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Foreward

Writing in the Law Review's commemorative issue of the 150th anniversary of The Dickinson School of Law may legitimize a brief attempt to place current developments in historical perspective. In 1834, Judge John Reed founded the Dickinson School of Law "to prepare students thoroughly for the practice of their profession."[1] Today, The Dickinson School of Law is the seventh oldest surviving law school in the United States. Only William and Mary (1779), Maryland (1816), Harvard (1817), Yale (1824), Virginia (1825) and Cincinnati (1833) antedate its foundation.[2]

The opening of Judge Reed's law school was a significant landmark in the history of American legal education. At a crucial turning point in our legal history, and at a time when post-revolution hostility to Great Britain was still prevalent, it played an important role in developing lawyers trained in common law traditions and techniques. Acceptance of the common law rather than the civil code system thereby was facilitated.

This was a critical period for American law. Dean Roscoe Pound stated that "it was impossible for the common law to escape the odium of its origins."[3] The common law was "badly tarnished,"

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1. B. LAUB, THE DICKINSON SCHOOL OF LAW: PROUD AND INDEPENDENT 13 (1983).

2. See the individual school statements in the *Prelaw Handbook 1983-84*, published by the Law School Admission Council and the Association of American Law Schools and school catalogs. The Handbook also indicates that law lectures were initiated at the University of Pennsylvania in 1790, the law school being founded in 1852; and law lectures were initiated at Columbia in 1774, the law school being founded in 1858.

Dean James P. White, Consultant for Legal Education to the American Bar Association reported that as of September 1983 there were 173 ABA-approved law schools. *See* SYLLABUS Sept. 1983, at 12.

3. R. POUND, THE FORMATIVE ERA OF AMERICAN LAW 7 (1938).

and so were lawyers, many of whom were Tories.[4]

Noting the strength of the movement favoring adoption of the French civil code system rather than retention of the English common law, Chancellor Kent wrote, "The judges were Republican and very kindly disposed to everything that was French, and this enabled me, without exciting any alarm or jealousy, to make free use of such authorities and thereby enrich our commercial law."[5]

Chancellor Kent also met opposition to the use of English cases during his time on the New York Supreme Court (1798-1814). In a letter dated September 1818, he wrote, "English authority did not stand very high in those early feverish times."[6] A work on early Pennsylvania courts stated: "The citation of English decision in the opinions of the courts greatly exasperated the radical element. What were these precedents but the rages of despotism, who were the judges that had rendered them but tyrants, sycophants, oppressors of the people and enemies of liberty. . . ."[7] Our own inimitable Dean Laub comments on the matter as follows: "Indeed, twisting the British lion's tail was a major sport, and criticizing those lawyers who wished to retain the English common law as the law of the land was a public exercise."[8]

Judge Reed and the founders of these early law schools were in the forefront of legal education. They anticipated the nineteenth century evolution away from *apprenticeship law office* education. They were leaders in the movement toward *law school based* legal education and use of treatise, Socratic case law and simulation methodologies.

In his penetrating and thoughtful history of the Dickinson School of Law, Dean Laub, in addition to reproducing a statement of the legal education philosophy of the new institution contained in Judge Reed's "desk book," also listed texts which were to be used in the planned curriculum. These included the *Commentaries* by Blackstone and Kent, and other leading treatises of the era.[9] A first draft

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4. L. FRIEDMAN, A HISTORY OF AMERICAN LAW 94 (1973).
5. W. KENT, MEMOIRS AND LETTERS OF JAMES KENT LL.D. 117 (1898).
6. *Id.* at 118.
7. Loyd went on to say:

   [T]here was danger that our courts might be contaminated by the course from which they drew their inspiration, so an act was passed March 19, 1810, which provided that it should not be lawful to read or quote in any court of this commonwealth, any British precedent or adjudication which had been given or made subsequent to the fourth of July, 1776, except those relating to maritime law or the law of nations. . . .

W. LOYD, EARLY COURTS OF PENNSYLVANIA 150 (1910).

8. B. LAUB, THE DICKINSON SCHOOL OF LAW: PROUD AND INDEPENDENT 13 (1983).
9. Judge John Reed's desk book, the so-called "Little Book," contains a wealth of information on the establishment and maintenance of the Law School. It includes notations on texts and materials and the first draft of the previously discussed advertisement of the school's opening.

of the advertisement of the opening of The Dickinson School of Law which later appeared in revised form in twelve consecutive issues of the *American Volunteer* beginning on January 9, 1834, contained the following description of the method of instruction:

