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Troubled Legacies: The *Northern Ireland Troubles (Legacy and Reconciliation) Act 2023* and the Thin Line Between Impunity and Reconciliation

by
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Abstract

On 18 September 2023, the UK Parliament adopted the *Northern Ireland Troubles (Legacy and Reconciliation) Act 2023* to address the legacy of the Northern Ireland conflict and promote reconciliation between communities. However, the *Act* has been heavily criticised for being in violation of the European Convention on Human Rights (ECHR) and was challenged before courts. On the one hand, the Irish government lodged an inter-state appeal against the United Kingdom before the European Court of Human Rights (ECtHR) for the second time since the 1978 judgment on *Ireland v. United Kingdom (I)* (no. 5310/71). On the other hand, the High Court of Belfast declared several provisions of the *Legacy Act 2023* in violation of the ECHR, a decision later upheld by the Court of Appeal. Almost a year after the first adoption, in December 2024, the UK government presented to Parliament a proposal for a Remedial Order, later scrutinised by the Joint Committee on Human Rights. This case note analyses the relevance of the legal challenges against the *Legacy Act 2023*, assessing the impact of these decisions on the process of reconciliation in Northern Ireland as well as the ECHR system of human rights protection.

Keywords

Legacy Act 2023, Northern Ireland, European Convention on Human Rights, European Court of Human Rights, High Court of Belfast, Appeal Court in Northern Ireland.

1. Introduction

On 18 September 2023, the Westminster Parliament adopted the *Northern Ireland Troubles (Legacy and Reconciliation) Act 2023* (henceforth "*Legacy Act 2023*") to address the legacy of the Northern Ireland conflict and promote reconciliation between communities. However, this has been heavily criticised both at the national and international level for being in violation of human rights obligations and especially of the rights entrenched in the European Convention on Human Rights (ECHR). A few months after the adoption, the *Legacy Act* was challenged before courts, with the Irish government lodging an inter-state appeal against the United Kingdom[I] before the European Court of Human Rights (ECtHR) for the second time since the 1978 judgment in *Ireland v. United Kingdom (I)*.[II] If the inter-state application is still pending, at the domestic level the High Court of Belfast[III] and the Court of Appeal in Northern Ireland[IV] already found the *Legacy Act* in violation of the ECHR. These decisions required the UK government to draft a proposal for a Remedial Order addressing the ECHR violations in the *Legacy Act* that was presented to Parliament in December 2024.[V]

This case note seeks to analyse the relevance of the legal challenges against the *Legacy Act 2023* both at the ECHR and domestic levels, assessing the impact of these decisions on the process of reconciliation in Northern Ireland as well as the ECHR system of human rights protection. To do so, the case note first reviews the background leading to the adoption of the *Legacy Act* and outlines the political and legal context of conflict in Northern Ireland and post-conflict settlements. Then, the analysis focuses on the legal challenges against the *Legacy Act 2023*, bringing together the two decisions delivered by the High Court and the Court of Appeal and the pending inter-state application lodged by Ireland against the United Kingdom before the ECtHR. Finally, the Proposed Remedial Order drafted by the UK government[VI] is addressed, taking into account the respective report adopted by the Joint Committee on Human Rights. The case note ends with a few concluding remarks on the right to truth and reconciliation in Northern Ireland.

2. Background

The conflict in Northern Ireland (the so-called 'Troubles') endured for over thirty years, spanning approximately from 1968 to 1998, and had a dramatic impact on the collective memory of both unionist and nationalist communities[VII] (Ferguson and Halliday 2020; Edwards 2023). Indeed, the violent acts perpetuated by military and paramilitary groups claimed more than 3,500 lives (most of which civilians) and several thousands of injured people (McKittrick and McVea 2012; McAtackney and Ó Catháin 2024). On 10 April 1998, the UK and Irish governments signed the Belfast Peace Agreement (also known as the 'Good Friday Agreement'), which established new political institutions and a peculiar system of intergovernmental relations in Northern Ireland (McGarry and O'Leary 2004; Birrell 2012) and reaffirmed the parties' commitment to peace, human rights and reconciliation (Dickson 2002; Guelke 2004; Bell 2005; Beirne and Knox 2014).

Possible paths to effectively address the legacy of the Troubles have been widely discussed in the scholarship on transitional justice in Northern Ireland (Gilmartin 2021; Maguire 2024),[VIII] also exploring the creation of a 'Truth Commission for Northern Ireland' following the South African experience[IX] (Lundy and Mcgovern 2008). Past efforts of truth-seeking included judicial public inquiries into particularly controversial events (e.g., the Bloody Sunday Inquiry);[X] police investigations of past violence as well as Police Ombudsman investigations into allegations of police malfeasance (Lundy 2009); civil actions (Mallory, Molloy, and Murray 2020) and other court-based proceedings (Anthony and Moffett 2014; McQuigg 2023); a limited immunity scheme (Mallinder et al. 2015; Leahy 2023); and a small number of conflict-related prosecutions (Bryson and McEvoy 2024). Interestingly, the process of transitional justice in Northern Ireland appeared to be *sui generis* insofar as it occurred 'within a State structure with at least a formal commitment to liberal democracy' (Campbell and Aoldin 2003, 872), whereas much of the literature on transitional justice focused on those processes unfolding in previously authoritarian regimes (Teitel 1997; 2003; 2005).

After several attempts at systemising the variety of these transitional justice mechanisms that led to more than two years of negotiations, in 2014 the political parties in Northern Ireland and the Irish and British governments signed the Stormont House Agreement (SHA). The Agreement encompassed an entire section dedicated to 'The Past' that fostered the

establishment of a Historical Investigations Unit, an Independent Commission on Information Retrieval, and an Implementation and Reconciliation Group.[XI] Despite its wide political and popular support, the implementation of the SHA was delayed by the Brexit referendum and subsequent negotiations of the Withdrawal Agreement and Northern Ireland Protocol (Bonifati 2019; Connolly and Doyle 2021; Fabbrini 2022). The issue of the legacy of the Troubles returned to the news in 2021,[XII] when the former British PM Boris Johnson advocated for the adoption of a legislation to deal with the past in Northern Ireland, proposing an effective amnesty for those accused of killing or maiming people during the conflict. The proposed bill was opposed by all parties in Northern Ireland, including the two governing parties, i.e., Sinn Féin and the Democratic Unionist Party, arguing that the bill would have denied victims' families the justice they deserved. Moreover, the Joint Committee on Human Rights warned that the bill contained several profiles of incompatibility with the European Convention on Human Rights, specifically Art. 2 (right to life) and Art. 3 (prohibition of torture). Nevertheless, the UK government presented the bill to the House of Commons on 16 May 2022 and the *Northern Ireland Troubles (Legacy and Reconciliation) Act 2023* was later adopted on 18 September 2023, entering into force on 1st May 2024.

The international response to the *Legacy Act 2023* has immediately been highly critical. On 3 May 2024, the Human Rights Committee asked the UK 'to repeal or reform the [Legacy Act] and to adopt proper mechanisms with guarantees of independence, transparency, and genuine power of investigation that discharge the State party's human rights obligation and delivers truth, justice, and effective remedies, including reparation to victims of the Northern Ireland conflict'.[XIII] Similar stances demanding substantial reforms have been taken by the UN General Assembly, the UN Special Rapporteurs, the UN High Commissioner for Human Rights, and the Human Rights Commissioner of the Council of Europe.

3. The Legal Challenges

The compatibility of the *Legacy Act 2023* with the European Convention on Human Rights has been verified both at the domestic and the supranational levels. If the inter-state appeal brought forward by Ireland against the UK is still pending before the ECtHR, the High Court of Belfast and the Court of Appeal in Northern Ireland already found several

provisions of the *Legacy Act 2023* to be in breach of the ECHR. This section first addresses the inter-state appeal and then domestic challenges, to link them more closely to the analysis of the proposed Remedial Order drafted by the UK government.

i. The ECHR Level

In January 2024, the Republic of Ireland lodged an inter-state appeal against the United Kingdom for the second time after the 1978 ECtHR judgment on *Ireland v. United Kingdom (I)*, claiming that some provisions of the *Legacy Act 2023* breached the European Convention on Human Rights (Holder and Forde 2023; Castellaneta 2024). Although the application is still pending, it is interesting to review the similarities and differences with the 1978 inter-state appeal to better frame the current case. In *Ireland v. United Kingdom (I)* (O'Boyle 1977; Donahue 1980), the ECtHR held that the five interrogation techniques[XIV] adopted by UK officials during the conflict constituted practices of inhuman or degrading treatment, and as such they violated Art. 3 ECHR on the prohibition of torture. However, the Court also clarified that 'said use of the five techniques did not constitute a practice of torture within the meaning of Article 3' (ECtHR, no. 5310/71, p. 86). Moreover, according to the Court, the conflict in Northern Ireland could be defined as a 'public emergency threatening the life of the nation' (ECtHR, no. 5310/71, p. 87), and confirmed that the requirements under Art. 15 ECHR on derogation in time of emergency were met by the UK. As a result, the derogations from Art. 5 (right to liberty and security) and Art. 6 (right to a fair trial) did not exceed the limits provided by Art. 15, and that no discrimination contrary to Art. 14 ECHR (prohibition of discrimination) occurred in those circumstances. The Court's decision raised criticisms not only by human rights activists and practitioners but also legal scholars, who argued that 'an opportunity was missed […] to set the threshold for what was acceptable treatment of detainees at a much higher level' (Dickson 2012, 363). On its part, Ireland requested a revision of the 1978 judgment, but this was rejected in 2018.[XV] After *Ireland v. United Kingdom (I)*, several individual applications were brought before the European Court of Human Rights, even though the successes in Strasbourg came in the final stages of the Troubles and had only a limited influence in the conflict-resolution process (Dickson 2012).

The 2024 inter-state appeal differs from its 1978 predecessor for three reasons. First, from a procedural perspective, the 2024 application is based on the new procedures introduced by Protocol no. 11, which entered into force in 1998. The new ECHR system

eliminated the option for Member States of the Convention not to accept the jurisdiction of the ECtHR, introduced the possibility for individual appeals, and abolished the former European Commission of Human Rights which served as a 'filter' for the applications before the Court. Therefore, the pending inter-state appeal will not experience the involvement of the Commission, as in the 1978 counterpart.

Second, from a substantive perspective, in *Ireland v. United Kingdom (III)*, Ireland not only claimed the violation of Articles 2 and 3 of the ECHR, i.e., two 'absolute rights' within the ECHR system (Bartole, De Sena, and Zagrebelsky 2012; Schabas 2015), but raised also issues related to systemic violations of the ECHR (Cannone 2018; Lemmens and Van Drooghenbroeck 2023). Specifically, these concerned the relationship between the Convention and a national policy on criminal justice that invoked the need to grant amnesty or immunity for reconciliation purposes. Moreover, the 2024 application brought to the centre stage the so-called "right to truth" for victims of conventional rights violations. Although not explicitly recognised in the ECHR, the right to truth has already found its way into the ECtHR jurisprudence (Sweeney 2018) and could be further consolidated in this case.

Finally, from a temporal perspective, the Court of Strasbourg, in *Ireland v. United Kingdom (III)*, will address a post-conflict context. Contrary to the 1978 judgement that was delivered during the Troubles, the 2024 application occurred in a very different context. Since *Ireland v. United Kingdom (I)*, Northern Ireland experienced the signature of the Good Friday Agreement in 1998, the adoption of the *Human Rights Act 1998*, and the withdrawal of the UK from the European Union in 2016, the latter being something that none of the parties involved in the conflict resolution could have imagined. In these changed circumstances, the ECtHR might find not only violations of the rights protected in the Convention but also of the Good Friday Agreement, with the possibility to ascertain the scope of the margin of appreciation granted to Member States when designing their reparation policies for victims (Castellaneta 2024).

For what concerns the merit of the 2024 inter-state appeal, Ireland holds that, by adopting the *Legacy Act 2023*, the United Kingdom violated Art. 2 (right to life), Art. 3 (prohibition of torture), Art. 6 (right to a fair trial), Art. 13 (right to an effective remedy), and Art. 14 (prohibition of discrimination) of the ECHR. As mentioned, Articles 2 and 3 ECHR are considered absolute rights insofar as they are essential to guarantee human dignity[XVI] and cannot be derogated under Art. 15 ECHR. Furthermore, the conditional immunity granted

in some provisions of the *Legacy Act 2023* to members of the British armed forces, as well as amnesty to those who collaborated with investigating authorities, would be in breach of the right an effective remedy, since they would prevent the determination of responsibilities and the delivery of justice to the victims. Indeed, these legislative provisions would guarantee immunity to former members of the British army for more than 1000 unresolved murders, precluding the start of new investigations. A further element is provided by the Independent Commission for Reconciliation and Information Recovery (ICRIR), the competent body identified by the *Legacy Act 2023* to conduct investigations and decide whether to grant immunity or defer the case to the public prosecutor's office. Since its members are appointed by the UK government, the ICRIR would not guarantee an independent investigation and ascertainment of the truth, and this would further affect the process of reconciliation in Northern Ireland. Finally, the sections of the *Legacy Act 2023* blocking the start of new civil actions and providing the dismissal of cases lodged after 17 May 2022 would be contrary to the ECHR system of guarantee centred on the States' obligation to recognise to each individual subject to their jurisdiction the rights and freedoms entrenched in the Convention.

Although the application is still pending, legal scholars have already observed that the UK government will meet several difficulties in supporting the compatibility of the *Legacy Act 2023* with the European Convention on Human Rights, especially considering that it will be highly probable that the Court of Strasbourg will find systemic violations of the Convention (Castellaneta 2024). Finally, it is worth mentioning that *Ireland v. United Kingdom (III)* follows a recent trend related to the more frequent use of inter-state appeals, an instrument that is founded on the concept of collective guarantee within the ECHR system and is functional to the protection of the European public order.[XVII] Despite its limited use, the increasing number of inter-state appeals before the ECtHR can be interpreted as emblematic of Member States' trust in the Convention and in the Court's role of ascertaining its violations (Palchetti 2021; Risini 2018), especially in cases of armed conflicts or territorial disputes (Leach 2021).

ii. The Domestic Level

Since the adoption of the *Human Rights Act* (HRA) in 1998 and its entry into force in 2000 (Bellamy 2011; Burlington 2017), the United Kingdom incorporated the ECHR in its legal order, 'making it an immediate source of individual rights against national authorities

and, in cases of violations, a source for remedies before national courts' (Besson 2008, 32). Under Section 19 of the HRA, the Minister proposing a bill to the Parliament must provide a declaration of compatibility with the Convention. Regarding the *Legacy Act 2023*, such a declaration was delivered by the Secretary of State for Northern Ireland, who confirmed that in his view the provisions of the bill were compatible with conventional rights.[XVIII]

After its entry into force, several applicants challenged the compatibility of multiple provisions of the *Legacy Act 2023* with the ECHR, i.e., Art. 2 (right to life), Art. 3 (prohibition of torture), and Art. 6 (right to a fair trial). On 28 February 2024, in *Re Dillon and Others*,[XIX] the High Court of Belfast found several sections of the *Legacy Act 2023* to be incompatible with the ECHR and issued declarations of incompatibility under section 4 of the *Human Rights Act 1998*. Specifically, the provisions providing for conditional immunity and prohibiting criminal enforcement actions[XX] were found in violation of Articles 2 and 3 ECHR, whereas the exclusion of material provided to or produced by the Independent Commission for Reconciliation and Information Recovery being used as evidence in other cases (e.g., civil or coronial proceedings)[XXI] was deemed incompatible with Articles 2 and 6 ECHR. Moreover, a violation of the right to a fair trial was found regarding the retrospective bar to the continuation of all Troubles-related civil actions brought between the first reading of the bill and the date it came into force.[XXII] The same applied to the retrospective validation of defective interim custody orders and the bar of civil actions based on those defective interim custody orders.[XXIII] In a powerful passage, the High Court argues that 'there is no evidence that the granting of immunity under the 2023 Act will in any way contribute to reconciliation in Northern Ireland, indeed, the evidence is to the contrary' ([2024] NIKB 11, § 187).

The High Court's judgment also went beyond the compatibility of the *Legacy Act 2023* with the ECHR and found some provisions to be in violation of the *Windsor Framework* (WF), the agreement regulating the specific terms of the UK's withdrawal from the EU to be applied in Northern Ireland. According to the High Court, it is relevant to address the violations of the *Windsor Framework* because 'the effect of any breach established results in the disapplication of the offending provisions' ([2024] NIKB 11, § 518). In this respect, the Court clarified that pursuant to Section 7A of the *European Union (Withdrawal) Act 2018*, the *Framework* has primacy over domestic legislation, and any violation should result in the disapplication of the legislative provisions in question. Regarding the *Legacy Act 2023*, the

High Court found that the provisions relating to the immunity from prosecution and the bar to the continuation of all Troubles-related civil actions[XXIV] were in breach of Art. 2 *Windsor Framework*. Indeed, the Court recalled that Art. 2 requires the UK to prevent any diminution of rights for Northern Irish residents in the aftermath of the UK's decision to withdraw from the European Union. Since these provisions would constitute such a diminution of rights and guarantees, the Court held that these had to be disapplied.

The High Court's decision was appealed by both the UK government and the applicants to the Court of Appeal in Northern Ireland, that delivered its judgement on 20 September 2024.[XXV] In this decision, the Court of Appeal confirmed what already concluded in the High Court's judgement, and found additional aspects of the *Legacy Act 2023* to be in violation of the Convention, in relation to which the Court issued declarations of incompatibility under the *Human Rights Act 1998*. In particular, the Court of Appeal found section 43(2) of the Act, barring all future Troubles-related civil actions, to be incompatible with Art. 6 ECHR. The Court also found additional violations of Articles 2 and 3 ECHR regarding some aspects of the *Legacy Act*'s disclosure regime related to sensitive material, and the lack of provision in the *Legacy Act 2023* for effective next of kin participation, especially in the form of legal aid for investigations being carried out by the Independent Commission for Reconciliation and Information Recovery.

The Court of Appeal also confirmed the *Legacy Act 2023*'s violations of the *Windsor Framework* already held by the High Court and clarified an aspect that was not raised at first instance, namely that Art. 2(1) of the WF had direct effect ([2024] NICA 59, § 310(a)). Another interesting element related to the compatibility of the *Legacy Act 2023* with EU law concerns the obligations deriving from Art. 11 of the Victim's Directive (EU Directive 2019/29/EU).[XXVI] Indeed, the Court of Appeal found there has been a diminution of the victims' right to request a review of a decision not to prosecute, and as such the *Legacy Act 2023* was in breach of an EU Directive having direct effect. Therefore, the judges concluded that 'the correct remedy shall be disapplication in relation to the conditional immunity provisions as these are covered by the Victims' Directive' ([2024] NICA 59, § 310(d)).

Following the decisions of the High Court and Court of Appeal, the UK government drafted a proposal for a Remedial Order to address the human rights deficiencies and incompatible provisions identified by the two courts and, in parallel, is currently seeking

permission to appeal some aspects of the Court of Appeal's Judgement to the UK Supreme Court.

4. The Proposed Remedial Order

Under Section 10 and Schedule 2 of the *Human Rights Act 1998*, incompatibilities with the Convention may be removed by adopting a remedial order. In the UK legal system, remedial orders are a form of secondary legislation and are used to amend primary or secondary legislation, particularly in response to declarations of incompatibility issued by courts under Section 4 of the HRA (Leigh and Lustgarten 1999). After the courts' decisions, the UK government drafted a Proposed Remedial Order that was later presented in December 2024 to Parliament pursuant to paragraph 3(1) of Schedule 2 HRA. The Proposed Order sought to remedy all the incompatibilities previously found by the High Court of Belfast and one of the incompatibilities found by the Court of Appeal in Northern Ireland. Specifically, the Order removed the provisions related to the conditional immunity scheme and the prohibition on criminal enforcement actions (Art. 2 Proposed Order); removed the ban on using evidence provided to or produced by the Independent Commission for Reconciliation and Information Recovery in civil proceeding and inquests (Art. 3 Proposed Order); removed the bar on new and existing civil actions relating to the Troubles (Art. 4 Proposed Order); removed the provisions seeking to retrospectively validate defective interim custody orders and prevent civil claims for compensation in relation to them (Art. 5 Proposed Order); and made several amendments to other enactments consequential to the previous changes (Art. 6 Proposed Order). However, the Proposed Remedial Order did not seek to resolve two incompatibilities found by the Court of Appeal, namely the effective next of kin participation (including legal aid), and the disclosure of sensitive information. This is due to the fact that the UK government is currently seeking to appeal these two declarations of incompatibility to the UK Supreme Court.

Under Standing Order No. 152B,[XXVII] the Joint Committee on Human Rights is required to scrutinise any remedial order made under the *Human Rights Act 1998* and report its findings to Parliament within 60 sitting days of the proposal for remedial order. In January 2025, the Joint Committee launched an inquiry and collected written evidence by experts and human rights bodies and NGOs such as the Northern Ireland Human Rights Commission, the

Committee on the Administration of Justice (CAJ), Relatives for Justice, and Amnesty International UK.[XXVIII] Overall, the report of the Joint Committee concluded that the Proposed Remedial Order would achieve the government's stated intention of rectifying the declarations of incompatibilities issued by the High Court and one of those issued by the Court of Appeal.[XXIX] Nevertheless, the Joint Committee identified three aspects that should be improved by the UK government before the Remedial Order is laid in draft. First, the Committee argued that the government has not articulated its 'compelling reasons' under Section 10(2) HRA with sufficient clarity, and as such these do not provide a satisfactory reassurance to Parliament and the public that the UK government has 'fully grappled with the issue' (Joint Committee on Human Rights 2025, 1). Second, the report raised the concern over the fact that the Proposed Remedial Order did not address the declaration of incompatibility issued by the Court of Appeal regarding Section 45 of the *Legacy Act 2023* on police complaints. The Joint Committee observed that the UK government has not clarified why Section 45 was not addressed and that is unclear whether this is a section subject to appeal to the UK Supreme Court. If it is not being appealed, the Committee suggested that the government should repeals Section 45 in accordance with its approach to Section 41. Finally, the report recalled that 'victims, their families, and all the communities affected by the Troubles deserve greater clarity about the timetable of the Government's plans to finally address Legacy issues' (§ Conclusion, Paragraph 125), and reiterated that it is of utmost importance to fully implement the ECtHR decisions on the *McKerr* group of cases,[XXX] after more than 20 years. This group of cases was brought before the Court of Strasbourg claiming the UK's failures to properly investigate deaths which had occurred during security operations (or where the collusion of State forces was suspected) in Northern Ireland in the 1980s and 1990s (Anthony 2005). The full execution of these judgments was set back by the *Legacy Act 2023*, since the *McKerr* cases were affected by the prohibition on the continuation of Legacy inquests which had not reached an advanced stage. Although the government has committed to restarting Legacy inquests by way of primary legislation,[XXXI] the Committee of Ministers of the Council of Europe has expressed concerns about the UK's measures to address the legacies of the Troubles in Northern Ireland, and these would require more than the mere restarting of investigations.[XXXII]

5. Concluding Remarks

If it is true that peace and human rights are the pillars of the Convention, it could also be argued that there is no peace without reconciliation, and there is no reconciliation without truth and justice. In its current form, the *Legacy Act 2023* would constitute a barrier not only to the achievement of peace and reconciliation in Northern Ireland but also to the right to truth (Clenaghan 2023; Gallagher 2024a; 2024b; Mckinney-Perry 2024). Under international human rights law, the expression "right to truth" describes several enforceable rights that empower the next of kin to learn the truth about a family member's fate (Stamenkovikj 2021). This right derives its legal basis as an enforceable right primarily from two underlying categories of rights protection, i.e., the prohibition of inhuman treatment and the right of access to justice (Groome 2011). In its direct expression as an explicit declaration, or in its indirect form as the obligation to conduct investigations on human rights violations, the right to truth has already found its way into international law and transitional justice (Klinkner and Davis 2019). This occurred with the adoption of Art. 32 of the First Protocol to the 1949 Geneva Convention, the entry into force of the UN International Convention for the Protection of All Persons from Enforced Disappearance in 2006, and the adoption of Resolution 12/12 of the UN Human Rights Council in 2009.[XXXIII] Its importance has also been confirmed by transitional human rights jurisprudence and especially by the Inter-American Court of Human Rights (IACtHR). In particular, the Court has argued that the right to truth is vital to protect human rights and that democracy should require the affirmation of such right not only in cases of individual human rights violations, but also guarantee the right to truth to the wider community of citizens (Pasqualucci 1994). This has become especially relevant when deciding on legislative measures related to amnesties in cases of gross human rights violations, such as the amnesty introduced by a Brazilian law regarding cases of forced disappearance during the regime and that would have prevented the development of adequate investigations.[XXXIV]

On its part, in *Cyprus v. Greece*,[XXXV] the ECtHR implicitly framed the right to truth along the two categories of rights previously recalled, finding the violation of Art. 3 (prohibition of torture) and Art. 13 (right to an effective remedy). According to the Court, Turkey's persistent failure to account for the missing family members constituted a 'continuing violation of Article 3 of the [Convention] with respect to the relatives of the Greek-Cypriot

missing persons' (*Cyprus v. Greece*, par. 155). Similarly, the Court concluded that Turkey's failure to provide Greek-Cypriots with adequate remedies to contest interference with their rights under Article 8 of the ECHR and Article 1 of Protocol 1 constituted a violation of Article 13 (*Cyprus v. Greece*, par. 192). In this respect, the decision of the ECtHR on *Ireland v. United Kingdom (III)* could further consolidate the recognition of the right to truth in the ECHR system of human rights protection. In the past, the European Court of Human Rights has adopted an approach similar to the IACtHR by providing for procedural obligations in recognising substantive rights (Fabbrini 2014). For instance, in *Cestaro v. Italy*,[XXXVI] the Court not only condemned Italy for the violation of Art. 3 ECHR for the acts of torture committed by police forces during the 2001 G8 in Genova, but it also imposed the incorporation of the crime of torture in the domestic legislation. On that occasion, the Court clarified that this legislation would have to ensure an effective punishment of armed forces responsible for the acts of torture, emphasising that amnesty or immunity should not be granted in such cases of gross human rights violations. Moreover, if the ECtHR confirms that the *Legacy Act 2023* is in systemic violation of the Convention, this could lead to a preclusion of the use of amnesty and immunity in post-conflict contexts, at least in those cases where it would be a measure to ensure impunity rather than an effective reconciliation (Castellaneta 2024).

