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Autonomy and Equality in Tension: The Italian Constitutional Court's Approach to Asymmetric Regionalism

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AUTONOMY AND EQUALITY IN TENSION: THE ITALIAN CONSTITUTIONAL COURT'S APPROACH TO ASYMMETRIC REGIONALISM

GIULIO CASILLI*

Abstract

This paper analyses the Italian Constitutional Court's recent case law on asymmetric regionalism, focusing on its reading of Article 116(3) with Article 117(2)(m) of the Constitution. It argues that the Court has established a constitutional framework in which competences affecting civil and social rights can be devolved only once the Essential Levels of Services (*Livelli Essenziali delle Prestazioni*, or *LEP*) are defined, securing equality across the national territory.

The Court considers asymmetric devolution permissible only when subsidiarity – interpreted in functional and citizen-oriented terms – provides a clear justification for transferring powers. The article reconstructs the criteria identified by the Court – administrative functionality, equality in rights protection, and institutional accountability – and shows how they operate as benchmarks for assessing the legitimacy of differentiated arrangements, offering a structured methodology for future practice.

Grounded in the Italian experience, the analysis contributes to broader debates on how multilevel systems reconcile territorial diversity with shared rights and solidarity – a tension common to federal and decentralised states.

Keywords: Differentiated regionalism; Asymmetric autonomy; Italian Constitutional Court; Essential Levels of Services (LEP); Fiscal federalism; Subsidiarity.

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Translations from the original Italian texts are by the author. Any inaccuracies remain the author's responsibility.

Summary

1. Introduction: Regionalism in the Italian Context. – 1.1 The Prolonged Delay in Establishing Ordinary Regions. – 1.2 The “Bassanini” Laws and the 2001 Constitutional Reform. – 2. The Constitutional Provision for Differentiated Regionalism in Italy. – 3. From Constitution to Implementation: The Path of Differentiation. – 4. The Constitutional Court Unveils Italy’s Asymmetric Regionalism. – 4.1 A Closer Look at Judgments No. 192 of 2024 and No. 10 of 2025. – 5. Court’s Framework for Differentiation: Subsidiarity and Constitutional Boundaries. – 6. The Essential Levels of Services (“LEP”) as Structural Safeguards. – 6.1 Constitutional Framework and Operational Challenges in Implementing the LEP. – 7. Pluralism and Its Limits: Differentiation within the Unity of the Republic. – 7.1 Fiscal Federalism and Democratic Accountability: Comparative Insights. – 7.2 Italy’s Unimplemented Fiscal Autonomy. – 7.3 The Principle of Loyal Cooperation. – 8. Concluding Remarks: From Judicial Clarification to a New Phase?

1. Introduction: Regionalism in the Italian Context.

The evolution of Italian regionalism constitutes a particularly instructive case for observing how contemporary constitutional systems address the persistent dialectic tensions between autonomy and unity, and between differentiation and equality.¹ In the Italian context, these tensions reflect a complex constitutional history that has significantly influenced the vertical distribution of powers and the institutional architecture of the Republic.²

This article examines the recent rulings of the Italian Constitutional Court on asymmetric regionalism – often referred to in the Italian debate as differentiated regionalism – placing them within the broader evolution of Italy’s constitutional framework. It argues that these decisions mark a turning point by clarifying the conditions under which asymmetrical autonomy may develop, particularly through the activation of the Essential Levels of Services (LEP) for civil and social rights under Article 117(2)(m) of the Constitution. This hybrid configuration makes the Italian experience particularly significant in comparative constitutional debates: it shows how a unitary state can accommodate differentiated autonomy while preserving substantive equality and national cohesion, offering useful insights for other decentralised or multilevel systems. As Ronald L. Watts has observed in his typology of “constitutional asymmetries”, such arrangements arise where the basic constitutional design itself recognises differentiated powers or status among component units, as distinct from merely political or factual

¹ Stelio Mangiameli (eds.), *Il regionalismo italiano dall’Unità alla Costituzione e alla sua riforma* (Giuffrè 2012).

² Beniamino Caravita di Toritto, ‘The Italian Challenge Between Federalism and Subsidiarity’ (2010) 5 *Federalismi.it*, 10 March 2010, 5.

asymmetries;³ this framework provides a useful lens for situating the Italian model within broader comparative debates.

The analysis explores how the Italian Constitutional Court's approach reshapes the balance between autonomy and equality and outlines possible trajectories for both symmetrical and asymmetrical regionalism in the coming years.

1.1 The Prolonged Delay in Establishing Ordinary Regions.

Although the 1948 Constitution formally established Regions as fundamental components of the republican order,⁴ their design was largely abstract and not grounded in existing legal or administrative practice. Regional boundaries were defined through a top-down political process, with little connection to historical or functional criteria,⁵ with the sole exception of the special-statute Regions, whose delineation reflected specific historical, cultural or geopolitical considerations – notably the protection of linguistic minorities, the fulfilment of international obligations and the mitigation of separatist tensions in border area.

The Constitution required the creation of the Regions through the calling of elections for the Regional Councils within one year of its entry into force⁶, as well as the adaptation of the legal system within three years to reflect the new framework of local autonomy and regional legislative powers⁷. In practice, these mandates remained unfulfilled for decades, and only the special statute Regions were activated in the immediate post-war period (with the partial exception of Friuli-Venezia Giulia, established in 1963).⁸

The delay affecting the ordinary Regions was symptomatic of broader structural factors. On the one hand, the historical tradition of centralism – established during the liberal period and reinforced by the institutional model of the Fascist regime – exerted a lasting influence on the

³ Ronald L. Watts, *Comparing Federal Systems* (McGill-Queen's University Press, 2008), 125 ff.

⁴ Article 131 of the Italian Constitution. On the connection between Article 5 of the Constitution and the regional model, see: Giorgio Berti, 'Art. 5', in G Branca (eds.), *Commentario della Costituzione* (Zanichelli-II Foro Italiano 1975) 277 ff.

⁵ Roberto Bin, 'Unità e differenziazione: il problema costituzionale e le prospettive' (2020) 3 *Munus* XIV ff.

⁶ Italian Constitution, Final and Transitional Provisions, VIII.

⁷ Italian Constitution, Final and Transitional Provisions, IX: "The Republic, within three years of the implementation of the Constitution, shall adjust its laws to the needs of local autonomies and the legislative jurisdiction attributed to the Regions".

⁸ The five special statute Regions are: Friuli-Venezia Giulia, Sardinia, Sicily, Trentino-Alto Adige, and Valle d'Aosta. The Trentino-Alto Adige Region is also composed of the autonomous provinces of Trento and Bolzano. For a detailed analysis of the origins of special autonomy, see Gaetano Silvestri, 'Le Regioni speciali tra limiti di modello e limiti di sistema' (2004) 5 *Le Regioni* 1119.

post-war constitutional order. On the other hand, the Constituent Assembly was faced with the task of balancing two competing principles: the accommodation of territorial autonomy and the preservation of national unity and substantive equality, within a constitutional framework oriented towards the social state.

This constitutional tension, although rooted in the Italian experience, raises broader questions familiar to comparative constitutional analysis: to what extent must state unity rest on equality, and how much inequality may be tolerated in order to respect diversity? There is a significant, and largely unexplored, conceptual divergence between the understanding of equality in federal and decentralised systems – which confer varying degrees of autonomy on their constituent regions – and that prevailing in unitary systems, where uniform rules apply across the national territory.⁹

Placing the Italian case within this wider framework helps to explain its hybrid character and the persistent difficulty in reconciling differentiation with equality.

It was precisely this search for balance that informed the constitutional compromise enshrined in the 1948 text, giving rise to a regional model symmetrical in principle.

1.2 The “Bassanini” Laws and the 2001 Constitutional Reform.

However, ordinary Regions became operational only in 1970¹⁰, following the enactment of implementing legislation more than two decades after their constitutional recognition. Despite the clear mandate set out in the 1948 Constitution, successive governments repeatedly postponed their activation, due to political caution, institutional resistance, and the absence of adequate administrative infrastructure.

This difficult and delayed constitutional trajectory reflects what the newly appointed Constitutional Court Justice, Professor Massimo Luciani, has defined as the absence of a true model of regionalism in the Italian constitutional order¹¹. In this sense, Italian regionalism has not developed according to a pre-defined model, but through an evolving process of political compromises and normative adjustments.

This “non-model” calls into question the constitutional function of regional government itself, exposing the fragility of a system that lacks a coherent normative and institutional design. The

⁹ Eva Maria Belser and Lawrence Zünd, ‘Introduction’, in E. M. Belser, T. Bächler, S. Egli, & L. Zünd (Eds.), *The Principle of Equality in Diverse States. Reconciling Autonomy with Equal Rights and Opportunities* (Brill 2021) 2.

¹⁰ Law No. 281 of 1970 and the first regional elections held on 7-8 June 1970.

¹¹ Massimo Luciani, ‘Un regionalismo senza modello’ (1994) 5 *Le Regioni* 1313-1336.

absence of a structured framework has led to a fluctuating trajectory of decentralisation, marked by recurrent delays in giving full effect to the constitutional principles of fiscal autonomy and territorial solidarity.

