

# Italy and European Integration: A Lawyer's Perspective

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## I. ITALY'S STANCE ON A UNITED EUROPE AND PROGRESS TOWARD EUROPEAN INTEGRATION

### A. *Historical Background*

Throughout the post-war period, Italy has maintained a steady and unqualified commitment to the goal of European integration. Indeed, in the years immediately following the Second World War, Italy became a staunch advocate of European political union. However, when hopes for a federated Europe failed to materialize, it became evident that the path toward integration was along the road of economic functionalism. Although Italy readily supported this alternative, it never lost faith that integration would eventually grow beyond this economic focus.

Italy's membership in the European Community ("Community") has not been free from adversity or controversy. Adapting the Italian economy to the taxing demands of the Common Market has proven difficult. Italy's delay in implementing Community directives and fulfilling treaty obligations has given rise to doubts among its Community partners as to the firmness of the Italian commitment to European integration. Italian governments have been criticized for paying lip-service to the Community without making the sacrifices necessary for full participation. Nevertheless, there is widespread conviction among the Italian people that a united Europe is in their best interests; consequently, serious efforts have recently been made toward filling the gap between rhetoric and responsible commitment to Community participation.

To better analyze the entrenchment of Italy's dedication to the goal of European unity, we must review the early efforts toward integration. Immediately following World War II, Italy and the world witnessed an unprecedented era of compromise. A new democratic

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constitution in Italy and the chartering of the United Nations were two very important accomplishments of this period. However, this spirit of cooperation and democratic negotiation was short lived. As the specter of the communist military threat rose in the East, a different political strategy was required. In the face of a common and imposing enemy, the nations of Western Europe became more closely aligned. Soon the groundwork was laid for the formation of the North Atlantic Treaty Organization (NATO), the West European Union (WEU), and the European Defense Community (EDC).

This brief period of defensive integration in response to the formation of the Eastern alliances left its institutional marks. The ground rules laid down by the Charter of the United Nations and by the Italian Constitution, in order to maintain peace and democracy in their respective spheres, were to a large extent unilateral. These documents condemned and penalized manifestations of the extremes represented by the totalitarian regimes responsible for the war. Such provisos written into international instruments, national constitutions, and the U.N. Charter, reflected the common attitude of rebuking the past.

The crystallization of the bi-polar Cold War was based upon a deep ideological divide that severely affected Italy's domestic situation. The fundamental role of Italy's pro-Soviet Communist Party in the Italian resistance against fascism during the war garnered the Italian Communists much public support and approval, legitimizing their position on the Italian political spectrum. It was only in the spring of 1947 that a deft political maneuver by Prime Minister Alcide De Gasperi, of the Christian Democratic Party, ousted the Communists and their Socialist allies from the government. Thus, Italy's initial involvement in the European integration process was the work of moderate coalitions formed around the Christian Democrats.

This new centrist order in Italy was superimposed upon that era of collaboration in which the crowning achievement was the promulgation of the Italian Constitution by the Constituent Assembly. In addition to the legal guarantees of democracy provided by the new constitution, political guarantees were required. The governments led by De Gasperi viewed Italy's participation in European integration as a kind of insurance policy against the danger of domestic instability created by the Cold War. Italian support for the creation of the EDC was motivated in part by this same concern.

The unratified EDC Treaty remains the only official text in the history of European integration to have envisioned the eventual establishment of political union through federal institutions. A European defense community would have called into being a nascent form of

common government stemming from the merger of national armies. Italy was particularly supportive of Article 12 of the EDC Treaty which provided that in the event of actual or threatened internal turmoil within the territory of a member state, the necessary contingent forces furnished by another state would be placed at the threatened state's disposal by the Community's Commissariat. Consequently, the EDC would have served two fundamental Italian interests: integration and internal security. The French Parliament, however, failed to ratify the EDC Treaty, and the EDC was never realized.

