The territories of the Italian peninsula were greatly influenced by the culture and the institutions of the French Revolution. During the years 1796–9, continental Italy was occupied by French military forces and the French revolutionary regime established several 'sister republics': the Cisalpine Republic (covering more or less the present-day regions of Lombardy and Emilia-Romagna), the Roman Republic (present-day Latium and Umbria) and the Neapolitan Republic in southern Italy (excluding Sicily). Those republics were in theory independent states. Their constitutions were modelled after the French constitution of the Directory (Year III of the republican era, 22 August 1795). It was the first time in Italian history that institutions expressing a 'liberal rule of law' were being introduced, based on a separation of power and on the effective protection of civil rights. The main features of the new French courts system were also introduced in all the Italian territories under French influence. The changes were accordingly numerous and substantial, but the political regimes which bore those new institutions were short-lived and the innovations they brought could not be fully put into practice.

In that respect, Napoleonic rule (1800–14) had a more lasting influence and was even more important. During that period, the whole of continental Italy took over the French constitutional and judicial system. Napoleon went on to create an Italian Republic (covering more or less the present-day regions of Lombardy and Emilia-Romagna), the Roman Republic (present-day Latium and Umbria) and the Neapolitan Republic in southern Italy (excluding Sicily). Those republics were in theory independent states. Their constitutions were modelled after the French constitution of the Directory (Year III of the republican era, 22 August 1795). It was the first time in Italian history that institutions expressing a 'liberal rule of law' were being introduced, based on a separation of power and on the effective protection of civil rights. The main features of the new French courts system were also introduced in all the Italian territories under French influence. The changes were accordingly numerous and substantial, but the political regimes which bore those new institutions were short-lived and the innovations they brought could not be fully put into practice.

The opening of the judicial year, 2010, at the Court of Appeals in Naples.

In the Napoleonic system, administrative justice was governed by separate institutions: ‘administrative litigation’ was ultimately under the jurisdiction of the Council of State, which acted as the appellate tribunal when a decision of a préfecture council was challenged. Although the Council of State was essentially, at its beginnings, a consultative body, it also came to play an important role in adjudicating in administrative disputes. Councils of State were created after the French example...
in the Napoleonic kingdoms of the peninsula: at Milan in 1805 and at Naples in 1806. The French administration of justice ensured a comparatively swift termination of proceedings in civil cases, and an effective enforcement action in criminal cases. The rationality and simplicity of the judicial hierarchy, the clarity of the judgment and the abridgment of proceedings were generally praised. Everywhere in Italy, the importance of the French judicial reforms was recognised. At the time of the Restoration, all the governments were inspired by the French system when introducing their own reforms. Among the main provisions which Italy borrowed from the French to modernise its judicial system were the division between civil and criminal courts, the public character of the trials, the requirement of stating the reasons of the decision in the judgment, the two degrees of proceedings, the control of legality exclusively through the cassation jurisdiction, and, in the area of criminal justice, the prohibition of torture and the restriction of sentencing to more humane forms of punishment.

The Napoleonic judicial system – for which the legal reference was the famous Act of 20 April 1810 – was extremely influential in the whole of continental Europe. In Italy, it was adopted in the Kingdom of Sardinia, which was later to achieve the political unification of Italy.

THE RESTORATION AND THE ITALIAN STATES BEFORE UNIFICATION (1814–48)

After the military defeats of Napoleon in 1814–15 and following the agreements made at the Congress of Vienna, the old ruling dynasties were restored to power in the Italian States as their ‘legitimate’ authorities. After a short period during which these rulers tried to reconstitute the ancient regimes and institutions and practices in their pre-revolutionary form, they came to realise that turning the clock back was no longer possible, nor advisable. The political and administrative classes had no interest in ignoring the 15 years of French rule and the modernisation it had brought to society. A full and uncompromising restoration of the old institutions had become impossible, and this was particularly true for the judicial institutions from the Napoleonic era, which had proved both innovative and effective. Notwithstanding the ideological aversion of the political establishment in the Italian States at the time of the Restoration towards French revolutionary ideas and the institutions they had produced, there was some consensus that in judicial matters, the effectiveness and abridgment of proceedings was a significant achievement which had to be attributed to the French system, and a great improvement compared to the slow and confused state of affairs under the old institutions.