> I. The means of instruction will consist: First, in a methodical course of study of the best books properly arranged. Secondly, in frequent examinations accompanied with familiar conversations adapted to the progress and comprehension of each particular student, and thirdly, in a regular series of lectures.
> II. The practice will be taught, First by the examination of approved precedents and books of practice. Secondly, by presenting fictitious cases, and training the students through all the forms and distinctions of actions, pleas or pleadings, trial, judgment etc: thus familiarizing them with all the modes of procedure, from the inception of a trial, to its consummation by final execution.
> III. The application of theory and practice will further be made familiar, by frequent exercises in conducting proceedings in a MOOT COURT to be organized for the purpose. Actions will be instituted and regularly prosecuted through all the windings which the skill and ingenuity of the students can suggest; and in those prosecutions, regular discussions will be had on debatable points, both orally and in writing. . . .[10]

Initiation of the Master of Comparative Law program for foreign students in 1968 and The Dickinson School of Law Summer

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The Order of Reading, as it appears in the "Little Book" is as follows:
I. & II. Blackstone's Commentaries
[Marginal notation:] Blackstone's Commentaries carefully revised. [indecipherable] page 7.
III. Kent's Commentaries
IV. Chitty on Pleading
V. Stephen on Pleading
VI. Phillips on Evidence
VII. Pennsylvania Practice [No author given]
VIII. Paley on Agency
Theobald-Principal and Surety
Chitty on Contracts
Jones on Bailments
Platt on Covenants
Angell & Ames on Corporations
Powell on Contracts
[Marginal notation:] In such order as may be most convenient
Collier on Partnerships
Tidd's Practice
Foulbanque on Equity with [indecipherable]
Potter's Law of Executors
Sugden on Vendors
Chitty on Bills
Reports—Acts of Assembly—and Miscellaneous readings in connection with questions in the Moot Court.
Id. at 178-79.

10. *Id.* at 180.

Seminars in Florence in 1981 has introduced an exciting and promising new dimension to the task of fulfilling Judge Reed's mission. In the context of the twenty-first and the latter part of the twentieth centuries, fulfillment of this mission by legal educators will require continuing innovative responses, including expanding exposure to international and comparative law.

In recent years we have seen new developments in American legal education, including courses on alternative dispute mechanisms, advocacy, computer-aided education and research, continuing legal education, counseling, graduate degree specializations, internships, legal clinics and negotiation programs. Continuing discussions within the legal education community on methodology are a healthy and necessary part of our professional endeavors. The relative merits of lecture-text, case, statutory, historical, problem, conceptual, functional or transactional approaches in the presentation of subject matter or of skills training, professional responsibility-value orientation, clinical exposure, integration of law and the social sciences, analysis of the judicial decision-making process and use of empirical methods and data processing, are matters of vital and continuing importance which legal educators need to constantly subject to re-evaluation.[11]

The education and professional development opportunities which Dickinson's new international and comparative law program offers to Dickinson students and faculty will continue to generate meaningful international and comparative studies.[12] It is hoped that the following essay will help foster interest in these increasingly important areas of legal practice.

I. Italian Government Organization

Italy is a unitary state subdivided into twenty regions which are further subdivided into numerous provinces and municipalities. Five of the regions were established by special statutes between 1946 and 1972.[13] These regions (Sicily, Sardinia, Valle d'Aosta, Friuli-Venezia Giulia, and Trentino Alto-Adige) enjoy especially broad autonomy because of their comparative geographic isolation, their historic

11. L. Del Duca, *Continuing Evaluation of Law School Curriculum—An Initial Survey*, 20 Journal of Legal Education 309 (1968).

12. The instant article was initially conceived while the author was working on a Fulbright-Hays Researcher grant assigned to the International Institute for the Unification of Private Law (UNIDROIT) located in Rome, Italy. The opportunity to complete this work has been facilitated by The Dickinson School of Law Summer Seminars in Florence.

13. Decree Law of May 15, 1946, No. 455, converted into the Constitutional Law of February 26, 1948, No. 2 for Sicily; Constitutional Law of February 26, 1948, No. 3 for Sardinia; Constitutional Law of August 31, 1973, No. 670 for Trentino Alto-Adige; Constitutional Law of January 31, 1963, No. 1 for Friuli-Venezia Giulia; Constitutional Law of February 26, 1948, No. 4 for Valle d'Aosta; Presidential Decree of August 31, 1972, No. 670 for Trentino Alto-Adige.

legislative and administrative self-sufficiency, and the presence of linguistic minorities.

The post-war Constitution anticipated enabling laws by Parliament to transfer legislative and administrative responsibilities to the remaining fifteen regions.[14] These regions, however, remained little more than paper entities until enactment of legislation in the late sixties and seventies providing for the transfer of substantial responsibilities to them from the central government.[15] The ramifications of this new legislation are yet to be fully developed as the regions continue to exercise their newly acquired powers.