The end of the De Gasperi era in 1954 coincided with the demise of the EDC. Although projects for the creation of a political community in Europe were not scuttled entirely, attention clearly shifted toward the sectorial approach which was exemplified by the Schuman Plan for a European Coal and Steel Community (ECSC). The purpose of the ECSC, which was formally established in 1952, was to eliminate political barriers to the reconstruction and development of the coal and steel industry. In addition, it sought to remove the regulations and discriminatory laws enacted by national governments which broke up a natural economic area. Common control of this strategic sector was also intended as a method to maintain peace among nations traditionally prone to conflict. The means chosen to achieve certain political objectives were primarily economic in nature. This experience with economic functionalism during the early 1950s would prove its importance after the establishment of the European Economic Community (EEC) under the Treaty of Rome in March, 1957.

### B. *Economic Functionalism vs. Political Integration*

During the initial negotiations to create the EEC, participant states were intent on creating institutions that would interfere as little as possible with their sovereign rights. The essential choice faced by the Community's architects was between economic functionalism and political confederation. No one championed, then or today, a European federal state capable of devouring national sovereignty. Confederation, a weak and inefficient form of federalism, was known to possess the full potential of statehood. The lesson of the eighteenth and nineteenth centuries was that confederations, which were freely entered into, always evolved into federal states.

The framers of the Treaty of Rome may well have been thinking of these historical precedents when they rejected the confederal mode of integration. Their formal rejection of this process was based upon the criticism of institutional debility; confederation simply lacks the cohesive power of economic functionalism and saps sovereign rights of

member nations. It is paradoxical that confederation was rejected as politically too strong and functionally too weak, since closer examination actually belies this impression.

Economic functionalism leads to the complete integration of the sector to which it is applied. Under the Treaty of Rome, the doctrine of functionalism confers rights and imposes obligations directly upon citizens as well as upon member states. Conversely, political confederation, traditionally exemplified as a league of states, has no direct effect on the individual citizen. Functionalism does not represent the primacy of economies over law, as has been asserted by its critics. Not unlike federalism, functionalism requires implementing the ordering capacity of legal norms. It is Community law, as interpreted by the national courts of member states, that has spun the web of economic interests and values into a binding, normative system.

Thus, integration is a result of what might be called judge-made federalism. Indeed, European integration has been shaped by judges more than by politicians. The supremacy of the Treaty of Rome and Community law over conflicting national legislation has been affirmed by the European Court of Justice in accord with the highest judicial bodies of the member states, including various constitutional courts. The Treaty of Rome has therefore been read to embody a supremacy clause of the kind found in fully federated states.

### C. *The European Economic Community and the Single Market*

From the outset, the idea behind the EEC has been to open up a space on the Continent and British Islands for the free movement of people, services, goods, and capital. This has been a difficult and gradual process, the last stage of which was triggered by the Single Act of 1987. A vast common market now exists which the Community Court has defined as an internal market—one which functions like the national markets of the member states. Until the creation of the EEC, common markets had historically only arisen in areas covered by a pre-existing political union and single currency. Thus, economic integration has yielded results which, according to experience, should have only been achieved subsequent to European political federalism. The single market is an unprecedented achievement, and political federalism has yet to come.

### D. *The Treaty of Maastricht and European Citizenship*

The Treaty of Maastricht contemplates political as well as economic and monetary union. Political difficulties aside, its provisions do not

offer a satisfactory answer to the problems which must be met if a European union is ever to be established. Political union requires a broader sphere of powers embodied in the Community than currently exists. These powers must embrace new fields such as common foreign policy and defense which relate directly to its political as well as economic responsibilities. Truly democratic methods which have been neglected as long as the Community has remained exclusively economic can no longer be ignored. It is time that the much criticized democratic deficit in Community institutions be remedied.

