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INNOVATION BY THE EXECUTIVE BRANCH IN THE HISTORY OF THE ITALIAN SECONDARY SCHOOL

It is well known that the two great laws concerning the Italian educational system (that is, the Casati law—1859—and the Gentile reform—1923) were promulgated by full-powers government and therefore were neither discussed nor approved by Parliament. If we exclude the Coppino law concerning obligatory schooling (1877) and the Daneo-Credaro law concerning attribution of elementary school management to the State (1911), myriads of bills were discussed without ever being approved.

This fact may be considered to lie at the base of the sometimes—expressed conviction that, in the other years these provisions, the Italian school system has remained static without having undergone changes or any form of innovation¹. This conviction may be strengthened by the fact that, of the thousands of bills discussed, almost none ever went so far as to pass into law.

On the contrary, a series of significant interventions was simply carried out by the executive branch. They concerned important aspects of school organization: school hours, examinations, regulations, teaching programs and curricula, among others. These interventions are still today subject of little study, especially as regards their significance for Italian schooling and their political significance: in particular, their relationship to executive-legislative interaction and to the role this interaction plays in government in general.

With an almost yearly cadence, unceasingly, these interventions modified the constituent elements of the identity itself of the Italian school. These interventions are carried out by the executive branch and are considered to appertain to its jurisdiction; and, generally, a proper awareness of their implication is lacking.

Without going into a juridical treatise—which I am not competent

¹ The word "innovation" in this paper will not necessarily assume a connotation of positive value.

to do—I would remind you that juridical practice and theory in liberal, post-Unity Italy interpreted the division of powers as non-exclusive; that is, each branch of government was characterized by its *prevalent* function. The constitutional foundation of the Kingdom of Italy (Statute) was based on a combination of royal with popular sovereignty. But, from the very beginning, political practice tended toward popular sovereignty as it was expressed, to a limited degree, by Parliament.

Politicians' sensitivity regarding the use and abuse of the regulating powers (*infra legem, ultra legem, contra legem*) of the executive branch grew in correspondence to this trend.

It is difficult to underestimate the role played by the executive branch in the case of the school system. According to the juridical treatises of the time, the executive branches', repeated interventions in the field of education are regarded *not* as "independent" regulations (deriving, that is, from constitutional norms), nor as regulations implicitly "delegated" by a Parliamentary law, but, rather as "executory" regulation needed to render a law applicable in practice.

The jurist Cammeo observed, in 1901, that since the Casati law (which is, however, extremely detailed, composed as it is of 360 articles) had never been modified, "regulations were issued to remedy to the conflict between written law and the needs of the country which, although their scope was to only honestly correct and complete the existing law, overtly modified it. Whence, a very great part of today's scholastic laws represents the clearest example of unconstitutional regolamentary norms".²

Simultaneously, however, he tempered this charge with full comprehension and legal justification of the habitual political practice: "We cannot ignore the fact that, given the defects of the parliamentary system in Italy and the practice of making very short laws, many provisions of 'executory' regulation must necessarily be *praeter legem*: otherwise, the laws would be not only incomplete, but quite simply impossible to put into practice". He goes on to say that, as the example of the Casati law demonstrates, more extensive laws would not have eliminated the necessity for "executory" regulations³. This affirmation is not unfounded, but it is questionable if it is to be used to justify that practice, which lasted many decades, of transforming the "executory" regulations into interventions modifying the law itself.

The problem is not an exclusively juridical one; or rather, the problem is that of the juridical aspect of a problem which principally regards society and the State.

² F. Cammeo, *Della manifestazione della volontà dello Stato nel campo del diritto amministrativo. Leggi ed ordinanze*, in: V. E. Orlando, ed., *Primo trattato completo di diritto amministrativo italiano*, Milano SEI, 1901, vol. III, p. 173.

³ *Ibid.*, 174

In the first place we have to consider the capacities and the designs of the Italian ruling class. Secondly, we must consider, also, that which intervenes between intentions and results. This last concerns problems that are inherent not only to politics, but also to the running of the parliamentary state; and problems deriving from the complexity of the management and regulation of a deliberate and institutional formative activity.

These considerations had the effect of assigning directly to the executive branch not only those interventions regarding everyday administration (which in schools is not a mere pastime), but also those interventions aimed toward modifying the existing structure. The direction of the schoolsystem thus comes into closer contact than necessary with the modification worked on the system itself by means of a series of small innovations: the borders between law and regulation become mobile. But precisely because a circular, for example, cannot, despite everything, substitute a law, the functional difficulties encountered by the liberal state (in this case represented by the incorrect executive — legislative relationship) will have the effect of maintaining inertia of the *status quo*.

