

# The Italian Parliament in the European Union

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# Conclusion: ‘Silent’ Constitutional Transformations: The Italian Way of Adapting to the European Union

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NICOLA LUPO AND GIOVANNI PICCIRILLI

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## I. The Composite Nature of the European Constitution

This volume analysed the evolution and the current features of the Italian Parliament through the lens of the European integration process. Since the 1950s, when the two Houses supported the Government in its being a founding member of European Communities, the Chamber of Deputies and the Senate of the Republic have undergone deep transformation processes, although there has been substantial stability of the constitutional provisions devoted to them (with the only exception of the constitutional amendment of 1963, regarding the equalisation of the two Houses’ terms and the stabilisation of their number of members).<sup>1</sup>

Especially in its first decades, the European integration process—to which some specific provisions of the rules of procedure have been devoted since 1968 at the Senate and since 1971 at the Chamber—apparently played a very marginal role in this transformation. Only recently has the Italian Parliament fully acknowledged the political and institutional relevance of the European dimension. Similar to what happened in many other Member States, and in particular in the other founding ones, the first institutional actors to adapt to the European dimension were (some of) the judges. In parallel, the Government and its administration also started a transformation process aimed at adapting and profiting from

<sup>1</sup> See Constitutional Law No 3/1963. In the original text of the Constitution, the Senate legislative terms lasted six years, instead of five, and the members of both Houses were determined according to the most recent census, in proportional terms. However, this difference never had practical applications: in all legislative terms up to 1963, the Senate was dissolved one year prior to its ‘natural’ deadline, in order to have a single election day for both Houses.

the needs and opportunities deriving from it. Conversely, the Parliament was among the last national institutions to start its Europeanisation process.

As already has been remarked, it is especially the constitutional dimension of this transformation that has been brought to the fore by the contributions included in this volume. The Italian Parliament, like every other national Parliament in the European Union, is called upon to play a significant constitutional role, taking full advantage of its position among the institutions of the Euro-national parliamentary system and contributing to the composite European Constitution. That is why this concluding chapter is also focussed on re-examining the main features of the Italian Parliament and its evolution, as analysed in the volume, understanding whether and how it influenced the European Constitution. This means that in this conclusion the constitutional approach will be more explicit and that, most of all, a reverse viewpoint will also be adopted: instead of looking exclusively at how the European integration process transformed the Italian Parliament, the analysis will try to shed some light also on how the European Union has been influenced, for better or for worse, by the Italian Parliament, and more generally by some institutional features of the Italian Constitution.

Of course, the editors of the volume are fully aware of the vivid and still ongoing debate about the existence and the characteristics of the European Constitution, which would not make sense to summarise here.<sup>2</sup> Among the different and alternative ways of defining and qualifying the European Constitution, all of them share the theory according to which in the European Union a Constitution in a modern sense exists,<sup>3</sup> although it is not codified and has a composite nature. This means that it is not embedded in a unique legal document and that it cannot to be derived exclusively by EU law (treaties and other sources of EU law), as it is composed of elements of both EU law and national constitutional law.<sup>4</sup>

That is why an analysis of the Italian Parliament would be, in our opinion, significant also to understand better how the European Constitution actually works and why it has acquired some features and not others. More specifically, it aims to investigate one of the elements of this Constitution clearly attributable to the ‘political constitutionalism’ dimension of this Constitution.<sup>5</sup> Especially in the absence of a popular constituent act, it is precisely on the will of national Parliaments that the EU legal order was founded and on them,

<sup>2</sup> For an updated picture see R Schuetze in his ‘Introduction’ to the second edition of *European Constitutional Law* (Cambridge, Cambridge University Press, 2016) Lxiii ff. For the origins of the debate, JHH Weiler, *The Constitution of Europe: ‘Do the New Clothes Have An Emperor?’ And Other Essays on European Integration* (Cambridge, Cambridge University Press, 1999) and I Pernice, ‘Multilevel Constitutionalism in the European Union’ (2002) 27 *European Law Review* 511–29.

<sup>3</sup> On the notion of ‘Constitution’ in a modern sense, deriving from the two Revolutions at the end of the 18th Century and defined by Art 16 of the French Declaration of the Rights of Man and of the Citizen in 1789, according to which ‘Toute Société dans laquelle la garantie des Droits n’est pas assurée, ni la séparation des Pouvoirs déterminée, n’a point de Constitution’, see V Onida, *La Costituzione. La legge fondamentale della Repubblica* (Bologna, Il Mulino, 2007).

<sup>4</sup> See L Besselink, *A Composite European Constitution* (Groningen, Europa Law Publishing, 2007) and L Besselink and JH Reestman, ‘The Fiscal Compact and the European Constitutions: “Europe speaking German” (2012) 8 *European Constitutional Law Review* 1–8. Somewhat convergent seems the approach proposed by A Manzella, who even anticipated the idea of a ‘union of constitutions’ (‘Dopo Amsterdam. L’identità costituzionale dell’Unione europea’ (1997) 5 *Il mulino* 906–25) and then, in the light of the evolution of the European treaties, concluded with the ‘constitutional unity’ of the European legal order (‘L’unitarietà costituzionale dell’ordinamento europeo’ (2012) 3 *Quaderni costituzionali* 659–64).

<sup>5</sup> The reference here is naturally to the contribution by R Bellamy, *Political Constitutionalism. A Republican Defence of the Constitutionality of Democracy* (Cambridge, Cambridge University Press, 2007).

together with the European Parliament that, according to Article 10 Treaty on European Union (TEU), it derives its own democratic legitimacy.<sup>6</sup>

The ‘political constitutionalism’ dimension of this story, indeed, has been often overlooked or neglected, especially by EU law scholars, also because it has played, at least until very recently, a very limited role in the setting up of European institutions and in the EU decision-making.<sup>7</sup> As it is generally recognised, in fact, the most relevant role in fostering the European integration process and in designing the features of the European Constitution was played by the judiciary: that is, consistently with the composite nature of this Constitution, by the Court of Justice of the EU as well as by the national judges, especially (some) Constitutional Courts.<sup>8</sup> As has been remarked, in the EU judges operate in a ‘space of *constitutional interdependence*’, as they are ‘embedded in a constitutional fabric made of national constitutions, European Union (EU) law, European treaties, and conventions.’<sup>9</sup>

Further, this judicial and legal prevalence in the setting up of the European Constitution helps to explain some of the issues currently at stake within the European project. Namely, it definitely confirmed its elitist origins<sup>10</sup> and confined the place of national Parliaments—and national public opinions—to a marginal one: essentially, Parliaments have been called upon to intervene in the ratification phase of every new treaty, often without much debate on the merits of the main choices and steps of the integration process, already defined at the inter-governmental level.<sup>11</sup> As for the rest, oversimplifying a bit, it is probably not utterly improper to state that the overall mood in Brussels, among EU institutions and their bureaucracies, was that the less national Parliaments and national politics had to do with European affairs, the better.

<sup>6</sup> See L Besselink, ‘The Place of National Parliaments within the European Constitutional Order’ in N Lupo and C Fasone (eds), *Interparliamentary Cooperation in the Composite European Constitution* (Oxford, Hart, 2016) 34 ff.

<sup>7</sup> Among others, N Scicluna, *European Union Constitutionalism in Crisis* (Basingstoke, Routledge, 2014) 3 ff. and C Fasone and N Lupo, ‘Constitutional Review and the Powers of National Parliaments in EU Affairs Erosion or Protection?’ in D Jancic (ed), *National Parliaments after the Lisbon Treaty and the Euro Crisis: Resilience or Resignation?* (Oxford, Oxford University Press, 2017) 59–75.

