



# LAUREA IN ECONOMIA E GESTIONE AZIENDALE

## **INTRODUCTION TO ITALIAN LAW (PUBLIC LAW)**

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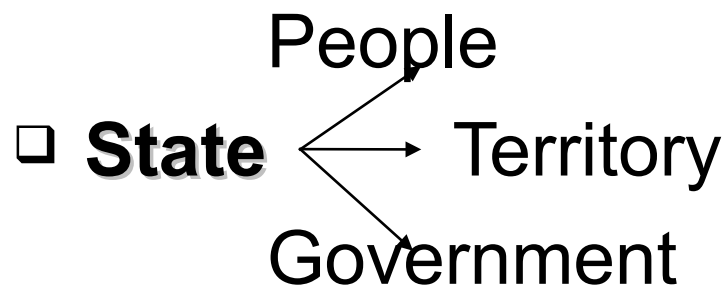


# WHAT IS A CONSTITUTION?

- ❑ There is no universal and uncontested definition
- ❑ It is a «**Higher Law**» which describes:
  - the basic principles of the State
  - The structure and process of Government
  - The fundamental rights and duties of citizens
- XX Century: A) Representative Government  
B) Protection of Rights



# WHAT IS A STATE?



□ **Sovereignty**



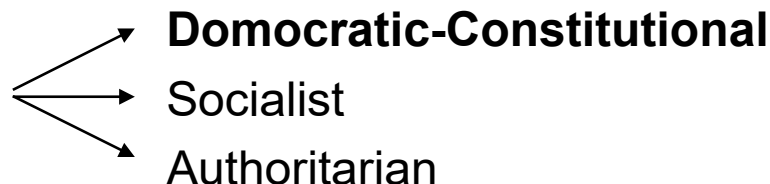
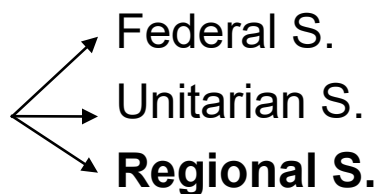
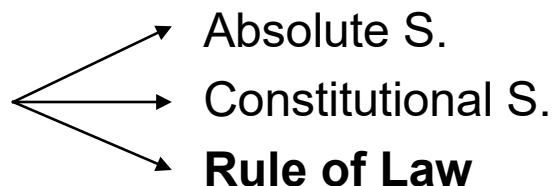
# THEORIES OF STATE LEGITIMACY

- ❑ **Social contract theory** (T. Hobbes; J. Locke; J.J. Rousseau)
- ❑ **Divine Rights of Kings** (T. Hobbes; J. Bodin)
- ❑ **Rational-Legal authority** (M. Weber)



# FORMS OF STATE

## ➤ Relationship among People/Government/Territory





# FORMS OF GOVERNMENT

- **Relationship among main institutional bodies**  
(i.e. Legislative/Executive/Judiciary)

- Monarchy
- **Republic**

- **Parliamentary**
- Presidential
- Semi-Presidential



# ITALIAN CONSTITUTIONAL HISTORY

## MONARCHY

**STATUTO ALBERTINO (1848-1947) - *Octroyée***

**UNIFICATION:** (1861) – Capital city: Turin

(1865) - Capital city: Florence

(1871) – Capital city: Rome

**FASCISM:** - Benito Mussolini's "March on Rome" (1922)

- Racial Laws (1938)

- Italy enters into WW2 (1940) alongside  
Germany and Japan

**25 April 1945:** "Liberation" of Italy

**2 June 1946:**

- Constitutional Assembly Elections

- Constitutional Referendum

Monarchy: 46%

Republic: 54%



# THE ITALIAN REPUBLIC

## REPUBLIC

**CONSTITUTION (1.1.1948):** - *Democratic* (≠ plebiscitary, imposed)

- 139 articles ("long")

- *Political compromise*

- "written" (≠ customary)

- "rigid" (≠ flexible)

Centralized State → 2001: **strong Regional State**

**Structure of Government:**

- **Separation of Powers** (but mutual checks and balances)

- "**Form of Government**": Parliamentary

- **Multi-party system**





# THE SUPREMACY OF THE CONSTITUTION

## ❑ CONSTITUTION “RIGIDITY”:

A) the Constitution can not be amended by a simple Act of Parliament) → ***ad hoc* amending procedure:**