Many aspects of the school system are characterized by a high viscosity: notably, in didactic practice and in the bureaucratic apparatus which serves as an interface between capillary reality and centralized power. And this gives rise to two paralysing effects. On the one hand, projects for substantial renovation have, historically, encountered the most disparate reactions from teachers and from users of the system, and have not succeeded in obtaining a social and political consensus sufficient to guarantee their realization. On the other hand, the only interventions that have been historically practicable have been represented by small adjustments, often followed by other interventions in answer to the difficulties encountered by those proceeding. Resistance to change and the absorption of innovations into consolidated practice seem to be two constant, opposing characteristics of the school system. It would seem that successive adjustments can control and at times direct the system, but not profoundly change it; while at the same time designs for general renovation remain always, and only, at the project level.

A valuation of scholastic politics will, for this reason, have to be based not only on statements of intent and on legislative acts, but also on the activity of the state organisms and of the executive branch.

This is particularly evident in the case of the liceum, which, although it is the scholastic level that has been least subject to structural changes worked by law, has been, nonetheless, subject to myriad changes of course, as the schedules, programs, examination norms, etc., modified by means of regulations and circulars, demonstrate. A faithfulness

to certain cultural and didactic approaches corresponds only apparently to a structural and functional constancy (that is, the formation of the ruling classes, but in a changing society)⁴.

The explicit debate over the school system that took place at the time of Italian Unity and immediately thereafter tended to center on institutional problems, while scarce or too-generalized attention was dedicated to cultural and formative questions within the modalities of operation of the school system itself. These modalities are predetermined by the complex of normative frameworks within which the school, the teachers, and the students act and react: certainly, they move with reference to certain specific patterns of behavior and conditions, but in any case move within a given frame of reference. The same has come about in the study of the history of the school. Instead, no history of schooling can afford to ignore this complex of important questions: not only that it may understand what the school has, in reality, been, but that it may succeed, also, in understanding how scholastic politics have developed. In this context the traditional legislative history and the new, "material" history of schooling will shed light on one another in turn.

In the forty years from 1860 to 1900, not one of the numerous bills and proposals advanced for the modification of the school system will become law; the abundant but fragmented debate will not find outlets in legislation. The legislative system remains that of Casati, and the schools' programs, schedules, and examination norms are subjected to numerous and continuous modifications: while the legislative branch wore itself out in dead-end discussions the executive branch, whose interventions became something more than simple administrative management of the school system, held the upper hand. "In more than thirty years no minister has been able to have an organic reform law for the classical school discussed and passed by Parliament: so that, when one wanted to try to remedy the situation one had to resort to stopgap measures; as it was impossible to change the law, regulations, schedules, and programs changed, and were changed again and again"⁵.

Schedules and programs are not secondary matters: their objective importance, already great due to their significance in determining the activities and the aims of the school system, actually grows as they become, in a changing reality, the instrument for an adjustment which takes the place, to some degree, of the new legislation for the structure of the schools that was still lacking.

Programs and schedules represent one of the concrete links between

⁴ D. Ragazzini, *Per una storia del liceo*, in: T. Tomasi, ed., *La scuola secondaria in Italia (1859 — 1977)*, Firenze, Vallecchi, 1978, pp. 137—245.

⁵ G. Chiarini, *La scuola classica in Italia dal 1860 ai giorni nostri*, „Nuova Antologia”, July 15, 1894, p. 256.

the formative (educational) planning of the governing group and the "molecular" work of the teachers. Despite the fact that these norms are destined for the schools themselves, we must not forget that they represent a choice with regard to both the progress of scientific-cultural debate and research and to the economic state of the country. "Which school?" comes to mean "Which type of formation for which social and economic development?"

As the efforts toward modification through ordinary parliamentary channels fail, an overt attempt to work the desired changes is made, in a number of successive, partial interventions by the executive power.

The problem of the respective roles of the executive and the legislative branches with regard to the problems of the school system will begin to be felt in the first years of the 20th century. In the first decade of the century we will find that the problem has been singled out, we find charges against its incorrect solution, and we find some attempts at a legislative regularization of the question ⁶.

