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Between Spain and Germany. The Historical Models of Italian Regionalism

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1. The Two Benchmark Models and Their Influence on the Work of the Constituent Assembly

The entire historical development of Italian regionalism drew its inspiration from two benchmark models: Spanish regionalism and Central European (mainly German) federalism. With regard to the territorial distribution of political power, these were the institutional models that most influenced the work of the Constituent Assembly (1946-1947) and the constitutional reforms that developed subsequently, culminating in the reform of Title V Const. during the 13th Parliament (1996-2001) following the enactment of Constitutional Laws No. 1/1999 and No. 3/2001[1].

The main advocates of these two benchmark systems at the Constituent Assembly were Gaspare Ambrosini and Costantino Mortati, two distinguished constitutional lawyers with an excellent understanding of both models.

Ambrosini, a scholar of North American federalism, had published a paper in 1933 on Spanish regionalism under the Constitution of the Second Spanish Republic (the 1931 Constitution),[2] which was the first genuine form of regionalism in history. This was subsequently overthrown, as we know, by the Franco régime that restored the centralised unitary state.

Mortati had been schooled in German and Austrian classical studies and belonged to that large community of Italian constitutionalists who, as it were, "*spoke German*". Among his other works, was his translation and commentary on the Weimar Constitution in a

[1]To these constitutional laws we must add Constitutional Law No. 2/2001, prior to the reform of the Special Regional Statutes.

[2]Ambrosini (1933), p. 93 *ff*. The interest shown in the subject by Italian legal scholars was confirmed by another paper published the year before: Carena (1932), p. 165 *ff*. Ambrosini also published a more wide-ranging paper: Ambrosini (1944).

series of books published by the Ministry for the Constituent Assembly in advance of the drafting of the new Italian Constitution.[3]

This double influence left very visible marks on the Italian constitution.The *nomen* "Regions" attributed to the new territorial entities comes from the Spanish model (a nomen that is not without precedents in the Italian post-unification tradition). The *regional* enumeration of powers and subject-matters was also borrowed from the same source (differentiating the regional model from the federal model which enumerates the subject-matters in the reverse, i.e. listing the powers of Central Government and not of the sub-Central tiers of government, which are vested with general powers). The establishment of five Regions enjoying a special form of autonomy - the s.c. Special Regions (Sicilia, Sardegna, Valle d'Aosta, Trentino Alto Adige and Friuli-Venezia Giulia) - was also inspired mostly by the Spanish Constitution, and that, like all the Spanish Regions, are vested with their own specific and mutually differentiated competences which are governed by their respective Statutes (*Statuti speciali*).

Conversely, the Central European (particularly German) federalist tradition, inspired the category of "Ordinary Regions" each Region having identical powers, like the member States of a federal State, and the constitutionalization of the division of powers between Centre and periphery (governed not only by the Constitution but also by the Special Regional Statutes which were instituted by laws of constitutional rank, unlike the Spanish autonomous Statutes).

However, none of this implies that the regional structure produced by the 1947 Italian Constitution was merely a mechanical borrowing of "pieces" taken from a variety of other constitutional experiences.

Its most original feature was the way in which it implemented the *unitary principle*, as one of the two counterbalancing principles enshrined in article 5 of the Constitution, which on the one hand proclaims both the unity and indivisibility of the Republic, and on the other it establishes the principle of the recognition and development of local autonomies.[4] In passing, we should note that this solution would subsequently be adopted by other countries, and was the inspiration underlying the two Iberian Constitutions of the 1970s: the 1976 Portuguese Constitution, which recognised the two autonomous region of the Azores and Madeira, and the 1978 Spanish Constitution, which embarked upon a comprehensive process of regionalising the State. In both instances, the Constitutions combined the unity (or, to quote the Spanish Constitution, the indissoluble

[3] Mortati (ed.) (1946).

