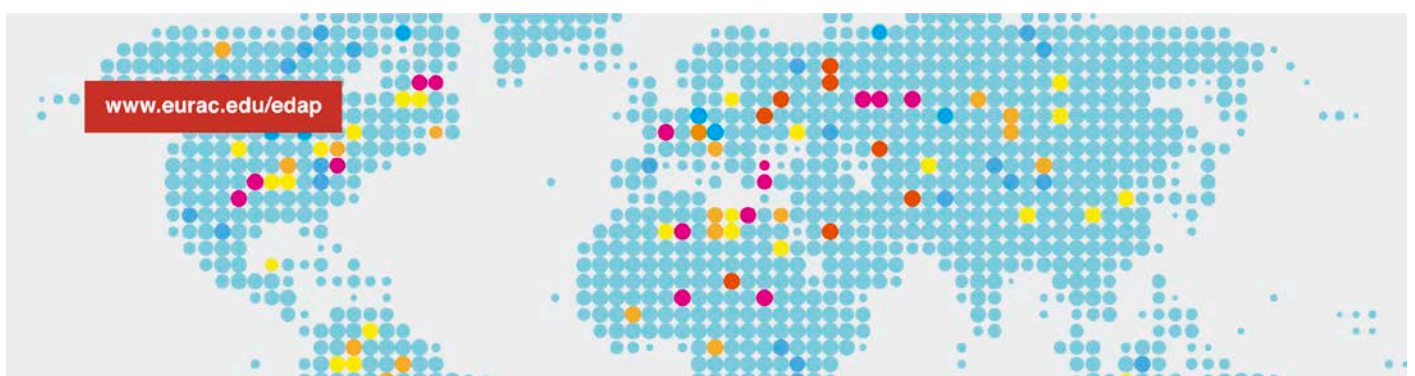


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# The Dynamics of Decentralization in Italy: Towards a Federal Solution?

Francesco Palermo and Alex Wilson



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## Abstract

This paper analyses the recent process of state decentralisation in Italy from the perspectives of political science and constitutional law. It considers the conflicting pressures and partisan opportunism of the decentralising process, and how these have adversely affected the consistency and completeness of the new constitutional framework. The paper evaluates the major institutional reforms affecting state decentralisation, including the 2001 constitutional reform and the more recent legislation on fiscal federalism. It argues that while the legal framework for decentralisation remains unclear and contradictory in parts, the Constitutional Court has performed a key role in interpreting the provisions and giving life to the decentralised system, in which regional governments now perform a much more prominent role. This new system of more decentralised multi-level government must nevertheless contend with a political culture and party system that remains highly centralised, while the administrative apparatus has undergone no comparable shift to take account of state decentralisation, leading to the duplication of bureaucracy at all territorial levels and continuing conflicts over policy jurisdiction. Unlike in federal systems these conflicts cannot be resolved in Italy through mechanisms of "shared rule", since formal inter-governmental coordination structures are weak and entirely consultative.

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## Key words

Italy - Constitutional Reform - Institutional Change - Fiscal Federalism - Constitutional Court - Political Parties - Inter-governmental Relations.

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# The Dynamics of Decentralization in Italy: Towards a Federal Solution?

Francesco Palermo and Alex Wilson

## 1. Introduction

Italy has undergone a remarkable transformation in recent decades: moving from a historically centralized unitary state organized along Napoleonic lines, to a more decentralized state with some federal features yet nested within a bureaucratic organization and political culture that remains highly centralized. Major reforms to the political system and constitutional design have been enacted, often approved unilaterally by the governing coalition under electoral or coalitional pressure from the Northern League. The resulting arrangements suffer from a lack of legal clarity, contain contradictory elements, and are rarely supported by adequate implementing legislation. The 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. An embittered political climate and frequent legislative paralysis has meant these inconsistencies in institutional design are largely resolved through constitutional adjudication, with the Constitutional Court performing an assertive role in determining how legal provisions should be interpreted and the system should work. Yet this is unlikely to be sufficient in resolving inherent weaknesses in the system, including the lack of “shared rule” mechanisms at national level, consistent with an increasingly regionalized (but not fully federalized) political system. Formal mechanisms of inter-governmental relations now exist but are weak, with central institutions and actors having the final say on competence and resource allocation for ordinary regions. The consolidation of lobby groups for territorial governments represents an important advancement in informal mechanisms of inter-governmental relations, which have made the consultative formal mechanisms more relevant. Directly elected territorial leaders have become assertive political actors vis-à-vis the central government, introducing a further centrifugal dynamic in the system that counters the centripetal tendency of national parties.

## 2. Dynamics of Decentralisation in Italy

As in many other countries, the dynamics of decentralization in Italy have often appeared to follow a partisan logic.<sup>1</sup> Since the 1990s, this has been driven by the need for national parties to compete electorally or form governing coalitions with the Northern League, a powerful autonomist party that shifts between extremely radical proposals (e.g. secession) to bolster its core support, and more moderate proposals on state design (e.g. enhanced regional powers within a federal state), designed to produce a workable parliamentary reform.<sup>2</sup> An effect of this constant pressure has been to ensure that proposals for state decentralization overcome the general inertia of legislative decision-making in Italy, as well as the hurdle of intra-party differences and inter-party divisions. These are inevitable in a country with strong cultural differences and an economic gulf between North and South, yet the result has been a partial and inconsistent reform of the political system, hindered by the divergent preferences of actors in both centre-left and centre-right coalitions. Whereas the centre-right coalition has adopted reforms under coalitional pressure from the Northern League, on which successive Berlusconi governments have relied on for their parliamentary majority, the centre-left coalition has seen the Northern League as an electoral (even existential) threat in northern regions, to be countered by credible decentralizing reforms. But the dynamics of decentralization in Italy cannot be entirely explained by the need to accommodate a powerful regionalist challenger. Federalism is increasingly accepted as a desirable form of state design across the political spectrum, with all main parties incorporating it into their electoral manifestos. Despite partisan pressures and electoral opportunism in the timing and content of legislative reforms, there is some degree of continuity in the actions of the Italian parliament, with approved reforms heavily modeled on earlier legislative proposals. There are also several instances of parliamentary consensus on decentralizing reforms, particularly where these improve efficiency or accountability in the political system, but without undermining the interests of national parliamentarians. Yet this apparent federalist consensus masks major intra-party and inter-party differences over what federalism implies for the state in terms of policy divergence, fiscal capacity, and welfare provision.<sup>3</sup> The combination of a vague political consensus on federal reform and its inevitable subordination to partisan pressures has led to a series of reforms that, while often substantial in content and pervasive in scope, are incomplete at the time of approval, not fully implemented by successive governments, and sometimes contradictory in nature. The result of these

