Institutional change and the eurozone crisis in Italy: the case of Berlusconi and the Italian president

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Abstract

This paper considers the changed role of the Italian head of state and the combined impact and legacy of Silvio Berlusconi and the eurozone crisis on this. Since 1992, in response to wider socio-political change, successive Presidents have used their formal and informal powers to maintain the status of the office and to promote political goals, notwithstanding previous practice up to the 1980s and the predominance of narrow juridical interpretations of the constitutional role of the Presidency. The argument is that the eurozone crisis and the roles of Berlusconi and Giorgio Napolitano, the current head of state, constitute an important acceleration of long-term changes in the configuration of Italian constitutional roles. The domestic impact of the crisis and of the politics of austerity associated with it should not be underestimated; that the crisis has had fundamental effects on Italian society and its political processes can hardly be doubted, but it is important to see these in the context of long-term changes to incentive and opportunity structures applying to leading institutional roles in Italian politics.

Introduction

How are we to understand the impact of the eurozone crisis on the role of the head of state, and what is the likely legacy? For many these questions have been inextricably linked with the policies and performance of Silvio Berlusconi, Prime Minister from 2008 to 2011, which have been widely regarded outside the ranks of his own supporters as major factors in the unprecedented involvement of the head of state in Berlusconi’s resignation. My argument is that the likely legacy of the joint impact of the eurozone crisis with that of Berlusconi on the role of the Presidency is the continuing development of the influence of the head of state as the guarantor of the internal political order, as prescribed in the constitution but with a broader remit than previously understood, and as the guarantor of Italy’s external role, especially in the economic sphere, a role that is not envisaged directly in the constitution. It is therefore reasonable to argue, as many have,
that the shift in acceptable Presidential practice that occurred in 2011 resulted from an unprecedented convergence of a major economic crisis and a powerful but idiosyncratic Prime Minister, widely perceived at least outside Italy as incapable of responding appropriately, which called into play previously unrecognised aspects of the role of the head of state. However, the period of Berlusconi’s major political influence, extending from at least 1994, has seen repeated attacks by him on the incumbents and the institution of the Presidency of the Republic; there has also been a significant increase in the visibility of the Presidency and in the involvement of incumbents in major political events in Italy. The emergence of the political Presidency in 2011 should be seen as an acceleration off existing trends, not a complete break, and to some extent these trends are traceable to the impact of changes since 1992. Undue emphasis on the events of the autumn of 2011 and on the personality of Berlusconi risks obscuring the complexity of longer-term effects and especially the importance of institutional factors in political change.

This is not to deny that there is a role for agency in political explanation. If we consider briefly how the Presidential role has been characterised conventionally, we can see how Berlusconi’s influence, generally understood, may be perceived as altering the established configurations in this longer term sense. Giuliano Amato, a former Prime Minister and a former professor of comparative constitutional law at the University of Rome, now a judge in the Constitutional Court, is widely quoted as characterising the role of the head of state as like an accordion: the power and activities of the role expand when the other actors are weak, but when they are strong, especially the political parties, the President is limited in the noise he can make (Pasquino 2013; Tebaldi 2012). This metaphor is helpful if we think of the ‘other actors’ as mainly the political parties, which have certainly weakened progressively as organisations since 1992. Its application to Berlusconi as a political leader is less compelling. He is widely regarded as the most influential political leader in Italy of the last twenty years, but during this time the accordion of the Presidency has sounded ever louder. This in itself requires explanation. A similar argument is provided by Roberto Bin (2013), who argues that the form of government can be analysed as a mathematical figure of variable geometry, in the form of a triangle, in which the three apexes are the Presidency, the Government and Parliament: the length of the sides and the angles they make with one another vary depending on the context and on their relative strengths, but the triangular shape remains, and one side cannot expand without one or
both of the other two contracting. In these terms, and bearing in mind the dangers of excessive reliance on explanations based on agency alone, Berlusconi may be seen not as a component of the institutional triangle but rather as a powerful exogenous factor, with the potential not just to alter the angles of the triangle, so to speak, but also to induce the strappo, the fundamental break that results in a different institutional configuration. If the political parties recover from their present weakened role, will the triangle return to something like its former shape, or have the conflicts and their outcomes altered the relationship permanently? From a more radical perspective, the eventual passing of Berlusconi from the political stage may leave behind a complex configuration in which we can no longer speak of a three-sided institutional arrangement at all, but more likely a mix of personality and institutional politics. Similar arguments need to be applied to the weight of the eurozone crisis; in my argument this is not only a matter of long-term social and economic change, but also a development of institutional powers and roles which precisely because they are embedded in rules, roles, conventions and practices that survive individual bearers of the relevant norms, should be expected to have a long term effect.

