Regional electoral legislation in Italy. A short essay on raise and fall of the myth of territorial differentiation

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Regional electoral legislation in Italy. A short essay on the rise and fall of the myth of territorial differentiation

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Abstract

Up to 15 years ago the Constitution entrusted State law with the task of regulating the election system of regional councillors. Since the nineties there have been radical changes in the provisions (constitutional and later sub-constitutional) regarding elections of regional Councils, and the Regions have been given concurring or residual legislative competences, thus authorizing them to autonomously adopt rules concerning their own elections. The electoral laws approved by the Councils of Regions from 2001 up to now are nevertheless substantially uniform in contents. Such substantial uniformity was not required. The single Councils could have made far more differentiated electoral choices. We can say that there has been a sort of institutional conformism. The local political classes handling the institutional change were not able (or did not want) to introduce substantial differentiations and innovations and they have only created systems almost identical to one another. Such a conclusion is only seemingly surprising. We notice in fact how difficult it is for party systems to "regionalise themselves", even when political interests of regional bodies are at stake. Every single regional electoral appointment is seen as the opportunity to once again measure general political consent, not as the time to consolidate territorial consent. We realize how weak the regional party systems still are, in spite of the widespread use of federalist rhetoric, and how scantily independent they appear to be. The effect is that the actual uniformity of electoral systems will cause a further step towards uniformity of party systems.

Key-words

Region, Electoral law, political system, territorial differentiation, right of vote, majority, proportional system, form of government

1. Does a doctrine of regional electoral law exist?

Up to 15 years ago there was no point in talking about the existence of a doctrine of regional electoral law. In fact, up to the nineties, the electoral legislation concerning regional representative assemblies in Italy was a matter of little interest to experts in Constitutional law. The Constitution (art. 122, in the text before the 2001 reform) entrusted the «law of the Republic» with the task of regulating the election system and the number and cases of ineligibility and incompatibility of regional councillors. This choice was based on a clear idea of the institutional relations between State and Regions: the electoral system, closely connected with the form of government, was to represent a unifying element, admitting no derogation for the various Regions. Therefore, it was to be regulated by national legislation, to assure the conformity of all representative regional assemblies with the same model. The only (theoretical) exception was represented by the five Regions under special Statutes; in fact, since their creation, for historical reasons, they have had the possibility to autonomously regulate the electoral systems of their assemblies (although they have not entirely exploited such chance, as we will see later).

We must add that, in the traditional framework which went on up to the electoral referendums of the early nineties, the electoral models were basically similar at all representative levels (local authorities, Regions, State, Italian representatives in the European Parliament), with only minor differences. In short, the electoral legislations at all levels were characterized by the choice of proportional systems, not very selective (that is to say, not distorting the distribution of votes), functional to a parliamentary form of government called «extreme multi-party system» (according to the well-known classification by Leopoldo Elia[1]), that is without the direct election of the leaders of the executive powers. Such systems, at all government levels, reflected the party system as established in the post-war period and they were based on the selection of the elected on the basis of multiple preference vote.

Since the nineties, however, things have deeply changed. The taboo of necessary uniformity to safeguard unitary policies has been given up and there have been radical changes in the provisions (constitutional and later sub-constitutional) regarding elections of

regional Councils. In addition to the reassessment of the constitutional discipline regarding the elections of Regions under ordinary Statutes (const. l. no. 1/1999, introducing an additional legislative competence and giving the Statutes the competence to determine the form of government of the Regions), there has been a continuous adjustment of the rules contained in special Statutes, regarding the electoral discipline of the five Regions with special autonomy (const. l. no. 2/2001, introducing substantially uniform rules for special electoral matters "according to the mechanism of primary competence"[II]).

Lastly, the reassessment in the distribution of legislative competences between State and Regions has also had a considerable impact on electoral matters. In fact, the Regions have been given residual legislative competences, thus authorizing them to autonomously adopt rules concerning their own elections.

Following such constitutional changes, in 2004 a State framework act, introducing the main principles of the new legislation regarding the election system of the Regions under ordinary Statutes, became effective[III]. In the following years, some Regions started to build their own electoral legislation, either making new laws, or modifying specific parts of the transitional electoral legislation which had been planned for all Regions by the constitutional law no.1/1999, together with the ordinary law no. 43/1995[IV].

If we analyse the single electoral rules which Regions have started to work out, together with the principles (of constitutional and sub-constitutional character) introduced by State legislation, we must necessarily conclude that we could theoretically try to build a real «doctrine of regional electoral law»; in fact, the peculiarity of this system, more and more different from the other electoral rules (which have all, in the course of time, become different from one another) has greatly intensified.

From this point of view, Italy is to be considered a comparative exception: in most States, in fact, the same electoral system (or very similar systems) tends to be normally used at all levels of election[V].

