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Balanced Budget Objectives and the Role of Executives: The cases of Italy, Spain and US states

1. INTRODUCTION

In recent years, the economic crisis in Europe has led to several reforms in the institutional frameworks of the Member States and the EU.[1] The new governance of fiscal policies has been characterised at the supranational level by the adoption of stricter budget rules [2] and at the national level, in the modification of national laws amidst the crisis. In particular, in the countries affected by severe financial downturns, these changes took the form of wide-ranging reform plans, including both constitutional amendments and socio-economic restructuring. In this process, a new frame of internal relationships between the centre and the periphery and a new role for central government emerged. These elements partially redefined the national Constitutions even more radically than the formal reforms had required.[3]

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[1] This provoked a wide debate about the nature of the changes made at the supranational level that are not the main interest of this paper and that will be considered as "constitutional mutation". However, this has been a controversial term in the literature, see for example, B DE WITTE, 'Euro Crisis Responses and the EU Legal Order: Increased Institutional Variation or Constitutional Mutation?' (2015) 11 *European Constitutional Law Review* 434-457; G MARTINICO, 'Las Implicaciones Constitucionales de la Crisis: una Reseña de la Literatura Reciente' (2016) 64 *Estudios de Deusto* 1.

[2] Mainly through the Six and Two Packs and the Treaty on Stability, Coordination and Governance (TSCG).

[3] There have been several studies on the modification of national Constitutions after the approval of the so-called Six and Two Pack [see as an ex. M Adams, P Larouche and F Fabbrini (eds), *Constitutionalization of European Budgetary Constraints* (Hart Pub. 2014)] and as a consequence of the Financial Assistance Programmes [see the comparison provided by X CONTIADES (ed), *Constitutions in the Global Financial Crisis* (Ashgate 2013)].

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This paper tries to solve the question of the nature of the institutional evolution in two Eurozone countries, comparing them to the paradigmatic case of the states of US.[4] Which are the consequences upon the internal balance of powers of the introduction of budgetary requirements? How could the processes of vertical integration influence this trend?[5]

To solve the research questions, this paper adopts a comparative approach, selecting three cases. First are two Eurozone countries that are among the most similar[6] and that faced financial distress: Italy and Spain. The analysis is completed by an overview of a paradigmatic case, that of the US states, which is usually considered to be emblematic for the application of Balanced Budget Rules with fiscal autonomy at a subnational level.[7] The analysis of the US case is particularly useful, as it shows that the trend towards centralisation began as a reaction to a fiscal crisis determined by economic downturns: however, it resulted in the introduction of rules and in the reshaping of intergovernmental relationships,[8] that proved to be a long-term

[4] The US are considered as an emblematic case in fiscal federalism studies for two elements, both interesting for the topic of this paper. On the one hand, it is an example of the evolution of balance of powers between centre and peripheries without a formal amendment, see ES CORWIN, 'The Passing of Dual Federalism' (1950) 36 *Virginia Law Review* 1*;* JF ZIMMERMANN*,* 'National-State Relations: Cooperative Federalism in the Twentieth Century' (2001) 31 *Publius: The Journal of Federalism* 2; J KINCAID, 'From Cooperative to Coercive Federalism' (1990) 509 *The Annals of the American Academy of Political Science*. On the other hand, it is the State that experienced most, both as kind of instruments and as a time of their approval, a balance of actors with strong commitments upon peripheral entities and lesser boundaries on the central one. This element helps to explain its role as a prototypical case in the studies of fiscal federalism, see as an example, J RODDEN, *Hamilton's Paradox. The Promise and Peril of Fiscal Federalism* (Cambridge University Press 2006); see also J Rodden, G Eskelund and J Litvack (eds), *Fiscal Decentralization and the Challenge of Hard Budget Constraints* (MIT Press 2003). The comparison is even more relevant in the analysis of the constitutional mutations proposed in this article because the countries analysed experienced the introduction of budgetary constraints and an evolution in terms of vertical integration without formal amendments.

[5] The concept of vertical integration adopted in this work has often been used to describe the governance of policies in a federal system, particularly in political studies; see, as an example, DA SUPER, 'Rethinking Fiscal Federalism' (2005) 118 *Harvard Law Review* 2544. Moreover, integration is usually considered to be one of the main features of the EU, both in terms of dynamics (see, as an example, J WEILER, *Federalism and Constitutionalism: Europe's Sonderweg* (Harvard Law School 2000) and in descriptions of the EU framework (see F PALERMO, *La forma di stato dell'Unione europea: per una teoria costituzionale dell'integrazione sovranazionale* (Cedam 2005)).

[6] See R HIRSCHL, 'The Question of Case Selection in Comparative Constitutional Law' (2005) 55 *American Journal of Comparative Law* 125. Italy and Spain are among the biggest countries in the Eurozone, and they are also the two biggest facing financial distress. Moreover, they present several institutional similarities: a parliamentary form of government, wide forms of decentralisation with regional autonomy, and strong constitutional courts.

[7] Moreover, the US is traditionally considered a paradigmatic case for the overall integration process in the Eurozone; see JHH WEILER, 'Federalism Without Constitutionalism: Europe's Sonderweg' in K Nicolaidis and R Howse (eds), *The Federal Vision: Legitimacy and Levels of Governance in the United States and the European Union* (Oxford University Press 2001) 54; E STEIN and T SANDALOW, 'On the Two Systems: An Overview' in T Sandalow and E Stein (eds), *Courts and Free Markets. Perspectives from the United States and Europe* (Clarendon Press 1982), 3-4. The two systems also present several similar aspects such as economic and demographic development, the exigencies of the balance between centralisation and decentralisation and a plural constitutional system founded upon the balance of powers between institutions and levels of government; as noted for the US by B ACKERMAN, 'The New Separation of Powers' (2000) 113 *Harvard Law Review* 642.

[8] Classic federal constitutions like the US one, usually do not make references to intergovernmental relations, because coordination between governments was not considered necessary, according to the dual federalism approach. However, the development of the welfare and regulatory state required legislative and executive coordination in complex areas. This provoked an increasing entanglement of government and the interdependence between national and subnational governments also in mechanism regarding financial issues. For an overview of intergovernmental relations and their impact upon federalism, see F PALERMO and K KÖSSLER, *Comparative Federalism. Constitutional Arrangements and Case Law* (Hart Publishing 2017), 246-260. In the context of the US, as

feature of its constitutional framework. This will shed light on how the institutional evolution in Spain and Italy should be considered a permanent reshaping of the balance of powers, a change that could be a permanent effect of the reaction to the economic crisis. When compared to the US, Spain and Italy present several similarities for the direction of institutional reforms as well as some differences which are noted below.

The thesis is that the creation of pre-commitment rules[9] led to the creation of a centre of management for decisions on budget policies[10] that is most easily placed in the executive branch. The creation of rules required an institution responsible for ensuring compliance with those rules, not only on political grounds but also on judicial ones. On the other hand, particularly in the EU case-studies, the centralisation went even further because of the concurring pressure of the process of vertical integration. The creation of an institutionalised coordinating framework, the European Semester, restricts internal autonomy basically to what the executives, who are reunited by it, have agreed. The emergency simply provoked, and partially revealed a stable and long-term modification trend.

To assess this point, I will first analyse, in section 2, the elements that define the centralisation of budget management in Italy and Spain. The analysis considers constitutional and ordinary law changes to show the evolution in two dimensions, between the centre and the periphery and between the executive and the legislative. In section 3, I will summarise the elements that define the US long-term experience with pre-commitment rules, looking first at how budget requirements can confer powers on the executive. Second, I will look at the effects of the development of intergovernmental relationships upon the budgetary autonomy of states and local entities. In section 4, using the comparative example provided by the US states case, I also draw up an overview and an assessment of this modification emerging from the comparative analysis. In the last section, I offer some concluding notes.

I. EUROZONE CASES: CENTRALISATION IN ITALY AND SPAIN

The institutional evolution of the EU economic governance and the responses to the crisis at the European and national level determine domestic constitutional changes and impacted

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noted by AM Sbragia, the concept of intergovernmental relations has received a great deal of attention particularly because subnational governments have become so entangled in the implementation of federal programs, see AM SBRAGIA, 'American Federalism and Intergovernmental Relations' in SA Binder, RAW Rhodes and BA Rockman (eds.), *The Oxford Handbook of Political Institutions* (Oxford University Press 2008), 249-250.

[9] The theory of pre-commitments and its limits has been analysed as an analogy to the myth of Ulysses and the sirens by J ELSTER, *Ulysses and the Sirens: Studies in Rationality and Irrationality* (Cambridge University Press 1979); J ELSTER, *Ulysses Unbound* (Cambridge University Press 2000). The model has been applied to the Stability and Growth Pact by W SCHELKLE, 'EU Fiscal Governance: Hard Law in the Shadow of Soft Law?' (2007) 13 *Columbia Journal of European Law* 718-722.

[10] In this analysis I will utilise a broad concept of budget policies as comprehending fiscal and economic policies and not considered as coincident with a decision on a budget bill, using the definition of budget proposed by RA MUSGRAVE, 'A Multiple Theory of Budget Determination' (1956/57) 17(3) *FinanzArchiv/Public Finance Analysis* 333-343.

the balance of powers at the national level. The reform approved at the national level introducing budgetary constraints in the EU context had very different natures among themselves. To highlight the effects in terms of the internal balance between the powers and the consequences of centre-periphery dynamics, the selection of cases focuses on two of the most similar examples, Spain and Italy. These are the two biggest EU countries that faced financial troubles during the crisis. The selection of cases with similar rationales is helpful for showing how the institutional frameworks of those countries faced very similar issues that were solved using institutional choices along the same lines, even in sectors where the supranational level concedes to States different options to adapt their internal framework.[11]

It is noteworthy that both countries adopted constitutional amendments as a quick response to the pressure of the markets in order to increase their credibility for the markets. The timeline of approval differentiated the experiences of Italy and Spain from the German ones. In Germany, the constitutional reform was approved in 2009, before the harsh times of the financial crisis and was unhurriedly elaborated and passed.[12] Moreover, the idea of fiscal constitutionalism that has been embraced in Germany to define the relations between *Bund* and *Lander* has been a model both for the rules adopted at the intergovernmental and European level and for the constitutional reforms of the cases analysed. The existing scholarship has offered a comparison of those cases, noting some common centralistic trends from the examples of Italy, Spain and Germany.[13] This paper, adopting the US case as an external parameter, aims to add a more general perspective on the effects of fiscal constraints on a double dimension of internal balance.

This analysis will help to show that the supranational integration, with its focus on a "summit" model of governance[14] and its internal modifications, pushes for a transfer of competences, i.e. for an increased role of governments in the management of budget policies.[15] The studies on the activities of the Chambers show that they have debated about the crisis and the

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[11] The margins of discretion are connected both to the tools that States could use to introduce in their internal framework the balanced budget principles – for what concerns normative instruments and procedural requirements – and to the different indications received by the cases analysed. As noted hereafter, while Spain was inside an Assistance Programs with detailed provisions, Italy only received a letter indicating some priorities of its reform process. The discretion in the internal implementation of supranational requirements seems to be almost missing in other cases of Eurozone countries in financial distress, particularly Portugal and Greece. For an overview of the Greek constitutional evolution after the financial crisis, see X CONTIADES and IA TASSOPULOS, 'The Impact of the Financial Crisis on the Greek Constitution' in X Contiades (ed), *Constitutions in the Global Financial Crisis* (Ashgate 2013), 195-6. For an overview of the challenges faced by Portugal, see LM PIRES, 'Private Versus Public or State Versus Europe? A Portuguese Constitutional Tale' (2013) *Michigan Journal of International Law Emerging Scholarship Project*, http://www.mjilonline.org/european-integration-through-law/ (Accessed January 3, 2018).

