

ON THE CONSTITUTIONAL ORDER IN/OF ITALIAN FASCISM

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Abstract

In this article we will analyse the fascist regime as a politico-constitutional reality. From a new way of looking at politico-constitutional phenomena, we will interpret them as inscribed on religious grounds.

We seek to show that the fascist regime was characterised as having identified the political community as Absolute. It suggests that it appears to constitute a different case in a generic politico-constitutional family of regimes that are characterised as making the political community a supreme good.

Keywords

Fascism; Constitution; Religion; Authoritarianism; Totalitarianism

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ON THE CONSTITUTIONAL ORDER IN/OF ITALIAN FASCISM¹

Pedro Velez

In this article, we examine the fascist regime as a politico-constitutional phenomenon². We will do it from a new way of looking at the politico-constitutional, a way that not only sticks to forms or institutions, or is limited only to probing a favourable or decisive socio-political occasion; or is the "capture" of a "founding" axiological materiality of low intensity ("too human", so to speak) – the certainly "real" and important moments of the constitutional. We seek to reattach the theoretical and constitutional project of the famous German constitutionalist Carl Schmitt through research on identities, parallels and cross-fertilisation between the "politico-juridical" – or, more specifically, "the politico-constitutional" – and the "religious"³.

Conjecture about "the politico-constitutional" as an axiophanic reality; from the *Summum Bonum* as an invariant of the politico-constitutional

In this study we take as a starting point a concrete hypothesis for the reading of politico-constitutional phenomena. It would also be illusory, as has been stressed by phenomenology in general, to pretend that such a thing as a pure constitutional description from a "given" can exist.

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² About fascist regime, see in the most recent national literature: António Costa Pinto *O Regime Fascista Italiano*, in Fernando Rosas and Pedro Aires Oliveira (coord.), *As Ditaduras Contemporâneas*, Colibri editions, 2006, pp. 27 to 36; Diogo Freitas do Amaral, *História do Pensamento Político Ocidental*, Almedina, Coimbra, 2011, pp. 499 ff. (*anti-communist and fascist state dictatorship*), and *Uma Introdução à Política* Bertrand Editora, Lisboa, 2014, 83-85; Jaime Nogueira Pinto, *Ideologia e Razão de Estado: uma história do poder*, Civilization Publisher, 3rd ed., Porto, 2012, chapter xi *o Fascismo: Ideologia e Conquista do Estado*). In the jus-constitutionalist doctrine, see Jorge Bacelar Gouveia, *Constitutional Law Manual - Volume I*, Almedina, Coimbra, 5th Edition, 2013, pp. 204-207 and Jorge Miranda, *Manual de Direito Constitucional - Tomo I - Preliminares - O Estado e os Sistemas Constitucionais*, 7th edition, Coimbra Editora, Coimbra, 2003, pp. 213 ff. On the judico-constitutional systems of the interwar usually categorised as "right-wing non-democratic regimes", especially Brazil's regime post-1937, see Pedro Velez, *Constituição e Transcendência: os casos dos regimes comunitários do entre-guerras*, doctoral thesis, Lisbon, FDUNL, 2013. For this politico-constitutional temporality, see: António Manuel Spain in *Os modelos jurídicos do liberalismo, do fascismo e do Estado social: Continuidades e rupturas*, in *Análise Social*, Vol. XXXVII, No. 165, 2003, pp. 1285-1302 and Diogo Freitas do Amaral *Corporativismo, Fascismos e Constituição* in Fernando Rosas, Álvaro Garrido (Coord.) *Corporativismos, Fascismos, Estado Novo*, Almedina, Coimbra, 2012, pp. 81-98.

³ Vide Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, MIT Press, Cambridge, Massachusetts/London, England, 1985 (1922/1934) and Carl Schmitt, *Political Theology II, The Myth of the Closure of any Political Theology*, Polity, Cambridge, 2008 (1970).



In the interpretation of constitutional forms of existence, we will assume that such forms are structured as identifications of something supremely/maximally valuable/normative, of a *Summum Bonum* (a supreme good); or, in more a subjectivist way, we will suppose that constitutional thought or imagination direct an axiological/normative intentionality to a *quid* taken as a supreme good. This means that we interpret the politico-constitutional phenomena ultimately as religious "choices" or "decisions", given the common belief that the "election" of a *Summum Bonum* is a characteristic of religious behaviour⁴.

The formulation of such a possibility of politico-constitutional reading has not appeared, as to its fundamental orientation, *ex nihilo*.

Re-viewing as extracting new developments of usual ways of looking at the constitutional order is the *maxime* of modes that comprise a form of public things and material-axiological realities: who says form can mean the end (and, therefore, the identification of a good)? Who says axiology can say axiophany (identification of a supreme good)⁵? It does indeed, following seminal attempts of (politico-)juridical and juridical-constitutional interpretation that seem to go in this direction⁶.

In the chalk of this possibility of reading the classic understanding of the politico-constitutional classic separates, in which political "phenomena" are precisely identified, compared and differentiated as interpretations of the Supreme Good. In the frameworks of classical philosophy, human behaviour is, in fact, generally seen as a behaviour that seeks the highest good for humans – *Summum Bonum*⁷.

The idea that individual and collective human "behaviour" always expresses an intentionality from religious order directed to a Supreme Good has been explicitly thematised in the universe of contemporary philosophy. We especially present the thought of Max Scheler and Eric Voegelin.

In Max Scheler we find a description of human action as informed by a fundamental valuation directed to a supreme good/value that is intrinsically religious⁸. In *The Political Religions* (1938/1939), but also in later writings, Eric Voegelin suggests that personal and socio-political existence – philosophico-political or theologico-political thought systems – are organised in light of something (religiously) "experienced" as highly real and valuable (*Realissimum/Summum Bonum*)⁹. These authors took up the thoughts of

⁴ On identification of a centre of axiological superlativity, separating the "sacred" from the "profane" as characteristic of religious behaviour, *vide* Mircea Eliade, *The Sacred and the Profane: The Nature of Religion*, A Harvest Book, Harcourt Brace & World, Inc., New York, 1987.

⁵ We are thinking, above all, about the theory of the «constitution in a material sense» drawn up by Costantino Mortati in *La Costituzione in Sense Materiale*, Giuffrè Editore, Milan, 1940.

⁶ *vide* Eric Voegelin, *A Natureza do Direito e outros textos jurídicos*, Portuguese version with a foreword by Adelino Maltez, Veja, Lisbon, 1998.