Under the Constitution, regions are granted legislative powers over designated matters.[16] In addition, the Parliament has authority to statutorily grant additional powers to the regions. Legislation enacted by the regions must be within the "fundamental principles established by the laws of the state" (Italy), and may not "conflict with national interests or those of other regions."[17]

Because of an elaborate system of proportional representation, both the national and regional legislative bodies closely reflect the electoral strength of the various political parties. The national parliament consists of the Chamber of Deputies (630 members) and the Senate (315 members), in which all members are elected for five year terms.[18] Executive power resides in the Council of Ministers (also referred to as the "government"), headed by the President of the Council of Ministers.[19] The President of the Council of Ministers is analogous to a prime minister. Failure to win a vote of confidence in Parliament is cause for the Council of Ministers to resign.[20]

The President of the Republic, elected for a seven year term by a special session of Parliament,[21] has the power to appoint a new President of the Council of Ministers should a resignation occur, and new ministers on proposal of the President of the Council of Ministers.[22] The President of the Republic may also dissolve the whole Parliament or one of the Chambers—thereby causing early elections to occur.[23]

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14. COSTITUZIONE art. 114-133.
15. Law of February 17, 1968, No. 108; Law of May 16, 1970, No. 281; D.P.R. of January 14, 1972, No. 1; No. 2; No. 3; No. 4; No. 5; No. 6; D.P.R. of January 15, 1972, No. 7; No. 8; No. 9; No. 10; No. 11; Law of July 22, 1975, No. 382; D.P.R. July 24, 1977, No. 616.
16. COST. art. 117.
17. *Id.*
18. COST. art. 56, 57, and 60.
19. COST. art. 92.
20. COST. art. 94.
21. COST. art. 85.
22. COST. art. 92.
23. COST. art. 88.

II. Sources of Law

Sources of Italian law include legislation, regulations and usages.[24] A variety of procedures for enacting legislation and adopting administrative regulations exist under the Italian Constitution and parliamentary system. "Constitutional laws" may amend or supplement the Constitution. They are enacted by passing both houses of Parliament, initially by a simple majority, followed by a favorable absolute majority vote in both houses three or more months later.[25] Constitutional laws are equal in rank to the Constitution and superior to all other legislation.

The next level of legislation consists of "ordinary laws," "acts having the force of law," and "regional laws." "Ordinary laws" are passed by Parliament by a simple majority while "Acts having the force of law" are either delegated legislative decrees (decreti legislativi delegati) or decree-laws (decreti leggi).

Within constitutional limits, Parliament may delegate the authority to issue laws to the Council of Ministers.[26] These are the delegated legislative decrees. In extraordinary cases the government may issue decree laws without parliamentary delegation. Unless the decree laws are approved by Parliament within sixty days they are void *ab initio*.[27] The decree law method of law making has been used extensively in recent years. It has been suggested that its overuse has tended to bypass normal procedures for enacting legislation.

Both delegated legislative decrees and decree laws must be issued under the signature of the President of the Republic to be effective.[28] They then become "Decreti del Presidente della Repubblica" (i.e., D.P.R. or Decrees of the President of the Republic).

Many bodies of law have been statutorily codified. The Civil Code, adopted in 1942, contains 2969 articles (i.e., sections) divided into six books entitled Persons and Family, Succession, Property, Obligations, Labor, and Protection of Rights.[29] The Code of Civil Procedure and the Code of Navigation were also adopted in 1942. The Penal Code and the Code of Criminal Procedure were adopted in 1931. All have been extensively amended and the Code of Criminal Procedure has been substantially modified by decisions of the Constitutional Court. Other bodies of law are from time to time unofficially compiled and published as "Codes," and particular subject areas of the law are occasionally systematized and reenacted in

24. Art. 1, Provisions of the Law in General, Civil Code.
25. COST. art. 138.
26. COST. art. 76.
27. COST. art. 77.
28. COST. art. 87.
29. M. CAPPELLETTI, J. MERRYMAN & J. PERILLO, THE ITALIAN LEGAL SYSTEM, 439-52 (1967).

the form of a consolidated statute designated as a "Testo Unico."[30]

Regional laws are enacted by the regional legislatures as ordinary laws in the subject areas delegated to them by the Constitution and Parliament.[31] Individual ministers may also issue administrative decrees known as "decreti ministeriali" (ministerial decrees). These subordinate regulations may not contain provisions inconsistent with laws or regulations enacted by the Council of Ministers.[32] Regulations may be enacted by the State, the Regions, and other public entities. State regulations are usually enacted by the Council of Ministers, which has the power to enact regulations within the bounds of constitutional law.[33] The power of other state agencies to enact regulations is subject to ordinary laws passed by the Parliament.[34]

The procedure for promulgating regulations usually starts with a proposal by the competent Minister upon which the Council of State, an administrative court, renders an opinion. After approval by the Council of Ministers, the regulation is promulgated under the signature of the President of the Republic.

