KILLING FEDERALISM FROM ABOVE: CONSTITUTIONAL CULTURE, THE ITALIAN FOUNDING, AND THE SEEDS OF CONTEMPORARY INSTABILITY[1]

Nikolai G. Wenzel

Flagler College (St. Augustine, Florida, USA)

OUTLINE: I. INTRODUCTION. II. A BRIEF REVIEW OF ITALIAN HISTORY. III. CONSTITUTIONAL POLITICAL ECONOMY. 1. Constitutional Culture and Constitutional Stickiness. 2. Defining Constitutional Success. IV. 1861: ITALY'S CONSTITUTION AS FOREIGN IMPOSITION 1. Annexation and centralization. 2. Why Centralization? 2.1. *Unity first, then institutional design. 2.2. Making Italy, making Italians. 2.3. Weak institutional capacity outside Piedmont.* 3. Why the constitution didn't stick. *3.1. No sense of Italy 3.2. Quashing a tradition of local autonomy.* V. CONCLUSION.

Abstract: With chronic governmental instability, a dangerously high debt-to-GDP ratio, Northern secessionism, and Southern under-development, Italy continues to stagger along. This paper uses the lens of constitutional culture to examine the Italian founding in 1861. Despite arguments for imposed centralization from above, Italy would have fared better under a federal system that respected the peninsula's rich tradition of local autonomy. Although counter-factuals are impossible to prove, a federal system would likely have led to greater stability and growth.

Keywords: Italian founding; Italian constitution; federalism; constitutional political economy; constitutional culture

I. INTRODUCTION

Italy appears to be perpetually in crisis; in fact, it has become a parlor game to make fun of Italian politics, corruption and instability. And, yet, Italy never ceases to amaze. (Sabetti, 2000, ix) writes of the "paradox of Italy – poor government performance in contrast with successes across a broad array of human endeavor." With an estimated debt/GDP ratio of 120%, Italy is at the center of the Euro debt crisis. The country ranks 83rd out of 144 countries in economic freedom, and scores a dismal 3.9/10 on the Transparency International index (closer to Mexico's 3/10 than the Western European average of six to nine). The country has had 55 prime ministers, presiding over 64 different governments, since 1948 – for an average governmental longevity of approximately one year. The current government is a weak centrist coalition, coming on the heels of a technocratic government that was

not able to get re-elected. Simultaneously, Italy is a member of the G-8 club of the world's largest economies. Some of the world's highest fashion and best performing automobiles are Italian. And Italy seems to move from crisis to crisis without civil or social turmoil.

The literature is already rich with explanations for Italy's troubles (see, e.g Sabetti 2000, Ziblatt 2006, Gold 2003, Herder 2000, Ginsborg 2003, Leonardi et al. 1981, or del Duca and del Duca 2006). This paper takes the political and historical theory, and reframes it within a framework of constitutional stickiness – and specifically the need for congruence between constitutional culture and constitutional parchment. In sum, Italy's 1861 constitution did not match the underlying political and constitutional culture – technically, "cultures" (plural), because six provinces were incorporated into the Kingdom of Piedmont. National unity was imposed through electoral trickery and brute force to extend the power of the Piedmontese monarchy, under a veneer of liberalism and national sovereignty. Fascism nestled comfortably within this administrative structure and the bureaucracy carried on after World War Two, into the redistributive instability of the Italian welfare-corporatist state. The constitution was a foreign, external imposition, and therefore did not stick, causing troubles that linger into the present. Italy would have been better off with a federal system that respected local traditions of governance.

Section two reviews modern Italian history, with an emphasis on the creation of Italy. Section three reviews some theory in constitutional political economy, including constitutional culture, constitutional stickiness, and constitutional success. Section four reviews the Italian founding through the lens of constitutional political economy, with an emphasis on the original lack of congruence between constitutional culture and constitutional parchment. The final section concludes, repeating the 1860s Italian voices for federalism, which were quashed in the nation-building process.

II. A BRIEF REVIEW OF ITALIAN HISTORY

Italy is an exception in modern European history. Whereas one can trace the origins of modern France or England a thousand years ago or more, Italy is a recent invention, dating to the second half of the 19th century. To be sure, the Italian peninsula was the cradle of Western civilization – arguably since Remus and Romulus suckled the she-wolf or Aeneas flirted his way into Latium. But for 1400 years after the fall of Rome in 476 there was no Italy. Renaissance thinkers, such as Dante and Machiavelli, had called for unification (Sabetti 2000, 30). But the first modern use of "Italian" did not occur until 1800, as applied to the Cisalpine Republic, a Northern brainchild of French Emperor Napoleon I (Hearder 2001 157).