The current institutions of the Community are the same as those established by the Treaty of Rome: the Parliament, the Commission, the Council of Ministers, and the various auxiliary bodies. This existing layout can hardly be altered, but powers can be redistributed. Parliament should be endowed with all attributes required for the full and effective performance of its role as a popularly elected legislature. It should be coequal with the Council of Ministers in the enactment of European legislation. The Parliament should vote into office and control the Commission according to the principles of parliamentary government. Additionally, the regions of member states should be allowed to enter into compacts, to cooperate among themselves across national borders, and to participate in integrated regional planning.

Although this may require that the national constitutions of the member states be changed accordingly, it would not be the first time that the European integration process has affected the constitutions of member states. The European Community cannot force its members to decentralize, fragment their sovereignty, and create new regions. However, where regions already exist and are recognized by the national constitutions of the states in which they are situated, there is no reason why the Community should not involve them directly in the integration process.

Therefore, the political union provisions of the Maastricht Treaty need to be refined, or even revised, to ensure that decision making is not monopolized by the intergovernmental body of the Community, the Council of Ministers. Currently, the combination of intergovernmental diplomacy and Community bureaucracy tends to dilute democracy. It cannot be assumed that the legislative intent of the framers of the Maastricht Treaty, in speaking of "union," was merely a league of states resembling that created under the Articles of Confederation two hundred years ago in the United States. Evidence to the contrary exists in the provision which recognizes a European citizenship alongside national citizenship. A modern confederation attuned to democratic principles may well be the most appropriate institutional framework

for a European union, so long as it is not only a partnership among sovereign nations, but also a community based upon the idea of common citizenship.

*E. Growing Support for the European Community from the Italian Political Left*

As the internal political situation in Italy evolved and the advantages of European economic integration became recognized, the European Community gained wide acceptance among the country's political forces. The opposition of the Communists with respect to the Community dissipated over time. Although it is difficult to date the turning point, by the mid-1970s the Italian Communist Party had begun to change its attitude toward the Community. There were several reasons for this erosion of opposition to the EEC.

The Communist Party may have seen support for European integration as an important step on the road toward full legitimization as a partner in the national government. Participation in the regional governments set up in the 1970s had allowed the Communists to build on the reputation they already enjoyed for having provided good government at the local level. Active involvement in the Community was probably viewed as a further opportunity for the institutional legitimization of the Communist Party. The Italian Communists may have also perceived integration as serving the cause of Euro-communism. Their view of a strong united Europe was one which also envisaged counterweights to Italy's alignment with the United States and its dependence on American benevolence.

After the first direct election of the European Parliament in 1979, Altino Spinelli, who had been elected as an independent candidate on the Communist Party ticket, played a decisive role in launching the appeal for European unity. He produced an innovative draft treaty which attracted wide support from European Federalists and was endorsed by the Italian Communists, although it failed to receive official support from national governments. The Communist Party's philosophy of Europeanism went beyond that of the Socialist Party, which had years before come out decidedly in favor of integration. The core problem for the left-wing parties in Italy, as elsewhere in the Community, was to define what kind of united Europe to which they aspired.

*F. Social Policy in the European Community: The Italian Consensus*

The thrust of the political left's interest in the building of Europe lay in the area of social policy. Both the Socialists and the Communists

recognized that social policy could be used as a lever to promote political union in order to balance the liberalizing effects of a single free market. The left was drawn to advocate the federalist cause by its desire to guarantee social rights, promote economic planning, and establish a democratically legitimized central authority in place of the invisible hand of the free market.

In Italy, support for what is known as "Social Europe" is not limited to the left. A wide political consensus exists over the social rights enshrined in the Italian Constitution. All of the major political parties agree that implementation of these rights should not be jeopardized by any limitation placed on national governments by the European Community. In other countries, advancements in social rights have already been secured. However, Italy still faces serious problems in the area of social services and cannot afford any retrenchment on social rights that in some cases have not yet been given full effect. Although Italy has always championed economic as well as political integration, it has maintained the reservation that establishing freedom of circulation and exchange of goods and services should not undermine the viability of the welfare state, nor infringe upon the constitutionally protected social rights of Italian citizens.