Here, I discuss the question of the so-called ‘Berlusconi anomaly’ and some of the questions of method involved in the exercise. I then look at the role of the head of state up to the early 1990s, to establish a point of departure; this entails a rapid analysis of the constitutional and political development of the functions of the President from 1948 up to the end of the Cossiga presidency in 1992. Third, I ask how the ‘Berlusconi anomaly’ has affected the way the presidency works and especially how it has impacted on the political relationship with the government during the ‘long transition’ (Edwards 2005); I pay particular attention to the presidency of Giorgio Napolitano, which saw some major changes in practice and some important episodes, of which the most significant were the role of Napolitano in the eurozone crisis, and most particularly his role in the resignation of Berlusconi in November 2011 and his replacement as Prime Minister by Mario Monti, an unelected academic economist and former EU commissioner. Finally, I consider briefly some of the arguments about the changes in political practice over the period with regard to Presidency–government relations and draw some conclusions about the political legacy.

‘The Berlusconi anomaly’

The main elements of the distinctive contribution of Berlusconi to the relationship of the presidency and the executive, and their context are not controversial. Pasquino (2007a,
p.95) identifies five roles he attributes to Berlusconi: party builder, coalition builder, institution builder, Prime Minister and opinion leader. Of these, the most relevant to the shaping of relations with the Presidency are the last three. In general terms, the argument is that for all his gifts as a communicator, Berlusconi lacked a ‘coherent blueprint’ for constitutional reform, failed to deliver most of his promises in his much-promoted ‘contract with the Italians’, and followed rather than led the popular anti-political trend he found in his battery of opinion polls. Since the article was published in 2007, to the summary of his record in government could be added his handling of the eurozone crisis, not regarded by many as a great success.

Pasquino argues that Berlusconi lacks a consistent political vision for Italy. This has affected his standing and influence in the long term, in the area of his relations with the president among others. An example is the attempt at major constitutional reform in his 2001-2006 government, which ended in failure (for detail of the reform, Vassallo 2005). Even before the collapse of his government in 2011 and his successive criminal convictions in 2013, it is difficult to discern a serious political strategy for conservatives from his leadership. At the interface between neo-liberalism and traditional conservatism, in particular the crucial relationship between the authoritative role of the state and the hegemonic claims of international finance, his solutions have been short-term and fragile, in so far as his governments addressed the issues at all in practice (that is, beyond the level of rhetoric). In this light, just as his political achievements are almost entirely electoral, not governmental, the impact of Berlusconi governments in relation to the development of executive-President relations might best be seen as the result of contingency, not intention.

Second, I would add a further role to Pasquino’s framework: that of Berlusconi as businessman. This role sits at the heart of the ‘Berlusconi anomaly’, in several important aspects: his business success provided him with material resources essential to his electoral success; it also enabled him to claim to be an outsider, a non-political leader with proven experience, a role model for the successful Italy he claimed was being held back by the incompetent, venal and extremist politicians. But perhaps most importantly, the role created and sustained the conflict of interest between his business concerns and his political responsibilities.

This conflict engendered, among other developments: bitter encounters with the judiciary; repeated attempts to change criminal and civil law to enable him to escape their attentions,
some of which were successful; the mistrust of other international leaders; and not least, the repeated and ever more frequent interventions of successive heads of state when his efforts or those of his ministers over-stepped too flagrantly the boundaries between governmental and judicial spheres of responsibility. Recent examples of this, as well as the Lodo Alfano discussed below, are the message from Napolitano on the Brancher case in June 2013, and his public and prompt rebuke to the leader of PdL group in the Chamber of Deputies for his comments about the politicisation of the judiciary in September 2013, (Pesole 2013; n.a. 2013a). As well as using his parliamentary majority to protect himself from the judiciary, Berlusconi repeatedly sought to pass legislation that promoted his personal interests, among which, the Gasparri law of December 2003, also discussed in detail below.

Third, in so far as there is a guiding principle to be identified by which Berlusconi navigates in politics, other than the importance of protecting his business interests, it is the fundamentally Bonapartist notion that the majority leader has a popular mandate to govern as he wishes until the next scheduled election or until his majority fails, in which case early elections are the only solution (on Bonapartism, see Hibberd 2004; Marangoni 2009; Rémond 1969). This need not imply a centralised state as in the French case, and Berlusconi did not have this in mind, as his attempted constitutional reform of 2005 demonstrates. A defining characteristic of modern or neo-Bonapartism is the emphasis on elections as plebiscitary exercises rather than establishing plural representative mandates. Bonapartism here refers to the method of representation, the direct personal link with the individual citizens, preferably with only the minimal intervention of intermediaries such as political parties, and in consequence usually implies a considerable degree of freedom on the part of the leader to interpret the popular will as he sees fit, which is indeed what Berlusconi did as Prime Minister (Hine 2002).