In the late 19th century, Italy was an amalgam of independent states – with the important and powerful Kingdom of Piedmont and Sardinia in the North, the Papal States in the center and the Kingdom of Naples and Sicily the South. In between, was a mosaic of more or less important and more or less independent provinces. In an ironic twist of history, it was Napoleon's invasion of Italy and his creation of the

Cisalpine Republic in the North that awakened nationalist sentiment in Italy. In 1815, for the first time, Joachim Murat declared Italian unity against foreign occupiers, be they France or Austria; Murat's declaration was just that – a declaration – but it was the first step in a process that culminated in the 1870 annexation of Rome, which marked full Italian unity.

From 1870 until 1947, Italy continued as a kingdom. The reader may find it surprising that I lump the 1870-1922 liberal regime with the 1922-1945 fascist regime and the postwar Allied occupation. But, as I will explain in greater detail in the next section, Fascism merely adopted most of the founding regime's institutions (most notably the centralized, bureaucratic national administration) – and the country remained a kingdom. This historical sketch is intentionally brief, as I return to the institutional implications and developments below.

This paper focuses on the founding period. However, a sidebar note is in order, to support the argument that the seeds of contemporary discontent were planted in 1861. After World War Two and the fall of Fascism, the Italian people selected a republic over a monarchy, by referendum. That republic has been marked by two main themes of constitutional failure: instability and clientelism, both of which persist to this very day. The former has manifested itself in a waltz of governments: Italy has had 55 prime ministers, presiding over 64 different governments, since 1948 – for an average governmental longevity of approximately one year. The latter, clientelism, has taken the form of a massive redistribution scheme, from the beginning of the republic. Specifically, this has meant purchasing votes in the less developed South with national funds (taxed from the industrialized North) – and an overall public finance crisis, in which Italy has accumulated more than 120% of GDP in national debt. Republican attempts to devolve power to the regions were postponed until the 1970s, when Italy engaged in a process of *pro forma* decentralization. The decentralization was incomplete and amounted to a dissemination of central power at the local level, rather than a real decentralization of power, as one might expect in a true movement toward federalism.

III. CONSTITUTIONAL POLITICAL ECONOMY

As a bridge between history and speculation, it is now time to include some theory. To analyze Italy's founding failure, I look at the various choices of institutions, and rules about rule-making. In other words, I now apply the lens of constitutional political economy to Italy. More specifically, I use the concept of constitutional culture and the fundamental problems that Italy faced during its unification – a poor choice of institutions planted seeds of discontent that are perniciously blossoming today.

1.Constitutional culture and constitutional stickiness

A word on constitutional constraints is in order. As important as constitutions are for liberty and human flourishing, the deep answer to the challenges of constitutionalism lies not in formal mechanisms. After all, constitutions are mere

parchment; while ordinary contracts rely ultimately on external enforcement mechanisms, a constitution is the formal enforcement mechanism of last resort. Instead of a contractual approach (Buchanan 1975), I employ Hardin's (1999) basic view of a constitution as a coordinating mechanism among the "interests that matter" within a polity; similarly, North *et al.* (2009, 18) explain that "controlling violence depends on the structure and maintenance of relationships among powerful individuals." Hardin (1988) explains that "without support from relevant people, perhaps often in the grudging form of those unable to co-ordinate in refusing support,...rules would not be worth the paper on which they are recorded." Such informal constitutional constraints are best captured in the concept of constitutional culture. Constitutional culture covers the general attitude towards the nature, scope and function of constitutional constraints, including the polity's willingness to be bound. It includes the implicit and explicit, stated and unstated, conscious and subconscious, thoughts, feelings, beliefs, impressions and norms a group holds about the nature, scope and function of constitutional constraints. For details on constitutional culture, see Wenzel 2007 and 2010a.

Moving from constitutional culture to constitutional success, the literature shows that success must involve matching between the constitutional parchment and the underlying constitutional culture. In sum, constitutional adoption can be classified into four categories, based on (1) the origin of the ideas contained in the constitution, whether domestic (matching the underlying constitutional culture) or foreign (non-matching); and (2) the origin of the constitution-making effort, whether domestic or foreign.[2] Before assessing the relative merits of each, it bears recapitulating the constraints that policymakers and scholars alike face when studying institutional choice, *viz.* what Leeson and Subrick (2006) dub "robust political economy":

> In the context of political economic systems, "robustness" refers to a political economic arrangement's ability to produce social welfare-enhancing outcomes in the face of deviations from ideal assumptions about individuals' motivations and information. Since standard assumptions about complete and perfect information, instantaneous market adjustment, perfect agent rationality, political actor benevolence, etc., rarely, if ever actually hold, a realistic picture and accurate assessment of the desirability of alternative political economic systems requires an analysis of alternative systems' robustness. The Mises-Hayek critique of socialism forms the foundation for investigations of robustness that relax ideal informational assumptions. The Buchanan-Tullock public choice approach complements this foundation in forming the basis for investigations of robustness that relax ideal motivational assumptions.[3]

---

[2] Generally, see Franklin and Baun (1995) and Boettke *et al.* (2008); I borrow language from the latter and build upon it, although it applies to institutions generally, rather than constitutions specifically. For case studies, see Wenzel 2010b and 2010c.