Even after the activation of ordinary Regions in 1970, regional autonomy remained institutionally marginal, operating within a legal system dominated by national legislation and centrally controlled administrative structures. Regional institutions remained structurally subordinated to central authority, with a limited set of legislative competences and minimal influence over national policymaking.¹²

More precisely, the vertical distribution of powers was governed by Article 117 in its original formulation, which conferred only a narrow set of legislative competences (matters) to the Regions and left all residual authority to the State. Regional autonomy was further constrained by two additional instruments: the “national interest” clause¹³ and the State’s power of direction and coordination,¹⁴ both of which enabled pervasive interference with regional legislative choices. Moreover, regional laws were subject to *ex ante* State control.¹⁵ Finally, the original financial model was one of almost exclusively derived finance, based on State transfers rather than autonomous regional taxation, which accentuated the dependence of the Regions on central government and weakened the link between democratic representation and fiscal responsibility.

A decisive shift in the trajectory of regional governance began to take shape in the late 1990s with the adoption of a set of legislative measures commonly referred to as the “Bassanini” reforms.¹⁶ Enacted without amending the constitutional text, these reforms – initiated by Law No. 59 of 1997 – sought to promote the decentralisation of functions and responsibilities by giving practical effect to the principles of autonomy and subsidiarity through ordinary

¹² Lorenza Violini, ‘50 anni di vita delle Regioni: un percorso a fasi alterne per la crescita del Paese’ (2021) 1-2 *Le Regioni* 255.

¹³ According to the original text of Article 117 of the Italian Constitution: ‘The Region shall issue legislative provisions on the following matters, within the limits of the fundamental principles established by State laws, provided that such provisions are not in conflict with the national interest or with the interest of other Regions...’. For further analysis of the national interest clause, *ex multis*, see: Augusto Barbera, *Regioni e interesse nazionale* (Giuffrè 1973).

¹⁴ This function was defined by the Constitutional Court as “the positive counterpart of the general limit of compliance with the ‘national interest and the interest of other Regions’” (Judgment No. 39 of 1971, para. 5). See, in this regard, Roberto Bin, ‘L’interesse nazionale dopo la riforma: continuità dei problemi, discontinuità della giurisprudenza costituzionale’ (2001) 6 *Le Regioni* 1214.

¹⁵ For a detailed examination of the pre-2001 system of State control over regional legislation, see: Emanuele Rossi, *La legge controllata. Contributo allo studio del procedimento di controllo sulle leggi regionali* (Quaderni del Dipartimento di Scienze giuridiche 1993); Eduardo Gianfrancesco, *Il controllo governativo sulle leggi regionali. Profili procedurali* (Giuffrè 1994).

¹⁶ These laws are named after the surname of the Minister for Public Administration in office at the time.

legislation. Often described in constitutional scholarship as a reform without constitutional amendment (*“riforma a Costituzione invariata”*), they did not alter the legal status of the Regions but helped reorient the system toward a more functionally decentralised configuration of administrative governance.

Acting as a precursor, these legislative reforms paved the way for the constitutional revision of 2001, which codified and expanded the decentralising trajectory within the constitutional text itself.¹⁷

This constitutional reform expanded the legislative competences of the Regions by replacing the enumerative model of Article 117 with a tripartite distribution of legislative powers. Under this new framework, matters are classified as: exclusive competences of the State; concurrent competences – in which the State determines the fundamental principles, while the Regions legislate in detail; and residual competences, which fall entirely within the legislative authority of the Regions.

This redesign of the vertical distribution of legislative powers was mirrored on the administrative side by the redefinition of Article 118. The principle of subsidiarity replaced the earlier logic of legislative-administrative parallelism,¹⁸ establishing that administrative functions are to be exercised, as a rule, by the level of government closest to the citizens – primarily municipalities – and attributed to higher levels (provinces, metropolitan cities, Regions, or the State – in this order) only when necessary, under the principles of subsidiarity, differentiation, and adequacy, in order to ensure uniform implementation.

This strengthening of subnational autonomy was completed by the new formulation of Article 119, which recognises the financial autonomy of territorial entities: Regions and local authorities are entitled to their own financial resources, may establish and collect local taxes, and participate in the revenues generated through national taxation within their respective jurisdictions. At the same time, Article 119 reflects an effort to reconcile regional autonomy with the principle of solidarity. While recognising fiscal self-government, it tasks the national legislator with establishing an equalisation fund – without any allocation constraints – to support territories with lower per capita fiscal capacity. This signals a shift from a needs-based

¹⁷ Francesco Gallarati, ‘Le conseguenze dell’attuazione del regionalismo differenziato sul riparto di competenze legislative tra differenziazione e sussidiarietà’ (2020) 1 *Diritti regionali* 176.

¹⁸ The original Article 118 codified the so-called “principle of parallelism,” whereby administrative functions were attributed to the Regions in the same fields as their legislative power, a model later abandoned in 2001 in favour of subsidiarity, introducing a more flexible and dynamic allocation of administrative functions. See: Giandomenico Falcon, ‘Art. 118, I comma’, in Giuseppe Branca (eds.), *Commentario della Costituzione* (Zanichelli 1985) 224 ff.; Marta Picchi, *L’autonomia amministrativa delle Regioni* (Giuffrè 2005) 38 ff.

equalisation model to one focused on fiscal capacity, whereby the State is expected to reduce disparities in the revenue-generating potential of individual Regions.¹⁹

This substantial enhancement of legislative, administrative, and financial autonomy marked a decisive shift in the architecture of Italian regionalism. However, the overall structure of the Republic remained that of a unitary State, as reaffirmed by the Article 5 of the Constitution, which – left unchanged – upholds its unity and indivisibility.²⁰

2. The Constitutional Provision for Differentiated Regionalism in Italy.

Building on the broader reconfiguration of regional autonomy introduced by the 2001 constitutional reform, Article 116(3) established an express constitutional basis for asymmetric regionalism. It enables individual Regions to request further legislative and administrative competences in the twenty areas subject to concurrent legislative powers²¹, and in three specific matters of exclusive State competence,²² beyond the default distribution set out in Article 117.

Despite its constitutional potential, Article 116(3) remained inert for almost two decades,²³ primarily owing to political reticence and concerns that its activation could undermine national

¹⁹ Antonia Baraggia, Benedetta Vimercati, 'Unity and Diversity: A Turbulent Journey Through Italian Fiscal Federalism', in Francisco Javier Romero Caro, Alice Valdesalici (eds.) *Fiscal Federalism and Diversity Accommodation in Multilevel States: A Comparative Outlook* (Palgrave Macmillan Cham 2024) 215 ff.

²⁰ Augusto Barbera, 'Da un federalismo "insincero" ad un regionalismo "preso sul serio"? Una riflessione sull'esperienza regionale' (2 October 2012) *Forum di Quaderni Costituzionali* 22. See also: Beniamino Caravita di Toritto, 'Italy: Between the hybrid state and Europe's federalizing process', in John Loughlin, John Kincaid, Wilfried Swenden (eds.), *Routledge Handbook of Regionalism & Federalism* (Routledge 2013) 287 ff.

²¹ According to Article 117 (3) of the Italian Constitution, matters of concurrent legislation include: international and EU relations of the Regions; foreign trade; job protection and safety; education, subject to the autonomy of educational institutions and with the exception of vocational education and training; professions; scientific and technological research and support to innovation in productive sectors; health protection; nutrition; sports; disaster relief; land-use planning; civil ports and airports; large transport and navigation networks; regulation of communications; national production, transport and distribution of energy; complementary and supplementary social security; co-ordination of public finance and taxation; enhancement of cultural and environmental assets, including the promotion and organisation of cultural activities; savings banks, rural banks, regional credit institutions; regional land and agricultural credit institutions.

²² These are the following matters indicated in Article 117(2) of the Italian Constitution: l) jurisdiction and procedural rules; civil and criminal law; administrative justice (limited to the organisational requirements of the Justice of the Peace); n) general provisions on education; s) protection of the environment, the ecosystem and cultural heritage.

²³ Luca Gori, 'L'autonomia regionale differenziata a partire dai lavori preparatori della riforma del Titolo V della Costituzione' (2023) 1 *Osservatorio sulle fonti* 89.

unity and the equal guarantee of rights by exacerbating territorial inequalities and fragmenting the uniform provision of civil and social rights. These underlying concerns have not entirely disappeared but have been mitigated through recent legislative and judicial clarifications that, together with changing political priorities, have reopened the political space for the implementation of asymmetric autonomy.

Conversely, Article 117(2)(m) – introduced by the same 2001 constitutional reform – has seen more concrete, though fragmented, legislative implementation.²⁴ This provision reserves to the State the exclusive power to determine the Essential Levels of Services (*Livelli Essenziali delle Prestazioni*, hereinafter “LEP”) that is, the minimum standards required to guarantee civil and social rights uniformly across the national territory.

Within the framework of differentiated regionalism, LEP serve as constitutional safeguards: their function is to prevent regional autonomy — particularly when exercised asymmetrically — from resulting in territorial disparities that compromise the substance of fundamental rights.

In this perspective, LEP represent a constitutional instrument aimed at maintaining the balance between two founding principles of the Italian legal order: equality and regional autonomy. As has been observed in constitutional doctrine, they embody a “non-derogable and non-substitutable requirement of harmonisation and balance” between these principles²⁵. Article 117(2)(m) therefore performs a structural role within the constitutional framework, as the LEP functions as safeguards against the inequalities that may result from regional autonomy, ensuring that the expansion of competences under Article 116(3) does not undermine the uniform protection of essential rights or compromise the conditions of social cohesion. While their content reflects a political choice, once determined they are mandatorily binding on all levels of government;²⁶ furthermore, the Court has interpreted Article 117(2)(m) as a transversal State competence,²⁷ capable of constraining regional action across subject areas.