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<sup>1</sup> Thomas Gold, *The Lega Nord and Contemporary Politics in Italy* (Palgrave MacMillan, Basingstoke, 2003); Martino Mazzoleni, "The Italian regionalization: a story of partisan logics", 14(2) *Modern Italy* 2009, 135-415.

<sup>2</sup> Anna Cento Bull and Mark Gilbert, *The Lega Nord and the Northern Question in Italian Politics* (Palgrave MacMillan, Basingstoke, 2001).

<sup>3</sup> Michael Keating and Alex Wilson, "Reforming Italy: Institutional Change and the Federal Option", *Edinburgh Europa Paper Series* 2010.

legislative failings has been that the precise allocation of competences and key questions of regional autonomy have been left to constitutional adjudication. Administrative decentralisation has allowed regional bureaucracies to flourish, but without any comparable reduction in the size or scope of the central government. This has made decentralizing reforms more costly than envisaged by their promoters, while encouraging the central bureaucracy to continue micro-managing policy areas that should, in principle, have been largely devolved to regional governments.

### 3. Regions in the Unitary State

With the achievement of national unity in the 1860s, the Italian State was modeled according to the French blueprint of a centralized and bureaucratic administration, with various federal options rejected.<sup>4</sup> It was only with the republican Constitution of 1948 that an innovative but rather limited experiment with regionalization began. Italian regionalism has always been characterized by its asymmetrical design, both as a matter of constitutional law and in the effective use of powers transferred to the regions. At first, only five “special” regions were established, all situated in the periphery: three Alpine regions with large linguistic minorities (Val d’Aosta, Trentino-South Tyrol, Friuli-Venezia Giulia), and the two main islands of Sicily and Sardinia. Each of them is guaranteed autonomy by a “special statute”, a basic law with constitutional rank. Although regionalization of the whole country was laid down in the 1948 Constitution, it was only implemented in the 1970s after an agreement between the governing Christian Democrats and the opposition Communists saw the “ordinary” regions set up. These were granted very limited (and entirely symmetrical) legislative powers and fiscal capacity.<sup>5</sup> To ensure their capacity to wield even these limited powers, regional governments were forced down the path of constitutional adjudication, as there is (still) no effective institutional representation of regional interests at central level.<sup>6</sup> These conflicts and a jurisdiction underlining the necessity of cooperation and consultation, led to the gradual emancipation of the regional level into a system that has been characterized as “cooperative regionalism”. Until the party system crisis in the 1990s, there was little sense this would evolve into a quasi-federal arrangement based on significantly enhanced powers for regional governments. Yet as the governing parties collapsed under the weight of corruption scandals, the Northern League made strong electoral advances by linking political corruption to excessive state centralisation. Autonomist demands from the Northern League and other party actors contributed to shaping a new fluid political context,

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<sup>4</sup> Daniel Ziblatt, *Structuring the State. The Formation of Italy and Germany and the Puzzle of Federalism* (Princeton University Press, Princeton, 2006).

<sup>5</sup> David Hine, “Federalism, Regionalism, and the Unitary State: Contemporary Regional Pressures in Historical Perspective” in Carl Levy (ed.), *Italian Regionalism: History, Identity & Politics* (Berg, Oxford, 1996); Martino Mazzoleni, “The Italian regionalization...”

<sup>6</sup> Roberto Bin, “Veri e falsi problem del federalismo in Italia” in Luigi Mariucci et al. (eds.), *Il federalismo preso sul serio* (il Mulino, Bologna, 1996), 61-78.

where more ambitious attempts were made to regionalize the political system. Yet the Northern League remains a centralized party that has reinforced the pattern of negotiating state decentralization entirely at the level of national parties and institutions. Regional and local governments (of all sizes) remain largely excluded from determining the processes and forms of institutional change. Although the Northern League is active at all levels of government, its territorial units largely play a supporting role by rehearsing nationally formulated policies and enacting symbolic campaigns promoted by party leaders.<sup>7</sup> There has been no real attempt to negotiate levels of autonomy at local or regional levels.

#### 4. Institutional Reforms and Constitutional Amendments (1996-2001)

Major decentralizing reforms were approved by centre-left governments between 1996 and 2001, without strong legislative input from the Northern League, but under pressure from a party that had obtained its strongest vote share in the 1996 general election (over 20% in northern Italy). This engendered a clear political need to supply some form of autonomist reforms, particularly as the centre-left coalition had performed poorly in large northern regions such as Lombardy and Veneto, now strongholds of the Northern League. The first measures approved can be described as administrative decentralization. Known as the Bassanini reforms (1997-8), these rationalized public administration by granting each territorial level of government sufficient capacity and autonomy to pursue policies that had been allocated by the Constitution.<sup>8</sup> This contributed to regionalization of the national health-care system, a long process that culminated in the Bindi reforms (1999-2000), which shifted management of health-care to regional governments and provided some own resources for this task, alongside continued transfers from the central government.<sup>9</sup> Another institutional reform established the direct election of regional presidents, replacing a parliamentary system whereby regional presidents were nominated and (very frequently) replaced by parties in the legislature.<sup>10</sup> This reform required a Constitutional amendment to become effective in ordinary regions (1999) and most special regions (2001). Both amendments were approved with broad cross-party support in parliament, but without formal consultation of the regions concerned. These changes inadvertently created a tension between the interests of political elites at central level (nominated and promoted by

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<sup>7</sup> Nicole Bolleyer, Joost van Spanje and Alex Wilson, "New Parties in Government: Party Organization and the Costs of Public Office", 35(5) *West European Politics* 2012, 971-998.

