

Roundtable

Constitutional Reform in Italy: Is Failure Inevitable?

Gianfranco Baldini, Mauro Calise, Paul Furlong, and Carlo Fusaro

At the 2009 annual conference of the UK Political Studies Association (PSA) (7–9 April, University of Manchester), the Association’s Italian Politics Specialist Group sponsored a roundtable on constitutional reform and its prospects in the light of the outcome of the 2008 general election. The roundtable was organised by Daniele Albertazzi of the University of Birmingham and Duncan McDonnell of the Universities of Birmingham and Turin. The principal speakers were Gianfranco Baldini of the University of Bologna, Mauro Calise of the University of Naples Federico II, Paul Furlong of the University of Cardiff and Carlo Fusaro of the University of Florence. The following is an edited transcript of the deliberations that took place. Daniele Albertazzi starts by reminding the participants of the profound significance of the topic... which later provides for some strongly expressed divergences of view among participants!

Daniele Albertazzi: I am Daniele Albertazzi from the University of Birmingham and together with my colleague, Duncan McDonnell – who is also from the University of Birmingham but also from the University of Torino – I am the organiser of this roundtable. The reason why we’re having yet another roundtable – it’s not the first one – is because we’ve actually found in the last few years at the PSA that some of the most interesting discussions that take place actually take place at the café or in the restaurant and that at the panels there is often very little time to debate. So I’d like to start by stressing that this is really an opportunity for all of us to exchange views. And the topic of today’s roundtable is obviously something that has been debated a lot in the last few decades: constitutional reform in Italy. Now as we said yesterday there is a very strong centre-right government that we may presume will continue to remain in power for some time. There has again been talk of the need to change the Constitution, of reinforcing the powers of the Prime Minister, perhaps of presidentialisation, and certainly there is a federal reform on the way as we discussed yesterday. So we thought that this was a good opportunity to exchange views on all this; and I am delighted to welcome four very distinguished panellists. On my far right, there is Professor Paul

Furlong, who is the Head of the Cardiff School of European Studies. He has written widely on Italian politics and the European Union. In fact he addressed our Group on constitutional reform not so many years ago and he has been an observer of constitutional reform for a long time. Sitting here next to me is Professor Gianfranco Baldini from the University of Bologna who has written very widely on electoral matters and constitutional matters and is a research director of the Istituto Cattaneo. He is now also editing this year's edition of *Italian Politics*. Sitting in front of me is Professor Mauro Calise of the Università Federico Secondo di Napoli, professor of politics and head of the Società Italiana di Scienza Politica, and who, as we heard yesterday, has again published very widely on a wide variety of themes. His book that we mentioned several times in discussion is *Il Partito Personale*. And finally, on my left, there is Carlo Fusaro who is not a political scientist but a constitutional expert and comes from the University of Florence and who has published – again, very widely – on electoral matters and also on the institutions of Italy, the President of the Republic and many other themes. And I think that it is also fair to say that he is a passionate advocate of constitutional reform.

So if I may start with the first topic, what I wanted to ask – though I am aware that nobody has a crystal ball – is what your views are about what is likely to happen in the next few years in terms of constitutional reform. Federalism is now on the way; Presidente Berlusconi has expressed views, more than once, about the need to change the Constitution. My first question is really not what you think *should* happen in terms of how the Constitution might change, but more what you think is *likely* to happen in the next few years given the situation in Italy that we've been discussing since yesterday. Can I start with Professor Fusaro please?

Carlo Fusaro: Well, the answer, as far as one can foresee, is that there could be a window of opportunity after fiscal federalism – which was obviously a priority for the Government – has been approved. Keep in mind that it is a law – not a constitutional law – because the Constitution, with regard to federalism, has been changed and the only further changes I expect, are going to be a sort of tidying up of the 2001 reform, which might well take place along with other changes. A window of opportunity, I said, could be after the regional elections of 2010 because then we might finally have a couple of years without elections. At the same time, if one looks at facts only – and I am trying not to be judgemental, I hope – there is a widespread consensus on the need for a set of amendments, which are widely agreed upon, along the lines of the so-called Violante Project. As you know, Luciano Violante's job in the legislature from 2006 to 2008 was head of the Constitutional Commission of the Chamber of Deputies. The Commission was an ordinary commission. So they laid down a project for some minor changes to the role of the Prime Minister that I expect the centre right will

want to beef up a little bit. They also laid down some changes to the bicameral system, which I expect not to be as courageous as those in the Violante Project unfortunately, because the Violante Project, it must be borne in mind, was a project laid down by the Chamber. So when it goes to the Senate they will have problems probably. But these things could take place in my opinion because the situation is rather different to what it was when the centre right approved the 2005 reform, which was then struck down by the referendum: I think there is much wider consensus and furthermore – and this is the most important thing – no one speaks anymore of a general reform, not even just of part two of the Constitution. No one thinks any more in terms of radical change. I think it's going to be an incremental reform and it's going to be a set of important but not all-inclusive points.

Gianfranco Baldini: Let me just use this first intervention, if I may, to offer my idea of the space of constitutional reform right now. If we want to think about the likely situation in the coming months or years, we can draw a triangle where we have the 'B' factor (Berlusconi) and the strengthening of prime-ministerial powers at the apex and where we can place federalism and the Northern League, and Gianfranco Fini and electoral reform – thinking of this in terms of institutional, not just constitutional, reform – at the other two points of the triangle respectively. And of course the PD is very much in the middle of the triangle, very much a sort of prisoner not knowing in which direction to move. So the PD has tried to ally with Bossi on federal reform and fiscal federalism; it is very uncertain what to do about electoral reform; and it is again divided in terms of the top angle of this triangle which is the predominant factor that might affect all the other reforms. So I think that most of the forthcoming moves will be affected by this situation, which means that the Government of the centre-right parties are very much leading on each of these topics and the PD is somehow undecided on where to move on each of these points.

