

From the Euro-crisis to the COVID-19 crisis: lessons learned and to be learned by Regional States (The Italian and the Spanish case)

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1. The comparative study of Italy and Spain; a necessarily cautious approach¹

The decision to study the impact of the Euro-crisis and the COVID-19 crisis on Regional States requires two initial remarks. First, it is well known that the distinction between Regional and Federal States is a contested one. Regional States are normally understood in relation to Federal states, but there is no agreement on what Federation implies, beyond the minimum definition of federalism as a "combination of self-government and shared government"². Furthermore the distinction between federalism and regionalism cannot be merely quantitative but it must also be qualitative. Be that as it may, Spain and Italy have been traditionally labelled as Regional States.

Secondly, comparative constitutional law on issues related to federalism is particularly intricate. As Vicky Jackson pointed out "federal systems are built on inherently political compromises, often quite particularly contextualized, and consist of interdependent "packages" whose particular features may function quite differently in connection with other federalism"³.

Thus, even though there is much to be learned from the comparative analysis, the approach must be particularly cautious. In this regard, Spain and Italy have been selected as case studies because they share key elements and trends that can make the comparative analysis fruitful.

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¹ This contribution was ended on 16th October 2020

² D. J. Elazar, Exploring Federalism, 1987

³ V. Jackson, "Narratives of Federalism: Of Continuities and Comparative Constitutional Experience", Duke Law Journal 51, 2001

1. There has been a reciprocal influence between both constitutional settings. The theory of the regional state in Italy drew inspiration from the Constitution of the Spanish Second Republic. Later on, the Italian Constitution inspired several provisions of Title VIII of the Spanish Constitution devoted to the so-called "State of the Autonomies". Finally, the Italian constitutional reform passed on 2001 took into account the Spanish experience, as article 116.3 of the Italian Constitution makes clear.

2. Both Constitutions enshrine a dynamic asymmetrical Regional State allowing the coexistence of Regions with different powers, being bilateral cooperation one of the more salient trails of cooperation in both Regional systems.

3. In both cases there is a clear lack of mechanisms of participation of the subnational units in the decision making processes at the national level, the functioning of the Spanish and Italian Upper Chambers being a blatant example.

4, The central government's stability has been quite scarce and the political divide increased dramatically in the frame of the Euro-crisis and remains up to the date.

5. Italy and Spain have been particularly hit, and hit in a similar way, by both the Euro-crisis and the Coronavirus crisis. In fact, both crises might be shaping a reconfiguration of both Regional States.

2. From the Euro-crisis to the COVID-19 crisis

During the Euro-crisis the drive for centralization was deeply reinforced in Italy and Spain. There was also a remarkable increase of litigation before the Italian and Spanish Constitutional Courts which resulted in case law that implied a strong deference for the central government's powers and contributed greatly to reducing the powers of the Regions, particularly regarding social policies. In fact, the measures required to reduce the public debt in the context of the Euro crisis were extremely demanding and were applied under particularly tight time constrains. Furthermore, lowering the financial contribution to social policies was the easiest way to reduce administrations' expenditures quickly. In this regard, it is worth

highlighting that social policies account for up to 75% of the Italian and Spanish regional budgets. It is quite difficult to envisage how one could reduce regional deficit without decreasing the expenditure in social services (for instance, according to the Stability Plan 2012-2015 for Spain, the budget cuts implied a saving of 7.2 billion Euros in the area of health, in which the Regions hold the majority of the powers).

The financial and economic crisis, the conditionality imposed by the EU to tackle the crisis, the role of the Courts and the long-standing shortcomings of the Italian and Spanish Regionalisms provoked a centralization and strengthened the competition among territorial players, weakening thereby each other⁴. However, decentralization and integration go hand in hand. The structure is strong when the framework is strong; in other words, when both the whole and the parts gain strength simultaneously on an interdependent basis⁵. The trend of regionalism in Italy and Spain weakened all the territorial players since it increased the powers of the State but also the mistrust of the Regions towards the State. And the lack of trust in partners eventually leads to a decline in the confidence in the whole system that diminishes the range of activities available to the system⁶.

