

# Contents

<i>Acknowledgements</i> .....	<i>vii</i>
<i>Table of Cases</i> .....	<i>xv</i>
<i>Table of Legislation</i> .....	<i>xxi</i>
1. The Making of the Italian Constitution and its Evolution.....	1
I. Introduction.....	1
II. The Albertine Statute .....	3
III. The Fascist Regime, the Second World War and the Transition to the Republic (1922–1945) .....	6
IV. The Constituent Assembly (1946–1948) .....	8
V. The Rigidity of the Republican Constitution.....	11
VI. Procedures for and Limits on Constitutional Amendments.....	15
VII. The Most Important Constitutional Amendments .....	18
VIII. The Evolution of the Italian Republican Constitution .....	20
A. The First Phase (1948–1992): A Republic Ruled by Political Parties .....	20
B. The Second Phase (1993–2013): In Search of a Majoritarian Democracy .....	22
C. The Third Phase (2013–2021): A Republic with a De-institutionalised Party System?.....	24
IX. Conclusion.....	25
Further Reading.....	26
2. The Italian Constitution within the ‘Composite’ European Constitution .....	27
I. Introduction.....	27
II. Openness to the International Order and its Foundations .....	28
III. The Constitutional Principles on International Law .....	30
IV. The ‘European Journey’ of the Constitutional Court .....	33
V. The ‘Counter-limits’ Doctrine .....	37
VI. The European Convention of Human Rights in the Italian Legal System .....	39

VII. Constitutional Rules and Practice of Implementing EU Law .....	41
A. The Government's Duty to Inform and the Parliamentary Scrutiny Reserve .....	42
B. The Early Warning Mechanism and the Political Dialogue in the EU.....	43
C. The Role of the Italian Parliament in Implementing EU Measures .....	44
VIII. Conclusion.....	44
Further Reading.....	45
3. Popular Sovereignty and Separation of Powers.....	46
I. Introduction.....	46
II. The Democratic Principle in the Italian Constitution: The Right to Vote and to be Elected .....	48
III. Direct Democracy: The Abrogative Referendum and its Different Usages.....	50
IV. Representative Democracy: The Electoral System and its Evolution .....	55
A. An Electoral Law Written by the Parties: The Proportional System (1948–1993) .....	55
B. An Electoral Law Written by the People: The Majoritarian System (1993–2005) .....	56
C. An Electoral Law Written by the (Centre-right) Majority: The Majority Bonus (2005–2013) .....	59
D. An Electoral Law Written by the Constitutional Court? (2014–2017).....	60
V. Conclusion.....	65
Further Reading.....	67
4. Parliament.....	68
I. Introduction.....	68
II. The Italian Parliament in the Constitution .....	69
III. A Symmetrical Bicameralism .....	70
IV. The Internal Organisation of the Chamber and the Senate .....	72
V. Privileges and Immunities of MPs.....	76
VI. Parliamentary Rules of Procedure .....	80
VII. The Legislative Process .....	82
VIII. The Budgetary Process .....	86

IX. The Oversight Function.....	88
X. Conclusion.....	90
Further Reading.....	91
<b>5. The Government: Between Politics and Administration .....</b>	<b>92</b>
I. Introduction.....	92
II. The Structure of the Government .....	93
A. The Essential Bodies .....	93
B. The Non-essential Bodies.....	96
C. Members of the Government, Members of Parliament .....	98
III. The Confidence Relationship with the Two Houses of Parliament .....	98
A. The Motion of Confidence.....	99
B. The Motion of No Confidence.....	100
C. The Motion of No Confidence in a Single Minister .....	100
D. The Question of Confidence .....	102
IV. The Primary and Secondary Normative Powers of the Government .....	104
A. Decree-laws .....	105
B. Legislative Decrees.....	108
C. Regulations .....	111
V. The Distinction between Politics and Administration .....	112
VI. The Constitutional Principles on Public Administration....	114
VII. The Auxiliary Bodies and the Independent Authorities.....	116
VIII. Conclusion.....	118
Further Reading.....	120
<b>6. The President of the Republic .....</b>	<b>121</b>
I. Introduction.....	121
II. Election, Term of Office and Substitution .....	122
III. The Responsibility of the President of the Republic.....	123
IV. The Counter-signature and the Classification of the Acts of the President of the Republic .....	126
A. Formally Presidential, but Substantively Governmental, Acts .....	127
B. Fully (Both Formally and Substantively) Presidential Acts .....	129
C. Complex (or Dual) Acts: Appointment of the Government and Dissolution of the Parliament .....	131

V. The Shaping of the Role of the President of the Republic Throughout the Constitutional Experience .....	135
VI. Conclusion.....	137
Further Reading.....	138
<b>7. Regional and Local Government.....</b>	<b>139</b>
I. Introduction.....	139
II. Origins and Evolution of the ‘Republic of Autonomies’.....	141
III. The Constitutional Framework and its Delayed Implementation.....	144
IV. Special and Ordinary Regions.....	146
V. The Direct Election of the Presidents of the Regions and Statutory Autonomy .....	149
VI. The Distribution of Legislative Competences between the State and Regions .....	150
VII. Administrative Autonomy and the Principles of Subsidiarity and Loyal Cooperation.....	154
VIII. Financial Autonomy .....	158
IX. Local Authorities.....	160
X. Conclusion.....	162
Further Reading.....	163
<b>8. The Judiciary .....</b>	<b>164</b>
I. Introduction.....	164
II. The Evolution of the Judicial Function .....	165
III. The Separation of Powers and Judicial Independence .....	168
A. External Independence: The High Council of the Judiciary .....	169
B. Internal Independence: Appointment, Tenure and Absence of Hierarchy .....	172
IV. The Organisation of the Judiciary .....	176
A. The Principle of Unity of Jurisdiction and Special Judges.....	176
B. Administrative Courts: A Dual System .....	178
C. Judges and Public Prosecutors .....	180
V. Judicial Responsibility.....	181
VI. Conclusion.....	184
Further Reading.....	185

9. The Constitutional Court .....	186
I. Introduction.....	186
II. Historical Background .....	187
III. The European Model of Constitutional Adjudication .....	189
IV. The Constitutional Court: Composition and Functions.....	190
A. Special Judge .....	190
B. Specialised Body .....	192
C. Centralised Body .....	192
V. The Court's Delayed Establishment and First Years of Activity: Reviewing Fascist Legislation .....	193
VI. A Variety of Remedies.....	196
VII. The Incidental Procedure and the Relationship with Ordinary Courts .....	199
VIII. The Constitutional Court and European Courts .....	202
IX. The Relational Character of Italian Constitutional Adjudication and Internal Collegiality .....	205
X. Conclusion.....	207
Further Reading.....	208
10. Protection of Rights .....	209
I. Introduction.....	209
II. The Evolution of Constitutionalism and the 'Age of Rights' .....	210
III. Inviolable Rights .....	212
IV. The Italian Approach to Fundamental Rights: Personalism, Pluralism and Solidarity .....	214
V. Codified Rights and New Rights.....	218
VI. Limiting Rights .....	221
VII. Judicial and Non-judicial Safeguards .....	225
VIII. Key Rights .....	230
A. Citizens and Migrants.....	230
B. Freedom of Religion .....	234
C. Social Rights.....	239
IX. Conclusion.....	243
Further Reading.....	244
<i>Index</i> .....	245