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Federalizing Italy: The Challenges Ahead

Vincenzo Antonelli

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Over the last decade Italy has been experiencing a political and institutional transformation toward a progressive process of federalization. In 1999 and 2001, two constitutional reforms were made, which considerably increased the powers of regions and local governments. The 2001 reform completely reshaped the constitutional provisions concerning the relations between the central government, the regions and the local governments (Municipalities, Provinces and Metropolitan cities). Recently, the process of federalizing the country has moved ahead. In May 2009, the new law on fiscal federalism, approved under the proposal of the Minister for federal reforms, came into force and is in the way of implementation.

1. The two constitutional reforms of 1999 and 2001 complete the reorganization process of the Italian Republic in regionalist and autonomist terms. This process began in 1970 with the creation of regions with ordinary statute, 20 years after their inclusion in the 1948 Constitution.

After the institution of these regions with ordinary statute, there have been several attempts of devolution of powers from the central government to the regions. The first took place in 1972, the second in 1977, and the last in 1997-1998.

In particular, in 1997-1998 there was a broad devolution of state powers along with a reform of the Public Administration and a simplification of administrative activities. This process was inspired by the principles of subsidiarity, differentiation, adequacy, and fair cooperation. This process was renamed "Administrative Federalism with unamended Constitution".

At the same time, there has been an increase of the powers of local self-governments with the adoption of a general law in 1990, which came after the adoption in 1989 of the European Charter of Local Self-Government.

The trend emerging from these reforms aims at strengthening the decision-making power of citizens towards representative institutions (through the direct election of the top political powers of local governments) and reducing the distance between public powers and citizens (through an increase of resources and services, which are managed directly by local governments).

This trend was reaffirmed and constitutionalized in 1999 and 2001.

2. The Constitutional Law 1/1999 amends the Constitutional provisions on the direct election of the President of the Regional Council and the statutory autonomy of the Regions.

The Constitutional Law 2/2001 extends the direct election of the President of Regional Councils to the Regions having special statute.

Although provided for as temporary solution, the presidential form of government of the Italian regions (direct election of the President, power of appointment of councillors, principle of *simul stabunt simul cadent*), becomes final. As a matter of fact, the new regional statutes abandon the idea of choosing a different solution.

Also, the 1999 reform increases the number of subject matters regulated by statute. The 1948 Constitution provided that the regional statute should regulate "the right of initiative and referendum on regional laws and administrative provisions" and "the publication of regional laws and by-laws." It also contained norms on the internal organization of the regions." With the 1999 amendment, the regional statute provides for "the form of government and fundamental principles of organization and functioning" of the region. Also, with the 2001 reform, it now regulates the "Councils of local self-governments as the consultation body between regions and local governments"

Furthermore, after its adoption by the regional council, the statute was no longer approved with state law.

The 1999 reform gave the opportunity to adopt new regional statutes after those enacted in 1970. Several regions have delayed their adoption, whereas some other regions like Veneto have not yet adopted them.

The overall judgment of this "second generation" of regional statutes is disappointing.

In general, regions have not introduced any innovative provision compared to the past. Most of the time, they have only re-presented principles and institutions already present at the central level or already disciplined in the older statutes, In particular, they have not introduced any different form of regional government other than the one provided by the constitutional law 1/1999.

3. The 2001 reform was the largest constitutional reform since 1948. It was approved by the left-wing parliament majority and confirmed by referendum.

At the institutional level, the reform of Part V of the Constitution marked the full and conscious assertion of the principles of pluralism, diffusion of powers, and autonomy, as already contained in section 5 of the Constitution.

In providing for a "constitutive" character of municipalities, provinces, metropolitan cities, regions, and State, section 114 of the Constitution, as amended, made the afore mentioned in participate to the sovereignty of the legal order, sovereignty no longer a prerogative of state power, but raising the local governments to the role of organizer of the whole legal order.

As a result, in the new constitutional framework, local self-governments can no longer be considered as mere administrative branches of the central state, since they concur to structuring the Republican order.