So, the question is: are we going to have reforms after the 2010 regional elections? Well that might be the case, but first we have the 2009 European elections – which will determine the respective strengths of the parties and their attitude on how to confront these topics – and again, the electoral referendum. The most likely result is that the referendum will bring nothing basically. In my opinion, the Northern League chose the Interior Ministry in 2008 not just because of its importance for immigration, but also because it was germane in order to control this referendum on the electoral law. My guess is that they will either decide to postpone it to the second round – on 22 June – of the administrative elections, thereby ensuring a failure to reach the quorum, or the Sunday before, with the same result. Anyway, the first important move for the parties is to deal with this

reform. We will probably be able to say more on this after June 2009, recollecting that the space I have described is crucial in terms of each party's move on the constitutional reforms.

Paul Furlong: Since others can talk in a lot more detail about the current position, I don't want to focus on that. What I want to focus on are some of the assumptions behind the way in which this subject is often addressed and the way in which the issue is framed. If you'll excuse me repeating, there is the old anecdote about the French constitutional changes in the nineteenth century when they went from empire to monarchy to republic, back to empire and then back to another republic and so on. And the story goes that a distinguished lawyer went into a bookshop in Paris and said: 'Can you give me a copy of the latest constitution?' And the book seller said, 'No sir, I'm sorry: we don't deal in periodical literature' – the point of the story being that this is not a well you can go to too many times. If you do, you lose the efficacy of the process: constitutional change is not like other forms of policy change. And this process in Italy, as others here know much better than me, has been going for a very long time indeed. One thinks, for example, of the Bozzi Commission (a long-running show which failed miserably in the 1980s); the De Mita Committee at the beginning of the 1990s, and then of course the famous or infamous experience of the Bicamerale chaired by D'Alema in the 1996 to 2001 legislature which in my view was the last best effort at general reform, which – Carlo has said – is now off the agenda. So that's the first point: that the way in which this is approached by political elites affects the likelihood of success.

In a system like the one we have in Italy, it is particularly important to appreciate that we need to distinguish between constitutional reform and constitutional change. The Italian political system is particularly open, it seems to me, to what you might call – Carlo used this phrase at dinner last night and I was struck by it – organic reform. I think there is probably a spectrum we could develop (though I haven't got time to do it here) between deliberate constitutional *reform* – that is, organic constitutional reform, which is instrumental – and constitutional *change*. This occurs on a day-to-day basis almost. And particularly in a system like that of Italy where the Constitution gives powers to protect the Constitution to a variety of institutions – the Constitutional Court and the President of the Republic particularly; but there are also others who can be involved in the process of constitutional change – it means that, even though the Constitution is a written and relatively inflexible constitution in terms of how you change it formally, there are processes of change going on the whole time insofar as it is being interpreted by Parliament, by judges, by the Constitutional Court, by senior administrators and politicians, and not least by the President of the Republic. Insofar as it is being interpreted, it is also being changed and I don't think we should ignore that. If you think, for example, of the way in

which the constitutional interpretation of the rights of the individual has changed, particularly in relation to the magistracy, then (though this was one of the chapters in the Bicamerale that didn't attract a lot of attention) the whole background of Berlusconi's involvement in criminal justice, and the way in which he's had laws passed which directly affect the way in which the judiciary treats people like him, have affected constitutional interpretations of the rights of the individual and not necessarily positively. It would be difficult to argue that that wasn't a form of incremental constitutional change. Interpretation of the constitution has changed; so my point is that it represents change as much as the 'big-bang' issues – to do with federalism and the *forma di governo*, the powers of the Prime Minister, the powers of the President and so on – and as much as the other 'big-bang' issue (which is actually not a matter written in the Constitution but which, significantly, we have already started talking about as part of constitutional change): electoral law. We're saying this is part of the real constitution as opposed to the formal constitution and I don't disagree with that. So my point is that we do not need to be too restrictive in our view of what the process of constitutional change consists of.

Mauro Calise: I fully agree with Paul Furlong: we need to be aware of the changes that have already occurred. That has always been my basic point about constitutional change in this country. And again, though the electoral law is not part of the Constitution – and we know why: it was decided at the very last moment not to have it as part of the Constitution – the way it has affected the system overall is so important that to me it's been a major material or de facto constitution. And of course the other major change I have always been underlining concerns the powers of the Prime Minister. Of course there is always the possibility that Berlusconi will say that he wants more; and I think he can even possibly have more if the parties should ever reach an agreement. But he has already got a lot in terms of prime ministerial powers and in this respect I am very sceptical that he will want to run the risk of up-front confrontation on this issue. It is true, as Carlo Fusaro was saying, that the climate has changed; but I fully agree with Baldini that one of the major actors, the PD, is caught in that triangle and because they could move in any one of those directions they will go nowhere. The climate *has* changed, but it has been enough for Berlusconi to stage one of his usual shows: we all know the episode surrounding the Englaro decree. We all know that for the past twenty years, the major part of governmental activity has been going on through these kinds of decrees. Englaro was a very exceptional case in which the President of the Republic did actually tell Berlusconi to stop. Berlusconi has taken this opportunity to make a big fuss. But he knows – he is very pragmatic – that he can do whatever he wants with these decrees, and keep on doing it, which is better

than provoking a conflict. You can see what would happen: there would be *comitati per la difesa della Costituzione*. If there is one issue on which Rifondazione could again fill the squares then it's going to be one linked to just these kinds of changes. Again, there is the constitutional reform paradox: Can you see the Senate, those senators, stepping in together and taking the decision to cut off their own heads? So in this respect I can see the climate has changed: that may lead to a lot of talking, but again I don't see where or how the PD can get out of that triangle and I don't see Berlusconi taking an initiative. So I need to see the actors who are really going to take the lead. Of course Fini may be one but has he got the stamina? And will Berlusconi let him be the new constitution maker? You know: surprises may be there but I'm really sceptical.