⁷ Varro (116 BC - 27 BC), in *De Philosophia*, would classify the various philosophical schools according to the conceptions of the Supreme Good for human beings by those conveyed - *vide* Alasdair MacIntyre, *God, Philosophy, Universities, A Selective History of the Catholic Philosophical Tradition*, Rowman & Littlefield Publishers, Inc., Lanham, Boulder, New York, 2009, p. 30. In our times, some contemporary authors have sought to recalculate the classical heritage. One can observe a revival of the idea that human worlds are like determinations of the Good (think, for example, in Leo Strauss, Alasdair MacIntyre and Charles Taylor).

⁸ Max Scheler, *On the Eternal in Man, with an Introduction by Graham McAleer* Transaction Publishers, New Brunswick, NJ, 2009.

⁹ Cf. Eric Voegelin, *The Political Religions*, in Eric Voegelin, *Collected Works, vol. 5, Modernity without Restraint: The Political Religions, the New Science of Politics, and Science, Politics, and Gnosticism*, University of Missouri Press, Columbia, MO, 2000, p. 32. See also, for example: *The New Science of Politics* in Eric Voegelin, *Collected Works, vol. 5., Modernity without Restraint...* Cit., *maxime* p. 235, 236;



Augustine, whereby human behaviour would always be informed by a love or fundamental desire directed to a certain *quid*, God or an idol¹⁰.

Note, however, that the use of the *Summum Bonum* concept does not necessarily refer here to something more than a formal existential and phenomenological "structural place" (a soft ontological dimension, if you want) – and is susceptible to obtaining different directions. Reaping inspiration elsewhere, we admit that the "politico-constitutional transcendental" Supreme Good can be differently determined in terms of "axiophanic" intensity and comprehensiveness. Therefore: the Supreme Good can or cannot be interpreted as the sole, exclusive, unlimited, unconditional source of all normativity/ values/axiological and normative authority, like an Absolute¹¹.

This form of politico-constitutional forms could eventually be erected as the substance of a form of life or a universal and civilizational order. It has been present here at the opening of this sub-hypothesis, the fact that the capacity/potential to generate a way of life, or at least a comprehensive axiology, is, often, considered a characteristic of the religious. According to Habermas, for example:

"[A]ll religion is originally a 'world view' or a 'comprehensive doctrine' in the sense that it arrogates to itself the authority to structure a way of life in its totality"¹².

J. Rawls pointed out that

"many religious and philosophical doctrines aspire to be both general and comprehensive"¹³.

Additional "paths" of the politico-constitutional

In addition to the hypothesis and conjecture that have just been substantiated, this work further explores – prolonging the fundamental analytical record that underlies such a hypothesis – certain paths where the politico-constitutional inscribes itself.

Necessary Moral Bases for Communication in a Democracy (1956), in *Collected Works*, vol. 7, *Published Essays, 1953-1965*, University of Missouri Press, Columbia, MO/London, 2000, pp. 55-57.

¹⁰ James Smith KA, *Introducing Radical Orthodoxy, Mapping the Post-Secular Theology* Baker Academic, Grand Rapids, Michigan/Paternoster Press, Milton Keynes, UK: 2004, pp. 113 to 116. S. Augustine, *Of True Religion* in JHS Burleigh (ed. and trans.) *Saint Augustine Earlier Writings*, Westminster John Knox Press, Louisville, Kentucky, 2006. On the influence of St. Augustine in Scheler and Voegelin (and the influence of Scheler on Voegelin) see William Petropoulos, *The Person as Imago Dei: Augustine and Max Scheler in Eric Voegelin's Herrschaftslehre and The Political Religions*, in "Glenn Hughes (ed.), *The Politics of the Soul: Eric Voegelin on Religious Experience*, Rowman & Littlefield, Lanham, MD, 1999, pp. 87-114.

¹¹ The idealist philosopher José Antonio de Brito could suggest that political regimes, or at least some of them, are declensions of what is seen by its founders and protagonists as an Absolute. The question of whether modernity can truly do without the Absolute "category" was put together by Hannah Arendt; see: Hannah Arendt, *Authority in the Twentieth Century*, in *The Review of Politics*, Vol. 18, No. 4, 1956, pp. 403-417 and Samuel Moyn, *Hannah Arendt on the Secular*, in *New German Critique*, Vol 35, No 3105, 2008, pp. 71-96.

¹² Jürgen Habermas, *On the Relations Between the Liberal Secular State and Religion*, in Vries Hent, *Political theologies, Public Religions in a Post-Secular World* Fordham University Press, New York, 2006, p. 259.

¹³ John Rawls, *Political Liberalism*, Columbia University Press, New York, Chichester, West Sussex, 1996: 13.



In the work of Schmitt we find the idea that the modern "construction of order" is done by lifting immanent/inner-worldly/earthly objects to "idol" status¹⁴. In this study, beyond this, we will not forget another intuition of Schmitt, according to which the modern politico-constitutional can only be understood as a place of *res mixtae* – i.e. of mixed things – like a decision ("negotiation") on the borders between modern politics and the "traditional-religious"¹⁵.

The German jurist also noted that what is usually considered the religious discourse par excellence (and in particular Christianity), as a phenomenon in the world, could not fail to have a politico-constitutional translation. In today's science of constitutional law – we think, for example, of the work of Spanish constitutionalist and political philosopher Miguel Ayuso – going beyond this intuition, Christianity, *maxime* Catholicism, has been "rediscovered" as a politico-constitutional tradition; a politico-constitutional tradition that "postulates" a transcendent axiology and normativity, previous, exterior and superior to the politico-constitutional (and more specifically the definition of an order that recognises a specific Catholic foundation and is structured as a non-monistic order respectful of "social sovereignties")¹⁶. We will consider in the analysis a *maxime* element when we ascertain nature and "measure" the intensity of "axiophanic investments" underling the politico-constitutional phenomena. Here we consider whether the politico-constitutional understanding conveyed by this tradition will qualify some of these investments.

Object and method

It is having in mind the abovementioned way of seeing the essence of the politico-constitutional, that we will *in concreto* identify and differentiate forms of political existence.

In the wake of theories of material constitution, the juridical-constitutional in the conventional sense, the juridical-constitutional instruments in one (conventionally regarded) strict sense (formal constitutions) or equivalent realities (fundamental laws, for example), as well as their genetic processes – processes of constitutionalisation, fundamental processes – forms of public things that renew will be considered as instances of fundamental "axiophanic" decisions, or more specifically, *Summa Bona* choices.

In this work, the use of historical background will be instrumental and ancillary in relation to the interpretation or the theoretical-juridical and constitutional reconstruction that we propose to undertake. The use of history will help the development of a legal method with a special teleological and theologico-political orientation, which will be dictated by this same development.

We adopt an advanced analytical framework not only because it seems the most apt method to capture the "deep structure" of the constitutional phenomena in general, but because looking at "right-wing non-democratic regimes" of the inter-war period from a form that will increase the analytical capacity available for them to come to light.