[3] See also the "Ikeda synthesis" of the Austrian knowledge problem and Public Choice's incentive problem (Ikeda 2003).

In any realistic analysis of constitutional choice, we must take into account both the "knowledge problem" – policymakers lack knowledge to run the lives of others or to impose a constitution that does not match the indigenous culture – and the "incentive problem" – policymakers cannot be assumed to hold to heart the best interest of their constituents or the inhabitants of the country on whom they are imposing a constitution, but must be assumed to have their own interests at heart.[4] Turning from theory to constitutional transfer, we thus have four categories; each comes with its own set of challenges, in light of robust political economy. In each of these cases, the "source" refers to the impetus for constitutional change, whereas "ideas" refer to the constitutional substance. The four categories are: (1) Foreign Source, Domestic Ideas; (2) Foreign Source, Foreign Ideas; (3) Domestic Source, Domestic Ideas; (4) Domestic Source, Foreign Ideas (see Boettke *et al.* 2008). A constitution cannot force reform; in fact, there is great danger in imposing reforms – whether from foreign or domestic sources – that do not match indigenous ideas. The literature indicates that the source of constitutional adoption is ultimately secondary; what ultimately matters is the congruence between the constitutional text and the indigenous ideas. This is where Italy failed, *ab initio* – its constitution did not stick, because it was based on a combination of foreign source and foreign ideas, imposed by Piedmont on lukewarm or hostile provinces.

But first, a word on constitutional success.

2. Defining constitutional success

North *et al.* propose that human history can be classified in three social orders: foraging, limited access orders (aka natural state) and open access orders (2009, 2). Setting aside foraging as pre-civilization, they focus on the latter two.

A closed access order "manages the problem of violence by forming a dominant coalition that limits access to valuable resources... or access to and control of valuable activities... to elite groups" (30). Such an order is characterized by slow growth and vulnerability to macroeconomics shocks; polities without generalized consent of the governed; a relatively small number of organizations (in the market and civil society); small and centralized governments; and personal social relationships (privilege, hierarchy, lack of rule of law, etc.) (11). There are degrees within this category, ranging from fragile and barely sustained orders (Haiti, Iraq, Afghanistan) to basic orders with a durable and stable organizational structure (Bolivia, Venezuela or Russia), all the way to mature closed orders, with a durable institutional structure and elite organizations outside the immediate framework of the state (Mexico is a prime example) (41).

---

[4] For details on the knowledge problem, see, e.g. Hayek 1945 and Hayek 1960 or Read 1958. For details on the incentive problem (aka Public Choice theory) see Buchanan and Tullock 1962, or Olson 1971. For a prescient synthesis, see also Bastiat 2012[1850].

By contrast, an open access order is one in which "political management of violence is based on impersonal rules and organizations, not, as in the natural state, on the manipulations of economic privileges. As a result, open access societies adjust to economic and social change without necessarily making adjustments in the political arrangements dealing with violence" (122). Open access orders manifest high levels of political and economic development, less negative growth, rich and vibrant civil society with many organizations, big and decentralized governments, and widespread impersonal relationships (including rule of law, property rights, etc.) (11). Examples of open access orders include the US, UK and France (which all made the transition from closed to open in the early 19th century), or South Korea and Taiwan (1950s-2000) (27).

In the framework proposed by North *et al.*, "the big question… is how natural states make the transition to open access societies" (25-26) – and they remind us that the transition occurs within the natural state, and must thus follow natural state logic, while giving elites incentives to make the transition to impersonal exchange. Transition occurs when elites transform personal privileges into personal rights. Such transitions do not happen immediately; first, relations within the dominant coalition must transform from personal into impersonal; then this change must extend to the larger population. There are three "doorstep" conditions for the transformation (151): rule of law for elites; perpetual organizations in both the public and private sphere; consolidated control of the military. Different countries go through different details and different orders of doorstep conditions.

