AUTONOMY ITALIAN STYLE:
SOVEREIGNTY IN SÜDTIROL/ALTO ADIGE

AUTONOMIA ALL'ITALIANA: SOVRANITÀ IN SÜDTIROL/ALTO ADIGE

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Abstract English: A critical legal thinking analysis of autonomy in Südtirol/Alto Adige is useful for rethinking Italian sovereignty in the province. Initiating with articles 5, 6, and 116 of the Italian Constitution (1948) and subsequently with two statutes of autonomy (1948 and 1972) with several amendments, a particular system of law was constructed in the context of the Italian regional state.

Several historical events have also determined the current Südtirol/Alto Adige autonomous status. Most notably during the aftermath of World War I, it was subject to a change in sovereignty from Austria to Italy. Soon after, during the fascist period, a failed attempt at so-called *Italianization* dramatically lessened the rights of the Ladin and German-speaking majority. Moreover, following the devastation of World War II autonomy was granted but not fully accepted in its original form by the majority of the population in Südtirol/Alto Adige. As a consequence, the political movement for self-determination became more relevant and terrorist violence emerged. The international community stepped up to the conflict and the Italian government established a new form of autonomy that brought justice and peace.

Thereafter, Südtirol/Alto Adige's autonomy has received support and recognition from the United Nations, the European Union, and other international organizations.

Key Words: Südtirol/Alto Adige, Autonomy, Sovereignty, Constitutional legal theory, Linguistic minorities

Abstract Italiano: Uno studio critico del diritto sull'autonomia in Alto Adige/Südtirol è utile per ripensare la sovranità italiana nella provincia. Prendendo spunto dagli articoli 5,6 e 116 della Costituzione Italiana (1948), e successivamente dei due statuti di autonomia (1948-1972) con vari emendamenti, è stato costruito un sistema statutario particolare nel contesto dello Stato regionale italiano.

Vari eventi storici hanno determinato la situazione attuale dell'autonomia dell'Alto Adige/Südtirol. Innanzitutto, dopo la prima guerra mondiale, c'è stato un cambio di sovranità dall'Austria all'Italia. Subito dopo, durante il periodo fascista, nel tentativo fallito chiamatosi *italianizzazione*, sono stati diminuiti drammaticamente i diritti dei gruppi linguistici maggiori, i ladini e i tedeschi. Inoltre dopo la devastazione della seconda guerra mondiale l'autonomia è stata garantita, ma non pienamente accettata dalla maggioranza

della popolazione nella forma originale. Di conseguenza il movimento politico per l'autodeterminazione è diventato più importante e si è fatto notare il terrorismo. La comunità internazionale ha fatto un passo avanti nel conflitto e il governo italiano ha stabilito una nuova forma d'autonomia che ha portato giustizia e pace.

Successivamente, l'autonomia del Südtirol/Alto Adige ha ricevuto el appoggio e il riconoscimento delle Nazioni Unite, dell'Unione Europa e di altre organizzazioni internazionali.

Parole chiave: Südtirol/Alto Adige; autonomia; sovranità; teoria costituzionale; minoranze linguistiche.

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Dedicated to the memory of my father, Lcdo. José R. Gómez Alegría.

1. Historical context

Südtirol/Alto Adige (SAA) (also known as *South Tyrol*) is the most northern province of Italy with a total population of circa 535,774 residents[1]. It has the political legal status of an autonomous province, a special case in the Italian regional form of government, where generally regions are autonomous not their provinces. This is established in Article 116, second paragraph of the Italian Constitution (Constitution) "*The Trentino-Alto Adige/Südtirol Region is composed of the autonomous provinces of Trento and Bolzano*". This year 2022 marks the 50th Anniversary of the Second Autonomy Statute[2], which brought forth the completion of a First Autonomy Statute that was first put into law early after World War II (WWII) in 1948[3]. Autonomy in SAA is also based on the linguistic minority rights of the German and Ladin population[4], as guaranteed in Article 6 of the Constitution: «The Republic safeguards linguistic minorities by means of appropriate measures». From an international law perspective, SAA in many

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[1] The official number of 535,774 residents in Südtirol Alto Adige on December 31, 2021 was published by the Provincial Institute of Statistics (ASTAT), https://astat.provincia. bz.it/it/popolazione.asp. (Accessed on July 20, 2022).

[2] Decreto del Presidente della Repubblica 31 agosto 1972, n. 670, as amended, "Testo unificato delle leggi sullo statuto speciale per il Trentino Alto Adige".

[3] Legge costituzionale 26 febbraio 1948, n. 5, as amended, "Statuto speciale per il Trentino Alto Adige".

[4] For a detailed explanation of Ladins in Südtirol/Alto Adige, please see, Gómez Biamón J.R., 2021, pp. 295-322.

ways has become a digest for the development of minority rights in Europe[5].

1.1. The rise and fall of fascism

After World War I (WWI), the territory that is now known by the name of Südtirol/Alto Adige (SAA) becomes part of the Italian State, whereas before it was an integral part of the Austrian Empire, with an established and uninterrupted German language and culture of more than one thousand three hundred years. Thus, SAA experienced a turbulent history after the change of sovereignty[6].

Traditional historiography tends to overlook the years between the end of WWI (1918) and the rise of fascism (1922). Not foreseeing that in the context of autonomy it is important to recognize that during those brief years there was a political movement in Italy to grant autonomy to SAA[7]. In this respect, on December 1920, the King of Italy, Vittorio Emanuele III delivered a political speech referring to SAA, talking about how the newly acquired lands required a new solution based on autonomy and the respect of local traditions[8]. As a matter of fact, autonomy for SAA was also an important topic during the peace negotiations of the Treaty of Saint Germain-en-Laye of 1919, a proposal brought by the Allies as a political solution for accepting Italian sovereignty over the once Austrian territories, and more importantly extending the Italian border to Brenner/Brennero. Nonetheless, soon afterward Vittorio Emanuele III changed his views and fascism became the dominant political movement in SAA. The first victim was Franz Innerhofer a 37-year-old elementary school teacher and musical band director that was brutally killed by a pistol shot on April 24, 1921. Innerhofer was protecting students that were being brutally assaulted by a fascist squad in Bozen/Bolzano[9]. This incident was never investigated by the authorities and is still known by the name of "*Domenica di sangue*" with public monuments dedicated to the event and political manifestations held in remembrance.

Precisely it was during the dawn of fascism that a program of so-called *Italianization* was imposed on the *Südtiroler/Altoatesini* people. Thereupon, fascist policies in SAA relied heavily on the acculturation of the local German and Ladin-speaking population. Starting with the 1923 school year, the only language that was taught in all elementary schools was Italian. The next year the norm applied to all middle and high schools, eventually having a complete Italian school curriculum[10]. The prohibition of German and Ladin became a problem for the population of SAA, to the extreme of prohibiting private German

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[5] Alber & Zwilling, 2017, p. 273.

[6] Carlà, Constantin, 2019, p. 159.

[7] Cossetto, 1988, p. 124.

[8] *Ibid.*

[9] Kučera, Konrád, 2022, p. 153.