[12] See S RAGONE, 'Constitutional Effects of the Financial Crisis at European and National Level: A Comparative Overview' (2014) 15 *Revista General de Derecho Publico Comparado,* 12-13.

[13] Ibid, 20-22.

[14] I make particular reference to the role of negotiations between executives and to the expanding role of the European Council in the management of economic and fiscal policies in the Eurozone, see F FABBRINI, *Economic Governance in Europe. Comparative Paradoxes and Constitutional Challenges* (Oxford University Press 2016) 123 – 128. This trend is even confirmed in some institutional tools introduced in the new framework, like the Euro – Summit since October 2011, see Euro Summit Statement, October 26, 2011.

[15] In a similar direction, S. RAGONE, 'La incidencia de la crisis en la distribución interna del poder entre parlamentos y gobiernos nacionales' (2015) 24 *Revista de derecho constitucional europeo* 3, 527-530.

measures adopted to respond to it, but they lost the power to determine them, i.e. the decision-making role.[16] As this analysis will show, the powers assumed by the parliaments in the integration process[17] and the instruments of involvement adopted amidst the crisis seem to be focused on assuring a function of a controller in the implementation phases rather than of decision maker in the drafting and proposing one.[18]

A. Crisis, Supranational Intervention and Constitutional Reform in Italy

In the trend towards centralisation in Italy, the need to react to the economic and financial crisis played a key role. Budgetary weakness, i.e. difficulties in refinancing the great amount of public debt contracted by the State, is a long-term issue for Italian finances, dating back to the 1980s and the result of the stagnant economy registered in recent years. While the country did not infringe the parameter that would have triggered the Excessive Deficit Procedure (EDP), and it did not even ask for formal assistance plans, supranational institutions played a key role in alleviating the suffering of the Italian budget, but, on the other hand, required particular and detailed reforms in an undefined institutional framework. The expansive policies of the ECB were a crucial element in lessening the costs of refinancing. On the other hand, the central bank intervened in an innovative way, jumping onto the field of political debate with a letter indicating to the Italian government both ordinary and constitutional reforms that were considered necessary.[19] The economic and the political crisis, therefore, became interconnected, causing a change of the executive composition and leadership in 2011 and, on the

[16] See K AUEL and O HÖING, 'Scrutiny in Challenging Times–National Parliaments in the Eurozone Crisis.' (2014) 1 *SIEPS European Policy Analysis*, 4 ff.

[17] On which see for example, M Cartabia, N Lupo and M Simoncini (eds.), *Democracy and subsidiarity in the EU National parliaments, regions and civil society in the decision-making process* (Il Mulino 2013); K Auel and A Benz (eds.) 'Europeanisation of Parliamentary Democracy' (2005) *Journal of Legislative Studies;* J O'Brennan and T Raunio (eds.) *National Parliaments Within the Enlarged European Union* (Routledge 2007).

[18] In a similar direction, Ragone, 'La incidencia de la crisis en la distribución interna del poder entre parlamentos y gobiernos nacionales' (n. 15), 546-550. This helps to explain the different readings offered by other authors, which show that the crisis increased the power of parliaments (see, for example, C FASONE, 'Taking budgetary powers away from national parliaments? on parliamentary prerogatives in the Eurozone crisis' (2015) 37 *EUI Law Working Paper*). The focus of this contribution is on the overall powers of parliament in the European processes, and it registered an increased involvement of them. But, with respect to the internal balance, there is a different trend: the gradual loss of decision-making powers in the internal budget decision that is registered in the following paragraphs of this article is not compensated by the different "adjuvant" role played in the context of the parliament's dialogue.

[19] Letter sent on 5 August 2011, available in E OLIVITO, 'Crisi economico-finanziaria ed equilibri costituzionali. Qualche spunto a partire dalla lettera della BCE al governo italiano' (2014) 1 *Rivista AIC* 1-18.

other side, a new timetable for the reaching of the balanced budget objective, which was originally scheduled for 2014 and thereafter changed to 2013.[20] At the same time, the Italian government adopted a wide reform plan, substantially satisfying ECB requests, through a broad use of decree-law.[21]

Constitutional reforms were also among the requests made in the letter from the central bank: as it was requested in this document, the Italian State adopted an amendment to the Constitution containing constraints that exceeded the modification required by the new European framework or even the Treaty on Stability, Coordination and Governance (TSCG).[22] Many of the rules introduced at the supranational level should be considered to have been operating in the internal framework even before the amendment of the Italian Constitution. The main outcomes of the reform should be better individuated, on the one hand, in the creation of a decentralised system of monitoring of supranational commitments – partly required by EU law – operating through state institutions. On the other hand, it provoked a redefinition of the budget policies that harmonised internal principles and rules with the new European framework, through a dynamic reference to the supranational law for the determination of these parameters.[23] The constitutional reform relies on this framework both by using definitions, concepts and budgetary criteria that are distinctive to it and by an overall statement establishing the applicability of national norms only if they are compatible with EU law. The Italian framework takes from the new EU governance model its more peculiar features: the negotiated nature of the parameters and the wide instruments to assure flexibility, on technical and political grounds.[24]

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[20] See d.l. 98/2011 and d.l. 138/2011. The intertwining between the political and institutional mutations that is a consequence of the economic and financial crisis has been analysed by T GROPPI, 'The Constitutional Consequences of the Financial Crisis in Italy' in X Contiades (ed), *Constitutions in the Global Financial Crisis* (Ashgate 2013), 100-4. The debate also involved public opinion, as can be seen from the attention that the mass media gave to the theme and to its link with the emergency measures adopted by the Italian government; see F CRAMER, 'Sviluppo, premier allo scontro con l'asse Tremonti-Bossi' *Il Giornale* (18 October 2011); G LONGO, 'Sviluppo, gli antitremontiani fanno slittare ancora il decreto' *Il Riformista* (18 October 2011); R PETRINI, 'Stallo sul decreto Sviluppo salta il Consiglio dei Ministri. Ue irritata: "Misure urgenti"' *La Repubblica* (21 October 2011).

[21] See E PICCARDI, 'The Economic Crisis and the National Parliaments: The Italian Experience' www.parlamento.it/documenti/repository/affariinternazionali/ecprd2012/4_Piccardi_EN.pdf (Accessed December 10, 2017).

[22] See I CIOLLI, 'The Balanced Budget Rule in the Italian Constitution: It Ain't Necessarily So…Useful?' (2014) 4 *Rivista AIC* 2-4. The relationships between the Italian government and the Eurozone institutions have remained in conflict in recent years, with the first asking for and adopting measures of slight indebtedness and the EU institutions asking for formal compliance and respect for the preventive arm of the SGP, as can also be detected in the last Country Specific Recommendation, available at https://ec.europa.eu/info/files/2017-european-semester-country-specific-recommendation-commission-recommendations-italy_en (Accessed January 3, 2018).

[23] See the references to EU law in articles 97 and 119 of the Italian Constitution, and in the implementing law n 243/2012. For an argument against the proposed approach and the idea of a dynamic reference, see G SCACCIA, 'La giustiziabilità della regola del pareggio di bilancio' (2011) *Il Filangieri, Quaderno* 225.

[24] See G RIVOSECCHI, 'Il coordinamento dinamico della finanza pubblica tra patto di stabilità, patto di convergenza e determinazione dei fabbisogni standard degli enti territoriali' (2012) 1 *Rivista AIC* 1-21; M LUCIANI, 'L'equilibrio di bilancio e i principi fondamentali: la prospettiva del controllo di costituzionalità', Conference on "Il principio dell'equilibrio di bilancio secondo la riforma costituzionale del 2012", Italian Constitutional Court, 22 November 2013, available at www.cortecostituzionale.it/documenti/convegni_seminari/Seminario2013_Luciani.pdf , 12, 17-18, (Accessed November 20, 2017) and TF GIUPPONI, 'Il principio costituzionale dell'equilibrio di bilancio e la sua attuazione', (2014) 1 *Quaderni costituzionali*, 58.

The reliance upon supranational parameters helps to explain the divergence with other models for the implementation of the Eurozone evolution, particularly the German model that is founded instead upon rigid values that are internally fixed. Instead, the Italian reform aims to create an effective mechanism to let the internal actors utilise all the autonomy that is left to them after the phases of negotiation and cooperation that are fixed at a European level, particularly in the European Semester, while the few parameters that operate autonomously are the ones that are necessary to create the system of checks and surveillance at the national level, as required at the supranational level.[25]

B. *Crisis, Supranational Intervention and Constitutional Reform in Spain*

The reform plans implemented in Spain in reaction to the financial crisis must be considered from the perspective of the supranational indications that had earlier been received.[26] The Euro-group approved a Financial Assistance Plan, disbursed through the European Financial Stability Facility (EFSF) in June 2012. The conditions for the financial assistance, contained in the memorandum of understanding between the Commission and the Spanish government, were focused on reforms in the banking and finance sectors. However, the country acted in compliance with these provisions and the assistance programme ended on 31st December 2013; it was followed by the 'post-surveillance' phase.[27] Moreover, Spain has also been under an Excessive Deficit Procedure since 2009, with an exit from the infringement situation at the end of 2016.[28] The government fulfilled these requests, and the main law reforms of those years were part of this process.[29] As examples, laws 26/2013 and 22/2014 adjusted the banking system as regards savings and venture capital to EU norms for the sector. Decree-law 8/2016 reformed the labour market, with significant changes in assistance to the unemployed. In all these sectors, the legislature operated in compliance with European parameters – where they existed – and requests.[30]

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[25] See TF GIUPPONI, 'L'equilibrio di bilancio in Italia, tra stato costituzionale e integrazione europea' in A Morrone (ed), *La costituzione finanziaria. La decisione di bilancio dello Stato costituzionale europeo* (Giappichelli 2015), 37, 38; A Morrone, 'Pareggio di bilancio e stato costituzionale' (2013) *Lavoro e diritto* 370.

[26] For an overview of the doctrine analysing the constitutional mutations of the Spanish framework related to the crisis and to the supranational evolution, see PJ CASTILLO ORTIZ, 'La Crisis y las Transformaciones del Derecho Público Estatal y Europeo Vistas por la Academia Española' (2014) *Revista de Estudios Políticos* 165.

[27] As provided by art 14 of EU Regulation 472/2013. The country fulfilled the objectives established in the post-surveillance phase, as can be detected by looking at the reports available at https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-financial-assistance/which-eu-countries-have-received-assistance/financial-assistance-spain_en (Accessed January 3, 2018).

[28] European Commission, *Country Report Spain 2015*, 26 February 2015; see also Council Recommendation on the 2015 National Reform Programme of Spain and Council Opinion on the 2015 Stability Programme of Spain, 13 May 2015.

