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**What Role for Regional Assemblies in Regional States?  
Italy, Spain and the United Kingdom in Comparative  
Perspective**

by

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## Abstract

The article aims to underline firstly the trend towards the homogenization of the subnational forms of governments, at regional level, across regional States, focusing on Italy, Spain and the United Kingdom (UK). This is only marginally the outcome of constitutional provisions and jurisprudence, but it is mainly caused by the passive attitude of the Regions, which either remain inactive to the opportunity of reforms and adaptation or decide to adopt institutional solutions already experimented or ‘constitutionally prepackaged’, without any changes.

Secondly, it is highlighted that, with the exception of the UK, regional Assemblies with legislative powers have experienced a process of progressive weakening, especially on the side of the legislative function. Also in order to counteract this tendency, Regions of the three States are trying to enhance the role of legislative Assemblies as *trait d’union* between voters and institutions at subnational level, on the one hand, testing tools which are inherited at State level; on the other hand, strengthening the position of standing committees within the Assemblies

## Key-words

Subnational forms of government, Regional States, Regional legislative Assemblies



## 1. Introduction

The balance of powers, particularly between the Legislative and the Executive branches, at subnational level has rarely interested constitutional scholars, with some exceptions. For instance, James Madison in *Federalist Paper no. 47* blamed the New Jersey Constitution of 1776 for having ‘blended the different powers of government’ (Williams 1997-1998: 1037-1038),<sup>i</sup> even though nowadays most subnational Constitutions, especially in the United States, acknowledge the importance of the principle of separation of powers and other cornerstones of contemporary constitutionalism.

Depending on the constitutional order, and especially on the way the Executive branch is appointed and operates – whether it is chosen directly by citizens or indirectly by the Legislature and if it bases its legitimacy on the confidence relationship –, representative Assemblies are deemed to play a more or less prominent role in the subnational institutional architecture. To this purpose, also the party system, the electoral system and the internal organization of legislatures are crucial elements.

Indeed legislatures, and above all those established within small territorial communities, are by definition the institutions which act closest to the people; and therefore they are (or should be) able to capture social demands and represent them along the decision-making process.<sup>ii</sup> This is why having strong or weak legislatures at subnational level makes the difference also in terms of ‘democratic performance’ of a certain constitutional system (Tarr 2004: 4-7).<sup>iii</sup>

The aim of the article is to analyse the role of Assemblies in subnational systems of government, looking at how the relationship with the Executives is shaped. The article focuses on the comparison of three European regional States: Italy, Spain and the United Kingdom and their regional legislative Assemblies. In fact, the choice of these countries is justified by several aspects: firstly; all of them are expression of the European subnational constitutionalism (Delledonne-Martinico 2011: 2-3); secondly, in the three contexts, regionalization began within unitary States and is perceived as an ongoing process towards the strengthening of the subnational units, at least according to what the written norms require (mainly the Constitution); thirdly, the three States are always depicted as examples



of asymmetrical regionalization, where not all the subnational units are equally empowered; fourthly, notwithstanding this last feature, these are the only European countries to be provided with a legislative Assembly in all their established Regions whose forms of government was definitely conditioned by decisions taken at central level. Thus the case selection follows the paradigm of the prototypical case logic, being Italy, Spain and the UK three prototypes of Regional States in Europe (Hirschl 2005: 125-155).

The comparison amongst systems of government in Regional States has been even less frequent than those regarding Federal states, probably because Regions are usually less autonomous than Member States in setting their institutional devices. Notwithstanding this premise and observing the (central) Constitution, the Regions considered (20 in Italy, 17 in Spain and 3 in the UK) have developed their own institutional specific features,<sup>IV</sup> sometimes departing from the only institutional model at their disposal and provided by the Constitution itself or by the national legislature (as for the Westminster model). Sometimes the novelty of the institutional solutions proposed at regional level has become a model for the central government or for other subnational units in that country.

Of course the definition of regional institutional arrangements has not been a 'peaceful' process everywhere. Indeed, on some occasions, constitutional Tribunals, such as the Italian constitutional Court, banned the content of regional Statutes on governmental organization, being inconsistent with the Constitution (see further, para. 4); on other occasions, such as in Northern Ireland, the devolution process was suspended and the direct rule was restored (between 2002 and 2007) because of the escalation of tension between unionists and nationalists.

Three main trends can be found when looking at the position of regional legislative Assemblies in each of the three States: the first is the tendency towards homogeneity. When suitable (as said before, the Northern Ireland Assembly is quite a unique case that is unlikely to move closer to that of the Scottish Parliament and the Welsh Assembly), the functioning of the regional Assemblies and the regulation of regional legislature-executive relationship resemble one another amongst different Regions of the same State; the second trend relies on the influence of the combined effect of the electoral systems, of the party systems and of the internal organizations on the strength of regional legislatures; the third element is the shift of focus from the legislative function of regional Assemblies to the oversight function and the attention paid to open their procedure to the public.



The article is devised as follows. Section 2 tries to underline to what extent the concept of subnational constitutionalism can be extended to regional States and the importance of the constitutional autonomy of Regions; section 3 briefly describes the nature of regionalism in the three States and the influences exerted on the establishment of the regional legislatures; section 4 looks at the structural features of the regional Assemblies in Italy, Spain and the UK (how they are named, how they are elected, their size, and their internal organization); section 5 will consider the status of the regional legislative Assemblies *vis-à-vis* their Executives (the confidence relationship and the bodies involved as well as the autonomy of the Assembly); finally, section 6 will take into account the poor performance of regional Assemblies as law making authorities and the need to re-orient their role.

## 2. The issue of subnational constitutionalism in regional States

Italy, Spain and the UK are deemed to be regional States (Olivetti 2003; Contreras Casado 2006; Bogdanor 1999; Leyland 2011), formed through a process of decentralization of a unitary State (*contra*, on the Spanish case, Aguado Renedo 1996: 189).<sup>v</sup> Regions enjoy political autonomy – which means that their political institutions are directly or indirectly chosen by people independently by national elections –, administrative and legislative powers, within the limits set by the national Constitutions (Volpi 1995: 389). The conferral of legislative authority to Regions and particularly to their Assemblies is what distinguishes regional States from other decentralized systems (like Poland and to a certain extent France).

Nowadays scholars unanimously agree on the fact that the differences between federal and regional states have substantially reduced throughout the years, and they are more quantitative – regarding the number of issues to be regulated at subnational level, which is usually wider in federal States – than qualitative in nature.

However, some features still remain diverse. Indeed, contrary to federal States, Regions in States like the three considered remain apart in the process of constitutional revision, where the agreement of subnational units is not formally required. Moreover, other factors may concur in defining regional States: the judiciary is usually organized at national level



only; Regions are normally excluded from representation in the Second Chamber of the national Parliament, thus they do not participate in the national legislative process (although this can happen also in federal States, like Canada) (Férrandez Segado 1996: 271-292);<sup>VI</sup> and the position of subnational entities is not binding in the appointment of national constitutional bodies (they can participate in the process, but mainly with an advisory power), like Constitutional Courts.

What is more, the basic document of the Regions in the three States, defining the institutional architecture and the policies to be addressed by the regional institutions, is not exactly a Constitution. It is not named ‘Constitution’, but *Statuto* (in Italy), *Estatuto* (in Spain) and Devolution Act (in the UK), and above all it does not have the form and the content of a Constitution.

The form of the Constitution lacks because the Statutes of the 17 Spanish Autonomous Communities are formally organic laws of the national Parliament (*Cortes Generales*), though adopted and revised following a process started within the Autonomous Parliaments (Olivetti 2003: 71-77);<sup>VII</sup> because in the UK, the Devolution Acts (also those reformed) are formally Acts of the Westminster Parliament; and because the special Statutes of the five Italian Regions enjoying a peculiar status (Sicily, Sardinia, Friuli-Venezia-Giulia, Valle d’Aosta, Trentino Alto Adige, with the two autonomous Provinces of Trento and Bolzano) are constitutional statutes approved by the national Parliament. Before the reform of 1999 of the Italian Constitution (const. law no. 1/1999), Art. 123 It. Const., the original version of 1948, provided that the Statutes of the remaining ordinary Regions were adopted – once approved by the Regional Councils – through a national ordinary law. After 1999 Regions with ordinary Statutes are entitled to adopt their basic document on their own in the Regional Councils, provided that the procedure fixed in the new Art. 123 Const. is respected. Therefore only these 15 Regions have as Statutes regional sources of law, as expression of constitutional autonomy: according to Art. 123, the Statute lays down ‘the form of government and basic principles for the organisation of the Region and the conduct of its business’.

However, also in those Italian, Spanish and UK Regions whose Statutes are national sources of law, the content of those Acts is never defined solely by the State, but is negotiated between State and each Region.<sup>VIII</sup> In Spain especially the provisions of the Autonomous Statutes are basically defined by Regions and, as happened with the new



Statute of Catalonia of 2006, it passed, despite the Popular (PP) and the Socialist Parties (PSOE),<sup>IX</sup> the two major parties at national level, not agreeing with many of its contents, even after the draft Statute had been significantly amended compared to the initial version approved by the Autonomous Parliament.<sup>X</sup>

As for the content of the regional Statutes or Devolution Acts, they do not comply *stricto sensu* with the traditional definition of ‘Constitution’ provided by Art. 16 of the French Declaration of the rights of man and citizen, and requiring the protection of rights and the separation of powers in order for a legal system to be considered ‘constitutional’.<sup>XI</sup>

Indeed, it is well-known that the *Scotland Act 1998*, the *Government of Wales Act 2006* and the *Northern Ireland Act 2006* are devoid of a catalogue of rights. The Italian Regions and the Spanish Autonomous Communities tried to insert provisions on rights in their Statutes, but their attempt was blocked by the two Constitutional Courts (Balaguer Callejón 2008: 11-31; Castellà Andreu 2010),<sup>XII</sup> by treating those provisions as if they were not legally binding. More precisely, whereas the Italian Constitutional Court denies entirely their legal value (Morana 2009), the Spanish Constitutional Court considers the fundamental rights provided in the Statutes as mandates to the public authority (*mandatos a los poderes públicos*) (Serramalera Mercè 2009).

From this perspective looking only at the Statutes could be misleading in assessing whether the features of subnational constitutionalism can be found at regional level, too (not only at State level in Federations). Indeed, dealing with rights, the activity of Regional Assemblies in Italy, Spain and the UK considerably affects them. For instance, very often regional legislation concerns the right to education, to health care, to dwelling, all matters falling within the Regions’ remit (differently named, as reserved, shared and residual, depending on the constitutional system).

Also on institutional matters, regarding separation of powers, Regional Statutes only provide a partial picture, though important. The provisions on the regional governments contained in the Statutes have to be complemented by the constitutional norms, where existing (only in Italy and in Spain), by regional legislation detailing the content of the Statutes (this is particularly significant in the Spanish Autonomous Community) (Balaguer Callejón 2007),<sup>XIII</sup> by the Rules of procedure of the Regional Assemblies, by the regional electoral laws.



All these provisions represent the set of the regional constitutionalism in Italy, Spain and the UK. As pointed out by Elazar referring to State Constitutions, this patchwork of norms, produced both at regional and at national levels, performs the fundamental functions of subnational Constitutions, a) defining ‘the overall frames of government for polities’; b) ‘expressing the purposes of government’; and c) ‘reflecting the public conceptions of the proper role of government and politics’ (Elazar 1982: 11).

For the purpose of the present article the first dimension is the most relevant, regarding the regional frames of government in the light of the position occupied the regional legislative Assemblies.

