Federalism in Italy and the Relevance of the American Experience

Esperienze federaliste tra garantismo e democrazia: Il "Judicial Federalism" negli Stati Uniti. By Mario Comba.* Naples: Casa Editrice Jovene, 1996. Pp. 376.

Federalismo, regionalismo e riforma dello Stato. By Franco Pizzetti.† Turin: G. Giappichelli Editore, 1996. Pp. 307.

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Reviewed by Martin A. Rogoff**

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I. INTRODUCTION

With the end of the Cold War, international and national politics have heated up. The restructuring of political relationships has become the order of the day. This is particularly true in Europe, where established economic and military arrangements, like the European Union and NATO, are in flux, and where several nations have already come apart. Significant legal developments have already occurred or

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are in progress at the national level in a number of European nations as they seek to readjust their internal political structures to new international and domestic political, economic, and military realities.[1]

The case of Italy is particularly interesting and instructive. A highly diverse nation—economically, ethnically, culturally, historically, and politically—Italy has recently emerged from more than forty years of political gridlock.[2] Fundamental questions about the structure and tenor of Italian political life are now being vigorously debated, important actions have recently been taken (like the *Mani Pulite* investigations[3] and the change from an electoral system based on proportional representation to one based primarily on the majoritarian principle[4]), and more are on the horizon. In addition,

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1. For example, Belgium has recently changed its constitution to transform the former unitary state into a federal state. The Coordinated Constitution of Belgium of February 17, 1994, in II ALBERT P. BLAUSTEIN & GISBERT H. FLANZ, CONSTITUTIONS OF THE WORLD (1994). Also, Great Britain has recently proposed according Scotland considerable political autonomy in a move described as "Britain's biggest constitutional shake-up since Irish independence in 1922." *London Offers Scotland Its Own Parliament, With Wide Powers*, N.Y. TIMES, July 15, 1997, at A6.

2. On recent Italian politics, see Lawrence Rosenthal, *Dateline Rome: The New Face of Western Democracy*, 104 FOREIGN POL'Y 155 (Fall 1996); Thomas Sancton, *A Clean Sweep*, TIME (Int'l ed.), Apr. 21, 1997, at 20. *See also* FRANCO FERRARESI, THREATS TO DEMOCRACY: THE RADICAL RIGHT IN ITALY AFTER THE WAR (1996):

> In the pre-1989 bipolar world, a country's international alignment chiefly determined its domestic policies. Where a powerful Communist Party existed, as in Italy, the repercussions were most severe, as the struggle against communism became the chief objective and the mortar holding together anti-Marxist forces.
>
> This permitted the supremacy of such forces for more than half a century, thus "saving democracy." But it blocked the system, causing the most serious distortions.

at 83. On post-war Italian politics, see PAUL GINSBORG, A HISTORY OF CONTEMPORARY ITALY: SOCIETY AND POLITICS 1943-1988 (1990); NORMAN KOGAN, A POLITICAL HISTORY OF ITALY: THE POSTWAR YEARS (1983). For descriptions of the Center, extreme Left, and extreme Right in Italian politics until the early 1990s, see ROBERT LEONARDI & DOUGLAS A. WERTMAN, ITALIAN CHRISTIAN DEMOCRACY: THE POLITICS OF DOMINANCE (1989); ROBERT C. MEADE, JR., RED BRIGADES: THE STORY OF ITALIAN TERRORISM (1990); FERRARESI, *supra*.

3.

> During [the early 1990s], a judicial inquiry into *tangenti* (kickbacks) in public works contracts has resulted in the largest political scandal in Italy's postwar history. Dubbed operation *mani pulite* (clean hands), the investigation has exposed political corruption at all levels of Italian government, implicating many of Italy's leading political figures . . . . The continuing investigations and prosecutions have led to the resignations of top government officials and renewed calls for legal and constitutional reform.

Stephen P. Freccero, *An Introduction to the New Italian Criminal Procedure*, 21 AM. J. CRIM. L. 345, 346-47 (1994).

4. *See* Alessandro Pizzorusso, *I nuovi sistemi elettorali per la Camera dei Deputati e per il Senato della Repubblica*, in MASSIMO LUCIANI & MAURO VOLPI, RIFORME ELETTORALI 123-45 (1995). The principal reasons for the changes in the election laws were to enhance the influence of the voters by reducing the power of political parties, and, by eliminating or reducing representation of small parties, to bring about a more stable situation in Parliament. *Id.* at 140-43.

the Italian electorate has responded enthusiastically to the new possibilities offered by the revival of real political choices. New political parties and groupings have come into existence and have already had a major impact on Italian political life. The parliamentary elections of 1994 and 1996 and other contemporaneous events have demonstrated that real political change is possible, as a newly-formed center Right coalition took power, gave way after seven months to a nonpartisan government of "technocrats," which in turn was replaced sixteen months later by a government of a reinvigorated center Left. Gridlock has given way to the real possibility of *alternanza*.[5]

Moreover, the Italian people have recently demonstrated that they will no longer tolerate the machinations of the political class that have for so long operated to the detriment of the general interest. In October 1997, the small Communist Refounding Party withdrew its support from the center-Left government of Prime Minister Romano Prodi, causing it to fall. Confronted with a barrage of criticism from the press and public, the communists entered into a face-saving compromise with Mr. Prodi that allowed him to return to Parliament for a new vote of confidence.[6]

Of all the structural changes presently under consideration in Italy, perhaps the most important, and certainly the most intriguing,

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For a description of the Italian electoral system existing before the 1993 changes and the history of recent elections under it, see PIERGIORGIO CORBETTA, ARTURO M.L. PARISI, & HANS M.A. SCHADEE, ELEZIONI IN ITALIA (New ed. 1996).

5.

> The final demise of the cold war, with the dismantling of international communism, has rendered unthinkable a strategy of tension like the one that operated in the 1970s . . . . System blockage has been replaced by an extraordinary system dynamics. The combined effect of international events (the fall of the Berlin wall and the ensuing end of communism) and domestic shocks (the 1992 electoral law, replacing the proportional system with a uninominal one, and the shattering "clean hands" investigations) has changed the system almost beyond recognition.

FERRARESI, *supra* note 2, at 194-95. On the legislative elections of April 1996, see Celestine Bohlen, *Italian Left Wins Big Breakthrough in National Vote*, N.Y. TIMES, Apr. 23, 1996, at A1; Celestine Bohlen, *Italy's New Politics; Barricades in the Middle of the Road*, N.Y. TIMES, Apr. 28, 1996, sect. 4, at 3.

6.

> After 55 governments in five decades the Italians are used to the mini-dramas built into their political system. But this time seemed different, because many Italians were upset at the prospect of losing a governing team—a coalition that ranges from liberal Catholics to ex-Communists—that seemed to be doing a good job.

Celestine Bohlen, *Hard-Line Leftists in Italy Back Out of Backing Out,* N.Y. TIMES, Oct. 14, 1997, at A10. *See also* Celestine Bohlen, *Italian Government Falls in Fight Over Euro Austerity*, N.Y. TIMES, Oct. 10, 1997, at A10; Celestine Bohlen, *An Accord with Communists Ends Latest Italian Political Crisis*, N.Y. TIMES, Oct. 15, 1997, at A5; Celestine Bohlen*, The Magic Word for Italians: Europe (Pain and All)*, N.Y. TIMES, Oct. 26, 1997, sect.1, at 8.

are those dealing with the structure of the State (*la forma di Stato*).[7] At present, the Italian State is divided into twenty regions, fifteen of them "ordinary" and five (i.e. Sicily, Sardinia, Trentino-Alto Adige, Friuli-Venezia Giulia, and the Valle d'Aosta) "special".[8] This arrangement was established pursuant to the post-war Constitution, which was adopted by a Constituent Assembly on December 22, 1947, and entered into force on January 1, 1948.[9] The regional State of the post-war Constitution represented a compromise between the centralized State, which had existed in Italy since unification,[10] and a looser federal State. The regional structure of government, contemplated by the Constitution, became a reality during the 1970s,

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7. *See* Michele Salvati, *Le proposte della Bicamerale—La forma di Governo e la Giustizia hanno allontanato il dibattio sul nuuovo assetto dello Stato; Alla ricerca del federalismo perduto*, IL SOLE-24 ORE, July 30, 1997, at 7. Another highly controversial matter presently under consideration is whether to adopt a "semipresidential" form of government (the French model) or a "strong premiership" to replace the existing system of parliamentary supremacy, which has proved highly unstable. *See infra* note 155.

8. G. LEROY CERTOMA, THE ITALIAN LEGAL SYSTEM 163-64 (1985). The five special regions are islands (Sicily and Sardinia) or ethnically-mixed border areas (the Valle d'Aosta, Trentino-Alto Adige, Friuli-Venezia Giulia) where strong separatist tendencies exist. For a study of the legal status of the special regions, see Annamaria Poggi, *Casi di "differenze" nelle giurisdizioni. La vicenda di alcune regioni speciali Italiane*, *in* FRANCO PIZZETTI, FEDERALISMO, REGIONALISMO E RIFORMA DELLO STATO 273-307 (1996). Provinces are subdivisions of regions; and communes (composed of towns and urban and rural districts) are the basic governmental unit. There are presently 101 provinces and about 8,100 communes.

9. For an English translation of the Italian Constitution, see IX ALBERT P. BLAUSTEIN & GISBERT H. FLANZ (eds.), CONSTITUTIONS OF THE WORLD (1987; Supplement, 1994) [hereinafter Italian Constitution]. The English text is accompanied by the Italian text, a detailed Constitutional Chronology and a bibliography. For an article by article commentary on the Italian Constitution, see GUIDO NEPPI MODONA (ed.), STATO DELLA COSTITUZIONE: PRINCIPI, REGOLE, EQUILIBRI. LE RAGIONI DELLA STORIA, I COMPITI DI OGGI (1995).