It is this that explains why his navigation so often brought him into direct conflict with other political institutions that had the constitutional role of ensuring that the contrary was the case, that is that governments should be sensitive to the range of opinion and interests beyond their own majority: the Constitutional Court and the Presidency most notably. An early example of how Berlusconi viewed his relationship with the electorate and with the constitutional authorities was provided by the collapse of his government in December 1994. This episode is also important as it appears to have confirmed the suspicions of Berlusconi and his supporters that for a political leader of his ambitions and objectives, the
head of state in the existing constitutional configuration could rarely if ever be relied on for neutral treatment, still less for support. Berlusconi and his close allies learnt from this episode, and acted on what they had learnt.

In brief, in a much-debated decision, the head of state Oscar Luigi Scalfaro refused to dissolve Parliament following the collapse of Berlusconi’s first government, and with the conditional and reluctant agreement of Berlusconi engineered the support of Parliament for a so-called ‘governo tecnico’, led by Lamberto Dini, incumbent Treasury Minister at the time, and composed entirely of ministers who like Dini had no elected position in Parliament. This was justified by Scalfaro in terms of the need to avoid the instability and uncertainty that would result from calling elections a mere nine months after the last, especially at a time of economic crisis and in the full flow of Tangentopoli (Clean Hands) (Hine and Poli 1997; Balboni 1999; Fusaro 1999; Musella 2012). It was not the first time a head of state had sought to avoid early elections in this way – the practice was common in the period before 1992, though rarely with the heightened activism of the President in promoting this outcome; what was more unusual at the time was Berlusconi’s reluctance to tolerate the stratagem, and the extent of his criticism of the head of state at what Berlusconi saw as his betrayal of the agreement afterwards. All three of these factors – the activism of the head of state in engineering a new government, Berlusconi’s preference for new elections and his public criticism of the President’s behaviour – have been repeated since then, though as the crises during his second administration show, his preference for new elections or not is highly tactical. After a brief period in which the Dini government was supported by a broad coalition in Parliament, Berlusconi and his supporters came to believe that with the explicit encouragement of Scalfaro, Dini’s government was favouring the centre left parties both in economic policy and even more importantly for Berlusconi, in its protection of magistrates engaged in the Tangentopoli investigations; these Berlusconi increasingly came to portray as a communist plot against the legitimate activities of right wing politicians and entrepreneurs. The animosity and suspicion towards Scalfaro as a person and towards the figure of the Presidency were confirmed when the centre left parties won the Parliamentary elections of April 1996. All these themes have been repeated since.

Berlusconi’s understanding of his role as a political leader, seen through such episodes, may be reminiscent of Joseph Schumpeter’s influential understanding of modern mass democracies, that the modern political leader is essentially an entrepreneur in the political
arena (Schumpeter 1947). As a modern re-statement of a Bonapartist democratic mandate, Schumpeter’s argument understates the extent to which a modern political leader such as Berlusconi can mould the political offering to the electorate and re-interpret the mandate once he is elected. It therefore also underestimates the tensions and instability the pursuit of the role may entail.

Why then should Berlusconi seek not only to challenge the decisions of the incumbent head of state but also to question and weaken the Presidency? The answer lies in the convergence of these personal and political ambitions. For Berlusconi, as he made clear on numerous occasions, the natural objective would be a constitutional reform that, among other changes, in one way or another gave a position of real authority to a directly elected figure in charge of the executive who also should be able to count on a majority in Parliament: at various times, for example during the bi-lateral commission on constitutional reform (1996-2000) when he was in opposition, and then again in government after 2001, he varied between preferences for either a semi-presidential French system, or a directly elected Prime Minister with a strictly figurehead president. In both cases a reformed electoral system would be needed to ensure a working majority for the directly-elected leader. The keyword in either case was ‘governabilità’. Berlusconi did not want to be a head of state like Scalfaro, Ciamì or Napolitano. One of his purposes in seeking to question and weaken the head of state was therefore not only because he needed to pursue policies that they were obliged to oppose, but also because he wanted to expose the weaknesses and limitations of the current constitutional arrangements.

Fourth, the most serious of these conflicts, of which the Scalfaro difficulties had been a harbinger, was the collapse of his government in November 2011, which I deal with in more detail below and which involved the head of state in an unusually direct role both in finding Berlusconi’s successor and in tying the Parliamentary majority to explicit support for the reform programme required by the international community. However, this episode is not attributable directly to the Bonapartist star in his navigation plan; it is much simpler and more satisfactory to see this as the result of a mix of governmental incompetence, political trimming and failed opportunism on his part, which came up against a fundamental shift in the role of the head of state in its relations with the executive.
Berlusconi’s difficulties may have been the occasion for this development to gather pace, but this change had been observable in Presidential practice for some time, even before the Scalfaro episode of 1994. It is not restricted to the Napolitano presidency only, or even to the period since 1994, but can be seen at least embryonically from the Pertini presidency of the 1980s on. Berlusconi is not directly responsible for the development of the activist presidency in Italy, nor is the financial crisis, but Berlusconi did contribute to the accelerated pace of its development, and the crisis confirmed these trends.