### **3. The nature of the three Regional States and the influence exerted on the Regional legislative Assemblies**

The process of regionalization and devolution in Italy, Spain and the UK has developed in different timeframes.

In Italy, it was a top-down process defined within the Constituent Assembly and then in the Constitution of 1948. Though entitled to exercise legislative powers, Regional Councils (the regional legislative Assemblies) could adopt ‘legislative norms’ only in the subject-matters listed in Art. 117 It. Const. and providing that they complied (in those matters) with the fundamental principles fixed in national legislation. But the fact that the Italian regionalization process was centre-driven is confirmed also by the circumstance that, except for the 5 Special Regions – established immediately and entitled to exercise wider legislative competences – Regions with ordinary Statutes (15) were established as subnational entities only 22 years later, in 1970, due to the political deadlock at national level. After the administrative reforms of the Nineties, the turning point for the Italian Regions and their Assemblies were two constitutional reforms, in 1999 (through const. law no. 1/1999) and in 2001 (const. law no. 3/2001). The first reform, as already mentioned, provided ordinary Regions with the power to adopt their own Statutes and to define their form of government and institutional arrangements in respect of the Constitution (in practice, Regions have not been guaranteed a significant margin of manoeuvre and they have not been able to use it properly) (Gianfrancesco 2009: 193-237). The second reform – for what is relevant to the article – in principle enhanced significantly the role of the



Regional Councils as legislators, reversing the previous criterion of distribution of legislative competences and giving to the Regions the general power to legislate (Art. 117, para. 4, It. Const.), except in those fields reserved to the State (Art. 117, para. 2, It. Const.) or submitted to the shared competence between State (defining the fundamental principles of the matter) and Regions (regulating the remaining issues). However, in practice, the constitutional jurisprudence has undermined the effectiveness of these new provisions, often neglecting the existence of these residual competences to the detriment of regional legislatures (Parisi 2008: 1601-1602).

Though started many years ago, the Italian process of regionalization is still far from being concluded. On the one hand, two Regions, Basilicata and Molise, do not have a new Statute in force yet and many others have not implemented many provisions of their new Statutes so far.<sup>XIV</sup> On the other hand, the division of legislative competences, compared to what is written in Art. 117 of the It. Const., has been interpreted by the Constitutional Court in a way which requires further settlement by the Regions and the State.<sup>XV</sup>

In Spain the process of regionalization is ongoing, too. It started immediately in 1978, with the democratic Constitution, but contrary to Italy, can be depicted as a bottom-up regionalization. The three 'historical nationalities' (*nacionalidades históricas*) – País Vasco, Catalonia and Galicia –, which had already approved their Statutes during the Spanish Second Republic (1931-1939), plus Andalucía, which was established as an Autonomous Community complying with a very complex procedure set in Art. 151, para. 1, Sp. Const. and requiring a large agreement of municipalities and of citizens through local referenda, since the beginning obtained the highest level of autonomy. In terms of legislative competence, and thus of legislative power for their Autonomous Parliaments, those Communities could (and can) legislate on all the subject-matters not expressly reserved to the State by Art. 149 Sp. Const. and listed in their Autonomous Statutes. Moreover the Constitution (Art. 143) assures the possibility to establish other Autonomous Communities on the initiative of local entities set up in their territory: this is why Spanish regionalization has been conceived as an open process deferred to the input of local communities.

Thirteen Communities have been formed since the Eighties on the basis of the right to autonomy and self-government guaranteed by the Constitution (Art. 2 Const.). However, these (initially) 'second-ranking Communities' in the first five years of their existence could only legislate on a close list of subject matters (Art. 148 Sp. Const.), subsequently



expandable using the residual clause of Art. 149 Const., like the historical Communities, and amending their Statutes. Following the negotiation and the conclusion of political agreements in 1981 and 1992 (*Pactos autonómicos*) among the main national political parties and the government of these Autonomous Communities, the Communities established by means of Art. 143 Const. procedure subsequently enjoyed a remarkable enlargement of their competences. Finally, since 2006 a new wave of reforms of Statutes has started, involving both historical and ‘ordinary’ Autonomous Communities,<sup>XVI</sup> also aiming at re-defining the regional institutional arrangements and the balance of powers between regional legislatures and executives.<sup>XVII</sup>

The same developing nature of regionalization highlighted in Italy and Spain can be found in the UK devolution, which prominent scholars even consider as the cause ‘of ongoing constitutional change at many levels’ and sectors (Leyland 2011: 252). However, compared to the other two States, the devolution in the UK shows some specific features for its origins. The process is very recent, started officially after the political election of 1997 and the new Labour dominance (after the failed attempt to create devolved entities in the Seventies), and was intended to address the request of self-government by regional communities, particularly in Scotland and in Northern Ireland (though within different political and social contexts). Moreover the UK devolution is geographically limited, England remaining excluded exactly because its population voted against it in the referendum held in November 2004.<sup>XVIII</sup> The content of the Devolution Acts, Acts of the Westminster Parliament, for Scotland, Northern Ireland and Wales, were negotiated between national Government and the political parties representing the self-governing claims at regional level and finally approved through regional referenda. Thus devolution started as a bottom-up process, but became reality only when the central authority accepted it.<sup>XIX</sup>

A new subnational entity was created, the devolved authority in between the State and the local levels, endowed with political autonomy, administrative and normative powers – also legislative in Scotland and Northern Ireland – but devolution was and remains in many regards centre-driven in its functioning, at least considering legislation. Westminster retains the power to legislate also on devolved matters (provided that the devolved authority agrees, using the so-called Sewel motion) and national legislation cannot be challenged for being *ultra vires* on the basis of the distribution of competences. In practice any piece of



legislation, whether coming from Westminster (as happens most of the time) or from a regional Assembly is the result of a bargaining between central and devolved authorities, according to a sort of ‘procedural manual’ settled in political agreements.<sup>xx</sup>

Devolution was constructed as a step by step process, depending on the context to which it applies. Devolution in Scotland is probably the most successful experiment and the outcome of a ‘struggle’ for more autonomy dating back to the Seventies (Mitchell 2010: 98-116), whereas in Northern Ireland devolution was imagined as a possible solution to the long standing problems of coexistence between unionists (Protestants) and nationalists (Catholics) (Wilford 2010: 134-155).<sup>xxi</sup> It arose by the Belfast Agreement 1998, between Northern Ireland parties and central Government, and then by the Northern Ireland Act 1998; it stopped between 2002 and 2007 because it was impossible to find a compromise to govern between the opposite factions and the ‘direct rule’ was applied; it was re-launched by the St. Andrews Agreement 2006 and the Northern Ireland Act 2006 (then amended in 2009).

Instead, in Wales, devolution was more ‘instantaneous’ in the sense that it was not intended either to satisfy historical requests of self-government or to appease violent political tensions, but just to recognize cultural and linguistic peculiarities (impacting also on the education system) of that Region. This is why the devolution of competences was very cautious towards Wales (Rawlings 2011: 54-80).<sup>xxii</sup> The absence of a lengthy process of deliberation, as happened in Scotland, resulted in poorer performance of Welsh devolution than in Scotland and the need to amend the Government of Wales Act (Trench 2010: 117). The Government of Wales Act 2006 finally conferred legislative authority to the Welsh Assembly and provided for the approval of the proposal in a referendum, which succeeded in 2011.

What is very interesting in relation to regional Assemblies is that one of the tenets of the devolution process, on which the regional communities insisted more before the adoption of the Devolution Acts – fixing both the distribution of competence and the devolved form of government –, was the idea to rebalance the relationship between legislature and executive at subnational level, departing from the Westminster model. Even though many differences exist amongst the three devolved authorities, proportional (as formula or as results) or mixed electoral systems were chosen, the Executive and particularly the Head of the Executive have to be selected by the Assembly from its members and the Assembly



cannot be dissolved by the Executive. There was the deliberate aim to create consensual governments at devolved level opposite to traditional majority party government at Westminster, and particularly in Ireland, the government was conceived as ‘consociational’ (Wilford 2010: 136).<sup>xxiii</sup>

The so-called ‘new politics’ of devolved authorities was also based on particular features of their Assemblies, which differentiate them completely from the Westminster Parliament at the end of the Nineties (nowadays, probably because of the reforms of the legislation and of the House of Commons Standing Orders, Westminster has moved closer to the devolved Assemblies). What distinguishes the two realities is immediately visible to the members of the devolved Assemblies, since most of them were also MPs (dual mandates are not allowed anymore as of 2011). For instance, Mr. David Steel, Presiding Officer (*Speaker*) of the Scottish Parliament (*Holyrood*) between 1999 and 2003, but also MPs for three decades, listed twelve main differences between the two Parliaments: Amongst them it is worth mentioning the existence of the fixed parliamentary term for *Holyrood* (very recently introduced, in September 2011, by the Fixed-term Parliaments Act 2011 also for Westminster); the election of *Holyrood* by ‘proportional representation’ and the multipartitism, in contrast with the first-past-the post system and the tendency towards a bi-party system at Westminster (though of the results of the 2010 political elections); ‘*Holyrood* has a U-shaped chamber designed to promote consensus’ in contrast with the opposing benches at Westminster, fostering the political struggle; in *Holyrood* standing committees scrutinise the bills before they get to the Floor and oversee the Executive’s departments, whereas at Westminster most bills are considered by the Committee of the Whole or by *ad hoc* committees and departmental select committees only exercise the oversight function (Lord Steel of Aikwood 2009).

Therefore the institutional arrangements of the devolved authorities in the UK seem to run contrary to the general trend in decentralized States whose institutional structure in the various levels or orders of government tends to resemble each other (Sturm 2006; Trench 2010: 117). The same applies to Italy when we look at the national form of government and at the relationship among Regional Councils, Presidents of the Region and Executives, after the constitutional reform in 1999: the institutional architectures at the two levels of government are differently shaped. In Spain, instead, even though the legal provisions in the Constitution, in the Statutes, in regional legislation and in parliamentary rules of



procedure differ between the central Government and the Autonomous Communities they usually resemble each other in practice (and the resemblance has become more evident in the new Statutes).<sup>xxiv</sup>

While this difference exists when we compare the form of government and the legislative Assemblies vertically, from the State to the Regions, diversities almost completely disappear when comparing horizontally the forms of government of subnational units in the three States. This result could depend to some extent on constitutional constraints mandatory upon regional authorities. However this is only partially true. As is shown in paras. 5 and 6, in Italy and Spain the Constitution leaves the floor to different institutional solutions and even when, like in Italy, a provisional institutional arrangement was provided, the door was left open in order to change the model. But alternative solutions were not attempted at all or were declared inconsistent with the Constitution (see para. 5).

In the UK, lacking a Constitution, devolved authorities have approached one another in terms of institutional settlement, amending the Assembly's rules of procedure or, directly, the Devolution Acts, as was the case for Wales and its 'movement' towards Scotland.<sup>xxv</sup>

Finally it is possible to find a common tendency in Italy, Spain and the UK in this regard. Although it was not obvious at all at the origins of the regionalization processes, there has been a trend towards the homogenization of the regional forms of government within each country. The case of Wales and Scotland has been just mentioned. In Spain the Autonomous Communities established by the Art. 143 Const. procedure looked at the historical Communities – mainly at Catalonia – as a model to imitate, and it was a voluntary choice because they could have headed in different directions (Jover 2009: 171-191). In Italy the distinction between the forms of government of Regions with ordinary Statutes and of those with special Statutes substantially came to an end by const. law no. 2/2001.<sup>xxvi</sup> Indeed this constitutional law introduced amendments to the Statutes of the five special Regions aiming at following the 'model' of form of government already provided to ordinary Regions by const. law no. 1/1999 (the same that changes the procedure for the adoption of regional ordinary Statutes), pending the adoption of the new regional Statutes.