[10] Cossetto, 1988, p. 125.

lessons with the prosecution and jail sentences for those that did not comply. Thus, clandestine schools started to prompt rapidly in almost every village of SAA[11]. Furthermore, political parties were forbidden and people's names became forcibly changed into Italian[12]. Authorities were so confident in their efforts that in 1927 a Bozen/Bolzano fascist-controlled newspaper declared that bilingual texts would no longer exist in SAA[13]. Notwithstanding, all the initiatives imposed by the fascist did not work as anticipated[14]. On an international level, in 1929 the Austrian government was calling for autonomy in SAA and in that respect gave an opinion to the League of Nations, condemning the treatment of Italy in SAA and expressing that minority rights as such are part of and not inconsistent with the so-called right of self-determination of people[15]. For SAA the twenty years (1919-1939) that followed the change of sovereignty from Austria to Italy could be described as a virtual repression of the German and Ladin character in all spheres of cultural, political, and civil life. Therefore, provoking some underground resistance and a profound mistrust toward the Italian government[16].

   Despite that in 1933, Germany denounces the Disarmament Geneva Conference and Hitler withdrew Germany from the League of Nations. Later in 1935 Germany entered into a naval agreement with Great Britain, resulting in a military increment over what was granted to Germany in 1919. One year later, German troops marched into the Rhineland to reoccupy the demilitarized area. Even though all these acts violated the Treaty of Versailles of 1919, the so-called powers did nothing to stop it[17]. Europe was heading towards war, when in 1936 during the Spanish Civil War, fascists in Spain started receiving military assistance from Italy and Spain, while the Soviet Union took sides with the Spanish Republic. During the WWII prewar period, diplomatic tensions grew between Germany and the United States. The U.S. withdrew its ambassador from Germany in 1938 after the violent events of the so-called *Night of the Broken Glass* on November 1937 and the disgust over the imposed racial policies[18]. Hitler responded with Germany withdrawing its ambassador from Washington. Despite that, the other powers did not protest Germany's actions, not even after the annexation of Austria with the so-called *Anschluss* in 1938. In 1939 Western democracies were put on the defensive with the German-Soviet Nonaggression Pact, which seemed like a coalition of anti-democratic powers between Germany, Italy, Japan, and now the Soviet Union. Therefore, in that year the U.S. began its

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[11] *Ibid*.

[12] Benedikter, 2009, p. 69; Lantschner, 2008, p. 6.

[13] Brannick, 2013, p. 85-86.

[14] Cossetto, 1988, p. 126.

[15] Tancredi, 2018, p. 204-205.

[16] Benedikter, 2009, p. 69.

[17] Iriye, 2013, p. 145 .

[18] *Ibid*., p. 161.

massive armament program to deal with the international crisis[19]. In June 1941, Hitler ordered the invasion of the Soviet Union and declared war on that country. On the Atlantic front, German submarines continued to sink American ships, actions that prompted the US Congress in October 1941 to approve the arming of US merchant vessels. Therefore, the entire world became divided into Allies and Axis, with a few nations maintaining their neutrality. After the Japanese attack on Pearl Harbor on December 7, 1941, the US declares war on Japan and a few days later on Germany and Italy. A turning point of WWII was on January 1943 when Soviet troops relieved the siege of Leningrad and won the Battle of Stalingrad with an enormous loss of human life on both sides. This was followed by the Allied invasion of Sicily in July 1943; and later in September 1943, with the invasion of Italy. The death tolls of WWII were never seen before in history, with so many deceased people in such a short time and estimates of 70-85 million deaths.

During WWII, SAA geographically located on the border between Italy and Austria was caught between the annexation of Germany and Austria with the so-called *Anschluss* and Mussolini's Italy. At an important meeting between Hitler and Mussolini in the Brenner/Brennero in 1940, both dictators agreed that Italy would have sovereignty over SAA. Additionally, concerning the German and Ladin-speaking populations of SAA, it was decided that they would continue to be relocated to Austria by the Nazis. Elections were held for the *Südtiroler/Altoatesini* to choose between Austrian or Italian citizenship with an overwhelming majority of 90% voting in favor of the Nazi *Reich*[20]. In reality, the so-called *Südtirol/Alto Adige Option* was an intense Nazi propaganda effort headed by Heinrich Himmler, commander of the *Schutzstaffel (SS)*. In the minds of the S*üdtiroler/Altoatesini*, the *Südtirol/Alto Adige Option* was kind of a plebiscite over Italian sovereignty in SAA that the majority of the population was overwhelming against, as explained before[21]. The *Südtirol/Alto Adige Option* (1939-1943) was a dire period for those who left SAA. The *Südtiroler/Altoatesini* were not welcomed in Austria; able men were rapidly indoctrinated and enlisted in the German military service and farmers were put to work in factories[22]. Almost all immigrants suffered a lack of proper housing, hunger, and discrimination[23]. A great number of them were deemed sick and together with many children were taken by the Nazi extermination program *Lebensunwerten Lebens* (Life unworthy of life) and murdered in a few years by so-called *savage euthanasia*[24].

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[19] *Ibid.*, p. 164.
[20] Lechner, 2013, p. 104.
[21] Willeit, 2020, p. 28.
[22] Lechner, 2013, p. 116.
[23] *Ibid.*, p. 116-117.
[24] *Ibid.*, 115.

Moreover, before the unconditional surrender on May 2, 1945, in Italy there were 18 years of fascist dictatorship; and after twenty months of civil war. During the end of WWII, the fighting became more dramatic in the peninsula, with two occupying armies confronting in a confine always shifting. Virtually having a civil war with two zones; one controlled by the German forces and another by the Allies. Italian society reproduced that demarcation, with fascists on one side and anti-fascists on the other[25]. The situation in Italy during WWII was complicated in the sense that Mussolini was overthrown on July 1943 while there was little fascist resistance that remained in power[26]. As a result, the country became officially a co-belligerent on the Allied side. At the same time, German troops occupied the north of the country and installed a puppet regime called *Repubblica di Salò* (1943-1945). Italy was in the middle of a civil war between fascists and anti-fascist that tore the population, as explained before. Punishment of collaborators, sometimes imagined, began before the war ended with individual executions or under instructions from the underground resistance[27]. As historian Tony Judt points out, the impact of these civil wars was huge because it meant that the war did not finish in 1945 with the departure of German troops. Also, this had the negative effect that even after the enemy was defeated, it remained in place with the memory of the conflict[28]. In Italy, unofficial reprisals were high, for example only in the regions of Lombardy and Emilia-Romagna during the last months of the war 15,000 persons were killed, continuing with several killings for the next years[29].

For SAA an important political discussion came on November 1943, when the Allies declared the intention of establishing an independent Austria[30]. Allies were worried about engaging in an invasion of SAA that could bring pro-German partisans taking over the fight. Therefore, on September 1944, SAA was declared a disputed area with a military occupation under the control of the Allies and martial law imposed on the population[31].

