

Italy – A Contested Polity

Edited by Martin Bull and Martin Rhodes

 **Routledge**
Taylor & Francis Group
LONDON AND NEW YORK

2009

Conflicts of Interest and Media Pluralism in Italian Broadcasting

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The development of post-war media in Italy has contributed to the promotion of democratic values, ideas and processes (Hibberd 2004; Monteleone 2003; Scannell 1989). Broadcasting, in particular, has functioned as one form of public sphere safeguarding fundamental principles including freedom of speech and expression and promoting new forms of dialogue. In recent decades there has been a distinct shift in government policy across Europe – a gradual move away from the traditional public service broadcasting regulatory model in favour of policies that encourage a more market-driven broadcasting industry; a shift in approach that may be seen as a strategic response to ideological and technological changes that are opening up the television broadcasting industry globally (Doyle and Hibberd 2003). One of the key features of this shift is the high degree of cross-media ownership present in many countries, provoking intense policy and public debates about how best to safeguard pluralism and freedom of expression in the multi-media environment.

This shift is particularly evident in Italy, where a unique broadcasting environment has grown up in the past 25 years. The Italian situation is also complicated by the rise to political office of Silvio Berlusconi, controlling shareholder of Mediaset, Italy's major commercial television company. Berlusconi's re-election to power in 2001 at the head of a centre-right coalition led to regular and heated political arguments over his so-called conflicts of interest. These arguments centred on centre-left claims that:

- 1) Berlusconi introduced favourable legislation for Mediaset, helping to boost the company's profits; and
- 2) that he wielded a high degree of political influence over both the country's main TV broadcasters, Mediaset and the public service broadcasting company, RAI, which together attract 85 per cent of television audiences and advertising revenues (*The Economist* 2001; Hibberd 2004).

Political opponents argued that Berlusconi had accrued substantial economic and political benefits, while compromising media pluralism in Italy. A recent Council of Europe-funded report (Venice Commission 2005) heavily criticised the Berlusconi government (2001–06), arguing that two pieces of legislation (the Gasparri Law, that relaxed media ownership rules, and the Frattini Law, that sets out rules relating to conflicts of interest in public life) did little to resolve issues relating to Berlusconi's dominance of Italy's broadcasting media. This follows other international parliamentary debates and reports that have been equally condemning of the Italian media system (Freedom House 2004–06). Although Berlusconi was swept from power in April 2006, he remains leader of the opposition and could reassume power in some future election. Furthermore, the new centre-left government in Italy faces major hurdles implementing current proposed reforms of Italian media law, given its slim majority in the Senate.

This article examines issues relating to conflicts of interest and media pluralism in Italy, analysing the Gasparri and Frattini laws and the implications of these reforms for Italian democracy. The article also discusses the key position of Silvio Berlusconi in relation to Italian media development in the past 15 years. Finally, the article makes a tentative assessment of the current state of media pluralism in Italy compared with the pre-1990s period.

Why Does Media Ownership Matter?

The mass media play an increasingly important role in advanced, post-industrial societies. The media act as a central institution of cultural and political life and also constitute a key commercial sector in the early twenty-first century. Questions relating to who owns media companies and corporations are also becoming more important as the role of the media

increases. Gillian Doyle (2002: 171) has recently argued that '[media ownership] matters to society because a number of potential harms may result from concentrated media ownership, including the abuse of political power by media owners or the under-representation of some viewpoints'. Indeed, one of the main reasons for media regulation across the globe is to ensure that such abuses do not take place and that essential rights, such as freedom of expression, prevail. Freedom of expression is enshrined in Article 10 of the European Convention on Human Rights, which states that:

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises. (Quoted from Venice Commission 2005: 10)

Pluralism of the media is considered by most experts to be one vital aspect of freedom of expression. Citing Doyle (2002: 11), once again, 'pluralism is generally associated with diversity in the media: the presence of a number of different and independent voices, and of differing political opinions and representations of culture within the media'. There are two types of pluralism: external or structural pluralism and internal pluralism. External pluralism relates to the diversity of ownership within a specific market. It is achieved when there is a plurality of broadcasters and outlets in a sector. Internal pluralism refers to the diversity of output. It is achieved when extensive coverage and diversity of programming are provided by media outlets. Restrictions on media ownership are not sufficient in themselves to guarantee diversity of output reflecting different political and social views, and other policy instruments should be used to encourage greater internal pluralism (i.e. strong and independent media regulators) (Doyle 2002: 12; Venice Commission 2005: 11).

The concept of pluralism is well established in Italian media law and policy debates. Electoral laws (*Par Condicio*) oblige broadcasters to provide equal airtime during news bulletins in defined election periods to the major political blocs. Furthermore, successive Italian media legislation and Constitutional Court decisions have used pluralism as a key term in defining the guiding principles of Italian media law.

Broadcasting in Italy: From Monopoly to Duopoly

Television and radio broadcasting dominates the contemporary Italian media environment. Other traditional media have been weakened in the post-war period. Cinema, once the most popular form of entertainment, declined greatly in Italy from the 1960s onwards (Gundle 1990). The newspaper industry in Italy has suffered various setbacks in the contemporary

period. Historically, the regional character of the press industry means that Italy was slow to develop national titles, hindering the development of a mass readership, and allowing broadcasting to reap national advertising revenues. Italy, therefore, has a situation, unparalleled in many other western European countries, where broadcasting takes a far larger share of advertising revenue than newspapers (Balassone and Guglielmi 1993: 12; Andreano and Ippadre 2005). The development of a vibrant 'free sheet' newspaper market in recent years might yet alter the structure of the Italian advertising market, along with the development and rise of the internet. But broadcasting still dominates advertising markets and consumer attention in Italy.

