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Between Unity and Separation:

Paths of Territorial Differentiation in the EU

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BETWEEN UNITY AND SEPARATION: PATHS OF TERRITORIAL DIFFERENTIANTION IN THE EU

Luca Castelli*

Abstract

This article recalls the most recent trends in territorial differentiation which have emerged in United Kingdom, Spain and Italy, arguing that one of the central facets that have contributed to the growth in centrifugal drives within these states is the lack of a territorial upper house that engages sub-state tiers of government in the law-making procedure, so that they may have their say in national decisions affecting their territorial interests. This argument is still unproven, since no methodology has been provided so far in order to demonstrate the relationship between a push toward independence and the absence of a federal chamber. Against this background, the article is a first attempt to shed light on such a relationship, as it seeks to set the stage to understanding how to build a possible methodology.

Introduction

Over the past decade the European Union has been crossed by a strong push for territorial differentiation that has involved some of its major member states, not only the ones affected by long-standing secessionist drives – e.g. Spain and the United Kingdom – , but also others – such as Italy – which have an entrenched tradition of state uniformity behind them.

Looking at what happened in the aforementioned countries a question unavoidably arises. Have they anything in common? Is there any *fil rouge* that runs through them and can explain – irrespective of their historical, sociological and institutional differences – the eruption of such drives, albeit in diverse shapes and with a diverse degree of intensity?

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This article aims at answering such a question arguing that one of the central facets that have contributed to heighten these long-term trends is the lack of a territorial second chamber enabling sub state levels of government to have their say in the law-making procedure, so that they can better protect their territorial interests within national decisions through the production of shared rules.

My point is still unproven. What is more, it is very hard to prove. Indeed, no proper research methodology has been provided thus far in order to demonstrate the link between a push toward independence, on the one hand, and the absence of a territorial second chamber, on the other.

Quite the opposite, many arguments militate against this assumption, beginning with the Belgium case, where separatist pressures exist notwithstanding the presence of a federal chamber[1].

Not to mention Spain. One could argue that the Spanish problem is not a "weak" territorial Senate – as Spanish scholars unanimously depict it – but the very idea of a Senate that equally represents the regional tiers of government, as Catalans claim to be different from all the other Autonomous Communities and do not want their specific identity to be mixed up within a same institutional body.

More generally speaking, in the wake of Yoram Dinstein's insight[2], one might even say that autonomies are always destined to fail, since they are never enough for Regions seeking for independence and they are always too much for the central power. Take Catalans. They simply want to be independent, no ifs, no buts.

Ultimately, many conceptual and practical hurdles should be overcome to prove my hypothesis, which entails a very challenging methodology, perhaps even impossible to find.

I am well aware of such a challenge, reason for which in this paper I do not purport to give a definitive response to the research question I have posed, but only to set the stage in view of a further study. From this vantage point the paper is a preliminary attempt at shedding a more intense light on the correlation – if any – between secession and the lack

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[1] Delpérée, F. (2006). *The Belgian Senate*, in J. Luther, P. Passaglia, R. Tarchi (Eds). *A World of Second Chambers. Handbook for Constitutional Studies of Bicameralism*, Giuffrè. See also Popelier, P. & Lemmens, K. (2015), *The Constitution of Belgium: A Contextual Analysis*. Oxford: Bloomsbury Publishing.
[2] Dinstein, Y. (Ed). (1981). *Models of Autonomy*. Tel Aviv: Faculty of Law, Tel Aviv University. New Brunswick and London: Transaction Books.

of a federal chamber. As such, it must be considered the first act in a two-part research that I started during my fellowship at NYU Jean Monnet Center and which is still ongoing.

I will proceed in three steps. I will first go over the more recent trends in territorial differentiation that emerge in the United Kingdom, Spain and Italy, as major signals of the homegrown conflicts that persist – or simmer – in many member states of the European Union.

Such trends will be analyzed in the prism of the evolution of the relationships between the European Union and territorial autonomies, in order to ascertain whether – and eventually to what extent – the current institutional setting of the EU has affected the entrenchment of the separatist dynamics.

Then, moving from the role of second chambers in decentralized-basis states, I will focus on Britain, Spain and Italy's upper houses, explaining why they are unfit to reflect the territorial plurality of the state.

Finally, I will seek to suggest a possible direction of travel for my further research in order to collect new elements that can enable me to build the methodology I am looking for.

1. The Major Pressures for Territorial Differentiation in the UE: the Aftermath of the Scottish Referendum on Independence

In the United Kingdom, after the referendum held in September 2014 in which Scotland rejected independence, the Government took steps to contain the separatist drives and take forward the promise to devolve further powers to Scotland (the so called devo-more).

Shortly after, Westminster, following the Smith Commission review of devolution, passed the Scotland Act 2016, which made the Holyrood Parliament a permanent body and granted it extensive law-making powers.

The Act also gave statutory recognition to the *Sewel Convention*, one of the most important principles underpinning UK devolution, under which «the Parliament of the United Kingdom will not *normally* (emphasis added) legislate with regard to devolved matters without the consent of the Scottish Parliament»[3].

[3] Section 28.8, Scotland Act 1998, in *ww.legislation.gov.uk*.

The embodiment in a legal act raised the question of whether the Convention remained a political rule, not legally binding or turned into a legal rule. A particularly thorny question in the light of Brexit, given that many competences once carried out at EU level and now supposed to return to UK – agriculture, fisheries, environment – are among those devolved to Wales, Scotland, Northern Ireland.

The status of the *Sewel Convention* was finally clarified by the Supreme Court in the famous *Miller* case[4], which actually concerned who could lawfully trigger withdrawal under Article 50 of the TEU[5].

Indeed, on the one hand, the Government claimed to be entitled to give formal notice to leave the EU without any vote in Parliament, relying on the Crown's treaty-making prerogative; on the other hand, the devolved nations deemed that their agreement would be necessary, despite the fact that the EU Referendum Act 2015 did not mandate to reach a double threshold – of voters and nations – to withdraw from the UE, unlike what happens in some federal countries, but only the majority of the British as a whole.

The High Court, while denying – among others – that the devolved nations enjoy the right to veto Brexit, excluded the legal force of the Convention and ruled that «the policing of its scope and the manner of its operation does not lie within the constitutional remit of the judiciary»[6].

In other words, the interpretation and the operation of the constitutional conventions is a political question and it is up to Parliament to deal with it. As Douglas-Scott pointed out, «it may be argued that the express inclusion of the Sewel Convention in the Scotland Act 2016 makes it impossible to ignore politically»[7]. Nothing more. Therefore, no shared sovereignty is provided under British Constitution.

