

THE PRESIDENT'S INFLUENCE ON THE FORMATION OF GOVERNMENTS: THE CASE OF THE REPUBLIC OF ITALY

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Abstract. The purpose of this study is to elucidate the legal, primarily constitutional, constraints that govern the formation of the government of the Italian Republic and the involvement and significance of the President of the Republic in this process. The study is conceived as a synthesis of legal and socio-political perspectives, aimed at examining this pivotal yet complex process for the state. Considering the constitutional foundations that underlie the government formation procedure, the study first examines the legal limitations on the actions and duties of the President in that process. The interaction between the exercise of the head of state's powers and their limitations, both by legal regulations and established constitutional precedents, is subjected to scrutiny. The role of the President, viewed through the lens of the boundaries of the authority of the office, is characterized, in conclusion, by the delicate balance between discretion and the legal and political-constitutional constraints on the President's actions. While the study mainly concerns the circumstances surrounding the establishment and ultimate selection of the Meloni cabinet, it can be viewed as a notable addition to the overall analysis of the President's influence on the formation of the government in politically fractured and divided Italy.

Keywords: Government; Prime Minister; Meloni; Italian President; Italian Constitution

1. INTRODUCTION AND METHODOLOGY

1.1. Background and significance

The historical context in which government formation occurs is a complex backdrop of political evolution and transformation. An examination of political history is essential to understand the President's role in this process, especially in consideration of the developments that have taken place in the last seventy years in Italy, starting from the post-war period and ending with the conclusion in the 90s of an important era for the Italian Republic and the subsequent advent of the government of Silvio Berlusconi which saw a key figure of Italian entrepreneurship filling the role of Prime Minister. Amid political change, government formation combines constitutional principles and political realities. Decisions made during this pivotal

phase have wide-reaching implications, affection the nation and citizens' daily lives. The importance of this inquiry lies in its potential to provide a comprehensive understanding of the President's role in shaping the political landscape, particularly by scrutinizing the appointment of the Meloni government as a case study.

The role of Prime Minister Georgia Meloni in Italy is of particular importance not only because of the political faction of which she was for a long time the main representative but also because of the, equally important, fact that Georgia Meloni is the first woman to hold the role of Prime Minister in Italy, an element that certainly implies a factor of innovation in the country.

The objective is to offer a nuanced perspective on the decision-making process, legal constraints, and real-world implications faced by the President. This analysis aims to explore the intersection of law, ethics, and the demands of the political sphere. Throughout this exploration, the approach adheres to precise legal acumen. The intention is to facilitate a profound exploration of government formation, one that acknowledges the inherent complexities of the process and the great importance of decisions affecting countless individuals.

1.2. Scope of the study

Within the scope of this study, a clear framework is established to delineate the boundaries within which the analysis operates. This delineation is imperative to provide a comprehensive understanding of the President's role in government formation during times of political transition and change. The study primarily concentrates on the constitutional and legal aspects inherent in government formation, with a specific focus on the 2023 appointment of the Meloni government in Italy, given its relevance and complexity in the context of political and historical transformation [Einaudi 1948, 661-67]. The analysis concerns therefore the legal framework underpinning government formation, encompassing pertinent constitutional provisions and legislative acts to show the legal parameters which serve as a guide for the President's actions in this process. Employing a primarily qualitative research methodology, the study involves a comprehensive analysis of legal texts, constitutional provisions, and historical records. Additionally, it critically examines relevant legal commentaries and the literature of political science to provide an interdisciplinary perspective. Although this study does not enter into the policy decisions or political negotiations shaping government formation, it does offer a legal and ethical lens for understanding the overarching process. Acknowledging the peculiar nature of government formation, especially in the Italian situation, the analysis underlines specific facets

related to the legal and constitutional dimensions to reach the ultimate goal, which is to facilitate an in-depth comprehension of the President's role, including its complexities, constraints, and implications.

1.3. Research methodology

In the context of this study, an accurate delineation of scope is instituted to establish the framework for subsequent analysis: such demarcation is imperative to define the boundaries within which this investigation operates, consequently delineating the extent and comprehensiveness of the inquiry. The primary focus of this study is directed towards an examination of the President's role in the process of government formation, especially during periods characterized by political transition and change. Despite the nature of government formation, which involves an array of elements such as political negotiations and policy decisions, this study is particularly focused on the constitutional and legal aspects that intervene in this process.