**Understanding ‘the Berlusconi era’**

The issue of the historical characterisation of the ‘Berlusconi era’ can only be dealt with briefly here. The dangers of excessive personalisation are well known, but that should not mean they can be disregarded. In asking about the role of Berlusconi, we need to be especially aware of the dangers of adopting his own categorisations and discourse. The reference to 1994 as a starting point has the justification that in his terms this is when he ‘came on to the pitch’ (n.a. 2005) with his own political party, but this masks his long-term involvement with leading politicians prior to this and their helpful role in his business career. The increased role of the president did not begin in 2006 or even in 1992 when Scalfaro was elected president; similarly, even though 1994 is frequently referred to by Berlusconi, it is mainly significant because it was in January of that year that Forza Italia became a fully recognised party in the formal sense. In 1993 he was already the one of the richest people in Italy and had control over a large part of the Italian print and TV media. Berlusconi’s own version, that 1994 is the start, is therefore problematic. He has consistently claimed that he came into Italian politics as a new man, selflessly sacrificing his own entrepreneurial ambitions to protect Italian democracy from the threat of communism (for example, Berlusconi 2000). In the 1980s however he had been a close friend of the now disgraced Socialist Prime Minister Bettino Craxi, and his commercial interests in the growth of his TV networks benefited especially. As a private sector entrepreneur, he had benefited from major changes in Italian political economy in the 1980s, in which he and other entrepreneurs took over favoured roles that the public sector enterprises IRI, ENI and others had historically enjoyed (Gambino and Lannutti 2005). Before he became leader of his own personal political party, he already had a political profile and had had an influence, albeit indirect, on the way the Italian political system worked – not least by exploiting the weakness of Parliament and the Constitutional Court to enable him to achieve a dominant position in the Italian media which he had already
used to his own political advantage and that of his allies. Successive heads of state had been unable to prevent his institutional activism. In short, his political career profited from the political and economic changes of the previous period, and his objectives in government reflected the need to promote and protect the advantages he had accrued.

The periodisation raises another question, which underlies the issue of the weight and significance of his influence. Berlusconi was not the only politician setting himself up in this period as the charismatic leader of a populist party, mobilising support through skilful use of the media rather than through control of a traditional territorially-based mass party. His success is therefore not the result of his efforts alone, as if he were swimming against the tide of social, economic and political change. On the contrary, his rise to political stardom in Italy can be traced to major long-term patterns from which others also sought to benefit, such as his frequent ally Umberto Bossi, leader of the regionalist party *Lega Nord*: change in some labour market processes (the rise of the educated *precariato*); persistence of other long-term weaknesses (for example, the exclusion of women from the labour market to a much greater extent than in other developed European economies) (for both, see OECD 2011); changes in material consumption and leisure practices; changes in patterns of family and community cohesion (De Blasio and Nuzzo 2010); and major demographic shifts in the age structure of the population (Amato and Graziosi 2013). All of these, and others, are factors that relate to the interaction of economic development and political stagnation in the period up to the early 1990s under the political control of the Christian Democrats and their allies, exercised partly through sophisticated systems of patronage. His success therefore profited from the political and economic failures of the previous period, is strategically designed to do so, and from this perspective he and others who are part of the political process had no material interest in altering the economic conditions that enabled him to achieve power and to remain there. Berlusconi sought to take advantage of these changes, as did others; he did not create them.

We should also not forget that the period had seen major changes in the structure and composition of the party system, of which Berlusconi was a beneficiary as well as an instigator (Fabbrini 2011). His electoral control, which is the immediate origin of his role as Prime Minister and therefore of his relationship with the Presidency, depended on the failings of others as well as his own resources and skills.
The political role of the head of state, before 1992

Before 1992, the constitution and political practice were interpreted by common consensus, including that of academic lawyers, to relegate the head of state to the role of guarantor of the constitution, understood in a narrow sense (Fusaro 2003; Tebaldi 2005). This is notwithstanding the vagueness of the provisions relating to the head of state, and despite the occasional efforts on the parts of Presidents to expand the role; these were confronted not least by residual but powerful concerns about the possible abuse of a ‘monocratic’ position (Bonini 1993, 170-172).