That said, what most matters for the purpose of the present article is that the Scottish referendum had a ripple effect on the territorial constitution of the United Kingdom as a whole. Wales gained new powers (Wales Act 2017), despite the fact that –

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[4] Craig, R. (2016). *Miller Supreme Court Case Summary*, U.K. Const. L. Blog. Available at *https://ukconstitutionallaw.org/*.
[5] Craig, R. (2017). *The Process: Brexit and the Anatomy of Article 50*, in F. Fabbrini (Ed.). *The Law & Politics of Brexit*, Oxford, 49 ff.
[6] Para 151, in *www.supremecourt.uk/cases/docs/uksc-2016-0196-judgment.pdf*.
[7] Douglas-Scott, S. (2017). *Brexit and the Scottish Question*, in F. Fabbrini (Ed.), *op. cit.*, 133.

unlike Scotland and Northern Island – it has always had fewer strings to its bow in bartering with London.

Even England, always considered «the dog that never barked»[8] because of its traditional lack of interest in devolution[9], has been involved in this process. Indeed, due to further devolution, the «West Lothian Question» became a particularly tricky issue.

First posed by Tam Dalyell in 1977, such question refers to the role of Scottish, Welsh and Northern Irish MPs at Westminster, since they had the same right to vote as any English MP and therefore they could cast their ballots on measures which relate only to England, while the reverse was not possible as English MPs were not allowed to vote on devolved matters.

In response, a new parliamentary law-making procedure was set up – English Votes for English Laws (EVEL)[10] –, in order to ensure that legislation that affects only England is approved by a majority of MPs elected in English constituencies.

1.1. Brexit and the Prospect of a Kingdom No Longer United

Against this background, the Brexit referendum occurred and had a «seismic effect»[11] on the territorial unity of the United Kingdom, bringing out the contradictions of a multinational Union in which its largest and most powerful component – England – has been for centuries synonym of Britain, but without having its own parliament, unlike Scotland, Wales and Northern Ireland.

The Brexit saga has never been only about Britain's membership in the European Union. This was one side of the coin. On the other side, Brexit calls into question the

[8] Giovannini, A. and Willett, J. (2014). *The uneven path of English devolution: will the dog finally bark? Political insight*. Available at *www.psa.ac.uk*.
[9] See Tierney, S. (2017). *Brexit and the English Question*, in F. Fabbrini (Ed.), *op. cit.*, 98 ff.
[10] Russell, M., Lodge, G. (2006). *The Government of England by Westminster*, in R. Hazell (Ed), *The English Question*, Manchester, 64-95. To assess whether EVEL has succeeded in answering the West Lothian Question see Gover, D. and Kenny, M. (2018). *Answering the West Lothian Question? A Critical Assessment of 'English Votes for English Laws' in the UK Parliament*, in *Parliamentary Affairs*, 71, 760–782; and also Guastaferro, B. (2019). *"Visible" and "invisible" second chamber in unitary States: "Territorializing" national legislatures in Italy and the United Kingdom*, in R. Albert, A. Baraggia, C. Fasone (Eds), *Constitutional Reform of National Legislatures. Bicameralism under Pressure*, Elgar, 52 ff.
[11] Frosini, J. O. (2017). *Was It an Act of Self-Dissolution? Brexit and the Future of the United Kingdom*, in *Istituzioni del Federalismo*, Special Issue, 22.

constitutional integrity of the United Kingdom. As Douglas-Scott pointed out «in leaving one union – the EU – Britain may in fact destroy its own union»[12].

Scots decided in 2014 – by 55.3 percent to 44.7 percent – to stay in a United Kingdom that was a Member State of the European Union, thus maintaining their twofold identity as British and as European at the same time.

Therefore, when two years later a sort of «"reverse" West Lothian Question»[13] arose, as Scots voted overwhelmingly (62 per cent) to remain in the European Union, whereas the majority of English and Welsh voters backed the Leave, it would not have been hard to predict that such a swing from the 2014 "Indiref" would have strengthened the centrifugal forces that were already pulling the union apart, fueling the fire of the nationalist sentiment and feeding the prospect of a "Scexit" after Brexit.

A prospect not that theoretical following the 2019 general elections, in which the Scottish National Party gained a great majority of seats in Scotland after running an anti-Brexit campaign.

According to Ms. Sturgeon, Scottish First Minister, such a victory was a clear warning that Scotland wanted to remain part of the EU and gave her a "mandate" for a second independence referendum, since Scots could not be deprived once again of the right to choose their own future, given that Brexit had been «an essentially English phenomenon»[14].

What is more, pro-independence feelings have been heightened by the handling of the coronavirus pandemic. As public health is among the devolved matters for which Scottish authorities are responsible, public opinion believe that Scotland has performed well, dealing with the virus better than England.

In actual fact, the performance of the two nations in curbing the curve has not been that different. Scotland's death toll has been only slightly below that of England. But Sturgeon's approach in the fight against the virus has been more cautious and serious. Just enough to establish a more general comparison on the overall quality of the respective governments and entrench Scots' "going-it-alone" mindset, namely the belief that they are able to run their country better on their own.

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[12] Douglas-Scott, S. (2019). *The Future of the United Kingdom*, in *EJILS*, Special Issue. 247.
[13] Frosini, J. O. (2017), *op. cit.*, 22.
[14] O'Toole, F. (2018). *Heroic Failure: Brexit and the Politics of Pain*, Head of Zeus Book, xvi.

All this, notwithstanding Scotland is far smaller and more sparsely populated than England; and despite the fact that an eventual transition to independence raises serious concerns about its economic outcomes: a hard border with England, which takes 60 per cent of Scottish exports; collapse in oil prices and resulting tax revenues; significant increase in public debt.

But independence is neither about geography, nor about economy. It is about identity. It's a seductive lure before which rational "head" arguments do not work. Rather, as Weiler pointed out, it is often the result of «speaking from the gut»[15].

The English vote in favor of Brexit was mostly pressed by a sense of nostalgia for the greatness of the past, when the realm of England was declared an empire by Henry VIII and England had a prominent role in the history of the island. It seems no coincidence that Bagehot's classic on the working of British institutions is «The English», not «The British» Constitution[16]. Likewise, Scottish call for independence has nothing to do with a fully calculated cost-benefit analysis, but is deeply rooted in culture, history, national pride.

In both cases, however, the underlying idea is that secession – respectively from the EU and from UK – marks the victory of popular sovereignty, empowering people to "take back control" and paving the path for a brighter future, being that a new (imaginary) "Global Britain" or an independent Scotland, where everything will turn out for the best[17].

Scotland, however, is not the only constituent nation to jeopardize the UK's territorial settlement in the wake of the 2016 referendum to leave the EU. Another peril for the dismemberment of the United Kingdom comes from Northern Ireland, whose electorate voted by against Brexit by a large margin as well[18].

Since it is the only part of the Kingdom to have a land border with the EU, as well as a close economic integration with the Republic of Ireland, any shift in the UK–EU trading relationships would affect it heavily.