This insistence on social rights reflects the position of a country situated in southern Europe, the main interest of which, regardless of party politics, is to develop cohesion within the market. Since the market should function as a unified area, the road to European unity passes through cohesion. For the market to yield its promised advantages, it must be cohesive and not disparate. The poorer regions should be developed to narrow the gap which divides them from the richer ones. This goal can best be pursued by combining state aid with well-planned regional social policy. Joint efforts at the institutional level are also required if the European Community is to complement the actions of the member states.

Therefore, the problem is to what extent policies promoting cohesion through redistribution of wealth conflict with the principle of fair competition guaranteed by the Treaty of Rome. If there is too much state aid, or if there is none at all, then the balance between cohesion and competition is upset. Assistance should be proportional to the actual needs of the relevant area. Beyond the quantitative aspects of this problem, it is important that the aid foster a spirit of enterprise and lay the groundwork for sustainable development. How these different needs can be met is clearly a Community decision; however, no Community plan can be implemented without the direct involvement of the government of the member state concerned. Thus, integrated

planning is the best possible institutional formula to achieve the objective of cohesion while preserving competition.

*G. The Delors Plan: Integrated Planning as a Blueprint for Cooperative Federalism*

The Delors Plan, launched in 1987 and subsequently updated to bring the Single Act to fruition, hinges on integrated planning which it describes as partnership. A policy of partnership is the method of management for the structural funds which have been earmarked to pursue the central objects of social policy:

- 1) The struggle against unemployment, especially among youth and women;
- 2) promotion of traditionally economically depressed regions; and
- 3) assistance for areas hit hard by industrial crisis.

The hypothesis of the Delors Plan requires an advanced form of federalism not dissimilar from the New Deal policies of the United States during the 1930s.

One of President Roosevelt's achievements in the United States during this period was to turn the old system of dual federalism into one where the federation and its member states cooperated to achieve common goals. In Europe, a long and difficult road of negotiation and compromise must be traveled before the institutional premises are laid down for anything resembling the New Deal. Cooperative federalism requires a strong and democratically legitimized central authority—one that would have all the powers and resources necessary to organize and oversee the combined exercise of power by different levels of government. Thus, a Political Europe is a prerequisite to Social Europe.

II. NORMATIVE INTEGRATION: THE RELATIONSHIP BETWEEN  
COMMUNITY LAW AND ITALIAN LAW

The focus of this analysis is how Italian judges have posed and resolved the problem of the interrelationship between Community law and Italian law. To make integration workable, the supremacy of Community law over conflicting national law must be established. This has largely been done throughout the EEC. The principle of supremacy was first enunciated by the Community Court. National high courts and constitutional courts have followed suit. The meeting point at which the Community Court and the national courts have arrived requires further elucidation.



A. *The Evolution of the Community Court's Jurisprudence*

When it was first established, the Community Court was challenged by striking the proper balance between the need to avoid excessive encroachment on national sovereignty and the need to facilitate the European integration process in a supranational direction. At the outset, the Court considered Community law as a new legal system within the realm of international law. Over time, the Community Court came to regard and interpret Community law as an autonomous system creating legal rights and duties for individuals independently of any concurrent adaptation of national law to Community law. By the late 1960s, the Court had affirmed the unity of the legal system of which both the Community and the member states formed a part. The supremacy of Community law was spelled out as a corollary of this unitarian view of the system. The Court's position meant that no provision of internal national law, including constitutional law, could prevail over pre-existing Community law.

National decision makers throughout Europe have come to accept the stance of the Court on this point. The prevalence of Community law has been defined by national judicial bodies, including Italian courts, as an essential requirement of normative integration, and one without which the Common Market cannot work. It has been widely recognized that the discipline of integration leads to a more rational public management of the economy. This process essentially either forces market deregulation or conversely introduces new binding rules. Thus, judges have seen that integration secures advantages not only for the member states of the Community, but also for individuals and enterprises.