The most important aspects of this new relationship among central state, regions, and local governments are:

- Equal classification among State, regions, and local self-governments (municipalities, provinces, and metropolitan cities)
- Institution of metropolitan cities and of Rome Capital District
- Recognition of the political and normative autonomy of local self-governments
- Change in the division of legislative powers between central government (specific powers) and regions (general powers)
- Abolition of state control on acts issued by local governments
- Conferral of administrative powers to municipalities according to the principle of subsidiarity
- Enlargement of fiscal and financial autonomy of local self-governments

A state-centered legal order was therefore replaced by a pluralist system where public powers are distributed among a plurality of community and autonomous entities.

4. In 2005, the Parliament (center-right majority) approved a text that amends the Constitution both with regards to the form of government (introduction of the figure of prime minister) and with regards to the relationship between state and local self-governments.
In particular, in addition to providing for a federal Senate, regions are granted exclusive legislative powers in the following subject matters:
a) health assistance and organization
b) scholastic organization, management of scholastic and vocational institutions, without prejudice for the autonomy of scholastic institutions
c) definition of the portion of scholastic and vocational programs of specific interest to the Region
d) administrative police, local and regional
and in “any other subject matter not expressly reserved to the State".

This part was renamed the “devolution” section, and was contained in a constitutional bill pertaining a partial amendment of section 117 of the Constitution, submitted by the Berlusconi government and approved by the Parliament, but later abandoned as incorporated in the new constitutional law.
Nonetheless, the 2005 reform also contains provisions somehow inconsistent with the strengthening of regional powers.
For example, on one side the provision contained in section 116, paragraph 3, of the Constitution, allowing “regions with ordinary statute to request and obtain from the state legislative powers other than those already listed in section 117, is eliminated.
Also, there is the introduction, for regional laws, of the “national interest” limit: when the central Government believes that a regional law jeopardizes the national interest, it can ask the Region to eliminate the prejudicing provisions. If the Region fails to do so, the Government can refer the question to both houses of the Parliament, which can annul it.
The referendum held in 2006 rejected the reform (which has never come into force).

5. The first law that tries to implement the constitutional reform of 2001 is the law 131/2003.
Besides the financial aspects, the legislation aims at redefining the relationship between central state and local governments, as well as the general framework of local self-governments.

However, the central government will not succeed in implementing these provisions within the required time frame.

The second legislation that implements some important aspects of the 2001 constitutional reform is law 11/2005. This legislation regulates the participation of Italy in the normative process of the European Union, and the procedures to implement community obligations. Specifically, this law increases the role played by regions in the procedures aimed at defining and implementing European community law.

Hence, after two legislatures, the 2001 constitutional reform is still largely unrealized.

6. With the 16th (XVI) legislature (that has begun in April 2008) the center-right parliament majority tries to restart the process of implementation of the Constitution through ordinary legislation, thus giving up the idea of a broader reform in federal terms of the Constitution. Starting from the implementation of section 119 of the Constitution in fiscal matters, the idea is to reframe the relationship between central government, regions, and local governments.

Therefore, through "fiscal federalism" we want to implement an "institutional federalism."

Briefly speaking, the major points of law 42/2009 are:

- Abandonment of the model of local financing derived from the State
- Enhancement of taxation powers of the regions through the creation of local and regional taxes by regions
- Overcoming the idea of historic spending as financing tool of local governments
- Introduction of the criteria of standard needs and cost to finance local governments
- Application of the principle of tax territoriality
- Introduction of an equalization fund for areas having less fiscal capacity per inhabitant
- Attribution of their own asset to municipalities, provinces, metropolitan cities and regions
- Introduction of coordination structures (such as a parliamentary committee for the implementation of fiscal federalism, joint technical committee for the implementation of fiscal federalism, permanent conference for the coordination of public finance)
- Coordination of various levels of governance

Furthermore, law 42/2009 temporarily regulates the institution of 9 metropolitan cities (Torino, Milano, Venezia, Genova, Bologna, Firenze, Bari, Napoli e Reggio Calabria) and the regulation of Rome Capital Districit.

Law 42/2009 provides for 21 “delegations” to the Government (for 21 times the legislation delegates to the government the adoption of implementation and regulation provisions within 24 or 36 months from the entry into force). As such, it is not a law that can be immediately enforced.