## 4. Structural features of the Regional Assemblies in Italy, Spain and the United Kingdom

### 4.1. The *nomen*

Reflecting on the name assigned to a regional legislative Assembly could seem a too formalistic exercise. Nonetheless the choice made and the autonomy guaranteed by the Constitution to the Regions in naming their own institutions mirrors a certain understanding of the role of those Assemblies.

Italy, Spain and the UK followed different approaches on this point. Italian Regional Councils are forbidden to proclaim themselves as “Parliaments”. After the constitutional reform in 1999, but before the adoption of the new Statute in 2005, the Regional Council of Liguria passed a motion stating that, in the subsequent documents approved by the Assembly, the name Regional Council would have been placed side by side with that of ‘Parliament of Liguria’. The State challenged that motion of the Regional Council before the Constitutional Court (Lupo 2002: 1209-1224),<sup>xxvii</sup> arguing that the only institution exercising sovereign powers, the national Parliament, can be called ‘Parliament’. The Court declared that motion in contrast with the Constitution, but rejected the argument proposed by the State. It affirmed that the name ‘Parliament’ does not derive exclusively from the exercise of sovereignty of behalf of the people: there is no identity relationship between sovereignty and national Parliament.

By contrast the decision of the Court was based on the textual interpretation of the Constitution which attributes the name ‘Parliament’ in Art. 55 to the constitutional body composed of two Chambers and entitled to guarantee the political representation at national level, while it assigns the name ‘Regional Councils’ in Art. 122 to the regional legislative Assemblies. Thus regional Councils cannot depart from the name fixed in the Constitution: Regions do not have the faculty to decide the name of their institutions already provided by the constitutional text (regional Councils, the Regional Executive, the President and the Council of local authorities).

Neither in the UK are devolved authorities free to chose the names of the regional bodies: they are fixed in the Devolution Acts. What is particularly interesting is that regional Assemblies have been named differently. Only *Holyrood* is literally a ‘Parliament’



(Part I of the Scotland Act 1998), while the others devolved legislatures are the ‘Northern Ireland Assembly’ (Northern Ireland Act 2006) and the ‘National Assembly for Wales’ (Government of Wales Act 2006). According to Mitchell, *Holyrood* is a Parliament for two orders of reasons: the first is sociological and deals with its capacity to conform to the ‘public and elite conceptions of what a real Parliament looked like’, showing the ‘familiar hallmarks of Westminster’ (Mitchell 2010: 108),<sup>xxviii</sup> the second refers to its legislative powers (Rawlings 2001: 54 et seq.). Therefore, the Welsh Assembly could not be called ‘Parliament’ so far, because it was not entitled to pass legislation until 2011.<sup>xxix</sup>

On the other hand, the choice to not call the Northern Ireland Assembly ‘Parliament’ is probably more political and symbolic. Indeed the ‘Parliament of Northern Ireland’ was the home rule legislature for this Region from 1920 (Government of Ireland Act 1920) to 1972, when it was suspended and abolished by the Ireland Constitution Act 1973. This Parliament was at the very centre of the home rule system of government, being composed of two Chambers, the House of Commons and the Senate, and expressing the Executive (the Prime Minister was the leader of the majority party in the House). Establishing a ‘New Parliament of Northern Ireland’ in 1999, recalling the home rule experience, would have probably exacerbated the already patent and visible tensions between the main and conflicting regional political parties (the Democratic Unionist Party and *Sinn Fein*).

In contrast with the Italian and the UK experiences, the Spanish Autonomous Communities can define substantially on their own the name of the regional institutions. According to Art. 147, para. 2, let. c), Sp. Const., the Statutes of Autonomy have to identify ‘The name, organization and seat of its own autonomous institutions’. Even though Statutes are state organic laws, conflicts have never arisen about the name given by Autonomous Communities to their regional legislative Assemblies: thus a variety of names have been chosen (Parliament, Assembly, *Cortes*, *Junta General*), sometimes depending on the history of the Community. Most Communities (9 out of 17) preferred the term ‘Parliament’, and amongst them the historical Communities, those having a strong ‘national’ identity, such as País Vasco, Catalonia y Navarra; only three Communities opted for the uncontroversial term ‘Assembly’ (Extremadura, Madrid and Murcia); four Communities (Aragón, Castilla-La Mancha, Castilla y Leon, Comunidad Valenciana) chose the term ‘*Cortes*’, which is also the official name of the Spanish national Parliament, recalling the Assemblies summoned, sometimes frequently and others only occasionally, on



the present Spanish territory from the XI century; finally only one regional legislative Assembly, that of Asturias, has the unusual name (for a legislature) of '*Junta General*', as a tribute to the self-governing body of the Principality established in 1388.

#### 4.2. The electoral systems

The electoral systems for the regional legislative Assemblies decisively influence the balance between legislature and executive at regional level. In this matter the trend towards homogeneity underlined above is definitely confirmed.

In the UK the three regional legislatures are elected by basically the proportional systems defined in the Devolution Acts. Thus the option for enhancing proportional representation was taken, with the agreement of the regional political parties, by the Westminster Parliament, departing from its own system of election (which is now in a "minority position", considering that also British MEPs are elected by a proportional system). This aimed to counterbalance, at least a subnational level, the distorting effects produced at national level by the first-past-the post system.

Both the Scottish Parliament and the Assembly for Wales are elected through the Additional Member System, a mixed system, which combined the first-past-the post in individual constituencies with the proportional system based on party lists and multi-seats regional districts (the same used for the election of the British MEPs in Scotland).<sup>xxx</sup> Instead the Northern Ireland Assembly is elected through the Single Transferable Vote System that assures the most faithful representation in the legislature of the options expressed by voters on the candidates.

Of course the consequence of the adoption of proportional-oriented electoral systems is also the increasing number of the political parties represented within the devolved legislatures, leading to the exclusion *de facto* of majority party government, which until recently has been the rule at Westminster, and to the appointment of coalition or minority governments.<sup>xxxI</sup> This is a first important element to take into account for understanding the role of devolved Assemblies: the more likely coalitions or minority governments are, the more crucial the role of legislature becomes as a place of the compromise between the Executive and 'the others'.



In Spain, on the contrary, the convergence of Autonomous Communities towards the electoral proportional system for regional Parliaments was to a large extent the result of the constraints introduced by constitutional jurisprudence, of the ‘pervading’ provisions of the state organic law no. 5/1985 and of the regional choice to not try different solutions.

Starting from the first aspect, Art. 152, para 1, Sp. Const. formally fixes a certain institutional settlement only for those Communities established according to the burdensome procedure of Art. 151, thus for País Vasco, Catalonia, Navarra and Andalucía. The adoption of a proportional system of election for the regional legislatures to be set up in those Communities is required. Instead, nothing is provided for the other thirteen Communities, those of Art. 143 Const. In theory, they should have not been prevented from adopting a majority system. However the Constitutional Court in decision no. 225/1998 generalized the use of a proportional system as mandatory upon all Autonomous Communities that complied with this jurisprudence.<sup>xxxii</sup>

Considering the second aspect, the organic law provided in art. 81 Sp. Const. on the general electoral regime, organic law no. 5/1985, in principle is not automatically applicable to Autonomous Communities in its chapters concerning the electoral formula (see decisions of the Spanish Constitutional Court no. 40/1981, 38/1983, 72/1984): according to the Constitutional Court regional elections are regulated by each Community (Álvarez Conde 2007: 6). Nonetheless those provisions of the organic law no. 5/1985 (LOREG) concerning the right to vote and to be elected, the electoral procedure and the electoral crimes or the use of media for the electoral campaign and their financing are mandatory also upon Autonomous Communities. Indeed the competence to legislate on the basic conditions for the exercise of constitutional rights is reserved to the State, according to art. 149, para. 1, Sp. Const. (see decision no. 37/1987 of the Constitutional Court), and on this basis the LOREG is enabled to limit the regional autonomy.<sup>xxxiii</sup> Some 116 articles of the LOREG are applied to Autonomous Communities, too (Álvarez Conde 2007: 18).

On the third aspect, also the attitude of the Autonomous Communities in regulating their electoral system has been passive. Most Statutes ‘of the first generations’ were very laconic when they came to the election of the regional legislatures, referring to *leyes de desarrollo básico* (a sort of regional organic law) for the detailed regulation of the matter. The inconvenience was that these kinds of regional laws have to be approved and amended by a qualified majority, thus they are not easy to modify – they have a high level of rigidity – and



in one case, Catalonia, its adoption has proved to be impossible. In this autonomous Community, the provisions of the LOREG on national elections are applied *mutatis mutandis* to the election of the Catalan Parliament.

The tendency, in terms of relationship between the Statutes and the regional law on the electoral system, has changed with the Statutes ‘of second generations’, but the rigidity of the norm has not reduced and may have even become worse. The new Statutes are the source of law (even more difficult to modify than the *leyes de desarrollo básico*) that now provide in detail how the regional electoral system works, thus leaving small space to regional legislation.

The substance has not changed in practice anyway (Presno Linera 2007: 101-146). The electoral system of the Communities remains the national electoral system with minimal adaptations: proportional system, in small provincial districts (except for Asturias and Murcia) with the same or a higher electoral threshold as that provided in the LOREG (3% in each province).

The effect of the system, as at the national level, is to contain the political fragmentation and to produce mainly bipolar or two-party systems (Torres del Moral 2009: 205-256), even though especially in the historical Autonomous Communities the party system is more varied than in other Communities, because of the nationalist parties (Jover 2009: 186-187; Oñate-Delgado 2006: 135-174).

In Italy the transformation of the regional forms of government before const. law no. 1/1999, started by the reform of the law for the regional elections. Law no. 43/1995, drawing inspiration from Law no. 81/1993 on local elections, moved in the direction of reinforcing the position of the Head of the Executive, the President of the Region.<sup>xxxiv</sup>

Afterwards, because of the shift of the competence in regional electoral matters from those reserved to the State to those shared between State and Regions following const. law no. 1/1999 (Art. 122 Const.), State law no. 165/2004 was approved as framework law fixing fundamental principles to be respected by the Regions when regulating the details of their electoral systems. In this regard, the strict relation between Art. 122 and Art. 123 of It. Const. can be immediately seen. Indeed, by setting the general framework of the regional electoral systems, and especially prescribing the direct election of the President of the Regions, where not otherwise provided for in the Statutes, Art. 122 directly conditions



the regional forms of government, to be defined in each Statute, according to Art. 123 It. Const (Catalano 2010: 43-107).

Amongst the principles fixed by Law no. 165/2004, there are two which are particularly important: the first requires the contextual election of the regional Councils and of the Presidents of the Region – now directly elected by people (see further para. 5); the second demands that the regional electoral systems assure the formation of stable majority in the Council as well as guaranteeing the adequate representation of minorities (Art. 4, para. 1, let. a) law n. 165/2004) (Clementi 2005: 115-141). Therefore, on the one hand, a divided government and the risk of dealing with opposite majorities, in the Council and for the President, is minimized; on the other hand, the President can count on a certain and reliable majority to govern, even though the duty to protect minorities impedes the adoption of pure majority electoral systems.