As a final remark, in 1998, the Good Friday Agreement highlighted that '[…] it is essential to acknowledge and address the suffering of the victims of violence as a necessary element of reconciliation' and that 'the achievement of a peaceful and just society would be the true memorial to the victims of violence' (Good Friday Agreement, p. 18, par. 11-12). The legal challenges analysed in this case note serve as a necessary reminder that post-conflict societies need to deal with their past to achieve a peaceful future. Hopefully, almost thirty years after the end of the Troubles, the United Kingdom will choose a path leading to truth and justice for the citizens of Northern Ireland.

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[I] European Court of Human Rights, no. 1859/24, *Ireland v. United Kingdom (III)*, 17 January 2024 (date lodged).

[II] European Commission of Human Rights, no. 5310/71, *Ireland v. United Kingdom (I)*, 18 January 1978.

[III] High Court of Justice in Northern Ireland [2024] NIKB 11, *Dillon, McEvoy, McManus, Hughes, Jordan, Gilvary, and Fitzsimmons Application and In the matter of the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 and the Secretary of State for Northern Ireland* (28 February 2024).

[IV] Court of Appeal in Northern Ireland [2024] NICA 59, *In the Matter of an Application by Martina Dillon and others*

- *NI Troubles (Legacy and Reconciliation) Act 2023* (29 September 2024).

[V] Northern Ireland Office, *A Proposal for a Remedial Order to Amend the Northern Ireland Troubles (Legacy and Reconciliation Act) 2023*, 4 December 2024, available at https://www.gov.uk/government/publications/a-proposal-for-a-remedial-order-to-amend-the-northern-ireland-troubles-legacy-and-reconciliation-act-2023.

[VI] The Proposed Remedial Order was presented to Parliament on 4 December 2024 pursuant to paragraph 3(1) of Schedule 2 to the Human Rights Act 1998.

[VII] After the Irish partition in 1921 and the Anglo-Irish Agreement in 1922, Northern Ireland has been dominated by two main communities, each seeking opposing political goals concerning the constitutional status of the Ulster counties. On the one hand, the 'unionists', of British origin and traditionally Protestants, were strong supporters of Northern Ireland as being a constitutive of the United Kingdom. On the other hand, the 'nationalists', of Irish origin and overwhelmingly Catholics, aimed at establishing a united island of Ireland. See also Lidia Bonifati, 'La questione nordirlandese alla luce di Brexit: quale futuro per Belfast?', *Costituzionalismo Britannico e Irlandese*, no. 1 (2024): 248–66.

[VIII] On the process of transitional justice in Northern Ireland, see the articles of the Special Issue published in 2003 in the *Fordham International Law Journal* (vol. 26, no. 4), available at https://ir.lawnet.fordham.edu/ilj/vol26/iss4/.

[IX] The Truth and Reconciliation Commission was a body of restorative justice established in 1996 to address the legacies of apartheid in South Africa often recalled as a best practice in post-conflict settlements (see Adrian Guelke, 'Post-Conflict Management in Deeply Divided Societies. The Cases of South Africa and Northern Ireland,' *Memoria e Ricerca, Rivista di storia contemporanea*, no. 3 (2023): 487-504; Mahmood Mamdani, 'Amnesty or Impunity? A Preliminary Critique of the Report of the Truth and Reconciliation Commission of South Africa (TRC),' *diacritics* 32, no. 3 (2002): 33-59).

[X] See Lord Saville, 'The Report of the Bloody Sunday Inquiry' (London: HMSO, 2010).

[XI] See Northern Ireland Office, 'The Stormont House Agreement. An Agreement on Key Issues that Opens the Way to a More Prosperous, Stable and Secure Future for Northern Ireland,' *Policy Paper*, 23 December 2014, available at https://www.gov.uk/government/publications/the-stormont-house-agreement.

[XII] A few months later having announced his intention to give implementation to the SHA, Boris Johnson unilaterally decided to abandon the agreement and focus on 'the cycle of reinvestigations into the Troubles in Northern Ireland' (see Secretary of State for Northern Ireland Brandon Lewis, 'Addressing Northern Ireland Legacy Issues,' Written Ministerial Statement, Statement UIN HCWS168, 18 March 2020).

[XIII] Human Rights Committee, CCPR/C/GBR/CO/8, par. 11.

[XIV] The European Commission of Human Rights (which at the time filtered the applications before the Court) established that the five techniques consisted of wall-standing; hooding; subjection to noise; deprivation of sleep; and deprivation of food and drink (see ECtHR, no. 5310/71, § 96).

[XV] European Court of Human Rights, no. 5310/71, *Ireland v. United Kingdom*, 20 March 2018.

[XVI] See European Court of Human Rights, no. 28957/95, *Christine Goodwin v. United Kingdom*, 11 July 2002, par. 90: 'Nonetheless, the very essence of the Convention is respect for human dignity and human freedom.'

[XVII] Cfr. European Court of Human Rights, no. 25781/94, *Cyprus v. Turkey*, 10 May 2001, par. 78.

[XVIII] See European Convention on Human Rights Memorandum issued by the Northern Ireland Office, 16 May 2022, available at https://bills.parliament.uk/bills/3160/publications.

[XIX] [2024] NIKB 11.

[XX] Sections 7(3), 12, 19, 20, 21, 22, 39 and 42(1) of the Legacy Act.

[XXI] Section 8 of the Legacy Act.

[XXII] Section 43(1) of the Legacy Act.

[XXIII] Sections 46(2), (3) and (4) and 47(1) and (4) of the Legacy Act.

[XXIV] Sections 7(3), 12, 19, 20, 21, 22, 39, 41 and 42(1) (relating to immunity from prosecution); Section 41 (on the prohibition of criminal enforcement action for Troubles-related offences); Section 43(1) (barring Troubles-related civil actions between the first reading of the bill and its entry into force); and Section 8 (on the admissibility of material in civil proceedings).

[XXV] [2024] NICA 59.

[XXVI] Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

[XXVII] House of Commons, Standing Orders 2002(2), 152B 'Human Rights (Joint Committee)'.

[XXVIII] See all the written evidence at the following link: https://committees.parliament.uk/work/8754/northern-ireland-legacy-remedial-order/publications/written-evidence/.

[xxix] Joint Committee on Human Rights, '1st Report - Proposal for a Draft Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 (Remedial) Order 2024', 28 February 2025, availabe at https://committees.parliament.uk/work/8754/northern-ireland-legacy-remedial-order/publications/reports-responses/.
[xxx] European Court of Human Rights, no. 28883/95, *McKerr v. United Kingdom*, 4 August 2001.
[xxxi] See the Statement by the Secretary of State for Northern Ireland on 29 July 2024, available at https://questions-statements.parliament.uk/written-statements/detail/2024-07-29/hcws30.
[xxxii] Committee of Ministers, 'Execution of the judgments of the European Court of Human Rights - McKerr and four cases against the United Kingdom,' Interim Resolution CM/ResDH(2023)148, 7 June 2023.
[xxxiii] See also UN Office of the High Commissioner for Human Rights, 'Study on the Right to Truth: Report of the Office of the United Nations High Commissioner for Human Rights', Geneva, 8 February 2006, available at https://digitallibrary.un.org/record/567521?v=pdf.
[xxxiv] Inter-American Court of Human Rights, *Gomes Lund and Others v. Brazil*, Series C No. 219, 24 November 2010.
[xxxv] European Court of Human Rights, no. 25781/94, *Cyprus v. Turkey*, 10 May 2001.
[xxxvi] European Court of Human Rights, no. 6884/11, *Cestaro v. Italy*, 7 April 2015.

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CENTRO STUDI SUL FEDERALISMO
PERSPECTIVES ON FEDERALISM

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Symposium on "Capital Cities Shaping National Constitutional Identities"

Introduction

by

Ylenia Maria Citino and Giacomo Delledonne[I]

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"The city does not tell its past, but contains it like the lines of a hand, written in the corners of the streets, the gratings of the windows, the banisters of the steps..."
— Italo Calvino, Invisible Cities (1972)

Capital cities, like the imagined metropolises in Calvino's Invisible Cities, are palimpsests of constitutional meaning and can indeed be referred to as "Westphalian constructs" (Boggero in this issue). They do not speak their constitutional role explicitly, but it is imprinted in their spatial order, institutional density, symbolic architecture, and political function. More than geographic centres or seats of government, capital cities often host the whole set of state institutions and, as such, embody the aspirations, contradictions, and historical sediment of the nation-states they represent, through the different facets. They concentrate the visible and invisible structures of power, authority, identity, and collective memory, concealing the scars in the history of their people. This ambivalence is witnessed by the *Concise Oxford Dictionary*, where the following definition can be found: a capital city is 'the most important town or city of a country or region, usu. its seat of government and administrative centre'. In purely functional terms, a capital hosts the institutions of the state or a great part of them; however, its political, economic and cultural relevance within the state usually goes far beyond this. This is true even of cities that were purposefully conceived as the seat of the federal government, as Washington D.C. within the United States of America (see Annicchino in this issue).

This symposium dives into rather uncharted territories, exploring the original connection between constitutional identity and the evolving role of capital cities across various European and non-European jurisdictions. With this, we aim to offer insights into how public law and its identitarian flank shall be called to acknowledge their structural diversity and symbolic power.

The issue stems from the panel "Capital Cities Shaping National Constitutional Identities", held at the ICON·S Austria 2024 Annual Conference, hosted on September 10–11, 2024 by WU Vienna and Sigmund Freud University in Vienna. The conference theme, "Public Law and the Cities," reflected a growing scholarly interest in the relationship between

constitutional law and urban governance. The panel was part of the broader framework of the PRIN research project "Identitarian Public Law: Dynamics of Illiberal Exclusion and Democratic Inclusion" (CUP J53D23018930001), funded under Italy's National Recovery and Resilience Plan, Mission 4, Component 2, Investment 1.1. (Research projects of major national interest), and whose principal investigator is Prof. Giacomo Delledonne.

The conference panel originally gathered five constitutional scholars in order to develop a comparative reflection on how capital cities influence and reflect constitutional values, how their legal status is intertwined with the most traditional public law issues, shaped by historical legacies, central-local tensions, or contemporary governance challenges. Draft papers were presented and discussed by Giovanni Boggero (Università del Piemonte Orientale), Ylenia Maria Citino (Scuola Superiore Sant'Anna), and Giacomo Delledonne (Scuola Superiore Sant'Anna). The session was chaired by Florian Lehne (Universität der Bundeswehr München), with Zuzi Vikarská (Masaryk University) serving as discussant and providing a critical lens through which to analyse the normative implications of capital city status in connection with the notion of constitutional identity. Huge thanks are also due to Lando Kirchmair Universität der Bundeswehr München) for his help in the run-up to the conference.

The theoretical core of this special issue draws upon the research work and the feedback gathered at the conference and, more in general, from comparative constitutional law. While recognizing that capital cities are often central symbols of national unity, as exemplified by Article 22 of the German Basic Law ("The Federation shall be responsible for representing the nation as a whole in the capital"), we noticed that their constitutional status, in the comparative landscape, varies markedly across legal systems.

A notable distinction arises between capital cities in federal and unitary states. In federal states, capitals are frequently constitutionalised and granted significant autonomy. Besides Berlin, Article 5.1 of the Austrian Constitution also designates Vienna as "the Federal capital and seat of the highest Federal authorities". Similar provision can be found in Article 194 of the Belgian Constitution. Capital cities in federal states often possess substantial autonomy as self-governing territorial entities, accommodating multiple layers of governance. Vienna, for instance, not only serves as the capital but is also recognised as a Land (region) and a municipality according to Article 2. In unitary states, by contrast, capital cities are largely non-constitutionalised and they are often governed through ordinary law, with varying

degrees of institutional specificity and political autonomy. Sometimes, special legislation may grant them specific governance structures, as seen in cases such as the Métropole du Grand Paris and Greater London. Rome, instead, is acknowledged under Article 114 of the Italian Constitution but only in declaratory terms. Madrid is enshrined as the capital under Article 5 of the Spanish Constitution alike.

Capital cities serve not only as seats of government but also as platforms for asserting a country's global visibility and democratic identity. Notwithstanding some idiosyncrasies, they function not only as political and administrative centres, but also as economic, cultural, and demographic hubs within a nation. Additionally, they play a pivotal role in fostering local and regional democracy. Beyond mere geographical significance, capital cities often embody the essence and complexity of a nation's identity, frequently encompassing a representative function of the unity of the Nation. Yet they are increasingly confronted with structural challenges that threaten to disrupt their unique identity roles. These challenges include climate change, ageing infrastructure, rapid urbanisation, demographic shifts such as overcrowding, depopulation or gentrification, lack of affordable housing, social inequalities, and, last but not least, the digital divide affecting marginalised populations. Effective urban governance planning could help address these issues, but without the support of a solid constitutional framework all of this could be vain.

To this end, national constitutions can foster, with tailored normative provisions, the special needs of capital cities, for instance by granting privileged status, financial autonomy or other mechanisms allowing them to bear the changes of this epoch.

In this issue, we discuss whether their autonomy shall be as such as protecting them from undue political interference from national governments, a risk exacerbated by their physical proximity to the seat of national administration. Constitutions should not only emphasise capital cities' function as bridges between national and local governance but also recognise their significance on the international stage. As symbols of national identity, capital cities represent their respective nations internationally. From time to time, such representative function may be at odds with the specific needs of local self-government.

The issue further interrogates how constitutional law can accommodate and protect the evolving reality of capital cities in this fraught context. In essence, the constitutional power vested in capital cities varies greatly, ranging from mere administrative local status to roles where they admix powers from both metropolitan cities and regional entities. This

differentiation not only impacts abstract categorisation, making it extremely challenging, but also affects the case for a uniform approach by the state.

The essays in this special issue can be axed around four intersecting dimensions of identitarian reflection: comparative constitutional frameworks, symbolic and functional roles of the cities, religious identity and European integration.

Giovanni Boggero, in his contribution, constructs a comparative taxonomy of constitutional provisions and legal statuses of capital cities across Europe. His paper draws from research of the Council of Europe and the 1985 European Charter of Local Self-Government to demonstrate recurring legal patterns and tensions between centrality and autonomy.

Ylenia Maria Citino explores the paradoxes inherent in Rome's status. While the capital of Italy is acknowledged by the Constitution, the set of institutional rules enshrined in primary law that define its governance is at the root of the many inefficiencies and sometimes the cause of overlapping of functions between institutional actors. Constitutional design, as she argues, would be the preferable solution in order to reappraise the symbolic and identitarian value of the capital and equip the city with the autonomy it deserves, while at the same time allocating a clear share of responsibilities.

Giacomo Delledonne offers a reflection on Paris in order to analyse its role in shaping France's constitutional identity. He first notes that Paris, despite its undeniable centrality in France's political and historical development, remains a constitutional blind spot which is not even mentioned in the constitution. Delledonne paints a historic fresco while attempting to describe the causes of the normative and symbolic marginalization of Paris.

Oliver Garner investigates London's significance to and within the unwritten and flexible constitution of the United Kingdom. The position of London within the British constitutional order has been greatly affected both by the introduction of a directly elected mayor as part of the ambitious reform agenda of the New Labour government and by the multiple crises that have hit the country in the last decade, ranging from the Brexit to the uncertainties about the future of Transatlantic solidarity.

Finally, Pasquale Annicchino turns to Washington D.C., using it as a case study to examine the role of capital cities in legal and religious power projection. He situates the U.S. capital as a global hub for lawfare, strategic litigation, and religious advocacy, exploring its extraterritorial influence on global constitutional and human rights debates.

The set of papers, even though it does not cover all potentially relevant cases in comparative public law, still provides the reader with a clear picture of how legal systems recognise, construct, or suppress the identity of capital cities within national and supranational orders. While no singular model emerges, the comparative insights underscore how capital cities increasingly function as constitutional laboratories—spaces where identity, authority, and governance intersect and sometimes collide.

In advancing this research agenda, we can complete this introduction by recalling that the special issue contributes to the broader objectives of the PRIN project on Identitarian Public Law. As stated in the opening, it interrogates the dynamics of inclusion and exclusion within constitutional frameworks. Therefore, in conclusion, capital cities, precariously poised between tradition and innovation, between national identity and global contradictions, can be truly recognised as central actors in the contemporary redefinition of constitutional space.

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Common Constitutional Patterns of Capital Cities in Europe

by

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Abstract

This paper examines the dual role of European capital cities as both symbols of national sovereignty and autonomous local government units. Despite their increasing prominence in economic and environmental spheres, capitals remain deeply embedded in their states' administrative structures, balancing their functions as political and cultural hubs with local self-government. The paper identifies key constitutional and administrative patterns across Europe, drawing on Council of Europe frameworks and comparative analyses. It highlights variations in capital city models – ranging from dominant "city-states" like Berlin and Vienna to decentralized capitals such as Bern and The Hague – while emphasizing shared challenges in governance, financial autonomy, and intergovernmental cooperation. The findings underscore the enduring diversity of capital city arrangements, shaped by historical, constitutional, and local autonomy factors, with no uniform trend emerging despite European integration efforts.

Key-words

Capital cities, Constitutions, Local autonomy, State symbols, Council of Europe

This piece has been written within the remit of the PRIN research project "Identitarian Public Law: Dynamics of Illiberal Exclusion and Democratic Inclusion" (CUP J53D23018930001), funded under Italy's National Recovery and Resilience Plan, Mission 4, Component 2, Investment 1.1. (Research projects of major national interest).

1. Introduction – The Dual Role of Capital Cities

Despite their increasing prominence as autonomous international actors in economic and environmental spheres [Orttung, 2019], capital cities in Europe remain, first and foremost, integral components of their respective states' administrative structures. As inherently Westphalian constructs, they embody the history of nation-states, reflecting their triumphs, struggles, and aspirations. In essence, capital cities function as powerful symbols, communicating the core features of a state's identity both domestically and internationally [Delpérée, 1993]. Their symbolic role is deeply intertwined with their political and constitutional significance, as they serve as instruments for fostering unity and promoting political, social, and cultural integration among citizens [Smend, 1928; Häberle, 1990]. The role of capital cities varies significantly depending on the nature of the state and the degree of local autonomy it grants. According to a well-established framework [Claval, 2000], capital cities can be broadly categorized into two main types: (a) symbols of national sovereignty, embodying the historical and cultural heritage of the nation-state, or (b) functional centers of a state whose legitimacy derives from multiple communities. The former often serve as primary hubs for political, economic, and cultural activities, attracting the ruling elite and becoming centers of intellectual and artistic life for the entire country (e.g., Paris). The latter, by contrast, tend to focus on political and administrative control, sharing their influence with other significant cultural or economic centers (e.g., Bern, The Hague); they are sometimes referred to as "secondary capitals" [Kaufmann, 2018]. At the same time, and perhaps more importantly, all capital cities function not only as *ein Stück Staat* (a piece of the state) but also as local government units, typically in the form of municipalities. At least since the seventeenth century, capital cities have served as the most representative image of a state while increasingly acquiring self-governing powers [Shaw & Štiks, 2023]. Unlike other local government entities, they uniquely combine sovereignty and autonomy, balancing their dual roles as symbols of the state and as administrative units. In countries with a strong tradition of local autonomy – particularly federal states and common law countries – state administrative structures are typically less centralized, and the national capital assumes a more modest role [Slack & Chattopadhyay, 2011]. Conversely, in highly centralized states, the capital often emerges as a dominant urban center, resembling a "city-state" and characterized by an extensive bureaucratic apparatus. The interplay between the nature of the nation-state

and the degree of local autonomy results in a wide variety of capital city models. Despite this diversity, a common thread is the need to reconcile state and local government functions. The aim of this short paper is to identify the most significant patterns in these reconciliation efforts throughout Europe.

2. Shared Constitutional Patterns: Insights from the Council of Europe

This reconciliation, though shaped differently across legal systems, reveals several shared patterns among capital cities in the "Greater Europe". These patterns are not merely descriptive but normative, emerging from the combination of state characteristics and local autonomy levels. The Council of Europe, particularly through its Congress of Local and Regional Authorities, has addressed this issue in two different reports, one adopted in 2007 and the other in 2021 [Tarschys-Ingre & Kössler, 2020]. These reports aim to establish a comparative framework for capital cities and provide general recommendations to member states on the role of their national capitals within the European constitutional legal order. These recommendations respect the constitutional identity of each state and therefore its margin of appreciation (discretion under international law) in arranging national capitals, while emphasizing the importance of local autonomy, as outlined in the 1985 European Charter of Local Self-Government (ECLSG) – the only international treaty setting out standards for local governments [Boggero, 2018; Himsworth, 2015].

2.1 The Legal Foundations of Capital City Status

Defining what constitutes a capital city is challenging beyond general descriptions of it as the demographic, cultural, economic, and political center of a country. While most European capitals enjoy direct or indirect constitutional or legal recognition, the specific function of this recognition is often difficult to clarify in broad terms. Historical convention and political consensus frequently play a role, but constitutions typically do not elaborate on the meaning of capital city status. Instead, they tend to recognize capitals either to establish a special administrative status (as discussed in Section 2.2) or to assign them a distinct place within the governmental system.

More often than not, the constitutional designation of a capital is a symbolic and political act, rooted in national traditions, customary constitutional law, or political consensus. This means that relocating the capital generally requires a constitutional amendment and/or a national referendum. Constitutional entrenchment ultimately grants capitals a degree of authority and permanence [Arban, 2020; 2022], protecting them from arbitrary relocation and ensuring their position within the state structure.

Yet, such provisions rarely shed light on the selection process or the rationale behind capital city designation. A notable exception is Belgium, where Article 194 of the Constitution – mirroring Article 126 of the 1831 text – explicitly designates Brussels as the capital due to its role as the seat of major governmental institutions. This recognition stemmed from the city's resistance during the September Days of 1830, serving as a symbolic reward for its contribution to the nation's independence. Following reunification, Germany underwent a similar constitutional deliberation, moving its capital from Bonn – provisionally designated as the Regierungssitz (seat of government) after 1949 – back to Berlin, the historic capital of the German Empire. Initially a gesture of restored unity, this decision was later formalized through a 2006 amendment to the Basic Law. Article 22 now stipulates: "Berlin is the capital of the Federal Republic of Germany," followed by a functionally oriented clause: "The Federation shall be responsible for representing the nation as a whole in the capital." This implies that one of the German capital's key roles is the Selbstdarstellung (self-portrayal) of the nation-state's diversity and unity. However, it remains unclear whether this provision mandates that all federal constitutional organs be headquartered in Berlin [Weischede, 2022]. In most cases, the rationale and implications of constitutional recognition remain ambiguous, leaving the underlying reasons and consequences of capital city designation open to interpretation and subject to ordinary law.

2.2 A Trend towards a Special Administrative Status?

Capital cities are often assigned a special administrative status, yet this means different things depending on the legal order under consideration. The classical distinction [Rowat, 1973; Van Wynsberghe, 2009] includes three types of arrangements that extend beyond federal systems to various forms of state organization: A capital forming a special district (e.g., Washington DC, Canberra, Abuja), primarily found in non-European federal states; A

capital constituting a city-state, also functioning as a region, thus with dual status as both a municipality and a federal entity or region (e.g., Berlin, Vienna, Brussels);

A capital located within a federated entity, a region, or a province having little or no special status (e.g., Bern, Rome, Kyiv). It is important to recognize that each of these three types of status within multilevel government systems has specific implications for autonomy. The first type – typically found in non-European federal states – involves a planned (rather than historically evolved) capital district intended to shield the federal government from potential interference by the host state. However, this concern now seems overshadowed by the opposite problem: federal overreach into the capital's local autonomy. The other two institutional arrangements are more common among Council of Europe member states. Within the Council of Europe's legal framework, "antifederal behavior" by capital cities does not appear to be a significant issue. In fact, granting capital cities representation in federal institutions may be a sound policy recommendation for federations. This approach could even provide stronger safeguards against antifederal tendencies than excluding them from institutional participation [Nagel, 2013].