1.2. Postwar and the long-awaited autonomy

The liberation of SAA by the Allies was difficult and created disputes among the Italian Government, the *Comitato di liberazione nazionale* (CNT), and local partisans. In general, SAA was not looked at positively and had few supporters because during the last years of WWII it was very sympathetic to Nazism[32]. Finally,

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[25] Di Michele, 2020, p. 125.

[26] Judt, 2010, p. 33.

[27] *Ibid*., p. 42.

[28] *Ibid*., p. 35-36.

[29] *Ibid*., p. 42.

[30] Pfanzelter, 2020, p. 26.

[31] *Ibid*., p. 28.

[32] *Ibid*., p. 33-34.

an accord was agreed upon between the Allies and the Italian government, to implement protection measures for the German-speaking population of SAA. Thus the Allied military government established policies to balance the promotion of self-government with local public employees while at the same time avoiding exaltations towards Austria or Italy[33]. The *Südtiroler Volkspartei* (SVP) the political party that represented the German-speaking majority of SAA was founded in May 1945 and was soon sending emissaries to the Allies asking for self-government with more political representation in local matters[34]. In fact, at the end of WWII local politicians collected more than 200,000 signed petitions in favor of self-determination for SAA[35]. Also, in the spring of 1946, the Austrian Government presented to the Allies a formal petition of 150,000 signatures asking for a plebiscite in SAA to determine its political status[36].

In this context, amid the peace negotiations, the Allies refused the request by the *Südtiroler/Altoatesini* for self-determination; and also, an Austrian claim by the newly appointed Austrian President, Karl Renner that requested to the Allies that SAA returned to Austria's sovereignty[37]. Austria was seen differently by the Allies than Italy because Italians contributed to ending the war; by autonomously arresting Mussolini in 1943, and more notably fighting the Germans with the so-called *Regno del Sud*, numbering an army of 245,00[38]. As a result, Italy was considered and recognized as a cobelligerent while Austria was not.

As an alternative to recognizing self-determination for SAA, Italy and Austria during the Paris Peace Conference of 1946 agreed to the De Gasperi-Gruber Accord (also known as the *Paris Agreement*), included as an Annex in the multilateral Treaty of Paris of 1947[39]. The *Paris Agreement* was ratified on November 28, 1947, by Enrico De Nicola, the Provisional Italian Head of State, it was specifically formulated in terms of tutelage for the German population of SAA and the few multilingual towns in Trentino[40]. The *Paris Agreement* aimed at showing the international community the peaceful healing from the wounds of the fascist dictatorship and two world wars. It also gave importance to having two neighbors constructing a collaboration of peace, economy, and stability for Europe[41]. Even though the *Paris Agreement* was an important legislation, establishing equity and parity of rights to the German speakers of SAA it did not give special autonomy to the territory. At that time autonomy would have been very hard to accept by

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[33] *Ibid*.
[34] Cossetto, 1988, p. 126.
[35] Carlà, Constantin, 2019, p. 156-157.
[36] *Ibid*., 127.
[37] Pfanzelter, 2020, p. 43.
[38] Di Michele, 2020, p. 127.
[39] Decreto legislativo 28 novembre 1947, n. 1430, "*Accordo Degasperi-Gruber*" .
[40] Marcantoni, Postal, 2014, p. 235.
[41] *Ibid.*

Italian public opinion and politicians, looked at as a validating first step that could potentially separate SAA from Italian sovereignty[42]. On the Austrian side, it was generally recognized that giving administrative autonomy to a territory of another language would increase self-determination sentiments instead of reducing them[43]. Thus Austria was in favor of complete autonomy for SAA[44]. The major political parties and legal culture of Italy during this period were not in favor of an autonomy solution for SAA. Even Italian philosopher Benedetto Croce thought it would be difficult to concede autonomy only to German speakers[45]. Croce debated against autonomy, arguing that the *Paris Agreement* was "*frightening*" because it was done without an existing constitutional government in place, and favored a complicated form of regionalism without any prior political experience[46]. On the debate for the Constitutional Assembly on January 29, 1948, regarding autonomy for Trentino-Alto Adige, De Gasperi had to underline several times that Italian sovereignty was not being jeopardized by autonomy[47]. Furthermore, he argued that the *Paris Accord* was completely independent of the eventual statute of autonomy that was to be approved by the Italian Government[48]. Instead, the *Paris Accord* became key in Italian regionalism as the outline and inspiration for the democratic regionalism form of government in the constitutional text[49]. Even though De Gasperi believed that autonomy benefited economically and politically Italy, in reality, the aspirations for self-government of the *Südtiroler/ Altoatesini* were not taken into account[50].

Subsequently, the framers of the Constitution had the design of sharing competence jurisdiction between the regions, while establishing strong civil rights from the state[51]. Constructing a balance between the natural right based on the principle of autonomy with the principle of popular sovereignty, underlined by the newly created Constitutional Court. The decentralized nature of autonomy was also a reaction to the historical fact that under fascism these rights were unavailable[52]. Therefore, Autonomy was at the heart of the Constitution with articles 1 and 139[53]. Also, article 5 of the Constitution makes it clear that Italy

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[42] Di Michele, 2020, p. 136.

[43] *Ibid*.

[44] Tancredi, 2018, pp. 204-205.

[45] Di Michele, 2020, p. 134.

[46] Guastaferro, 2020, p. 22.

[47] *Ibid*.

[48] Lanzinger, 2016, p. 152.

[49] *Ibid*.

[50] Schiera, 1988, p. 115.

[51] Guastaferro, 2020, p. 21.

[52] *Ibid*., p. 215.

[53] Article 1 of the Constitution reads as follows: «Italy is a democratic republic founded on labor. Sovereignty belongs to the people and is exercised by the people in the forms and within the limits of the Constitution."and Article 139 of the Constitution reads as follows:

recognizes unity but does not rule out political autonomy: «The Republic is one and indivisible. It recognizes and promotes local autonomies, and implements the fullest measures of administrative decentralization in those services which depend on the State». The regional form of government established in Article 131 of the Constitution has two types of regions, 5 with special autonomy like Sicily, Sardinia, Valle d'Aosta, and Friuli-Venezia Giulia, and the remaining 15 regions with ordinary statues. In reality, during the drafting of the Constitution Italy had in the north 3 regions with ethnic minorities that were claiming self-determination and special autonomy: Valle d'Aosta with a French-speaking population, Friuli-Venezia Giulia with Ladin and Slovenian minorities, and Trentino-Alto Adige with German and Ladin. Also in the south, Sicily claimed independence and later autonomy along with Sardinia, which is considered linguistically distinct from the Italian mainland[54]. The Constitution framers by the end of WWII also had serious concerns with the role of a centralized structure that could permit the rise of fascism again where it found a voice. Therefore, to prevent this a more decentralized framework was proposed[55]. Regionalism was understood as an organized resistance against the process of a concentration of power[56]. Specifically, for SAA the Constitution has given a double degree of autonomy, one on a regional level and another provincial[57]. Particularly, regionalism has historically been an aspiration from the legislative power against the center[58]. As historian Pierangelo Schiera explains there has been a battle between territorial rights and the prince, the prince won because it had sovereignty towards the state but also externally in a system of values that responds to their social and material needs. It could be summarized as peace, order, welfare, and happiness[59]. In this sense, SAA enjoys a special position within the Italian Constitution because it represents an instrument for linguistic minority protection and also autonomy[60].