The Royal Commission for Secondary Studies (1905—1909) itself observed:

It is understandable that, since Parliament's inertness in matters of reorganization of secondary instruction shows no signs of changing, many Ministers of Public Instruction, having as they do to cope with general and daily demands for school reform and with difficulties and resistance on the part of the legislative machine, have given in to the temptation to try to eliminate the causes of the school system's ills and correct its defects using the more limited means at the disposition of the executive power.

In fact this was perhaps the richest period for the production of Ministry regulations regarding the secondary schools: continuous rebuilding and modification of teaching programs, concessions or restrictions of examination norms, stricter or more easy-going norms for scholastic organization. Most Ministers hoped that these partial and limited interventions would restore the school system as a whole to health, or would at least contribute to its healing without, however, actually modifying its basic structure ⁷.

This same Commission will recall the names of Ministers Boselli, Baccelli, and Orlando for their efforts to use the executive's powers to introduce more and more ambitious elements of reform.

Minister Orlando did not present a general reform bill for the secondary schools, as had his immediate predecessors Nasi, Gallo, Baccelli, Martini and Villari. He spoke of the necessity for a "long series of remedies tried, revisions, and experiments which will both calm the pres-

⁶ On a general level, we note the attention given, in juridical research, to the problem of the law delegating the power to act on the question. For example: the Cammeo text, *op. cit.*; A. Gamberini, *I decreti per la delegazione legislativa del governo*; A. Bruniatti, *La indebita ingerenza del potere esecutivo nella legislazione*.

⁷ Ministry of Public Instruction, *Commissione Reale per l'ordinamento degli studi secondari in Italia*, Tip. Cecchini, Roma 1909, vol. I, p. 99.

sure exercised by effective needs and confer a new impulse to these last; proceeding cautiously, always, but with generosity and readiness of means and resources, toward a progressive development and toward the adaption of the old scholastic organisms to the new forms and different social conditions"⁸. He pointed out, that is, problems on two levels: that of the elaboration of a theoretical awareness of and capacity to master the problems and propose solutions to them, and that of the resistance posed by those interested parties damaged by the solutions or left unsatisfied by them. A scholastic policy which would govern the myriad tendencies within the school system, without, however, proposing an organic plan and lacking a wide consensus, could not be recapitulated and expressed in a single bill of law: "a single bill is not enough. What is necessary is a vast scholastic policy which will constantly aim toward those very different, yet related, ends to be achieved"⁹.

A propos of this theme, let us take a look at two parliamentary debates, of different importance and held in different sessions: the debate over the Public Instruction budget for 1882¹⁰ and that over a bill sponsored by Minister Orlando. This last will lead to the approbation of Law 403 of July 28, 1904, entitled *Provisions for Regulating Examination Subjects in the Secondary and Elementary Schools*¹¹.

The first, which concerns not only the past work of Minister Baccelli but the role played by the Minister and the Ministry in the management of the laws as well, treats the problem of the executive branch's use of its powers, and that of its relationship to the legislative branch, only by implication.

Silvio Spaventa condemns the behavior of Minister Baccelli in a series of cases which, in different manners, have to do with the Minister's behavior with regard to respect of the norms. He would have abolished these last without substituting others for them, or he would have ignored them completely.

Interesting, from our point of view, are their harly, but significantly, touched-upon opinions about programs. Spaventa had accused Baccelli of modifying secondary school programs without having first asked the advice of the Consiglio Superiore (High Council) of Public Instruction. This last could have been called upon, as it was the responsible counselling agency even for "general provisions for the organization of schooling". Baccelli replied, not that the opinion was, in fact, optional,

⁸ *Ibid.*, p. 145

⁹ *Ibid.*, p. 145

¹⁰ See: Parliamentary Acts, Chamber of Deputies, debates, Sessions of December 16 and 17, 1881, pages 7912—7972.

¹¹ V. E. Orlando, *La riforma della scuola classica*, "Nuova Antologia", 16 X, 1905, p. 10

but by reducing the importance of the program, considering it part of the Ministry's normal competence; that is, the exclusive province of the Ministry and as such not subject to external control. We must also consider the fact that this is not a pure and simple "theoretical formulation" of an argument for the defense; nevertheless, it is interesting that the Minister of Public Instruction himself considered this distortion a proposable argument. And, in fact, this is a practice, or at least a tendency, that often became the case.