In the post-war period, the public service broadcaster, RAI, held a monopoly over broadcasting services until the mid-1970s. During this time the company was heavily influenced by the main party of government, the Christian Democrats. News programme were closely controlled up until 1963, when the Socialists joined government coalitions. Broadcasting in Italy was irreversibly changed by Constitutional Court decisions in 1974 and 1976. The Court passed two judgments in 1974, nos. 225 and 226. Judgment 225 upheld the legitimacy of the national and local terrestrial monopoly, citing Article 43 of the Constitution, due to technical scarcity of frequencies. Article 43 states that for purposes of general utility, 'The law may reserve to the state, to the public institutions, or to worker or consumer associations, *ab initio*, or transfer to them by expropriation, subject to identification, certain undertakings or category of undertakings involving essential public services... important to the community' (Esposito and Grassi 1975a: 44-5). Judgment 226 decided that the monopoly could no longer be justified in respect of cable and foreign-based channels, with the Court citing Article 21 of the Constitution. Article 21 states that 'Everyone shall have the right to express freely his own thoughts in words, writing or any other medium' (Esposito and Grassi 1975a: 44-5). This judgment opened a new historical phase in Italian broadcasting.

Many of the Court's arguments were incorporated into the 1975 Italian Broadcasting Act. Responsibility for the overseeing of broadcasting was transferred from the executive to parliament, including powers to appoint RAI's Administrative Council. The Christian Democrats were, however, able to hold on to much of their influence by virtue of having the largest party in parliament, with the rest of power being shared between the Socialist party and other minor coalition parties. Despite the good intentions of the Constitutional Court, little had actually changed and political control of RAI remained tight (Cavazza 1979: 103-5).

The 1975 Broadcasting Act also stated that RAI should be split into two separate networks (Esposito and Grassi 1975b: 53). The formation of two networks facilitated the creation of two broad ideological camps: the first for a Catholic culture and the second for a lay culture, with the result that the two camps were gradually subjected to political control. RAI was

effectively partitioned along party lines running from the President (Socialist) and the Director-General (Christian Democrat) down to the TV and radio networks, Raiuno (Christian Democrat) and Raidue (Socialist). Radio channels came under the sphere of influence of minor government parties. When Raitre began broadcasting in 1979, it was brought gradually under the wing of the Italian Communist Party. The 1975 Broadcasting Act therefore contributed to the formal carve-up of RAI by political parties: the system of *lottizzazione*. The policy of *lottizzazione* caused many problems for RAI: it was highly bureaucratic and costly, created bitter internal disputes between the three networks that, arguably, affected programme quality, and undermined RAI's pretence to be impartial. But the system did guarantee a certain degree of internal and external media pluralism. As Daniel Hallin and Paolo Mancini (2004: 108) have recently argued:

The system was actually a complex mixture of external pluralism – in the sense that the different political forces had their 'own' channels – and internal pluralism, both in the sense that RAI was governed by a common body and in the sense that each channel still had personnel from a variety of different parties. News programmes on each channel reflected the full spectrum of Italian politics.

The Constitutional Court (Judgment 202) ended RAI's monopoly over local terrestrial broadcasting in July 1976. The decision to end RAI's local monopoly reshaped broadcasting development in Italy for the next 30 years. The reason cited by the Court, and one that clearly differed from the government's position outlined in the 1975 legislation, was that technical advances meant that television frequencies were no longer as scarce as they once were and commercial broadcasting could be permitted at a *local* level. The increasing economic importance of television had created a booming cultural industry, leading to the ever-increasing importance of television as a popular form of entertainment (Macchiarella 1985: 12). There was little political consensus, however, about how to regulate the new commercial sector, so in the late 1970s and 1980s, apart from a few ad hoc decree laws, the commercial system was allowed to run largely unimpeded by regulations despite numerous proposals for reform being presented. Until the passing of the 1990 Broadcasting Act (known as the Mammi Law, after the then Minister for Post and Telecommunications), the Italian system became known as the 'Wild West' of all broadcasting systems.

After 1976, local channels quickly began forming larger blocs or alliances. By 1982 there were three quasi-national commercial networks consisting of syndicated groups of local channels offering the same programmes. Simultaneous broadcasting had been banned by a decision of the Constitutional Court in 1981 (Sentence No. 148, July 1981), but the channels were not outlawed and continued broadcasting by using a legal

loophole which allowed them to pre-record programmes on video cassettes and then show them at slightly staggered times across the country. The lack of regulations allowed one company, Silvio Berlusconi's Fininvest, to gain gradual control of the commercial television market. Berlusconi entered the local television market in Milan in the mid-1970s before starting his own quasi-national channel, Canale 5 in 1980. In January 1983 he bought Italia Uno and in August 1984 he acquired Retequattro (Grasso 1992: 412–28). By 1984, Italy had a *de facto* television duopoly.

Political approval for this duopoly came in October that year when magistrates in various parts of Italy closed down Berlusconi's channels on the grounds that they broke the broadcasting monopoly. Berlusconi decried, not without some justification, the interference of politically motivated magistrates – not the last time he would employ this defence. Within three days, the Socialist Prime Minister, Bettino Craxi, a friend of Berlusconi's, introduced a decree reopening the stations. Not surprisingly the decree became known as the 'Berlusconi Decree' (Decree Law 694, 29 October 1984). The decree was an overtly political decision and was the first decree named after the beneficiary, not the subject in hand or the politician responsible for drafting it, as is the usual custom (Menduni 1993: 437; Schlesinger 1990). The Berlusconi Decree is the most obvious example of clientelism – defined as 'a pattern of social organisation in which access to resources is controlled by patrons and delivered to clients in exchange for deference and various kinds of support' (Hallin and Mancini 2004: 135) – between commercial media and political parties in the 1980s.