As a result of the First Statue of Autonomy for the Trentino-Alto Adige/Südtirol region, 71.5% of the residents belonged to the Italian language group. The representation of the German group in the regional legislative body was limited and the German population was unable to influence the decision-making process because they were outvoted[61]. Thus Trentino was favored in the First Statute of Autonomy and this caused angst among the majority of the population of SAA. For Trentino the autonomy statute is different because its population is almost

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"The form of Republic shall not be a matter for constitutional amendment».

[54] Benedikter, 2009, p. 67.

[55] Magliana, 2000, p. 44.

[56] Schiera, 1988, p. 8.

[57] Biscaretti di Ruffia, 1988, p.709.

[58] *Ibid.*

[59] *Ibid.*

[60] Alber, 2017, p. 278.

[61] Carlà, Constantin, 2019, pp. 157-158.

all Italian with only a small Ladin population, different than in SAA where the majority of the population is German and Ladin.

1.3. Terrorism and the construction of a second autonomy

Italy joined the United Nations (UN) on December 1955, and soon after the issue of the so-called *Südtirol/Alto Adige Question* was discussed at the international level. Specifically, Austria also admitted to the UN on that year, affirmed the role of the tutelage of SAA and efficiently opened the issue, tying Italy to the controversy[62]. On a domestic front, in 1956 the SVP was expressing intense dissatisfaction with the political situation in SAA, accusing the provincial administration of not taking into account the *Südtiroler/Altoatesini* linguistic minority interests and therefore not having effective autonomy in the province[63].

In the middle of this political turmoil, on the night of September 20 and 21, 1956 the first terrorist attack of many after took place in Bolzano, exploding with dynamite several columns of train tracks that ran from Bozen/Bolzano to Meran/Merano. Simultaneously, in the Huber Barracks, a big bomb was detonated causing severe damage, luckily without human victims[64]. Subsequently, on October 15, another bomb was set off in Bozen/Bolzano in front of the Don Bosco place of worship, specifically where the government would hold the XII Provincial Congress of the Christian Democracy, a leading Italian political party that Alcide De Gasperi founded and presided before his death in 1954[65]. Soon after, the national and international press coverage of terrorism in SAA was huge, and on October 27 and November 2, several bombs were discovered on trains from Munich to Meran/Merano[66].

Afterward, in October 1956 the Austrian government notified Rome of its concerns for the German-speaking population of SAA and formally requested to resolve the issue. On the other hand, the Italian government refused negotiations at that time, claiming that the current autonomy brought forth by the First Autonomy Statute, *Legge costituzionale 26 febbraio 1948, n.5*, as amended, and the Treaty of Paris of 1947 fulfilled all the requirements for Austria not to get involved with Italian internal affairs. Subsequently, after fruitless talks between both countries, Austria's foreign minister brought the SAA dispute before the United Nations General Assembly and a complaint before the European Convention of Human Rights, the issue was presented initially as one regarding minority rights and not self-determination, as would later be argued[67].

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[62] Rossi, 2015, p. 184.
[63] Marconi, Postal, 2014, p. 29.
[64] *Ibid.*, p. 30.
[65] *Ibid.*
[66] *Ibid.*, p. 31.
[67] Magliana, 2000, pp. 37-38.

Consistently, Rome decided to keep a position contrary to opening the issue of the *Südtirol/Alto Adige Question* on an international level or internally with legal procedures that would have caused risks and instability to the country[68]. The fear of having a formal position on the UN would result in an embarrassing situation for the whole western block with regards to self-determination, which would cause comparisons with other countries like Ireland, the auto-determination of Gibraltar, the independence of Algeria, or even Pan-Germanism[69]. During 1956 in the UN General Assembly, there was an atmosphere of popular participation and high tensions on the subject of SAA, with all the media coverage of the revolts during public acts and on public property, and with the first terrorist attacks, as explained before.

In such a context, Austria registered as the order of the day the *Südtirol/Alto Adige Question* during the XV Session of the UN General Assembly (1960-1961). The request was done in the representation of the so-called *Austrian Minority* of SAA[70]. Thus stating that the *Südtiroler/Altoatesini* were in danger of grave and systematic violations of their minority rights in Italy. The controversy got the attention of the UN because, in 1960 with the so-called *Year of Africa*, 17 African nations got their independence. Therefore, the debate based on the right for auto-determination of SAA was relevant in this scenario. In 1961 important discussions and decisions on auto-determination and the right of self-determination were also held against the backdrop of 5 additional African nations gaining independence. SAA was in the middle of this with a history of cultural indoctrination, political persecution, education to another language, and a population movement with the *Südtirol/Alto Adige Option* (1939-1943)[71]. Moreover, precedents of ethnic demands for increased autonomy or secession were the cause of more than a third of all civil wars since the end of WWII. To appease the separatist and maintain sovereignty and territorial integrity, governments turned to forms of self-government[72]. The issue with SAA did not only affect foreign relations between Austria and Italy but also several other states, including the world powers that were cautious that the controversy could have repercussions and precedents with newly formed countries[73]. Italy favored peacekeeping operations of the UN, but excluded a military operation in Katanga in 1960, avoiding interference in the internal affairs of another sovereign country. Thus, Italy was very careful not to create precedents for a UN intervention in SAA in the case Austria insisted on it. Therefore, the *Südtirol/Alto Adige Question* was also deemed menacing to peace and international security.

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[68] Rossi, M., 2015, p. 185.

[69] *Ibid.*

[70] *Ibid.*, p. 187.

[71] *Ibid.*, p. 181.

[72] Schulte, 2021, p. 1.

[73] Rossi, 2015, p. 182-183.

On a local level, terrorist attacks in SAA continued on January 1961, with an attack in Ponte Gardena/Waidbruck blowing with a bomb a Mussolini statute. Soon after in February 1961 another sabotaged train line from Auer/Ora to Meran/Merano[74]. The most dramatic attack was on June 11 and 12, also known as *Feuernacht*/*Notte dei fuochi* which also celebrates the Feast of the Sacred Heart that historically has been associated with Tyrolean guerilla warfare during the Napoleonic wars. On that day, several explosions were set up in Bozen/Bolzano, leaving the city without electricity and the population in panic. Also, two major train tracks were damaged. The result of the *Feuernacht*/*Notte dei fuochi* was one death and 37 attacks with great material damage[75]. On an international talk between Austria and Italy on June 24, 1961, Italy accused Austria of having an ambiguous position against terrorism in SAA[76]. Also, on June 1961, the Italian law enforcement agency *Carabinieri* was caring out a major police operation on the terrorist attacks in SAA. During the investigation, information came out on how militants were armed and trained in a sabotage school in Innsbruck, Austria. As a result, several arrests were done in SAA, including prominent local politicians[77]. More arrests followed, accusing more politicians and numerous members of paramilitary organizations. Search and seizures produced more than two tons of explosives, kilometers of fuses, thousands of detonators, timers, munitions, and many fire weapons[78]. In 1961 Austria brought again the *Südtirol*/*Alto Adige Question* to the UN and later on that same year, the Italian Government established the so-called *Commission of 19* with a mandate to propose solutions for the conflict[79].