10. For a constitutional history from reunification through the provisional constitution of 1943, see SILVANO LABRIOLA, STORIA DELLA COSTITUZIONE ITALIANA (1995). On the perceived need for a strong central government at the time of the founding of the Italian state in 1860, see ROBERT D. PUTNAM, MAKING DEMOCRACY WORK: CIVIC TRADITIONS IN MODERN ITALY 18 (1993) ("For the Piedmontese monarchists who unified Italy, regional differentiation was the principal obstacle to national development. *Fatta l'Italia, dobbiamo fare gli italiani* was their slogan: 'Having made Italy, we must now make Italians.'"). See also the perceptive comments of P.-J. PROUDHON, THE PRINCIPLE OF FEDERATION (Richard Vernon transl., 1979) [1863]:

> For centuries, the idea of federation seems to have been hidden and held in reserve; the reason for this eclipse is the initial incapacity of nations and the need to form them by means of stern discipline. Such is the role which seems to have been assigned, by a sort of sovereign design, to the unitary system. . . . Federation cannot fulfil this initial educational mission because it is liberty; because it excludes the idea of constraint, resting on the notion of bilateral, commutative, and limited contracts; and because its object is to guarantee the sovereignty and autonomy of the peoples whom it unites, peoples who must suffer domination until they become capable of governing themselves by reason. . . .

PROUDHON, *supra*, at 50-51. *See also* P.-J. PROUDHON, LA FÉDÉRATION ET L'UNITÉ EN ITALIE (1862).

with the enactment of implementing legislation by Parliament.[11] Regional government soon developed into a vital and important feature of Italian political life.[12]

What makes the present Italian debate about *la forma di Stato* so interesting, is that it is occurring at a time when Europe is experiencing both increasing supranational institutional development as well as enhanced regional and local political vitality.[13] As the Italian case demonstrates, political restructuring today involves not only giving legal definition and institutional expression to the relations between the central government (*lo Stato*) and the existing regions, but must also take into account the law and institutions of the European Union as well as the interests of local governmental entities. It should be noted that there has long existed in many parts of Italy a strong tradition of communal, or local, government.[14]

In January 1997, the Italian Parliament established a Parliamentary Commission for Constitutional Reforms.[15] The Commission, composed of thirty-five senators and thirty-five deputies,[16] was charged with the "preparation of proposals for the

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11. *See* PUTNAM, supra note 10, at 17-26.

12. *Id.* at 26-62. On the economic impact of regionalism in Italy, see RAFFAELLA Y. NANETTI, GROWTH AND TERRITORIAL POLICIES: THE ITALIAN MODEL OF SOCIAL CAPITALISM (1988). *See also* ROBERT LEONARDI & RAFFAELLA Y. NANNETTI (eds.), THE REGIONS AND EUROPEAN INTEGRATION: THE CASE OF EMILIA-ROMAGNA (1990).

13. *See* John Newhouse, *Europe's Rising Regionalism*, 76 FOREIGN AFFAIRS 67 (Jan./Feb. 1997); ROBERT LEONARDI (ed.), THE REGIONS AND THE EUROPEAN COMMUNITY: THE REGIONAL RESPONSE TO THE SINGLE MARKET IN THE UNDERDEVELOPED AREAS (1993); R.A.W. RHODES & VINCENT WRIGHT (eds.), TENSIONS IN THE TERRITORIAL POLITICS OF WESTERN EUROPE (1987); YVES MÉNY & VINCENT WRIGHT, CENTRE-PERIPHERY RELATIONS IN WESTERN EUROPE (1985). The Treaty on European Union (Maastricht Treaty) of 1992 amended the Treaty Establishing the European Community to create the Committee of the Regions, art. 198a. The Committee is composed of 222 members representing regional and local entities within the member states. The Committee has "advisory status," *id*. The Committee "shall be consulted by the Council or by the Commission where this Treaty so provides and in all other cases in which one of these two institutions considers it appropriate." *Id*. art. 198c.

14. *See* PUTNAM, *supra* note 10, at 121-62. On local government in Italy, see Enzo Sanantonio, *Italy*, *in* EDWARD C. PAGE & MICHAEL J. GOLDSMITH (eds.), CENTRAL AND LOCAL GOVERNMENT RELATIONS: A COMPARATIVE ANALYSIS OF WEST EUROPEAN UNITARY STATES 107-29 (1987); Bruno Dente, *Centre-Local Relations in Italy: The Impact of the Legal and Political Structures*, *in* YVES MÉNY & VINCENT WRIGHT (eds.), CENTRE-PERIPHERY RELATIONS IN WESTERN EUROPE 124-48 (1985).

15. Istituzione di una Commissione parlamentare per le riforme costituzionali, Legge Costituzionale, n.1., 24 gennaio 1997, G.U. n. 22 del 28 gennaio 1997 [hereinafter Law Establishing Parliamentary Commission]. On the work of the Commission, *see* FAUSTO CUOCOLO, BICAMERALE: ATTO PRIMO. IL PROGETTO EE REVISIONE COSTITUZIONALE (1997).

16. Chamber of Deputy and Senate Commission members are to be appointed respectively by the President of the Chamber of Deputies and the President of the Senate "on the designation of the parliamentary Groups, respecting the existing proportions among these

revision of Part II of the Constitution, in particular with respect to form of State, form of government and bicameralism, [and] system of [constitutional] guarantees[,]"[17] and was instructed to transmit a bill or bills to Parliament by June 30, 1997.[18] The Commission began its work in February 1997. It constituted four committees to prepare working drafts on the various subjects within its charge. Five working texts were adopted at the Commission's 32nd and 33rd

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Groups." Law Establishing Parliamentary Commission, *id.* art. 1, para. 1. The Commission is to elect its own President, art. 1, para. 2.

17. Law Establishing Parliamentary Commission, *id.* art. 1, para. 4. Part II of the Constitution is entitled "Organization of the Republic." It consists of six titles: Parliament; the President of the Republic; the Government; the Judiciary; the Regions, Provinces, and Communes; and Constitutional Guarantees. Basic Principles (arts. 1-12) and Part I of the Constitution (arts. 13-54), entitled "Rights and Duties of Private citizens," are not within the Commission's mandate for reform. Part I consists of four titles: Civil Relations, Ethical and Social Relations, Economic Relations, and Political Relations.

18. Law Establishing Parliamentary Commission, *id.* art. 2, para. 4. The Law further provides that the Commission's proposals are then to be considered by each house of Parliament. Amendments may be offered. Each house must vote the bill or bills in two readings, not less than three months apart. The final vote, on the second reading, must be by an absolute majority of the members of each chamber. The constitutional law approved by the Parliament is then to be submitted to popular referendum within three months and will enter into force if approved. "The constitutional law . . . is submitted to a single popular referendum within three months of its publication and is promulgated if a majority of those entitled to vote has participated in the referendum and [the law] has been approved by a majority of the valid votes." *Id.* art. 4.

Article 138 of the present Italian Constitution, *supra* note 9, which governs amendments to the Constitution, reads as follows:

> Amendments to the Constitution and other constitutional laws are passed by the Chamber of Deputies and the Senate in two successive sessions at an interval of not less than three months and are approved by an absolute majority of the members of each Chamber after a second reading.
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> The laws themselves are submitted to popular referendum when, within three months of their publication, a demand shall be made by one fifth of the members of either Chamber or by 500,000 electors or by five Regional Councils. A law submitted to referendum shall not be promulgated unless approved by a majority of valid votes.
>
> A referendum shall not be held if the law has been approved in both Chambers, during the second reading, by a majority of two thirds of each Chamber.

Criticism has been leveled at the procedure contemplated by the Law Establishing Parliamentary Commission on the grounds that it is not consistent with either the letter or the spirit of Article 138. According to one critic:

> . . . the restricted time frames, the limitation of parliamentary debate, the (more or less) *happy end* referendum—all in a context of profound division among political forces, with the risk that the new arrangements are the object of undesirable "political deals" and without the "integrative" ideals which inspired the founding Fathers—are not the best ingredients for a reformulation of the second part of the Constitution.

Massimo Siclari, *La Commissione parlamentare per le riforme costituzionali: alcune note critiche*, Gazzetta giuridica Guiffrè ItaliaOggi n.8/97, 2, at 5. *See also* Alfonso Vuolo, *Un Procedimento in deroga per la revisione della seconda parte della Costituzione: alcune brevi note sulla legge costituzionale* in itinere (unpublished, 1996).

sessions on June 3 and June 4,[19] and a draft of a proposed revision of Part II of the Constitution was adopted on June 30, 1997, and forwarded to Parliament. Within 30 days of submission, senators and deputies were permitted to present amendments to the Commission's text. Following the thirty-day period, the Commission met again to consider the amendments presented and to formulate a final text to be presented to Parliament for legislative action. This "second phase" of Commission deliberations was intended to afford an opportunity for "a rethinking of the text elaborated during the first phase" after "a pause for reflection" and "a full debate with the participation of the diverse components of civil society."[20] The text as "rethought" by the Commission and subsequently adopted by Parliament will then be submitted to popular referendum.