In part, the low profile of early Presidents can be attributed also to the reluctance of the electors (Parliament supplemented by regional representatives) to allow the most influential figures the opportunity to develop the role. Often it was the fear of promoting the more powerful politicians to the Presidency that resulted in the election of more second-rank figures, such as Scalfaro instead of Andreotti in 1992, or of neutral non-party figures such as Ciampi in 1999. This behaviour is an implicit acknowledgement that in the hands of determined and capable politician the role of head of state could be greater than hitherto had been the case (on political careers in general, and the changes since 1992, see Verzichelli 1994; Best and Cotta 2000; Cotta and Verzichelli 2007).

On the powers of the President, in the formal and in the practical constitution, there has been much legal debate about lack of specificity of the role of the head of state in the constitution, and about the impact of this on the difficult constitutional questions relating to the form of the state and the form of government (Calandra 1988; Barile 1958; Silvestri 1985; Amato and Barbera 1991; Martines 2005; Amato and Clementi 2012). As Tebaldi argues, this contrasts with the relative lack interest from political scientists (Tebaldi 2012, 1). The vagueness of the constitutional powers has provided scope for constitutionalists (Baldassarre 1985); the lack of observable influence in Italy’s party-run democracy justified the neglect by political scientists.

For jurists in the early part of the Republic, interested in identifying the implications of the constitutional provisions for the formal characterisation of the system of government as a whole, attention focused not on the dependence on the political conditions, but on the generic notion that the primary responsibility of the head of state is as guarantor of the constitution and of the form of government derived from it. In the context of arguments about the impact of Berlusconi, the constitutional form of government is highly relevant as
a formal and political constraint, even though his role may depend most importantly on the political context. According to the constitution, sovereignty belongs to the people, but is exercised within the forms and limits of the constitution: Italy is a parliamentary and representative democracy, not a presidential one, and not a popular one, and it is the responsibility of the President to guarantee this. A long-standing difficulty is that the protection of the constitution as a politically neutral act cannot be separated analytically, let alone in real life, from the need for the President on occasions, though not as a matter of routine, to engage directly with the substance and form of governmental acts.

This raises both the issue of the extent of the powers of exception of the President, that is, the power to assume complete control in a crisis, whether these derive from controversial legal doctrines associated with the German jurist Carl Schmitt, and the question of the President’s political neutrality, derived from those of the French jurist Benjamin Constant (Giannini 1986; Lanchester 1986). For both of these, in different ways, the notion that the President is a guarantor of the constitutional order gives him a role above the constitution itself, in the cause of protection of the political order of which the constitution is an expression. If the vagueness of the powers of the President can be understood to allow him to involve himself in political direction, he may have exceptional powers to ignore representative democratic institutions in what he considers are times of emergency or exception. The political risks that follow such an interpretation make it a particularly difficult one in the Italian historical context, but it is nevertheless one that the constitution appears to make possible. The interpretation also conflicts directly with the pervasive reliance in Italian legal argument on the doctrines of the Austrian jurist Hans Kelsen, more hierarchical, cohesive and rationalist in his understanding of legal systems.

The Presidential responsibility of protecting the constitution, and protecting the forma di governo, the form of government, is shared with the Constitutional Court and with other institutions (on the Court in this period, Furlong 1988). This relationship was important in a variety of ways in the development of political practice over the first four decades of the Republic. In terms of their direct interaction, the Court built up a variety of precedents that affected the interpretation of the powers of the President, either directly or indirectly. In the hierarchy of laws, the wider responsibilities and the wider powers are those of the President, including that of guaranteeing the constitutionality of processes for resolving disputes over the attribution of powers between state institutions. However, over this period it was the detail of the judgements of the Constitutional Court that had a greater
political impact, for example on powers of the regions or on the development of mass media. This was because the Court’s powers had a direct effect on legislative adequacy, whereas the President was the more constrained by the overweening power of the parties in government and in Parliament. If his powers were direct, they were wielded only episodically and most obviously at times of government crisis and after elections; if indirect, they relied on public exhortation, such as messages to Parliament, or on private conversations and correspondence, both of which could often be politely ignored up to the early 1990s. Both the Presidency and the Court had to operate in a context in which the political parties in government and in parliament could ignore their repeated calls to order, as the accordion argument suggests.

The break in this practice, that of the President as notaio (notary), can be traced to before the early 1990s, before the collapse of the governing parties, the corruption scandals and the emerging economic imperative of the introduction of the euro, and therefore before Berlusconi’s public political career. The widening and deepening of the role of the head of state becomes visible during the presidency of Sandro Pertini (1978-1985), and achieves real prominence at the end of that of his successor, Francesco Cossiga (1985-1992). It relates most notably not to the specific use of the main presidential powers of government formation and calling of elections, which became more important later. What was most noticeable about the Pertini presidency, from this perspective, was his willingness to make explicit his political stance on national and international issues, and to use the media to do so. Pertini saw his role as restoring popular confidence in political institutions, and pursued this objective vigorously. The term used to refer to the increasing number of informal interventions, beyond the usually ineffective formal messages to Parliament, is esternazioni, best translated as ‘expressions of opinion’, used by Pertini and by Cossiga to talk to the public at large so as to put pressure on elected politicians to reform and respond to public concerns over corruption and inefficiency (on Cossiga's early resignation, see Onida 1992; Della Sala 1993; Balboni 1992).