²⁴ The Essential Levels of Services have been established primarily in the healthcare sector, with only limited development in a few additional areas, such as active labour market policies and vocational training, social welfare services, early childhood education, and transport for students with disabilities. See: Elena D’Orlando and Francesco Porcelli, ‘The Challenges of the National Recovery and Resilience Plan and of Asymmetric Regionalism: A Resilience Opportunity for Italian Regions?’ (2025) 1 *CERIDAP* 4.

²⁵ Cesare Pinelli, ‘I livelli essenziali delle prestazioni’ (2018) 3 *Rivista Giuridica del Mezzogiorno* 771.

²⁶ Guido Rivosecchi, ‘Regioni, democrazia e finanza pubblica’ (2024) 2 *Le Regioni* 304-305.

²⁷ Italian Constitutional Court, Judgments No. 282 del 2002 and No. 88 of 2003. In the literature, see Giovanni Comazzetto, ‘La determinazione dei LEP e le prospettive della differenziazione regionale alcuni spunti ricostruttivi’ (9 maggio 2024) *Forum di Amministrazione in cammino* 25.

3. From Constitution to Implementation: The Path of Differentiation.

After some earlier unsuccessful attempts,²⁸ the question of asymmetric autonomy has re-emerged on the legislative agenda during the current Parliament, through the adoption of Law No. 197 of 2022 and, in particular, Law No. 86 of 2024. The latter introduced a general framework for regional differentiation, reflecting political debates and legislative proposals from previous legislatures, particularly under the Draghi and Conte governments, and also establishing that any request for the devolution of functions would be admissible only if the Essential Levels of Services have first been identified in the relevant policy areas. This procedural requirement was conceived as a constitutional safeguard, designed to guarantee the uniform provision of civil and social rights across the national territory.²⁹

To fully understand the recent trajectory leading to Law No. 86 of 2024, it is helpful to briefly revisit previous legislative attempts. These include proposals during the Draghi government (2021-2022), informed by the commission chaired by Professor Caravita di Toritto,³⁰ and the earlier and decisive shift under the Conte II government (2019–2021), which first established the need for both a general framework law and the prior identification of LEP as preconditions for implementing Article 116(3).³¹

Indeed, the logic underpinning the LEP in what is now Law No. 86 of 2024 supersedes and reconfigures the earlier draft agreements drawn up with Lombardy, Veneto, and Emilia-Romagna during the Conte I government (2018–2019), as well as the “pre-agreements” those regions already signed with the Gentiloni previous government on 28 February 2018.³² It is worth noting that those earlier texts made no provision for a general law implementing Article 116(3), a point that has long divided legal scholars – some viewing such a law as superfluous,³³ others as necessary.³⁴ This absence reflected an approach that saw Article

²⁸ See: Giulio Casilli, ‘Verso la necessaria determinazione dei LEP: la Cabina di regia governativa, tra “pre-intese” e DDL “Calderoli”’ (2023) 2 *Italian Papers on Federalism* 112-131.

²⁹ *Ibidem*.

³⁰ Reference is made to the Commission tasked with research, support, and advisory functions on the subject of differentiated autonomy, established by Ministerial Decree of 25 May 2021.

³¹ As stated in the hearing of the Minister for Regional Affairs, Francesco Boccia, before the Parliamentary Committee on Regional Affairs on 12 February 2020.

³² See: Francesco Pallante, ‘Nel merito del regionalismo differenziato: quali «ulteriori forme e condizioni particolari di autonomia» per Veneto, Lombardia ed Emilia Romagna?’ (2019) 6 *Federalismi.it*, 20 March 2019, 2 ff.

³³ Beniamino Caravita di Toritto, *La Costituzione dopo la riforma del Titolo V. Stato, Regioni e autonomie fra Repubblica e Unione europea* (Torino: Giappichelli 2002), 144; Marcello Cecchetti, ‘Attuazione della riforma costituzionale del titolo V e differenziazione delle regioni di diritto comune’ (2002) *Federalismi.it*, 13 December 2002, 9; Omar Chessa, ‘Il regionalismo differenziato e la crisi del principio autonomistico’ (2017) 14 *Astrid Rassegna* 9.

³⁴ See: Raffaele Bifulco, ‘I limiti del regionalismo differenziato’ (2019) 4 *Rivista AIC* 263 ff.; Andrea Morrone, ‘Il regionalismo differenziato. Commento all’art. 116, comma 3, della Costituzione’, (2007) 1

116(3) as immediately operational, without requiring further normative coordination — an assumption explicitly reversed by later governments, as noted in constitutional scholarship.

The constitutional text of Article 116 stipulates that any agreement must be enacted through a law passed by an absolute majority in Parliament (commonly referred to as the “differentiation law”), but it does not clarify the precise relationship between the agreement itself and this so-called “enhanced” law. This ambiguity has raised concerns about Parliament’s actual role in the process, particularly given the reinforced legal status conferred by such a law, which implies a quasi-constitutional permanence of the resulting arrangements.³⁵

The preliminary agreements of 2018 effectively reduced Parliament’s role to that of a rubber stamp – merely ratifying the agreement in its entirety or rejecting it outright³⁶. This approach, which drew significant criticism, even went so far as to reference Article 8 of the Constitution, which governs agreements between the State and religious denominations other than the Catholic Church. Critics argued that this analogy was deeply flawed, given the fundamental differences between regions – entities within the State structure – and religious organizations, which are external actors tasked with safeguarding a constitutional freedom.³⁷

These earlier arrangements reflected a fundamentally asymmetric logic in which regional demands, rather than constitutional principles, guided the process. The Parliament was relegated to a merely reactive role, while the broader implications for the unity of the Republic and the equal enjoyment of rights were left unresolved. It is precisely this institutional and normative impasse that recent constitutional jurisprudence has begun to overcome, opening a new phase in the evolution of Italy’s asymmetric regionalism.

Federalismo fiscale 154. In favour of “overall central direction” and “predefined guidelines on matters, timing, procedures and resources”: see Enrico Grosso and Annamaria Poggi, ‘Il regionalismo differenziato: potenzialità e aspetti problematici’ (8 November 2019) *Il Piemonte delle Autonomie* 2.

³⁵ In this regard, see Lorenza Violini, *Una forma di Stato a regionalismo differenziato? Percorsi e argomenti per l’attuazione dell’art. 116, III comma, Cost.* (Giappichelli 2021) 118–119. For a reconstruction of the scholarly debate on the nature of the so-called “differentiation law”, see Nicolò Zanon, ‘Per un regionalismo differenziato: linee di sviluppo a Costituzione invariata e prospettive alla luce della revisione del Titolo V’, in *Problemi del Federalismo* (Giuffrè 2001) 57; Francesco Palermo, ‘Il regionalismo differenziato’, in T. Groppi – M. Olivetti (eds.), *La Repubblica delle autonomie* (Giappichelli 2001) 53 ff.

³⁶ Andrea Napolitano, ‘Il ruolo (imprescindibile) delle Camere per una corretta ed equa attuazione del regionalismo differenziato’ (2020) 3 *Nuove Autonomie* 882 ff.

³⁷ *Ex multis*, Lorenza Violini, ‘Regionalismo differenziato: un cammino a ritroso partendo dai più recenti accadimenti’, (2020) 1 *Milan Law Review* 119 ff.; Sandro Staiano, ‘Il regionalismo differenziato. Debolezza teorica e pratica del conflitto’, (2019) 3 *Rivista Gruppo di Pisa* 225; Andrea Patroni Griffi, ‘Regionalismo differenziato e uso congiunturale delle autonomie’ (2019) 2 *Diritto Pubblico Europeo* 30.

4. The Constitutional Court Unveils Italy's Asymmetric Regionalism.

In its Judgment No. 192 of 2024³⁸ – which declared several provisions of Law No. 86 of 2024 unconstitutional – the Italian Constitutional Court produced what might be described, in a Joycean sense,³⁹ as a moment of institutional unveiling: a judicial exposition of the underlying structure of asymmetric autonomy.

The reasoning offered by the Court goes beyond the mere procedural clarification. It outlines a constitutional order in which subsidiarity, solidarity, loyal cooperation, and substantive equality are not isolated doctrines, but interconnected principles that sustain the unity of the Republic within a multilevel institutional framework.

In its Judgment No. 192 of 2024, the Constitutional Court examined the legal conditions under which differentiated autonomy can be introduced in compliance with the Constitution. The decision concerned both Article 116(3), which makes provision for the transfer of additional powers to individual Regions, and Article 117(2)(m), which entrusts the State with the task of defining the Essential Levels of Services (LEP). The Court held that where civil and social rights are involved, no transfer of functions is constitutionally admissible unless the corresponding LEP have first been established.

The decision – structured as a “multiple” ruling with more than fifty holdings⁴⁰ – provides a detailed account of how regional autonomy may be expanded without undermining the Republic's unity. The Court framed autonomy and equality not as opposing goals, but as interdependent values within a coherent constitutional design.