Carlo Fusaro: I would have a couple of comments on what I've heard. First of all, Gianfranco's is a clever way of putting it, but we should not forget – and I think Gianfranco will agree with me – that the package of reforms that might be brought up for discussion involves, precisely, the Prime Minister, bicameralism and a 'tune-up' of title V. (And then there might be justice. Justice is going to be one of those issues where – I agree with Mauro – they may not feel it's worth taking up the fight because its going to be the most controversial for a variety of reasons). But though the three elements of the package correspond to the three points of Gianfranco's triangle, the package is one that allows each player to get something so I think that's something suitable. And the second comment is that I basically think Mauro overemphasises the strength of the powers of the Prime Minister in Italy. And we tend to overemphasise it now, contrary to the past, because of the political context, which of course is extremely important. But we do not know what the political context will be five years from now or ten years from now. And constitutions are made for a long term. And in this respect, I think that a constitutional reinforcement of the Prime Minister would be important especially in relation to the role of the President of the Republic. And here I will add something and put it on the table because I am interested in hearing your comments: I believe that one of the major mistakes that have been made – and here I am obviously judgemental – has been – in order to face Berlusconi – to overemphasise powers that the President never legally had and does not have and the Constitution doesn't really give to him or at least its very controversial whether the Constitution gives these powers to him or not. And this I think is strategically a major mistake, not only because it allows for a dualistic instead of a non dualistic conception of the form of government, but precisely because of what someone yesterday reminded us of, which is that Mr Berlusconi is potentially a president of the Republic. So I think that to strengthen the role of the President of the Republic and keep the role of the Prime Minister

(from the legal and formal point of view) weak is very risky and is a big mistake.

Daniele Albertazzi: I think there are two very interesting ideas here: the PD being trapped and whether strengthening the powers of the Prime Minister is a good idea. Perhaps the panellist could say something more about these issues in a moment; but first I'd like to open it up to the floor and get a couple of comments or questions from the audience.

Mark Donovan: I'd just like to pick up on this issue of change: I think it is one of the most difficult topics in political science – as is, sometimes, the issue of stability and stasis: these things are confused. When we talk about constitutional change I think Paul is right: that we do tend to think of these 'big bang' issues, but that there is also gradual change – of interpretation. There have also been reforms *to* the Constitution over the years. But I'd like to link this whole theme of incremental change and the question Paul asked – about whether there is some kind of line between incremental change and 'big-bang' change – to the issue of transition. And I know that many people are fed up with that issue, but I do think it is an interesting one. And I'm thinking here of some of the historical institutional perspectives, which may be oversimplistic but which seem to see periods of relative change – of relative flux: periods where actors and agents are more important – and then periods of stabilisation in which institutions – the Constitution *a fortiori* – are providing relative stability. If we have that kind of perspective then I think that this issue of incremental change and adaptation contrasted to major significant changes that perhaps amount to regime change – although I think that when we talk about the material constitution, talking about transition in terms of the party system has been enormously significant – is one that is worth pursuing further.

Chris Hanretty: I don't remember the details of Bozzi or Violante, so I wanted to know what the provisions for making the Prime Minister stronger are. I presume it's the ability to conduct a cabinet reshuffle without having to go to the President of the Republic. Secondly, there is a related thing: the thing I found weirdest about the proposed 2005 reform were these anti-*ribaltone* provisions. Are they dead? Can I forget about this idea that once the chambers have given their vote of confidence to one governing team they can't give it to another without dissolution? If these proposals were dead I could safely forget about them.

Carlo Fusaro: It is the way you thought: the Violante Project envisages the ability to reshuffle without the need – which is disputed among scholars really – arising from the customary constitutional law that you have to

resign in order to change a minister. The anti-*ribaltone* measures are not within that project. I could develop that but I think it would take too much time. The true issue you know is how connected is the nomination of the Prime Minister to the electoral outcome – this is the real issue – and how far you can through legal means get close to what Duverger would call an immediate democracy. And within this frame the Violante project says something like: the President of the Republic nominates the Prime Minister following the outcome of the elections. Of course it always happens in some way. On the other side we all know that we have an electoral law now that says that each list or coalition must have a head or a candidate prime minister, so if you connect these two things it makes sense. So that is as far as facts are concerned.

I will spend one more minute on this issue of constitutional change. All constitutions change all the time – all of them, and ours too; and there is a trend bringing customary constitutions like the British, and text-based constitutions like ours, closer somehow. And you are right: interpretation is extremely important. Every written constitution, though, has a limit to its flexibility and it needs constant maintenance. My own personal view is that if you do not maintain a constitution in time then you end up at a moment when you might get closer to a sort of ‘big bang’ situation. However, we are talking about a stable democracy – let us not forget that – and I haven’t seen any stable democracy changing its constitution’s core. I don’t know what you can mention. The Swiss re-wrote theirs. The Swedes re-wrote theirs. The Finns re-wrote theirs. But they re-wrote something that was basically already there. So I think that the crisis of the 1990s was in part the effect of the fact that the political class of that time was not able to maintain the Constitution. I am sure that if they had been able to maintain it by tuning it up – in the 1980s there was the Bozzi project and so on – then the crisis would not have occurred, probably. But anyway, the Constitution has been changed incrementally a lot. The D’Alema project was the only one that changed the Constitution entirely: all the others are technically incremental, including the 2005 project, because they have taken an article of the Constitution and they have made a little change or a larger change, and then they have taken another and done it many times. But the structure is there, just as it has been for sixty years – while with the D’Alema project it was entirely re-written; and at the same time large parts of it have been translated into law. One is article 111 on justice which is basically the European Convention on the protection of human rights introduced into the Italian constitution; and of course the articles of Title V are already there.

