At the beginning of 1948, Italy's first republican constitution went into effect. After exactly a century, the Statuto of 1848 was finally and formally superseded. History will record that the Statuto proved a powerful instrument in the formation of Italian unity and in the development of Italy's freedoms and parliamentary system until 1922, just as it will also be a witness to its rejection and nullification in the course of the subsequent twenty-five years. The new republican constitution represents the first deliberate effort by the Italian people as a whole to guarantee their freedom and common welfare within a constitutional framework.

The influences of many lands are visible in the document. One can see in the rebirth of regionalism the native historical tradition of municipal freedom; the French fear of Caesarism reflected in election of the president by Parliament rather than by the people; British reliance on a balance of power between executive and legislature translated into the almost unlimited executive power of dissolution of the chambers; the time-honored American principle of bicameralism accepted with the creation of two legislative houses of equal power; and the equally famous American doctrine of judicial review tentatively imitated through the establishment of a Constitutional Court. Of Eastern constitutionalism there are only scant traces, the new social and economic rights reflecting rather the general trends of the times than any overt allegiance to the tenets of the Soviet constitution. Indeed, the acceptance of the new has been tempered by a strong restatement of what is valid in the individualistic and liberal traditions of the eighteenth and nineteenth centuries.

The constitution is a result of much thought and effort, and of an
attempt to learn from the mistakes of others. The Bonapartist régimes, the Weimar experiment, as well as the fate of the first French constitutional project of 1946—all were considered. The learning displayed over a period of eighteen months by the relatively few who took an effective hand in the proceedings was impressive; the question of whether necessity should be considered a constitutional source of law was fully debated. Continuous reference was made in the many thousand pages of debates to the classical political philosophers from Aristotle to Montesquieu and Rousseau. During the debate on bicameralism, Hamilton, Robespierre, Napoleon, Siéyès, Proudhon, Mirabeau, Mill, Pitt, Blum, Mazzini, Cavour, and Sorel were quoted, not to mention Duguit, Lees-Smith, Giraud, and Kelsen. The Communists called in the authority of George Washington and relied on Benjamin Franklin to weaken the argument for an upper chamber, while the Christian Democrats quoted at length the authority of Stalin to support the thesis that the two chambers had to be of equal power.

i. 1947 vs. 1946

Every constitution reflects not only the relative strength of the contending political forces within the Assembly which writes it, but also the political climate of the country at large, and of the community of nations within which the country moves. The Italian constitution is a good example of this truth. In no other way could many of the changes which occurred between the draft constitution, largely prepared in 1946, and the final constitution, debated and approved in the course of 1947, be explained. In the final bill of rights, some of the formulae so cherished by the constitution-makers in the people’s and workers’ republics of the East, and which had been accepted in the constitutional draft, have disappeared, while the political rights of citizens have been strengthened. The executive emerges with more power, and the independence of the Constitutional Court is guaranteed more securely. All these changes represent Communist defeats; while the Christian Democratic retreat from a corporativist and regionalist stand must be viewed as a victory of classical Italian liberal beliefs and of common sense.

The most serious encroachment of Eastern constitutionalism was found in Article 32 of the draft, which conditioned the exercise of political rights upon the fulfillment of some activity or function
contributing to the material or spiritual development of society. Thus the enjoyment of political rights could be seriously curtailed for any citizen, depending upon the interpretation which successive governments might give of what constitutes an appropriate activity. In the final text, this condition is eliminated. A number of other changes reveal the gradual decrease in the influence of the Marxist parties. Trade unions must be democratically organized before they can get recognition by the state. No longer have all workers the right to strike; instead, the right is to be exercised only within the sphere of the laws regulating it. The latifundia are not to be abolished, but transformed. The workers do not have a right to participate in the management of their plants, but only a right to collaborate in such management, taking into account the interests of production. Schools are open, not to the “people,” but to “all.” Private agencies have not the mere faculty, but the right, to open schools, even though no burden may accrue to the state. No longer are children born out of wedlock entitled to a juridical status equal to that of legitimate children, nor have parents the same duties toward them; they are entitled merely to support and to every protection compatible with the rights of legitimate offspring. The only Christian Democratic defeat in this area came when the final constitutional text no longer proclaimed the indissolubility of marriage. The ringing declaration of the draft that when the power of government violates fundamental freedoms and the rights guaranteed by the constitution, resistance to oppression becomes the right and duty of citizens, was quietly dropped — as it was in France in the second constitutional project.

