ITALY

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I. HISTORICAL PERSPECTIVES

Italy emerged in the 1860s as a unitary state by joining, under the king of *Piemonte*, what had been the territories of Modena, Parma, Tuscany, Austrian-occupied Lombardy-Veneto, the Papal States and the Kingdom of the Two Sicilies. The governmental structures in these territories collapsed at the moment of unification, thereby reinforcing centralization of government in the Piemontese-created State.[1] The *Piemontesi* imported French administrative law, not to assure individual rights, but rather to assure effective administration of State power. Italy's first constitution, the *statuto Albertino*, was that of a ruling monarch according the populace limited rights. The monarch's ability to change its constitution at will exemplified the State's brittle quality.

This weakness facilitated emergence of the fascist State in the 1920's, with popular ratification, and increased centralization. Its constituent administrative units were Italy's 103 provinces, each under an appointed prefect. Establishment of national management, labor and professional "corporativist" associations worked to overcome regional and other heterogeneity of Italian society, and facilitated centralization of power.

Italy's first post-World War II referendum established itself as a Republic, eliminating the monarchy tainted by association with fascism. In reaction to the previous regime's disregard of rights and its centralization of authority at the State, *i.e.*, central, level, the subsequent 1948 Constitution proclaimed fundamental principles and rights, provided for Regions, and established a Constitutional Court to protect its principles and rights and its Regions' sphere of activity. In contemporary Italy, the term "State" can be understood as referring to the national, central power, and the Regions can be understood as the constituent member units of the State.

The Constitution provides for twenty Regions, divided into provinces and municipalities. Five outlying Regions (Friuli-Venezia-Giulia, Sardegna, Sicily, Trentino-Alto Adige/Südtirol, and Valle d'Aosta) were accorded so-called Special Statutes by the Constitution's Article 116, that afforded them recognition of some immediate autonomy upon the Constitution's adoption, reflective of comparative geographic isolation, prior legislative and administrative self-sufficiency, and linguistic minorities.[2] Trentino-Alto Adige/Südtirol and its provinces Trento and Bolzano also benefit from treaty guarantee of autonomy.[3]

National political considerations regulated the labored pace of establishing the Regions as meaningful entities within the State. The Christian Democrats, recognizing that they would maintain national

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[1] Louis F. Del Duca and Patrick Del Duca, An Italian Federalism?—the State, its Institutions and National Culture as Rule of Law Guarantor, 54 AMERICAN J. COMP. LAW 799 (2006) (publishing parts of the present work); Daniel Ziblatt, STRUCTURING THE STATE: THE FORMATION OF ITALY AND GERMANY AND THE PUZZLE OF FEDERALISM (2006).

[2] On the legal status of linguistic minorities in Italy, see Patrick Del Duca, CHOOSING THE LANGUAGE OF TRANSNATIONAL DEALS: PRACTICALITIES, POLICY AND LAW REFORM 105-106, 156-159 (American Bar Association, 2010).

[3] *See* Lorenzo Dellai, *Ai confini dell'Italia e al centro dell'Europa / At the Frontier of Italy and at the Centre of Europe*, in NATION, FEDERALISM AND DEMOCRACY: THE EU, ITALY AND THE AMERICAN FEDERAL EXPERIENCE 19-24 (Fabbrini, Sergio, ed., 2001).

predominance with coalition partners, delayed implementing the constitutional provisions for developing the Regions, while the Communists, excluded from national power, advocated empowering them.[4] The end of the Cold War changed the Italian political landscape, allowing Italy to define itself as a state comprised of Regions with the beginnings of meaningful political autonomy. The divide between Christian Democrats and other parties of the center left who held power on the national level throughout the post war period on the one hand, and the communists who achieved power only in certain regions on the other hand, became mooted by the end of the Cold War. This allowed development of the consensus required to implement the constitutional provisions that contemplated Regions. National legislative measures gave substance to the Regions,[5] consolidated by a constitutional amendment in 2001, and accompanied throughout by decisions of the Constitutional Court supportive of development of the Regions.

Nonetheless, the Italian State retains elements of national control typical of a unitary state. Its courts are national, as are its legal professions and training. Its civil, commercial, corporate, criminal and family laws remain uniform national bodies of law. Its Parliament retains the power to establish essential principles to contain exercise by the Regions of their powers. Italy's Constitutional Court, a national institution, is at the forefront of defining the relationships between Italy's Regions and its central State authorities.

II. DISTRIBUTION OF LEGISLATIVE POWERS AMONG THE STATE, REGIONS AND LOCAL GOVERNMENTS

1. *2001 Constitutional Amendment*

The 2001 amendment of Italy's Constitution created a new Title V, titled "Regions, Provinces, Municipalities." The new Title V conceives Regions and other local governments as having, within their defined spheres of activity, equal dignity with the State. The pre-2001 amendment text considered Regions and other local government entities the base of a pyramid, hierarchically-presided by the State.

The Constitution's new Article 117, first paragraph, initially affirms that the legislative power is to be exercised by the State and the Regions in respect of the Constitution, "as well as the restrictions derived from the community[European Union] order and international obligations."[6] Article 117 then proceeds to:

(1) reserve to the State exclusive legislative power in seventeen enumerated matters (Art. 117, second paragraph);

(2) enumerate twenty matters of concurrent State and Regional legislative power, subject to State legislative determination of "fundamental principles," (Art. 117, third paragraph); and,

(3) reserves to the Regions legislative power in every other matter (Art. 117, fourth paragraph).

2. *Seventeen Exclusive State Powers*

The seventeen categories as to which Article 117, second paragraph, grants exclusive legislative power to the State are:

[4] *See* Yves Mény, *The Political Dynamics of Regionalism: Italy, France, Spain*, in REGIONALISM IN EUROPEAN POLITICS 1-28 (Roger Morgan, ed., 1986).
[5] DPR no. 616 of July 24, 1977, GAZZ. UFF. no. 234 of Aug. 29, 1977; Law no. 59 of March 15, 1997, GAZZ. UFF. no. 63 of March 17, 1997; D.L. no. 112 of March 31, 1998, GAZZ. UFF. no. 92 of April 21, 1998, ord. supp. no. 77, rectification GAZZ. UFF. no. 116 of May 2, 1997; D.L. no. 115 of March 31, 1998, GAZZ. UFF. no. 96 of April 27, 1998.
[6] Although some translations of the Italian constitution add article sub-numbering, the present work closely tracks the actual numbering conventions of the Italian text.

a) Foreign policy and international relations of the State; relations of the State with the European Union; right of asylum and legal condition of citizens of States not belonging to the European Union;

b) Immigration;

c) Relations between the Republic and religious confessions;

d) Defense and Armed Forces; security of the State; arms, munitions and explosives;

e) Money, protection of savings and financial markets; protection of competition; exchange system; tax and accounting system of the State; equalization of financial resources;

f) Bodies of the State and relative electoral laws; state referenda; election of the European Parliament;

g) Order and administrative organization of the State and of the national public entities;

h) Public order and safety, other than local administrative police;

i) Citizenship, civil status and registry; [the Italian alphabet omits the letters j and k]

l) Jurisdiction and procedural norms; civil and criminal order; administrative justice;

m) Determination of the essential levels of performances concerning civil and social rights that must be guaranteed throughout the national territory;

n) General norms on instruction;

o) Social security;

p) Electoral legislation, bodies of government and fundamental functions of Municipalities, Provinces and Metropolitan Cities;

q) Customs, protection of national borders and international prophylaxis;

r) Weights, measures and determination of time; informational, statistical and computer coordination of local, Regional and State public administration data; intellectual property; and

s) Protection of the environment, the ecosystem and cultural goods.

In a practical sense, Italy's continued reliance on civil (Italy's civil code addresses commercial, family and tort law, among other topics), criminal, civil procedure and criminal procedure codes, all adopted as national legislation, provides national uniformity on a core of matters that promotes maintenance of a national identity. Even following the 2001 amendments to increase Regional autonomy, the national Constitution through its Article 117(l), as noted above, makes express provision to continue to reserve to State legislation "jurisdiction and procedural norms, civil and criminal legal framework, and administrative justice."

