

FISCAL FEDERALISM AND COMPARATIVE LAW

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This paper aims to set a general framework within which a study on fiscal federalism could be developed. The term “fiscal federalism” stems from American economic schools. The natural tendency of economic science to cross national boundaries allowed fiscal federalism theory to spread to all liberal-democratic States and affect legal studies. The legal analysis of fiscal federalism concerns rules that regulate the allocation of economic and financial powers between layers of government to understand how these powers achieve common values. The interaction between principles of fiscal federalism and sources of law gives rise to a plural system of fiscal intergovernmental relations, which can be ordered into different patterns or models. Some States protect territorial autonomy more than equality, but others guarantee equal conditions for citizens more than a differentiation of territories. The choice between equality and territorial autonomy depends on the social Constitution. In fact, the coordination between taxing and spending, which are both related to equalisation, is essential for the realisation of the welfare State. From a comparative law perspective, the study of the balance of powers highlights the conditions and limits of the fiscal constitution, which, in conjunction with an institutional context, defines the constitutional field of fiscal federalism.

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I. INTRODUCTION

Fiscal federalism is in vogue in comparative studies because it is one goal of reforming policy in contemporary democracies. Scholars of fiscal federalism are supposed to assist lawmakers in the reformation of fiscal relationships between levels of governments. Academics fail to set a common theoretical approach to the issue, and therefore, they draft many different versions of the same theme. For this reason, a study on fiscal federalism is essentially a conceptual one.

Most comparatists believe that fiscal federalism involves the power to levy taxes¹. According to this theory, the power to tax is the keystone to building fiscal relations between central and sub-national governments. Both central and state levels can levy and collect taxes, and these powers have to be constitutionally guaranteed.

From a broader perspective, fiscal federalism in a free internal market includes principles and rules that concern relationships between levels of government, particularly taxing and spending, debt, accountancy, budgeting, the commerce clause, labour market, and financial institutions².

The all-inclusive theory is too broad and difficult to apply to different systems because it encompasses from fiscal and commercial rules to market labour and accountancy laws.

This paper aims to set a general framework in which a study of fiscal federalism could be developed. This study would choose from economic principles that are most directly related to “the financial territorial constitution”³. This expression refers to the overlap of territorial and fiscal constitutions. The former expression contains rules that govern vertical divisions of power in national territories. The latter expression refers to rules regulating financial flow and budget policies.

Fiscal constitution covers some aspects of the economic sovereignty of States and Federations, which also encompass market and monetary legislation, and several government interventions in the economy⁴.

¹ G. Bizioli, C. Sacchetto (eds), *Tax Aspects of Fiscal Federalism*, IBFD, Amsterdam, 2011.

² G.F. Ferrari, *Il federalismo fiscale nella prospettiva comparatistica*, in ID. (ed.), *Federalismo, sistema fiscale, autonomie*, Donzelli, Roma, 2010, 5.

³ M. Medina Guerrero, *Financiación autonómica y control de constitucionalidad (Algunas reflexiones sobre la STC 13/2007)*, in *Revista d'Estudis Autònomic i Federals*, 2008, 6, 92 ss.

⁴ G. Di Plinio, *La costituzione economica europea e il progetto di Trattato costituzionale*, in www.unich.it/scigjur/wrkpapers/.

If we restrict research to financial territorial constitution, we will compare legislation of fiscal federalisms, i.e., the regulation of powers distributed between different vertical layers of authority, particularly: 1) the power to tax; 2) the power to spend; and 3) the power to equalise territorial differences.

We will assess similarities and differences between legal systems to classify them based on this functional repartition. American history demonstrates that the exercise of these three powers causes conflicts between layers of government in a federation of States, which drove the founding fathers of liberal democracies to establish rules on fiscal relationships⁵.

In some legal systems, these rules also involve local governments, which are usually governed by States or other regional authorities.

Notably, rules on fiscal federalism are not entirely enshrined in codified Constitutions because some rules stem from so-called natural economic laws, which, as we will see, are accepted by institutions.

Statements and rules governing fiscal relationships are, or could be, the consequences of economic events that lead to a flexibility of rules on the economic aspects of federalism, as one of the first scholars of federalism realised⁶. Events (e.g., growth of public debt) call for a response (e.g., debt limits) that could be legislative, political or judiciary, depending on which forms are adopted by authorities.