But we must wonder whether, after the birth of an autonomous doctrine of regional electoral law, an electoral differentiation, satisfying specific requirements of regional rules, has been effectively carried out. The question is whether, since Regions have acquired legislative competence about elections, single Regions have really adopted different models, as a consequence of different legislative choices made by the regional political bodies entrusted with such competence.

In order to analyse in detail the regional electoral rules and the different degrees of autonomy recognised by the Constitution, we must first of all distinguish the autonomy provided in the five Regions under special Statutes and the autonomy in force in the fifteen Regions under ordinary Statutes. But first we want to clarify some (alleged) common limits, which should be in force for any type of regional electoral system.

2. Common principles regarding the electorate: extension of participation and equal opportunities

Single regional legislations cannot obviously derogate from the constitutional principle of universal suffrage (art. 48 Const.) and freedom of access to elective offices (art. 51 Const.). What we must make clear however is the degree of autonomy given to Regions as to franchise and eligibility requisites (within the constitutional frame) and the source to refer to (the regional Statute, ex art. 123, par. 1, Const., or the regional law ex art. 122, par. 1, Const.?).

On this point, two problems, summing up two political issues widely debated in recent years, must be dealt with.

The first problem is the following: could the Regions themselves lay down franchise and eligibility requisites, enhancing special "links" with the regional territory? In other words, could the Regions reduce the right of vote on the basis of specific subjective requisites, different and more restrictive compared to the mere residence on the regional territory at the moment of vote? And could they reduce eligibility, by demanding requisites wider than those provided for by national legislation (Italian citizenship and residence in any municipality of the Republic)?

Possible limitations of this type could obviously be adopted only if enabled by the Constitution or by a constitutional law: this was the case of the two special Statutes, providing for minimal requisites of residence for admission to vote (Valle d'Aosta and Trentino-Alto Adige) or for eligibility (Friuli-Venezia Giulia, Sardinia, Valle d'Aosta, plus the ordinary regional law in Trentino-Alto Adige and Sicily: the fact that this was an ordinary law, and not the regional Statute, perplexed commentators). In fact, we are talking about the restriction of a right guaranteed by the Constitution, which could not be

admitted without a constitutional decision. Since the Constitution does not provide for anything of this kind for ordinary Regions, the Statutes of these Regions cannot derogate from this rule: all the Italian citizens resident in the Region have the right of vote and all the Italian citizens resident in any municipality of the Republic have the right to be elected.

Let us remember that the Constitutional Court excluded that the notion of «regional people» could be admitted in our constitutional rules[VI]. This means that the «regional electorate body» can only be defined by the mere sum of the Italian citizens resident in the Region[VII].

The second problem is even more relevant and politically difficult: could the Regions establish rules extending the number of the holders of the right of vote beyond citizenship? In this case there is no constitutional restriction. According to Paolo Barile, in fact, «juridical situations are generally awarded to all private constitutional subjects, without considering their citizenship… the exceptions exist where the Constitution expressly excludes non-citizens»[VIII]. In other words, it is advisable to supply an "open" interpretation of the constitutional rules concerning fundamental freedoms, when such rules tend to guarantee rights, not to lay down prohibitions[IX]. Article 48 Const. clearly recognizes the right of vote to citizens i.e. it forbids the law from depriving citizens (or some of them) from this right. But this rule must not be taken as fixing a ban on the extension of the right of vote to non-citizens. Non-citizens might be granted the right of vote if and when the law considers it advisable[X].

We must rather ask ourselves whether the Regions have the power to discipline the matter autonomously, without a national legislative decision. The Constitutional Court has clearly explained that national and regional elective assemblies are both an expression of the sovereignty of the people. Therefore regional elections are to be traced back to political, rather than local elections[XI]. In fact European citizens resident in Italy, on the basis of EU Treaties and following the Directive no. 94/80 CE, can vote in local elections, not in regional elections.

Following such considerations, it seems possible to say that the State law can extend the right of vote to foreigners, both European and non-EU[XII]. On the contrary, it seems impossible to maintain that such choice can be entrusted to single regional legislations.

In fact, according to art. 117 Const., it is entirely the State's competence to decide on juridical condition of foreigners, immigration, electoral legislation of municipalities, provinces and metropolitan cities. On the contrary, a concurring legislation (a regional law complying with the fundamental principles established by a State law) is provided for as to the election system of Regions.

It therefore seems possible to infer that only the State law could establish rules to extend franchise and eligibility in municipal and provincial elections to foreigners, and only the State law could establish fundamental principles to extend the right of vote to foreigners in regional elections.

