church preferred to recommend a solution more in line with classic Catholic social theory, where the role of local autonomies, associations and families is central.⁶³ Federalism was seen as involving diminished solidarity, a central concern of the Church. In fact, as Destro explains, “even Cardinal Martini [the archbishop of Milan] came out against adventurism and lack of solidarity”.⁶⁴

Because of the aforementioned concerns, especially with regards to federalism as antithetical to unity and solidarity, the constitutional reform of 2001 implemented a very “mild” federal system, with provisions calling for the increased autonomy of local self-governments mitigated by others that required a stronger control on the center, as detailed in previous chapters. I will now turn to the provisions on solidarity in the Italian constitution to better understand how this principle is construed, and eventually determine whether federalism and solidarity are antithetical or not.

2. Solidarity in the Italian constitution

Similarly to the Spanish constitution analyzed above, the Italian constitution enshrines the principle of solidarity in two different contexts: among the fundamental principles of the constitution (article 2) and in the ambit of fiscal federalism (article 119). I will now consider each of them separately.

⁶² See *La Repubblica*, 19 November 1992, online at <http://ricerca.repubblica.it/repubblica/archivio/repubblica/1992/11/19/il-vaticano-bolla-la-lega-politica.html?ref=search>; see also Lecours & Arban, *Italy and Nepal*, cit., p. 189.

⁶³ See *La Repubblica*, 16 May 1997, available online at <http://ricerca.repubblica.it/repubblica/archivio/repubblica/1997/05/16/dal-friuli-appello-dei-vescovi.html?ref=search>; *La Repubblica*, 23 May 1997, available online at <http://ricerca.repubblica.it/repubblica/archivio/repubblica/1997/05/23/il-papa-temo-per-italia.html?ref=search>; see also Lecours & Arban, *Italy and Nepal*, cit., p. 189.

⁶⁴ Destro, *The case of Padania*, cit., p. 371; see also Lecours & Arban, *Italy and Nepal*, cit., p. 189.

a. Article 2 Const.

Article 2 Const. provides that:

The [Italian] Republic recognizes and protects the inviolable rights of the person, both as an individual and in the social groups where human personality is expressed. The Republic expects that the fundamental duties of political, economic and social solidarity be fulfilled.⁶⁵

This article allows us to make some important classifications among and between different types of solidarity. In fact, it categorizes two sorts of solidarity: *political* and *socio-economic*. *Political* solidarity commonly includes duties such as voting, homeland defense, and military service. As for *socio-economic* solidarity, this comprises the duty to get proper education, the duty to work, the duty to contribute to public expenses, etc.⁶⁶ The aforementioned duties of political and socio-economic solidarity mainly refer to a general duty of the individual towards the community at large where he or she belongs. Although article 2 Const. is the only article where this type of “interpersonal” or “intergenerational” solidarity is explicitly mentioned, the spirit of this principle lurks in other parts of the constitution as well.⁶⁷ For example, article 3(2) mandates that one of the duties of the Republic is to

remove those obstacles of an economic or social nature which constrain the freedom and equality of citizens, thereby impeding the full development of the human person and the

⁶⁵ All references in the chapter are to the official English translation of the Italian Constitution available online at the following link: https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf. The original version (in Italian) can be found at <http://www.governo.it/Governo/Costituzione/CostituzioneRepubblicaItaliana.pdf>.

⁶⁶ See G. Razzano, “La materia concorrente della produzione, trasporto, e distribuzione nazionale dell’energia nella recente giurisprudenza costituzionale, fra leale collaborazione e doveri di solidarietà” (2011), *Federalismi.it*, available online at

⁶⁷ This idea of “interpersonal” or “intergenerational” solidarity comes from the ItCC: see decision 203, 18 July 2013, par. 3.4.

effective participation of all workers in the political, economic and social organization of the country.

But the spirit of solidarity also permeates other provisions of the first part of the constitution, specifically those related to the so-called socio-economic rights: for instance, article 31(1) on family matters, in the part providing that the Republic shall “assist[s] the formation of the family and the fulfillment of its duties, with particular consideration for large families, through economic measures and other benefits”; article 32(1) on the right to health, where health is protected as a “fundamental right of the individual and as a collective interest” thus guaranteeing “free medical care to the indigent”; and article 38 on social security. With specific regards to this last norm, article 38(1) provides that “[e]very citizen unable to work and without the necessary means of subsistence is entitled to welfare support”. Consequently, individuals who cannot work and who do not have enough means to live have a right to social assistance and support. Similarly, article 38(2) mandates that “workers have the right to be assured adequate means for their needs and necessities in the case of accidents, illness, disability, old age and involuntary unemployment”.

To conclude, this concise overview of article 2 Const. proves that the type of interpersonal or intergenerational solidarity is well articulated in the Italian constitutional framework. However, it moves vertically from the individual to the collectivity or central institutions and, vice versa, from central institutions to the individual, in a dynamic movement that brings reciprocal benefits to the parties involved. In the next paragraph, I will detail the more “public” facet of solidarity as contained in articles 119(3)(5) Const.

b. Article 119 Const.

Article 119(3) Const. provides that:

State legislation shall provide for an equalization fund – with no allocation constraints – for the territories having lower per-capita taxable capacity.

Furthermore, article 119(5) Const. provides that:

The State shall allocate supplementary resources and adopt special measures in favour of specific municipalities, provinces, metropolitan cities and regions to promote economic development along with social cohesion and solidarity, to reduce economic and social imbalances, to foster the exercise of the rights of the person or to achieve goals other than those pursued in the ordinary implementation of their functions.

Contrary to the “interpersonal” or “intergenerational” connotation of solidarity as contained in article 2 Const. and just outlined above, article 119 Const. relates to a more “public” aspect of the principle. Here, the central government is called to play a pivotal role in assisting disadvantaged regions through equalization payments. I have already noted how equalization funds are not infrequent, especially in federal or decentralized systems, being a favorite solidarity-based mechanism whose role is to contain the imbalances (especially on a fiscal basis) between richer and poorer areas or territories.

Article 119 Const. on fiscal federalism is one of the several innovations brought to Title V by the constitutional reform of 2001. The previous version of article 119 contained a paragraph (now abolished) positing that the national government could grant by law special contributions to single regions, particularly in order to valorize the *Mezzogiorno* and the Islands.⁶⁸ In critically analyzing the changes brought to Title V by the constitutional reform of 2001 through the prism of solidarity, some constitutional scholars have concluded that the new Title V is filled with

⁶⁸ Article 119(3), now abolished, mandated that “[f]or specific purposes, and particularly to valorize the Mezzogiorno and the Islands, the State can grant, by law, special contributions to individual regions.” *Mezzogiorno* is an expression commonly used to refer to the South of Italy, traditionally disadvantaged in socio-economic terms compared to the North of the country, whereas the term *Islands* usually refers to Sicily, Sardinia, but also to the myriad of smaller islands positioned in the Mediterranean Sea which are also considered disadvantaged areas.

provisions “betraying” the spirit of solidarity that should inform the Italian legal system, to the point that this new approach adopted by the constitutional legislator might eventually work as a threat to the unity of the state.⁶⁹

To conclude, the solidarity principle discussed in article 119 Const. is rather different than the one painted in article 2 Const., as the former mainly refers to a very specific solidarity-based mechanism which is very popular in federal or decentralized states, as already noted. However, the comments raised by one part of the scholarship prove that the exact contours of solidarity are rather blurred, as the economic aspects are never completely separated from the more moral or spiritual nuances of the principle. In this sense, the various facets of solidarity overlap, making it a very composite and overarching concept.

c. Conclusion

From the analysis outlined above, and similarly to other European contexts, it clearly emerges that the principle of solidarity is crucial within the Italian legal system. In fact, it constitutes the foundation on which the whole package of constitutional provisions on socio-economic rights and on fiscal federalism is built. Scholars have also explained that the constitutional reform of 2001 was meant to “delineate some sort of Italian way to a unitary and solidarity-based federalism.”⁷⁰ In fact, as already noted, solidarity has emerged almost as an

⁶⁹ See, among others, A. Patroni Griffi, “Federalismo, Mezzogiorno e sviluppo solidale” *Forum di Quaderni Costituzionali*, available online at http://www.forumcostituzionale.it/wordpress/images/stories/pdf/documenti_forum/paper/0247_patroni_griffi.pdf [Patroni Griffi, *Federalismo e Mezzogiorno*]. In fact, in addition to the elimination of the “southern question” clause mentioned in the text above, Patroni Griffi criticizes other novelties introduced in 2001 that, in his opinion, debase solidarity: the introduction of asymmetric regionalism in article 116(3) Const.; the elimination of the “national interest clause” and, in general, the new fiscal system introduced by article 119 Const.

⁷⁰ G. C. De Martin, “Riforme autonomistiche incomplete e problem culturali” (2013), *Amministrazione in Cammino*, available online at http://www.amministrazioneincammino.luiss.it/wp-content/uploads/2013/01/GCDeMartin_studi-onoreN_Greco.pdf.

obsessive concern for Italian decision makers since the time of unification in the 1860s, particularly because of the socio-economic disparities existing between the richer regions in the North and the poorer areas in the South, so that solidarity-based mechanisms have persistently been invoked to limit or reduce these imbalances. Before the constitutional amendments of 2001, one of the major fears voiced in political circles was that the transformation of Italy into a fully-fledged federation would amplify the socio-economic disparities between the North and the South. In other words, federalism was construed as running counter the spirit of solidarity among regions, as Patroni Griffi urged in the comments noted above. Accordingly, this tension between solidarity and federalism has been a constant marker of the Italian constitutional history. I will now complete the overview on solidarity in Italy by looking at the interpretation of this principle offered by the Italian Constitutional Court.