3. *Twenty Concurrent State and Regional Powers*

Article 117, third paragraph, designates twenty matters as within the concurrent jurisdiction of the State and the Regions. It provides that "in the matters of concurrent legislation, the legislative power belongs to the Regions, except for the determination of the fundamental principles, reserved to legislation of the State." The concurrent legislative powers of the Regions can be understood as a form of subordinate powers, in that Article 117, third paragraph, reserves to the State the determination of the fundamental principles for their exercise. This constraint maintains continuity with the constitutional provision prior to the 2001 amendment that Regions could issue "legislative norms" within a specified list of subject matters "in the limits of the fundamental principles established by laws of the State," provided that such norms were not "in contrast with the national interest and those of other Regions." The twenty concurrent subject matters now identified by Article 117, third paragraph, are:

1. Relations of the Regions, international and with the European Union;
2. Foreign trade;
3. Protection and safety of work;
4. Instruction, excepting autonomy of scholastic institutions and with exclusion of professional instruction and formation;
5. Professions;
6. Scientific and technological research and support for innovation for the productive sectors;
7. Protection of health;
8. Nutrition;
9. Sport regulation;
10. Civil protection;
11. Governance of territory,
12. Civil ports and airports;
13. Major transportation and navigation networks;
14. Regulation of communication;
15. Production, transport and national distribution of energy;
16. Supplementary social security;
17. Harmonization of public accounts and coordination of public finance and tax system;
18. Giving value to cultural and environmental goods and promotion and organization of cultural activities;
19. Savings institutions, rural savings institutions, credit enterprises of regional character; and,
20. Entities of land and agricultural credit of regional character.

4. *Reserved Regional Powers*

Article 117, fourth paragraph, is a "reserved powers" clause. Powers not exclusively reserved to the State's legislative power or designated as concurrent powers are reserved to the Regions. Article 117, fourth paragraph, provides that the Regions hold "the legislative power in reference to every matter not expressly reserved to the legislation of the State." The significance of the reservation of un-enumerated legislative powers to the Regions will be defined only in time, but will remain constrained by (i) the exclusive reservation of the seventeen broad subject matters to State legislative power and (ii) the limitation that as to the twenty matters made the object of concurrent State and Regional legislative power, the Regions may legislate only in conformity with the fundamental principles legislatively established by the State.

5. *Additional Constitutional Mechanisms Facilitating National Unity*

A. *Free Circulation; National Government Substitution; Court of Accounts Audits*

The Constitution (Article 120) offers additional mechanisms to assure national unity, notwithstanding the other constitutional provisions that favor Regional autonomy. It prohibits Regions from impeding free circulation of persons and goods, or limiting the right to work. Moreover, it allows the national government to substitute itself for Regions and other local governments:

(1) to assure respect of international and European obligations;

(2) in cases of grave danger for health and public welfare; and,

(3) to protect legal or economic unity, particularly essential levels of services concerning civil and social rights.

As part of the constitutional glue bonding State and local governments, Article 120 provides that the procedures relative to such substitution are to be defined by law in accord with principles of "subsidiarity" and "loyal collaboration."

In addition to the State power to substitute itself for Regional and other local governments, the President of the Republic, having heard a Parliamentary Commission's opinion, can dissolve a Regional Council and remove the President of a Regional *Giunta* in the event that either acts "contrary to the Constitution or in grave violation of the law," as well as for reasons of "national security."[7] Regions and other local governmental entities also remain subject to audit by the national Court of Accounts (*Corte dei Conti*).

Reflective of the increasing Regional autonomy, the 2001 constitutional amendment eliminated the State commissar assigned to each Region to "oversee" coordination of State and Regional administrative functions.[8]

B. *Constitutional Court as Arbiter between State and the Regions*

The Constitutional Court adjudicates "controversies relative to the constitutional legitimacy of the laws and of the acts, having force of law, of the State and of the Regions," and "on conflicts of attribution between powers of the State and on those between the State and the Regions, and among the Regions" (Constitution Article 134). Most of the Constitutional Court's case law arises from referral of questions concerning the constitutionality of a law by ordinary judges who determine that such a question is pertinent to a pending proceeding. However, the Constitutional Court has original jurisdiction over disputes in which the State or a Region challenges an act as exceeding the "sphere of competence" accorded respectively to the Region or the State (Constitution Article 127).

Throughout its rulings, the Constitutional Court devotes particular attention to "fundamental" and "supreme" principles. The 1948 Constitution labels its opening articles "fundamental principles." Among them are: popular sovereignty "exercised in the forms and limits of the Constitution;" promotion of local autonomies; and, advancement of linguistic minorities. In particular, Article 5 of the constitution provides as part of the "fundamental principles":

"The Republic, one and indivisible, recognizes and promotes local autonomies, implements in the services that depend on the State the most broad administrative decentralization, adapts the principles and methods of its legislation to the needs of autonomy and decentralization."

[7] CONST. art. 126.
[8] CONST. art. 124, abrogated by Constitutional Law no. 3 of Oct. 18, 2001, GAZZ. UFF. no. 248 of Oct. 24, 2001.

However, the Constitutional Court itself has defined the notion of fundamental principles even more broadly than those expressly listed as such in the opening articles of the constitution. Faced in 1988 with the constitutionality of a Bolzano Provincial Council member's immunity from prosecution for having disparaged the Italian flag, the Court procedurally dodged the question, but declared, with a *Marbury v. Madison* bravura:

> "The Italian Constitution contains some supreme principles that cannot be subverted or modified in their essential content either by laws of constitutional amendment or other constitutional laws. Such are principles that the Constitution itself explicitly contemplates as absolute limits to the power of constitutional revision, such as the republican form [of government] (CONST. art. 139), as well as principles that, although not expressly mentioned among those not subject to the principle of constitutional revision, are part of the supreme values on which the Italian Constitution is based."[9]

As an example of the Constitutional Court's action as arbiter of allocation of governmental powers, its decision no. 70 of 2004 addressed a challenge by the State to Tuscany Region legislation.[10] With the challenged legislation, the Region claimed ability to act in place of municipalities and provinces failing to approve hazardous waste remediation plans in a timely fashion.

The Constitutional Court acknowledged that Constitution article 117(2)(p), as amended 2001, reserves definition of "fundamental functions" of municipalities, provinces and metropolitan cities exclusively to State legislation, while Constitution article 118(1) delegates all administrative functions to municipalities unless legislation justified on criteria of "subsidiarity, differentiation, and adequacy" allocates power to a different governmental level. The Court reasoned that because the State power of substitution established by Constitution article 120 derives from the need for State substitution to protect essential State interests as articulated by article 120, such power of State substitution is "extraordinary and additive." The Court accordingly concluded that the State power of substitution is not exclusive and upheld the Regional law. The Court further noted that its pre-2001 amendment jurisprudence on criteria for State substitution of Regions remained valid. The Court concluded that the criteria for a Region to substitute itself for its municipalities and provinces include that the criteria for substitution, both as to substance and procedure, be well defined and that the principle of "loyal collaboration" among governmental levels mandated procedural guarantees to assure that undue exercise of a power of substitution be avoided.

C. *Practical Predominance of Central Government Legislation*

For now, the abundant legislative production by Italy's national Parliament and Government, including its basic codes and ample normative material outside the code framework, substantially outweighs its Regions' legislative production. Regions began significant legislation only recently, and the heavy preponderance of national law predates them. However, even as Regional legislation grows in importance, a confluence of factors will work to preserve influence of national law on key points. They include Italy's Constitution and the Constitutional definition of the State's ongoing role, the national judiciary working predominantly in the civil law tradition, and continued reliance on national codes for core legal topics of civil, commercial and criminal law.

Italian Regions perform significant roles in respect of administration of health care, implementation of public works, environmental regulation, land use and planning, agriculture, public instruction, cultural activities, and tourism promotion. These activities occur within nationally determined constraints,

[9] Corte cost. judgment no. 1146 of Dec. 15, 1988, considerations in law, ¶2.1, GAZZ. UFF. of Jan. 11, 1989, *prima serie speciale* no. 2.
[10] Corte cost. judgment no. 70 of March 2, 2004 (*Pres. Cons. v. Toscana*), GAZZ. UFF. of March 10, 2004, *prima serie speciale* no. 10.

including national constitutional principles, fundamental principles established by State legislation, and the predominant role of national revenue collection and establishment of expenditure budgets.

Collaboration in funding and direction of health care system is certainly the largest budget category for collaboration between Regions and the State. Health care, as to which Regions function essentially as conduits for transfer of State funds to local health units and hospitals, constitutes over 60% of their total outlays.

Under Constitution Article 117, paragraph 4, as amended 2001, the Regions have residual legislative powers. But, the State retains ultimate responsibility for assuring the rule of law in respect of the Constitution.