But, in order to make the transition, all countries must fulfill the three doorstep conditions; now comes the importance of constitutionalism. We can think of constitutions facilitating or hindering the transition from closed to open access order. North *et al.* (2009, 2) emphasize that "transition [from closed to open access] entails a set of changes in the economy that ensure open entry and competition in many markets, free movement of goods and individuals over space and time, the ability to create organizations to pursue economic opportunities, protection of property rights, and prohibitions on the use of violence to obtain resources and goods or to coerce others" – in other words, a constitution that limits government while enabling productive exchange.

Does this not sound surprisingly like Hayek's safeguards for individual liberty under a "constitution of liberty" (1960, 205-209)? These are rule of law; equality before the law; separation of powers; and absence of discretionary powers to administrative authorities. In sum, we can define a successful constitution as one that: (a) provides a check on government, just as it empowers it to defend individual rights; (b) provides a space within which markets and civil society can flourish; and (c) supports the shift from a closed-access to an open-access order, or helps in the maintenance of an open access order.

Moving from the language of political economy to historical language, we can take the purpose of a constitution to be one of simultaneously enabling and restraining – enabling a state to do productive things, while restraining it from engaging in mischief like plunder or murder. To quote James Madison in the Federalist #51:

If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.

The Italian constitution failed at empowering the Italian state, first again fascism, second against corporatism. And it failed at constraining the Italian state against redistribution.

IV. 1861: ITALY'S CONSTITUTION AS FOREIGN IMPOSITION[5]

Along many dimensions, Italy's constitution failed to stick. To use the framework developed in the previous section, the Italian constitution of 1861 was – as far as the non-Piedmontese provinces were concerned – a foreign imposition of foreign ideas that did not match the local constitutional cultures. Gold (2003, 14) explains that "unification was something that was more or less imposed from above and not something that emerged spontaneously from below." Intellectual driver of national unity Giuseppe Mazzini referred to the founding as a "war of the princes", i.e. an elite dispute from the top down (Hearder 2001, 175). Similarly, Del Duca and Del Duca (2006) debunk the founding myth of Italians banding together by referendum – explaining that the founding "band-aid was a hasty 'national' referendum', by an extremely restricted slice of society preoccupied with public order, to ratify Italian unification." Ziblatt (2006, 102) echoes this, highlighting that the referendum for unification took place via "fraud, police threats, and corruption." In sum, "Piedmont's further extension of the Napoleonic system... only added to the image of unification as a foreign imposition from above" (Gold 2003, 17).

1.Annexation and centralization

There are multiple theories regarding the reasons for centralization. Perhaps Piedmontese imposition of national unity was a genuine response to a fear of foreign domination, or perhaps it was the result of weak institutional/administrative capacity in all the annexed states (as proposed in the next section). Perhaps it was an obvious power grab, in a textbook Public Choice story (Ziblatt 2006, 75 explains that Piedmont was suffering a public finance crisis in 1860, and sought to expand its tax base through annexation of other provinces; in addition, unification was a centralist ploy to distract the conservative opposition).

---

[5] This section parallels the methodology employed in other case studies, such as the Argentine founding (Wenzel forthcoming) and comparative analysis of the Argentine and Mexican foundings (Wenzel 2010b) and the Japanese and Filipino foundings (Wenzel 2010c).

Regardless, Piedmont did step up, and the entire process of national unification was a "gradual aggrandizement of the Kingdom of Sardinia and Piedmont" (Albert et al. 1894) as "the Northwest region of Piedmont (Kingdom of Sardinia) united what is now known as Italy through a process of diplomacy, coercion, and war" (Gold 2003, 13). Parliamentary monarchy was assigned the task of unifying the country (Sabetti 2000, 10). It did so through a process of centralization of power, to overcome regional differences (Ginsborg 2003, 145). Although the imposition took place under the liberal veneer of spreading the 1861 *Statuto*, a weak but innovative bill of rights that shifted Piedmont from an absolute to a parliamentary monarchy, the "application...was done in an authoritarian manner" with no respect for local traditions and institutions (Gold 2003, 16). In the South, centralization was imposed through brutal repression, in a quasi-colonial fashion (Gold 2003, 28-29).

From a constitutional perspective, the process of unification was perceived as a foreign imposition of foreign ideas. The next section explores this proposition.

2. Why centralization?
2.1. *Unity first, then institutional design*

The most plausible reason for the choice of institutional imposition from the Piedmontese top, in an often brutal process of centralization, comes from concerns about foreign powers. Much like Poland in the 20th century, the 19th century Italian provinces had an unfortunate location between two big powers, France and the Austro-Hungarian empire. Napoleon had invaded Italy earlier in the century, and French influence lingered a half century later. Austrian troops occupied Lombardy and Veneto at the eve of the founding. The smaller states "rushed to adopt Piedmontese legislation and pushed in 1859 for rapid annexation by Piedmont to avoid Papal or Austrian intervention that might fill the power vacuum left behind by the weak states of the restoration period" (Ziblatt 2006, 81). In the period between the 1848 upheavals and the 1860 unification, the Papal States and the Kingdom of Naples, the two most powerful states after Piedmont, routinely called foreign forces (usually Austrian) to support their regimes in time of crisis (Ziblatt 2006, 87).