[29] The evaluation of Spanish compliance is available, in the OECD Economic Survey *Spain September 2014*, http://www.oecd.org/eco/surveys/Spain-Overview-2014.pdf, (Accessed December 10, 2017) among other places. The connection between the stability programme and the supranational requests can easily be verified by looking at Programa Nacional de Reformas de Espana 2015, 30 April 2015, www.thespanisheconomy.com/ (Accessed November 20, 2017).

[30] This is the evaluation made in *Post-Programme Surveillance Report Spain*. Spring 2015, Occasional Papers 211, May 2015, http://ec.europa.eu/economy_finance/publications/occasional_paper/2015/pdf/ocp211_en.pdf (Accessed January 3, 2018).

In the pre-existing framework, three particular weaknesses were noted. The first is the absence of an enforceable mechanism to guarantee compliance with the fiscal rules. This would usually take the form of systems for correction and sanction. Secondly, both the rules and the court gave scope for the local autonomies to have deficits, even with some kind of control over them.[31] Lastly, there was no provision that directly fixed the debt limits, either for the State or for the Comunidades.[32]

From the viewpoint of the relationships between the levels of government, the main outcome of the constitutional reform could be considered to be the vertical integration of budgetary policies between the Spanish state and the EU level. Looking at the key elements of the new article, this evaluation can be confirmed: the main rules rely upon the supranational law.

The main goal of the reform is to introduce the new principle of *estabilidad presupestaria*,[33] that relies upon its definition in supranational norms.[34] Also, the deficit and the debt provisions find their limits with reference to EU law. This was done through article 135 para 2 of the Spanish Constitution, which provides that 'Neither the State nor the Autonomous Communities shall enter into a structural deficit beyond the limits stipulated, if applicable, by the European Union for its Member States'.[35] Only two elements are totally original in the Spanish reform: the priority of debt payments and the different limits for local autonomies – who, instead of a balanced budget, must achieve an even one.[36]

The same trend could be registered by an analysis of the Organic Law nr 2/2012. The legislation explicitly refers to EU thresholds or, at least, they are considered as boundaries to the elasticity of the internal provisions.[37] The Organic Law introduces also new powers for the government to control the compliance of other administrations with EU targets.[38]

C. *Reshaping Relationships between State and Autonomies*

The centralisation process also takes another form, particularly considering the intergovernmental relationships. The restriction of the autonomy of subnational entities that we have

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[31] The Constitutional Court held that measures to contain the ability of local autonomies to become indebted were admissible, so long as they do not totally do away with the admissibility of debt financing for the autonomies, see STC 233/1999.

[32] These weaknesses were thoroughly analysed in J LOPEZ, LABORDA, 'Beneficios y costes del Estado Autonomico' (2011) *Cuadernos Manuel Gimenez Abad* 1.

[33] Art 135 para 1 of the Spanish Constitution: 'Todas las Administraciones Publicas adecuaran sus actuaciones al principio de estabilidad presupuestaria'.

[34] The reference is to Declaration No 30, para 7 and Declaration on article 126 of the TFEU, at paragraph 8 attached to the Treaty on the Functioning of the European Union (TFEU), to article 3 para 1 l. a) of the TSCG and to the norms that fixed the Medium Terms Objectives in the EU legislation

[35] Particularly interesting is the analysis of the new article 135 of the Spanish Constitution by M. MEDINA GUERRERO, 'La reforma del articulo 135 CE' (2012) *Teoria y Realidad Constitucional,* 146-147.

[36] The rule on the priority of debt payments was introduced by article 135 para 3 of the Spanish Constitution. This rule has been particularly criticised, both for functionality issues and for its constitutional admissibility, given how far it curtails the choices about expenditure and the guarantee of those choices in article 31 para 2 of the Spanish Constitution. On the first of these, see F DE LA HUCHA, 'La refurma del articulo 135 de la Constitucion. Estabilidad presupuestaria y deuda publica' (2012) 135 *Civitas, Revista espanola de derecho financiero*. On the second, among others, see M CARRILLO, 'Constitucion y control de las finanzas publicas' (2014) 101 *Revista Espanola de Derecho Constitucional* 28-31.

[37] For examples, see articles 11-13 and 30 of the Organic Law nr 2/2012.

[38] Art 10 para 3 of the Organic Law nr 2/2012 and Chapter IV of the same Law introduces an internal version of the corrective arm of the Stability and Growth Pact, on which see section E below.

seen in the two Eurozone cases analysed in this research could be interpreted in two different dimensions. On the one hand, we can consider how far the budgetary decisions at the central level have had an impact upon the expenditure of the Regions or restricted their substantial scope for the autonomous determination of budget contents, through crowding-out effects or restrictions on revenues options. On the other hand, we can analyse how far the constitutional reforms adopted in the midst of the crisis provide procedural restrictions on the budgetary space by imposing constraints or forms of control and surveillance upon it. These two dimensions, partially overlapping, are both considered in the following analysis of the cases.

i) Substantial Restrictions to Regions' Budgetary Autonomy

The Spanish crisis legislation has been characterised by its huge impact upon the budget autonomy of the Comunidad, in two directions: first, as concerns overall values (the size of the deficit and debt, as an example), but also as concerns budgetary decisions, particularly the composition of expenditure.

This second point seems to be less commonly considered, possibly because it is a sort of unwanted outcome of national reforms; however, it becomes quite evident when looking at the social legislation and the connected guarantees of rights. The Spanish institutional framework provided several reasons for this trend. Trying to summarise some of these points, the basis is the constitutional framework for social rights. In terms of competence, social policies fall mainly within the competences of the Comunidades. The crisis legislation clearly played a role in stressing the traditional order. To implement the reform plans contracted with the supranational institutions, the government also had to promote legislation in areas that were traditionally within the competence of the Comunidades. First of all, therefore, there is an issue with legislative competences that slightly moved policy decisions towards the centre. This is quite an explicit trend, but there is also a less evident element, pushing the dynamics in the same direction. To understand this one has to take a look at the budgets of the autonomies: 80% of their expenditure is focused on two sectors, health and education. Moreover, they had huge debt exposure that increased the impact of the aforementioned 'priority rule'. The government, regulating the orders of payments and intervening heavily in health care and education, eroded the space for autonomy in the budget decision-making of the Comunidad. The tensions between the social legislation and the decentralisation emerged deeply, in terms of a powerful 'crowding effect', generated by central decisions about expenditure.[39]

The financial autonomy of the Italian subnational entities has been curtailed by significant interventions in their financing ways: the Commission for the Implementation of Fiscal Federalism (*Copaff – Commissione tecnica paritetica per l'attuazione del federalismo fiscale*) noted

[39] Significantly, studies about the implicit effects in terms of the 'crowd-out' of federal policies have been recently evaluated in the politics scholarship in the US, to explain the effects of the Obama reform of Medicaid on the budgetary autonomy of the states. See, for example, MS GREVE, 'Our Federalism Is Not Europe's. It's Becoming Argentina's' (2102) 7(1) *Duke Journal of Constitutional Law & Public Policy*.

that the expenditure cuts in the last budgets were significantly concentrated upon those entities.[40] This is the outcome of a process of centralisation that involves different matters, which have also been stressed in constitutional challenges. The Constitutional Court, as an example, intervened to regulate the matter of regional competences in its judgement regarding the so-called social card (law-decree n. 112/2008). In the judgement, the Court recognised that, theoretically, the matter of social policies was within the competences of the regions, but decided the national intervention was justified because of the State's exclusive power to determine the basic levels of services – art 117.2 l. m) of the Italian Constitution – and, particularly, that the derogation to the principle of sincere cooperation was legitimised because of the exceptional circumstances arising from the economic crisis, so redefining in an explicit way the principles regulating the relationships between State and regions in a centralistic way.[41] The same trend, to utilise the economic and financial emergency as a way to legitimise a centralistic trend, derogating from the formal distribution of competences, has been reinforced in the judgement of the Constitutional Court about law decree n. 78/2010.[42]

These brief examples are helpful in highlighting a trend towards an increased degree of intervention by the central government in matters of expenditure and policies that are among those guaranteed to the Regions, with such intervention being legitimised on the grounds of the objective of guaranteeing overall financial stability. Those measures and the centralising input contained in them seem to be linked to the unstable financial situation in Italy, whereas for years there has been a massive debt stock, rather than to supranational indications or to the processes of reshaping the economic governance of the Eurozone: in crisis times, it became necessary to be more severe and not merely to reassure the financial markets about the sustainability of the debt.

ii) Procedural Restrictions to Regions' Budgetary Autonomy

In Spain, the centralisation process has been strengthened, particularly by the constitutional reforms implemented by the Organic Law. This provision gives the government the power to fix individual limits for deficits, debt and financial objectives. On the one hand, this provision modified the bargaining nature of the pre-existing framework that was based upon the *Consejo de Política Fiscal y Financiera (Cpff)*, where the governments of the Comunidades played a pivotal role. On the other hand, the provision appears to have been inspired by the individual approach taken in the analysis of the Medium Term Objectives for the European Semester. Both the *Cpff* precedent and the EU inspiration were characterised by the involvement on equal terms of subjects who have to submit their proposed budgets. In the reformed Spanish framework, this will not necessarily happen, opening the door to unilateral decisions that strongly restrain the autonomy of the other levels of the government.

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[40] See www.mef.gov.it/ministero/commissioni/copaff/ (Accessed December 21, 2017). Similarly the Court of Auditors set out its position in the resolution of 29 December 2014, *Relazione sulla gestione finanziaria degli enti territoriali*

[41] See GROPPI, 'The Constitutional Consequences of the Financial Crisis in Italy' (n. 20) 106-108.

[42] It. C. Court, n. 151/2012. For an overview of the use of the emergency as a way to justify centralising interventions, see G FALCON, 'Editoriale: La crisi e l'ordinamento costituzionale' (2012) *Le Regioni*.

However, the key element that highlights the scale of this centralisation process is the system for sanctions and surveillance. As mentioned above, the source of inspiration is clear, given the similarity between the Stability and Growth Pact. The system relies on two paths: an ordinary one, consisting of duties on transparency and information, and an ultimate one, which is the procedure that, starting from checking, can continue on a strictly consequential base through to sanctions and coercion. The procedure has been widely analysed by scholars:[43] in this article the focus is only on three elements that are particularly useful for our topic. In the procedure, the role of the Finance Ministry emerges as crucial in all the phases. First, the Finance Ministry is the office in charge of collecting all the required information to check the compliance by the autonomies with the balance provisions and constraints derived from the EU indications. In the corrective phase, the Ministry has an advisory power that becomes binding if the Comunidad wishes to gain access to state grants. As the process goes forward, the powers of the Ministry increase. Thus it checks the compliance of the corrective plans that the autonomy must send in order to avoid the coercion phase, and it can send an expert committee that formulates a proposal that becomes compulsory if access is to be gained to inter-institutional funds. The Finance Ministry in this way takes on an ambiguous nature, definitely overcoming its traditional administrative functions: it adds to these functions a mix of powers of decision-making, of inspection and of technical evaluation.