In the legislative field, on the other hand, the corporatist efforts of the Christian Democrats met final defeat. The Senate, instead of being elected one-third by regional councils and two-thirds by universal suffrage, is to be elected entirely by universal suffrage. Referenda are now possible, under certain circumstances and for certain types of legislation, only to repeal existing laws and not to suspend the enactment of new ones.

The resolution to strengthen the executive power, notwithstanding the stubborn and clever opposition of the Communists, is apparent throughout. Executive decree laws, which had not been admitted in the draft, are legitimatized in the final text, even though only in extraordinary cases of necessity and urgency, and under rigid conditions. While the draft was silent on the matter, the final
text authorizes the president of the Republic to send back to the chambers, within the time limit allowed him for promulgation and with a motivated message, any bill of which he disapproves. Presidential promulgation must follow if the bill is again approved by the chambers. The president's influence and power are extended into two new fields about which the draft said nothing: the president can send messages to the chambers and he must authorize the presentation of government bills to the chambers. In one respect, the president's power was curtailed: his otherwise unlimited power of dissolution of the legislative bodies cannot be exercised during his last six months of office.

The Christian Democrats had to yield on important points as far as regionalism was concerned. The complicated hierarchy of regional powers, which the draft classified as exclusive, concurrent, and complementary, was abandoned and no powers at all were given to the regions in the previously admitted fields of industry, trade, commerce, mines, credit controls, public education, and health. The Liberal-Communist alliance held fast and succeeded in maintaining that the Italian Constituent Assembly of 1947 could not take away from the jurisdiction of the central government areas of public power which the Philadelphia Convention of 1787 had already recognized as necessary for the survival of a federal government. The generosity of the draft toward regional finances was modified, and state revenues were allocated to the regions not for "essential" but for "normal" purposes. The already great power of the central government in dissolving regional councils was increased when it was added that the councils might be dissolved for reasons of national security. The dissolution was no longer to be proclaimed by the president with the concurrent advice of the Senate, but by the president, having heard a mixed parliamentary committee. Furthermore, the number of regions was reduced from twenty-two to nineteen, and the creation of new regions in future made twice as difficult.

Some of the changes introduced in the structure and jurisdiction of the Constitutional Court will strengthen its authority and independence. The tenure of the justices was increased from nine to twelve years. The indeterminate membership was changed to a fixed one of fifteen justices. The appointment of the justices which the draft left to Parliament (with the selections required to be one-half from magistrates, one-fourth from lawyers and law professors,
and one-fourth from citizens eligible for public office) has now been left, in equal measure, to the president of the Republic, to Parliament, and to the higher courts; and the choice will be limited to magistrates, law professors, and lawyers.

II. BICAMERALISM AND REPRESENTATION

One of the characteristics setting the Italian constitution apart from other postwar constitutions is the acceptance of the bicameral system. Article 55 reads: "The Parliament is composed of the Chamber of Deputies and of the Senate of the Republic." In itself, the bicameral idea did not meet with strong opposition, even though the Socialists and Communists declared against it in principle. No such agreement was possible, however, when the jurisdiction and the method of election of the two legislative bodies had to be determined.