Most early intellectual proponents of Italian unification and independence argued that independence from foreign rule was the priority, and political unity of the peninsula was the method to achieve this. Institutional details could be dealt with later (Hearder 2001, 165; see also Sabetti 2000, 34), and centralization was imposed on the new kingdom as a response to fears of national disintegration (Leonardo et al. 1981). Mazzini and others feared that the quest for good government and the proper form for a unified Italy had been an impediment to unification in the first place. Independence had to take precedence over a constitutional framework, and imposition by Piedmont was the most expedient manner; it was deemed that negotiations with regional parliaments would have been too lengthy (Ziblatt 2006, 105).

Interestingly, this worry parallels Latin American constitutional development at roughly the same time (recall that the final version of Argentina's constitution was adopted in 1860, a year before Italian unification, and that the seeds of Argentina's independence were planted in the 1810 disintegration of the Spanish crown under French occupation – the same year that Murat made his declaration of Italian independence). Argentine founding father Juan Bautista Alberdi (2002[1852]) emphasized how many of Argentina's difficulties can be traced to constitutional choice. He explained how there were two constitutional phases in Latin America (ibid, 13). The first, immediately following independence, was backward-looking and sought to clean up the shortcomings of earlier systems, rather than addressing fundamental problems and questions of identity. Furthermore, the earlier driving goal (ibid, 14) was democracy and independence from Europe and the Spanish crown, not economic development. In the 1850s, the second phase of constitutionalism (ibid, 38), there was no longer a need for independence, but for economic development through a new and improved set of institutions.[6]

2.2. *Making Italy, making Italians*

The second plausible reason for centralization was cultural; where there existed no Italy, the founders had to make a country. They also had to make Italians. "The task of fusing Italy's heterogeneous areas and population into a single 'reawakened' great nation was assigned to parliamentary monarchy" (Sabetti 2000, 10). In the words of Piedmontese leader Massimo D'Azeglio, "now that we have made Italy, we must make Italians" (in Sabetti 2000, 10).

This process was accomplished through the imposition of a unified set of laws and institutions by Piedmont, in what Italians call *statto di diritto* – or rule of law, but procedural rule of law, devoid of any normative content beyond uniform application of the law. Compare this with Hayek's requirements for substantive rule of law (1960, part II, and specifically chapter 14). It is rule <u>by</u> law, rather than rule <u>of</u> law (Sabetti 2000, 245). While the intent of applying the law universally and without favor may have been laudable, the result ends up being layers of Kafkaesque morass... combined with clientelestic politics, as the national administration is used to exchange goodies for votes. See also Ginsborg (2003, 394).

Sabetti (2000, 89) explains the rationale for national, centralized *statto di diritto* over respect for local autonomy:

> Local government institutions were not designed to be responsive to the preferences of diverse communities of people. Serving the needs of localized or private interests was regarded as perverse or as the "first step to corruption" of the *statto di diritto*. For private citizens to take a serious interest in public affairs or local problems was regarded as improper and even illegal... according to the doctrine of *statto di diritto* only officials were presumed to be concerned with public affairs or local problems.

---

[6] Generally, see Wenzel (forthcoming)

The emphasis on *statto di diritto* also helps to explain the continuity of the Italian state, through three regimes (parliamentary monarchy, Fascism, and democratic republic), in a story that is reminiscent of Tocqueville (1856) and de Jouvenel (1945). While the electorate changed and the politicians changed, the proverbial crowd merely changed heads, and the largely independent underlying bureaucracy steamed on. Sabetti (2000, 48) explains that Italy's liberal unifiers naively believed that a national bureaucracy was a neutral device – as long as it was in the proper hands, all would be well. Contrast this with Hayek's (1960, 401) critique of both conservatives and socialists: "like the socialist, [the conservative] is less concerned with the problem of how the powers of government should be limited than with that of who wields them; and, like the socialist, he regards himself as entitled to force the value he holds on other people."

In more contemporary terms, we have a Public Choice story of regulatory capture (see McChesney, 1987). Thus, centralization might indeed have been successful at unifying the country and "making Italians" under the Piedmontese parliamentary monarchy. But it was also an easily captured instrument to shape people in the image of imperial Rome under Fascism, and later, to bolster republican values – while also advancing a corporatist and redistributive state (Sabetti 2000, 90).