³⁸ Applications for constitutional review No. 28, 29, 30 and 31 of 2024, lodged respectively by the Regions of Puglia, Tuscany, Sardinia and Campania, published in the Italian *Gazzetta Ufficiale* No. 37 and 38 of 2024.

³⁹ James Joyce, *Stephen Hero* (T. Spencer, J. Slocum, H. Cahoon, ed., New Directions Publishing, 1963), 213: “This is the moment which I call epiphany. First we recognize that the object is one integral thing, then we recognize that it is an organized composite structure, a thing in fact: finally, when the relation of the parts is exquisite, when the parts are adjusted to the special point, we recognize that it is that thing which it is. Its soul, its whatness, leaps to us from the vestment of its appearance. The soul of the commonest object, the structure of which is so adjusted, seems to us radiant. The object achieves its epiphany”.

⁴⁰ Specifically, ‘25 findings of “unfoundedness”, 13 of “inadmissibility”, 6 of “foundedness” or mere unconstitutionality, 5 of the “substitutive” type (i.e., where the judgment replaces the original provision by stating “provides, establishes, mentions... instead of...”’, 2 of “consequential” unconstitutionality, and 1 of the “additive” type (i.e., where the Court declares the omission of a necessary provision unconstitutional)’; Antonino Spadaro, ‘La “quadratura del cerchio”... o della sent. cost. n. 192/2024’ (2025) 1 *Diritti Regionali* 2.

A few weeks later, the Constitutional Court delivered another important ruling, Judgment No. 10 of 2025, which declared inadmissible the proposed referenda seeking to repeal Law No. 86 of 2024.⁴¹

The requests had been formally submitted pursuant to Article 75 of the Constitution by over 500,000 citizens, as well as by the Regional Councils of Campania, Emilia-Romagna, Puglia, Tuscany, and the Special Region of Sardinia. These initiatives emerged in the context of heightened political tension across the country, particularly in the Southern Regions, where strong popular and institutional opposition to the law reflected deep concerns about the potential for increased territorial inequality. Critics feared that the implementation of differentiated autonomy could pave the way for a so-called “secession of the rich”⁴² – a reference to the wealthier Northern Regions – thereby undermining the principles of national solidarity and equal access to fundamental services.

The referendum aimed at the total repeal of the legislative framework for implementing asymmetric regionalism under Article 116(3) of the Constitution. The Central Referendum Office at the Court of Cassation had declared the requests compliant with legal requirements, amending the original wording of the question to incorporate the substantial normative changes resulting from Judgment No. 192 of 2024. However, at the conclusion of the admissibility proceedings, the Court ruled that the referenda could not proceed, finding that the object of the proposed abrogation had become normatively unstable and opaque due to the extensive modifications made by Judgment No. 192.

The residual provisions of Law No. 86, the Court held, lacked the clarity, unity, and intelligibility required for a valid referendum under Article 75 of the Constitution. It further stressed that the initiative risked transforming into a *de facto* plebiscite on the constitutional model of differentiated autonomy itself – a matter lying beyond the scope of abrogative referenda and touching instead upon the domain of constitutional revision⁴³.

4.1 A Closer Look at Judgments No. 192 of 2024 and No. 10 of 2025.

Read together, Judgments No. 192 of 2024 and No. 10 of 2025 form a line of cases that make clear that, in the Court’s view, regional self-government must be exercised in conformity with

⁴¹ The reference is to the popular and regional referendum proposals submitted by five Italian Regions (Puglia, Tuscany, Sardinia, Campania, and Emilia-Romagna) aimed at repealing Law No. 86 of 2024, referred to in the order of 12 December 2024 issued by the Central Referendum Office at the Italian Court of Cassation (*Corte di Cassazione*).

⁴² Gianfranco Viesti, *Contro la secessione dei ricchi* (Laterza 2023).

⁴³ Italian Constitutional Court, Judgment No. 10 of 2025, para 11.

the principle of equality, and that territorial pluralism cannot be allowed to weaken the foundational guarantees of the Republic.⁴⁴ The Court gave weight to the role of LEP and subsidiarity, not as technical procedures but as substantive requirements that define both the scope and limits of asymmetric devolution. Within the Constitutional Court's reasoning, pluralism, solidarity, and unity operate not as abstract values, but as constitutional obligations.

According to this interpretation, asymmetric autonomy is not an expression of regional freedom in itself. It is a legal instrument whose use depends entirely on prior constitutional checks, including the definition of LEP and a justification grounded in subsidiarity as understood *ex parte populi*.

The Constitutional Court's recent rulings must be interpreted within the specific framework of Italy's model of intergovernmental relations, which – unlike classical federal systems – embodies a dynamic form of cooperative regionalism grounded in the constitutional equilibrium between autonomy and the indivisibility of the Republic⁴⁵. As already mentioned above (para 1.2), this model did not follow a predetermined design; it evolved through political compromises and normative adjustments, often marked by oscillations and what has been described as a “conjunctural vision of institutions.”⁴⁶ Italian regionalism combines cooperative elements – such as the constitutionalisation of the principle of loyal cooperation, the system of intergovernmental conferences, and a flexible interpretation of the allocation of competences – together with competitive features linked to the possibility of differentiation under Article 116(3) of the Constitution and to the implementation of fiscal federalism⁴⁷. Taken together, these dynamics account for the structural tensions that still shape the vertical distribution of powers within Italy's system of territorial governance.

This vertical distribution refers explicitly to the allocation of competences and responsibilities across national, regional, and local levels of government. Formally expanding regional self-government with the 2001 constitutional reform, the Italian regionalism remains fundamentally oriented toward safeguarding national cohesion and ensuring the uniform protection of fundamental rights throughout the territory – an imperative shaped by the Republic's commitment to its social State identity.⁴⁸

⁴⁴ See: Giulio Casilli, 'L'epifania del regionalismo differenziato (e dei LEP): *primum* uniformare *deinde* differenziare' (2025) Special Issue No. 1 *Consulta Online* 175-185.

⁴⁵ Adriano Dirri, 'Pandemia e leale cooperazione: il modello regionale italiano alla luce di due “federalismi classici”' (2021) 3 *Italian Papers on Federalism* 105.

⁴⁶ Alessandro Morelli, 'Quale futuro per il regionalismo italiano?' (2021) 1-2 *Le Regioni* 156.

⁴⁷ Omar Chessa, 'Specialità e asimmetria nel sistema regionale italiano' (2011-2012) 10 *Diritto@Storia*.

⁴⁸ Luis Maria Díez-Picazo, 'Diritti sociali e federalismo' (1999) 1 *Politica del diritto* 19, observing that “historical experience shows that, to varying degrees, the birth and development of the welfare state

Judgment No. 192 of 2024, which addressed the regional applications seeking the (partial or total) declaration of unconstitutionality of Law No. 86 of 2024, and Judgment No. 10 of 2025, which declared inadmissible the proposed referendum on the same law, provide pivotal clarification of the constitutional preconditions for the lawful implementation of differentiated regionalism. They also shed light on several longstanding doctrinal questions debated within Italian constitutional scholarship.

The Constitutional Court first clarified that the implementation of Article 116(3) does not require a prior framework statute⁴⁹. Historically, its absence had not precluded preliminary negotiations between the State and certain Regions⁵⁰. However, the Court recognised the institutional relevance of such legislation in providing legal certainty, procedural clarity, and transparency, especially considering the complexity and potential asymmetry involved⁵¹. In the Court's view, and in line with its settled case law,⁵² a different reading would have excluded any admissibility of a referendum on the matter. Even so, the Court proceeded to a full examination of the proposed initiative, ultimately declaring it inadmissible on the grounds that the subject and purpose of the question had become materially indeterminate and obscure, due to the extensive and complex revisions to Law No. 86 of 2024 introduced by Judgment No. 192 of 2024.

Second – and more significantly – the Court ruled that differentiated autonomy cannot be used to circumvent the rigid procedures for constitutional amendment set out in Article 138 of the Constitution. Although the laws enabling asymmetric devolution must be approved by an absolute majority in the Italian Parliament, they cannot alter the essential structure of the constitutional allocation of competences, which remains codified in Article 117.⁵³

have represented one of the most penetrating forces of centralisation in pre-existing federations, even where the dualist federalism model prevails”.

⁴⁹ Italian Constitutional Court, Judgment No. 10 of 2025, para 6.3. Comparable conclusions were already formulated in legal scholarship; see, *inter alia*, Annamaria Poggi, ‘Il referendum sul regionalismo differenziato: i principi, l’attuazione, le Corti e la sovranità popolare’ (2025) 1 *Federalismi.it*, 1 January 2025, vii.

⁵⁰ Giovanna De Minico, ‘Il fil rouge: dalla legittimità costituzionale all’ammissibilità referendaria della L. n. 86/2024’ (2024) 3 *Osservatorio sulle fonti* 152.

⁵¹ Italian Constitutional Court, Judgment No. 10 of 2025, para 6.3 (explicitly referring to Judgment No. 192 of 2024, para 7.2) and 10. This solution was already proposed in the literature, among others, by Enrico Grosso and Annamaria Poggi, ‘Il regionalismo differenziato: potenzialità e aspetti problematici’ (2019) *Il Piemonte delle Autonomie*, 8 November 2019, 2.

⁵² *Ex multis*, Italian Constitutional Court, Judgments No. 50, 56 and 57 of 2022; No. 10 of 2020; No. 15 and 16 of 2008; and No. 49 of 2000. For an overview of the Court's case law on the admissibility of referendums, see Italian Constitutional Court – Research Service, *Il giudizio sull’ammissibilità del referendum* (December 2024).