Finally, the centralisation process is confirmed in the new financial assistance procedure. The reform broadens the possibility of state intervention, introducing two general purposes: to finance mature debt and to satisfy the cash needs of the Autonomy.[44] The procedure is combined with a form of strict conditionality that reminds us of the assistance provided through the ESM and the EFSM.[45] As already mentioned, the Ministry of Finance plays a key role in this process, as it must reach an agreement with the Autonomy on an adjustment plan. The conditions provided for this have a very peculiar nature. First, the list of items that could be negotiated is very broad, and tools for collecting information and extraordinary adjustment instruments to reach the fixed targets are also included there. The centralisation is also more evident if a second element is considered: the plan is treated as binding and can be enforced through the use of the sanction and correction mechanisms.

The interpretation provided by the Italian Constitutional Court of the state powers of intervention in the financial decisions of the Regions (as determined by art 117.2 l e) of the Italian Constitution) admitted the possibility of general measures that aimed to reach overall financial stability, while it was considered impossible to intervene in the punctual financial decisions of

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[43] See, particularly, E ALBERTÍ ROVIRA, 'El impacto de la crisi financiera en el estado autonomico espanol' (2013) 98 *Revista Espanola de Derecho Constitucional* and M MEDINA GUERRERO, 'El estado autonómico en tiempos de disciplina fiscal' (2013) *Revista Española de Derecho Constitucional*.

[44] The outcome is a very tempered form of no bailout clause; see the analysis of Medina Guerrero, 'La reforma del articulo 135 CE' (n. 35) 130-133.

[45] The similarity has been marked by ALBERTÍ ROVIRA, 'El impacto de la crisi financiera en el estado autonomico espanol' (n. 43) 70.

those entities.[46] The constitutional reform modified this balance by extending the application of the principle of a balanced budget to all the public administrations (art 97), by moving the competence to harmonise public budgets from a concurrent to an exclusive state competence (art 117)[47] and, particularly, by modifying art 119 of the Italian Constitution. The reform, in the first paragraph of the article, introduced a duty for the Regions and local entities to cooperate with the state in guaranteeing respect for the commitments assumed at a supranational level. The new provision configured a new legitimisation for central intervention in the budgetary autonomy of those entities.[48] Moreover, the new paragraph 6 of part 119 provides a strong limitation on the margin of discretion in the budgetary behaviour of subnational entities: it introduces a rigid golden rule that admits the possibility of indebtedness only to finance expenditure on investments. The limit is even reinforced by procedural requirements: the necessity to present a pay-back plan, and a clause that guarantees that the overall public administration of each Region should respect the principle of a balanced budget.[49] This second requirement is particularly effective in limiting political options because the possibility of contracting debt is no longer determined only by looking at the Region's own behaviour: political actors must also consider the budgetary decisions of other entities over which they have no power of intervention.[50] The constraint is even more rigorous than the one applicable to the State (which is laid down by the EU framework) because it does not consider the economic cycle to guarantee flexibility and it does not allow for exceptional circumstances to give deviations as provided for in the latter.[51]

The Italian legislator decided to face the economic crisis through restricting the financial autonomy of the subnational entities: to ensure the application of the new supranational duties and restrictions, the legislator decided to take the path of limiting the possibility that these entities would adopt unsound budgetary behaviour, rather than adopting principles that increased their budget responsibility.[52] The Constitutional Court interpreted in an expansive way

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[46] See A LONGO, 'Alcune riflessioni sui rapporti tra l'interpretazione conforme e diritto comunitario e l'utilizzo del canone di equilibrio finanziario da parte della Core costituzionale' www.giurcost.org, 20 (Accessed December 21, 2017); A RUGGERI, 'Summum ius summa iniuria, ovverosia quando l'autonomia regionale non riesce a convertirsi in servizio per i diritti fondamentali (a margine di Corte cost n. 325 del 2011)', www.giurcost.org (Accessed December 21, 2017).

[47] See D MORGANTE, 'La costituzionalizzazione del pareggio di bilancio' (2012) 14 *Federalismi.it* 30. The creation of a new, exclusive comptence for the Chamber of Deputies in the determination of the contents of the reinforced law has been noted by GM SALERNO, 'Equilibrio di bilancio, coordinamento finanziario e autonomie territoriali' in V Lippolis et al. (eds), *Costituzione e pareggio di bilancio* (Jovene 2012), 169 ff.

[48] Along the same lines, see M CECCHETTI, 'Legge costituzionale n. 1 del 2012 e Titolo V della Parte II della Costituzione: profili di contro-riforma dell'autonomia regionale e locale' (2012) 4 *Federalismi.it*, 6.

[49] See Salerno, 'Equilibrio di bilancio, coordinamento finanziario e autonomie territoriali' (n. 47) 163.

[50] Particularly critical of this rule as imposing two contradictory principles – financial autonomy and solidarity-based responsibility – is M. CECCHETTI, 'Legge costituzionale n. 1 del 2012 e Titolo V della Parte II della Costituzione: profili di contro-riforma dell'autonomia regionale e locale' (n 48) 6. The rule would imply a new role for a region as a guarantor of the budgetary behaviour of its internal entities, according to MORRONE, 'Pareggio di bilancio e stato costituzionale' (n. 25) 368.

[51] Similarly, M NARDINI, 'La legge n. 243/2012 e l'adeguamento dell'ordinamento nazionale alle regole europee di bilancio' (2013) 1 *Osservatorio sulle fonti* 14 ff.

[52] Along the same lines, see L ANTONINI, 'Il cosiddetto federalismo fiscale. Un giudizio d'insieme su una riforma complessa' (2014) 42 *Le Regioni 1-2*; A. BRANCASI, 'Il coordinamento della finanza pubblica nel federalismo fiscale' (2011) *Diritto pubblico*; G RIVOSECCHI, 'Profili di diritto tributario nel contenzioso Stato-regioni', Issirfa 'Studi

the powers of the State to coordinate with the public finances, but at the same time fixed a boundary to the use of the economic emergency rationale: transitional circumstances cannot redefine the competence distribution as identified in the Constitution.[53] Therefore, the redefinition of the relationships between the State and the Regions balanced on the tightrope created by, on the one hand, the possibility of diminishing the financial options of the latter as determined by a redefinition of state transfers and the use of powers connected to the coordination of the public finances and, on the other hand, the possibility of the central legislator intervening only in the sectors that are among the state competencies (concurrent or exclusive competences) and not redefining the distribution of the same.[54]

D. Balance between Executive and Legislative

In this section, we will try to highlight some points of the internal modification generated by the process of vertical integration and the introduction of balanced budget rules, in the executive and legislative balance. Many of the reforms adopted by Spain and Italy have been introduced using decree-laws. This element is particularly innovative if one is looking at the traditional legal doctrine of the case study.

The Spanish constitutional framework considers the decree-law as a highly exceptional instrument: this is confirmed by the provisions of article 86 of the Spanish Constitution, which requires 'an extraordinary and urgent need' before a decree-law can be used. The evolution of the court decisions testifies to the intent to adopt a permissive interpretation of this clause.[55] Summarising the case law, it is possible to view it as being distinguished by two elements: a deferential approach by the Court when evaluating the existence of those extraordinary situations, while it introduced limits to the fields that could be regulated through the decree-law. This balance has been seriously undermined by the post-crisis legislation. The government adopted an unprecedented number of decree-laws, even in fields that were traditionally considered exempt. The Constitutional Court endorsed this trend, with several decisions. Summarising the situation, case law has been characterised by three elements: a) a wide interpretation of the constitutional limits to the use of decree-laws; b) an evaluation of the economic and financial consequences of the Court's own judgements; and c) in the Court's reasoning, widespread references to the government's position as set forth in the defence. This approach has

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e interventi' (July 2016), www.issirfa.cnr.it. (Accessed December 8, 2017). The Italian Constitutional Court endorsed this extensive use of the competence of coordinating the public finances as proposed by the State: see, as an example, C Cost n 143/2016.

[53] See C Cost n 148/2012; 151/2012; 99/2014. The exigency of redefining the relationships between the State and the autonomies on a structural and permanent basis, instead of rhapsodic and temporal interventions determined by financial needs, has been noted by G RIVOSECCHI, 'L'equilibrio di bilancio: dalla riforma costituzionale alla giusitiziabilità' (2016) 3 *Rivista AIC* 9-10.

[54] A particular critic of the 'neo-centralistic' approach set out in the interpretation of the competence of coordinating the public finances has been G MAZZOLA, 'Le regioni fra riforme costituzionali, crisi finanziarie e federalismo' (2012) *Amministrazione in Cammino,* www.amministrazioneincammino.it., 11-13. (Accessed November 1, 2017).

[55] As an example, see STC 23/1993.

seriously eroded the efficiency of the constitutional norm; some scholars have seriously questioned the persistence of the emergency and extraordinary clauses.[56]

These elements are useful for clarifying an important meaning of the centralisation process that is proposed in this article. This is that economic decisions, or, rather, political decisions having a major budgetary impact, are slipping from the hands of the Parliament to the hands of the government. The Court endorsed this dynamic, introducing economic reasoning into decisions concerned with norms regulating the sources of law, such as those that created the constitutional framework for the adoption of decree-laws.[57] The use of economic reasons has legitimised, within an internal balance, decrees that totally reform the entire legislation regulating key sectors, such as health or workers' safeguards. As shown above, this is only a smokescreen: the reforms are also the result of bargaining between the government and supranational entities. The internal economic interest becomes coincident with the outcome of coordination procedures at the supranational level, thanks to the role of a link between those two levels played by the government. This increasing role has been confirmed by another element. In the last parliament (2011-2015), the government had an absolute majority supporting it in the assembly; this would, theoretically, have guaranteed the approval of the proposed reforms and would also have allowed accelerated procedures to have been followed. The choice to use decree-laws instead forced an evolution in what was required for a decree-law: it should be considered that the emergency and extraordinary needs become something very close to political convenience and accommodation.[58] The government adopted this instrument to avoid an assembly debate and to ensure compliance between internal norms and supranational requirements, but by endorsing this trend it acquired new powers that this article describes as a part of a centralisation process.[59] On procedural grounds, the government has increased its autonomy by establishing the required circumstances that open the door to the adoption of a decree-law. As a consequence, it also gained, in a wide field, the ability to regulate new and wide sectors of public policy with decisions made first in its internal council and only afterwards examined by the Parliament.

The intensive use of decree-laws has been one of the major elements of the redefinition of the Italian institutional framework in recent decades, and this trend has even been reinforced in reaction to the economic crisis: while historically the number of decree-law conversions as a percentage of overall primary laws implemented by the Italian chambers was less than 20%,

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[56] On the use of the decree-law and the deferential approach taken by the Court, see A DIAZ DE MERA RODRIGUEZ, 'Gobierno de la crisis. Uso y abuso del Decreto-ley' (2011) 24 *Asamblea – Revista parlamentaria de la Asamblea de Madrid*; P SANTOLAYA MACHETTI, 'Venticinco anos de fuentes del derecho: el decreto-ley' (2003/4) 58-59 *Rev. Derecho pol.* 393.

[57] Along these lines, see A RUIZ ROBLEDO, 'The Spanish Constitution in the Turmoil of the Global Financial Crisis', in X Contiades (ed), *Constitutions in the Global Financial Crisis* (Ashgate 2013), 152-4.

[58] This was a trend that was also registered in older studies about the use of decree-laws, which seems to have strengthened in this phase; see I ASTARLOA HUARTE-MENDICOA, 'Comentario al articulo 86. Decretos-leyes' in O ALZAGA VILLAMIL (ed), *Comentario a las leyes politicas, vol. VII* (Edersa 1985).