There are however some authors who, after analysing the meaning of the words «electoral legislation» or «system of election» (art. 117, par. 2, lett. p, and art. 122 Const.), and considering that the extension of the electorate would be part of neither, tried to maintain that regional electoral law could be the Regions' concern[XIII] (while local electoral rules could be directly established by municipalities[XIV]). But the question seems to have been solved once and for all after both the Constitutional Court[XV] and the Council of State[XVI] denied such possibility. The Region seems therefore precluded from any intervention tending to affect the determination of the subjects constituting its electoral body. A statutory competence is to be excluded (in fact it could not be justifiable ex art. 123, par. 1, Const.) and at the same time a competence of the "residual" regional law ex art. 117, par. 4 would be unimaginable. As to the "concurring" legislation, it is obvious that, failing a fundamental principle of State legislation, the single Regions have no possibility to act. And it would also be quite inappropriate to do so. To entrust single regional or local political bodies with the competence on a fundamental right such as the right to vote would represent a violation of the equality principle. An untenable territorial differentiation in this matter would arise, contrasting with the necessary uniformity required by art. 3 Const. with reference to the exercising of political rights. In particular, foreigners would or would not enjoy such right depending solely on where they live.

In this connection, a delicate problem arose when the Statutes of Tuscany and Emilia-Romagna inserted a rule (but only among general principles), according to which «the Region "*promotes*" (or, in the case of Emilia-Romagna, "*guarantees*"), in compliance with Constitutional principles, the extension of the right of vote to immigrants». The Government questioned the constitutional legitimacy of that rule before the

Constitutional Court. The Court "defused the bomb", saving the mentioned rules because they were considered «devoid of juridical effectiveness, as mainly regarding different political sensibilities present in the regional community when the Statute had been approved»[XVII]. In short, the Court, without tackling the general problem concerning the compatibility with the Constitution of a prospective extension of the right of vote beyond citizenship, has made clear that such extension could not be the result of an autonomous decision of a single Region, neither through a law, nor through statutory rules.

As to vote equality, derogations are only admitted to safeguard the linguistic minorities, and only if provided for by constitutional rules. Therefore, the electoral legislation of ordinary Regions is not allowed to introduce differentiations on this matter: only the Regions under special Statutes, which are constitutionally "covered" by their Statutes, could do so.

The question of equal opportunities is different[XVIII].

Since the nineties, Italy has been debating the legitimacy of legislative measures aimed at making effective the duty of promoting equal opportunities between genders, in order to gain access to public offices and elective positions. The Constitutional Court first denied constitutional legitimacy to such measures[XIX], causing a series of political reactions which led to the introduction of new constitutional rules, concerning both regional (new art. 117, par. 7, Const.; l. cost. no. 2/2001) and political elections (new art. 51, par. 1, Const.).

The above mentioned framework law no. 165/2004 has not introduced any sort of principle. This does not prevent the Regions from giving the problem an autonomous answer, on the basis of the powers they have (ex art. 117, par. 4). Up to now, ten Regions have approved measures concerning the obligation to present lists formed with candidates of both genders in a fixed proportion, where the percentages vary from case to case[XX]. The non-observance of the rule is punished with sanctions of different kinds, ranging from a merely economic sanction (loss of public refunding for the electoral campaign) to the inadmissibility of the list.

A quite specific case is that of the electoral law in Campania. Here, the so called «gender preference»[XXI] has been planned. Such measure has been devised because the mere presence in the list of a guaranteed minimum number of women does not in itself guarantee a female presence among the elected. In fact, the majority of "mistrustful" electors continue to vote for male candidates. Besides, male candidates are often favoured

as to sources of finance for their electoral campaigns and anyway they have a visibility which assures them considerable advantages in the competition.

The technique devised to make up for such alleged inequalities (which allows the elector to give two preferences, provided they are of different gender, with the sanction of invalidating the second preference if the two votes are given to persons of the same gender) was questioned by the Government in front of the Constitutional Court. But the Court[XXII] declared the question unfounded, arguing (as it had done a few years before with the Valle d'Aosta electoral law[XXIII]) that the provision only guarantees parity of chances, and does not favour either male or female candidates in getting a seat: the provision has been considered as a mere anti-discriminatory measure, not as a real «positive action».

3. Constitutional and statutory obligations to regional electoral legislation

What are the electoral models which can be adopted by regional legislation?

The State framework law no. 165/2004, which we have often mentioned, only orders Regions to find «an electoral system favouring the building of stable majorities and guaranteeing the representation of minorities». The "minorities" we are talking about are – obviously – the political ones (not the linguistic ones, which are guaranteed ex art. 6 Const.): in fact, the rule expressly connects such "minorities" to the "stable majorities" whose creation must be favoured. In any case, even without such recommendation, clear constitutional constraints (provided for by articles 1, 49, 83, par. II, 123, par. III, 126, par. II, Const.) would not allow the adoption of electoral systems clearly unfit to guarantee representation to minorities, in order to safeguard the pluralism of political representation.