<sup>8</sup> See, respectively, the classic studies by A Stone Sweet, *The Judicial Construction of Europe* (New York, Oxford University Press, 2004) 1 and M Claes, *The National Courts’ Mandate in the European Constitution* (Oxford, Hart, 2006). More recently, among others: M Dawson, ‘The Political Face of Judicial Activism: Europe’s Law–Politics Imbalance’ in M Dawson et al (eds), *Judicial Activism at the European Court of Justice* (Cheltenham, Edward Elgar Publishing, 2013) 11–31; J Komárek, ‘The Place of Constitutional Courts in the EU’ (2013) 9 *European Constitutional Law Review* 420–50.

<sup>9</sup> M Cartabia, ‘Europe as a Space of Constitutional Interdependence: New Questions about the Preliminary Ruling’ (2015) 16 *German Law Journal* (conclusion of the Special Issue on Preliminary References to the CJEU), 1791–96 (with specific reference to the Constitutional Courts, but both the concept and the terminology seem to work for any European judge).

<sup>10</sup> In general, on the role (real or aspired) of the elites in the European integration, see JHH Weiler, ‘Europe in Crisis. On “Political Messianism”, “Legitimacy” and the “Rule of Law”’ (2012) *Singapore Journal of Legal Studies* 248–68. The influence of elites in the Italian public discourse on Europe is deepened by di M Cotta et al (eds), *L’Europa in Italia. Élite, opinione pubblica e decisioni* (Bologna, Il mulino, 2005). More specifically, on the legal elites (the ‘community of lawyers’) who drove the integration process, see A Vauchez, ‘Introduction. Euro-Lawyer, Transnational Social Fields and European Polity Building’ in A Vauchez and B De Witte (eds), *Lawyer Europe: European Law as a Transnational Social Field* (Oxford, Hart, 2013) 1–20.

<sup>11</sup> See the chapter by G Vosa, in this Book.

## II. The Wide Scope and the Stability of the ‘European Clause’ Embedded in Article 11 of the Italian Constitution

In the composite European Constitution a crucial role is exercised by the so-called ‘European clauses’: namely, specific clauses embedded in almost all the Member States’ Constitutions that implicitly or explicitly aim at opening the internal constitutional order to norms and principles adopted at European level.<sup>12</sup> Together with some provisions of the EU treaties—like, for instance, Article 4(2) TEU, with its reference to ‘national constitutional identities’,<sup>13</sup> and Article 6(3) TEU, with its reference to ‘constitutional traditions common to the Member States’, just to quote the two clauses with general contents<sup>14</sup>—such ‘European clauses’ entailed in national Constitutions enable the ‘communication’ between the EU and the domestic legal orders and support once more the idea of the existence of a composite Constitution. They operate with mutual reference to each other and ensure the openness of both the EU and national legal orders, acting like ‘valves’: that is, like mechanical switches that can raise or lower the amount of (normative) fluid flowing through them, making the two legal orders communicate and interact as components of a unique whole.<sup>15</sup>

The existence of clauses of ‘openness’ towards the international legal order is an original feature of the Italian and German Constitutions. Both contained clauses allowing—respectively—‘limitations’ (Article 11, in 1947) or ‘transfers’ (Article 24, in 1949) of sovereignty since the beginning, and they have been immediately used as ways for European Communities law’s accession into internal legal orders. The same model was then followed by other Member States, like the Netherlands (Article 62 in 1953, now Article 92), Luxembourg (Article 49 bis, in 1956), and Denmark (Section 20, in 1953), with the introduction of general constitutional clauses used as mechanisms for acceding to the European integration process.<sup>16</sup>

Especially with the Treaty of Maastricht, when the constitutional nature and effects of the European Union were about to become more evident—after having been dissimulated for a long time<sup>17</sup>—a new series of clauses referring to the European Union was inserted in

<sup>12</sup> M Claes, ‘Constitutionalizing Europe at its Source: The “European Clauses” in the National Constitutions: Evolution and Typology’ (2012) 1 *Yearbook of European Law* 81–125; M Claes, ‘Le “clausole europee” nelle costituzioni nazionali’ (2005) 2 *Quaderni costituzionali* 283–320. See also, mainly from a EU law perspective, J Wouters, ‘National Constitutions and the European Union’ (2000) 1 *Legal Issues of Economic Integration* 25–92.

<sup>13</sup> It is known that the wording of Art 4(2) TEU is broader and more complex, including not only the ‘constitutional identity’, but more precisely ‘national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government’. On the recurring simplification of this formula see E Cloots, *National Identity in EU Law* (Oxford, Oxford University Press, 2015).

<sup>14</sup> It is necessary to add also all the times that TEU and TFEU state that some decisions are taken by each Member State ‘in accordance with its own constitutional requirements’ (for instance arts 42(2) TEU; 25; 218(8); 223(1); 262; 311 TFEU). More elaboration on this point is made in the chapter by G Piccirilli, in this book.

<sup>15</sup> M Avbelj, ‘Supremacy or Primacy of EU Law—(Why) Does it Matter?’ (2011) 17 *European Law Journal* 744–63 reconstructs the mutual relationship between national and European law as ‘heterarchical’ and thus to be reciprocally coordinated rather than considered one subordinated to the other.

<sup>16</sup> Claes, above n 12.

<sup>17</sup> This dissimulation was fully consistent with the approach followed among others by Jean Monnet, according to which the best way to conduct the integration process was to avoid dramatic (and so too-evident) spurts, and to proceed with the ‘politique des petits pas’.

many Member States' constitutions. Their main aim was to make possible the adaptation of internal legal orders to some of the provisions included in the Treaty of Maastricht, but often it was also to put a series of conditions and requirements to further developments of the European integration process.<sup>18</sup>

When a rather strict European clause was in force, national Constitutions needed to be amended consistently with every Treaty revision taking place at EU level. This is the case of the French Constitution, which has been amended several times in order to: ratify the Treaty of Maastricht<sup>19</sup> and the Treaty of Amsterdam;<sup>20</sup> proceed to the ratification of the Constitutional Treaty, which, as is known, was then-nullified by the popular referendum;<sup>21</sup> and finally to ratify the Treaty of Lisbon.<sup>22</sup> These constitutional adaptations were required also as an effect of a procedural mechanism (Article 54 French Constitution) that allows the pre-emptive involvement of the Conseil constitutionnel before the ratification of a new international treaty (and therefore any new European treaty), asking this body whether the Treaty complies with the Constitution or whether, on the contrary, a constitutional amendment is required.<sup>23</sup>

It can be worth considering more deeply, through some comparative elements, the relationship between constitutional amendments and ratification of European treaties in order to underline the Italian particularity of 'silent' adaptation. Many European clauses, in fact, different from the Italian one, refer explicitly or implicitly to constitutional amendment procedures to ratify new European Treaties.

As a matter of common knowledge, this is the option embraced by the (new) Article 23 of the German Basic Law, inserted in 1992, in view of the ratification of the Treaty of Maastricht and prior to its approval by the German institutions. According to it, every modification to the European treaties that substantially amends or supplements the Basic Law must be subject to the constitutional amendment procedure entailed in Article 79(2) and within the limits of Article 79(3) of the Basic Law.<sup>24</sup> The rationale of this clause is to ensure the rigidity of the Basic Law vis-à-vis the evolution of the European integration both procedurally (by requiring the same procedures and majorities of constitutional amendments) and substantially (by setting the same limit of the 'eternity clause' of Article 79(3) of the Basic Law to both 'domestic' constitutional amendments and 'EU-driven' ones).<sup>25</sup>

<sup>18</sup> Along the same line of reasoning, see the analytic examination of the individual clauses (updated after the Lisbon Treaty) that is presented in the Annex III of the study commissioned by the European Parliament (PE 493.046) and conducted by L Besselink et al, *National Constitutional Avenues for Further EU Integration* (Brussels, European Parliament, 2014) 263 ff.