- ❑ 2 adoptions by each House;
- ❑ 3 months interval
- ❑ Absolute majority approval in last votations in each House
- ❑ should < 2/3 majority: referendum possibility

**B) Matters limits** (explicit and implicit as well)

## ❑ “CONSTITUTIONAL REVIEW” BY THE CONSTITUTIONAL COURT



# FEDERALISM AND DECENTRALIZATION: ITALIAN REGIONALISM (I)

- ❑ Constitutional Assembly: **compromise** between Centralist and Federalist approaches → **Regional State** → 2001: **strong Regional State**
- ❑ **Asymmetric regionalism**: 15 Ordinary status Regions and 5 Special status Regions (and Trentino Alto Adige Region with 2 Special status Provinces)



# FEDERALISM AND DECENTRALIZATION: ITALIAN REGIONALISM (II)

## ❑ ART. 5 CONST.

- ❑ State Indissolubility
- ❑ State unity
- ❑ Regional/local autonomy

## ❑ ART. 114 CONST.

- Republic pillars: municipalities, Provinces, Regions, State



# THE ITALIAN CONSTITUTION (1)

- ❑ Preamble
- ❑ **Fundamental Principles** (Articles 1–12)
- ❑ **Rights and Duties of Citizens** (Articles 13–54)
  - Civil Relations (Articles 13–28)
  - Ethical and Social Relations (Articles 29–34)
  - Economic Relations (Articles 35–47)
  - Political Relations (Articles 48–54)



# THE ITALIAN CONSTITUTION (2)

- ❑ **Organisation of the Republic** (Articles 55–139)
  - ❑ Parliament (Articles 55–82)
    - ❑ The Houses (Articles 55–69)
    - ❑ Legislative Process (Articles 70–82)
  - ❑ The President of the Republic (Articles 83–91)
  - ❑ The Government (Articles 92–100)
    - ❑ The Council of Ministers (Articles 92–96)
  - ❑ Public Administration (Articles 97–98)
  - ❑ Auxiliary Bodies (Articles 99–100)
  - ❑ The Judicial Branch (Articles 101–113)
    - ❑ The Organisation of the Judiciary (Articles 101–110)
    - ❑ Rules on Jurisdiction (Articles 111–113)
  - ❑ Regions, Provinces, Municipalities (Articles 114–133)



# THE ITALIAN CONSTITUTION (3)

- ❑ **Constitutional Guarantees** (Articles 134–139)
  - ❑ The Constitutional Court (Articles 134–137)
  - ❑ Amendments to the Constitution. Constitutional Laws (Articles 138–139)
  
- ❑ **Transitory and Final Provisions** (Provisions I–XVIII)



# **THE ITALIAN REPUBLIC: MAIN INSTITUTIONS**

**A.THE ELECTORAL BODY**

**B.THE PARLIAMENT**

**C.THE GOVERNMENT**

**D.THE PRESIDENT OF THE REPUBLIC**

**E.THE CONSTITUTIONAL COURT**

**F.THE JUDICIARY**

**G.THE REGIONS**



# A) THE ELECTORAL BODY

*[tr: il Corpo elettorale] (1)*

## □ ART. 1 CONST.:

“Italy is a **democratic** Republic founded on labour.

Sovereignty belongs to **the people** and is exercised **by the people** in the forms and within the limits of the Constitution”.

## □ ART. 48 CONST.

“**Any citizen**, male or female, who has attained majority, is entitled to vote. The vote is personal and equal, free and secret. The exercise thereof is a civic duty. The law lays down the requirements and modalities for citizens residing abroad to exercise their right to vote and guarantees that this right is effective. A constituency of Italians abroad shall be established for elections to the Houses of Parliament; the number of seats of such constituency is set forth in a constitutional provision according to criteria established by law. The right to vote cannot be restricted except for civil incapacity or as a consequence of an irrevocable penal sentence or in cases of moral unworthiness as laid down by law”

## □ ART. 49 CONST.

“**Any citizen** has the right to freely establish parties to contribute to determining national policies through **democratic** processes.