Soon after, the General Assembly of the UN in 1961 created the Special Committee on Decolonization with Italy as a member, a position held for a period of 10 years. For Italy membership was looked at as a positive thing with a new country being admitted to the UN contributing to international law with an important legal tradition. Also, it meant having prestige and political relations with the Arab and African nations[80]. On the other hand, Italy domestically had the *Südtirol/Alto Adige Question* without a plausible solution. Officially Italy held to the position that the principle of self-determination did not apply to the case of SAA, an issue that rested in the concept of minority rights[81]. Also, Italian positions in the UN were careful not to compromise and influence the creation of

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[74] Marconi, Postal, 2014, p. 45.

[75] *Ibid.*, pp. 47-48.

[76] *Ibid.*, p. 51.

[77] *Ibid.*, p. 53.

[78] *Ibid.*, p. 54.

[79] Carlà, Constantin, 2019, pp. 157-158.

[80] Tancredi, 2018, p. 198.

[81] *Ibid.*, p. 199.

precedents that could later be evoked to the *Südtirol/Alto Adige Question*[82]*.* Based on UN Resolution 1497 for the XV General Assembly, Italy rejected the Austrian theory of self-determination in a way to include minority groups[83]. Looking as a way of broadening the concept of self-determination to include minority rights[84]. On November 1961, UN Resolution 1661 of the XVI Session of the General Assembly stated that both Austria and Italy did not negotiate to satisfaction the issue and that the dispute remained unresolved, calling for: «[…] further efforts by the two parties concerned to find a solution […]»[85]. Both resolutions did not include references to self-determination or minorities[86]. Concerning Austrian-Italian foreign relations, in November 1961, Italy presented the same arguments as before, with the difference that it added Vienna's negligence in stopping and encouraging terrorism in SAA[87]. On the other hand, Austria accused Italian law enforcement of giving tortures, and judges of passing impartial and prejudicial sentences to *Südtiroler/Altoatesini*[88]*.*

As a consequence of terrorism in SAA on December 6, 1961, there was a notorious criminal case held in Graz, Austria, with dozens of accused and 4 Austrian citizens found guilty of providing weapons and explosives linked to the attacks[89]. During that trial, it was determined that Austria's government had some responsibility. Testimonies emerged on how the training of terrorists was done in Austria, and that also explosives were produced in that country. Furthermore, it was revealed that high-ranking Austrian ministers knew about the terrorist activities connected to SAA for many years[90]. At the end of October 1963, the *Südtiroler/Alto Adige Question* was discussed again with Austria affirming that the Austrian Government had evidence demonstrating tortures to *Südtiroler/Altoatesini* by Italian law enforcement. From that moment talks between both countries regarding the *Südtiroler/Alto Adige Question* ceased and after several years they finally got into an accord[91].

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[82] *Ibid.*

[83] UN Resolution, General Assembly, 1497, October 31, 1960, gives the following recommendation to Italy and Austria: «2. Recommends that in the event of the negotiations (…) not leading to satisfactory results within a reasonable period of time, both parties should give favourable consideration to the possibility of seeking a solution of their differences by any means provided in the Chapter of the United Nations, including recourse to the International Court of Justice or any other peaceful means of their choice».

[84] Tancredi, 2018, pp. 204-205.

[85] UN Resolution, General Assembly, 1661, November 28, 1961.

[86] *Ibid.*

[87] Rossi, 2015, p. 197.

[88] *Ibid*.

[89] Marconi, Postal, 2014, p. 61.

[90] *Ibid*.

[91] *Ibid*., p. 69.

Previously, the Italian government had already established a special commission, the so-called *Commission of 19*, mentioned before, that had the mandate of achieving an autonomy solution for SAA. Thus in 1969 a so-called *package* including 137 measures was presented and accepted by the SVP, the main political party in SAA, with a small margin of 52%[92]. Opponents of the *package* rejected it because an approval meant renouncing their goal of self-determination[93].

After the enactment of the Second Autonomy Statute in 1972, the international controversy got resolved with great success for SAA and also with both nations involved. As a result, in January 1972, the Second Statute of Autonomy came into force, transferring all legislative and administrative powers from the Autonomous Region of Trentino-Alto Adige/Südtirol to the Autonomous Province of Bozen/Bolzano and also to the Autonomous Province of Trento. Therefore, SAA gained the maximum local autonomy guaranteed by the Constitution. But also, constructing a political solution that brought a peaceful solution to the tensions of an ethnic-linguistic conflict. Autonomy in SAA is based on the power-sharing between the main linguistic groups, setting a balance with separation and cooperation[94].

2. Sovereignty in the context of Südtirol/Alto Adige

It is widely recognized that the rights and obligations that are present in the status of sovereignty have come to serve as a powerful political weapon that commands worldwide respect[95]. Originally the term sovereignty referred exclusively to the absolute power of ruling monarchs, but over time sovereignty came to denote the independence of states with their supremacy at home and liberties to establish relations with other countries. Generally, the source of sovereignty in international law comes from the power that originates in the people themselves who form their government[96]. Therefore as philosopher Herman Heller points out, popular sovereignty is not a mere fiction but a political reality that can only be understood with the separation of powers[97]. Accordingly, Article 1, second paragraph of the Constitution, clearly states that: «Sovereignty belongs to the people and is exercised by the people in the forms and within the limits of the Constitution». Moreover, in foreign relations sovereignty is also very relevant because it helps to create an order of international status, the territorial extension of a state is determined by its sovereignty over the people living there,

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[92] Alber, Zwilling, 2014, p. 38.
[93] *Ibid*.
[94] *Ibid*., pp. 44-45.
[95] Magliana, 2000, 20-21.
[96] General Nature, 1963, p. 233.
[97] Heller, 1971, p. 266.

thus contributing to state power.[98]

As a result of the intensity and gravity of sovereignty-based conflicts related to terrorism violence, the lack of effective legal norms has given rise to new approaches to resolving these conflicts[99]. Thus the approach of *earned sovereignty* is used by international organizations and powerful states in conflict management[100]. Also, in places where violent ethnic conflicts have risen, territorial self-government or power-sharing has been used as the basis for institutional agreements[101]. There is a difference between power-sharing and autonomy because autonomy distributes power away from the central state, while power-sharing aims at political inclusion and integrating segments of society into decision-making[102]. Some studies have found that a high degree of self-government is necessary for the success of autonomy[103]. In this sense, self-government has prevented the exploitation of rival groups by reducing the competition for state power, ensuring recognition, and in turn reducing their separatist desires[104].