The Christian Democrats, together with the Liberals, were the main champions of the absolute equality of powers of the two chambers as eventually written into Article 70 ("The legislative function is exercised collectively by the two Chambers") and Article 94 ("The Government must have the confidence of the two Chambers"). A bicameral system was needed, they said, to give balance to the legislative process, greater maturity to legislative debate, and, quite as important, greater stability to parliamentary government. This last aim could not be achieved unless the two chambers were of equal powers.¹ Nor could the goal of true regionalism be attained if the upper chamber, originally intended to be, in part at least, a regional body, was placed from the beginning in a condition of inferiority.² In 1936, Stalin himself had supported the concept of parity between the two Soviets.³ Not even the authority of Stalin disarmed Communist opposition to parity of powers; but when trying to write into the constitution the principle that the government should enjoy the confidence only of the

¹ Piccioni, Assemblea Costituente, Debates, Sept. 17, 1947, p. 266.
³ Tosatto, A. C., Debates, Sept. 19, 1947, p. 343: "The Soviet constitutional commission of 1936 debated whether or not a bicameral system should be adopted and whether or not the Soviet of the Union and the Soviet of Nationalities should be placed on a footing of equality. Stalin opposed the current which denied equality, by pointing out that by giving unequal powers to the two houses conflicts between them would not be eliminated but increased, and that what eliminates legislative conflicts is parity and an equal democratic basis."
Chamber of Deputies the party continued in a minority. As the constitution stands, it does not provide for any procedure whereby conflicts between the two chambers can be solved. As in the United States, the normal procedure will be discussion between committees of the two chambers and compromise. In case of absolute deadlock on an important issue, one or both of the chambers can be dissolved by the president. The matter appears a purely theoretical one for the next several years, given the essentially similar political composition of the two chambers as a result of the elections of 1948.

Acceptance of parity did not solve the other major issue of how to elect the upper chamber. The easy agreement reached on the Chamber of Deputies (Article 56: “The Chamber of Deputies is elected by universal and direct suffrage . . .”) could not be realized for the Senate because of revival by the Christian Democrats of their traditional doctrine of interest representation. To a Constituent Assembly chosen for creating a new democratic structure on the ruins of dictatorship, the idea of interest representation appeared too much like an effort to resurrect fascist corporativism. The Christian Democrats refused to concede the parallel, pointing out that a substantial body of socialist and syndicalist doctrine had favored the idea of interest representation in the last fifty years, and that within a constitutional framework the idea was not incompatible with the idea of democracy. The representation of economic groups, divided into the major categories of agriculture, industry, trade, academic bodies, professions, artisans, white-collar workers, and civil servants, was needed to integrate universal suffrage and to implement the limited rôle of political parties which were to dominate the stage in the Chamber of Deputies. In a bitter attack on political parties, a Christian Democratic deputy said: “Italian parties lack a strong attachment to the ideas of freedom; they are followed by an exceedingly small minority of the population, while the great mass is foreign to them. For this reason, political parties are dogmatic and fail to reflect the true needs of the country. Parties have as yet been unable to give birth to a technical and political aristocracy capable of meeting the difficult and specialized tasks of government.”

This De Gaulleist attack on political parties was not well received,
and all subsequent Christian Democratic attempts to secure an even 
partial recognition of interest representation were defeated. 
Parity had been admitted, but the Marxist parties were determined 
to make the second chamber as exact a duplicate of the first as 
possible, so that from the upper chamber no important opposition 
could originate to the policies of the lower one. In the end, how-
ever, the constitution provided for some small differences. Each 
region was given at least six senators (except Valle d’Aosta, which 
gets one), and the term of the Senate was extended to six years, 
while that of the Chamber remained at five. While both deputies 
and senators are to be elected by universal and direct suffrage, their 
electors are, respectively, those who have attained their twenty-
first and their twenty-fifth birthdays. The theory that by raising 
the age limit one could expect to have an electoral body endowed 
with a greater sum total of wisdom, and therefore presumably less 
inclined to vote for the Left, was disproved by the elections of 1948, 
when the percentage of Communist Front votes was practically the 
same in both the Senate and the Chamber elections. A more sig-
ificant difference, not contained in the constitution, arises from 
the different electoral laws adopted for the two houses. The Cham-
ber of Deputies is elected by proportional representation with a 
limited use of surpluses by national lists. The Senate is elected on 
the basis of a hybrid system whereby candidates stand initially for 
election in single-member constituencies and those of them who 
obtain at least sixty-five per cent of the total vote cast in their con-
stituency are elected. The constituencies where no candidate has 
obtained that percentage are pooled regionally, candidates are 
grouped on party lists, and a proportional representation system, 
without national lists, is applied from that point on.