However, the adoption of the new Statutes, most of which containing provisions on the new electoral law (preferably approved by qualified majorities), has not varied significantly the outlook. The rate of innovation in this regard has been low<sup>xxxv</sup> and most ordinary Regions have not adopted their own electoral law, opting for two solutions: either completing the content of the national framework law no. 165/2004 for certain limited aspects (such as incompatibility) or applying, as allowed by const. law no. 1/1999, law no. 108/1968 as modified by law no. 43/1995 (mentioned above).<sup>xxxvi</sup>

Law no. 43/1995 provides a mixed electoral system: four-fifths of the Regional Council's members are elected on the basis of a proportional formula amongst competing provincial lists (in provincial electoral districts); one-fifth of the seats, instead, is allocated using the majority formula to the most voted regional list (called *listino*) associated to the candidate to the Presidency of the Region. As a general rule, the front-runner of the most voted regional list becomes the President of the Regions and all the candidates in that list, which is a blocked list, obtain a seat the Council. In any event, a majority bonus is assigned up to 55% or 60% of the seats in the Council to the most voted regional *listino* and to the provincial list associated with it.<sup>xxxvii</sup> As is immediately evident, this electoral system usually secures to the President a stable majority in the regional Council, contrary to what happened before 1995 and particularly 1999, when the regional Executive was unable to control a highly fragmented Council.<sup>xxxviii</sup>



Amongst the few cases of brand new regional electoral laws, that of Tuscany seems to be particularly interesting or, at least, has tried to vary the State model of law no. 43/1995. The Regional Council of Tuscany is elected by a proportional system on the basis of provincial lists and possibly assigning a majority bonus equal to 60% of the seats.<sup>xxxix</sup> But also a sort of ‘minority bonus’ is provided too, since no less than 35% of seats have to be granted to the lists not associated to the winning candidate for the Presidency (Viceconte 2010: 228). This provision aims at complying with the principle settled in the state framework Law no. 165/2004, requiring the adequate representation of minorities in the Council.

Moreover the controversial mechanism of the ‘regional *listino*’ was abolished and replaced by ‘regional candidates’ (Tarli Barbieri 2004: 199-218), aiming at decreasing the political fragmentation in the Council. Both these candidates and the candidates in the provincial lists can be selected previously through primary elections (thus balancing the elimination of the preferential vote) (Rossi-Gori 2009: 626-630).

The overview of the regional electoral systems in Italy, Spain and the UK shows the existence of elements of rigidity and inertia. On the one hand, in the UK, devolved authorities cannot intervene to regulate their own elections; on the other hand, in Spain and Italy, the room left to the Regions and particularly to regional Assemblies on this matter by the Constitution has been ‘occupied’ by national legislation and has seen Regions substantially passive in accepting solutions already provided by the State, without accommodating them to the peculiarities of the subnational communities.

As for the effect produced by electoral laws on regional Assemblies, they favour multipartitism and the creation of minority or coalition governments in the three UK devolved regions, in contrast with the Westminster model, whereas in Spain the national electoral system is substantially replicated at subnational level, thus producing an artificial simplification of the party system in most Autonomous Parliaments. In Italy the same objective as in Spain has been pursued, aiming at favouring more stable regional Executives than in the past, not submitted to the changing orientation of the Council. Nonetheless such a goal could have not been achieved without the fundamental overturn of the regional form of government.



### 4.3. The organization of the Assemblies: An outline

All the regional legislative Assemblies in the three countries are unicameral and this counts in terms of the definition of the decision-making process, which is definitely more rapid and involves no problems of coordination between two legislative branches, as often occurred in bicameral legislatures.

By contrast, the lack of a Chamber of Second Thought – in addition to speeding up the procedures and making them probably less weighted – usually forces the members of the unicameral Parliament to follow a tighter schedule or to deal with overload problems, because an essential element of division of labour in parliamentary institutions is missed. Indeed the number of components of these regional legislatures ranges from 30 in the Italian regional Councils of Basilicata and Molise to 135 of the Parliament of Catalonia.<sup>XI</sup> What is interesting is that legislatures having quite different sizes are required to perform essentially the same tasks within each State.

In this regard, Regional legislatures are autonomous in arranging their internal organization, providing that the same basic principles – such as the participation of the minorities in parliamentary activity –, fixed in the Constitutions or in the Devolution Acts, are respected. However, regional Assemblies usually do not enjoy the same level of protection from external interferences which used to be recognized, for instance, in the UK and in Italy to the national Parliaments (Barber 2011: 144-154).<sup>XII</sup> In this perspective, the decision of the Spanish Constitutional Court no. 31/2010, on the new Statute of Catalonia runs in the direction of strengthening the Assembly's autonomy. Indeed, amongst the many provisions of the Catalan Statute which were declared inconsistent with the Constitution, there was also that entitling the *Consejo de Garantías Estatutarias* – the advisory and quasi-judicial body that controlled compliance with the Statute – to issue a binding opinion to the regional Parliament on bills dealing with the rights recognized by the Statute, pending the legislative process. The Constitutional Court found that this provision limited parliamentary autonomy and unreasonably affected regional law making.

The basic organizational units of all regional Assemblies are political groups. Even though the party system at regional level is usually 'richer' than a national level, because of nationalist or regional parties, the electoral laws (see above para. 4.2.) help in simplifying the framework. The main problems for the internal stability of the Autonomous



Parliaments (and the same happened before the introduction of the *simul-simul* mechanism in Italy) is the very frequent passage of members from one group to another. The new rules of procedure of the Parliament of Catalonia in 2005 tried to countervail the problem by creating the position of ‘non-attached members’ (Art. 26), which does not exist in the national Parliament. Indeed, the abandonment (or the expulsion) by a member from his own group, forbids him from becoming attached to another group (he could only move back to the original group) for the entire term, but allows him to enjoy all the individual rights as a member of the Parliament. There, this provision, prejudging non-attached members compared to those in groups, strongly discouraged the so-called *transfuguismo*.

The opposite situation has developed within the Italian Regional Councils since 1999. Most new Regional Statutes do not fix any threshold for the establishment of political groups in the Councils, leaving the floor to the rules of procedure. The very low thresholds provided and the explicit guarantee in two Statutes (Tuscany and Emilia-Romagna) for the creation of ‘mono-personal groups’ have led to the ‘explosion’ of groups and to an increasing political fragmentation. Here, contrary to Catalonia, the member of the Regional Council who decides to ‘become a group’ enjoys the same *status* as any other group, thus he is stimulated to leave his original group. The negative side of the story is how to reconcile this fragmentation with the carrying out of the Council’s procedures (Rubechi 2010: 101-117). Neither a special position is guaranteed by most Statutes nor Council’s rules of procedure to the Opposition, the largest group from the minority side, in order to establish a sort of ranking amongst groups (Perniciaro 2010: 87-99).

Indeed, the recognition of the role of the Opposition (regarding the time, the oversight etc.), different from the other minorities, has proved to be effective in the Scottish Parliament and in the Welsh Assembly for putting some order into the varied landscape of the party groups in the regional Assembly. Where, like in the Northern Ireland Assembly, such a position cannot be created in order to preserve the consociational nature of the form of government parliamentary procedures have proved to be longer and more burdensome.<sup>XLII</sup>

Finally, another cross-national feature of regional legislative Assemblies in Italy, Spain and the UK is that their members work most of the time in standing committees, organized by subject-matter more or less mirroring the Executive’s departments (see further, para. 5.3.), and this seems in contrast with the general trend at national level, where



the Floors of the Houses have become the very centre of parliamentary activity (Costa et al. 2004).

## 5. The relationship with the Executive

This section analyses the relationship between the Regional legislative Assemblies and their Executives looking at the procedure for the appointment of the Executive; at the ordinary coexistence between the regional and executive branches and at how it can be challenged; at the procedures to dissolve the Assembly; and at the oversight powers of the regional legislatures.

However, a first assessment of the regional legislative Assemblies' position *vis-à-vis* the Executive focuses on its composition and the incompatibility regime, considering whether the members of the Executive can act also as members of the legislature.

In this regard, the situation of the regional Assemblies in Italy, Spain and the UK is different.

The three devolved legislatures in the UK follow the Westminster model on this point, requiring as a condition for the appointment of the First Ministers (and the Deputy First Minister in Northern Ireland) as well as of the other Ministers, the *status* of Member of the relevant Regional Assemblies. The loss of this *status* implies the loss of the Ministerial position as well (Trench 2010: 120).<sup>XLIII</sup>

Also in Spain the election to the regional Parliament is a requirement for being appointed as President of the Community. On the basis of the generalization to all the Communities of the prescriptions of Art. 152, para 1, Sp. Const. (decision no. 225/1998 of the Constitutional Court), the President has to be elected by the Autonomous Assembly from its members. However nothing is specified with regards to the other components of the regional Executive, except that they have to be accountable before the regional Assembly. This means that the President of the Community, on whom the power to appoint the member of the regional Government relies, can choose them also from outside the Assembly.

Finally in Italy in the ordinary Regions, both in those having a new Statute and in those subject to the transitional provisions of const. law no. 1/1999, the President of the Region



is directly elected by the people, thus he relies on an autonomous channel of legitimisation rather than the Regional Councils.<sup>XLIV</sup> As for the relationship between the office of member of regional Executive (*Giunta*) and regional councillor, it is up to the Regions to decide. Art. 122 Const., indeed, clarifies that the regional law has to set the regime of incompatibility. So far only one regional electoral law, that of Tuscany, as modified in 2009, makes the office held within the regional Executive not compatible with that of member of the Regional Council (Viceconte 2010: 222-223). However, what could seem at first sight as an attempt to clearly separate the legislature from the executive is actually not that crucial in practice, because the components of the regional Government cannot be removed individually by the Assembly and because the maintenance of the Assembly and Executive's offices at regional level is now indissoluble (see next sections).

### 5.1. The confidence between Assemblies and Executives: A common element, but shaped very differently

The confidence relationship between the regional legislative Assemblies and their Executive is at the basis of the regional forms of government in the UK, Spain and Italy. Nonetheless, there are prominent differences between them as regards the establishment of this relationship, its tenure and its removal.

#### a) *The devolved Assemblies in the UK*

In the UK, The Scottish Parliament and the Welsh Assembly – the latter after the new Devolution Act 2006 – are at the very centre of the procedure for the appointment of the *First Minister*. Firstly, contrary to what happens at national level, where Her Majesty confines herself to appoint as *Prime Minister* the leader of the Majority Party proclaimed by the polls (or selected by the Majority Party itself) without any formal vote of confidence of the House of Commons, in Scotland and in Wales the Queen has to wait for the nomination (by simple majority) of the First Minister by the regional Assembly.<sup>XLV</sup>

Secondly, contrary to the practice in Westminster until the Fixed Term Parliaments Act 2011, where the dissolution of the Parliament did not imply the resignation of the Cabinet, who remained in charged, provided that the majority of the citizens confirmed their support, in Scotland and in Wales the procedure for the appointment of the new First



Minister has to take place after every renewal of the Assembly. The other Ministers (whose number is not fixed in the Scotland Act 1998, whereas Art. 51 of the Government of Wales Act 2006 limits the Ministers to 12) are appointed by the Queen on proposal of the First Minister.

However – and this is particularly important – the Scotland Act 1998, compared to the Welsh Devolution Act, limits the margin of manoeuvre of the First Minister towards the Parliament: The Head of the Government cannot seek the Queen’s approval for appointment without the agreement of the Parliament on the names of the Ministers (Art. 47, para. 2). And this is something which is also completely beyond the prerogative of the House of Commons in the appointment of the national Cabinet.