However, sovereignty-based conflicts are more likely to be resolved by state self-determination guidelines, diplomats, and policy analysts. On the other hand, the so-called *earned sovereignty approach* to sovereignty conflicts is an in-between political status for an entity that does not qualify traditionally as a sovereign state[105]. Examples of so-called *quasi-sovereign* states have been part of Central European history, as Michael Scharf explains with German *quasi-sovereign* states members of the Federal State of Germany before WWI[106]. *Earned sovereignty* is also used as a conflict resolution process that creates opportunities for the parties to accord on basic requirements that the emerging sovereign entity must meet during an intermediate phase to then discuss the final political status[107]. Therefore the emerging sovereign during the process will gain internal and external powers as it moves forward[108]. As peace negotiator Paul Williams clarifies the conflict-resolution process fundamentally seeks to settle centuries of tension between the concepts of self-determination and sovereignty by managing the transfer of sovereign authority and functions from the state to a sub-state entity[109]. Thus, *earned sovereignty* seeks to provide a mechanism through a process of transition to independence or heightened autonomy in a way that does not threaten the

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[98] Fowler, Bunk, 1995, p. 32.

[99] Williams, Pecci, 2004, p. 349.

[100] *Ibid*.

[101] Felix Schulte, 2021, p. 14.

[102] Felix Schulte, 2021, p. 16.

[103] *Ibid*.

[104] *Ibid.,* p. 14.

[105] Scharf, 2003, pp. 374-375.

[106] *Ibid*.

[107] Williams, Haymann, 2004, p. 438.

[108] *Ibid*.

[109] Williams, 2003, p. 388.

parent state and the international community. The *earned sovereignty* approach requires the consent of the state and has been applied in conflicts that have to do with the protection of a majority group that later becomes a minority in the state. Notwithstanding, those that prefer an approach that is based on the right of self-determination *vis-à-vis* one that is based on sovereignty, most likely perceive *earned sovereignty* as a means of making it harder for independence[110].

Likewise, during the so-called unification of Italy in 1861, an important debate took place on how to structure the state. Thus, centralization was viewed as the only viable solution that would not disintegrate[111]. In this context, the lesson imparted by Pasquale Stanislao Mancini in 1851 *Della nazionalità come fondamento del diritto delle genti*, established that nationalities and not the state should be considered the basic subject of international law. Mancini argued that nationalities were natural and necessary subjects of internal law in contrast to the state which was artificial and fictitious[112]. Mancini's ideas also marked the beginning of Italian international law[113]. For Mancini national character is defined by geography, climate, physiology, traditions, and also what he calls a moral force. Therefore, when referring to culture, he reflects on its national conscience, the legal construction of auto-determination, and political sovereignty for an ethnic community and its relations with other nations, regulated by international law[114].

In particular, European politics in general have dealt with many problems relating to sovereignty. Even nowadays, as historian Ernesto De Cristofaro explains there is a new pulse, what he describes saved sovereignty in the constitution of Europe[115]. International treaties can be analyzed as the *ubi consistam* of European sovereignty and are not intended in terms of abstract norms, more likely as a continuous desire of opening toward politics[116]. In reality in Europe, there is a diffused concept of sovereignty that interacts with an asymmetry between treaties and sovereignty. This dichotomy is therefore resolved in the course of a contractual scheme. The approach analyzed by economist Jeremy Rifkin underlines the important role that new technology of communications has in the deconstruction of European state sovereignty, allowing actors in the base of the hierarchy of power to connect and relate with their counterparts thanks to a universality that prescinds any mediation[117]. Specifically in the European Union (EU), there is a network of so-called informal actors that exercise power, including subjects that do not have the power of the state; hence, cannot dominate but

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[110] Williams, Pecci, 2004, pp. 350-351.
[111] Magliana, 2000, pp. 37-38.
[112] Tancredi, 2018, pp. 192-193.
[113] Stasi, 2019, p. 35.
[114] *Ibid.*, p. 23.
[115] De Cristofaro, 2007, pp. 130-131.
[116] *Ibid*.
[117] *Ibid*.

instead can contribute to the flow of the process. An example of this can be found in the European Citizens' Initiative which has several successful initiates starting with *Right2Water* which was responsible for the Drinking Water Directive (See: Council Directive 98/83/EC of November 3, 1998, as amended and Commission Directive (EU) 2015/1787 of October 6, 2015).

Accordingly, another important function of sovereignty is to preserve autonomy in political decision-making, with some space for the difference at a community level within the state[118]. On the other hand, autonomy is decreasing because of globalization in the sense that cultural, economic, and political differences converge with state sovereignty with some undesirable traits such as the suppression of political dissent or religious freedom, the subordination of women, and the preservation of corrupt elites. Also, there is a fading in the traditional cultural and economic basis of sovereignty, therefore making it necessary for legal harmonization accordingly[119]. In that sense legal scholar, Benedict Kingsbury argues that it could be expected that people who experience a diminution in their legal force to counter those harmful changes from globalization, for example, can rebel. As Herman Heller explains, the specific object of politics consists in always organizing the opposition with the people's will[120]. Moreover, it is accepted in constitutional theory that a rule enforced by a legitimate authority can be partially or completely disregarded by the society it was applied by rebelling, ignoring, or not complying[121]. As a result, constitutional doctrine establishes that a rigid constitution, such as the Italian Constitution, has legal procedures for constitutional revision[122]. Thus, a principle that is not systematically effective is pointless, based on the legal concept of *contradiction in adiecto*[123]. As a result sovereign states are open to the prospect of some autonomy for the people to disagree in a structured political space[124].

On the other hand, sovereignty in the context of autonomy could appear to some as terms in contrast. For example, when referring to Scotland, whenever the term is used, it tends to contrast with full national sovereignty, as if it would become a separate independent nation[125]. Notwithstanding having major decentralization has led to some autonomy against national representation. Hence, when the relationship between autonomy and sovereignty is not always linear it may seem as having a double contradictory value. In this case, it had the value to exalt the power of the government with its limitations to dominate

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[118] Kingsbury, 1999, p. 93.
[119] *Ibid*.
[120] Heller, 1971, p. 182.
[121] Rescigno, 1999, p. 58..
[122] Biscaretti di Ruffia, 1988, p. 666.
[123] *Ibid*.
[124] *Ibid*., p. 89.
[125] Feinberg, 1983, p. 447.

others; while at the same time having a diseconomy in a systematic limitation of power[126]. Sovereignty and political autonomy are distinguishable. Autonomy on one hand is limited and incomplete, while sovereignty is complete and absolute. Therefore, an autonomous government administrates itself in some aspects, but not in others. In comparison, sovereign states do not renounce their right to govern entirely when it delegates autonomy[127].

Altogether, there are contradictions in the concept of sovereignty. Following this line of thought, philosopher Joel Feinberg calls the phrase sovereign state a *redundancy* because a nation is naturally made of a group of persons, unified by a common culture that occupies a specific territory and establishes a system of law or authority. Therefore, there is a need to become a state to survive as a nation[128]. According to philosopher Michael Foucault in the old political system, there was a sovereign and a subject, with both having a legal and economic relationship between them, where the sovereign was obligated with their protection. Then during the period of liberalism, there was a mechanism in which in every instant there is the arbitration of liberty and the security of the individual gravitates around the idea of fear[129]. It was during the industrial revolution that the original contract of rights and obligations ended. Later with the birth of utilitarianism by Jeremy Bentham, there is perpetual surveillance with an internal homology of institutional control of the educational institutions and health assistance[130]. Nowadays, there is the question of how can there be sovereignty while at the same time having a community of states in the European Union. As philosopher Biaggio de Giovanni explains the problem with European sovereignty is that it has a deep crisis with the traditional term of sovereignty, multiplying this within the limits of state power, institutions, and its functions; therefore, making it a crisis requiring the need to re-think about the future life of Europe, and being this in itself its hidden virtue[131].