This Essay will review and evaluate the Parliamentary Commission's proposals on *la forma di Stato*[21] in the light of two recent books which provide both background and perspective on the structural changes that are in progress. Professor Franco Pizzetti's book, *Federalismo, regionalismo e riforma dello Stato*, suggests a framework of analysis for questions involving federalism and regionalism, describes current arrangements under the existing Italian constitution, and discusses the principal proposals for change. Dr. Mario Comba's book, *Esperienze federaliste tra garantismo e democrazia: Il "Judicial Federalism" negli Stati Uniti*, begins with an illuminating analysis of federalism conceived as a dynamic process, and then moves on to a detailed discussion of the American experience. Both parts of his book furnish useful material for comparative evaluation of current developments in Italy.

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19. Transcripts of Commission sessions and texts of documents adopted by the Commission, as well as other documents and materials relevant to the work of the Commission, are available on the Internet at http://www.camera.it/parlam/bicam/rifcost/home.htm [hereinafter Parliamentary Commission Internet site].

20. Relazione introduttiva del Presidente della Commissione Massimo d'Alema, at ¶ 1. Parliamentary Commission Internet site, *id.* On November 4, 1997, the Commission approved the text to be submitted to Parliament. Testo risultante dalla pronuncia della commissione sugli emendamenti. Parliamentary Commission Internet site, *id.* [hereinafter November 4 text]. *See generally* Donatella Stasio, *Il cammino della Bicamerale—Termina martedì la stesura dei testi per la nuova Costituzione*, IL SOLE-24 ORE, Oct..31, 1997, at 3.

21. This Essay will focus on the Commission's proposals of June 30, 1997. Although the second round of Commission deliberations and subsequent consideration by Parliament will undoubtedly lead to some modifications in the text finally adopted by Parliament for submission to popular referendum, it appears that decisions on fundamental directions and issues have been made and are unlikely to be called into question. On the amendments proposed during the 30-day amendment period, see Antonella Rampino, *Bicamerale*, *la carica degli emendamenti*, LA STAMPA, July 31, 1997, at 10; Antonella Rampino, *L'assedio degli emendamenti*, LA STAMPA, Aug. 1, 1997, at 4.

II. REGIONALISM AND FEDERALISM IN ITALY

Professor Pizzetti prefaces his discussion of the Italian situation by setting out a useful analytical framework for considering questions of federalism and regionalism and by discussing the political implications and the political context in which such questions arise. He points out that "federalism" and "regionalism" are relative concepts and warns against using them for their evocative or emotional content.[22] He says that "it is impossible to give a univocal definition of the federal State"[23] and then suggests analytical categories for describing and discussing "a political order composed of a central political-institutional subject possessing authority co-extensive with the national territory and a plurality of subjects with limited territorial authority."[24] His eight categories are: (1) the formation of the organs of the "central State," (2) the power of the "peripheral subjects" to adopt their own institutional structure, (3) the division of legislative competence, (4) the division of competence for and the organization of the administrative apparatus, (5) the financial and fiscal system, (6) judicial organization, (7) the possibility for the "peripheral subjects" to enter into agreements among themselves and with other nations, and (8) the constitutional guarantees afforded to the "peripheral subjects" regarding such matters as the amendment of the national constitution, the organs for guaranteeing the constitutional rights of the "peripheral subjects," and the protection of their territorial integrity.[25] He tests the utility of his eight categories by using them to analyze federalism in the United States and in Germany, and demonstrates that their use provides insights into significant aspects of "central State"/"peripheral subject" relations.[26]

Professor Pizzetti then considers whether the political/ideological orientation of federalism favors economic liberalism or the interventionist state, whether it is more congenial to the forces of the right or the left, and whether it tends to unite, to divide, or to allow to remain together the territorial parts of a state. He concludes that "there exist as many 'federalisms' as there are 'national' histories and cultures of individual countries: so that it is accurate to say that federalism is the child of the specific history of each nation."[27] He reminds us that the European Union is an important factor in the

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22. PIZZETTI, *supra* note 8, at 3.
23. *Id.* at 9.
24. *Id.* at 9-10.
25. *Id.* at 10-20.
26. *Id.* at 31-49.
27. *Id.* at 25.

development of federalism in contemporary Europe, and, more particularly, that the strong influence exercised by the German *Länder* has "strengthened regional articulation within the European Union."[28]

With this introduction in place, Professor Pizzetti proceeds to describe the constitutional structure of the Italian state (using his eight-factor analysis), and to trace the history of the legal relations between the central government and the regions from 1948 through December 1995. A brief review of these matters is necessary to provide the background and context to assess the developments which are now in progress.

A. Lo Stato *and the Regions in the Present Constitution*

(1) Although the present Italian Constitution creates the possibility for the regions to exercise significant influence on the composition and operation of the central government, that in fact has not occurred.[29] The Constitution provides that the Senate is elected on a regional basis.[30] Senators are apportioned to the regions on the basis of their relative proportion of the total national population as determined according to the last census, with each region having at least seven senators (except the Valle d'Aosta and Molise).[31] Also, the Regional Councils have the power to initiate legislation in Parliament,[32] to request a referendum to abrogate laws or governmental acts of the State having the force of law,[33] and to request a referendum on matters of constitutional revision.[34]

(2) The regions have relatively little freedom to organize their own governmental structures. The legal regimes governing the organization of the five special regions have the status of constitutional laws (*leggi costituzionali*),[35] while those pertaining to the 15 ordinary regions are ordinary laws.[36] Thus, in both cases, the national Parliament has the final say on the content of the regional

28. *Id.* at 27.
29. *Id.* at 54.
30. Italian Constitution, *supra* note 9, art. 57. Also, the regions play a small role in the election of the President. The President is elected by the Parliament in a joint session. Participating in that election are three delegates from every region elected by the Regional Council (except for the Valle d'Aosta, which has only one). *Id.* art. 83. Since there are 945 members of Parliament (630 deputies and 315 senators), the 58 regional representatives have little influence.
31. *Id.* art. 57.
32. *Id.* arts. 71, 121.
33. *Id.* art. 75. Such a referendum must be requested by five Regional Councils.
34. *Id.* art. 138. Again, the request must be made by five Regional Councils.
35. *Id.* art. 116.
36. *Id.* art. 123.

"constitutions." Moreover, certain provisions of the Constitution control important aspects of local government organization and operation.[37]

(3) Article 117 controls the division of legislative competence between the national Parliament and the regional councils. That article enumerates the powers of the regions and by implication reserves the rest to the central government.[38] Also, the power of the regions to legislate is limited by the requirement that regional legislation is "[w]ithin the fundamental principles established by the laws of the State" and also that it "is not in contrast with the interests of the Nation or of other Regions."[39] According to Professor Pizzetti, "the Constitutional Court is always alert to defending the interests of the State[.] [T]he Constitution has been constantly applied to maximize the national legislative body's power to impose limits and constraints (thereby emphasizing the need for uniformity) and to reduce the scope of discretion of regional legislative bodies (thereby devaluing the need for diversity)."[40]

(4) The regions have administrative competence with respect to the same matters for which they have legislative competence.[41]

(5) The Constitution is ambiguous with respect to the fiscal powers of the regions.[42] During the 1970s, however, when the regional government provisions of the Constitution were finally implemented by Parliament, the social welfare state was in full

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37. For instance, Article 121 specifies the organization of regional government; and Article 122 provides for national control of regional electoral practices. *Id.*

38. Article 117 provides that "the Region legislates in regard to the following matters, ... Organization of the offices and the administrative bodies dependent on the Region; Town boundaries; Urban and rural police; Fairs and markets; Public charities and health and hospital assistance; Vocational training of artisans and scholastic assistance; Museums and libraries of local bodies; Town planning; Tourist trade and hotel industry; Tram and motor coach services of regional interest; Roads, acqueducts and public works of regional interest; Lake navigation and ports; Mineral and spa waters; Quarries and peat bogs; Hunting; Fishing in lake and river waters; Agriculture and forestry; Artisanship; Other matters indicated by constitutional laws; The laws of the Republic may delegate powers to the Region to issue norms for their enforcement." *Id.*

39. *Id.* art. 117.

40. PIZZETTI, *supra* note 8, at 59.

41. Italian Constitution, *supra* note 9, art. 118. Professor Pizzetti calls this the "principle of parallelism." *Id.* at 59.

42. *Id.* art. 119. Paragraph 1 provides that "The Regions have financial autonomy within the forms and limits established by the laws of the Republic" and paragraph 3 authorizes the State to make special allocations to single regions by law. On the other hand, paragraph 2 provides that "the Regions are assigned their own taxes and quotas of Exchequer taxes according to the expenditure necessary to the fulfillment of their normal functions," and paragraph 4 provides that "the Region has its own demesne and patrimony . . . ."

flower, thus mandating a centralizing interpretation and application of the fiscal provisions of the Constitution.[43]

(6) The administration of justice is a matter for the central government.[44] Although the review of administrative actions occurs in Regional Administrative Tribunals, these tribunals are appointed and regulated by the central government.[45]

(7) The regions are not permitted by the Constitution to enter into international agreements,[46] and their power to enter into agreements among themselves has been consistently denied by the central government and by the Constitutional Court.[47]

(8) Regarding constitutional guarantees of regional autonomy, the Constitution authorizes the regions to challenge, before the Constitutional Court, national laws which they maintain invade their areas of competence.[48] Parliament has the power, however, to amend the Constitution and constitutional laws without the participation of the regions and without their consent,[49] although five Regional Councils may request a referendum on such amendments.[50] Territorial changes (the merging of existing regions, the creation of new regions, the movement of provinces and communes from one region to another, and the alteration of regional boundaries) require the participation of the regions concerned, national legislative action, and a referendum in the concerned areas.[51]