¹⁴ Carl Schmitt, *Politische Romantik*, Dunker & Humblot, Berlin, 1968, p. 23.

¹⁵ *vide* the aforementioned *Political Theology II* Cit.

¹⁶ About this politico-constitutional issue and theologico-political view, see: Miguel Ayuso, *La constitución cristiana de los Estados*, Ediciones Scire, Barcelona, 2008.



We then begin our journey through the fascist "ventennio" (its twenty years of rule) and its terminal Republican sequel.

Favourable occasion

In the post-First World War era, Italy was defined as a Nation-State, but organisationally, legally and "spiritually" it seemed incomplete.

The liberal order, an order that lacked support in a parliamentary tradition or even a true governing class, was in a process of democratisation. Under the political activation of the masses and their management (i.e. state institutions), state institutions, *maxime* the parliamentary institution, were blocked, generating a crisis of governability¹⁷. According to much of the coeval Italian publicists, the State was unable to cope with the explosion of alternative private political and power centres, centrifugal and dissolving of the social order, and Italy had become no State. The "modern state crisis", coined by the jurist Santi Romano, was a widespread expression in the inter-wars period¹⁸.

In such a scenario, a new mass movement emerges that evokes the "New State", constructed from the idea of Nation - the fascist movement¹⁹.

The fascist movement was co-opted by a part of the establishment as "a new state to sustain the State"²⁰. On 31st October 1922, the leader of the fascist movement Benito Mussolini is made President of the Council of Ministers. This was the fascist "National Revolution"²¹.

Reconstitution and hypostatisation of the State. The cancellation of social sovereignty and building an integrated/integrating mono-archival political organisation

The so-called fascist *ventennio* was increasingly seen as a "*sperimento costituzionale*"²². Following the interpretation of the architect of its fundamental matrix, the "*Guardasigilli*

¹⁷ A law of June 30, 1912 would institute an almost universal suffrage. In 1919, the electoral system would be based on a proportional representation principle.

¹⁸ View Aldo Sandulli, *Santi Romano, Orlando, Ranelletti and Donati sull' "eclissi dello Stato". Sei Scritti di inizio secolo XX*, in *Rivista di diritto pubblico trimestrale* No. 1, 2006, pp. 77-97. E. Laclau and Zac did not fail to point out social disorganisation in Italy during the 1920s in *et pour cause*. Fascism presented and established itself as embodying "the abstract principle of the social order as such" - *apud* Benjamin Arditi, *Politics on the edges of liberalism: difference, populism, revolution, agitation*, Edinburgh University Press, Edinburgh, 2007, p. 27.

¹⁹ See Emilio Gentile, *Il mito dello Stato nuovo*, Editori Laterza, Rome-Bari 1999.

²⁰ To use formulations from a contemporary description of Eric Voegelin.

²¹ Regarding the *occasio do regime fascista vide*: Alexander De Grand, *The Hunchback's Tailor Giovanni Giolitti and Liberal Italy from the Challenge of Mass Politics to the Rise of Fascism, 1882-1922*, Praeger, Westport, Connecticut / London, 2001; Marco Tarchi, *Italy: Early Crisis and Fascist Takeover*, in Dirk Berg-Schlosser and Jeremy Mitchell (eds.), *Conditions of Democracy in Europe 1919-39, Systematic Case Studies*, Palgrave Macmillan, Houndmills / London, 2000, pp. 294-320.

²² *vide* Enzo Fimiani, *Fascism and tra regime Meccanismi statutari and "costituzione materiale"* in M. Palla (dir.) *Lo Stato fascista*, La Nuova Italia-Rcs, Firenze, 2001, p. 79-176. About the institutions of the fascist "regime", *maxime* on the constitutional transformation processes that took place in the *ventennio*, *vide*: Livio Paladin, *Fascism (diritto costituzionale)*, in *Encyclopaedia del Diritto*, vol. XVI, Giuffrè Editore, Milan, 1967, pp. 887-901; S. Labriola, *la costituzione authoritarian* in S. Labriola, *Storia della Italian costituzione*, Esi, Napoli 1995, pp. 203-274; Alberto Aquarone, *L'organizzazione dello Stato totalitario*, 2nd ed., Einaudi, Torino 2002. Also, see Renzo de Felice, *Brève histoire du fascisme*, trad. Éditions Audibert, Paris, 2002; Philip Morgan, *Italian Fascism 1915-1945*, 2nd ed., Palgrave Macmillan, Houndmills / New York, 2004, chap. 3; John Pollard, *The Fascist Experience in Italy*, Routledge, London / New York 1998/2005, chaps.



[Minister of Justice] *del la Rivoluzione*" and jurist of fascism Alfredo Rocco, interpretation developed by the so-called *fascistissimi* constitutionalists (Sergio Panunzio and Carlo Costamagna), this process can be seen as an attempt to build an order that, while integrating a mono-archival organisation of the social in the political, could update the idea of State²³.

In January 1925 in parliament Mussolini announced the opening of a new politico-constitutional era. From that time, the fascist government effectively ceased to be a "normal government" and became the director-agent of a sovereign dictatorship (to use Schmittian's terminology), defining a new (formal and material) constitutionality²⁴. Most notably with the global and systematic "constitutional engineering" designed and actuated by Rocco until 1928, the contours of a new politico-constitutional order were being set.

In the first moments of constitutional transformation, a strengthening of the power that in the eyes of the chief protagonist of this transformation (Rocco) constituted the "most genuine expression of the state", of the executive branch, took place. Law No. 2263 of 24th December 1925 and Law No. 100 of 31st January 1926 strengthened the structural seat of government and its head in the governance system. With the first of these statutes, the political responsibility of the Government to Parliament ends, and a new institutional figure is created *Capo del Governo, Primo Ministro Segretario di Stato*, replacing the *Presidente del Consiglio* figure (Repealing and emptying the principles of ministerial collegiality and solidarity, with the new figure no longer being a mere *primus inter pares*). These were assigned to the determining Government powers in relation to

3 and 4. For a consultation with legal and formal instruments which established a fascist constitutional building *vide* Alberto Aquirone, *L'organizzazione dello Stato totalitario* Cit., Pp. 315 ff. ["appendice"]; also see *Italie* In B. Mirkine-Guetzévitch, *Les Constitutions de l'Europe Nouvelle avec les textes constitutionnels* Part II.^a, Librairie Delagrave, Dixième édition, Paris, 1938, pp. 371-427.