Paul Furlong: To respond both to Carlo’s point earlier and to the discussion we’ve just had: what puzzles me is what’s happening now in comparison with, for example, the D’Alema project (let’s just call it that

though there were a lot of others involved in it). The minutes of the opening session of the Bicamerale in 1997, when there's a very interesting, long, and unusually clear speech by D'Alema (which was presumably written for him) explains what he thought the consensus was for and which did actually – it seems to me – drive the process of the Bicamerale. And of course it came to a very unpleasant end for all sorts of reasons. My question is this: since, in the Bicamerale, it was clear what the driver was, you could see why they could move towards a general agreement about re-writing the Constitution – which, Carlo is absolutely right, they did: there was a whole package there. You could see what it was: it had to do with issues like *governabilità*. It had to do with the viability of government. But underlying it there was a whole discourse about how Italy was a major European economy – a driving force in European society – but how it hadn't got a political system that matched those of other European countries. So the Bicamerale actually looked at other European systems; and of course going on in the background was the whole process of Italy's entry into the Euro and the difficulties that Italy had had about the single market project and all that kind of thing. So there was a very definite external context that people were clearly thinking about – and you can document that. And they actually went through a whole process of comparing political systems. So there is a wonderful session in the Bicamerale where they've got Giovanni Sartori in to tell them about the different merits of presidentialism, semi-presidentialism and the Westminster system, which is really a *tour de force*: it was like a master explaining to pupils. They were really engaged with the process.

Carlo Fusaro: Be wary of masters at times!

Paul Furlong: Yes of course! I am not suggesting that there was anything there to agree with and that Sartori didn't have his own agenda. Nevertheless, my point is that there was a real engagement and there was a real effort to try to see what other countries were doing. Maybe they shouldn't have done that but they did do that. What's the driver now? That's what I don't understand. That is what is not clear to me. And the way Gianfranco Baldini has set it out there, what you've got is a piecemeal process in which the motivations of the actors involved are very different one from the other. There may be a pragmatic low-level consensus about what they'll settle for, but there's no consensus at elite level about what they really need to *do* with the Italian Constitution, it seems to me. Perhaps others can tell me what the driver is here. I'm not sure there is a driver and therefore I expect to see a process of incremental, piecemeal change which, we know, always proceeds in a zig-zag fashion. So that's my point.

The second point, which follows on from that, just very briefly, is: Carlo has pointed out, quite rightly, that the changes that are now being introduced in terms of fiscal federalism are not actually directly constitutional modifications. They may have constitutional implications: they have to do with laws that are required to implement the previous constitutional change. Electoral law I have already referred to: it is not part of the Constitution but we're talking about it as though it is. My question is: what is it that needs doing that requires constitutional change, as opposed to just other forms of policy change that aren't as grand as constitutional change? Aren't we in danger of overstating the use – of misusing – the term 'constitutional change'?

Carl Levy: I like what Paul was saying before: this idea that you have to sort of think outside of the box; this idea that you have to look at electoral reform as being part of the Constitution and therefore at the effects of elections. So if you think of the Constitution as a custom, then last year's elections, you felt, changed the rules of the game. So I think that if you want to conceive of what's going on and not get hung up, then what Paul is saying is right: you have to look at events and at changing things which are not necessarily, pedantically, constitutional change. I mean, that's why most people, most students, I know, think there's a Second Republic; and in a way, intuitively, they're right because of what happened after 1990 and precisely what happened in 2008 in a way, on the ground. The way people think about how a constitution functions through its citizens – how they think about the rules of the game – when they think about major elections is slightly different now, more than slightly different. And the construction of the political spectrum itself has changed: certain actors are not visible any more on the national scene the way they used to be. So that was a major change and it was caused by electoral change and by the way people were going to use those elections.

Daniele Albertazzi: Once we've finished this comment maybe we can focus on what has already changed and, as Paul said, what still needs changing that we can call constitutional change. But can we just finish because a lot of things have been mentioned: the PD being trapped; the Prime Minister needing to become stronger. Can we finish this second round with first Professor Baldini responding to some comments and then Mauro Calise?