⁵³ Italian Constitutional Court, Judgment No. 192 of 2024, para 4.3.

Differentiation must therefore be limited to specific functions, not entire subject matters, and must be supported by detailed justifications demonstrating administrative effectiveness, equity in rights protection, and institutional accountability.⁵⁴

In this framework, the principle of subsidiarity plays a fundamental role: functions must be allocated to the level of government closest to citizens only when this enhances effectiveness and protects substantive equality, consistent with the vision of subsidiarity *ex parte populi* rather than *ex parte principis* – that is, aimed at fulfilling citizens' rights rather than institutional preferences.⁵⁵

The Court firmly locates differentiated regionalism within a model of cooperative constitutionalism⁵⁶, in which regional diversity is constitutionally recognized, but only within a coherent architecture that guarantees national solidarity and effective protection of civil and social rights, uniformly safeguarded through the prior determination of LEP.

From this perspective, differentiation does not alter the constitutional identity of the Regions. What it allows, rather, is a clearer definition of their role within the institutional framework of the Republic. It offers a way to reconsider the function of regional autonomy, not in abstract terms, but in light of the responsibilities that distinct territorial contexts demand.

5. Court's Framework for Differentiation: Subsidiarity and Constitutional Boundaries.

The opportunity for differentiated regionalism, as envisaged by Article 116(3) of the Italian Constitution, does not mark a constitutional rupture, but rather an evolution within the Italian regionalism, aiming to foster more effective and responsive governance while preserving the Republic's founding principles of solidarity, equality, and unity (Articles 2, 3, 5, and 120).⁵⁷

Article 116(3) does not establish a new constitutional order. Nor does it permit the Regions to break away from the logic of the Republic. What it does – cautiously, and under strict

⁵⁴ Italian Constitutional Court, Judgment No. 192 of 2024, para 4.3 and 11.2.

⁵⁵ Italian Constitutional Court, Judgment No. 192 of 2024, para 4.1. In literature, see: Beniamino Caravita di Toritto, 'Prime osservazioni di contenuto e di metodo sulla riforma del Titolo V della Costituzione' (2001) 16 *Osservatorio sul federalismo* (available at www.federalismi.it), who argues that one of the interpretative keys to understanding the 2001 reform of Title V lies in its implementation "from the bottom up", in accordance with the principle of subsidiarity.

⁵⁶ Gianmario De Muro, 'Art. 114' in R Bifulco, A Celotto and M Olivetti (eds), *Commentario alla Costituzione*, vol. III (Giappichelli 2006); Lorenza Violini, *Una forma di Stato a regionalismo differenziato? Percorsi e argomenti per l'attuazione dell'art. 116, III comma, Cost.* (Giappichelli 2021) 13 ff.

⁵⁷ Italian Constitutional Court, Judgment No. 192 of 2024, para 4.

conditions – is allow certain functions to be redistributed, on a case-by-case basis, where there is a clear reason to do so.

The Constitutional Court has clarified that such redistribution cannot rest on institutional preference alone. It must be justified in terms of subsidiarity *ex parte populi* – that is, by demonstrating that a different allocation of power would serve the people better.

That means proximity alone is not enough: the Court identifies three essential criteria that any proposal for differentiated autonomy is required to meet.

First, the Court requires concrete and contextual evidence: a Region seeking new powers must demonstrate that it can exercise them more effectively than the State. This is not a technical formality, it is a constitutional threshold: this criterion directly reflects the principle of good administration, enshrined in Article 97(2) of the Constitution. The allocation of additional functions from the State to the Regions (and the local governments) must be justified in reference to administrative effectiveness and efficiency.

The principle of subsidiarity, when applied with institutional consistency, concerns how responsibilities are assigned and exercised. It requires that functions be exercised as close as possible to the individuals or communities affected by them, wherever this improves effectiveness and accountability. In this perspective, horizontal subsidiarity acquires concrete meaning: local communities, associations, and other social actors are not placed at the margins of institutional decision-making but are called to share responsibility for the delivery of public functions. Horizontal subsidiarity thus implies active involvement of private entities and civil society organizations in providing public services, reinforcing democratic participation and responsiveness to citizens' needs. This participation strengthens the connection between public authority and civic life and makes the use of public resources more responsive to real needs.⁵⁸

Beyond that, there are limits that come from outside the domestic framework. Article 117(1) is clear: obligations under international and EU law apply equally to the State and the Regions. No experiment in differentiated autonomy can be allowed to breach those boundaries⁵⁹. Some matters are, as a rule, not open to fragmentation. The Court has listed them clearly: foreign trade, environmental protection, national energy production, civil ports and airports, large transport and navigation networks, the regulation of professions, communication regulation, and general education rules.⁶⁰ In these sectors, differentiation is not ruled out – but the bar is

⁵⁸ Italian Constitutional Court, Judgment No. 192 of 2024, para 4.2.1.

⁵⁹ Italian Constitutional Court, Judgment No. 192 of 2024, para 4.2.3.

⁶⁰ Italian Constitutional Court, Judgment No. 192 of 2024, para 4.2.3 and 4.4.

very high. The Court will ask for reasons that are precise, substantial, and constitutionally convincing.⁶¹

Alongside subsidiarity, the Court recalls a second principle that admits no exception: equality. Under Article 3 of the Constitution, the Republic is bound to ensure that rights are protected uniformly, regardless of geography or status. And when it comes to civil and social rights, the Court has drawn a clear line: no Region may obtain further powers unless the Essential Levels of Services (LEP) – defined by the State pursuant to Article 117(2)(m) – have already been identified with sufficient clarity.

6. The Essential Levels of Services (“LEP”) as Structural Safeguards.

The Constitutional Court’s reframing of differentiated regionalism places the Essential Levels of Services (LEP) at its core. Far from constituting a mere technical tool, LEP perform a pivotal constitutional role by ensuring that regional asymmetries do not undermine the uniform protection of fundamental rights, and by serving as instruments of national solidarity. LEP define minimum standards required to ensure equal access to key civil and social rights nationwide. They also embody the Republic’s duty to remove economic and social barriers to equality and personal development, as mandated by Article 3(2) of the Constitution.⁶²

Law No. 86 of 2024, as a framework statute, already linked the attribution of additional functions (to the regions) to the prior definition of LEP (by the State). The Constitutional Court, however, in Judgment No. 192 of 2024, elevated this legislative connection to a constitutional principle by interpreting Article 117(2)(m) in accordance with the other constitutional principles. The Court affirmed that the definition of the Essential Levels of Services constitutes a constitutional precondition - a “protection net” (*rete di protezione*) – for any devolution of functions concerning civil and social rights: this safeguard preserves the essential core of social citizenship, ensuring its uniform protection across the national territory.

⁶¹ Claudia Tubertini, ‘La proposta di autonomia differenziata delle Regioni del Nord: una differenziazione solidale?’ (2018) 7 *Federalismi.it* 324; Giovanni Comazzetto, ‘I “limiti di contenuto” ai processi di differenziazione regionale. Categorie, problemi, prospettive’ (2023) 1 *Italian Papers on Federalism* 10 ff.; Simone Pajno, ‘Il regionalismo differenziato tra principio unitario e principio autonomista: tre problemi’ (2020) 5 *Federalismi.it* 114.

⁶² Italian Constitutional Court, Judgment No. 192 of 2024, para 14.

6.1 Constitutional Framework and Operational Challenges in Implementing the LEP.

The principle requiring the prior determination of LEP was legislatively anticipated by Law No. 42 of 2009,⁶³ which established the legal and technical basis for calculating standard needs and standard costs. These parameters are essential not only for the equalisation fund ex Article 119 of the Constitution but also for ensuring that the devolution of functions under Article 116(3) is compatible with the substantive protection of rights across the national territory.

The Court recognises that differentiating functions among regions inevitably brings with it a trade-off between autonomy and equality and responds by requiring rigorous justification, a careful legal foundation, and mechanisms – especially fiscal ones – that are capable of correcting structural imbalances. Otherwise, what begins as a gesture toward pluralism may end in institutional fracture.⁶⁴

In this context, the Constitutional Court further clarified that the definition of LEP (Essential Levels of Services) inevitably entails political discretion — particularly in relation to available financial resources — but must nonetheless be consistent with principle of reasonableness, as repeatedly underlined by the Constitutional Court (see, e.g., Judgment No. 169 of 2017). Once established, LEP impose a binding obligation on the State to secure their adequate funding and effective implementation.⁶⁵

LEP operate as a two-tiered conditionality mechanism⁶⁶: *ex ante*, by conditioning the possibility of transferring functions — if the relevant LEP have not been concretely determined, the function cannot be devolved; *ex post*, by setting binding standards that constrain the exercise of devolved functions, ensuring that regional implementation complies with national guarantees. The second level of conditionality is backed by the State's substitutive power under Article 120(2) of the Constitution. If a Region fails to give proper effect to the LEP, thereby putting at risk the uniform protection of fundamental rights, the State is authorised to intervene directly to restore compliance.

⁶³ On the content and implementation of Law No. 42 of 2009, see: Monica Bergo, 'A vent'anni dalla riforma del Titolo V. L'autonomia finanziaria regionale e locale, tra Costituzione, legge n. 42 del 2009 e prassi' (2022) 20 *Federalismi.it* 395 ff.