²³ Alfredo Rocco, *La trasformazione dello Stato: dallo Stato liberale allo Stato fascist*, La Voce, Rome, 1927 (the writings of Rocco, namely the relations preceding the so-called *fascistissime* laws. They were considered in fascist *pubblicistica* as canonical writings, and the source of authentic interpretation of state doctrine and the fascist constitutional law); Sergio Panunzio, *generale theory dello Stato fascist*, 2nd ed, Cedam, Padova, 1937.; Carlo Costamagna, *Storia del fascismo and Dottrina*, Editrice Torinese, Turin, 1938. *vide* Pietro Costa, *Lo 'Stato Totalitarian': un field semantic nella giuspubblicistica del Fascism*, in *Quaderni fiorentini per la storia del pensiero modern giuridico*, No. 28, Volume I, Giuffrè, Milano, 1999, pp. 61-174. In our times, here and there, it seems to be pointed out, more or less explicitly, to a characterization of the experience of the Italian fascist regime as superlative update project the idea of State - *vide* above: Marcel Gauchet, *À l'épreuve des totalitarismes, L'avènement de la démocratie III*, Bibliothèque des sciences humaines, Gallimard, Paris, 2010, pp. 348 ff. (Chapter VIII, « *Le fascisme en lui-même of quête* »); David D. Roberts, *The totalitarian experiment in twentieth-century Europe: Understanding the poverty of great politics*, Routledge, London / New York, 2006, pp.271 ff. . It is also thought in the interwar literature: *vide* Rudolf Smend, *Constitucion y Derecho Constitucional*, Centro de Estudios Constitucionales, Madrid, 1985. For a topography of views about Italian fascism, for all to see Emilio Gentile, *Qu'est-ce que le fascisme? Histoire et interpretation*, French version, Gallimard, Paris, 2004 *maxime* p. 67 ff.

²⁴ Certain legislative changes initially operated by the new fascist direction of government seemed to already announce the overcoming of forms of the liberal democratic state: The Royal Decree No. 31 of 14th January 1923 would create a military body to defend public order directly under the Chairman of the Board of the Volunteer Militia for National Security (*Milizia Voluntary per la Nazionale Sicurezza*, MVSN). By a further Decree of 4th August 1924, No. 1292, the Militia become would an integral part of the armed forces, and its members swore an oath to the king. The famous Acerbo Law, Law No. 2444 of 18th November 1923 would operate the first bottom transformation of electoral legislation, ensuring two-thirds of parliamentary seats to the list supported by 25 percent of the vote. The RDL No 3288 of 15th July 1923, published only on 8th July 1924, would restrict the freedom of the Press. Several party-based committees had been constituted in 1923 and 1924 to "work" the issue of constitutional reform. *Commissione dei Diciotto or dei Soloni* would be constituted by decree of the President of the Council of 31th January 1925, chaired by Giovanni Gentile, and was mandated to meditate and present conclusions on the subject of constitutional reform. The composition of the "mestizo" commission will not have come to fully express purely fascist constitutional reform trends, but "debugged liberal" conclusions, to use the language of the *fascistissimo* constitutionalist Carlo Costamagna. *Vide* Alberto Aquirone, *L'organizzazione dello Stato totalitario* Cit., Pp. 51 ff.



the direction of the inner life of parliamentary chambers (such as institutions failing to enjoy freedom of provision on agendas). These laws regulate with great latitude the use of normative acts issued by the executive branch, departing from the separation of powers principle²⁵. In subsequent constitutional changes, which would add to the power of the Head of Government – particularly its legal capacity to act on the composition and the internal life of the new institutions – one centre of direction would crystallise and unify the internal life of the State and its action on "society"²⁶.

It would project a complex of juridico-political institutional forms of permanent, objective and subjective "incorporation", from the socio-economic into the political; the call in the fascist semantics: "union-corporate planning". Law No. 563 of 3rd April 1926, providing discipline for labour relations, prohibiting and incriminating strikes and lockouts, creating legally recognised unions that were comprised of workers and employers – which were granted the right to conclude valid collective agreements *erga omnes* – and would structure a judiciary of work²⁷. With the executive regulation of this law – Royal Decree No. 1130 of 1st July 1926 – corporate reform would begin in a strict sense. The regulation provided for the establishment of institutional mechanisms that would connect symmetrical unions of each productive sector, terming such mechanisms as corporations. The self-named *Carta del Lavoro* of 1927 (see below) in declaration VI doctrinally enshrined the national-state character of corporations as the basis of the corporate project:

The corporations constitute the unitary organisation of the forces of production and integrally represent their interests. By virtue of this integral representation, and in view of the fact that the interests of production are the interests of the Nation, the law recognises the corporations as State organisations²⁸.

Royal Decree No. 1131 of 2nd July 1926 would create a Ministry of Corporations. Law No. 206 of 20th March 1930 structured an apex body of corporate planning, the National Council of Corporations (*Consiglio Nazionale delle corporazione*)²⁹; based on Law No. 163 of 5th February 1934, the creation of corporations would be progressively

²⁵ Although also shown to serve a *telos* of the rationalising ordering of power and its constitutional practices, the new constitutional engineering was consecrated, however, there was a clear predominance of executive power in the face of legislative power: the organisational regulations of public services can now counteract pre-existing laws, thus constituting a kind of reserve decree, antithetical in relation to the classical law of reserves; decree-laws became provisional laws, able to last for a period of two years – this time renewable for successive decrees – producing permanent effects considering that the cameras do not need to confirm such decrees.

²⁶ Also the local government would be redesigned in an eminently national-state sense, with personal organ directors of communes and provinces – *Podesta* and *Preside* – to be appointed by the government, and auxiliary collegiate bodies of a corporate base to replace the local "parliamentary" organs previously elected (Law of 4th February 1926, No. 237 and Law of 2nd June, 1927, No. 957; Law No. 2962, 27th December 1928 and Law No. 383 of 3rd March 1934).

²⁷ Enrolment in the union was optional; professional associations' existence was not ruled out; in addition to the contracts of employment, the labour share and certain special rates were mandatory for all who belong to a given category.

²⁸ Corporations were conceived as unitary organisations of productive forces and integral representatives of interests - objectives and stakeholders in the production process - from production, and as producers of mandatory standards on labour relations and the coordination of production.