<sup>8</sup> Mark Gilbert, "The Bassanini Laws: A half-way house in local government reform" in Hine and Vassallo (eds.), *Italian Politics: A Review* (Berghahn, Oxford, 2000).

<sup>9</sup> Franca Maino, "The restructuring of the health service: The Bindi reform and fiscal federalism" in Mario Caciagli and Alan S. Zuckerman (eds.), *Italian Politics...*

<sup>10</sup> Gianfranco Baldini and Salvatore Vassallo, "The Regions in Search of a New Institutional Identity" in Mario Caciagli and Alan S. Zuckerman (eds.), *Italian Politics...*



party leaders) and those of regional or local leaders (directly elected or replaced by citizens), which is relevant for our understanding of inter-governmental relations (see Part 8).

Although a Bicameral Commission (1997-8) was set up to develop workable proposals on broader constitutional reform, this collapsed because of partisan conflict.<sup>11</sup> Yet some of its proposals were implemented in a constitutional reform approved exclusively by centre-left parties, in less than a year between the 2000 regional elections and the 2001 general election. This was a remarkable timeframe given the need for two separate votes in both houses of parliament, each with an absolute majority. The trigger was the heavy centre-left defeat in the 2000 regional elections, particularly in northern regions where the Northern League had returned to the centre-right coalition. Given the rushed timing and opportunistic objectives underlying this legislation, centre-right parties opposed its ratification in parliament and sought a confirmative referendum, which can be convoked when constitutional reforms are approved by under 2/3 of the parliament. The ensuing referendum was held in October 2001, after the centre-right coalition had won the general election and formed a new government. The YES campaign won convincingly with over 64% of the national vote and a majority in all regions except tiny Val d'Aosta. Centre-left parties presented a united front while most centre-right parties were internally divided. The Northern League pushed for abstention, claiming the reform was pointless as it did not significantly advance regional autonomy, and would be replaced with more radical changes sponsored by the League in government. Yet the 2001 constitutional reform merits closer consideration because it continues to represent the basis for the territorial design of the Italian state, since the alternative centre-right reform ultimately failed.

The 2001 constitutional reform completely reshaped the constitutional provisions on the relations between State and regions, often according to previous jurisprudence of the Constitutional Court. The equality of all component units of the "Republic" (State, Regions, Provinces, Metropolitan Cities, Municipalities) was emphasized alongside the concept of functional "spheres" rather than hierarchical levels of government.<sup>12</sup> The "two track asymmetry" - ordinary and special status regions - is confirmed, but single ordinary regions may request additional powers to be transferred to them by the State after an act of parliament (article 116.3),<sup>13</sup> although in practice this asymmetry in competence allocation has never been granted by the Italian parliament. More significantly, the reform drastically changes the distribution of legislative and administrative powers between State and regions: the Constitution (article 117) now lists all legislative powers of the State as well

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<sup>11</sup> Martin Bull and Gianfranco Pasquino, "A Long Quest in Vain: Institutional Reforms in Italy", 30(4) *West European Politics* 2007, 670-691.

<sup>12</sup> Article 114 const., as amended in 2001 reads: "The Republic is composed of the Municipalities, the Provinces, the Metropolitan Cities, the Regions and the State".

<sup>13</sup> Francesco Palermo, "Il regionalismo differenziato", in Tania Groppi and Marco Olivetti (eds.), *La Repubblica delle autonomie. Regioni ed enti locali nel nuovo Titolo V* (Giappichelli 2nd ed., Torino, 2003), 55-62.

as the fields of concurrent legislation (i.e. where regions can legislate only within the framework of general guidelines determined by a national law), with all other fields left to the regions. Management of health-care became entirely devolved to regional governments, which also gained an enhanced role in, *inter alia*, economic development and professional training. Administrative powers were no longer connected with legislative ones, but distributed in a flexible manner according to the criteria of “subsidiarity, differentiation and proportionality” (article 118). The new provision on fiscal federalism granted partial financial autonomy to sub-national entities (article 119) but required implementing legislation. All regions were required to establish a consultative body for the representation of local authorities within their territory (article 123). The elimination of preventive State control (before the reform, all regional laws had to be approved by the government before entering into force) marked the equal rank of regional and State legislation, but also prompted another escalation in adjudication to the Constitutional Court, as regions and the State sought legal clarification over their respective policy spheres (see Part 7).

Although some constitutional amendments had immediate effect, in particular the new distribution of legislative powers, the new lists were revealed to be incomplete and contained many overlaps, giving rise to an enormous increase of controversies. In practice the Constitutional Court had to face the fundamental task of re-defining competences,<sup>14</sup> and frequently this led to the justification of an expanding role of the State: through the assumption of “cross-cutting issues” instead of narrow competence-matters, and the interpretation of the State as guardian of a “national interest”, the Court in several occasions supported a rather centralistic interpretation of the new distribution of competences. A second set of reform provisions required further legislation on details, such as the new financial relations between layers of government. The second Berlusconi government (2001-6) showed little interest in completing the reform inherited from its predecessor, while the Northern League advanced its competing Constitutional reform proposals. Two implementing laws were finally adopted in 2003 (law no. 131) and 2005 (law no. 11), giving life to some amended provisions of the Constitution, but this did not come close to the range of implementing legislation actually required. The issue of financial relations remained unresolved, as the envisaged system of fiscal federalism was only approved a full decade later by the parliament (see Part 6).

## 5. The Failure of Federal Reform (2001-6)

The second Berlusconi government (2001-6) eventually approved its own constitutional reform after several years of tortuous negotiations between the Northern League and statewide parties in the governing coalition. The Northern League insisted on creating a new Ministry of Institutional Reform

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<sup>14</sup> Roberto Bin, “I criteri di individuazione delle materie”, 5 *Le Regioni* 2006, 889-902.

and allocating the post to their party leader Umberto Bossi, to clearly display their sponsorship of the proposal. Although federal reform was a condition of the pre-electoral and governing alliance between the Northern League and the rest of the centre-right coalition, the precise details were not agreed in advance. The outcome of intense negotiations was an ambitious but rather incoherent reform package that sought to appease different parties in the governing coalition through a series of somewhat contradictory concessions. Approved unilaterally by centre-right legislators in November 2005, it was rejected by Italian voters in a confirmative referendum held in June 2006.