⁶⁴ Italian Constitutional Court, Judgment No. 192 of 2024, para 4.2.2.

⁶⁵ *Ibidem*.

⁶⁶ For a complete overview of the different forms of conditionality as a mechanism for the exercise of power and its implications for the form of the State, see Antonia Baraggia, *La condizionalità come strumento di governo negli Stati compositi: una comparazione tra Stati Uniti, Canada e Unione Europea* (Giappichelli 2023) 20 ff.

The Constitutional Court draws a clear distinction between the Essential Levels of Services (LEP) and the minimum core of fundamental rights. Whereas LEP are defined through legislative process, the minimum core of fundamental rights enjoys direct constitutional protection and remains immune from political discretion. Accordingly, the Court retains full jurisdiction to intervene whenever the minimum content of a right is at risk, regardless of whether the relevant LEP have been defined or met.⁶⁷

The Court also ruled unconstitutional provisions of Law No. 86 of 2024 that delegated the definition of LEP to broad sectoral guidelines without establishing specific criteria for each individual matter or policy area⁶⁸. Because of Judgment No. 192 of 2024, the procedural framework for LEP definition now demands comprehensive restructuring⁶⁹. Although governmental decrees (“*d.P.C.M.*”) remain a viable instrument⁷⁰, such measures must fall within clear statutory parameters established by Parliament⁷¹: future procedures must avoid reliance on abstract or generic criteria, instead grounding LEP definitions in sector-specific analyses of social need, policy prioritization, and resource distribution, by taking due account of the work already carried out by the Technical-Scientific Committee for LEP identification, established by the Prime Minister’s Decree of 23 March 2023 (the so-called “CLEP” Committee).⁷²

The definition of LEP must take place in accordance with constitutional principles and, in particular, with the principle of reasonableness. Such determinations must contribute to the progressive realization of social rights, in line with Articles 2, 3(2), and 5 of the Constitution, by harmonising regional autonomy with substantive equality and the unity of the Republic. In this sense, LEP represent the structural backbone of a constitutionally balanced model of differentiated autonomy: one that enables administrative innovation and responsiveness while

⁶⁷ Michele Belletti, ‘Un percorso di riflessione per un regionalismo “differenziato-cooperativo”’ (2023) *Diritti Regionali*, 9 May 2023, 3.

⁶⁸ Italian Constitutional Court, Judgment No. 192 of 2024, para 13.3.

⁶⁹ As confirmed by Italian Constitutional Court, Judgment No. 10 of 2025, para 10.2, where the Court stated: ‘at present, there is no way to identify the LEP [Essential Levels of Services] referred to in the aforementioned Law No 86 of 2024: the “new” criteria do not exist, and the existing ones are no longer effective’.

⁷⁰ This view is endorsed by Andrea Morrone, ‘Lo stato regionale dopo la sent. n. 192 del 2024’ (2025) *Giustiziainsieme.it*, 29 January 2025, who argues that “the reference to the consolidated experience of the Essential Levels of Assistance (LEA) in the healthcare sector, provided for by Law No 502 of 1992 and specified in the relevant intergovernmental agreements (the most recent dating back to 2008) and in specific Prime Ministerial Decrees, suggests that this mixed intervention model may be replicated in other contexts as well.” See also Claudia Tubertini, ‘Le molte luci e le (poche, ma importanti) ombre della sentenza 192/2024 sulla determinazione dei LEP’ (2025) *Diario di diritto pubblico*, 10 January 2025.

⁷¹ Italian Constitutional Court, Judgment No. 192 of 2024, para 9.2.

⁷² Italian Constitutional Court, Judgment No. 192 of 2024, para 4.

preserving the foundational values of national unity, social equality, and the republican indivisibility.

7. Pluralism and Its Limits: Differentiation within the Unity of the Republic.

In the model of asymmetric regionalism articulated by the Constitutional Court in Judgments No. 192 of 2024 and reaffirmed in Judgment No. 10 of 2025, the differentiation – when properly justified and institutionally disciplined – can strengthen democratic participation, align governance with territorial realities, and enhance institutional responsiveness. It should be viewed not as an exception to the unity of the Republic, but as one of its constitutional expressions.⁷³

At the same time, the Court imposes strict substantive and procedural limits to prevent differentiation from degenerating into dangerous fragmentation or inequality. This constitutional balance rests on two foundational pillars: (i) the binding determination of Essential Levels of Services (LEP), as normative guarantees to ensure that regional diversity does not lead to wide territorial disparities in the protection of fundamental rights; and (ii) the principle of subsidiarity, interpreted as a dynamic allocation mechanism oriented toward the public interest rather than particularistic claims.

Beyond legal safeguards, the constitutional sustainability of differentiated regionalism hinges on political responsibility and constitutional allegiance. The Court's jurisprudence implicitly calls for a cultural shift: for political actors to conceive of autonomy not as a tool of short-term negotiation or territorial competition, but as a shared project for consolidating solidarity, equality and the deepening of democracy throughout the Republic.

This constitutional vision takes shape within a regional framework that, more than twenty years after the 2001 reform, still exhibits persistent structural weaknesses. Although regional competences have been formally expanded, the national legislature has failed to establish adequate institutional counterbalances capable of supporting a stable and coordinated model of multilevel governance. As a result, much of the burden of resolving institutional tensions has shifted to the Constitutional Court.⁷⁴

The Court's interpretation of regional autonomy captures its underlying political dimension, and in doing so, indirectly illuminating the enduring dispute surrounding the absence of a defined constitutional model of regionalism. At stake in this debate are the classic functions

⁷³ Italian Constitutional Court, Judgment No. 192 of 2024, para 4.

⁷⁴ Corrado Caruso, 'Cooperare per unire. I raccordi tra Stato e Regioni come metafora del regionalismo incompiuto' (2021) 1 *Rivista del Gruppo di Pisa* 292 ff.

traditionally ascribed to regional government: on the one hand, the territorial distribution of power as a structural check on centralisation; on the other – according to Carlo Esposito’s formulation – the affirmation of “self-government of the governed” through institutional forms that serve as a vehicle, expression, and guarantee of freedom and democratic participation⁷⁵ – including in the sphere of financial autonomy.⁷⁶

However, the Italian model of regionalism has followed a markedly divergent path. The vertical distribution of powers has developed primarily around the territorial configuration of the Welfare State and mechanisms of democratic participation, while the liberty-guaranteeing dimension – although partially envisaged by the constitutional legislator – remains largely latent.⁷⁷

From this perspective, the concept of autonomy is understood less as the power to establish an independent normative order, and more as the capacity to pursue a policy direction that partially diverges from that of the central government, within parameters and limits defined by the latter. In this framework, regional legislative authority plays a pivotal role in operationalising autonomy, as it constitutes the primary vehicle for differentiated policy-making – by virtue of its inherently political nature.⁷⁸

Nevertheless, the practical realization of regional autonomy through legislative means has been progressively marginalised. Frequently reduced to a derivative or derogatory role – and often supplanted by fragmented administrative measures – regional legislation has suffered a substantial erosion of its normative capacity⁷⁹. Despite the formal expansion of competences following the 2001 constitutional reform, regional law-making has rarely produced innovative or structurally transformative policies, tending instead to consist of spending measures or sectoral incentives with limited strategic coherence.⁸⁰

The tendency of the national legislature to reassert control over the regional sphere has grown steadily and has often been validated by the Constitutional Court. Using a combination of interpretative and normative techniques – including the extension of the principle of

⁷⁵ Carlo Esposito, ‘Autonomie locali e decentramento amministrativo nell’art. 5 della Costituzione’ in *La Costituzione italiana. Saggi* (CEDAM 1954) 80 ff.

⁷⁶ Guido Rivosecchi, ‘Regioni, democrazia e finanza pubblica’ (2024) 2 *Le Regioni* 284 ff.

⁷⁷ Paolo Costa, ‘Separazione verticale dei poteri e libertà. A proposito di una relazione trascurata nel regionalismo italiano’ (2022) 3 *Rivista AIC* 89 ff.

⁷⁸ See, on the importance of the regional legislative function, Augusto Barbera, ‘Il “peccato originale” delle regioni’ in R Bin and F Ferrari (eds), *Il futuro delle Regioni* (Editoriale Scientifica 2023) 63; Eduardo Gianfrancesco, ‘Le Regioni per l’amministrazione... attraverso la Legislazione’ (2023) 1 *Le Regioni* 117.

⁷⁹ Roberto Bin, ‘Regioni, democrazia, legislazione’ (2024) 2 *Le Regioni* 252.