[59] In a similar direction, noting also the differences between the government of Zapatero and Rajoy in the use of this instrument, see also Ragone, 'La incidencia de la crisis en la distribución interna del poder entre parlamentos y gobiernos nacionales' (n. 15), 537-539.

it reached a peak of over 30% during the more severe phases of the financial crisis and over the last two parliaments has registered 26.5%.[60] Under the Monti government in particular (2011-13), political and economic factors combined to transform the use of the decree-law, and this was followed by a unique and all-encompassing amendment ('*maxi-emendamento*') in which the government asked for a vote of confidence in the conversion phase, which was the ordinary way of legislating.[61] In the legislature between 2013 and 2018, the law converting decrees have been half of the overall laws approved by the Chambers, even if the harsher times were passed.[62] A new step towards the same direction was represented by the approval of the budget bill for 2019, which was redefined by a single amendment that the internal Committee had no opportunity to analyse.[63]

This severely crushed the possibility of the legislature adopting a different political direction or even implementing slight modifications to the economic and financial reforms proposed by the executive, because a vote again the amendment would have had an impact on the existence of the executive itself and perhaps on the financial credibility and stability of the country.[64]

The evolutions of the Eurozone economic governance has been reflected upon the Italian institutional framework – and has been emphasised by the peculiar financial crisis of the country – in a reinforcement of a long-term trend of the progressive shift of decisions into the hands of the government, realised through explicit provisions, the substantive effects of other reforms and, in particular, an increase in the use of the existing praxis such as the *maxi-emendamento* with a vote of confidence. In particular, the budget session has become increasingly marked by the use of techniques restricting the possibility of modifications in the process of parliamentary approval; this has increased the degree of conformity between the result of this process and the result originally proposed by the government, and by the same sharing and negotiation in the processes of supranational coordination that are particularly reinforced in the European

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[60] See Openpolis, *Minidossier, Premierato all'italiana. Osservatorio sulle leggi nella XVII Legislatura,* December 2015, http://minidossier.openpolis.it/2015/12/Premierato_Italiana_Leggi. (Accessed December 15, 2017) The more innovative element of this new trend should not be considered the massive use of decree-laws in itself, but the way in which the chambers had to approve the conversion law that, as a consequence of the financial crisis, is characterised by strong limits on the possibility of adopting modifications to the measures proposed by the government; see A RUGGERI, 'Crisi economica e crisi della Costituzione', www.giurcost.org. (Accessed December 10, 2017) This effect is even reinforced by the risks connected to the regulation of the intertemporal effects of decree-laws, as noted by V LIPPOLIS, *La centralità del Governo nel sistema politico. Le specificità del caso italiano* (Jovene 2011).

[61] See R CALVANO, 'La crisi e la produzione normativa del Governo nel periodo 2011-2013. Riflessioni critiche' (2013) *Osservatorio sulle fonti 3*.

[62] On the use of decree-law by the Italian Assembly, see also RAGONE, 'La incidencia de la crisis en la distribución interna del poder entre parlamentos y gobiernos nacionales' (n. 15), 534-537.

[63] To shed light on the impact of this amendment on the contents of the law, see the differences between the law «*Bilancio di previsione dello Stato per l'anno finanziario 2019 e bilancio pluriennale per il triennio 2019-2012*» (A.S. 981) and the text that was approved by the low chamber at the and of the first reading on december 8th 2018.

[64] The impact on the legislative praxis of the perception of the crisis at the international and national level and the measures to face the same has been analysed by R CALVANO, 'Influencing the Public Opinion or Giving Effective Answers to the Crisis? The EU perspective and the Italian Way' (2017) 2 *Nomos*.

Semester.[65] The goal of stabilising and giving assurance for the financial policies and directions agreed at a supranational level seems to be the main factor in this redefinition of the balance between the executive and the legislative, as could also be inferred from the development of another praxis, such as the anticipation of the content of the same stability laws in an earlier phase through the use of decree-law.[66] The silent constitutional evolution of the distribution of competences in the Eurozone in matters involving the budget policies of the Member States, and the development of instruments and frames of coordination along the same lines seems, in the Italian case too, to be reflected in an enhanced pleading role played by the actors (ministers and government) who also participate in this procedure in the internal balance, as a reflection and, in some aspects, as a necessary consequence of the new intergovernmental relationships.[67]

The approval of the budget bill for 2019 offered new elements to assess this trend. The law was examined by the internal Budget Committee of the Chamber of Deputies from November 6th to the midnight of December 4th. However, the bill was examined in a session of the house only for two days, 7 and 8 December, because the Government asked for a vote of confidence on the text approved by the internal Committee. In the meantime, the European Commission examined the draft budgetary plan and considered that it would have undermined the financial stability of the country; accordingly, it recommended to redefine the planned deficit.[68] Thus, while the Chambers were examining the provision, the Government continued a parallel negotiation with the European Commission on the same bill that conveyed to an agreement on a different percentage of deficit/Gdp to be provided in the budgetary plan on December 18th. As a matter of fact, the internal Budgetary Committee of the Senate started to analyse a draft on December 10th, yet being aware of no chances that the same text could be the one adopted at the end of the process. Therefore, in a total disregard of the ordinary procedures of law approval, as well as in an unprecedented extremization of the "*maxi-emendamento"* praxis, at the beginning of the exam by the Senate, the Government presented an amendment (the 1.9000) to provide an entire substitution of the budgetary bill so far discussed and analysed by both Chambers. Moreover, it decided to ask for a vote of confidence on it and for a vote on the same day, December 22th, just few hours after sending the text to its members. The final exam by the Chamber of Deputies followed a similar pattern, with a vote of confidence and only few days for the examination and the approval of the text.[69] The largest partyamong the minorities even presented a reference to the Italian Constitutional Court, by considering

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[65] See G PICCIRILLI, 'I paradossi della questione di fiducia ai tempi del maggioritario' (2008) *Quad. Cost. 789.*

[66] See G GRASSO, *Il costituzionalismo della crisi. Uno studio sui limiti del potere e sulla sua legittimazione ai tempi della globalizzazione* (Editoriale Scientifica 2012); G RIVOSECCHI, 'Decretazione d'urgenza e governo dell'economia' in R Calvano (ed), *'Legislazione governativa d'urgenza' e crisi*, *Atti del I Seminario di studi di Diritto costituzionale – Unitelma Sapienza – Roma 18 settembre 2014* (Editoriale Scientifica 2015).

[67] In the same direction, noting that the prospect of an expansion of European power could even reinforce this trend, see RIVOSECCHI, 'L'equilibrio di bilancio' (n. 53) 7-8.

[68] See European Commission, REPORT FROM THE COMMISSION. Italy. Report prepared in accordance with Article 126(3) of the Treaty on the Functioning of the European Union, Brussels, 21 November 2018, COM 2018 – 809 – final.

[69] See the reconstruction provided by G BUONOMO and M CERASE, 'La Corte costituzionale ancora irrisolta sul ricorso delle minoranze parlamentari*',* (2019), *Forum di Quaderni Costituzionali*, 2-3.

that the extremization of the *maxi-emendamento* praxis violated the art. 72 of the Italian Constitution regulating the procedure for the approval of ordinary laws. The Constitutional Court rejected the appeal with an order, considering it inadmissible.[70] However, in an *obiter dicta,* the Court both recalled its precedents assessing of the problematic aspects of the *maxi-emendamento* praxis[71] and it stated the peculiarity of the procedure adopted in the case as detached from the *iter legis* prescribed under the art. 72 of the Constitution.[72] The Constitutional Court seems to share the idea that the praxis followed for the approval of the Budgetary plan for 2019 was a sort of "extremization" of a long-term trend that could make it intervene, "in similar situations", to guarantee the parliamentary prerogatives.[73] However, in the view of the Court, timely requirements and the dialogue with EU institutions should be considered as relevant elements to assess a non-manifest violation of the constitutional prerogatives of the Chamber, here being the criteria of admissibility in the case.[74] The case is emblematic of the trend towards centralization that is described in this paper: on the one hand the Court noted that the Budget bill was increasingly relevant in the internal policies because of new rules introduced after the crisis.[75] Conversely, such increased role should be considered as a part of a new Euro-national procedure (mainly defined in the European Semester) that is only partially determined by national rules and that is characterised by the dialogue and the negotiation between the national Government and the European Commission.[76]

E. Centralisation and Vertical Integration

The analysis shows that two major trends in the governance of the public economy of Spain are coexistent and connected: integration between jurisdictions reflected on the national side by a centralisation process. Let me summarise the key points. The constitutional reform has introduced dynamic references and definitions from the EU order. It has created a system that could be considered as the realistic expression of a process of vertical integration. The same is confirmed if one considers the relationships between the national reform plans implemented during the crisis and the measures recommended by the supranational institutions. In the internal framework, this process generated centralisation, which happened in two major dimensions. The government, to implement the national reform plan, eroded the boundaries on the use of decree-laws and concentrated power in its own hands, weakening the Parliament. On the other hand, to guarantee compliance with budget objectives, the financial auton-

[70] C Cost. Ord. n. 17/2019.
[71] *Ibidem*, par. 4.3
[72] *Ibidem*, par. 4.1
[73] *Ibidem*, par. 4.5
[74] I*bidem*, par. 4.5. For an exam of the order n. 17 of 2019 of the Constitutional Court see, among others, S LIETO, 'Conflitto tra poteri e «soglie di evidenza». Notazioni a margine dell'ordinanza n. 17 del *2019*', (2019), *Rivista AIC,* n. 1..
[75] Similarly to what the Court assessed in previous cases such as the C Cost. n. 184/2016.
[76] In a similar way, see N LUPO, 'Un'ordinanza compromissoria, ma che pone le basi per un procedimento legislativo più rispettoso della Costituzione', (2019) *Federalismi.it*, n. 4, 13-14.

omy of the Comunidad was constrained. However, this case is also not merely a centre–autonomies process, because the increasing powers of the state are particularly concentrated in the hands of the government, and, in particular, of the Finance Minister.

The outcome is the creation of a centre for guidance and major decisions on all the key economic policies in the country. This is the state government, whose position, however, has fundamentally changed. The main point is that in an integrated system it must be responsible for the commitment that it has assumed. In other words, it is not possible to delegate the budgetary decisions as it did before because there is a superior framework in which these decisions must fit. This originally emerged as a consequence of the Article 3 of the Protocol on the Excessive Deficit Procedure annexed to the Maastricht Treaty and it was even reinforced in the following modifications of the Eurozone economic governance.[77] The national government is both the one that promised to build the system and the one that could be considered responsible for any infringement. Thus it happened that the internal system had to be modified in a way that can ensure that there is a place in which the key decisions about budgetary behaviour can be made. Moreover, this 'centre' must also have the opportunity to expand its own powers if the compliance with a target is, for any reason, at risk. The choice is particularly germane to further works on this kind of theme because the decisions are also realistic in ensuring elasticity: where the economic emergency requires it, one can expect a deeper intervention of the central government to ensure compliance with the more detailed commitments that it must assume at a supranational level.