III. PRESIDENT AND EXECUTIVE

In the sphere of executive powers, the constitution had to solve 
three major problems: first, definition of the extent and of the na-
ture of presidential powers; second, establishment of a balance between the executive and the legislative powers; and third, definition of the position of the cabinet.

The members of the Constituent Assembly had to keep in mind that the Monarchy was gone and that the Republic was not to be of the presidential type. Under the Republic, the three main provisions of the constitution of 1848 relating to the royal powers were no longer applicable. These were that the power of legislation belonged collectively to the chambers and to the king, that executive power belonged to the king, and that justice issued from the king. Indeed, traditions of parliamentary government which had been established ever since the second half of the nineteenth century had already emptied these formulae of any substantial content. But while the English monarchy and the American presidency could not be used as prototypes, neither could the French presidency offer much help; for from the very first the Christian Democrats made it clear that they wanted a stronger president than had been given to the French people. Furthermore, the principle of the irresponsibility of the president, except for treason or violation of the constitution, was too firmly established to permit granting the president any powers based on the prerogative of his office. The constitution therefore states, in Article 89: “No act of the President of the Republic is valid unless countersigned by the Ministers proposing it, who assume responsibility for it.”

With these requirements in mind, the constitution has made these main provisions for the office of the president. The president is elected for a period of seven years by the Chamber of Deputies and the Senate, meeting together as the Parliament, with the participation of three delegates for each region in order to guarantee a somewhat broader electoral basis. Unlike the French constitution, which permits the president to be re-elected once, the Italian constitution is silent on this point. According to Article 83, the election of the president “takes place by secret ballot and requires a two-thirds majority of the Assembly. After the third ballot, an absolute majority is sufficient.” The French constitution left the whole matter to decision by the Parliament meeting for the presidential

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6 For the election of the first president, however, only members of Parliament were present, since there had been no time to choose the regional representatives. This was in accordance with Art. 2 of the transitional arrangements of the constitution.
election; and the decision was in favor of secret ballot and absolute majority. Both countries, therefore, seem to have agreed that the manipulations made possible by the secret vote are less damaging to a real freedom of choice than the compulsion of a public vote.

The constitution proclaims the president head of the state and representative of national unity, but not the protector of the constitution as urged from several quarters. As such, he has powers of appointment, in specified cases, of accrediting and receiving diplomatic representatives, of declaring a state of war upon decision of the chambers. He also has command of the armed forces—a function which the French constitution splits between the prime minister, who directs the armed forces, and the president of the Republic, who has the title of commander of the armies.

Even though the chairman of the constitutional committee denies that the president is part of the legislative power, the constitution gives him various means of influencing the legislative process. The President can only "promulgate" and not "sanction" laws; but he may (Article 74), "by means of a motivated message, request a new decision of the Chambers." He has, under normal circumstances, thirty days in which to exercise this suspensive veto, as against the ten days allotted to the French president. No special majority is required to override this suspensive veto, and if the chambers again approve the law it must be promulgated. Apart from this power, which is to be exercised with reference to specific bills, the president may send messages to the chambers. In the course of the debate, the messages of the president of the United States were recalled as an example of the type of leadership expected from the president in times of emergency or whenever important issues are expected to come before Parliament. One presidential function which appears in the French constitution, that of presiding at cabinet meetings and of setting up and keeping minutes, is not to be found in the Italian constitution. But the Italian president is given the power of authorizing the presentation to the chambers of bills initiated by the government—a function, however, which must be considered largely of a formal nature.

In the appointment of a prime minister and, upon his recommendation, of the ministers, the president will exercise one of his more important executive powers. Yet another difference between

the French and Italian constitutions is to be found here. The French president can at first merely nominate the prime minister and must wait upon a vote of confidence by the National Assembly toward the prime minister and his program before appointing him to office. On the other hand, the appointment of the cabinet by the Italian president is final, from a constitutional point of view, even before the cabinet presents itself before the chambers to seek the confidence which it of course must have to continue in office. The two different solutions reflect the initial French premise that the choice of the prime minister belongs exclusively to the legislative power, and the Italian effort to establish as far as possible the independence of the executive, quite apart from the issue of responsibility toward the representatives of the people. Were shifting parliamentary majorities to prove the rule, it is not too difficult to anticipate quite different parliamentary reactions when the prime minister presents himself alone and as a beggar, or when he presents himself surrounded by a fully formed cabinet.