The key Northern League demand for regional devolution was met through a modest increase in 'exclusive' regional competences (local policing, school administration), but fell well short of initial demands made by the party leadership. The central government re-gained certain competences, including a residual control of norms on health-care; a renewed control over national transport infrastructures and energy networks; and exclusive competences in the areas of job security, communications and professional qualifications. Other provisions sought to reverse some aspects of the 2001 constitutional reform, including a new clause allowing the Senate to suspend any regional law that contravened the 'national interest' within 30 days of its promulgation, and the abolition of a clause that allowed asymmetrical competences to be granted to specific ordinary regions.<sup>15</sup> The most radical aspect of this reform was the attempt to transform Italy into an explicitly 'federal state', through a dramatic change in the composition and election of the parliament, with the attribution of different competences to the Chamber and Senate.<sup>16</sup> Another feature was a stronger Prime Minister, who would be solely responsible for nominating and dismissing ministers, and could determine the dissolution of the Chamber (presently a function of the President). The PM would be directly elected via a formal link to the winning party list, avoiding a parliamentary vote of confidence. The PM could later only be removed from office by his own governing majority, which would need to achieve a 'constructive' vote of no confidence in the Chamber to do so.

Yet this package failed to convince voters. The centre-left coalition (having just returned to government) campaigned compactly for a NO vote in the confirmative referendum, arguing that the proposal was grossly incoherent and socially divisive. Centre-right politicians were half-hearted in their support, with only the Northern League campaigning actively. This helped to produce a majority for the YES vote in the large northern regions of Veneto and Lombardy, but failed to counter-balance the overwhelming NO vote (61%) in the country as a whole. The reform was particularly unsuccessful in central regions dominated by the centre-left coalition (known as the "Red Belt"), as well as all southern regions. Although a number of

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<sup>15</sup> Salvatore Vassallo, "The Constitutional Reforms of the Centre-Right", in Carlo Guarnieri and James L. Newell (eds.), *Italian Politics...*

<sup>16</sup> For more details see Marco Cammelli, "Una riforma costituzionale che non va", 3 *Il Mulino* 2004, 397-414.

similar constitutional proposals have since been debated in parliament, they have lacked sufficient momentum for implementation. This has made it even more necessary to fully implement the 2001 constitutional reform, including its fiscal provisions.

## 6. Fiscal Federalism (2008-2011)

Popular rejection of the centre-right constitutional reform was linked to the difficulty in getting nationwide approval for a reform so heavily promoted by the divisive Northern League. Accepting this setback and taking some comfort from the high YES vote in its electoral heartlands of Lombardy and Veneto, the Northern League campaigned in the 2008 general election for a system of 'fiscal federalism' to safeguard the financial interests of northern taxpayers. There was a heavy dose of realism here: fiscal legislation can be approved without the complexities (and referendums) of constitutional revision, and directly addresses the concerns of northern voters more interested in the economic aspects of federalism than its institutional features. Possibilities for cross-party agreement were higher since 'fiscal federalism' would also complete the centre-left constitutional reform, which foresaw implementing legislation on financial relations between levels of government (art. 119 const.). A reform package was eventually pushed through the parliament with concerted effort by the Northern League, which got the legislation approved despite the chronic instability of the third Berlusconi government (2008-11). Broad cross-party support was certainly achieved at national level, with no party sensing any political traction to be gained from opposing a complex but fairly logical reform whose implementation would be diluted in time. The reform was more contentious for territorial governments, which sought to organize collectively to address elements of the legislation that damaged their financial position (see Part 8).

The asymmetrical nature of constitutional design in Italy is particularly visible when it comes to fiscal arrangements. To a variable degree, all five special regions enjoy more favourable financial arrangements than the fifteen ordinary regions. These disparities are often justified in political and economic terms: the three special regions in the North host more or less sizeable national minorities, while the other two are economically backward islands in the South. When it comes to finances, each special region has a different agreement with the State, mostly regulated in its respective regional basic law, which has constitutional rank. In general, all financial arrangements are quite generous with the special regions compared to the ordinary ones.<sup>17</sup> The latter have some allocated resources but nevertheless

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<sup>17</sup> Enrico Buglione, "Aspetti finanziari della specialità delle Regioni a statuto differenziato", in Antonio Ferrara and Giulio Maria Salerno (eds.), *Le nuove specialità nella riforma dell'ordinamento regional*, (Giuffrè Milano, 2003), 205-242. Enrico Buglione, "Una prima valutazione degli accordi ex legge 42/2009 conclusi dalle regioni speciali e dalle province autonome" in Francesco Palermo, Elisabeth Alber and Sara Parolari (eds.), *Federalismo fiscale: una sfida comparata* (Cedam, Padova, 2011), 307-322.

rely heavily on fiscal transfers from the central government to finance their ordinary expenditure. These central transfers have come under immense strain recently due to the economic and fiscal crisis in Italy, so sub-national governments need to raise their own revenues as well as contain their spending within limits. Further pressure on fiscal reform came from a large number of municipalities belonging to ordinary regions that bordered special ones. These municipalities initiated the complex procedure to be attached to the special regions, largely to take advantage of the improved fiscal environment there, prompting national legislators to pursue a more comprehensive reform of financial arrangements at territorial levels.<sup>18</sup>

Italy retains a rather centralistic arrangement for the collection and distribution of revenues, with most taxes collected by the State and distributed to the regions (and municipalities) according to criteria laid down in the national legislation and based on "historic expenditure", i.e. the basis for the financial transfer is in principle the expenditure of the previous year. Except for a few specific levies, ordinary regions (and their local authorities) cannot establish their own taxes. Ordinary regions also have little influence in determining the criteria for the distribution of financial resources, as they have little weight in the decision-making process at national level (although their consultation is mandatory). More worryingly, there is very little incentive for regions and municipalities to be virtuous as to their expenditure: to some extent the higher the spending, the higher the basis for next year's financial transfer from the State. Bail-outs of insolvent administrations remain worryingly commonplace. The 2001 constitutional reform sought to radically change this system by granting the sub-national layers of government financial autonomy with respect to revenue and expenditures. Article 119 provided that regions and municipalities (as well as provinces) should set and levy taxes and collect revenues of their own, while the State can allocate additional resources and must set up an equalization fund for territories with lower per-capita fiscal capacity. Yet implementing legislation was not adopted to put these principles into practice and this lacuna has adversely affected the whole federalizing process in Italy.