B. Lo Stato *and the Regions Since 1948*

For many years, from 1948 until 1970, that part of the Constitution concerning the ordinary regions remained dormant.[52] It was not until 1968 that a law was enacted for the election of Regional Councils in the ordinary regions, and it was not until 1970 that financial resources were provided for the operation of regional government. According to Professor Pizzetti, both laws sought to impose a nationally-determined

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43. PIZZETTI, *supra* note 8, at 62.
44. Italian Constitution, *supra* note 9, arts. 101-110.
45. *Id.* art. 125.
46. The Constitution accords the power to enter into international agreements to the State and by implication denies it to the regions. PIZZETTI, *supra* note 8, at 66.
47. *Id.* at 67.
48. Italian Constitution, *supra* note 9, art. 134.
49. *Id.* art. 138.
50. *Id.* However, "[a] referendum shall not be held if the law has been approved in both Chambers, during a second reading, by a majority of two thirds of the members of each Chamber." *Id.*
51. *Id.* arts. 132 and 133. The regions are mentioned by name in the Constitution. *Id.* art. 131.
52. PIZZETTI, *supra* note 8, at 69.

uniformity on the composition and operation of regional governments, rather than to afford true autonomy to the regions.[53] This is so, because the real purpose of activating the regional government provisions of the Constitution at this time was to allow minority parties, which had grown greatly in strength, to share power at the local and regional levels, thus permitting their continued exclusion at the national level.[54]

A "second phase" of regional empowerment began in 1975 with the enactment of a law (and the promulgation of implementing regulations) transferring important administrative functions to the regions (administrative structure and organization, social services, economic development, management of its territory).[55] During the late 1970s, the regions sought to expand their roles,[56] but, for a number of reasons (e.g., the financial dependence of regional governments on the State, the tendency of the State to deal directly with the provinces and "comuni" thereby by-passing the regions, the expansive role accorded to the national Parliament by decisions of the Constitutional Court), an "effective regionalism" did not emerge.[57]

Beginning in 1987, with the Tenth Legislature (1987-1992), and continuing through the Eleventh Legislature (1992-1994), the Twelfth Legislature (elected in March 1994), and the present Thirteenth Legislature (elected in April 1996), regional reform assumed increasing importance on the Parliamentary agenda.[58] The most important outcomes of this enhanced Parliamentary interest were the establishment of Parliamentary commissions to make proposals for

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53. *Id.* at 77. For the history of the development of regional government in Italy, see also Robert Leonardi, *The Regional Reform in Italy: From Centralized to Regionalized State*, in ROBERT LEONARDI (ed.), THE REGIONS AND THE EUROPEAN COMMUNITY: THE REGIONAL RESPONSE TO THE SINGLE MARKET IN THE UNDERDEVELOPED AREAS 217, 217-36 (1993); Robert Leonardi, Raffaella Y. Nanetti & Robert D. Putnam, *Italy—Territorial Politics in the Post-War Years: The Case of Regional Reform*, in R.A.W. RHODES & VINCENT WRIGHT, TENSIONS IN THE TERRITORIAL POLITICS OF WESTERN EUROPE 88-107 (1987). Earlier studies are Peter Gourevitch, *Reforming the Napoleonic State: The Creation of Regional Governments in France and Italy*, *in* SIDNEY TARROW ET AL. (eds.), TERRITORIAL POLITICS IN INDUSTRIAL NATIONS 28-63 (1978); SIDNEY TARROW, BETWEEN CENTER AND PERIPHERY: GRASSROOTS POLITICIANS IN ITALY AND FRANCE (1977); ROBERT C. FRIED, THE ITALIAN PREFECTS: A STUDY IN ADMINISTRATIVE POLITICS (1963).

54. PIZZETTI, *supra* note 8. For descriptions of the political understanding which allowed the anti-communist Christian Democrats to retain control of the central government while allowing the Italian Communist Party to participate in the political life of the nation at the regional and communal levels, see Giuliano Amato, *Italy: The Rise and Decline of a System of Government*, 4 IND. INT'L & COMP. L. REV. 225 (1994); Francesco Cossiga, *Institutional Reform and Italian Crisis*, *id*. at 231.

55. PIZZETTI, *supra* note 8, at 80.

56. *Id.* at 83.

57. *Id.* at 84-85.

58. *Id.* at 85-105.

change in the existing system and the enactment of laws affording greater financial autonomy to the regions.[59] These developments took place against the background of rising demands for more regional autonomy, particularly in the north, where regional sentiments found powerful political expression in the Northern League.[60]

After tracing the historical development of regionalism in Italy, Professor Pizzetti analyses in detail nine current proposals for constitutional reform, utilizing his eight-factor analysis.[61] These proposals range from highly decentralized models (like that of the Northern League)[62] to those seeking to preserve the "centrality" of the State (like that of the Speroni Commission).[63]

Although sensitivity to specific historical experience is essential to appreciating current developments in Italy, comparative perspectives are important, too. Professor Pizzetti makes reference to American and German experiences with federalism as a way of gaining insight into the likely or possible consequences of certain arrangements. In fact, he includes in his book two essays on the American and German models, the first of which is written by the author of the other book reviewed here.[64]

III. THE OPERATION OF A FEDERAL SYSTEM

Mario Comba's book *Esperienze federaliste tra garantismo e democrazia: Il "Judicial Federalism" negli Stati Uniti* provides an excellent description of the operation of the federal system in the United States, with a focus on the role of the courts in maintaining the proper balance of federal and state authority as the political, social, and economic realities underlying the system change. In fact, it is precisely this "dynamic" perspective which is necessary to assess the long-term prospects of any federal system. As history has shown time and time again, the federal or regional structures contemplated by constitutional draftsmen must evolve, often in ways not desired or foreseen by them, in order for the system to adapt to changing political, social, and economic needs and to altered societal values and perspectives.[65]

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59. *Id.*
60. On the Northern League, see Lawrence Rosenthal, *Dateline Rome: The New Face of Western Democracy*, 104 FOREIGN POL'Y 155, 161-62 (Fall 1996).
61. PIZZETTI, *supra* note 8, at 113-85.
62. *Id.* at 121-31.
63. *Id.* at 137-51.
64. Mario Comba, *Il modello americano*, at 207-39; Jörg Luther, *Il modello tedesco dello Stato federale sociale*, at 241-71.
65. A classic example is the course of constitutional development in Canada, where the framers of the British North America Act of 1867 sought to create a strong central government,

As Dr. Comba demonstrates, a "static" view of federalism, one which seeks to locate sovereignty at a particular political level (central government or member states), is particularly congenial to continental thought, with its tendency toward abstract, conceptual thinking and models,[66] but it produces only "sterile" "circular" reasoning,[67] and is most often employed to advocate or support a particular political preference (centralization or, conversely, states rights, for example). The "dynamic" approach, however, which has found particularly fertile ground in Anglo-Saxon pragmatism,[68] focuses on the study of "structural changes and the evolution of relations between the center and the periphery in the federal state, not considered as static phenomena . . . but as dynamic ones—in continuous evolution, crystallizable only with difficulty into a single organizational arrangement."[69] More specifically, a dynamic, functional approach to federalism, one which asks: "What function does a federal relationship have?—rather than: What structure?," leads to more fruitful study of intergovernmental relations.[70] The dynamic approach to the study of federalism is a "methodological instrument to understand better the existing arrangement of the relation of forces between the center and the periphery and to determine from [that understanding] lines of evolution."[71] It is this approach which Dr. Comba recommends and which he employs in his study of the American experience.

The focus of Dr. Comba's study is on the relationship between federalism, democracy, and individual rights—or, in his words, on "the influence which centralization or decentralization has on the

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and included provisions specifically intended to produce that result, but the eventual outcome was a rather loose federation. *See* PETER W. HOGG, CONSTITUTIONAL LAW OF CANADA 86-92 (2d ed. 1985).

66. MARIO COMBA, ESPERIENZE FEDERALISTE TRA GARANTISMO E DEMOCRAZIA: IL "JUDICIAL FEDERALISM" NEGLI STATI UNITI 2-17 (1966). *See id.* at 13-15 nn.15-18, for citations to the post-war Italian literature which takes a "static" approach to the analysis of federalism.

67. *Id.* at 17.

68. *Id.* at 19.

69. *Id.* at 17.

70. *Id.* at 27 (quoting CARL J. FRIEDRICH, TRENDS OF FEDERALISM IN THEORY AND PRACTICE 173 (1968)).

71. *Id.* at 35. The dynamic approach to the study of federalism requires "an analysis of particular positive legal realities in order to understand from them their internal mechanisms of evolution . . . and to discover individual correlations between these [positive legal realities] and the underlying variations in constitutional values." *Id*. at 35. The dynamic approach to the study of federalism has been utilized in Italy by Antonio La Pergola (*see, e.g.*, his article *L'"Empirismo" nello studio dei sistemi federali: a proposito di una teoria di Carl Friedrich*, *in* [1973] DIRITTO E SOCIETÀ 7, *reprinted in* ANTONIO LA PERGOLA, TECNICHE COSTITUZIONALI E PROBLEMI DELLE AUTONOMIE "GARANTITE" (1987)) and GIOVANNI BOGNETTI (*see, e.g.*, his book COSTITUZIONE ECONOMICA E CORTE COSTITUZIONALE (1983)).

democratic connection between voters and elected officials."[72] He distinguishes between two distinct views of "democracy" and "rights" in American political thought: the majoritarian (or communitarian), where rights are best protected by majority decisions in appropriately-sized communities (usually the states); and the antimajoritarian (or individualistic), where rights are best protected by governmental decision-makers (courts or federal legislators) applying fundamental principles to protect rights uniformly throughout the national territory, even against the preferences of local majorities.[73] So conceived, the relationship between democracy, rights, and center/periphery relations is clear.[74]

Dr. Comba then utilizes his "dynamic" approach to the study of federalism to examine the relationship between "legislative federalism" ("the changes in the boundary between the authority of Congress and that of state legislatures")[75] and "judicial federalism" ("the relationship between the jurisdiction of state and federal courts").[76] His description demonstrates the crucial role of the federal courts in constantly making those small adjustments necessary to preserve a desired equilibrium between state and federal authority (both legislative and judicial), and occasionally (during the late 1930s, for example, and perhaps today[77]) recalibrating the system in major ways to allow it to respond to fundamental changes in national needs or perspectives.