Therefore, not only wholly majority systems would be considered illegitimate, but also barrier clauses or too high majority bonuses, built in such a way as to reduce the representation of political minorities beyond the reasonable requirements of stability and governability. Besides, if regional electoral laws contained electoral rules endangering such principles, the question should be solved by the Constitutional Court, carrying out a reasonable balance between requirements of stability/governability and the principle of vote equality (following the example of the German constitutional federal Tribunal

regarding the *Sperrklausel,* in force both in the law for the election of the *Bundestag,* and in the electoral systems of the single *Laender*[XXIV]).

Other limits could be introduced (by Statutes) to guarantee the stability of the system in the last part of the legislature. At the moment, something of this kind is only established in the Statute of Abruzzo: the regional Council cannot modify regional electoral legislation in the last six months of the legislature. It is a basic principle created to guarantee the rights of political minorities, but, up to now, it has not been adopted by other Regions[XXV].

Besides, although the electoral law is an «ordinary» regional law in itself, the Statutes could establish that it must be approved by a special majority (absolute majority, or majority of 2/3 or 3/5), in order to guarantee (in theory) Council minorities. Actually, many regional Statutes make it compulsory to approve a law with absolute majority. Anyhow, such rules are rather ineffective, as more often than not absolute majority can easily be reached through the votes of the Council majority: in fact, their representation share is guaranteed by the majority mechanisms provided for in most regional electoral laws.

4. The present discipline: a) the Regions under special Statutes

The events that led to the adoption of the new regional electoral laws in the course of the last 15 years are rather complex and politically entangled. By analysing such events, we will clearly see the endless labour of a difficult political season, uncertain and full of problems, which Italy finds it hard to emerge from even today.

We must first make a distinction between Regions under special Statutes and Regions under ordinary Statutes. When the constitutional law no. 1/1999 gave ordinary Regions greater electoral autonomy, special Regions had already enjoyed such autonomy for a long time. Actually, in the original version, they had full autonomy. The Statute of Sicily (art. 3) gave the regional Assembly full competence as to regional elections (later, it was interpreted as a concurring competence). With a few differences, it was the same for the Statute of Sardinia (art. 16) and for the Statute of Trentino-Alto Adige (art.19, par. 1). On

the contrary, the Statute of Friuli-Venezia Giulia expressly inserted electoral legislation among the subjects of concurring competence from the very beginning (art. 5, par. 1). However, the case of Valle d'Aosta was specific because the electoral legislation was given to the State, after advice from the Region (see the original text of art. 16, modified only in 1989).

The problem was, first of all, how to "constitutionalise" the proportional principle, which was considered as the fundamental principle of the electoral matter, although not referring to any specific framework law. Such principle was clearly mentioned in the Statutes of Friuli-Venezia Giulia, Sardinia and Trentino-Alto Adige (indirectly, also in the Statute of Sicily, which mentioned the «principles established by the Constitution as to political elections», referring back to the electoral laws of Parliament[XXVI]). In any case, however, the proportional principle was (politically) standardized and its adoption by the Regions under special Statute did not create any problem up to the nineties. There was instead a real 'standardization effect', which caused the adoption of electoral systems almost identical to the one provided for by the State law for ordinary Regions.

Only in the nineties, following the majority fashion which seemed to have suddenly struck the whole national political system, some Councils of the Regions under special Statute hurried to modify their electoral legislations. At first, this change caused several compatibility problems with their Statutes (they had in fact been written much earlier, when the constitutional principle used to be constitutionalised). The constitutional law no. 2/2001 («Provisions concerning the direct election of the Presidents of the Regions under special Statute and of the autonomous Provinces of Trento and Bolzano»), solved the most delicate juridical problems by introducing some "targeted" modifications of the old Statutes, in order to make them compatible with the new majority rules.

The techniques of changing the different electoral laws towards the majority system are rather similar to one another. Barrier clauses and/or limited majority bonuses have been introduced, bearing similarities to the electoral system which had been outlined for ordinary Regions by the law no. 43/1995 (and later on, by the transitional integrations of art. 5 of the constitutional law no. 1/1999).

It is interesting to note that the introduction of barrier clauses, whose purpose was to consolidate *political* majorities, over-representing its consistency in terms of seats, had the immediate consequence of damaging, or anyhow of making more difficult, the

representation in regional Councils of linguistic minorities, which were the only minorities expressly guaranteed by many special Statutes (the Ladini in Trentino-Alto Adige, the Walser in Valle d'Aosta). The Constitutional Court itself had to intervene, declaring the electoral law of Trentino-Alto-Adige unconstitutional, where it represented «an obstacle to the representation of linguistic minorities»[XXVII].

The constitutional law no. 2/2001, as we said, introduced some careful modifications to single Statutes; for example, it gave special Regions *exclusive* legislative power in the electoral matter (only stating that electoral laws must be «in harmony» with the Constitution and with the general principles of the juridical system). The same law gave such power to a special source, the «statutory law», which is to be adopted through the same procedure established for Statutes: approval with absolute majority and possible subjection to confirmative referendum when this is required by one fifth of the regional councillors or by one fiftieth of the electors of the Region. This should be of help to give greater stability to regional electoral legislation.