The attempted strengthening of the executive in its relationship with the legislature is quite visible in Article 88 dealing with the crucial dissolution issue. The article reads: "The President of the Republic may, having heard their respective presidents, dissolve both Chambers or only one of them. He may not exercise such power within the last six months of his term." If the attempts of a Christian Democratic group to have the dissolution power proclaimed a presidential prerogative to be exercised independently of the advice of the prime minister\(^9\) failed, so did the Communist effort to curtail this power. The Communists had offered as their solution an exact duplicate of Article 51 of the French constitution,\(^10\) barring dissolution during the first eighteen months following election of the Chamber, and after that making it possible only when two ministerial crises had occurred within the same period of eighteen months. It is a curious paradox of history that where a viable power of dissolution would be useful in helping to solve a most difficult parliamentary state of affairs, as in France today, that power does not exist. On the other hand, where the constitution grants that power, as in Italy, there is no foreseeable need for its use in the course of the next five years.

The Constituent Assembly refused to call the head of the cabinet

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"prime minister," as proposed by the constitutional committee, and reverted to the traditional title of "president of the council of ministers." Having thus refused to classify the chief political officer of the country as anything more than primus inter pares, the constitution proceeds, however, to say, in Article 95, that "the President of the Council of Ministers directs the general policy of the Government and is responsible for it. He maintains the unity of political and administrative action, and promotes and coördinates the activity of the Ministers," thus recognizing, far beyond anything provided in the French constitution, the commanding position of the head of the cabinet.

In making clear where cabinet leadership is to be found, and in making cabinet ministers collectively responsible, the constitution seeks to give strength to the cabinet. The same effort can be seen in the provisions surrounding the question of legislative confidence toward the cabinet. The principle of cabinet responsibility toward Parliament is fundamental in a parliamentary government. Any new government must present itself before the chambers within ten days of its formation to seek their confidence. Unlike France, Italy's bicameral system requires that this confidence be granted separately by the Chamber of Deputies and by the Senate. Lack of confidence expressed by one chamber is enough to cause the resignation of the government. But, as in France, the government is subsequently protected against sudden parliamentary attacks. Three full days must elapse before a vote of no-confidence (which must be by roll-call) can be taken, and the motion must be put forward by at least one-tenth of the total membership of either house (the constitutional committee had gone so far as to recommend a minimum of one-fourth of the members). The same Article 94 also makes clear that "a contrary vote of one or both chambers on a government proposal does not carry with it the obligation of resigning." In practice, however, it is likely that if the government is defeated on an important policy matter, a motion of no-confidence will follow, so that, in important issues, this will at most mean the granting of a breathing spell, permitting the government to marshal its parliamentary support.

Serious, but certainly not immediate, difficulties may arise over the grant of confidence to the government by one chamber and the withholding of it by another. With elections to the Chamber and to the Senate occurring, normally, in different years, this is a
likely development, because the chambers will reflect different political moods. The alternative which will then confront the president will be between accepting the negative verdict of one of the two houses and, following the resignation of the government, proceeding to the formation of a new one, or refusing to accept it and dissolving the house which has denied confidence to the government. It may be expected that the determinant factor will be whether the denial of confidence has proceeded from the house which has been elected last. In this case, its verdict should be considered an expression of the present political will of the country, and therefore accepted. A new government would then be formed, and the other chamber dissolved if it refused to grant its confidence.

IV. THE PROTECTION OF FREEDOM AND OF THE CONSTITUTION

A preamble and a bill of rights, which together account for more than one-third of the constitution, protect the individual against the encroachments of the state and promise him those benefits which are today recognized as one of the main functions of government. A regional plan tries to break up and distribute the power of the state. Finally, the constitution itself is recognized as the supreme law of the land, and a special court is set up for its protection. As a result of this threefold approach, it would be difficult to deny that Italy's constitution-makers have made a determined effort to safeguard individual freedom, to prevent excessive exercise of public power from the center, and to place the constitution beyond the reach of any momentary expression of the people's will.