7. In May 2010, the Italian government adopted the first legislative decree implementing law 42/2009, in spite of the failure to reach an agreement among State, regions, and local governments.
The legislative decree gives municipalities, provinces, metropolitan cities, and regions their own property, and refers the identification of the assets to be transferred to local governments to additional governmental acts.
The State identifies the state property that can be given for free to Municipalities, Provinces, Metropolitan cities, and Regions, and forces local governments to guarantee their utmost functional valorization. This identification is done according to the principles of subsidiarity, territoriality, adequacy, simplification, fiscal capacity, correlation with competences and functions, as well as environmental enhancement. To date, we have talked about minor rivers and lakes, buildings no longer used by the armed forces (like military stations) or by state administrations.
Particularly interesting is the rule that provides that, in order to favour the utmost enhancement of assets and promote the fiscal capacity of local governments, property transferred to local governments can be conferred to one or more investments funds.
Properties could be sold and the revenues have to be used for the public debt’s reduction.

8. Fiscal federalism is one of the most important texts for the implementation of Part V of the Constitution, as amended by constitutional law 3/2001, because the law implements section 119 of the Constitution and allows the exercise of the legislative power in the area of fiscal autonomy by Regions and local governments.
Law 42/2009 gives priority to the implementation of the constitutional reform.
The Italian legislator has chosen to anticipate fiscal federalism and use it as a means to reach the other steps of the implementation of the constitutional reform.
This approach is “fragmentary” and it conditions the whole implementation of the reform.
A reform of the State in federal terms should primarily define the tasks of the various levels of government. Then, it should establish how funding is carried out.
This approach is “temporary”, since the choices made with fiscal federalism are destined to be revised or confirmed by the law on local self-government.
The risk is that temporary decisions become final.

Furthermore, it seems to prevail an "economic" approach even in the definition of the general legislation and in the simplification of local governments.
Expenditure savings and economic efficiency are at the basis of the more recent legislative provisions.

9. It seems that the legislator does not have a clear, overall, and coordinated picture of the redefinition of the various roles, and of the responsibilities of the various levels of government.
During the first two years of the XVI legislature, there have been various relevant interventions touching upon issues concerning the functioning and condition of local self-governments:

- Law 15/2009, providing for rules on controls pertaining local self-governments, among other things;
- Law 69/2009, containing rules on administrative proceedings pertaining local self-governments, among other things;
- Law 94/2009, regulating the responsibility of municipal and provincial bodies as well as local self-governments' personnel, among other things;
- Law 196/2009, reforming public accounting and finance, including local self-government finance,
- Budget law for 2010 and law 42/2010, which anticipate a series of containment interventions of local self-governments' expenses, including a drastic restructuring of municipal and provincial councillors, among other things.

Particularly interesting is law 196/2009 on the reform of public accounting and finance, which amends some provisions contained in law 42/2009. For the implementation of fiscal federalism, the law provides for the harmonization of the accounting systems of all administrations, including territorial ones.
Fiscal federalism requires the adoption of uniform accounting rules, capable of meeting the planning, managing and reporting needs of the entire public finance.
Also, law 15/2009 (preceding law 42/2009) aims at introducing a new evaluation system of the whole administrative action. In addition to the introduction of information and transparency obligations aimed at favouring diffused forms of control by citizens while abiding to the principles of good trend and impartiality, this law asks public administrations and local self-governments to commit to the introduction of evaluation and assessment systems of the performances of civil servants structures and personnel.

This law should become another pillar of fiscal federalism, which can work only upon condition that it is supported by a better performance in economic terms of all public administrations and by the control done by citizens on the work performed by civil servants.

While Parliament analyzes and discusses the bill initiated by the cabinet (AC. 3118 of January 13, 2010) pertaining to both bodies and functions of local self-governments and the simplification and rationalization of the various levels of government, with the goal to get to a "Charter of local self-governments" restructuring the general legislative framework on local self-governments, the Cabinet proposes various laws anticipating and pertaining the topics discussed in the Charter on local self-governments.

Finally, it is worth noting the decree (having force of law) 78/2010 containing "urgent provisions on financing stabilization and economic competitiveness" attempting to face the economic crisis.

This legislative provision aims at containing public expenditures and intervenes on several aspects of the life of territorial bodies.