In political terms, the most public roles of the President occurred in the formation of governments and the power to call elections. This role was exercised within the constraints imposed by the party leaders of the governing parties, and they were able to control these processes because of their capacity, such as it was, to determine the formation of the shifting majorities needed in Parliament (Labriola 1994). The involvement of the President in the direction of the political process has also happened
both when the President has had to object to the way legislation was being produced by the executive and Parliament, and more rarely, when the President wanted to object to the direction of policy on the grounds that it infringed substantive constitutional principles (Grisolia 1992). A long-running example of presidential objection to how laws are being made is the increasing reliance of governments on the use of decree laws (Musella 2012). This practice allows the government in times of urgency to publish laws having immediate effect, subject to the ratification in Parliament within 60 days. It developed from the 1980s on with the increasing difficulties encountered by governments in controlling their majorities in Parliament – in other words, it was used by governments not necessarily to meet an urgent need for action but to ensure the passage of ordinary legislation. None of the Presidents of the period was able to halt this evident abuse of procedure. In part at least this was because of their unwillingness to challenge governments directly, as they could have done if they had refused to countersign the decree laws as was formally required.

The President and the executive after 1992

The attempted expansion of the function of political direction, exercised both through formal powers and pervasively through informal private conversations and public esternazioni, is a development that has been maturing for some time; the issue is how rapidly they have accelerated since the early 1990s, and the responsibility of the Berlusconi leadership. The extension of the powers of the President in government formation arguably is more recent and genuinely novel (Pasquino 2003, p.95; Barbera 2001)

The election of the head of state through complex and extended horse-trading within and between the political parties, of which Giovanni Gronchi (1955-1962) and Giovanni Leone (1971-1978) were outstanding examples, had its last example with the election of Scalfaro in 1992, though this last was also directly affected by the unusual and controversial circumstances in which his predecessor Cossiga had stepped down, referred to above (Della Sala 1993). This is not to say the trading cannot return, but in 2006 Ciampi (a former head of the Bank of Italy, elected in 1999 as a non-partisan (Pasquino 2000)) was asked to stand again, and would probably have been re-elected had he not rejected the offer; in his place, Napolitano was elected on the fourth ballot against the wishes of majority leader Berlusconi, and in 2013 he was re-elected contrary to his initial wishes after the collapse of the party discipline on the majority centre left resulted in
stalemate. This difference in original electoral bases, and in their developments, affected both the way the incumbents have interpreted their role, and the disposition of the contending parties towards them, but not necessarily in an obvious way. The same can be said about Scalfaro in 1992. Scalfaro was no-one's first choice, but he benefited from the collapse of the Christian Democrat-Socialist alliance and of the constituent parties. As a result, as we have seen, he was at first able to exercise a significant degree of influence not so much through his powers of persuation and reason in private and in public, but through his willingness to use the two heavy guns granted him by the constitution – the power to nominate the Prime Minister and the power to dissolve Parliament and call election, or to refuse to do so.

Ciampi, faced by a more compact majority after 2001, and by a more determined and better equipped Berlusconi, had little opportunity to wield the big stick, and probably had little wish to do so; in any case, the battles he had to fight related predominantly, though not exclusively, to the conflict of interest and to Berlusconi’s arguments with the judiciary, the Berlusconi anomaly in the narrow sense. As a head of state above the party conflict (which Scalfaro was not always seen to be), Ciampi relied extensively on his moral authority, and proved less willing to interfere in the rights of government to govern, even to the extent that he did not use the right to refer back when he had serious concerns about the Porcellum electoral law in 2005. What Ciampi was able to do was to express a moral vision, through his emphasis on ‘constitutional patriotism’, and to ensure that the elected politicians were aware of his support for the embattled judiciary.

For Napolitano, there could be no pretence that he was welcome to the centre-right as well as to the centre-left. His most difficult task therefore was to respond to the crises of the post-2006 as he saw fit, which meant actively, while at the same time building and maintaining public and political support beyond his original electoral base, without which his role would be very much more demanding. He therefore had to combine two roles: the representative of the nation in a moral sense, which Ciampi had sought to do with some success, and the political leader with the authority to maintain stability and promote good government, which was Scalfaro’s favoured approach (Galliani 2012). Whether he succeeded in this or not, as we have seen he was persuaded to stand again in February 2013 and was elected with a broad consensual support. The example of Ciampi however suggests that this cannot be relied on for too long. Already in September 2013, party leaders of Popolo della Libertà were attacking the Napolitano for his ‘declarations of a
political character’, made without consulting them, on their threat to resign en masse should Berlusconi lose his Senate seat as a result of his conviction for fraud (n.a. 2013b).