The first serious attempt to implement the constitutional framework on financial relations was made by the centre-left Prodi government in 2007. A draft law was presented for the implementation of article 119 of the Constitution, generally following a cautious line by stressing inter-territorial solidarity and focusing on equalization rather than specifying the taxation powers of regions. Due to the early dissolution of parliament, this legislation

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<sup>18</sup> The complex procedure for shifting regional borders is laid down in article 132.2 of the Constitution: it requires that the concerned municipality approves its separation from one region and its incorporation into another by popular referendum, with the support of an absolute majority of resident voters. Following the positive outcome of the referendum, a national law is required, on which the parliaments of both involved regions should be consulted but without a formal veto. Although referenda were successfully held in several municipalities, no change of border took place and it is very unlikely this will ever happen. Not only is the new legislation on "fiscal federalism" aimed at blocking the migration of municipalities towards the special regions, but for political reasons the Italian parliament has always refused to adopt the required legislation, in order to avoid a proliferation of new claims for transfer across adjacent regions.

was never adopted. In summer 2008, the third Berlusconi government presented a different proposal that was later submitted to parliament. This was modeled on a reform proposal supported by the regional government of Lombardy: a relatively rare case of a regional government setting the policy agenda on state decentralization in Italy. This reform was adopted in a relatively short time (May 2009, law no. 42/2009), with support from across the political spectrum, including the centre-left parties now in opposition. The details are contained in a series of by-laws that will enter into force over a period of 7 years, i.e. the new system will only be fully operational in 2016. This dilution in time was the political compromise needed to guarantee strong parliamentary support. The by-laws were adopted by the end of 2011, although some require further specification in the form of government regulations.

The new system provides all regions with transfers and equalization concerning "essential services" (health care, welfare, education): these are to be granted irrespective of the financial performance of each region. As for other areas including, inter alia, administration costs and public transport, regions will either have to increase their own taxes or be equalized based on benchmarks determined by the State. The criterion of "historic expenditure" will be replaced: equalization transfers to regions and other sub-national governments will be based on "standard costs", as determined by a specialized commission composed by representatives of the national government and of the regions (and municipalities). This means that inefficient and poorly managed regions will receive much less funding from the State, so will have to increase taxes or cut costs in other areas to continue providing "essential services".

While this reform allows regions and municipalities to collect their own taxes in potentially all fields of their competence, including as a means to collect additional resources should transfers from the State be insufficient (which is likely in future), there is rather limited room for regions and municipalities to actually do so. This is due to the constitutional principle which prohibits double taxation: since no activity or good can be taxed twice, and almost all taxes are determined by the State and partly transferred to the regions and municipalities, there is little room for new regional or municipal taxation, except in very few areas where no State taxation already exists. Almost all regional revenues will therefore continue to be based on shares of State taxes rather than on own levies. Municipal taxation is likely to rely heavily on property taxes, which are not taxed centrally.

An unusual feature of this legislation was that the by-laws were approved exclusively by the national government, with no role for the parliament and only limited consultation of territorial governments. This may have been necessary to achieve a compromise between the potential losers of the reform (mainly southern regions) and the potential winners (more efficient northern regions), but this approach is neither very "federalistic" nor particularly inclusive. As for the special regions, they kept their asymmetrical status by negotiating new financial arrangements bilaterally with the national government, although the law clearly states that they should participate in

the overall equalization system (article 27 law 42/2009). In practice, the financial advantages of special regions have been considerably reduced, in exchange for more clarity and control over their own fiscal revenues.

It is beyond doubt that the old system of territorial financing had to be reformed, as it contained tremendous disparities in the financial treatment of the various regions. Only seven regions spent less money than they produced in economic terms, while all the others (53% of the population) spent more - in several cases a lot more - than they generated in terms of fiscal revenue.<sup>19</sup> Regions and municipalities currently raise own revenues for only 22% of their budgets, while their overall expenditure is 54% of the national total. This means there is little direct political responsibility for public expenditure at sub-national levels of government.<sup>20</sup> Yet the objectives of fiscal federalism remain ambiguous: are the new arrangements a means to increase the autonomy of the regions, to reduce public expenditure, or to promote inter-territorial solidarity? Political actors are heavily divided on this question, which may lead to difficulties in future implementation. Another concern is the growth in bureaucracy at territorial levels, with no concomitant reduction in the size of the central bureaucracy. Not only is this unsustainable given high levels of public debt in Italy, it also runs counter to the spirit of the 2001 constitutional reform, which envisaged many legislative competences being devolved to regional governments.<sup>21</sup> Not all regional governments have sufficient policy expertise to fulfill their range of functions, with wide variations in institutional capacity and performance leading to *de facto* asymmetry in the exercise of regional competences,<sup>22</sup> although the latter remain symmetrical in *de iure* terms. The central bureaucracy retains substantial expertise in policy areas that have been transferred (either partially or fully) to regional governments, encouraging it to behave as if nothing much has changed despite major institutional change.

## 7. Constitutional Adjudication

Political bargaining over the form of state design in Italy has produced a system that is now more decentralized, but a constitutional framework that is

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<sup>19</sup> For example, every citizen of Lombardy pays average taxes of 13.700 euros a year, while the expenses for services on the territory of that region are 8.850 euros per citizen; conversely, Calabria receives pro capita 2.750 euros a year more than it generates.