Spaventa's position will be clearer in his last speech: here he not only recalls respect for the norms, but underlines the role of the norms as a guarantee for the administration's personnel, for the citizen, and for the Minister himself, since it is the existence of norms of conduct which defines the lawfulness of behavior. If norms of conduct, regulations, are lacking, the Minister will become the omnipotent interpreter of the laws approved by Parliament, and the dividing line between his legal and his political responsibility will disappear. The question, moreover, is much more relevant if we consider that the creation of the Ministries was based only on a principle of the Statute which authorized the King to create them. The discussion on the need for norms to govern the application of the laws regarding administration, the citizen, and the Minister will lead to discussion of the distinction between what constitutes administrative versus ministerial business.

The entire debate is somewhat less explicit than it may seem in my reporting. Above all, it hinges on the specific political case-in-point of the Minister then in office (with some reference to general institutional problems) and not, yet, on the question of the Minister's and the Executive's political employ of their powers and tools. Spaventa denounces a *personal* case, *not* a case of political technique: but the question had, actually, already become the latter. However, a greater awareness of these problems will reveal itself only in later years.

We could say that the debate of 1881 still concerns the theoretical and political definition of the regulations as a guarantee for the administrative apparatus, for the citizen, for the Minister, and even for Parliament; while the 1904 debate deals with the political, anti-Parliamentary use of the executive branch's powers and procedural tools.

The 1904 law is not a very important one; interesting, instead, are the discussions that accompanied its passage. The Minister proposing the bill, in fact, denounced the too-frequent government intervention in the modification of examination norms for the secondary schools. The bill accordingly entrusted the task of coordinating the infinite norms pertaining to secondary school examinations to the government, while providing that any modifications during the first year would be possible only if approved by a commission including parliamentarians elected

by the Chambers; in the years following, only by means of a law delegating the power to act.

The objection was raised that an arrangement of this kind annulled the distinction between the legislative and the executive branch (according to the bill the parliamentary members of the Commission were to be elected *by* Parliament instead of being chosen *from* Parliament by the Minister). And, it was asked, if examination norms really came under the government's jurisdiction, why then should it be necessary to resort to a law in order to reorganize them? The very fact that the need for a law was felt belied a significant uncertainty and embarrassment about the matter: that is, what was being asked for, in substance, was a delegating law for which no one wanted the responsibility, disguised as an act of reorganization. Even at the Ministerial level there were, in effect, doubts as to the legality of the "executory" regulations; but neither was there the courage necessary to introduce the principle of the delegating law.

It will be Parliament, in fact, with the final approval of the Minister himself, who will pass a delegating law. In presenting the bill to the Commission, Boselli, the rapporteur, will declare that "the present bill restores (n.b.) the matter of the discipline of examinations, etc., for the future, to the jurisdiction of the legislative power"¹².

But, if a comprehension of the typically juridical and political aspects of the problem emerges clearly in the debate, an understanding of the problem's origins in society and State is less evident. Of its significance with respects to the school system, only that aspect characterized by the exasperating mobility of the norms and by the insecurity deriving therefrom was grasped, while the fact that it represented a particular political technique of small, successive steps passed unobserved. It was also a control technique of the innovations and of the reactions they had given rise to: a control technique whose nature was dictated by the actual nature of the central and peripheral system, that was merely bureaucratic and unable to receive or utilize school system feed-back. Note that this technique was neither completely consciously thought out nor completely realized, but that it was to some degree effective.

A propos of this argument I have found only a rapid acknowledgement in an article by V. E. Orlando, who laments that scholastic questions are too ideological in nature to permit gathering a body of evidence to be examined before an ideological judgement is pronounced. And he adds, "Not even those research methods, which could be put into practice and whose employ by an office exercising a continuous, ordered, State surveillance on the school would be feasible, are of any

¹² Parliamentary Acts, Chamber of Deputies, documents, bills and reports, *op. cit.*, p. 6.

assistance in Italy, in that these services in our country are in no way organized or disciplined: our government (it is painful to admit) does not at all know its schools. If, then, we want to formulate some sort of exact idea of the situation, we must necessarily resort to indirect means and to logical induction"¹³.

However, the problem of knowledge and control is still an important prerequisite (not yet obtained), which must be put to use by State policy and which must inform the State structure. At the root of many of the questions touched on above there is, then, a problem of paramount importance: that State management of a social instrument as important as the school system was not easily embraced by the conception of the liberal state, more the warrantor of social functionality than an instrument for intervention. It is exactly this problem that the Fascist government, after its own fashion, will try to resolve in the scholastic field as well as in others.

¹³ V. E. Orlando, *La riforma della scuola classica*, p. 10.