The episode that seems to have alerted the wider public to potential changes in the balance of power and the distribution of functions between the President and the executive occurred in November 2011, when with the close involvement of Napolitano, Berlusconi resigned as Prime Minister and was replaced by a non-elected academic, Mario Monti. During the consultation period, Monti was appointed life senator by Napolitano, ensuring him a non-party seat in Parliament, an unprecedented use of the power for this purpose. Like Scalfaro, Napolitano consulted closely with the presidents of the two chambers on this process, because of their importance as guarantors of proper Parliamentary business management; he had already relied on them to help maintain normal government business by ensuring that a vote of confidence on Berlusconi’s government took place after the budget had been passed, so that normal government business could continue if he were defeated.

The details of the formation of the Monti government are well known and do not need reconstruction here (Fusaro 2012; Bosco and McDonnell 2012; Di Virgilio, Giannetti, and Pinto 2012). The episode reveals not only how far-reaching was the new role of the head of state, but also the extent to which he was responding to external pressures and internal failures. First, Napolitano had by this time become the favoured contact in Italy of foreign leaders, notably Angela Merkel and Barack Obama, and this was not hidden from the public either in Italy or abroad. As power ebbed from Berlusconi with the departures from his coalition majority in Parliament, it was to the head of state that responsibility moved. Second, Napolitano’s role in managing the crisis was active, and public, as well as private, to the extent that he could be said to have chosen Monti as Berlusconi’s successor, in consultation, and to have convinced the major parties of the urgent necessity of supporting him in Parliament. Third, and most unusually, Napolitano was able to re-assure international authorities and foreign leaders that the ‘strange majority’ supporting the Monti government was fully committed to the reform programme agreed at the EU summit in June 2011 and reinforced by the letter from the ECB in August that year (Dinmore and Atkins 2011; Bini Smaghi 2013). With this, in plain view, the head of state was not merely guiding the process of government formation; he was also engaged in determining its political direction, in particular, the austerity programme required by international markets and external political leaders, and in guaranteeing the commitment
of Monti’s government to it. This dual role was continued with his direct involvement in the formation of the Letta government in March 2013 and the commitment to the same programme of reform.

In contrast, the power to send a law back to Parliament for further consideration is one that has proved more difficult for Presidents to use effectively. Even Ciampi found himself drawn into public battles with Berlusconi he might have wished to avoid, on the content and form of laws he was required to sign, some of which he certainly wished to resolve by direct private advice and persuasion (Pasquino 2003). The Gasparri law which came to Ciampi in December 2003 regulated the ownership and control of broadcasting media, nominally so as to prepare for digital TV, but in practice in ways that were clearly aimed at maintaining and reinforcing the dominant position of Berlusconi’s television channels. In a judgement on an earlier law the Constitutional Court had already warned about the unconstitutionality of Berlusconi’s legislative attempts to make special provisions for one of his TV channels. Ciampi refused to sign the law, and in accordance with the constitution sent it back to Parliament for further consideration. When it came back to him in May 2004 with only minimal changes, under the provisions of the constitution he had no choice but to sign it. The episode demonstrated again the depth of the conflict between Berlusconi and the head of state, the willingness of Berlusconi to use his position to promote his own interests in disregard of the President and of the Constitutional Court, and some of the limits of the constitutional position of these two.

On another major and far-reaching issue in 2005, that of the electoral law reform, Ciampi had misgivings about the constitutional propriety of the new electoral system, the so-called Porcellum. He expressed these in a message to the government but stopped short of requiring Parliament to reconsider the bill. The law has since been found unconstitutional by the Constitutional Court, on similar grounds to those he had expressed, and this decision of his has been criticised by constitutional lawyers. However, he clearly did not feel strong enough, especially coming towards the end of his presidency, to force a showdown with the Parliamentary majority (Ponthoreau and Rayner 2007).

Napolitano’s use of the power of referral has been similarly limited, and this has been the cause of some criticism from academic constitutionalists as well as from Berlusconi’s political opponents. Two contrasting examples of this are the Englaro case, which concerned a woman in a vegetative coma and political interference in medical decisions (for the detail, see Pasini 2010; also Bin 2013, pp. 10-13), and the Lodo Alfano, a much
wider issue, when in 2008 Napolitano, faced with yet another attempt by the Berlusconi government to pass a law allowing the holders of major offices of state to avoid trial, expressed his ‘serious concern’ about the constitutionality of the law, but stopped short of requiring it to be re-considered (Pederzoli 2011). In this case, the job was done by another institutional authority: the Lodo Alfano was declared unconstitutional by the Constitutional Court in October 2009.