**Any citizen** may present petitions to Parliament to request legislative measures or to express collective needs.”





## A) THE ELECTORAL BODY (2)

### □ Art. 51 CONST.

“**Any citizen** of either sex is eligible for public offices and elected positions on equal terms, according to the conditions established by law. To this end, the Republic shall adopt specific measures to promote equal opportunities between women and men. The law may grant Italians who are not resident in the Republic the same rights as citizens for the purposes of access to public offices and elected positions. Whoever is elected to a public function is entitled to the time needed to perform that function and to retain a previously held job. “

### □ Art. 52 CONST.

“The defence of the country is a sacred duty for **every citizen**. Military service is obligatory within the limits and in the manner set by law. Its fulfilment shall not prejudice a citizen’s job, nor the exercise of political rights. The organisation of the armed forces shall be based on the **democratic** spirit of the Republic.”

### □ Art. 53 CONST.

“**Every person** shall contribute to public expenditure in accordance with their capability. The tax system shall be progressive.”



# ITALY: THE HOUSE OF COMMONS

*[tr: Camera dei Deputati]*  
(Palazzo Montecitorio)





# ITALY: THE SENATE

[tr: Senato]  
(Palazzo Madama)





## B) THE ITALIAN PARLIAMENT (1)



**Differences**

**Mandate: 5 years**

**Functions:**

- **Legislative Power**
- **Amendments of Constitution**
- **Rewiewing and guiding the Executive**
- **Inquests**
- **Joint sessions** (PR election/impeachment, 1/3 M CC, 1/3 M HCJ)



## **B) THE ITALIAN PARLIAMENT (2)**

- ❑ **MP represent the Nation without a binding mandate (art. 67)**
- ❑ **Double majority (art. 64)**
- ❑ **Each House elects a President (art. 63) and adopts its own rules (art. 64)**
- ❑ **Parliamentary Groups**
- ❑ **Parliamentary Committees and Plenary sessions**
- ❑ **Current Presidents:** - SR: On. Maria Elisabetta Alberti Casellati  
- HC: On. Roberto Fico





# ITALY: THE PRIME MINISTER HEADQUARTERS

*[tr: Presidente del Consiglio]*

(Palazzo Chigi)





# C) THE GOVERNMENT

*[tr: il Governo]*

## □ Composition

- **A) President of the Council** (i.e. Prime Minister): appointed by PR.  
Current PC is Prof. Mario Draghi
- **B) Ministers:** appointed by PC
- **C) Council of Ministers**

## □ Vote of confidence

## □ Electoral system importance

## □ Policy making (power of legislative initiative, LD and DL, by-laws...)

## □ Government instability (1948-2020: 67 Governments)



# THE PUBLIC ADMINISTRATION (1)

- ❖ Why Administrative Law?
- ❖ Central, Regional, Local, Agencies...
- ❖ Prefetto
- ❖ Privates in charge of public concessions





# THE PUBLIC ADMINISTRATION (2)

## Constitution and Law no. 241 of 1990 –

Fundamental principles:

- ❑ **Legality:** 1) Rule of Law; 2) satisfaction of public interests;
- ❑ **Impartiality:** 1) equality; complete investigation; 3) motivation; 4) distinction between political and operational levels
- ❑ **Proper functioning:** 1) proper use of public resources; 2) good administration
- ❑ **Proportionality**
- ❑ **Accountability and Transparency**



# THE PUBLIC ADMINISTRATION (3)

## Administrative procedure:

- ❑ **Participation**
- ❑ **Fairness and Collaboration**
- ❑ **Research for consensus and a shared decision**
- ❑ **Quickness and Simplification**



# THE PUBLIC ADMINISTRATION (4)

**The regime of the administrative act:**

- ❑ **Revocation and Annulment *ex officio***
- ❑ **Execution and Enforcement**
- ❑ **Unlawfulness and Nullity**



# THE PUBLIC ADMINISTRATION (5)

## Remedies:

- ❑ **Judicial protection**

**Administrative Courts**  
*("legitimate interests")*

**Civil Courts**  
*("subjective rights")*

- ❑ **Enforcement of decisions**



# THE PRESIDENT OF THE ITALIAN REPUBLIC HEADQUARTERS

*[tr: Il Presidente della Repubblica]*

(Palazzo del Quirinale)





## D) THE PRESIDENT OF THE REPUBLIC

*[tr: il Presidente della Repubblica]*

- ❑ **PR elections:** Parliament in joint session + 3 members from each Region
- ❑ **Qualified majority:** super partes
- ❑ **Mandate: 7 years (renewable)**
- ❑ **Interim:** SP
- ❑ **Tasks: overall constitutional order (and some legacies of the monarchical prerogatives):**
  - Law-making process
  - International affairs
  - Elections
  - Parliament
  - Executive authority
  - judiciary
- ❑ **Immunity** (but not High treason or Violation of the Constitution → **impeachment**)
- ❑ **Countersignature**



## D) THE PRESIDENT OF THE REPUBLIC

*[tr: il Presidente della Repubblica]*

### ART. 87 CONST.

The President of the Republic is the **Head of the State** and **represents national unity**.