<sup>19</sup> Loi constitutionnelle no 92-554 of 25th June 1992, adding to the Constitution the title: 'The European Communities and the European Union'.

<sup>20</sup> Loi constitutionnelle no 99-49 of 25 January 1999, amending ss 88-2 and 88-4 of the Constitution.

<sup>21</sup> Loi constitutionnelle no 2005-204 of 1 March 2005 amending Title XV of the Constitution.

<sup>22</sup> Loi constitutionnelle no 2008-103 of 2 February 2008 substituting again the Title XV of the Constitution, at the moment of the entry into force of the Treaty of Lisbon.

<sup>23</sup> See P Gaïa, 'Le Conseil constitutionnel français et le contrôle de conformité à la Constitution des engagements internationaux et européens de la France' in N Zanon (ed), *Il controllo preventivo dei trattati dell'Unione europea* (Milan, Giuffrè, 2015) 2-79.

<sup>24</sup> Art 79(2) requires the approval by two-thirds of the Members of each House of the Federal Parliament. Art 79(3) prohibits constitutional amendments affecting the division of the Federation into Länder, affecting their participation on principle in the legislative process, or affecting the principles of human dignity (set in Art 1) and those of the democratic and welfare state (Art 20).

<sup>25</sup> However, this link between (further) European integration and constitutional rigidity is not to be seen as an element of closure of the German constitutional order to external interactions: see A Di Martino, 'The "Open

Not too dissimilar from the German solution tends to be, at least in practice, the Irish approach. Starting with the decision of the Supreme Court in the case *Raymond Crotty v An Taoiseach and Others* in 1987,<sup>26</sup> any significant modification to the European Treaties requires a correspondent amendment to the Irish Constitution. The procedure tends to be even more complex and difficult, however, as constitutional amendments in Ireland necessarily imply the approval by popular referendum.<sup>27</sup> In order to ratify the Treaty of Lisbon, after the negative result of a first referendum held in Ireland on 12 June 2008, a new referendum was celebrated on 2 October 2009 in the light of the negotiations that led to some concessions for the Republic of Ireland.<sup>28</sup> The positive result of the second referendum allowed the entry into force of the 28th Amendment of the Constitution of Ireland, which affirmed the ‘commitment’ of Ireland to the European Union, enabled the ratification of the Treaty of Lisbon and made specific reference to some of the innovations introduced with it (such as the *passerelle* clauses, the adhesion to forms of enhanced cooperation, the establishment of a common defence, etc).<sup>29</sup>

Slightly different is the French example, in which, as already recalled, it is the interaction between political will (the decision of the President of the Republic, or the Prime Minister, or the President of one of the two Houses or, since 1992, 60 deputies or 60 senators, to involve the Conseil Constitutionnel) and legal elements (a negative outcome of the preliminary *saisine*, by the same Conseil Constitutionnel, provided by Article 54 Constitution) that may lead to a constitutional amendment, in order to ratify a European treaty. In the case of the Treaty of Lisbon, for instance, the political element is quite evident, with the neo-President of the Republic, Nicolas Sarkozy, invoking the intervention of the Conseil Constitutionnel on the same day that he himself signed it (13 December 2007). Then the legal element followed shortly after, with the Conseil Constitutionnel deciding on the matter in just one week,<sup>30</sup> asking for a constitutional amendment (... that arrived within a couple of months).<sup>31</sup>

At the opposite extreme, the main and original European clause embedded in the Italian Constitution has an extremely wide scope and did play a crucial role in the last 60 years, granting a smooth adaptation of the Italian legal order to the different stages of the European integration process.

Constitutional State’’: Germany’s responses to International and European Pluralism’ in L Mezzetti (ed), *International Constitutional Law* (Turin, Giappichelli, 2014) 109–40, who reconnects the way in which Germany participates in the European integration to the ideas of the ‘open constitutional state’ (K Vogel, *Die Verfassungsentscheidung des Grundgesetzes für eine internationale Zusammenarbeit* (Tübingen, Mohr, 1964)) and of the ‘cooperative state’ (P Häberle, *Der kooperative Verfassungsstaat aus Kultur und als Kultur* (Berlin, Duncker und Humblot, 2013)), fostering the adhesion to the concept of a constitutional integration in terms of ‘Verfassungsverbund’ that ends to be not dissimilar from that of the composite European constitution (see at 131 ff).

<sup>26</sup> Decision [1987] IESC 4, released on 9 April 1987 and specifically related to the ratification of the Single European Act.

<sup>27</sup> Art 46(2) of the Irish Constitution.

<sup>28</sup> The agreement between Ireland and other Member States are attached to the conclusions of the Presidency of the European Council, held in Brussels on 18/19 June 2009: Annex 1 (Decision of the Heads of State or Government of the 27 Member States of the EU, meeting within the European Council, on the concerns of the Irish people on the Treaty of Lisbon); Annex 2 (Solemn declaration on workers’ rights, social policy and other issues) and Annex 3 (National declaration by Ireland).

<sup>29</sup> See, in particular, the new Arts 29.4.4–29.4.9 of the Irish Constitution.

<sup>30</sup> Judgement No 2007-560 DC, on 20 December 2007.

<sup>31</sup> See the already quoted loi constitutionnelle no 2008-103, 4 February 2008. On this, see X Magnon, ‘Le traité de Lisbonne devant le Conseil constitutionnel: non bis in idem?’ (2008) 74 *Revue française de droit constitutionnel* 310–33.

According to Article 11 of the 1947 Italian Constitution, placed since the beginning among its fundamental principles (Articles 1–12), ‘Italy agrees, on conditions of equality with other States, to the limitations of sovereignty that may be necessary to a world order ensuring peace and justice among the Nations’ and ‘promotes and encourages international organisations furthering such ends’.

The provision was originally conceived mainly for the membership to the United Nations, but was drafted in a way that allowed its extension to the multiple projects of European integration that were taking place after the Second World War.<sup>32</sup> In it, there are also some traces of the openness to the international order requested in the Constitutions of the three main defeated military powers, Germany,<sup>33</sup> Japan,<sup>34</sup> and, precisely, Italy.<sup>35</sup>

Thanks to the constitutional reference to sovereignty and its limitations, Italy has been capable to ensure the ratification of all the European Treaties by means of ordinary legislation and the legal effectiveness of EU law to the domestic legal order, allowing also the Italian Constitutional Court to progressively adapt its case law to the early affirmation of the primacy and direct effect by the European Court of Justice as early as the 1960s.<sup>36</sup>

More recently, in addition to Article 11, a limited number of specific references to the European Union and some of its institutions appeared in the text of the Italian Constitution.

A first step was made in 1999, when Article 122 Constitution was amended in a comprehensive reorganisation of the regional form of government. Among other changes, the new discipline of incompatibility that excluded the possibility of being a member, at the same time, of elected assemblies at different levels of government, made the first explicit reference to one of the EU institutions, namely the European Parliament.

A second (and more telling) step was taken in 2001. Here, in the framework of a general re-thinking of the distribution of legislative competences between state and regions, a reference to the ‘constraints deriving from Community Law’ was set in Article 117(1), together with the Constitution itself and ‘international obligations’, as limits common to both state and regional legislation. It was probably intended as a mere reaffirmation of limits already recognised by the case law of the Constitutional Court to state as well as regional legislation, but it raised a certain debate especially where it referred also to ‘international obligations’.