The geographical and temporal purview of this research encompasses the procedures involved in government formation within Italy, with specific emphasis on the appointment of the Meloni government in the year 2023. The selection of this particular case study is underpinned by considerations of relevance and intricacy, particularly in the context of comprehending the influence wielded by the President in the process of government formation during instances of political transformation [Einaudi 1948, 661-67].

This study undertakes a deep analysis of the legal framework that underpins government formation, encompassing relevant constitutional provisions and legislative acts. Its objective is to furnish an enhanced and comprehensive understanding of the legal parameters that govern the actions of the President within this process. Consequently, the research methodology that has been adopted predominantly aligns with qualitative methods, necessitating an exhaustive analysis of legal texts, constitutional provisions, and historical records. Although this study deliberately refrains from engaging in an intricate dissection of the complexities associated with policy decisions and political negotiations that significantly influence and shape government formation, it provides an objective, legal, and ethical framework for comprehending the overarching process. Against the backdrop of this extensive contextual framework, it is imperative to acknowledge the nature of government formation. As such, this analysis restricts its focus primarily to the legal and constitutional dimensions. The overarching goal is to facilitate a comprehensive understanding of the role played by the President in this process, elucidating its intricacies, limitations, and consequences within the Italian framework.

2. CONSTITUTIONAL FOUNDATIONS AND PRESIDENTIAL POWERS

2.1. Constitutional framework of government formation

At the core of government formation lie the constitutional prerequisites [Sabetti 1982, 65-84]. These prerequisites serve as the linchpin of the entire process, establishing the legal conditions and obligations that must be met before a government can take shape. By comprehending these prerequisites, it is possible to gain a thorough understanding of the legal and constitutional foundations upon which the President's actions are based.

An essential pillar within the architecture of government formation is the principle of the separation of powers [Merrill 1991, 226-60].

As explained in the constitution, the separation of powers serves as a fundamental safeguard against the consolidation of authority. The concept of the separation of powers is fundamental to the structure of government, with the aim of preventing any single branch from accumulating excessive authority. Instead, it establishes a system of checks and balances. In this framework the legislative branch is charged with the creation of laws and the allocation of financial resources for government operations, the executive branch is responsible for implementing and administering the public policies formulated and financed by the legislative branch, the judicial branch plays a pivotal role in interpreting the constitution and laws, applying these interpretations to resolve disputes brought before it.

In the context of government formation, this translates into a delicate balancing act among the executive, legislative, and judicial branches of government. This equilibrium is not merely a theoretical concept; it profoundly influences the very essence of how governments are constituted. The separation of powers ensures that no single branch of government can exercise unchecked authority in the formation process. Central to this constitutional principle is the distinct role of the legislative branch in government formation. The constitution typically designates the legislature with the pivotal responsibility of approving or endorsing the proposed government [Baumgartner and Case 2009, 148-63].

The legislative oversight plays a central role in maintaining the balance and checks within the government formation process, ensuring its alignment with the legislative representation of the people. The President's role must harmonize with legislative mandates, respecting the legal prerequisites established for government formation.

In the formation of a government, the executive branch assumes a central position as the initiator of the process. The President, in accordance with constitutional principles, frequently exercises the authority to invite

a prospective Prime Minister or designate the leader of the majority party. Nevertheless, this executive initiative remains subject to the constitutional framework and the legal parameters that delineate the process [Cozzolino 2019, 336-52]. The separation of powers also extends to the judicial branch, which serves as the ultimate arbiter in cases involving legal disputes or constitutional issues that may arise during government formation. The judiciary, grounded in its independence, assumes indeed a pivotal role in interpreting and upholding the constitution's integrity throughout the process, also given the centrality and importance of the Constitution and its interpretation updated to the current situation. The formation of a government, influenced by the separation of powers, is therefore clearly based on a system of checks and balances and these mechanisms ensure that the substantial influence of the President remains subject to legal and constitutional constraints. The President's involvement in government formation becomes manifest within this complex interplay among the branches, firmly grounded in the democratic principles at the core of the constitution.