Therefore, a survey on fiscal federalism should analyse rules of territorial constitution, how economics and economic theories influence the development of relationships between territorial governments and how economic constitutions influence fiscal relationships.

From a methodological perspective, legal research on fiscal federalism is influenced by quantitative and statistic data, which can afford to evaluate the efficiencies of territorial and fiscal organisations.

⁵ J.P. Meekison, H. Telford, H. Lazar, *The Institution of Executive Federalism: Myths and Realities*, in ID. (eds.), *Reconsidering the Institution of Canadian Federalism*, McGill-Queen's University Press, Montreal, Québec; Ithaca [N.Y.] 2004, 19 ss. P. Leslie, R.H. Neumann, R. Robinson, *Managing Canadian Fiscal Federalism*, in J.P. Meekison, H. Telford, H. Lazar(eds.), *Reconsidering the Institution of Canadian Federalism*, cit., 213 ss.

⁶ K.C. Wheare, *The Federal Government*, London and New York, Oxford University Press, 1946.

This article begins by outlining the birth of fiscal federalism notions in different areas of economic studies⁷. The article then examines the manner by which the economic theory of fiscal federalism became a legal theory.

Finally, this article considers the sources of law regarding fiscal relationships between levels of government and attempts to develop a model to classify them.

II. THE ECONOMIC THEORY OF FISCAL FEDERALISM

The term “fiscal federalism” was first used by a group of American scholars to define a decentralisation theory in the public sector in the United States of America. The natural tendency of economic science to cross national boundaries allowed fiscal federalism theory to spread to all liberal-democratic States⁸. The term was quickly given a wider meaning, which has been used to illustrate intergovernmental fiscal relationships in States with different levels of government⁹. In this sense, fiscal federalism has formed a fundamental key for the study of relationships between central and sub-national governments, and contributed to the elaboration of operational models for composite States¹⁰.

The economic theory of fiscal federalism is more recent than the phenomenon it describes, which started with the first federal Constitutions in the eighteenth century. When the United States Federation was born, the term “federal finance” was used to indicate fiscal relationships between central and sub-national governments. Federal finance was inseparably linked to the federal State and the revendication of the financial independence of central government towards state government. However, fiscal federalism was used to describe fiscal relations within all composite and/or decentralised States.

This transformation was determined by the development of the State, which became responsible under Keynesian impulse for providing functions that were

⁷ G.G. Carboni, *Il federalismo fiscale: dalla nozione economica a quella giuridica*, in *Diritto pubblico comparato ed europeo*, 2009, IV, 1417 ss.

⁸ On this diffusion L. Greco, *Federalismo fiscale: una nozione economica*, in *Federalismo fiscale*, 2007, 39 ss.; D. Fausto, *Note sulla teoria economica del federalismo fiscale*, in D. Fausto, F. Pica (ed.), *Teoria e fatti del federalismo fiscale*, Il Mulino, Bologna, 2000, 103 ss.

⁹ R. Bifulco, *Le relazioni intergovernative finanziarie negli Stati composti tra Costituzione, politiche costituzionali e politiche di maggioranza*, in V. Atripaldi, R. Bifulco (eds.), *Federalismi fiscali e Costituzioni*, Giappichelli, Torino, 2001, 16 ss.

¹⁰ The financial relations have established a pattern of "attraction" for all centre-periphery relations (administrative, legal, political), which have been named and described with words and concepts from economics: competitive federalism, cooperative, concurrent, etc.

previously supplied by the free market, such as delivering goods and services unavailable to all citizens and guaranteeing the social and economic conditions for participation in public life. The objective of public finance is threefold: governmental effects on (1) efficient allocation of resources, (2) distribution of income, and (3) macroeconomic stabilisation¹¹.

Government is expected to reallocate resources from some groups to others in times of financial crisis to guarantee this macroeconomic stabilisation. In this case, public expenditure is directed to the transfer of income from rich to poor people.

The birth of the welfare State and the rising federal commitment in wealth redistribution have produced a change in taxing and spending policies¹². Taxing has increased enormously to finance income redistribution and stability policies supported by central government. Spending has increased to the benefit of all levels of government, which are requested to exercise a wide variety of functions.

The theory of fiscal federalism proposed by public finance scholars has tried to develop an optimal distribution model of these tasks for different levels of government by taking account of the three fundamental functions of public finance (goods and services allocation, income distribution, and economic stability).