Codification had also proved to be an important and useful innovation: it offered a comprehensive system of legal rules, which no longer required to rely – unless marginally – on other legal authorities. It was the end of the role of the Roman-canonicalius commune in legal practice. Legal exceptionalism, based on particular local or regional laws, had been a characteristic feature of pre-Napoleonic Italy, which was now replaced by a civil code which guaranteed an equal status and rights to all citizens, i.e. equal treatment by the executed codified law, which was henceforth to be considered as the sole source of law and the best prospect for ensuring legal security to all.

THE KINGDOM OF THE TWO SICILIES

The southern kingdom, styled of the Two Sicilies in 1816, also went through a period of reforms inspired by the French institutions which had been characteristic of the Napoleonic state-building. Ferdinand I of Bourbon passed on 29 May 1817 a statute which organised the courts system in the continental part of the realm, while a statute of 7 June 1819 organised the courts in Sicily. The system was derived – except for different names given to the courts – from that of the Napoleonic state, more specifically as it had been introduced in 1808 under the rule of Murat: it included high courts in civil cases (corte di giudizio), high courts in criminal cases (corte di criminali), special high courts (corte di speciali), lower courts in civil cases (tribunali civili) and commercial courts (tribunali di commercio), local magistrates (giudici di circondario) and mediators for conciliation proceedings (conciliatori). Because of the disparities between the continental and the Sicilian legal systems, two courts of appeal were established, designated as supreme judicial courts (corte di giustizia), one in Naples (organized in two chambers), the other in Palermo (with a single chamber). These supreme courts had jurisdiction only on issues of law, following the French system introduced after the Revolution.

In the field of administrative justice, too, the influence of the French system is obvious. Statutes of 1816 and 1817 had abolished the jurisdiction on administrative litigation as it had been instituted during the Napoleonic regime, but the new system replicated that jurisdiction as regards the fundamental principles. In each town where the centre of the provincial administration had been established, there was a consigliere d’intendenza, which were subordinate to two high courts of audit (gran corti deonti) sitting in Naples and Palermo. In the former, members were designated as first-instance judges, the latter heard cases on appeal. These councils and courts could only act in an advisory capacity, as their opinions were not binding for the sovereign, to whom belonged the ultimate decision. Around the same time, an ambitious codification was introduced into a few years and carried out important reforms. In 1810 the code for the kingdom of the Two Sicilies was enacted. It was divided in five parts, which dealt with civil law, criminal law, civil procedure, criminal procedure and commercial law. As in the case of the judicial system, these codes were largely influenced by their Napoleonic models.
The accession of Charles Albert to the throne of Sardinia in 1831 brought with it a new wave of legal reforms aimed at modernizing the judicial system. Charles Albert, who was previously involved in the Congress of Vienna as a representative of the French government, initiated legal reforms that were reminiscent of those introduced by Napoleon in Piedmont. These reforms sought to align Sardinian law with French models, particularly those concerning the establishment of a cassation court and the abolition of private law courts.

However, the opposition to these reforms was significant, particularly among the legal community. The establishment of a cassation court was seen as a threat to the autonomy of the judiciary, as it would undermine the independent and impartial nature of judicial decisions. The opposition was so strong that even the king, Charles Albert, was forced to reconsider his plans. The king was concerned about the legitimacy of the reforms and their impact on the institution of the judiciary. He was aware of the need for reform, but also of the potential for resistance and opposition.

The king was eventually persuaded to modify the reforms, and a new decree was issued on 18 August 1831. This decree abolished the old regime institutions and procedure, but it also established the Cassation Court, which would eventually become the supreme court of appeal for Sardinia. The new court was modeled on the French Cassation Court, and it was seen as a symbol of the king's commitment to modernizing the judicial system.

The king's decision to modify the reforms was seen as a pragmatic move, as it allowed him to proceed with the reform of the judicial system while addressing the concerns of the legal community. The new court was established in 1836, and it played a crucial role in the development of the modern Sardinian legal system.

The establishment of the Cassation Court was a significant achievement, as it marked a shift from the old regime institutions to a more modern system of justice. The court was designed to ensure that judicial decisions were based on statutory grounds, and it was given the power to give an authentic interpretation of statutes. The court was also given the power to review the decisions of lower courts, which was a significant step towards ensuring the independence and impartiality of the judiciary.