Special status might also involve a different arrangement of the scope of responsibilities, as laid down by national or regional laws on municipal government. In this legal construction, the same rules apply to all municipal governments, possibly with some special regulations or minor modifications concerning the self-government of the capital city. Special administrative status is not always exclusive to capital cities; it may also be granted to manage the governing authorities of larger cities or urban areas. However, in some cases, institutional "bicephalism" creates governance inefficiencies due to an ambiguous distribution of functions and overlapping competences between the Capital City Mayor and the Head of the City State Administration. Since the latter holds executive authority, this dual structure undermines the autonomy and effectiveness of local self-government. This explains why, in certain parts of Europe, capital cities lack special administrative or legal status and hold the same administrative rank as other municipalities.

Notably, this uniformity is also common in most Western European countries. Such consistency suggests that the symbolic or political significance of capital cities does not inherently justify special legal status or differentiated treatment. On the contrary, in many Council of Europe member states, capitals operate under the same legal framework as other municipalities. Where capitals do enjoy special administrative status, it may derive from

various factors beyond constitutional recognition, including historical tradition or political expediency. Recognizing this diversity, the Council of Europe Congress of Local and Regional Authorities has evolved its position from advocating a specific special status for all capitals (Recommendation No. 219/2007) to acknowledging that "the undoubtedly specific role of capital cities does not always translate into a special status" and "where granted, this status may take different forms, depending on a great variety of factors" (Recommendation No. 461/2021). The Congress now recommends that member states exercise their margin of appreciation to establish appropriate legal safeguards for their capitals' local autonomy vis-à-vis the national government, particularly as capitals are vulnerable to political conflicts. Nevertheless, the Congress continues to recommend special administrative status in cases where the statutory framework fails to account for the particular responsibilities of capital cities compared to other municipalities, as evidenced in recent reports (e.g., the report on Iceland CPL(2024)47-02 on the status of Reykjavik or the report on Romania CG(2023)44-11 on the status of Bucharest).

2.3 A Citywide Elected Administration and Its Subdivisions

National capitals are typically large municipalities characterized by high population density and expansive territories. The Council of Europe recognizes that most capital cities operate under a unified municipal government, though exceptions exist, such as Baku, the only European capital without a mayor [Shahniyarov, 2022]. The Congress of Local and Regional Authorities emphasizes the importance of an elected citywide administration as a key legal safeguard to represent and advance the unique interests of capital cities. To this end, the Congress advises against fragmenting a capital's territory into multiple independent municipalities, stating that "the management of the capital city by centrally appointed authorities or by local district authorities, without an elected municipal government at the citywide level, does not comply with the fundamental principles of the European Charter of Local Self-Government" (Recommendation No. 219/2007). This position was reinforced in Recommendation 461/2021 regarding Azerbaijan, which emphasized that dividing a capital's territory undermines the coherent representation of capital-specific interests, as historically demonstrated by London prior to the establishment of the Greater London Authority.

However, the Congress does not prescribe specific institutional features for capital city governments, as the standard provisions for elected self-government apply. For instance,

there is no mandatory requirement under Article 3, paragraph 2 of the ECLSG for both the mayor and the council to be directly elected. Nevertheless, despite resistance – particularly from Scandinavian countries, where indirect election of executives is traditional – a trend toward the direct election of capital city mayors has emerged, especially in Central and Eastern Europe since the 1990s. This shift has been most recently observed in Zagreb (since 2009) and Warsaw (since 2002), while similar discussions have taken place regarding Paris (see Discussion Document of the Secretariat of the Congress of Local and Regional Authorities on the Direct Election of Mayors, CPL(2023)44-04).

Simultaneously, many capital cities operate under a two-tier local authority system, where governance is divided between citywide and district-level administrations. This structure is often seen as contributing to more effective and efficient administration and public service delivery at the grassroots level. The specific implementation varies considerably. Particularly in microstates, some capital cities, such as Vaduz, Valletta, Luxembourg, Nicosia, and Reykjavik, generally lack internal administrative divisions. In certain cases like London or Moscow, subdivisions function as relatively autonomous self-governing districts. Elsewhere, districts serve as administrative units established either voluntarily or by legal mandate, with governance structures that may include directly elected councils (e.g., Paris, Rome, Berlin, Vienna) or appointed councils (e.g., Madrid, Athens). The Council of Europe acknowledges that the need for "proximity governance" is not incompatible with an elected citywide administration. This can be achieved by establishing districts as internal subdivisions. Suburban districts, which are common not only in capital cities but also in other local authorities, enhance administrative efficiency and public service delivery by adhering to the principle of subsidiarity. They also foster greater citizen engagement in local affairs. Consequently, the Congress recommends establishing an administrative system that includes elected district authorities, with their competences clearly defined by law and distinct from those of the citywide administration. This approach aligns with the subsidiarity principle and is particularly advisable for larger capital cities under the Charter. However, the Congress recommendation No. 452 (2021), which pleads for a clear division of competences between city and district authorities, appears to go beyond the requirements of subsidiarity, potentially constraining the flexibility needed for effective multilevel governance. Furthermore, the dual federalistic model implied in some recommendations does not reflect common practice among Council of Europe member states, where the distribution of competences between

city and district authorities often involves diverse institutional arrangements, frequently granting the citywide government hierarchical powers even within two-tier systems. In summary, while the Council of Europe advocates for elected citywide administrations and the establishment of districts to enhance local governance, the implementation of these recommendations must balance the principles of subsidiarity and flexibility. This approach is necessary to accommodate the diverse administrative realities of capital cities across Europe, ensuring both effective governance and the representation of local interests.

2.4 Addressing the Unique Financial Challenges of Capital Cities

Financial issues faced by capital cities are, in many respects, similar to those encountered by other local government units. However, in federal systems such as Germany or Austria, the comparison is more appropriately drawn with other *Bundesländer* rather than with local authorities. Like all subnational entities, capital cities are primarily concerned with ensuring sufficient revenue-generating capacity, including taxation powers – and securing adequate financial transfers to fulfill their responsibilities.

Nevertheless, despite the considerable economic advantages of being a national capital, these cities across Europe share a distinctive financial challenge: they typically incur higher expenditures compared to other urban centers of similar size. This increased financial burden stems from a variety of factors, including the need to host national institutions (such as government offices, parliaments, and judicial bodies), accommodate diplomatic missions (embassies and international organizations), provide infrastructure and services for national events and public demonstrations, and maintain heightened security measures, among others. In recognition of these unique financial pressures, the Council of Europe Congress has recommended that capital cities receive regular additional compensation through dedicated fiscal mechanisms. For example, the case of Andorra La Vella (CPL(2024)46-02) illustrates how a capital city's distinctive role necessitates tailored financial arrangements to address its specific needs. This compensation is essential for enabling capital cities to fulfill their dual roles as both local administrative entities and national centers. Another critical financial issue concerns the division of revenues between citywide governments and their districts in two-tier systems. While district-level authorities in many countries are eligible for equalization grants through the same mechanisms as other municipalities, the allocation of funds between citywide administrations and their subdivisions often follows different

methods and principles. This creates potential disparities in financial resources relative to responsibilities. From the perspective of the Charter, particularly Articles 9(1) and 9(2) ECLSG, it is essential that both capital city governments and their districts have financial resources commensurate with their duties. The citywide administration must possess sufficient financial flexibility and autonomy to ensure this balance, especially as it often bears the primary burden of additional costs associated with capital city functions.

2.5 Establishing Special Channels for Horizontal and Vertical Co-operation

The relationship between capital cities and central governments exemplifies the challenge of reconciling a capital's dual role as both a state administrative entity and a local government unit. Despite this need for special coordination, capital cities typically lack dedicated formal channels for this purpose; they must generally use the same communication pathways available to all local governments, underscoring once again the prevalence of uniformity over differentiation in many Council of Europe member states.

While special bilateral channels between national governments and capital cities do exist, they are often informal and ad hoc rather than institutionalized. The Council of Europe therefore recommends formalizing cooperation both horizontally (between the capital and neighboring municipalities) and vertically (between the capital and higher levels of government), as required by Article 4(6) of the ECLSG [Vandelli, 2004]. Central-local government relations tend to be stronger and contacts more numerous when the capital city holds additional status beyond being just a local authority, such as representing an entire region or another middle-tier governmental unit (e.g., the city-states of Berlin or Vienna). In such cases, the capital participates in intergovernmental relations through established federal or regional mechanisms. Individual agreements between capital cities and national governments serve as the most common legal instrument for managing this relationship. Examples include the cooperation agreements between the federal government and the *Land* of Berlin in Germany, the coordination mechanisms between the Austrian federal government and Vienna, and the joint committees established in Brussels. Equally important are frameworks governing the capital's interactions with surrounding municipalities, particularly for addressing metropolitan-scale challenges like transportation, environmental management, and regional planning. These neighboring relations – common not only in capital cities but also in metropolitan areas – are typically established by law, creating

frameworks for cooperation based on mutual agreements. Such partnerships may address specific administrative tasks (as in the case of the Greater Paris Metropolitan Area) or establish comprehensive, long-term collaborative frameworks (as with the Madrid Metropolitan Region).

3. Conclusions – The Enduring Diversity of European Capital Cities

The distinction between different types of capital cities, rooted in the nature of the state, has gradually evolved over time due to the standardization brought about by the rise of the nation-state in the 19th and 20th centuries. Nevertheless, fundamental differences persist today, as evidenced from the outset by the contrast between cities like Paris or Moscow, which serve as dominant national centers, and those such as Bern or Amsterdam, which share influence with other major urban centers within their countries. There is no significant – or even foreseeable significant – general trend toward the uniformization of capital city structures or organization across Europe. While European Union regulations do not directly target capital cities, they indirectly shape them as urban areas through rules applied to Local Administrative Units (LAUs) and the Nomenclature of Territorial Units for Statistics (NUTS), as well as through specific policy tools like the Urban Agenda for the EU [De Frantz, 2022].

Although globalization and legal transplants within the EU may have introduced some commonalities in urban governance approaches, they have not erased fundamental differences in capital city arrangements. Over the past three decades, the Council of Europe significant – particularly through its Congress of Local and Regional Authorities significant – has sought to promote certain standards for local governance by encouraging alignment of capital city arrangements in the Caucasus and Eastern Europe with principles derived from Western European models. Yet, this harmonization effort should not be interpreted as diminishing the diversity of capital cities. On the contrary, the underlying nature of the state and the extent of domestic local autonomy continue to play significant roles in sustaining varied capital city structures across Europe. The term most frequently associated with capital cities in comparative studies remains "variety" [Rossmann, 2017; Kaufmann, 2018],

underscoring their enduring diversity despite increasing legal standardization. This diversity reflects the continued importance of constitutional identity significant – the ultimate source of legitimacy for a capital's legal order and the degree of local autonomy it enjoys – in shaping capital city arrangements. As Europe continues to balance integration with respect for national distinctiveness, capital cities will likely remain diverse expressions of their respective states' constitutional traditions while gradually incorporating shared principles of local democracy.

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Rome as a Determinant of the National Constitutional Identity

by

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Abstract

This paper explores the evolution of the constitutional status of Rome within Italy's legal and political framework, arguing that the city's symbolic and functional significance as the capital remains underdeveloped. Despite its central place in Italian history and identity, Rome's constitutional status has long been ambiguous in legal terms, only formally recognized in 2001. The author examines how this legal uncertainty has hindered effective governance and limited Rome's potential as a global capital. It suggests that Rome should not merely be treated as a municipality but recognized as a unique territorial entity with enhanced powers. The study further stresses on the need to reconcile Rome's dual identity, as both a national symbol and a functioning urban center, through a more coherent legal framework. Drawing on Rome's example and recent legislative efforts, the paper not only advocates for a constitutional reform that moves beyond piecemeal legislation, granting Rome greater autonomy and a clearer institutional identity, but more in general argues that capital cities shall be emancipated from the state-centred vision of post-war constitutions.

Key-words

Rome; Constitutional Reform; Capital Cities; Constitutional Identity; Local Governance.

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1. Introduction

Rome has long occupied a distinctive and strategic position in the historical and political evolution of Italy (Caracciolo, 1974). As the heart of multiple regimes, from the Roman Empire to the Byzantine era, from the Papal States to the Napoleonic domination, from the Kingdom of Italy to fascism and, lastly, the modern Republic, Rome changed its status many times, but as it transcends mere geography, today it embeds itself as a determinant of the Italian constitutional identity. Yet, constitutionally speaking, this role remains persistently unsettled, reflecting conflicting visions of how Rome's legal framework shall be crafted. As a consequence, the identitarian potential of Rome remains unexploited.

In this paper, I intend to enquire how constitutional design can reconcile the dual identities of capital cities as both national symbols and functional territorial entities within a unitary state framework. To this end, moving from Rome's example, I contend that capital cities shall be emancipated from the state-centred vision of post-war constitutions. As argued by Marcelli (2015, 7), the "Capital" is not always and not necessarily "the most important city, the most central city, or the seat of institutional bodies". To qualify as a Capital, a city must receive "a legal-formal designation, of symbolic significance: it is the city that the Constitution or the law declares as such"[II]. In this paper, I want to demonstrate that the identitarian value of a capital city requires a reappraisal of the function that constitutional law can exert. Only by granting more control over local governance in conjunction with a reassessment of fiscal capacity and, in the long term, national enfranchisement can the city be equipped to exercise its role as capital in a globalised world.

After highlighting the symbolic weight of Rome in the Italian constitutional identity, section 3 examines the unsettled evolution of Rome's constitutional and legal status within the Italian legal order. Section 4 then addresses the enduring challenges Rome faces in terms of governance and autonomy, despite its official recognition as the capital city.

In contrast, Section 5 explores the ongoing debate over constitutional reform, arguing that the real challenge lies in releasing Rome's management from a state-centred vision. Achieving this requires concrete measures such as devolving powers and functions, reconsidering fiscal and expenditure autonomy, and granting self-government in territorial matters.

The paper concludes that, after repeated yet unsuccessful attempts at constitutional reform, the time is ripe for a pooled effort towards a reform that redefines Rome's constitutional status by reconciling its symbolic and functional dimensions. Such a reform should move beyond fragmented legislative adjustments and instead establish the basis for a future stable and coherent framework that guarantees effective governance. This requires a firm approach toward a model that acknowledges the city's need for self-determination in a way as to allow Rome to fully assume its role as a global capital.

2. Rome's Symbolic Weight in Constitutional Identity

According to Peter Häberle (1990, 23), "the question of the capital city brings together the penultimate, indeed the ultimate, aspects of a political community's self-image". Notwithstanding their centrality in a state polity, capital cities lay at the periphery of the constitutional debate and an inventory of their constitutional functions and meaning at large-scale is still missing. Despite their pivotal role in the constitutional framework as the number one entity of a state, only a scant legal scholarship dives into constitutional issues on capital cities.

Over the past five years, Ran Hirschl's *City, State* (2020) has stood out in the absence of competing research. Noting this scholarly gap, Hirschl explicitly seeks to break the "constitutional silence" surrounding the rise of megacities and urban agglomerations, seen as the most "burning challenge" whose "mind-boggling figures" ought to puzzle every constitutional scholar. With a fluent and compelling style, he underscores that "as the modern state has effectively eliminated the city as a formal political entity, constitutional representation of the urban—the habitat of over half of the world's population—is minimal" (Ibid., 18). More recently, Alexandra Flynn, Richard Albert and Nathalie Des Rosiers edited a volume on "*Cities and the Constitution*" (2024) exploring "the misalignment between the importance of municipalities and their constitutional status" in Canada. In the European context, an important reference is the comprehensive mapping effort by Ernst Hirsch Ballin *et al.* for the *2020 European Yearbook of Constitutional Law*, which explores *The City in Constitutional Law*. Likewise, in a report commissioned by the Council of Europe, it is shown that "the undoubtedly specific role of capital cities does not always translate into a special

status. Where granted, this status may take different forms, depending on a great variety of factors." (Tarschys-Ingre, 2021, p. 2).

The shared view among these publications is that there is a total absence of uniform constitutional categories and common notions in the comparative landscape even though current research shows enough evidence that constitutionalisation of cities can be a solution to many problems and may help in responding to persistent challenges. A prime example of a completely overlooked subtopic is capital cities' constitutional nature as determinants of a state constitutional identity (Häberle, 1990).

Within this framework, constitutional identity should be understood as it was originally conceptualised by the first constitutional theorists who shaped the notion (such as Gary Jacobsohn and Michel Rosenfeld's decade-old works), namely, as a set of distinctive features that define the public image of a polity and the self-awareness of its political community. In this paper, I adopt an inclusive interpretation of national constitutional identity (Fukuyama, 2018), explicitly rejecting the opposing view that frames identitarian claims as a challenge to constitutionalism. This latter perspective often underpins exclusionary patterns such as ethnonationalism, separatism, or secessionism and is out of the scope of the present paper.

Rome, in this context, emerges as a particularly compelling case. Despite being the capital of Italy and hosting critical constitutional, governmental, and international institutions, Rome's recognition as the nation's capital – as it will be discussed later on – only came when a 2001 constitutional amendment rendered its status official, but the open-textured wording of the provision left significant ambiguities in its implementation. As Luciani observed (see below), for decades, the flag was the only constitutionally recognised symbol—neither the language nor the national anthem held such status.

In the origins, with the law No. 33, 3 February 1871, Rome's designation as the capital of Italy, following Turin (1861-1865) and Florence (1865-1871), signified the wish to symbolise continuity with the glorious Roman Empire. As Agnew explains (1998), "when Rome was annexed to the new Kingdom of Italy in 1870 it was only the fifth city of the new state, exceeded in population by Naples, Milan, Genoa and Palermo". However, even prior to its legal annexation in the new kingdom, Rome was declared a symbolic capital as early as 1860, and it was a vital political battle to conquer its territory and complete Italy's reunification. Consequently, historical and cultural traditions supported the legal rationale of the institutional change, associated with the myth of a magnificent and unified future.

Amidst a progressive layering of reforms, Rome enjoys a multifaceted status today. First and foremost, as the capital of the State, Rome is a municipality (embodying an entity called *Roma Capitale*), which hosts all constitutional institutions, governmental and administrative buildings, embassies, and consulates. Rome possesses as such the *Konstituierende Elemente einer Hauptstadt*—the constitutive elements of a capital—that Häberle outlined in his seminal analysis (cit.).

Rome also serves as the regional capital, known as the *Capoluogo di Regione* in the Region of Lazio. After the entry into force of Law No. 56 of 2014, commonly referred to as the 'Delrio Law', Rome is no more a province as it was converted into a Metropolitan City (*Città Metropolitana di Roma Capitale*), whereby Metropolitan Cities were introduced to replace provinces in the country's largest urban areas. As a metropolis, Rome is responsible for coordinating economic and territorial development as well as managing wide-area public services. Lastly, Rome's jurisdiction also incorporates a separate sovereign state: Vatican City!

Beyond legal categories, it must be recalled that Rome's symbolic value is overwhelming as it displays a prodigious quantity of artistic masterpieces and historical buildings, and it also represents the centre of Christianity, welcoming thousands of tourists every day. These features make Rome distinct and unique not only with regard to other major Italian cities but also globally: a fact that requires particular consideration (Mangiameli, 2003). The symbolic and identitarian value of a capital like Rome resonates, for instance, with the German constitutional theories that place the description of capitals in textbook sections on symbols[III].

However, along with many other European cities, Rome's situation in the constitutional framework follows the Westphalian model of organisation of the society, a model that "came at the expense of untrammelled city power" (Hirsch Ballin et al., 2021, 3) repositioning the cities "as among the lowest constituent units within the overall state structure".

3. Rome's legal and constitutional journey

Building on Haberle's classification, the Italian Constitution (also, IT Const.) is an example of a constitution containing a *Hauptstadt-Klausel*, a clause on the capital city. However, this clause is not as old as the Constitution itself. Originally, the text did not specifically acknowledge Rome as the capital of the Republic (Zagrebelsky, 1993). As

Massimo Luciani argues (2020), this omission was not primarily due to a fear of recreating institutions associated with fascism or because the unique status of a capital city seemed more appropriate for federal systems. Rather, in the author's view, it was the apparent unavoidability of choosing Rome as the Capital that led to the constitutional silence on the matter.

I rather contend that the fascist rule significantly influenced the drafting of this section of the Constitution. It must not be forgotten that with Royal Decree No. 1949 of 28 October 1925, on the 'Institution and Regulation of the Governorate of Rome', the Grand Council of Fascism gave the capital a special legal recognition for the first time (Chiola, 2012, 50-6). During the regime of Benito Mussolini, Rome was profoundly reshaped amidst the heightened awareness of its value as an identitarian factor, both in terms of physical infrastructure and ideological symbolism. It was transformed into a "fascist city" through intense urban planning and monumental architecture to reflect the regime's ideology, emphasising its connection to both ancient Roman grandeur and modern totalitarian power (Kallis, 2014). New government buildings, such as the *Altare della Patria* (Altar of the Fatherland), also called *Vittoriano*, and new districts such as the *E.U.R.* (*Esposizione Universale Roma*) used modern fascist aesthetics combined with classic Roman imagery, and the aim was to showcase the regime's strength and a vision of Italy's destiny as a great, imperial power[IV]. The fascist legislation also redefined the city's boundaries, with the aim of transforming it into the largest rural municipality in Europe, thus reflecting a strong anti-urban stance.

One must, therefore, agree that the fascist rule altered the perception of Rome as a "neutral" capital so that the city was inextricably associated with this idea of authoritarian propaganda. Concerning this, a short digression is worth noting that a militant interpretation of constitutional symbolism is a phenomenon still occurring in the present day. This is particularly evident in countries adopting constitutional reforms to incorporate identity-based elements or countries whose political majorities tend to emphasise existing identitarian elements. Militant interpretation of symbols, such as anthems, flags, national holidays and, obviously, capitals, allows for bolstering the ideological premises of illiberal political agendas in countries whose democracy is still at an infancy stage (Haberle, 2008).

As for Rome, it was not until 2001 that Italy's constitutional silence on the status of its capital was addressed with an amendment to Article 114, paragraph 3, which now states that "Rome is the Capital of the Republic" and "its status is regulated by State law". While this

amendment appears straightforward, scholars such as Sterpa (2012, 27) have noted that it remains unclear whether Rome should be understood as a "functional" or a "territorial" entity. In other words, there has always been legal ambiguity as to whether Rome's constitutional status is inherently linked to its function as the capital, implying a form of "functional" supremacy, or whether it should be regarded merely as a territorial unit that holds the same degree of power as other local entities. That same year, Constitutional Law No. 3/2001 marked a significant shift toward a more decentralised governance structure in Italy. This reform granted regions more legislative power and reinforced the principle of regional autonomy while retaining the unity of the state.

The amendment to Article 114, underscoring in general terms Rome's legal value as the capital of Italy, signified the importance of this official designation in a unitary state whose territorial components are expressly enumerated by Article 114, paragraph 1, IT Const. Despite these efforts, however, the implementation of Rome's special status, as we would expect from a modern European city hosting 2.7 million residents, faced numerous challenges that expose the complexities of the legal and political landscape of its territory.

Notwithstanding the elementary wording of the norm, as said, its implementation has been nowhere near simple. A series of inconsistent measures have been enacted throughout the years, resulting in ongoing dissatisfaction with Rome's current legal setting (Filippi, 2023; Fontana, 2022; Romano, 2021; Orso, 2020).

In 2009, Law No. 42 on fiscal federalism delegated the Government with the power to establish a regulation to grant autonomy to Rome, setting up a temporary system that entitles special functions to Rome as a municipality (*Comune di Roma Capitale*) waiting for a permanent system that devolves such functions to Rome as a Metropolitan City (*Città Metropolitana di Roma Capitale*). Article 24 of this law, enacted to implement Article 114, paragraph 3, IT Const., spells out that "Rome, as the capital, is a territorial entity whose current boundaries correspond to those of the Municipality of Rome. It enjoys special statutory, administrative, and financial autonomy within the limits established by the Constitution". As Sterpa notes (cit., 90), "The regulation of *Roma Capitale Comune* should have been conceived and drafted as a temporary measure, serving as a transitional framework toward the establishment of the Metropolitan city"[V]. Instead, this derogatory regime remains in force 14 years later.

After the 2009 law, two legislative decrees were issued: Legislative Decree No. 156 of 2010, which established *Roma Capitale*'s institutional governance structure (comprising the

Capitoline Assembly, the Capitoline Council, and a directly elected Mayor), and Legislative Decree No. 61 of 2012, which regulated the transfer of administrative functions to *Roma Capitale*. Nonetheless, Rome's status still remains unsettled amidst this temporary regime.

4. The disconnect between the constitutional façade and the reality of urban Rome

Until now, I have discussed the persistent governance challenges that Rome faces due to the inherent ambiguity associated with the wording of Article 114.3 IT Const. The norm failed to clarify whether Rome should be considered a functional or territorial entity, as doctrinal debate estimated. A noteworthy point is that such criticisms continue despite the fact that an implicit interpretation has in the meantime sedimented over the norm, as scholars and practitioners, after many years, are convinced that the Constitution refers to Rome as a municipality (*Comune*) and that the reservation of law as the exclusive source of regulation (*riserva di legge*) does not extend to the other layers of the territorial governance.