3. Italian constitutional jurisprudence

In this section, I will briefly focus on two decisions issued in recent years by the Italian Constitutional Court (“ItCC”). The first decision (n. 331/2010) elaborates on the principle of solidarity enshrined in article 2 Const., whereas the second (n. 176/2010) investigates the scope of solidarity-based mechanisms as contained in article 119 on fiscal federalism.⁷¹

a. Decision 331/2010

This decision is interesting in that the ItCC invokes the principle of solidarity entrenched in article 2 Const. to soften self-centered behaviors of certain regions faced with legislation enforced at the national level in the interest of the whole country (in the case at issue, the sector at stake was that of energy production). In fact, according to the ItCC, the national government might decide to implement legislation at the national level in order to foster “an effective

⁷¹ All decisions of the Italian Constitutional Court are accessible (in Italian only) through the website: <http://www.cortecostituzionale.it/actionPronuncia.do>

development of nuclear energy”. But regions cannot “unilaterally back out of the sacrifices required from them” thus openly violating the binding duty of socio-economic solidarity enshrined in article 2 Const.⁷² In this decision, it seems that the trajectory taken by the ItCC is to consider the solidarity duty of article 2 Const. as some sort of “national interest” clause justifying measures taken by the central government in the interest of the whole country. Thus, socio-economic solidarity goes beyond the traditional approach whereby central governments are required to create institutions, mechanisms and platforms allowing citizens to foster their own individuality. Rather, solidarity shall be construed as the animating force of all actions and decisions taken at central level.

b. Decision 176/2012

This is a very interesting decision on the scope of article 119(5) Const. mentioned above, and one which offers a slightly different approach compared to the previous decision analyzed. In particular, the ItCC was called upon to elaborate on the wider scope of this provision and determine whether there is some legal duty upon “virtuous regions” to sustain the financial consequences of special interventions in favor of less advantaged regions.⁷³ In other words, the issue being addressed by the ItCC was whether the Italian legal system enshrines some (horizontal) solidarity-based duty binding one region to the other, so that the duty to support less developed regions falls not only within the jurisdiction of the State, but also within the richer regions.⁷⁴ In its decision, the ItCC made it clear that solidarity-based strategies and equalization interventions shall come only from the central state (not from the regions), in the logic of the

⁷² ItCC decision 331 of 3 November 2010, par. 7.

⁷³ E. Longo, “Le Regioni ricche non possono finanziare le più povere. La Corte Costituzionale esclude la “chiamata in solidarietà” prevista dallo Stato nella l. N. 148 del 2011” (2012) 5 *Giurisprudenza costituzionale*, 3741 [Longo, *Chiamata in solidarietà*].

⁷⁴ Longo, *Chiamata in solidarietà*, cit.

“vertical” equalization made by the constitutional legislator in 2001.⁷⁵ Consequently, wealthier regions are not legally bound by some sort of “solidarity call” to financially support less virtuous regions; only the central government shall do that through the mechanisms implemented by the constitutional and legislative framework (although clearly the resources available to the central government may be overwhelmingly provided by certain wealthier regions). We can thus see how the ItCC limits the scope of *horizontal* solidarity.

At the end of this extensive discussion on the legal meaning of solidarity and its constitutional entrenchment in Italy and elsewhere, it is now time to move to the third and last section to discuss how it is possible to eventually reconcile solidarity and federalism.

Section III – Reconciling federal theory and solidarity

1. Lessons to be learned: horizontal and vertical solidarity

In previous sections, I have extensively explored the meaning and use of solidarity in a selection of federal or decentralized schemes both in Europe and North America. Which conclusions can be drawn and how can we address the opening questions, i.e. whether solidarity and federal theory are conflicting ideas, and how can we reconcile solidarity with the need for more autonomy, specifically when it comes to the acknowledgement of political and socio-economic societies characterized by *non-national* differences?

In order to answer the above questions, however, I need to revert to the various constitutional models taken into account in this chapter and sum up the lessons that can be learned. From this study, what has emerged is a pervasive concern about disparities and cleavages among territories within the same federal or decentralized state. For this reason, solidarity-based provisions are included in the various constitutions to help level these

⁷⁵ ItCC decision 176 of 6 July 2012, par. 4.

differences. I indicated that these mechanisms can be found at three different levels: in the ambit of socio-economic rights, between central institutions and individuals; fiscal federalism, with equalization payments funneled from the centre to the periphery; and in case of unfortunate events, at all levels (centre-periphery, among constituent units, or in the international arena). With specific regards to the welfare state, I noted how solidarity is its animating principle as it reconciles the weaker and the stronger, the poorer and the richer, etc.⁷⁶

Another aspect that is worth noting is that, similarly to the case of subsidiarity as detailed in chapter VII, legal solidarity also presents a *vertical* and a *horizontal* aspect, although the distinction between the two might not always been so firm. In any event, *vertical* solidarity can be found in unitary and decentralized states alike, and refers to a variety of duties of central institutions towards the individual, and of the individual towards the collectivity at large and central institutions. This is the most classic understanding of solidarity, and several tools are used to articulate this idea in practice: from the protection of socio-economic rights to equalization funds. *Horizontal* solidarity, on the other side, specifically pertains to the relationship between the component units of a federation or of a decentralized system. In other words, the concept of *horizontal* solidarity within a federal or decentralized state poses the question whether constituent units are legally bound by a solidarity duty to help and provide mutual assistance to each other in difficult situations. However, as mentioned above, this distinction is not always so firm, because it may happen that regions can either be asked to directly contribute to other regions disasters (an example of *horizontal* solidarity), or the same regions could be taxed on their greater wealth allowing the centre to contribute to the region in difficulty (in which case it

⁷⁶ Ottoman, *Solidarity*, cit., p. 40.

would fall within the *vertical* type of solidarity). Yet, this does not change the fact that the wealthier region has paid more, or transferred more, to the other regions.

But while *vertical* solidarity is a mature and well-articulated concept that distinguishes most constitutional arrangements, less attention is given to the *horizontal* aspect of the principle. Some of the European constitutions studied above contain provisions enshrining this type of bond, but this aspect remains less studied. From the preceding analysis, we can thus conclude that, in order to address my initial questions (e.g. whether solidarity and federalism are compatible, and how solidarity can be reconciled with the need for more autonomy, especially in the ambit of *non-national* differences), we need to pay attention also to the horizontal aspect of the principle, as I will illustrate in the remainder of the chapter.

2. Are federal theory and solidarity clashing ideas?

The idea emerged in Italy over the past decades that a federal model would exacerbate the socio-economic cleavage between the North and the South, and thus frustrate solidarity among the different constituent units, can certainly be challenged in light of the above. Federalism is a very resilient or plastic scheme in that it is conceived to reconcile unity with diversity, as diversities are intrinsic in the federal idea: they can be linguistic or cultural (as in the case of Spain or Canada), or more economic and political (as in the case of Italy and the EU). However, such imbalances are not the prerogative of federations only: even unitary states, especially if geographically vast or with a diverse social fabric, display a certain degree of non-homogeneous distribution of resources, and this is why I explored the notion of political and socio-economic societies in chapter VII.

A metaphor can once again help us to better illustrate the point: federal or decentralized systems can be conceived as the equivalent of families.⁷⁷ Although part of the same family, each child in the family is unique in his or her physical traits, and distinctive in experiences, aspirations, talents, interests or priorities. Ideally, each child is bound to develop in a way so that he or she can fulfill specific desires, skills or aptitudes. The innate characteristics that differentiate each child do not prevent him or her from still being part of the family and maintaining close relationships with parents and siblings. But attempting to render uniform or homogenize at all costs these unique traits would amount to a distortion of their true self, and sibling sentiment would be thereby jeopardized.

Federal theory and solidarity are reconcilable, in the sense that neither a federal model nor the existence of *non-national* communities in and of themselves promote self-serving behaviors among constituent units, or discourage solidarity-based attitudes. After all, constituent units are unique in their connotations and might aspire to different things in different ways. Yet, this does not prevent them from exhibiting solidarity-based interest in the other constituent units, whether mediated through the centre or directly. However, the opposite might be the case: solidarity-based measures instituted without any recognition of existing difference, whether political and socio-cultural, or political and socio-economic.

3. Exploring horizontal solidarity with political and socio-economic communities characterized by *non-national* differences

⁷⁷ It should be acknowledged that the analogy is imperfect in one important sense: federalism does not imply that the center is more important than the regions. Legal federalism has the center and the regions with different powers, not superior and inferior powers. So when we talk about children, we can imagine them not necessarily as infants depending on the parents, but as adults with their own rights and duties, yet still belonging to the same family and committed to the welfare of the members of that family, both individually and collectively.