²⁹ Having also predicted the existence, in the bosom of this body, from a more restricted body: The Corporatist Central Committee (*Comitato corporativo central*).



implemented, although the corporate reform had not come to be fully actuated³⁰. The corporate project would generate lively debate on fascist "public and political space" – a debate whose fault lines did not fail to reveal a shared basic assumption: the functionality of the corporate project for (objective and subjective) "production" of the political community. In the guidance of Rocco, the corporate project appeared to be understood in an "imperial", "bureaucratic" and "centralist" sense as a reconstruction technique in complex times of society, and the re-emergence of groups of a fully sovereign State that could integrate and unify, from top to bottom, the "social magma" so that the "political" coincides (or returns to coincide) with the "State", which is an imperial scheme of the political community for society itself³¹. They could also crystallise nuanced centralist guidelines in which the state – whose reconstruction, strengthening and power increase continued to be the main goal – arising from the structure of societal institutions, from whose intrinsic relatively autonomous dynamism, the state political process would receive a minimally influential impulse – from the bottom up. In the doctrinaire record of Giuseppe Bottai, one of the great architects of the Fascist State, corporatism was conceived as a means of restructuring the State and controlling social magma, but was also a scheme of self-government of the economy. Corporatism was presented as a system eminently governed by a "bottom up" logic, but a system of realities based on the community, of learning places of a civil-community form – proprietary corporations (Ugo Spirito) and large public limited companies (Volpicelli)³². A register of control by the State apparatus, *maxime* of the management centre of State life, training, internal life, and normative will of the institutions of the corporate-union, planning would prevail. The Fascist State was structured "corporately" but "society" could still express itself in terms of a minimal influence, with corporatism being intrinsically a final dimension of recognition of a certain irreducible social pluralism³³.

In another politico-constitutional transformation, the National Fascist Party (NFP) and the State would be institutionally jointed. Law No. 2693 of 9th December 1928 would

³⁰ According to Mussolini (14th November 1933): "to apply full, complete, integral and revolutionary corporatism, three conditions must occur: A single party, to allow the action of political discipline along with the action of economic discipline, which is above the interests at stake, and that is a bond that unites all in the same faith. This however is not enough. In addition to the one-party, a totalitarian State is necessary, i.e. a State that transforms and strengthens all energies, all interests, all the hopes of a people. But still this is not enough. Third, the final and most important condition: we must live an ideal period of high tension, like the one we are currently experiencing" – Benito Mussolini, *O Estado Corporativo*, Vallecchi Editore, Firenze, 1938, pp. 34-35.

³¹ In a sector of the fascist intelligentsia, there was even a project "of corporatism without corporations", an ordering scheme in which the State was conceived as an integral and supreme corporation and "corporations" as mere state bodies of magma formatting social. Toraldo M. di Francia, *Per un corporatism senza corporazione: "Lo Stato" di Carlo Costamagna*, in *Quaderni fiorentini XVIII*, Giuffrè Editore, Milan, 1989, pp. 267-327.

³² On the subject of corporatism(s) in fascism see: Gianpasquale Santomassimo, *La terza via fascista: il mito del corporatism*, Carocci editore, Rome, 2006; Lorenzo Ornaghi, *Stato and Corporazione, Storia di una dottrina nella crisi sistema politico contemporaneo*, Giuffrè Editore, Milano, 1984; Bernardo Sordi, *Corporativismo e dottrina dello stato in Italia: incidenza costituzionali e amministrative* in Aldo Mazzacane / Alessandro / Sum Michael Stolleis (eds.), *Korporativismus in den südeuropäischen Diktaturen / Il corporatism nelle dittature sudeuropee, Das Europa der Diktatur 6* Vittorio Klostermann, Frankfurt am Main, 2005, pp. 129-145; Paolo Grossi, *Scienza Italiana giuridica. Un profilo storico 1860-1950*, Giuffrè, Milano, 2000, p. 171 ff; cfr. furthermore A. Aquarone, *op. cit.*, Pp. 122 ff. vide Pietro Costa, *Lo 'Stato Totalitario': un field semantic nella giuspubblicistica del Fascism* Cit.

³³ See Sabino Cassese, *Lo Stato fascista*, Il Mulino, Bologna 2010. The desired unification of the social would be operated via *ad hoc* institutional arrangements and with the outline of the creation of a "managerial" social state. vide: S. Lupo, *Il fascismo: La politica in un regime totalitario*, Donzelli Editore, Rome Editore, 2000; Maria Sophia Quine, *Italy's Social Revolution: Charity and Welfare from Liberalism to Fascism*, Palgrave Macmillan, Houndmills/New York, 2002; Guido Melis, *Fascismo (ordinamento costituzionale)*, in *Digesto delle Discipline Pubblicistiche, vol. VI*, Reprinting, Turin, 1999 (1st ed. 1991), pp. 259-273.



erect the Grand Council of Fascism (*Gran Consiglio del Fascism*) party institution, a "supreme body that coordinates and integrates all activities of the regime", reproducing the terms in Article I³⁴. This organ, the composition and discipline of internal life directly or indirectly by the Head of Government would have to be consulted in the emanation procedure of constitutional norms. It was also invested with the power to propose to the Crown a list of three potential names of incumbents from the Head of the Government in the event of vacancy. With this latest attribution (in favour of *in fieri* fascist monarchy), the structural place of the monarchical institution in the governance system changed, reducing the possibilities of its intervention through appointment and dismissal of the Head of Government. Through Law No. 2099 of 14th December 1929 the National Fascist Party became a full institution in the State. According to this legal instrument, the NFP's statutes would have to be approved by royal decree on the proposal of the Head of Government, after hearing the opinions of the *Gran Consiglio* and the Council of Ministers; and the most important leaders of the Party should be appointed by decree through the Head of Government under the Party Secretary-General's proposal. The "*fascio littorio*" was put on par with the national emblem (12th December 1926, Decree No. 2061), and subsequently introduced in it (Decree No. 504 of 11th April 1929). Later, through Decree-Law No. 4 of 11th January 1937, the Secretary-General of the NFP would be granted the function of Secretary Minister of State³⁵. The political order was based on a new device assigned to the creation of a governing class of a national-state form, and a national community subjectivity for the members of the political community.

Classical parliamentary political representation would also be "re-institutionalised". At first, with Law No. 1019 of 17th May 1928, it was established that the Fascist Grand Council (used in the internal life of the State), based on suggestions of names submitted by the fascist unions and other associations, would select (with full decisional freedom) a list of 400 deputies that the electorate could support or reject as a whole. With Law No. 129 of 19th January 1939, the House of Representatives would become extinct through the creation of the "*Camera dei Fasci e delle Corporazioni*". Such an institution distinguished itself from liberal-democratic legal mechanisms of political representation. The new chamber would not be separated (through elections) from the traditional, individualistic and abstractly determined "people"; however, it would be separate from any organised and political public. It would bring together the Head of Government and, based on the NFP and corporate-union planning, members of the Fascist Grand Council, of the National Council of Corporations (National Advisers) and of the National Fascist Party National Council. The new institution was to work with the Government in the formation of laws, where, according to Article 2, "[the Senate and] the Camera of Fasces and Corporations collaborate with the Government in the formation of laws". The Head of Government shall appoint directly or indirectly members of this institution; it acquired the ability to affect the power to approve bills between the House and the various committees.³⁶

³⁴ Created on 15th December 1922; the first official meeting would be announced to the people of Italy on 11th January stating that the "meetings shall be convened and chaired by the Head of Government".