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[15] Weiler, J. (2020). *Brexit – Apportioning the Blame*, in *EJIL:Talk!*.
[16] Bagehot, W. (2001), *The English Constitution*, OUP.
[17] Mancini, S. (2012). *Secession and Self-Determination*, in M. Rosenfeld and A. Sajó (Eds.). *The Oxford Handbook of Comparative Constitutional Law*, OUP. See also Closa, C., Margiotta, G., Martinico, G. (2019). *Between Democracy And Law. The Amorality Of Secession*, Routledge.
[18] Doyle, J. and Connolly, E. (2017). *Brexit and the Northern Ireland Question*, in F. Fabbrini (Ed.), *op. cit.*, 139 ff.

This is why the so called Irish backstop – namely how to avoid the establishment of a hard border between northern and southern Ireland if UK exits the EU – has been the Gordian knot of the negotiations for delivering Brexit and has raised concerns with regards to a return to violence and sectarian strives.

The Good Friday Agreement has guaranteed decades of peaceful coexistence between Catholics and Protestants by mandating smooth trade between Northern Ireland and the Republic of Ireland. And this was possible thanks to the free movement of goods granted by EU membership. So the victory of Remain in this part of the Kingdom surely reflected this background.

That said, the 2019 general elections were a turning point also in Northern Ireland's political trajectory and made more concrete the possibility that a united Ireland may soon happen since nationalist parties, who advocate reunification with the Republic of Ireland (and backed the Remain campaign), have gained – first time ever – more MPs than unionist parties, who instead want to remain in the United Kingdom (and supported the Leave).

Notwithstanding a solution has been finally agreed in the Protocol on Ireland and Northern Ireland, the issue remains particularly controversial. While avoiding a physical border between the two parts of the Emerald Isle, the agreement provides that goods shipped from England, Scotland and Wales will require customs checks; furthermore, customs duties will apply to such goods unless they are not at risk of entering the EU's Single Market[19].

De facto, this means putting a new border in the Irish Sea and creating between its shores a costly, bureaucratic trading system that undermines the UK common market, in so far as it distances Northern Ireland economically from the rest of the UK. Accordingly, a process of territorial reunification might be set in motion in the wake of an economic united Ireland.

So it is no surprise that the latest act of the drama concerns a bill introduced by the British government in order to override key parts of the customs system arranged in the Protocol, thus bringing about a grave breach of international law[20].

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[19] For further details see Kane, J. (2020). *Trade and regulation after Brexit*, Report of the Institute for Government, in *www.instituteforgovernment.org.uk*.
[20] New York Times, *Boris Johnson Facing Revolt Over Northern Ireland Pact*, Sept. 8, 2020.

There are many lessons from the Brexit saga. I mention only two. In the birthplace of parliamentary sovereignty, a vital decision for the future of the country was taken directly by the people. And although the referendum was not legally binding[21], UK government abided by the result and took the legal steps for withdrawing from the EU.

The Supreme Court, however, halted it, requiring Parliament to give its approval before the process could begin, since «Parliamentary sovereignty is a fundamental principle of the UK constitution»[22] and, as Dicey summarized, Parliament has «the right to make or unmake any law whatsoever»[23].

In other words, the sovereignty of Westminster remains undisputed vis a vis the people, the executive and the devolved nations too. This leads to the second lesson, as the UK's decision to leave the UE did not take into any account the will of people in Scotland and Northern Ireland, who did not have any direct say in the Brexit process.

So if Parliament, according to the Supreme Court, is (still) the weight-bearing column of the constitutional system, in order to avoid the risk of a break-up of the Union what is needed – that is my point – is a different settlement of such a body, in order to allow Scottish and Northern Irish to make their voice heard in the law-making procedure not just as British, but also as people of devolved nations.

1.2. The Catalan Referendum: A Dispute Still Unsettled

In Spain, the 2010 Constitutional Tribunal judgement that struck down part of the new Statute of Catalonia passed in 2006 was the straw that broke the camel's back, triggering the claim for «the right to decide» of the Catalan people.

After the failure of the talks with the Government over broader fiscal autonomy modelled on that of the Basque province (2012), such a claim first led to an unofficial consultation in 2014; then, to the illegal referendum in 2017, which the Catalan authorities held despite the fact that Art. 2 of the Constitution requires the «indissoluble unity of the Spanish nation».

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[21] More in general, on the constitutional status of referendums in the UK see Gordon, M. (2020). *Referendums in the UK Constitution: Authority, Sovereignty and Democracy after Brexit*, in *European Constitutional Law Review*, 16, 1-36.
[22] Para 43, in *www.supremecourt.uk/cases/docs/uksc-2016-0196-judgment.pdf.*
[23] Dicey, A. V. (1915). *Introduction to the Study of the Law of the Constitution*, 38.

Following the subsequent unilateral declaration of independence, the Government – for the first time in the Spain constitutional history – applied the measure of federal coercion laid out in Article 155 of the Constitution, as it imposed immediate direct rule from Madrid and suspended Catalan autonomy.

More recently, new mass protests have erupted across Catalonia as the Spanish Supreme Court passed tough sentences against pro-independence Catalan leaders, jailing them for up to 13 years for sedition and other serious crimes.

The Court depicted the independence bid as a «pipe dream»[24], given that the state has full control of the military, police and judiciary and stressed that «the *imaginary right* (emphasis added) of self-determination was a device [...] to pressure the national government to negotiate a plebiscite»[25].

So, once again, independence emerges as a political fantasy[26], as a gateway from the reality of an oppressing present to move forward on the path to a better future embodied by the coveted Catalan republic.

Feeding this imagination, both in Catalonia and in Scotland, is also the prospect that «all these new states will somehow find a safe haven as Member States of the European Union»[27]. That is the brighter harbor where the separatists will finally dock.

As a matter of fact, before the single market and political integration started, neither an independent Catalonia nor any other independent region would have made any sense, since they would have been too small to compete in the global arena.

Nowadays, instead, such a prospect has become realistic thanks to the "umbrella" provided by the European Union, whose membership comes with many perks, as it gives access to a wider market and involves the state in a common management of relevant policies.

It could seem a sort of catch-22 that while a deeper political integration is what we need to have an «ever closer union», a more integrated Europe – and the assumption to be automatically part of it – results, at the same time, in a strong incentive for

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[24] Judgment No. 459/2019, B) Determination of Criminal Classification, Para 3.2, in *www.poderjudicial.es*.
[25] Judgment No. 459/2019, Proven Facts, Para 14, in *www.poderjudicial.es*.
[26] Poggeschi, G., (2018). *La Catalogna: dalla Nazione storica alla Repubblica immaginaria*, Napoli, Editoriale Scientifica. Speaking of imagination, see the "reverse story" described by Weiler, J. (2020). *Once Upon a Time in Catalonia*, in *EJIL:Talk!*.
[27] Weiler, J. (2012). *Editorial, in EJIL*, Vol. 23, No. 4, 910.

independence. In short, the more Europe is integrated, the more claims for independence can arise.

What is wrong with this equation is that it «is diametrically opposite to the historical ethos of European integration»[28]. As Robert Schuman said in his declaration of 9 May 1950 «Europe will not be made all at once, or according to a single plan. It will be built through concrete achievements which first create a de facto *solidarity* (emphasis added)»[29].