In fact, according the Dr. Comba, a true federal state must be a "constitutional" state, because for real federalism to exist, the presence of "an established constitutional guarantee of the autonomy of the territorial entities" is essential.[78] In a centralized state, on the other hand, the transfer of functions and powers from the central government to the territorial entities is always subject to modification or revocation at the will of the central government.[79] Moreover, the dynamic study of federalism must take into account not only the study of the constitutional text and its modifications, but also variations in

72. *Id.* at 53.

73. *Id.* at 73-93.

74. *See id.* at 125-32.

75. *Id.* at 167.

76. *Id.* at 230. This includes the rules which govern the choice of competent court (state or federal) and the instruments which are available to the federal judiciary to influence that of the states. *Id.* at 231.

77. *See*, *e.g.*, U.S. v. Lopez, 514 U.S. 549 (1995); *see also* Martin A. Rogoff, *La recente giurisprudenza della Corte Suprema degli Stati Uniti*, DIRITO E SOCIETÀ 107-41 (1996, No. 1).

78. COMBA, *supra* note 66, at 353.

79. *Id.* at 353-54.

"arrangements" of a "constitutional nature" which come about through constitutional interpretation and create "constitutional customs."[80]

The United States has had the longest and richest experience with federalism when compared to other democratic nations organized along federal or regional lines. Federal/state relations have been central to America's development as a nation, and questions associated with federalism (political and economic, as well as legal) have spawned a rich theoretical literature, dating back to *The Federalist* and De Tocqueville's *Democracy in America*. The comparative lens provided to an Italian audience and to others by Dr. Comba, at this crucial time in his country's constitutional history, will, hopefully, provide guidance to those now charged with designing a new *forma di Stato*, and also to those who will in the future be charged with assuring that the system remains flexible and responsive to changed conditions and perspectives.

IV. THE BICAMERAL COMMISSION

On June 30, 1997, the *Commissione parlamentare per le riforme costituzionali* (usually referred to as the *Commissione Bicamerale* or Bicameral Commission) submitted its proposals for the revision of Part II of the Constitution to the two houses of Parliament. In this Part, after making a few general observations on the work of the Commission concerning *la forma di Stato*, I will describe and evaluate the Commission's proposals, utilizing the analytical categories suggested by Professor Pizzetti in combination with the dynamic approach and comparative insights afforded by Dr. Comba.

A. General Observations

Part I of the Constitution, which the Commission is not authorized to alter, provides that "Italy is a democratic Republic."[81] Moreover,

> [t]he Republic, which is one and indivisible, recognizes and promotes local autonomy; it applies the fullest measure of administrative decentralization in services dependent on the State and adjusts the principles and methods of its legislation to the requirements of autonomy and decentralization.[82]

These provisions establish the parameters within which the Commission must carry out its charge of recommending changes in *la forma di Stato*.

80. *Id.* at 355.
81. Italian Constitution, *supra* note 9, art. 1.
82. *Id.* art. 5.

Thus, the republican form of government is a given. What is the meaning, however, of the provision that "the Republic . . . is one and indivisible"? Does this preclude the establishment of a true federal state, one with legislative, fiscal, and administrative competence shared between the central government and the governments of the peripheral subjects? And how is the "indivisible Republic" to be reconciled with the requirement that "the Republic recognizes and promotes local autonomy"? Is "local autonomy" limited to "administrative decentralization" and the adjustment "of the principles and methods of [*national*] legislation to the requirements of autonomy and decentralization?" In his Report on the Form of the State, Senator D'Onofrio addresses directly these fundamental questions:

> We do not risk moving from national unity to national disunity, but, on the contrary, [we are moving] from the agreement on national unity contained in the republican Constitution presently in force to a new agreement on national unity, in the conviction that a federal agreement is capable today of giving new vigor and new life to national unity, which will be called into question if it remains immobile in the conservation of the *status quo*.[83]

In other words, the indivisibility requirement contained in the unamendable Part I of the Constitution need not be understood in the Jacobin, centralizing sense and is thus no bar to the devolution of authority to sub-national political units.

In the Commission's text, the first title in Part II of the proposed Constitution deals with the State (*lo Stato*) and other territorial units (communes, provinces, and regions).[84] In the 1947 Constitution this title came near the end of Part II (after Parliament, the President of the Republic, the Government, and the Judiciary). The new placement of this title accentuates the importance of the "federal" principle in the

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83. Relazione sulla forma di Stato del Senatore Francesco D'Onofrio, ¶ 5 [hereinafter D'Onofrio Report]. Parliamentary Commission Internet site, *supra* note 19; *see also* Umberto Allegretti, *Autonomia regionale e unità nazionale*, 23 LE REGIONI 1 (Feb. 1995) (arguing that article 5 should be read in conjunction with articles 2 and 3, which recognize and guarantee individual and social rights, and articles 10 and 11, which recognize Italy's international obligations and responsibilities). For a dissenting view, one which regards federalism as contrary to the "indivisibility" requirement of article 5 of the existing Constitution, see the remarks of Senator Francesco Servello of the conservative Allianza Nazionale, Commissione parlamentare per le riforme costituzionali, Session 4, Feb. 13, 1997, at 95-97, Parliamentary Commission Internet site, *supra* note 19. In general, the parties of the Right have been opposed to decentralization. Robert Leonardi, *The Regional Reform in Italy: From Centralized to Regionalized State*, *in* ROBERT LEONARDI (ed.), THE REGIONS AND THE EUROPEAN COMMUNITY: THE REGIONAL RESPONSE TO THE SINGLE MARKET IN THE UNDERDEVELOPED AREAS 224, 229 (1993).

84. Commissione parlamentare per i riforme costituzionali, Progetto di legge costituzionale [hereinafter Proposed Constitutional Law], arts. 55-66, Parliamentary Commission Internet site, *supra* note 19.

organization of the Republic. Furthermore, a significant change has been made in the first article in this title. Where the present Constitution provides that "[t]he Republic is divided into Regions, Provinces and Communes,"[85] the Commission's text would substitute: "The Republic is made up of Communes, Provinces, Regions and the State (*lo Stato*)."[86] As one commentator remarked, "the Italian State, for the first time, is placed on the same level as [a commune, a province, a region]."[87] This represents a fundamental break from the pattern of thought that runs from Hegel through the former Soviet Union.[88]

Another interesting innovation in the Commission's text is the provision that "[t]he functions that cannot be more adequately undertaken autonomously by private persons are divided among [public authorities] on the basis of the subsidiarity principle . . . ."[89] I will discuss the subsidiarity principle later. It should be noted here, however, that the Commission's text seems to provide a legal basis for enhanced protection of a private sphere of action and thus might serve as constitutional basis for limiting the sphere of competence of public authorities. Senator D'Onofrio justifies the inclusion of this provision in his Report:

> According to article 2 of the Constitution, the human being is considered potentially capable of activities of public importance, and so such [activities] limit from the outset the powers of local, regional, or national political entities. The formulation of article 56 of the new republican Order is intended to express this relationship between public and private in the sense of the necessity of [requiring] reasons for the choice of a public instrumentality every time a person demonstrates being able to carry out "more adequately" the activities that the public entity intends to carry out.[90]

The potential "privatizing" impact of this provision has not gone unnoticed, however.[91]

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85. Italian Constitution, *supra* note 9, art. 114.
86. Proposed Constitutional Law, *supra* note 84, art. 55.
87. Antonella Rampino, *Federalismo, così cambia il "condominio Italia,"* LA STAMPA, June 19, 1977, at 7. The November 4, 1997 text, *supra* note 20, gives further emphasis to the federal nature of the Republic. In that text, Part II of the Constitution is entitited "Federal Structure of the Republic" (*Ordinamento federale della Repubblica*), a change from the title of Part II contained in the draft of June 30, 1997 ("*Ordinamento della Repubblica*").
88. *Id.*
89. Proposed Constitutional Law, *supra* note 84, art 56.
90. D'Onofrio Report, *supra* note 83, ¶ 3(b); Parliamentary Commission Internet site, *supra* note 19.
91. Donatella Stasio, *Il cammino della Bicamerale—Nel testo sul federalismo più spazio ai privati*, IL SOLE-24 ORE, June 18, 1997, at 2.