2.3 Weak institutional capacity outside Piedmont

Adding to the "national sovereignty theory of imposition from above," Ziblatt (2006) proposes a simple and compelling theory of Italy's centralization: weak institutional capacity in every Italian province but Piedmont. "Absorbed states with low infrastructural capacity prompt the political center's centralization of political power" (2006, 14). The lingering threat of foreign intervention called for swift action towards unification, rather than deliberate institutional design. In addition, the unification process had "undermined the infrastructural capacity of the potential subnational regional governments by destroying the political entities that might have served as autonomous subnational regional governments in a federal but united Italy" (Ziblatt 2006, 81) After the Austrian defeat by France, and the fall of the Neapolitan-Sicilian monarchy after Garibaldi's adventure, even committed federalists were calling for Piedmontese annexation to put an end to the social unrest throughout the peninsula (Del Duca and Del Duca 2006; see also Ziblatt (2006, 98). In sum, the very process of unification by conquest doomed subsequent possibilities of federalism.

To support the theory, Ziblatt (2006, 83) points out the lack of political modernization outside Piedmont: by 1848, no other province had a parliament, a constitution or an autonomous administration. All the other states (except Lombardy-Veneto) had deep infrastructural incapacity, as measured by ability to tax and conscript and school enrollment (86). Even the other two powerful states, the Papal States and the Kingdom of Naples and Sicily, had weak tax collection or no monopoly of tax collection over their territories (84). Lombardy did have an effective administration, but it lacked a constitution or parliament, as it was under Austrian

occupation.[7]   Del Duca and Del Duca (2006) echo the thesis defended by Ziblatt (2006), concluding that Italy adopted a unitary state because it lacked the local institutions to sustain federalism.

3. Why the constitution didn't stick

It is now clear (a) that Piedmont imposed a centralized system of laws and administration onto the new Kingdom; and (b) why this was deemed necessary. I now turn to explaining why the process failed – or, in other words, how the local constitutional cultures rejected the parchment, with ensuing constitutional failure.

3.1. *No sense of Italy*

Before the *Risorgimento* and the unification, there was no Italy, and no sense of Italy. Italy was a divided nation through the late 19th century (Gold 2003, 14). Ginsborg (2003, 3) opines that, still today, "in purely historical terms, it would be better to talk not of three Italys [(North, Center and South)] but of three hundred." Historian Antonio Gramsci later complained of Italy's "municipal particularism and Catholic cosmopolitanism" (in Gerschenkron 1962, 92). Even the Italian language was not widely spoken; Piedmontese Prime Minister Camilio Cavour, the engineer behind unification, preferred French over Italian for his correspondence (Gold 2003, 14).[8] One can thus not speak of a uniform "Italian" constitutional culture – in fact, the entire logic of imposition and centralization supports this theory.

3.2 *Quashing a tradition of local autonomy*

Rather than a culturally homogeneous Italy, waiting for a marginal step of political unification, the peninsula was divided into provinces with a variety of political institutions. Italy had a tradition of local autonomy (Sabetti 2000, 72) and all regional sovereigns (except, of course for the King of Piedmont) were anti-nationalist (Sabetti 2000, 40). Rich tradition of local governance and vibrant civil society existed throughout the peninsula, even in the South, contrary to contemporary misperceptions: even "in Sicily, as in other parts of the South, there were traditions of self-governance on which Italian unification could have relied" (Sabetti 2000, 48; see also 216-217). But the central government actively set out to destroy the South's civil society networks after unification (Sabetti 2000, 233). In sum, Sabetti (2000, 32) explains that the political divisions that had existed in Italy for 1,300 years had led to a strong attachment to community and regional affairs, and an "extraordinarily diverse" set of social institutions, cultures and languages.

---

[7] Incidentally, the Lombardy-Veneto exceptions are early explanations for the current secessionist movements.

[8] Some dissenting voices claim that there existed an Italian identity before unification (as reported in Sabetti 2000, 32).

In the North, the people of Northeastern Lombardy-Veneto were displeased by unification, because their republican institutions were replaced by the "autocratic modernism" of the new kingdom (Gold 2003, 15). They were also unhappy about Piedmont's refusal to recognize "distinctive administrative traditions, such as their *convocato degli estimati*, or roughly a 'local taxpayers' democracy'"; more generally, the people of regions such as Veneto, Lombardy and Tuscany, which had enjoyed decentralized structures before unity, were not pleased to be annexed into the new Piedmontese/Italian kingdom (Gold 2003, 18). Interestingly, Ziblatt (2006, 19-20) explains that the political elites (if not the people) in Lombardy-Veneto supported annexation into the new kingdom; then again, Lombardy-Veneto was annexed in a rather peculiar manner, as it was handed from the Austro-Hungarian crown to the Piedmontese crown, under French imperial influence, through the Franco-Austrian Treaty of Villafranca (Ziblattt 2006, 90). This, of course, supports the theory of external imposition. And in the three decades following the 1861 unification, the central government routinely ignored bills put forward by local governments or proposals that would have given more autonomy to local governments (Gold 2003, 20).