<sup>20</sup> Health-care makes up the most significant regional expenditure and has so far produced debts of 45 billion Euros. These need to be covered by the State budget in order for regions to continue providing ordinary services, raising doubts about whether 'fiscal federalism' can resolve such structural problems in government financing.

<sup>21</sup> Over two-thirds of civil servants are State employees (including almost all teachers), while less than one-third work for regional or local governments (in the case of regional governments, these are mainly employees in the health-care system). This situation continues despite the fact that municipalities and regions are formally responsible for all administrative duties that not attributed to the State, according to the principle of subsidiarity (art. 118 const.).

<sup>22</sup> Robert Putnam and Robert Leonardi and Raffaella Nanetti, *Making Democracy Work: Civic Traditions in Modern Italy* (Princeton University Press, Princeton, 1993); Salvatore Vassallo, *Le Regioni: Capitale Sociale, Equilibri Politici e Rendimento Istituzionale: Rapporto di Ricerca* (Istituto Cattaneo, Bologna, 2009).

unclear and often incomplete, with limited guidance on the respective policy spheres of central and regional governments, and continued interference by the central bureaucracy in regional matters. As a result, most contentious issues have been resolved in some way by the Constitutional Court, which has been performing this role for at least three decades, and is likely to continue doing so for years to come.

Constitutional litigation was initially the only way for the regions to affirm their rights and ultimately to establish themselves after their creation in the 1970s. The most active regions learned to use constitutional adjudication for political purposes, intentionally losing the case but bringing the Court to make important statements as to the limits of State jurisdiction.<sup>23</sup> This strategy was combined with partisan political agendas: nearly all significant inter-governmental constitutional litigation was prompted by regions governed by the Communist Party, which was in opposition at national level. To force institutional cooperation irrespective of partisan incongruence, the Constitutional Court has to a large extent invented Italian regionalism and brought it into a more mature stage. In this respect, the principle of mutual and loyal cooperation between the State and regions has played a decisive role, first by obliging the State to consult the regions in a number of matters of regional concern, then by putting a limit to regional aspirations with regard to the power to decide alone without asking the consent of the State.

The role of the Court became even more decisive after the adoption of the 2001 constitutional reform. The situation became even more difficult than in the early stages: while the overall centralistic attitude of the State continued, the Constitution provided for an advanced federal framework in which the regions are responsible for many policy issues whereas the State only plays a subsidiary role. While some regions remained passive about asserting their new competences, others tried to test the new limits of their jurisdiction and approved legislation that was contested by the State. The question of partisan incongruence was relevant: most inter-governmental litigation occurred between national governments led by the centre-right and regions governed by the centre-left. The Court was suddenly caught between the necessity of making the new constitutional framework work and the need to stop excessive regional activism. At the same time, the Court had to develop a consistent doctrine over a text that is far from consistent. The division of legislative and administrative powers proved to be particularly unclear: according to article 117 of the constitution, there is a concurrent legislative competence for the "national production, transport and distribution of energy" (which technically makes it impossible for the State to have a national energy policy); the State has exclusive jurisdiction on the "protection of the environment, the ecosystem and cultural heritage", but the regions have concurrent competence for "cultural and environmental assets"; nothing is said with regard to traffic and rules on circulation, with the consequence that these are theoretically exclusive regional powers;

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<sup>23</sup> Robert Bin, "L'importanza di perdere la causa", 6 *Le Regioni* 1995, at 1012.



nothing is said as to the coordination of the legislation enacted before and after the reform. And finally, without implementing the provisions on fiscal federalism, most of the new regional powers remained for long time on paper because resources to pursue them were lacking - and continue to be scarce in the current financial situation. In simple terms, the new framework was not workable and the Court was the only institution that could fill it with life.

In the aftermath of the 2001 constitutional reform, the number of cases brought to the Court concerning litigation between the State and regions decuplicated. In practice, the Court determined (and largely re-wrote) the division of legislative and administrative powers laid down by the reform. Only after some years, when the case-law had established the interpretative principles, did the litigation significantly decrease.<sup>24</sup> When the legislation on fiscal federalism will be fully implemented, we can expect a new wave of challenges to take place.<sup>25</sup> The case law on state decentralization is clearly too extensive for this article, but is useful to highlight some key decisions taken on the political organization and policy competences of regional governments.

## 7.1 Political organization of the Regions

The Court was called to bring clarity on the form of regional government. Judgment 2/2004 was a landmark in this respect. Article 122.5 of the Constitution (as amended in 2001) provides that the regional president "shall be elected by universal and direct suffrage, unless the regional basic law provides otherwise". The President can appoint and dismiss his or her cabinet. If the President leaves office, dies, or is dismissed by the regional legislature, new elections are automatically called. Alternatively, any region can go for the parliamentary model, with the president elected or replaced by the legislature.<sup>26</sup> The region of Calabria drafted its new basic law providing for a hybrid between the two models: the president (and vice-president) had to be formally elected by the assembly but with no discretion, as the legislature was bound to elect the presidential ticket that obtained the most votes: in case it did not, the assembly was dissolved and new elections called. Yet after the election, the assembly retained the power to dismiss the president. The system was controversial because the president was directly elected but could be dismissed at any time by the legislature, which undermined his/her capacity to exercise regional leadership. The Court made clear that the Constitution only provides for an "either-or": if the presidential system is adopted then its full consequences should also be

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<sup>24</sup> See at <http://www.cortecostituzionale.it/informazione/statistiche.asp>

<sup>25</sup> Giandomenico Falcon, "Che cosa attendersi, e che cosa non attendersi, dal federalismo fiscale", 4-5 *Le Regioni* 2008, 765-770.