<sup>32</sup> A Cassese, ‘Commento all’articolo 11’ in G Branca (ed), *Commentario della Costituzione, articoli 1–12, Principi generali* (Bologna-Rome, Zanichelli, 1975) 569 ff. See also M Cartabia-L Chieffi, ‘Art 11’ in R Bifulco, A Celotto and M Olivetti (eds), *Commentario alla Costituzione* (Turin, Utet, 2006) 264–305.

<sup>33</sup> See, in particular, Art 24 of the 1949 German Basic Law, which states, inter alia, that ‘The Federation may by a law transfer sovereign powers to international organisations’ and that ‘With a view to maintaining peace, the Federation may enter into a system of mutual collective security; in doing so it shall consent to such limitations upon its sovereign powers as will bring about and secure a lasting peace in Europe and among the nations of the world’.

<sup>34</sup> See Art 9 of the 1946 Japanese Constitution, according to which ‘Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes. In order to accomplish [this aim], land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized’.

<sup>35</sup> M Cartabia, ‘The Legacy of Sovereignty in Italian Constitutional Debate’ in N Walker (ed), *Sovereignty in Transition* (London, Hart Publishing, 2003) 305–26 (analysing the uses of ‘sovereignty’ in the Italian legal scholarship and case law).

<sup>36</sup> The now-classic reference to this path is P Barile, ‘Il cammino comunitario della Corte’ (1973) *Giurisprudenza costituzionale* 2406. More extensively see M Cartabia and JHH Weiler, *L’Italia in Europa. Profili istituzionali e costituzionali* (Bologna, Il Mulino, 2000) and GL Tosato, ‘L’articolo 11 della Costituzione e il diritto dell’Unione europea’ in N Ronzitti (ed), *L’articolo 11 della Costituzione. Baluardo della vocazione internazionale dell’Italia* (Naples, Editoriale scientifica, 2013) 69–85.

The applicability of this limit also to state legislation, indeed, brought the Constitutional Court to overcome the traditional principle according to which international treaties had, in the internal legal order, the same legal status of the law executing them (that is, ordinary law) and could therefore be repealed by more recent piece of legislation according to the *lex posterior* criterion. According to its decisions nos 348/2007 and 349/2007, the Constitutional Court in particular can use the European Convention on Human Rights as a standard for judicial review of state legislation<sup>37</sup> (insofar its provisions, as interpreted by the European Court of Human Rights, conform with the Constitution): so, it acquired an intermediate position between ordinary law and the Constitution.<sup>38</sup>

Finally, with the constitutional revision that in 2012 introduced the balanced budget principle in Article 81 Constitution, also Article 97, containing the basic principles for public administration, was amended. A new paragraph was added, at its beginning, addressed to all 'general government entities' (ie the public administration in a subjective sense), now asked to ensure balanced budgets and sustainability of public debt 'in accordance with European Union law'.<sup>39</sup>

However, contrary to what happened in Germany with the aforementioned replacement of Article 23 Constitution,<sup>40</sup> the modifications to the Italian Constitution did not touch the essence or the letter of the original European clause, which is still contained in Article 11.<sup>41</sup> At the most, some scholars as well as several decisions of the Italian Constitutional Court combine Article 117(1) with Article 11, using both as constitutional bases for justifying the constitutional need to adapt the internal legal order to EU law. Yet, it would be incorrect to rely on Article 117 alone, as it solely implies a constraint for the internal legislators (the state as well as the regions), whereas Article 11 refers to wider limitations of sovereignty that thus include the constitutional level of the sources of law and also the other branches of the Republic. Indeed, when the Constitutional Court wished to recap the main elements of the composite European Constitution, obviously as seen from an Italian perspective, it did not need to recall also Article 117, as the referral to Article 11 is sufficient to recognise the '*primauté*' of EU law on national law (with the only exception of the so-called '*controlimiti*').<sup>42</sup>

<sup>37</sup> See G Repetto (ed), *The Constitutional Relevance of the ECHR in Domestic and European Law. An Italian Perspective* (Cambridge, Intersentia, 2013).

<sup>38</sup> See V Barsotti, PG Carozza, M Cartabia, A Simoncini, *Italian Constitutional Justice in Global Context* (Oxford, Oxford University Press, 2016) 226–30.

<sup>39</sup> On the importance of this addition see GL Tosato, 'La riforma costituzionale del 2012 alla luce della normativa dell'Unione: l'interazione fra i livelli europeo e interno', available at [www.cortecostituzionale.it/documenti/convegni\\_seminari/Seminario2013\\_Tosato.pdf](http://www.cortecostituzionale.it/documenti/convegni_seminari/Seminario2013_Tosato.pdf). More broadly, see the special issue of *Il Filangieri. Quaderno 2011, Costituzione e pareggio di bilancio* (Naples, Jovene, 2012).

<sup>40</sup> However, see also the opening words of the Preamble of the Basic Law, as originally drafted in 1949: '[the German people] inspired by the determination to promote world peace as an equal partner in a united Europe'.

<sup>41</sup> See C Pinelli, 'I limiti generali alla potestà legislativa statale e regionale e i rapporti con l'ordinamento internazionale e con l'ordinamento comunitario' (2001) 5 *Foro italiano* 194.

<sup>42</sup> See the recent order no 24/2017 of the Constitutional Court, which issued a preliminary reference to the Court of Justice in reaction of the latter's judgment on the 'Taricco case', para 2 ('The recognition of the primacy of EU law is an established fact within the case law of this Court pursuant to Article 11 of the Constitution; moreover, according to such settled case law, compliance with the supreme principles of the Italian constitutional order and inalienable human rights is a prerequisite for the applicability of EU law in Italy. In the highly unlikely event that specific legislation were not so compliant, it would be necessary to rule unconstitutional the national law authorising the ratification and implementation of the Treaties, solely insofar as it permits such a legislative scenario to arise (see Judgments No 232 of 1989, No 170 of 1984 and No 183 of 1973)'). More on the '*controlimiti*' doctrine also below, at n 61.

The choice to make use of Article 11 of the Italian Constitution as a European clause and, consequently, not to amend the 1947 Constitution to include a reference to the European communities was originally due to political reasons. During the 1950s, the majority required for passing any constitutional amendment was at least two-thirds of the members of each House.<sup>43</sup> Because of the opposition of the communist and socialist parties it was practically impossible to reach that threshold for the ratification of European Communities' founding treaties.<sup>44</sup>

In a different political context, after the crisis of the party system in the early 1990s, in the framework of an attempt to comprehensively reform the Constitution, there also has been the idea of inserting a new European clause.<sup>45</sup> It would have included a list of (rather vague) limits to the participation in the European Union<sup>46</sup> and a specific procedure to allow further limitation of national sovereignty (apparently applicable also to the ratification of new European treaties) that would have requested even a popular referendum.<sup>47</sup> However, after the failure of that constitutional reform, no further (significant) proposals have been examined to amend or integrate Article 11 Constitution.<sup>48</sup>

Thus, under the wide umbrella of Article 11 Constitution, the Italian participation in the European Union has been relying essentially on just legislative means, starting from the choice made when authorising the ratification of the first European treaties,<sup>49</sup> soon confirmed and refined by the Italian Constitutional Court. Even though it took some time

<sup>43</sup> According to Art 138 of the Italian Constitution, any approval with a mere absolute majority would have allowed the possibility for requiring a popular referendum. However, as the ordinary legislation implementing the referendum itself was passed only on 1970, before that date all the constitutional amendments needed to be approved with a two-thirds majority by both Houses.