The electoral laws approved by the Councils of special Regions from 2001 up to now are substantially uniform in contents. They all (apart from Valle d'Aosta) provide for popular direct election of the President of the regional Board together with the election of the Council, thus creating a direct and indissoluble link between electoral system and form of government. They all adopt a proportional formula with multi-member constituencies (with the exception of Valle d'Aosta, for obvious geographical reasons). They all give a majority bonus to the list or the coalition of lists connected to the winning candidate President. They all provide for preference vote to select councillors and for a barrier threshold (generally low: between 3% and 4%) for the lists not in coalition (that is, not connected to a candidate President who has obtained at least 5%). They all provide for vote splitting between President and party list. There are marginal differences only about how to award the bonus: in some cases the mechanism of the so called regional "*listino*" is adopted, consisting of a fixed number of councillors to be given to the winning list; in other cases the bonus is distributed within the individual provincial constituencies.

Such substantial uniformity was not required. The individual Councils could have made far more differentiated electoral choices. But it is interesting to note that in the only case when a regional council tried to work out a substantially different electoral system, the electoral body, when called to express their opinion on the statutory law through a

referendum, rejected such choice[XXVIII]. In another case, not to make dangerous differentiations, the Council preferred to avoid approving a new law, *a priori* waiving the right to exercise legislative autonomy and accepting to continue to elect the regional Council on the basis of State rules clearly qualified as «transitional»[XXIX].

Once and for all we must remark that the transitional electoral model offered by the State to the special Regions has been perpetuated both formally and substantially, while the regional statutory legislator has proved to be devoid of real innovative capacities; by easily accepting that model, it has confirmed the provisional choices made by the State legislator in his stead. In short, there has been a sort of institutional conformism, made worse by the fact that the electoral system motivating such conformism was of very poor quality, quite unfit to guarantee a balance between representativeness of political forces and stability of executive powers: there was thus heralded a model of «fragmented bipolar system» which was obscure and difficult to understand and apply[XXX].

The local political classes handling the institutional change were not able (or did not want) to introduce substantial differentiations and innovations beyond the chances the rules offered and they have merely created systems almost identical to one another and quite similar to the dreadful national model (with the exception of some marginal details due to territorial requirements).

Such conclusion is only seemingly surprising. We could wonder why Regions with special autonomy (where special electoral rules, based on their specific territorial situation would be justified) have *always* adopted very similar laws. In fact, as we have seen, special Regions had been given wide discretionary powers to establish their electoral legislation and in 2002 they had even obtained *exclusive* powers on the matter. Still, they have constantly made almost identical laws, similar to the ones in force in the other Regions in the same period (all of them were proportional in the first period; all of them were based on the majority system with direct election, majority bonus and barrier threshold in the second period). As we will soon see, there is nothing to be surprised about.

5. The present discipline: b) the Regions under ordinary Statutes

Following the constitutional revision of art. 122, introduced by constitutional law no. 1/1999, the electoral legislation of ordinary Regions is, as we have seen, a matter of concurring competence. The formula used by the constitutional legislator in 1999 seems however so badly worded[XXXI] as to leave space to all possible interpretations. According to the most sensible interpretation, the limit of «fundamental principles established by a law of the Republic» would only operate with reference to the «electoral system» in the strict sense of the word and to the causes of ineligibility and incompatibility (but not to the forms of nomination of the President of the Region and of the members of the regional Board, nor to the so-called «*legislazione elettorale di contorno*» (the set of rules concerning electoral campaigns, electoral financing, media access, etc.). In any case, this was the interpretation given by the State legislator with law no. 165/2004, which introduced just a few rules of principle.

The State framework law requires the same length for the councils of all ordinary Regions[XXXII]. Besides, it gives some brief principles as to the election system in the strict sense of the word (the electoral formula to turn votes into seats), only requiring an electoral system favouring the birth of stable majorities and guaranteeing representation to minorities. Finally, it states the fundamental principles as to ineligibility and incompatibility to the office of regional councillor and of President of the Board (and also incompatibility to the office of member of the Board itself).

But no rule is given as to the relationship between Council and Board or between Council and President. This is quite consistent with the constitutional framework. In fact, such aspects concern the form of government and should therefore be directly and autonomously disciplined by the Statutes ex art. 123 Const., with no intervention "of principle" from State legislation.