3. A critical theory of autonomy in Südtirol/Alto Adige

Rousseau and Kant strived for the notion that autonomy was unifying practical reasoning[132]. Thus when the sovereign interacts with human rights and popular sovereignty, these two concepts would mutually interpret each other[133]. In the crisis of the modern state, the dominant idea between state and autonomy makes it prevalent that sovereignty and uniformity are in favor of autonomy

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[126] Guastaferro, 2020, p. 217.

[127] *Ibid*., p. 450.

[128] Guastaferro, 2020, p. 217.

[129] De Cristofaro, 2007, p. 123.

[130] *Ibid*.

[131] De Giovanni, 2013, p. 375.

[132] Habermas, 1994, p. 27.

[133] *Ibid*.

because it is symbolic, participative, and diverse[134]. In that regard, Article 5 of the Constitution unequivocally favors autonomy:

> The Republic, one and indivisible, **recognizes and promotes local autonomies**, and implements the fullest measure of administrative decentralization in those services which depend on the State.**The Republic accords the principles and methods of its legislation to the requirements of autonomy and decentralization** (added emphasis).

Nevertheless, it is paramount to distinguish that there is an important difference between sovereignty and autonomy. That is the case when the authority of the sovereign state makes the autonomous region a revocable privilege. It is therefore the sovereign that grants autonomy freely and also has the power to withdraw it[135]. As Joel Feinberg explains: «Local autonomy is delegated; sovereignty is primal and underivative. Sovereignty is, in a sense, an ultimate source of authority»[136]. Early references by Thucydides recognized that even though autonomy was seen in Ancient Greece as equal to sovereignty, in reality, autonomy was limited to a community within a larger polis[137]. More recently, philosopher Jürgen Habermas explains that the concept of autonomy in Kant was a response to Thomas Hobbes's attempts to justify a system of rights based on the sovereign imparting commands, without the aid of moral reason while enjoying the wealth purchased by their labor[138]. The claim for autonomy has also been formulated in revolutionary times as claims against absolute power monarchies. Specifically, as a belief that persons have the right to certain autonomy and freedoms and therefore that the state should respect and guarantee[139]. John Locke for example wrote about how the people decide when it is necessary to rebel because they have the ability to act as a community that survives after the dissolution of the government[140]. In some socialist countries, such freedoms can only be enjoyed if several socio-economic conditions are met[141]. Nevertheless, in the context of self-determination, within moral and/or political autonomy, Habermas reminds us about the importance of creating adequate legislation: «[…] the source of all legitimacy lies in the democratic lawmaking process: and in turn calls on the principle of popular sovereignty»[142]. Thus echoing Rousseau's *Social Contract* concepts of the sovereign will manifested thru laws: «[…] obedience to self-

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[134] Schiera, 1988, p. 16.

[135] Feinberg, 1983, p. 448.

[136] *Ibid*.

[137] Schulte, 2021, p. 18.

[138] Habermas, 1994, p. 21.

[139] Sap, 2017, p. 49.

[140] Laslett, 1963, p. 114.

[141] Sap, 2017, p. 49.

[142] Habermas, 1994, p. 20.

prescribed law is freedom»[143].

As a result of modern French philosophy, the function of the singular is replacing that of the universal, to be understood as the single sovereign or the monarch in another historical period[144]. In Alan Badiou's rationality, this individual becomes the singular sovereign by recognizing and establishing his or her fidelity, to what Badiou refers to as an *evanescent event*, that is not recognized or specified by a situation that takes place, for example, a political revolution[145]. Badiou's work has caused great interest because it connects philosophical terms with a philosophy of the absolute generic; a philosophy of truth, without resourcing to standardization. As philosopher Peter Hallward points out: «A philosophy of the event without recourse to historicism a philosophy of justice without recourse to rights»[146]. Badiou sees the problem of undoing absolutism as a relationship between sovereign power and social interest. In this case, the sovereign lacks a mutual relationship with others, therefore is without an object and its simple existence is what legitimizes his rights toward its subjects[147]. Badiou explains this in *The Three Negations* (2008) essay, published in the Cardozo Law Review, a law journal that has played a fundamental role in the Critical Legal Movement with other articles, for example, Jacques Derrida's *Force of Law: The Metaphysical Foundation of Authority* (1992).

Whereafter, philosopher Antonio Calcagno applies *The Three Negations* analysis to how National Socialism in Germany became a contradiction in Weimar constitutional law and a state of exception that legitimized Adolf Hitler, seizing power thru law, thus establishing a new sovereign that gave rise to another event called Nazism[148]. In other words, the law justified the extermination of millions of innocent people, with a sovereign state of exception and a contradiction that produced a revolution. The result was altering the whole world and systematically killing communists, Jews, homosexuals, Gypsies, and others considered non-human[149]. In contrast with social democracy, which believes that sovereignty resides in the people, Nazi political theorist Carl Schmitt reproduces Hobbes's attempts to justify a system of sovereignty that commanded without morals to its benefit and personal interests. As a result, Schmitt places sovereignty in the *Nazi Reich* with the *Führer* commanding the people's will[150]. Therefore, for the Nazis sovereignty of law was meant only for the men who administered the law:

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[143] Rousseau, 2002, p. 167.
[144] Hallward, 1998, p. 87.
[145] *Ibid*.
[146] *Ibid*.
[147] *Ibid*., p. 100.
[148] Calcagno, 2016, p. 200.
[149] *Ibid*., p. 200.
[150] Bendersky, 1983, pp. 34-37.

> (...) the rule of law means nothing else than the legitimization of a specific status quo, the preservation of which interests particularly those whose political power or economic advantage would stabilize itself in this law. (...) In this case it is clear to a politician that **the rule or sovereignty of this type of law signifies the rule and sovereignty of men or groups who can appeal to this higher law and thereby decide its content and how and by whom it should be applied** (added emphasis)[151].

Even though Badiou's opinion of National Socialism or Nazism is that of a state of exception, he believes that it was not an *event* like the Mao and Stalin revolutions. Therefore, because the sovereign state of exception in National Socialism was legal, it is fully present and it appears as an identity that runs the high risk of producing hateful change that still to this day has a worldwide following[152]. Thus, it is conceivable to understand the sovereign as a legal subject with the force of bringing about a new *event*. Destroying the established order and introducing a new form of discourse with the creation of new laws that appear to be in contradiction with the old establishment[153]. In *The Three Negations*, Badiou explains the relationship between law and an event:

> The lesson is that, when the world is intuitionistic, a true change must be classical, and a false change paraconsistent. **So the relationship between law and event is intelligible only if we clearly distinguish the three different meanings of negation**. A truth, as a set of consequences of a change, is certainly transgressive in a classical context. But if the context is intuitionistic, the world continues with the same general laws, with some differences in their application. And if the context is paraconsistent, the change is only a fiction (added emphasis)[154].