III. Judicial System and the Judiciary

A. Organization

The Italian Constitution provides for a national judiciary autonomous from the legislature and government.[35] Although judicial districts are organized by region and province, all courts are part of the national government.

The principal jurisdictional groupings of courts are the "Ordinary Courts," "Administrative Courts," and the "Constitutional Court." The "Ordinary Courts" are a system of lower and appellate courts dealing with general, civil, commercial, labor, and criminal matters. The "Administrative Courts" are a separate system of courts dealing with administrative law matters. Unlike the United States system in which administrative law issues both within the state and federal systems are generally appealable to the general system of courts for ultimate resolution, administrative law issues are resolved in Italy by a system of administrative courts not subordi-

30. Examples include: R.D. of April 14, 1910, No. 639, (consolidated statute on the provisions of the law relating to enforcement procedures in collection of amounts due to the State and other public entities, income due on public property and services, and business taxes); D.P.R. of February 13, 1959, No. 499 (consolidated statute on private insurance); R.D.L. of October 8, 1931, No. 104 (consolidated statute on fishing as amended by R.D.L. of November 4, 1938, No. 1183); R.D. of June 26, 1924, No. 1054 (consolidated statutes on the Council of State); D.P.R. of June 1959, No. 343 (consolidated statutes on traffic laws).

31. COST. art. 117.

32. Art. 3, Provisions of the Law in General, Civil Code.

33. *Id.*

34. Art. 4 of the Provisions of the Law in General, Civil Code.

35. COST. art. 101-05.

nated to the "Ordinary Courts." All constitutional issues raised in a civil, criminal, or administrative proceeding are referred immediately to the Italian Constitutional Court.

B. Ordinary Courts

The "Ordinary Courts" exercise jurisdiction over general civil, commercial, labor, and criminal matters. The Conciliators ("Conciliatori") and "Pretori" are the small claims lower level judges. The Tribunals ("Tribunali") are the courts of general original proceedings. Appeals are taken to the Courts of Appeal ("Corte di Appello") and heard de novo. From there, issues of law may be appealed to the Court of Cassation ("Cassazione"). This hierarchy might be represented as follows:

Cassation
Courts of Appeal
Tribunals
Pretori
Conciliators

1. *Conciliators* (I Conciliatori).—The Conciliator is the judge at the lowest level of the Ordinary Courts. He sits as a single small claims judge and is not required to have a formal legal education.[36] His task is conciliation rather than strict application of legal norms. Jurisdiction is limited to controversies involving less than 50,000 lire (about $35),[37] although the parties may jointly agree to permit the conciliator to decide larger cases.

There are approximately 8,000 conciliators,[38] all of whom serve without pay for three-year renewable terms.[39] They are appointed by the Court of Appeals presiding over the area in which the conciliator sits.

2. *Minor Judiciary* (I Pretori).—The "Pretore," of whom one sits as a single judge, in each of the 900 pretorial districts is a career judge who presides over various kinds of civil matters generally involving small claims of up to 750,000 lire (about $535),[40] and criminal matters punishable only by fine or by less than three years imprisonment. The Pretore also hears appeals from Conciliators, and

36. M. Cappelletti & P. Rescigno, *"Italy,"* INTERNATIONAL ENCYCLOPEDIA OF COMPARATIVE LAW, Vol. I, p. 95, National Reports, J.C.B. Mohr (Paul Siebeck), Tubingen. (completed 1972); Royal Decree of January 30, 1941, No. 12, art. 23.

37. Codice di Procedura Civile art. 7(1).

38. *Id.*

39. M. CAPPELLETTI, J. MERRYMAN & J. PERILLO, THE ITALIAN LEGAL SYSTEM, 79 (1967); Royal Decree of January 30, 1941, No. 12, art. 21.

40. The general limit on the amount of controversy before a Pretore is 750,000 lire (about $535), but this limit does not apply in actions for unlawful possession of property, actions to recover civil damages for illegal acts, tenant evictions, and some other urgent proceedings, C.P.C. art. 8.

recently, the pretori have been given jurisdiction over labor law disputes,[41] which has greatly increased their importance.