[4] "The Republic, which is one and indivisible, recognises and fosters local autonomies; it ensures the broadest administrative decentralisation of services which depend on the State; it adjusts the principles and methods of its legislation to the demands of autonomy and decentralisation".

and indivisible unity) of the State or Nation with recognition of the right of the decentralised entities to their autonomy.[5]

Italy implemented the unitary principle essentially in two ways.

The first was to require all Regional instruments be subjected to the prior scrutiny of the Central Government, to appraise their merits and their constitutionality. By so doing, Central Government was in a position to annul the Regional measures before they came into force (or at all events to prevent them from becoming part of the legal system). The reason for this was not only to avoid inconsistency with the Constitution or with Statute Law, but also – save in the case of administrative instruments – for reasons of political convenience (freely assessed by the Central Government bodies designated for this purpose). Controls of this kind were applied to the Ordinary Regions' Statutes, whose entry into force was conditional upon their approval by an Act of Parliament, and (with a less rigorous substantive scrutiny) to administrative instruments.

The second way of implementing the unitary principle was by subjecting Regional legislation to the *concurrency principle*. This ensured that the Regions had no area in which they were free to deliberate with total autonomy (albeit, obviously, in compliance with the Italian Constitution). In all cases they were required to comply with the principles laid down in Acts of Parliament (or derivable from Acts of Parliament). This applied both to the legislation which in Italy is called *concurrent* or *concurring,* which must comply with the framework laws enacted by the State, and *full* or *primary* legislation (vested exclusively in the Special Regions), which must be compliant with the general principles of the State legal order: these are unwritten principles which can be inferred inductively from the *corpus* of Central Government legislation.

And it was precisely by drawing on these elements that this writer in the literature was able to speak in terms of the Central Government's *tutelage role*,[6] that reflects the role that Central Government had traditionally played in relation to the local authorities in the strict sense of the term (*Municipalities and Provinces*), on which it was very large modelled.

2. The Constitutional Reform in the 13th Parliament and the Persistence of Double Influence

Spanish and German double influence not only continued in the constitutional reform of Italian regionalism, as already mentioned, but was actually further enhanced by

[5] For example, art. 2 of the Spanish Constitution and art. 6 of the Portuguese Constitution, respectively, *"La Constitución se fundamenta en la indisoluble unidad de la Nación española, patria común e indivisible de todos los españoles, y reconoce y garantiza el derecho a la autonomía de las nacionalidades y regiones que la integran y la solidaridad entre todas ellas"*; *"O Estado é unitário e respeita na sua organização e funcionamento o regime autonómico insular e os princípios da subsidiariedade, da autonomia das autarquias locais e da descentralização democrática da administração pública"*.

[6] D'Atena (2010), p. 60.

it: firstly, by what I might call an increase in the *dosage* of the Spanish and German input, and secondly, by the previously unimaginable cross-fertilisation between the two models.

To complete the picture, it may be noted that in the Constitution, as reformed by Constitutional Laws No. 1/1999 and No. 3/2001, the distinctive feature of the Italian model was no longer the unitary principle but the subsidiarity principle.

3. The Spanish Influence

The most evident sign of the enduring influence of the Spanish model was the retention of the Regions enjoying special autonomy: these are the most 'Spanish' of the Italian Regions. And this is all the more noteworthy considering that in the process of drafting the reform, legal writers had suggested differentiated autonomy be abolished, on the grounds that it was inconsistent with the federal rationale underlying the planned (and subsequently implemented) reversal of the enumeration of powers.[7] One matter that was raised was that by by vesting general powers in the Ordinary Regions, the Special Regions (which had originally been vested with broader powers) would ultimately be left with fewer powers than the Ordinary Regions.

And this is not all!.

In the case of the Special Regions, the Spanish influence was not only retained but, as already pointed out, it was further enhanced.