<sup>44</sup> A Barbera, 'Costituzione della Repubblica italiana', in *Enciclopedia del diritto. Annali*, VII (Milan, Giuffrè, 2015) 263–358, at 352; A Varsori, *La Cenerentola d'Europa? L'Italia e l'integrazione europea dal 1947 ad oggi* (Soveria Mannelli, Rubbettino, 2010) 34 ff. More specifically, with regard to the evolution of the communist party on the European integration, that brought it to have, as elected in its own lists, Altiero Spinelli as member of the Italian Chamber in 1976 and of the European Parliament in 1979, see interviews and documents in M Maggiorani and P Ferrari (eds), *L'Europa da Togliatti a Berlinguer. Testimonianze e Documenti (1945–1984)* (Bologna, Il mulino, 2005).

<sup>45</sup> See Art 114 of the draft constitutional amendment elaborated by the Bicameral Committee for constitutional reforms in 1998, on which C Curti Galdino, 'Il progetto di revisione costituzionale sui temi attinenti all'Unione europea nei lavori della Bicamerale' in Società Italiana Diritto Internazionale, *Riforme costituzionali, Prospettiva europea e prospettiva internazionale* (Naples, Editoriale scientifica, 2000) 27.

<sup>46</sup> Limits were identified with the 'supreme principles of the legal order and the respect of the human being'.

<sup>47</sup> The Law to allow further limitations to national sovereignty would have been approved by absolute majority in both Houses and submitted to popular referendum upon the request of one-third of the members of each House, 80,000 voters or five regional assemblies.

<sup>48</sup> For the sake of completeness, some proposals for constitutional amendments to Art 11 have been submitted, in particular by MPs members of the Northern League, in order to tighten the constraints to the participation of the EU. See, in the XVI legislative term (2008–2013), the two identical constitutional bills nos AS 769 by Sen Bricolo and AC 1329, by Hon Cota, submitted in 2008 (and later copied and pasted in 2016, during the subsequent legislative term, by AS 2396, by Sen Consiglio). These proposals aimed at introducing the necessity for the approval of further limitations to national sovereignty both by the Parliament (by absolute majority) and by the people with a referendum. However, no discussion of any of these constitutional bills has ever been started in parliamentary committees. More recently, also Sen Tremonti, former finance minister in the Berlusconi governments, submitted a proposal aimed to add to Art 11 Const a new sentence, self-declared inspired by the German Constitution (that EU law is applicable only 'if compatible with principles of sovereignty, democracy, subsidiarity and with the other principles of the Italian Constitution') as well as to restore the original version of Art 117(1) Const (AS 2693, submitted on 10 February 2017).

<sup>49</sup> Law 14 October 1957, no 1203.

to combine the dualist approach of the Italian legal order with the early affirmation of the primacy and direct effect made by the European Court of Justice,<sup>50</sup> the Italian Constitutional Court never called for the need of a constitutional reform in order to participate in the integration process, affirming the possibility to cope with it by the means of interpreting the Constitution in force.<sup>51</sup>

The same model was then followed for authorising the ratification of all treaty revisions. A bill was submitted by the Government and approved, as quickly and plainly as possible, by a large parliamentary majority—which enlarged even more as the parties of the left became gradually more in favour of European integration—and no referendum or prior judicial check of compatibility with the Italian Constitution was required.<sup>52</sup> This model was applied also to the Treaty of Lisbon, even more because the Italian Parliament had been among the first to ratify the constitutional treaty three years earlier. This helps to explain why neither in the Senate (on 23 July 2008) nor in the Chamber of Deputies (31 July 2008) a single negative or abstention vote was cast on the bill authorising its ratification.<sup>53</sup> If for ratifying the constitutional treaty there was no need for any constitutional amendment, this was evidently true for a treaty as that of Lisbon which, at least formally, intended to downgrade the constitutional impact (as well as some constitutional rhetoric) of its immediate precedent.

The approach chosen by the Italian constitutional order doubtless offers some advantages, both from the point of view of the domestic level as well as from that of the European one.

Starting from the former, such an approach keeps the constitutional norms (ie the most rigid and fundamental rules at the basis of the legal order) as open as possible to supra-national interaction, ready to adapt to the evolving reality of European integration via interpretative evolutions, without the need for formal revisions of the constitutional text. This openness allowed the incorporation of the most innovative steps of the process of European integration via a mere ordinary law authorising the ratification of the individual treaty at stake. No constitutional amendments have been approved (or required) in order to originally take part in the European Coal and Steel Community (ECSC), European Atomic Energy Community (EAEC) or European Economic Community (EEC); to adhere to the European Union after the Treaty of Maastricht; to join the single currency; or to complete the domestic procedure for the (later-failed) Constitutional Treaty. In other words, the absence of rigid constitutional barriers in the communication between the two legal orders has facilitated the ‘incorporation’ at the constitutional level of interpretative conventions, filling the void of what the Constitution does not say.<sup>54</sup>

<sup>50</sup> Barile, above n 36. See also F Sorrentino, ‘La Costituzione italiana di fronte al processo di integrazione europea’ (1993) *Quaderni costituzionali* 71–112 and M Cartabia, ‘The Italian Constitutional Court and the Relationship Between the Italian Legal System and the European Union’ in AM Slaughter et al (eds), *The European Court and National Courts: Doctrine and Jurisprudence: Legal Change in Its Social Context* (London, Hart Publishing, 1998) 133–46.

<sup>51</sup> Barsotti et al, above n 38, 205 ff.

<sup>52</sup> See chapters by P Falletta and G Vosa.

<sup>53</sup> In the final vote on the bill authorising the ratification of the Treaty of Lisbon the Senate registered 286 votes in favour out of 286 members participating in the vote (consisting of the plenum of 321 members, as at that time there were seven life senators, plus the President). At the Chambers of Deputies there were 551 votes in favour out of 551 voting members (plenum 629, plus the President).

<sup>54</sup> This may represent a case of ‘informal constitutional change by incorporation’, according the classification proposed by R Albert, ‘How Unwritten Constitutional Norms Change Written Constitutions’ (2015) 2 *Dublin*

There is also a specific advantage for the Italian Parliament, which had been the protagonist, together with its Government, of the founding of the European Communities and remains. No place was left for actors like the Constitutional Court (at least in the ratification phase) or the Italian people. Regarding the latter, the only exception was the 1989 referendum, provided by an 'ad hoc' constitutional law (so approved by the Parliament itself), and devoid of any binding value. Through the advisory referendum in 1989 Italian citizens were asked—on the same day in which they were called to elect, for the third time, the members of the European Parliament—whether they wanted to transform the European Communities into a Union, with a Government responsible before the European Parliament, and to confer to the European Parliament a mandate to draft a project of a European Constitution. The result confirmed the wide pro-European orientation of the Italian public opinion at that time, as 88.1 per cent of the voters gave a positive reply (and the turnout was rather high, at 81 per cent also because it was held on the same day of the EP elections).<sup>55</sup>

Also, the European level can benefit from such an interpretative way of approaching the constitutional coping with continental integration. It allows a (founder) Member State to promptly follow the evolution and the different phases (and fashions) at the European level, keeping the 'constitutional avenues for further integration'<sup>56</sup> as accessible and large as possible. It seems also fully consistent with the idea of a constant evolution of the European Union, as stated in the motto 'an ever closer Union'.<sup>57</sup>

Beyond the just mentioned advantages, there can be some risky drawbacks. Generally speaking, progressive affirmation of non-written norms integrating and lying beside the Constitution risks affecting and weakening the Constitution's effectiveness,<sup>58</sup> as it loses its communicative potential to be perceived as a point of reference of the common values of the society.<sup>59</sup>

*University Law Journal* 387–417, namely 'the evolution in the tacit understanding of law and politics held by governors and accepted by governed'.