The lack of formal precision left the task of defining the capital's territorial scope to parliamentary legislation, which ultimately relegated Rome's governance to the lowest possible level, treating it primarily as a municipality rather than a distinct institutional entity. Subsequent state legislation failed to leverage the potential benefits of its constitutional recognition and left many issues unresolved.

To illustrate the issue from a practical standpoint, I can bring the example of the Capitoline Assembly's regulatory authority. The innovative potential of Article 114 IT Const. was not fully exploited by Law 42/2009. Article 24 of this law provides Rome with administrative and regulatory autonomy that is "special" in its scope but remains formally aligned with the standard regulatory framework of other local entities (Sterpa, 2012, 62). In other words, rather than granting Rome a unique regulatory power with only constitutional principles as its limit, the law constrained its autonomy within the boundaries of national and regional legislation. This means the Assembly cannot override national laws to address Rome's unique needs as the capital. Additionally, its regulatory authority is strictly bound by a parallelism with the special administrative powers granted to Rome which, according to said law no. 42, include the enhancement of historical, artistic, and environmental assets,

along with responsibilities in economic development, tourism, urban planning, public and private housing, urban services (particularly public transport and mobility), and civil protection. Despite this broader mandate, the authority of the Capitoline Assembly remains quite limited.

This complex legislative journey has resulted in a hybrid territorial entity, where the functions and characteristics of a metropolitan city coexist with the special prerogatives occasionally granted to *Roma Capitale*, initially conceived as a temporary arrangement. This situation has led to a layering of legislation that has created significant legal and administrative confusion, weakening the entity and hindering the effective exercise of its powers.

At the core of the issue remains the city's multifaceted institutional identity, as highlighted at the outset of this analysis. The boundaries of Roma Capitale are those of a municipality, whereas the Metropolitan City of Rome encompasses the much larger area of the former Province of Rome. This misalignment creates a blurred distribution of metropolitan functions, as the powers granted to Roma Capitale apply solely to the municipality and do not extend to the broader metropolitan area. Consequently, the governance of the territory remains fragmented, strengthening the urgent need for structural reform.

5. The struggle for a constitutional reform redefining Rome's status

The ongoing struggle for a constitutional reform that strengthens Rome's status as the capital city reflects the discussed institutional ambiguities and mirrors current governance challenges: the main sensitive issue concerns, in fact, the need for a constitutional qualification of Rome's level of governance, be it a municipality, a metropolitan city, a region or a new hybrid entity. Many commentators recognise the fiasco of the Delrio Act, which transformed the province of Rome into a metropolitan city while failing to design a specific institutional asset that distinguished Rome from other metropolitan cities by reason of its being a capital. This failure deprived Rome of its identity, as it established instead a strong local competition between the other territorial entities such as Roma Capitale and the Region of Lazio, not to mention a risk of overlapping the exercise of functions.

Several constitutional reform proposals are currently under discussion in the Parliament — draft bills A.C. 278[VI], A.C. 514[VII], A.C. 1241[VIII], A.C. 2001 at the Chamber of Deputies

and draft bill A.S. 172 at the Senate of the Republic — and they seek to address the necessity to empower the capital of Italy by redefining Rome's legal and administrative framework within the legal order[IX]. While two proposals are introduced by former municipal councillor and MP from Democratic Party (PD) Roberto Morassut (A.C. 278 and A.C. 1241), A.C. 2001 is sponsored by Italia Viva's MP Roberto Giachetti, who previously ran as the center-left candidate for Mayor of Rome, another is a joint text tabled by Forza Italia's MP Paolo Barelli and Fratelli d'Italia's MP Luca Sbardella (A.C. 514). Lastly, draft bill A.S. 172 in the Senate is proposed by Forza Italia's senator Maurizio Gasparri. It shall be considered that the initiation of parliamentary debate is taking place at the Chamber of Deputies, signalling that debates in that Chamber will be relevant to place the issue on top of the legislative agenda.

More importantly, according to recent news (De Rosa, 2024), the synthesis of these proposals may ultimately take shape through a government-sponsored bill. Prime Minister Meloni declared her personal involvement in the initiative, particularly given the broad, cross-party consensus on key aspects of the reform. This consensus is reflected in the significant similarities between the centre-right and the centre-left proposals.

It is my contention that this reform is very likely to have a positive outcome, not only because of its broad support but also because, from a political and cultural standpoint, this is a one-of-a-kind reform that can be easily heralded by a centre-right government. By taking the lead on it through a government-sponsored bill rather than a parliamentary-initiated text, the centre-right ensures steering power in the debate. Furthermore, a government with a wide consensus, underpinning nationalist or sovereigntist tendencies, may see reinforcing the capital as a way to bolster national identity and state prestige.

The outcome of the parliamentary debate and the trajectory of the reform process remain uncertain. One possible avenue, as most ambitiously outlined in A.C. 278, is the establishment of *Roma Capitale della Repubblica* as a distinct region, thereby incorporating it into the list of Italian regions under Article 131 of the Constitution and creating an enclave within the Lazio Region. Alternatively, proposals such as A.C. 514 and A.C. 1241 advocate for the constitutional entrenchment of Rome's special autonomy, as they propose to amend Article 114 to enhance the normative, administrative, and financial autonomy of Rome as the capital, including granting it legislative powers in areas of concurrent legislative competence (with the exclusion of healthcare) and all residual regional competences. They

also underscore the necessity of a constitutional guarantee ensuring the provision of adequate financial resources for the effective exercise of Rome's institutional functions.

Before reaching my conclusions, allow me to share some perplexities annexed to the possibility that Rome acquires the status of a region with ordinary regime (i.e., not a special region). In this case, Rome's institutional framework would be outlined directly by the Constitution, but one of the proposals establishes that Rome's basic Statute, instead of being enacted by ordinary law, as is the case with ordinary Regions, would be enacted through a two-thirds deliberation of the Capitoline Assembly. By such means, the authority of the Parliament would be overridden by that of a local assembly, creating friction with the normal hierarchy of legal sources. Furthermore, the transformation of Rome into a Region could enable the new entity to access the Constitutional Court and challenge the constitutionality of laws or raise jurisdictional conflicts, much like other Italian regions: such a consequence would perhaps require an explicit acknowledgement in the corresponding articles of the IT Const. (Articles 127 and 134).

All in all, incorporating Rome into the rigid institutional framework established by the Constitution for the Regions may not be the most suitable solution unless accompanied by appropriate adaptations and differentiation.

6. Conclusion: Rome, an eternal city in eternal legal uncertainty?

The debate over Rome's constitutional reform has been ongoing for more than twenty years (Marcelli, 2003; Mangiameli, 2003) and at every political shift in the government the emphasis on the reform was relaunched again (Caravita, 2010; 2015). Clarifying the position of Rome in the constitutional order by taking into account the necessary changes to the vertical and horizontal distribution of power is essential to reconcile the dual identities of capital cities, as local entities and formants of the national constitutional identity. This requires a constitutional design that moves beyond a purely state-centric approach, embracing a model of governance that fosters the emergence of a functional dimension of the capital (Romano, 2021). Capital cities in federal states tend to be characterised by the highest level of autonomy: Berlin, Vienna and Brussels are granted a regional status.

Even in unitary states, capital cities are often granted a special status. Notable examples include *Greater London*, established by a parliamentary act in 1999, and the *Ville de Paris*, which,

since 2019[X], has been structured as a special-status entity (*collectivité à statut particulier*) under Article 72 of the French Constitution and is also part of the *Métropole du Grand Paris*, a functional public body for inter-municipal cooperation. In Spain, the Constitution designates Madrid as a *Villa* (Article 5), while Organic Law No. 3/1983 established the *Comunidad Autónoma de Madrid*, also granted with specific functions. These cases illustrate how capital cities adapt their governance structures to evolving challenges within their national contexts (Fucito, 2021).

At present day, the Italian system singles out as having adopted a minimalist approach. However, prospectively, it is reasonable to argue that the reforms under debate present a unique opportunity to enhance Rome's governance and autonomy, positioning it more closely with its status as the capital of a major European nation. However, a well-thought-out constitutional amendment, while necessary to strengthen Rome's identitarian role in the Italian legal order, must be carefully crafted to ensure consistency with the existing constitutional setting, particularly in relation to the role of the Regions and the distribution of power between "ordinary" regions and regions with special autonomy.

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[II] Translation of the author.
[III] See for instance the textbook quoted by Haberle (1990, 23): K. Stern, *Das Staatsrechte der BR Deutschland*, Bd, I, 2. Aufl. 1984, S. 281 f.
[IV] As Agnew describes at 233, «Piazza Venezia became the key space in Rome for performing the ceremonies and ritual
speech-making of Italian Fascism. It was from the balcony of the Palazzo Venezia that Mussolini made the speeches proclaiming the "victories" won by Fascism and Italy and commanding Italians to faith and obedience. The sacralization of the Vittoriano as the site of the burial of Italy's Unknown Soldier (1921) was used by the Fascist regime to further reinforce the symbolic centrality of Piazza Venezia to the "nationalization" of Rome».
[V] Translation of the author.
[VI] Available online, https://documenti.camera.it/leg19/pdl/pdf/leg.19.pdl.camera.278.19PDL0006330.pdf.
[VII] Available online, https://documenti.camera.it/leg19/pdl/pdf/leg.19.pdl.camera.514.19PDL0008670.pdf.
[VIII] Available online, https://documenti.camera.it/leg19/pdl/pdf/leg.19.pdl.camera.1241.19PDL0042230.pdf.
[IX] It should be also mentioned a legislative proposal that aim at implementing Article 144 IT Const. through ordinary legislation: A.C. 1593, available online at camera.it.
[X] The reform of the Statute of Paris is established by the law n° 2017-257 of 28 February 2017, in JORF n°0051 du 1 mars 2017, but entered into force in 2019.

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Paris: Epitome or Blind Spot of the Constitutional Identity of France?

by

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Abstract

This short piece aims to make sense of the place of Paris within the French constitutional order and to analyse the role of the capital city in defining the constitutional identity of the country. The paper is organised around two main axes: first, the specific features of the legal status of Paris within the French legal order, and second, how this contributes to shaping the constitutional identity of France

Key-words

Paris, French constitutional order, constitutional identity, Fifth Republic, metropolitan governance

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1. A paradox

Unlike many other constitutions, both in Europe and elsewhere (see Häberle 1990)[II], the Constitution of 4 October 1958 does not make reference to Paris as the capital of the French Republic. This was also the case with the previous regimes: the capital city is not mentioned in any of the constitutions enacted since 1791.

The 'silence' of the Constitution of 1958 is all the more striking as Article 2 mentions a number of identity-related symbols of the French Republic, including language (paragraph added in 1992), the national emblem (i.e. the flag), the national anthem, and the motto of the Republic[III]. In its original wording, Article 2 also proclaimed the fundamental principles of the constitutional order, which were moved to Article 1 in 1995 and further amended in 2003: 'France shall be an indivisible, secular, democratic and social republic. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs. It shall be organised on a decentralised basis'. In this respect, there is strong continuity between Articles 1 and 2 of the Constitution of 1958 and Articles 1 and 2 of the Constitution of 27 October 1946.

This short piece aims to make sense of the place of Paris within the French constitutional order and to analyse the role of the capital city in defining the constitutional identity of the country. The paper is organised around two main axes: first, the specific features of the legal status of Paris within the French legal order, and second, how this contributes to shaping the constitutional identity of France[IV].

2. Making sense of the Constitution's silence

As I have mentioned in the preceding paragraph, the French Constitution is quite precise in defining the symbols of the Republic, except for the capital city. The ensuing question is how the silence of the Constitution should be interpreted. The silence of constitutional documents has been widely discussed, as it highlights 'the inevitable and irreducible role of conventions and culture in constitutional law' (Albert and Kenny 2018: 881). Interestingly, provisions on capital cities are one of the few exceptions to the 'near-absolute silence of constitutions and constitutional thinkers on city power' (Hirschl 2020: 37). Why did the drafters of the Constitution of the Fifth Republic, as well as their predecessors since the Revolution, refrain from entrenching references to the capital city? Different answers are

possible. First, in a highly centralised state the role of Paris as the political, administrative, cultural and economic hub of France[V] is so self-evident that no explicit entrenchment of its role is needed. In this respect, there are similarities and differences with the *legal* status of Rome as the capital of Italy. Since the age of the Capetian kings, the emergence of Paris has gone hand in hand with the century-long process of formation of the French state (see Delpérée 1993: 132). By contrast, when the Kingdom of Italy was established in 1861, the idea that the capital of the new state would be Rome was almost unanimously viewed as ineluctable (see Luciani 2020: 1). Paris clearly embodies the continuity of the French state, also at international level, but its relevance to the constitutional order is less easy to decipher. This may open up further questions on the interaction between statehood and constitutions and their respective roles in European public law systems. In practical terms, the fact that Paris is a 'constitutional unthought-of' (*un impensé constitutionnel*: Chauvel and Renaudie 2022) means that the regulation of its status is reserved for ordinary legislation. In the last fifteen years, the relevant legislative framework has been frequently modified[VI], which suggests that the position of the city of Paris within the legal order, aside from its status as capital, is more problematic than it used to be.

A second explanation has to do with the fact that French public law has generally been very suspicious of particularism[VII]. In fact, a closer look at the French legal order reveals that its territorial organisation is quite complex, with the coexistence of a common regulatory framework for local government authorities and the legislative entrenchment of a number of specific regimes, both in metropolitan and overseas regions (Plessix 2024: 317-318). The promotion of differentiation has been a defining feature of the legislative reforms of local government since the 2010s; still, the constitutional entrenchment of special statuses is a more delicate step, as the long-standing debate about the constitutional recognition of Corsica's specificities shows (see, among others, Mastor 2021)[VIII]. Therefore, the fact that the Constitution says nothing on a specific legal status for Paris *as the capital of the French Republic* may sound less surprising.

Finally, a third possible answer to the initial question is that the role of Paris as the capital of France is inherently problematic and has affected the regulation of its regime and, more generally, the attitude of the central government(s). It remains to be seen what this entails for the constitutional identity of France.

3. A complex evolution

Over the tumultuous course of French constitutional history, Paris played a crucial role from the outbreak of the Revolution until the founding years of the Third Republic. This point was powerfully presented by literary critic Albert Thibaudet in his essay *La République des Professeurs*, which was first published in 1927: 'La Révolution ce fut Paris, la Commune de Paris, la dictature de Paris. Ou plutôt les Révolutions, 1789, 1830, 1848. Tout se passait alors comme si la France eût été, comme l'Autriche d'aujourd'hui, hydrocéphale' (Thibaudet 2007: 87). In the revolutions that put an end to the *ancien régime*, the Bourbon Restoration and the July Monarchy, uprisings in Paris played a crucial part. In this respect, Tocqueville noticed that the 'Parisian omnipotence' in the political sphere was further highlighted by the centralised organisation of France (Tocqueville 2011: 75). For the same reason, however, when new regimes settled down, the municipal autonomy of Paris was viewed with suspicion. Both in 1848 and 1870, the overthrow of a monarchic regime was followed by the appointment of a mayor of Paris, as this figure was supposed to embody the emergence of a new, republican regime (Granier 1982: 119). However, in 1848, when the first stage of the democratic revolution came to an end, no mayor was elected after Armand Marrast left the office. In the mature stage of the Second Republic and under the Second Empire, the capital was administered by the Prefect of the Department of Seine and the Prefect of Police, and the members of the municipal assembly were appointed by the state executive. Aside from the 'fear of revolutionary Paris', Baron Haussmann, who served as Prefect of Seine from 1853 of 1870, held that state authorities should be directly involved in the government of the capital city (Nivet 2004: 10; see also Prétot 1986: 719). Some years later, during the parliamentary discussion that led to the adoption of a reform of municipal government, liberal statesman Pierre Waldeck-Rousseau argued that Paris could not benefit from municipal autonomy and the special status of a capital at once (Renaudie 2019: 1470), as these two concepts appeared to be contradictory.

Developments in the nineteenth century point to a double paradox. On the one hand, after taking the lead in many of the upheavals that led to the end of monarchy and the advent of a republican regime, Paris was placed under state control. On the other hand, in a country in which administrative uniformity was the logical corollary of centralisation (Vandelli 2003)[IX], the capital city was quite often subject to a specific regime that made it distinct from

other French cities and towns (Souchon-Zahn 1986: 101). This approach was also influenced by opportunistic concerns. Although the Third Republic marked a break with the authoritarian model of the Second Empire, among republican forces there was little consensus on a decisive transformation of the capital's regime. Once a revolutionary bastion, Paris turned into a stronghold of conservative groups by the end of the nineteenth century. This ultimately dissuaded the republican elites from clinging to their long-standing idea of strengthening the capital's municipal autonomy (Nivet 2004: 11). The municipal council was elected by universal suffrage, but its chair was a relatively weak figure; meanwhile, the mayors of Paris's twenty boroughs (*arrondissements*) would be appointed by the state executive until 1975. On a different note, the emergence and consolidation of universal male suffrage clearly reduced the relative weight of Paris and its inhabitants at national level and contributed to putting an end to the 'Parisian omnipotence' (Granier 1982: 122). The marginal role of Paris in the political landscape of the Third Republic was persuasively summarised, once again, by Albert Thibaudet: 'On ne gouverne que contre Paris … Seulement on ne gouverne pas contre la province. On ne gouverne pas contre Lyon et Toulouse. On ne gouverne pas aujourd'hui contre *La Dépêche*' (Thibaudet 2007: 110).

A significant change in the legal regime of Paris would not occur until the advent of the Fifth Republic. Even in that case, the gradual, partial normalisation of the legal status of the capital city, with a diarchic executive composed of an elected mayor and the Prefect, was favoured by practical concerns (Nivet 2004: 15-16). Due to the predominance of conservative forces at the national level, by the 1960s the majority within the municipal council was no longer at odds with the state government. In spite of a few remaining suspicions, law no. 75-1334 of 31 December 1975 democratised the legal status of Paris and provided for a mayor elected by the municipal council. However, democratisation did not result into full normalisation, and the Prefect of Police kept his powers in the field of local police, that is, public order, civil protection, etc. In 2002 and 2017, the Prefect of Police was stripped of some of these competencies, which were attributed to the mayor[X]. There are similarities between these developments and the evolution of the status of London until the adoption of the Greater London Authority Act in 1999: little by little, the idea that the status of capital city per se did not justify the non-recognition of local autonomy gained traction both in France and the United Kingdom (Chauvel and Renaudie 2022).

Since the 1980s, a few relevant trends have been observed. On the one hand, the possible

emergence of Paris as a counterpower continued to cause occasional concern. At a time when Gaullist leader Jacques Chirac was mayor of Paris, which office he left after being elected President of the Republic, the Socialist government that had been installed in 1981 sought to reduce the influence of a much-feared counterpower. In 1982, the *loi PLM* redefined the municipal governance of Paris, Lyon and Marseille by devolving power to their boroughs[XI]. In providing a common legislative framework for three most populous cities in the country, the legislature focused on Paris not as the capital of France but as a very important city (in fact, the most important one). In the past four decades, the handling of the typical problems of metropolitan governance has coincided with a dilution of the specific features of a capital city (Renaudie 2019: 1474-76): by now, the focus of policymaking is not so much on the city of Paris as bounded by the Thiers wall as on its wider metropolitan area. The establishment of the Metropolis of Greater Paris (*Métropole du Grand Paris*) in the 2010s is a powerful illustration of this trend (see De Donno 2014: 13-24). The Metropolis of Greater Paris includes 131 municipalities within Île-de-France, with twelve internal subdivisions known as *Établissements publics territoriaux* and three times as many people as in Paris proper.

4. The symbolic function of the capital city

Aside from constitutional and legislative provisions, the capital city has always been affected by the exercise of state power. From a functional viewpoint, the capital city is unique in that it hosts the main institutions of the state; from a symbolic viewpoint, it is supposed to stand out for its exemplary character (see Renaudie 2019: 1471). In this respect, the case of Paris is of great interest. Since the second half of the twentieth century, French political leaders have taken particular care in enhancing the symbolic function of the capital city. This is illustrated by the management of the Panthéon and the so-called Great Works policy (*grands travaux*). For all their differences, the management of the former church in the fifth borough and the launch of daring projects like the construction of a pyramid in the courtyard of the Louvre Palace have one thing in common, that is, they are the product of presidential decision-making.

In 1964, President de Gaulle announced that the remains of Jean Moulin, the leader of the Resistance who had been executed by the German occupying forces in 1943, would be

translated to the Panthéon. This marked a break with the Third and Fourth Republics, when *panthéonisations* were proposed by the legislature; since 1964, the decision to translate the remains of a well-known figure from the (recent or remote) past has fallen within the President's tasks. Scholars have highlighted that the head of state resorts to *panthéonisations* to spell out his or her own view of the national history (Garcia 2004). Furthermore, the President of the Republic may take advantage of these ceremonies to highlight specific aspects of the ever-evolving constitutional identity of France. Such is the case, for instance, of Jean Monnet, one of the architects of European integration, and Simone Veil, who was responsible for the adoption of the ordinary law that partially decriminalised abortion. The *panthéonisation* of Simone Veil in 2018 predated by five years the entrenchment of the 'woman's guaranteed freedom to have a voluntary interruption of pregnancy' in Article 34 of the Constitution. Abortion is rarely mentioned in constitutions (see Suteu 2020), and the constitutional entrenchment of the 'guaranteed freedom to have a voluntary interruption of pregnancy' in France, aims to highlight a distinctive component of the country's constitutional identity (see Cavino 2024: 22-23).

The involvement of the head of state in the Great Works has been a defining feature of the Fifth Republic since Georges Pompidou's term of office. The relevance of these architectural projects to the definition of France's constitutional identity is less straightforward. This, however, is another example of how state authorities think of the capital city as a place that epitomises the whole country in front of the world. Even in absence of codified powers, the head of state is supposed to take the lead, while the Mayor of Paris has little room for manoeuvre.

5. Concluding assessment

In the preceding paragraphs, I have analysed some key steps in the evolution of Paris and its institutions. I have shown that there is a clear link between crucial components of the identity of France, first and foremost its republican form of government, and the place of Paris within the legal order. Quite often, this connection led the governments of the day to view with suspicion the possible implications of a fully-fledged municipal autonomy for Paris. This was the case not only under the Second Empire but also in the founding years of the Third Republic, when the French army defeated and repressed the revolutionary

Commune in Paris: 'une armée de ruraux, en 1871, a écrasé la Commune et … Paris est réduit, dans la vie politique de la France, à un quatre-vingt-troisième d'influence, selon le vœu des Girondins' (Thibaudet 2007: 87). By the end of the twentieth century, these concerns had lost much of their relevance. In recent times, lawmakers have mostly focused on Greater Paris and the typical problems of metropolitan governance. In this respect, Paris is no exception to a global trend that has put in the spotlight cities and their (lack of) role in public law (see Boggero 2018: Chapter 4; Hirschl 2020; Arban 2022).

Due to the centralised organisation of France, Paris is supposed to embody the country's history and identity. As I have argued above, under the semi-presidential regime of the Fifth Republic the head of state plays a primary role in this field. Here again, the peculiar position of Paris, which is set to highlight specific components of the national identity, is reflected in the fact that the President of the Republic, who ensures 'the continuity of the state' (Article 5(1) of the Constitution), has quite important decision-making powers that impact directly on the capital city. This is related not only to the need to ensure the proper functioning of the French institutions and administrative machine but also to the national and international visibility of Paris, its urban landscape, and its symbolic value. In sum, some of the specific traits of Paris's regime have been superseded, but the peculiar role of the capital *within the constitutional order* is here to stay.

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[II] Examples include Article 114(3) of the Constitution of the Italian Republic, Article 22(1) of the Basic Law of the Federal Republic of Germany, and Article 5 of the Spanish Constitution.

[III] As Carcassonne and Guillaume (2022: 48) put it, monarchy is, by definition, a symbol of tradition, and the ruling dynasty embodies national unity. A republic, in turn, needs to create its own symbols.

[IV] For the purpose of this paper, I will refer to national (constitutional) identity in a twofold meaning. On the one hand, 'constitutional identity represents the essential core of a given constitutional order and consists of the (explicitly or implicitly) unamendable provisions' (Drinóczi and Faraguna 2023: 67). In the case of France, the unamendability clause in Article 89(5) of the Constitution of 1958 only mentions the 'republican form of government'. On the other hand, I will occasionally refer to a typically French notion of constitutional identity, that is, *crucial* and *distinctive* principles that make the French constitutional order unique (see Zoller and Mastor 2021: 94-95). An example of this is a speech given by Pierre Mazeaud, then President of the *Conseil constitutionnel*, in 2005: on that occasion, President Mazeaud referred to *laïcité* as a crucial and distinctive component of France's constitutional identity – 'Autrement dit: l'essentiel de la République'.

[V] On Paris as a religious capital, see Boudon 2002.

[VI] See law no. 2014-58 of 27 January 2014 (*loi MAPA*M or *loi MAPTAM*), law no. 2015-991 of 7 August 2015 (*loi NOTRe*), and law no. 2017-257 of 28 February 2017.

[VII] This is exemplified by the suspicious attitude of France vis-à-vis the European Charter of Local Self-

Government. Although France signed the Charter in 1985, it only ratified it in 2007 (see Boggero 2018: 15).
[VIII] The regulation of basic aspects of the New Caledonian regime in Title XIII of the Constitution is a very peculiar exception (see Alber 2024).
[IX] However, see critical discussion by Plessix (2024: 320-324).
[X] See, respectively, law no. 2022-276 of 27 February 2002 and law no. 2017-257 of 28 February 2017.
[XI] See law no. 82-1170 of 31 December 1982.