The search for the most efficient model of task delivery included sectors linked to the financing and spending of sub-national governments, and all economic public sectors generally related to the welfare State¹³.

The costs and benefits of decentralisation have been compared, and irregularities and differences in the distribution of economic activities in the territorial context and the differential effects produced by public policies have been considered.

The “fiscal federalism” theory has been used to justify both the decentralisation of some functions and the centralisation of others.

In this view, the allocation of goods and services should be attributed to local governments, which can ask their citizens to pay related costs, unless these citizens benefit from the services of other territories (i.e., defence).

Indeed, local government should be able to allocate goods and services at a lower cost to better satisfy people’s needs and promote democratic decisions¹⁴.

¹¹ R. Musgrave, *The Theory of Public Finance*, McGraw-Hill, New York, 1959.

¹² R. Bowie, C. Friedrich, *Studies in Federalism*, Little, Brown & Company, Boston, Toronto, 1954.

¹³ R. Musgrave, P. Musgrave, *Public Finance in Theory and Practice*, MacGraw-Hill, New York, 1989, 613 ss.; W.E. Oates, *Fiscal Federalism*, Harcourt Brace, New York, 1972, *passim*

The economic theory of fiscal federalism assigns the management of redistribution policies, which are directed to guarantee minimal equity conditions¹⁵, and policies focused on economic balance and financial stability to central government.

Decentralisation of these functions to sub-national governments would be a disadvantage to citizens due to the inadequate size of local government compared to the tasks to be performed and the costs of the division of functions, which can be developed at an optimal level by a central government¹⁶.

One risk of decentralisation is that territorial governments behave opportunistically and make decisions that require economic efforts by central government (e.g., spending and borrowing) against the necessity for stability¹⁷.

Another group of academics who are associated with the “Public Choice” school has criticised the economic theory of fiscal federalism. These academics highlighted the limitations of a purely economic and efficiency dialogue on task allocation between public administrations¹⁸. According to these scholars, the decentralisation of public policies does not necessarily have good results *per se*; conditions and institutional constraints have to be imposed to pursue the public good through the democratic process of decision, and fiscal relations have to be adequate for an efficient system of fiscal relationships.

The different approach of the Public Choice school does not revise the conclusions of the Public Finance school, for which the fiscal federalism theory is adaptable to all States with different levels of government. Research into federal finance is replaced by studies of fiscal federalism, a category that allows us to confront a greater number of States.

III. FISCAL FEDERALISM AND SOCIAL SCIENCE

Economists and other social scientists have studied the decentralisation of economic tasks. Jurists, political philosophers and scientists of federal political systems

¹⁴ M. Tiebout, *A Pure Theory of Local Expenditure*, in *The Journal of Political Economy*, 1956, V. 64, n. 5, 416 ss. W.E. Oates, *Fiscal Federalism*, cit., passim

¹⁵ It should be remembered that equalisation is addressed to the territories in Europe, but it is often granted to individuals within specific programs in the USA. W.E. Oates, *An Essay in Fiscal Federalism*, in *Journal of Economic Literature*, 1999, 1127.

¹⁶ R. Musgrave, P. Musgrave, *Public Finance in Theory and Practice*, cit., 623 ss.

¹⁷ J.A. Rodden, G.S. Eskeland, J. Litvack, *Fiscal Decentralization and the Challenge of Hard Budget Constraints*, The MIT Press, Cambridge, 2003.

¹⁸ J. M. Buchanan, G. Tullock. *The Calculus of Consent: Logical Foundations of Constitutional Democracy*. Ann Arbor: University of Michigan Press, 1962.

initiated the study of federal finance from the birth of the first American constitution. Nevertheless, it was necessary to wait until the second half of the nineteenth century to witness a massive development in comparative studies on federal finance. Research in this field from different disciplines has provided comparative studies with a basic knowledge of the theme, which prompted public law researchers to give greater attention to the rules of the allocation of financial tasks¹⁹.

The circulation of the economic theory of fiscal federalism into political and juridical sciences occurred on the basis of two important premises: the shift from a static to a dynamic theory of federalism and the idea of considering economics as the main pillar of the relationship between central and sub-national governments²⁰.

A new scope for studies stems from the need to adapt comparative studies to transformations of contemporary States. On the one hand, traditional unitary States started decentralisation processes without renouncing the central feature of the State, and regional States shifted to federal organisation. On the other hand, federal States adapted their organisation to be appropriate in the new context²¹.