³⁵ In 1937 a single youth party organisation – *a Gioventu Italiana del Littorio* – also crystallises

³⁶ The issue of political representation reform was a highly debated topic in fascism (having been resistant towards the abandonment of traditional electoral principles). Within the legal doctrine of public law, the use of the concept of representation was maintained in the characterisation of the Fascist State. The concept might, however, be reformulated: for example, with the construction of the "institutional representation" (Esposito) concept in the characterisation of the Fascist State – being an institution and based on institutions – the Fascist State could not fail to be, in many respects, representative. Certain voices – Spirito and



In the final days of the regime, the politico-constitutional situation pre-announced the achievement of a fully fascist politico-constitutional order, with the "re-institutionalisation" of institutions that had thus far been less "redefined" by processes of constitutional transformation – of the Crown and Senate – or they were simply suppressed³⁷. It would be the successful implementation – or at least the perfecting – of a monarchical political organisation dedicated to "absorbing", organising and fully unifying "the social" in the political.

The fascist public orthodoxy: The Political Community as an Absolute

In addition to an overhaul of the institutions, the sovereign fascist dictatorship also sought to solemnly and codify the radical ethics. The instances manifested in a constant axiological regard addressed to the *quid* political community, interpreting it as emptying itself in the universe of the valuable, and even explicitly as an absolute.

Alfredo Rocco was one of the first to synthesize the fascist creed. The author would "immanentistically" decline a classic communal conception of the politico-community without reference to a *telos* above or a trans-political. According to Rocco, fascism would constitute a new and more perfect interpretation of the politico-corporate community. The political society would be understood as a reality for an age – a potentially encompassing unity of an infinite number of generations – with a "structure" of purposes coinciding with the ends of the human species, and so a concrete undertaking for humanity. Fascism would thus differentiate itself from other modern political phenomena – liberalism, democracy, socialism – all perceived as sharing the conception of the political society as a sum of individuals, as *quid* that lives for individuals whose ends are but the "particularistic" ends of individuals³⁸.

Giovanni Gentile would see the (better) concept of the regime in the idea of the "Ethical State" (in turn, the essence of the idea of the State):

Volpicelli – would argue, however, about the non-applicability of the concept to the State Fascist: for such voices, the distinction between society and people and State, that would presuppose representation, would make sense ("ontologically" and in the specific fascist universe). *Vide* Pietro Costa, *Lo 'Stato Totalitario': un campo semantico nella giuspubblicistica del Fascismo* Cit., Pp. 97 to 101.

³⁷ Note that the celebrated speech by Udine on 20th September 1922 (the institutions "could not be approved or disapproved *sotto la specie dell'eternità*"; fascism accepted a "*monarca sufficientemente monarca*") having put an end to the "Republican trend" that manifested itself in the generic period of fascism. In a famous private conversation with Ciano, Mussolini expressed, however, several times, the intention of eliminating the monarchy.

³⁸ Alfredo Rocco, *A doutrina política do Fascismo* (Portuguese version), in Antonio José de Brito (ed.), *Para a Compreensão do Fascismo*, Nova Arrancada, Lisbon, 1999, pp. 51-74. Behind the formulation and design of its "State doctrine" was a certain "jurist mental path"; now, for example, by finding that the construction of the State adopted by the school of German public law and by the Italian law school (the so-called legal State theory, a "jurist's" theory of the State, whose *telos* – at least in the Italian version – was to expunge the discourse of legal knowledge of political and axiological moments), conveyed an implicit idea of the strong and mono-archical State, counteracting (in the author's view) the entire individualist ideology of the French Revolution (e.g., with the concept of self-limitation of the State – such as the concepts of sovereignty and the legal personality of the State, (legal) dogma of such legal-formal approaches to State – to serve as the basis for individual rights, individual liberties left to be seen as pre-positive rights of the individual becoming represented as concessions made by the State in their interest, thus enshrining the full subordination of individual interests to collective interests and the derivation of the citizen of the State). *Vide* Paolo Ungari, *Alfredo Rocco and l'Ideology giuridica del Fascism*, Morcelliana, Brescia, reimp. 1974 (1st ed. 1963).



"[S]o the ethical State, not in the sense of a reality that made one think of a reality superimposed on the will of individuals, but that represents the very essence of the individuality of the individual, who only manifests himself as the universal will."

The fascist State – *maxime* for the corporate project overcoming abstract class divisions in a real national "like-mindedness" – would "reflect" and "express" the moral-universal moment of individuals, a moment directed to the political community, i.e. the State "*in interiore hominem*"³⁹. Hence the philosopher, finding objectivity in subjectivity (our words), had been able to sustain that

*"fascism is this affirmation of identity between genuine liberalism and the morality of the State"*⁴⁰.

The *Carta del Lavoro* (Charter of Labour) was the writing to help form public fascist ethics. In the fascist world, the Charter was not assimilated into the Declaration of the Human Rights of the French Revolution. Emanated as a political or extra-judicial document in 1927 by the *Gran Consiglio del Fascismo*, the Government would be legislatively authorised to give actuation to it (law of 18th December 1928), having finally been elevated to a source (in a technical sense) of positive law with a legal instrument on 30th January 1941 recognising to its dispositions the value of general declarations of law and governing criteria for the interpretation and application of the law; a certain sector of the doctrine even understood the Charter as belonging to the existing positive and juridical order with a real value of a constitutional act⁴¹. Article I of the Charter read:

*The Italian nation is an organism that has its ends, life and means of superior action for the individuals that compose it. It is a political and economic unit that is fully realised in the Fascist State. The production, taken as a whole, is unitary in the national point of view; its objectives are unitary and are summarised in the wellbeing of individuals and the development of national power*⁴².

A principle of the "internal finality of the State" – to use the interpretative of the Costamagna fascist constitutionalist formula – translated into the State prioritising the personal interests of the political community as a whole (maximising its power and potency), giving substance to the legal system.

³⁹ See Giovanni Gentile, *Philosophy of Fascism* (1937/1941), in Antonio José de Brito (ed.), *Para a Compreensão do Fascismo* Nova Arrancada, Lisbon, 1999 pp. 35 ff.

⁴⁰ About the continuity between fascism and liberalism according to Gentile *vide*: Augusto del Noce, *Giovanni Gentile. Per una storia della interpretazione filosofica contemporanea*, Il Mulino, Bologna, 1990, p. 393-4; cfr. Also, Richard Bellamy, *Idealism and Liberalism in an Italian 'New Liberal Theorist': Guido Ruggiero's History of European Liberalism*, in *The History Journal*, vol. 30, No. 1, 1987 P. 198.

