CHAPTER 2

Italy since 1796

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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 Lazio 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 Directoire (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 (soon to become the kingdom of Italy, with Milan as its capital) for the central and northern regions, and the kingdom of Naples in the southern part of the peninsula. Some territories were completely incorporated into the Napoleonic empire: Piedmont, Liguria, Tuscany, Lazio and Umbria. Only the major islands, Sicily and Sardinia, remained outside the French imperial rule, governed, respectively, by the house of Bourbon and that of Savoy.

In comparison to the situation in ancien régime Italy, the French judicial system was in many respects truly revolutionary. It was based on a new judicial theory, inspired by enlightened rationalism and the will to ensure fundamental rights to all citizens. The first (and fundamental) innovation was the introduction of the Napoleonic codes (in bilingual French-Italian versions): the civil code, the code of civil procedure, the commercial code, the penal criminal code and the code of criminal procedure. This was for Italy a fresh experience with a new regimen of legal sources and authorities, founded on the State's normative and legislative monopoly. It was the end of the age-old authority of the traditional ius commune.

The French imperial judicial institutions were introduced in Italy in their entirety, with the sole exception of the jury system, which Napoleon believed was unsuitable for the Italians, deemed to be 'too passionate' (as the emperor stated in a letter of 24 June 1808). Accordingly, the French assizes courts were not extended to the Italian territories of the empire, but the French-style justices of the peace, first-instance courts, courts of appeal (later named 'imperial courts'), criminal courts and commercial courts were all established in Italy, closely following the general model which prevailed in the domestic political order of Napoleonic France.

Also very important was the introduction of the cour de cassation at the top of the judicial hierarchy, as the supreme institution for assessing the legality (as opposed to the assessment of facts) in civil and criminal proceedings. The sharp distinction between 'judging the facts', which is the task of the lower courts and of the courts of appeal, and 'judging the lawfulness', which is the specific task of the cour de cassation, was one of the main

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

features introduced under the French system. The principle of 'cassation' was well received and would be upheld in the Italian states after the demise of the Napoleonic regime.

A cassation jurisdiction was established in 1802 at Milan for the kingdom of Italy, and in 1808 at Naples for the kingdom of Naples. The territories which had been incorporated into the French empire were of course subject to the jurisdiction of the French cour de cassation in Paris.

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 principles 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 reinstate the ancien régime 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 rule of the Roman-canonical ius commune in legal practice. Legal exceptionalism, based on particular local or regional laws, had been a characterisic feature of the traditional system, but was now replaced by a civil code which guaranteed an equal status and rights to all citizens, i.e. equal treatment by the enacted and 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 (gran corti civili), high courts in criminal cases (gran corti criminali), special high courts (gran corti 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 (corti supreme di giustizia), one in Naples (organised 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 consiglio d'intendenza, which were subordinate to two high courts of audit (gran corti de'conti) sitting in Naples and Palermo. In the former, members were designated as first-instance judges, the latter heard cases in 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 within 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 crest of the Kingdom of the Two Sicilies.

THE PONTIFICAL STATE

When pope Pius VII was restored to power in the Pontifical State, political moderation and, at first, a cautious reformist agenda, marked the return of papal rule. The reforms, encouraged by the Secretary of State Ercole Consalvi, were introduced through a series of enactments aimed at a more rational and modern system of law courts and legal authorities. The statute given motu proprio of 6 July 1816 on the reform of public administration heralded the beginning of a period of important judicial and administrative reforms. The statute was strongly inspired by the French system; its purpose was to simplify and rationalise the system of courts and the administration. In civil and criminal cases, the principle of public trials and the requirement of stating the reasons of the judgment were introduced.

The jurisdiction of baronial courts in civil cases was partly abolished, and, although the reform fell short of imposing a uniform judicial system, it went on to suppress many special courts. Simplification of the judicial system was achieved by reorganising the hierarchy of the courts (governatori, first-instance courts, courts of appeal, and the Rota Tribunal); each court's jurisdiction was better specified. The court of the segnatura held powers akin to those of an appeal review. Similarly, in the administration of criminal justice, most of the special courts were suppressed and their jurisdiction transferred to the governatori and to criminal courts of delegates. Appeals in criminal proceedings were heard by courts of appeal instituted at Bologna, Macerata and at the court of the sacra consulta.