Both in Wales and Scotland, Ministers are not individually subject to a motion of censure by Parliament and only the First Minister can remove them from Office, unless a motion of no confidence is approved towards the Executive as a whole.

In Northern Ireland the ‘pillars’ of the parliamentary form of government have been adjusted to a peculiar and highly unstable context, in which the institutional architecture was originally based on a power-sharing devolution, particularly between the Legislature and the Executive, directly derived from the Assembly. A constant feature of the Northern Ireland Executive is that it is headed by a diarchy: the First Minister and the Deputy First Minister, in spite of the name of the latter which could suggest a sort of hierarchy between the two Offices, have to agree on any measure to be proposed or taken.<sup>XLVI</sup>

Before 2006, the amendments to the Northern Ireland Act 1998 and the St. Andrews Agreement, the process for the appointment of the First Minister and the Deputy First Minister started after the elections within the Assembly, once the political designations were expressed.<sup>XLVII</sup> The Office of First Minister was assigned to the leader of the largest designation, while the Office of Deputy First Minister was attributed to the leader of the second largest designation. Substantially the two positions have always been split between the Democratic Unionist Party and *Sinn Fein*. But from 1998 to 2007 the nominee to these two positions, in order to be ratified, required also a cross-community vote in the Assembly (Wilford 2010: 146).

Then the two Heads of the Executive determine jointly the number of Ministerial offices and their functions. The allotment of the ministerial positions amongst parties is based on the d’Hondt method, ranking the parties according to the electoral polls. Usually



four parties are involved in the negotiations and two of them, the Democratic Unionist Party and *Sinn Fein*, gain the great majority of the offices.

After the St. Andrew Agreement, however, something changed in the process of appointment. First of all the appointment of the First and of the Deputy First Minister has become a sort of ‘*de facto* referendum’ (Wilford 2010: 146), since their nomination comes directly from the polls and not from the political designations within the Assembly. They are respectively the leader of the largest and the second largest parties at the elections. This new provision weakens the position of the Legislature towards the Executive formation.

Once the Executive is formed, a Minister can be removed only by its nominating officer, who is normally the leader of his/her party (and very often the First or the Deputy First Minister). Of course such Executive, divided by rigid political quotas, can be affected by two main problems. The first is the ‘ministerial unilateralism’, since every Minister tends to be accountable to his party only; and the second concerns the preservation of the consociational functioning of the institution, as its composition requires. Then, the main threat is the political deadlock.

Both the Belfast and the St. Andrews Agreements (1998 and 2006) provide a possible tool for countervailing the block of the institutional activities, the vote of no confidence, supported by a cross-party majority in the Assembly; but it has not proved to be effective so far: the two largest parties in the Assemblies lead the Executive and they are not willing to force the Government to resign.

Notwithstanding this criticism, after the period of direct rule, the Northern Ireland Assembly has been able to complete its first parliamentary term (2007-2011), showing that, though still not perfect, the institutional system of Northern Ireland is certainly more stable now than a decade ago.

#### *b) The Autonomous Parliaments in Spain*

On the basis of the general reference contained in Art. 152, para. 1, Sp. Const., as interpreted by the constitutional jurisprudence, the Government of the Autonomous Communities is composed of: the directly elected Assembly; the President, elected by the



Assembly from its member and entitled i) to direct the regional politics, ii) to represent the Community in inter-institutional relations and iii) to represent the State within his Community; the Council of Government, who exercises executive and administrative functions.

The form of government of the Autonomous Communities has been defined uniformly in the original Statutes of Autonomy, in the subsequent regional institutional laws (such as the electoral laws), the *leyes de desarrollo estatutario*, usually approved by qualified majority – thus requiring a wide consensus – and finally in the Statutes of ‘second generations’, which contained much more detailed provisions on this point and on Parliaments than the previous ones. The institutional arrangements regarding the relationship between the legislative and the executive branches, settled by the Autonomous Communities, have almost never been challenged before the Constitutional Court (Jover 2009: 174-175). Therefore the organization of powers has proved largely stable.

The process for the establishment of the Executive after regional elections is divided in two stages. The first, once the new Parliaments has been summoned, normally sees the President of the Parliament involved in consultation of political groups aiming at proposing a candidate to the Presidency of the Community.<sup>XLVIII</sup> The candidate agreed presents his political program to the Parliament and is elected as President of the Community by the absolute majority of the Parliament’s members at the first voting or by simple majority at the second one. The procedure resembles exactly that provided at national level within the *Congreso de los Diputados*. After the confidence vote, the President is instructed by the King to form the Council of Government.

This second stage marginalizes completely the Regional Assembly, which only in few Communities is informed about the composition of the new Executive. Indeed, the appointment and organization of the Council of Government as well as the removal of one or more members is a decision taken unilaterally by the President. The exclusion of Parliament is likely to reduce its influence also during the activity of the Executive. Even though the general directions of regional politics are defined by the Presidents, the other members of the Executive are responsible for the accomplishment of those objectives in the different subject-matters, thus the decision on who will take those responsibilities is crucial.<sup>XLIX</sup>



As for the Executive tenure, the form of government of the Autonomous Communities relies on the traditional tools of the rationalized parliamentarism, the question of confidence (approved by simple majority) and the vote of no confidence, which, as happens at national level, is a constructive vote of no confidence (to be supported by the absolute majority of the members). Neither instrument has been much used to date (Allué Buiza 2006: 209-252; Porras Nadales 2006), though they have been applied more often than in the *Congreso de los Diputados*. Fifteen constructive motions of no confidence have been tabled since 1978, but only five of them were approved,<sup>I</sup> thus causing the resignation of the President (the removal of his Executive) and his replacement.<sup>II</sup> Moreover, some Statutes of Autonomy limits the use of the question of confidence to issues of great relevance or prohibit it in relation to the budget and electoral or institutional matters.<sup>III</sup>

The cautious use of these two instruments has to be understood jointly with the tendency to strengthen the position of the President throughout the years and most of all to preserve the stability of the Executive: majority governments have been predominant, thus the party cohesion has discouraged the use of both questions of confidence and motions of no confidence. However, this does not mean that Autonomous Parliaments are inactive in their relations with their Executive: progressively there has been a considerable growth in the use of the ordinary oversight tools (compared to the ‘extraordinary’ ones, which can lead to the resignation of the President) (Porras Nadales 2006).

### *c) The Regional Councils in Italy*

There was a common and negative evaluation of the performance of the regional forms of government from the Seventies to the Nineties: too unstable Executives, too much conditioned by the changes of political majority in the (legislative) Assemblies (D’Atena 1988). At that time, the President of the Region (as well as the other members of the Executive body), entitled to define the general political directions of the subnational entity, was elected by the Council from its members (as in the Spanish Autonomous Communities). His mandate as President depended on the support of the majority in the Council – an Assembly with limited legislative power, but having the authority to adopt regulations, programs and plans for the Region –, the same majority who voted for him



after the election. However, most regional Governments did not reach the end of the five-year term.

Regional Councils were accused of being responsible for the political deadlock and subsequently the electoral law (no. 108/1968, see above) was changed in 1995, introducing the clause that requires the guarantee of a stable majority in the Councils (Pinelli 2008: 1777-1789). Const. laws no. 1/1999 and 3/2001 should have completed the reform of the regional governments, reinforcing the position of the President of the Region towards the Regional Council and giving to the latter the role of full legislator.

Pending the adoption of the new Regional Statutes, const. law no. 1/1999 immediately provided a new form of government for the ordinary Regions to be implemented during the transitional phase. The linchpins of the reforms were: i) the direct election of the President of the Region as well as of the Council; ii) the power of the President of the Region to appoint and remove the other members of the regional Executive, without any participation of the Council;<sup>LVIII</sup> iii) the power of the Council to force the President to resign; iv) the “joint destiny” of the Regional Council and the President (see further, para 5.2.), which makes definitely unlikely the removal of the President in charge by the Assembly through the withdrawal of confidence.

As soon as the new Statutes were to have been approved, Regions could have chosen either to maintain the standard form of government provided in const. law no. 1/1999 or to adopt a new one (for instance moving back to the election of the President of the Region by the Council),<sup>LIV</sup> if consistent with the Constitution. In fact the transitional model became permanent (with few changes).

This outcome was the consequence of two main factors: on the one hand, the Regions became accustomed to the new form of government introduced in 1999 – also because it assured a double channel of direct legitimisation – and were not willing to come back to the past or to test alternatives (the failure could have meant the sanction of the Constitutional Court and/or subsequent amendments to the Statutes);<sup>LV</sup> on the other hand, the attempt by some Regions, essentially the Councils, who approved the Statutes, to insert variations on the “prepackaged” form of government was obstructed by the Constitutional Court.

For instance, the new Statute of Calabria was probably too ‘brave’ in providing that the Vice-President of the Region would have automatically succeed the elected President (as



the new President of the Region) without affecting the Council, which, on the contrary should be dissolved in this hypothesis (as acknowledged in decision no. 2/2004 on the basis of Art. 126 Const.). Therefore, in case of choosing the standard model, constitutional provisions cannot be substantially derogated.

From the perspective of the Regional Councils, their position in the regional form of government has certainly not been enhanced by the constitutional reform and the new Statutes (Olivetti, 2005; Lippolis, 2010; Carli 2010b; Cavaleri 2010).<sup>LVI</sup> The aim of the reform was acknowledged by the Constitutional Court itself: to simplify the regional political systems – with the aspiration to move from an extreme fragmentation of political groups to a bipolarization – and to make the functioning of the political institutions more stable (decision no. 2/2004). Therefore Regional Councils would have been far less free to determine the destiny of the Executives compared to the past.

According to Art. 126 Const. and to the new Statutes, the Council can challenge the existence of the confidence relationship, basically in two ways: by approving a motion of no confidence by the absolute majority of its members or, where introduced, by rejecting a question of confidence posed by the President. Actually in decision no. 12/2006 the Constitutional Court disputably denied the existence of the confidence relationship between Council and President and affirmed that the relation is based more on ‘political consonance’ (Buratti 2006: 90-101), as the results of two contextual elections confirming the same majority. However, while it is certainly true that a vote of confidence is not required when the new Executive is set up and would probably be inconsistent with the Constitution, nonetheless it is the Constitution itself that calls that relationship, once established, as based on confidence. Otherwise Art. 126, which entitles Regional Councils to adopt ‘a reasoned motion of no confidence against the President of the Executive’ would be misleading.

It is also questionable the position taken by the Constitutional Court when it declared unconstitutional the provision of the Statute of Abruzzo on the individual motion of no confidence to the members of the Regional Executive (decision no. 12/2006). The conclusion is that such a motion can be voted but, if approved, cannot provoke the removal of the person contested from its Office. It seems conceived as a kind of symbolic sanction, limiting the opportunity for the Council to effectively control the action of the Executive.



Four Regions have also introduced the question of confidence to be put by the President in the Council (in Campania, Friuli-Venezia Giulia, Liguria and Calabria, where a previous decision of the Executive as a whole is required). As with the analogous tool provided at national level, it should enable the Head of the Executive to call his majority to order on crucial measures for the governmental political program. For how they are regulated, questions of confidence are very unlikely to be rejected. It will be almost impossible for a President to fail and to be forced to resign. On the one hand, the technique used to regulate the question of confidence led to the opposite effect to the discipline contained in the rules of procedure of the national Parliament. While these rules allow putting a question of confidence on virtually every matter except those strictly forbidden, regional Statutes and legislation list the bills or the measures on which such a motion can be presented. On the other hand, regional norms on the vote of the question of confidence require the absolute majority for its rejection and the simple majority for its approval, which then becomes the rule.