The President may send **messages to Parliament**.

The President shall:

- **authorise the introduction to Parliament of bills initiated by the Government;**
- **promulgate laws and issue decrees having the force of law, and regulations;**
- **call a general referendum** in the cases provided for by the Constitution;
- appoint State officials in the cases provided for by the law;
- accredit and receive diplomatic representatives, and ratify international treaties which have, where required, been authorised by Parliament.

The President is the **commander-in-chief of the armed forces**, shall preside over the Supreme Council of Defence established by law, and shall make declarations of war as have been agreed by Parliament.

The President shall preside over the **High Council of the Judiciary**.

The President may grant pardons and commute punishments.

The President shall confer the honorary distinctions of the Republic.





# F) THE JUDICIARY

[tr: la Magistratura]  
(cd. Palazzaccio)







## F) THE JUDICIARY

### □ **Ordinary Courts** (Criminal and Civil matters)

- 1) The Justices of the Peace and The Tribunals
- 2) The Appellate Courts
- 3) The Supreme Court of Cassation

### □ **Special Courts**

- ✓ Regional Tribunals for Administrative Law and the Council of State
- ❖ Regional Audit Chambers and the Court of Auditors
- Tax Courts of First instance and Tax Court of Second instance
- Military Courts, ...



# THE LEGAL PROFESSIONS

- ☐ Legal education
- ☐ The Attorneys
- ☐ The Notaries
- ☐ The judges



# E) THE CONSTITUTIONAL COURT

[tr: la Corte Costituzionale]

(*Palazzo della Consulta*)





## E) THE CONSTITUTIONAL COURT

- **15 members**
  - 5 from P
  - 5 from PR
  - 5 from the Supreme Courts
- **Professional criteria:**
  - University Law Prof
  - Upper Court judges
  - Lawyers (with 20 years..)
- **Term:** 9 years (non renewable)



## E) THE CONSTITUTIONAL COURT

- Types of controversies:
  - 1) Judicial review of unconstitutional statute («incidental procedure»)
  - 2) Conflicts between Regions and State
  - 3) Conflicts between different «Powers»
  - 4) Admissibility of *referenda*
  - 5) «Impeachment of the President of Republic



# THE HIGH CONCIL OF THE JUDICIARY

[tr: il Consiglio Superiore della Magistratura - CSM]  
(*Palazzo dei Marescialli*)





# THE HIGH CONCIL OF THE JUDICIARY

- ❑ The Italian High Council of the Judiciary is the self-governing body of the Judiciary
- ❑ it is competent for:
  - appointment of magistrates (always through a public examination);
  - assignment of magistrates to a specific role;
  - promotions;
  - transfers;
  - subsidies for magistrates and their families;
  - appointment of magistrates to the Supreme Court of Cassation
  - appointment and removal of honorary magistrates



# THE HIGH CONCIL OF THE JUDICIARY

- ❑ The Italian High Council of the Judiciary is the **self-governing body** of the Judiciary
- ❑ It's composed by 27 members:
  - ❖ 3 members are **ex officio** (The President of Republic, The First President and the Prosecutor General of the Supreme Court of Cassation)
  - ❖ 24 members are **elected**:
    - 2/3 by Judges;
    - 1/3 by Parliament in joint session, among University Prof of Law or Lawyers 15 years experienced;





# THE HIGH CONCIL OF THE JUDICIARY

- To effectively implement the safeguards applying to autonomy and independence of the Judiciary, the drafters of Italy's Constitution decided that the judiciary would not be managed by entities belonging to the executive and/or legislative powers; accordingly, they set up the Superior Council of the Judiciary
- As for the status of the HCJ, the Constitutional Court has ruled that **it is not part of the public administration**
- Taking account of the functions entrusted by the Constitution to the C.S.M., the latter was found to be "**a body unquestionably discharging Constitutional functions**"