Fininvest's rapid success can also be explained by other factors, including the company's efficient management of programming schedules to maximise advertising revenues. What the company proposed was, in Italian terms, both original and audacious. The Fininvest group, like RAI, acted as both producer and distributor of television programmes and also owned its own advertising agency, Publitalia 80, to maximise revenues. Fininvest's advertising revenue rose from 12.5 billion Italian lira (\$7.14 million) in 1980 to 880 billion Italian lira (\$502.86 million) in 1984. Financially, the whole Italian media system benefited from growth in advertising investment (Hibberd and Sorrentino, forthcoming). RAI's reaction to this competition was to go down-market and fight Berlusconi with more commercially oriented programmes, arguably damaging its public service remit (Hibberd 2001a and b).

The duopoly system was officially sanctioned in law in August 1990 (Law No. 223, 6 August 1990). The tortuous parliamentary passage of the Act produced an act described by its author, the then Minister for Post and Telecommunications, Oscar Luigi Mammì, as: 'the best that was possible at the time' (Giacalone 1992: xiii). The best was rather little. The crucial Article 15 states that no group should control more than 25 per cent of the national channels. The law did not specify the number of national channels, but few doubted that a minimum 12 licensees would be allocated allowing RAI and

Fininvest to retain three channels a piece. Twelve licences were duly announced in August 1992, formally entrenching the duopoly in statute.

Of ongoing concern to legislators and judicial authorities since the 1990 Act has been the status of the duopoly. Formerly Fininvest, Mediaset was created as the communications sub-holding of Fininvest in 1994. Silvio Berlusconi sold part of his stake in Mediaset in 1995. The company was then floated on the Milan Stock Exchange in July 1996. Silvio Berlusconi (through Fininvest and Silvio Berlusconi Holdings) still holds a controlling interest. One defining moment for the duopoly came in December 1994 when the Constitutional Court argued that the ownership of three channels as guaranteed by Article 15 of the 1990 law distorted the rules of competition in the broadcasting industry and therefore fell foul of Article 21 of the Constitution. The Court ruled, therefore, that Mediaset should lose one channel. The Court granted a period of transition so that new legislation could be introduced. In other words, the Court decided that the duopoly could no longer safeguard media pluralism in Italy. The decision of the Court, although technically against Mediaset only, effectively condemned the duopoly as unconstitutional. However, waters were quickly muddied when, in June 1995, three consultative referenda were held relating to the future of the broadcasting system in Italy. The three referenda proposed were:

- 1) to privatise or part-privatise RAI (subsequently carried);
- 2) to reform regulations regarding advertising (which failed); and
- 3) to reduce the number of commercial channels held by any one media operator (which also failed).

In fact, the rejection of the last referendum, to reduce the number of commercial channels held by any one operator, was a victory for Berlusconi and placed popular opinion at odds with the Constitutional Court decision the previous year. The problem was passed back to the politicians to decide on the legislation required.

It was therefore against this backdrop that the 1997 Broadcasting Act, introduced by the centre-left Prodi government, reduced the number of RAI channels allowed to take television spot advertising from three to two. With RAI being reduced to just two advertising channels, the 1997 Broadcasting Act also required Mediaset to reduce the number of its terrestrial channels from three to two, with Retequattro being withdrawn to become a satellite channel. These developments fulfilled the demands of the Constitutional Court decision of December 1994. But the 1997 Act did not provide a precise timetable for these changes and both Mediaset and RAI successfully lobbied government and regulators to delay implementation. Both companies would have lost substantial advertising revenues and found common cause. The argument did not end there, however. In 2002, the Constitutional Court again ruled that the duopoly was unconstitutional,

setting a new deadline for the implementation of the Retequattro decision. The date set was 31 December 2003, ensuring that the incoming government would have to pass new media legislation by that date.

Having introduced what was, arguably, a radical piece of media legislation that would have helped transform the face of Italian broadcasting, the centre-left then failed to have these provisions implemented before losing power to Berlusconi's centre-right alliance in 2001. This is despite having the legal support of the Constitutional Court. It is worth asking why the centre-left failed in its attempt to curb the power of the RAI/Mediaset duopoly. There are two broad lines of thinking. On the one hand, the three centre-left governments from 1996 to 2001 were arguably *unable* to push through implementation of the 1997 law due to political weaknesses and problems with the legislation. Law 249 was the product of laborious negotiations and trade-offs between various factions of the centre-left and centre-right alliances. Arguably, the final piece of legislation suffered as a result. For example, key responsibilities were given to the new media regulator, AGCOM. Although defined as an independent authority accountable to parliament, AGCOM commissioners are appointed by the Italian parliament and their independent status has often been questioned. Asking a politicised regulatory authority to implement a highly contentious piece of legislation was always likely to be problematic, especially when RAI and Mediaset were lobbying vigorously behind the scenes against implementation. AGCOM was able to justify its failure to implement aspects of the Meccanico Law by citing Article 2 of Law 249 which stated that 'concentration standards are not binding if the violation stems from "the spontaneous development of the company which does not produce a dominant position or eliminate or compromise pluralism and competition"' (Andreano and Iapadre 2005: 102).

On the other hand, commentators argue that some on the Italian centre-left were also *unwilling* to see provisions of Law 249 fully implemented. The former member of RAI's Administrative Council between 1998 and 2002, Vittorio Emiliani, argues that the major reform of Italy's media lacked sufficient political will because politicians from both sides of the political spectrum secretly favoured the status quo position. They either favoured a public service broadcaster that was politically compromised and subservient to factional interests and/or they did not want to see Berlusconi's company significantly weakened or broken up (Emiliani 2002: 58).