While the French constitution avoids the difficulty of defining civil and political rights and is satisfied with a reference to the Declaration of 1789, the Italian constitution faces the problem, and a listing of the rights of the citizen in the traditionally accepted sense comes before the definition of the new economic and social rights and duties. Article 2 typifies the confluence of the old and the new: "The Republic recognizes and guarantees the inviolable rights of man, whether as an individual or in the social groups through which his personality develops, and requires the fulfillment of the unavoidable duties of political, economic, and social solidarity." The constitution, then, recognizes the right of the citizen to
be left alone and the right to be left free in the activity in which his life, both as an individual and as a member of the community, is fulfilled. But it does more than bar the state from entering these areas of freedom; it directs the state to lend the active support of its machinery to the securing of those rights to work, to security, to welfare, to education, which are today considered an essential part of any organized political society. In exchange for these positive contributions to the citizen’s happiness, the state exacts from every citizen, according to the capability and the choice of each, the undertaking of tasks which will contribute to the material and spiritual progress of society.

The bill of rights includes more than a definition of the rights and duties of the citizen and of the state. It contains a general outline of future economic policy. It asserts the principle that public and private economic activity may be directed and coördinated toward social ends. It declares that those economic enterprises which relate to essential public services, and which have an aspect of preëminent general interest, may be turned over to the state or other public agencies or to communities of workers or consumers. It announces the principle of restrictions on the private ownership of land for the purpose of attaining a rational exploitation of the soil and of establishing just social relations. Finally, it recognizes the right of workers, subject to the requirements of production, to collaborate in the management of business enterprises. These are the areas in which the bill of rights has no precise meaning, as it reflects the position of compromise of Christian Democracy, seeking to reconcile the claims of private property and of collective action. A meaning will be given to these clauses only within the framework of specific legislative measures enacted by successive parliaments.

The regional structure finally provided for in the constitution is only a rather pale image of the original intentions of the constitution-makers. It is, however, probably all that it should be, given the problems which lie ahead. In Article 115, the constitution recognizes the regions as “autonomous bodies, with powers and functions of their own according to the principles fixed by the constitution.” But the most striking feature of the plan is the extent to which the state has retained the power of control over regional activities. Articles 123–127 are evidence of the fact that the new constitution has not created a federal Italy, but has retained a unitary form of government within which the regions can exercise
useful local functions—always subject to the control of the state, which will see to it that the exercise of these functions lies within the fundamental principles of the laws of the state and is not in conflict with the interests of the nation or of other regions. When such a conflict develops, the regional council, which is the regional legislative body, may be dissolved, as it also may be for reasons of national security. The fear expressed that, following the regional elections to be held later in 1948, the regions might develop into "autonomous republics" and flout the authority of the state, is entirely devoid of any constitutional foundation, just as it is largely outside the realm of political possibilities.

The final text represents a drastic trimming of the impressive grant of powers to the regions which the constitutional project contained. All useful regional and local matters are left within the jurisdiction of the region, and much valuable work can undoubtedly be performed there. But of areas in which it might be said that regional and national jurisdictions overlap, only agriculture is left. Even here, there can hardly be any doubt that national policies with regard to crop controls and prices, wage contracts and land reclamation, agrarian credit policies and land reforms, will prevail over anything the regions may want to do. On the other hand, the very useful and important task of administering national policies at the regional level might be given to the regions, thus achieving one of the main aims of decentralization.

The creation of regions, with its sequel of conflicts among the regions and between the regions and the state, would of itself have required the setting up of a Constitutional Court to settle the differences. The emergence of the Court, however, has a deeper meaning. It reflects the desire to place the constitution, as well as subsequent laws which will be given a constitutional character, beyond the temptation of legislators. The experiment is a bold one for a country brought up in the traditions of Roman, civil, and codified laws and for a country which, like France, has for so long accepted the principle that the legislative power is supreme and that anything approved by Parliament and meeting the outward procedural requirements is law. This is a tradition which has so far made it impossible to distinguish between positive and higher law. The new Italian Constitutional Court is therefore faced with the necessity of breaking with all traditions and precedents in order to carry out its task.