Gold (2003, 17) concludes that "Piedmont's further extension of the Napoleonic system [of centralized bureaucratic administration] only added to the image of unification as a foreign imposition from above."

V. CONCLUSION

The Italian founding was (a) a foreign imposition from above; and (b) a failure. But what were the alternatives? The one that comes most clearly to mind is that of federalism – an institutional structure that would have nourished Italy's traditions of local self-governance, allowed the Northern provinces to thrive without resentment, and permitted the South to grow without an institutional albatross on its back. Sabetti (2000, 48) reminds us that even "in Sicily, as in other parts of the South, there were traditions of self-governance on which Italian unification could have relied." Generally, see Sabetti (2000, chapters 8 and 9) for an attack on cultural explanations for the South's underdevelopment (in the tradition of Banfield 1958 or Putnam 1993, which Sabetti debunks) – instead, bad institutions, starting with the Piedmontese imposition of centralization, are to blame.

Why, then, did Italy not adopt a federal system in 1861? There were indeed federalist voices between 1815 and 1861 (see Ziblatt (2006, 9) or Sabetti (2000, 25) on "vigorous" federalist voices at the founding); but they were ultimately quashed. Vincenzo Gioberti had called for a confederation of united states under the Pope (Hearder 2001, 170); political economist Carlo Cattaneo favored a federation, arguing that liberty and self-government had to come before unification at any cost (Sabetti 2000, 34-35. He explained that, because of Italy's city-state tradition, Italy was "physically and traditionally federalist"; his counterpart Francesco Ferrara argued that Italy was fundamentally "polycentric" and that a single capital would be an "artificial" solution (Gold 2003, 25). Ferrara further argued that Sicily would end up like Ireland (in the British Empire), neglected and poor in a unitary system

(Ziblatt 2006, 79).   Several federalist proposals were advanced, then rejected, in the years leading up to the *Risorgimento*.   Sabetti (2000, 72-73) explains that Italy needed local autonomy and federal law to govern the relations among its states.   At the founding, it had the former, but lacked the latter.   Instead of federalism, a centralized bureaucratic system was imposed by Piedmont on the other provinces that were annexed, conquered or incorporated into the new kingdom.   That centralization quashed local autonomy, as we have seen over the past 150 years.   To their credit, the federalists saw through the centralizing charade.   They did not share the founding myth that "the extension of representative institutions built on a logic of parliamentary sovereignty could be equated with self-government."   Rather, they rightly expected that centralization, "far from being a neutral policy instrument, would be a political contrivance more sensitive to the demands of the governing class than to regional diversities in Italy" (Sabetti 2000, 236-237).

Was centralization necessary to counter foreign threats or lack of administrative capacity in the periphery? Perhaps. But Einaudi ([1944]1954, 532) bluntly concludes that the creators of the Italian state "believed that they were establishing liberty and democracy when they were forging instruments of dictatorship."   Counterfactual history is, by necessity, a hypothetical pursuit. However, two things are certain: first, centralization was a failure; and second, facts and theory indicate that federalism would likely have been better.   In the words of Algernon Sidney (Hayek 1960, epigram), "our inquiry is not after that which is perfect, well knowing that no such thing is found among men; but we seek that human Constitution which is attended with the least, or the most pardonable inconveniences."

Federalism might not have been perfect.   But centralization did fail.   A federalist constitution would likely have matched the underlying cultures more closely, and thus more successfully empowered the Italian state, while limiting it. Or at least, it would likely have done so with more "pardonable inconveniences" than a one-size-fits-none, centralized, top-down imposition through bureaucratic-authoritarianism.   This would likely have helped Italian stability and growth, while quelling contemporary secessionist movements in the North and pervasive Southern under-development.

REFERENCES

Adams, J.C. and P. Barile (1953), "The Implementation of the Italian Constitution," *The American Political Science Review*, Vol. 47, No. 1 (March 1953), 61-83

Albert, C. S.M. Lindsay and L. Rowe (1894), "Supplement: Constitution of the Kingdom of Italy," *Annals of the American Academy of Political and Social Science*, Vol. 5, Supplement 9 (November 1894), 1-44

Bastiat, F. (2012[1850]), *The Law*, Atlanta, GA: Foundation for Economic Education.