The First Berlusconi Government, 1994

Accusations that Berlusconi's involvement in national politics created a potential conflict of interest were made shortly after his announcement that he would enter the political fray in January 1994. Few doubted that Berlusconi could mobilise the full weight of his economic wealth and media outlets behind his drive for political power. And, indeed, the media did play

a very important role in Berlusconi's 1994 election victory. But it became clear early on that his television channels would be used selectively to promote his political aims. While political and social commentators were mobilised to work across the three channels delivering Berlusconi's message, there were distinct differences when it came to news programmes. The University of Pavia was one of a number of universities undertaking research into the 1994 electoral campaign news coverage. In its analysis, the university found that Raiuno and Raidue gave the most balanced coverage of the electoral campaign (in terms of time devoted to each party in line with their parliamentary strength) closely followed by Raitre and Berlusconi's Canale 5. By far the most partial coverage of the elections came from Berlusconi's Italia Uno and Retequattro channels.¹ While these two channels target broad audiences, they tend to attract younger and older people respectively. Both channels favoured Forza Italia. On Retequattro, Berlusconi's party gained 68.4 per cent of all news coverage whilst on Italia Uno the figure was 52.8 per cent. The ex-communist PDS gained just 9.3 per cent and 11.6 per cent of news coverage, despite being the largest parliamentary party (Rositi 1994; Ricolfi 1997).

The Retequattro case study is particularly interesting. Its news director, the former RAI journalist, Emilio Fede, has never hidden his devotion to his political master and presents, according to some, the most partial and biased news programme in Italy. Berlusconi's opponents maintain that Fede's role is crucial because Retequattro attracts large elderly audiences who have fewer educational attainments. The implication for some critics is that this social group is more susceptible to accepting Fede's strident pro-Berlusconi views. Italia Uno's younger audience is thought more likely to be receptive to Berlusconi's populist and market-orientated rhetoric. On the other hand, Berlusconi has never really mobilised his main Canale 5 news service. Its director until 2005, Enrico Mentana, is a highly regarded journalist in Italy who maintained a broadly balanced news service. Again, Berlusconi's opponents have often argued that better educated social groups tend to watch Canale 5 and were, therefore, less likely to be susceptible to pro-Berlusconi propaganda. It is interesting to note that Berlusconi and his team have borrowed well-honed advertising techniques to identify and target potential swing voters.

Berlusconi was not so shy in asserting his government's dominance over RAI. Here, RAI's reforming Administrative Council (nominated by the Ciampi government in June 1993), and led by the late Claudio Dematè, was introducing major reforms to the public service broadcaster, including dismantling the *lottizzazione* system. But buoyed by the outcome of the European parliamentary elections in June 1994, Berlusconi's government lost no time in stamping its authority over RAI. On 24 June 1994, the then Minister for Parliamentary Relations, Giuliano Ferrara, announced that the government had blocked the Administrative Council of RAI's reconstruction plan (RAI, like Fininvest in the early 1990s, was saddled by

enormous debts). The Administrative Council resigned within a week and procedures were set in motion to select a new board. Within months, one member of the new Administrative Council, Alfio Marchini, resigned in protest at appointments to the news services, declaring that there was too much political interference in company decisions and that the Administrative Council had been placed under too much political pressure when debating the new appointments. Berlusconi's government effectively reasserted political domination over a RAI Administrative Council that had sought valiantly to depoliticise the company in the aftermath of the political turmoil.

The ironic feature of the first Berlusconi government was, of course, that its tough and assertive control over the media, especially public service broadcasting, did not prevent it (the coalition) from imploding. While Berlusconi controls three commercial television channels and numerous magazines, and his wife and brother own two national newspapers, and despite the fact that there was overt political interference in RAI, this did not save his first government from ignominious collapse after only nine months. Not surprisingly, the second Berlusconi's government was a little more cautious and circumspect in its relations with RAI in the early months of the government's life.

The Second Berlusconi Government, 2001–06

The prospect of a Berlusconi victory in 2001 preoccupied the media within and outside Italy. *The Economist*, in its now infamous editorial of April 2001, launched a blistering attack on Berlusconi and his democratic credentials:

In any event, in any normal country the voters – and probably the law – would not have given Mr Berlusconi his chance at the polls without first obliging him to divest himself of many of his wide-reaching assets. The conflict of interest between his own business and affairs of state would be gargantuan... If he wins again on May 13th, he will control a good 90% of all national television broadcasting. He has made not the slightest effort to resolve this clear conflict. (*The Economist*, 'Fit to Run Italy?', 21 April 2001)

This editorial began a bitter war of words between Berlusconi and *The Economist* in the last two weeks of the election campaign. Arguably, the interventions of an English-language magazine had little effect on domestic Italian public opinion, but the editorial heralded a new phase in the bitter war of words between the Berlusconi government and the foreign press corp.² In relation to RAI, the appointment of RAI's new pro-Berlusconi five-person Administrative Council came only in February 2002, at the end of the scheduled mandate of the centre-left-appointed Council; but it

nevertheless led to the promotion of senior managers and journalists favoured by centre-right coalition parties. Berlusconi himself argued that 'new appointments would ensure that RAI provided objective information and abandoned the factionalism that characterised its "military occupation by the left"' (Willan 2002).

Behind the scenes, parties from both ends of the political spectrum, via the two presidents of the Italian parliament ('institutional' figures who had been given the task of nominating RAI's Administrative Council in the 1993 reform law – No. 206, 25 June), engaged in negotiations detailing the final outline of RAI's new five-person Administrative Council, dividing the 'spoils' with three government-friendly appointees and two opposition-friendly ones. Berlusconi's treatment of RAI followed a similar pattern to that of other Italian governments in promoting supportive managers and journalists to key positions. The centre-left had done this in 1996 and the opposition centre-right had, with some justification, argued that RAI was dominated by centre-left appointees. In 2002, a centre-left-dominated Administrative Council was replaced with a new centre-right-dominated one. The Administrative Council then appointed a government-friendly Director General and other key senior positions, leaving some positions of influence for the political opposition (i.e. Raitre) and allowing RAI to maintain a degree of internal pluralism.