6. *Financial Autonomy of Regions and Local Governments*

The Constitution (Article 119) provides that Municipalities, Provinces, Metropolitan Cities and Regions are to have financial autonomy relative to revenue and expenditures. It further provides that they are to have "autonomous resources". They are to establish and apply their own taxes and income, "in harmony with the Constitution and according to principles of coordination of the public finance and of the tax system." They are to benefit from shares of the property taxes referable to their territory. State law is to establish an "equalization fund", "without strictures of use" for territories with lesser "tax capacity" per inhabitant.

The resources mentioned in the previous paragraph are to be sufficient to allow the Municipalities, Provinces, Metropolitan Cities and the Regions to finance entirely the public functions attributed to them.

The concluding paragraph of Article 119 affirms that the Municipalities, Provinces, Metropolitan Cities and the Regions have their own patrimony. It allows them to make recourse to indebtedness "only to finance expenses of investment." Any State guarantee of their debts is excluded.

7. *Administrative Powers of Municipalities*

Municipalities have no formal law-making power. However, they do have administrative powers. Their exercise of these powers includes the articulation of norms that *de facto* constitutes the exercise of law-making power.[11]

The Constitution attributes "administrative functions" to Municipalities (Article 118, first paragraph). The exception to this general attribution is the attribution of administrative functions to Provinces, Metropolitan Cities, Regions and the State in order to assure their "unitary exercise". Such attribution is to be on the basis of the principles of "subsidiarity, differentiation and adequacy". Municipalities, Provinces and Metropolitan Cities are constitutionally defined as holders of their "inherent administrative functions" and "of those conferred by state or regional law" (Article 118, second paragraph). It further provides that State law is to regulate coordination between State and Regions in the subject matters of immigration and of public order and safety, as well as the forms of "understanding and coordination" in the subject matter of protection of cultural goods.

III. MEANS AND METHODS OF LEGAL UNIFICATION

[11] *See* CITTÁ A CONFRONTO: LE INSTITUZIONI METROPOLITANE NEI PAESI OCCIDENTALI (Giuseppe Franco Ferrari and Pierciro Galeone, eds.) (Societá editrice il Mulino, Collana dell'Associazione Nazionale Comuni Italiani, 2011) (an anthology of contributions on local financial autonomy prepared in view of pending reforms in Italy, including an essay at p. 35 by Patrick Del Duca, *Governo e forme di finanziamento delle aree metropolitane negli Stati Uniti. Una guida per la navigazione*, highlighting the importance of market discipline on local government finance through borrowing via issuance of bonds).

1. *Unification By Exercise Of Central Government Power*

National law, comprised of the Constitution, national legislation and the civil law tradition, predominates in Italy in both formal and practical ways.

In a formal sense, the Civil Code, adopted in 1942, reinforces national uniformity by defining a hierarchy of sources of Italian law, comprised of national legislation, followed by regulations and then usages.[12] The 1948 Constitution placed Constitutional law at the head of this list, and added Regional law, which within the spheres of concurrent legislative power established in Title V of the Constitution may displace national statutory and regulatory law other than such law which constitutes the determination of fundamental principles by the State within the meaning of Article 117, paragraph 3. In addition, it may not displace constitutional law.[13] European Union law trumps the sources of law identified in Italy's Civil Code by virtue, and on the terms, of its acceptance in Italy through the Constitution's article 11.

A. *Constitutional Court Definition of Limits of State Direction of Regional Expenditures*

The Constitutional Court addressed the Constitution article 117(3) reservation to State legislation of definition of fundamental principles of public finance coordination in a 2005 ruling.[14] The ruling resolved an original jurisdiction case in which Campania, Marche, Tuscany, and Val d'Aosta challenged the constitutionality of 2004 State legislation addressing the national deficit, insofar as such legislation undertook to restrict Regional and local budgetary autonomy.

The Court at the outset of its analysis addressed a standing issue as to whether Regions could challenge restrictions on municipal and other local government expenditures. In determining that the Regions did have the necessary standing, the Court relied on reasoning that the connection between Regional and local governmental attributions is so tight that inappropriate invasion of local government attributions is "potentially susceptible" of harming Regional powers as well.

To contain costs, the challenged law purported to limit Regions and local governments to accomplishing procurement either through contracts established by the national treasury ministry, or otherwise within nationally established price and quality parameters. The Court reaffirmed the principle "constantly affirmed by the jurisprudence of this Court" by which

"norms that establish specific limitations relative to individual headings of expense in budgets of the regions and the local entities do not constitute fundamental principles of coordination of public finance, in the senses of article 117(3) of the Constitution, and they therefore harm the financial autonomy of expenditure guaranteed by Constitution article 119."

Further, the Court cited several of its recent decisions for the proposition that the State may impose budgetary policy limitations on Regions and local government entities, but only with "discipline of

[12] CIV. CODE, art. 1, Provisions of the Law in General, Sources of Law, amended by Law no. 218 of May 31, 1995, GAZZ. UFF. ord. supp. no. 128 of June 3, 1995.
[13] CONST. art. 138.
[14] Corte cost. judgment no. 417 of Nov. 14, 2005, GAZZ. UFF. of Nov. 16, 2005, *prima serie speciale* no. 46. For similar reasoning, *see* Corte cost. judgment no. 88 of March 10, 2006, GAZZ. UFF. of March 15, 2006, *prima serie speciale* no. 11 (Court voided 2005 State budget law limitation on Friuli-Venezia Giulia Region's future ability to hire at-will employees, as violating Region's Special Statute-guaranteed autonomy, citing in ¶5 considerations in law, among others, judgment no. 417 of Nov. 14, 2005, here discussed.). *See also* Corte cost. judgment no. 118 of March 24, 2006, GAZZ. UFF. of March 29, 2006, *prima serie speciale* no. 13 (upholding Friuli-Venezia Giulia challenge to 2005 State budget law provision for State funds to promote first family home purchase, on the ground that social funds in areas outside State legislative power "must be assigned generically for social purposes without the above-indicated constraint of specific destination", 9.1 considerations in law, *id*.).

principle," "for reasons of financial coordination connected to national objectives, conditioned also by community [European Union] obligations."[15] For such limitations to respect Regional and local government autonomy, the Court observed, they must be focused on either "the amount of the current deficit" or in a transitory manner "the growth of current expenditure of the autonomous entities," but the State can establish only "an overall limit, that leaves the entities themselves broad liberty of allocation of the resources."[16]

B. *Constitutional Court Jurisprudence on National Power*

Constitutional Court jurisprudence has extensively developed the ramifications of Regional government. Indeed, one of the Court's first decisions invalidated, as incompatible with the Constitution article 120 prohibition on limiting right to work, legislation of the autonomous Province of Bolzano. In the challenged legislation, the Province, relying on the Special Statute of Trentino-Alto Adige, sought to create a system to regulate artisans that *de facto* excluded participation of artisans from outside the Region.[17]

The State may within sixty days of publication challenge a Regional law before the Constitutional Court as exceeding Regional power.[18] Likewise, a Region can challenge a law or act having the force of a law, either of the State or another Region.[19] This mechanism, established by the 2001 amendment, superseded the previous mechanism that treated Region and State less equally. Formerly the State could also challenge the Regional Council to re-adopt the challenged Regional measure, as well as then ask Parliament to reconsider the measure as substantively inappropriate.[20]

The Constitutional Court has issued a continuing stream of rulings addressing spheres of State and Regional action. Such rulings increased following the 2001 Constitutional amendment that redefined the status of the Regions. Common issues in this litigation are environmental protection, often concerning waste disposal,[21] interplay of national taxation and equalization of Regional financial resources,[22] allocation of powers between Regions and State regarding social security,[23] powers of municipalities,

[15] *Id.*, citing Corte cost. judgment no. 36 of Jan. 26, 2004, GAZZ. UFF. of Feb. 4, 2004, *prima serie speciale* no. 5; and referencing Corte cost. judgments nos. 376 of Dec. 30, 2003, GAZZ. UFF. Jan. 7, 2004, *prima serie speciale* no. 1; 4 of Jan. 13, 2004, GAZZ. UFF. of Jan. 21, 2004, *prima serie speciale* no. 3; and, 390 of Dec. 17, 2004, GAZZ. UFF. of Dec. 22, 2004, *prima serie speciale* no. 49.

[16] Corte cost. judgment no. 417 of Nov. 14, 2005, citing Corte cost. judgment no. 36 of Jan. 20, 2004, at ¶6 findings in law. In judgment no. 417 of Nov. 14, 2005, the Court went on to conclude:

"In the instant case, the provisions challenged do not fix general limits to deficit or to current expenditure, but they establish limits to expenditures for studies and consultancy assignments conferred to parties outside the administration, to expenses for missions abroad, representation, public relations and conventions, as well as to expenses for acquisition of goods and services; limitations that, regarding individual headings of expense, do not constitute fundamental principles of coordination of public finance, but do comport an inadmissible invasion into autonomy of the entities for expenditure management." *Id.*

[17] Corte cost. judgment no. 6 of June 15, 1956 (*Pres. Cons. v. Bolzano*), *available at* www.cortecostituzionale.it.