Boettke, P., C. Coyne and P. Leeson (2008), "Institutional Stickiness and the New Development Economics," *American Journal of Economics and Sociology*, 2008, 67(2): 331-358

Buchanan, J. (1975), *The Limits of Liberty – Between Anarchy and Leviathan*, Chicago: University of Chicago Press

Buchanan, J. and G. Tullock (1962), *The Calculus of Consent*, Ann Arbor: University of Michigan Press

Del Duca, F. and P. Del Duca (2006), "An Italian Federalism? The State, Its Institutions and National Culture as Rule of Law Guarantor," *The American Journal of Comparative Law*, Vol. 54, No. 4 (Fall 2006), 799-841

Franklin, D. and M. Baun (1995*), Political Culture and Constitutionalism: A Comparative Approach*, Armonk, NY: M.E. Sharpe

Gerschenkron, A. (1962), *Economic Backwardness in Historical Perspective*, Cambridge, Massachusetts: Belknap Press of Harvard University Press

Ginsborg, P. (2003), *A History of Contemporary Italy*, New York: Palgrave

Gold, T. (2003), *The Lega Nord and Contemporary Politics in Italy*, New York: Palgrave MacMillan

Gordon, S. (1999), *Controlling the State: Constitutionalism from Ancient Athens to Today*. Cambridge: Harvard University Press

Hardin, R. (1999), *Liberalism, Constitutionalism and Democracy*, Oxford: Oxford University Press

Hayek, F.A. (1945), "The Use of Knoweldge in Society," *American Economic Review*. XXXV, No. 4. pp. 519-30

Hayek, F.A. (1960), *The Constitution of Liberty*, Chicago: University of Chicago Press

Hearder, H. (2001), *Italy: A Short History*, Cambridge and New York: Cambridge University Press

Ikeda, S. (2003), "How Compatible Are Public Choice and Austrian Political Economy?," *Review of Austrian Economics* 16:1, 63–75

Jouvenel, B. de (1945), *Du Pouvoir. Histoire naturelle de sa croissance*. Genève: Editions du Cheval Ailé

Leeson, P. and J. Subrick (2006), "Robust Political Economy," *Review of Austrian Economics* 19, 107-111

Leonardi, R., R. Nanetti and R. Putnam (1981), "Devolution as a Political Process: The Case of

Italy," *Publius*, Vol. 11, No. 1 (Winter 1981), 95-117

McChesney, F. (1987), Rent Extraction and Rent Creation in the Economic Theory of Regulation," *Journal of Legal Studies* 16 (1987) 101-118

North, D., J. Wallis and B. Weingast (2009), *Violence and Social Orders: A Conceptual Framework for Interpreting Recorded Human History*, New York: Cambridge University Press

Ohmae, K. (1995), *The End of the Nation-State: The Rise of Regional Economies*, New York: The Free Press

Olson, M. (1971), *The Logic of Collective Action*, Cambridge, MA: Harvard University Press

Posner, A. (1977), "Italy: Dependence and Political Fragmentation," *International Organization*, Vol. 31, No. 4, Between Power and Plenty: Foreign Economic Policies of Advanced Industrial States (Autumn, 1977), 809-838

Read, L. (1958), "I, Pencil," Atlanta, GA: Foundation for Economic Education

Sabetti, F. (2000), *The Search for Good Government: Understanding the Paradox of Italian*

Democracy, Montreal, Kingston, Ithaca, London: McGill-Queen's University Press

Sobel, R. (1994), "The League of Nations Covenant and the United Nations Charter: An Analyis of Two International Constitutions," *Constitutional Political Economy*, Vol. 5, No. 2

Tocqueville, A. (1856), *L'Ancien Régime et la Révolution*

Wenzel (2007), "Beyond Parchment, Beyond Formal Rules: Constitutional Culture and Constitutional Political Economy," *Ama-Gi, The Journal of the Hayek Society of the London School of Economics*, Volume 8, Issue 1, Summer Term 2007

Wenzel (2010a), "From Contract to Mental Model: Constitutional Culture as a Fact of the Social Sciences," *Review of Austrian Economics*, Vol. 23, No. 1, 2010.

Wenzel (2010b), "Constitutional Culture and Parchment: Post-Colonial Constitutional Choice in Mexico and Argentina," *Historia Constitucional*, No. 11, 2010

Wenzel (2010c), "Constitutional Culture in Japan and the Philippines: Success and Failure in Post-War Constitutional Choice," *Pacific Focus*, Vol. 25, No. 3 (Dec. 2010)

Wenzel (forthcoming), "A Waltz of Regimes in the Land of Tangos: Argentina's Constitutional Culture Rejects the New Parchment (1853-1930)," *Developments in Spontaneous Orders*