States that originated from political and geographic transformations in the late twentieth century have the form of a composite State, but not always the form of a federal State²².

The diffusion of new organisation models led to the abandonment of the concept of a federal State because it was conceived between the eighteenth and nineteenth centuries and the implementation of new forms of State, such as the Autonomic State in Spain and the Devolved State in the UK.

From a theoretical point of view, the diffusion of new territorial organisation models and the circulation of federal institutions weakened the efficacy of previous criteria to differentiate the form of the State. The traditional classification has become insufficient and unsuitable.

In modern federalism, the traditional distinction between unitary, regional and federal States (alongside confederations and international organisations) is complimented

¹⁹ G. Bognetti, *Lo spirito del costituzionalismo americano. Breve profilo del diritto costituzionale degli Stati Uniti. La costituzione democratica*. II, Giappichelli, Torino, 2000, 150 s.

²⁰ G.G. Carboni, *Il federalismo fiscale: dalla nozione economica a quella giuridica*, in *Diritto pubblico comparato ed europeo*, cit.

²¹ L. Pegoraro, A. Rinella, *Diritto pubblico comparato. Profili metodologici*, Cedam, Padova, 2009, 178 ss. R. Scarciglia, *Introduzione al diritto pubblico comparato*, Il Mulino, Bologna, 2006, 84 s.

²² D.J. Elazar, *Exploring Federalism*, Tuscafoosa: University of Alabama Press, 1987.

by a distinction based on the federalising process, which considers decentralisation and centralisation as territorial re-organisation processes of the State²³.

The consideration of economics as a main pillar of intergovernmental fiscal relationships developed before the idea of the federalising process.

At the end of the twentieth century, federalism and fiscal federalism obtained a very broad meaning, which does not necessarily coincide, because there could be a federal State with a limited application of fiscal federalism and a unitary State that realises a deep decentralisation of fiscal power. However, there is no doubt that the economic-fiscal aspect of federalism affects the development of relationships between the central State and sub-national governments, and these relationships simultaneously influence fiscal federalism.

The mutual interdependence between economic and institutional aspects of the federalising process has been clear since economic terms and concepts first appeared in juridical language. Economists have long held that institutional aspects are necessary to understand fiscal intergovernmental relationships, and constitutional guarantees are essential to distinguish autonomy from decentralisation.

Studies on federalism have recorded these theoretical and institutional transformations. These studies were previously interested in the cultural and political bases of federalism, but now their attention has moved to the question of the financing and sustainability of federal systems²⁴. These new studies demonstrate a widespread belief that fiscal federalism entrenches a set of principles that regard getting and spending more efficiently and equally for citizens²⁵.

Fiscal decentralisation has been reformed in unitary States, such as France and the United Kingdom, regional States, such as Italy and Spain, and federal States, such as Germany.

Reformers have been convinced to promote fiscal decentralisation for the same reasons elaborated by economists to sustain the theory of fiscal federalism: the chance to better satisfy citizens' expectations, the benefits that stem from competition for public goods, and the checks of power obtained through political and financial responsibility²⁶.

²³ C.J. Friedrich, *Trends of Federalism in Theory and Practice*, Praeger, New York, 1968.

²⁴ R.L. Watts, *The Historical Development of Comparative Federal Studies*, in www.queensu.ca, 7 ss.

²⁵ T. E. Frosini, *The Gamble of fiscal Federalism in Italy*, in *Italian Journal of Public Law*, n. 1, 2010, 124 ss.

²⁶ U. Thießen, *Fiscal Decentralisation and Economic Growth in High-Income OECD Countries*, in *Fiscal Studies*, 2003, 24/3, 237 ss.

The process of reforms that affected European democracies, some Anglo-American States and developing countries, caused a further stage of studies on fiscal federalism, regarding its applicability to different institutions and contexts.

Aside from economists²⁷, political scientists who considered the allocation of fiscal resources and powers as one of the most important elements to compare federal systems have been the most active players in this field²⁸.

The latter research has supported trends that emerged from scientific studies in the 1960s and 1970s: the separation of the territorial financial system from the “federal principle”²⁹, whereby there was a division between revenue and expenditure powers, which were allocated to a certain level of government, and administrative and legislative powers, which were attributed to another level.