The Cassation Court was a symbol of the king's commitment to modernizing the judicial system, and it was a significant achievement in the development of the modern Sardinian legal system. The court played a crucial role in ensuring the independence and impartiality of the judiciary, and it was a testament to the king's commitment to modernizing the Sardinian legal system.
to assert its authority via a structure which was already strongly dependent on the executive. The fascist leadership could simply identify the members of the judiciary who were committed to the regime and ensure that they were given preferential to key posts. The extension of police powers and the control of the judiciary effectively enabled the regime to oversee public life.

Among the most important statutory interventions during the fascist period, one of the earliest reforms was the unification of the courts of cassation in civil affairs (Royal Decree of 24 March 1923, No. 601), by which the system of five concurrent courts (in Rome, Turin, Florence, Naples and Palermo), which had already been unified for criminal justice in 1888, was replaced by a single Court of Cassazione for the whole kingdom. The regime also created a Special Tribunal for the Defense of the State (Act of 25 November 1926, No. 2008), which took over the jurisdiction over political offences from the ordinary courts. Finally, the ‘Grandi decree’ of 30 January 1941 (named after the Minister of Justice Dino Grandi) reorganized the judicial hierarchy and confirmed its subordination to the executive.

One should also remember that during the fascist era, the codes themselves underwent a complete overhaul. A criminal code and a code of criminal procedure were enacted in 1930, a civil code and a code of civil procedure in 1942. The assessment of the influence of the fascist regime on Italian law and legal culture is a controversial issue among historians. There is little doubt that the regime wanted to impose its ideological mark on legal culture and the new codes. However, thanks in part to its technical quality, the law retained in general a degree of autonomy. In that respect, it is significant that all the codes of that period (although the code of civil procedure was renewed in 1899, by introducing the so-called ‘Usual code’) are still in force. After the fall of the regime, one had only to adjoin the provisions which were too obviously inspired by the fascist ideology and incompatible with the liberal-democratic principles which had been reinstated in post-war Italy. In the criminal code of 1930 (named ‘Rocco code’ after the jurist Alfredo Rocco, then Minister of Justice), the influence of the authoritarian features of fascism was the most overt, as the code, in the view of the lawmaker, was intended to equip the regime with an efficient instrument of repression. Its incoherence and anachronism were the result of a hurried attempt to transpose a legal system which had been in force for many decades and which was therefore effective to the Court of Cassazione which acted as the governing body of the judiciary. The court essentially reflected the orientations of the political establishment, because the government was in a position to influence the judges’ careers. From the 1960s onwards, when the independence of the judiciary was more effectively secured, the court began to follow a more autonomous line of reasoning, sometimes departing from the political line of the Government.

The Court of Cassazione is the supreme institution of the ordinary courts system. It continues to fulfil its essential task of interpreting the body of laws. A uniform interpretation of the Italian legal literature, this function is sometimes dubbed as ‘nomodattista’, a task completed by eminent judges. Although in the Italian legal system the judgments of the Court of Cassazione are not considered to be binding precedents, they often provide the full court, whereby different sections are sitting together, increasingly tend to have a ‘persuasive authority’ for the judges of lower courts.

At present, the court is divided in five civil sections and seven criminal sections.

**THE COURT OF CASSAZIONE**

With the unification of the kingdom in 1861, the structure of the Court of Cassazzione had to be reconsidered. Because of the substantial differences between the legal cultures and traditions of the various Italian states before unification, and because it was impractical to embark immediately on a general codification, it was decided to proceed in stages, with the various regions enacting codes in accordance with their own traditions and requirements.

The law of 6 December 1888 achieved the jurisdictional unification of the kingdom, and the civil and criminal courts of 查勘 were abolished and that their jurisdiction was concentrated in one institution, the Court of Cassazione in Rome. The Court of Cassazione is the supreme institution of the national judicial system as a whole, however, was achieved, which explains why at the beginning of the 21st century, the courts system is still largely based on the Grande legislation of 1941.