2.2. Presidential powers and obligations

The core of the President's involvement in government formation is rooted in the concept of executive privilege [Huff 2015, 396-415]. Executive privilege constitutes a fundamental pillar of presidential authority within this intricate process and, through this privilege, the President exercises the authority to initiate and direct the formation of governments. It is essential to emphasize that executive privilege does not operate in isolation; rather, it functions within a precise and defined framework of legal obligations and constitutional constraints. This privilege empowers the President with a substantial degree of discretionary authority in shaping the government, encompassing the designation of the Prime Minister and influencing critical appointments. This prerogative plays a central role in the functionality of democratic governance. However, it is crucial to recognize that the scope of executive privilege is not boundless, instead it operates within a network of legal obligations and constitutional parameters, ensuring that the President's actions remain aligned with the principles of the rule of law and constitutional integrity.

Beyond the two important legal and constitutional dimensions, government formation is intrinsically intertwined with ethical considerations [Campus and Pasquino 2006, 25-40]. The decisions made by the President in the process of shaping the government bear indeed profound moral implications: ethical considerations serve as a guiding compass, directing the President's actions to conform not only to legal soundness but also to ethical defensibility. This dual dimension of legal and ethical aspects

underscores the peculiar role and character of the President's responsibilities in government formation.

The President's role extends beyond mere legal interpretation considering his role in ethical discernment, thus reflecting the complex interplay of legal and ethical dimensions within the decision-making process. Historical precedents play a significant and unquestionable role as valuable guideposts in the search to understand presidential powers in government formation [Woolf 2022].

These precedents offer insights into the evolution of the President's authority over time and its intricate interactions with constitutional provisions. With the understanding and consideration of historical cases, it is possible to understand better and more valuable perspectives on the dynamic evolution of the President's role and the enduring influence of these precedents on contemporary government formation provide historical context but also underscore the lasting impact of presidential powers in shaping the government. They allow the reader to clearly understand how presidential authority has adapted in response to changing political landscapes and evolving legal interpretations, reinforcing the imperative of nuanced comprehension regarding the historical underpinnings of contemporary government formation. It is crucial to recognize that government formation does not take place freely. Rather, legal constraints operate as foundational checks and balances that govern the President's actions and these legal boundaries delineate the parameters within which the President operates, emphasizing the constraints and limitations that define the exercise of presidential powers. Legal constraints serve therefore a pivotal and absolute role in preserving the constitutional principles and upholding the rule of law throughout the government formation process.

In examining the dynamics of presidential powers and obligations within government formation, it is possible to better understand the intricate interplay between legal authority, ethical considerations, historical influences, and the indispensable role of legal constraints and see how this understanding is paramount for comprehending the nature of the President's influence in shaping the government.

3. THE ROLE OF THE PRESIDENT – THE MELONI GOVERNMENT CASE

3.1. Presidential authority in government formation in Italy

The Italian constitutional framework confers a distinct and constitutionally-mandated role upon the President in the process of government formation [Fusaro 1998, 45-74]. Within the Italian legal framework, the President

bears a specific constitutional mandate concerning government formation. This constitutionally-mandated role is of paramount significance in the appointment of a Prime Minister and the direction of government formation, as prescribed by the Italian Constitution.¹ Italy's unique political landscape involves the President's exercise of executive initiative, which encompasses the President's appointment of a designated Prime Minister, typically the leader of the political party or coalition holding a parliamentary majority.

This manifestation of executive privilege underscores the distinctiveness of the President's role within the Italian governmental framework. The Italian President's involvement in government formation is, in turn, governed by a set of well-defined legal parameters [Idem 2012, 78-98]. Constitutional provisions and legal requisites set forth the boundaries within which the President operates,² thereby delineating the scope and limitations of the President's participation in the formation of governments. The Government, as a constitutional body, represents an entity that acts directly and immediately in accordance with the Constitution, it exercises both a political guiding power and an administrative function; at the same time it relies on specific organs, such as the Prime Minister and the ministers, who together form the Council of Ministers.