Gianfranco Baldini: Just some clarification on my triangle which was meant to be provocative so I am happy that it has raised some comments. And yes: my idea was just to point out that in terms of institutional reform – so including the question of electoral reform and the referendum – the three governing parties have issue ownership now. They are leading on

these questions and the PD is trailing and is very much undecided on what to do. But the other issue is that the 'B' factor is on top of this, not just because it is at the apex of the triangle but because this presence of Berlusconi affects all our understanding of these reforms in terms of both the powers of the Prime Minister and the President of the Republic. So it affects the issues talked about by Mauro Calise and Carlo Fusaro, who seem not to agree about the actual powers of the Prime Minister, and the longer term questions and aspects of institutional reform. My guess is that the PD – and I have an interview with Franceschini in this week's *Panorama* – wants to restart from the *Violante* project because it's a minimal change in terms of what Berlusconi would like to do – in the longer term of course – or what he claims to want to do. But he is fully aware of all the contradictions and all the problems that every new reform will have, maybe because – and this is another point which hasn't been raised so far – of the impact of the economic crisis which stands in the background. Franceschini mentions this explicitly, saying we're not going to deal with major institutional reform now when people are losing jobs and we have a high and rising rate of unemployment in Italy. So there's this question, and it brings us back to the point about the window of opportunity with which Carlo started half an hour ago. There is no major consensus as far as I can see that we now need a new major constitutional reform. The parties are split, and not only the PD which is again entrapped in this situation, but also the other parties. And public opinion is, to put it bluntly, just unaware or sceptical or largely uninterested in most of the reforms. There might be some supporters of the League who are interested again in....

Carlo Fusaro: It has always been that way, historically.

Gianfranco Baldini: Not always. If we think about the start of the transition, in 1992/1993 with the referendum movement, there was somehow a push behind this. Of course the 1993 law, the *Matarella* law, was different from what the *referendari* wanted, but then, as compared to the current situation, there was a large window of opportunity before a major change as far as I can see. And this brings us back to the problem of yesterday: we were discussing how to achieve reform, and article 138 and which majorities might line up behind major or minor constitutional reforms – to come back to Mark Donovan's questions. The problem is that any agreement inside Parliament needs both the PdL and the PD to agree and I can't see any way of having the two parties agree on any large constitutional reform. So they can only agree on some small fine-tuning reform which might imply the *bozza Violante* again.

Mauro Calise: Looking at another triangle is very useful and it's another trap. It's the political triangle of the PD. So you take Di Pietro and you choose one of the angles. You put Casini and you put the extreme left at the other two: these are the three allies the PD is now trying to chase. Even in that case they don't know. Now I ask you: who of these three allies is pro-constitutional change? None. So I very much think that it's really not going to be on the agenda. I agree it's been there: there's been the Bicamerale; the drive, a different framework; a different climate. Now, in terms of any major constitutional change even incremental, it's going to be so complicated; it's going to arouse so much criticism. And again it's not that I do not agree that we *need* to strengthen the Prime Minister. Of course we need a stronger prime minister. I am fully aware that because Berlusconi's there the thing works in a simple way. But then that's none of Berlusconi's business. He's there and the problem is for those who are going to come after Berlusconi; and I am fully aware that there may be problems regarding what's going to happen after Berlusconi. And that's why I was speaking yesterday of a coup d'état – a *quasi* coup d'état: but basically that is what has happened. So while we've been discussing minor or major constitutional changes, there's been a quasi coup d'état by changing the electoral law in a way which has completely changed the party system. And in a way such that parties seem to be now in control; but they are no more in control. They are not in control of the periphery as far as the PD is concerned. They are not in control of the electorate because they are going down as the Belgians did six months ago; and what is the control that the PdL has over its own environment? That we are going to learn after Berlusconi. So at that point it's going to become interesting again because we have a coup d'état which has been too smart by half, as I think we used to say. So in this sense I am curious to see. But again, this is nothing that the present political class can take care of. They've done it. They are now fully aware that it was an incredible mistake. But what can they do now? What can Berlusconi do? He just lives on and thinks, 'Afterwards they'll take care of it.' But then we should summon agreement and try and see what's happening and if there could ever again be a constitutional agenda. But for now the situation is just trapped in two triangles and a coup d'état. That would be a nice title for a book: 'Two triangles and a coup d'état'.

Jim Newell: Listening to the discussion, the impression I have is that we seem to be moving towards the position that the most likely scenario is that there won't be anything that we could reasonably describe as a 'big bang' in the foreseeable future. Incremental change is a much more likely possibility and in that respect, as Carlo Fusaro implied, Italy is really no different to any other democracy. Or perhaps he didn't imply that, but that seems to me to be the implication because, as you say, all constitutions are constantly in a process of change. Now it seems to me, looking back on the

constitutional reform debate that's been going on in Italy for such a long time, that back in the 1990s (when a 'big-bang' type of change did seem for a while to be a more likely possibility) the notion of a 'big-bang' change was very much bound up with – and almost symbolised the idea within the political class and among comparative political scientists – that Italy was somehow an anomalous democracy: it was different from other European democracies. People often used the idea pejoratively to say that somehow Italian democracy was lacking. So, if we're now in the position of saying that a 'big-bang' change is no longer likely but incremental change possibly *is* – while also acknowledging that this happens in *all* democracies – in what way is Italy any longer different from other West European democracies? What distinguishes Italian democracy from democracies elsewhere in Europe?

Carl Levy: Berlusconi?

Jim Newell: I don't know. Does Berlusconi really... I mean he is, perhaps, a more extreme example, but populism is not confined to Italy is it?

Mark Donovan: It's just not clear to me: I would think that the 'big bang' happened. I mean I think this idea of a First Republic and a Second Republic is very real. I mean the Christian Democrats governed Italy for forty-five years and then, bang: they were dead!

Duncan McDonnell: That's the party system.

Mark Donovan: Yes, but this is quite significant: this is the question of the unit of analysis when we are talking about transition and change; and that's part of what I meant when I suggested that when we're talking about constitutional reform we have to talk about material constitutions. There seems to be agreement that we have to do that even if it is for something as specific as the electoral system, though there have been suggestions that there are other issues that come into this notion of material constitution. I would suggest that in that sense of regime (or significant material constitutional) change there has been a 'big bang'. And I would just like to know what other people think about that really. It seems to me to be a pretty fundamental question.