The move towards centralisation in the Italian framework has primarily been realised through the use of decree-laws that, with the purpose of addressing the economic crisis (testified also by the fact that they are called '*Salva Italia*' or '*Sblocca Italia*'), implemented mechanisms of coordination and constraint on the financial autonomy of all the internal entities, particularly using modulations of their expenditures.[78] The Italian Constitutional Court approved these constraints, adopting an interpretative approach that the concurrent matter of the 'coordination of public finance' included a division of powers between actors that allows the imposition of a ceiling on the expenditures of the subnational entities as a general principle that could be invoked again the ordinary and budgetary legislation of the regions.[79] The Italian

[77] For an overview about the obligation that the State assumes at EU level also for budgetary behaviour of its subnational autonomies, see a recent case of the ECJ condemning the Spain as responsible for the Comunidad Valenciana fiscal behaviour, Case, C-521/15, *Spain v. Council,* ECLI:EU:C:2017:982.

[78] See C BERGONZINI, *Parlamento e decisioni di bilancio* (FrancoAngeli 2014); G RIVOSECCHI, 'La decretazione d'urgenza al tempo della crisi', in A. Ruggeri (ed.) *Scritti in onore di Gaetano Silvestri, Vol. III,* (Giappichelli 2016).

[79] See C Cost n 139/2012; 310/2010; 68-69-108-122-155-182/2011; 139-173/2012. According to some authors, as a consequence of this extensive interpretation the same definition as a concurrent competence of the matter has been weakened: the plausible area that could be covered using instruments legitimised by the state using this competence could reach a level of detail absorbing the theoretical division; see M BELLETTI, 'Forme di coordinamento della finanza pubblica e incidenza sulle competenze regionali. Il coordinamento per principi, di dettaglio e "virtuoso", ovvero nuove declinazioni dell'unità economica e dell'unità giuridica' and G. RIVOSECCHI, 'Il coordinamento della finanza pubblica: dall'attuazione del Titolo V alla deroga al riparto costituzionale delle competenze?' in S Mangiameli (ed), *Il regionalismo italiano tra giurisprudenza costituzionale e involuzioni legislative dopo la revisione del Titolo V* (Giuffrè 2014).

framework registered a process of the unilateral determination, at the central level, of boundaries and constraints to the financial autonomy of subnational entities, which seems to be justified by the objective of guaranteeing the conformity of the budgetary behaviour of all the internal public administrations with policies determined at a European level, in a coordinating framework where the government acts as the protagonist. This helps to explain why this trend is, on a normative ground, determined by measures imposed by decree-law: a praxis that testifies both to the dual dimension of the centralisation as described in this research and to the strict interconnection between economic, financial and budgetary policies proposed and implemented at each level of jurisdiction in the multi-level system of the Eurozone. Only the analysis of these interactions can provide a proper understanding of the degree and the areas of autonomy retained by each actor.

II. THE CASE OF THE US STATES

The comparison with U.S. States case seems to be very helpful in highlighting the dynamics of introducing fiscal constraints and the reshaping of intergovernmental relations that, adopted amidst crisis, led to a long-term redefinition of the balance of powers. The US states are selected as a case according to "paradigmatic" criterion: since they are traditionally considered a model of balanced budget rules introduced at the state level in a multilevel frame to avoid moral hazard risks, the analysis of this case could offer a useful perspective about the balance of powers evolution in the Eurozone countries analysed.

As noted by I. Rodriguez Tejedo and J.J. Wallis, since the American states came into existence, they have continued to face the persistent problem of how much to spend, and whether some expenditures should be financed through borrowing. The fiscal crisis of 2009-2011 is considered only one in a "series of crises that will be repeated in the future."[80] According to those authors, fiscal constitutions - i.e. constitutional provisions regarding taxing, spending and borrowing – are considered the main pattern of a "recursive" institutional change.[81] New constitutional changes respond to a crisis exacerbated by a previous constitutional change. The existing constraints are the result of the reaction to different economic and financial crises. Those are in short: (i) debt restrictions after the debt crisis in 1841 and 1842; (ii) debt procedures for local governments after the wave of local government defaults in the 1870s; (iii) stronger balanced budget rules in the 1930s and thereafter; (iv) Rainy Day Funds and Tax and Expenditures Limits adopted in the 1980s after the round of fiscal strain the recessions of 1975 and 1981.[82] Each of these elements has been introduced to reply to a punctual exigency emerging from the last crisis: however, they become permanent features of the

[80] See I RODRIGUEZ-TEJEDO and JJ WALLIS, 'Fiscal Institutions and Fiscal Crisis' in P Conti Brown and DA Skeel Jr (eds) *When States Go Broke. The Origins, Context, and Solutions for the American States in Fiscal Crisis* (Cambridge University Press 2012), 9.

[81] Ibid 10-11.

[82] This helps to shed light on the progressive creation of budget requirements among US States. They faced a serious debt crisis for the obligations assumed by States in pure investment activities without any kind of

State institutional framework and contribute to defining the way it operates and the kind of liability that it will be able to assume in the long terms.

The other consequence of the crisis is the increasing role played by the federal government. On the one hand, the states are unable to undertake countercyclical responsibilities because of the lack of a fiscal structure to do so. Moreover, the need to comply with constitutional constraints force them to adopt pro-cyclical measures. On the other hand, the crisis increased the role of the federal government because the government assumes the responsibility of counter-cyclical policies and because the features of federal programs involve State participation. Matching programs[83] in particular are increasingly expensive in economic downturns because they require a bigger share of the State budget. As noted hereafter, this increased relevance of intergovernmental relations modifies the selection of policies by the States and it contributes to the process of centralisation of their institutional framework.

The crisis indirectly provoked a shift of powers and competencies in the US states. The institutional solutions adopted in response to them have become the major patterns of their fiscal constitutions. The solutions adopted amidst the crisis have come to define a permanent institutional framework. Instead of a temporary deviation, those solutions provoked the definition of rules and policies that are the pillars of the balance of powers inside the states.

A. The Role of Executives

An analysis of the constraints that induce a centralisation of the US states framework should be focused on the rules defining the contents of and procedures for budget bills.[84] The

limits before the so-called "Panic of 1837". The default of several States after the crisis lead to the introductions of debt restrictions to avoid the financial liability of States for private interests. However, many States simply moved the investment and indebtedness role to local government. The Depression of 1873 led to a flood of state and local government defaults between 1873 to 1879 and to the introduction of stricter controls upon those entities. After the crisis of 1929, several rules adopted by States emerged as ineffective, because they focused only on restricting debt activities and not upon elements defining timelines, procedures and contents of the annual – or pluriannual – budget. The restriction adopted by States, indeed, contributed to the affirmation of the Federal Government as the countercyclical actors. Again, the popular activities and the Government initiatives that led to the season of RDF and TELs rules was a reaction to the crisis of 1970-1973. The rules, however, remain nowadays as a permanent chain for the activities of some States and they contribute to a permanent redefinition of their budgetary autonomy. For an overview of this evolution, see R BRIFFAULT, *Balancing Acts. The Reality Behind State Balanced Requirements* (Twentieth Century Fund Press 1996); CR HENNING and M KESSLER, 'Fiscal Federalism: US history for Architects of Europe's Fiscal Union' (2012) *Peterson Institute for International Economics Working Paper Series*; P Conti Brown and DA Skeel Jr (eds) *When States Go Broke. The Origins, Context, and Solutions for the American States in Fiscal Crisis* (Cambridge University Press 2012); BU RATCHFORD, *American State Debts* (Duke University Press, 1941).

[83] Matching programs are a peculiarity of the US federalism compromise to develop social policies. In those cases, the National Government provides a federal programme for a service – health as an example – that theoretically should fall inside State competences. The program is financed together by the State and the federal level in a percentage that is determined in the decision at the central level to establish it. However, the State is, in abstract, free to accept or not to enter into the program and it have also to decide whether to give the percentage of the total costs that is required by the programme. The impact of those programmes in redefining the nature of US federalism has been noted in several studies, see SUPER, 'Rethinking Fiscal Federalism' (n. 5); DA Kenyon and J Kincaid (eds), *Competition among States and Local Governments* (Urban Inst. Press 1991); CORWIN, 'The Passing of Dual Federalism' (n. 4).

[84] For an overview of the type of constraints adopted by US states, see M IANNELLA, 'U.S. States' fiscal constraints and effects on budget policies' (2016) 8(1) *Perspectives on Federalism* 85-92.

main tool adopted by the states is a procedure in which the key actor is the executive branch: exceptionally – in three states – the legislature has full power to reshape the budget proposed by the governors.[85] In the ordinary context where the main powers for the budget bill procedures rest upon the executive, some degree of variation can be found among the states. The initiative for the budget bill procedure is retained by the governor in half of the states: several of the Constitutions require that the governor propose a balanced budget to the legislature.[86] Once the budget has been approved by the legislature, the governor, in approximately four out of five cases, has the power to veto individual spending items without using his veto authority on the entire budget. In ten states the governor has the power to reduce the amount of a budget item. These powers greatly enlarge the role of executives in the formation of a budget bill compared to the role of the legislature.[87] In the implementation phase, the Constitutions of some states also provide tools that grant a pivotal role to the governor. Forty-two states, according to the Council of State Governments, allow budget spending to be reduced without legislative authorisation after the budget has been enacted.[88] This power is, in some cases, limited with a ceiling on the size of the reduction: the Constitutions of Connecticut, Louisiana and Maryland, as examples, fix a maximum amount for the appropriation of a set percentage.[89] The Constitution of Missouri provides a general power for the governor to manage budget cuts,[90] which has been considered by the Court to give broad authority for autonomous operations required to balance the budget when there is a fall in revenues.[91]

The result of these powers, even if they are restricted in some cases, has been a broad authority for the governors to reshape the budget enacted by the legislature during its implementation phase. In several cases, rules have been considered as a floor from which to develop even broader powers for the executives, mainly connected to the existence of an impounding authority. The Rhode Island and New York Courts faced a similar challenge: could an authority impound funds autonomously be implied from the balanced budget mandate con-

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[85] According to the National Conference of State Legislatures, *NCSL Fiscal Brief: State Balanced Budget Provisions*, October 2010, these states are Arizona, Colorado and Texas.

[86] See, for example, the Rhode Island Code, Title 35, ch 3, s 13. This kind of provision is in fact very weak: generally, the legislature itself is under no obligation to pass a balanced budget. Moreover, in several constitutions it is possible for the budget to be balanced using borrowing, see National Conference of State Legislatures, *NCSL Fiscal Brief* (n. 9), 6-8. Forty-one states do require their legislature to pass a balanced budget, see IANNELLA, 'U.S. States' fiscal constraints and effects on budget policies' (n 74), 89-92.

[87] See BRIFFAULT, *Balancing Acts. The Reality Behind State Balanced Budget Requirements* (n 72) 31-32.

[88] DA GONA, *The Book of the States, 1994-95*, Council of State Governments (1994) 42.

[89] United States General Accounting Office, briefing report to the chairman, Committee on the Budget, US House of Representatives, *Balanced Budget Requirements: State Experiences and Implications for the Federal Government* (1993) 22.

[90] 'The governor may control the rate at which any appropriation is expended during the period of appropriation by allotment or other means and may reduce the expenditures of the states or any of its agencies below their appropriations whenever the actual revenues are less than the revenues estimates upon which the appropriations were based', Missouri Constitution, art 4 section 27; in a similar way, North Carolina Constitution, art 3 section 5.3.