In the preceding paragraphs, I have concluded that, at least in theory, federalism and solidarity do not represent contrasting ideas, as they serve different purposes. It is now time to revert to *non-national* differences and see how they relate to solidarity and federalism. My argument is that the acknowledgement of the interests of political and socio-economic societies characterized by *non-national* difference does not pose a threat to the family-like bonds that unite the various components of a federal or decentralized scheme. On the contrary, recognition of difference, whether political and socio-cultural (i.e. *national*) or political and socio-economic (i.e. *non-national*) is an important part of strengthening those bonds. Societies characterized by *non-national* differences need to understand that, without commitment to the larger whole (for instance in the form of *vertical* solidarity), there is little incentive for the state and for other regions to make an effort to find ways to recognize the political and socio-economic difference that is a reality for that *non-national* region.⁷⁸ However, if solidarity becomes an issue when discussing *non-national* differences, the less explored mechanism of *horizontal* solidarity can be employed to address the problem. In any case, *horizontal* solidarity may be of some assistance in tightening the bonds of unity.

But in which way can *horizontal* solidarity come to help? From my comparative survey, I noted how, while generally recognizing (as in the case of Spain or the EU) that solidarity should be the glue cementing the relationships among constituent units, very few examples are used to elucidate how this principle should be translated into practice. And if we look at the Italian case study outlined above, despite all the concerns for the lack of solidarity in the new regional

⁷⁸ Likewise, *national* regions need to understand that, without commitment to the larger whole (for instance in the form of interest in the institutions of the central state or interest in the differences existing elsewhere in the state), there is less incentive for the state and other regions to make the effort to find ways to recognize the political and socio-cultural difference that is a reality for that *national* region.

scheme implemented in 2001, nothing in the Italian constitution seems to refer to the *horizontal* aspect of the principle (i.e. solidarity among regions). In fact, I noted how, except for interpersonal solidarity of article 2 and for the equalization funds of article 119, none of the provisions contained in Title V mandates for a solidarity-based connection among regions. This is probably something that might be modified: the constitutional legislator should include one or more provisions explaining the meaning of solidarity and whether, and to what extent, regions are bound to each other by this principle. So, why should this legal tool be more clearly encapsulated in federal constitutions, and how?

The first question can be easily answered: entrenching *horizontal* solidarity in the constitution of federal states or when *non-national* differences are present would probably be a good idea if we think of constituent units as members of the same family. In fact, it would be the translation into practical terms of a natural connection that characterizes a federal arrangement. As in the case of members of the same family, hard times trigger the occasional intervention of the members if one of them is in a challenging situation. Furthermore, entrenching solidarity at constitutional level would offer the perfect platform to define the principle in the legal ambit: the constitution itself, or a national law linked to the constitution, would be the ideal place to define the principle, its meaning and its contours, so that the role of the constituent units would not leave room for misinterpretations, and territorial units would know well when they are called upon to offer their help. At the same time, however, there are disadvantages in stressing too much the principle of solidarity, as I have noted above. Finally, it could be argued whether the constitutional entrenchment of *horizontal* solidarity is enough, or whether there would also be a need to legalize the solidarity duty to make it binding and enforceable. In fact, I explained earlier in the chapter how one of the elements that allow distinguishing between moral and legal

solidarity is the fact that the latter should create enforceable rights, whereas the former relies more on voluntary actions. At the same time, however, legalizing the principle would weaken its meaning, so celebrating the solidarity duty without enforcing it would probably make it more attractive.

More challenging is trying to address the issue of which *horizontal* solidarity-based provisions could serve my purpose, also because of the scarcity of models from which to seek inspiration. First of all, however, any provision that would be included should provide for an “occasional” intervention: this means that territorial units (including those characterized by *non-national* difference) should be bound by solidarity-based provisions towards each other only occasionally, or in exceptional cases. Systematic interventions would in fact distort the uniqueness of their variegated natures, but they would also trigger the discontent of more “virtuous” territories if they have to constantly take charge of the problems affecting other areas.

Similarly, I believe that *horizontal* solidarity-based provisions should not be used in the event of financial or economic difficulties of other territorial units: in these situations, only the central government should come into play with the mechanisms mentioned above (*in primis*, equalization funds). In fact, asking other territorial units to be financially responsible for one or more units in difficulty is more challenging because of the inequalities that already exist between the various territories. This is probably one of the reasons that brought the ItCC, in the decision discussed above, to assert that wealthier regions are not legally bound to financially support less virtuous regions, and only the central government shall do that through the mechanisms existing within each legal framework. If nothing else, it would be rather difficult to identify which criteria to use to determine which territory is richer or wealthier than the others.

A natural way to implement *horizontal* solidarity-based provisions is in the event of natural or man-made disasters, as some constitutional texts studied above have illustrated: in this sense, the moral and legal facets of this principle are intimately intertwined and overlap.⁷⁹ But, besides these exceptional circumstances, there are other sectors in which horizontal solidarity-based provisions could be entrenched: energy, natural resources (and, by extension, the environment), water supply or immigration. With specific regard to the environment, the recent Italian history has been a fruitful source of examples in this sense: one of them was the emergency in the garbage crisis in the Naples area, when bordering and non-bordering regions were called by the Italian government to assist Campania to dispose of the enormous quantity of garbage that was scattered all around the city of Naples, as the situation was going out of control. The lack of clear *horizontal* solidarity-based provisions caused the emergence of tensions in the relationships among regional governments, since their rights and duties were not clearly defined. As for immigration, one example I can think of directly draws upon the current Italian history: with a continuous flow of migrants arriving by boat on the shores of Italian coasts, one problem that might arise is how to “distribute” these people among the various immigration shelters scattered in the territory: should regions be entitled to decide whether, and in which measure, to accept migrants, or should there be some *horizontal* solidarity-based stratagem that requires better off regions to absorb a higher number?

⁷⁹ Incidentally, it shall be noted that, in case of natural disasters (i.e. floods, earthquakes, etc.) an entity exists in Italy called *Protezione Civile* (“Civil Protection”). This Department has been based in the offices of the Presidency of the Council of Ministers since 1982. It works in connection with regional and local governments acting in a guiding role, in “projects and activities for the prevention, forecast and monitoring of risks and intervention procedures that are common to the whole system.” It also “coordinates the response to natural disasters, catastrophes or other events - events of C type - that intensity and extent, should be faced with extraordinary powers and means.” For additional information, see http://www.protezionecivile.gov.it/jcms/en/dipartimento.wp?request_locale=en.

4. Conclusion

In this chapter, I explored the legal meaning of solidarity with specific regards to federal or decentralized systems, also taking into account *non-national* differences. I outlined the difference between *vertical* and *horizontal* solidarity (although the distinction is not always so firm), and tried to solve the riddle of whether federal theory and solidarity are clashing ideas. I argued that these two ideas are compatible, because they serve different purposes: federalism brings together unity and diversity, while solidarity fortifies the family-like relationships interconnecting the various actors of the complex federal model.

Thus far, I have discussed the *non-national* nature of the Italian North (and, partially, of the South), and the need to show solidarity emerging from federal-type relations. But there is one last aspect that still needs to be discussed, one that allows bringing together federalism, regionalism, sub-state nationalism and solidarity. If we go back to the Italian example, it could be argued that it is unfair that the wealthier North be required to contribute to, or maintain some type of solidarity-based attitude, towards the South, without a parallel re-evaluation of its own powers in line with its own political and socio-economic distinctiveness. Perhaps, the willingness of the North to show solidarity is linked to the central state's recognition of the North's unique contribution. For this reason, achieving asymmetrical powers for the North may be linked to the recognition of the South's unique social and economic position, and the need for transfer of wealth that comes with that. Similar conclusions could be reached for multinational states like Canada: *national* societies are intrinsically different from the rest of the country and this difference needs to be constitutionally recognized (as pointed out in chapter III); this inward-looking need to have the difference recognized at constitutional level does not eliminate the more outward-looking side of federalism, i.e. solidarity, both of the *horizontal* and *vertical* type: in

fact, it would be unfair to expect Quebec to be fully part of Canadian federalism and care about the rest of the country, while at the same time be quiet about the distribution of federal powers. Quebec willingness to show solidarity may be linked to Canada's recognition of Quebec's unique contributions. Furthermore, in many federal and regional polities, the difficulty in recognizing one type of difference (i.e. the *national* political and socio-cultural) may be made easier by recognizing that which has been largely ignored (i.e. the *non-national* political and socio-economic); in any case, both the national and the *non-national* need to be reminded of (*vertical* and *horizontal*) solidarity obligations. These issues will be addressed in Chapter IX.

CHAPTER IX

CONCLUSION: FEDERALISM, REGIONALISM, NON-NATIONAL DIFFERENCE

AND SO LIDARITY

Introduction

Building upon the recent Italian experience with federalism, regionalism and sub-state national theory, part III of this thesis has engaged in a discussion on *non-national* differences and solidarity. More specifically, I proposed a definition of political and socio-economic communities characterized by *non-national* differences, as well as some examples drawn from federal and regional state models to help better portray this concept. The existence of these political and socio-economic communities is more common than one might think, although their *raison d'être* is largely ignored by mainstream scholarship, which mainly tends to focus on sub-state *national* groups. In chapter VIII, I further elaborated on the subject by specifically exploring issues of equality, fairness and, most importantly, solidarity: the discussion regarding *non-national* differences can in fact elicit solidarity issues that also need to be addressed. Furthermore, I argued that federalism and solidarity are not irreconcilable, since the presence of federal-based stratagems does not jeopardize the latter. Yet, when solidarity does become an issue, I proposed to reinforce it *horizontally*.