The abolition of torture, of the death penalty by hanging and of arbitrary punishments was confirmed. The use of Italian in judgments and all criminal procedural documents became compulsory. The key-actor of all these judicial reforms, who was also legal adviser to Consalvi was the consistory advocate Vincenzo Bartolucci, the most famous and influential lawyer in Rome during the Napoleonic era. In 1809, he was appointed First President of the Court of Appeal in Rome and, in 1811, State Councillor in Paris. At the time of the Restoration, far from falling into disgrace, he was appointed head of the commission vested with the task of drafting a civil code and a code of civil procedure. Bartolucci, an expert in both pontifical ius commune and French law, is therefore yet another example of the French influence beyond the French occupation and rule in Italy. However, the commission's work and drafts encountered much

The accession of Charles Albert to the throne of Sardinia in 1831 brought with it legal reform, such as the introduction of the Council of State. [TO BE PURCHASED.]

opposition and the code of civil procedure was the only one eventually enacted in 1817.

After the death of pope Pius VII in 1823, his successor Leo XII followed a much more reactionary course. In consequence, the reform movement was stopped and some of the innovations which had been introduced were repealed. One would have to wait until the pontificate of pope Gregory XVI before somewhat bolder judicial reforms were once again introduced, such as the organic rules on criminal procedure (1831) and the legislative and judicial rules on civil cases (1834).

THE KINGDOM OF SARDINIA

The kingdom of Sardina deserves special attention, because in 1861 its courts system became, with political unification, the system extended to the whole of Italy. It should be remembered that the kingdom included, in addition to Sardinia, Piedmont, the Val d'Aosta, Savoy and – following the Congress of Vienna – the territory of the former Republic of Genoa.

After Napoleon's defeat, the return to power of the House of Savoy had seemed to aim at a sweeping restoration of the ancien régime. Immediately upon his arrival at Turin, Vittorio Emanuele I, king of Sardinia, issued on 21 May 1814 an edict reinstating the whole of the legislation as it was in force prior to the French annexation in 1800. The Laws and Constitutions of Sardinia from 1770 and the authorities of the Roman-canonical ius commune, in particular, were again to be applied. It appeared very quickly, however, that a general reform of the state institutions was necessary. The political class and the lawyers understood that a reform of the judicial system, especially, was urgent and unavoidable, because the old regime institutions and procedure appeared all the more irrational with respect to the institutional innovations which the French had introduced in Piedmont during the previous 15 years. The king was therefore persuaded to launch a series of wide-ranging reforms of the kingdom's public administration; however, the task proved extremely difficult as regards the judicial institutions. Any proposals of reform met with the strongest opposition from a large number of judges, particularly among the members of the Senates. It was therefore in a climate of tension and resistance that the government – thanks, above all, to the firm reformist determination of Prospero Balbo, who was Home Secretary from 1819 onwards – was able to submit between 1815 and 1821 a train of projects intended to bring the Piedmontese courts system in line with those nations which had already modernised their state and judicial institutions.

The strength of the constitutional movements in 1821 convinced the Savoy monarchy to hasten the pace of reforms. The judicial system had by now become a priority and as early as 1822 Charles Felix, the new king, issued two important edicts: one on the system of mortgage law (16 July 1822) and one on the judicial institutions (on 27 September). That reform of the judiciary was a first attempt, still modest, to simplify and rationalise the Piedmontese system of courts. Other statutes of 1822 abolished the practice of sportulae, whereby judges were paid certain sums by the litigants pending their cases, and introduced the principle of free access to the administration of justice. Collegiate courts at the level of the prefettura were created and some special tribunals were suppressed. Even so, the reform fell short of ensuring the independence of the judiciary, as the judges could at any time

be dismissed by the sovereign. Additionally, the judges did not have to state the reasons of their judgments, a requirement which would only be imposed (in the institutions of Sardinia) in 1838, after the enactment of a civil code. Finally, the reformed system ignored the institution of an appeal court or cassation, which was eventually reintroduced by royal edict in 1847.