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London: The Past, Present, and Future of the Seat of Constitutional Monarchy

by

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Abstract

London is the capital city of the United Kingdom. This unitary state is composed of four constituent nations under the 'devolution' arrangements, that may be regarded as 'asymmetric federalism'. This unorthodox constitutional structure results from the centuries of development from separate feudal autocracies, through imperial expansion, and into a modern constitutional monarchy. The last decade has seen these arrangements challenged by the irruptions caused by 'Brexit', the United Kingdom's withdrawal from the European Union. This article traces the past, present, and potential future of London's role as the geographic and symbolic seat of power in the United Kingdom's hybrid aristocratic-democratic constitutional system.

Key-words

United Kingdom; Constitutional Monarchy; London; Devolution; Brexit: Globalisation

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1. Introduction

"London calling to the imitation zone/Forget it, brother, you can go it alone."
John Graham Mellor (A.K.A 'Joe Strummer'), 1979.

The United Kingdom of Great Britain and Northern Ireland is a unitary state. The very name of this state, however, indicates that it is a composite of four different nations. The present 'devolution' arrangements, whereby the UK's Parliament in Westminster, London has transferred power to the devolved capitals of Edinburgh, Cardiff, and (Stormont, just outside of) Belfast has resulted in territorial arrangements that have been termed 'asymmetric federalism' (McGarry 2007; Zuber 2011).[II] However, it should be noted that this distribution of power to the constituent nations is becoming increasingly symmetrical. Before devolution, these regions and nations remained represented only by their Westminster MPs. Devolution may have challenged the material claim to dominance of England within the arrangements that govern life on the British and Irish isles. Legally, however, constitutional orthodoxy –as supported by dicta of the UK apex court[III] – holds that Westminster retains the ultimate decision-making authority over whether devolution continues. And Westminster Palace, the geographical residence for the UK's Parliament's two chambers of the House of Commons and the House of Lords, is perhaps the most recognisable geographical landmark in the capital of the United Kingdom – London.

This article considers London's significance to and within the UK's unwritten and flexible constitution. The first section provides a brief historical overview of how the city named by the Romans as 'Londinium' came to be the central seat of the United Kingdom's constitutional monarchy. The next section delineates the modern volta towards 'devolution', following the gradual creation of the United Kingdom through domestic (material and legal) acts leading to union from the 13th to the 19th century. Section III considers the 'regionalist' (Stanton and Craig, 2022) aspect of devolution, focusing prominently upon the creation of a political figurehead for the governance of London itself. The penultimate section reflects upon the future for London and considers the extent to which there is now a *Dis*united Kingdom. The final section concludes. London was an ancient colonial outpost which, over the course of a millennium, become a global imperial capital. It is and will continue to be a global modern city, but with a power based upon culture and diplomacy rather than military

force. The questions remain, however, of whether the dialectic challenges generated by London's globalist modernity, the tense accommodation of the Kingdom's four other national capitals, and the state capital's status as the primary geographical seat of a constitutional monarchy that derives its legitimacy from ancient sanctity (Godolphin 2025) may be a creative and constructive tension, or a destructive and deconstructive one (Agamben and Wakefield 2014; Patberg 2020; Garner 2025).

2. History: From 'Londinium' to the 'Global(isation) Capital'

'Londinium' constituted one of the Roman Empire's more far-flung outpost citadels. The conquest of Celtic Britain remains a testament to the formidable military strategic power of Ancient Rome, as evidenced by the (claimed) inability for any other foreign power to conquer the territory of the British isles for 959 years (Tombs 2022).[IV] The dynamics precipitated by successful defences of the territory from the Spanish and French empires in the 16th and 19th centuries respectively greatly accelerated Britain's own ascent to global imperial dominion in the 'long 19th century' (Hobsbawn 1962). The most recent such defences, mounted from 1914-1918 and 1940-45 against the second and third *Deutsche Reiche* during what certain historians term a 'European Civil War' (Payne 2011) in turn disturbed the equilibrium of Empire, leading to a slow and incremental process of de-imperialisation, a wave of independences, and efforts to reorganise into a 'Commonwealth', through the transitional phase of 'Dominions'.[V]

Empire also greatly impacted the internal dynamics of the development of the constitutional order, and London's place therewithin; however, it would be reductive to look only to such international dynamics for the causes of these processes. Instead, quotidian domestic and local issues played a driving role.

Empire accelerated into the 17th, 18th, and 19th centuries and the engine-room could be found not in the public constitutional halls of power, but instead in the *(hybrid public-)private* hands of the East India Company.[VI] Young ambitious '*nabobs*' (Dalrymple 2019) travelled from the regions of the United Kingdom on to the sub-continent, via the capital nerve centre of the various London-centric docks and ports, to make their fortune – via trade, and exploitation (Sanghera 2021; Sanghera 2025). The irony of empire in the sub-continent is that the seat of constitutional authority, the Crown, only officially took material territorial

control following the abject failure of private preferences to ensure order – the British Raj was established as late as 1858 under Queen Victoria, who thus styled herself 'Empress of India' from 1876, and so lasted for less than a century until the social and physical disintegration wreaked by the haste of British withdrawal and 'partition' into India and Pakistan directly following the end of World War II (Khan 2017).[VII]

As Empire expanded and mutated abroad (Douglas Scott 2023), London and the executive and legislative arms of power contained therewithin would be the steering wheel for the vehicle of the Industrial Revolution that would literally drive through the geography of the land, and metaphorically drive through the settled socio-economic dynamics of the nation's cities, towns, villages, and hamlets (Blake 1886).[VIII] Labour and capital drained to the imperial centre of London from the peripheral regions.[IX] Parliaments in Westminster extended the electoral franchise, incrementally, so that within two centuries those eligible to vote expanded from land owning men to (nearly) all individuals over the age of 18[X] – including women, following the protest activities of the Suffragette and Suffragist movements including the infamous suicide of Emily Davison at the 1913 Epsom Derby. Constitutionally, the Westminster Parliament took control over the executive following the upheaval of the Glorious Revolution of 1688, and the longer-term legacy of Parliamentary and Royalist conflict that drove the English Civil War, resulting in the *interregnum* of Cromwell,[XI] and the Restoration. Parliamentary Sovereignty would evolve, arguably, into the '*grundnorm'* (Kelsen 2024); 'rule of recognition' (Hart 2012), and 'meta-master-principle' (Dworkin 1986) of the United Kingdom Constitution.

Imperial wars *inter alia* in Crimea and present-day South Africa in the 19th century were followed by World Wars in the early 20th century, and post-colonial Cold War proxy conflicts *inter alia* in Singapore, Korea, and (arguably) the Falkland Islands (Mercau 2019).[XII] London remained the seat of executive governance by which these wars were prosecuted, the use of the armed forces remaining a 'prerogative power' of the Crown to be exercised by His or Her Majesty's Government rather than being a power that had been placed into 'abeyance' by the decision by Parliament to overwrite it and take the power for itself.[XIII] Pre- and inter-war dynamics were dominated by various economic crises, contractions, and expansions leading to what has been termed as 'political nightmares' (Tinline 2022) at various *volte*. Fears of inflation and growing unemployment in the 1930s following the Weimar socioeconomic, political, constitutional, and moral collapse in Germany prompted decisions with great

import for the macroeconomic material constitution; similar dynamics would replicate themselves following the decision to join the European Economic Communities in 1973, leading through 'Black Friday' crashes and reversals of decisions to join European monetary constructions, through the 'wait and see' and 'prepare and decide' policies of the Major and Blair/Brown administrations respectively in relation to adoption of the Euro, and eventually decisions to engage in 'big bang' deregulation of the City of London by the New Labour government – in continuation of Thatcher's Hayekian globalist pursuit of 'comparative advantage' by making the UK the 'service provider' to the world, and thus the dismantlement by (literal and metaphorical) force of the country's primary and secondary industry in the 1980s (Bolick 1995). Gordon Brown's decision whilst Chancellor of the Exchequer to engage in further deregulation regarding financial services did not cause the Global Financial Crash of 2008, but it arguably did leave the United Kingdom's economy, and specifically financial and banking sector greatly exposed, as certain providers collapsed whilst others were nationalised (Mackintosh 2015).

All of these decisions were taken in London. Before devolution, those regions and nations who were most greatly affected by these executive choices – including the North East, Wales, and the North West[XIV] – remained represented only by their Westminster MPs. The New Labour socioeconomic irritations saw a nascent representation for the devolved nations, but greater *regional* devolution and the creation of local mayors in 'powerhouse' regions would come only during the Conservative governments of the mid-2010s.[XV] Regional equalisation was a driving policy of the Boris Johnson administrations, with its flagship slogan and agenda of 'levelling up' (Martin et al 2022). It may be debated whether the true objective behind 'levelling up' was a return to autarky and self-sufficiency by reconstructing primary and secondary industry within the United Kingdom as part of Johnson's Svengali Dominic Cumming's 'super-forecasting' (Tetlock and Gardner 2016) of the long-term threats to the country.

Attempts by the David Cameron-George Osbourne regime to empower the UK's regions through the 'Northern Powerhouse' scheme have not come to fruition, as evidenced by the eventual scrapping of plans for High Speed Railway to connect London to the North by Rishi Sunak in 2023. The Cameron-Osbourne policies of 'austerity' over public spending (Keegan 2014) – with an attendant nebulous commitment to the 'Big Society' as a form of quasi-governmental solidarity rebalancing (Norman 2010) – have been criticised by

economists as unnecessary economically and incredibly negatively consequential societally (Deleidi and Mazzucato 2019). London experienced these frissons viscerally, as broken promises from the junior Liberal Democrat coalition party regarding abolishing student fees, with a referendum on 'alternative voting' instead being held unsuccessfully in an apparent example of their leader Nick Clegg putting 'party above country', led to youth-driven riots and looting in the capital and beyond in 2011 (Briggs 2012).

The Cameron majority regime established following the 2015 election would come to a premature end before breakfast.[XVI] His fate was sealed by the decision to open up to the country in a popular plebiscite the question of whether constituent power that had been delegated to Brussels and Strasbourg should be repatriated to London.[XVII] After succeeding in a similar *internal* constituent gamble regarding whether popular constituent power should be repatriated to Edinburgh through 'independence' thus reversing the Acts of Union of 1707, Cameron failed in his wager in favour of continuing adherence to *supranational* delegation. The Conservative political gambler who, *au contraire*, succeeded in his own gambit as a result was Boris Johnson. In the first example of a leader parlaying the Mayoralty of London into the position of Prime Minister of the United Kingdom, Johnson took over from the troubled transitional caretaker regime of former Home Secretary Theresa May upon her resignation in 2019 after multiple landslide defeats in Parliament for her administration's attempts to secure approval for the EU-UK Withdrawal Agreement (Shipman 2024a).

The sequel to the 2016 'Take Back Control' slogan in the snap December 2019 election – 'Get Brexit Done' – would become totemic for Boris Johnson's landslide victory (Shipman 2024b). 'London', as the diplomatic metonym for the UK's exercise of sovereign authority in international law, sought to challenge and redraft the terms of withdrawal and future relations from the EU under the stewardship of Lord Frost. Meanwhile, London as the internal metonym for executive and parliamentary authority, and specifically 'Whitehall' therewithin as the metonym for executive power, pursued the socioeconomic policy of 'Levelling Up'. The language of 'gamification' (Werbach and Hunter 2020) obscured, for many commentators who did not have eyes to see, the objectives behind this policy. One may interpret the agenda as part of a *revanchist* anti-globalist, anti-neoliberal Johnsonian neo-Victorian, neo-One Nation(alist) drive to reupholster the fabric of the society and economy that had been torn asunder under Thatcher's radical Hayekism, a socioeconomic approach that was continued under the New Labour governments (Jenkins 2007). An underlying

premise of this ideology – the irreversible march of globalisation – has arguably been catastrophically dispelled by the COVID-19 pandemic, the responses thereto, the attendant disruption to global trade flows, and the Trade War unleashed by the tariffs of the Trump 2.0/47th presidency, following the interregnum of the Biden/Harris 46th presidency of the United States of America. The potential success of the Johnson's premiership's policy to guarantee re- and upskilling for any adults who were willing to take up the offer of lifelong (re-)education and training could never be judged, for Johnson resigned due to his and others' (including future Prime Minister Rishi Sunak's) violation of pandemic restrictions (see Shipman 2024b).

Johnson's increasingly frenetic attempts to quell the scandal, which just so happened to coincide with Russia's full-scale invasion of Ukraine and saw the Prime Minister pledging support unwaveringly and almost unconditionally in neo-Churchillian fashion, has created a pathway dependence for the UK's foreign policy in relation to the Western Eurasian conflict, following by the Truss, Sunak, and now Labour Starmer regimes, and culminating legally in 'London' and 'Kyiv' signing a 100 year security partnership agreement. The Johnsonian reported proposals for an Anglicisation of continental intergovernmental relations through a 'European Commonwealth',[XVIII] that would also include resistant EU Member States most prominent amongst them Poland and Hungary,[XIX] would not come to fruition. However, the French President Emmanuel Macron's proposal for a 'European Political Community' has arguably been subtly taken over by the UK government, as evidenced by the summer 2024 conference at Blenheim Palace, the birthplace and ancestral home of Winston Churchill. These international ruptures, developments, and irritations continue apace, conducted from Whitehall and discussed in Westminster, all while socioeconomic distress through the 'cost of living crisis' and physical violence through the gang knife-crime epidemic continue apace in the London that is currently governed from the Mayoral office of Sir Sadiq Khan.

3. Power to the Nations and Regions?

The constitutional, economic, and societal dominance of London may be compared to and contrasted with the capitals of its European neighbours. Paris is the seat of executive, legislative, judicial, historical, societal, and cultural power in the Republic of France;[XX] by contrast, in the Federal Republic of Germany, the federal legislature and executive remain in

the previous *Reichskapital* of Berlin, but apex *constitutional* adjudicative authority is ensconced within Karlsruhe,[XXI] with strong executive federalism through the *Ministerpräsidenten* of the sub-state *Lände* units.[XXII]

London remains the seat of monarchical, Prime Ministerial, parliamentary, regulatory, economic, and (cosmopolitan-)cultural power within the United Kingdom. However, the unfolding story of devolution since the New Labour governmental reforms following their general electoral victory in 1997 has carved out new sites of power and authority in the United Kingdom's devolved nations and regions, resulting in parliaments, assemblies, mayoralties, and more within Wales, Scotland, Northern Ireland, and a choice selection of relevant English regions.[XXIII] The story has been one of gradually unfolding delegation of powers – symbolic, titular and linguistic,[XXIV] and functional – from the Sovereign Parliament in Westminster to these regions. The constitutional disintegration from supranationalism contained within the 'Brexit' process of EU withdrawal challenged this equilibrium. Responses thereto, from Labour Prime Ministers past and future-present, have sought refuge in the simpler and more easily digestible concepts of pure federalism, drawing also from the experience of a potential secession embodied in the Scottish independence referendum in 2015 (see Brown 2015). As the United Kingdom adjusts itself to a reality of a Parliament that has re-established material Sovereignty after four decades of delegation to the *supra*national level with regard to certain conferred competences, the effects upon delegation *down* to the *sub*national and -state level will continue to unfold, and all may be up for grabs for those with particular agenda regarding the independence or otherwise of these nations and regions. Arguably the United Kingdom's constitutional identity of 'hybrid aristocratic-democratic constitutional monarchy' would have been threatened if the House of Lords had indeed been replaced by an 'Assembly of the Nations and Regions', as proposed by the Labour party before their electoral victory in 2024.[XXV]

4. The future-present-past of the constitutional monarchical capital

London generates and regenerates as the United Kingdom recovers from and adapts to its new symbolic and material 'independence' from the supranationality of European integration. Constitutionally, the Westminster Parliament is free again to legislate in areas of competence that were previously 'conferred' to the EU institutions, and exercised thereby in

Brussels, Strasbourg, and Frankfurt with adjudication thereupon in Luxembourg. Legally, the previous Conservative governments from May to Johnson chose first to 'retain' the 'overriding and binding domestic source'[XXVI] of EU law, before 'assimilating' it through a process of incremental stripping of its special features, and the creation of extensive 'Henry VIII' powers enabling modification thereof – albeit with very limited use in practice.[XXVII]

Macro-economically, attempts to 'unleash' growth in the UK economic through radical deregulation during Liz Truss' short and ill-fated premiership led to global institutional revolt, and a restoration of (a semblance) of economic unorthodoxy under Rishi Sunak (see Shipman 2024b). Today, the Labour government of Sir Keir Starmer and his Chancellor of the Exchequer Rachel Reeves must wrestle with the dynamics of 'passive divergence' as the EU moves forward in areas of competence such as product regulation, and assessments of compliance in key areas such as data protection loom large. The mechanisms created to address this phenomenon[XXVIII] may be criticised for undermining principles of the Rule of Law – ironically, in the same vein as criticisms of executive power from previous Conservative governments in relation to what used to be EU law, albeit with a diametrically opposed policy purpose.

At the micro-economic and socio-individual level, those nationals of the EU Member States who previously had the right to move to and establish themselves freely, both for economic and democratic purposes (see Garner 2018), in the United Kingdom have been stripped of any such capacity.[XXIX] Those who qualified under the transitional arrangements to enable gradual disintegration under the EU-UK Withdrawal Agreement can now acquire 'settled status' – an ossified time-capsule of the free rights of movement that they previously enjoyed in relation to and within the British isles (albeit with the exception of the region of Northern Ireland with its de facto status within the EU's internal market under the 'Windsor Framework' (see Fabbrini 2022). The locus of EU-UK relations has been transferred back to the geopolitical level of diplomatic relations conducted on the basis of the logic of intergovernmentalism, as evidenced by the EU-UK summit on 19 May 2025, in London. The subject-matter has been firmly dominated by the existential threat posed to Europe by Russia's full-scale invasion of Ukraine, and the attendant external security and defence cooperation between the nuclear power of the United Kingdom and the international organisation of which it used to be a member.

5. Conclusion

London has evolved from Roman backwater outpost at the farthest North Western regions of that Empire, to the seat of governance first of a formal global British Empire, before transitioning into a capital of the New Global(ised) Order post-war – an order that is now undergoing sustained challenge from *revanchist* autarky economically, and pre-Medieval anti-liberal pro-hierarchical movements constitutionally. It remains and will remain a global city despite – and perhaps even because – of Brexit. Perhaps the greatest challenge to the current constitutional identity of the United Kingdom as a hybrid aristocratic-democratic constitutional monarchy will not, however, come from without, but rather from within, as movements towards 'modernisation' in constitutional reform could drive the polity towards standardisation and the simpler conceptual norm of 'federalism'. However, if any lessons have been learned from the decade of socio-economic, political, and legal irruption prompted by Brexit, then surely the most prominent amongst them is that society and the electorate *must* be taken along in any such grand plans for constitutional transformation – regardless of the support that may be expressed therefor from the cosmopolitan elites who are based within the M25 boundaries of the nation's capital.

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[II] For the claim of growing symmetry, see discussion below of recent legislation pertaining to Northern Ireland, Wales, and Scotland.

[III] See *Reference by the Lord Advocate of devolution issues under paragraph 34 of Schedule 6 to the Scotland Act 1998* [2022] UKSC 31.

[IV] William 'the Conquerer' of Normandy defeated Harold Godwinson ('Harold II') to claim the throne in 1066. Debates may be held over whether the 'Glorious Revolution' through which William of Orange came to the throne may similarly be regarded as a 'conquest' by the then great power of the Netherlands. More flamboyant rhetorical claims abounded during the Brexit referendum process, and previously in academia, regarding the extent to which accession to the then-European Economic Communities in 1973 similarly constituted a 'revolution' through which the London Westminster Parliament ceded sovereignty to a 'foreign' supranational entity (see Wade 1996).

[V] The choice of the term 'Commonwealth' was auspicious, given that this was the moniker chosen by the 'Lord Protector' Oliver Cromwell for his regime following the English Civil War, one of the only periods in the last millennium in which constitutional monarchy was disrupted within the territory of the now-United Kingdom of Great Britain and Northern Ireland.

[VI] The extent of this hybridity is evidenced by the fact that the Foreign, Commonwealth, and Development Office retains furniture from the headquarters of the East India Company.

[VII] The last Viceroy of India who was ultimately responsible for partition, Louis Mountbatten, was assassinated by the Irish Republican Army on 29 August 1979 in Co Sligo, Eire.

[VIII] William Blake provides a literary account of these effects upon the psychospiritual-geography of the nation, which was later set to music by Sir Hubert Parry: "And was Jerusalem builded [sic] here,/Among these dark

Satanic Mills? (…) "I will not cease from Mental Fight,/Nor shall my sword sleep in my hand:/ Till we have built Jerusalem,/ In Englands green & pleasant Land" (Blake 1886).

[IX] For an example of the reflexive effects of Empire and the Industrial Revolution upon the cities of the UK, see how the Manchester cotton industry was disrupted by the colonial cotton industry established in India, and built upon quasi-slave labour, as gathered via oral history from an anonymous interlocutor on Piccadilly Square, Manchester, England, United Kingdom (c. 16 January 2025).

[X] For example, the Representation of the People Act 1832, also known as the first Reform Act or Great Reform Act.

[XI] Almost literally, as Cromwell mused about making himself King, in a historical hypothetical that may be compared to Napoleon Bonaparte crowning himself the Emperor of France in 1804 (see Lay 2020).

[XII] The Falklands War in 1982 may be regarded as a special case of the Cold War proxy conflicts, the most famous of which remains the USA's war in Vietnam, but which also includes engagements in which the USSR were the primary superpower protagonist, in Afghanistan. The dispute over the sovereignty of the Falklands/*Malvinas* may, instead, be regarded as an 'echo' conflict– ideologically as a struggle between democracy (with the caveats of the authoritarian trappings of the Thatcher years) and autocracy (the Argentinian *junta*), territorially as a post-colonial conflict over far-flung territory more akin to the Napoleonic Wars, and more materially a struggle between a formed 'Allied' power, and a power that had benefitted materially from the legacy of the primary 'Axis' power of *Das Dritte Reich*, in terms of capital and human resources (see Mercau 2019).

[XIII] See *inter alia Attorney General v De Keyser's Royal Hotel* (1920) AC 508, UKHL 1; *Laker Airways v Department of Trade* [1977] 2 All ER 182; and *R v Secretary of State for the Home Department, ex parte Fire Brigades Union* [1995] UKHL 3.

[XIV] For discussion of the impact upon Liverpool, the actions by that Council in the fact of bankruptcy under the influence of the *Militant* movement, and the reaction of the Labour leader Neil Kinnock, see Hayter 2022.

[XV] For example, see the Cities and Local Government Devolution Act 2016 for the creation of 'metro-mayors'.

[XVI] David Cameron resigned as Prime Minister on 24 June 2016, the morning of the EU referendum result, meaning that he was barely able to start let alone finish his second helping of 'Shredded Wheat', having stated in a 2015 BBC interview that 'terms [as Prime Minister] are like Shredded Wheat. Two are wonderful, but three might just be too many' .

[XVII] These (intellectual) concepts were not employed explicitly during the referendum campaign. However, the Machiavellian political genius of the 'Take Back Control' slogan was its ability to encompass both 'high' (for example see Wade 1996) and 'low' concerns over sovereignty and self-determination.

[XVIII] This plan was reported in the Italian press, see Federico Fubini, 'Il piano segreto di Boris Johnson per dividere l'Ucraina da Russia e Ue: il Commonwealth europeo' (*Corriere della Sera,* 26 May 2022) <https://www.corriere.it/economia/finanza/22_maggio_26/piano-segreto-boris-johnson-dividere-l-ucraina-russia-ue-commonwealth-europeo-02d3b232-dc6b-11ec-b480-f783b433fe60.shtml> accessed 9 May 2025; for an account in English see Alvise Armellini, 'UK wants to include Ukraine in 'European Commonwealth': Report' (*AA.com,* 27 May 2022) <https://www.aa.com.tr/en/europe/uk-wants-to-include-ukraine-in-european-commonwealth-report/2599081> accessed 9 May 2025.

[XIX] For analysis of the constitutional 'resistance' of these states to the European Union, most prominently in relation to the EU's 'value' of the Rule of Law, within the context of Brexit see Garner 2024.

[XX] One may consider the interest inherent in the *ancien regime* in France before the revolution of 1789 being nested within the Versailles estate, functioning in all but name as a separate settlement (see Ferrari 2025).

[XXI] One may compare this to the structure of the (non-state) constitutional order of the European Union, with executive functions contained within Brussels, legislative functions spread between Brussels and Strasbourg, economic executive functions enshrined within Frankfurt, and judicial power seated in the 'fairyland Duchy of Luxembourg' (see Stein 1981).

[XXII] Deustscher Bundestag, 'Basic Law for the Federal Republic of Germany', 23 May 1949, last amended on 22 March 2025.