Fiscal federalism has become a model that can entrench different legal orders with different institutions and political systems, be organised on two or more levels and have distinct allocations of power regardless of the dynamic of intergovernmental relations³⁰.

IV. COMPARATIVE PUBLIC STUDIES

The history of comparative public law is a very recent one, and this partly explains why the study of fiscal and economic phenomena in modern States has not developed with an appropriate method or in a systematic manner.

Fiscal power and its allocation to different levels of government has long remained an unexplored aspect of State organisation. Public law science has preferred studies on normative, administrative and constitutional reform powers, for which it elaborated patterns of State classification and studied relationships between territorial governments.

In recent years, there has been more awareness of the necessity for research into the fiscal aspects of federalism. The first comparative studies on fiscal federalism were interested in federal States, but subsequent studies included non-federal States, following other sciences.

²⁷ T. Ter-Minassian (ed.), *Fiscal Federalism in Theory and Practice*, IMF, Washington, 1997. P. Moländer (ed.), *Fiscal Federalism in Unitary States*, Kluwer, Boston, 2003.

²⁸ R.L. Watts, *Comparing Federal System*, McGill-Queens Univ. Press, Kingston, 2008, 6 s. ID., *The Spending Power in Federal Systems: A Comparative Study*, Queen University, Kingston, 1999.

²⁹ K.C. Wheare, *Federal Government*, cit., 1.

³⁰ G. Anderson, *Fiscal Federalism, a Comparative Introduction*, Oxford University Press, Oxford, 2010, 2 s.

The fiscal federalism of economists is different from that of jurists, and this difference was really understood by researchers who first questioned the link between federal process and fiscal federalism³¹.

The difference primarily involves the objective. For economists, it is important to analyse the economic effects produced by a plurality of decision makers. However, it is important for jurists to evaluate the effects of decisions and the degree to which territorial governments participate in the decision-making process to verify in which ways and through which guarantees financial decisions are made and know the control procedures of these decisions.

The specificity of legal studies is to define institutional conditions for fiscal decentralisation. Legal analyses try to identify States with similar financial legal orders and classify them into comparable types³².

Without a common institutional context, the analysis of financial power and its allocation among levels of governments makes sense from an economic perspective, but much less so from a juridical one. Examining economic data is useful to evaluate the efficiency of the system but not the democratic performance.

Comparative studies primarily considered liberal-States that have a democratic organisation of powers because it was into this fiscal framework that federalism was born. Even within such a limited context, comparisons of fiscal federalisms are an arduous task because they are the result of notions and categories from different disciplines.

There is no correspondence between public powers and functions as laid out by law or their classifications made by the economic school of public finance. The allocation of one function to a certain level of government (e.g., education) depends more on State constitutional history and legal tradition than on considerations of economic performance.

This consideration explains why most legislative decisions are made on the basis of equity rather than efficiency.

Scholars of constitutional law have focused on equity in particular and also on how fiscal federalism conforms to the Constitution, the legal order and liberal-democratic principles in a certain State³³.

³¹ F. Palermo, *Comparare il federalismo fiscale: cosa, come, perché*, in F. Palermo, M. Nicolini (a cura di), *Federalismo fiscale in Europa. Esperienze straniere e spunti per il caso italiano*, ESI, Napoli, 2012, 1 ss.

³² L. Pegoraro, A. Rinella, *Diritto pubblico comparato*, cit., 87 ss.

The constitutional analysis of fiscal federalism concerns rules that regulate the allocation of economic and financial powers between layers of government to understand how they achieve common values.

The affirmation of the values of equity and solidarity that is shared by modern liberal democracies influences the taxing and spending policies of all governments. Nevertheless, every State has a different legal order that sets rules on levying taxes, voting expenses, budget approvals, etc.

The definitions of legal principles regarding economic and financial fields have been based on economic principles provided by the theory of fiscal federalism. This theory identified the best tax assignment, the optimal allocation of government resources, and the best way to coordinate the economic activities of different levels of governments.

Regarding tax assignment, the theory of fiscal federalism assumes that sub-national governments should be responsible for the collection and allocation of resources to finance public services. Therefore, regional and local differences could be taken into account, and more efficient policies would be favoured by citizens having more influence.

This principle has rarely been accepted by constitutional democracies. Some democracies allocate a portion of tax revenue to regional and local governments. Nevertheless, only the central State (usually the Parliament) has the power to tax. In a few States, sub-national governments have this power, and we can see that legal rules comply with the economic theory of fiscal federalism in these cases.

