CHAPTER THREE

SOUTH TYROL’S SPECIAL STATUS WITHIN THE ITALIAN CONSTITUTION

Francesco Palermo

I. Italian Asymmetric Regionalism and its Evolution

A. Regionalism in Italy: Origins and Evolution

Italy was the first country to experiment with devolutionary asymmetry—a model invented by the Spanish Republican Constitution of 1931 but not implemented there because of the immediately subsequent Franco revolution. The 1948 Italian Constitution had to face a complex situation with regard to regional diversity. On the one hand, international obligations imposed by the Paris Peace Treaty had to be taken into account, such as the Gruber-Degasperi Agreement on the protection of the German-speaking minority in South Tyrol, mandating a substantial amount of self-government for this national minority; on the other hand, concrete fears of the possible secession of parts of the national territory as well as geographical reasons made the establishment of a strong sub-national level of government in at least five areas inevitable: Trentino-South Tyrol, the Aosta Valley, Friuli-Venezia Giulia (three relatively small alpine regions where ethnic minorities are settled), and Sicily and Sardinia (the two main islands facing economic and social problems). In order to avoid too strong an asymmetry between these areas and the rest of the country and to experiment with a ‘third way’ between a federal and a unitary system, regions were foreseen for the whole country, although enjoying a much lesser degree of autonomy than the five named above.

The development of Italian regionalism can be roughly divided into three stages:

1. The early period (1948–1972);
2. The implementation of regional autonomy (1972–1999); and
3. The new constitutional framework (1999 onwards), which is still in the process of implementation.

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1 This was the case in the Aosta Valley (a small region in the northwest of the country, which had a long tradition of self-government and which had even by 1943 elaborated a plan for a strong autonomy) and in Sicily, which elaborated its own Constitution as a possible independent state in 1946, before the Italian Constitution was drafted.

2 As in the case of Sardinia, which, at that time, was quite isolated from the rest of the country.
1. The Early Period (1948–1972)
In 1948, the democratic Constitution established twenty regions (Art. 131), five of which enjoy a higher degree of autonomy (Art. 116). These five so-called ‘special’ or ‘autonomous’ regions have their own ‘basic law’ (statuto, hereinafter “Autonomy Statute”, AS), which have each been approved as a constitutional law of the state, have received much more legislative, administrative and financial autonomy, and can negotiate their own by-laws directly with the national government, bypassing the national parliament. In addition, the powers of each region and, to some extent, even the governmental structure are different in each special region. The remaining fifteen so-called ‘ordinary’ regions enjoyed only a limited amount of legislative power in specific fields listed by the national Constitution (Art. 117), their autonomous statutes were less firmly guaranteed, being formally approved only by the ordinary law of the state, and all had a very similar if not identical governmental structure. Moreover, for complex political reasons, they remained on paper only for more than twenty years: only in 1970 were the ordinary regions established and only in 1972 were the first laws devolving some legislative power enacted. The following process of implementation lasted for at least two decades.

During this first era of Italian regionalism, therefore, only the special regions existed. They developed rather different political systems in each of them and, even more importantly, each special region developed bilateral relationships with the central government.

2. Legislative and Judicial Implementation (1972–1999)
Between 1972 and 1999, a long and complex process of implementation of the autonomy regimes of both ordinary and special regions gradually took place. In the early 1970s, the ordinary regions were established (1970) and the election of their bodies took place (1972). In 1977, effective powers finally began to be transferred to the ordinary regions. These regions, however, were lacking in political culture as well as governmental experience. Moreover, no specific cooperation instrument between these regions and the state was provided: therefore, the power-sharing between the state and the regions envisaged by the Constitution pretty soon showed its inadequacy, especially in terms of cooperative mechanisms and division of powers. All this led to a profound cleavage between the constitutional provisions and reality. The more active regions tried to ‘force’ the central government towards a more benevolent interpretation and more autonomy whereas the weaker regions were left behind. Thus, the case-law of the Consti-

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3 See the chapter by Francesco Palermo on the implementation of the Autonomy Statute in this volume.
4 At the same time, the most autonomous special region (Trentino-South Tyrol) was profoundly changed in its structure with the new Autonomy Statute (1972), establishing two autonomous provinces that are, de facto, two different autonomous regions.