[XXIII] One may consider the historical significance of the regions that have had mayoral power devolved thereto from London, bearing in mind historico-constitutional developments (as captured in the 'history' plays of William Shakespeare including *Richard II, Henry IV Part I and II, and Henry V*), and present sporting-cultural domination (football teams from the North West of England have won 22 of the 31 English Premier League titles since the reorganisation of the top flight of English football in 1992).

[XXIV] For example, the Welsh Legislative Assembly has now become the Senedd (see the Wales Act 2017).

[XXV] See Labour, 'A New Britain: Renewing our Democracy and Rebuilding our Economy' Report of the Commission on the UK's Future, December 2022.

[xxvi] See *R(Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5.
[xxvii] See the European Union (Withdrawal) Act 2018, the European Union (Withdrawal Agreement) Act 2020, the European Union (Future Relationship) Act 2020, and the Retained EU Law (Revocation and Reform) Act 2023.
[xxviii] See the Product Regulation and Metrology Bill [HL], Session 2024-25 and the Data (Use and Access) Bill [HL], Session 2024-25.
[xxix] A vast number of such individuals chose London as the city in which they would so establish their lives – cite statistics. For a snapshot from 2019 see The Office of National Statistics, 'The number of EU citizens living in London' (Census 2021, 16 July 2019) https://www.ons.gov.uk/aboutus/transparencyandgovernance/freedomofinformationfoi/thenumberofeuciti zenslivinginlondon> accessed 9 May 2025.

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Washington D.C. as a global center of power projection and its relevance for the interaction of State(s) and religion(s)

by

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Abstract

This contribution explores Washington D.C.'s unique role as a global epicenter in the production and dissemination of legal ideas, particularly in the context of U.S. power projection and the interaction between law and religion. From this perspective Washington D.C. represents a unique place in global legal culture and constitutional imagination.

Key-words

Washington D.C.; Law and Religion; Global legal culture; Mega-cities; Constitutional imagination

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I. Introduction

In positive law, States have always been at the center of the analysis of legal scholars. Recently it has been highlighted how a "(...) stark gap in constitutional scholarship on cities, amid ever-expanding urban agglomeration worldwide, reflects a long-standing state-centered vision of constitutional order" (Hirschl 2020, 30). If one moves from a pure positivistic understanding of the law and tries to assess cities relevance in the production of legal ideas and legal imaginary, Washington D.C. is one of the few cities that cannot be missed from the selection. This contribution highlights the role of Washington D.C. as a global center of U.S. power projection and hub for the production of legal narratives with a particular focus on the interaction of law and religion at the global level. Paragraph II focuses on the role of power projection theories in understanding the law. Paragraph III situates Washington D.C. in the current debate on megacities, highlighting how megacities contribute to shaping legal narratives and imagination. Paragraph IV points at the unique role of Washington D.C. and American legal culture in global debates on role and religion. Paragraph V concludes.

II. The United States and power projection

The United States occupies a central role in power projection theories, which focus on the ability of a state to influence others and assert its interests across the globe. The United States are an essential case-study in understanding how states utilize different tools-diplomatic, cultural, economic, military, or legal-to project their influence and maintain hegemonic power in international relations. As highlighted by Katz: "The United States must campaign against adversarial states and nonstate actors, organizations, and individuals. The United States must successfully operate in environments of intentional ambiguity, opacity, and asymmetry, and do so without its most powerful weapons" (Katz 2018, 25). Power projection implies an interdisciplinary understanding since the tools deployed in this context are several (law, of course, can be one of them): "America must be able to orchestrate the interaction between its power and its projection of that power on guidance, delivery, and effects by employing spatial, nonspatial, hybrid, and complex projection means" (Katz 2018, 25). In this complex scenario, capital cities, especially Washington D.C., become sites for producing legal narratives and imagination. Washington D.C., for its history, architecture, and global position, is at the center of US power projection and can be analyzed as the main

place of production of legal imagination not only for the United States but, in different contexts, for the Western world. Since when with the approval of the Residence Act of 1790 Congress decided that a "district of territory, not exceeding ten miles square, to be located as hereafter directed on the river Potomac, at some place between the mouths of the Eastern Branch and Connogochegue, be, and the same is hereby accepted for the permanent seat of the government of the United States"[II] Washington D.C. has been the headquarters of the production of legal ideas and tools in the United States, being a central knot of American law and culture in the context of the special relationship that binds them together in the United States. (Rosen 2006). We could argue that law deserves an essential place in power projection theories in understanding how States and other actors try to influence the national and international arena. Law can legitimize power and States' actions on the global stage, but it can also serve as a site for contesting power and interests. Examples are constantly offered in cases of military crises and civil wars where law is used to justify the conduct of state and non-state actors through reliance on international treaties, United Nations resolutions, or customary legal norms. Legal norms are, therefore, essential tools not only at the technical level because of the concrete consequences they determine, but also because they help contribute legal narratives that shape legal and political frameworks and imaginaries. In producing these narratives, they support or undermine the different states' credibility in the context of international community. By examining the sites and contexts of legal production and dissemination, we can assess the role of law in different social contexts that escape a pure positivistic understanding that is traditionally adopted by legal scholars (Annicchino 2021). The concept of "lawfare" has been adopted to describe the extent to which legal norms are mobilized to reach political or military goals without direct confrontation (Kittrie 2016). Lawfare acknowledges how law can be weaponized to project power more complexly yet effectively. The role of law in power projection is also illustrated by the influence that States seek in the context of international legal institutions like the United Nations and its agencies or the World Trade Organizations. Law often plays this dual role of power enabler and power constrainer, which is, therefore, at the core of power struggles. If one looks at the global influence of American legal culture in 1988, Antony Lester argued that: "The Bill of Rights is more than an historical inspiration for the creation of charters and institutions dedicated to the protection of liberty. Currently, there is a vigorous overseas trade in the Bill of Rights, in international and constitutional litigation involving norms derived from

American constitutional law. When life or liberty is at stake, the landmark judgments of the Supreme Court of the United States, giving fresh meaning to the principles of the Bill of Rights, are studied with as much attention in New Delhi or Strasbourg as they are in Washington, D.C., or the State of Washington, or Springfield, Illinois". Today, as a result of the new polycentric nature of the world, this influence is probably diminishing (Liptak 2008) and the capacity to project power of the United States is as well. Washington is becoming globally less relevant, but it is still at the center of Wester legal developments. The recent decision of the U.S. Supreme Court in the case involving the social media platform Tik Tok[III] is, for instance, yet another example of how legal ideas and doctrines elaborated in Washington D.C. will affect legal developments and debates in other countries especially in the West. It is for these reasons that if we look at law as culture what happens in Washington deserves special attention.

III. Washington in the context of mega-cities

Washington, as such, cannot be characterized as a mega or global city (Sassen 2001). It has been argued that we can identify a North-East Megalopolis or Boston-Washington corridor, which, in fact, served as the first example when the word megalopolis was coined[IV]. As Richard Florida has argued: "Bos-Wash, which extends from Boston through New York and Philadelphia down to Washington, D.C., is the world's largest mega-region of nearly 50 million people, generating almost $4 trillion in economic output. If this mega-region were its own country, the economy would be equivalent to the world's seventh largest, bigger than the United Kingdom's or Brazil's" (Florida 2019). As the seat of the U.S. federal government, the city is home to institutions such as the White House, Congress, and the Supreme Court. These institutions make it a hub for policymaking far beyond national borders. The city's international relevance is further amplified by the presence of global organizations like the World Bank, the International Monetary Fund (IMF), and numerous embassies. Washington's legal culture and the legal profession have caused scholars to ask themselves why Congress has so many lawyers. (Bonica 2020). A simple fact that brings distinctive cultural consequences on how public policies are thought and designed. Therefore Washington D.C., in the context of the study of the production of legal ideas and imaginary, deserves a unique place. Decisions like *Roe v. Wade*[V] or *Obergefell v. Hodges*[VI] are the products

of a distinct elite legal culture of Supreme Court specialists that affects the United States and the world (McGuire 1993). This legal culture produced in Washington D.C. in litigation, adjudication and law-making has an effect not only in legal circles, but also in popular culture. As Maxwell Bloomfield noted already in 1981: "In surveying the cultural scene today, one is most forcibly impressed by the continued outpouring of Court-related materials of all kinds. The public, it appears, has an insatiable desire to know more about the institution and its personnel" (Bloomfield 1981). The global influence of Washington D.C. and, for legal scholars, of the U.S. Supreme Court, still has ripple effects worldwide, shaping other legal orders, global governance structures and celebrity culture (Posner 2013). To that extent, if we analyze Washington D.C.it might be true that we may not meet the strict population criteria of a mega-city but, from the perspective of projecting power theories, Washington ascends to a status of global relevance in global constitutionalism.

IV. The impact on the interaction of State(s) and religion(s)

The interaction of law and religion as a distinct field of legal inquiry (Berman 1974) witnesses the relevance and influence of legal ideas and imaginaries produced in Washington D.C. This is also the result of the amount of the advocacy efforts of religious groups[VII] that make of Washington one of the global epicenters for the productions of laws with a distinct focus on freedom of religion or belief (Annicchino 2016). The city's legal institutions think tanks, and international organizations collectively generate, refine, and disseminate ideas that influence governance worldwide and the laws on the religious phenomenon are a distinct example of this contribution (Hertzke 1988). Scholars have also used the distinctive place of Washington as the city of secular power to argue that religious groups are present and part of the process, but they are not of it. A book from 1995 was, in fact, titled "*In Washington but Not of It: The Prophetic Politics of Religious Lobbyist*" (Hofrenning 1995). However, as Allen Hertzke has argued, reviewing the book: "But if we look at the actual agenda, we find religious groups battling over such issues as single-payer health care or a $500 child tax credit. Perhaps they are more *of Washington* than they would like to admit" (Hertzke 1996, 431). When the author suggests a distinctive approach by religious groups to lobbying and advocacy, Hertzke rightly points out: "But do they really live like prophets in the biblical tradition? Are they immune to the blandishments of power, such as an invitation to the White

House or a citation in the *Washinton Post?* These are questions left unanswered" (Hertzke 1996, 431). The presence of this secular power is a fundamental characteristic of Washington D.C., which is the seat of the U.S. Supreme Court, Congress, and the Executive Branch, all of which play pivotal roles in formulating and interpreting legal norms. The Supreme Court, for instance, produces landmark decisions that redefine the constitutional framework of the United States. Cases such as *Brown v. Board of Education* (1954)[VIII] and *Roe v. Wade* (1973)[IX] not only transformed American society, but also inspired global debates on equality and human rights with direct consequences in other legal orders (Annicchino 2015). These decisions, emerging from Washington's legal ecosystem, often serve as reference points for other countries grappling with similar issues and strategic litigation engineered by American religious groups has also shaped legal developments in other countries. The well known *Lautsi* case decided by the European Court of Human Rights[X] has been a classical example of this process which is also confirmed by the relevant amount of American NGOs and public interest law firm that contribute to the European legal discourses with interventions before the European Court of Human Rights (Annicchino 2011). A distinctive contribution made especially to European legal developments has been the culture of strategic litigation which religious groups have largely embraced making of it a distinctive feature of transnational culture wars (McCrudden 2015). To this extent transnational culture wars can be understood as a transplant of American culture wars on a global scale. Not a repetition, because the cultural context always different. But a paradigm to understand societal cultural and political development in the context of which mobilization and change through the strategic use of legal tools plays a distinctive role (Annicchino 2018).

V. Conclusion

Washington, D.C., stands as a pivotal nexus for producing and disseminating legal ideas that resonate far beyond its geographic confines. Its institutional density and its unique place right at the center of the developments of power projection in the Western world have made it a distinctive place to study the role of law in this context, which shapes legal narratives and imagination on a global scale. Washington's legal ecosystem is key to this process and deserves unique attention, especially for those with a particular interest in the interaction of law and religion.

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[II] U.S. Congress, *An Act for establishing the temporary and permanent seat of the Government of the United States-Residence Act*, 16th July 1790, Section 1.
[III] U.S. Supreme Court, *TikTok Inc., et al., Petitioners v. Merrick B. Garland, Attorney General* (24-656) *Brian Firebaugh, et. al., Petitioners v. Merrick B. Garland, Attorney General* (24-657), (2025).
[IV] As Richard Florida has argued: "Back in 1961, the economic geographer Jean Gottmann coined the term "megalopolis" to describe the emerging economic hub that stretched from Boston to Washington, D.C. The term came to be applied to a number of regions in the world, including the vast Midwestern megalopolis that extends from Chicago, through Detroit and Cleveland, and south to Pittsburgh, which Gottmann dubbed "Chi-Pitts", R. Florida, *The Real Powerhouses That Drive the World's Economy*, Bloomberg, 28/2/2019, available at: https://www.bloomberg.com/news/articles/2019-02-28/mapping-the-mega-regions-powering-the-world-s-economy.
[V] U.S. Supreme Court, *Roe v. Wade*, 410 U.S. 113 (1973).
[VI] U.S. Supreme Court, *Obergefell v. Hodges,* 576 U.S. 644 (2015).
[VII] The Pew Forum has defined religious advocacy as encompassing "(...) a wide range of efforts to shape public policy on religion-related issues. It includes lobbying as strictly defined by the Internal Revenue Service - attempts to influence, or urge the public to influence, specific legislation, whether the legislation is before a legislative body, such as the U.S. Congress or any state legislature, or before the public as a referendum, ballot initiative, constitutional amendment or similar measure. But it also includes other efforts to affect public policy, such as activities aimed at the White House and federal agencies, litigation designed to advance policy goals, and education or mobilization of religious constituencies on particular issues", Pew Forum on Religion & Public Life, *Lobbying for the Faithful: Religious Advocacy Groups in Washington D.C.*, 2012, disponibile su: https://www.pewresearch.org/wp-content/uploads/sites/20/2011/11/ReligiousAdvocacy_web.pdf.
[VIII] U.S. Supreme Court, *Brown v. Board of Education*, 347 U.S. 483 (1954).
[IX] See supra at footnote 5.
[X] European Court of Human Rights, *Lautsi v. Italy*, 30814/06 (2011).

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Decentralization in Italy and Greece: a diverging trajectory

by
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Abstract

Italy and Greece are two Mediterranean countries that are often paralleled in public policy and discourse because of their strong party patronage systems, perceived bureaucracy, Napoleonic governance traditions and clientelism, however an issue that separates them is decentralization. An analysis of the main decentralization indexes confirms an important difference in the level of local autonomy between the two countries, with Italy exhibiting a minor trend towards federalism over the last four decades while Greece remains one of the most unitary and highly centralized countries in the European Union. Moreover, decentralization reform in Italy is a more gradual and continuous process, while in Greece decentralization occurs in a rarer and more brutal scope. This difference in decentralization approaches has led to divergent outcomes in local governance, regional development, and political power distribution within each country, despite their shared Southern European context and historical similarities.

Key-words

Italy, Greece, decentralization, delegation, reform, centralism

1. Introduction

This essay provides an overview of the decentralization reform history in Italy and Greece, presents the main Decentralization Indexes for the two countries and highlights their commonalities and differences. Italy and Greece share characteristics due to their European Union membership, administrative systems and state traditions (Kickert 2011). Ongaro (2010) argues that the two countries are united in their centralism, strong political control over bureaucracy; party patronage, clientelism in personnel recruitment; a deep legalism rooted in the Napoleonic tradition, and institutional fragmentation. Burroni et al. (2021) propose that Southern European countries[I] belong to the same 'family of states' due to their shared traits, which creates an interesting case for political, institutional and economic comparison.

However, despite the two countries being grouped together as post-Napoleonic states constructed in a fragmented arrangement and a legalistic culture that inhibits the development of economic and societal innovation (Lambropoulou & Oikonomou 2018) their decentralization trajectories are considerably different. The impact of bureaucratic traditions may be profound, significantly shaping each state's approach to crafting and guiding its economic policies, but they are not the only variable defining political and institutional change (Lippi & Tsekos 2019).

In both countries governments declared a desire to bring an end to centralism and over the last four decades implemented extensive public sector reforms, while also attempting to reconstruct their system of territorial governance and implement decentralization reforms (Capano et al. 2024). Nevertheless, the outcomes of the reform efforts varied significantly. In Italy, the move towards decentralization unfolded gradually, influenced by political circumstances that introduced contradictions and ambiguities (Palermo & Wilson 2014). Conversely, Greece's efforts towards decentralization were marked by their brevity and lack of robustness, with successive governments perceiving decentralization as merely an obligation in the pursuit of establishing a modern state (Hlepas 2012).

The rationale of the analysis presented in this essay is discovering the extent to which Italy and Greece can be grouped together as Southern European countries when framed within a European decentralization perspective. While both are Southern European nations with a history of centralized governance, their paths towards decentralization are too

divergent to be grouped under the same umbrella. Italy has made substantial progress in devolving power to regional and local authorities, while Greece maintains a more centralized system with limited powers delegated to local governments (Spyropoulos & Fortsakis 2023; Oikonomou, 2019). The motivations and outcomes of decentralization efforts in these countries have been markedly different. Italy's process has been driven by regional identity politics, economic disparities between north and south, and a desire to improve administrative efficiency (Giovannin & Vampa 2020; Alessi & Palermo 2022). Greece has faced challenges in implementing meaningful decentralization due to a strong tradition of centralism, economic constraints, and concerns about maintaining national unity (Hlepas 2020). These distinctions underscore the importance of examining each country's unique context when analyzing decentralization processes, rather than assuming similarities based on geographical proximity or broad cultural categorizations.

The examination of decentralization characteristics in Italy and Greece involved an analysis using primary decentralization indexes and a literature review. Since the research focus is on a historical analysis, we selected databases that offer longitudinal data. By focusing on diachronic data, researchers can track the evolution of decentralization processes over time and analyze its historical development. These indexes serve as crucial tools for measuring the extent to which power and decision-making authority are distributed from central governments to lower levels of administration.

Measuring decentralization and its various elements is not easy (Harguindéguy et al. 2019). Decentralization includes multiple dimensions such as political, administrative and fiscal which do not always align (Schneider 2003). As a result, creating an objective and universally accepted measure of overall decentralization is nearly impossible (Martinez-Vazquez & Timofeev 2010). Even though the task of measuring decentralization is challenging, it has consistently drawn the attention of scholars from various branches of social sciences (Harguindéguy et al. 2019).

The principal Decentralization Index is the Regional Autonomy Index, which measures the authority in self-rule and shared rule exercised by regional governments within their countries on the basis of regional datasets which include annual scores for regional governments or tiers and a country data set that aggregates these scores to the country level (Hooghe et. al 2016). Further Indexes such as the similar Local Autonomy Index developed

by the European Commission (Ladner, et al. 2015) and the 2009 Assembly of European Regions are presented (AER 2009a; AER 2009b).

All three Decentralization Indexes paint a similar picture, Italy is a medium-high decentralized country (i.e. more decentralized than the European average), while Greece is one of the more centralized European countries. Thus, Italian regions have more political power and policy making ability than their Greek counterparts do. It is important to note that Italy has five Regions that are governed by a Special Autonomy Statute (i.e. Sicily, Sardinia, Trentino-Alto Adige/Südtirol, Friuli-Venezia Giulia & Valle D'Aosta), while all Greek regions are governed by the same legislative framework (the Monastic Republic of Mount Athos is a self-governed and sovereign part of the Greek State). Nonetheless, even though Italy may have an above average degree of decentralization; there is also a distinctive centralism (described as centralism without center) which is the result of the struggle between historic forces of localism and a desire for a strong unitary state (Romanelli 1995; Cafagna 1999).

This essay demonstrates, contrary to the literature that has highlighted the administrative and political similarities between Italy and Greece (Kickert 2011) that they experienced distinctly different paths of decentralization.

2. The difficulty in defining decentralization

The decentralization debate is often characterized by a lack of consensus and broadness.[II] This varying range of opinions on the issue of decentralization can be attributed to the sheer size of the literature, which spans more than five decades and hundreds of countries, as well as on the diversity of the research methods and scientific backgrounds (i.e. Economics, Political Science, Geography, Sociology, Anthropology, Public Administration, etc.) of the researchers (Greig et al. 2007; Faguet 2004).

Although decentralization has a significant economic element, it is chiefly a political phenomenon; decentralization is the main aspect of the territorial dimension of politics and is inherently local-favoring. Canavire-Bacarreza et al. (2017: 1210) propose that a country's decentralization trajectory is heavily influenced by its geography. This argument is based on the logic that more geographically diverse countries tend to show greater heterogeneity among their citizens, including their preferences and needs for public goods and services

provision. The link between decentralization, politics and geography is so strong that it can be traced back to the emergence of the idea of what constitutes a state.[III] States are defined by their ability to enforce and exercise independent control over the people and institutions that live within their territorial borders. However, direct rule from the center is practically impossible if a territory is too large. Therefore, the Government delegates some of its authority and responsibilities to subnational groups and institutions (Heywood 2013). Consequently, decentralization is mainly a result of states trying to safeguard their existence. States that are unwilling to compromise and decentralize are prone to splintering and collapsing (Shorten 2016).

Due to the political nature of decentralization the debate in the literature is characterized by each author's perception of the failings of the modern state and the philosophical optimal size and structure of government. Proponents of decentralization often base their arguments on the hypothesis of a wasteful and ineffective central government, which breeds clientelism, corruption and political alienation, hence, if we accept that the nature of the central government is de facto inefficient and to some extent unrepresentative, because of its distance from citizens and the size of its bureaucracy, a logical solution could be to decrease its authority by delegating responsibilities to the local level (Faguet 2014). However, the issue appears to be more complex since corruption does not necessarily decrease when decentralization increases. Some studies show that decentralization reduces corruption, whereas others conclude that corruption increases with decentralization (Lessmann & Markwards 2010; Treisman 2007). The differences in the results of similar policies can be attributed to their implementation and thee differences in the political environment. An effective policy seems to require accountability and politicians facing strong pressure from their constituents (Mansuri & Rao 2012). The smallness and intimacy of local politics may facilitate corrupt relations, according to empirical evidence from countries such as Germany, the USA, the Philippines and Italy (Rodden & Rose-Ackerman 1997; Rose-Ackerman & Palifka 2016).

Decades of inconclusive research on the effects of decentralization on service delivery and corruption have led to a shift in focus towards the impact of decentralization on the quality of governance itself. One of the main weaknesses of arguments in favor of decentralization is that they are based upon the idea that it leads to increased accountability, participation and democratization (Fox & Goodfellow 2016), thus critics of decentralization

argue that there are no a priori reasons why bringing decision-making closer to the people would obligatorily improve social welfare and the democratic process (Faguet 1997; Heller 2000). Some critics even assert that political power can be detrimental to fostering an accountable and efficient political system because of the ability of local elites to exercise their power more ruthlessly and callously without strong national supervision (Beall 2005)

Arguments based on economic theory are also ambiguous, proving the advantage of decentralization in terms of allocative efficiency using economic models has failed to yield conclusive results (Fox & Goodfellow 2016). The literature seems to suggest that decentralization has achieved moderate results in some states, moderate failures in others and occasionally both (Andrews 2013). Characteristically the World Bank in its 1997 World Development Report (p. 120) notes that:

> 'decentralization offers the chance to match public services more closely with local demands and preferences and to build more responsive and accountable government from below. But decentralization also has its pitfalls, including the possibility of increased disparity across regions, loss of macroeconomic stability, and institutional capture by local factions, especially in highly unequal societies'.

Therefore, because of the inability to safely generalize empirical evidence can prove to be quite useful in helping us understand why some decentralization programs fail, while others succeed. Is this a result of erroneous design of policy or lack of capacity to implement them? The answers to these questions may be key to understanding decentralization and its effects.

When discussing decentralization, it is useful to define it by reviewing the various definitions given by both researchers and the agencies that implement it. It must also be noted that the word 'decentralization' is more of an umbrella term that encompasses distinct processes and ideas than an analytically precise term per se (Faguet 1997).

The most used definition is provided by Rondinelli, et al. (1983: 13) as:

> 'the transfer of responsibility for planning, management, and resource-raising and allocation from the central government to (a) field units of central government ministries or agencies; (b) subordinate units or levels of government; (c) semi-autonomous public authorities or corporations; (d) area-wide regional or functional authorities; or (e) NGOs/PVOs.'

Most definitions of decentralization –broadly- describe it as a process of transferring power from national to local government institutions and organizations; however, they

subsequently categorize it into different types (World Bank 1997; Greig et al. 2007; Bailey 1999). This phenomenon is representative of the argument that decentralization is more representative of a category than a term itself; the literature places more emphasis on the subtypes, their definitions and interaction than the hypernym.

Treisman (2002) proposed a different approach to decentralization, according to which decentralization has either a dynamic or a static interpretation. If we understand decentralization as dynamic, it is the process of becoming decentralized, whereas its static interpretation is the state of being decentralized. Treisman notes that some usages of the word decentralization imply that systems are either 'decentralized' or 'centralized', which can be considered a false dichotomy if decentralization is perceived as a continuous phenomenon. According to this approach decentralization is simply a characteristic of compound systems (i.e. multi-tiered administrative systems, in which all final decision-making authority is held by the highest tier); it is the interaction between the various tiers of administration.