The accession of Charles Albert to the throne in 1831 gave the opportunity for further reforms. An edict of 18 August 1831 instituted the Council of State, modelled after the French example. It was divided in three sections (one for home affairs, one for the Treasury, and one for justice) all of which had an exclusively advisory role. The Council was presided over by the king, and it counted among his staff and members a vice-president, three presidents for each of the sections, and 14 councillors. A few years afterwards, a civil code (1837), a criminal code (1839) and a commercial code (1842) were enacted; procedural codes took longer: the code of criminal procedure arrived only in 1847, and the code of civil procedure in 1854.

An edict of 19 September 1837 resuscitated the old Senate of Casale, which had been abolished in 1730. It was a court of supreme judicial authority at the same level as the two other senates of the Savoy state, in Turin and Chambéry.

The institution of an appeal court (called magistrato di cassazione) in 1847 was a milestone. It was divided in two sections (one civil, one criminal) and staffed by a First President, a president for each section and 16 councillors. The court had essentially the same jurisdiction – i.e. reviewing the application of the law by lower courts – as its French model. With the establishment of a cassation jurisdiction, the judicial organisation acquired the characteristic features of the French system, which it would keep, almost without any further major changes, for a substantial period, although the absence of a jury system remained a striking difference.

A new era in the kingdom's history was inaugurated by the Statuto of the kingdom of Sardinia, a constitutional charter granted by Charles Albert on 4 March 1848. The charter was clearly inspired by the French charters of 1814 and 1830: many of the 1849 provisions were simply Italian translations of provisions in the French texts. The provisions on the judicial system also followed closely their French examples. Thus, the articles 68–73 of the 1848 charter stated that 'justice proceeds from the king and is administered in his name' (art. 68); that the judges, appointed by the king, except for those who were specially commissioned, 'could not be removed from office after having held their office for three years' (art. 69); that the judicial system had to be based on statutory grounds (art. 70); that litigants were entitled to appear before their natural judge (art. 71); and, finally, that judicial hearings had to be public (art. 72). Article 73 prohibited the judges from making general normative statements (as exemplified by the arrêts de règlement of the pre-revolutionary parlements in France) and allowed that the power to give an authentic interpretation of statutes would be exercised by the legislative branch only. In the same spirit, art. 82 abolished the old prerogative of the Senates to register and ratify enactments and other official acts.

The implementation of the constitutional charter of 1848 and the establishment of a cassation court entailed the abolition of the three Senates, which were transformed into appeal courts (styled magistrati di appello, and, following an Act of 26 July 1854, corti d'appello from 1855 onwards). The abolition of the Senates symbolically marked the end of the ancien régime and its institutions in the Savoyard kingdom.

The constitutional and organisational principles of the 1848 Charter remained rather limited in respect of the necessary guarantees for a due process of law and justice. The judiciary – as regards the appointment of judges, their promotions, their transfer and their disciplinary status – was still very much dependent on the executive branch.

ITALY DURING THE LIBERAL ERA AND UNDER THE FASCIST REGIME

After unification, the first statutory provision which aimed at a systematic organisation of the Italian judicial system was the Royal Decree of 6 December 1865 (No. 2626). The text of 1865 borrowed from the Royal Decree of 13 November 1859 (No. 3781) for the kingdom of Sardinia, which itself had been largely based on the Napoleonic institutions introduced by a statute of 20 April 1810. The hierarchy of the judiciary, with the Minister of Grace and Justice as its head, was thoroughly reconstituted. Judges and magistrates were now appointed after a competition or directly nominated by the executive branch which selected them among advocates and university professors.

The fascist regime which came to power in 1922 did not make radical changes to the judicial system. Instead, it was able

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 preferment 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 early 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) rearranged 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 qualities, 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 1989, by introducing the so-called 'Vassalli code') are still in force. After the fall of the regime, one only had to abrogate 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 system of punishments reflected a hardening of criminal policies, witnessed by the importance of the death penalty (abolished in 1889 but reinstated in 1926 by the fascists when they created the Special Tribunal), and the code listed several offences which allowed prosecution for beliefs or opinions. Especially repressive were the provisions for offences against the State.