[18] CONST. art. 127.

[19] *Id.*

[20] CONST. art. 127, in force from 1948 to 2001.

[21] Under CONST. art. 117(2)(s). *E.g.*, Corte cost. judgment no. 505 of Dec. 4, 2002 (*Soc. Ecograf s.p.a. v. Prov. Treviso*), GAZZ. UFF. of Dec. 11, 2002, *prima serie speciale* no. 49 (voiding Veneto Region's limitation on disposal in Veneto landfills of other Regions' hazardous waste).

[22] Under CONST. art. 117(2)(e). *E.g.*, Corte cost. judgment no. 296 of Sept. 26, 2003 (*Pres. Cons. v. Piemonte*), GAZZ. UFF. of Oct. 1, 2003, *prima serie speciale* no. 39 (voiding Regional legislation providing tax exemption for Olympic organizing entity and alternative energy vehicles); Corte cost. judgment no. 94 of March 28, 2003 (*Pres. Cons. v. Lazio*), GAZZ. UFF. of April 2, 2003, *prima serie speciale* no. 13 (upholding Regional law subsidy scheme for "historic business places").

[23] Under CONST. art. 117(2)(o). Corte cost. ord. no. 526 of Dec. 9, 2002, GAZZ. UFF. of Dec. 11, 2002, *prima serie speciale* no. 49 (declaring inadmissible as inadequately posed a first instance judge question concerning compatibility, of a Regional law regulating publically-subsidized rents, with constitutional reservation to State of assuring national civil and social rights minimum standards).

provinces and metropolitan cities,[24] and health care.[25] The Constitutional Court's president in early 2008 noted a drop in the number of such cases brought to the court, falling from 111 in 2006 to 52 in 2007. He attributes the drop to the Court's growing jurisprudence in interpretation of the 2001 Constitutional amendment, and consequently the ability of the parties concerned to resolve their disputes politically, in application of the principle of "loyal collaboration" as articulated by the Court.[26]

2. *Standing Regional Conferences*

The Conference of the Regions and the Autonomous Provinces was created among the Regions in 1981.[27] It considers itself equivalent to the Conference of State Governors in the United States. It seeks improvement of relationships with the State by virtue of elaborating common positions among Regional governments and establishment of a permanent inter-regional framework to diffuse "best practices", to advocate the system of Regional governments, and to underline the role of the Region in the construction of the European Union. It maintains a permanent secretariat and study center in Rome–*Centro interregionale di studi e documentazione* (Cinsedo).

The "Conference State-Regions" exists by virtue of statute and decree adopted in the period from 1983 through 2000.[28] The Constitutional Court has recognized it and its functioning as part of the necessary implementation of the principle of "loyal collaboration" among levels of government.[29] The Conference offers opinions on proposals of the State for legislation and regulation, and is the venue for the State and the Regions to reach agreements for coordinated action among them. There is a similar "Conference State-Cities", and a "Unified Conference" that includes the Conference State-Regions and the Conference State-Cities".[30]

3. *Regional Government*

A Region's constitution is its *Statuto* (Statute), which "in harmony with the Constitution," determines its form of government, organization and operation.[31] A Region is governed by a popularly-elected Regional Council.[32] To promote distinction between Regions and State, a Regional Council member may not also serve in Parliament.[33] The *Giunta* is the Region's executive body, appointed by its popularly elected President.[34] If the President fails a Regional Council confidence vote by an absolute majority of the

[24] Under CONST. art. 117(2)(p). *See, e.g.*, Corte cost. judgment no. 201 of June 11, 2003, GAZZ. UFF. of June 18, 2003, *prima serie speciale* no. 24 (Lombardia Region legislation limiting State-mandated incompatibility of simultaneous holding of Regional and municipal councilor positions to larger municipalities, unconstitutional); Corte cost. judgment no. 376 of July 23, 2002, GAZZ. UFF. of July 31, 2002, *prima serie speciale* no. 30 (as Court denies, under the pre-2001 Constitution Title V, Emilia-Romagna and Liguria challenges to State administrative procedure reform measures, it invites renewed challenges under amended Title V (at ¶5 considerations in law)).

[25] Under CONST. art. 117(3). *See, e.g.*, Corte cost. judgment no. 88 of March 27, 2003, GAZZ. UFF. of April 2, 2003, *prima serie speciale* no. 13 (voids State effort to regulate provision of addiction treatments); Corte cost. judgment no. 282 of June 26, 2002, GAZZ. UFF. of July 3, 2002, *prima serie speciale* no. 26 (voiding Regional law purporting to suspend electroshock and lobotomy therapy).

[26] Annual Press Conference of the President of the Constitutional Court, February 14, 2008, *available at* www.cortecostituzionale.it.

[27] *See* www.regioni.it.

[28] *See* statutory and regulatory materials cited at http://www.governo.it/Conferenze/c_stato_regioni/norme.html.

[29] *E.g. Corte Costituzionale* Decision no. 116 of March 23, 1994, GAZZ. UFF. of April 13, 1994.

[30] *See* www.regioni.it.

[31] CONST. art. 123. The Regional Council may modify a Regional Statute by absolute Council majority in two votes at least two months apart, which the State has thirty days to challenge before the Constitutional Court. Constitutional Law no. 1 of Nov. 22, 1999, art. 3. If a fiftieth of the Region's voters or a fifth of the Regional Council triggers a referendum, the modification is valid only if approved by a majority of votes cast. *Id.* How Regions will recraft their charters remains to be seen.

[32] CONST. art. 121, 122.

[33] CONST. art. 122.

[34] *Id.*

Council members, called by at least a fifth of the Council, the Council is dissolved for new elections, and the *Giunta*'s mandate revoked; resignation of three-fifths of the Council achieves the same result.[35]

Relevant industry, trade and other organizations are typically of national scope. As an example, labor negotiations are handled nationally between labor and management groups.

4. *Role of Legal Education*

Italy's legal professions are national and contribute to assuring a national legal culture. Their national quality corresponds to the national governance of its law faculties, and the national system to select and promote law professors. Moreover, the law faculties' influence in imparting a national legal culture extends beyond the formal legal professions because they train such a broad slice of Italian university students, even as only a fraction of such students pursue formal careers in law.

The nationally-defined careers available to university graduates in law include lawyer, State attorney, notary, magistrate (which includes civil and criminal judges and prosecutors), administrative judge, and law professor. A further legal profession, open to university graduates in economics and business, is that of *commercialista*, a business-oriented advisor intermediate between a lawyer and an accountant. Specialized training, apprenticeship, and examination are required for each category. Mid-career changes from one profession to another are rare.

Italian law faculties, with limited exceptions, are State schools. They offer open enrollment to students with a secondary school diploma, the *maturità* earned by passing the secondary school exit examination, typically at age nineteen. A full five-year degree course of study allows access to the apprenticeships and examinations prerequisite to lawyer, magistrate, and notary careers. Although recently universities have some latitude to determine courses of study, law curricula remain substantially uniform, and their degrees nominally equivalent.

To become a professor, a law graduate undertakes a further graduate degree in law and sits for a State examination to become a university researcher. With one or more established professors' tutelage, the aspiring academic can hope to win a university academic post in national competitions based principally on evaluation of publications.

National legislation regulates the bar,[36] and an *avvocato* (lawyer) may practice throughout Italy. Until recent legislation abrogated the setting of legal and other professional fees,[37] the *Consiglio Nazionale Forense* (National Bar Council) fixed allowable fees at a national level for *avvocati*, although a client could consensually pay more.