Indeed the reform of the Constitution reduced the 'heteronomous charge' of the Special Statutes. Even though these have retained the nature of constitutional laws, unlike *normal* constitutional laws they are enacted concurrently with the Regions which under Constitutional Law No. 2/2001, are required to take part in the drafting process with the Regional Council issuing a mandatory (but non-binding) opinion. The Statutes cannot be put to a confirming referendum, as instead is the case for normal constitutional laws, when, in the second parliamentary vote, they are approved with an absolute majority and not a qualified two-thirds vote. To fully appreciate the importance of this second amendment, suffice it to note that since the confirming referendum is a nationwide referendum, the decision is left to an extra-regional popular majority (for the obvious reason that even though the population of the Region takes part in the referendum, it only represents a small fraction of the total national population).

The system would be wholly identical to the Spanish system if the demand constantly being made by the Special Regions were to be taken up, and amendments to the Special Statutes were made subject to agreement between Central and Regional Governments.

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[7]The problem was originally raised when the previous constitutional reform was being designed and in particular the version adopted by an *ad hoc* Bicameral Commission, the De Mita–Iotti Commission (see, in particular, the papers by D'Atena (1993), p. 19 *ff*.; Ruggeri (1993), p. 87 *ff*.; De Martin (1993), p. 106 *ff*), and was taken up again with reference to the reform that was completed in 2001. See D'Atena (1999a) p. 1132 *ff*.; Id. (1999b), p. 208 *ff*; and Id. (2001a), p. 210 *ff*; Id. (2001b), p. 225 *ff*.

Even though this solution was taken up by the constitutional reform in the 14th Parliament,[8] it was rejected in the popular *confirming* referendum.[9]

4. The German Influence

Similar considerations to those already made regarding the Spanish influence also apply to the German influence. For in the 2001 reform it was not only taken up again but was actually enhanced.

The most evident indication of the continuing German influence was the retention of the Ordinary Regions that, like the German *Länder* (as in most of the member states with a federal system), are vested with identical powers directly enshrined in the Italian Constitution. In order to differentiate between that model and the one adopted in Spain, the latter used the image of coffee for all (*café para todos*) in contrast with the image of the cheeseboard of which more will be said further on.

It may be relevant to emphasise the fact that the retention of the category of Ordinary Regions was by no means a foregone conclusion. For in the course of the preparatory work leading up to the reform it had been proposed to extend the Spanish model to the Ordinary Regions, albeit revised and adjusted, (and – for some unknown reason – called the "Catalan model"). This is a reference to the D'Onofrio Draft, according to which each Region would have *special* autonomy, in the sense of differing potentially from the autonomy vested in each of the others.[10] But when the reform was eventually enacted, this

[8]This is a reference to the constitutional law that was carried on the second vote with an absolute majority of the members of both Chambers, enacting "modifications of part II of the Constitution" (Official Gazette No. 269 of 18.11.05), in which article 38 provided as follows: "The following shall be added to the end of article 116 (1) of the Constitution: 'after prior agreement with the Region or Autonomous Province concerned regarding the text approved by both Chambers when first voted on. The proposed agreement may be rejected within three months of the date on which the text is forwarded, by a qualified majority of two-thirds of the members of the Regional Council or Assembly or of the Council of the Autonomous Province concerned. The Chambers may enact the Constitutional Law if the rejection has not been voted on by that deadline".

[9] The referendum was held on 25 and 26 June, 2006. The turnout was 53.6 per cent of the registered voters, who rejected it by a resounding majority: 61.7 per cent against, compared with 38.3 per cent in favour.