In this chapter, I am going to take the discussion one step further and address the interconnectedness of *national*, *non-national*, federal and solidarity-based issues. For instance: why is it important to acknowledge the existence of *non-national* differences? Is there a legal or moral obligation to accommodate the interests of these political and socio-economic communities? What sort of constitutional or other legal recognition might this lead to? And how

can this be done so as to respect the “other” territorial units and protect the integrity of the state? This same set of questions has already been asked regarding *national* communities in the plentiful literature on the subject, though the final question – how can this be done so as to respect other territorial units and protect the integrity of the state? – has not always been emphasized much less answered. Here, I will argue that the recognition of the distinct or unique attributes of *national* or *non-national* communities is crucial to the politics of seeing the recognition process through, and that reinforcement of solidarity is also highly relevant. Again, the *national* part of this story has often been told. Accordingly, I will focus on the *non-national*, taking care to identify linkages and interconnectedness of issues wherever they exist.

I will try to identify mechanisms that can help recognize political and socio-economic communities characterized by *non-national* difference in their distinctiveness and at the same time identify mechanisms which help present this special treatment of *non-national* difference to the state-wide community (that is, to that segment of population that is “asymmetrical” in other ways or which is not asymmetrical at all). Consequently, while both in chapters VII and VIII my observation point was that of political and socio-economic societies, in this chapter I will broaden the perspective and include the viewpoint of the state-wide community. The objective, as already indicated, is not just to accommodate the different parts, but to do so in a way which is compatible with the integrity of the state.

The threat to the integrity of the state can take different shapes: it can go from milder concerns of equality and solidarity, already discussed in chapter VIII, or it can take the more dramatic shape of secession, where the detachment and subsequent independence of one part of the territory is at stake. Secession is often very controversial both at the domestic and

international levels:¹ in fact, besides all the questions pertaining to the domain of international law (the right to self-determination, recognition by the international community of the existence of a *nation*, membership in international organizations, etc...), secession represents first and foremost a defeat for the state, unable to find a suitable way to manage internal tensions arising from and within *national* (but also *non-national*) communities. This is why it is important (from the perspective of the state, at the very least) to carefully pinpoint all premonitory signs that could put at risk the integrity of the state: in fact, while most secessionist threats will never lead to the actual break-down of the state, the risk should not be overlooked.²

My first task will thus be to explain why or how neglecting *non-national* differences could threaten the integrity of the state, the situation regarding *national* societies being altogether better known and therefore not in need of elaboration. The presence of political and socio-economic communities characterized by *non-national* differences seeking acknowledgement of their *de facto* asymmetry might in fact elicit two types of reaction: these communities themselves can react and decide to walk alone, thus seeking (more or less convincingly) to become independent or to secede; in this case, the threat comes from *within* the *non-national*

¹ One example will help better explaining the point I am trying to make. At the time I am writing, two referendums for the independence of two European *nations* are going to take place, or have just taken place: Catalonia and Scotland, respectively. But while in September 2014 the vote on the independence of Scotland took place in a rather serene environment characterized by a mature and calm discussion, the same cannot be said with regards to the referendum for the independence of Catalonia, initially scheduled for November 2014: in this case, the Spanish constitutional court, acting upon a request of the national government, has suspended the vote on the grounds that it needed to examine whether this would breach the constitution. See article “Spain court suspends Catalonia independence referendum” available online at: <http://www.bbc.com/news/world-europe-29410493> (last checked: 29 September 2014); in other words, it seems that the environment in Spain is far from being serene and constructive as in the Scottish case.

² Without overemphasizing the danger of secession, the perspective on the issue can radically change depending on the observer. Here, I am looking at things mainly from the perspective of the state, for which secession almost always represents a loss. However, it is very likely that the nation that is willing to secede does not see all the ills of secession; rather, it considers it a very advantageous solution.

community. Conversely, when the asymmetrical interests of the political and socio-economic society find some real form of acknowledgement or recognition, a reaction may ensue from the state-wide community that can take various forms: by alleging that values such as solidarity, fairness or equality are being disregarded, or by declaring that they too present some specificity, the latter having the potential of instigating a dangerous domino-effect. In this case, the threat to the integrity of the state comes from *without* the *non-national* society. Incidentally, it might be worth pointing out once again that what political and socio-economic societies may lack in linguistic, cultural or other *national* distinctiveness, they typically make up for in terms of the ability to exist and survive as a separate entity: a strong economic base, good governance, good trade and other links.³ Similarly to what happens with sub-state *national* societies (see chapter III), however, the question these factors present is to find a way to accommodate or recognize both *national* and *non-national* in order to make the resort to secession unnecessary.

Furthermore, it is important to acknowledge concretely and symbolically the differences that exist both in *national* and *non-national* societies. While this may be harder to do in a federation (where formal equality has a greater value), it is easier to do in a regional arrangement, as administrative solutions may provide more flexibility for a particular region.⁴ At the same time, however, the acknowledgement of *non-national* differences may serve two other purposes: on one side, it may unlock the accommodation of sub-state national societies and, on the other side, it may unlock *non-national* societies' willingness to show solidarity, as their willingness to recognize another regions' needs may be affected by the state's ability to

³ And this often contradicts the reality of *national* societies, which may be strong on *nation* but weak on other state-like attributes such as strong economy and governance.

⁴ This goes back to the argument I developed in chapter II, when I outlined the reasons that make a regional model preferable to a federal one.

recognize their own needs and distinctiveness, as already noted in chapter VII. Consequently, if some reader is still skeptical regarding whether *non-national* differences are real or imagined, the two reasons just provided justify the utility of their recognition.

This chapter is divided in two sections: in the first one, I will revert to the importance of acknowledging the asymmetrical interests of political and socio-economic communities characterized by *non-national* differences. If the difference is real rather than imagined, as I argue, and if the system has potential for flexibility, then that flexibility should be employed. This is ultimately important to avoid threats to the integrity of the state, but it is also important, as already indicated, as a component in the interconnected logic of the nation state. I will do so also by directly drawing from concrete examples coming from the Italian experience. In section II, I will identify some possible scenarios that help illustrate the many ways in which the different parts of the state are interconnected: *national*, *non-national*, and other. As we will see, various asymmetrical solutions will be once again among the preferred recommendations. While these asymmetries are more easily implemented in the regional logic of the Italian constitution, some of them may be useful for borrowing in more structured federal systems.

Section I – Acknowledging *non-national* differences

1. Introduction

This section necessarily starts with some obvious, yet indispensable considerations, some of which have already been implied in other parts of this thesis. My narrative targets the reality of political and socio-economic societies characterized by *non-national* differences, meaning communities located within a given geographical territory and characterized by some *de facto* political and socio-economic asymmetries compared to the state-wide community, which seek

some form of acknowledgement of their specificity and which display some feeling of identity. It should be noted that these features go a long way towards potential statehood (as is noted in the literature on *national* communities), but the point of this analysis is to explore internal solutions which ensure that statehood is not part of the community's agenda unless that is deemed truly to be the only acceptable outcome.⁵

De facto asymmetries can be of various types (economic, social, political, linguistic, religious, etc.), but they are a normal facet of most countries worldwide: in fact, it may be difficult to locate a state where all areas or territories are perfectly identical the one to the other. However, while asymmetry is often a constant, it can be present at very different degrees. At one extreme, we have *nations* within multinational or plurinational states or federations (like Quebec in Canada or Catalonia and the Basque Country in Spain) where the linguistic or cultural differences are effectively rooted in the history of the countries. At the other extreme we have situations where there is no asymmetry at all, or where asymmetry does not constitute an issue requiring action, as in the case of the United States, where the deep socio-economic and cultural differences existing between states like California and North Dakota, or Rhode Island and Alabama, for instance, have never contributed to the formation of *non-national* differences (with the exception, perhaps, of Texas, which displays traits and sentiments that are rather unique). But in between these two extremes, the whole universe of *non-national* differences looms. Australian states exhibit few obvious asymmetrical elements but at one time Western Australia sought to secede from the Commonwealth of Australia, and at different times Queensland has exhibited similar independent-mindedness. Similar conclusions can be reached for Brazil, where in recent

⁵ Nevertheless, as stated earlier, the viability of *non-national* communities as nation states is far from irrelevant in terms of why we should study the phenomenon.

times the wealthier state of Rio Grande do Sul has started talking about independence from the rest of the country, a sentiment of “rebellion” that has exacerbated after the recent presidential elections held at the end of October 2014. These are more accurately described as *non-national* differences.

Therefore, the preliminary observation I wish to make is that asymmetry does not trigger, in and of itself, the presence of a community characterized by *non-national* difference; asymmetry becomes an issue only when the distinctiveness is coupled with some identity factor and with some form of malaise, frustration, or dissatisfaction – a sentiment that the region would be better off doing things its own way – within the same community or society, as the Italian case study well illustrates.

2. Why it is important to acknowledge the claims of *non-national* societies.

a. Reasons of principle

In previous sections of this work, I raised the issue whether *non-national* societies’ issues are real or not; yet another way to put this is asking whether the alleged diversity of political and socio-economic communities are real or imaginary. In chapter III, I described the attempts made by the Northern League (“LN”) to use ethno-nationalism to justify the differences between the North and the South of Italy, an attempt that eventually failed because of the lack of foundation of ethnic reasons in support of it. However, besides this imaginary example, if we assume that the difference is real, I have just explained that some communities are happy to be treated symmetrically despite the differences (as in the case of US states); but there will always be cases where that real difference is accompanied with real grievance, a feeling that cannot be plainly ignored. Federal systems are very reluctant to respond to this for fear that the balance in the

federal architecture will collapse, with the result that federations often live with these problems for long periods of time. Regional systems, on the other side, are more flexible in addressing these challenges. If the difference is real, and the potential is there to deal with it, the next question is whether, as a matter of principle, there is some legal or moral obligation to acknowledge this difference, or whether there should be a refusal to do so. In order to address this question, we need to revert to the principles of equality and solidarity discussed in chapter VIII.⁶ In the next paragraphs, I will illustrate some of the possible means that can be employed in order to achieve this, so that the logic of substantive equality would naturally lead to make use of those means.