⁴¹ Costamagna and its magazine *Lo Stato* - *vide* Toraldo M. di Francia, op. cit., P. 309.

⁴² Point II reads "work in all its intellectual, technical or manual forms, whether in organisation or execution, it is a social duty. Only this concept is under state protection".



An "official" self-interpretation – or quasi-official, from a formal-legal point of view – finally crystallised with the publication of the text *Dottrina del Fascismo* written by Mussolini and Giovanni Gentile⁴³. This text evoked and theorised about the State and the individual as Absolutes. Human action was understood as something that runs throughout political society; political society not appearing clearly ordered to a *summum bonum* meta-political:

The man of Fascism is an individual who is nation and fatherland, which is a moral law, binding together individuals and the generations into a tradition and a mission, suppressing the instinct for a life enclosed within the brief round of pleasure in order to restore within duty a higher life free from the limits of time and space; a life in which the individual, through the denial of himself, through the sacrifice of his own private interests, through death itself, realizes that completely spiritual existence in which his value as a man lies... Fascism is a religious conception in which man is seen in his immanent relationship with a superior law and with an objective Will that transcends the particular individual and raises him to conscious membership in a spiritual society... Against individualism, the Fascist conception is for the State; and it is for the individual in so far as he coincides with the State, which is the conscience and universal will of man in his historical existence... For the Fascist, everything is in the State, and nothing human or spiritual exists, much less has value, outside the State. In this sense Fascism is totalitarian, and the Fascist State, the synthesis and unity of all values, interprets, develops and gives strength to the whole life of the people⁴⁴. The "base of fascist doctrine" – to quote a paragraph from one part of the text (entitled Political and social doctrine), established by the founder of the fascist order – "is the conception of the State, of its essence, its obligations and purposes. For Fascism the State is absolute, before which individuals and groups represent the relative. Individuals and groups are conceivable only if they belong to the State"⁴⁵.

Fascism as a comprehensive doctrine and civilizational project

According to Article 147, the new fascist Civil Code, "Education and instruction shall conform to the principles of morality and the fascist national sentiment". Giovanni Gentile famously highlighted that:

One cannot be fascist in politics and not fascist... in school, not fascist in one's family, not fascist in one's work. Like a Catholic, if

⁴³ Benito Mussolini, *Doutrina do Fascismo* (Portuguese vers.), in Antonio José de Brito (ed.), *Para a Compreensão do Fascismo*, Nova Arrancada, Lisbon, 1999, pp. to 13-34.

⁴⁴ Cf. Paragraphs 2, 5 and 7 from Benito Mussolini, *Doctrine of Fascism*, cit., pp. 16, 17 and 18.

⁴⁵ Benito Mussolini, *Doctrine of Fascism*, cit., p. 27 (beginning of paragraph 10 of section the "Doctrine of Fascism" mentioned in the text).



one is a Catholic, one invests his whole life with religious sentiment... if he is truly Catholic, and has religious sense, one remember always in the highest part of one's mind to work and think and pray and meditate and feel Catholic; so too a fascist, who goes to parliament, or to the fascist house, writes in the newspapers or reads them, follows his private life or converses with others, looks to his future or thinks of his past and the past of his people, ought always to think of himself as a fascist!⁴⁶ .

The comprehensive nature of fascism does not suffer doubt. All "realities" of existence were potentially references to the City (a city to itself) – realities such as family, marriage and the "feminine" constituted potentially reconceptualisable and reconstructable realities essentially as public goods.

Illustrating the comprehensive vocation of fascism, the fascist constitutionalist Costamagna, for example, drafted a new normative general director of human sciences, with an architectural and structural place in the system of knowledge equivalent to ancient theology, a State science understood as a science of the common good of a particular community organised in the State⁴⁷.

Mussolini would mark a universal vocation to the fascist idea and fascist regime:

Today I hold that Fascism as an idea, a doctrine, a realisation, is universal; it is Italian in its particular institutions, but it is universal in the spirit, nor could it be otherwise. The spirit is universal by reason of its nature. Therefore anyone may foresee a Fascist Europe. Drawing inspiration for her institutions from the doctrine and practice of Fascism; Europe, in other words, giving a Fascist turn to the solution of problems which beset the modern State, the Twentieth Century State which is very different from the States existing before 1789, and the States formed immediately after. Today Fascism fills universal requirements; Fascism solves the threefold problem of relations between State and individual, between State and associations, between associations and organized associations⁴⁸.

During the *ventennio*, political symbols such as the "New Age", the "New Civilization" and "Young Man" were often evoked in public and political spaces, revealing the will of global reinstitution of order of human affairs⁴⁹. The fascist regime was defining itself as a carrier regime of a universalist, ethico-political ideal of a new civilization, an ideal and project centred around a new subjectivity consistent with man's identification with the political

⁴⁶ Cf. Giovanni Gentile, *Che cosa è il fascismo?* In Giovanni Gentile, *Politics and culture* Herve Cavallera A. (ed.), Vol. 2, Le Lettere, Florence, 1991, p 86, cited in Mabel Berezin, *op. cit.*, P. 51.

⁴⁷ Carlo Costamagna, *Storia del fascismo and Dottrina* cit.

⁴⁸ Benito Mussolini, *Doctrine of Fascism*, cit., p. 30, note 2 (reproducing the "year IX message to federal directories convened in Venezia Palace on 27th October 1930").

⁴⁹ Dante Germino, *Italian Fascism in the History of Political Thought*, in *Midwest Journal of Political Science*, Vol. 8, No. 2, 1964 pp. 119 ff.



community, the idea life in a civil and political context, like the alpha and omega of civilization⁵⁰. As pointed out by some, fascism was to constitute a universal ideology; hence the decoupling of Nation in the sense of community with an inherited historical structure and its own mandatory and autonomous order.

The development of Ideas of Empire and Universal *Ecumene* with a sense of life extension in the *polis* occupied the politico-constitutional imagination of the intellectual fascist stratum. Already consolidated, the fascist regime could, for example, suggested that the *telos* of the fascist project would consist of a world order based on the principle of universalisation of a regime of communitarian civility. According to A. Volpicelli, ethics - the incessant overcoming of separations and antagonisms - would be the substance and the internal norm of the Political; the human need to include men in the circle of humanity would lead to a common spiritual life and a regime of peace. The *telos* of politics would not be nationalism, but the articulation of people in an organic unit⁵¹.

Fascism and Catholicism: The Ethical State and the "transcendentist virtuality "

In a speech in 1930, Giuseppe Bottai defines Fascism as

*"a political and civil religion... the religion of Italy"*⁵².