Emiliano Grossman: I work quite a bit on French constitutional change and we have had major reform recently. And I just wanted to come back to the question about what is the driving force here because that is something I don't understand when I look at Italy. I'm trying to compare the two and I have some trouble. In the French case what happened is that basically

we've had a couple of incremental changes which brought two fundamental things out of line – which is why I agreed with the comments of Mark Donovan that you can't really separate the party system from the constitutional system because they are in permanent interaction. So basically, I would like to know: is there a kind of discrepancy that has to be compensated by constitutional change that would be a potential driving force? Were the changes – the electoral reform and things like that – after the 1990-1991 crisis not enough and that basically now you are making up for what has not been accomplished by incremental change so far? So I'd like to come back to this driving force question to which I have not really heard any satisfying response yet.

Carlo Fusaro: I think we are getting confused now. I took it, from the way you introduced the panel, that you were inviting us to refer to legal, formal, constitutional change. Let's decide: I think we all agree that there has been a major, organic, change in the way that Italian democracy functions. That has changed, so let us not become bogged down in it: it becomes a theoretical thing that might be interesting to discuss but which we might approach in different ways me being a constitutional academic and you being political scientists. So the 'big bang' has occurred; but on the constitutional side of the formal text, the 'big bang' in terms of the form of government has not occurred yet.

I would not, Paul, underestimate the incremental changes we are talking about. And this comes some way to answering, or reacting to, our friend from France. An example: first of all, one of the things that a constitutional incremental reform might change is a set of majorities which the constitution requires for a set of elections for, for instance, the Constitutional Court, or even – as within the Violante project – for amendment to the Constitution. The idea is to strengthen the Constitution; to make it a little bit more rigid. Because of course, through the coup d'état, you can more easily obtain a wide majority than under a strictly proportional representation system. Whether it is a coup d'état or not – Mauro likes *parole ad effetto* at times – it is certainly, a major change. I have written ferocious articles on it because I really believe that it's utterly, not unconstitutional, but outside the 'frame' of the Italian constitution to establish an electoral law which provides two *premi di maggioranza* for two different chambers elected by two different bodies (because citizens between 18 and 25 do not vote for the Senate). You've got to be crazy to have something like that: it's absolutely absurd. It's constitutionally unsuited *perché non puoi avere due premi di maggioranza*: you can have one if you really want. I mean: we can discuss it, but it doesn't make sense to have two because you are looking for trouble. And I think that in our system we have been looking for trouble since 1948 because we established the only constitution in the world in which the poor cabinet requires two

majorities in two different chambers elected by two different people. So we need to change that – and the Violante project would change that, Paul – and it's a major change.

And finally, my last words on this: I don't regard it as a minor change. It wouldn't even be the fine-tuning of the role of the Prime Minister – not only because I want the future prime minister to be safe from a potential invading president, but because Italy always runs the risk to go the French way, which has been quite good for France probably, but I am not sure it would be good for us. It also has a symbolic significance: if we had an incremental tuning up of the form of government, then I think we could proceed and go beyond, finally, and symbolically close the transition (that is not the transition that was demanded). And it's true that people will be thinking, Mauro, about the earthquake and everything else. But I think Berlusconi will come back to that and will say, 'I have to act fast: because of the world crisis, the credit crunch and the earthquake, I cannot wait for the times,' and he will push on that.

Mauro Calise: I can see Rifondazione and Casini taking to the piazza in moments to say, 'No! Defend the Constitution!' and Dario Franceschini will be in the triangle.

Carlo Fusaro: I understand. I don't know if I am any more, but I have always been a member of the PD; so although I am on the defeated side, somehow, you see we should not... that is a partisan point of view!

Mauro Calise: You know it's not a partisan point of view. It is only to say that in order to pass a constitutional change you need an agreement with the PD!

Carlo Fusaro: No. I don't think so. This time no. And I don't think it's sound.

Mauro Calise: That's an important point you're making!

Carlo Fusaro: The next time I will talk, because I want to elaborate on that!

Daniele Albertazzi: Can we move on? We haven't exhausted this question of the driving forces of change.

Gianfranco Baldini: The problem as far as I can see – and it also picks up Jim's question about how far Italy is now a normal democracy – is that the 'B' factor is always behind this, because a driving force for having another incremental constitutional reform would be to have certain powers for the

Prime Minister independently of who takes up the job. I am referring, of course, to most of the things we've been saying: if Berlusconi were to come along and say he needed extra powers to act faster and things like that, that would depend on his personality. And the driving force for having another constitutional fine tuning would be to make the role safe, and processes work fast and effectively, without having the Berlusconi factor behind this. And this is as far as I can see that. And this brings us to the question of how far Italy is now normalised. I can see that as long as Berlusconi's there, there will be problems in terms of finding majorities behind any constitutional change; and I don't know if, Carlo, you were meaning that he will push ahead with these reforms in spite of Parliament or majorities he can find behind his proposals. I am not quite sure that he will manage to do this in these times or at least during this year. But the question of having some other reforms is linked to the fact that we need to be normalised for a longer time span independent of the people now in government. And again, the PD is in trouble because there is the second triangle of the possible alliances and because parties like the UDC, Di Pietro and Rifondazione think that constitutional reforms are not needed. Or maybe Di Pietro thinks that some reforms are needed – but these are not the ones the other parties are thinking about. So again, the situation is very difficult. But I think that some reforms are still needed in terms of incremental changes, and that some parts of the *progetto Violante* can become a matter of discussion in the future, although I don't think in the near future.

Daniele Albertazzi: Thank you. Maybe later – we've still got a little bit of time – we can move to the question of what changes *should* be made according to the panellists.