B. *Application of Community Law in Italy by the Constitutional Court*

Until the mid-1980s, Italy's membership in the European Community was marked by a longstanding dispute between the Italian Constitutional Court and the Community Court over the proper relationship between Community law and domestic law. It was only with *Granital v. Amministrazione Finanziaria* in 1984 that the Constitutional Court adopted a position consistent with the Community Court's view of supremacy.

The Italian Constitutional Court's initial decisions were more influenced by its understanding of international law than by strict Community law. The importance of international law in the Italian legal system can only be appreciated in light of Italy's experience during the Second World War. In the war's aftermath, Italy, like Germany, sought to supplant its previously belligerent approach toward international relations.

Both the Italian and German constitutions contain specific provisions that authorize membership in international organizations and collective security systems. These provisions are found in Article 11 of the Italian Constitution, and Article 24 of the German Basic Law. These two texts envision membership in a range of institutions which are broader in scope and looser in structure than the European Community. Yet, due to the lack of a provision expressly devoted to European integration, these general articles were the only constitutional foundation available for Italy and Germany to sign the Treaty of Rome and join the European Community.

In Italy's case, the "cart came before the horse." Italy adhered to the Treaty of Rome under its ordinary law because the Italian constitution had not been amended before the Treaty was ratified. Consequently, very sensitive constitutional issues were raised relating to the application of Community law in Italy. Article 11 of the Italian constitution does not explicitly provide that ordinary law, rather than constitutional amendment, can transfer any degree of national sovereignty away to an international organization, nor does it clearly articulate the legal consequences of such a transfer of sovereignty.

Thus, the first approach of the Italian Constitutional Court toward defining the relationship between Community law and national law was to place Community law within the Italian constitutional framework governing the application of international law in Italy. Article 10 of the Italian constitution provides that the Italian legal order conform itself to generally recognized rules of international law. Treaties are not included among those rules of international law. Therefore, they rank equally with ordinary domestic law, except for those treaties which, by virtue of an express constitutional prohibition, cannot be changed by a simple majority vote in parliament. Examples of such prohibitory provisions are found in Article 7, clause 2 and Article 10, clause 2 of the Italian constitution.

The question of determining the rank of Community law within Italy's internal legal system was not merely a theoretical one. The Constitutional Court is competent to adjudicate disputes between ordinary law and higher ranking norms. The question, therefore, became whether Community law should be regarded as supreme over ordinary domestic law.

When the Court first confronted these problems, the postwar constitution provided it with two conceptual approaches. First, the Court could treat Community law as if it were a treaty, which would allow it to be applied by any judge; but this would also allow it to be modified by subsequent internal legislation. Alternatively, it could treat Com-

munity law as if it were customary international law. This treatment would make it applicable only through the centralized constitutional review procedure, and no modification by subsequent internal legislation would be possible.

Neither of these doctrinal options adequately met the goals of European integration. Under the Italian legal system, treating Community law as treaty law would subject it to the whims of the national legislature. Conversely, treating Community law as customary international law would require the additional procedural step of application through centralized constitutional review. Both solutions fell short of what the Community Court, since the 1960s, had defined as the proper relationship between Community law and national law. The Community Court's view of the supremacy of Community law over conflicting national law entailed immediate application by national courts as well.

In the 38 years since the adoption of the Treaty of Rome, a large and growing number of directives, regulations, and decisions have been promulgated by the European Community. No less important nor less extensive is the body of jurisprudence developed by the Community Court through the procedure laid out in Article 177 of the Treaty. This key article mandates that all national judges who face a question requiring an interpretation of Community law be allowed, or bound in the case of courts of last instance, to refer that question to the Community Court. The Community Court has exercised its monopoly on interpretation to determine, pursuant to Article 189 of the Treaty of Rome, that Community law is supreme over conflicting national law.