Thus, when the COVID-19 crisis impacted upon Italy and Spain both constitutional systems were unequipped to deal with a crisis that has been characterized as complex intergovernmental problem. A problem that demands "intergovernmental collaboration for effective and legitimate policy responses, while making the necessary collaboration difficult to achieve"⁷

⁴ R. Toniatti, "L'autonomia regionale ponderata; aspettative ed incognite di un incremento delle asimmetrie quale possibile premessa per una nuova stagione costituzionale del regionalismo italiano", *Le Regioni*, XLV, n. 4, 2017

⁵ D. J. Elazar, *Exploring Federalism*, 1987

⁶ Luhmann, *Familiarity, Confidence, Trust*, D Gambetta, *Trust Making and Breaking Cooperative Relations*, University of Oxford, 2008

⁷ M. Paquet and R. Schertzer COVID-19 as a complex intergovernmental problem. *Canadian Journal of Political Science* 2020

The ongoing Coronavirus crisis is being particularly harsh in both countries, with Spain suffering more acute flare-ups of COVID-19 than Italy by now. The Coronavirus crisis is also strengthening the role of the Governments at the expense of the Parliaments and, in particular, the role of the central governments. In both cases the central government approved a very strict lock-down in the whole territory in the framework of a state of emergency/state of alarm that granted powers to the central government to decide temporarily in fields in which the Regions have the main competence (such as sanitary policies). However, the Italian government has extended the state of emergency till 31st January 2021, whereas the Spanish government put an end to it on 21st June due to the lack of parliamentary support to it.

In fact, the fierce political struggle within the Lower Chamber has its parallel in the relations between the State and the Regions in Spain, Madrid and Cataluña fighting back the main proposals and recommendations stemming from the central government. Unsurprisingly the President of Madrid is a member of the Popular Party, whereas the Catalan government is a coalition between political parties pro-independence. The current political struggle between the government of Madrid and the government of Spain is a striking example.

On 9th October 2020 the Spanish government declared the state of alarm limited to several cities of Madrid, including the capital⁸, against the opinion of the regional government. The facts leading to the state of alarm have been quite bewildering. Both governments set up a task force to tackle the alarming rising of the flare-ups of COVID-19 in Madrid, whose memberships were two ministers of the Spanish Government and a minister and a vice-president of the Region. Theoretically this task force reached an agreement, that the vice-president of the Region made public, but one day later the government of the Region rejected completely the agreement. Thus, the Minister of Health submitted the agreement to the National Health Inter-territorial Council, a Sectorial Conference composed by members of the regional governments plus the Spanish minister of Health. The plan was approved thanks to the votes of four out of 17 Regional governments. Only three regional governments

⁸ Royal Decree 900/2020, 9th October

composed by members of the Popular Party plus Catalonia and Ceuta voted against it. The decision of the Sectorial Conference was mandatory and Madrid passed a decree to implement it but, on the same token, Madrid challenged its own decree before the Superior Regional Court of Justice. On 7th October the decree was declared null by the Court⁹. The central government urged the Regional government to restrict the movement in the cities more affected by the COVID-19 before a three-day weekend to contain the epidemic within the Region, but the regional government refused to take such measure. The central government declared the state of alarm.

These unprecedented events can only be understood in the midst of a fierce political struggle between the two main political parties, with Popular Party trying to weaken the central government but also to gain the terrain that lost before the far right political party in the last year elections (regional and general). In a nutshell, these events seem to be due to a misuse of the regional structure for political conflicts that would probably take place anyway, rather than by the regional structure itself¹⁰. Still the flaws of the intergovernmental relations (IGR) have come to the forefront as a consequence of the pandemic.