When the French toyed with the same idea, all that they could
agree upon in the end was a constitutional committee with power to tell the Constituent Assembly that it was about to "revise" the constitution, and that it had better go about it in the right way. All that this clause accomplished is to make the legislators aware that a revision of the constitution is under way and to call for the special majorities required for the situation. On the other hand, Article 136 of the Italian constitution reads: "When the Court declares unconstitutional a norm of law or of an act having the force of law, the norm ceases to have effect from the day following the publication of the decision." This leaves the Italian Parliament very much in the same position as the American Congress when confronted by a decision of unconstitutionality by the Supreme Court.

To carry out a task which potentially is of a decisive nature, a strong court is required. Whether Article 135 makes provision for such a court can only be a matter for speculation at this point. The Court will be made up of fifteen justices nominated for twelve years, one-third by the president of the Republic, one-third by Parliament in joint session, and one-third by the highest ordinary and administrative courts. Article 137 left to a subsequent constitutional law the establishment of "the conditions, the forms, the terms for bringing action of constitutionality and the guarantees of the independence of the justices of the Court." As its last act, the Constituent Assembly determined to eliminate the uncertainty surrounding this clause. On January 31, 1948, the necessary constitutional law was approved by a vote of 202 to 85, with the Left presumably voting in the negative.\(^{11}\) Article 1 reads: "The question of constitutional legitimacy of a law or of an act having the force of a law of the Republic, when raised by the bench or by either party to a judicial action, and not held by the judge to be manifestly unfounded, is placed before the Constitutional Court for its decision." This brief provision, which forms the core of the law, seems to be a satisfactory solution of the procedural problems relating to judicial control over the constitutionality of laws. It should be noted that attempts to establish a time limit of two or four years within which the constitutionality of a law could be tested were defeated.

V. THE CONSTITUTION COMES TO LIFE

The constitution was approved on December 22, 1947, by the

\(^{11}\) A. C., Debates, Jan. 31, 1948, pp. 4329 ff.
overwhelming vote of 453 to 62. All major parties supported it; and it went automatically into effect on January 1, 1948. Following the election of a Chamber of Deputies and of a Senate on April 18–19, and of the first president on May 11, the Italian Republic has now begun its constitutional life. The Italian popular legend that there is a star in the sky to look after the country, no matter what her misfortunes or what the follies of which her people are guilty, will certainly receive added strength as a result of the developments of the recent past. For the Italian Republic begins its life under the auspices of a tolerably good constitution which shows more than a minimum of political wisdom, following elections which resulted for the first time in Italy's modern history in the victory of a single political party, and just when the United States has started a far-reaching program for the economic reconstruction of sixteen European countries, including Italy.

The framework and the means, the procedural as well as the substantive requirements, appear to be all at hand to get the Italian experiment in constitutional and progressive democracy in motion under conditions as favorable as this tragic postwar era will allow. Avoiding many of the extremes and weaknesses of its contemporaries, the Italian constitution provides for the exercise of balanced, yet effective, political power. It is careful to protect the rights of citizens, and yet it is mindful of the demands of an industrial age. It makes change possible, and yet grants to the constitution that higher validity without which no constitutional democracy can be said to exist. Having accomplished this, the Italian people have now turned over the primary responsibility for governing the country for the next five years to one political party, the Christian Democrats. The usual fateful consequences of proportional representation were avoided and the main purpose of finding a majority capable of governing was kept successfully in mind. The Marshall Plan will presumably place at the disposal of the Italian government means of unprecedented size which—if wisely used—should guarantee the creation of a more sound and just economic system. Looking at the problem purely within its national boundaries, one must conclude that if the cumulative result of these forces shall not be such as to lead to the gradual establishment of a free and advancing political and economic society, the folly of man must indeed be adjudged immeasurable.