The older federations put the fiscal autonomy of sub-national governments into practice, but other composite States do not. In these States, fiscal autonomy is limited to a guarantee of an equal standard of services to all citizens, so that fiscal federalism is overlapped by fiscal centralisation. Centralisation is the rule in Europe, and decentralisation is the exception (e.g., Switzerland).

Between the full tax power of a decentralised authority (i.e., the right to introduce or abolish a tax) and the right to share tax revenues, there is a third group of States (e.g., most regional States) where sub-central governments have the right to set tax rates, define the tax base, or grant tax allowances or reliefs to individuals and firms.

³³ G. Lombardi, *Premessa al corso di diritto pubblico comparato. Problemi di metodo*, Giuffrè, Milano, 1986, 74.

If we consider the spending power, the theory of fiscal federalism upholds that the expenditure of a certain level of government should be financed by its taxes to guarantee the autonomy of government decisions.

This principle is generally accepted by decentralised States. When expenditures are financed by grant revenues, the central government exercises controls over it. The problem is to establish a level of intervention by the central government that has the power to coordinate sub-national governments and uphold macroeconomic stabilisation.

In contemporary democracies, government expenditure is specifically intended to develop solidarity, because legislation supports social programs. When the role of economic stabilisation belongs to the central government, economic and legal theories agree, which occurs in federal and regional States in a similar manner as unitary States.

V. SOURCES OF LAW

Principles and rules of fiscal federalism come into existence from sources of law, which are approved by different authorities at different levels of government. There are many sources of law in any society. Laws of fiscal federalism can be written in the country's Constitution, be passed by the legislator (usually the Parliament) or come from long social traditions. Every State establishes fiscal federalism through a particular combination of multiple sources of law that allocates economic and financial powers among levels of government and regulates them.

Some rules, which we will call rules for static coordination, aim to apply and explain the Constitutional design, define and limit the power of every level of government and establish the necessary guarantee to respect these limits. Other rules, which we will call rules for dynamic coordination, create links between functions and defined sectors to ensure the effective operation of fiscal federalism.

Rules of the first group outline the constitutional distribution of powers and the relationships between powers and state which government is responsible for a function. Rules of the second group explain how fiscal federalism works. These rules could be common or civil laws, legislative or customary rules.

This approach is particularly appropriate to comparative law because it tends to dissociate the linguistic use of law (declamation) from practiced law. However, sources of

laws are essential for the identification of binding rules, alongside which other rules of the same field exist.

In some States, constitutional rules of static coordination occupy fields that are regulated by legislative rules of dynamic coordination in other States. In recent years, matters such as budget constraints switched from legislative to constitutional jurisdictions due to the financial crisis. Nevertheless, the constitutional cover does not guarantee more efficiency. The distinction between rules of static and dynamic coordination concerns the function, not the type, of the source of law.

The interaction between principles of fiscal federalism and sources of law gives rise to a plural system of fiscal intergovernmental relations, which can be ordered into different patterns or models.

The division of relationships into groups allows us to classify legal systems, identify links between aspects of different models and detect the order that governs these aspects.

It is necessary to classify relationships between taxing, spending and equalisation powers to understand which of these factors prevail in the building fiscal intergovernmental relations and establish models of the functioning of fiscal federalism.

Models of fiscal federalism are built on the basis of the prevalence of one of these three powers. They are outlined by rules that define matters and competences (of static coordination) and especially by rules that address fiscal federalism in action (of dynamic coordination).

According to this combination of factors (rules and powers), it is possible to identify a constitutional model of fiscal federalism and its functioning in a particular system.

Some States protect territorial autonomy more than equality, but other States guarantee equal conditions for citizens more than a differentiation of territories. The choice depends on the social Constitution. In fact, the coordination between taxing and spending, which are both related to equalisation, is essential to realise the welfare State³⁴.

From a comparative law perspective, studying the balance of powers highlights conditions and limits of the fiscal constitution, which define the constitutional field of fiscal federalism in conjunction with the institutional context³⁵.

³⁴ M. Nicolini, *Principio di connessione e metodo comparato*, in F. Palermo, E. Alber, S. Parolari (a cura di), *Federalismo fiscale: una sfida comparata*, Cedam, Padova, 2011, 97 ss.