B. The New Federalism in Italy

(1) *The formation of the organs of the central government.* In redesigning the national governmental system, the Commission was clearly of the view that the various institutions of the nation must be structured and accorded powers to insure their ability to function as intended without undue reliance on the Constitutional Court, which should not be expected to become a "systematic arbiter of political conflict."[92] To this end, the Commission's proposals enhance the influence of the regions in the formation and operations of the central government, while at the same time preserving Parliament as the guardian of national unity (so that, for instance, the interests of the weaker regions are not sacrificed to those of the stronger).[93]

Debate in the Commission regarding the role of the regions in the central government focused on the composition and role of the Senate. Extreme centralizing or decentralizing proposals, like the abolition of the Senate in favor of a unicameral legislature or the transformation of the Senate into a Senate of the Regions, were rejected.[94] The Senate, which the Commission's proposal reduces from 315 to 200 members,[95] is, like in the existing Constitution, to be elected on a regional basis, each region having a minimum number of senators plus additional seats assigned on the basis of its relative population.[96] While the Senate's role is somewhat reduced in the Commission's text (it does not participate equally with the Chamber of Deputies in all legislative matters,[97] and its confidence is no longer necessary for the formation or continuation of the Government[98]), it does have a special role to play in legislation of concern to the communes, provinces, and regions. Article 97 establishes the Commission of the Autonomous Territories within the Senate. One-

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92. Relazione sul parlamento e le fonti normative e sulla partecipazione dell'Italia all'Unione Europea della Senatrice Marida Dentamaro, at ¶ 2 [hereinafter Dentamaro Report]; Parliamentary Commission Internet site, *supra* note 19.

93. Dentamaro Report, *supra* note 92, ¶ 3.

94. *Id.* ¶ 3.

95. Reasons given for the reduction of the number of senators (and also members of the Chamber of Deputies, from 630 to 400) were "to increase the authority of [elected representatives] and the efficiency of the functioning of Parliament," and, significantly, to "reorganize the legislative function of Parliament as a consequence of the devolution of many matters to the normative power of the Regions and of European institutions . . . ." *Id.* ¶ 4.

96. Proposed Constitutional Law, *supra* note 84, art. 86.

97. Laws pertaining to certain enumerated matters must be approved by both Chambers, *id.* art. 98. Other articles specifically require the participation of the Senate, e.g., article 109 (declaration of war; but the Chamber of Deputies alone can approve the use of the armed forces outside of the national borders); article 110 (amnesty and pardon).

98. *Id.* art. 76.

third of Commission members are senators, one-third are regional presidents (including the presidents of the provinces of Trento and Bolzano), and one-third are representatives of the communes and provinces. "The Commission shall examine proposed legislation . . . and shall express its opinion on questions concerning the Communes, the Provinces and the Regions."[99] The Commission is specifically accorded a role in legislation concerning financial and fiscal matters.[100] According to the Report of Senator Dentamaro, the Commission represents "an original attempt to translate into constitutional organization the need for territorial representation . . . with provisions that seek to be responsive to our specific national history."[101]

There are other provisions that seek to give representation and protection to regional, provincial, and local interests at the national level. For instance, "If a treaty directly affects a Region or the autonomous Provinces of Trento or Bolzano, it can proceed to ratification only after the regional or provincial Assembly has been consulted."[102] Also, the regions may participate in the formulation of national policy with respect to the European Union and international agreements which impinge on their areas competence.[103] Finally, the regions are given a role in the selection of members of the Constitutional Court: three of the fifteen members of the Court are named by the regions.[104]

(2) *The power of the "peripheral subjects" to adopt their own institutional structure.* The Commission's proposal accords considerable latitude to the regions to adopt their own governmental structures and their own electoral laws.[105] This represents a marked change from the present Constitution, which requires parliamentary approval of regional government organizational statutes. This change was hotly debated in the Commission and is regarded by the

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99. *Id.* art. 97.

100. *Id.* art. 113. In the November 4 Commission text, *supra* note 20, however, the Commission of the Autonomous Territories, described in the text, is eliminated, and replaced with another device to ensure the regions and local political entities participation in the legislative process when their interests are affected. According to article 89 of the November 4 text, the Senate meets in special session (in which its membership is augmented by 200 regional, provincial, and communal counsellors ("*consiglieri*"), elected by regional, provincial, and communal councils, when it considers certain enumerated categories of proposed legislation affecting the regions, provinces, and communes.

101. Dentamaro Report, *supra* note 92, ¶ 3.

102. Proposed Constitutional Law, *supra* note 84, art. 111.

103. *Id.* art. 118.

104. *Id.* art. 135.

105. *Id.* art. 61.

Commission as one of "the most significant affirmations of the political autonomy of the regions."[106] Furthermore, another significant constitutional guarantee of regional and local autonomy is the provision that "[t]he acts of the Communes, the Provinces and the Regions may not be subjected to preliminary review (*controlli preventivi*) for validity or content."[107]

(3) *The division of legislative competence*. The Commission's text reverses the approach of the present Italian Constitution, which enumerates the legislative powers of the regions and accords all other legislative powers to the central government,[108] by enumerating the powers of the central government and leaving all residual powers to the regions.[109] The enumerated powers of the central government fall into three general categories representative of three important national interests: the State as an international subject,[110] the organization of the State,[111] and the responsibility of the State for the general welfare.[112] This third State interest is the source of "legislative power concerning the definition of uniform minimum national levels of social, economic, and civil rights."[113] Also, the State is accorded legislative power "for the protection of important and necessary national interests,"[114] a provision which Senator D'Onofrio explains as according power to the national parliament "to deal with supervening facts or emergent interests which require uniform national regulation."[115]

A perusal of the enumerated powers of the central government makes clear that federalism Italian style differs significantly from what is understood by that term in the United States. For instance, the central government has legislative competence with respect to public

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106. D'Onofrio Report, *supra* note 83, ¶ 3(g); *see also* Donatella Stasio, *Oggi si comincia a votare il nuovo testo base sul federalismo roscritto da D'Onofrio*, IL SOLE-24 ORE, June 17, 1997, at 4.

107. Proposed Constitutional Law, *supra* note 84, art. 56 (last paragraph). *Controlli preventivi* is a type of review that occurs before a legal act takes legal effect. For a description of the controls exercised by the State over regional administrative and legislative measures, see G. LEROY CERTOMA, THE ITALIAN LEGAL SYSTEM 170-72 (1985).

108. *See supra* note 38 and accompanying text.

109. Proposed Constitutional Law, *supra* note 84, art. 59; *see also* D'Onofrio Report, *supra* note 83, ¶ 3(e). Some legislative powers are concurrent, most notably those pertaining to the promotion and organization of cultural activities. Proposed Constitutional Law, *supra*, art. 59; D'Onofrio Report, *supra*, ¶ 3(f).

110. Proposed Constitutional Law, *supra* note 84, art. 59(a).

111. *Id.* art. 59(b).

112. *Id.* art. 59(c).

113. D'Onofrio Report, *supra* note 83, ¶ 3(e).

114. Proposed Constitutional Law, *supra* note 84, art. 59.

115. D'Onofrio Report, *supra* note 83, ¶ 3(e).

order and personal security, civil and penal law, the judicial order, provincial and communal electoral laws and governmental organization, university-level education, professional licensing, medical services, and the protection of the environment—all matters which in the American version of federalism fall primarily within the competence of the states. This approach (characterized as "superficial") to the question of decentralization has been much criticized in those parts of Italy where regional (if not actual separatist) feeling runs high.[116]

To protect their spheres of legislative competence against the State, the regions, and also the communes and the provinces, are accorded the right to raise the question of the constitutional power of the State to enact a law or perform an act having the force of law before the Constitutional Court.[117]

The Commission's draft refers specifically to the principle of subsidiarity, which has recently assumed great importance in the law of the European Union.[118] It is problematical, however, whether the subsidiarity principle will play a significant role in the allocation of legislative competence in Italy, as the principle is utilized in the Commission's draft in article 56, which is primarily concerned with the allocation of administrative competence. Also, in light of the detailed enumeration of the legislative competence of the central government, there would appear to be little room left for the application of the subsidiarity principle in the context of legislative federalism.

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116. *See*, *e.g.*, the comments of Massimo Cacciari, Mayor of Venice, in Celestine Bohlen, *In Not-So-Serene Venice, Leaders Fear Rising Desire for Secession*, N.Y. TIMES, July 14, 1997, at A8. The President of Lombardy, Roberto Formigoni, has pointed out that legislative responsibility for health and the environment, included in the Commission's enumeration of federal legislative competence, is allocated to the regions in the existing Constitution. Marino Massaro, *I governi territoriali sono contrari alle proposte sul Fisco inserite nel progetto di riforma costituzionale*, IL SOLE-24 ORE, June 24, 1997, at 23.

117. Proposed Constitutional Law, *supra* note 84, art. 60. The State has the power to challenge a law enacted by a region before the Constitutional Court on the ground that its enactment exceeds the legislative competence of the region. *Id.*

118. Article 3b of the Treaty Establishing the European Community (as amended by the Treaty of Maastricht), *supra* note 13, provides in part:

> In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.

For comparative discussions of the subsidiarity principle, see Denis J. Edwards, *Fearing Federalism's Failure: Subsidiarity in the European Union*, 44 AM. J. COMP. L. 537 (1996); George A. Bermann, *Taking Subsidiarity Seriously: Federalism in the European Community and the United States*, 94 COLUM. L. REV. 331 (1994).

(4) *The division of administrative competence*. The Commission's draft rejects the present Constitution's "parallelism" in the allocation of administrative functions (whereby administrative functions are allocated in the same way as legislative competence), opting instead for a clear preference for allocating administrative functions to the communes.[119] The State, however, is accorded the power to allocate administrative authority by law. The relevant provision reads:

> General administrative and regulatory power, including that pertaining to those matters which fall within the legislative competence of the State or the Regions, is ascribed to the Communes, except for functions expressly ascribed to the Provinces, to the Regions, or to the State by the Constitution, by constitutional laws, or by the law . . . .[120]

Thus, the Commission's draft, while expressing a preference for placing administrative responsibility at the governmental level (commune, province, region, or State) which is closest to the affected citizens, with that determination being made according to the requirements of need for uniformity and effective performance of the function,[121] is better regarded as an enabling provision coupled with a stated standard than a true grant of power to local government entities. As one commentator has suggested, the Commission's treatment of the allocation of administrative authority represents in effect its approval of recently enacted laws concerning administrative decentralization.[122] Thus, while administrative functions may be decentralized, the autonomous administrative sphere of the communes would receive little constitutional protection under the Commission's draft.