⁸⁰ Feliciano Benvenuti, *Disegno dell’amministrazione italiana. Linee positive e prospettive* (CEDAM 1996) 134.

subsidiarity to legislative matters, the detailed specification of fundamental principles, and an expansive reading of ‘transversal’ State competences – the national legislature has significantly curtailed regional normative powers.⁸¹

In this context, the role of regional legislation – whether in shared or exclusive domains – has become increasingly marginal, despite once being conceived as a central feature of autonomy. This retreat has contributed to what some scholars have identified as a weakening of the constitutional substance of regional self-government.⁸²

That imbalance is exacerbated by the persistent centralisation of financial resources. Regional budgets continue to depend largely on transfers from the State, rather than on revenue autonomously raised. This form of derived finance – due to the incomplete implementation of Article 119 of the Constitution, despite the attempts made in 2009 – frequently results in a mismatch between the functions assigned to the Regions and the means available to perform them. Consequently, the capacity of regional institutions to implement coherent policies – and to be held politically accountable for them – is significantly diminished, a problem that remains at the core of the financial dimension of Italian regionalism.⁸³

7.1 Fiscal Federalism and Democratic Accountability: Comparative Insights.

The financial dimension is among the most delicate and complex aspects of Italian regionalism after the 2001 reform, and it is particularly decisive in the context of differentiated autonomy. Although Article 119 formally guarantees financial autonomy, in practice regional budgets remain heavily dependent on state transfers. This structural dependency is largely due to the incomplete implementation of Law No. 42 of 2009, which was meant to establish a comprehensive and coherent framework for regional and local finance. The resulting reliance on actual State-dependent financing (commonly referred to as “*finanza derivata*”) undermines not only regional autonomy, but also the democratic accountability of regional institutions.⁸⁴ This phenomenon is not unique to Italy, nor is it confined to federal systems. It reflects a broader constitutional tension present in many multilevel states and decentralised

⁸¹ See, *ex multis*, Marco Olivetti, ‘Rilievi sparsi sulle funzioni legislative statali e regionali nel nuovo titolo V, venti anni dopo’ (2022) 20 *Federalismi.it* 9 ff; Filippo Benelli and Roberto Bin, ‘Prevalenza e “rimaterializzazione” delle materie: scacco matto alle Regioni’ (2009) 6 *Le Regioni* 1189 ff; Antonio D’Atena, ‘A proposito della “clausola di asimmetria” (art. 116 u.c. Cost.)’ (2020) 4 *Rivista AIC* 316 ff.

⁸² Paolo Colasante, ‘La competenza concorrente in Italia fra neocentralismo statale e prospettive di riforma’ (2014) 3 *Italian Papers on Federalism* 19 ff.

⁸³ Guido Rivosecchi, ‘Il regionalismo differenziato, un istituto della Repubblica delle autonomie: perché e come realizzarlo entro i limiti di sistema’ (2022) 4 *Federalismi.it* 859.

⁸⁴ *Ibidem*.

administrations, where decision-making responsibilities are devolved without corresponding fiscal powers. In Germany, for example, the federal government has long maintained control of the “golden reins” (“*goldene Zügel*”) of taxation, leaving the Länder in a position of almost total fiscal dependence: their spending autonomy has been reinforced through larger federal transfers, but only at the cost of an overall weakening of their political autonomy.⁸⁵

Comparative experience in other systems – particularly that of the United Kingdom – offers a further useful perspective. As observed in the literature, the extent to which local authorities control their own financial resources serves as a meaningful indicator of both the nature of central–local institutional relations and the effective degree of subnational autonomy.⁸⁶

In the UK, local councils derive their income from a combination of sources. They can raise funds through fees and service charges, and they are entitled to levy both domestic and non-domestic property taxes across their areas. However, as Stanton notes,⁸⁷ the majority of local government income continues to be allocated from the Centre, predominantly in the form of grants. This arrangement enables central and devolved governments to exercise significant control over how responsibilities are fulfilled, while limiting the fiscal capacity of local authorities. As a result, many councils operate with structurally insufficient budgets — a condition worsened by successive austerity measures and by policies that restrict both the scope of local taxation and the funding attached to delegated responsibilities.

Despite the existence of these mechanisms, local government finance remains highly centralised, and devolved administrations frequently assume responsibilities without possessing adequate fiscal autonomy. This misalignment between financial capacity and functional responsibility contributes to an institutional dynamic in which decision-making authority is dispersed across multiple tiers of government. Such dispersion tends to compromise the intelligibility of institutional responsibility, attenuating the electorate’s capacity to hold public officials accountable through electoral mechanisms.⁸⁸

⁸⁵ Cristina Fraenkel-Haeberle, ‘Dall’autonomia all’intreccio: il labirinto delle competenze nel federalismo tedesco’ (2025) *CERIDAP*, 10 settembre 2025. On this point, see also: Cristina Fraenkel-Haeberle, Alice Valdesalici, ‘La terza riforma del federalismo tedesco: il Finanzausgleich tra vecchie e nuove previsioni normative’ (2018) 3 *Le Regioni* 373 ff.

⁸⁶ Robert Hay and Stephen James Martin, ‘Controlling Local Government Spending: The Implementation and Impact of Capping Council Taxes’ (2014) 40(2) *Local Government Studies* 224.

⁸⁷ John Stanton, *Law, Localism, and the Constitution* (Routledge 2023) 176.

⁸⁸ Stephen D. Fisher and Sara B. Hobolt, ‘Coalition government and electoral accountability’ (2010) 29 (3) *Electoral Studies* 358-359.

As highlighted by a recent comparative study,⁸⁹ similar tensions between fiscal autonomy and solidarity can be observed in other multilevel systems. In Australia, for instance, the Commonwealth Grants Commission traditionally pursued full equalisation. However, following the Productivity Commission's 2018 recommendation to move towards a "reasonable equalisation" standard, the federal legislature chose a different reform path: equalisation was recalibrated based on the stronger of either New South Wales or Victoria, with a transitional period extending until 2027. Although the reform did not formally adopt the Commission's proposed formula, it has been widely interpreted as a gradual transition away from strict full equalisation, reflecting a political accommodation of the significant economic disparities within the federation.⁹⁰

Spain offers another instructive case: its dual financing model combines the common regime applied to most autonomous communities with the "*foral*" regime of the Basque Country and Navarra, constitutionally entrenched but often criticised for fuelling perceptions of fiscal privilege and exacerbating debates on solidarity, especially during the Catalan crisis.⁹¹

Canada further illustrates a layered model of fiscal federalism, where provinces enjoy substantial tax autonomy, while territories and Indigenous peoples remain heavily reliant on federal transfers. This structural asymmetry underscores the coexistence of multiple forms of diversity accommodation within the same federation.⁹²

7.2 Italy's Unimplemented Fiscal Autonomy.

The comparative overview above highlights that tensions between fiscal autonomy and solidarity are a common feature of multilevel systems. In the Italian case, similar concerns had already emerged in scholarship prior to the adoption of Law No. 86 of 2024 and the Constitutional Court's recent intervention in Judgment No. 192 of 2024.

⁸⁹ Alice Valdesalici and Francisco Javier Romero Caro, 'Diversity Accommodation and Fiscal Federalism: Comparative Remarks from a Constitutional Law Perspective', in Francisco Javier Romero Caro, Alice Valdesalici (eds.) *Fiscal Federalism and Diversity Accommodation in Multilevel States: A Comparative Outlook* (Palgrave Macmillan Cham 2024), 333 ff.

⁹⁰ *Ivi*, 339 and 344 ff. See also 'Will Sanders Fiscal Equalization in Australian Federalism: Managing Diversity of Size Among Subnational Jurisdictions', in Francisco Javier Romero Caro, Alice Valdesalici (eds.) *Fiscal Federalism and Diversity Accommodation in Multilevel States: A Comparative Outlook* (Palgrave Macmillan Cham 2024), 41 ff.

⁹¹ Alice Valdesalici and Francisco Javier Romero Caro, 'Diversity Accommodation and Fiscal Federalism: Comparative Remarks from a Constitutional Law Perspective', in Francisco Javier Romero Caro, Alice Valdesalici (eds.) *Fiscal Federalism and Diversity Accommodation in Multilevel States: A Comparative Outlook* (Palgrave Macmillan Cham 2024), 336 and 346 ff.

⁹² *Ivi*, 336-337.

The analysis pointed to a persistent asymmetry between the responsibilities attributed to the Regions and the limited financial means available to discharge them. Attention was drawn to the inadequacy of existing equalisation mechanisms and to the risk that asymmetric differentiation under Article 116(3) might proceed in the absence of sufficient safeguards against the deepening of territorial inequalities.⁹³

These concerns had already been acknowledged in earlier constitutional jurisprudence. In Judgment No. 220 of 2021, the Court identified the persistent failure to determine the Essential Levels of Services (LEP) as a key obstacle to both the effective implementation of Article 119 and the reduction of territorial disparities in access to social rights⁹⁴. Despite the mandate set out in Law No. 42 of 2009, the LEP remain largely undefined. This omission continues to undermine the fiscal autonomy of the Regions and the constitutional principles of equality and solidarity that must guide any differentiated autonomy.

These observations have found confirmation in recent constitutional jurisprudence. In Judgment No. 192 of 2024, the Court reaffirmed that fiscal asymmetry raises issues not only of administrative coordination, but of constitutional principle. It stressed that the transfer of additional competences must be preceded by the definition and full financing of the Essential Levels of Services (LEP), which serve as a condition for the effective enjoyment of rights across the national territory.

The Court also warned that regional differentiation cannot be pursued as a vehicle for financial privilege.⁹⁵ To guard against this, it has insisted on two essential conditions. The first is that any request for the transfer of additional powers must rest on a clear and well-reasoned justification, one capable of being assessed under constitutional review. The second is that the State must fully give effect to Article 119, ensuring that fiscal autonomy is not only formally recognised, but grounded in adequate and reliable resources.⁹⁶ Without such guarantees, the implementation of asymmetric autonomy cannot be reconciled with the principles of solidarity, equality, and democratic accountability that underpin the constitutional order.