Paul Furlong: I agree with Carlo: I think we need to be clear about this distinction between formal and material, if that is the conventional one we want to use, and that there has been significant material change, but not so much of the former change. And we don't want to get bogged down in that because it'll get us into the whole question about the Second Republic and so on. I agree with Jim, if this is what Jim was saying, that Italy is not anomalous. I would merely add to that, 'if ever it was'. And that's a whole other discussion which would be very interesting; but I don't want to get involved in it now. I want to clarify the second of the questions that I just put. My first question – What's the driver? – was in a certain sense rhetorical because I don't think there is one other than the relatively short-term interests of the political parties involved. And if there's another one perhaps you could tell me what it is.

And that leads me to the heretical, provocative thoughts which lie behind the second question which I'm still puzzling with. And I'm not saying that I've got an answer to it but this is the thin ice I'm skating on.

What needs doing that requires constitutional change? And if there isn't a clear answer to that, why is so much effort expended on it? Underlying this whole debate, it seems to me, there is an as yet unclear set of assumptions and arguments about what the real weaknesses of the Italian policy process are, and I haven't heard people tell me yet what the real problems are. Therefore, why does one focus on the powers of the Prime Minister in particular. I'm suspicious of that because that sort of debate takes us into the realm of agency or super-agency, which is the 'B' factor. We're focussing far too much on the powers of an individual in a very complex policy process and I need to be convinced that the Prime Minister is constrained more by the Constitution than by politics. So, without wanting to go on at any more length about this, my conclusion might be, unless I hear arguments to the contrary, that a lot of this discussion about constitutional change is at best necessary window dressing to persuade people that the political elites are actually doing something, or it is mere displacement activity.

Mauro Calise: I fully agree with what Paul Furlong was saying. In a way we have already had the 'big bang', so this we all take for granted. So we've moved from the First to the Second Republic; and as some of you may know, in my opinion, we have also moved outside the Second Republic into a third republic. And actually what has happened, thanks to the quasi coup d'état, is that because of the system changes that have already occurred we know enough about the Second Republic: we have been writing about it; we have seen how the rules of the game have changed, the party system, the new alliances. We know very little about the Third Republic. One thing we know about the Third Republic is that in order to conquer, or keep or re-conquer power, Berlusconi will not hesitate to pass an electoral law which de facto completely changes the political actors on the ground. And what is interesting – and that is why I called it a quasi coup d'état – is that he was so brilliant in doing this by involving the opposition as part of the project. So in this sense it's perfectly legitimate. A constitutional lawyer like Carlo Fusaro could make a whole list of reasons why it should not have been passed and of course we all know those. But the law has been passed and because it has been passed by agreement I would agree with Jim Newell in this sense that it has been also very democratic. It has been incredibly democratic. I agree with what Jim is saying. You know in a way the perception of Italy has changed. There has been a normalisation and what is even more incredible is that because this major change has basically been made by agreement between the contending forces, there is no perception of this quasi coup d'état. But we are now moving in unknown waters because on one side the result for the smart parties of the left is that they have lost control of their own majority;

they have lost control of the periphery; they are in disarray. On the other side we have the centre-right camp which is working perfectly – but which will continue to do so only as long as Berlusconi's there. We know little about the laws of the Third Republic and again these are real processes of the kind that Paul was referring to: what is it that is really not working? We have entered a new set of power relationships which are very much in the making. So again there is the matter of the silent constitution which should be addressed; and you can call it material, you can call it solid, but again, the real game is going to be there, and again I agree with Paul. Much as I could underwrite the Violante proposal, I don't think they will ever venture onto that territory; and again one reason why I would be very dubious that Berlusconi will really take it up seriously in the sense of doing it in spite of the others is because he has been successful in engineering a quasi coup d'état without anyone really noticing it and now he would become embroiled with the opposition and cries of, 'He wants to change prime-ministerial power: he's a dictator!' He's so smart he would never do something like this. He will speak about it here and now, but he would never really take it up because of what you were saying (and I very much agree with the point you were making): the President of the Republic has really become so much now, whether we like it or not. And I agree with you: I don't like it. Again, Berlusconi may talk about the premier, but he wants to go there: 'upstairs'. So why make a big fuss about changing the Prime Minister and becoming the 'dictator' while he still has his own political route?

Carlo Fusaro: You just said, though, why the PD should go along with that change of the Constitution on the Prime Minister's side if they are not to be victims of a *furba*.

Mauro Calise: That's the point.

Daniele Albertazzi: Before we conclude can I ask if people in the audience would perhaps have a couple of brief comments or criticism of something that has been said?

Carl Levy: From a historical point of view there is, maybe, something anomalous about Italy I think in some ways. If we look historically at the constitution that reigned in the Kingdom of Italy and under Fascism, you see a constitution created in 1848 which exists under an elite liberal constitutional regime and then mass democracy briefly and then under Fascism. And it's the same constitution. It only ends with what we call the First Republic, so in a sense Italy has this track record. You might want to conceptualise the same thing as the way Italians do their constitutional

changes: they do major constitutional change within a text that hasn't been changed over time.

Mauro Calise: Much more American than French you may say!

Carl Levy: Yes, or even British in that way; you know: 1688 and all that!

Chris Hanretty: If anything did need to be changed I think it would be symmetric bicameralism in order to address the non-negligible possibility introduced by this electoral law that we might have different majorities in the two houses. There is nothing necessarily wrong with that: you'd just have to have some kind of super-sized coalition. But if pre-electoral identifiability of governments is something that Italians want then I think – if the public cares at all about this and they probably don't care that much – if they like this pre-electoral identifiability, then in order to deal with this possibility, perfect bicameralism would have to be one of the things that would have to change.