3. The evolution of decentralization in Italy

Italy has been undergoing decentralization granting more power to local and regional authorities since 1946, further steps towards decentralization were made in the 1990s (Fabbrini & Brunazzo 2003; Pola 2008; Pola 2010; Palermo & Wilson 2014; Desideri 2014; Jansen 2017). This process of institutional change has been rather chaotic; thus, the history of the Italian state can be divided into four phases (Baldini & Baldi 2014):

1. the **Liberal Age** from Italy's founding in 1861 to World War I in 1915,
2. the **Fascist Age** (1922-43)
3. the **First Republic** (1946-92)
4. the **Second Republic** (1992-)

Italy struggles with a tradition of centralism, which can be traced back to Italy's founding in 1861, and a robust tradition of localism (Baldini & Baldi 2014). Leonardi et al. (1981: 95) go so far as to argue that 'The history of regional reform in Italy can be described as a protracted political war between the supporters of the center versus those of the periphery'. This difficulty in implementing reform led to a complex political culture, which, instead of

replacing previous institutional assets tries to work around them or convert them into something new (Pola 2010; Baldini & Baldi 2014).

Even though there were proponents of a decentralized state since the beginning, such as Cavour, the Prime Minister of the Kingdom of Sardinia-Piedmont and later the first Prime Minister of Italy, the opposition which favored a more centralized state prevailed (Ziblatt 2006). The decision for a unitary and centralistic system of governance can be interpreted on the basis of three factors. The first one is the fear that local identities could threaten the unity of a nascent country which in its early stages had weak legitimacy (Romanelli 1995; Cafagna 1999; Astuto 2011). Concerns about centrifugal tendencies were founded on the resistance to the Italian state that was encountered in the South and the Papacy's hostility to Italy's unification process, a problem that was solved militarily with the conquest of Rome (Hine 1996).

A second factor which favored centralization was the weak institutional and bureaucratic capacity of the kingdoms that unified to form the new Italian state. Ziblatt (2006) argues that in Italy unlike Germany, where preexisting countries managed to negotiate some self-rule, political insufficiencies caused a lack of significant regional concessions in the critical stages of the country's founding process. Finally, according to Fedele (2010) and Putnam (1993), the third factor was a strong municipal power that could be traced back to the Italian medieval city-state. These historic local identities influenced the course of unification by legitimizing the unorthodox Italian centralism.

The centrifugal forces that challenged the legitimacy of the Italian state combined with citizen's entrenched localism to create an unusual relation between center and periphery, which is described in the literature as 'centralismo senza centro' (i.e. centralism without center) (Romanelli 1995; Cafagna 1999; Astuto 2011; Piretti 2011; Galli della Loggia 1998). Enduring socio-economic inequalities, chiefly the economic underdevelopment of the South, made public administration standardization efforts more difficult to implement (Romanelli 1995; Melis 1996). In the first phase of Italian Governance and Politics, we encounter issues that became persistent such as clientelism and trasformismo[IV] (Tullio Altan 2000). Furthermore, due to the ambiguities of the constitutional framework national executives, to survive in parliament, constantly needed to rely on notables whose power was entrenched locally, especially in the South, in patron-client relations, which could channel local interests in the national arena (Rebuffa 2003; Macry 2012). This practice, known as trasformismo,

meant that coalitions were unstable and no real political alternation took place. Thus, in a society where the propensity to accept and offer bribes was traditionally high, centralism was negotiated instead of imposed and vested interests in preserving these unorthodox dynamics soon developed, as 'parliament became a true compensation chamber were local and personal interests came to replace more genuinely political issues'(Musella 2003: 48).

The gradual transformation of the Italian State from a Centralized Napoleonic State similar to France to a limited Centralized State based on a political bargain between the Center and the Periphery is a process known 'Piemontesizzazione' (from the Kingdom of Piedmont) (Cafagna 1999; Astuto 2011). The Liberal phase was characterized by fostering decentralization and the dynamics of bargained centralism. Local governments were reinforced with reforms that increased both political and administrative decentralization, such as the election of mayors and heads of provincial offices introduced in 1888 and the transfer of more policy competences (1903). Centralism was also adapted to the initial development of the welfare state and the parallel democratization process via the progressive extension of the electoral franchise (1867, 1882, 1913) and the slow birth of mass parties (Baldini & Baldi 2014).

This process of bargained decentralization and increased democratization was halted by the rise of fascism. The Fascist Era (1922-43) saw increased central control and political pluralism was discontinued (Romanelli 1995; Vesperini 2004). The office of the mayor was abolished in 1926 while provincial councils were suppressed two years later in 1928. Centralization during this era was so significant that the subnational share of public spending fell dramatically, from 34% in 1913 to 13% in 1940 and local taxation fell from 26.6% in 1913 to 18.7% in 1939 (Melis, 1996).

The so-called first Republic (1946-92)[V] restarted the process of decentralization that had been interrupted. The 1948 Constitution tried to address territorial grievances and stop any possible resurgence of fascism. Thus, the decisive institution was inspired by France's 1946 Fourth Republic constitution, which meant that the crucial institution in Italian politics would be the parliament and not the executive branch unlike many other contemporary democracies (Amoretti, 2011). Political pressure by the ethno-linguistic minorities in the North near the borders and the separatist pressures from Sicily and Sardinia, as well as the historic problem of the developmental divide between the north and south, as well as the mountainous regions of the Apennines, led to a parliamentary compromise that promoted

political regionalism as a new form of decentralization (Trigilia 1992; Bassanini 2012). This post-war phase saw many similarities to Italy's Liberal Age, with the main parties finding a consensus on institutional reform, while not completely giving up on their unique brand of centralism and preserving a political alliance with agents of localism (Macry, 2012).

Another factor that influenced the political environment of the First Republic was the polarization of the electoral process due to the ideological divide between communism and anti-communism dominating discussions, leading to a veto-ridden governance structure (Baldini & Baldi 2014). The main political parties agreed on a change towards regionalism, without giving up on the basic idea of centralism, as this was more consistent with their political strategies (and beliefs). Like most left-wing parties the PCI (Italian Communist Party) and PSI (Italian Socialist Party), favored the preservation of centralism as a guarantee of nation-wide homogeneous welfare provisions. While the DC (Christian Democracy) was formally a proponent of increased regionalization, in reality it benefited from maintaining the traditional alliance with localism, given its key role as a political broker in patron-client relations, mainly in Southern Italy (Hine 1996; Macry 2012).

Despite the fact that the constitution created a new level of government, it did not change the overall institutional culture: layering won out over replacement. A regional state was envisioned, with legislative power devolved to the regions, but it would still resemble a unitary rather than a federal state, because the regions were not granted fiscal autonomy or territorial representation, including participation in constitutional amendments, and decentralization was largely guided by central institutions (top-down) (Perulli 2013). The constitution protected local government architecture, which was still governed by the 1934 frame legislation and was directly controlled by the central government (and not by the regions). Five 'special' regions (RS) were given extensive self-rule powers and immediate construction of elected regional assemblies, including the two largest islands (Sicily and Sardinia) and three areas with ethno-linguistic minorities (Aosta Valley, Trentino Alto-Adige, and Friuli Venezia-Giulia). The remaining 15 'ordinary' regions ('Regioni Ordinarie' or "RO") were guaranteed a more limited set of competencies (Massetti 2007). This asymmetry reflects a two-fold logic: on the one hand, the goal of building a more democratic and efficient system of government (top-down) by respecting pluralism in mobilized territories (a bottom-up dynamic) and preventing centrifugal tendencies (Putnam et al. 1985; Groppi 2007).

ROs were similarly established to adhere to the notion of 'democracy by proximity' (even in places where no political player demanded autonomy) and to simplify development planning, thereby offering assistance to the undeveloped South under rigorous central oversight. While the RS was put up immediately, the RO was not deployed until the 1970s. The Christian Democratic Party 'was the more convinced champion of a wide regional autonomy' inside the constituent assembly, 'partly because of the idea that the left would soon have taken over the national parliament, and that autonomous regional bodies might prevent Communism from controlling the country' (Mazzoleni 2009b: 206).

ROs were implemented as part of the coalition agreement struck by the DC, PSI, Italian Social Democratic Party (PSDI), and Italian Republican Party (PRI) to form the country's first center-left government (Mazzoleni, 2009a). By that time, the PCI, the primary opposition party, had become more regionalist, following a pattern that would soon be followed by other European center-left parties (for example, the Socialists in France and the Labour Party in the United Kingdom). The objective was to capitalize on electoral support resulting in the establishment of an institutional level at which the party could govern (Putnam et al. 1985). Despite an agreement, the RO was only given the means to become active in 1977 (DPR n. 616). However, the decentralization trend was quickly reversed and the Italian regions eventually found themselves with less leeway when it came to constitutional architecture. Regional finance would be fully reliant on state transfers, and sub-state revenues fell substantially from 14.7 percent in 1950 to 3.2 percent in 1980 during a period of re-centralization following the fiscal reform that began in 1971 (Baldini & Baldi 2014). Parliament continued to legislate in areas assigned to regions, robbing Italian regionalism of one of its most important prerogatives (Putnam et al. 1985). Finally, regions were never given control over local administration, giving them an uncertain role in relations between the center and periphery (Baldi and Agostini 2011). Thus, regions did not gain traction in representing territorial concerns, which preferred the previous informal party structures based on the centralism-localism combination.

In the 90s the fourth Italian institutional change started, known as the Second Republic. This phase, unlike the previous ones, was influenced by a resurgent regionalist movement and more pressure for reform by the citizenry. The traditional political party of Christian Democrats collapsed and the Northern League (Lega Nord) started gaining traction (Diamanti 2003). The Northern League complained about the centralized status quo and

advocated devolution to regions of more legislative powers as well as fiscal federalism (full autonomy in tax raising and management of fiscal revenues), even threatening secession (Amoretti 2011). Although this view would not be easily stomached by the South, it struck a chord with public opinion. Territorial politics acquired unprecedented salience, and almost all parties soon claimed to be in favor of federalism. A window of opportunity for institutional reforms opened up to meet EU requirements for the increased political and fiscal accountability of sub-state governments (Fabbrini and Brunazzo 2003). Many reforms, including a major constitutional reform in 2001, were approved strengthening decentralization (Lanzalaco 2005). Political decentralization was increased by both the direct elections of chief executives at all sub-state levels and the transfer of many competences and responsibilities. The sub-state shares of public spending moved from 26.8% in 1980 to 31.6% in 2008, while fiscal revenues increased remarkably from 3.2% in 1980 to 22.5% in 2007 (Baldini & Baldi 2014). Federal principles were included in the constitution, reversing the traditional criteria for assigning powers with a strict definition of the state's legislative powers and the devolution of all other legislative powers to the regions (Bassanini 2012), introducing fiscal federalism and embryonic mechanisms of territorial representation in both national and European policy-making. Both constitutional and ordinary legislation significantly strengthened regional autonomy, overcoming the weaknesses of the past, on a similar dynamic of federalization by devolution experienced by other European countries such as: Belgium, Spain and, to some extent, the UK. Regions acquired more powers and responsibilities, new constitutional guarantees, and their executives became more stable and legitimate.

Nevertheless, this process of decentralization encountered some difficulties and resistance, such as regions being represented neither in national law-making nor constitutional amendment processes (Baldi & Tronconi 2011; Massetti 2012). This intense season of reform strengthened not only the regional level, but also local governments, in continuity with the tradition of localism (Dente 1997), so much so that the amended constitution refers to the Italian state as a 'republic of autonomies', by placing regions, provinces and municipalities on equal footing (Groppi & Olivetti 2003; Cepiku 2013).

Italian federalizing trends strengthened in the 1990s and the 2000s. A decentralization process began in the 1990s with the introduction of a direct election of mayors, culminating in 2009, when Law 42 established the principles of fiscal federalism, guaranteeing a higher

level of autonomy for regions and local authorities. There are 20 regions (15 of which have ordinary status and 5 have a special status guaranteeing those more powers), 103 provinces and 8,088 municipalities. However, only 136 of these municipalities have a population of more than 50,000 inhabitants, while more than 92% of the municipalities have a population that does not reach 15,000 inhabitants (i.e. 7466 municipalities) (Mussari & Giordano 2013).

Italian public sector reforms generally involve every level of government (central administrations, regions, provinces, local governments, agencies, hospitals and universities) with varying degrees of intensity. In the case of local governments, the reforms of the early 1990s implied an increase in autonomy in three key areas: organizational (managerial) autonomy through the Local Government Reform Act in 1990, civil service reform in 1993, and local government accounting reform in 1995 (Anessi Pessina 2002).

The decentralization reform process was substantially completed in 2001, vis-à-vis the reform of the second part of the Italian Constitution and the introduction of a horizontal subsidiary as a guiding principle for the assignment of responsibilities among different tiers of governance. In fact, at the constitutional level, the reforms redistributed not only legislative powers between central and regional governments (Article 117), but also administrative functions between central and local governments (Article 118), and they granted greater financial autonomy to lower levels of government (Article 119) (Bordignon et al. 2007).

Mussari and Giordano (2013) argue that the main purpose of these reforms was to enhance efficiency, accountability, manageability, and autonomy in a multi-tiered government, however the extent of their success can be debated as the overall increase in Italian public sector spending did not lead to a significant decrease in regional inequalities. The shifting of powers from central to local governments failed to produce the expected expenditure reductions of central entities, while on the other side of the spectrum; local governments generally increased their expenditures to manage their new functions. Additionally, inefficient intergovernmental financial relations (characterized by grants calculated on historical expenditures, central bailout expectations, and the lack of sanction mechanisms for local government fiscal indiscipline) have tended to stimulate overspending within local governments and produce unsustainable deficits (Baldini & Baldi 2014). The devolution of services, when accompanied by negative factors such as sunk costs, has often generated inefficiencies and much higher public spending (Cepiku et al. 2016).

Another legacy of these reforms has been duplication and confusion in many areas of shared rule among governmental tiers. An example is the 2001 Constitutional reform that introduced concurrent legislation (i.e. national and regional laws have the same force) in policy areas such as energy, tourism and industry, among others. This increased the level of conflict between the regional and central governments, because of weak coordination mechanisms (Palermo & Valdesalici 2019).

In recent years, the issue of decentralization has reemerged and become an important topic of political discourse centered on the 'Differentiated Autonomy' (in Italian Autonomia Differenziata) proposal. During the pandemic period, the Italian administrative system encountered several difficulties and was a subject of criticism, due to these experiences new arrangements of local self-governance were proposed (Dini & Zilli 2020). Differentiated' autonomy proposes the allocation of more functions to ordinary statute regions in the implementation of Article 116 of the Constitution (Bordignon et al. 2023). The topic is highly contested in Italian politics with proponents arguing that it would increase the efficiency of public services, while a common argument against it is that it would increase the north-south divide with the richer northern regions retaining more resources and thus having better services compared to their southern counterparts (Andrianopoulou 2023).

4. The evolution of decentralization in Greece

Greece is one of the most centralized and unitary states in the European Union, thus the Greek state has been characterized for most of its history by a reluctance to cede a significant share of political power, decision-making and resources to decentralized administrative structures and local governments (Verney & Papageorgiou 2007; Christofilopoulou 2008). Even though elected offices have existed since the founding of the country, their institutional framework was limited and fragmented, and the local level was often a subject of control and supervision by the center (Verney & Papageorgiou 2007). Mouzelis (1995) described the Greek political system of the nineteenth and early twentieth centuries as 'decentralized clientelism'. Most decentralization reforms in Greece take place after the country's accession to the European Community in 1979 and the decades of the 80s and the 90s were a time of great administrative reform (Karanikolas & Hatzipanteli 2010).

Loughlin (2001: 272) argues that this strong centralism is the result of the way the Greek state was created and expanded. Of Greece's current geographical territory, only 36% has been part of the state since independence; the rest was added after peace treaties with the last addition being as recent as 1947. This national liberation struggle and the existence of military threats led the Greek state to emphasize centralization and territorial unification in their political ideologies.

The establishment of the modern Greek state, beginning in 1833, is linked to the enforcement of centralization and the abandonment of a longstanding tradition of autonomy that was characteristic of the 'fragmented' societies common in many regions under Ottoman control. In a nation accustomed to multiple power centers, no single center was willing to easily accept the authority of the national government. It was only the firm control of the Bavarian regents that succeeded in unifying and consolidating power (Koliopoulos & Veremis 2009). The 1844 Constitution, based on the 1830 French and 1831 Belgian constitutions, provided for the protection of individual rights and established constitutional monarchy referring to Otto as 'King of Greece by the Grace of God'. The legislative power was exercised by the King, who had the right to ratify legislation, by the elected parliament, and by the senate, whose members were appointed for life by the king. Both the parliament and the senate were self–standing and had to approve taxes. The king had the right to dissolve the parliament and call for elections. He also retained the right to choose and remove ministers. The king was the source of judicial power and appointed the judges (Tridimas 2018).

The Greek Decentralized administrative system and the wider administrative law, since its inception in 1830 were based on France (Hlepas 2010). This French influence culminated with the adoption of the 'prefet' system, which meant that until the regional elections of 1994, Greece's regional governors and/or 'préfets' were selected by the government of the day. Greek 'préfets' were political appointees entrusted with the task of monitoring the elected mayors in their own 'prefecture' (Lalenis 2003; Getimis & Demetropoulou 2005). Depending on the local political circumstances, mayors disputed the authority of the 'préfets'. In this context, today's seven 'decentralized administrations' can be understood as a legacy of 'prefecture' system and a compromise of the long historical tension between elected officials and appointed officials in charge of Greece's sub-national authorities (Lalenis & Liogkas, 2002; Christofilopoulou, 1990).

It should be noted that the same pattern of dependence of the local government on the state is reproduced by the region in its relations with the state in the area of its jurisdiction. Indeed, as it is organized on the model of the central administration, it also reproduces its basic problems. The organizational problems of public administration (mismanagement, bureaucracy, clientelism, transactionalism) are likewise reproduced in local governments, but also in their relations with citizens and the policies it implements (Petrakos & Psycharis, 2004).

Another Greek peculiarity is the lack of regional pressure for decentralization. Unlike countries such as Spain and Italy, there are no significant regional movements in Greece that push for more autonomy and decentralization reforms (Lalenis & Liogkas 2002). Greece is largely uniform in terms of its ethnic composition, as most of its population speaks the same language and follow the Greek Orthodox faith (Zachos 2009). Nonetheless, there are still minority groups within the country. The most significant of these, and the only one officially acknowledged and safeguarded by international treaties, is the Muslim minority residing in Thrace. The minority, despite rallying around a strong call for self-determination during the latter part of the 1980s, did not demand regional autonomy and instead focused on electing representatives at the national level. The 1991 change in electoral law, which introduced a national minimum three percent threshold for a political party to enter parliament made it practically impossible for the minority, due to its small size, to elect representatives outside the main Greek parties, marking the beginning of a decline in support for separatist politics (Anagnostou 2001; Hlepas 2015).

Regional authorities gained various administrative competencies over time and because of pressure from EU authorities (Siminou 2007). The 13 regional administrations have also absorbed EU funding provided by the Union's regional strategy since its inception in 1986. However, most powers remain largely in the hands of the central government. Most crucially, on certain policy matters, there are shared competences between the central government and sub-national authorities, allowing the central government to participate in the day-to-day management of regional and local issues (Oikonomou 2016).

The main decentralization reforms in Greece during the EU era were the following three:

1. 1986, the establishment of administrative regions

2. Kapodistrias in 1998, sharply reduced the number of municipalities and communities [from 5775 (441 municipalities and 5382 communities) to 1033 (900 municipalities and 133 communities] and regional governors were appointed by the state.
3. Kallikrates in 2011, municipalities are further decreased to 325 and regional governors were directly elected.

Table 1. Elements of Kapodistrias and Kallikrates reforms (Ioannidis 2015:.6)

	Kapodistrias 1998	Kallikrates 2011
First tier of local government	900 municipalities and 133 communities	325 municipalities
Second tier of local government	52 prefectures	13 regions
Regional Authority	13 regions	13 regions, now second tier of local government
Election system	Direct election for mayors, presidents of the communities and prefects. Appointment of regional governors by the state	Direct election for mayors, presidents of the communities and regional governors.
Level of Competences	Low level of competences for communities, municipalities and prefectures. Regional governors implement the rule of the state	High level of competences for municipalities and regions. Cognitive conditions for local actors to participate in the commons
Main source of financing	Intergovernmental Grants	Intergovernmental Grants

Table 1 above presents the main elements of the Kapodistrias and Kallikrates reforms. Although the Kapodistrias reform (Law 2539/1997) merged 5.755 municipalities and rural communities into 900 larger municipalities and 134 enlarged communities their competences did not expand. The low level of responsibilities local governments had combined with the prefecture system creating a complicated and restrictive bureaucratic environment, thus, the engagement of local actors and their voices was limited (Sofianou et al. 2014). Albeit only a small part of the important responsibilities of the central bodies were transferred to the region, the creation of an intermediate level of power, with an administrative body and decision-making powers on several issues was an important institutional change. The emergence of the region as the new, and only pole of the decentralized system in Greece, also served as an institutional and political counterweight to the state at the regional level,

following the transformation of the state prefecture into a second-tier Local Government, a phenomenon that can be described as decentralized concentration (Petrakos & Psycharis 2004).

The potential of municipalities after the Kapodistrias reform remained limited, their resources were few and their dependence on the region and central state was high. Local authorities do not have fiscal autonomy but are instead financed through a labyrinthine system and there is very little fiscal decentralization (Psycharis et al. 2015). Often local government functions, for many issues, as a branch of the state, dealing with its affairs at the local level, but without ensuring a corresponding transfer of resources and infrastructure (Chortareas & Logothetis 2016).

Kallikrates, however, was a more comprehensive decentralization strategy that restructured the Greek state in favor of local administration (Akrivopoulou et al. 2012). The expansion of local and regional power as well as the subsequent creation of institutional bodies such as the Regional and Municipal Consultation Committees were the two most essential foundations of the reform. Local actors could participate at the local and regional levels by addressing and resolving relevant issues to them. Nevertheless, the statute did not anticipate any improvement in local government funding, and the central government remained the primary promoter throughout the intergovernmental grant procedure (Hazakis & Ioannidis 2014).

The complex web of relations between central administration, decentralization and local government reveals not only how the administration is organized, but also how the Greek political system, which is based on centralized structures, operates. The Greek system of administrative organization is heavily linked to the system of political organization (Petrakos & Psycharis 2004). From 1974 to 2012 (with the small exception of a nine-month-long period in 1988-1989, when unstable coalition governments were formed) Greece was governed by single-party majority governments. The center-right New Democracy (ND) and the Panhellenic Socialist Movement (PASOK, a center-left party) alternated in power for nearly four decades (1975-2011). Thus, the Greek political system was a series of rotating governments where the ruling majority exercises power in a 'winner takes all' way, without having to include the opposition (Hlepas & Getimis 2011). The winner of elections used to populate public administration, public bodies and state agencies with political appointees

(Sotiropoulos 1996), which led to a highly politicized bureaucracy (Sotiropoulos 2000; Sotiropoulos 2004; Makrydemetres 2013).

The reliance on pro-government civil servants and mistrust of other civil servants appointed by previous governments created an unusual framework in which ministers, on the one hand, formulated public policies, on the other hand, supported by groups of political appointees, also closely monitored the implementation of policies (Spanou & Sotiropoulos 2010). Hence, even now there is such strong supervision of all levels of administration from the center of government located in Athens that decentralized services of ministries and state agencies (e.g. tax authorities in the periphery of the country and public hospitals.) do not apply any legislation unless they receive very detailed orders, drafted by ministers and their entourage, with very concrete step-by-step instructions on how to interpret and apply legislation. Centralization of decision-making was further enhanced after the financial crisis erupted, as central authorities imposed strict fiscal discipline on sub-national levels of government (Kyvelou & Marava 2017).

Article 101 of the Greek Constitution declares that the state is constitutionally obligated to be organized according to the decentralized system (Panezi 2008), nevertheless the centralized system in Greece remains strong (Petrakos & Psycharis 2004). The central government spends most of the funds, whereas sub-national governments have limited resources and authority (Karanikolas & Hatzipanteli 2010).

In Greece, there are seven decentralized administrations (branches of the central administration in Greece's periphery), 13 regional authorities (founded in 1986 and headed by elected regional governors and councils) and 325 municipalities (created in 2011 by merging 1034 municipalities and headed by mayors and municipal councils). The idea behind the merging of municipalities was the creation of economies of scale that would lower local government expenditures and improve their administrative capacity to better absorb European funding, as small and ill-equipped municipalities were incapable of accessing adequate funding (Kalimeri 2018; Ioannides 2016).

Nevertheless, due to statewide political party competition infiltrating local politics and the reproduction of national political feuds at the sub-national level as a result of Greece's polarized party system, any new theorized administrative capacities were not entirely fulfilled. One of the reasons why the mergers of smaller municipalities into larger municipalities did not always produce the anticipated results was that local government employees typically

lacked official educational credentials and skill levels comparable to those of central government employees (Hlepas 2015, Sotiropoulos 2015).