Notwithstanding this proviso in the Treaty of Rome, the Italian Constitutional Court has never forfeited its function as the supreme interpreter of the Italian constitution. It has viewed the entire problem of how the two legal systems relate to one another from the standpoint of Article 11 of the Italian constitution. This view was crystallized in the *Granital* case, which represents the last in a long line of cases reading Article 11 that began with *Costa v. ENEL* in 1964.

### C. *The Constitutional Court's Jurisprudence: A Review of some Important Case Histories*

#### 1. *Costa v. ENEL* (1964)

It was in *Costa* that the Constitutional Court first confronted a challenge to the applicability of Community law in Italy. The issue was whether the domestic law establishing ENEL as the national electric

monopoly conflicted with various provisions of the Treaty of Rome, and if so, which law controlled.

The Court held that Article 11 of the Italian constitution, which authorized Italy's participation in international organizations under general conditions of parity with member states, permitted Italy to join the European Community without a constitutional amendment. The Court's holding essentially allowed Italy to limit its sovereignty through adherence to the Treaty of Rome, but did not permit any exceptions to the principle of legal parity between treaties and domestic Italian law as applied within the Italian legal system.

Thus, a subsequent domestic law would take precedence over the Treaty of Rome as well as over any Community rules flowing from it. For this reason, the Court declined to consider whether the law instituting ENEL conflicted with the Treaty of Rome. According to the Court, any such conflict was moot because the later national law automatically took priority over any existing Community law with which it conflicted. The Community Court, in a contemporaneous and related case, responded by declaring the supremacy of Community law over conflicting domestic law, even if that domestic law was passed subsequent to the Community law.

## 2. *Frontini v. Ministro delle Finanze* (1973)

The Constitutional Court's decision in *Frontini* provided an intermediate step toward accommodating the Community Court's conflicting position regarding application of Community law in Italy. The Court held that Community law was the law of an autonomous legal order directed toward economic ends. It determined that Italy's delegation of lawmaking power to the Community was consistent with the Article 11 transfer of sovereignty to international organizations.

The Court found that the Treaty of Rome provided sufficient guarantees of due process, and that there was no unconstitutional interference with Italian sovereignty because Italy participates in the formulation of Community acts. The Court also declared that it no longer had jurisdiction to review the compatibility of Community regulations with the Italian constitution, since these regulations were given effect as acts of an external legal system. Henceforth, it could only pass on the constitutionality of Italian domestic law. Moreover, any Italian judge was permitted to apply Community regulations.

Notwithstanding these findings, the Constitutional Court of Italy did reserve an important role for itself. It declared that if Community acts exceeded their economic purpose and conflicted with either the fundamental principles of the Italian constitution or the inalienable

rights of Italian citizens, then it had jurisdiction to determine whether those acts exceeded the scope of the limitation of sovereignty allowed by Article 11. If the Court found those acts to exceed the scope allowed by Article 11, then the Court could declare the domestic law authorizing the implementation of the Treaty of Rome to be unconstitutional insofar as it permitted those acts. However, such a declaration would not cause Italy to withdraw from the European Community; it would merely bar those particular Community acts from being applied in Italy.

3. *Società Industrie Chimiche Italia Centrale IOIO v. Ministero Commercio con L'Estro* (1975)

By the early 1970s, the Constitutional Court had established the superiority of Community law over inconsistent domestic law. However, it had not made clear whether enforcement of the supreme Community law was the exclusive domain of the Constitutional Court. In *Società Industrie Chimiche*, the Court expressly stated that while Italy's membership in the Community enabled all Italian judges to apply Community regulations inconsistent with previous Italian law, it did not confer the power on those judges to abstain from applying subsequent Italian law. Rather, the Court allowed domestic judges to invoke centralized constitutional review in order to obtain a declaration on the constitutionality of the subsequent Italian law.

In the *Simmenthal* case of 1978, the Community Court countered the Italian Court's version of the supremacy of Community law over domestic law. There, the Community Court held that the requirement of centralized constitutional review was not consistent with its view of the supremacy of Community law. According to the Community Court, supremacy and immediate application of Community law go hand in hand. From a practical standpoint, the intervention of the Italian Constitutional Court, and the ensuing procedural bottleneck, would block the effective immediate application of Community principles.