As far as municipalities and provinces are concerned, the decree intervenes on the composition of top bodies, on municipal concerns, on administrative bodies, and personnel. Particularly, in order to coordinate public finance and contain public expenditures, it considers as fundamental functions those provided for on a temporary basis by law 42/2009 (that the bill "Charter of local self-governments" on the contrary tries to redefine) and regulates the modalities of exercise by local self-government (thus anticipating the implementation of the rules contained in the bill "Charter on local self-government").

Also, in implementing the law on fiscal federalism (where it is provided for the creation of Rome as a Capital District) the decree (having force of law) 78/2010 also provides for the economic sustenance of the City of Rome, which is currently undergoing a serious financial crisis.

As a result, the economic concerns regulate aspects of institutional federalism.

Furthermore, by intervening on the spending of the regions, it has caused the contrary reaction of all other regions (particularly, of Lombardia, a Northern region which favours federalism).

The latter complain that the intervention was done by the Government without sharing measures and any amount of the cuts, without a direct involvement in defining the manoeuvre, even after the approval of the laws on accounting and public finance (Law 196/2009) and of the law implementing section 119 of the Constitution (Law 42/2009).

The regions believe that the reduction of the financial transfers required to fund public offices, and granted to regions, openly clash with the Constitution, and is inconsistent with the principles contained in section 119 and with the subsidiarity principle of section 118 of the Constitution.

The reduction involves the funds destined by the State to the exercise of administrative tasks transferred to the Regions pursuant to the administrative decentralizing process done before the reform of Part V and later consolidated through the amendments brought to sections 117, 118 and 119 of the Constitution.

As such, the economic crisis would bring back to the center all decisions pertaining to public finance, and would slow down the federalization process, thus leading to inconsistent behaviors.

10. The broad scope of the 1999 and 2001 constitutional reforms (being it not limited to the amendment and replacement of a few constitutional provisions) have deeply affected the relationships among state, regions, and local governments. As a result, it requires an implementation process having a systemic and complex character.

Although some provisions are immediately enforceable, some other constitutional provisions need to be implemented.

These interventions shall be coordinated.

First of all, it is necessary to define the general legislative framework of local governments regarding fundamental functions, political bodies (elective), as well as electoral system. This power belongs to the state.

Second, it is necessary to transfer some functions from the State and Regions to local governments, beginning from municipalities and according to the principles of subsidiarity, differentiation, and adequacy.

Third, it is required to reorganize (and simplify) state and regional administrations and simplify the levels of government.

Therefore, it is necessary to reform the planning organisms and procedures among state, regions, and local governments.

More generally, it is necessary to rethink the relationships among the various levels of governance, and implement an institutional federalism.

These are interventions that should outline the framework of fiscal federalism, required and indispensible for a full implementation of constitutional reforms of 1999/2001 that can be realized with the adoption of ordinary laws without the need to amend the Constitution.

An institutional federalism is possible today by using the operative tools given by the Constitution to the state as well as the local self-governments.

But both the state and the regional legislators seem not to be willing to use the constitutional novelties introduced back in 1999. We have already noticed how regional statutes do not present innovative elements. Similarly, regions have not requested particular forms and conditions of

autonomy (the so called differentiated regionalism) that, pursuant to section 116 of the Constitution can be attributed to the regions by means of law for subjects like education, environment, and justice.

In turn, the national Parliament has not proceeded to the integration of the parliamentary committee on regional issues with the participation of representatives of the regions, the provinces, and the local self-governments.

At the same time, the state legislator seems to be not very interested in amending the Constitution with the introduction of a federal Senate as the House that represents local entities. It is not even interested in giving local self-governments the possibility to directly address the Constitutional court to protect their interests. These elements are necessary for a federal reorganization of the State.

11. The implementation of federalism coincides with the 150 years of the unification of Italy (1861). This is the right time for the assessment of the evolution of the form of state in Italy (i.e. the organization of the relationship between territory and sovereignty) and of the division of sovereignty on the territory.

The creation of a national state in 1861 and the need to guarantee its political unity (with the creation of a national Parliament) required a common and uniform legislation and administration over the whole national territory.

Within this framework, local institutions are conceived as articulations of state administrative decentralization, whose intrinsic political elements are denied. At the same time, the choice is not to implement regions, due to the fear that pre-unitary states could re-emerge.