The discretionary power theoretically left to regional law appears to be quite wide. Only pure, non-selective proportional systems or, on the other side, some strong majority systems such as the English *plurality* should not be admitted, because they contrast with the principles of State legislation. Between the two extremes, however, there seems to be plenty of room for guaranteeing the widest differentiation of individual systems (from proportional systems with majority bonus, to mixtures of proportional and majority systems, to the different types of systems with barrier threshold, to proportional systems

"after the Spanish model", having very small multi-member constituencies and without reckoning fractional remainders).

Forming no part of concurring competence and which can therefore be autonomously regulated by Regions ex art. 117, par. 4 are:

a) the discipline of the so-called "primary elections", as established by the regional laws of Tuscany and Calabria;

b) the limits of expense for an electoral campaign and, more generally, the discipline of the so-called "*par condicio*" in Regional elections;

c) the administrative organization of elections.

Besides, the Statute can establish special majorities to approve electoral laws, in order to guarantee the political minorities in the Council. This is considered admissible ex art. 123, par. 1, Const. and it has been used by several Regions[XXXIII]. The Constitutional Court, in the famous decision no. 2/2004 regarding the Statute of Calabria, recognized that these procedural weights are the «legitimate example of statutory choices regarding sources of law, which can indirectly influence regional electoral legislation». But the real problem is that (as we have already noticed referring to the «electoral statutory law» provided for in the Regions under special Statute) such "weights" do not generally reach the purpose intended, owing to the nature of the Council representation, which is itself distorted in not perfectly proportional frameworks. These rules therefore guarantee the inside articulations of the Council majority rather than the opposition.

The Statute can also regulate other aspects influencing the regional electoral legislation: we can mention equal opportunities (art. 117, par. 7, Const.), number of regional councillors[XXXIV] and above all the option for direct or indirect election of the President of the Board. In the last case, the choice of the election system of councillors is closely linked to the choice of the form of government in the Region.

According to article 5 of the constitutional law no. 1/1999, up to the coming into force of the whole system of the new regional electoral legislation (and of the new Statutes necessarily connected), a "common" discipline for all ordinary Regions, based on the old State law of 1995, was to be applied. The new feature included in art. 5 consisted of the generalised introduction of direct election of the President of the Region[XXXV] (but only

transitionally, until the single Regions had made their autonomous electoral and statutory choices).

From what we have said so far, we can see that in 1999 also ordinary Regions (as well as special Regions) had a wide range of choices. They could have differentiated their own electoral systems on the basis of the aspects most specific to their territory; they could have made provision for the demographic differences; they could have highlighted possible political-ideological differences regarding elections. Nothing of this sort happened. After a decade, we can conclude that Italian Regions have given up the opportunities which were offered to them.

Up to now, there have been two "rounds" of regional electoral legislation. Soon after the regional elections of 2005, which was soon after the State framework law came into force, electoral laws were passed by Calabria, Lazio, Marche, Puglia and Tuscany. Later on, close to the 2010 elections, the electoral laws of Basilicata, Campania and Umbria were passed. All the other Regions still use the transitional State discipline.

It is surprising that many Regions have actually reproduced, in their new electoral laws, State transitional legislation (this is the case of Calabria and Lazio); other Regions have been slightly more innovative (Tuscany, Marche, Puglia) but they have all adopted a system based on not just a tight but almost a symbiotic link between candidacy to presidency and corresponding coalition of lists, with a majority bonus to the winning "chain"[XXXVI]. There are obviously some details to be evidenced:

a) rise of the barrier clause (in Calabria it is 4% for all lists, without considering the coalition with a candidate President; in Puglia it is 5%, when there is no link with other lists reaching 5% altogether);

b) majority bonus given no longer on the basis of a «regional list» (the famous "*listino*"), but to the groups of provincial lists linked to the elected president, with seats distributed proportionally among the groups of lists entitled (this is the case of Campania, Puglia, Marche and Tuscany); the result is the return of a considerable number of elected – about 20% of the total – to provincial constituencies, that is to territory representation outside major cities (a percentage which, according to the system provided for by the national 'transitional' law, was actually bargained by the regional leaders of the coalitions);

c) provision of a "minimum" share for the opposition (35% in Tuscany and now also in Campania);
d) abolition of preferences (in Tuscany, where the closed list has been introduced, the electoral law provides for the possibility of holding primary elections inside every party, to select candidates and to decide on their position in the list).

In any case, the framework appears to be rather uniform. Despite the extensive freedom to act granted by the rules and the resulting opportunities for local political classes to use the Regions as a training ground where to try out electoral models, perhaps transferable to national level, the Regions seem to have contented themselves with playing on the same plot; so, they have under-exerted, or even not exerted at all, their competences, limiting their activity to the mere application of the national transitional law. None of the Regions has abandoned the model of direct election of the President. None of them has given up the majority bonus to the coalition of lists linked to the elected President. None of them, on the other side, has discarded the scheme of proportional representation (apart from the correction effected with the bonus), with multi-member constituencies on a provincial basis, barrier clause and preference vote. None of them has refused to introduce the "*simul stabunt vel simul cadent*" clause (literally *they will stand together or they will fall together*: if the President suffers a vote of no confidence, resigns or dies, also the Council is dissolved and a snap election is called).