The centralization of legal services for substantial business activities in Milan and Rome contributes to the national character not only of the formal legal system, but also of its practical application. Recent evidence suggests that the larger Italian firms, frequently with a foreign law firm affiliation and typically based in Milan and Rome, are among the most profitable anywhere.[38] Such large, organized law firms

[35] CONST. art. 126.
[36] R.D.L. no. 1578 of Nov. 27, 1933, GAZZ. UFF. no. 281 of Dec. 5, 1933, converted into law and amended by Law no. 36 of Jan. 22, 1934, GAZZ. UFF. no. 24 of Jan. 30, 1934, amended by Law no. 406 of July 24, 1985, art. 2, GAZZ. UFF. no. 190 of Aug. 13, 1985.
[37] D.L. no. 223 of July 4, 2006, art. 2(a), GAZZ. UFF. no. 153 of July 4, 2006, rectified GAZZ. UFF. no. 159 of July 11, 2006, converted into law by Law no. 248 of August 4, 2006, GAZZ. UFF. no. 186 of August 11, 2006, ord. supp., coordinated text GAZZ. UFF. no. 186 August 11, 2006 ord. supp.
[38] Cobianchi, Marco, and Seghetti, Roberto, *Legalrisiko: Guerra tra i re della parcella*, PANORAMA 113 (Feb. 23, 2006), reporting average annual partner revenue in the 43 largest Italian firms over €1.3 million.

focus on securities, financial and other business matters, and relative to the bulk of other lawyers practicing in smaller firms or as individual practitioners, collect a share of legal fees disproportionate to their number.[39]

Italian notaries draft and authenticate legal instruments including contracts, wills, corporate charters, and real property and other conveyances.[40] In particular, the system for tracking corporate charters and real property ownership is nationally uniform. To become a notary, a law graduate attends one of a limited number of a two-year notary schools, apprentices with a notary for two years and then takes a challenging national examination to earn the assignment to provide notarial services in a specific territory.[41]

5. *Role of International Law and Other External Factors*

Annual delegation to the Government of responsibility to issue the necessary measures was the practical expedient to resolve the legislative impasse that created a chronic deficiency in legislation to implement European Union norms.[42]

The Constitutional Court's resolution of the practicalities of Italian courts' application of European law is a resounding declaration of the supremacy of constitutional values. Just as the Court has positioned itself as the arbiter of the bounds of Region and State spheres of action, it has also in respect of European law established itself as the guardian of Italian constitutional "fundamental principles."

In the 1960's the Italian Constitutional Court and the European Court of Justice took conflicting positions on the relation between European Community law and Italian law.[43] The European Court asserted a monist view under which Community law took supremacy over national law. Specifically, it considered the Treaty of Rome to have instituted a new legal system to which national law was subject. As an implication of this view, the Court of Justice asserted that any Italian court must apply relevant European Community law to disputes before such a court. Initially, the Italian Constitutional Court took the dualist view that European Community law and Italian law constituted two separate legal systems. In the initial formulation of its position, the Constitutional Court expressed the view that European Community law would be applied by Italian courts only through a procedure of constitutional judicial review as established by Italy's Constitution. In practice this meant that an Italian court would be able to apply European law only following reference of a question to the Constitutional Court and a consequent Constitutional Court decision directing the referring court to apply the European law.

A critical turning point in the Constitutional Court's view was its 1985 *Granital* decision. There the Court concluded that the dualist view, *i.e.* the view that the Italian and Community legal systems were separate legal systems, was nonetheless compatible with the routine, direct application of Community law by all Italian courts. Although the Constitutional Court has made clear that what Italy's Constitution establishes regarding "fundamental principles of the constitutional order and inalienable rights of the human person" prevails in any event, it has determined that Italy's Constitution, based on its Article 11 provision for acceptance of international organizations, otherwise allows supremacy of European law over Italian law.[44] It reached this conclusion by reasoning that the Constitution Article 11 acceptance of Italy's

[39] *Id.*, reporting such firms billing €1 billion of the €8.5 billion annually collected by all practicing Italian lawyers.
[40] There are about 5,000 notaries. Federazione Italiana delle Associazioni Sindacali Notarili, *available at* www.federnotai.it.
[41] *See Consiglio Nazionale del Notariato* (National Notary Council) web site: www.notariato.it.
[42] Law no. 86 of March 9, 1989, GAZZ. UFF. no. 58 of March 10, 1989. *See* Mengozzi, Paolo, EUROPEAN COMMUNITY LAW: FROM THE TREATY OF ROME TO THE TREATY OF AMSTERDAM 144-46 (2nd ed., 1999).
[43] *See* Antonio La Pergola and Patrick Del Duca, *Community Law, International Law, and the Italian Constitution*, 79 AM. J. INT'L L. 598 (1985).
[44] Corte cost. judgment no. 170 of June 8, 1984 (*Granital*), GAZZ. UFF. no. 169 of June 20, 1984, at point 7 of the considerations of law. *See* La Pergola and Del Duca, *supra* note 43, and *Bundesverfassungsgericht* (German Federal Constitutional Court),

participation in international organizations and Italy's ratification of the European treaties implied a broad opening to the second legal system, *i.e.* what is now the European Union legal system. The Constitutional Court, however, maintained the sovereignty of the Italian legal system and the Constitutional Court's own role as the guarantor of the integrity of the Italian Constitution, by providing that any question involving "fundamental principles of the constitutional order and inalienable rights of the human person" continue to be referred to the Constitutional Court.[45]

The 2001 constitutional amendment that redefined the Regions' role acknowledges the European law view that such law directly applies to Regions. It provides that Regions, within their subject matter, "participate in decisions directed to the formation of community normative acts and provide for the implementation and execution of international agreements and of European Union acts," albeit "in respect of the norms of procedure established by law of the State," that are to "regulate the means of exercise of power of substitution [by the State] in case of noncompliance."[46] Of the two parts of this Constitutional acknowledgement, *i.e.*, that Regions have a voice in the formulation of European norms and that they may directly apply such norms, the latter appears of greater import. Indeed, the Treaty on European Union contemplates at best a consultative role on European legislative activity for the Committee of the Regions that it constitutes.[47] Further, even as to the Regions' actions to implement European norms directly, the Constitution expressly preserves the State's various tools to constrain Regional action beyond the bounds of what the Constitution contemplates.

Italy is a member of the Hague Conference on Private International Law. Of 39 Conventions that the Hague Conference tracks on its web site, Italy has ratified or at least signed twenty. Although this is less than the 30 ratified or signed by the Netherlands, it is nonetheless sufficient to put Italy in the upper echelon of Hague Conference members defined by ratifications and signatures.

Italy is one of the sixty elected members of UNCITRAL, with its current term expiring in 2016.

Italy is a member of UNIDROIT. Italy hosts the UNIDROIT headquarters in Rome, and pursuant to the UNIDROIT charter, names its president.

IV. EFFECT OF INSTITUTIONAL AND SOCIAL BACKGROUND

1. *The Judicial Branch*

The State institution most prominently responsible for initial application of the constitutional rule of law in post-War Italy is its *Corte Costituzionale*, the only court in Italy with the power of constitutional review of laws, principally following referral of questions from other courts, but also through original jurisdiction of disputes among key governmental authorities, such as the State and the Regions. Conceived by Italy's 1948 Constitution, it commenced operation in 1956. Fifteen judges serving nine-year terms comprise the Constitutional Court. Consistent with Italian jurists' view that the Court's power to invalidate laws is a combined quasi-legislative and judicial function, the Court is selected one-third jointly by the two Houses of Parliament, one-third by the President, and one-third by the highest ordinary and administrative courts (Court of Cassation, Council of State and *Corte dei Conti*).

BVERFGE 73, 339 (*Solange II*), at 376, referencing La Pergola and Del Duca, *supra* note 43, as it reached a conceptually analogous result for Germany.

[45] *Id.*

[46] CONST. art. 117.

[47] Treaty on European Union, Part 5, Title I, Chapter 4, OJ C 325 (Dec. 24, 2002).

In addition to the pivotal constitutional role of Italy's Constitutional Court, the national organization of its ordinary and administrative courts reinforces the national quality of its justice system. Although ordinary and administrative judicial districts are organized by Region and province, all courts are part of the State.

A national magistracy, constitutionally guaranteed autonomy from Parliament and Government, staffs the ordinary courts and public prosecutor positions.[48] Public prosecutors, known as *Procuratori della Repubblica*, are career magistrates. The *Consiglio Superiore della Magistratura* (Superior Council of the Magistracy, "CSM") is the national body that governs the magistracy. The CSM's composition is designed to provide national assurance of judicial and prosecutorial autonomy. It is presided by the President of the Republic and composed of the President of the Court of Cassation's First Section, and the Court of Cassation's *Procuratore Generale* (public prosecutor), with the balance of its members magistrates elected two thirds by all ordinary judges, and one third by Parliament from law professors or lawyers practicing more than fifteen years.[49] Entrance to the magistracy occurs through a national competitive examination, open to candidates trained in law.[50] The CSM is responsible for promoting magistrates.[51]

The judges who serve on administrative courts are not part of the magistracy; they are part of the executive, rather than the judicial, branch of government. Although not within the CSM's scope, their selection and promotion, on a uniform national basis, is intended to afford them similar impartiality, as well as to assure uniform national application of the law that they apply.[52] Selection of administrative judges, like ordinary judges, is based on educational qualifications and competitive examination pursuant to national legislation governing the Regional administrative courts and the Council of State.[53] All administrative judges must be graduates of an Italian law faculty, with new judges required to have completed the five-year university study in law; however, they need not be members of the bar.