³⁵ F. Palermo, *Per un quadro normativo del federalismo fiscale*, in F. Palermo, E. Alber, S. Parolari (a

It should be noted that the three models of fiscal federalism have been developed on the basis of one or more original experiences, which were used as an archetype. There is a different range of implementation of the principles that are used to build every model.

VI. CONCLUSION: A PROPOSAL FOR A FRAMEWORK

The first model to be considered is “concurrent fiscal federalism”, which assigns taxing and spending powers to the Federation and State. The principle prevailing in intergovernmental fiscal relations is the autonomy of each level of government to decide tax rates within areas assigned to their responsibility by the Constitution. Every State establishes the level of its taxation and expenditures, has a budget, and can borrow money without exceeding the limits imposed by federal and state Constitutions.

This model uses the United States as an archetype, but older Federations, such as Canada and Switzerland, are part of the model³⁶. In these legal systems, Constitutions set out the fundamental rules of financial powers and their allocation between levels of government, which provides a class of fields within which they have autonomy (i.e., static coordination).

The federal government has the power to coordinate and support fiscal relationships between national and sub-national governments.

The financial duality between autonomy and coordination is an expression of the federal principle of division of power between governments, which are each independent within a sphere. The distribution of responsibility for taxing and spending to different levels of government, and for different public services provided by these governments, is not always rigid. Overlapping and trespassing between levels are possible. Nevertheless, each government is supposed to defend its power through political and legal processes.

In this model, intergovernmental fiscal relations are dominated by the power to tax. Parliaments of States have the taxing power because they represent citizens of their territories. Therefore, they can decide how to spend their money to provide goods and services and better satisfy citizens’ preferences. The federal Parliament has the power to levy taxes to provide goods and services when they affect the entire country or there is a national concern (e.g., defence).

cura di), *Federalismo fiscale: una sfida comparata*, cit., 407 ss.

³⁶ In their study on federal States, R. Bowie, C. Friedrich, *Studies in Federalism*, cit. 361 ss., defined as “concurrent” a system that allocates the fiscal power both to Federation and States.

Federation and States also have the spending power, but fiscal decentralisation is based on the taxing power. This means that all fiscal relations have been built and organised on the basis of the power to levy taxes. Sources of law guarantee the tax aspect of fiscal federalism, which is the *condicio sine qua non* for the independence of States.

Every State has a particular system and applies the model in a different way. The most important difference regards the third pillar, redistribution. The United States is an original and extreme example of concurrent fiscal federalism because it does not allow federal Parliament to equalise economic differences between States, even if it can fund States for specific projects (grants in aid) to support the equal accessibility of citizens to certain services, like education and health care. The stability of public finance is assured by economic budget constraints, some of which are entrenched in federal and state Constitutions.

Canada and Switzerland have Constitutions that provide a framework of rules regarding equalisation, which establish how to reduce, but not eliminate, economic differences and the negative effect of competition between States.

The search for balance between fiscal autonomy and equalisation policy represents a common denominator of Swiss constitutional reforms and Canadian federal policies. These two countries try to realise the same aim, matching the advantages of differentiation with unity through an optimal distribution of responsibilities and resources.

The second model that we will consider is the “cooperative fiscal federalism”, within which all sub-national governments coordinate their financial operations to realise the purposes of a social-democratic State.

Intergovernmental fiscal relationships are dominated by the principle of financial equalisation, which compels Federations and States to contribute their resources to maintaining the national economic stability.

Taxing and spending are essential powers of the Federation and States/Länder, but the most important linkage of the federal pact is the economic balance between territories. The constitutional principle by which fiscal federalism is driven is the equality of the condition of citizens and Länder.

Germany is certainly the most interesting example of cooperative fiscal federalism. It was a model for Austria and Belgium, and all three countries share the

redistributive and interventionist role of State. Australia, which has a different geographic and cultural condition, also belongs to this group.

States that assume this model have a federal organisation. States and Federation are considered independent although fiscal powers are concentrated into federal hands, so that the federal principle is neglected.

In cooperative fiscal federalism, financial decisions are the outcome of integration between state and federal decision-making processes. The Länder and Federation act within a common political and institutional system to achieve mutual aims.

In fiscal matters, all of these countries have a consortium whereby the Federation controls revenue to finance the Länder. The spending power of States and Länder provides for executive competences. The federal government uses its powers to aid States, for example matching their expenses for public goods and services, because resources are generally inadequate.