Badiou does not see the law as an *event*, but instead as structured by the *event*. Therefore, when the law is viewed as one part of multiple elements that create an *event*, the intensity of the *event* is what conditions the law[155]. When Badiou refers to law it is in the context of his theory of justice as a particular or empirical injunction, a legal status that opens the possibility for another law and subsequently another law[156]. Badiou refers to revolutions to illustrate this theory of the *event*. There is also no opposition between law and *event*, but instead, an internal division that spirals wherein the *event* emerges[157]. When comparing Badiou to Derrida they both bring the law to a point of non-law or *non-droit* that it is internal to the law itself[158]. But for Badiou to have the possibility of justice,

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[151] Schmitt, 1996, p. 67.
[152] Calcagno, 2016, p. 200.
[153] *Ibid*., p. 194.
[154] Badiou, 2008, p. 1883.
[155] Calcagno, 2016, p. 192.
[156] Bruno, 2018, p. 1918.
[157] *Ibid*.
[158] *Ibid*, pp. 1906-1907.

it is necessary to interrupt the law by destroying it, while Derrida on the other hand employs deconstruction. Therefore, for Badiou destruction must meet the non-law to sweep away deception[159]. Destruction, therefore, identifies how the law lacks its place, showing its excessive force and giving rise to a new law.

4. Final thoughts

A reasonable conclusion regarding autonomy in SAA is that it is distinct from other Italian provinces. It is more comparable to the Province of Trento but not sharing a notable linguistic minority and also with a different contemporary history. Nevertheless, the form of regionalism for Trentino-Alto Adige/Südtirol, which includes the Province of Bozen/Bolzano does not entail more power for SAA. This would be contradictory to autonomy itself. Instead, reforms have been geared towards less dependence on Rome[160]. Constitutionalist Roberto Bin describes it as a statutory system that has a centrifugal configuration, very different from what applies to the rest of Italy[161]. It is based on a disconnection that is also united with an intense relationship of cooperation with a unidirectional exercise of power[162]. Furthermore, constitutionalist Paolo Biscaretti di Ruffia even describes it as having a double autonomy, based on the fundamental declaration of full parity of civil rights to citizens, regardless of their linguistic minority[163].

   From a legislative level, SAA is given far-reaching autonomy and independence compared to other Italian regions[164]. In this sense, the SVP has applied the formula of dynamic autonomy, where the autonomous powers given to the province are a consequence of the political constellation happening at a national level, and not necessarily at a local level[165]. Nowadays, in Italian politics they are discussions on full autonomy for regions, within the provinces' political discourse, so for example, politicians from SAA are also considering a possible third statute of autonomy with more powers[166]. Also, there are talks of integral autonomy, deriving from the sovereignty of the state, giving more prerogatives to SAA recognized by law in the exercise of more autonomous power[167]. An idea more in tone with Rousseau's Social Contract, where the sovereign are the people assembled by their self-imposed laws, hence the sovereign will not issue any unnecessary or burdensome laws. When comparing with its Austrian neighbors, as an example, SAA has more

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[159] *Ibid*., p. 1911.
[160] Magliana, 2000, p. 58-59.
[161] Bin, 2003, p. 137.
[162] *Ibid*.
[163] Biscaretti di Ruffia, 1988, p. 709.
[164] Magliana, 2000, p. 51.
[165] Alber, Zwilling, 2014, p. 39.
[166] *Ibid*.
[167] Marcantoni, Postal, 2014, p. 310.

power than the Land Tyrol federated state[168]. Both the Bozen/Bolzano and Trento provinces are more like regions in some aspects, having their financial budgets and legislative as well as administrative competencies. On talks of reforms, the Trento province has been resistant to the elimination of the current regional structure in the Second Autonomy Statute, as amended, fearing that it could lose its status as an autonomous province because Trentino does not have numerous linguistic minorities that could justify maintaining a special status[169].

Even though autonomy in SAA is seen as innovative, some critics have argued that its solutions are based on the conceptualization of language, culture, and identity that in their opinion are considered dubious, hence newer solutions are required to take into account multiplicity of identifications to replace current ideas of cultural identity[170]. Also, taking into account that autonomy initially was designed for the peaceful cohabitation between German, Ladin, and Italian languages and arguing the social changes in SAA during the last decades have prompted new challenges at regional and European levels[171]. An opinion that I do not subscribe to, because it is based on a sociological hypothesis that does not take into account the importance of cultural identity and language of the Germans and Ladins speakers, that historically have resisted brutal attempts of acculturation with success, and also defend sovereignty thru autonomy with a notable population majority of 74%[172]. Therefore, future eventual changes to autonomy should be considered from a coherent historical context and a constitutional framework, taking into account current social changes but not underestimating the rich and important history in all the cultural manifestations of the German, Italian, and Ladin inhabitants of SAA. In this sense, autonomy and self-governance provide a way for self-determination[173]. Internationally self-determination through autonomy or self-government has been important in resolving ethnolinguistic conflicts.

Additionally, autonomy in SAA has brought forth economic welfare. A transformation that prompted SAA as the wealthiest of all Italian provinces, a far cry from the period during the change to Italian sovereignty. As a result of autonomy, the SAA provincial government allocates to the province 90% of all taxes collected[174]. Also, the gross domestic product of SAA is the highest in Italy and ranks 21 in the European Union regions[175]. In the context of the European Union (EU), SAA was classified in 1975 by the EU as a 90% rural mountainous area,

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[168] Alber, Zwilling 2014, p. 40.
[169] Magliana, 2000, p. 60.
[170] Brannick, 2013, p. 14.
[171] Carlà, Constantin, 2019, p. 115.
[172] Benedikter, 2009, p. 77.
[173] Maglina, 2000, p. 20-21.
[174] *Ibid*., p. 169.
[175] *Ibid*., p. 172.

a so-called *Objective 5-B Area*, making it eligible for environmental protection funds, agricultural grants, grants to improve vocational training, grants to encourage traditional handcrafts, and also grant to ameliorate[176]. Afterward, the Single European Act (*OJ L 169, 29.6. 198)*, approved by the European Council in December 1985, regions expanded and the SAA provincial government started lobbying for EU community policies. The result has been advantageous to SAA, just between 1993 and 1999 the government of SAA received 96 million Euros in European structural funding[177]. Since 1990 the province of SAA has had a department that has been devoted exclusively to instructing residents on how to benefit from European resources[178]. In addition, with this objective SAA together with Trento and the Austrian, federated State, Land Tyrol, has maintained since 1995 an office in Brussels under a multinational collaboration project by the name of EUREGIO (European Region Tyrol-South Tyrol-Trentino). Critics of the EUREGIO have argued that an international treaty is needed between Austria and Italy to establish constitutional principles[179]. Nonetheless, EUREGIO has been very successful in obtaining EU funding which has resulted in wealth for SAA and applying autonomy in other areas.

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[176] Judt, 2010, p. 532.
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