6. Final remarks.

Two remarks are advisable as a conclusion. First, what we have said seems to be, over forty years after the considerations made by Leopoldo Elia on the nature of the forms of government, a further proof of the close interdependence of form of government, electoral system and party system.
The substantial uniformity of regional electoral systems, in a framework which did not theoretically prevent their even significant differentiation, seems to be the result of a clear choice from regional political *elites* who handled the transition stage from the old to the new system: it is therefore the clear example of their relative uniformity. This is further

proved by their common choice to reinforce the so-called "bipolar system", without introducing any serious instrument to avoid or at least limit the natural tendency for *internal fragmentation* of coalitions. Tuscany is a paradigmatic case: there a law has been approved, carbon-copied on the simple requirements of the smallest parties of the (then) majority coalition, containing rules whose clear purpose was to guarantee them a minimum share of representation[XXXVII].

In effect, we notice how difficult it is for party systems to "regionalise themselves", even when political interests of regional bodies are at stake. We find a confirmation *a contrario* to that by analysing the two unique special Regions where the party system is peculiar in itself, owing to the presence of *clivages* of ethnic/linguistic type overlapping the traditional right/left *clivages*: there, different balances have been reached. We refer to Valle d'Aosta and Bolzano Province, where the pattern of direct election - *simul simul* was deliberately avoided.

We must conclude that the so-called «regional parties» (whatever a careless observer from outside might think) are very weak and they are made even weaker by the "leadership obsession" based on the direct election of the President[XXXVIII].

So it is not surprising that in Italy there is a steadfast tendency to read regional electoral results in a "national" key. In fact, every single regional electoral appointment is seen as the opportunity to once again measure general political consent, not as the time to consolidate territorial consent.

We realize how weak the regional party systems still are, in spite of the widespread use of federalist rhetoric, and how scantily independent they appear to be; in fact, each of them carefully avoids adopting a differentiated electoral system, introducing unwanted differences from the common model. The effect is that the actual uniformity of electoral systems will cause a further step towards uniformity of party systems.

A second remark, closely connected to the previous one although more general, seems to be essential. We must probably give up reasoning on the basis (widely misleading) of differentiations based on alleged socio-cultural differences among Regions; we must instead realistically consider the substantial uniformity not only of political classes and their interests (in terms of alignment, alliances and strategies used to obtain consent), but also of the social basis of reference in the Italian Regions in connection with the national context. All that raises a number of doubts as to the strength of the model of "progressive

federalization" which has been extensively gaining credit both in politics and in some specialized printed material. We must therefore mention once more what has been remarked by many: the excess of rhetoric which has surrounded the concept of territorial differentiation over the last few years. In Italy, apart from some strained interpretation due to the need for political visibility, there does not seem to be any "national", "historical" or – even worse – "ethnical" justification to increase such differentiation. There has never been in our country (apart from some recent, coarsely artificial episodes of a folk character, due to electoral considerations) any real regional nationalistic urge (with the exclusion of the remote events of some territories belonging to special Regions). This can be easily understood if we only think that the differentiation rate allowed by society is extremely low, especially when political choices are at stake (and electoral choices are a clear example of that). There is in fact a substantial uniformity of all regional legislations in most sectors. This is a further example of the strongly unitary character of the Italian system, reflecting deep elements of the way of being of civil society and even of the psychology of single people[XXXIX].

Starting from these remarks, we should probably ask ourselves a more general question regarding the incredible investment of political and intellectual resources, recently spent in public debate about the almost prodigious capacities of the (alleged) new federal model of State organization. Such effort may have contributed to build a collective imagination. But it is still to be proved that it has produced any result in terms of institutional efficiency.

I Elia (1970), 634 ff.
II Cosulich (2008), 5.
III L. no. 165/2004: "*Provisions for the Implementation of Art. 122, par. 1, of the Constitution*".
IV Ten of the 15 ordinary Regions have handled up to now their electoral legislation, although only eight of them have regulated the electoral system in the strict sense of the world (that means the so-called "electoral formula").
V According to Giampieretti (2002), 69, «A Nation cannot be kept united without an adequate level of uniformity of its political system», while «the consonance of electoral systems makes it easier to elaborate coalition-strategies of parties, and vote-strategies among electors, bringing remarkable benefits to the good running of democracy».
VI Corte cost., no. 496/2000: see Cuocolo (2000), 3810 ff.; Zanon (2000), 3823 ff.
VII Olivetti (2002), 474.
VIII Barile (1966), 33.
IX On the basis of the well known lesson of the Constitutional Court (cfr. Corte cost. no. 172/1999: see. Grosso (1999), 1705 ff.). Pace (2003), 319, clearly acknowledges the ordinary legislator's power of «extending to foreigners the possession of the rights the Constitution gives to citizens, including those of 'political' nature».
X Grosso (2001), 103 ff.; Grosso (2010), 405 ff.