In order to reduce backlogs, the career Pretori are frequently supplemented by practicing attorneys and notaries[42] who are appointed on a part-time basis to serve unpaid three-year terms as vice-pretori.[43]

3. *Tribunals* (I Tribunali).—The 159 Tribunals[44] are courts with jurisdiction in civil cases not handled by the Conciliators and the Pretori.[45] They have exclusive jurisdiction on matters of tax,[46] personal status and capacity,[47] the authenticity of documents,[48] cases involving redress for other than monetary damages,[49] and execution of judgments on real property.[50]

The Tribunals also hear appeals from the Pretori[51] and exercise criminal jurisdiction over crimes for which punishment does not exceed eight years imprisonment. For criminal cases involving possible incarceration for more than eight years, special panels of the Tribunals called Courts of Assizes ("Corti di Assise") have jurisdiction.[52]

Criminal and civil cases are decided by three judge panels,[53] the number of which varies from district to district, depending on the volume of cases handled. These panels are formed annually within a district, and individual judges may develop a de facto specialization in a particular matter. As in all collegial courts in Italy, however, dissenting opinions are not recorded and only one opinion signed by all judges in the panel is issued for each proceeding. Within each Tribunal, special panels including lay experts decide cases involving minors[54] and agricultural disputes.[55]

4. *Courts of Appeals* (Corti di Appello).—In addition to their appeal jurisdiction over all matters within the jurisdiction of the Tribunali, Courts of Appeal have original jurisdiction over cases in-

41. C.P.C. art. 413(1).
42. For a definition of notary, see *infra* text accompanying note 111.
43. Royal Decree of January 30, 1940, No. 12, art. 32.
44. Di Federico, *The Italian Judicial Profession and its Bureaucratic Setting*, 21 JURIDICAL REV. 40, 43 (1976).
45. C.P.C. art. 9(1).
46. C.P.C. art. 9. *See also* Presidential Decree Law of October 26, 1972, No. 636, art. 1, 40.
47. C.P.C. art. 706-742.
48. C.P.C. art. 221-227.
49. C.P.C. art. 9.
50. C.P.C. art. 16.
51. C.P.C. art. 341.
52. Codice di Procedura Penale art. 29-44.
53. Royal Decree of January 30, 1941, No. 12, art. 48.
54. Royal Decree of January 30, 1941, No. 12, art. 50.
55. Legislative Decree of April 1, 1947, No. 273; Law of June 25, 1944, No. 353; Law of June 3, 1950, No. 392; Law of July 11, 1952, No. 765; Law of March 28, 1957, No. 244.

volving recognition of a foreign judgment.[56] The twenty-three Courts of Appeal also work in three judge panels.[57]

Criminal matters that involve more than eight years imprisonment are decided by the Courts of Assizes (Corti d'Assise), special panels of the Tribunals, and on appeal by special panels of the Courts of Appeal called Courts of Appeal of Assizes. The special panels, both in the Tribunals and Courts of Appeal, consist of two professional judges, one of whom serves as president of the panel, and six lay judges.[58] Lay judges must have graduated from secondary school and be between thirty-five and sixty-five years old.[59] The professional judges are generally responsible for drafting the court's opinion.

Unlike jurors in the common law system whose role is limited to fact finding, the civil law lay judges not only make findings of fact, but also apply and interpret the law. Although the six lay judges have the voting power to override the views of the two career professional judges, this rarely happens.[60]

5. *Court of Cassation* (Corte di Cassazione).—The Court of Cassation is the highest "Ordinary Court." Its purpose is to insure the unity and uniformity of national law and to regulate conflicts of jurisdiction.[61] Unlike the Courts of Appeal, only questions of law may be appealed to it,[62] and its decision is legally binding on the lower court which receives the case on remand. In other cases the decision has no stare decisis effect, although it is persuasive authority. The right of appeal to the Court of Cassation is constitutionally guaranteed with regard to final judgments and certain intermediate orders affecting personal liberties.[63]

The Court of Cassation is divided into five judge panels.[64] There are four civil sections and six criminal sections. In certain types of

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56. C.P.C. art. 796.

57. Art. 56 of R.D. January 30, 1941, No. 12, *amended by* Law of August 8, 1977, No. 532, art. 1.

58. Art. 3 of Law of April 10, 1951, No. 287, *amended by* Decree-Law February 14, 1978, No. 31, art. 1, converted into Law of March 24, 1978, No. 74.

59. Art. 9 of Law of April 10, 1951, No. 287.

60. Although no study of possible differences between professional and lay judges in deciding cases in the Italian legal system has been found, interesting studies of the German system are available. *See* Casper and Zeisel, *Lay Judges in the German Criminal Courts*, 1 JOURNAL OF LEGAL STUDIES 135 (1972); CASPER AND ZEISEL, DER LAIENRICHTER IM STRAIPROZESS (1979). A study of Austrian lay judges was reported in FRASSINE, PISKA, ZEISEL, DIE ROLLE DER SCHOFFEN IN DER OSTERREICHISCHEN STRAFGERICHTSBARKEIT (1970).