In the Italian case, the cooperation between the Regions and the State to tackle the current crisis has not been without contention¹¹, but it has been smoother by large than in the Spanish case. In this regard, it must be born in mind that the Conference of Presidents State/ Regions is much more developed in Italy than in the Spain. Furthermore, the Conference of the presidents of the Regions has played an essential important role in Italy, the president of such Conference acting as a kind of mediator between the Regions and the Central government (as foreseen in the health emergency laws, i.e Art.2.1 Decree Law No 19, 25th March 2020). It can be

⁹ The Superior Regional Court of Justice of Castilla and León reached a completely different decision on an almost identical case on 9th October. The order of the Superior Regional Court of Justice of Madrid has been challenged before the Supreme Court by the Spanish government, the case is still pending.

¹⁰ F. Palermo. Is there a space for federalism in times of emergency? Verfassungsblog

¹¹ E. Albert, Action and Reaction: What COVID-19 can teach us about Italian regionalism <https://blogs.eurac.edu/eureka/action-and-reaction-what-covid-19-can-teach-us-about-italian-regionalism/>

wondered whether the Conference of Presidents of the Regions has effectively impacted upon the decisions adopted by the Italian government or has just facilitated the coordination among regional governments and also whether the role played by the President of the Conference Regions and Provinces is coherent with the constitutional design¹². Be as it may, even though the so-called "system of the Conferences" has to be perfected¹³, it has proven to be better equipped than the Spanish one.

In fact, on the Spanish case the lack of horizontal cooperation among the Regions has proven to have deteriorating effects for the whole political system, since it makes easier for a regional government to become a kind of leader of the largest opposition party, rather than "just" a regional government.

In this regard, in the case of the measures passed by the National Health Inter-territorial Council, if they would have been taken by a horizontal forum the political impact of the Madrid's vote would have been quite different. It would not have been a vote against a government supported by another political party but rather as a vote that members of its own political party did not follow. The focus would have been on the discrepancy between Madrid and Castilla and Leon, a region also ruled by the Popular Party that supported the agreement submitted to the National Health Inter-territorial Council. It would also be emphasized that Murcia, also ruled by Popular Party, abstained in the vote. However, since it was a vertical forum it was easily presented as a struggle between the central government and the regional government, i.e between the Socialist Party and the Popular Party. The position of the rest of the Regions went quite unnoticed.

¹² E. Catelani "Centralità della conferenza delle regioni e delle province autonome durante l'emergenza COVID-19? Più forma che sostanza", Osservatorio sulle fonti, 2020

¹³ Among others, see F. Del Prete, "L'attuazione del principio di leale collaborazione nella prassi della Conferenza Stato-Regioni", *Istituzioni del Federalismo*, No 1, 2020; M. Castiello and G. Mazzola "L'evoluzione del Sistema delle Conferenze", *Amministrazione In Cammino*, 2014.

In a nutshell, the horizontal cooperation preserves better the powers of the regions than the vertical cooperation¹⁴ and reduces the risk of misuse of the IGR because if a Region wants to become the antagonist of the central government it needs the support of a significant number of its peers. Such a support can be difficult to rally when the decision of a Region can deeply damage the policies of another one, for instance in the management of a pandemic. Each territory may need different measures but those measures have to be coordinated at the very least with the neighboring regions. Hence, even though politics can deeply determine the functioning of a Regional State, the institutional design might facilitate or impede the abuse of a pluralistic decision-making for political purposes.

All in all, it is obvious that in the Spanish case the weakness of the Spanish government, formed by a minority coalition in the Parliament, and the increasing divide between political parties are the key factors in the current functioning of the Regional State. Still, the cooperation has clearly increased during the pandemic, the political dialogue replacing the courts in contrast to the Euro-crisis.

