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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.



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 (Zagrebel'sky, 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 unavailability 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 Staatsrecht 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 [JORE n°0051 du 1 mars 2017](#), but entered into force in 2019.

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