61. Art. 65 of R.D., January 30, 1941, No. 12. The court regulates jurisdiction conflicts among the ordinary courts as well as those between the administrative and the ordinary courts.

62. C.P.C. art. 360.

63. COST. art. 111(2).

64. Art. 67 of R.D., January 30, 1941, No. 12.

cases all the civil panels or all the criminal panels may sit together.[65] Some cases must be heard by a panel composed of nine judges.[66]

IV. Judicial Selection

Law school graduates between the ages of twenty-one and thirty may elect to pursue a judicial career.[67] Entrance is by examination supervised by the "Consiglio Superiore della Magistratura," which is the governing body of the judiciary.[68] This body is composed of the President of the First Section of the Court of Cassation, the "procuratore generale" (public prosecutor) of the Court of Cassation, twenty judges elected by all the ordinary judges, and ten law professors or lawyers, who have been in practice for more than fifteen years and are elected into office by Parliament.[69] The President of the Republic presides over the body.[70] This body is also responsible for promoting judges.[71] Although judges are initially appointed in a career competitive examination basis, such promotions are now based more on seniority than on merit.

It should be noted that in Italy the public prosecutors are career judges attached to the court.[72] They are known as "procuratori,"[73] and in the course of their careers may alternate between judicial and prosecutorial roles.

V. Administrative Courts

The administrative courts are composed of judges who are part of the executive rather than the judicial branch of government. Each of the twenty regions has an administrative court (tribunale amministrativo regionale, referred to as T.A.R.) with jurisdiction over administrative actions arising in that region. Because of the increased work volume resulting from the location of the national government in Rome the region of Lazio, there are five sections in the regional administrative court of Lazio. Other regions which have an

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65. Joint sections sit in cases dealing with jurisdiction issues, appeal judgments, or first and only instance judgments rendered by special judges dealing with the jurisdiction of the judge himself. Joint sections also sit in cases of conflict of jurisdiction among special judges or between the latter and ordinary judges, and jurisdictional conflict between administrative agencies and the ordinary courts, C.P.C. art. 360, 362. Joint sections also hear petitions raising matters of law judged adversely by the five judge panels and those of the most serious importance. C.P.C. art. 374.

66. Art. 67, Royal Decree January 30, 1941, No. 12.

67. Cappelletti & Resciguo, *supra* note 36, at 94-95.

68. COST. art. 104-05.

69. COST. art. 104-06.

70. COST. art. 104.

71. COST. art. 105.

72. Art. 74, R.D. of January 30, 1941, No. 12.

73. Lawyers serving their apprenticeship are also known as procuratori, but there is no connection between the two roles.

additional section in their administrative court are: Lombardia, Trentino-Alto Adige, Emilia-Romagna, Abruzzi, Campania, Calabria, Puglie, and Sicilia.[74]

The selection of administrative judges, like ordinary judges, is on the basis of educational qualifications and competitive examination as required by the legislation creating the regional courts and the Council of State. All administrative law judges must be graduates of an Italian law school. However, they need not be members of the practicing bar.[75]

The Council of State (Consiglio di Stato), which serves mainly as an advisory organ on juridical and administrative matters, is also the supreme administrative court and is divided into six sections. Three of these sections hear appeals from the lower administrative courts. Three of them provide advisory opinions to government ministers.

The membership of the Council consists of one hundred eleven magistrates, whose advisory functions are performed by three sections and the General Assembly of Council. The General Assembly consists of all one hundred eleven magistrates except for those who either preside or are otherwise assigned to the regional administrative courts. The judicial functions of the Council are performed by thirteen magistrates who constitute the "Plenum" of the Council and three sections of the Council.[76]

The criteria for allocating jurisdiction between the ordinary courts and the aforesaid administrative courts are highly complex. The basic idea, however, is that the ordinary courts have jurisdiction over controversies involving vindication of "subjective rights," i.e., rights of a particular person. Conversely, administrative courts have jurisdiction over cases brought by individual plaintiffs when such cases serve to vindicate the individual's "legitimate interest" in assuring that collective rights are respected. For example, a job applicant's suit to invalidate the results of a competitive examination for public employment because of alleged improprieties would involve protection of the public interest in maintaining an appropriate examination system, as well as protection of the individual's "legitimate

74. Art. 1, Law of December 6, 1971, No. 1034.

75. Art. 14-20, Presidential Decree-Law, April 21, 1973, No. 214; Art. 9-18, Law of December 6, 1971, No. 1034 for the Tribunali amministrativi regionali; R.D. of June 26, 1924, No. 1054; R.D. of April 21, 1942, No. 444; D.P.-L. of September 29, 1973, No. 579 for the Council of State; G. LANDI & G. POTENZA, MANUALE DI DIRITTO AMMINISTRATIVO 479 (1978).