However symbolically important it is, the President’s power to require Parliament to reconsider a law has been shown to be of limited use against a determined opponent. It is not surprising that Napolitano has made sparing use of this instrument, and has relied more effectively, as did both Ciampi and Scalfaro, on the responsibilities the constitution gives him in relation to the formation of new governments and the dissolution of Parliament. In the light of these episodes, the transformation of the political role of the Presidency under Giorgio Napolitano suggests how this transformation depended on highly contingent circumstances, during which an activist President such as Napolitano was able to extend his informal powers temporarily, though in ways that leave a benchmark for future heads of state.

**Conclusion**

These arguments demonstrate the reluctance of Presidents to require Parliament to reconsider laws, and thus the limitations they face in involving themselves directly in matters of executive policy. They also demonstrate the extent of their interaction with governments, and their use of the media to buttress their formal and informal powers (Marletti 2010). They show how far the Presidency has travelled from the austere notary functions that characterised the first Presidency, that of Einaudi. As a result, decisions about which instruments to use, whether to use them and when, are now political. This was already clear in the Ciampi Presidency, and under Napolitano is even more so: as a political leader, Napolitano has been criticised, as was Ciampi, for not using the power of referral more frequently, especially in the light of the number of occasions when they expressed concerns over the constitutionality of government laws they were called on to counter-sign. The President, like any other politician, has only a limited amount of political capital. It is therefore no surprise if Napolitano, facing the possibility of a crisis that threatened the economic and political stability of the country, chose not to confront the Berlusconi government over particular items of legislation, but preferred to conserve his political resources, in case a government crisis occurred at the same time as an
unprecedented challenge to the country’s financial security in the form of the eurozone crisis.

To some extent these changes are a response to far-reaching social and economic developments, and to the limited response of successive governments to these. More narrowly, they reveal also the alterations to the political landscape since 1992, while the formal constitutional structure has remained almost unaltered. In the absence of formal constitutional reform, practices change, and the practical constitution changes also. Sometimes, other institutions recognise the new demands on the role: so for example, in January 2013, the Constitutional Court supported the right of the head of state to keep his conversations and correspondence out of the gaze of magistrates in certain circumstances. This is a judgment with considerable political and normative significance, and one it is difficult to imagine the Court making in its early days (Chessa 2013).

Berlusconi’s role in these changes has been complex, but we can identify at least three ways in which it has been direct and long-term. The first is in his use of mass communication. His saturation of any useful form of mass communication, including social media, has not only dragged other political parties into the digital age, it has also arguably made it legitimate for Presidents to raise their own profile, albeit in a rather different form and with different ends from those of Berlusconi. Scalfaro, Ciampi and Napolitano, to an increasing extent, have sought to intervene with assessments, advice, warnings and expression of support not only through speeches on formal occasions, of which there are many, but also privately in conversations with individual leaders and even with informal briefings and leaks to the press. Berlusconi’s complete tactical flexibility and his obduracy over his protection of his business interests have been understood by successive Presidents to call for heightened Presidential involvement, for the sake of the stability of the system as well as its integrity. Berlusconi’s own political ambitions, especially his Bonapartist belief in the plebiscitary character of the electoral mandate, and his unfulfilled wish to promote a constitutional reform based on the direct election of the Prime Minister or the President, have drawn Presidents into public debate about fundamental values and principles, even when they wished to avoid this out of respect for the role of elected representatives in Parliament.

In terms of legacy, it is now widely recognised that a return to the cold purity of the Einaudian constitutional vision is impossible, even if it were desirable. Political parties may be able to re-assert themselves eventually, but the scope of the Presidency has been
widened, and the instruments at his or her disposal have increased in number. In more general terms, it is difficult to disagree with the argument of Pasquino that Napolitano has given Italians an inkling, or perhaps more, of how a semi-presidential system à la française might work in Italy (Pasquino 2013; also Pasquino 2007b; Ruggeri 2011). We must beware of over-personalising these arguments and of over-stating the influence of individuals. Nevertheless, the beliefs, preferences, motivations, intentions and choices of political leaders interact with the institutional framework in ways that impact on it in the long-term, even more than in the immediate events that are often interpreted as highly significant or conjunctural points of change. Perhaps the most important impact of individuals in the major offices of state, in terms of their legacy, is that they demonstrate to their successors an extended opportunity structure and a widened set of incentives. The changes to the relationship of the government to the Presidency analysed here will survive both Napolitano and Berlusconi, in the use made by their successors of the opportunities and incentives they have revealed. The most important of these is likely to be the role of Presidents as a point of reference for external authorities, and in times of crisis, their influence in ensuring that these authorities can have confidence in the government keeping to its commitments.
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