However, some reader will say that *non-national* difference is not important enough to differentiate, or still feel that *non-national* reasons are not strong enough, and therefore disagree with the position of principle just discussed. But even in this case, there are still prudential reasons that suggest taking into account *non-national* interests, as will be explained in the next paragraph.

b. Reasons of prudence

Here, I am going to discuss the importance of considering the interests of *non-national* societies so as to avoid eliciting sentiments of discontent, disharmony and intolerance to the rules on the part of peoples belonging to these communities. It must always be borne in mind that inherent or hard-won political, social and economic virtues, as a basis for difference, also render a community more viable as a potential nation state, provided there is sufficient social glue.

⁶ For instance, in European law the idea of substantive equality, or the idea that you may treat differently in order to achieve equality in substance, is well accepted.

Once again, the Italian experience can offer some interesting and constructive food for thought. In fact, besides the propaganda animated by the Northern League on the secession of *Padania*, secessionist claims having a more limited geographical scope periodically make the news. Although often relegated to minority factions, these claims are always fermenting, and erupt from time to time, especially at critical economic or political junctures. The same creation of five special regions with the 1948 constitution was in part justified by the presence of autonomist groups in certain peripheral territories, so that the enhanced autonomy that was granted to these local governments would help limiting their actions and power. But also in very recent times these movements have surfaced again: for instance, in June 2014 the regional council of Veneto passed, with majority vote, a bill to convene a referendum on the independence of the region,⁷ and to ask people living in the territory whether they would be in favor of an “independent and sovereign republic”.⁸ An online referendum on the independence of Veneto had already been organized by autonomist groups in March 2014, but the results were highly contested and later annulled (while greatly in favor of independence, it was later declared that they had been manipulated and, as a result, they were not reflective of the actual preferences).⁹

⁷ Until the XVIII century, Veneto was part of the Republic of Venice (also known as the Most Serene Republic of Venice or *Serenissima Repubblica di Venezia*), an independent state revolving around the city of Venice which lasted for about a thousand years from the late VII century. At the time of its utmost splendor, it included territories now part of various Mediterranean European States, such as Cyprus, Croatia, Albania, Greece, etc...

⁸ See Corriere della Sera, sezione Veneto, of 12 June 2014, available online at <http://corrieredelveneto.corriere.it/veneto/notizie/politica/2014/12-giugno-2014/indipendenza-veneto-via-libera-consiglio-regionale-referendum--223385301837.shtml> (last checked: 22 July 2014).

⁹ See The Telegraph, 21 March 2014, available online at <http://www.telegraph.co.uk/news/worldnews/europe/italy/10715888/Veneto-residents-support-leaving-Italy-in-unofficial-referendum.html> (last checked: 28 July 2014).

Similar solutions were discussed also in Friuli Venezia Giulia, one of the five special regions located in the Italian North East. Here, an online referendum was scheduled for October 2014, where participants were asked to express their views on whether Friuli should become an “independent and sovereign republic”. This referendum was open to all people with roots in a territory known as “historical Friuli” which includes some bordering municipalities currently located in Veneto, as well as some municipalities in Slovenia. *Friulani* living abroad were also able to express their vote, but people from Trieste (the current regional capital city but until the early 1900s the major port of the Austrian Empire) were excluded.¹⁰ Similarly to the case of Veneto, the legal or constitutional relevance of this popular consultation is highly debatable, although the promoting committee informed that, in the event a majority of voters in favor of independence, contacts would be made with the United Nations to “analyze all legal aspects pertaining to the attainment of independence”.¹¹ The results of the online consultation, however, were quite disappointing, at least for the promoters: while 85% of the voters expressed their preference in favor of independence, only 7,000 people voted (against the 200,000 initially

¹⁰ See *Messaggero Veneto* of 21 July 2014, available online at the following link: <http://messaggeroveneto.gelocal.it/udine/cronaca/2014/07/21/news/friuli-voto-per-l-indipendenza-esclusi-i-triestini-1.9633471?ref=search> (last checked: 22 July 2014). See also *Corriere della Sera*, 27 July 2014, available online at http://www.corriere.it/cronache/14_luglio_27/web-referendum-indipendenza-friuli-51e0f6c8-15b3-11e4-bcb3-09a23244c28e.shtml (last checked: 28 July 2014). Incidentally, the expression “historical Friuli” comprises territories in the provinces of Pordenone, Udine, Gorizia, as well as some important municipalities in Veneto, such as Sappada and Portogruaro. See <http://www.friulani.net/web/confini-del-friuli/> (last checked: 22 July 2014). What was referred to as *Patria del Friuli* was an administrative and political-religious entity that existed between 1077 and 1420, and the Parliament that was then created is usually regarded as one of the oldest examples of this institution in Europe. As one of the promoters of the referendum explains, because of the peculiar geographic location, *Patria del Friuli* was subject to repeated invasions, mainly from Easter Europe, but this has not cancelled the identity and culture of the people living in the territory. See http://www.corriere.it/cronache/14_luglio_27/web-referendum-indipendenza-friuli-51e0f6c8-15b3-11e4-bcb3-09a23244c28e.shtml (last checked: 28 July 2014).

¹¹ See *Corriere della Sera*, 27 July 2014, available online at http://www.corriere.it/cronache/14_luglio_27/web-referendum-indipendenza-friuli-51e0f6c8-15b3-11e4-bcb3-09a23244c28e.shtml (last checked: 28 July 2014)

expected).¹² While the Italian press was not giving much prominence to these consultations, these events give a sense of the sentiments shared by a certain fraction of the population.

In the course of 2013-14 discontent and frustration have emerged also within other political coalitions, as explained by Beppe Grillo, the leader of the populist political faction called Five Star Movement (“M5S” or “Movimento 5 Stelle”), a party that at the last general elections of 2013 succeeded in becoming the second most voted list in Italy. Mimicking the LN’s propaganda, Grillo recently asserted that “Italy cannot continue to be managed by Rome” and that Italian regions are nothing but “pure representation with no meaning”.¹³ His solution is therefore to return to the spirit of “thousand year old” entities such as the Most Serene Republic of Venice or the Kingdom of the Two Sicilies.¹⁴ Grillo provocatively added that Italy is nothing but a “harlequin-style combination of peoples, languages and traditions with no more reasons to stick together”.¹⁵ Consequently, nobody would be surprised if people from Veneto, Friuli Venezia Giulia, Sardinia, Sicily, Lombardy, etc... would no longer feel the need to “remain within a nightmare where democracy has disappeared”¹⁶ thus implicitly blessing the independence referendums announced by Veneto and Friuli.

As noted, while these actions and reactions do not necessarily reflect the feelings and sentiments of the entirety or of the majority of the population living in those areas,¹⁷ they

¹² See Corriere della Sera, 1 November 2014, available online at http://www.corriere.it/politica/14_novembre_01/web-referendum-l-indipendenza-friuli-flop-votano-7-mila-b042a91a-61e8-11e4-8446-549e7515ac85.shtml (last checked: 4 November 2014)

¹³ See Repubblica, 9 March 2014, available online at the following link: <http://ricerca.repubblica.it/repubblica/archivio/repubblica/2014/03/09/il-movimento-stelle-la-nuova-guerra-di.html?ref=search> (last checked: 22 July 2014).

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ In fact, very often a significant segment of the population derides these secessionist attempts.

certainly represent a valid prism through which reality could be scrutinized; consequently, it would be unwise, and at the same time risky, to disregard or diminish their relevance. In many aspects, this local secessionist propaganda is different than the secessionist claims advanced by the LN on behalf of *Padania* some years ago (although it could be easier compared to the autonomist claims existing in the South of Italy after unification and also in the aftermath of WWII, as explained in chapters IV and V). In fact, the *Padanian* nationalism movement was much more structured and diffused (although limited to Northern Italy), and was backed by a symbolism that is not necessarily present in these local expressions.¹⁸ However, the common element that links these otherwise different experiences is the fact that challenging economic and political circumstances, akin to those that Italy is currently facing, are always a fertile ground for discontent and frustration to grow. Therefore, finding a solution to appease or conciliate these claims, while at the same time preventing an even more risky “domino-effect” involving other territories, would probably be a responsible way to deal with the crisis.

These activities bear some close resemblance with the quest for recognition and accommodation made by sub-state *national* societies, as secession or independence are often part of their political agenda (Quebec, Scotland, the Basque Country and Catalonia being notable examples, at least in the Western world). In this sense, the boundaries between *national* and *non-national* groups are more blurred than one might expect and, for this reason, certain reasoning or solutions devised for political and socio-economic communities (*non-national*) might be of some utility when trying to accommodate political and socio-cultural (*national*) societies as well.