But Berlusconi then went beyond usual political protocol when, in May 2002, he singled out veteran RAI journalists and political commentators, Enzo Biagi and Michele Santoro and the comedian-satirist Daniele Luttazzi, criticising them for making 'criminal use' of RAI at the licence-payers' expense (Willan 2002). In his now infamous Sofia Declaration (his comments were made on a visit to Bulgaria), Berlusconi added that he had nothing against their continued appearance if they mended their ways, 'but since they don't change' (quoted in Willan 2002). The fact that Berlusconi had singled out these three did not surprise many commentators. Luttazzi and Biagi were criticised by the centre-right in the run-up to the 2001 election, the latter for his interview with Oscar-winning actor and director, Roberto Benigni.³ Santoro had also been accused of bias against Berlusconi.

The fact that a politician had criticised a public service broadcaster and its journalists and presenters is nothing new. But what made this case more serious was that all those named by Berlusconi were subsequently removed from RAI's TV schedules in the autumn of 2002. This is despite the fact that Santoro and Biagi were long-standing and senior RAI journalists fronting popular commentary programmes. In January 2005, a Rome court condemned RAI for removing Michele Santoro and he eventually reappeared on TV screens in September 2006. Apart from guest appearances, Biagi has never returned to TV and has since gone into semi-retirement (Biagi and Mazzetti, 2005). While the then President of RAI, Antonio Baldassarre, argued that Biagi and Santoro had been

dropped due to scheduling considerations, many commentators and politicians (including those in Berlusconi's coalition) remained sceptical. Certainly, programming considerations did form part of the negotiations between RAI and Biagi, but it is hard to avoid the conclusion that RAI's top brass were simply following political orders (Biagi and Mazzetti, 2005).⁴

Arguably, Berlusconi sought revenge against those he perceived to be critical of him during the 2001 election campaign. This episode, more than any other, clearly demonstrated that RAI's autonomy existed only on paper in statutes and agreements. Historical precedents aplenty mean that no one should be surprised at this situation. And it is not a condition that afflicts only Italy. Nevertheless, the Sofia Declaration did set a dangerous precedent and, arguably, internal pluralism in RAI was compromised. The banishment of the Sofia Three constituted a reduction in the diversity of voices and opinions.

The strength of national and international opposition to the series of events outlined above created a large anti-government consensus by June 2002. Many commentators feared that Berlusconi's full-frontal attack on RAI, coupled with new legislation granting senior institutional figures, including himself, immunity from prosecution while in office, undermined vital freedoms in Italy. The concerns of many people within and outside Italy provoked a response from the President of the Republic, Carlo Azeglio Ciampi, in the form of an open letter read to Parliament in July 2002. The contents of the letter included an appeal for adherence to respect for key concepts of pluralism and impartiality, restating the central importance of the mass media to the democratic process. The letter was a thinly coded attack on the Berlusconi government and reasserted the central importance of media pluralism to democratic life (Ciampi 2002).

The Administrative Council led by Antonio Baldassarre was thereafter split by irreconcilable political differences, with two Council members sympathetic to the opposition resigning in the Autumn 2002 and a third member, broadly sympathetic to the government, following shortly afterwards. The Administrative Council was eventually changed in February 2003, when, after an aborted attempt to bring in former editor of the *Corriere della Sera*, Paolo Miele, the senior RAI journalist Lucia Annunziata was elected new President of RAI. When she resigned in 2004, citing unacceptable political pressures, a centre-left politician, Claudio Petruccioli, was appointed President of RAI. Remnants of the old *lottizzazione* system remained in place, but more suited to the new 'majoritarian' system of two political blocs: a 'three plus two' Administrative Council system with the Director General being a government appointee. This shift was strengthened by the 2004 Gasparri Law that handed back responsibility for appointing RAI's Administrative Council to parliament and the executive, ending a ten-year period where the two

presidents of the Italian parliament – institutional figures – made such appointments (Maltese 2005).

We have examined two key pieces of media legislation in Italy over the past 20 years: the Broadcasting Acts of 1990 and 1997. Berlusconi's political bloc voted against parts of the 1997 Act and, as already discussed, fought their implementation, especially those articles relating to Mediaset and Retequattro. It is not surprising therefore that the incoming second Berlusconi government would revise or reverse parts of the 1997 Act. At the same time, however, the new government had to act before 31 December to accommodate the Constitutional Court decision of 2002. What followed, therefore, was the introduction of two new pieces of legislation, the Frattini and Gasparri laws that have brought widespread criticism from the Parliamentary Assembly of the Council of Europe (2004), the Council of Europe-funded Venice Commission (2005) and the US-run non-governmental organisation, Freedom House (2004-06) for being pro-Berlusconi and for ignoring media pluralism issues in Italy. Let us now turn to these two pieces of legislation.

Conflicts of Interest: The Gasparri and Frattini Laws

Gasparri Law

In November 2003, the Italian parliament passed a new media law and sent it to the President of the Republic's office for presidential assent. What normally constitutes a procedural formality was turned on its head when, in December 2003, President Ciampi refused to sign Law 249, the Gasparri Law (named after the then Minister for Communications) declaring that parts (primarily Article 15) contravened Constitutional Court decisions on external pluralism (*Corriere della Sera*, 16 December 2003). The law was sent back to the Italian Parliament for further consideration. In order to beat the Constitutional Court's imposed deadline of 31 December 2003, the government launched the 'Save Retequattro' decree, which allowed Retequattro to broadcast beyond the end-of-year deadline. Berlusconi's supporters hailed the decree as support for the parliamentary law. Opposition politicians argued that the decree ran contrary to constitutional provisions. After some alterations the Gasparri Law was passed in May 2004, this time gaining presidential assent.