[xi] Corte cost., no. 29/2003.
[xii] See, also for further bibliographical indications, Grosso (2001), 103 ff.; Grosso (2006), 966; Grosso (2007), 28 ff.; Grosso (2010), 405 ff. It should be up to the legislator to define the requisites required to enjoy such rights (years of residence, possible reciprocity condition, etc.). It should be up to it above all to decide whether such right is to be limited to municipal elections or extended to provincial, regional or even political elections. This opinion was recently shared by Salazar (2005), Rossi – Vrenna (2006).
[xiii] Carli - Fusaro (2002).
[xiv] Angiolini (2004).
[xv] Corte cost., no. 196/2003, 2/2004, 372/2004, 379/2004.
[xvi] C.S., sez. 1 e 2, 6 July 2005, no. 11074/04; sez. 1, 16 March 2005, no. 9771. See Grosso (2007), 40 ff..
[xvii] Corte cost., no. 372 e 379/2004: see Anzon (2004), 4057 ff.
[xviii] For a more complete reconstruction on this subject, see lastly Caielli (2010).
[xix] Corte cost. no. 422/1995.
[xx] In Calabria electoral law provides for «at least one candidate of each gender»; other regional laws establish variable percentages (from 20% to 33%); in Sicily the alternative presence, in every list, of candidates of male and female gender is established.
[xxi] Caielli (2010).
[xxii] Corte cost., no. 4/2010.
[xxiii] Corte cost., no. 49/2003.
[xxiv] Cosulich (2008), 51 ff.
[xxv] It has to be remembered what happened in Calabria, when the barrier clause was increased (from 3% to 4%) only two months before 2005 elections.
[xxvi] Cosulich (2008), 138 ff.
[xxvii] Corte cost. no. 356/1998.
[xxviii] We are talking about Friuli-Venezia Giulia case. The electoral statutory law, approved with a two-thirds majority in March 2002, replaced the usual model of direct election of the President, with a not-constricting indication, to be confirmed by a vote from the Council. The President would have therefore been elected by the Council, and not by the electoral body. Such rule had the aim to avoid the enforcement of the principle «*simul stabunt vel simul cadent*»: in fact the President, elected by the Council, could have suffered a vote of no confidence and been replaced, without the contemporary dissolution of the Council itself.
[xxix] This is the case of Sardinia, where the regional Council is still elected on the basis of the State transitional law no. 43/1995.
[xxx] See in particular, Di Giovine - Pizzetti (1996), 11 ff.; Frosini (2003), 127 ff.
[xxxi] Tarli Barbieri (2007), 44; Cosulich (2008), 212.
[xxxii] In this connection, see Corte Cost. no. 196/2003, according to which this constitutional rule would prohibit an autonomous regulation of the *prorogatio* of Councils, beyond the terms stated by State law.
[xxxiii] Art 32 St. Abruzzo; art. 38 St. Calabria; art. 19 St. Lazio; art. 24 St. Puglia; art. 36 St. Umbria; art. 17 St. Piemonte; art. 14 St. Liguria. This two last Statutes provide for qualified majorities of three-fifths and two-thirds.
[xxxiv] This subject is clearly of statutory competence, as was recently reasserted by the Constitutional Court (Corte Cost., no. 188/2011, where it is pointed out that «art. 123 Const. provides for the existence of real reserves in favour of statutory source in ordinary regional law; it adds that the determination of the number of members of the Council is part of such reserve»: about this decision, see Gabriele (Forthcoming). Such possibility has often been used in an unscrupulous way by regional Councils; this choice has led – with the exception of Piedmont and Abruzzo – to a considerable increase in the total number of regional councillors as to the previous State electoral law of 1968.
[xxxv] It was established that the old head of the list was considered as the «candidate President» of the regional "*listino*": this aimed at obtaining the majority bonus: «Up to the date where there came into force the new regional Statutes and of the new electoral laws approved ex art. 122, par. 1, Const, as replaced by Art. 2 of the present constitutional law, the election of the President of the Board is concomitant with the election of the regional Councils, and it takes place according to the rules established by the ordinary laws in force regarding elections of regional Councils. The candidates to the Presidency of the Board are the heads of the regional lists. The candidate who has obtained the majority of valid votes in the Region is declared the winner".
[xxxvi] Fusaro (2005), 442.

[xxxvii] Fusaro (2005), 442.
[xxxviii] The remark dates back, but it has never changed in the course of time: Fedele (1988); Bartole (2000), 398 ff.; De Martino (2007), 14.
[xxxix] Falcon (2005), 707 ff; Groppi (2008), 22.

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