An examination of historical precedents within the Italian context provides valuable contextual insights in understanding the contemporary role of the President in government formation [Campus and Pasquino 2006, 25-40]. Historical examples at the same time provide valuable insights into the dynamic and adaptive nature of presidential authority, showing appropriately how the role changed over time and its interaction with constitutional provisions. This historical perspective serves as a substantial contribution to the comprehension of the intricacies of presidential powers. Italy's political landscape, especially following 1992 and the judicial investigation that went down in history with the name of "Mani Pulite" which saw the collapse of the previous political system and the transition to a system profoundly influenced by the presence and a more capitalist vision, crystallized in the figure of Silvio Berlusconi. It appears today characterized by coalition governments and fluid political developments and presents a distinctive challenge for the President's role in government formation. It therefore appears decidedly crucial to understand these historical precedents to have

¹ Italian Constitution, Article 92: "Il Governo della Repubblica è composto del Presidente del Consiglio e dei ministri, che costituiscono insieme il Consiglio dei ministri. Il Presidente della Repubblica nomina il Presidente del Consiglio dei ministri e, su proposta di questo, i ministri."

² Italian Constitution, Article 93: "Il Presidente del Consiglio dei ministri e i ministri, prima di assumere le funzioni, prestano giuramento nelle mani del Presidente della Repubblica."

an overall and global vision of the Italian system and the reason why there was the emergence of a party which was certainly right-wing but which led, for the first time in Italian history, to the appointment of a female prime minister. To fully understand the complex political scenario that is present in Italy today, a deep understanding of evolving political dynamics is required and the capacity to facilitate the establishment of governments capable of governing efficiently in such a multifaceted environment.

3.2. Constitutional constraints on presidential discretion

Transitioning into the analysis of the constitutional constraints governing presidential discretion in Italy, it is possible to gain a comprehensive understanding of the intricate legal parameters that define the President's role in government formation.

Within Italy's legal framework, the delineation of the President's powers and responsibilities is exacting, particularly concerning government formation [Giannetti 2015, 108-130]. A salient constitutional constraint on presidential discretion emanates from the pivotal role accorded to Parliament in the government formation process.

The Italian Constitution³ prominently underscores the imperative of parliamentary endorsement, accentuating the collaborative character of government formation and accentuating the President's duty to operate in collaboration with the legislative branch.⁴ Moreover, the Italian Constitution underscores the significance of the President's role in appointing a Prime Minister who can secure a parliamentary majority. This constitutional prerequisite curtails presidential discretion by ensuring that the Prime Minister garners parliamentary support, functioning as a constitutional safeguard against the establishment of minority governments. It is clear that this process encompasses a multifaceted interplay involving constitutional authority, ethical considerations, and historical precedents and, undoubtedly, among the historical precedents the transition that led from the passage from the fascist dictatorship to the Italian Democratic Republic following the Second World War must be mentioned and from which the fundamental role of the President of the Republic as guarantor of the legality of the government derives.

³ Article 96 of the Italian Constitution: This article addresses a vote of no confidence in the Prime Minister. It states that the Prime Minister can be removed by the Parliament through a motion of no confidence.

⁴ Article 97 of the Italian Constitution: This article regulates early elections. If the Prime Minister resigns or is removed through a vote of no confidence, the President of the Republic can dissolve the Parliament and call for new elections.

The President's influence is intricately circumscribed by executive privilege, which bestows discretionary power in the appointment of a Prime Minister within the confines of legal obligations and constitutional constraints. These constraints underscore the delicate balance between authority and legality, underscoring the pivotal role of the rule of law, especially constitutional law, in government formation. Moreover, Italy's political landscape, characterized by coalition governments and shifting dynamics, underscores the President's role as a neutral arbiter. It is in this political environment that the President's capacity to facilitate the formation of governments capable of achieving political stability assumes paramount importance, representing a critical facet of the President's influence.

3.3. The case of the Meloni government: decision-making

An analysis of the case of the Meloni government affords a unique opportunity for examining the President's influence on government formation in Italy, encompassing decision-making processes, legal rationale, and practical implications. The appointment of the Meloni Government occurred within the context of significant political change and realignment, offering insights into the intricacies of the President's decision-making process when tasked with government formation during a period of political transformation. The President's role in this process is exemplified through the exercise of executive initiative, wherein the President appoints a designated Prime Minister. This discretionary power reveals a pivotal dimension of the President's influence, shedding light on the intersection between presidential authority and the legal and constitutional frameworks. Indeed, the appointment of the parliamentarian Giorgia Meloni as head of the government appears to be of particular importance in the Italian political panorama: on the one hand it is the first time that a woman has held such an institutional position in Italy, while on the other hand it is undoubtedly one of the rare times in which the most extreme right appears to have come to power with a clear majority vote.