[10] The proposal was tabled on 30 June, 1997 by Senator D'Onofrio in the course of the deliberations of the Bicameral Commission (the D'Alema Commission, named after its President) which was responsible for drafting proposals for revising the second part of the Constitution for submission to both Chambers. It made provision for the distribution of powers between the Central and the Regional Governments in respect of the subject-matters not directly falling within the remit of the former or the latter by the Constitution, to be established by a constitutional law agreed between the individual Region concerned and the national Parliament. Art. 4(3) provided that, "The legislative functions of the central and the regional governments shall be governed in respect of all the remaining subject-matters by Statute resolved by each Regional Council and enacted by Parliament with the rank of a constitutional law, explicitly specifying Central Government powers, leaving all the others within the legislative remit of the Regions". It may be noted in passing that even though this proposal took up the federal technique of enumerating the subject-matters falling within the remit of Central Government, as a result of having a plurality of Regional Statutes (one per Region), the system gave rise to a range of Regional autonomies that all differed from each other (and hence were all "special").

possibility was abandoned, and the category of Ordinary Regions was maintained accordingly.

The German (and more generally, federal) influence was further enhanced by the decision to invert the enumeration of legislative powers. The new constitutional provisions no longer assign the enumerated powers to the Regions (as is normally done in the case of Regional states) but to Central Government[11] which is called upon to legislate in respect of the matters allocated to its exclusive powers (art. 117(2) Const.) while for the matters allocated to concurrent powers, the State can only lay down the core principles, in respect of the matters allocated to concurrent Central/Regional powers (art. 117(3) Const.). For all the other matters, the residual clause in favour of the Regions in article 117 (4) applies. But this residual clause was expressed in particularly drastic terms. Indeed, the 2001 constitutional provisions did not merely give the Regions legislative powers over every matter *not reserved* to Central Government legislation, but it used more stringent wording, allocating residual regional powers over any matter not *expressly* reserved to Central Government. It therefore used an adverb ("*expressly*") that was however subsequently dropped from the United States Constitution. The 10th Amendment reads as follows: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people".[12]

A second indication of the enhanced influence of the German model is the introduction, albeit in false guise, into the Italian constitutional system of a typically German type of power: the *konkurrierende Gesetzgebung* (or what is known as *German-style* concurrent legislation, to distinguish it from the *Italian-style* concurrent legislation mentioned above).

This is an elastic technique for dividing the competences that enable Central Government to legislate in areas falling within the remit of the sub-Central tiers of government, thus shifting the borders between their respective powers. By exercising this power, that Federation (the *Bund*) takes over matters falling within the remit of the *Länder*, thus restricting or even *crushing* (to quote an expression used in Germany) the powers of the *Länder*.

We have called this an import "in false guise" because the result of making the distribution of legislative powers more flexible, giving the Central legislator the power to

[11]It should be noted that this reversal of the enumeration of powers in the Constitution, with reference to legislation, does not apply to the other Regional powers: the Constitution does not directly allocate matters to the Regional Statutes (construed from article 123 using the enumerative method) and to their administrative powers, which – as we shall be seeing – are not directly allocated by the Constitution, which merely lays down the criteria and the forms of allocation (art. 118).

[12] Strictly speaking, the use of the adverb "expressly" in the 2001 constitutional reform, could be used to arguing for a more rigid separation of powers between the Central and the Regional Governments, with a reduction to the minimum (and possibly even the total *exclusion*) of all "implied powers", to use the United States formula, vested in the former. However, this interpretation has not been followed up in practice. For the Constitutional Court has argued on the basis of the dynamic elements in the system and has given Central Government legislative powers even over matters not *expressly* allocated to it.

make use of such flexibility (albeit – as we shall be seeing – only partially), stems from the use of a different technique from that used by the German Constitution: the "Basic Law" (*Grundgesetz*).

Reference is being made here to the vesting of Central Government with *cross-cutting* powers, that is to say, powers that are not identified in terms of the subject-matter that they will affect, but by stipulating the purpose (or the result) they are intended to achieve. This category includes, for example, Central Government powers over "protecting competition" or "safeguarding the environment and the ecosystem".