The ordinary courts exercise jurisdiction over general civil, commercial, labor, and criminal matters. Since 1993 they are structured, in ascending order, as Justices of the Peace, Tribunals, Courts of Appeal, and the Court of Cassation.[54]

Pursuant to Constitution Article 125, the State provides an administrative court headquartered in each of the Regions (*Tribunale Amministrativo Regionale*, a Regional Administrative Tribunal—"TAR") with jurisdiction over administrative actions in that Region. The *Consiglio di Stato* (Council of State), part of which provides substantive advice on administrative matters, is the supreme administrative court. Three of its six sections provide opinions, some binding, to the public administration. The other three hear appeals from TARs. The public administration is understood to include all levels of government. Pursuant to Constitution Article 113, recourse to the courts is to be available to protect "rights and legitimate interests" against the public administration, while national law is to determine when courts can annul acts of the public administration.

[48] CONST. art. 101-105.
[49] CONST. art. 104-106; Law no. 44 of March 28, 2002, GAZZ. UFF. no. 75 of March 29, 2002.
[50] Law no. 150 of July 25, 2005, art. 2(1)(b); Law no. 262 of Nov. 5, 2004, GAZZ. UFF. no. 261 of Nov. 6, 2004; CONST. art. 106(1).
[51] CONST. art. 105. Magistrates were promoted principally on seniority rather than merit. Law no. 570 of July 25, 1966, GAZZ. UFF. no. 186 of July 28, 1966; Law no. 831 of Dec. 20, 1973, GAZZ. UFF. no. 333 of Dec. 29, 1973. Recent reform allows more rapid promotion based on evaluation of merit. Law no. 150 of July 25, 2005.
[52] Law no. 1034 of Dec. 6, 1971, art. 13, 14, 15 and 16, GAZZ. UFF. no. 314 of Dec. 13, 1971.
[53] DPR no. 214 of April 21, 1973, art. 14-20, GAZZ. UFF. no. 131 of May 22, 1973. Regio Editto no. 2417 of Aug. 18, 1831, three decades before Italy's unification, created the Council of State to address substantive public administration questions. It commenced as an administrative court pursuant to Law no. 2248 of March 20, 1865 (All. E), GAZZ. UFF. of April 27, 1865. Law no. 1034 of Dec. 6, 1971, establishes the TARs.
[54] Law no. 374 of Nov. 21, 1991, art. 49, 50.

Several special administrative courts exist, of which the most important in shaping the State's constitutional role is the *Corte dei Conti* (Court of Accounts), whose primary functions are review of public finances, auditing, and prosecution of misconduct regarding public assets, extending to all governmental bodies, including Regions, provinces and municipalities.[55] Its review as a national government entity of local finances is further national assurance of the constitutional rule of law and of the correct conduct of Regional, provincial and municipal governments, particularly in respect of their finances.

2. *National Electoral System*

The Italian parliament is comprised of a Chamber of Deputies and the Senate of the Republic. Seats of deputies are distributed among electoral districts in proportion to population. Senators are elected by Regional popular votes, with the number of Senators per Region distributed according to population, but with the constraints pursuant to Constitution Article 57 that no Region may have less than seven senators, except that Molise has two, and the Valle d'Aoste has one. The total number of elected Senators is 315, and the total number of deputies is 630. Twelve deputies and six senators are elected by Italians residing outside Italy. Article 59 makes any past President of the Republic a senator for life, until such time as such a person renounces the office, and empowers the President of the Republic to name as senators for life "five citizens that have illustrated the Country for highest merits in social, scientific, artistic and literary field".

From the 1948 Constitution's adoption, Italy employed proportional representation to impede any one political party dominating national life.[56] Accordingly, Parliament closely reflected the various parties' electoral strength through the post-war period. Nationally, proportional representation fragmented electoral representation among parties, making government practical only by broad coalition. In contrast, individual party or narrow coalition governance of Regions and municipalities was common.

Starting in the 1990's, Italy wrestled with ways to render its electoral mechanisms more decisive. In 1993 it determined to elect its Parliament on a predominantly first-past-the-post system. Another 1993 reform provided direct popular mayoral election in larger municipalities (with a run-off between the two leading candidates absent a first round majority), thereby allowing new talent entry into Italian politics.

In 2005, Italy returned to the proportionality model for national elections, but on national results for the Chamber of Deputies and Regional results for the Senate.[57] To address conflicting objectives of promoting electoral coalitions, assuring Parliamentary majorities able to govern, and protecting linguistic minorities and smaller parties, the proportionality is subject to thresholds to receive seats as well as premiums for receiving the most votes.[58]

[55] CONST. art. 100(2).
[56] *See* Alberto Pasolini Zanelli, *The Electoral Reform in Italy: Towards a Majority System*, in Paolo Janni, ed., ITALY IN TRANSITION: THE LONG ROAD FROM THE FIRST TO THE SECOND REPUBLIC: THE 1997 EDMUND D. PELLEGRINO LECTURES ON CONTEMPORARY ITALIAN POLITICS (1998).
[57] Law no. 270 of Dec. 21, 2005, GAZZ. UFF. no. 303 of Dec. 30, 2005, ord. supp. no. 213.
[58] *Id*. In April 2006 Italians resident abroad first elected members of Parliament, an idea raised with the 1993 electoral reforms. Law no. 459 of Dec. 27, 2001, GAZZ. UFF. no. 4 of Jan. 5, 2002; Constitutional Law no. 1 of Jan. 17, 2000, GAZZ. UFF. no. 15 of Jan. 20, 2000; Constitutional Law no. 1 of Jan. 23, 2001, GAZZ. UFF. no. 19 of Jan. 24, 2001; DPR no. 104 of April 2, 2003, GAZZ. UFF. no. 109 of May 13, 2003; Law no. 270 of Dec. 21, 2005. Ballots in the four "in the world" districts may be cast by candidate name, unlike for domestic candidates elected by position on party list. *Id*. The close election lent significance to the twelve Deputies and six Senators so chosen. *La Cassazione conferma la vittoria dell'Unione*, LA REPUBBLICA (April 19, 2006).

A June 2006 referendum rejected an amendment of Italy's Constitution.[59] The amendment under heading of "devolution" (nominally greater health, education and public safety powers to Regions) would have encouraged parties to campaign through coalitions whose leader would become Prime Minister, as well as redefined Parliamentary roles.[60] Under the amendment only the Chamber of Deputies would ordinarily have considered legislative matters constitutionally reserved to the State, and undertaken confidence votes to unseat the Prime Minister and the Government. The renamed "Federal Senate of the Republic" would have considered only legislation within concurrent State and Regional power, plus budget legislation. In each case, the other House could propose modification, but the initial House would retain the definitive vote. In limited matters, concerning national maintenance of "civil and social rights" and "electoral legislation, governmental entities and fundamental functions of Municipalities, Provinces and Metropolitan Cities," both Houses would vote.

3. *Taxation Powers and Revenue Sharing*

Until the 2001 Constitutional amendment discussed below, the Regions had no power to impose taxes; they depended solely on State revenue sharing. In large measure they continue to do so. The 2001 reform clarifies that Regions and other local governments set their own budgets and have their own resources, including to impose taxes, albeit "in harmony with the Constitution and according to the principles of coordination of public finance and tax system."[61] They are to participate proportionately in State taxes concerning their territory,[62] while State law is to establish an equalization fund for distribution to entities with lesser tax capacity per inhabitant (Regions limiting exercise of their taxing authority risk less ability to tap the fund),[63] and the State may selectively direct further resources.[64] Regions and other local governments may incur debt "only to finance expenses of investment," and no State guarantee is allowed.[65]

The available statistics suggest that Regions are exploring use of their augmented powers of taxation to build revenue bases,[66] albeit from a rickety foundation. Regional revenue bases include taxes on business activity, which Regions may adjust upward or downward by about 30% from the nationally set base and differentiate in application by taxpayer category,[67] personal income taxes collected through a Regionally adjustable surcharge on income declared for State income tax,[68] and dedicated shares set by State law in