Europe is a community of shared values even before of shared economic rules. European integration is about solidarity, loyalty and brotherhood as a premise to creating a future of enduring peace between countries that had been for centuries at each other's throats.

Secession inside the European Union, by contrast, is an expression of legal hubris and national egoism. In other words, it is none other than a betrayal of the deepest ideals in which Europe has been grounded and for which it stands.

Having said that, there is a big difference between Scotland and Catalonia. Unlike Scottish nationalists, the Catalan secessionists did not play by the rules in advancing their cause. Quite the opposite, they engaged in extreme methods and used violence, blocking roads and railways, clashing with the police and so on. Not surprisingly, the Supreme Court has talked about «a riotous uprising» with regards to the turmoil which occurred during the 2017 referendum.

The different approach of the Scottish nationalist movement, which I would define more "gradualist" – as recent proposals for new rules on referendums and for a citizens' assembly on Scotland's constitutional future seem to show[30] – is probably grounded in the fact that Britain has been a union of choice for more than 300 years, whereas Catalonia was formally recognized as historical nation only in the 1978 Constitution, notwithstanding its distinct cultural and political identity dates back to centuries before.

[28] *Ibidem*.
[29] See *https://europa.eu/european-union/about-eu/symbols/europe-day/schuman-declaration_en.*
[30] Renwick, A. (2019). *Scotland's plans for doing referendums better: an assessment*, in *The Constitution Unit*. Available at *https://constitution-unit.com*.

What is more, Britain has largely operated to Scotland's advantage, granting extensive powers to Holyrood parliament over the years, which could partly explain why the Sottish rejected independence in 2014.

On the contrary, the Catalan nationalists have seen Spain as an obstacle for what they deem a legitimate claim of self-determination, rather than a counterparty with which to bargain more autonomy.

So, somewhere along the line, they consciously decided to undertake an illegal act, without even considering that Catalonia does not meet the requirements issued by the Canadian Supreme Court in its famous decision on Quebec in order to enjoy a right of secession under public international law[31].

As Weiler stressed[32], indeed, Catalans are not a minority suffering political and cultural repression; instead, they are completely free to express their identity and exercise their historical rights under both their statute of autonomy and the Spanish constitution. And in any event, to decide the destiny of their state should be all the Spaniards, not just the Catalans[33].

Had secessionist leaders' attempt to declare independence succeeded, they would have celebrated as Founding Fathers. But since their plan failed, they have been treated as common criminals. After all, isn't this the old gamble all the aspiring revolutionaries have to deal with?

Having said that, after three years since the failure of the drive for independence, the wound is still far from being healed. The judgment of the Supreme Court, rather than put an end to the Catalan saga, risks being the fuse that further inflames secessionist opinion and amplifies the Spanish nationalist backlash, as it might be challenged first before Spain's Constitutional Tribunal, then before the European Court of Human Rights. And the more the chain of the judiciary lengthens, the more political tensions can reignite.

Hence, an institutional dialogue is needed to lead to a long-lasting achievement that may reconcile Catalan requests for self-government while respecting national unity.

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[31] The sentence is available at *http://scc.lexum.org/en/1998/1998scr2-217/1998scr2-217.html*. See also Delledonne, G. and Martinico, G. (Eds.). (2019). *The Canadian Contribution to a Comparative Law of Secession: Legacies of the Quebec Secession Reference*. Palgrave MacMillan.

[32] Weiler, J. (2012), *op. cit*.

[33] R. Ziegler, R., Shaw, J., Bauböck, R. (Eds.). (2014). *Independence referendums: who should vote and who should be offered citizenship?*, European University Institute, RSCAS, n. 90. Available at *http://cadmus.eui.eu/bitstream/handle/1814/32516/RSCAS_2014_90.pdf*.

But can the Spanish Senate serve as an appropriate institutional arrangement to foster such a dialogue? Similarly to the overwhelming majority of the Spanish scholars, I do not think so and I will detail the reason below.

1.3. The Claim for Asymmetric Regionalism in Italy

In Italy, after the failure of the constitutional referendum held in December 2016, which would have affected, in particular, the role of the Senate, reshaping it as a territorial upper house, made up of regional lawmakers and mayors selected by regional assemblies, a new push toward reforms has come from some ordinary regions, which called for «additional special forms and conditions of autonomy», under Art. 116 (3) of the Constitution.

This provision, amended in 2001, concerns the so-called asymmetric regionalism and allows ordinary regions to be granted greater autonomy over a wide range of legislative matters – involving areas of national interest such as education, public health, energy, environment – by virtue of state law enacted upon initiative of the Region, after consultation with the local authorities, in compliance with the fiscal principles and on the basis of an agreement between state and region.

A solution, as D'Atena pointed out, «based on a transparently Spanish rationale»[34], since it recalls the procedure adopted for the Spanish statutes that have to be agreed between the national parliament and the single autonomous community.

Against this background, both Lombardy and Veneto called people to have their say before starting talks with the government, although no referendum is required to trigger the process under Art. 116. Indeed a third region – Emilia-Romagna – started negotiations with Rome without resorting to any popular consultation.

Since these referendums took place just two weeks after the Catalan one, one cannot help but make a comparison between them. To this end, however, a premise is needed. The 1948 Constitution shaped a regional state in which regions – as intermediate tier of government between state and local authorities – have been vested with political and legislative autonomy.

[34] D'Atena, A. (2014). *Between Spain and Germany: The Historical Models of Italian Regionalism*, in Mangiameli, S. (Ed.). *Italian Regionalism: between Unitary Traditions and Federal Processes. Investigating Italy's Form of* State, Springer, 75.

Among them, a distinction can be drawn between 5 special statute regions (Val d'Aosta, Friuli-Venezia Giulia, Trentino-Alto Adige, Sardinia and Sicily) and 15 ordinary statute regions. The former have special forms and conditions of autonomy pursuant to special statutes adopted by constitutional law; the latter are directly regulated by the (Title V of) Constitution.

Although both bodies have been formally established since 1948, the ordinary regions became operational only at the beginning of '70s, when they held their first elections; until the '90s, however, they remained a rather weak institution, with limited legislative powers and an unstable polity.

In the early '90s deep changes affected the framework underpinning the birth as well as the first steps of Italian regionalism and marked a turning point in its further evolution. In this regard, a major role was played by the collapse of the traditional party system and the rise to prominence of the Northern League, a new anti-establishment party that had its core constituency in the Northern regions and pursued a secessionist aim, calling for independence of "Padania", an imaginary nation crossing Northern Italy.

In order to contain the League's disruptive claim, federalism took center stage in the Italian political debate and new reforms strengthened the role of the regions, devolving them more administrative powers (1997) and providing for the direct election of their presidents (1999).