These competences put Central Government in a position whereby it can encroach on matters allocated by the Constitution to the Regional Governments, thus constraining or "crushing" the Regions' exercise of powers by legislating comprehensively in respect of matters within their remit. For example, with regard to the protection of competition, Central Government can legislate on trade (a Regional matter), and with regard to environmental protection it can exercise its impact on industry and agriculture (both areas over which the Regions have competence).

But the analogy with the German *konkurrierende Gesetzgebung* goes further still. The purpose that identifies these kinds of powers also restricts their exercise, thereby performing a function which is not dissimilar from that of the exercise clause provided for by article 72 (2) of the German Basic Law (the *Erforderlichkeitsklausel*: the necessity clause), that enables the Constitutional Court to verify whether Central Government's action, consistently with the purpose assigned to it, has remained within the constitutionally established limits of its powers.

Enlightening in this regard was the ruling in a Constitutional Court core judgement, No. 14/2004, that states, "it is the very conformity of Central Government intervention with the constitutional distribution of powers that strictly depends on the reasonableness of the legal provisions. Where it can be shown that the instrument used is consistent with its purpose [...], the legislative powers of Central Government provided for by article 117(2) letter *e*) may not be denied." Hence the possibility of rejecting the claim that cross-cutting powers can be invoked to justify legal provisions which are not consistent with the purpose attributed to them (or which are in conflict with them). It is precisely by applying this criterion that the Constitutional Court was able, for example, to declare measures providing State aids to be unconstitutional: since these aids distort competition conditions, they cannot be provided for by a law whose *ubi consistam* is to "protect competition".[13] And with a similar argument, the Constitutional Court had grounds to reject the request to extend for a further 10 years the government franchises for the large-scale diversion of publicly-owned water, it too being in contrast with the protection of competition.[14]

[13]Constitutional Court, judgment No. 63/2008.

[14]Constitutional Court, judgment No. 1/2008. These are the relevant words; "For instead of gradually opening up the domestic energy market following the natural expiry date of the franchises for the large-scale deviations of

5. Mutual Interference Between the Two Models

As already mentioned, one of the most interesting novelties about the constitutional reform in the 13th parliament was the *mutual interference* of the two benchmark models. Reference is being made to the application of the Spanish rationale to Regions that had never known anything of the kind, namely, the Ordinary Regions, and secondly, the extension to the Special Regions of powers which are clearly inspired by the German model. This not only increased the Spanish and German "influences" on the Italian Constitution, but thier impact was felt also in areas lying outside their traditional sphere of influence.

The underlying reasons for the penetration of the Spanish model into the Ordinary Regions had to do with the unease created in these Regions as a result of retaining the two types of Region (Ordinary and Special Regions), particularly in the Regions located in the wealthier parts of Italy.

Indeed, it should not be forgotten that the Special Regions receive much more favourable financial treatment then the Ordinary Regions. Suffice it to recall that, according to the most reliable estimates,[15] in the period 2006-2009 the average *per capita* expenditure of the Special Regions[16] was almost twice that of the Ordinary Regions (5,382 euro compared with 2,846 euro).

Bearing this figure in mind, it is not surprising that high-income taxpayers in the Ordinary Regions resent the fact that their taxes are being used to help finance the Special Regions, by offering economic benefits that they themselves cannot enjoy.

This feeling of resentment is reflected both in the attempts by certain municipalities and Provinces in the Ordinary Regions to "migrate" into a bordering Special Region (by being incorporated into its territory), and the proposal to add other bodies (such as the Veneto Region, and the Provinces of Belluno, Bergamo and Treviso) to the list of Special Regions enumerated in the Constitution).

It was precisely to meet this sense of unease that article 116 (3) of the 2001 constitutional reform provided the possibility for Ordinary Regions to be granted forms of special autonomy – a solution based on a transparently Spanish rationale.