[59] *Referendum, il trionfo del No*, LA REPUBBLICA (June 26, 2006). Of the 53.6% of eligible voters participating, 61.7% rejected the amendment. *Id.* Parliament, when adopting the amendment as Constitutional Law, failed to reach the majorities to obviate a referendum, GAZZ. UFF. no. 269 of Nov. 18, 2005. The Court of Cassation then for the first time found all three referendum triggers satisfied. *Referendum contro devolution: quorum ampiamente superato*, LA REPUBBLICA (March 14, 2006).
[60] Constitutional Law, GAZZ. UFF. no. 269 of Nov. 18, 2005.
[61] CONST. art. 119.
[62] *Id*. On the particular, but analogous, rights of special statute Regions, *see* Emanuele Barone Ricciardelli, *Il rapporto tra finanza statale e finanza regionale: analisi di una recente sentenza della Corte Costituzionale*, TRIBUTI ON LINE: RIVISTA DEL MINISTERO DELL'ECONOMIA E DELLE FINANZE (June 2006).
[63] D.L. no. 56 of Feb. 18, 2000, art. 7, GAZZ. UFF. no. 62 of March 15, 2000.
[64] CONST. art. 119. On the Constitutional Court's role in determining limits on State control of Regional "equalization funds" spending, *see* Corte cost. judgment no. 49 of Jan. 29, 2004, GAZZ. UFF. of Feb. 4, 2004, *prima serie speciale* no. 5 (validating Emilia-Romagna Region challenge to State targeting of infrastructure funding).
[65] *Id.* Local government bond finance is emerging, to support capital investment and to securitize tax and other receivables. *See, e.g.*, reports of Dexia Crediop, an investment bank, *available at* www.dexia-crediop.it.
[66] One set shows Regions' tax receipts as percent of total receipts climbing: 33.8% in 1999, 37.8% in 2000, 38.9% in 2001, 39.1% in 2002, and 39.8% in 2003, with the balance substantially in State transfers. Table 25.6, Istituto Nazionale di Statistica, ANNUARIO STATISTICO ITALIANO 2005 (Nov. 2005). Another set shows Regions in 2001 deriving 49.9% of revenues from their own taxation, growing to 58.9% in 2002, Figure 3.1 at p. 129, Istituto Nazionale di Statistica, *Statistiche delle Amministrazioni pubbliche, Anni 2001-2002*, ANNUARIO (3) (2005), with the balance State transfers. *Id.* at Table 3.1 at p. 140 *et seq*.
[67] *Imposta Regionale sulle Attività Produttive* ("IRAP"), introduced by D.L. no. 446 of Dec. 15, 1997, art. 16, GAZZ. UFF. no. 298 of Dec. 23, 1997, upheld by European Court of Justice, Case C-475/03 (Oct. 3, 2006), as not reached by European limits on value added tax.
[68] D.L. no. 446 of Dec. 15, 1997, art. 50, as amended by D.L. no. 56 of Feb. 18, 2000.

national value added tax[69] and gasoline excise tax revenues,[70] as well as miscellaneous Regionally set taxes including vehicle registration taxes and hazardous waste disposal surcharges.[71]

4. *Non-Judicial Resolution of Intergovernmental Conflicts*

A. *National Referenda*

From its 1948 inception Italy's Constitution has contemplated two national referendum types: national law abrogation and reconsideration of constitutional amendment.[72] Each allows a disgruntled political minority of sufficient relevance direct recourse to the national electorate.

An abrogative referendum, on petition by 500,000 voters or five Regional Councils, achieves total or partial repeal of a law or an act having force of law if a majority of the electorate votes and a majority of valid votes cast supports the repeal.[73] Tax, budget, and treaty ratification laws, plus amnesties and pardons, are not subject to abrogative referenda.[74]

Constitutional amendments are by Constitutional laws, approved by each house of Parliament twice, at least three months apart, by absolute majority of each house the second time.[75] Should the second vote be a lesser majority, the amendment is subject to popular referendum triggered within three months of its publication by one fifth of the members of a house, 500,000 voters, or five Regional Councils.[76] Once the referendum is triggered, the measure is valid only if approved by a majority of those voting.[77]

Italy began as a Republic by a June 2, 1946 referendum on Republic vs. Monarchy (the Republic prevailed with 54%).[78] The next referendum was not until 1974 (a failed referendum to revoke a law allowing divorce), followed by 1978 referenda on antiterrorism measures and political party finance, 1981 referenda on terrorism, life imprisonment, right to bear arms and abortion, and a 1985 referendum on pensions, and from then through 2003, Italians were called twelve times to vote on forty-one referenda.[79]

Increased recourse to referenda coincides with the breakdown of uninterrupted center-left coalition governments and intensification of hollowing out the State's role in the 1990's, from below by Regionalization and from above by implementation of Italy's European obligations. The referenda reaffirm the national electorate's voice while affording a decisive mechanism to address political questions.

B. *New Deal Institutions*

[69] Instituted for ordinary statute Regions by D.L. no. 56 of Feb. 18, 2000, art. 2.
[70] Instituted for ordinary statute Regions by Law no. 549 of Dec. 28, 1995, art. 3(12), GAZZ. UFF. no. 302 of Dec. 29, 1995, ord. supp., as amended by D.L. no. 56 of Feb. 18, 2000, art. 4, 12.
[71] *See, e.g.*, Marco Annunziata and István Székely, *The Evolving Role of Regions in Italy: The Financing and Management of Health Care Services*, in International Monetary Fund, ITALY: SELECTED ISSUES, IMF Staff Country Report No. 00/82, (July 2000) at 95-96.
[72] Respectively, CONST. art. 75, CONST. art. 138. Regional territory and statute modification may also involve referenda of those directly concerned. Respectively, CONST. art. 132, CONST. art. 123.
[73] CONST. art. 75.
[74] *Id.* The Constitutional Court resolves disputes over such issues. Constitutional Law no. 1 of March 11, 1953, GAZZ. UFF. no. 62 of March 14, 1953.
[75] CONST. art. 138.
[76] *Id.*
[77] *Id.*
[78] Ministero dell'Interno, http://referendum.interno,it/ind_ref.htm.
[79] *Id.*

In the 1990's Italy focused on invigoration of the State by implementing antitrust, energy, securities, telecom, and privacy authorities on the US New Deal model of independent regulatory commission with technical expertise. European Union directives motivated reform of national law in the relevant subject matters together with creation of the new authorities, a kind of State institution not previously present in Italy, divorced from the State's existing bureaucracy.[80]

CONSOB (*Commissione Nazionale per le Società e le Operazioni di Borsa*—National Commission for Companies and Securities Exchange Operations), Italy's first independent regulatory authority, created by 1974 legislation, addresses Italy's securities markets. Other independent authorities established in the 1990s are: the Communication Regulatory Authority (Agcom), Regulatory Authority for Electricity and Gas, which has overseen introduction of competition into Italian electricity markets; Authority for protection of personal data; Antitrust Authority; Authority for Oversight of Public Works; and National Commission of Guaranty of Implementation of the Law on Strike in Essential Public Services. Each is created by national legislation and run by an independent commission whose members are chosen in ways intended to assure independence.

5. *Public Administration*

Hiring and funding of the State and Regional public administrations are separate, but subject to common constitutional principles. Pursuant to Constitution Article 97(3), employment in the public administration, of the State, Regions, provinces and municipalities, is by public competition unless otherwise specified by law. Regions may not make unfounded exceptions, as the Constitutional Court emphasized in finding unconstitutional a Regional law that would have given priority to job candidates previously employed by the Region.[81] A significant portion of public administration employees are now subject to civil, rather than public law, *i.e.* employment disputes are resolved by ordinary courts applying the Civil Code rather than administrative courts applying public administrative law. Such employees are subject to collective bargaining between representative unions and a State agency.[82]

Italy's national bureaucracy will continue to dwarf that available to the Regions for the foreseeable future. By one count, the State employs about two million people, while as of 2002 Regions employed 90,000; provinces 58,000, municipalities, the traditional local government unit, 480,000; and local health and hospital authorities 700,000.[83] Although Regional autonomy and responsibilities are increasing, the weight and simple numerical preponderance of the State public administration challenges Regions in their efforts to develop their fields of action. Further, turnover in the public administration is slow. Even through the 1970's much of the public administration began employment with the State well prior to the 1948 Constitution.[84] The numerical weight of the State public administration and the continuing political battles as to direction of the State suggest that, the process of Regionalization and Italy's adoption of New

[80] *See* Patrick Del Duca, and Duccio Mortillaro, *The Maturation of Italy's Response to European Community Law: Electric and Telecommunications Sector Institutional Innovations*, 23 FORDHAM INT'L L.J. 536 (2000); Lucia Musselli, *Direttive comunitarie e creazione amministrativa di un mercato nei servizi pubblici*, DIRITTO AMMINISTRATIVO 79 (1998).