It is relatively easy to see that the basic regulation – the electoral legislation, the formation of the Executive, and the confidence – of the relationship between Regional Councils and Presidents (Executives) of the Regions is not much in favour of the Legislative Assemblies (Buratti 2010: 139-175). However potentially there are many other channels for re-expanding the influence of the Councils on regional governments: the legislative process, which is regulated at regional level as well, the ordinary oversight function, fostering processes of public deliberations etc. (see decisions no. 378 and 379/2004).

## 5.2. The power to dissolve the Assembly

Another fundamental perspective through which the position of regional legislative Assemblies needs to be addressed deals with for what reasons and who can dissolve them before the expiration of the parliamentary term.<sup>I.VII</sup>

Here a different degree of autonomy exists amongst regional legislatures amongst the UK, Spain and Italy.

In the UK the only hypothesis of ‘extraordinary’ dissolution of devolved Assemblies envisaged – apart from the physiological term – is a sort of ‘*self-dissolution*’. The Executive is



completely set apart and is devoid of any powers to condition the date of new election, which instead was a decisive prerogative of the national Prime Minister so far (through the Crown).<sup>LVIII</sup> By contrast, the devolved Assemblies are able to force the Executive to have an election, since new elections have to be summoned after every dissolution of the Parliament.

The procedural requirement for the anticipated dissolution is the adoption of a resolution by at least two thirds of the Assembly's members, the highest quorum fixed amongst all the procedures of the devolved legislatures. It is certainly a guarantee of stability of parliamentary activity, which however makes quite unlikely the achievement of the threshold.

As for the reasons behind the '*self-dissolution*', there is a significant difference between Northern Ireland, on the one hand, and Scotland and Wales, on the other hand. In Northern Ireland the initiative to dissolve the Assembly can be taken only when the vacant Offices of First Minister and Deputy First Minister have not be filled within seven days of the first meeting of the Assembly, following elections. In this case two conditions have to be met: the quorum of two-thirds plus the substantive reason why the Executive is lacking. These provisions are, in any case, perfectly coherent with consociational nature of the Northern Ireland government.

On the contrary, in Scotland and Wales to some extent the dissolution of the Assembly could happen more easily (Rawlings 1998: 461-509).<sup>LIX</sup> In fact the self-dissolution takes place either when the qualified majority mentioned passes a resolution for whatever reason *or* when the Assembly fails in filling the Office of Prime Minister in due time (28 days). In this case the two requirements are alternative, whereas for Northern Ireland they are cumulative.

In Spain Autonomous Parliaments enjoy a much lower degree of autonomy in terms of decisions on their dissolution than their UK counterparts: there is nothing equivalent to the '*self-dissolution*'. However it is necessary to clarify that constraints have increased in the last few years.

When the Communities were established, under Art. 143, the situation became somewhat paradoxical. Only the historical Communities and Andalucía could provide the anticipated dissolution of their Assemblies and regulated the matter by legislation. In the ordinary Communities legislatures could not be dissolved in advance. It was forbidden,



exclusively for a technical and organizational reason, to hold contextual elections in all the Communities which could have been prevented by the decision of a President of the Region for the dissolution. Thus, behind this absolute rigidity of the system, which deprived the President of the Community of a certain margin of manoeuvre, there was not the intention to preserve parliamentary autonomy at regional level (Jover 2009: 183).

The prohibition was removed only when the Statutes of ‘second generation’ were approved. Some of the new Statutes (Comunidad valenciana, Balearic Islands, Aragón) expressly provide for the anticipated dissolution of the regional Parliaments, also in a very extensive way (Álavarez Conde 2007: 26).<sup>IX</sup> The power of dissolution is conferred to the Presidents of the Communities, who have started to use it actively, making the aspiration for a common electoral deadline unreal (Pendás García 1988).

Finally, in Italy after the constitutional reform in 1999 and the adoption of the standard model of government (founded on the direct election of the President of the Region) Regional Councils are in a peculiar position. They enjoy the power to self-dissolve, but its meaning is twofold (see Art. 126 Const.). The first hypothesis is that of the *proper self-dissolution* (for no specified reasons), when the majority of the members of the Council decides to resign. The second hypothesis is that of the self-dissolution rightly described as ‘*institutional suicide*’ (Gianfrancesco 2009: 218), where the dissolution is caused by the approval of a motion of no confidence against the President of the Region or the refusal to approve the question of confidence put by the President.<sup>IXI</sup> On these occasions – as the first implementation of the reform demonstrates – Regional Councils are very reluctant to use their prerogatives to sanction the President because the impact on their term of office, too.

Instead, the third hypothesis of dissolution dealing with the regional form of government has nothing to do with self-dissolution, depending on factors external to the Council: the removal (by the President of the Republic in case of acts in contrast with the Constitution or grave violations of the law), permanent inability, death or voluntary resignation of the President of the Executive.

Particularly in this regard (the third hypothesis), one can wonder whether the attempt to rationalize the regional form of government has not gone beyond its scope by creating doubts about the democratic legitimisation of the so-called clause ‘*simul stabunt, simul cadent*’.



If, for any reason, the President is deemed to be permanently unable to stay in office, the Council is forcefully dissolved. Either the two institutions act side by side or they do not.

However, the system of sanctions that penalizes the Council does not operate *vis-à-vis* the President, who, for example, can change the political majority supporting him in the Council without any consequences in terms of institutional balance (Tosi 2001).

### 5.3. Other tools for making the Executive accountable

In addition to the most traditional instruments for making the Government accountable, such as the confidence procedure (see above para. 5.1.), other tools are provided to the regional Assemblies for this purpose in their rules of procedure or standing orders. Written and oral questions, First Minister or President question time, and hearings are used by most regional legislatures far more frequently than motions of censure or questions of confidence, being ordinary oversight tools at Assemblies' disposal.

However, most activities regarding the relationship with the Executive take place at committee level. First of all, committees have become crucial within the regional balance of powers between the legislative and the executive branches, because in all devolved Parliaments, Regional Councils and Autonomous Parliaments, they exercise both the legislative and the oversight functions. The joint functions of standing committees in the UK is something completely new, since Westminster Parliament keeps them separated (see above, para. 3).

These standing committees (or statutory committees in Northern Ireland) participate in the legislative process for the consideration of the bill, amending its content and in a few cases – Piemonte, in Italy (Griglio 2010: 127-128); Catalonia and Andalucía, in Spain – they finally approve legislation on behalf of the House (law making committees) (Vírgala Foruria 1993: 73-95).

In Northern Ireland the existence of these committees is considered so strategic to the proper functioning of the form of government that the Offices of Chairman and Vice-Chairman of the statutory committees are allotted to political groups on the basis of the same procedure applied to the formation of the Executive. The d'Hondt method is followed, provided that the committee Chairman and the mirroring Ministers come from different parties.



But because of the weak position of the regional Assemblies in the decision-making process, though formally being the regional Legislators (see further para. 6), the rules of procedure amended after the adoption of the new Statutes or at the beginning of the devolution have preferably strengthened their position in overseeing the Executive through committees. This is required by the new institutional balance itself, particularly in Italy and Spain, which has reinforced the Executives. Not only standing committees carry out public hearings, inquiries and investigations, or address specific concerns to the Executive by mean of motions or resolutions.<sup>LXII</sup>

Perhaps the most important achievement pursued by the ‘new’ regional Assemblies through their committees is of linking the oversight activity on the Executive to the collection of data and information from the public (Maccabiani 2010: 161-188). These Assemblies have become more and more open and transparent as regards their activities (also thanks to ICT), but are also involved systematically in processes of wide consultation of the population (also regulating the code of conduct of lobbyists), both during the committee stage and on specific issues to be investigated. This trend has been especially emphasized by the Parliament of Catalonia (which seems to be a sort of model amongst the Autonomous Parliaments), by the Scottish Parliament and by the Councils of Tuscany and Emilia-Romagna. The new provisions help move regional Assemblies closer to citizens but, at the same time, assure an invaluable source of guidance in assessing the conduct of the Executive and in orienting it.

## **6. Brief notes on the normative power of the Assemblies...and of the Executives**

The most important feature found in all the Regional Assemblies of Italy, Spain and the UK is their nature of legislature. They have been designated to carry out the legislative functions within the remits of the Regions or devolved entities.

However, although legislative production should be the core of the Regional Assemblies’ activities, they have not been able to exercise their power effectively or ‘delegate’ their exercise to someone else.



For instance, in Italy, not only is the rate of legislative production lower at regional level compared to the central one, but also the quality of regional legislation has been often considered quite poor, sometimes hyper-sectoral and others not at all homogeneous in the content (Carli 2010a: 1-7). The legislative process is usually dominated by the Executive and concerns almost exclusively Executive's bills.

Moreover, after the constitutional reform Regional Councils have lost their monopoly as law making authority at regional level. The adoption of the regulations, originally reserved to the Councils, is now left open by the Constitution with regard to the definition of the competent authority and is usually transferred by the new Statutes from the Councils to the Executive bodies with few exceptions (Abruzzo and partially Marche) (Gianfrancesco 2009: 231; Tarli Barbieri 2009).

However, regional Executives, even after const. law no. 1/1999,<sup>LXIII</sup> are forbidden from adopting acts having force of law. In decision no. 361/2010 the Constitutional Court – actually required to decide on a quite different issue<sup>LXIV</sup> – recognized that all legislative powers at regional level are vested in the Councils and thus the Regional Executive is not entitled to adopt either delegated legislative decrees or decree-laws (Ruggeri 2010).

The opposite solution can be found in the Spanish autonomous Communities. Contrary to Italy, the Spanish Constitution indirectly (Art. 153 and 161) and the organic law on the Constitutional Court directly recognize the existence of acts having force of law at regional level. Therefore the legislative monopoly of the regional Assemblies has been severely challenged.

The possibility for Autonomous Parliaments to delegate the adoption of law to the Executives was provided most of all only in the regional institutional laws (*leyes de desarrollo estatutario*) until the recent reform of the Statutes (Castellà Andreu-Martínez 2009: 47-82),<sup>LXV</sup> when those provisions were incorporated in the basic law of the Communities. In most Statutes, legislative delegation is forbidden on certain matters (e.g. the institutional architecture and the protection of rights) and in the Rules of procedure of the Catalan Parliament the process for the adoption of delegated legislative decrees is strictly regulated (Art. 137), underlining the need to preserve the prerogative of the Assembly as 'ordinary legislator'. Indeed, the Catalan Parliament scrutinizes all draft legislative decrees of the Executive, which can be enacted only if amended consistently with what is required by the Assembly (Castellà Andreu-Martínez 2009: 47-82).



A major change of the Statutes of ‘second generation’ was the introduction of Communities’ decree-laws. The innovation does not consist of the requirements for adopting decree-laws – in case of extraordinary and urgent need –, for their conversion into law – without amendments by the Parliaments – and the substantive limits – i.e. their exclusion in matter of rights and freedoms of citizens, electoral law etc. –, to which Art. 86 Sp. Const. can be directly applied,<sup>LXVI</sup> but affects the institutional balance between the regional Parliaments and Executives.<sup>LXVII</sup> Indeed, the expansion of the regulatory activity of the Executive in the legislative field, traditionally reserved to the most democratically legitimated body, is somewhat disputable where no firm limits are posed. The Executives of the Autonomous Communities where decree-laws are provided seem quite active in their enactment. Moreover, due to the jurisprudence of the Spanish Constitutional Court – which recognizes a wide margin of discretion to the issuing authority of decree-laws in appreciating the occurrence of extraordinary and urgent circumstances (see decision no. 68/2007) –, no really effective balances to the law-making power of the regional Executives seemed to have been introduced. Therefore the increasing use of decree-laws could undermine the position of the Autonomous Parliaments.