[91] Missouri Supreme Court, *State ex rel Sikeston R-VI School District v Ashcroft*, 828 SW2d 372 (Mo 1992).

ferred on the governor? In both cases, the Court rejected the executive's arguments, particularly in cases when the local autonomous funds are under stress.[92] The Massachusetts Supreme Court, on the other hand, stated that legislation prohibiting any kind of impounding, even in cases in which such a spending reduction could be considered as necessary to achieve a balanced budget, would be considered unconstitutional.[93] When the impounding power is a result of a delegation made by the legislature to the executive, it generally overcomes constitutional challenges.[94]

Among the US states, New York is one of the more typical for constraints that have caused a shift in the balance of powers between the executive and the legislative.[95] In the context of Article VII of the Constitution – dedicated to state finances – the budget procedure is characterised by the strong role of the governor in the phases of the formulation, presentation and execution of the budget. This role is enforced by the exclusive power provided for the governor to determine the expenditure items of the executive branch. There is also a single – not absolute – veto power for items that have been modified by the legislature, and the authority to modify some expenditure in the implementation phase.[96] The balance of powers between the legislature and the governor has been under scrutiny for roughly the last decade, and various modifications have been proposed. The legislature has imposed several limits in the matter of budget choices. In general terms, the powers that are granted are concentrated on the negative side, in terms of the possibility of reducing authorised spending or reducing a proposed appropriation made by the executive. In the positive direction, it is impossible for the legislature to substitute items proposed by the governor or significantly to change proposed appropriations.[97] As a consequence, the system is structured in a way that makes it clear that policy budgetary choices are among the governor's tools. The New York Supreme Court, in *Potaki v New York State Assembly*, strongly approved of this vision, clarifying the different elements. It identified the scope of the constitutional mutation as an alteration of the roles of the executive and the legislative in the budget process: the first must be considered the 'constructor' of the budget, while the second has a 'critical' role, and its approval is needed.[98] Moreover, the executive powers are extended by two considerations on how far the budget contents can be challenged. Firstly, the Supreme Court of the State of New York had to decide whether the

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[92] In re State Employees' Union, 587 A.2d 919 (RI 1991); In re Advisory Opinion of the House of Representatives, 576 A.2d 1371 (RI 1990); County of Oneida v Berle, 404 NE2d 133 (NY 1980).

[93] *Opinion of the Justices,* 376 NE2s 1217, 1221 (Mass 1978).

[94] *Board of Education v Gilligan,* 36 Ohio App. 2d 15, affirmed 38 Ohio St.2d 107 (1973); *Bruneau v Edwards,* 517 So.2d 818 (LA Ct. App. 1987); *State v Fairbanks North Star Borough,* 736 P.2d 1140 (Alaska, 1987); *Chiles v Children,* 589 So.2d 260 (FL 1991).

[95] Several restrictions were introduced after the modification of several sections of the articles as it was amended by vote of the people on November 6, 2001.

[96] See particularly Art. VII, § 4 of the New York State Constitution; for an overview on the New York State budgetary rules and behaviour in the last economic crisis, see The State Budget Crisis Task Force, *New York Report*, 2012, 18 http://www.statebudgetcrisis.org/wpcms/ (Accessed November 24, 2017).

[97] N.Y. Const. Art VII section 4. For an overview of the New York case, see Iannella 'U.S. States' fiscal constraints and effects on budget policies' (n 74), 96-99.

[98] Potaki v New York State Assembly, 4 N.Y.3d at 82-83.

possibility of using the item veto power of government should be confined to budget bills. The Court making the unsuitability of this distinction explicit solved the conflict: 'The line between "policy" and "appropriations" is not just thin, but essentially non-existent: every dollar the State spends is spent on substance, and the decision of how much is spent and the purpose of the policy. Thus, all appropriations are substantive, and all appropriations make policy'.[99] Secondly, there is no legal constraint that the judiciary could impose on the governor to prevent him from inserting substantive law changes into the budget bill. These elements were combined in the exclusion of the amendment power of the legislature, regarding both the budget bill and the connected policy conditions: this kind of instrument could modify the balance of power provided in the New York Constitution, which does not provide a 'rival constructor' role for the legislative branch.[100] The procedural budgetary framework, combined with this interpretative approach, deeply influences the balance of power. The legislature has no choice but to approve, since if it refused to act it would force an impasse, with potentially devastating effects. As a consequence, the executive's powers, including the ability to make policies beyond the budget, were broadly extended: it could insert substantive law changes in budget bills and in this way force legislative approval.[101]

B. Constraints, Intergovernmental Relationships and Local Autonomies

The other aspect of centralisation that can be detected from the case of the US states is far less evident; it is connected to the intergovernmental relationships developed in the fiscal federalism framework of the country. On one side, this is a long-term trend connected to a progressive shift of powers from the states to the federal level. On the other, one of the effects of budget constraints has been the development of gimmicks to circumvent those rules.[102] Intergovernmental funds have been manipulated to achieve budgetary objectives, transferring costs to other jurisdictions. In this context, the local autonomies have not been guaranteed by the state Constitutions, and so they have no legal power either to require the states to guarantee them financial support or to avoid the imposition of certain expenses.

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[99] *Potaki* (n 88) section 93. On the challenge that faced the State of New York and the impact of the caseload of its Supreme Court on the balance of powers between the executive and the legislative, see R BRIFFAULT, 'Courts, Constitutions and Public Finance. Some Recent Experiences from the States' in E Garrett, EA Graddy and HE Jackson (eds), *Fiscal Challenges. An Interdisciplinary Approach to Budget Policy* (Cambridge University Press 2009), 432-6. Usually, appropriation, i.e. annual authorisation to spend money, has been connected to a proposal by the executive branch that the legislative branch will approve or reject. On the other hand, budget policies were pluriannual or permanent decisions about the expenditures of State that were considered as the basis for the budgetary role of Parliaments. The passing of this dividing line that makes of the Governor the constructor of the State budget *tout court* signs a key element in the centralisation trend.

[100] Ibid at 89-101.

[101] Along these lines, see BRIFFAULT, 'Courts, Constitutions and Public Finance' (n. 24), 432-6.

[102] See BRIFFAULT, *Balancing Acts* (n. 82) 27-30.

The constitutional structure of states generally allows them to exercise plenary power over their municipalities, subject to state constitutional restraints on municipal authority.[103] Those powers have been used, particularly in times of financial distress to create, abolish or alter the governance structure of their political subdivisions. As noted by Gillette, "When political subdivisions enter fiscal distress, states can essentially place them into receivership, eliminate democratically-elected governments and replace them with appointed oversight or financial control boards that have substantial authority over budgeting, expenditure and revenue raising."[104]

The centralistic trend[105] is reinforced by the role played by constitutional constraints. The objective of a balanced budget has been achieved by reducing the funds given to the local autonomies: the costs of compliance with constraints are transferred to local taxpayers, who see an increase in local taxation, which compensates for the loss of transfers. The Michigan Supreme Court was clear, when evaluating an impounding by the governor of revenue-sharing payments to local governments, that 'the State does have an obligation under the Constitution to balance the budget. It has no obligation to refrain from shifting the financial burdens of government to local government units.' [106]

The manipulation of local finances that is driven by these constraints changes the roles of the states and local entities in handling policies, transferring functions to the former. A paradigmatic example has been the evolution in California, after the approval of Proposition 13 in 1978. This initiative capped both the rate of the local property tax that was related to the value of the property and the increase of the asserted value, considering as it was also influenced by the inflation. To prevent any state tax increase to compensate for this limitation, Proposition 13 also required a two-thirds majority in the state legislature for tax increases. The main consequence of this reform was to shift several public services, and particularly the public school system, from local to state funding.[107] American public schools are financed by a combination of local property taxes and state funding. Given the limits introduced by the Proposition on local property taxes, the effect was to create a different balance between these two sources, increasing the percentage of the state contribution.

C. The Effects of Vertical Integration on State Budget Management

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[103] LA BAKER and CP GILLETTE, *Local Government Law,* 4th ed. (Thomson Reuters/Foundation Press 2010), 237-250.

[104] CP GILLETTE, 'What States Can Learn from Municipal Insolvency', in P Conti Brown and DA Skeel Jr (eds) *When States Go Broke. The Origins, Context, and Solutions for the American States in Fiscal Crisis* (Cambridge University Press 2012), 117-118.

[105] This similar trend originates from very different degrees of centralisation among US States, in the starting phase, see G MATHEW, 'The Functioning of Local Governments and their Relationship with Upper Levels of Government' in J Kincaid and R Chattopadhyay (eds), *Local Government in Federal Systems* (New Delhi: Viva Books, 2008) 40.

[106] See *Michigan Association of Counties v Department of Management and Budget*, 345 NW2d 584, 592 (Mich. 1984)

[107] See The State Budget Crisis Task Force, *California Report*, http://www.statebudgetcrisis.org/wpcms/ (Accessed November 24, 2017).

The influence of vertical integration upon the budgetary autonomy of US states and the balance of powers did not emerge as a consequence of direct institutional choices. The influence of intergovernmental relationships was a consequence of an evolutionary process that gradually limited the possibilities for taxation and expenditure by the states in relation to federal taxation and expenditure.[108] There is testimony to this trend in the OECD data that shows the increasing role of the national government in the overall system, and the large number of transfers provided by the same: looking at overall revenues in the US system, the federal level collects 57.46%, while all the other levels collect the remaining 42.54%, while on the expenditure side there is less divergence, with, respectively, 51.91% and 48.09% because of the transfers.[109] Looking from the states' perspective, this means that 30% of their revenues are provided by transfers, while only 49.5% is collected through autonomous taxation.[110]

The interdependence of the federal and state budgets has a pivotal role in diminishing the margin of autonomy in the budget decisions of political actors: if we consider the impact of mandates linked to federal financing, in particular, the margin of discretion in managing both revenues and expenditures for the states is very narrow.[111] However, the national government also sees an increasing proportion of its funding blocked in long-term programmes and in agreement mechanisms between levels of government that could not easily be modified without causing financing and political troubles in the overall framework.[112] This reciprocal dependence helps to explain the development of a system of cooperation in the governance of US fiscal federalism, developed as a rule by money - – i.e. regulation through market incentives and conditions attached to federal grants -.[113] The states adapt their expenditure items in order

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[108] For an overall analysis, see DA SUPER, 'Federal-State Budgetary Interactions' in E Garrett, EA Graddy and HE Jackson (eds), *Fiscal Challenges. An Interdisciplinary Approach to Budget Policy* (Cambridge University Press 2009), 366-371.

[109] See OECD, *Governments at a Glance, 2015 edition: Public finance and Economics,* https://stats.oecd.org/Index.aspx?DataSetCode=REV. (Accessed December 20, 2017) The effect of this budget distribution is particularly emphasised by the distribution of debt: 79.08% of debt is retained by the federal level (OECD, ibid).

[110] See United States Census Bureau, *State Government Finances Summary: 2013,* (February 2015), www.census.gov (Accessed November 2, 2017).