The all-important Article 15 of Law 249 focuses on ownership and cross-media ownership rules. The law proposes two major changes affecting (external) pluralism with 1) the introduction of a maximum threshold of 20 per cent of national channels a broadcaster is allowed to operate and 2) the introduction of media ownership limits called the integrated communications system (*sistema integrato delle comunicazioni* – SIC). This new definition has greatly expanded ownership thresholds not previously covered by media rules, for example:

- 1) national and local broadcasting, including pay-per-view, advertising, licence fees, sponsorship and tele-shopping revenue streams;
- 2) publishing (newspapers, magazines, books, electronic publishing);
- 3) cinema, television and music production and distribution; and
- 4) advertising (including hoarding advertising) as well as revenues from the internet. (Venice Commission 2005: 17)

The key point to stress about Article 15 is that it allowed Mediaset to retain Retequattro on terrestrial television, while Raitre was no longer to be forced to give up advertising, as both companies fell safely within the 20 per cent SIC threshold. This overturned provisions contained in the 1997 Act and ran contrary to the 1994 and 2002 Constitutional Court decisions. The law was nonetheless consistent with the 1995 referenda results. Relaxation of media and cross-media ownership rules aided, above all, those companies that derive their income primarily from advertising and subscription payments – Mediaset and SKY Italia, the digital satellite operator. Although the Venice Commission saw some positive signs for external pluralism in the expansion of digital television and radio services and the rise of the internet, its authors add:

Many of these channels are likely to have very small audience shares, but with similar amounts of output. The Commission finds therefore that the threshold protecting media pluralism, as measured by 20 percent of channels, is not a clear indicator of market share. Neither is this threshold an unambiguous indicator of balance and pluralism in the television and radio market as a whole. Larger companies will enjoy greater purchasing power in a wide range of activities such as programme acquisitions, and will enjoy significant advantages over other national content providers. They can also enjoy an unlimited share of the audience if this scheme is put in place. An individual company could enjoy extremely high degrees of revenue shares in individual markets, whilst at the same time remaining below the 20 percent threshold for the whole sector. (Venice Commission 2005: 19)

The Commission concluded that Article 15 was largely ineffective as an indicator of diversity. Their report highlighted concerns about the concentration of political, commercial and media power in the hands of Silvio Berlusconi, arguing that the Italian government had a duty to protect, safeguard and promote external media pluralism. The report further stated that, in Italy, 'the status quo has been preserved even though legal provisions affecting media pluralism have twice been declared anti-constitutional and the competent authorities have established the dominant positions of RAI and the three television channels of Mediaset' (Venice Commission 2005: 5).

The Gasparri Law also outlined plans to part-privatize RAI, stipulating that no company or individual could control more than 1 per cent of shares or form voting blocs with more than 2 per cent of shares. These rules were designed to prevent a takeover of the company by a group of small shareholders. One criticism of this form of privatisation was that if the company were sold off piecemeal it would leave the Italian Treasury (which took over ownership of RAI after the dissolution of the Italian state holding group, IRI) owning a controlling share of the company. This would not have stopped political interference in the company's day-to-day affairs; neither would it do much to lessen Mediaset's dominance, an argument forwarded by some on the centre-left. The date for the RAI privatisation was 2007, but this date had already been delayed prior to Berlusconi's defeat in April 2006, and is now indefinitely postponed pending the new government's proposals for the company.

It is interesting to note that plans to privatise RAI first surfaced under the centre-left government in 1997. These involved privatising RAI's transmission sites (Raiway) and also the two most popular public services channels, Raiuno and Raidue (Fontanarosa 2000). Under such plans, up to 49 per cent of each channel would have been sold off and listed on the Milan Stock Exchange. Both channels would have renounced their share of the licence fee, which would then have been shared among RAI's other core public service activities, especially Raitre. This type of privatisation would have presented Mediaset with more direct problems because without licence fee monies, the two channels would have become more commercial, directly threatening Mediaset's dominant share of advertising revenues. Some critics argued that this was a deliberate attempt by the centre-left to undermine Berlusconi and Mediaset and sell part of RAI to a multi-media company with centre-left connections, such as the Espresso group that owns *La Repubblica*, 15 provincial newspapers, magazines, radio channels and the internet provider Katweb.

Fratini Law

Neither the first Berlusconi government nor the subsequent governments of the left-wing coalition enacted legislation relating to the conflicts of interest question. In 2001, Berlusconi committed himself to solving the issue. Rules for the resolution of conflicts of interest were finally adopted on 13 July 2004. The new Fratini Law defined conflict of interest thus:

Conflict of interest arises from a situation in which the public official has a private interest which is such as to influence, or appear to influence, the impartial and objective performance of his or her official duties... The public official's private interest includes any advantage to himself or herself, to his or her family, close relatives, friends and persons or organisations with whom he or she has or has had business

or political relations. It includes also any liability, whether financial or civil, relating thereto. (Venice Commission 2005: 26)

The new law had certain merits. For the first time conflicts of interest were defined in statute. And the Berlusconi government could claim that it had succeeded in passing legislation that the centre-left had failed to introduce. However, one notable category of person was excluded from the new rules. Paragraph 4 of Article 1 states that the provisions of the Code do not apply to publicly elected representatives, members of government and holders of judicial office. Likewise, the law declares incompatibility only between the management of a company and public office, and not between ownership and public office, so sanctions are not envisaged for owners, only for the company managers. Even officials who find themselves in a situation of conflict of interest must inform the competent authorities, but are then under no other obligation to remove such conflict of interest. The Commission therefore concludes that: 'the Frattini law is unlikely to have any meaningful impact on the present situation in Italy' (Venice Commission 2005: 32)