After the fall of the fascist regime in 1943 and the complete liberation of Italy by April 1945, several reforms were enacted intended to ensure the protection of fundamental rights in the whole political system and its institutions, all now based on the liberal and democratic tradition. On 2 June 1946, the people voted – for the first time on a 'one citizen, one vote' basis – on the political form of the state (in what was referred to as an 'institutional' referendum) and elected a constituent assembly, which would have to work out a new constitution. The outcome of the referendum gave a (narrow) win for a Republic.

The new constitution of the Italian Republic was ratified on 22 December 1947 and came into force on 1 January 1948. A succession of statutory reforms gradually adjusted the judicial system to the requirements of the new constitution and to the democratic principles it expressed. No general reform of the 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 Grandi 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 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. 101, par. 2) and the necessary character of the criminal prosecution (art. 112). According to art. 111 (amended in 1999 in order further to improve the constitutional protections) justice has to be administered by the standards of the 'giusto processo', a phrase in which one may recognise the principle of 'fair trial', of a 'reasonable time-limit' and of adversarial procedure, whereby the parties appear on an equal footing before an independent and impartial judge.

The most innovative provision of the constitution was no doubt the creation of a Constitutional Court, which, for the first time in Italy, ensured that enactments would be subject to a judicial review of their conformity to the constitution. The legislature's powers are thus restricted with respect to the higher norms of the constitution.

THE COURT OF CASSAZIONE

With the unification of the kingdom in 1861, the structure of the Court of Cassazione 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 settle for the time being on five regional courts with cassation jurisdiction. They were established in Turin, Florence, Naples, Palermo and – after the annexation of the Pontifical State in 1870 – Rome.

The absence of a single supreme court for the whole kingdom presented a problem which was only gradually and partially addressed by a series of statutes. An Act of 12 December 1875 attributed to the Court of Cassazione in Rome the exclusive competence for deciding conflicts of jurisdiction. Later, an Act of 6 December 1888 achieved the jurisdictional unification in the domain of criminal justice by extending the Roman court's territorial jurisdiction to the whole kingdom. The issue of the unification of cassation jurisdiction in civil cases proved much more difficult. Several proposals were drafted, but it was not before 1923 (by Royal Decree of 24 March 1923) that the regional cassation courts were abolished and that their jurisdiction was concentrated in one institution, the Court of Cassazione in Rome.

The Court of Cassazione's mission, as the judicial guardian of the law, was 'to preserve the exact application of the (enacted) laws', to resolve conflicts between judicial and administrative authorities regarding their respective powers, and to decide on conflicts of jurisdiction between ordinary and special courts. The statute on judicial institutions of 30 January 1941 restated these functions of the court. Section 65 of the statute once again stated that the court would ensure 'the exact application 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 instituted 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 effectively 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 more autonomously its own course, if need be diverging 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 ensuring a uniform interpretation of laws (in Italian legal literature, this function is sometimes dubbed as 'nomofilattica'), 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, the decisions reached by 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 COUNCIL OF STATE

The Council of State established at Turin by king Charles Albert of Sardinia on 18 August 1831, had originally three sections (home affairs, Treasury, justice) and a purely advisory capacity.

In 1859, the Council was given the power to adjudicate in administrative litigation, a jurisdiction it held until 1865, when the system of administrative litigation was abolished. In order to placate liberal ideological opinions, a statute of 20 March 1865 instituted a uniform and sole jurisdiction, leaving the ordinary courts to deal with claims against the public administration. The Council of State became once again a merely advisory body. In the European countries of the time, one may recognise two distinct models with regard to the review of the lawfulness of administrative acts: the French model, based on a specialist administrative jurisdiction, and the Belgian system, which favoured the principle of a single jurisdiction. In 1859, the lawmakers of Sardinia had opted for the French model, in 1865 the Italian lawmakers opted for the Belgian model.

The new system did not prove satisfactory. The ordinary courts were not able to ensure an effective protection of the citizens vis-à-vis the actions of the public administration. 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 his jurisdictional powers.

THE COURT OF AUDIT (CORTE 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. The Court's tasks include the – both anticipative and subsequent – auditing and control of the different services of the state's public administration. The Court was transferred to Florence in 1865 and from there to Rome in 1871.

The Court is mentioned in the republican constitution (articles 100, 103, 111, and also in the sixth transitory provision). 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 Cassazione, 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 to its technical expertise.

The Palace of Justice in Rome, seat of the Court of Cassation.