¹⁸ With the exception, perhaps, of the use of symbols like the flag (it is not uncommon to see regional flags waving outside houses in small towns in Friuli, Veneto and other regions) and local dialects (for example, the official website of Friuli Venezia Giulia is available not only in Italian, but in *Friulano* as well (in addition to English, German and Slovenian).

Before moving to the next section and discuss how the acknowledgment of *non-national* differences may help unlocking the politics of recognition of the *national* reality, however, it is important to emphasize once again the interconnectedness of federalism, regionalism, sub-state nationalism, *non-national* difference and solidarity. In fact, once we agree on the fact that *non-national* differences shall be acknowledged for principle or for prudential reasons, it shall always be reminded that, being a member of the same family (as indicated in chapter VIII), obligations of solidarity shall not be ignored, as solidarity (*vertical*, but also *horizontal*) can benefit the various regions. It is part of the *quid pro quo* of recognition of distinctiveness. For instance, in the case of Italy, in the event of an environmental emergency (akin to the one in Naples illustrated in chapter VIII), the North (or the South) should be able to count not only on the *vertical* help coming from Rome, but also on the *horizontal* assistance coming from the other regions.

c. Unlock the key to bring the necessary reforms for the recognition of sub-state national societies

One problem that might arise when devising strategies that take into account the different interests of political and socio-economic societies characterized by *non-national* differences is that this might elicit the jealousy or the resentment of the state-wide community, who might see this as a selfish attempt to acquire more powers by the *non-national* community to the detriment of the rest of the country. Consequently, it is important not only to pay attention to the genuinely asymmetrical interests of the *non-national* communities, but also to be able to explain their asymmetry to the state-wide community. In the specific Italian case-study, I suggested that the Italian North (our quintessential example of political and socio-economic community

characterized by *non-national* differences) has different interests and priorities than other territories, both for the particular industrial drive and good governance and a well-rooted sense of distinctiveness that distinguishes most of its residents; but this does not mean that the South does not share other distinctiveness that might also require special attention. It is thus important that both people in the North and in the South understand and accept their specificity and distinctiveness, and that some mediation among and between the different interests be found.

I will discuss some strategies to do so later in this chapter. For now, I would simply like to emphasize how similar considerations can also emerge within sub-state *national* communities, where in fact it might be politically or institutionally challenging to recognize the *national* society, as such recognition risks displeasing the rest of the state community. In fact, while the claims of sub-state national groups are often very legitimate, it might be very difficult, both at political and institutional level, to accommodate their claims. The problem is of course not within the sub-state *national* group, which is more than eager to have their claims accommodated, but with the rest of the population, which usually finds it very complicated to understand why the sub-state *national* group seeks accommodation: often, it is difficult for them to understand why the sub-state *national* group is unhappy without some form of recognition, but they may also fear that the sub-state *national* group is using its special status as a way to blackmail the central government to ask for more special treatment.

The example of Canada can help better illustrating this concern: with its bundle of linguistic, social, and cultural differences that makes it a distinctive *nation*, Quebec traditionally seeks special constitutional (and political) accommodation reckoning and protecting its uniqueness. But the rest of Canada is far from being homogeneous. Even if the other nine provinces and three territories all share the same language, there are other elements that might

distinguish each of them from the rest. Incidentally, one of the reasons that probably contributed to the failure of the Lake Meech and Charlottetown constitutional amendment accords in the late 1980s and early 1990s was probably linked to the difficulty for the Rest of Canada to accept the special status Quebec was seeking, while other provinces in the state felt entitled to claim other forms of recognition. For this reason, I have suggested how Alberta (or a variably defined “West of Canada”) could be regarded as another example of political and socio economic (*non-national*) society: its unique socio-economic pattern and long-standing sense of grievance might in fact elicit the need for an asymmetrical treatment compared to other provinces with different priorities and needs.

Incidentally, the dilemmas illustrated above should not come as a complete surprise. In fact, it is part of human nature to experience feelings of jealousy or resentment when certain privileges are granted without justifying the underlying rationale. Similarly, most human beings would be ready to give up something they cherish only if there is some prospect that they too will receive something at some point in the not-too-distant future. This can probably be explained because they perceive that there is something special in them that needs to be acknowledged, whether that something is conventionally considered special or whether it is simply the more everyday uniqueness that characterizes each of us: only at that point they will be ready to make concessions.

In the next sections, I will suggest some tools or mechanisms to explain the diversity of a political and socio-economic society to the state-wide community, so that these mutual concessions can assist in encouraging acceptance of the asymmetrical treatment granted to the former. Before moving on to the next section, however, I need to make an important disclaimer.

When defining or discussing *non-national* differences, I have in mind communities sharing a given territory whose political and socio-economic fabric might be distinct than other territories existing in the same state, and this asymmetrical situation might require a parallel asymmetrical treatment recognized at constitutional or institutional level. In developing this argument, I have drawn some analogies and differences between sub-state *national* societies and *non-national* communities. In this way, some strategies or mechanisms devised for the latter can also find some utility in the case of the former. These are the two main groups of people I am focusing on, although I acknowledge that there might be other categories of people (i.e. less organized groups, new immigrant groups, etc....) which are left out from this analysis. My study, however, does not include them, in part for reasons of space, but also because their claims are made through the political system at large rather than through governance structures already existing in the constitutional system.

Section II – Suggesting strategies to explain asymmetrical interests

1. Explaining one's diversity

In this section I am going to analyze how to explain *non-national* differences to the state-wide community, so that it can more easily accept and understand their asymmetrical interests. In other words, I am going to explore how to explain one's diversity in order to limit the emergence of sentiments of rejection or intolerance to the new way of doing things. This might also have some benefits for multinational states, as it potentially helps unlock the solution to making the necessary constitutional changes to solve the recognition issue for other communities, that is, sub-state *national* groups. In fact, I have already emphasized how existing mainstream literature usually focuses on the claims advanced by the obviously different group (for example, *national*

minorities such as the francophone of Quebec, Catalans in Catalonia, Scots in Scotland, and their cultural, linguistic or historical differences), but little or no attention is reserved to the rest of the state community (that is, regions other than Quebec, Catalonia, the Basque Country, or Scotland), and which tools or mechanisms could be implemented to have them accept the differential treatment reserved to the *national* (and more distinct) community. This may be one other original contribution to scholarship contained in my research.

Some of the solutions I am proposing are directly borrowed from the Italian regional experience, in line with the fact that I have consistently construed Italian regionalism as a laboratory for experimentation, while other strategies are built upon sub-state *national* theory (in particular, the accommodation of *nations* within multinational states or federations, as discussed in chapter III). My discussion will start, once again, with asymmetrical solutions.

2. Asymmetry

The legal meaning of asymmetry, especially in its interconnectedness with federalism, has already been explored quite in detail in chapter VII, in particular by clarifying the difference between *de facto* and *de iure* asymmetry. Within a federal or federal-like state, in fact, I noted that asymmetry refers to the intrinsic differences in shape, size, population, wealth, socio-economic patterns, etc., that characterize the various constituent units of the system: for instance, in the United States a profound asymmetry exists between California and North Dakota as a consequence of the variances in population density, climate, socio-economic fabric, etc. between the two states. This type of asymmetry is also referred to as *de facto* asymmetry. However, because this heterogeneity can also affect the way powers are distributed among the constituent units of the federal arrangement, asymmetry may also be reflected in the legal structure of the

nation state, and thus refer to situations where at least one of the constituent units “enjoys a different, usually enhanced, level of autonomy than the rest”.¹⁹ This is what scholars identify as *de iure* asymmetry. For example, *de iure* asymmetrical patterns exist both in Canada and Italy, among others: in Canada, the predominantly francophone province of Quebec enjoys increased autonomous powers in a number of areas, including immigration and pensions. In Italy, *de iure* asymmetry exists between special and ordinary regions, whereby the former were granted special and increased powers so as to better deal with linguistic minorities, independentist movements, as well as with their geographical isolation.²⁰ These are the most obvious constitutional asymmetries, but a myriad of asymmetries can exist at the administrative level.

With specific regards to *non-national* differences, I already praised asymmetry as one of the possible strategies that could be introduced or reinforced to better meet the interests of these communities. In particular, when the cleavage is predominantly socio-economic (as in the case of Italy), I suggested the introduction of special powers over taxation (the so-called *fiscal* federalism), as enhanced taxation autonomy leads to increased local control on resources and infrastructures; conversely, when the asymmetry originates from other types of cleavage, increased autonomy can be devised for other areas.

While not all scholars are ready to unconditionally embrace asymmetrical solutions for their potential aptitude to foster secessionist trends, as I already noted in chapter III, one problem that asymmetry might create is that it may elicit sentiments of jealousy in the state-wide community. In the next sections, I resort once again to asymmetry to add a range of ideas or

¹⁹ See chapter VII, where this definition was drawn from McGarry, *Asymmetry*, cit., p. 105. See also Gagnon, *Asymmetrical federalism*, cit., pp. 323-324

²⁰ The differences between special and ordinary regions, as well as the rationale behind this classification, were extensively discussed in chapter V of this thesis.

strategies that may help conciliating the interests of *non-national* societies, without disregarding the state-wide community.

a. Solutions à la carte

A “solution à la carte” is an artificial expression referring to the possibility of negotiating special forms and conditions of autonomy with the central government in certain specific areas. This strategy directly builds upon article 116(3) of the Italian constitution, already described in other chapters of this thesis. Thus, before explaining how this tool could be exploited in the ambit of *non-national* differences, it might be useful to take some time and illustrate the genesis and rationale of this interesting provision.

i. Article 116(3) Const. on asymmetrical regionalism

Article 116(3) mandates that

[a]dditional special forms and conditions of autonomy, related to the areas specified in art. 117, paragraph three and paragraph two, letter l) - limited to the organisational requirements of the Justice of the Peace - and letters n) and s), may be attributed to other Regions by State Law, upon the initiative of the Region concerned, after consultation with the local authorities, in compliance with the principles set forth in art. 119. Said Law is approved by both Houses of Parliament with the absolute majority of their members, on the basis of an agreement between the State and the Region concerned.