The role of sub-national governments is not merely executive. In Germany, Länder take part in the decision-making process through a constant dialogue with the federal administration. In Austria, the institutional position of Länder is weak, but their role is enforced by the fact that they contribute to the providing of services and goods on the basis of a private deal within which the Federation and Länder are in the same position. In Belgium, analysis of intergovernmental relations is an inextricable mosaic of competences that are developed by different authorities to represent the diverse territories and nations that form the State. Finally, Australia is a particular and original example of cooperative fiscal federalism where States have an important role in enacting federal policies, and for this reason, claim more financial powers.

Due to the existence of intergovernmental transfer revenue, the federal power of equalisation is particularly important, and it needs to be continually adapted by norms of dynamic coordination.

The function of financial coordination has become very complicated for EU States, such as Germany, Austria and Belgium. The control of public expenditure and public finance must comply with a series of rules, which require regional and local governments to follow budget and political constraints.

“Regional fiscal federalism” is a model that stems from regional experiences wherein fiscal relationships between central and sub-national governments are based on the

assignment of a large extensive spending power to regional and local authorities and the exclusion of any fiscal competition.

Spain, Italy and the United Kingdom are examples of this model. although the latter country realised a unique form of decentralisation that is not entirely comparable to other regional States.

Regional States have at least three levels of government: central, regional and local. The regional level has political autonomy, but it is not independent from the central level, which has a primacy in the exercising of fundamental functions. The institutional situation of sub-national governments influences financial relations with the central government, which is at a higher level.

The Constitution of regional States sets the principles of autonomy and fiscal self-sufficiency without providing specific guarantees to defend regional attributions. However, it also establishes limits to financial autonomy.

Central States make the most important financial decisions unilaterally in Italy and the United Kingdom, where the financial requests of sub-national governments are represented by advisory bodies that have political influence. Spain has a different history because Autonomic Communities manage to affirm their financial autonomy through the reform of Statutes.

Within principles and sources of fiscal federalism, unitary interests prevail over autonomic interests.

Fiscal federalism of regional States is based on the central role of the power of expenditure in regional-state financial relationships. Regions have a weak taxing power (tax deduction, reduction in tax, etc.), and they are funded by state revenues. The central government decides how many resources to transfer to sub-national governments on the basis of general principles.

The main funding resources of regional governments stem from tax sharing. The equalisation power supports expenditures of territorial governments instead of acting to balance regional differences. In regional States, equalisation and territorial balancing are generally established by state law, which aims to coordinate regional and national interests. Constitutional provisions of equalisation powers are so vague that it is impossible to identify a specific model of income redistribution.

The efficiency of different models of solidarity intervention is discussed for several reasons. The first reason is that the institutional weakness of regional

governments, which have no opportunity to participate in financial decision-making processes. Second, there are few resources for equalisation because they are absorbed by expenditures. Finally, these States must comply with the European Stability and Growth Pact. Therefore, their budgets are subjected to strict rules that prohibit excessive expenditure and deficit.

European States are requested to implement fiscal policies that aim for each country to stay within the limits on government deficit and debt set by the EU. Central governments are responsible for national finance, and they control the budget of all public administrations and territorial governments. Regional authorities must respect European budget and financial constraints without being responsible for the budget and financial decisions. They perceive limits as a cause of justification of a new state centralism.

The economic theory of fiscal federalism is useless to allocate financial powers and competences between levels of government. However, it lays principles that can be applied differently and can be used to value the economic efficiency.

Likewise, an analysis of legal rules concerning fiscal federalism helps to value legal efficiency to ensure good institutional functioning.

In a legal system that assigns the aim to realise constitutional principles to different governments, the role of fiscal federalism is to favour an optimal financial allocation connected to competences. Balanced fiscal federalisms can guarantee the sustainability of public functions and the social State.

Fiscal federalism succeeds in making institutions work well if it satisfactorily and stably balances the three components of financial power, regardless of the model of fiscal relations. In a concurrent fiscal federalism, the decentralisation of tax power can be combined with different financial equalisation systems with more or less great federal spending power. In cooperative fiscal federalism, the mutual assistance between governments can be shared with a diverse degree of financial autonomy. In regional fiscal federalism, financial equalisation and taxing powers have a secondary role, and the balance of power is difficult to obtain.

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