This situation therefore leads to a profound reflection on the changes that are taking place in the country and also to the climate of exasperation which sometimes takes the form of a, probably, not completely correct management of immigration policies and at the same time of a labor shortage that divides the entire nation in two parts. On the one hand, southern Italy is perpetually devoid of job demand and, on the other, northern Italy where job offers are certainly significantly greater in number. This situation therefore determines an internal migration which tends to move with an external migration and often exasperates the minds of citizens who tend to take refuge in often stereotyped but well known values. Certainly, an examination of the case of

the Meloni government reveals the different dimensions of the President's influence on government formation, encompassing decision-making processes, legal rationale, and practical implications relating to executive privilege, legal obligations, and political pragmatism, offering a comprehensive perspective on the President's role in shaping the government.

Basically, the President of the Italian Republic, in composing the Government, is obliged to listen to every political force present in parliament in order to evaluate the possibilities of each political force to obtain a majority. Obviously the president will listen to the political force first who appears to have gained the greatest number of votes and, in this context, Giorgia Meloni's political party, Fratelli d'Italia, was clearly the party which not only had received the most votes, but was also the only one capable of creating an alliance with other political forces such as to offer stability to the country. Therefore on the one hand there was the power of the President of the Republic to confer and appoint the prime minister, on the other however it is clear that this power was bound to the decision made by the people, which was expressed with the election of the parliamentarians from whom the government would then emerge.

Undoubtedly the Meloni government, although in full legality, has taken steps to provide what Italians appear to perceive as extremely lacking in the country, namely the guarantee of substantial security which is reflected, for example, in the values of family and homeland constantly exalted by the propaganda of the first minister. The prime minister's adherence to reality actually represents the element that has made it possible to overcome the natural distrust of the Italian population towards the extreme right and to place trust in this political faction through the use of the vote to restore the order that population perceives as missing in the country currently.

CONCLUSIONS

To conclude this analysis of the of the President's impact on government formation in Italy, undoubtedly numerous legal issues have emerged that deserve further investigation. The contents of this article can bring out the particular nature of government formation in Italy, a formation that is certainly affected by the democratic basis that the country decided to give itself following the events of the dictatorship and following the tragedy of the Second World War, showing the multifaceted nature of the President's role, encompassing decision-making processes, legal constraints, and real-world implications. The President's influence in government formation evidently derives from the fundamental concept of executive privilege. This privilege empowers the President to initiate and steer the formation

of governments but it is imperative to acknowledge that this authority is delimited by legal obligations and constitutional constraints.

This delicate and sometimes precarious balance between authority and legality underscores the paramount significance of the rule of law in the process. Italy's intricate political landscape, characterized by coalition governments and fluid political dynamics, further underscores the peculiar character of the President's influence. In examining these issues which can easily spill over from the legal sphere into the geopolitical sphere, we have to go beyond the simple barrier imposed by the legislation to get closer to an understanding of the reason why the role of the President of the Republic in Italy is so important but at the same time so particular in the exercise of its functions and powers. Ethical considerations play a pivotal role in this multifaceted process, serving as a guiding compass for responsible leadership. The President's decisions in shaping the government carry profound moral implications, ensuring alignment with broader ethical principles and moral imperatives. This ethical dimension constitutes a pivotal facet of the President's influence [Kanungo and Mendonca 1996]. In this context, which moves between elements of public law, constitutional law and, obviously, undeniable historical elements which provide a clear explanation of the reason why a specific legislation exists in the formation of the Italian government, the President's influence takes shape, offering a profound understanding of the essence of governance during transition.

The President's exercise of executive privilege is delimited by constitutional obligations, underscoring the overarching importance of the rule of law in government formation. Furthermore, the President's influence is closely intertwined with Italy's dynamic political landscape. The need to manage coalition governments and ever-changing political dynamics underscores the President's role as a neutral arbiter, *super partes*, ensuring the formation of governments capable of political stability. Ethical considerations are intrinsic to the President's role, guiding decision-making and upholding ethical principles and moral imperatives. Responsible leadership is not merely a legal obligation but a moral imperative that defines the President's role.

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