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AUTONOMY AS CONSTITUTIONALISM

1. The title of this issue, "from the State to the individual", clearly evokes the political doctrine of liberalism that gave origin to constitutionalism. And it is this doctrine of liberal constitutionalism that is also the theoretical inspiration for our law journal that has tuned its constitutional reflections on a liberal approach, intended mainly as pluralism of ideas and theories. The reflections carried out in this issue of the journal on the problems on the relationship between individualism and statism is, therefore, consistent with our mission. That is why we welcomed the proposal of our colleagues to publish their contributions in the monographic part of the volume. This editorial wants to sketch briefly the specific questions of the issue of the concept of autonomy in the liberal constitutionalism.

Let me be clear: autonomy is one of the most important concepts in a liberal-democratic state. It is still worthwhile to read the article on *Autonomy* of Santi Romano in *Frammenti di un Dizionario giuridico*, dated 1945: «in the broader and generic meaning the concept of autonomy indicates any possibility of self-determination and, therefore, the active capacity, powers and individual rights. In a more specific meaning [...] it indicates: subjectively, the power to give a legal system and, objectively, its character of a legal order that individuals or entities establish for themselves, in contrast to the characteristics of legal orders that are established for them by others». It is interesting to note that in the overture of his text Romano is stating the purpose and meaning of autonomy as referring to self-determination and to the constituent power; or even at the moment of the founding of a people and of a legal order. These are all themes and issues that cyclically come up again; just think of the recent unsuccessful attempts undertaken by Scotland and Catalonia to achieve broader autonomy from the national state. This entities

are claiming the right to choose with whom sharing the territory where they want to exercise their own sovereignty; this means the right to self-determination, which involves collective right of the people to decide the course of their national life. A collective right, though not codified, can therefore be found implicitly in the principles of constitutionalism.

2. Another aspect of the issue is the autonomy of the individuals from the public power. And here we have liberalism that becomes constitutionalism and autonomy that becomes freedom. In this sense, even the separation of powers is to be understood à la Montesquieu as an organizational autonomy (but non only) of a power over other powers. Today, the autonomy of the individuals from the public is basically based on the constitutional principle of subsidiarity. With and through this principle is going to be promoted the autonomous initiatives of citizens that are performed individually and jointly, to carry out activities of general interest. And the verb "encourage" used by the constitutional legislator in art. 118, paragraph 4 of the Constitution expresses a duty of interest and action by the public authorities towards the citizens' initiatives of general interest aimed at solving problems and collective needs. The public administration, therefore, has to promote the citizens' initiatives. If they do not, because they are not prepared for it technically and culturally, it certainly can not prevent citizens to act for achieving the general interest with their own initiatives and in compliance with the principle of equality and legality. In this sense, the actions carried out by active citizens in accordance with the principle of subsidiarity are able to produce law and constitute living sources of constitutional and administrative law. This are, however, citizens, that are cooperating with the administration, in order to safeguard the interest of others, for which the administration has no longer the monopoly. The state and other public authorities, therefore, are called to protect and implement the development of civil society from the bottom up, that is the respect and enhancement of individual energies, that means the way in which those who participate freely interpret the collective needs coming up from the society.

3. Then there is the autonomy of the citizen from the state intrusiveness; Wilhelm von Humboldt called it the *limits of the state*.

Just think, that our daily behavior, our freedom, is left to the will of others, which determine it through a flood of laws. Through the legislation rules are imposed by which the autonomy of the individulas is restricted and conventions and agreements already prevalent in a given society are canceled. Of course, legislation is necessary but is should not be invasive; it should be limited to the regulation of general questions of civil coexistence, without trying to enter into the details of human behavior. In a legal order based on an excessive number of legal provisions citizens, economic operators and their freedom are likely to perish. At this respect you have to consider for example, above all, the unacceptable tax burden and the continuous and suffocating standardization. It is the point of time to do the "spring cleaning of the legislation", if we want to use an expression of the American doctrine that has the objective to remove obsolete legislation and to introduce expiration clauses of the new laws (*Sunset Law*). Just as it is also time to convince lawmakers that their role is not to be regulators of all and everything, and even not to provide some sort of instruction manual for the economy, covering all possible eventualities, up the most remote risk for our freedom. Constant upholds, and it is also the opinion of liberalism: «There is no doubt that there is a lack of freedom when people can not do all that the laws allow them to do; but laws may prohibit many things, and are therfore able to eliminate entirely the individual freedom».

4. There is, finally, the local autonomy. We can foreshadow that actually there is not a large autonomy, or that at least it is watered down. A concrete example are the Italian regions: they come into existance in the seventies, that means with a huge delay compared to the constitutional provision; they were provided with the original intent to sterilize at territorial level the *conventio ad excludendum* against the Communist Party; the potential for a federal structure inherent in the great reform of Fifth Title of the second part of the Constitution has never be carried into effect; today the regions are considered again by the revised Constitutional Law submittet to the vote of the sovereign people. From there arises the reccurent question: the regions still serve? Could we do without them? From here, we study new forms of macro-regions that meld a group of regions, which in no way considers the regional identities, as if they were anachronistic customs and traditions of village festivals.

The regions have never really worked as places and areas of territorial autonomy, because the central government did not want to make them work. In a first time they were subordinated and administrative bodies kept at bay by national interest; later, they were enveloped by a confused constitutional law that covers three legal levels: the level of exclusive state legislation, the level of concurrent legislation and the residual legislation powers in favour of the regions. The effect of this division of legilsative powers between state and regions are the uncertainty of the competences/powers and a consequent and still ongoing litigation before the Constitutional Court.

I want to be even more provocative: the state is afraid of Regions: he fears the theft of power, of the management of the interest as well as of the autonomy of the choices. He does not want to abdicate its leviathan role, that takes and dominates everything. Of course, it is the last cut of a state that is already watered down and weakened by globalization. This means, it is dissolved in the global dimension that tries to impose itself on the local level, that already is unpresentable.

Although these critics are founded, we can't say that it is all wrong. Still the constitutional reform that is going to be approved has to be welcomed with favour, at least from my point of view. There will be a Senate as representative organ of the local and regional governments, and no more a (useless) duplication of the Chamber of Deputies; the concurrent jurisdiction between state and regions will be eliminated and thus simplifies the legislative framework of the center and the periphery. Let me add that at the local level, at the level of municipalities and regions, for over a decade the mayor and the president of the region (so-called. "Governors") are elected directly: I would not have regretted if the constitutional legislator had completed this institutional framework providing for the direct election also of the president of the republic, following on the model of the French semi-presidential system. This would have meant a further extention of the space of autonomy of the citizens, in the name and on behalf of the sovereignty of the people to choose, vote and elect the head of state and representative of the national unity.

Autonomy as freedom; as a free market economy; Constitutionalism as the separation of powers. Is the authentically liberal democracy still an utopia?