First, it is important to note that the Italian legislator of 2001 chose to include this provision on asymmetrical regionalism in the same article that reiterates the special status of five regions and two provinces. Furthermore, Italian scholars have identified the rationale behind this provision in the fact that asymmetrical regionalism can be specifically useful when confronted with a reality of deep socio-economic differences or diversified preferences towards the federalization process, since this type of solution can help “attenuating tensions and conflicts”

that usually come into play when such reforms are being implemented.²¹ Moreover, asymmetric regionalism could be linked to the requests coming from the wealthier areas of the country for an “adjustment of the inter-regional redistribution of resources made by the central government” and thus address the autonomist push coming from certain Regions”.²² Finally, it could propel “forms of experimentation in the formulation and application of public policies” so that each local area is free to devise the most adequate solutions for its own reality.²³

Delving more into the twists of this provision, I would like to emphasize some of its notable features. First, the constitutional legislator chose to adopt a rather broad approach, by generally referring to all subject matters of shared jurisdiction between the state and the regions (article 117(3) Const.), in addition to certain specific areas where the state enjoys exclusive jurisdiction pursuant to article 117(2) (organization of the offices of justices of peace; education; environment and cultural heritage). This choice is commendable as it leaves quite some room to the regions to map their priorities.

Article 116(3) also describes the procedure to be followed in order to implement differential regionalism: this procedure is rather complex, as it requires the parallel approval of several different actors, who must all concur in the decision. In fact, the initiative must come from the region concerned after consulting with local authorities; next, a state law (approved by absolute majority by both houses of the Parliament) will grant the special autonomy, upon

²¹ A. Zanardi, “Il federalismo differenziato nell’articolo 116 della costituzione: una breve nota” (2006) *Federalismi.it*, available online at <http://federalismi.it/AppOpenFilePDF.cfm?artid=6309&dpath=document&dfile=14112006015318.pdf&content=Il+federalismo+differenziato+nell%E2%80%99articolo+116+della+Costituzione:+una+breve+nota+-+autonomie+locali+-+dottrina+-+>, p. 2 [Zanardi, *Federalismo differenziato*] [all citations from this document are my translations].

²² Zanardi, *Federalismo differenziato*, cit., p. 2.

²³ Zanardi, *Federalismo differenziato*, cit., p. 2.

agreement between the state and the region concerned; finally, all principles (on fiscal federalism) spelled out by article 119 Const. must be respected.

As noted elsewhere, however, in the ambit of Italian regionalism the possibility offered by article 116(3) Const. has not yet been exploited,²⁴ one of the reasons probably being the complex procedure to be followed as devised by the legislator; at the same time, the Italian Constitutional Court has not had the opportunity to further elaborate the meaning and scope of the clause. The scarce use of this option is quite unfortunate, because this mechanism would not distort the essence of the Italian regional state; rather, it would give regions the option to enjoy enhanced powers in specific areas.

ii. Application to state-wide communities and political and socio-economic communities characterized by *non-national* differences

A provision somehow mirroring the one contained in article 116(3) Const. could be adopted by nation states with the presence of *non-national* differences as a mechanism to help better embedding the diversity of the groups. Similarly, this solution could also inspire multinational states or federations dealing with the different or asymmetrical treatment granted to a sub-state *national* society: in fact, solutions *à la carte* could be offered to the rest of the country to help it better accept the asymmetry in place. These solutions amount to a sort of opting in/opting out, where the asymmetrical region has automatically opted in, and where the same potential for opting in is made available to regions which may (or may not) perceive the need to do so. This way of organizing things takes the emphasis off whether difference is

²⁴ See, *ex multis*, B. Caravita, "Italy. Between the hybrid state and Europe's federalizing process" in J. Loughlin, J. Kincaid & W. Swenden, eds., *Routledge Handbook of Regionalism and Federalism* (London & New York: Routledge, 2013), p. 299 [Caravita, *Italy*].

objectively made out, and leaves it to the regions in question to determine whether, according to their perception of themselves and their place in the larger whole, they wish to avail themselves of the potential for asymmetry.

Incidentally, the fact that the Italian constitution foresees the possibility to implement some functions “more or less” is not an entirely new concept, since in the ambit of EU law “some states may opt out of adopting some areas of common rules” as Caravita explains.²⁵ Consequently, this possibility could well be “exported” and implanted in other systems as well.

The scheme devised in article 116(3) Const. does not need to be reproduced in its entirety, as each legal system willing to mediate between the concurrent interests of *non-national* and state-wide communities can adopt the language deemed to be more appropriate and reflective of the nature and type of cleavage that gives rise to the specific local tensions. In any event, drafting a provision in general terms would have the advantage of better adjusting to the evolving and changing interests of the state-wide community.

Such solutions *à la carte* obviously have positive and negative aspects. On the positive side, representatives of the local communities would be responsible to negotiate the special forms and conditions of autonomy, thus limiting the possibility to create disagreement: they would all be placed in the same departing condition since they could “choose” in which areas to acquire special powers.

Another advantage is that this tool would strengthen the relationships and the reciprocal engagement of the various local institutions or governments, which would not feel neglected in

²⁵ Caravita, *Italy*, cit., p. 299.

relation to the *non-national* society (thus reducing the feelings of dissatisfaction), and which would probably be ready to collaborate promptly with one another in critical situations. By performing more autonomously in the chosen areas, each local government would be valorized for the contributions it can give to the country as a whole. This would also strengthen solidarity among the *non-national* society and state-wide community: in fact, instead of looking at each other with a sense of jealousy or resentment, they would be certainly ready to collaborate more eagerly because they would feel valorized in their true essence.

This mechanism, however, can have its own negative aspects. First and foremost, such a solution requires the demonstration, on the part of local governments, of maturity and awareness of the primary needs of the territory. It requires a careful planning and organization of the physical and financial resources to calibrate them in the direction most wanted. This may not be so obvious in countries like Italy, where local and national administrators and politicians rarely give proof of wisdom, responsibility and reliability in the management of resources and public good. The proposed accommodation would certainly implicate a demonstration of nerve and audacity on the part of the constitutional legislator, as well as a certain amount of reciprocal trust between central and peripheral institutions, as well as a common intention to work for the good of the country and not only of just one specific portion of it.

b. Offering favorable conditions on services depending on the state

Another strategy that could be used by the state to help the state-wide community adapt to the idea of special treatment reserved to *non-national* societies is to offer a “package” of favorable conditions on services depending on, or provided by, the central state. While this mechanism does not appear in the Italian constitution, it would help softening the tensions that

inevitably arise from the presence of *non-national* differences within the territory. For example, if in a specific country health services are managed and distributed at the central level, citizens of the state-wide community might receive health services at reduced price, without a parallel reduction of the quality of the service provided. Other services that might be offered at central level and then “discounted” include education or banking, for example. In other words, depending on how powers are divided between the centre and the periphery, certain services totally or partially depending on the central state can be provided at discounted or more favorable conditions.

One possible variant of this mechanism could involve taxation discounts. In other words, the tax rate applied by the central state to the state-wide community on certain services can be reduced to compensate for the asymmetrical treatment reserved to the political and socio-economic societies characterized by *non-national* differences.

This stratagem, however, is different than other “compensation tools” that already exist in certain federal states like Canada, for instance, where the idea of compensation obeys to the logic that a province that opts out of a service usually provided by the central government and the government compensate the region on a *per capita* basis according to what the center would have spent.

The mechanism just illustrated has both advantages and disadvantages. First, while there are many ways in which such a strategy could be perfected, local institutions taking advantage of this option would not be simply inundated with money coming freely from the centre: rather, they would receive services from central institutions at favorable conditions, thus the economic advantage would come in a very tangible fashion, with a consequent reduction of the potential

risk of misusing or mismanaging public funds, paralleled by a more limited risk of engaging in corrupted behaviors on the part of central and local administrators.

Another potential advantage of this solution is that it would greatly limit all grievances based on lack of solidarity which is the glue cementing and fortifying the relationships among the various territories composing the state, as observed in chapter VIII. In fact, when the state-wide community realizes that the central government is trying to make an effort to compensate for the asymmetrical treatment reserved to the *non-national* group, they would be less incentivized to complain that the *non-national* society is moved by reasons of selfishness and self-interest only when seeking to meet their asymmetrical interests. Consequently, the state-wide community would be more willing to help and collaborate with the *non-national* society and the central state alike. Incidentally, this goes back to the idea of *horizontal* solidarity discussed on chapter VIII, where I suggested that this specific profile of the principle should be strengthened when solidarity becomes an issue.

Among the possible downsides of the solution just described, the offer of services at reduced price should be carefully studied from many perspectives so that the availability of “discounted” services does not reduce the quality of the services granted. In fact, especially in subject matters such as health or education, central and local governments shall coordinate financial and non-financial resources in order to continue providing and enjoying services of standard quality without exposing the financial resources of the state to dangerous risks.