Duncan McDonnell: I would suggest that another *furbata* was D'Alema in the Bicamerale which legitimated the idea that we need a 'big bang' constitutional reform – that it can happen, that you can tear up the constitution – which is another example of the centre left introducing an idea which, in its arrogance, it then believes it can control the effects of, and then the effects are played out by other actors far more *furbi*.

Carlo Fusaro: To respond to Carl Levy, of course the 1848 constitution was a flexible one. It was not a rigid constitution of the modern kind. And precisely what you have noticed is what induced Italian scholars from the 1930s to develop the notion of the *costituzione materiale* – which was designed precisely to address that kind of problem of how the same single constitution could accommodate completely different regimes.

I get frustrated when subtle and prestigious friends still ask nowadays: 'Why do you want to change the powers of the Prime Minister after all?' There must be some reason why for thirty years we have been grappling with this issue. I can quote three things. One is the *ordine del giorno Franceschini* – not Fusaro and not Berlusconi – from the Chamber of Deputies on 24 March 2009 and it says: '*sollecitare un confronto maggioranza-opposizione per...una riforma della seconda parte della Costituzione che riproduca i contenuti del progetto Violante, riduzione parlamentari, trasformazione del Senato, procedimenti decisionali e forma di governo da adeguare al mutato contesto politico-istituzionale*'. I can quote Luciano Violante, April 1st 2009: '*Servono più poteri al premier*'. And I quote my true leader and friend and co-author of many books and a text book, Augusto Barbera: '*Subito più poteri al premier*:'

partiamo da qui', December 2008. So I mean let us not get back to that: Let's see how we can do it.

On the last speaker's question I will spend only thirty seconds to say: as I have been studying these things since the Bozzi Commission, where I started being involved in these kinds of matters as an aide to the leader of the caucus of the Republican Party of the time, Adolfo Battaglia, I can tell you that I have developed the persuasion that in order to bring about these kinds of changes – I am talking about the formal constitution – you need an idea; you need an institutional strategy; you need a majority behind that. And then you go and deal with the opposition: you cannot negotiate amendment by amendment, word by word, because otherwise you only get to very poor texts, very inconsistent projects: you get to muddled, meshed things that don't work, as has happened several times already. Of course a dialogue between majority and opposition is necessary, and any wise majority will try to establish this kind of dialogue. But such dialogue has to take place on the basis of a core institutional strategy, because if you don't have that, first of all you might not get any result, and if you get any result it will work very badly.

Paul Furlong: I think perhaps the area of disagreement between Carlo and me is less than Carlo might think. My question was really that of a devil's advocate. I know that this discussion has been going on for at least thirty years and actually more than that probably. And I am increasingly sceptical about the need for reform of the Prime Minister's office. I know that people keep on telling me that we need to reform the way in which the Prime Minister operates and my concern is that unless we're very clear about what the real problems are, we'll have another reform – the Craxi reforms of the 1980s did change the way in which the Prime Minister's office was supposed to work – we'll make more mistakes and we'll get it wrong again. I still haven't got clarity. Maybe it's just that I don't read enough about it or I read the wrong people and I certainly haven't read Augusto Berbera's latest offerings on this and I should do. But I still don't get the arguments. I still don't understand that this is a constitutional issue, not a political issue. And my concern is that if you don't get clear what you need to do, you'll get it wrong and you'll finish up in a worse position than you are. That was the point I was trying to make; and it follows from that, I think, that we've moved from verbal activism and practical lethargy – which is what went on for a large part of the late 1980s, right the way through the 1990s and so on – to a situation in which the debate about constitutional change is fully legitimised. So we have moved from inertia to the possibility of what seems to me to be reckless change. And that's my concern.

Gianfranco Baldini: I'll take just a few seconds since I support Carlo's points. My point is that yesterday we were saying that the centre left is not

able to cope with the trend towards presidentialisation or personalisation; and it is precisely because of that, that we would need some institutional incentives in order to have parties or coalitions able to deal with the way in which democracy in Italy works now. So, if the centre left is not able to cope with this trend towards personalisation, then these institutional incentives, this strengthening of the powers of the Prime Minister, should be aimed at exactly that: at having alternatives, a transformation of power, and leaders of the centre left who are able to remain in office, not a few months, but years: an entire legislature. And that's the meaning of these reforms that the leaders are apparently proposing without having a core structure in mind. So I completely agree with Carlo's point that Franceschini is advancing some proposals, saying that we need certain reforms, without having the party behind him. But he is doing this because he needs some legitimation. One day he talks about Berlusconi being the dictator; the other day he needs to show some openness to dialogue: that is a normal part of the dialectics of one who seeks to propose himself as a long-term leader. So my final point would be that these reforms – these small-scale reforms involving some fine-tuning of the powers of the Prime Minister – as well as the ending of perfect bicameralism, are needed if we want to have a really normalised democracy.

Mauro Calise: The discussion was very properly set on the ground of what we think will happen, not what we want; and yet our passionate friend cannot pass up a chance to simply push a case – and we very much love him for this. But still, he is caught in a trap: he says that he thinks this or that is going to be risky and that it is needed – but that's not the point! The topic of this round table was whether we believe change is going to happen, and for many reasons I think that a great majority of the panel, with one passionate exception, say 'No'. We'll see what's going to happen. Thank you very much for your hospitality.

Daniele Albertazzi: Let us thank the panellists for what has been a very interesting and thought-provoking discussion.

Edited by James L. Newell