In the UK devolved legislatures, on the contrary, the intention to ‘delegate’ legislation is realized more as self-restraint and deference toward Westminster than with the purpose of enlarging the tasks of the devolved Executive authority. Indeed, it is now commonly acknowledged that *Holyrood* and the other regional Assemblies are more than happy to abstain from legislating on devolved matters and to leave the floor to the national Parliament, in order to avoid complex negotiations or, even worse, to see their legislation declared *ultra vires* by the Supreme Court (Leyland 2011). On these occasions, devolved legislatures still have a say in the legislative process before the law is passed at Westminster, but it is something different from the traditional law making process.

However, devolved legislatures seem instead very committed to deeply scrutinising regional Executive regulations (subordinate legislation in Scotland). Standing parliamentary committees have been set up in order to examine draft regulations, which are regularly sent to the Parliament before their enactment (Reid 2003: 187-120).



## 7. Conclusions

The existence of Regional Assemblies provided with legislative powers contributes to the positive democratic performance of all the constitutional systems examined, by directly linking people to the fundamental regulatory function.

However, as the cases of regional legislatures in Italy, Spain and the UK prove, there are many challenges to the enhancement of their position, which was the ultimate aim of the constitutional and institutional reforms from the Nineties to the beginning of the new Century.

The first challenge derives from the nature of the States itself, not being federal States. Regions are bound by several constraints in depicting their form of government and in strengthening the autonomy of their own legislatures that inevitably compete with the national Parliaments. Constitutional Courts, in Italy and Spain, and the Westminster Parliament, in the UK, carefully monitor the activity of the regional Assemblies, often limiting their margin of manoeuvre.

The second challenge, instead, is the Assemblies' inertia. Regional legislatures, particularly in Italy and Spain, have not always been willing to test new institutional solutions, such as the electoral laws, relying on existing models. Within each country a gradual process of homogenization amongst legislatures has taken place, becoming more and more similar to one another in their organization and procedures.

Perhaps the most important common feature when we come to the form of government is the presence of the confidence relationship between the legislative and the executive branches in the Italian Regions, in the Spanish Autonomous Communities and in the UK devolved entities. Nonetheless the way this relationship is shaped varies a lot across countries. In this regard, three elements have proved to be crucial: 1) the degree of autonomy enjoyed by the Assembly *vis-à-vis* its Executive and particularly if and how legislatures can be dissolved, ranking the UK three devolved legislatures at the top, the Spanish regional Parliaments in the middle, and the Italian regional Councils at the bottom; 2) the electoral system, whether proportional or mixed, in the three countries; 3) the party system and its relations with the party groups in the regional Assemblies.



Finally, looking at the legislatures in the accomplishment of their normative and oversight functions, their role appears quite weak in the law making process, even though this should be their “core” activity. Indeed, on the one hand, legislative production in the Region has been inferior to expectations, both from the quantitative and the qualitative points of view; on the other hand, (also) at regional level the normative powers of the Executives have significantly grown in the last few years.

On the contrary, the most interesting and innovative institutional solutions can be found in the carrying out of the oversight function, which should be further enhanced in the future, aiming at countervailing more powerful Executives. All the regional legislatures have centred their activity preferably in the standing committees, establishing their own channels of dialogue with the public (through hearings, investigations, inquiries and wide consultations on internet). The objectives fulfilled by the legislatures are twofold: to revitalize the relationship with the constituents, but also to collect information to be used for the Executive’s oversight.

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<sup>I</sup> Indeed, the Governor, who was appointed by the Legislature, was also the President of one of the legislative branches. However, at the same time, ‘the same legislative branch acts again as executive council of the governor, and with him constitutes the Court of Appeals (*Federalist no. 47*).’

<sup>II</sup> The role and power of subnational legislatures are probably more significant in order to assess the ‘quality’ of the democratic system where, like in the three constitutional orders analysed (and unlike many States in the U.S.) – Italy, Spain and the United Kingdom –, local and regional referenda are not a tool for approving or amending legislation.

<sup>III</sup> On the general relation between federalism and democracy, see Madison James, 1788, *Federalist Paper n. 46*; Elazar Daniel J., 1987, *Exploring federalism*, University of Alabama Press, Tuscaloosa-Alabama, 87-108; Dahl Robert A., 1989 *Democracy and its critics*, Yale University Press, New Heaven-London, 213 et seqq.; Stepan Alfred, 1999, ‘Federalism and Democracy: Beyond the U.S. Model’, in *Journal of Democracy*, 10 (4): 19-34; Bodenhamer David J., 2006, ‘Federalism and Democracy’, in Holdstedt Melissa V. (ed.) *Federalism. History and Current Issues*, New Science, Hauppauge, 49-60; Lecours André-Nootens Geneviève, 2009, ‘Nationalism and Identity in Contemporary Politics. Issues of Democratic Shared and Self-rule’, in Lecours André-Nootens Geneviève (eds) *Dominant Nationalism, Dominant Ethnicity, Identity, Federalism and Democracy*, Peter Lang (International Academic Publishers), Bruxelles, Bern, Berlin, Frankfurt am Main, New York, Oxford, Wien, 2009, 11-31.

<sup>IV</sup> From a terminological point of view, the use of the term ‘Region’ instead of ‘State’ or ‘Member State’ is not



particularly significant (in Canada, for instance, Member States are called 'Provinces'). What is important, however, is the endowment of powers of these subnational units (see next sections).

<sup>V</sup> Normally, in regional States, Regions do not pre-date the constitutional legal order. On the contrary, they are formed afterwards by mean of decentralization. The only exception is represented by the historical Autonomous Communities, such as Catalonia, País Vasco and Navarra. Indeed, the Spanish constitutional Court has affirmed that Autonomous Communities pre-dated the 1978 Constitution (see decisions no. 58/1982, 85/1984 and 76/1988).

<sup>VI</sup> Even though the Spanish Senate is formally the Chamber of territorial representation, since part of its members are appointed by the Parliaments of the Autonomous Communities, it actually fails to act in such a way. So far the Spanish Senate has always reproduced the same political dynamics existing in the *Congreso de los Diputados*, as Chamber dominated by national political parties.

<sup>VII</sup> When the Spanish Autonomous Communities were first established, the process for the adoption of the Statutes was different - depending on the procedure followed, Art. 151.1 Const. for the historical Autonomous Communities and 143 Const. for the others -, originally involving municipalities and provinces willing to create a new regional entity.

<sup>VIII</sup> Olivetti Marco (2003), 71-77, 'catalogues' Statutes on the basis of the procedure for their adoption and on whether the source of law in which they might be embedded (a) derives from an international obligation; b) is contained in a national constitutional Act (like the Italian regions with special Statutes); c) is an ordinary statute of the national Parliament adopted without any *formal* guarantees for the devolved authorities (as for Scotland, Wales and Northern Ireland); d) is adopted on the initiative of the local authorities of the relevant Region as an Act of the national Parliament (as in Spain); e) is approved by the relevant regional Assembly but its entry into force depends on the adoption as a national statute (as for the Italian Region with ordinary Statutes before 1999); f) is adopted as a regional law, having a peculiar status compared to other regional statutes (it is the norm on the law production at regional level and the source of authority).

<sup>IX</sup> However the positions of PP and PSOE were very different. The Statute of Catalonia was approved by 189 votes against 154 in the *Congreso de los Diputados* in 2006. It gained the votes also from MPs of the socialist group, even though many of them remained critical about the outcomes of the negotiations on the Statute. On the contrary, the PP voted against the Statute and expressed its convinced opposition to it by appealing to the Constitutional Court (according to Art. 162 Sp. Const.).

<sup>X</sup> Nonetheless there are important exceptions in which the role of the State counts a lot (depending also on the relationship amongst political parties), like that of the new Statutes of País Vasco in 2005 (*Plan Ibarretxe*) and of the Canarias Islands in 2006 that were vetoed by the national Parliament.

<sup>XI</sup> The argument according to which regional statutes would be devoid of "constitutional nature" because they are not expression of a constituent power, acting without limits, cannot be used to differentiate them by State Constitutions in federal states. Indeed, even State Constitutions are subject to constraints, first of all the need to respect the federal Constitution and the division of legislative competences. Moreover, both in federal and regional states the national Constitution very often fixes additional constitutional requirements upon subnational authorities, such as how the relationship between the state legislative and executive branches is shaped.

<sup>XII</sup> By the decisions of the Italian Constitutional Court on the new Statute of Tuscany (no. 372/2004), on the new Statute of Umbria (no. 378/2004) and on the new Statute of Emilia-Romagna (no. 379/2004); and by the decision of the Spanish Constitutional Court on the new Statute of Comunidad Valenciana (decision no. 247/2007) and that on the new Statute of Catalonia (decision no. 31/2010).

<sup>XIII</sup> As recognized by Balaguer Callejón Francisco (2007), above all before the second generation of Statutes (approved from 2006 and 2007), most aspects of the institutional design for the Autonomous Communities were left to the regional legislative acts by 'expanding' the contents of the Statutes. However, in the new Statutes approved many provisions once contained in these regional acts have now been included.

<sup>XIV</sup> Indeed, the regional Council of Basilicata has not approved a new Statute yet, while the entry into force of the new Statute of Molise, adopted on February 22, 2011 and once passed the review by the Constitutional Court, according to Art. 123, para. 5 It. Const. (decision no 63/2012), has been currently suspended. Instead the new Statute of Veneto finally entered into force on April 18, 2012 (after its final publication on the official Journal of the Region, B.U.R. no. 30, April 17, 2012), when the present article had been already finalised.

<sup>XV</sup> See, for instance, the decision no. 303/2003 of the Italian Constitutional Court.

<sup>XVI</sup> Amongst them, the Statutes of Catalonia, of Comunidad Valenciana, of Andalucía, of Aragón, of Balearic



Islands, of Castilla y León, of Extremadura.

<sup>xvii</sup> The reform of the Statutes involves many other aspects, such as the recognition of rights and the claim of being acknowledged as ‘nations’ within Spain, but they are not considered here not affecting directly Regional Assemblies.

<sup>xviii</sup> At the present the *Devolution in England Referendum Bill 2011* has been introduced in the national Parliament, as a second chance to involve England in the devolution process.

<sup>xix</sup> After all, the inclusion of Northern Ireland, which is constitutive and geographically part of Ireland, in the United Kingdom implicitly assumes the existence of a ‘special community’ in that Region; and Scotland was originally an autonomous Kingdom before the annexation (and even today appears to consider as feasible the perspective of a secession from the United Kingdom: see the Report presented to the Parliament by the Secretary of State for Scotland, *Scotland’s constitutional future. A consultation on facilitating a legal, fair and decisive referendum on whether Scotland should leave the United Kingdom*, January 2012, [http://www.astrid-online.it/Dossier--R3/DEVOLUTION/Documenti/Gov\\_Scotland-constitutional-future\\_paper\\_01\\_2012.pdf](http://www.astrid-online.it/Dossier--R3/DEVOLUTION/Documenti/Gov_Scotland-constitutional-future_paper_01_2012.pdf)).