<sup>26</sup> So far only two regions have opted to retain the parliamentary system: South Tyrol (Autonomous Province of Bolzano) and Val d'Aosta. These are the only two regions which were politically stable before the direct election of the regional president was introduced, and did not feel the need to adopt the new system. Both are governed by autonomist parties supported by linguistic minorities in the region (see Annex 1).

accepted, and if a parliamentary system is chosen then the assembly cannot be constrained in its power to elect the president. The draft basic law of Calabria was struck down and had to be rewritten, with a presidential system eventually adopted. This decision paved the way for all other regional basic laws to be adopted,<sup>27</sup> and in every case so far regional governments have opted for the direct election of regional presidents, since this option is most popular among voters.

## 7.2 Competences

Judgment no. 282/2002 was the first decision in which the Court was called to interpret the scope of the 2001 constitutional reform: the central government contested a law of the region Marche on the basis of the previous criteria for the division of competences, and the region claimed its newly acquired power to legislate on issues such as health care and doctors' admissions. The Court recognized the new constitutional framework and the decision was a landmark for subsequent judgments on the division of powers, although it also clarified that some "cross-cutting" clauses, such as the State's exclusive power to determine the essential levels of protection of fundamental civil and social rights (art. 117.2 lit m const.), might trump the constitutional division of powers. It is fair to say that the Court was initially quite restrictive as to the symbolic dimension of the reform, but at the same time quite forthcoming to the new regional powers, and clearly dismissed the national government's attitude of continuing to behave as if nothing much had changed.

Yet the most revolutionary judgment on the division of competences between the State and the regions was issued in 2003. In its seminal decision no. 303/2003 (prompted by a bi-partisan appeal of several regions), the Constitutional Court established that, whenever the State believes that an administrative role in a matter of regional competence (and thus vested in the regions) needs to be performed at State level to achieve better results than those that can be expected by the regions, a State law can take that role away from the regions and vest it in the national government, in accordance with the principle of vertical subsidiarity. The State, however, is bound to obtain the assent (by agreement) of the interested regions, in accordance with the constitutional principles of subsidiarity and co-operation in good faith. This judgment had a tremendous impact on the constitutional division of powers: on the one hand, it transforms a rigid catalogue of competences into a flexible one, based on subsidiarity. On the other hand, it forces cooperation between the State and regions in some very important areas such as the realization of large infrastructural projects, with an increasing effort to make the State and regional policies converge.

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<sup>27</sup> In 2012, the process of adopting new statutes was completed in all ordinary regions, while no special region has adopted a new statute so far.

Other relevant jurisprudence concerns the scope of regional basic laws. Some new regional basic laws (Tuscany, Umbria and Emilia-Romagna, all ruled by a centre-left coalition) contained a catalogue of fundamental rights, some of which went beyond the specific provisions of the Constitution, or at least against the mainstream interpretation of it. The principle of equality was interpreted to include the rights of same sex couples in areas such as housing, assistance, and pensions. Bioethical issues included the right to be informed about any medical treatment. The Court was asked whether and to what extent the regional basic laws could provide for fundamental rights, given that their protection is clearly a reserved State matter. The Court found that the contested provisions are simply declaratory, indicating political goals that are not legally binding. Therefore, the regions are allowed to include them in their basic laws, but they cannot have legal effect (judgments no. 378 and 379/2004).

## 8. Inter-governmental Relations

The absence in Italy of institutional mechanisms for regional representation in national decision-making ("shared rule") has become inconsistent with the substantial advancements in "self rule" for regional governments described earlier, and has become a major lacuna in terms of institutional design. This is partly because the Senate does not function as a territorial chamber. Senators are elected in multi-member regional constituencies through closed party lists,<sup>28</sup> so tend to be more accountable to party leaders than regional voters. The legislative functions of the Senate are identical to those of the Chamber: necessary to pass all legislation and able to vote confidence in the government. So the Senate constitutes a powerful veto player that slows down the legislative process and duplicates the functions of the Chamber.

The problem of Senate reform has been recognized by Italian legislators and extensively discussed in the Bicameral Commission (1997-8). The 2001 constitutional reform did not involve changes to the composition or function of the upper house, as this would have clashed with the interests of incumbent senators, making it impossible for the governing coalition to approve the constitutional changes before a general election.<sup>29</sup> The constitutional reform approved by the centre-right did address this issue, but its result was invalidated by the referendum. Yet the question of territorial representation remains a vexed one, not only due to the enhancement of regional competences and their enshrinement in a revised Constitution, but also because the direct election of regional presidents and mayors raises the

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<sup>28</sup> The exception to this rule are the small special status regions of Val d'Aosta and Trentino-Alto-Adige where senators are elected in uninominal constituencies.

<sup>29</sup> Martin Bull and Gianfranco Pasquino, "A Long Quest in Vain: Institutional Reforms in Italy", 30(4) *West European Politics* 2007, 670-691.

visibility and popularity of sub-national leaders, without providing a clear channel for their views to be considered in national decision-making.<sup>30</sup>

Three limited formal mechanisms exist for managing inter-governmental relations in Italy, alongside some informal mechanisms developed between sub-national leaders to coordinate their negotiations with the central government. These informal mechanisms have strengthened the bargaining position of sub-national leaders, and also raised the salience of formal mechanisms for negotiations. The formal mechanisms were initially introduced in the 1980s, but only made permanent in 1997 as part of the Bassanini reforms. The most relevant of these mechanisms is the State-Regions Conference, an advisory body of the Council of Ministers, grouping together all 20 regional presidents. The Conference is usually presided by the Minister for Regional Affairs, who is present along with a series of government officials. This purely consultative body is convoked on request of the State, which also determines the agenda for discussion. It is required for consultation when the central government intends to introduce legislation that has a major impact on regional governments. In recent years the Conference has vigorously discussed reforms of the health-care system, budget cuts, and the system of regional financing. An almost identical body for municipal governments exists (Conference of State, Cities, and Localities), as well as a Unified Conference that joins the municipal and regional conferences together to negotiate key legislation that affects all territorial governments. The Unified Conference had little relevance until recently, when it became the privileged avenue for negotiations on the proposed system of fiscal federalism, although in many instances the central government proceeded without a formal agreement.<sup>31</sup> The main innovation in the 2000s was a new parliamentary committee on regional issues, where regional leaders could act as non-voting participants, but this has never been activated.