Most importantly, this solution requires a careful planning and management of financial and non-financial resources, both for the central and the peripheral governments. In fact, by offering services at reduced price, the financial burden on the central government would

drastically increase. Consequently, each state that decides to implement services forged on this approach will have to carefully evaluate the impact of this solution on their balances.

Incidentally, this problem is not foreign to sub-state nationalism theory: indeed, when enhancing the autonomy of *nations* through the “decentralization of powers over ‘domestic’ policy areas” (i.e. social policy, education, etc...),²⁶ one of the issues that commonly emerge is that of the “interdependencies” between local and national policies, to the point that some coordination between the two levels is needed by means of “intergovernmental relations” between the centre and the periphery.²⁷ As for the previously described solution, this testifies to the possibility to draw parallels between strategies available to *non-national* societies and those available to sub-state *national* communities.

c. Methods of monetary compensation

Another tool that could be used to help embed *non-national* differences into the state-wide community is monetary compensation. With this term I mean that, while *non-national* societies enjoy additional autonomy in certain areas directly related to their specificity, the state could decide to compensate all groups not belonging to *non-national* societies with additional payments or monetary transfers to be allocated in areas or subject matters individually chosen.

The type of monetary compensation I am proposing, however, should not be confused with the so-called equalization payments, which are solidarity-based mechanisms typical of many federal states, whose purpose is to help balancing the inevitable fiscal inequalities between the richer and poorer sub-units, and which exist irrespective of the presence of *non-national* differences. In fact, as pointed out in chapter VIII, the goal of equalization payments is to help

²⁶ McEwen & Lecours, *Voice or Recognition*, cit., pp. 226-227.

²⁷ McEwen & Lecours, *Voice or Recognition*, cit., p. 227.

disadvantaged areas or territories of a federal or federal-like state to reach a level of wealth comparable, if not equal, to the rest of the country. Conversely, with monetary compensation, the central state would grant a given amount of money to local governments outside of the *non-national* community, to compensate for the enhanced autonomy of the latter. Even if the method of delivery of the grant is identical (the central state funnels a given amount of money to the periphery), the rationale behind these two tools is profoundly different.

Monetary compensation would probably be a welcomed tool by local governments of the state-wide community, especially if located in areas or territories clearly disadvantaged in terms of natural resources or geo-physical conditions and which do not facilitate the installation of various forms of business or entrepreneurial activity. At the same time, however, it presents some risks and disadvantages that need to be carefully taken into account. First, this method necessitates to prudently gauging the amount and frequency of the compensation to the requirement of a balanced budget at central level. Consequently, it requires a careful planning of the financial resources on the part of the central state in order not to destabilize the financial resources of national and local institutions, something that is not so obvious, especially in challenging economic and financial contexts.

Furthermore, and partially linked to the risk just described, this mechanism might create abuses of power and increased corruption if and when the money received from the centre is not adequately managed by local and central institutions: this might be a very contentious issue, especially in less virtuous countries where episodes of mismanagement both at central and peripheral level are not infrequent. One possible remedy to reduce these risks would be to “attach” some conditions to the money transferred from the centre to the periphery, so that the

local governments would be forced to utilize the grants (and be entirely accountable for) only in certain specific ways or for certain specific objectives. Similarly, these grants or payments could be linked to a specific project (as it happens at EU level with structural funds): in other words, it is possible to submit detailed projects that, once approved, can be financed with money coming from the centre. One last alternative would be that peripheral governments be asked to prepare and submit a spending report justifying how the money is being used.

As for the other strategies suggested here, the actual usefulness or viability of this tool is not the same; in fact, in a multinational state like Canada it would be less necessary, as the recognition of the *non-national* differences allows offering to it the same that is offered to the *national*, thus partially solving the problem. The utility of such a mechanism might better benefit other realities where only *non-national* communities (and not the *national* counterparts, defined according to the literature) are present, whether within a federal or regional state. Besides the Italian specific case study (once again, it may be useful to stress that a regional model enjoys a more flexible architecture, thus it would be more prone to implement asymmetry), Australia or Brazil might offer good examples: if Queensland or Rio Grande do Sul seek and obtain asymmetry, my solution could help the other states to accept this.

d. Mutual concession

Finally, one last technique to potentially deal with the issue of helping along the asymmetrical treatment granted to *non-national* societies to the state-wide community in a constructive and profitable way is what I call mutual concessions. This solution combines the asymmetrical scheme modeled on article 116(3) Const. (because it would grant specific,

increased and differential powers in specific subject matters) with the monetary compensation (because it would involve the idea of compensation, although not monetary in nature).

If implemented, the mechanism of mutual concession would create a situation of profound asymmetry. Although questionable to a certain extent (I already noted in previous chapters how asymmetrical solutions are not always celebrated by scholars for their intrinsic risk of centrifugal moves), the advantage of this tool is that it would foster the reciprocal acceptance of the differences among territories. Incidentally, I do not think that this solution would jeopardize the unity and integrity of the state, as detractors of asymmetrical solutions often maintain; rather, all societies and groups present in the territory would enjoy a stronger sense of belonging towards the national state because they would feel more accepted and recognized by it. It should also be said, a point made earlier, that such flexible use of asymmetry is more easily implemented in a regional version of federalism rather than in a classic federation.

Conclusion

In this chapter, I concluded the narrative on *non-national* differences, with a specific focus on the importance of acknowledging their asymmetrical interests: among the various reasons behind this necessity, there is principled willingness to find solutions, should they be found to exist, and the prudential need to limit sentiments of rebellion coming from *within*, i.e. from the *non-national* community. However, if and when the asymmetrical interests of the *non-national* society are acknowledged in one way or the other, sentiments of jealousy can materialize from the *outside*, i.e. from the state-wide community because of the different treatment reserved to the *non-national* group. In order to be consistent both in the principled position and in the prudential desire to limit the risk of dangerous consequences for the integrity

of the state, I suggested some strategies that could be implemented or perfected, and thus help embed the diversity of the *non-national* society in the state-wide community. In other words, an asymmetrical treatment of the *non-national* society matched by some form of “concession” to the state-wide community leading up to a more or less profound asymmetrical scheme might help to mediate the various cross-sectional interests and players; furthermore, this might help the cohabitation and sharing of the same territory by communities with different priorities.

Furthermore, I pointed out how the acknowledgement of the asymmetrical interests of *non-national* communities can have a secondary, but not less important, benefit: helping to unlock the answer to making the constitutional changes necessary to accommodate and recognize sub-state *national* groups in nation states where they exist. In fact, while the nature of sub-state *national* and *non-national* societies is radically different in one sense (as explained in other sections of this thesis the distinctive feature of the former is often based on ethnic elements – language, religion, culture – while for the latter the asymmetry is mainly socio-economic and not ethnic, thus less obvious and more subtle than the *national* one), at the same time the two groups might be presented with similar challenges and concerns in, for example, their sense of grievance and frustration and in their viability as independent nation states should they ever choose that route. In other words, the dynamics existing between the *non-national* society and the state-wide community might parallel those existing between sub-state *national* societies and the rest of the state. As a result, some of the solutions devised for the former might well be applied and adapted to the reality of the latter. And in countries such as Canada where *national* and *non-national* units exist, the ability to address both *national* and *non-national* issues simultaneously may yield overall solutions that had not been previously evident.

Throughout the chapter, I also reiterated how asymmetrical solutions as those suggested to mediate between antagonist interests are not always celebrated or welcomed by scholars, mainly because of the potential risk that asymmetry carries of fragmenting even more an already divided society. However, besides these fears, there are other negative consequences that might emerge from asymmetry, and that would eventually need to be dealt with. In fact, what happens when, as a result of an asymmetric pattern, one local government has more power over one specific subject (e.g health) and the central government has to deal with this same subject matter for and on behalf of all the others who do not have such accrued powers? Should the representative of the asymmetric territory at the centre be allowed to vote? One possible solution in such a situation would be to frame a system whereby the central government only decides the main guidelines in a given subject matter, thus leaving the details to be discussed and decided locally. In such a case, the vote will be open to all at central level, but only on decisions concerning general guidelines.

I end my discussion here, intentionally leaving the question partially open for other scholars who would like to continue the debate from where I have left it. The principal goal of this thesis was to analyze federalism and regionalism on a spectrum rather than as discrete opposites, to theorize *non-national* differences in a way which builds on the voluminous literature on sub-state nationalism, and to show that the type of asymmetry that characterizes them is as important as the one that distinguishes sub-state *national* societies, although the two groups also present some profound divergences. In other words, I tried to show the interconnectedness existing between federalism, regionalism, sub-state national theory, as well as solidarity.

In bringing together federalism, regionalism, sub-state national theory and solidarity, however, I did not expect to provide easy answers or magical solutions (always very difficult, especially in the legal universe), as every situation is different, as different are the various players, their needs or priorities, and the environment in which they are situated. Rather, my less pretentious purpose was to use the Italian case study as a way to initiate a scholarly debate about a subject that I consider still in a very embryonic stage but with lots of potentialities waiting to be unveiled. The past and recent Italian experience with federal theory and federal solutions has served as the backdrop against which I have developed this research and the various arguments, but at the same time I also tried to position my narrative within a broader framework, so that the Italian experience could be of some utility to other, similar situations. In this probably lies the originality and main contribution of the research.

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