Above all, the 2001 overhaul of the Title V of the Constitution introduced key innovations, inverting the method of listing legislative competences, as it enumerated the matters over which the State has exclusive powers, while devolving all the others to the regions. A typical technique of the federal systems, reason why many scholars have named such reform the «Italian way» to federalism.

Make no mistake. That does not mean at all that after 2001 Italy has turned into a federal State. What I am arguing is only that the narrative – as well as the prospect – of federalism has been one of the political responses that has been given to counter the League's separatist push.

That said, the point is that asymmetry is nothing new in the Italian regional system. Irrespective of the differences between special and ordinary regions, with the former enjoying wider decision-making powers and stronger financing autonomy than the latter,

significant gaps emerge even among the ordinary regions, although they formally share the same powers.

As Palermo and Wilson underlined, «*de iure* symmetry has not [...] prevented *de facto* asymmetry between ordinary regions in their exercise of policy competences, owing to strong variations in their administrative and financial capacity as well as institutional performance»[35].

Such an opinion confirms what Putnam had already ascertained decades before in an extensive research on the Italian regions[36], stressing the remarkable divide existing among them, as some in the Centre-North perform noticeably better than those in the South.

Hence, in forging a sharper path to an asymmetric regionalism by providing for a third kind of region – that I would define "specialized" regions –, along with the special and ordinary ones, the 2001 reform did nothing else but formally recognize the longstanding cross-regional differences existing in the social and political reality.

Among such differences Lombardy and Veneto emphasized, in particular, the fiscal question, complaining about the fact that they give much more in taxes to central government than they receive, notwithstanding they account, respectively, for around 20 and 10 percent of the country's economy.

In short, they claim a greater return on their taxes in order to rebalance what they deem an unfair distribution of their resources. From this point of view, as Giovannini and Vampa argued, the Italian referendums on autonomy «provide a further attempt at addressing the alleged "fiscal injustice" perpetrated by the central state»[37].

Two factors have contributed to increase this perception of "injustice". On the one hand, the special status of Friuli-Venezia Giulia and Trentino-Alto Adige, two neighboring regions which, unlike Lombardy and Veneto, enjoy a far higher degree of control of the

[35] Palermo, F., & Wilson, A. (2014). *The multi-level dynamics of state decentralization in ltaly*, in *Comparative European Politics*, 12(4-5), 511.
[36] Putnam, R.D., Leonardi, R., Nanetti, R.Y. (1985). *La Pianta e le Radici: Il Radicamento dell'Istituto Regionale nel Sistema Politico Italiano [The Plant and its Roots: The Implantation of Regional Government in the Italian Political System]*. Bologna: Il Mulino.
[37] Giovannini, A. & Vampa, D. (2019). *Towards a new era of regionalism in ltaly? A comparative perspective on autonomy referendums*, in *Territory, Politics, Governance*, 7.

tax revenues they generate; on the other hand, the heavy recentralization of powers triggered by Europe's debt crisis[38], which has deeply limited the regional autonomy.

In this scenario it is not surprising that these referendums have been promoted just by Lombardy and Veneto, namely two regions that have traditionally embodied the heartland of the League's constituency, whereas Emilia-Romagna – the other region to call for more autonomy – has always been governed by the left-wing Democratic Party.

The struggle against the redistribution of resources from the wealthy north to the poor south, indeed, is one of the League's traditional masterpieces, even if the party has embraced a new political course by now, overcoming the secessionist aspirations harbored in the first place and turning into a nationwide appeal force, which opposes illegal immigration and is skeptical of the European Union. Nevertheless, its old motto "masters in our own home" stands, but such a home is no longer only in the North of Italy.

So did Lombardy and Veneto seek something like their "Catalan moment"? In other words, have these referendums been a threat for the national unity in Italy as much as the Catalan one has been for Spain?

At first glance, one could argue that all of them were rooted in the same, growing, discontent with the different – and more convenient – fiscal autonomy granted, respectively, to the Basque provinces in Spain and to the special regions in Italy.

Another common denominator is that both Lombardy and Catalonia were considered in the past among "the four economic motors of Europe", along with Rhône-Alpe and Baden-Wüttenberg; moreover, since the Italian referendums came on the heels of the Catalan one, an "emulation effect" has been brought about, as the President of Veneto during the campaign used to say that «Venice is like Barcelona».

But despite the very general choice of giving voice to the people, which underlies all the referendums in question, no well-founded parallel can be drawn between the Catalan one, on the one hand, and the ones held in Italy, on the other, for the decisive reason that the latter fully complied with Constitution and, although not expressly set out – but not even forbidden – grafts in the proceeding aimed at implementing Art. 116 (3). The former, instead, was a harsh violation of the Constitution.

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[38] Mangiameli, S. (Ed.). (2017). *The Consequences of the Crisis on European Integration and on the Member States. The European Governance between Lisbon and Fiscal Compact*. Springer International Publishing.

More in general, as a well-documented study found comparing the referendums held in Italy with the other autonomy referendums which took place across the EU, the Venetian and Lombard referendums «are quite peculiar in the European context»[39], since they were fully promoted by the regional governments and they started a process rather than ratifying specific legislation already approved.

They were also non-binding referendums, but in the intentions of the regional presidents such consultations were supposed to give them a strong popular mandate, in order to enhance their bargain power in the talks with Rome.

So their relevance is all political. Nonetheless, they had the merit of urging the constitutional scholars to finally focus on the interpretation and implementation of an article that had been hitherto not operational and can still be considered a "blank page" to fill out. Moreover, in the wake of such referendums other regions, both in the Center and in the South of Italy, took actions to trigger the process under Art. 116 (3).

Due to the pandemic, however, the definition of the conditions and forms of greater autonomy is in deadlock, even because, meanwhile, many concerns have arisen about the increase in the gap between North and South that asymmetric regionalism may yield.

While waiting to see when – and how – the logjam will be broken, there is at least one lesson from the Italian experience. Over the last 30 years the Northern League, born as regional movement seeking independence for Padania, has become a national party focused on asymmetric regionalism in the framework of the Constitution.

I would argue that such an evolution has been possible also thanks to the provision laid out in Art. 116 (3), as it contributed to put the push toward secession coming from that party onto a legal track.

More in general the question is whether – and to what extent – a constitutional amendment could be a suitable solution to better manage homegrown conflicts that undermine the unity of the State[40].

The Italian case, and its territorial differentiation constitutionally settled, seems to provide a positive, if incomplete, response, since no constitutional amendment so far has

[39] Giovannini, A. & Vampa, D. (2019), *op. cit.*, 6.
[40] Haljan, D. (2014). *Constitutionalising Secession*, Oxford, Hart; Martinico, G. (2017). *Le Costituzioni come strumento di gestione del rischio. Il caso della secessione*. In *Governare la paura*.

affected the structure of the Parliament in order to allow regions to have a say in the law-making decision.

2. Territorial Autonomies and European Union: An Attempt at Periodization

The development of the relationships between territorial autonomies and European Union can be divided into at least three major phases. The first is the «regional blindness», according to the famous metaphor coined by Ipsen[41].