<sup>55</sup> P Costanzo, 'La Costituzione italiana di fronte al processo costituzionale europeo' in F Modugno (ed), *Attuazione e integrazione della costituzione* (Naples, Jovene, 2009) 85–100 and B Caravita, 'Il referendum sui poteri del Parlamento europeo: riflessioni critiche' (1989) 2 *Politica del diritto* 319–27.

<sup>56</sup> For the use of this expression see Besselink et al, above n 18.

<sup>57</sup> Similarly, the evolving idea entailed in the motto was deemed consistent with the absence of a rigid hierarchy of norms among sources of EU secondary law: R Bieber and I Salome, 'Hierarchy of Norms in European Law' (1996) *Common Market Law Review* 907–30, at 911.

<sup>58</sup> T Ginsburg, 'Constitutional Specificity, Unwritten Understandings and Constitutional Agreement' in A Sajó-R Uitz (eds), *Constitutional Topography: Values and Constitutions* (The Hague, Eleven International Publishing, 2010) 69 ff.

<sup>59</sup> The risk of affecting the continuity in popular consent by informal constitutional changes has been described by W Dellinger, 'The Legitimacy of Constitutional Change: Rethinking the Amendment Process' (1983) 97 *Harvard Law Review* 383 ff. More specifically R Albert, 'Counterconstitutionalism' (2008) 31 *Dalhousie Law Journal* 1 ff, elaborates on the relationship between constitutionalism and constitutional culture, underlining that when the constitutional text loses contact with the reality of the law in action, the consequence is the people's loss of faith in the constitution. A recent example of this 'distance' can be exemplified by the rather surreal debate on the occasion of the constitutional referendum on 4 December 2016, stimulated by warnings related the replacement of 'community constraints' with 'EU constraints' in the wording of Art 117(1) of the Constitution. This elementary drafting update had been presented to the public opinion as a way to limit national sovereignty with an uncontrolled expansion of EU powers (so claimed the leader of the Northern League Matteo Salvini during the TV debate on the constitutional referendum with the Minister for Constitutional reforms Maria Elena Boschi held on 7 October 2010).

Specifically with regard to the ‘openness’ of the Italian Constitution towards European integration, the elasticity of constitutional requirements has often meant that the Italian interest can be underestimated during the negotiation that leads to the signature on a treaty reform, as it is not protected by a specific constitutional provision. If you add in the relative weakness of parliamentary mechanisms for directing and engaging in oversight of the behaviour of the Italian Government in the European negotiations, it is rather easy to understand why, in fact, Italy has hardly asked for ‘special’ treatment or specific clauses in the treaty revisions in order to convince its citizens in a referendum, or its opposition parties, or even its Constitutional Court. As has been already remarked, Italian electors were never called to vote on any treaty revision, while the consent of the opposition parties was generally taken for granted, at least until the ratification of the Treaty of Lisbon, which still was authorised with an extremely wide consensus. Even the Constitutional Court, although invoking, as a kind of last resort, the possibility of using its supreme principles as counter-limitations to the limitations of sovereignty allowed by Article 11 Constitution (the so-called ‘controlimiti’ doctrine), did not identify, at least until very recently, any effective constitutional element that EU law could not alter.<sup>60</sup>

Under a certain point of view, this rather smooth and almost uncritical acceptance of European integration, without any affirmation of elements of the Italian constitutional identity—as the German Constitutional Tribunal did with reference to the democratic principle, as derived from the right to vote—and without any request for opt-outs, derogations, legal guarantees or forms of differentiated integration,<sup>61</sup> may be interpreted as a weak *ex ante* protection of the Italian constitutional identity,<sup>62</sup> or even as the confirmation of a weak (sense of) identity.

<sup>60</sup> The expression ‘controlimiti’, although widely diffused in the scholarly debate (introduced as ‘contro-limitazioni’ by Barile, above n 36, commenting on the decision no 183/1973), has been used by the Italian Constitutional Court just once, in the decision no 238/2014. Even in the order no 24/2017 (above n 42) when the Court was asked to apply them, it preferred to recur to the working of Art 4(2) TEU, also in order to leave some margin of dialogue with the CJEU. Diffusely on the ‘controlimiti’ doctrine M Cartabia, *Principi inviolabili e integrazione europea* (Milan, Giuffrè, 1995), P Faraguna, *Ai confini della Costituzione. Principi supremi e identità costituzionale* (Milan, FrancoAngeli, 2015) and G Piccirilli, ‘L’unica possibilità per evitare il ricorso immediato ai controlimiti: un rinvio pregiudiziale che assomiglia a una diffida’, in A Bernardi, C Cupelli (a cura di), *Il caso Taricco e il dialogo tra le Corti. L’ordinanza 24/2017 della Corte costituzionale* (Naples, Jovene, 2017) 327–44.

<sup>61</sup> The main exception was probably the allocations of seats at the European Parliament on the occasion of the Treaty of Lisbon, in order to equalise the number of those attributed to Italy and France (then incorporated in the Declaration No 4, and supported by the further Declaration No 57 for subsequent terms). See C Fasone, ‘Quando i seggi ... non tornano. A proposito dei membri del Parlamento europeo spettanti all’Italia e del trattato di riforma’ (2007) *Amministrazione in cammino* 1–32, and F Fabbrini, ‘La composizione del Parlamento Europeo dopo il Trattato di Lisbona’ (2011) 61 *Rivista trimestrale di diritto pubblico* 787–802.

<sup>62</sup> P Faraguna, ‘Taking Constitutional Identity away from the Courts’ (2016) 41 *Brooklyn Journal of International Law* 491–578, at 525 ff, considers these forms of differentiation in participating in the European Union exactly as forms of (*ex ante*) protection of the national constitutional identity, that—diversely from Italy—have been pursued by other Member States such as the United Kingdom, Ireland (see also at n 28 above), but also Denmark (which opted out from the EMU and later from the single currency, and in various forms from the AFSJ: see in detail L Miles and A Wivel (eds), *Denmark and the European Union* (London-New York, Routledge, 2014) and specifically the chapters by M Marcussen, ‘Denmark and the Euro opt-out’ 47–64; R Adler Nissen, ‘Justice and Home Affairs: Denmark as an Active Differential European’ 65–79; and the conclusion of the editors ‘A Smart State Handling a Differentiated Integration Dilemma? Concluding on Denmark in the European Union’ 228–38). Finally consider the distinguishing in the application of the Charter of Fundamental Rights of the EU made by the United Kingdom, Poland and the Czech Republic in Protocol No 30: S Peers, ‘The “Opt-out” that Fell to Earth: The British and Polish Protocol Concerning the EU Charter of Fundamental Rights’ (2012) 12 *Human Rights Law Review* 375 ff.

At the same time, from another perspective, this constitutional approach might be seen as a demonstration of the closeness and even of the high degree of overlap between Italian and European constitutional identities. In other terms, in Italy the consensus for the European integration process has been very wide and the ‘European choice’ seemed rather natural, ‘given the three bases of Italian foreign policy. These are Europeanism, Atlanticism and a Mediterranean orientation.’<sup>63</sup> It comes as no surprise, thus, that Italy did not feel the need to affirm values and principles other than those that it found in the European integration process, and even its constituent fathers could have seen this process as a continuation of its constitutional foundations, aimed at securing peace and justice among nations and recognising the principle of equality and fundamental rights and freedoms. Whether, 70 years later, this means that the EU could be qualified as a ‘fulfilment’ of the Italian Constitution—as recently maintained<sup>64</sup>—seems, indeed, an open and more debatable issue.