76. *See* R.D. of June 26, 1924, No. 1054 *amended by* Laws of October 23, 1924, No. 1672; February 8, 1925, No. 88; May 6, 1948, No. 654; December 21, 1950, No. 1018; December 6, 1971, No. 1034. *See also* R.D. of April 21, 1942, No. 444; D.P.-L. of September 29, 1973, No. 579; COST. art. 100.

interest."[77]

The administrative courts have the power to annul or modify administrative acts found illegal.[78] In some cases they can evaluate the substantive merit of the administrative act.[79] In contrast, when a subjective right is involved and an action against the public administration is brought in an ordinary court, the power of the ordinary court is limited to setting aside the application of the administrative act to the particular case and awarding damages.[80]

There are a number of other special administrative courts. The most important is the "Corte dei Conti," whose primary function is review of public finances, auditing, and prosecution of misconduct regarding public assets.[81]

VI. Constitutional Court

The Constitutional Court, operating since 1956, is the only court competent to review the constitutionality of laws.[82] It is composed of fifteen judges who serve nine year terms.[83] Five are chosen by Parliament, five by the President of the Republic, and five by the Court of Cassation, the Council of State and the Corte dei Conti.[84]

When a constitutional issue is raised by a party or a court in a civil, criminal, or administrative proceeding, the referring court first determines that the constitutional issue is relevant to the decision of the case and is not manifestly unfounded.[85] The issue is then referred directly to the Constitutional Court.[86] The initial proceeding remains suspended until the Constitutional Court decides the constitutional issue.[87] A decision of constitutionality does not preclude future challenges by other parties.[88]

VII. Legal Profession

As in most civil law countries, choice of a particular legal career is normally made on graduation from law school. Career choices in-

77. Regarding the distinction between "subjective rights" and "legitimate interests," see G. LANDI & G. POTENZA, MANUALE DI DIRITTO AMMINISTRATIVO, 144-65, (1978). *See also* COST. art. 113.

78. COST. art. 113.

79. Royal Decree of June 26, 1924, No. 1054, art. 27. Law of Dec. 6, 1971, No. 1034.

80. Art. 4, Law of March 20, 1965, No. 2248.

81. *See* R.D. of July 12, 1945, No. 1214 *amended by* R.D. of June 28, 1941, No. 856, D.L. of May 4, 1958, No. 589; D.L. of May 6, 1948, No. 655; D.L. March 21, 1953, No. 161; D.L. March 21, 1958, No. 259; D.L. December 20, 1961, No. 1345; October 13, 1969, No. 691.

82. COST. art. 134.

83. COST. art. 135.

84. COST. art. 135.

85. Art. 23, Law of March 11, 1953, No. 87.

86. *Id.*

87. *Id.*

88. Art. 24, Law of March 11, 1953 No. 87.

clude law professor, lawyer, notary, state attorney, magistrate, and administrative magistrate. Specialized training, apprenticeship, and examination are required for each of these categories. Rarely will a person change from one career category to another in mid-career.

In 1981, the twenty-nine law school in Italy had 104,724 students.[89] As is true in most civil law countries, only a small percentage of students enrolled will complete their law studies. Even smaller percentages meet the additional requirements for eligibility to practice law.

All Italian law schools are state law schools except for the Sacred Heart Catholic University of Milan.[90] The University of Rome Law School, with 15,250 students, is the largest.[91]

After medicial schools, law schools are the most popular faculty in Italian Universities.[92] Unlike the system of selective admission used in the United States law schools, admission is granted to all Italian students with a secondary school diploma.[93] This is also the usual procedure in European civil law countries where the screening process occurs subsequently through the examination procedure.

The academic program, consisting chiefly of a series of lecture courses and a thesis, is designed to be completed in four years.[94] However, of the 6,639 law graduates in 1978 (including 1,882 women), only 1,741 had completed their studies in four years.[95] Although attendance at classes is by law compulsory,[96] only a small fraction of students actually attend. Exams are oral and stress mastery of doctrine. Although students may repeat exams as many times as they desire, until they receive a satisfactory grade, and although only the final grade is recorded,[97] only a small percentage of students enrolling actually graduates.

The entire teaching staff in Italian law faculties consists of 2,790 persons, of which 540 are tenured professors.[98] Most law

89. Instituto Regionale per la Programmazione Economica della Toscana, data 1980-81 (Tuscan Regional Institute for Economic Planning) [hereinafter referred to as IRPET].