At the very beginning, Europe was completely indifferent to sub-state levels of government, as the Founding Treaties built the legal system and the decision-making procedures of the European Community exclusively on a state basis. Not to mention that only a few member states had a regional tier of government and that the very aim of the European law was to ensuring uniformity among diverse states.

At this stage the centralized French-type model of state was the most widespread, except for Germany, which retrieved its federal tradition by virtue of the 1949 Basic Law, as well as for Italy, where the only operational regions were the special ones.

The second is the phase of «visibility». Beginning from the '90s, a process of strong enhancement of territorial autonomies crossed the Union as a whole. Belgium put to rest its transition to a federal state (1993); Austria, with a long-standing federal tradition, joined the EU (1995); in the United Kingdom, Westminster Parliament passed three devolution Acts for Scotland, Northern Ireland and Wales (1998).

Over a few years Italy experienced «a federalism without changing the Constitution» (1997), the direct election of the presidents of the ordinary regions (1999) and the reform of the Title V of the Constitution (2001), which devolved extensive legislative powers to the regional level.

Even France amended its Constitution in order to organize the Republic on a decentralized basis (2003), while Catalonia passed its new statute granting broad powers of self-government (2006).

The creation of the Committee of the Regions in 1992, pursuant to Art. 13 (4) of the Treaty of Maastricht, was at the origin of such a trend. The Committee is an advisory body

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[41] Ipsen, H.P. (1966). *Als Bundesstaat in der Gemeinschaft*, in *Probleme des Europäischen Recht. Festschrift für Walter Hallstein zu seinem 65.* Geburstag. 248-256.

providing institutional representation for all the EU's territorial areas, regions, cities and municipalities, in order to involve regional and local authorities in the European decision-making process. By dint of this body, territorial autonomies have been formally taken into consideration inside the institutional framework of the Union.

Therefore, the centralized model becomes recessive in EU and a new pattern of Europe begins to gain ground – the «Europe of the Regions» – namely the idea that regions must flank the states, as a third institutional level, in the building of European integration.

Such an idea was deeply rooted in the principle of subsidiarity, whose core is to shift power downward, given that the involvement of the regions in the EU policy-making process, as well as in the implementation of decisions that fall within their areas of competence, makes such decisions closer to the citizens affected by them.

Some wealthier and more prosperous regions seemed to even compete against the State, as Lombardy, Rhône-Alpe, Baden-Wüttenberg and Catalonia – also known as «The Four Motors of Europe» – sought for a direct dialogue with the European institutions, bypassing the state level.

After the Treaty of Lisbon (2007)[42] a new phase begins that I would call the «revenge of the states», which have a prominent role as «Masters of the Treaties», according to the famous definition of the German Constitutional Court[43].

On the one hand, the Treaty definitively overtook the «regional blindness», as it qualified the «regional and local self-government» part of the «national identities» of the member states the Union shall respect (Art. 4.2); took expressly into account «the regional and local level», as well as the central one, for the purposes of the application of the principle of subsidiarity (Art. 5.3); and finally, provided that the Committee of the Regions may bring actions to the Court of Justice on the grounds of infringement of the principle of subsidiarity by a legislative act for the adoption of which it shall be consulted according to the Treaty (Art. 8 Protocol n. 2 on the application of the principles of subsidiarity and proportionality).

[42] Craig, P. (2008). *The Treaty of Lisbon, process, architecture and substance,* in *European law Review,* 137-166.
[43]BVerfG, 2 BvE 2/08, June 30, 2009, available at *www.federalismi.it*, 14, 2009.

On the other hand, however, Lisbon entrenched the intergovernmental method, that is to say that national governments still carry major weight in the handling of European affairs.

The Committee of the Regions has not even been listed among the Union's main institutions under Art. 9 of the Treaty. Quite the opposite, in the major intergovernmental institution – the European Council – there is a seat for the Government of Malta, which represents 400 thousand inhabitants, whereas no representation is provided, for instance, for the Government of Catalonia, which represents 7.5 million inhabitants!

It seems no coincidence that this is the phase in which the EU addressed the most challenging pressures for territorial differentiation. Let us take a look at the timeline. 2010: Spanish Constitutional Tribunal strikes down the Catalan statute; 2014: Scottish referendum on independence; 2016: Brexit referendum; 2017: referendums in Catalonia, Lombardy and Veneto.

Different referendums, different political and institutional backgrounds, different goals. No question about this. But irrespective the differences, is there any common thread? On closer inspection, they all took place after 2009, namely after the entry into force of the Treaty of Lisbon.

Lisbon consolidated the institutional settlement created by the Treaty of Maastricht and grounded on a twofold system: supranational and intergovernmental. Shortly after Lisbon, however, the financial crisis[44], the migration crisis, the rise of populism[45] became an unpreceded challenge – Covid-19 emergency was yet to come! – for an Union that was already struggling with an overloaded decisional structure, in which a full involvement of sub-state actors was – and still is – lacking.

The impact of these multiple crises has unavoidably brought about a further strengthening of the intergovernmental institutions, since national governments, in coping with each of them, negotiated the major decisions within intergovernmental institutions at the expenses of both supranational and regional ones.

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[44] Kumm, M. (2017). *Cause of financial crisis and cause of citizens resentment in Europe: What law has to do with it*, in L. Papadopoulou, I. Pernice, J.H.H. Weiler (Eds.), *Legitimacy Issues of the European Union in the Face of Crisis*, Nomos. See also Maduro, M. P. (2017). *A Roadmap to Exit the Crisis: Democracy and Justice in Europe*, in L. Papadopoulou, I. Pernice, J.H.H. Weiler (Eds.), *op. cit.*

[45] Urbinati, N. (2019). *Me, the People. How Populism Transforms Democracy*, HUP.

It could be argued, therefore, that the intergovernmental Union is one of the factors that has contributed to the increase in the centrifugal pushes within the states, especially in those countries (Spain, United Kingdom) where separatist pressures were already mounted.

As Amato pointed out «the limits of intergovernmental coordination have emerged powerfully in the most delicate areas where coordination applies»[46]. More in general, a common awareness exists by now that EU has arrived at a stage of its evolution in which a «more fundamental reassessment»[47] is needed.

Such an awareness, actually, dates back long before the pandemic crisis[48]. But now that pandemic has occurred and the member states are still dealing with its aftermath, it is really time that such an awareness turns into action.

So, once again, the EU finds itself at the crossroads: choose a federal future[49] or move a small step ahead in specific areas? Pave the way is beyond the scope of this article. It is open to debate what solution may be the best, rather than the most viable.

I would only make the point that one of the limits of intergovernmental coordination that recent crises have emphasized the most – especially in the areas of migration, governance of Eurozone, fight against terrorism – is the unsatisfactory role played by the regional tiers of government in the EU decision-making process, where they have no appropriate voice.

Accordingly, whatever reform agenda of Europe will be put in play, this is an issue that should be addressed and that requires an institutional solution in order to allow regions to gain political weight in this process.