⁹³ Antonia Baraggia, Benedetta Vimercati, 'Unity and Diversity: A Turbulent Journey Through Italian Fiscal Federalism', in Francisco Javier Romero Caro, Alice Valdesalici (eds.) *Fiscal Federalism and Diversity Accommodation in Multilevel States: A Comparative Outlook* (Palgrave Macmillan Cham 2024) 228.

⁹⁴ Italian Constitutional Court, Judgment No. 220 of 2021, para. 5.1.

⁹⁵ Andrea Morrone, 'Lo stato regionale dopo la sent. n. 192 del 2024' (2025) *Giustiziainsieme.it*, 29 January 2025; Camilla Buzzacchi, 'Pluralismo, differenze, sussidiarietà ed eguaglianza: dalla sentenza n. 192 del 2024 il modello per il sistema regionale "differenziato"' (2024) 18 *Astrid Rassegna* (also available at www.giurcost.org).

⁹⁶ Marco Ladu and Lorenzo Spadacini, 'La nozione costituzionale di livello essenziale delle prestazioni tra potestà normativa e autonomia finanziaria delle Regioni' (2023) 2 *Italian Papers on Federalism* 110 ff.

Article 119 of the Italian Constitution indeed designs a framework in which territorial entities are entitled to financial autonomy in both revenue and expenditure. It authorises Regions and local authorities to levy their own taxes, share in State tax revenues, and benefit from an equalisation fund for those with lower fiscal capacity per capita. These constitutional provisions were given legislative effect by Law No. 42 of 2009 and Legislative Decree No. 68 of 2011, which aimed to shift the system from a transfer-based model to one grounded in standard costs, LEP, fiscal responsibility, and equalisation based on fiscal capacity.

These measures set out a financial system in which regional functions are meant to be funded primarily through resources raised locally or shared with the State – rather than through general-purpose transfers, which are to be progressively phased out.

The implications of this design become particularly evident in areas tied to civil and social rights. In such cases, regional spending cannot be arbitrary or politically negotiated. It must correspond to standard costs and be assessed against the Essential Levels of Services, as defined by the State under Article 117(2)(m).⁹⁷

That process is now subject to a binding deadline. Under the National Recovery and Resilience Plan (“PNRR”), all primary and secondary legislation necessary for the implementation of regional fiscal federalism must enter into force by March 2026.⁹⁸ That deadline is not a procedural formality. It represents a threshold of constitutional relevance: a moment that will determine whether the financial autonomy promised in the Constitution can find full expression in practice, or whether it will remain – yet again – deferred.

7.3 The Principle of Loyal Cooperation.

Within this constitutional framework, the principle of loyal or “sincere”⁹⁹ cooperation (*leale collaborazione*)¹⁰⁰ emerges as a structural pillar of the constitutional architecture of both symmetric and asymmetric regionalism. It presupposes continuous intergovernmental dialogue and shared institutional responsibility, guiding the exercise of autonomy along the

⁹⁷ Elena D’Orlando and Francesco Porcelli, ‘The Challenges of the National Recovery and Resilience Plan and of Asymmetric Regionalism: A Resilience Opportunity for Italian Regions?’ (2025) 1 *CERIDAP* 7, 8.

⁹⁸ *Ivi* 6.

⁹⁹ Giuseppe Martinico, ‘Dating Cinderella: On Subsidiarity as a Political Safeguard of Federalism in the European Union’ (2011) 17 (4) *European Public Law* 660.

¹⁰⁰ Fulvio Cortese, ‘Regioni e leale cooperazione’ (2023) 1 *Le Regioni* 37 ff; Roberto Bin, ‘Il principio di leale cooperazione tra i poteri dello Stato’ (2001) 1 *Rivista di Diritto Costituzionale* 3 ff.

constitutional axes of solidarity and unity, rather than allowing it to devolve into institutional fragmentation.

The Italian Constitutional Court, and in particular Judgment No. 303 of 2003, has clarified that *leale collaborazione* must operate not as a mere rhetorical formula, but as a procedural and consensual mechanism capable of legitimising derogations from the ordinary distribution of competences. Any deviation from the constitutional allocation of powers is admissible only where it is proportionate to the public interest pursued, subjected to strict constitutional scrutiny, and, above all, concluded through negotiated agreements between the State and the Regions.¹⁰¹ This approach confirms that subsidiarity and cooperation are inseparable principles: the transfer of additional functions acquires constitutional legitimacy only when grounded in a process of shared decision-making and mutual accountability.

This function is all the more essential given the constitutional status of the Regions. They are not sovereign entities, as emphasised by the Constitutional Court, and they do not participate directly in the national legislative process.¹⁰² Their exclusion from the formulation of general policy underscores the structural necessity of institutionalised cooperation between the State and the Regions – not as a matter of good practice, but as a constitutional imperative.

8. Concluding Remarks: From Judicial Clarification to a New Phase?

The Italian Constitutional Court's recent jurisprudence – in particular, Judgments No. 192 of 2024 and No. 10 of 2025 – has recast differentiated regionalism not as a constitutional outlier, but as a structurally legitimate instrument of democratic governance, on the condition that it operates within stringent normative and procedural boundaries, reinterpreting Article 116(3) of the Constitution as governed by enforceable constitutional constraints, excluding its treatment as a field for unrestrained political negotiation.

This judicial reframing does not conclude the constitutional debate but repositions it within a normative framework. The question is no longer the admissibility of differentiation, but the modalities – constitutional conditions – through which it may simultaneously advance regional self-government without compromising national cohesion. The Court affirms that any legitimate form of differentiation must be grounded in pluralism and solidarity, supported by loyal cooperation, and oriented toward effectiveness, equality, and accountability.

¹⁰¹ Giuseppe Martinico, 'Dating Cindarella: On Subsidiarity as a Political Safeguard of Federalism in the European Union' (2011) 17 (4) *European Public Law* 660.

¹⁰² Ludovica Durst, 'L'organizzazione territoriale in Italia tra regionalismo e autonomia differenziata: un percorso degli ultimi venti anni' (2024) 3 *Nomos – Le attualità nel diritto* 31 ff.

Within this architecture, LEP perform a dual role: they are not only preconditions for the admissibility of devolution, but also post-devolution safeguards, ensuring that regional exercise of functions remains aligned with national standards for rights protection. They represent the constitutional keystones that operationalise differentiated autonomy in line with the Republic's foundational commitments: equal dignity, the elimination of structural inequalities, and the universal guarantee of fundamental rights. The challenge, however, lies not only in defining the LEP but in securing their effective and stable financing, without which the constitutional promises of equality and solidarity risk remaining merely aspirational.

Their full definition — subject to a binding deadline under the National Recovery and Resilience Plan — will mark a turning point not only for the effective protection of social rights, but also for the implementation of Article 119 of the Constitution and the broader project of fiscal federalism initiated by Law No. 42 of 2009.

Respecting this deadline will be crucial, since its achievement could mark the transition of differentiated autonomy into a coherent constitutional project, while any further delay would risk perpetuating the “non-model” structure of Italian regionalism.

In this context, subsidiarity – understood as a functional criterion guiding the allocation of powers in the public interest (*ex parte populi*) – complements this broader constitutional framework: it requires that any transfer of functions be justified by demonstrable improvements in rights protection and administrative effectiveness, rather than by institutional convenience. This interpretation also recasts subsidiarity as a principle of accountability, ensuring that proximity to citizens translates into measurable gains in democratic participation and service delivery.

However, constitutional clarification is only part of the solution. The decisive challenge is political: whether institutional actors will be capable of transforming the normative space delineated by the Court into a differentiated governance model that is substantively democratic, efficient, fiscally sustainable, and socially equitable.

If it is true that Italian regionalism is “not the little sister or brother of federalism”¹⁰³, it is equally true that it does not offer a ready-made model for other systems. Rather, it demonstrates that asymmetry and unity are not incompatible, provided they are anchored in procedures that are both legally enforceable and politically accountable. What emerges is not a federal blueprint but a model of cooperative regionalism in which autonomy is permitted only within the limits

¹⁰³ Eva Maria Belser, ‘Concluding remarks: Regionalism: Italian lessons offered to complex states seeking legitimate and effective governance while being reluctant to federalism’ in Erika Arban, Giuseppe Martinico & Francesco Palermo (eds.) *Federalism and Constitutional Law: The Italian Contribution to Comparative Regionalism* (Routledge 2021) 218.

defined by shared constitutional commitments. Central to this vision is a particular reading of subsidiarity – one that transforms it from a mere justification for decentralisation into a rule of constitutional organisation, oriented toward mutual accountability, procedural discipline, and the primacy of rights-based equality.¹⁰⁴

This approach resonates with what Anna Gamper has described, in comparative federal theory, as the “*suum cuique*-test”: differentiation must be proportionate and responsive to the specific conditions of each level of government, rather than justified by abstract claims to autonomy.¹⁰⁵

¹⁰⁴ John Stanton, *Law, Localism, and the Constitution* (Routledge 2023) 266, 267.

¹⁰⁵ Anna Gamper, ‘Suum Cuique Tribuere. A Common Narrative of Federalism and Equality?’ in E. M. Belser, T. Bächler, S. Egli, & L. Zünd (Eds.), *The Principle of Equality in Diverse States. Reconciling Autonomy with Equal Rights and Opportunities* (Brill 2021) 19.