As previously stated, this Council of Europe-funded research was not the only international report on the Italian media system. Another report that has attracted media headlines in the past three years is the annual Freedom House report. Freedom House is a leading US-based non-governmental organisation specialising in media issues. It was founded more than 60 years ago by Eleanor Roosevelt. Each year it analyses the state of press freedom worldwide. In 2003, Italy joined Turkey as the only countries in Europe to be rated as 'partly free', which was the first time since 1988 that the media of an EU member state have been rated so poorly (Freedom House 2006). In its 2005 report, 23 European countries (92 per cent) were rated 'free' and two (8 per cent), Italy and Turkey, were still rated 'part free'. The 2005 report makes for very pessimistic reading. The organisation's main finding was that media freedom in Italy remained constrained by the dominant influence of Silvio Berlusconi:

Although freedom of speech and press are constitutionally guaranteed, media freedom remained constrained in 2005 by the continued concentration of media power in the hands of Prime Minister Silvio Berlusconi. The Gasparri Law on Broadcasting has been heavily criticized for not providing effective de-monopolization measures and thus doing very little to break up the 'duopoly' of RAI and Mediaset in broadcasting media. The Frattini Law prevents the prime minister from running his own businesses; it does not prevent him from choosing his own proxy, including a family member. (Freedom House 2006)

The Freedom House report (along with that of the Venice Commission) gives a damning verdict on the current state of the Italian media system.

Berlusconi is widely vilified by these international organisations and the solution posited for curing Italy's media ills is a resolution of the conflicts of interest issue.

Conclusion: Media Pluralism in Italy

The politicisation of the media has been a constant feature of post-war Italian life. Political parties have owned newspapers and have kept close control of public service broadcasting. Even commercial media have been strongly politicised, relying on strong clientelistic ties with political parties and politicians in order to gain state funding or political help. This model of media development is typical of Mediterranean countries, but the form it takes varies from country to country. The advantage of the Italian system is that, for all its faults, it has encouraged a degree of internal and external pluralism over the years. There is a plurality of voices across television channels and media platforms. To say that Berlusconi 'controlled' 90 per cent of broadcasting or broadcast journalism through his ownership of Mediaset and interference in RAI's affairs does not stand up to close critical scrutiny.

Nevertheless, there are notable shortcomings in the Italian media system. Disadvantages of this system include the media enjoying little real autonomy from political elites, which has led at times to key journalists being sacked and removed from the airwaves, and which, unsurprisingly, creates public distrust of journalists (Hallin and Mancini 2004: 109). The Italian public is by no means alone in distrusting journalists as well as its country's politicians. But politicisation of the Italian media system has affected the quality of programmes due to ineffectual or non-existent regulation, and has stunted the growth of the media sector compared to other European countries such as Germany and the UK (De Vescovi 1997).

One feature that emerges from analysing broadcasting policy in Italy over the past 15 years is that there are strong lines of continuity. Political control over RAI continues unabated, although it now takes a different form. The precise system of *lottizzazione* is no longer practised as it formerly was under the Christian Democrat, Socialist and Communist triumvirate. But the appointment of Administrative Councils and all senior managerial positions in RAI are still subject to detailed negotiations between political parties. Strong clientelistic relationships remain between the media and parties on both sides of the political spectrum.

Yet there are also clear differences between that earlier period and today's Italian media system and its relationship with political elites. As I argued in the introduction to this article, advanced capitalist societies now have more market-driven media industries as a result of economic and technological changes (Doyle and Hibberd 2003). One of the key features of this shift is the high degree of cross-media ownership present in many countries. In that

sense, Italy is not unique in experiencing the following trends: moves away from mono-media ownership to cross-media ownership; the development of media companies with substantial non-media interests; and the gradual convergence of 'old' and 'new' media industries under the control of single multinational corporations. The development of media moguls, as we know, is not confined to Italy. But while most media moguls wield political influence indirectly by lobbying political elites for favourable legislative changes and/or by influencing the court of public opinion via their media outlets, Berlusconi has chosen to lead from the front. There are numerous possible reasons for this mentioned in the various biographies of the man. These might include: the only viable option to save himself and friends from prying magistrates; a gap in the marketplace for a centre-right party; the lack of leaders available to lead such a party in 1994; Mediaset's negative economic plight that required urgent action; Berlusconi's sense of patriotism to a country suffering hard times; his sense of moral and political purpose to save Italy from 'communist' influences (Ginsborg 2003; Lane 2004). The Berlusconi phenomenon, as Philip Schlesinger (1990) defined it, is therefore the product of international media and business trends and domestic Italian politics.

There is little doubt that Berlusconi has used his parliamentary majority to reverse 'unfavourable' legislative and judicial judgments to his commercial and political advantage. Protectionism and self-interest are strong features of Berlusconi's media policy. Berlusconi has turned from being a client of the First Republic's political class, receiving favours from his patron, former Socialist Party leader and prime minister Bettino Craxi, to becoming a patron and client of the Second Italian Republic. Silvio Berlusconi, the Italian prime minister, has bestowed patronage on Mediaset, Italy's foremost media empire, owned by the media magnate, Silvio Berlusconi, and managed by his family and close business associates. In return, Mediaset has granted Berlusconi a disproportionate amount of positive news coverage and publicity.