From this point of view I would stress that the role of the Committee of the Regions should be deeply rethought[50] and a debate should be reopened on its turning into a second

[46] Amato, G. (2019). *From the Years of the Convention to the Years of Brexit. Where do we Go from Here?*, in N.W. Barber, M. Cahill, R. Ekins (Eds.). *The Rise and Fall of the European Constitution*, Hart, 15.
[47] Weiler, J.H.H., Begg, I. and Peterson, J. (2003). *Reassessing the Fundamentals*, in Id (Eds.). *Integration in an Expanding European Union: Reassessing the Fundamentals*, Blackwell Publishing, 4.
[48] Weiler, J.H.H. (2017). *United in Fear: The Loss of Heimat and the Crisis of Europe*, in L. Papadopoulou, I. Pernice, J.H.H. Weiler (Eds.), *op. cit.*
[49] Delaney, E.F. (2019). *The European Constitution and Europe's Dialectical Federalism*, in N.W. Barber, M. Cahill, R. Ekins (Eds.), *op. cit.*
[50] Martinico, G. (2018). *History of a (Limited) Success: Five Points on the Representativeness of the Committee of the Regions*. In *Perspectives on Federalism*, Vol. 10, issue 2.

chamber of European Parliament[51], fully representative of regional institutions, in order to meet the growing call for territorial representation in the EU.

As long as such a solution is not provided, it is unlikely that the drive for independence will lessen, given that the prospect of EU membership is seen as a sort of panacea for every hardship the state will face.

As an independent state, indeed, Scotland, Catalonia and all the others who wish they could join what Weiler defined the «ever lengthening queue»[52], would have a great influence in the EU decisional process, since they would act as veto players within the European Council in all the areas where unanimity is required.

Put simply, they would have as much voting weight as Italy, France or Germany – who are founding countries – in strategic areas such as taxation or EU budget, albeit their population is far smaller.

Not to mention that they would have a seat in the Council and in all the other committees and working groups; would have an autonomous representation in the European Parliament; would have a Commissioner in the European Commission; would appoint judges at the Court of Justice. In other words, they would gain a degree of power and representation incomparable to the one they currently enjoy as part of a member state.

This is why, in my opinion, it is only by a new constitutional arrangement providing a deeper involvement of the regional levels in the decision-making and policy development, that the European Union may help many of its member states to cope with the various centrifugal drives existing within them.

3. Multi-Tiered Systems and Role of Second Chambers

From a structural point of view Italy and Spain show common features: regional tiers of government exist between state and local autonomies; the Constitution guarantees their competences; such competences encompass legislation; a judicial review is provided by the Constitutional Court over central-regional disputes.

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[51] Passaglia, P. (2006). *Suggestions to Find a «Parliament» Within the Institutional Organization of the EU*, in J. Luther, P. Passaglia, R. Tarchi (Eds.), *op. cit.*, 1085 ff.
[52] Weiler, J. (2012). *Editorial, op. cit.*, 910.

As such, they can be qualified decentralized-basis states, stand out from the unitary states and bear some similarities with the federal states. That said, important differences exist between the federal model and the regional one, due to the diverse process that led to their formation.

Indeed, only the constituent units of a federal state are vested with the same powers of the state; may approve their own constitutions, not mere statutes; enjoy exclusive, as well as not enumerated, competences; are involved in the constitutional amendment procedures.

What is more, federal systems usually have a second chamber providing representation for the member states, in order to insert them in the heartland of the state organization and make their voice heard in national decision-making.

In doing so, second chambers play an important role as political guarantee of federalism, «offering the opportunity to protect constituent state interests and also give the states an effective role in the federal government»[53]. After all, as Russel outlined[54], «to represent different interests from those represented in the first chamber» is the «classic purpose» of a second chamber.

Although federalism is generally associated with bicameralism, there is no necessary connection between them[55]. However, where an upper house exists in federal state, it is always territorial and this is what usually happens in regional states as well. So a conclusion can be drawn that «territorial representation is now the most common way in which upper house members are chosen»[56].

Now, if we look at the three countries above-mentioned as major examples of pressure for territorial differentiation in EU – Italy, Spain, UK – we may notice that they all have a bicameral system; two out of three are regional states – Italy and Spain –, albeit the devolved system in the UK yielded a strong asymmetry too; only one – Spain – has a «House of territorial representation», according to Art. 69 of the Spanish Constitution,

[53] Elazar, D. J. (1987), *Exploring Federalism*, Tuscaloosa: University of Alabama Press, 183-184.
[54] Russell, M. (2001). *What are Second Chambers for?*, in *Parliamentary Affairs*, 54:3, 443.
[55] Romaniello, M. (2019). *Bicameralism. Multiple theoretical roots in diverging practices*, in R. Albert, A. Baraggia, C. Fasone (Eds.), *op. cit.*, 25.
[56] Russell, M. (2001). *What are Second Chambers for?*, *op. cit.*, 445.

although scholars almost unanimously deem it to be «a completely useless Chamber»[57], which does not serve as a genuine booster of territorial interests[58].

The Spanish Senate, indeed, represents only the provinces, not also the Autonomous Communities; moreover, it does not have specific competences in the area of territorial autonomy, except the one set out in Art. 155, namely the power to authorize the application of the measures of federal coercion taken by the Government in case of non compliance of the Community's obligations.

But even when it has fulfilled such a function, as occurred first time ever in 2017 following the secessionist process in Catalonia, it has acted according to party lines and not territorial lines, showing its inability to play the role of an effective federal chamber, as it is completely subordinated to the lower house.

As far as Italy is concerned, the 1948 Constitution provides what is known as "perfect bicameralism", since the Senate shares the same functions with the Chamber of Deputies, as well as the same (political) representation, although under Art. 57 it is «elected on a regional basis».

This provision, indeed, does not mean that the Senate represents the regional tiers of government, but only that the districts for the election of senators are region-shaped. Furthermore, each chamber must agree on legislation before it is passed and must grant its confidence to the Government[59].

A recent constitutional amendment cut a third of lawmakers, downsizing their number from 630 to 400 in the house and from 315 to 200 in the Senate. The move, however, did not address the very problem of the Italian bicameral system, namely the equal powers of the two houses. So the regions still lack an institutional seat where they can manage their political conflicts with the state rather than drag the Constitutional Court into them.

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[57] Lopez-Basaguren, A. (2018). *The Secession Issue and Territorial Autonomy in Spain: Bicameralism Revisited*, in *Perspectives on Federalism*, 10:2, 261.

[58] Castellá Andreu, J. M. (2006). *The Spanish Senate After 28 Years of Constitutional Experience. Proposals for Reform*, in J. Luther, P. Passaglia, R. Tarchi (Eds.)., *op. cit.*, 859 ff. See also Punset, R. (2020), *El senado español como cámara de las comunidades autónomas. Un proyecto de reforma constitucional*, available at *www.federalismi.it*.