[81] Corte cost. judgment no. 81 of March 3, 2006, GAZZ. UFF. of March 8, 2006, *prima serie speciale* no.10 (invalidates 2005 Abruzzo Region budget law provision for employment and career advantages to Regional employees, finding no basis for exception to "assuring access to public employment of the most competent and meritorious." ¶4.1.1 holdings in fact, *id.*).

[82] *Agenzia per la rappresentanza negoziale delle pubbliche amministrazioni* (Agency for negotiating representation of public administrations). D.L. no. 29 of Feb. 3, 1993, GAZZ. UFF. no. 30 of Feb. 6, 1993; D.L. no. 80 of March 31, 1998, GAZZ. UFF. no. 82 of April 8, 1998; D.L. no. 165 of March 30, 2001, GAZZ. UFF. no. 106 of May 9, 2001.

[83] Table 1.1 at p. 30, Istituto Nazionale di Statistica, *Statistiche delle Amministrazioni pubbliche, Anni 2001-2002*. *See* Cassese, Sabino, *Lo stato dell'amministrazione pubblica a vent'anni dal rapporto Giannini*, GIORNALE DI DIRITTO AMMINISTRATIVO (1) 99 (2000); Stefano Nespor, and Federico Boezio, *Quanti sono gli impiegati pubblici?*, RIP LA RIVISTA DELL'IMPIEGO E DELLA DIRIGENZA PUBBLICA no. 3 (2005); Pietro Virga, L'AMMINISTRAZIONE LOCALE (2d ed., 2003).

[84] *See* Rodolfo "Rudy" Lewanski, *Executive Civil Servants and Politicians in Italian Administration: Some Empirical Evidence from Large Municipalities*, paper presented at NISPAcee 9th Annual Conference on "Government, Market and the Civic Sector: The Search for a Productive Partnership," Riga, Latvia (May 10-12, 2001).

Deal-style authorities notwithstanding, the longstanding, broadly-perceived issues of effectiveness of many parts of Italy's public administration will remain challenges.

6. *Asymmetries*

The immediate special autonomy granted upon the Constitution's initial adoption to five outlying regions reflecting their prior legislative and administrative self-sufficiency and linguistic minorities has already been addressed.[85]

Although Italy's predominant language is now Italian, its first parliamentary debates when it emerged as a unified country in the 1860's were conducted in French, as the fraction of the population that spoke the variant of Tuscan that emerged as modern Italian was extremely limited. At Italy's unification, 10 to 12% of the population is estimated to have been Italian-speaking, with 75% illiteracy, accentuated in the south.[86] Through World War II, an important dimension of construction of the Italian state was the promotion and diffusion of standard Italian. The Italian constitution of 1948, adopted in reaction to the debacle of fascism, introduces a different emphasis, by providing that the Italian Republic is to protect linguistic minorities.[87] The charters of the special statute regions created in conjunction with the 1948 constitution provide specific rights in respect of language, *e.g.* , for German speakers in Trentino-Alto Adige/Südtirol and for French in Valle d'Aosta. Relatively recent national legislation in implementation of the constitutional provision for protection of linguistic minorities focuses on education and interactions with the public administration. It provides for protection of the language and culture of members of Italy's linguistic minorities who speak Albanian, *Catalán*, Croatian, French, Friulian, German, Greek, Ladino, Occitan, *Provençal*, Sardinian, and Slovenian.[88] Southern Italy's economic lag behind northern Italy remains a concern. Through the 1990's it was addressed principally by direct State subsidies and economic development initiatives outside the framework of the Regions.[89]

The continuing invention of an Italian federalism under the 1948 Constitution is not fundamentally the accommodation of territorial cleavages, *i.e.* a concentration in a specific territorial area of a self-aware minority,[90] but it is rather a redefinition of the State to accommodate national political impasse through invention of governmental levels other than the State itself, accompanied by devolution and delegation of responsibilities.[91] Italy's Christian Democrat-led coalition governments could not conceive national leadership by a Communist party that might turn away from Western Europe and the United States, but the energy of the left-wing opposition excluded from national power found expression in development of Regional and municipal autonomy. More recently, the *Lega Nord* and voices of the political right crafted a national role from Regional and municipal foundations.

V. CONCLUSION

[85] See s*upra* note 2 and accompanying text.
[86] Lucy Riall, GARIBALDI: INVENTION OF A HERO 135-36 (2007).
[87] Italian Constitution, art. 6. *See* Louis Del Duca and Patrick Del Duca, *An Italian Federalism?—the State, its Institutions and National Culture as Rule of Law Guarantor*, 54 AM J. COMP. L. 799 (2006).
[88] Law no. 482 of Dec. 15, 1999, GAZZ. UFF. no. 297 of Dec. 20, 1999.
[89] *See* Carlo Trigilia, SVILUPPO SENZA AUTONOMIA. EFFETTI PERVERSI DELLE POLITICHE NEL MEZZOGIORNO (1994).
[90] *See* Ugo M. Amoretti, *Federalism and Territorial Cleavages*, in Ugo M. Amoretti, and Nancy Bermeo, eds., FEDERALISM AND TERRITORIAL CLEAVAGES 1-23, 2 (2004) (essays on federalism and territorial cleavage in Belgium, Canada, France, India, Mexico, Nigeria, Russia, Spain, Switzerland, Turkey, and United Kingdom, plus Italy).
[91] Ugo M. Amoretti, *Italy: Political Institutions and the Mobilization of Territorial Differences*, in Ugo M. Amoretti, and Nancy Bermeo, eds., FEDERALISM AND TERRITORIAL CLEAVAGES 181-200 (2004), although focusing on the last decade's "political mobilization of the territorial cleavage between north and south," recounts Italian politics and governmental structures consistently with the present State reconstruction and constitutional rule of law analysis.

Regionalization and Supranationalism in Italy have proceeded concurrently as means of working around political impasses in politics at the national level. Their progress has redefined the State's essence, paradoxically reinforcing its role as guarantor of the constitutional rule of law. Both Regionalization and Supranationalism with time appear to be contributing to distill the State's premier purpose to the highest level, namely, assuring the constitutional rule of law. In legal matters, the Italian system is likely to remain highly unified. Its constitutional court and national government work effectively to assure that Italy's European Union and other international obligations are implemented uniformly. Its Regional governments focus almost entirely on land use, health care and other matters that do not challenge the pre-eminence of national institutions, including the national codes and statutory law, the importance of the state budget and public administration, and the exclusively national system of courts.

The national political process, although frequently manifesting sustained impasse, has in actuality been creative in affirming the State and its institutions through their deconstruction by Regionalization and Supranationalism. The State in the expression of national politics instigates the nascent federalism, and the State's institutional mechanisms of control assure its unfolding within the parameters of the constitutional rule of law. These mechanisms range from the Constitutional Court's role as arbiter of the bounds of State and Regional responsibilities, to the veto effects of national referenda, the budgetary controls under the continuing dominance of State revenue-sharing, and the *Corte dei Conti* audit of all governmental bodies. The uniformity of national legal culture further affirms the State's continuing role as guarantor of the constitutional rule of law. Within this framework, the Italian electorate has begun to vote in ways that alternate State governance among political groupings, while simultaneously supporting increasingly vibrant Regional and municipal polities.

The Italian State arose as a unitary State because the territorial entities that Piemonte incorporated into the new State of Italy lacked effective political institutions to sustain any federal system.[92] Moreover, the Piemonte regime's elitist character, with its flexible constitution, paved the way for degeneration into the fascist debacle. In view of this history, that Italy's present flourishing as a State under the constitutional rule of law is so tied to the development of its Regions, accompanied by its participation in the supranational European Union, is a happy irony, which builds upon Italy's diverse histories of its regions, yet also their common history with the rule of law. Although slow in developing, recourse to regionalization under the 1948 Constitution to work around political impasses, is building political capacity for Regional government, ranging through public administration, taxation, and regional politics distinct from national politics. The story of the Italian State's Regionalization and Supranationalism is a story of continuous procedural adjustments to work through and around national-level political impasses by newly invented institutions and practices.

The tools for State control of the Regions, including the Constitutional Court's protection and promotion of Regional spheres of activity, together confirm classification of Italian Regionalism as a system of Regional autonomy guaranteed by a national constitution, certainly not the joining of sovereign states in a federal or supranational union. Conversely, the Regions' legislative and budgetary autonomy confirm Italian Regionalism as more than the mere decentralization of administrative functions evidenced in unitary states.

[92] *See* Ziblatt, *supra* note 1.