This Spanish influence is evident, first and foremost, with respect to the procedure to be used. This enhanced (and special) autonomy is granted by an ordinary Act of Parliament (not a Constitutional Law), enacted at the initiative of the Region concerned

State-owned water, this provision unreasonably extends the franchises for a further 10 years beyond the expiry date of each franchise. Far from being an essential instrument for protecting and fostering competition, this provision violates the principles of EU law and *openly contradicts the very purpose (the protection of competition) which it purports to pursue*". More recently, see a similar judgement, Constitutional Court, judgment No. 10/2010.

[15]Buglione (2011) p. 553 *ff*.

[16]… and the two Autonomous Provinces of Trento and Bolzano, which enjoy the same status as the Special Statute Regions.

and by agreement with it and follows a procedure that is not very different from that used for the Spanish autonomous Statutes which have to be agreed between the national parliament and the individual 'autonomous communities' (*Comunidades autónomas*).

The Spanish influence is not any less evident, however, with regard to the substance of this possible "special" autonomy. The constitutional provision enumerates the subject-matters to which it may apply (thereby removing them from the jurisdiction of Central Government to that of the Region concerned). It also provides the possibility of making exceptions to the financial rules that apply to the Ordinary Regions.

In so doing, the Italian Constitution – albeit in relation to one particular case – uses the technique traditionally employed in Spanish Constitutionalism (both the Constitution of the Second Republic and the present Constitution). It is known as the "cheeseboard" (*tabla de quesos*) technique, under which the Constitution does not directly allocate powers, but enumerates the subject-matters that may be allocated to the Regions (now called *Comunidades autónomas*), while the Autonomy Statutes identify the matters that meet the requirements of the individual regional territories.

There has also been a heightened influence of the German system, as already mentioned, as a result of "cross-pollination". Reference is being made to the fact that according to the 2001 reform, the rationale of the German system ends up being applied, with some limitations, also to the Regions with a special form of autonomy (which previously had not been the case).

The provision that produces this result is article 10 of Constitutional Law No. 3/2001, which was designed to ensure that, following the reversal of the enumeration of powers (that applied solely to the Ordinary Regions) the Special Regions would not end up with considerably fewer powers than the Ordinary Regions; it therefore automatically extended to the former any new powers vested in the latter. In this way therefore, the more "Spanish" Italian Regions, that is to say, the Special Regions, enjoy residual legislative powers, like the German *Länder* (and like most States that are members of Federations).

6. The Shift from the Unitary Principle to the Subsidiarity Principle as a Specific Feature of the Italian System

Before concluding these considerations, it may be useful to point out that the new constitutional provisions have radically changed the way in which the unitary principle is embodied. It is true that this principle continues to be enshrined, in article 5 of the Constitution that has not been amended, but the instruments provided by the Constitution for its implementation, which were one of the most distinctive features of Italian regionalism, have been radically changed, not only because of the weakening of the principle of concurrent powers, which no longer underlies all of the Regional legislative powers (in particular it no longer applies to residual legislative powers), but above all

because of the abolition of the thorough network of scrutiny over regional instruments, which constituted the Central Government's *tutelage role*.

This does not mean that the aforementioned principle is entirely set aside. Suffice it to recall, for instance, that the attribution to Central Government of substitutive powers to act in lieu of the Regions (ignored in the original Constitution) provides a very solid basis to underpin the unitary requirements, whose absence in the past had been reason for complaints.[17]

The fact is that what was unique about the original way of implementing the unitary principle no longer exists: the introduction of substitutive powers has not created any exclusively Italian specific feature, but has merely brought the Italian system into line with that of other states (beginning with the Austrian Federal system which, in this field, can claim copyright).

However this does not mean that Italian regionalism, deprived of its original specific features, does not have significant original features in the international panorama.