90. *Id.*

91. *Id.*

92. *Id.*

93. Art. 1, Law of December 11, 1969, No. 910. For a discussion of admission procedures for various types of secondary school graduates, see A.M. SANDULLI, MANUALE DI DIRITTO AMMINISTRATIVO 722-25 (11th ed.).

94. By way of example, courses required at the University of Florence include: Public Law, Private Law, Roman Law, History of Italian Law, Administrative Law, Commercial Law, Constitutional Law, Civil Procedure, Criminal Procedure, Criminal Law, Labor Law and Tax Law.

95. IRPET data, 1980-81, *supra* note 89.

96. M. CAPPELLETTI, J. MERRYMAN, & J. PERILLO, THE ITALIAN LEGAL SYSTEM 89 (1967).

97. For a discussion of these features of Italian legal education, see M. CAPPELLETTI, J. MERRYMAN, & J. PERILLO, THE ITALIAN LEGAL SYSTEM 86-91 (1967).

98. IRPET data, 1980-81, *supra* note 89.

professors also practice law. To achieve the very prestigious rank of professor, a law graduate finds a professor who will accept him or her as an unpaid assistant.[99] After a number of years under the professor's tutelage, the assistant can hope to win a professional post in national competitions based principally on evaluation of the assistant's publications.[100]

To become a lawyer, a law graduate must serve a one year apprenticeship in the office of a procuratore.[101] A procuratore is limited to representation in certain areas.[102] After one year of apprenticeship, the law graduate is qualified to take a state examination to qualify as a procuratore,[103] successful completion of which entitles him or her to practice law within the territorial district of the court of appeal where he or she resides.[104] After six years of practice the procuratore is entitled to become a lawyer (avvocato).[105] An additional eight years of practice is required for admission to practice before the highest courts.[106] There are about 50,000 avvocati and procuratori in Italy.[107]

The Bar Association fixes allowable fees for procuratori and avvocati.[108] Contingent fees are forbidden,[109] although avvocati may by agreement charge fees above the allowable fees. Losers in litigation are required to reimburse the winner for counsel fees.[110]

Notaries (Notaii) are responsible for drafting and authenticating important legal instruments including wills, corporate charters, conveyances, and contracts.[111] To become a notary, a law graduate attends a Notary school such as those in Naples or Rome, serves an apprenticeship with a notary for two years and then must pass a difficult national examination.[112] Each notary is assigned a specific territory[113] and must deal with all who require his or her services.[114]

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99. Perillo, *The Legal Professions of Italy*, 18 J. LEGAL ED. 274, 275 (1966).
100. *Id.*
101. Art. 17, R.D.L. December 27, 1933, No. 1578, converted into law of January 27, 1934, No. 36. *See* Umberto Azzolina, *L'avvocatura nella giurisprudenza*, 139 PAVADO (1974).
102. *See* Azzolina, *supra* note 101, at 53.
103. R.D.L. December 27, 1944, No. 1578, converted into law of January 27, 1934, No. 36 as modified by D.L.L. September 7, 1944, No. 215. *See* Azzolina, *supra* note 101, at 151-53.
104. Art. 5, R.D.L. December 27, 1933, No. 1478, converted into law of January 27, 1934, No. 39.
105. *Id.* at art. 27.
106. Art. 4(2), R.D.L. December 27, 1933, No. 1578, converted into law of January 27, 1934, No. 36.
107. IRPET data, 1980-81, *supra* note 89.
108. *See* Perillo, *supra* note 99, at 282. *See also* Azzolina, *supra* note 101, at 304-09.
109. *Id.*
110. *Id.*
111. Perillo, *supra* note 99, at 286-89.
112. GIULIANI, LE SCUOLE DI NOTARIATO (1965); MORELLO, LE SCUOLE DI NOTARIATO (1972).
113. *Id.*
114. *Id.*

Fee schedules are fixed by law.[115] In 1980, there were 4,052 notaries.[116]

State attorneys (Avvocatura dello Stato) represent the state and most state organs, including governmental corporations.[117] Generally, three years experience as a procuratore is the prerequisite to sit for the competitive entrance examination.[118]

VIII. Summary

This brief description provides a general background for students of comparative law interested in the Italian legal system. It also may be helpful to business personnel and other persons trading with Italian firms or investing in Italy. Moreover, although this presentation does not pursue the more subtle nuances of the Italian legal system, it does provide a solid foundation from which any conceivable inquiry could be made.

115. *Id.*
116. IRPET data, 1980-81, *supra* note 89.
117. Perillo, *supra* note 99, at 285-86.
118. *Id.*