# THE REGIONS

- ❑ 15 Ordinary status R. + 5 special status R.
- ❑ Regional organs:
  - **President** (represent the Region and is in charge for the general policy)
  - **Cabinet** (executive authority)
  - **Council** (legislative power)



# LEGISLATIVE POWER IS SHARED BETWEEN STATE AND REGIONS

- ❑ **EXCLUSIVE LEGISLATION MATTERS** (RESERVED TO STATE)
  - Foreign policy
  - International relations
  - Defense and armed forces
  - Public order and security
  - Justice
  - Competition
  - ...
- ❑ **CONCURRENT LEGISLATION MATTERS** (SHARED MATTERS): i.e. Health care system, Urban planning, ...
- ❑ **RESIDUAL LEGISLATION MATTERS** (RESERVED TO REGIONS)



# **The ENTE DI DECENTRAMENTO REGIONALE DI TRIESTE (former Provincia of Trieste)**

- ❑ Regional Law No. 21/2019 established the Ente di Decentramento Regionale (EDR) of Trieste to exercise the functions transferred to the Region, whose territorial scope corresponds to that of the suppressed Province of Trieste.
- ❑ The EDRs are operational since 1st July 2020 and are functional bodies of the Region with legal personality under public law, endowed with managerial, patrimonial, organisational and accounting autonomy



# The Municipality of Trieste

- ❑ **In Italy:** 7.904 Townships
- ❑ **Competences:** registry of births and deaths, registry of deeds, maintenance of local roads and public works, urban planning, Primary School,...and every matter not explicitly allocated to other public bodies.
- ❑ **Institutions:**
  - **Mayor** [tr: Sindaco] elected by universal suffrage (\* tricolor band)  
Current mayor: Mr Roberto Dipiazza
  - **Cabinet** [tr: Giunta]: executive authority, chaired by the Mayor and composed by “Assessori” (appointed by the Mayor)
  - **Council** [tr: Consiglio] elected by universal suffrage



# The Italian University system

- ❑ In Italy: n. 96 Universities
  - 67 State
  - 19 Private (11 telematic)
  
- ❑ University missions:
  - 1) **First mission:** teaching (it is based on interaction with students)
  - 2) **Second mission:** research (interaction mainly with scientific communities and peers)
  - 3) **Third mission:** set of activities with which universities enter into direct interaction with society; it aims to spread scientific culture and the knowledge and skills acquired through research



# The University of Trieste

## □ University of Trieste - Main Institutions

- **Rector:** the current Rector is Prof. Roberto Di Lenarda
- **Academic Senate:** it is responsible for planning, coordinating, policy-making and monitoring concerning the University's didactic and research activities.
- **Council**
- **Students' Council**



# THE BILL OF RIGHTS (1)

- ❑ **Constitution - Fundamental Principles** (Articles 1–12)
  - ❑ Art. 1 (Form of State and Government)
  - ❑ Art. 2 (personalistic principle)
  - ❑ Art. 3 (formal and substantive equality)
  - ❑ Art. 4 (labour)
  - ❑ Art. 5 (pluralist principle)
  - ❑ Art. 6 (linguistic minorities)
  - ❑ Art. 7 (Lateran Pacts)
  - ❑ Art. 8 (freedom of worship)
  - ❑ Art. 9 (Culture, Research and Environment)
  - ❑ Art. 10 (international law principles)
  - ❑ Art. 11 (international organizations)
  - ❑ Art. 12 (flag)





# THE BILL OF RIGHTS (2)

## ❑ **Rights and Duties of Citizens** (Articles 13–54)

### ❖ Civil Relations (Articles 13–28)

- Personal liberty
- Personal domicile liberty
- Freedom of communication
- Freedom of movement
- Freedom of assembly
- Freedom of association
- Freedom of worship
- Freedom of speech
- Rule of law in tax matter
- Right to defence
- Presumption of innocence



# THE BILL OF RIGHTS (3)

- ❑ **Rights and Duties of Citizens (Articles 13–54)**
  - ❖ Ethical and Social Relations (Articles 29–34)
    - Economic Relations (Articles 35–47)
    - Work protection
    - Workers protection
    - Workers with disabilities
    - Trade unions
    - Right to strike
    - Ownership
    - Cooperation
    - Savings
  - ❖ Political Relations (Articles 48–54)



**Thank you for your  
attention!**