4. *S.P.A. Granital v. Amministrazione Finanziaria* (1984)

In the *Granital* case, the Italian Constitutional Court finally accepted a view of supremacy which an American constitutional lawyer might find similar to that view embodied in the Supremacy Clause of Article VI of the United States Constitution. The Court held that Community law applies immediately, and abrogates any conflicting national legislation regardless of whether that national legislation was promulgated prior or subsequent to the Community law. This holding guaranteed direct and immediate application of Community law in Italy. With this

holding, the issue was exhausted before the Constitutional Court.

The rationale followed by the Court in its construction of Article 11 diverges from that by which customary international law is adopted under Article 10. As interpreted by the Constitutional Court, Article 11 has never incorporated Community law into the Italian legal system, nor does the system conform itself to Community law. In *Frontini*, the Court established that Community law was considered the law of an external legal system which supplanted conflicting national law. Therefore, an Italian judge applying Community law would not be applying national law, but a special kind of non-Italian law. The two systems, which used the same judges, were regarded as separate and independent of each other, but coordinated through the Treaty of Rome.

However, the Court did not take the next step along this line of logic and declare that where Community law was applied, the national law was withdrawn. In practice, where Italian law is supplanted by Community law, Italian judges are called upon to decide cases falling within the purview of Community law to the exclusion of national law. The Court did not sanction this view.

Perhaps, during the 1970s, the Constitutional Court believed that sanctioning such a view would have been taken to mean that Italy had irrevocably surrendered its legislative power to the Community. This reasoning is faulty however, because legislative powers had already been transferred from the state to the Community under the Treaty. Moreover, the nature of this transfer was not irrevocable. Although each member state transfers part of its power to the Community, national sovereignty is not thereby extinguished.

The national law within each system is simply withdrawn to the extent that it allows for the application of Community law. What the Constitutional Court failed to recognize in *Frontini* was that the withdrawal of national law does not amount to a forfeiture of national sovereignty. Thus, the *Granital* decision carries the autonomy language of the earlier cases to a logical conclusion.

Italy's membership in the European Community, through Article 11, makes Community law applicable internally as the law of an autonomous legal order. Domestic courts determine whether Community law covers the subject matter dealt with by subsequent domestic law. If there is overlap, Community law will take precedence. However, the domestic law is not declared unconstitutional or annulled in any way; it is simply ignored.

Consequently, Italian judges, as well as all domestic judges of the other member states, behave as if they are the law-applying organs of the Community. They concern themselves with no other rule than that

provided by the relevant Community law. The hinderance of constitutional review has been removed, and the process by which courts decide whether to apply Community law has become decentralized. If Community law is found to be applicable, then its application is immediate. On this point, the system established by *Granital* resembles the diffused judicial review aspects of the American system.

D. *The Constitutional Court and the Doctrine of Judicial Sentinelship*

This decentralization of Community law application is not unqualified. By allowing domestic judges to apply Community law, the Constitutional Court has not surrendered its role as guardian of constitutional values. The Court still reserves for itself the power to pass on the conformity of Community rules with the basic principles of the Italian constitution and with the inalienable rights of Italian citizens under that constitution. The Court has also reserved the power to pass on the constitutionality of laws which may violate basic principles of either the constitution or the Treaty of Rome. Also included are questions which comprehend the abrogation of the Treaty altogether.

Although these issues rarely arise, once they do, they fall within the purview of the Constitutional Court because they bear on the delicate balance between the powers delegated to the Community and those retained by Italy. The Constitutional Court has never relinquished its exclusive jurisdiction over this area of litigation. The Court's posture flows directly from the view that each member state remains sovereign. Under this doctrine of judicial sentinelship, the Constitutional Court asserts its right to adjudicate broad and fundamental issues. The Court holds that it alone can define the boundary line between the national legal order and that of the European Community. This rationale is rooted in the belief that the Community is not yet a fully developed federal union. Rather, it is thought to be at most a confederation in the making whose members retain both their national identity and complete control over the fundamental values grounded in their respective legal systems.