[59] Lupo, N., Piccirilli, G. (Eds.) (2017), *The Italian Parliament in the European Union*, Hart. See also Faraguna, P. (2019). *How does the European Union challenge bicameralism? Lessons from the Italian case*, in R. Albert, A. Baraggia, C. Fasone (Eds), *op. cit*., 65 ff.

The UK, in turn, is neither a federal, nor a regional state, but is not even the unitary state it was in 1973 when it joined the then European Economic Community. Although many definitions have been given – among others «union of nations»[60], «composite state»[61], «quasi federal»[62] —, generally speaking it can be characterized as a devolved polity which shows a strong degree of asymmetry. Indeed, it is «a system of double asymmetry»[63], as asymmetric patterns exist not only among the devolved nations, but also among them and England, which lacks devolution.

Such a peculiar territorial arrangement, however, has not been reflected at all into Britain's Parliament, whose House of Lords, likewise Italian and Spanish second chambers, does not serve as a territorial chamber, but is really a quirk in the constitutional landscape of the upper houses – «a relic of a bygone age»[64] –, due to its origins as aristocratic chamber and its entirely unelected membership.

Having said that, the way the UK has dealt with its component parts is through a system of intergovernmental relations that had already proven weak prior to the Brexit referendum, since it is informal and essentially grounded on mutual trust and self-restraint[65].

Neither an institutional connection, nor a legal framework setting the role and the veto powers of the different tiers of government are provided. Furthermore, as has been noted, the practice of "permissive autonomy", namely how devolution has been accommodated so far, «has generated expectations of parity among the devolved administrations»[66] that Brexit would have revealed unfounded.

Indeed, testing «UK's territorial constitution to the limit»[67], the Brexit process has put in full display the tension underlying the IGR structure whenever such expectations

[60] Bogdanor, V. (1998). *Devolution in the UK*, OUP, 287.
[61] Colley, L. (2014), *Acts of Union and Disunion*, Profile Books.
[62] Gamble, A. (2006). *The Constitutional Revolution in the United Kingdom*, in *Publius*, 36:1.
[63] Tierney, S. (2017). *Brexit and the English Question*, in F. Fabbrini (Ed.), *op. cit.*, 98.
[64] Russel, M. (2006). *The British House of Lords: A Tale of Adaptation and Resilience*, in J. Luther, P. Passaglia, R. Tarchi (Eds.), *op. cit.*, 66. See also Leyland, P. (2019). *The House of Lords faces up to Brexit*, in R. Albert, A. Baraggia, C. Fasone (Eds.), *op. cit.*, 96 ff.
[65] The importance of a supportive system of intergovernmental relations on which autonomy must rest is stressed by Agranoff, R. (2004). *Autonomy, Devolution and Intergovernmental Relations*, in *Regional and Federal Studies, 14:1*, 30 ff.
[66] Sandford, M. and Gormley-Heenan, C. (2020). *Taking Back Control', the UK's Constitutional Narrative and Schrodinger's Devolution*, in *Parliamentary Affairs*, 73, 110.
[67] Tierney, S. (2017), *op. cit.*, 96.

have to cope with the Parliamentary sovereignty, which remains the basic foundation underpinning UK Constitution.

In this regard, what happened during the negotiations to withdraw from EU seems really paradigmatic. UK government embraced a state-centric and unilateral approach, allowing neither Scotland nor Northern Ireland – who voted against the exit – to make their particular sub-national interests count somehow.

But if the constitutional system does not provide any other institutional arrangement to give voice to the interests of the devolved nations, they end up finding a way out elsewhere. This is why, in my opinion, pressure for Scotland to secede or for Ireland to reunify have unavoidably grown, underlining how, in cases like these, «the lack of federal elements [...] may in the long term prove to be dangerous»[68].

Conclusion

The first – and arguably most agreed – conclusion that can be drawn from the present analysis is that the absence of a system of shared rule[69] between state and sub-state levels of government, no matter if they are devolved administrations, regions or autonomous communities, adversely affects the protection of the interests related to territorial autonomy.

Such interests have no institutional projection into the central state organization, which does not express the plurality of the territorial settlement. Quite the opposite, shared rule implies a legal framework providing a steady, institutionalized connection between the state and the sub-state tiers of government. In none of the countries I examined, however, such a tie exists (or is effective).

A second – and perhaps more questionable – conclusion is that the best way to produce shared rule, channeling territorial interests at the central state level, is by

[68] Tierney, S. (2009). *Federalism in a Unitary State: A Paradox Too Far?*, in *Regional and Federal Studies*, 19, 251.

[69] By shared rule I mean the participation of sub-state levels of government in the law-making procedure so that the law can reflect their interests. In Elazar's insight, who first created the notion, shared rule refers to the powers and competences of the central government. See Elazar, D. J. (Ed.) (1979). *Self Rule/SharedRule: Federal Solutions to the Middle East Conflict*. Ramat Gan, Israel, Turteldove Publishing.

involving the territorial entities in the law-making procedures, so that they may input their voice in momentous decisions affecting them[70].

In this light I argue that an effective system of intergovernmental relations cannot do without a territorial second chamber enabling the law – namely the will of the state – to embrace the multiple points of view of the territorial autonomies which compose the state.

Such a chamber fulfils an essential function in order to integrate the regional authorities in the state, binding the nation together and providing an institutional setting where state and regions may have a dialogue and find a common position, solving their conflicts politically.

My last conclusion is that the absence of this kind of constitutional arrangement may contribute to heighten centrifugal forces, especially in countries already affected by long-running territorial conflicts.

Indeed, the more the law accommodates the demands underlying drives for independence, since it also gives voice to the sub-national entities who advocate independence, the more such drives may be downsized.

As I outlined in the introduction, however, this is an assumption that still needs to be proven, due to the lack of a methodology that can link the secessionist trends with the absence of a federal chamber.

In this regard the first step to building such a methodology could be a deep dive into the functioning of the Spanish Senate, in order to examine its institutional design (composition, mode of election, functions fulfilled vis a vis Autonomous Communities) and thus provide a wider understanding of the reason why it is commonly deemed unfit to advance their territorial interests.

A second step could be the comparison between the Spanish model of second chamber and the Belgian one, as the latter was converted into a house of sub-states in 2014[71], but such a shift did not produce significant consequence in containing the push for separatism in Flanders, the Dutch-speaking region.

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[70] Benz, A. (2018). *Shared Rule vs Self-Rule? Bicameralism, Power-Sharing and the 'Joint Decision Trap'*. In *Perspectives on Federalism*, Vol. 10, issue 2.

[71] Popelier, P. (2018). *Bicameralism in Belgium: the dismantlement of the Senate for the sake of multinational confederalism*. In *Perspectives on Federalism*, Vol. 10, issue 2.

In taking these steps, new insights could emerge that may shed a light on my assumption. I am not sure I will be able to demonstrate it as such, however, the analysis carried out so far seems to suggest that premises exist to take the research forward.