Except for some policy areas in which implementation is relegated to the municipal level and less often to the regional level, most powers remain in the hands of the central government. In practice, even if sub-national authorities have exclusive powers, they enjoy limited autonomy and discretion (Athanasiadis et al. 2018). The reason for this dependence of the periphery on the center of the Greek state is that almost all tax revenue is raised by the central government. The central government frequently changes the general policies and specific regulations governing center-periphery relations in the Greek administration (Tsekos & Hlepas 2018). As a result, there are few agreements or negotiations between different government levels. Decentralization remains an issue that suffers from a lack of interest from both the political level and the general public (Hlepas 2020; Capano & Lippi 2022)

Most importantly, competences are shared between the central government and sub-national authorities on different policy issues, allowing the central government to have a hand in the daily management of regional and local issues. The dependence on the center for funding is further increased by many local governments overspending by hiring excess administrative personnel, such as temporary employees, in a typical public jobs-for-votes exchange and therefore needing last-minute interventions to cover deficits in municipal budgets or the availability of loans by private and state banks (Hlepas, 2015).

5. Measuring decentralization in Italy and Greece

The extent of regional autonomy differs significantly between European countries and often even between regions of the same country depending on the role that the respective national constitution assigns to regions as well as differences in the sense of regional identity (Flanagan et al. 2011; Giordano & Roller 2004). As a tendency, European Member States as part of the idea of 'Europe of Regions' have modified their self-perception in a way that has prompted a restructuring of their governance system, more precisely the devolution of state functions to sub-national levels (Loughlin 2007: 391-393). In the last 30 years, local governance has become a prominent subject of both academic studies and practical policy discussions (Barca 2009), so in order to measure the phenomenon, a wide variety of indexes were developed.

The **Regional Authority Index** (RAI) is one of the main indexes. It is an annual measure of the authority of regional governments in 81 democracies or quasi-democracies over the period 1950-2021. The dataset encompasses subnational government levels with an average population of 150,000 or more. Where appropriate, more than one regional tier is included, whereas regions with a special autonomous statute or asymmetrical arrangements are coded separately. Regional authority is measured along ten dimensions: institutional depth, policy scope, fiscal autonomy, borrowing autonomy, representation, lawmaking, executive control, fiscal control, borrowing control, and constitutional reform. Primary sources (constitutions, legislation, and statutes) are triangulated with secondary literature and consultations with country experts to achieve reliable and valid estimates. A regional data set contains annual scores for regional governments or tiers and a country data set aggregates these scores to the country level with higher values suggesting a greater degree of decentralization (Hooghe et al. 2016; Hooghe et al. 2021).

Figure 1. Greek and Italian RAI scores from 1950 to 2018 (Hooghe et al. 2021)

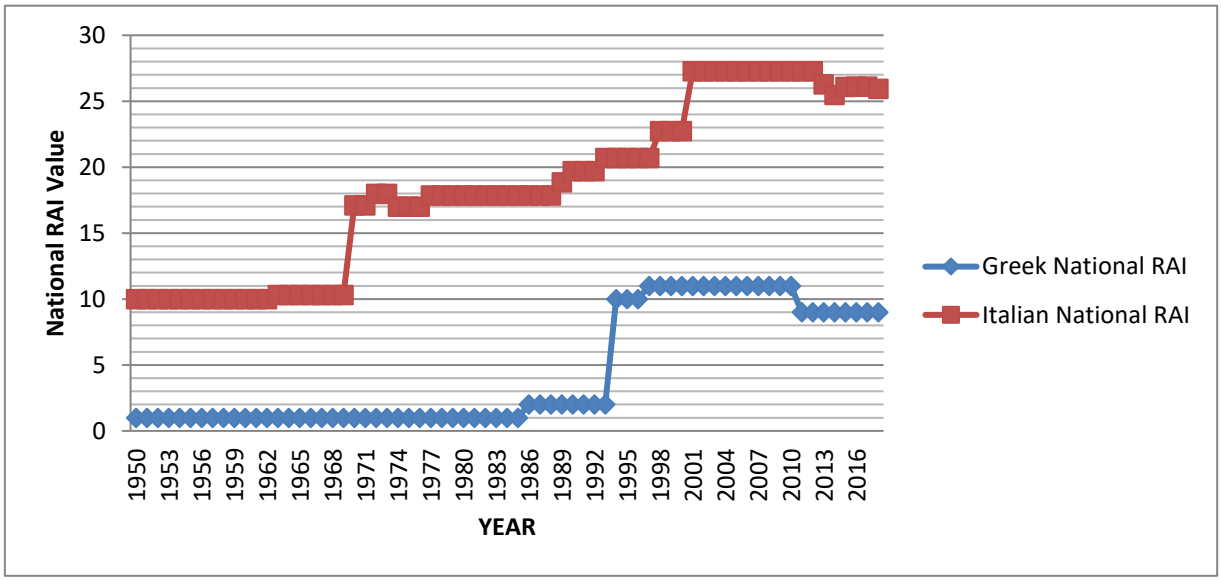

Figure 1 above depicts the evolution of the RAI for Greece and Italy. Greece for most of its history since 1950 exhibits a low degree of Regional Autonomy and a centralized system of governance. Decentralization reforms during the period 1950-2018 were implemented three times: in 1986, 1994, and 1997, while this trend of decentralization was reversed in 2011 when local governments lost their limited borrowing autonomy.

Italy has exhibited a high degree of Regional Autonomy since 1950 when local governments have both fiscal and borrowing autonomy. The main decentralization reforms in Italy during the period 1950-2018 were implemented in 1970 and 2001.Comparing Italy's and Greece's Regional Autonomy Indexes the high level of centralization in Greece becomes even more apparent since Italy's score in 1950 was higher than Greece's in 2018 after the implementation of multiple decentralization reforms. Another difference between the two countries is that Italy's index changes incrementally over the years, many small reforms lead to a change in the score, whereas Greece tends to have a mostly stable RAI that rarely changes. Nevertheless, there is also a similarity between the two indexes: Greece in 2011 and Italy in 2013 exhibited a decrease in their scores.

Figure 2. RAI scores of Italian Ordinary and Special Statute Regions (Hooghe et al. 2021)

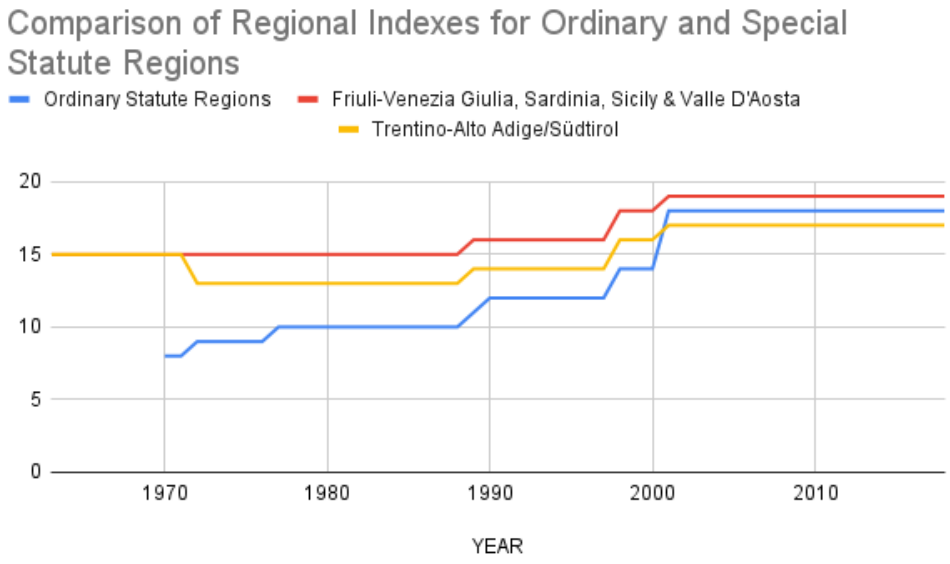

Figure 2 shown above depicts the RAI scores for Ordinary and Special Statute Regions. Italian Special Statute Regions have higher RAI scores, which is in accordance with the legal framework that grants them a greater degree of autonomy.

Figure 3. RAI scores of Greek Prefectures and Regions (Hooghe et al. 2021)

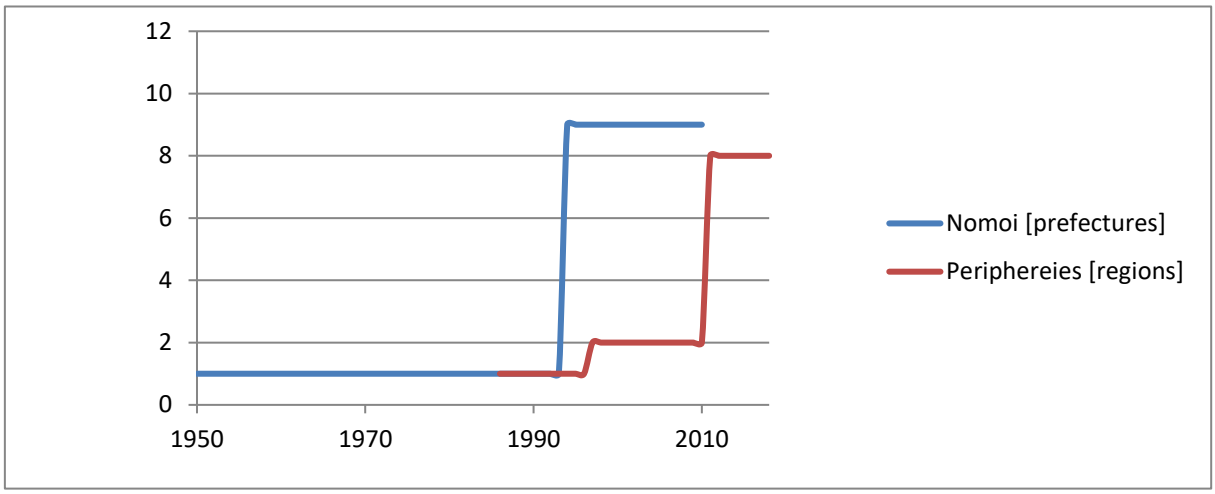

Figure 3 above depicts the RAI scores of Greek Prefectures and Regions. In 1986 regions were introduced and prefectures were abolished in 2011. The Greek Regions have not yet reached the prefecture autonomy peak.

The **Local Autonomy Index** is another methodology for measuring and comparing local autonomy, which was developed for the European Commission. The eleven variables measured are located on seven dimensions and can be combined into a single 'Local Autonomy Index' (LAI). The 11 variables are institutional depth (ID), policy scope (PS), effective political discretion (EPD), fiscal autonomy (FA), the financial transfer system (FTS), financial self-reliance (FSR), borrowing autonomy (BA), organizational autonomy (OA), legal protection (LP), administrative supervision (AS) and central or regional access (CRA). The former eight variables are subsumed under the term self-rule (SR), and the latter three under the term interactive rule (IR). The two variables (PS and EPD) consist of 12 components (Ladner et al.2015).

More in-depth the seven dimensions outlined by the Ladner et al. (2015) report are as follows:

1. *Legal Autonomy* measures the range to which the existence of municipalities is constitutionally safeguarded, and whether the central government can amalgamate municipalities against the wishes.
2. *Policy scope*, the extent of services that are a responsibility of a municipality.
3. *Political discretion*, the power of the municipality to decide how to fulfill the tasks they are charged with.

4. *Financial autonomy* examines the degree to which municipalities have their own financial resources, collect taxes, and borrow money.
5. *Organizational autonomy* explores whether a municipality can organize and staff their administration working within the bounds of their political system.
6. *Non-interference* is tied to relations with the central government and consists of the method in which local authorities are supervised and organized and whether financial transfers are unconditionally granted.
7. *Access* captures whether local authorities can influence higher-level decisions.

Figure 4. LAI for European Countries (Ladner et al. 2015)

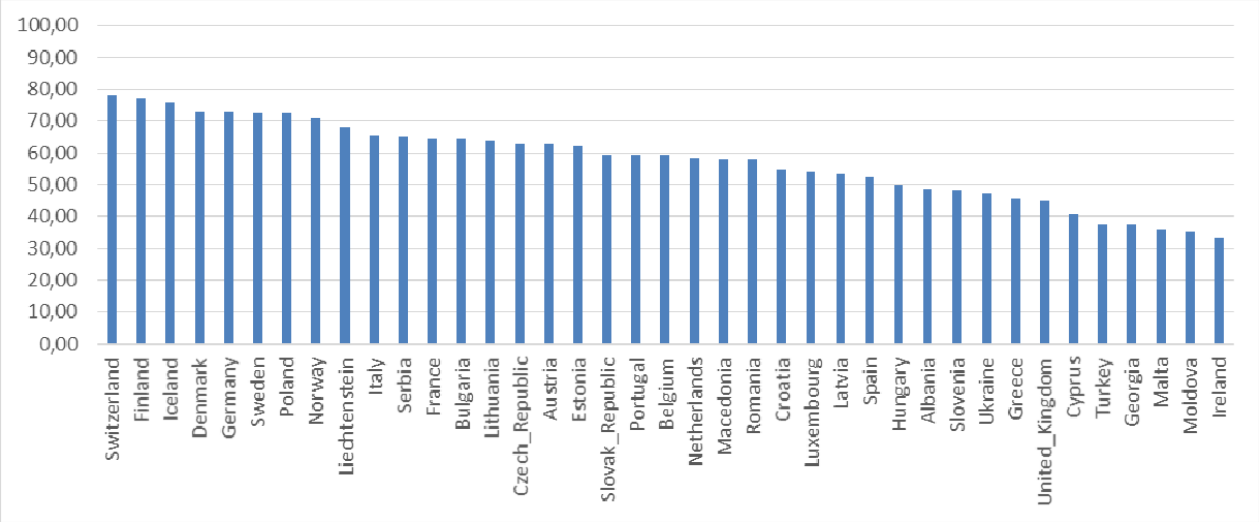

Figure 4 shown above is the LAI for European countries. The European Commission's report in 2015 (p. 72) groups Italy with the countries where municipalities have a medium-high degree of autonomy (index values between 60 and 70): Liechtenstein, Serbia, France, Bulgaria, Lithuania, Czech Republic, Austria and Estonia; while Greece is in a group of countries with a medium-low degree of autonomy (values between 40 and 50) together with: Hungary, Albania, Slovenia, Ukraine and the United Kingdom.

Table 2. LAI Scores in 1990 and 2014 for Greece and Italy (Ladner et al. 2015)

Country	LAI 1990	LAI 2014	Changes
Italy	51.1	68.2	17.1
Greece	41.5	47.9	6.4

Table 2 above shows the evolution of the LAI score for Greece and Italy. Higher values signify greater local autonomy. The LAI changes from 1990 to 2014 manifest an increase in decentralization in both Greece and Italy, nonetheless the extent is quite different. Italy increased from 51.1 to 68.2 whereas Greece increased only from 41.5 to 47.9. Similar to the RAI changes we notice that Greece remained at a lower level in 2014 than Italy's starting point in 1990.

Regional Autonomy Indexes albeit more limited in scope were developed by the OECD (Blöchliger & King 2006), which focuses on fiscal autonomy and the role of decentralization in taxation. Blöchliger and King's (2006) research found that Italy in 2002 had a taxing power of subcentral governments of 16.4% (tax revenue as a percentage of total tax revenues), while in Greece the percentage was only 0.9%. The OECD study, despite the limited scope of the variables examined, aligns with other indexes showing Italy as a medium-high decentralized country, while Greece is in the lower end of the spectrum.

In 2009 the Assembly of European Regions AER commissioned BAK Basel Economics for a detailed indicator-based analysis of decentralization in Europe. BAK Basel Economics conceived a **Decentralization Index** for the European Member States based on similar regions within a country and analyzed the correlation between decentralization and economic development. In the framework of comprehensive and multi-level proceedings, BAK Basel Economics developed a decentralization index through a successive merging procedure out of more than 200 qualitative and quantitative indicators. Separated into two main groups of decision and financial decentralization indicators, the index illustrates the general degree of political powers devolved to the regional tier within this country (AER 2009: 9; AER 2009b:10-11).

Table 3. Italian Decentralization Index (AER, 2009b: 65)

Sub-Indexes	Weight in %	Italy	European Average	Difference	Rank
Administrative	12	51	47	4	12
Functional	25	50	39	11	6
-thereof decision making	16.8	46	33	13	5
-thereof implementing	6.3	61	66	-5	17
-thereof territorial (not indicated)	1.9	-	-	-	-
Political	20	57	49	8	8
Vertical	3	52	43	9	8
Financial	40	50	47	3	7
-thereof qualitative	15	40	47	-7	18
-thereof quantitative	25	56	46	10	7
Decentralization Index	∑100	52	45	7	6

Table 3 above presents the calculated decentralization values for Italy. Higher values suggest greater decentralization. Having a score of 52 in the Decentralization Index Italy ranks sixth compared to the other countries researched by BAK. The Decentralization Index and its sub-indexes are the weighted averages of the regions with a normal status and the five autonomous regions. Italy has high scores in Functional (50, rank 6), Political (57, rank 8) and Financial Decentralization (50, rank 7). The report argues that Italy's high score in Functional Decentralization is due to the decision-making power being equally distributed among the different tiers in various policy fields (AER 2009b: 65). More implementing power lies with regions than with national and sub-regional tiers. In the case of Political Decentralization, several factors contribute to the high result: the regional tier is politically relatively autonomous, for example, the national tier has no power to overrule regional decisions. In turn, regions cannot block national legislation or decision-making. Nevertheless, it is possible to intervene if the national tier does not act in accordance with regional constitution or law. In the case of Financial Decentralization, the seventh rank is mainly due to the quantitative sub-indicators. In terms of income the regional shares of tax revenue (over 40%), grants (over 90%) and fees (over 90%) are high. On the expenditure side, public consumption is around 60% and public investment is near 80% (AER2009b: 65).

The following figure 5 displays the comparison between Italian decentralization and the European average.

Figure 5. Radar Graph of the Italian and European Average Decentralization Indexes (based on data from AER, 2009: 65)

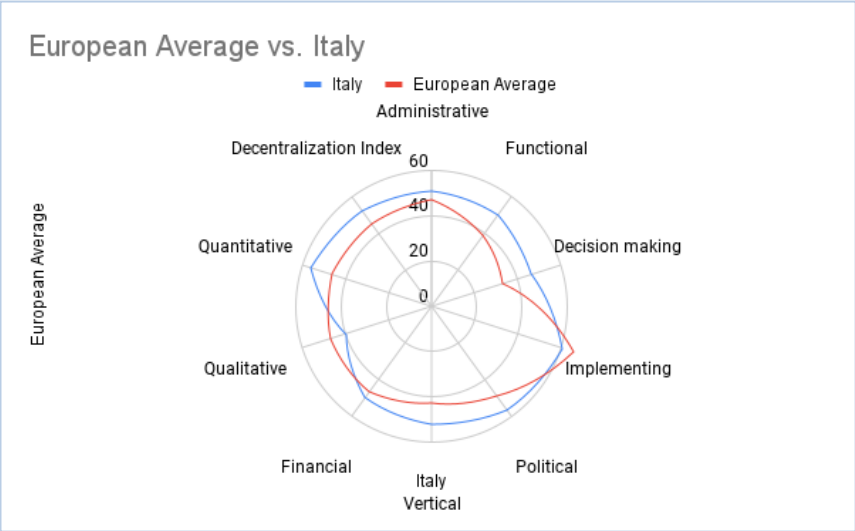

Table 4. Greek Decentralization Index (AER, 2009b, p. 61)

Sub-Indexes	Weight in %	Greece	European Average	Difference	Rank
Administrative	12	17	47	-30	24
Functional	25	37	39	-2	16
-thereof decision making	16.8	25	33	-8	18
-thereof implementing	6.3	98	66	32	1
-thereof territorial (not indicated)	1.9	-	-	-	-
Political	20	30	49	-19	24
Vertical	3	62	43	19	2
Financial	40	31	47	-16	25
-thereof qualitative	15	52	47	5	8
-thereof quantitative	25	18	46	-28	26
Decentralization Index	∑100	31	45	-14	24

Table 4 presented above indicates the Greek decentralization values. Greece achieved a score of only 31 in the Decentralization Index and was ranked third last in the country comparison, above Estonia and Bulgaria. The two main factors determining Greece's score are Political (30) and Financial Decentralization (31), this is due to both sub-indexes being highly weighted and hence an important factor on the final Decentralization Index. The report proposes that three factors reduce political autonomy in Greek regions. First, the national legislative body comprises only one chamber. Without a second chamber that represents the regions, the political influence of the regional tier on the national tier is therefore quite low. Second, regions have no constitutions. Third, although the regions have executive and judiciary bodies, a legislative body is missing (AER, 2009b: 61). Nevertheless, within Financial Decentralization the score for the qualitative sub-indicators is quite high (52, rank 8) because of a well-established per equation system. By contrast, the score for the quantitative sub-indicators was rather low (18, rank 26). Additionally, Greece has a very low score in Administrative Decentralization (17) in combination with a considerable mismatch between decision making (25) and implementing power (98).

Figure 6 below depicts the comparison between Greece and European average decentralization.

Figure 6. Radar Graph of the Greek and European Average Decentralization Indexes (based on data from AER, 2009b:. 61)

Baier et al. (2013: 13-14) propose a system to examine regional autonomy based on indicators that emphasize differences between regions of the same country which are more explicitly related to regional competencies relevant to regional innovation policymaking. To assess the degree of regional autonomy, a variety of documents were reviewed and translated into a ranking on general Likert Scales (i.e. a unidimensional scale that researchers use to collect respondents' attitudes and opinions) of either one to five or one to three.

Thus, Baier et al. (2013: 14-15) take into consideration the following three aspects:

1. General Regional Autonomy, as defined by each country's constitution; with the value '1' being assigned to regions in a fully centralized country without regional parliament; '2' to regions in a dominantly centralized context (e.g. regional representatives assigned centrally); '3' to a shared central/ regional structure (centrally appointed representatives plus regionally elected representatives); '4' to dominantly regionalized contexts with regionally elected representatives; and '5' to regions with regionally elected governments that have wide-ranging competencies and representations in other countries
2. Regional competencies concerning innovation policy; this variable was transferred on a three-point Likert Scale with '1' indicating full centralization of RTDI (i.e. Research, Technological Development, and Innovation) policies, i.e. neither legislative nor administrative competencies for such policies on the regional level; '2' indicating dominantly centralized RTDI policy governance, i.e. most legislative competences remain at the national level except in some areas; and '3' indicating a wide range of regional competencies in RTDI policies
3. Regional influence on priority setting in the allocation of ERDF funding; calculated as the average of two indicators which are: the *administrative perspective* (all countries in which just one regional authority was involved in structural planning funding received a score of '2' whereas all countries in which just one national authority was involved received a score of '4'. All others were assigned a score of '3') and the *programming perspective* (the Likert scale was calculated based on the share of the budget allocated by national and regional operational programmers respectively).

The results of this methodology for Greece and Italy are presented in the following table 5:

Table 5. Indicators of Regional Autonomy according to Baier et. al (2013:16)

Member State	General Regional Autonomy	Competences with regard to Innovation Policy	Influence on Structural Fund Allocations	Regional Level of Reference (NUTS) (first level under central government)
Greece	3	1	2	NUTS 2, regions/perifereies
Italy (average)	4	2	3.5	NUTS 2 regions, Regions/regioni
Italy (more autonomous)	5	3	3.5	NUTS 2 regions, regions/regioni *Friuli-Venezia-Giulia, Val d'Aosta, Trentino-Alto Adige/ Südtirol, Sardinia & Sicily*

Similar to previous regional autonomy indexes Italy has a higher degree of general autonomy than Greece, but regions also exhibit more competences with regard to innovation policy and have more influence on structural fund allocation.

6. Conclusion

Although Italy and Greece are countries that are often grouped together in public policy, a comparison of decentralization indexes depicts a significant difference between the two. Italy is above the European Union average decentralized country, while Greece remains one of the most unitary and centralized countries in the Union. The literature suggests a small federalizing trend in Italy with some political pressure in that direction, while such trends are nonexistent in Greece.

Decentralized authority in Greece remains weak, with local authorities lacking the ability to pass laws and with the institution of the region lacking constitutions. Combined with the lack of resources Greek decentralized authorities are dependent on the center and lack the capacity to implement their own policies, unlike Italy where the regions and municipalities have been granted more competences and political freedom.

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Notes

I. Italy, Greece, Spain and Portugal

II. Faguet (1997, p. 2) asserts that: 'Arguments for and against decentralization frequently assume the character of sweeping, cross-disciplinary claims about the effects of administrative measures on the quality and efficiency of both government and social interaction […]. Writers on decentralization, whose work more often than not consists of reports on past, or advocacy for future, reform, seldom specify the mechanisms by which favorable changes are meant to occur, and often fail to isolate the variables involved in a way which is both satisfactory and consistent'.

III. See Schragger, R. C. (2010). DECENTRALIZATION AND DEVELOPMENT. Virginia Law Review, 96(8), 1837–1910. for an analysis of the intersection between decentralization, economics and legal geography. See also Smith, B.C. (1985). Decentralization: The Territorial Dimension of the State (1st ed.). Routledge. for an analytical framework for the comparative study of decentralization in contemporary systems of government.

IV. Trasformismo is the blurring of ideological distinction, with deputies of both left and right parties switching sides to pace the way for the succession of different governments. This practice meant that coalitions were unstable and no real political alternation took place (Brunazzo & Della Sala, 2016).

V. 'First Republic' is the term by which many historians now designate the first decades of the life of our republic, from the coming into force of the Constitution (1948) to the advent of new political forces and institutional reforms marking the birth of the 'second republic' (from '94 to the present) (Bogaards, 2005).

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