### III. The Italian Parliament in the ‘Silent’ Evolution of the Composite Constitution

The same openness and adaptability to the evolution of the political context that has been found in the constitutional principles related to the Italian participation in the EU can be traced in the constitutional provisions related to the role of the Parliament in the Italian form of government.

In the name of its institutional autonomy, only a few constraints are defined in the Constitution’s text, leaving a wide margin of interpretation for the institutional practice and political dynamics. As shown in the book,<sup>65</sup> this approach, originally conceived to leave the hands of political parties rather free to pursue their own choices and alliances,<sup>66</sup> allowed the Italian Parliament to redefine several times its role in the constitutional system (especially vis-à-vis the Government) according to the evolution of electoral legislation and the reshuffling of the political parties that took place in 1993. Moreover, it allowed the Parliament itself to silently evolve its own functioning by modifications of the rules of procedure or, even, more recently, by innovative interpretations of the parliamentary rules and precedents.

The phenomenon of implied constitutional amendments has already been the subject of an influential book in the late 1950s by Silvano Tosi,<sup>67</sup> who, following an interpretation

<sup>63</sup> So, synthetically, SZ Koff and SP Koff, *Italy. From the Fist to the Second Republic* (London and New York, Routledge, 2000) 197–210.

<sup>64</sup> See (also relying on some speeches by Italian Presidents of the Republic rhetorically highlighting the common origins and values of integrated Europe and the Italian Republic) F Fabbrini and O Pollicino, ‘Constitutional Identity in Italy: European Integration as the Fulfilment of the Constitution’, EUI Working Paper LAW 2017/06.

<sup>65</sup> See the chapter by P Falletta.

<sup>66</sup> See G Amato, ‘Constitution’ in E Jones and G Pasquino (eds), *The Oxford Handbook on Italian Politics* (Oxford, Oxford University Press, 2015) 71 ff, at 78 (also highlighting that the Constituent Assembly did not know which parties would have prevailed in the subsequent elections of 1948).

<sup>67</sup> S Tosi, *Modificazioni tacite della Costituzione attraverso il diritto parlamentare* (Milan, Giuffrè, 1959).

of the Italian constitutional history proposed by Giuseppe Maranini,<sup>68</sup> elaborated on the discrepancies between the form of government enshrined in the Constitution and its actual functioning after 15 years of practice. He found in the two Houses' rules of procedure, similar to what happened pending the Albertine statute, the key factor in the significant detachment from the written constitutional provisions, pinpointing in their flexibility the cause of 'silent' (ie 'unsaid', not formalised via an actual constitutional amendment) modifications of the constitutional order.

More recently, the same process seems to have been brought to its extremes. Not only is the constitutional text stable, notwithstanding the political and electoral change that happened in 1993, but even the two Houses' parliamentary rules of procedure have not been significantly amended, at least in the last 20 years. The shift to a quasi-majoritarian form of government, fostered by the different reforms of the electoral law, did not bring any major formal adaptation of the rules internal to the Houses.<sup>69</sup> What facilitated this most recent evolution has been the capacity of the Presidents of the two Houses to find increasingly innovative interpretations of the existing rules, progressively detaching them from their original intent and even their wording. The result—as it has been remarked<sup>70</sup>—is a paradoxical inversion of the hierarchy of the sources of law in the parliamentary context that puts 'precedents' at the top of the pyramid, so weakening the effectiveness of parliamentary rules of procedure. This evolution also created the necessity of allowing the accessibility and verifiability of the collection of precedents, as happens in many Parliaments, in order to ensure forms of control by individual MPs, parliamentary minorities and also the general public.<sup>71</sup>

The relevance of parliamentary rules of procedure and even of the inner practices of the Houses confirms, once more, the idea that parliamentary law is an essential element of constitutional law. Consequently, their evolution—although 'silent'—deserves to be considered and deeply investigated. After all, the history of parliamentary bodies is, to some extent, a history of silent evolutions, progressive adaptation and increasing exploitation of the (often meagre) constitutional provisions on the role of elected assemblies and their relationship with the Government. Parliamentary rules at every level tend to prefer continuity and adaptation to ruptures and revolutions.<sup>72</sup>

This is surely true for the Italian Parliament in the nineteenth century, which progressively achieved the right to vote on the initial confidence to Government, that was not

<sup>68</sup> The most complete exposition of Maranini's interpretation is in G Maranini, *Storia del potere in Italia (1848–1967)* (Firenze, Vallecchi, 1967), but was anticipated also in previous writings. For an accurate reconstruction of the relationship between Maranini and his pupil Tosi, see F Lanchester, 'Politica e diritto in Silvano Tosi' (2009) 1 *Federalismi.it* 1–18.

<sup>69</sup> The need for such reforms stimulated two collections of essays: E Gianfrancesco and N Lupo (eds), *Le regole del diritto parlamentare nella dialettica tra maggioranza e opposizione* (Rome, Luiss University Press, 2007) and E Gianfrancesco and N Lupo (eds), *La riforma dei regolamenti parlamentari al banco di prova della XVI legislatura* (Rome, Luiss University Press, 2009).

<sup>70</sup> C Bergonzini, 'La piramide rovesciata: la gerarchia tra le fonti del diritto parlamentare' (2008) 4 *Quaderni costituzionali* 741–62.

<sup>71</sup> A specific attention on the elaboration, selection and application of parliamentary precedents is paid by the essays collected in N Lupo (ed), *Il precedente parlamentare tra diritto e politica* (Bologna, Il Mulino, 2013).

<sup>72</sup> See P Ungari, 'I precedenti storici del diritto parlamentare vigente in Italia', in V Longi et al (eds), *Il regolamento della Camera dei deputati. Storia, istituti, procedure* (Rome, Camera dei deputati, 1969) 39–95 at 95, and L Gianniti and N Lupo, *Corso di diritto parlamentare*<sup>2</sup> (Bologna, Il mulino, 2013) 21 ff.

foreseen by the Albertine statute.<sup>73</sup> Then, it is also the case of the Italian Parliament in the Republican period, with its subsequent adaptations to societal evolutions by modifying the rules of procedure (completely rewritten in 1971)<sup>74</sup> or interpreting them in evolutionary manners. The same can be probably said also for the European Parliament, which notoriously expanded its powers in the decision-making process vis-à-vis the Council, anticipating in its rules of procedure the treaty revisions that formally increased its role.<sup>75</sup>

Finally, a similar conclusion can be reached with regard to the evolution of the European role of the Italian Parliament. Coherently with the silent integration of the Italian legal order within the European Communities (and later Union) and in line with the continuous modification of the parliamentary function in the domestic form of government, the Euro-national procedures of the Italian Parliament also have been evolving progressively and mainly informally. As is already known, until recently the ‘European’ role of national Parliaments was left entirely to each Member State’s Constitution.<sup>76</sup> Thus, in Italy some ‘European’ procedures emerged long before the formal acknowledgement of the powers listed by the Treaty of Lisbon and have been expanding in new directions in the last few years.<sup>77</sup> Also in this context the road was opened not by a formal amendment to the rules of procedure, but by simpler innovations to the parliamentary practice.

Already before the approval of the Law No 234/2012, some important (and informal) innovations were reached through the application by analogy of existing procedures aiming to ensure mechanisms of parliamentary oversight of the Government’s activity in European affairs.