The concentration of political and media power in the hands of Silvio Berlusconi has, at times, hindered the development of media pluralism in Italy. Witness his *Sofa Declaration* and its pernicious effects. Yet, whether Berlusconi's actions have reduced the overall amount of media pluralism in Italy is harder to ascertain. Certainly, a high concentration of ownership means fewer suppliers of media goods and products, which in turn implies less pluralism (Doyle 2002: 13). But little empirical work has been done on the precise socio-cultural and political impact of Berlusconi's domination of the media. The little evidence that does exist would point to some political impact at election time (Rositi 1994; Ricolfi 1997). But media pluralism is also measured by the range of media output available to the public, and surely the arrival of internet and other satellite and terrestrial digital services in the past decade has increased the number and range of media outlets and products.

While this article remains very critical of the current situation, it recognises that future developments might help to change things. One recent development has been the expansion of satellite television in the form of Sky Italia, owned by Murdoch's News Corporation group. In 2004, Sky Italia exceeded 3 million subscribers, carving out a 4 per cent share of daytime viewers. The arrival of News Corporation to the digital satellite market provides hope that the Italian media market is not as closed as some would like to think. The development of digital terrestrial television might also lead to more media players. Digital terrestrial television (DTT) was introduced in 2004. The sudden rise in DTT (set-top box sales reached 1.5 million units by April 2005) is due in part to statutory subsidies lowering their consumer price. Thirty per cent of Italian families currently have multi-channel TV and access to an ever-expanding array of television channels and programmes. Despite this expansion, it should be noted that RAI and Mediaset hold three of the five digital multiplexes. Digital terrestrial development has been particularly exploited by Mediaset and the small Italia Telecom-owned channel, La7, due to the introduction of prepaid cards allowing pay-per-view services (Hibberd and Sorrentino, 2007).

The digital marketplace will also see more services supplied by telecom companies using ADSL broadband. Two companies are already present in this market, Fastweb and Telecom Italia, and other companies such as Wind, Tele2, Tiscali and HG3 will most likely also enter this market. There is likely to be greater separation between content and network providers. Due to the Gasparri Law allowing greater cross-media ownership, many of the principal publishing groups are examining how they can enter the digital marketplace. Digital television, radio and broadband markets are still emerging in Italy and future predictions are difficult to make due to uncertain consumer demand for new services. The situation in radio broadcasting is similar. But at the same time, the multiplication of television channels may not effectively guarantee greater pluralism. The Gasparri and Fratini Laws have allowed Berlusconi and Mediaset to maintain a dominant hold in the broadcasting sector without reaching the antitrust limit. Pressures to retain the status quo remain strong (Venice Commission 2005), despite attempts by the 2006 centre-left Prodi government to pass a new broadcasting law reversing some of the most criticised aspects of the Gasparri Law and revising the planned privatisation of RAI.⁵

Acknowledgements

The author is grateful to the Carnegie Trust for the Universities of Scotland and to the Stirling Media Research Institute for their financial support in conducting interviews for this article. Earlier drafts were presented to the Free University of Brussels, 9th November 2006 and to the RIPE Public Service Broadcasting Conference, Amsterdam, 15–18 November 2006.

The author would like to thank colleagues at these events for their constructive feedback, especially Dr Nico Carpenter and Professors Jo Bardeol, Raymond Kuhn and Albert Moran.

Notes

1. In his recent study of Italian television news, Chris Hanretty (2006: 16) argues that Raitre is more biased towards the centre-left than the Pavia studies demonstrate. He argues that RAI's news coverage did not alter radically after the change of Administrative Council in 2002, highlighting a degree of editorial independence for RAI journalists. He also argues that the more general hypothesis that the Mediaset channels taken together are more biased towards the right is confirmed. I would qualify this statement by saying that Berlusconi's Italia Uno and Retequattro channels are biased towards the centre-right, not Canale 5.
2. In a European parliamentary debate in July 2003 to mark the start of the six-month Italian Presidency of the European Union, and when goaded by a German MEP, Martin Schulz, Berlusconi told him that he would be 'perfect' for the role of a concentration camp guard in a forthcoming movie. The remarks caused much consternation across Europe and created embarrassment for Italian officials and parliamentarians (including his own coalition allies). A week later, Berlusconi's Minister for Tourism and Northern League party member, Stefano Stefani, unleashed a stream of vitriol against Germans (Hooper and Aris 2003). The comments of Berlusconi and Stefani created the biggest crisis in German-Italian relations in the post-war period. Moisés Naim (2003) summed up some of the European press comments: 'A crass buffoon [and] a man of very questionable integrity' is how *The Economist* described him. He incarnates 'nepotism, corruption and dishonesty' said Denmark's *Information*, while *Aftonbladet*, a Swedish daily, dismissed him as 'an arrogant clown' and the *Berliner Zeitung* wrote that he is 'a shady deal-maker'. France's *Liberation* concluded that he is a 'threat to liberal democracy', whereas the *Financial Times* argued that 'he lives in a media-bubble where his public gaffes and gratuitous insults go largely unreported at home at least until he goes abroad'. The war of words also extended to the quality of programmes on Italian TV, when Tobias Jones, in an article published in the *Financial Times* in 2003, wrote that the Italian television studio had replaced the Senate and soft porn had replaced hard news. The article was based on his book (Jones 2003).
3. This interview took place within the electoral period covered by Law No. 28 of February 2000 providing for equal access (*Par Condicio*) for parties to the media during electoral campaigns. The actor's criticisms of Berlusconi were no worse, however, than many of Emilio Fede's 'sermons'.
4. For an excellent blow-by-blow account, see Biagi and Mazzetti (2005: 51–125). Relations between Berlusconi and Biagi improved somewhat in April 2007 after Silvio Berlusconi went out of his way to compliment Biagi on his return to television.
5. Government proposals (introduced by Minister for Communications, Paolo Gentiloni) were being discussed by parliament at the time of writing (April 2007).

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