[111] For an analysis of the effects of the vertical integration between budgets, the role of this process in the margins of discretion for the decisions of states in the matter, and the role played by those links in the financial crisis, see, for example, J BARRO, 'Structural Challenges in State Budgeting', in P Conti Brown and DA Skeel Jr (eds), *When States Go Broke. The Origins, Context, and Solutions for the American States in Fiscal Crisis* (Cambridge University Press 2012) 77-98; AJ LEVITIN, 'Fiscal Federalism and the Limits of Bankruptcy', in P Conti Brown and DA Skeel Jr (eds), *When States Go Broke. The Origins, Context, and Solutions for the American States in Fiscal Crisis* (Cambridge University Press 2012) 214-27.

[112] See HE JACKSON, Counting the Ways: The Structure of Federal Spending, in E. Garrett, EA Graddy and HE Jackson (eds) Fiscal Challenges. An Interdisciplinary Approach to Budget Policy (Cambridge University Press 2009) 185-220.

[113] For an analysis of the role of those instruments in defining the US fiscal federalism, see Super, 'Rethinking Fiscal Federalism' (n. 5). The impact upon the US federal structure of the federal funding is deeply connected to the quantitative development of those instruments: in a system where the federal expenses are about 52% of the total expenditures, the central government is able to control and determine their budgetary policies by the financial leverage, as noted by RODDEN, *Hamilton's Paradox. The Promise and Peril of Fiscal Federalism* (n. 4). This could not happen in the EMU whereas the financial leverage is much smaller and the main elements that assure financial behaviour of States are the legal limits provided by EU law to their budgetary autonomy, see M IOANNIDIS 'Europe's

to shift them inside federal programmes – especially matching programmes that could also give an increase in the amount of the transfer received – and so to reduce the costs for them in the state budget. The integration between the budget policies of the states and the national government received a strong impetus under the Obama administration's plan to implement a *New Nationalism.*[114] Particularly in the Medicaid expansion, each state had the chance to develop its participation according to its own set of preferences, using waivers, which involves a negotiation between the state and the federal authority.[115]. In those cases, while there is some degree of participation by the legislature, the central aspects of the state health programme are determined beforehand by agreement between the executive branches: the Centre for Medicaid Services must consent to the application proposed by the state. The effect of this development in cooperation is to deprive the state legislature of central aspects of decisions about the main expenditure item of their budgets. This is an oblique way in which the process of vertical integration could imply centralisation without a formal modification of the balance of powers in the constitutional text.

II. CENTRALISATION PROCESS. CAUSES AND CONSEQUENCES

A. Differences and Similarities in Budget Constraints in the cases

The comparison between the EU and the US cases helps to show some differences on two levels, which influence each other: the way in which the states' constraints are formulated and the scope of those constraints should be reconnected to the leverages that are retained by the intergovernmental system to ensure sound budget behaviour. While the central US level could develop a system of regulation of the economic and fiscal policies of the states, based on incentives connected to the broad expenditure at a federal level, in the Eurozone the absence of a comparable financial leverage seems to have induced the development of more rigid rules, based on common principles determined at a supranational level and the duties of the States to implement them and adapt their frameworks to them.

New Transformations: How the Economic Constitution Changed During the Eurozone Crisis' (2016) 53(5) *Common Market Law Review* 1237. The Eurozone system is, indeed, characterised by a significant divergence in the economic roles of the levels of government. The overall expenditure of the European Union amounts to 1% of GDP, whereas the Member States had an average expenditure of 49%. Moreover, Member States cover 73.8 % of the "European Budget". See European Commission, *Budget: Providing Value for Money,* https://europa.eu/european-union/topics/budget_en (Accessed January 3, 2018).

[114] See T CONLAN and P POSNER, 'Inflection Point? Federalism and the Obama Administration' (2011) *Publius: The Journal of Federalism* 421-446.

[115] According to the 'Section 1115 Demonstrations' of the Medicaid legislation, http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/Section-1115-Demonstrations.html. See National Conference of State Legislatures, 'Innovation Waivers: State Options and Legislation Related to the ACA Health Law', March 2017, http://www.ncsl.org/research/health/state-roles-using-1332-health-waivers.aspx (Accessed November 24, 2017).

The EMU framework has been characterised by the imposition of detailed constraints, through legislative solutions, on the budget decisions of the Member States. This has happened since the regulation defining the Stability and Growth Pact in 1997 and in the modifications following the euro crisis, which introduced both necessary adaptations of the national budget frameworks to predetermined contents and constraints and, on the other hand, an institutionalised and detailed framework for the coordination of the economic and fiscal policies of the Member States. The US framework has, instead, been characterised by the progressive introduction of different types of constraints in various waves distinguishable on the basis of a timeline.[116] The introduction of those constraints could be explained as a gradual adaptation to both the ineffectiveness of the previous boundaries and new gradually emerging political and economic exigencies; however, they present some similar traits, and the common features of being particularly focused on procedural requirements and on a part of the administration budget, classically the general one of the state.[117]

Despite the very different origins of the constraints, several elements of similarity can be noted. Firstly as for the balanced budget rules, there is a common trend towards a concentration of the role of guarantor of the constraints in the hands of the executive, particularly in the drafting and proposition phases and, in various ways, in the approval and implementation ones: while Spain and Italy utilised their discretion to create a centre for the elaboration and control of the budget policies (both introducing third bodies and increasing the role of the executive), in the US cases there are detailed powers conferred on the governors connected to the objective of a balanced budget. Secondly, control and strict boundaries are imposed on the budgetary autonomy of subnational entities in times of economic downturn.

An overall comparison must note that the US state constraints are more extended in their scope than the EU cases, since they cover not only budget decisions but also taxes and expenditure limits: as a consequence of this broadness and of their historical nature, they also present a lower degree of uniformity. It appears that there is more ability for the constraints on the US states to diversify and channel the behaviour of political actors than to be autonomously effective. In the Eurozone cases, by contrast, the constraints are more focused on the objective of reaching an overall balanced budget taking into account all the public administrations. As a consequence of their links to the supranational framework, these rules are far less similar between the EU States than are the US States and have some discretional aspects that are, instead, regulated in a different way that is mainly focused upon other parameters such as expenditure limits. The supranational framework has also inspired mechanisms of control and sanctions that ensure a major degree of efficiency. In the Eurozone cases, the room for autonomy in budgetary decisions by the States seems to be derived from the limited scope of application of the constraints: however, also in other aspects of their economic and fiscal policies, the decision would be assumed after a coordination procedure, and this is particularly emphasised in the new economic governance.

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[116] See I RODRIGUEZ-TEJEDO and JJ WALLIS, 'Fiscal Institutions and Fiscal Crisis' (n 70), 24-31.
[117] Ibid 31-36.

B. The Need for a Responsible in Budget Management

What has emerged from the comparison of these cases is the common need for a response in budget management that should be connected to two levels of the pursuit of a balanced budget. On the first, more straightforward, a level we can detect a similar trend in internal – State-based – rules that provide budgetary constraints on processes of centralisation. This happens in three major dimensions. First of all, the constraints in all the countries in our analysis allocate the responsibility of proposing and ensuring a balanced budget to the executive in a similar way. To ensure there is the ability to reach those pre-determined targets, the government is variously empowered, in the different cases, we have analysed, with instruments of intervention that can be used before, during and after the debate and approval of budget bills in parliament. This leads us to the second dimension: a reduction in the possibility of modifications made by the legislature to the proposed budgetary policy measures proposed by the executive. This happens both through the introduction of constitutional requirements that make modification or indebtedness more difficult, such as super-majority votes, and – on the other hand – through the adoption of legislative instruments and praxis that bypass and limit the powers of assemblies, such as the wide use of decree-laws. Lastly, all the cases analysed show a similar trend of cutting the autonomy of the subnational entities in their budgetary decisions. This happens in several converging areas: procedural restrictions in constitutional texts, substantial cuts connected to the State's modulation of expenditure, and the empowerment of state executives in a surveillance and control role of the behaviour of the subnational entities. Those aspects converge to create an increasing role, both in the negotiation and the implementation phase, of the state government, which works as the coordinator of the budget policies of the different levels.

On a second, more hidden, level is the process of vertical integration in fiscal and economic governance that reinforces the centralisation trend. The increasing interdependence of state and federal/supranational economic and fiscal policies has been reflected in the development of processes of the codetermination of state economic policies involving both levels of government. These processes see a dominant role for executives because they are the ones participating in the coordination forums, reaching agreements with the other actors and guaranteeing the respect and implementation for those agreements. The more interdependent the budgetary policies, the more governments need to develop powers and instruments to ensure the efficient working of the multi-level system. This happens in very different shapes in the cases of the US and the Eurozone countries, but there is a common trend toward the institutionalisation of this link. In the EMU context, it is the coordination frame itself and the constraints that are institutionalised, through the European Semester and the boundaries determined in the Regulation composing the Stability and Growth Pact and its modifications. In the US context, by contrast, the federal programmes and the instruments of rule by money developed in relation to them have found an increasing degree of stabilisation and regulation with a judicial reflection in the position of the US Supreme Court proposed in *NFIB v Sebelius.* These differences, as shown above, strongly affect the shape and dimensions of the centralisation process, but they are not sufficient to hide the link between a deeper interdependence between

the funding and management of economic and fiscal policies and the necessity of the role of the executives in the management of state budgetary policies increasing to ensure the boundaries, limits and commitments of these integrated systems are met.

III. CONCLUSIONS

The cases selected show a similar trend towards centralisation in two dimensions. On the one hand, while they have a completely different framework and guarantees for subnational entities, the EU cases and the US states have adopted policies to lessen the financial autonomy of the subnational entities and have assumed a role of controller and guarantor of the fiscal behaviour internally. On the other hand, the executive has emerged as the key actor in fiscal and economic policies by assuming a pivotal role in the determination of budget contents and in the negotiation with other levels of government that have become increasingly relevant in the determination of state economic policies. While there is a wide differentiation between the US and the Eurozone processes of vertical integration, a common trend emerged, i.e. the development of economic and fiscal policies in negotiation contexts between executives.

The centralisation trend seems to be originated by economic and financial emergencies. However, this is only the beginning. The rules introduced to react to the crisis become permanent features of the state's institutional framework. The use of the dialogue with EU institutions to justify the procedure adopted for the approval of the budget bill for 2019 in Italy could be considered as a major example of this trend. The constraints aim to diminish the possibility of choice in the determination of budget policies, working as pre-commitments and they are characterised by a similar trend towards guaranteeing power and responsibility for the executive and in a parallel diminution of the margins of elasticity for the intervention of parliament. This is a long-term trend, which has emerged from the analysis of the case of the US states, which have seen a shift of power that should be connected to the emergent need for budget management that is implied by those constraints.

The trend is even reinforced by the processes of increased vertical integration between the state level and the supranational level in relation to economic and fiscal policies. While there is a wide differentiation between the US and the Eurozone processes of vertical integration, a common trend emerged, i.e. the development of economic and fiscal policies in negotiation contexts between executives. In the US, this mainly happens through negotiations and incentives connected to the federal programme, but the increasing relevance of those funds in the state budget gives the executive branch – which is the main actor in the negotiations – greater responsibility on the internal side, because the executive has to guarantee the agreement reached in the intergovernmental forums. In the EU cases, this process is also reinforced by the features of vertical integration that characterise the institutionalisation of the coordination of budgetary policies. The European Semester, in particular, is emblematic of this trend. On the internal side, this peculiarity is manifest in an increasing reliance on the rules of EU law and in the pivotal role played by the documents presented in the coordination phase by the government in the determination of budget decisions at the EU level.