3. Growing cooperation in times of pandemic; learning from the crisis or weathering the storm?

We are witnessing a blossom of the cooperation between the State and the Region both in Italy and in Spain to tackle the current crisis. As a matter of fact, the COVID-19 crisis has brought an unprecedented reborn of the Conference of Presidents in Spain, since there had been 14 meetings since March in which all the regional presidents have attended, with only one exception¹⁵, whereas since its inception in 2004 to 2020 the Conference of Presidents was convened only in 6 occasions. In fact, the Conference of Presidents always had a quite low performance in Spain¹⁶.

¹⁴ J. Schnabel, "Committed to Coordination? Intergovernmental Councils as a Federal Safeguard", *Swiss Political Science Review*, 23, 2017,

¹⁵ The president of Catalonia did not participate in the face-to-face meeting this summer

¹⁶ See, M. J. García Morales/X. Arbós Marín, "Intergovernmental Relations in Spain; an essential but underestimated element of the State of the Autonomies" J. Poirier, Ch. Saunders and J. Kincaid (eds) *Intergovernmental Relations in Federal Systems: Comparative Structures and Dynamics*, Oxford University Press, 2015

This trend has not been stopped by the political controversies and the EU COVID-19 Recovery Fund will be discussed on 26th October in a meeting of the Conference of Presidents, in which the President of the EU Commission will also participate. Also, as already stated, the "system of Conferences" is having a determining role in the management of the COVID-19 crisis in Italy. This increasing role of the IGR in both, in Italy and Spain, is in line with the blooming of executive bodies based on cooperation¹⁷. Even in cases in which the intergovernmental relations are scarce and deeply flawed, the pandemic has fostered the cooperation because the interconnection in managing powers has grown exponentially. Unluckily enough, this turning point in the development of the Regional State can be wiped out by the political struggle at a very sensitive time for regions.

The lock-down implied the centralization of the measures taken but as the pandemic slowed down the regions were back in the picture. This new scenario implies new and higher challenges. On the one hand, there is an increasing request of asymmetrical responses to the crisis. The pandemic affected differently and not synchronically the territories¹⁸. Furthermore, the constitutional system of Italy and Spain enshrined an asymmetric Regional State and, with it, the bilateral cooperation¹⁹. This extremely relevant bilateral cooperation cannot be disregarded since it is well anchored in both constitutional systems. Thus, the growing multilateral cooperation has to take the existing bilateral one into account.

On the other hand, the litmus test for Regional States is just starting. Beyond the sanitarian crisis, the pandemic has triggered a severe economic and social crisis in both countries. Regions and the State have to decide not only the measures to

¹⁷ F. Palermo. "Beyond Second Chambers: Alternative Representation of Territorial Interests and Their Reasons", *Perspectives on Federalism*, Vol. 10, Issue 2, 2018

¹⁸ EU Annual Regional and Local Barometer: COVID-19: a regional health crisis <https://cor.europa.eu/en/our-work/EURegionalBarometerDocs/4370-Barometer%20optimized.pdf>

¹⁹ F. Palermo. "Beyond Second Chambers: Alternative Representation of Territorial Interests and Their Reasons", *Perspectives on Federalism*, Vol. 10, Issue 2, 2018

tackle it but also how to share the burden²⁰. This decision is the really tricky one because the incentive to shift the blame is extremely high. The cooperation would be a great tool to face it because it can guarantee a coordination that shares the benefits and the costs. Regions should not forget that the costs of the last crisis were particularly paid by the regional and local governments²¹. Hence, it seems wise to change the strategy and commit themselves to strengthen the cooperation among them and with the State. The EU is leading the way, since it seems to have learned the lesson after the Euro-crisis and it has articulated a very different response to tackle the COVID-19 crisis. It remains to be seen whether Regions have also learned from the former crisis to better tackle the current one.

²⁰ A. Benz. "Maßnahmen in der Corona-Krise. Vorteil Föderalismus". <https://www.hss.de/news/detail/vorteil-foederalismus-news6146/>

²¹ Opinion of the Committee of the Regions on 'Devolution in the European Union and the place for local and regional self-government in EU policy making and delivery', OJ C 139, 17.5.2013, p. 39–45