<sup>xx</sup> See the *Memorandum of Understanding and Supplementary Agreements* Between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers, and the Northern Ireland Executive Committee, March 2010, [http://www.cabinetoffice.gov.uk/sites/default/files/resources/devolution-memorandum-of-understanding\\_0.pdf](http://www.cabinetoffice.gov.uk/sites/default/files/resources/devolution-memorandum-of-understanding_0.pdf), and the dozens of Concordats agreed on specific subject-matters, <http://www.scotland.gov.uk/About/concordats>.

<sup>xxi</sup> Out of the three, the Devolution in Northern Ireland, due to the contingency, has been the most dominated by a top-down approach, although every measure has always been negotiated.

<sup>xxii</sup> The Government of Wales Act 1998 excluded the conferral of legislative competences to the Welsh Assembly.

<sup>xxiii</sup> However, according to Mitchell James (2010), 98 the Scottish Parliament ‘is very much the child of Westminster. It is in its DNA’. What changes is essentially the proportional representation.

<sup>xxiv</sup> Actually at the origins of the Spanish democracy the ‘brand new’ rules of procedure of the Autonomous Parliaments largely relied on the provisions of the rules of procedure of the *Congreso de los Diputados*. Afterwards, following the reform of the rules of procedure of the subnational Parliaments, these rules reached their own peculiar configuration, departing from the original model (and although the Spanish Constitutional Court is used to read these rules of procedure through the lens of the national ones).

<sup>xxv</sup> The situation remains quite unique for Northern Ireland, whose institutional architecture is deliberately intended to avoid increasing political tensions.

<sup>xxvi</sup> This constitutional law opened the floor to regulate the form of government of the special Regions outside the Statute, by approving *ad hoc* laws by the absolute majority of the Regional Council’s members.

<sup>xxvii</sup> The action was brought before the Constitutional Court as a conflict arising from allocation of powers between State and Regions, according to Art. 134 It. Const. and led to decision no. 106/2002. The ‘example’ of Liguria was then followed by Marche, whose new Statute, approved in 2001, provided the new name of ‘Parliament of Marche’ to be put in any official document of the Region together with that of ‘Regional Council of Marche’. This denomination was struck by decision no. 306/2002 of the Constitutional Court.

<sup>xxviii</sup> The Scottish Parliament was not established in 1999. It had existed for centuries until it was adjourned in 1707 following the Act of Union. Significantly the opening session of the new Scottish Parliament in May 1999 began by saying that ‘the Scottish Parliament, which adjourned on 25 March 1707, is hereby reconvened’.

<sup>xxix</sup> ... and it neither had a glorious past such as the Scottish Parliament: the Welsh Assembly was a brand new devolved institution.

<sup>xxx</sup> A slight majority of the Scottish Parliament and Welsh Assembly’s members are elected through the first-past-the post system.

<sup>xxxi</sup> Actually in 2011 the first majority party government ever was appointed in Scotland. From 1999 to 2007 Scotland was led by a coalition government composed of the Labour and the Liberal-Democratic parties, while in 2007 a minority government was appointed following the great success of the Scottish national party, which was able to enlarge consensus in 2011 up to 69 out of 129 seats in *Holyrood*. Sometimes political dynamics and the shift in public opinion’s orientation can reverse the usual expectations originating from a certain electoral system.

<sup>xxxii</sup> In that decision one of the Justices, Pedro Cruz Villalón, in his separated opinion criticized the Court for having misinterpreted the scope of Art. 152, para. 1 Const., unreasonably extending its application.

<sup>xxxiii</sup> For instance, the Constitutional Court struck down a law enacted by the legislature of País Vasco that



tried to regulate the conditions to register before elections aiming at exercising the right to vote (decision no. 154/1998).

XXXIV This law provided that every electoral list declared its candidate to the Presidency of the Region, granting to the candidate of the most voted list the election by the regional Council (indeed, formally the President of the Region had to be elected by the Council); a stable majority in the Council, assigning the majority bonus (in order to reach at least 55% of the seats in the Council) to the most voted list; the dissolution *ex lege* of the Regional Council after the first two years of the term in case of withdrawal of the confidence relationship between the President and the Council.

XXXV Moreover, the entry into force of some regional electoral laws, such as that of Tuscany and of Marche, was suspended pending the adoption of the new Statute, according to the decision no. 196/2003 of the Constitutional Court. Therefore their effects have been postponed.

XXXVI These Regions are Abruzzo, Basilicata, Emilia-Romagna, Liguria, Piemonte and Veneto.

XXXVII The attribution of 55% or 60% of the seats depends on the percentage of votes obtained by the most voted regional list, whether below or above 40%.

XXXVIII The fragmentation in the Council has not disappeared, if not got worse, but it seems to affect more the functioning of the Council itself than the ability of the President of the Region to govern.

XXXIX The conferral of the majority bonus is not automatic, but depends on whether no list or coalition has got at least 60% of votes (provided to have obtained at least 45% of votes). See Regional law of Tuscany no. 25/2004 as modified by law no. 50/2009.

XL The number of the Assembly's components is fixed in the Devolution Acts in the UK; in the regional Statutes in Italy (see decision no. 188/2011 of the Italian Constitutional Court) and in the Statutes – which usually fix only the minimum and the maximum size of the Assembly –, but further clarified in the institutional laws and in the rules of procedures of the regional Assemblies in Spain.

XLI This is particularly evident in the UK, where the myth of 'parliamentary sovereignty' of Westminster has not been abandoned yet, notwithstanding the considerable changes derived from the EU law and the ECHR, whereas the devolved legislatures can always be deprived *ex lege* of their legislative competences by the national Parliament. In Italy, instead, whereas the *autodichia* (domestic jurisdiction) of the two national Chambers persists almost unaltered from the landmark decision no. 154/1985 of the Constitutional Court, since 1964 the Court has denied to the Regional Assembly of Sicily (and thus to the other Regional Councils) the same prerogative because of the different constitutional positions of the two parliamentary institutions in the constitutional architecture (see decision no. 66/1964).

XLII Indeed, the idea of having an official Opposition is embedded in majority system, where the first loser takes this role. But in a system, like that of Northern Ireland, where nobody can be considered as a loser in the election for social and political reasons and everyone, according to the most inclusive logic, has to participate in the decision-making process, 'the majority rule is a non runner' and thus an Opposition is not conceivable.

XLIII See Articles 45-49 of the Scotland Act 1998; Art. 16A of the Northern Ireland Act 1998; and Art. 46.6 of the Government of Wales Act. In the former Government of Wales Act 1998, the 'fusion' between the Assembly and the Executive was complete, since there was not an independent Executive branch. Executive functions were delegated by the Assembly to its executive committee.

XLIV Before 1999, instead, the President of the Regions, like in Spain, was elected by the Council amongst its members.

XLV The nomination is notified to the Queen by the Presiding Officers of the devolved Assemblies.

XLVI For instance, Art. 20 of the Northern Ireland Act 1998, as modified, establishes that the Executive Committee (the Executive) shall be chaired by both, the First Minister and the Deputy First Minister.

XLVII The text of the Northern Ireland Act talks about the choice of the 'political designation' by the members of the Assembly. This means that every member has to sign the Register of the Assembly by labelling himself as 'nationalist' or 'unionist' or something else in order to facilitate cross-party negotiations required for the passage of any bill. The system of designation was actually contested by the Alliance Party, by saying that it institutionalizes divisions.

XLVIII In País Vasco and Asturias political groups directly propose their candidates to the Assembly, without the intervention of the President of the Parliament.

XLIX In Catalonia, the Statute has introduced the new Office of *Consejero Primero* (first Counsellor of the Government), a sort of *primus inter pares* within the Executive, to whom the President delegates certain tasks.

L This kind of motion was approved from the end of the Eighties to the middle of the Nineties, in Galicia,



Rioja, Aragón, Canarias Islands, and only indirectly in Murcia. In this Community, actually, the motion was not approved but the President decided to resign anyway.

<sup>L1</sup> However, it is worth mentioning that a constructive motion of no confidence has never been approved in the *Congreso de los Diputados*.

<sup>LII</sup> Like the Statute of Castilla-La Mancha and Valencia.

<sup>LIII</sup> The Constitutional Court confirmed this interpretation of const. law no. 1/1999, recognizing an exclusive power of the President to appoint and remove the members of the Regional Executive (decision no. 12/2006).

<sup>LIV</sup> The Region of Valle d'Aosta, one of the Regions with special Statutes, used the possibility given by const. law no. 1/2001 to adopt a regional law (no. 21/2007) on the election of the President of Region that turned to the previous model for the ordinary Regions, but introducing also brand new provisions: the President of the Region is elected by the Council, who can approve a constructive motion of no confidence against him and also a motion of no confidence against the other members of the Regional Government.

<sup>LV</sup> As was mentioned above, the Italian Regional Councils were not particularly willing to try out new electoral laws that could have been a significant element of innovation.

<sup>LVI</sup> The constitutional reform also had another 'victim', probably even more compromised than the Councils: the Governing bodies of the Regions (*Giunta regionale*), in search for a new role between the powerful Presidents and the Councils. By contrast, the real winner of the constitutional reform is the President of the Region, as also the Constitutional Court has somewhat admitted (decisions no. 372/2004 and 352/2008).

<sup>LVII</sup> The term lasts four years for the Spanish Autonomous Parliaments and the UK devolved Assemblies and five years for the Italian Regional Council.

<sup>LVIII</sup> However, things have changed at Westminster, too, because of the above mentioned Fixed Term Parliaments Act 2011.

<sup>LIX</sup> Before the Government of Wales Act 2006 the legislative Assembly could not be dissolved beforehand. This could be explained by the absence of the traditional institutional separation between the legislative and the executive branches. The Executive Committee was a committee of the Parliament. See Rawlings Richard, 1998, 'The New Model Wales', in *Journal of Law and Society*, 25 (4): 461–509, who stresses the importance of the original understanding of the Welsh devolution as structurally different from the other two (in Scotland and Northern Ireland) aiming to reproduce at regional level the functioning of local institutions.

<sup>LX</sup> For instance the Statute of the *Comunidad valenciana* does not fix any limitations on the use of this presidential prerogative that could prejudice the balance of power between legislature and executive.

<sup>LXI</sup> The possibility to use a constructive motion of no confidence to substitute a President with another without election is not admitted (see decision no. 2/2004 of the Italian Constitutional Court).

<sup>LXII</sup> In the new Rules (2005) of the Parliament of Catalonia a new procedure was introduced, called *ponencia redactora* (Rule 117), that substantially entitles standing committees to initiate legislation.

<sup>LXIII</sup> The constitutional Court excluded this possibility when the original text of the Constitution was in force (decisions no. 59/1959 and 32/1961), but doubts arose about their admissibility in the constitutional framework after the Nineties.

<sup>LXIV</sup> The '*petitum*' was related to the infringement by a law adopted by the President of the Calabria Region of the national Government's power to replace Region in case of inertia to act (Art. 120 It. Const.) and of the principle of loyal cooperation (Art. 118 It. Const.) and the decision was issued on the basis of a conflict of competence between Regions and State.

<sup>LXV</sup> The introduction of a new source of law at regional level outside the domain of the Statute seems to be quite disputable. Indeed, the Statutes of autonomy are (or, better, should be) the only sources on regional law making, when it is not otherwise provided by the Constitution.

<sup>LXVI</sup> Indeed many Statutes simply refer to the constitutional provisions, occasionally enlarging the lists of matters excluded.

<sup>LXVII</sup> The power of the Executive to adopt regulations, on the contrary, seems to be well delimited to the matter of organization and falling within the competences of the Community (see decision of the Constitutional Court no. 33/1981 and 18/1982).



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