The republican constitution enshrined some fundamental principles for a democratic political system. A High Council for the Judiciary (Consiglio superiore della magistratura, art. 104), which is to ‘govern’ the members of the judiciary (art. 105), is a guarantee for the autonomy and independence of the judges and prosecuting magistrates (art. 104, par. 1). In order to ensure the due process of law, the constitution states the principle of the natural judge (art. 25, par. 1), the prohibition to establish courts to deal with claims against the public administration (art. 112). According to the judges to the (enacted) law (art. 101, par. 2) and the necessary character of the criminal prosecution (art. 101, par. 3), the prohibition to establish a grand inquest (art. 105), is a guarantee for the autonomy and independence of the judges and prosecuting magistrates (art. 104, par. 1). In order to ensure that the due process of law and justice, the constitution states the principle of the natural judge (art. 25, par. 1), the prohibition to establish extraordinary or special judges (art. 102), the subordination of the judges to the (enacted) law (art. 105, par. 1) and the necessary character of the criminal prosecution (art. 101, par. 3), amended in 1999 in order further to improve the constitutional protections) justice has to be administered by the statutes on judicial institutions of 30 January 1941 restated these functions of the court. Section 65 of the statute also stated that the court would ‘ensure the tax' effectiveness and the uniform interpretation of the law’. Apart from its strictly jurisdictional tasks, the court also played an important role in the management of the judiciary until that function was taken over by the High Council of the Judiciary established in compliance with the 1947 constitution. A council had been established at the Ministry of Justice, consisting exclusively of members who were judges of the Court of Cassazione, and who were charged with disciplinary matters, promotions and transfers of judges from one court to another. Until 1959, when the High Council started functioning, it was therefore
advocated – figures such as Silvio Spaventa and Francesco Crispi were particularly active and influential – that the jurisdictional function of the Council of State be restored, making it a special court of administrative justice, and distinguishing between ‘legitimate interests’ and ‘subjective rights’. The Act of 31 March 1889 created the Fourth Section of the Council of State, specifically earmarked to deal with administrative litigation. In 1907, a Fifth, and again in 1948, a Sixth jurisdictional section were both added. The Council of State thus gradually acquired its present-day structure, consisting of three advisory sections and three jurisdictional sections. It was the French model of administrative justice which, in the long run, prevailed in Italy.

The Council of State is mentioned in several articles of the republican constitution, viz. in the articles 100, 103 and 111. In the course of the 20th century, it has acquired an important place in the Italian legal system, particularly due to its jurisdictional powers.

THE COURT OF AUDIT (CORTI DEI CONTI)

The Court of Audit exercises the highest jurisdiction on issues of auditing and has proved a technically highly qualified institution, though it carries less political weight. Jurisdictional institutions endowed with powers to control the financial administration of public offices had already been set up in several Italian states before the unification, and more generally in Europe from the later Middle Ages onwards. In 1859, the kingdom of Sardinia established at Turin a Court of Audit modelled after the French Cour des comptes and organised in two sections or divisions. A statute of 10 October 1862 changed its status to that of Court of Audit for the Kingdom of Italy, with a territorial jurisdiction extending to the entire new state. It was the French model of administrative justice which, in the long run, prevailed in Italy.

The Council of State was transferred to Florence in 1865 and from there to Rome in 1871. It is described as the paramount institution controlling the working of the state administration and the supreme administrative jurisdiction with regard to the state’s accounts. It is currently structured in ten sections, one of which has a controlling body, while the nine other exercise jurisdictional tasks.

THE CONSTITUTIONAL COURT

The most important jurisdictional innovation by the constitution of 1947 was the establishment of a Constitutional Court, mentioned in the articles 134–137. The court comprises 15 judges, of which five are appointed by the President of the Republic, five by the supreme ordinary and administrative courts (i.e. the Court of Cassation, the Council of State and the Court of Audit) and five by both chambers of Parliament sitting in a joint session. The judges are chosen among the magistrates of the supreme ordinary and administrative courts, ordinary law professors and advocates with at least 20 years’ professional experience.

The beginnings of the court were fraught with hurdles. Its fundamentally novel character inspired awe and distrust. The structure of the court required a political agreement between the parties in the government and the parliamentary opposition. As long as the political actors were diametrically opposed, as was the case during the 1950s, it was difficult to come to such an agreement. The court started functioning only in 1956 (following the organic statute of 11 March 1953) and held its first hearing on 23 April of that year. In the last half-century, the court has evolved into one of the prime actors of the institutional dynamics in Italy. It has developed an independent case law, often boldly in the defense of constitutional principles and rights, and the court has therefore acquired much prestige and earned general respect. Occasional attacks from some political groups notwithstanding, the court has been successful in staying aloof from the most divisive political polemics, mainly due to its widely recognised independent position and its technical expertise.