E. *Monism vs. Dualism: The Conflicting Philosophies of the Community Court and the Constitutional Court*

Although the Community Court and the Constitutional Court now agree on the supremacy and immediate application of Community law, these two bodies arrived at this conclusion by way of different legal theories. The monist view of the Community Court is diametrically opposed to the dualist position of the Italian Constitutional Court. The

underpinning of dualist philosophy is that the Community legal system remains separate and independent from that of the member states. The dualist approach attempts to reconcile the seemingly incompatible notions of the prevalence of Community law with the independence and sovereignty of the member states.

The German Constitutional Tribunal also subscribes to the dualist approach. The logical principle upheld by both the Italian and German constitutional courts is that the relationship of national law to Community law is not that of oneness and subordination, but rather that of separateness and coordination.

The Community Court, following the monist viewpoint, regards Community law and national law as forming one legal system. It conceives national law to be subordinate to that of the Community, as if national law were the law of a member state within a federal union. Despite these philosophical differences, judges have proven capable of reducing the high voltage of this dispute into a serviceable current. The practical results which the Community Court and the constitutional courts have reached assures that integration works on the legal front.

#### F. *Application of Community Directives in Italy and the La Pergola Act*

Community action is undertaken through the implementation of directives and regulations. Article 189 of the Treaty of Rome defines directives as rules that fix objectives but leave member states free to choose the means to carry them out. Conversely, regulations are complete and immediately applicable—they are self-applying. The distinction between these two classes of rules is drawn by the Treaty, but in fact some directives are so detailed that they can hardly be distinguished from regulations.

The Common Market has been shaped by both instruments, but the bulk of normative integration is still *via* directive. Most of the rules intended to harmonize national provisions are directives. It is therefore essential that directives be implemented by all of the member states and that established deadlines be promptly complied with.

During my tenure as Italy's Minister for European Affairs, the government was suffering from a heavy backlog in the implementation of Community directives. Coping with the implementation of these directives was no less arduous a task than that which I had earlier confronted when, as a constitutional judge, I delivered the opinion of the Court in the *Granital* case. I believed that the only practical remedy to this non-implementation of Community directives was to oblige the government to address the problem by means of an annual omnibus



bill. Such a bill would provide for all of the legislative measures required to bring the directives issued during the preceding period into effect.

Under this procedure, as with the budget law, a yearly debate on the omnibus bill is held in Parliament on the "*legge comunitaria*" before it is to be enacted. This process has come to be known as the La Pergola Act. Each year, the bill establishes an exhaustive system calling for three types of provisions. First, Parliament is asked to repeal rules that it has promulgated or amend laws inconsistent with Treaty obligations. Second, Parliament is asked to entrust a lesser class of measures to the government by delegation in a wide variety of areas covered by Community directives. Finally, a large number of matters covered by law, which in Italy far exceed those addressable under the constitution as formal acts of Parliament, can be brought within the sphere of the executive branch, and thus regulated by decree. The rationale for this last provision is based on the fact that many Community directives concern technical problems which the executive of a member state can handle more effectively than the legislature.

Another bill provision was designed to determine which Community directives would have to be implemented by national law where matters of regional competence are concerned. Due to the divisive nature of this issue, the La Pergola Act provided for a careful balancing of local and central powers. The regions were allowed to implement directives autonomously unless an act of the Italian Parliament provided for uniform implementation. Despite initial difficulties, the system established by the La Pergola Act has been working reasonably well. As a result, Italy's compliance with Community directives has been steadily improving.

As the ultimate instrument of European integration, it is law that has organized the Common Market into a well regulated system of free exchange. And it will be law, again, that will harness the forces of political and economic change under Maastricht and forge, as the Americans say, "a more perfect Union."