Particularly novel and original are the new constitutional provisions governing administrative powers. Indeed, in its new form, the Constitution does not directly allocate these powers, distinguishing between those vested in Central Government and those vested, respectively, in the Regions and the sub-Regional authorities (Municipalities and Provinces). It merely lays down the criteria for distributing them, which is left to ordinary legislation enacted by the Central and the Regional Governments. One absolutely central principle forming part of these criteria is the subsidiarity principle. After vesting municipalities with residual administrative powers, article 118 provides that they can be shifted to a higher institutional tier by an ordinary law, when this is required to guarantee uniformity in their exercise, specifically in compliance with the subsidiarity principle (and the principles of adequacy and differentiation[18]).

The originality of this solution is evident. For as a rule, in federal and regional systems the provisions governing the distribution of powers (enshrined in the Constitution or in autonomous Statutes) directly allocate the administrative functions. In Germany, for example, it is the Constitution – the "Basic Law" – which identifies the administrative functions of the Federation (*Bund*), vesting it with specifically enumerated powers, and attributing to the *Länder*, in specific residual clauses, all the other functions that are not

[17] The substitutive powers of Central Government are now enshrined in article 117 (5) Const. in the event of non-performance by the Regions of any of their obligations deriving from international law or European Union law, and in article 120 (2) which contains a general provision to this effect.

[18] These two latter principles are not so much autonomous principles as specifications of the subsidiarity principle. The former – the adequacy principle – subordinates the allocation of administrative powers to a given tier of local government, to the fitness of the latter to perform them; the latter – the differentiation principle – make it possible to avoid applying the same treatment to entities belonging to the same category, justifying, for example, the differentiation between municipal powers on the basis of their respective populations.

excluded from their powers by the Constitution (because they are vested in the *Bund*).[19] In Spain, the situation is more complex, because being based on the "cheeseboard" model, the allocation of the administrative functions is done through the autonomous Statutes and, partly, by the Constitution, which vests the Statutes with the function of allocating powers[20] while directly allocating certain administrative functions itself.[21]

In order to fully appreciate the peculiarity of the Italian constitutional system, however, one must not merely consider the rules written in the Constitution, but account must also be kept of the role given to the subsidiarity principle by constitutional case-law, which deems it to be one of the corner-stones of the whole system.

Suffice it to recall that by placing a "procedural" construction on this principle, the Constitutional Court, has made it justiciable (by no means a foregone conclusion)[22]. Moreover, the Court applies it not only to the administrative powers but also to the legislative powers. It has argued on the basis of the principle of legality that the power needed to govern the administrative functions *attracted by subsidiarity* to Central Government is vested in the State, even if falling within the scope of a subject-matter of the Regions competences.

This makes the principle of subsidiarity a kind of *deus ex machina* that tones down the drastic nature of the residual clause, and that takes on a role which, in these terms, has no equivalence in any of the other models found in the field of comparative constitutional law.

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[19]In addition to the general residual clause (art. 30 Basic Law, under which the *Länder* are vested with all the public tasks not assigned by the Basic Law to other authorities) there is also a residual clause referring explicitly to the administrative functions relating to the subject-matters falling within the competence of the *Bund*. This is a reference to art. 83, which vests these functions in the *Länder* as their "own powers" (*als eigene Angelegenheit*), save where the Basic Law provides for (or permits) a different allocation. It should also be noted that the Basic Law (art. 28) specifically requires the *Länder* to respect the municipalities' powers of self-administration (*Selbstverwaltung*).

[20]Art. 147(2)(d), which leaves it to the regional Statutes to govern the powers vested in the Autonomous Communities (simultaneously removed from Central Government). This is the actual wording: "*Los Estatutos de autonomía deberán contener: [...]Las competencias asumidas dentro del marco establecido en la Constitución y las bases para el traspaso de los servicios correspondientes a las mismas*".

[21]This is the case, for example, with employment legislation. Art. 149(1)(7) Const. Vests central Government with legislative powers over employment, specifying: "notwithstanding the implementation of Central Government law by the authorities of the Autonomous Communities" (*sin perjuicio de su ejecución por los órganos de las Comunidades Autónomas*).

[22]Settled case-law. The original judgment is No. 303/2003.

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