Given the weak formal mechanisms for inter-governmental relations, it is perhaps not surprising that local, provincial, and regional leaders have sought to consolidate lobby groups that promote their respective interests. The National Association of Italian Communes (ANCI) is a historic organization with presence across the national territory, and vocally represents the interests of local governments, primarily vis-à-vis the central government, but also vis-à-vis regional and provincial governments. The Union of Italian Provinces (UPI) has an identical function but is less visible in public debate: provincial leaders are not well known and this level of government is likely to be abolished in future. The Conference of Regional Presidents brings together all regional presidents and has both a political and institutional function. The body contributes to political debate by issuing declarations to the media about legislation that affects regional governments, while its members

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<sup>30</sup> Ilenia Ruggiu, *Contro la Camera delle Regioni. Istituzioni e prassi della rappresentanza territoriale* (Jovene, Napoli, 2006).

<sup>31</sup> Camera dei Deputati, "La Conferenza permanente dei livelli di governo", Documentazione per l'esame dei progetti di legge, XVI legislatura, n. 539, 19.9.2011.

negotiate common positions in advance of the State-Regions and United Conferences. Partisan differences within the Conference of Regional Presidents are explicitly recognized, with the president and vice-president drawn from opposing coalitions. The body has proved useful for reconciling regional interests in negotiations with the State. The Conference supported referendums in the late 1990s to abolish national ministries that dealt with exclusively regional competences. It was also generally positive in backing the 2001 constitutional reform during the referendum campaign, despite the opposition of centre-right leaders at national level. Some centre-right regional presidents supported the reform and were willing to defy the party line, while others remained ambivalent about weakening party cohesion but did little to advance the NO campaign. The Conference did not provide tangible support for the 2005 constitutional reform, partly because of partisan differences between (mainly) centre-left regional presidents and the centre-right government that sponsored it. Yet there was also widespread concern that the legislation did little to advance regional autonomy and lacked any financial provisions, while the proposed Senate reform did not grant the type of “shared rule” that powerful regional presidents sought.<sup>32</sup>

In recent years, partisan and territorial differences have been partly put aside as mayors and regional presidents unite to contest the severe reduction in financial transfers imposed by the central government, issuing largely unified positions in formal and informal bodies. Only Northern League regional presidents and mayors have been effectively barred from adopting public positions at odds with those of their party leadership, although they have often made apparent their displeasure at national measures. During the process of negotiating fiscal federalism, regional presidents of different affiliations were brutally critical of attempts to impose a new funding regime while withdrawing financial support for regions, with the centre-right regional president of Lombardy declaring that, with such a scale of budget cuts, “fiscal federalism is now dead”.<sup>33</sup> Yet this degree of negotiating unity may not be replicable in future: certain regions and localities have more to lose (or gain) from the shift towards “standard costs” and “own resources” envisaged by the new fiscal federalism legislation.

## 9. Conclusion

Given the current instability in the party system and the huge external pressures on Italy resulting from the sovereign debt crisis, it is difficult to make confident projections about the future dynamics of state decentralization. Nevertheless, it is possible to outline some likely features. The 2001 constitutional reform will constitute the basis for institutional

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<sup>32</sup> Presidents of larger Italian regions tend to support the German model, where regional governments send delegates to the *Bundesrat*, in relative proportion to their population. The proposed centre-right constitutional reform offered no more than non-voting participants from regional governments in future Senate proceedings.

<sup>33</sup> *Il Sole 24 Ore*, 12/08/2011.

design in the foreseeable future, as parliamentarians are unlikely to agree on anything to take its place. The immediate challenge will be to shift from a dysfunctional and inefficient system of sub-national financing based on 'historic expenditure', towards a system of fiscal federalism where expenditure by territorial governments converges around a rational formula based on 'standard costs'. There will be serious difficulties in producing such a high degree of convergence between territorial governments of widely differing fiscal capacity and patterns of expenditure, especially because political and institutional actors see different goals in the fiscal federalism reform. For some, it should enhance intra-regional solidarity, while for others it ought to reward the richer and better administered regions. The current legislation is vague enough to support both positions, but strong tensions are likely to emerge in the phase of implementation.<sup>34</sup>

In the past, central governments lacked the will to punish failing administrations and avoid bailing out regions or municipalities in serious financial difficulty, especially when the dominant political culture still assumes that ultimate responsibility lies in Rome. Sub-national governments may gain an enhanced fiscal capacity, but in many cases this will be insufficient to compensate for the sharp and continuing decline in transfers from the central government. The extent to which special regions will contribute to the new compensating fund is another matter for speculation, although it is clear that the system of fiscal federalism will remain highly asymmetrical. Regional and local leaders are likely to continue defending their territorial interests vocally vis-à-vis the central government, exploiting whichever formal and informal mechanisms are available to them, and taking advantage of the current disarray among national parties to carve out personal spheres of autonomy. This may become a major centripetal dynamic in the political system,<sup>35</sup> alongside continued pressure from the Northern League for advances in regional autonomy that can finally satisfy the expectations of their electorate. Yet the tricky question of resolving competence disputes between territorial governments and the State is likely to continue to fall to the Constitutional Court, given the absence of any other institution able to do this. Further budget cuts will make it even more difficult for some regional governments to exercise their full range of policy functions, encouraging the central bureaucracy to continue legislating in areas of regional competence. The dynamics of decentralization will be characterized by strong tensions between levels of government, but without an institutional mechanism for their resolution, given the weakness of "shared rule" mechanisms at national level. Political parties in Italy are even less likely in future to be able to compensate for such deficiencies in institutional design, given their chronic organizational problems and paramount concern with re-positioning themselves in a fluid party system.

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<sup>34</sup> Palermo, Francesco, Elisabeth Alber and Sara Parolari (eds.), *Federalismo fiscale: una sfida comparata* (Cedam, Padova 2011).

<sup>35</sup> Sergio Fabbrini and Marco Brunazzo, "Federalizing Italy: The convergent effects of Europeanization and Domestic Mobilization", 13(1) *Regional and Federal Studies* 2003, 100-120.

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