(5) *The fiscal system*. Fiscal autonomy, or regional control over taxation and expenditures, is perhaps the central concern driving the recent push toward federalism in Italy. Many in the prosperous northern regions resent high national tax burdens, with their inhibiting

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119. This is in recognition of "the centrality of the Commune in the new order." D'Onofrio Report, *supra* note 83, ¶ 3(c).

120. Proposed Constitutional Law, *supra* note 84, art. 56.

121. *Id.* art. 56. This is the subsidiarity principle.

122. Marcello Clarich, *Il federalismo è soltano amministrativo*, IL SOLE-24 ORE, July 3, 1997, at 7. These law are the Bassanini Laws, Law No. 59/1997, and Law No. 127/1997. The first Bassanini law effected a complete revision of the functions of the State by conferring many State functions on the regions and local entities, in accordance with the subsidiarity principle, along with a comprehensive restructuring of the central administration of the State. The second Bassanini law provides specific mechanisms for simplifying administrative activity. Forlenza Oberdan, *Le nuove norme sulla semplificazione amministrativa*, Guida Normativa, May 30, 1997, at 188. These laws, particularly Bassanini I, provide an excellent example of the potential for the development of "administrative" or "executive" federalism under the present, unamended Constitution.

effects on business, to support a central government and poorer regions to the south that are perceived as inefficient, wasteful, and corrupt. Moreover, as the European Union poised recently on the brink of monetary union, the north chafed at the possibility that Italy might have been left out of the initial common currency group set to debut in 1999 because of the weaker economies of the south and the poor management of the economy by the central government.[123]

The Commission's proposals regarding fiscal federalism retain the ambiguity of the existing Constitution. While article 64 begins by proclaiming that "Autonomy in financial matters and in taxation is a constitutive element of regional autonomy," it goes on to require legislative action by the national Parliament for most regional initiatives in these areas. For instance, the regions may finance their own activities with their own taxes, which they may impose through regional law, but such laws must conform to principles established by laws approved by both houses of Parliament (*dalle due Camere*). Also, the same article accords local governmental entities autonomy with respect to taxation and financial matters, but local laws regarding these matters must be approved by Parliament.

Over the past few years, Parliament has transferred (or delegated) considerable power to the regions over financial matters.[124] As is true with administrative power, however, as discussed above, the power of the regions in fiscal matters is derivative, that it to say that it is ultimately dependent on legislative action of Parliament and does not rest firmly on constitutional guarantees.

(6) *Judicial organization*. In the Commission's proposal, the administration of justice falls exclusively within the domain of the central government.[125] Under the proposed scheme, a national system of "ordinary" courts has general civil and criminal jurisdiction; and a national system of administrative tribunals, composed of regional administrative courts and an Administrative Court, is accorded "administrative jurisdiction."[126]

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123. Celestine Bohlen, *In Not-So-Serene Venice, Leaders Fear Rising Desire for Secession*, N.Y. TIMES, July 14, 1997, at A8. *See also Bossi: il New York Times ha capito, solo la Padania nel G7*, LA STAMPA, June 23, 1997, at 2; Celestine Bohlen, *Italy's North-South Gap Widens, Posing Problem for Europe, Too*, N.Y. TIMES, Nov. 15, 1996, at A1.

124. For citations to and descriptions of the relevant laws, see PIZZETTI, *supra* note 8, at 96-101.

125. For a thorough discussion of the Commission's proposals on the judicial system, which covers civil, criminal, administrative, and constitutional jurisdiction, see Relazione sul sistema delle garanzie del Deputato Marco Boato [hereinafter Boato Report], Parliamentary Commission Internet site, *supra* note 19.

126. Proposed Constitutional Law, *supra* note 84, art. 121.

"Ordinary" judges and administrative magistrates "constitute an autonomous order, independent of any [political] authority."[127] Each body is governed by its own Council; three-fifths of whose members are elected by the judges or magistrates in the system and two-fifths of its members by the Senate. The President of the Republic presides over each Council. Each Council is responsible for "appointments, assignments, transfers and promotions" of judges and magistrates.[128] Entry into the ordinary or administrative magistrature is by competitive examination and prior apprenticeship.[129] Ordinary and administrative judges are irremovable.[130]

A national Constitutional Court has jurisdiction over constitutional questions. As discussed above,[131] among its fifteen members are three selected by the Regions.

(7) *The possibility for peripheral subjects to enter into agreements among themselves and with other nations.* The Commission's draft would allow regions to enter into agreements with other regions "for the better exercise of their own competencies."[132] Also, the regions may make agreements with other nations or their territorial subdivisions within the scope of their own competence, subject to the prior approval of Parliament.[133] Furthermore, as discussed above, the Commission's draft allows the regions to participate in the formation of national policy with respect to the European Union regarding matters of concern to them.[134]

(8) *The constitutional guarantees afforded to peripheral subjects.* (a) *Amendment of the national constitution.* The Commission's proposed article on constitutional amendment is identical to article 138 of the present Constitution.[135]

(b) *Organs for guaranteeing the constitutional rights of the peripheral subjects.* The Constitutional Court has jurisdiction over conflicts of competence between the State and other territorial entities.[136] As discussed above, regions, provinces, and communes may bring such questions before the Court.[137]

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127. *Id.* art. 122.
128. *Id.* art. 124.
129. *Id.* art. 126.
130. *Id.* art. 127.
131. *See supra* note 104 and accompanying text.
132. Proposed Constitutional Law, *supra* note 84, art. 62(a).
133. *Id.* art. 62(b).
134. *See supra* note 103 and accompanying text.
135. *See supra* note 18.
136. Proposed Constitutional Law, *supra* note 84, art. 134(c).
137. *See supra* note 117 and accompanying text.

(c) *Protection of the territorial integrity of peripheral subjects.* The relevant provision in the Commission's proposal, article 66, is similar to that in the existing Constitution.[138] An innovation in the Commission's text, however, gives the regions the power to create new provinces and to change the boundaries and the names of existing provinces.[139]

C. The Future of Italian Federalism

In order to assess the future of federalism in Italy, it is necessary to examine both the political and juridical contexts in which the future federal system will operate. Comparisons with the American experience will prove illuminating.

1. The Political Context

There is an important strand of constitutional thinking in the United States that maintains that questions concerning the limits to the competence of Congress because of the federal structure of government are not appropriate for resolution by the courts. Proponents of this point of view regard the Constitution itself as providing the states with enough political leverage to protect adequately their interests against encroachments by the central government and deem the intervention of judges in the political process inappropriate. Thus:

> The principal means chosen by the Framers to ensure the role of the States in the federal system lies in the structure of the Federal Government itself. It is no novelty to observe that the composition of the Federal Government was designed in large part to protect the States from overreaching by Congress. Given the fact that Members of Congress are elected by the people of the several States, with each State receiving an equal number of Senators in order to ensure that even the smallest States have a powerful voice in the legislature, it is quite unrealistic to assume that they will ignore the sovereignty concerns of their constituents. . . . [U]nelected judges are better off leaving the protection of federalism to the political process in all but the most extraordinary circumstances.[140]

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138. *See supra* notes 48-51 and accompanying text.

139. Proposed Constitutional Law, *supra* note 84, art. 66. *See also* D'Onofrio Report, *supra* note 83, ¶ 3(l).

140. Printz v. United States, 117 S. Ct. 2365, 2394-96 (1997) (dissenting opinion of Justice Stevens) (citations omitted). *See also* Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985).

Even though this view is presently in the minority in the United States,[141] it correctly directs attention to the political protections afforded to the states by the political structure established by the Constitution itself.[142]

The role of political arrangements in the operation of the federal system has also been clearly recognized in Italy by the Parliamentary Commission. Marco Boato points out that "it is evident that the [Constitutional] Court cannot alone be responsible for regulating the tensions in the system of autonomous territorial units, without distorting its fundamental character as an organ of constitutional justice."[143] Therefore, it is political organs, especially the Senate and the Senate meeting in special session,[144] which must be entrusted with primary responsibility for the maintenance of the appropriate balance between the central government and the peripheral territorial units. "It is indispensable to promote the institutional effectiveness of such bodies in order to guarantee that the Constitutional Court conserve its role as ultimate guarantor and interpreter of the principles of the system, rather than place it in the position of resolving, in the ordinary course, the internal microconflicts in the interrelations of the autonomous territorial entities."[145]

2. The Juridical Context

Over and above the political protections for federalism discussed above, and the possibility that the Constitutional Court will defer in most cases to the political process by adopting a standard of review designed to achieve this result, the Commission's proposals definitely contemplate an important role for the Court in the application of constitutional standards in the relationships between the central government and other territorial entities.[146] According to the Report of the Committee on Guarantees:

> In [the] context of the explicit recognition of the powers of autonomous local entities . . . the Commission has decided to insert also a series of protective guarantees for the effective exercise of the functions of the local communities, which rest on two fundamental bases: first of all, the

141. Printz v. United States, 117 S. Ct. at 2394; United States v. Lopez, 115 S.Ct. 1624 (1995); New York v. United States, 505 U.S. 144 (1992).