For example, with an autonomous decision of the (then-just-appointed) President of the Council of Ministers Mario Monti, the Government started to report to the Houses regularly before each meeting of the European Council. This parliamentary practice inaugurated by the Monti Government seems particularly telling, as it needs to be set in the framework of a general attitude of governments—and especially of the so-called

<sup>73</sup> Again Maranini, above n 68 and also S Labriola, *Storia della costituzione italiana* (Rome, ESI, 1995); F Rossi, *Saggio sul sistema politico dell’Italia liberale: procedure fiduciarie e sistema dei partiti fra Otto e Novecento* (Soveria Mannelli, Rubbettino, 2001); R Ferrari Zumbini, ‘La Torino del 1848-49 come laboratorio costituzionale: la nascita spontanea della fiducia parlamentare’ (2016) 2 *Le Carte e la Storia* 75–85.

<sup>74</sup> In 1971 the adoption of new rules of procedure helped the Italian Parliament to open itself to the society that was undergoing deep transformations. For a re-reading on the role of the new rules of procedure see A Manzella (ed), *I regolamenti parlamentari a quarant’anni dal 1971* (Bologna, il Mulino, 2012) and F Lanchester (ed), *Regolamenti parlamentari e forma di governo: gli ultimi quaranta anni* (Milan, Giuffrè, 2013). The reversion of the secret/open ballot rule with two parallel modifications of the rules of procedure of both Houses was a way to register the end of the so called ‘consociational democracy’ in the late 1980s: see A Lijphart, *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries* (New Haven, Yale University Press, 1999), A Pizzorno, ‘Le difficoltà del consociativismo’ in A Pizzorno, *Le radici della politica assoluta* (Milan, Feltrinelli, 1993) 285–313, S Vassallo, ‘Parliament’ in Jones and Pasquino (eds), above n 66, 107–18.

<sup>75</sup> G Tsebelis, ‘The Power of the European Parliament as a Conditional Agenda Setter’ (1994) 88 *American Political Science Review* 128–42; B Rittberger, *Building Europe’s Parliament: Democratic Representation Beyond the Nation State* (Oxford, Oxford University Press, 2005).

<sup>76</sup> This specific point has been developed in the Introduction to this book.

<sup>77</sup> See the extensive research, committed by the European Parliament (PE 474.392) and edited by W Wessels and O Rozenberg, *Democratic Control in the Member States of the European Council and the Euro Zone Summits* (Brussels, European Parliament, 2013).

‘technocratic governments’<sup>78</sup>—to act (and feel) quite independent from their respective Parliaments at the European level.<sup>79</sup>

This practice was later formalised in Article 4 Law No 234/2012 and regularly followed by subsequent Governments led by Enrico Letta and Matteo Renzi, as well as the first months of the one led by Paolo Gentiloni.<sup>80</sup> Significantly, the President of the Council of Ministers has been directed to assume the duty to stand before the plenary to present the Government’s position. Even more interestingly, the Parliament has reacted as it usually does on the occasion of communications by the Government, namely by approving resolutions in order to give political directions in light of the European Council meetings.<sup>81</sup> Far less frequent have been the reports in the plenary on the outcome of the same meetings, also because in these cases a hearing of the minister or undersecretary of state on EU policies in front of the two Houses’ joint committees is usually preferred.<sup>82</sup>

Moreover, it is also possible to find interesting innovations in the organisation of parliamentary bodies that has occurred without formal amendments to the parliamentary rules of procedure. For instance, the Committee on EU Policies at the Senate established a subcommittee for the relationship with the regions in matters of EU affairs<sup>83</sup> (its second subcommittee, in addition to that in charge of draft opinions on EU legislative proposals on behalf of the whole body). The potential impact of a dedicated body in charge of overseeing the cooperation with regions (which in Italy hold legislative powers) might be very incisive in composing the Italian position on EU policies, also considering the representatives of the regions’ permanent lack of participation in parliamentary bodies.<sup>84</sup>

This is, more or less, the state of the art regarding the Italian Parliament, and its European powers, which this book has sought to analyse. It is difficult to imagine what the future could be, in a time in which political and constitutional changes happen so fast. From a certain point of view, the described ‘silent’ evolution and the progressive adaptation of both the Italian Constitution and the Italian Parliament were possible in and consistent

<sup>78</sup> On the experience of the so-called ‘technocratic governments’ see D McDonnell and M Valbruzzi, ‘Defining and Classifying Technocrat-led and Technocratic Governments’ (2014) 53 *European Journal Political Research* 654–71 and N Lupo, ‘I “governi tecnici”. Gli esecutivi Ciampi, Dini e Monti nel difficile equilibrio tra tecnica e politica’ (2015) *Rassegna parlamentare* 57–120.

<sup>79</sup> See, significantly, the statement by the same Monti few months later during an interview with *Der Spiegel* (‘A Front Line Between North and South’, 6 August 2012, available at [www.spiegel.de/international/europe/interview-on-the-euro-crisis-with-italian-prime-minister-mario-monti-a-848511.html](http://www.spiegel.de/international/europe/interview-on-the-euro-crisis-with-italian-prime-minister-mario-monti-a-848511.html)) when he stated that ‘If governments let themselves be fully bound by the decisions of their parliaments without protecting their own freedom to act, a breakup of Europe would be a more probable outcome than deeper integration’. Critically on this point S Puntischer Riekman and D Wydra, ‘Representation in the European State of Emergency: Parliaments against Governments?’ (2013) 5 *Journal of European Integration* 565–82.

<sup>80</sup> In 2013–2016, with regard to such purpose, the Government went before the Chamber of Deputies 16 times (and just as many before the Senate).

<sup>81</sup> More details in the chapter by A Esposito.

<sup>82</sup> In the same time span, the President of the Council went only once before the plenary of the Chamber of Deputies (and never in the Senate) after the meeting of the European Council (Mario Monti on 25 March 2013). In the XVII parliamentary term (started in 2013), joint meetings of the committees on EU policies (sometimes together with the committees on foreign affairs and less frequently also with the committees on budget) have been convened for reporting the outcome of the European Council meetings on 22 May 2013, 17 July 2013, 15 January 2014, 9 July 2014, 12 November 2014, 20 May 2015, 1° July 2015, 2 March 2016.

<sup>83</sup> More information in the chapter by C Fasone, in this book.

<sup>84</sup> However, at least in its first paths, the subcommittee seems to be not extremely active. It convened only four times in 2014 and never again in 2015–16.

with a context of a general ‘permissive consensus’ on the European integration process.<sup>85</sup> Currently, as is well-known, the economic crisis and the difficulties of the EU in facing it caused a standstill of the European integration process, which also brought within the Italian Parliament a division between pro-European and anti-European political parties, formerly unknown to Italian politics. At the same time, the rejections by the referendum of 4 December 2016 of the constitutional reform proposed by the Renzi government seems to question the validity of the majoritarian transformation begun in 1993.

It will be interesting to see whether the main features of the Italian Parliament will continue as they are and allow it to play a significant role in the Euro-national parliamentary system, or whether its being inserted into the Euro-national parliamentary system and the new political and electoral reality will oblige it to increase the formalisation and even the rigidity of its channels of communication with the EU legal order, once the evolution of the political system may it become less valid as a common list of widely shared principles and core values.

<sup>85</sup> S Kröger and R Bellamy, ‘Beyond a Constraining Dissensus: The Role of National Parliaments in Domesticating and Normalising the Politicization of European Integration’ (2016) 14 *Comparative politics* 131–53. The concept of ‘permissive consensus’ is taken from L Hooghe and G Marks, ‘A Postfunctionalist Theory of European Integration: From Permissive Consensus to Constraining Dissensus’ (2009) 39 *British Journal of Political Science* 1–23.