We can note a substantial equation between the principles and values of unity, uniformity, and equality. Both for the legislator and the interpreters, the unity of regulation and administration represented a necessary condition to guarantee the equality of rights and the political unity of the state. This was followed by the attribution within the constitutional organization of a prevalent position to the state institution, having the task of protect this equation.

This trend was recovered also after the enactment of the Constitution, although section 5 provides for the principles of unity and autonomy and the constitutional framework is based on social and institutional pluralism. Therefore, despite the provision for regions and local self-governments, the 1948 Constitution provides for a prevalence of the State. Local self-governments are considered as administrative branches of the State. The central state has the power to legislate on the organization of local self-governments, to approve regional statutes, and to control them.

As a result, we can talk of a hierarchical unity.

Only with the constitutional reforms of 1999 and 2001 a regionalist and autonomist order acquires constitutional character, as I have outlined in my previous slides. Within this new order, the proceedings and mechanisms for a fair cooperation among state, regions, and local self-governments acquire great relevance. Therefore, we can talk of collaborative unity.

In this framework, the Constitutional Court has engaged in the solution of quite contentious interpretative issues which have emerged after the reform of Part V of the Constitution. This intervention of the Court has been called "replacement" before the inactivity of institutional characters. However, the Court has showed a general continuity in its judicial interpretations.

Furthermore, if on one side the judicial interpretation of the Court has recognized to the local self-governments the derivation from the democratic principle and from people's sovereignty, on the other side it has confirmed the "peculiar position" of the State, that can be drawn from the repeated referral to a "unitary instance" manifested by the recall to the respect of the Constitution, of the ties deriving from European law, and of the international commitments which limit all legislative powers, and of the need to protect the judicial and economic unity of the same legal order.

According to the Constitutional Court, section 114 of the Constitution (as amended) does not provide for a total equality among the bodies mentioned therein, since they have powers that are not similar among them. Only the State has a power of judicial review, while municipalities, metropolitan cities and provinces have no legislative powers.

In the Court's opinion, the provision of unitary instances postulates that within the legal order there is a subject having the role of ensuring its full satisfaction: the State.

Nonetheless, there is a broad tendency to claim that principles of unity, uniformity, and equality are more and more replaced by the principles of federalism, differentiation, and equivalence.

The evolution in federal terms of the unitary state determines an administrative differentiation and certain equality among citizens' rights (the Constitution talks about essential levels of services concerning civil and social rights that shall be guaranteed over the whole territory)

12. Is it possible to talk about *federalizing Italy* after the 1999 and 2001 reforms?

Compared to the theoretical models of federal state, in Italy there are tri-lateral relationships among state-regions-local self-governments, and non-bilateral relationships among state and regions.

The state reserves for itself legislative powers on important issues related to local self-governments, powers that are usually reserved to regions or provinces in traditional federal states.

Furthermore there is no full equality between state and regions.

It is also possible to use the "federalism" criteria and talk about a more or less federal character of the Italian order. Probably we are at the first step on the stairs to federalism.

But at the same time, if we use the “unitary or centralized” criteria, we could talk of a unitary or centralized state that is becoming weak.

In my opinion, what is missing from a traditional federal model is the federal covenant (*foedus*). I do not believe that this role can be currently played by the Constitution as amended in 1999 and 2001.

Obviously, starting from the idea that there is no single model of federalism, it is always possible to say that Italy is experimenting its “Italian way” to federalism.

However, I don’t think that the ultimate goal is really the creation of a federal system.

Both at the cultural and at behavioral level, it is common to observe “centralisms” and hidden counter-reforms towards the center.

There are still several contradictions in giving effective and concrete implementation to a constitutional framework that should concur to strengthen a substantial democracy, giving responsibility to local self-governments and stimulating the participation of citizens to the management of common interests.

For example, the state continuously recurs to the protection of unitary (national) interests in order to invade regional jurisdiction, and it implements laws as if it still had legislative powers over subjects that the 2001 reform has given to regions.

This is a hidden non-enforcement of the 2001 reform that also characterizes the work of central administrations with respect to local self-governments.

It is at the cultural and educational level of civil servants and administrators that the game of federalism is played.