142. Courts in the United States regularly examine *state* legislation for its conformity to constitutional standards. *See*, *e.g.*, Camps Newfound/Owatonna, Inc. v. Town of Harrison, 117 S. Ct. 1590 (1997); U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779 (1995).

143. Boato Report, *supra* note 125, ¶ 5.2.1.

144. *See supra* note 100.

145. *See* Boato Report, *supra* note 125.

146. *See supra* notes 117, 136, and 137 and accompanying text.

> possibility on the part of the Communes and the Provinces (as well as the Regions) of raising the question of constitutional legitimacy before the Constitutional Court of a law or of an act having the force of law which may be prejudicial to a competence assigned to such autonomous local entities; in the second place, the guarantee of Court review of conflicts of attribution between State, Regions, Communes and Provinces.[147]

As discussed above, the Commission's proposal regarding the selection of members of the Constitutional Court (three of the fifteen members of the Court are to be named by the regions)[148] increases the likelihood that the Court will be sympathetic to the concerns of the regions,[149] as does the inclusion of the "subsidiarity" standard in proposed article 56. In spite of the problematic nature of the "subsidiarity" concept (does it have real normative content? or is it a mere truism or tautology like the Tenth Amendment to the Constitution of the United States?), it does at least offer a constitutional basis for the Court to adjust intergovernmental relations in specific cases involving the exercise of legislative, administrative, or fiscal authority, if the Court wishes to do so.[150] It is significant that Marco Boato stresses the importance of the subsidiarity principle in his discussion of "constitutional guarantees of the system of autonomous entities" in his Report.[151]

V. CONCLUSION

The adoption of a new constitution is always problematical. Will it provide a structure and principles which will endure and furnish a vital basis for national political life or will it prove to be provisional, ineffective, or irrelevant? What are the prospects for constitutional reform in Italy today? And how does the work the Parliamentary Commission measure up to the contemporary needs of Italian society and the political system?

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147. Boato Report, *supra* note 125, ¶ 5.2.3.

148. *See supra* note 104 and accompanying text.

149. For an analysis of the role of the Constitutional Court in intergovernmental relations from 1970 through 1985, see SERGIO BARTOLE ET AL. (eds.), REGIONI E CORTE COSTITUZIONALE: L'ESPERIENZA DEGLI ULTIMI 15 ANNI (1988). *See also* A. Pizzorusso, V. Vigoriti & G.L. Certoma, *The Constitutional Review of Legislation in Italy*, 3 CIV. JUST. Q. 311 (1984). *See generally* FAUSTO CUOCOLO, ISTITUZIONI DI DIRITTO PUBBLICO 563-669 (discussing local and regional entities) and 917-69 (discussing the Constitutional Court) (9th ed. 1996).

150. For discussions of the legal significance of the subsidiarity principle in the law of the European Union, see Virginia Harrison, *Subsidiarity in Article 3b of the EC Treaty—Gobbledegook or Justiciable Principle?*, 45 INT'L & COMP. L.Q. 431 (1996); A.G. Toth, *Is Subsidiarity Justiciable?*, 19 EUR. L. REV. 268 (1994).

151. Boato Report, *supra* note 125, ¶ 5.2.3.

First of all, the time is right for constitutional reform. The post-war political system has collapsed. The system is now in crisis, political structures are malleable, and new paths are possible. The political process, moreover, has not been captured by any extreme, but is solidly in the center. And because of the coalition nature of Italian parliamentary politics, all parties and groupings can play meaningful roles in the process of constitutional reform. This is, then, a propitious time for constitutional reform. Moreover, the method chosen for the drafting and adoption of a new constitution appears well calculated to provide maximum political participation, support, and acceptance, without running the undue risk of convening a constitutional convention.[152]

As one Italian journalist has commented, the Commission's proposals represent a "mimesis," or exact copy, of the current political constellation.[153] He laments this outcome, and also the absence of "founding fathers authoritatively inspired by the divinity of reform" at this "magical moment."[154] On the other hand, however, the work of the Commission has been characterized by Italian President Oscar Luigi Scalfaro as a "political success," resulting from a common effort that has seen the majority and the opposition unite "to assume reciprocal responsibilities" in a spirit of "solidarity" and "ecumenism."[155]

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152. *But see* Jon Elster, *Forces and Mechanisms in the Constitution-Making Process*, 45 DUKE L.J. 364 (1995) (concluding that "to reduce the scope for institutional interest, constitutions ought to be written by specially convened assemblies and not by bodies that also serve as ordinary legislatures. Nor should the legislatures be given a central place in the process of ratification." at 395) Professor Elster also points out that "there is no body of literature that deals with the constitution-making process in a positive, explanatory perspective. . . . [T]here is not, to my knowledge, a single book or even article that considers the process of constitution-making, in its full generality, as a distinctive object of positive analysis." *Id.* at 364.

153. Edmondo Berselli, *Due anni senza conflitti*, LA STAMPA, July 1, 1997, at 1. ." . . the proposed constitutional reform . . . is the exact photograph of present Italian politics, perfect in every particular." *Id*.

154. *Id.*

155. Renato Rizzo, *"La Bicamerale? Successo considerevole,"* LA STAMPA, July 11, 1997, at 6. The work of the Bicameral Commission has also been seen in a positive light by the general public. Renato Mannheimer, *Bicamerale, chi la conosce l'approva*, CORRIERE DELLA SERA, July 14, 1997, at 6. An example of the cooperative attitude in the Commission is the handling of internal disagreement concerning whether to propose a "semipresidential" form of government rather or a "strong premiership." After the forces of the center Left that were in control of the Commission narrowly lost on this controversial and highly-charged issue (by a vote of 36-31) because of the defection of the six Northern League commission members, *Lega col Polo: sì al semipresidentialismo*, LA STAMPA, June 5, 1997, at 1; *see also id*. at 2, 3, 5, both sides cooperated to improve the semipresidential model. See Relazione sulla forma di governo del Senatore Cesare Salvi, ¶ 1, Parliamentary Commission Internet site, *supra* note 19.

Although the Commission's proposals regarding *la forma di Stato* have been criticized by those wanting more regional autonomy and also by those objecting to what they regard as the unwise devolution of the power and authority of the State, the proposals on federalism must be seen in the context of the entire reform package. In that light they appear to represent, as do other parts of the package, a temperate, compromise solution to perceived problems, needs, and political pressures. They are a measured step forward, in keeping with the spirit of recent legislative developments, in the direction of increased regional autonomy, while at the same time preserving the essential unity of the Italian State.

After more than a century of strong central government, which was necessary to create the Italian nation, it is no surprise that the "culture of federalism" is still a minority sentiment in Italy today.[156] Since the late 1940s, however, the idea of regional autonomy contained in the post-war Constitution has become a reality (in the 1970s) and has increasingly developed into a vital feature of Italian political life (during the 1980s and 1990s). The current debate on regionalism, federalism, and even separatism, in the Commission and in the nation as a whole, is a healthy step forward toward a synthesis that takes into account and accommodates Italy's history, current economic and social situation, present internal political alignments, and supranational considerations.[157] In this light, the Commission's proposals represent an appropriate framework for current intergovernmental relations and furnish the political and legal basis

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156. Marcello Clarich, *Il federalismo è soltanto amministrativo*, IL SOLE-24 ORE, July 3, 1997, at 7.

157. According to Philip Allott, *The Crisis of European Constitutionalism: Reflections on the Revolution in Europe*, 34 COMMON MKT. L. REV. 439 (1997):

> The constitution of a society is a constituting, a process over time, a process of change, of accumulated effected produced by a succession of causes. And it is a process in three dimensions, a process at the level of ideas, of events, and of law. (at 468)
>
> The democratic legitimating of constitutional forms is not achieved by formalistic manipulation of intricate sub-systems, . . . Democratic legitimation is the interiorization by the people of the *necessity* of particular social forms, forms which produce life-determining social products (legal, political, economic, administrative, psychic. (at 487)

On the formation of territorial identities in federal states, see generally IVO D. DUCHACEK, COMPARATIVE FEDERALISM: THE TERRITORIAL DIMENSION OF POLITICS (1970). *See also* MARK TUSHNET (ed.), COMPARATIVE CONSTITUTIONAL FEDERALISM: EUROPE AND AMERICA (1990).

The Italian example offers a case study in constitutional development which should also be of interest to American observers. *See generally* Bruce Ackerman, *The Rise of World Constitutionalism*, 83 VA. L. REV. 771, 774 (1997) (arguing that American academics should adopt a comparative, non-provincial perspective by "orienting themselves to the world-historical transformation occurring all around us").

for further incremental progress toward the greater acceptance of the culture of federalism in Italy.

AFTERWORD

Just before this article went to press, the Italian Parliament removed the matter of constitutional reform from its agenda. This action resulted from the withdrawal of support for the Bicameral Commission's proposals by the opposition leader Silvio Berlusconi. Although the Bicameral Commission has not been formally abolished, which would require a constitutional law, and therefore could conceivably be resurrected at a future time, it is highly unlikely that its proposals in their present form would be adopted pursuant to the procedures mandated by the Constitutional Law of January 28, 1997, which established the Commission. Under consideration at present as procedures for moving forward with constitutional reform are the use of the procedures provided for in article 138 of the present Constitution or in the alternative the convening of an elected constituent assembly.[158]

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158. *See supra* note 17; Monica Larner, *Italy Abandons Constitutional Reform*, THE NATIONAL LAW JOURNAL, June 22, 1998, at A14; Donatella Stasio, *In Aula it tramonto dell Bicamerale*, Il Sole-24 Ore, June 3, 1998, at 2.