Nevertheless, as the basis of the nationalist "idealistic" and "spiritualist" revolution, fascism claimed to be favourable to "traditional religious fact", namely the Catholic religious dimension of the Italian national tradition. The *Doctrine of Fascism* explicitly codified such an idea:

The State is not indifferent to religious phenomena in general nor does it maintain an attitude of indifference to Roman Catholicism, the special, positive religion of Italians. The State has not got a theology but it has a moral code. The Fascist State sees in religion one of the deepest of spiritual manifestations and for this reason it not only respects religion but defends and protects it. The Fascist State does not attempt, as did Robespierre at the height of the revolutionary delirium of the Convention, to set up a "god" of its own; nor does it vainly seek, as does Bolshevism, to efface God from the soul of man Fascism respects the God of ascetics, saints, and

⁵⁰ Emilio Gentile, *Qu'est-ce que le fascisme? Histoire et interpretation*, cit, p. 122.

⁵¹ Cf. David D. Roberts, *Myth, Style, Substance and the Totalitarian Dynamic in Fascist Italy*, in *Contemporary European History*, Vol. 16, No. 1, 2007, p 31, referring to Arnold Volpicelli, preface to Carl Schmitt, *principii politici*, Ed. Delio Cantimori, GC Sansoni, Florence 1935 vii. About corporatism as a universal grammar (likely to build a European and universal order) conveyed by the fascist regime, cfr. also: A. Volpicelli, *Corporazione and ordinamento internazionale*, in *Archivio of Studi Corporative*, Vol. V n °S III-IV, 1934, pp. 329-339; Luca Nogler, *Corporatiste Doctrine and the "New European Order"* In Christian Joerges / Navraj Singh Ghaleigh (dir.), *Darker Legacies of Law in Europe* Hart Publishing, Oxford, 2003, pp. 275-304.

⁵² *Apud* Emilio Gentile, *Qu'est-ce que le fascisme? Histoire et interpretation*, cit, p. 255.



*heroes, and it also respects God as conceived by the ingenuous and primitive heart of the people*⁵³.

On 9th January 1938 at the Palazzo Venezia before more than 60 bishops and 2,000 priests, the *Duce* portrayed the fascist order as based on the principle of "friendly cooperation" between the State and the Church and fascist Italy, as well as being a "stronghold of Christian civilization" and a "Catholic nation" ⁵⁴ .

With the signing on 11th February 1929 of the Lateran Treaty between Italy and the Holy See, the fascist regime co-opted Catholic Christianity as part of the order, and a time would even come when a public Christian paradigm would be adopted⁵⁵. A concordat would regulate relations between Church and State in the country. The teaching of Christian doctrine was the foundation and crowning of public instruction taught in elementary schools and secondary schools, according to agreed programmes between the State and the Catholic Church, and marital canon law was received by through ordering of the State⁵⁶. A treaty consecrated the foundation of the Vatican City State under the sovereignty of the Supreme Pontiff and the recognition by the Holy See of the Kingdom of Italy "under the dynasty of Savoy, with Rome as capital of the Italian State". Whether the Concordat or the Lateran Treaty, in the first article of each of these documents, the principle of a confessional State was reaffirmed, with the Catholic religion being the only official State religion⁵⁷ .

The fascist regime would be established, however, explicitly as an order founded on a moral basis independent of religion (the Ethical State). A "novation" of "tradition", Catholic Christianity was consciously and theoretically received as ordering content from a self-referential exterior (sovereignty), by a State which interpreted itself as *Norma Normarum*, thus repeating the original formula of the modern State.

There was another thought of the chief negotiator from the redefinition of the relationship between the State and the Church, a thought that was indeed formed early. From the words of Alfredo Rocco in 1914:

Nationalists do not believe that the State should be an instrument of the Church; they believe, instead, that the State must also assert its sovereignty in relation to the Church. Since, however, they recognise that religion and the Catholic Church are very important factors of national life, they wish to watch over Catholic interests as far as possible, always safeguarding State Sovereignty. And at this

⁵³ This is paragraph 12 of the aforementioned part of this "coding" text prepared by the *Duce* - Cfr. Benito Mussolini, *Doctrine of Fascism*, cit., p. 29.

⁵⁴ Cf. Emilio Gentile, *New idols: Catholicism in the face of Fascist totalitarianism*, in *Journal of Modern Italian Studies*, vol. 11, No. 2, 2006, p. 161.

⁵⁵ On the relations between the fascist regime, the Catholic Church and Catholicism, see: John Pollard, *Catholicism in Modern Italy, Religion, Society and, since 1861 Politics* , Routledge, London / New York, 2008, pp. 69-107; John Pollard, *The Vatican and Italian Fascism, 1929-32, A study in conflict*, Cambridge University Press, Cambridge/New York, 1985; Alice A. Kelikian, *The Church and Catholicism* , in Adrian Lyttelton, *Liberal and Fascist Italy*, Oxford University Press, Oxford/New York, 2002, p. 44-61.

⁵⁶ A Financial Agreement still made up the Church by the loss of the Papal States.

⁵⁷ The Lateran Treaty are available at: http://www.vatican.va/roman_curia/secretariat_state/archivio/documents/rc_seg-st_19290211_patti-lateranensi_it.html.



*stage of Italian life, this protection should take the form of respect for freedom of conscience of Italian Catholics, against the anti-religious persecution of anticlerical democrats. In the future, it may be possible to go further and establish an agreement with the Catholic Church, even if only tacit, by which the Catholic organisation could serve the Italian nation's expansion in the world*⁵⁸.

On 13th May 1929 at the presentation of the Lateran Pacts to the Chamber of Deputies, Mussolini thus describes the essence of the Fascist State:

*The fully fascist State proclaims in its full ethical character; it is Catholic, but it is fascist, it is above all, exclusively, essentially Fascist. Catholicism integrates it, we declare it openly, but no-one dreams of us changing the cards on the table with philosophy and metaphysical claims. It is useless to deny the moral character of the fascist State, because it embarrasses me to speak from this rostrum if I did not feel the representative of the moral and spiritual strength of the State. What would the State be if it did not have a spirit, its own morality, which is what gives strength to its laws and makes citizens obey them?*⁵⁹

Under the doctrine of the Ethical State, as a man expresses his duty in full in the political community, religion should be integrated in the space of the *polis* as an "internal" component. According to Giovanni Gentile:

The fascist State is an ethical State, since strict, complete and concrete human will cannot not be ethical. It is also a religious State. This does not mean that it is a confessional State, even if it is connected with treaties and concordats of a particular Church, as it is connected to the Italian State. The limitation that such treaties and concordats bring to the freedom of the State (that in the modern State, i.e. according to modern consciousness, cannot fail to be an absolute freedom) is a self-limitation similar to the human spirit practised to set a concrete form; similar to the one that makes the Italian not surrender their freedom when speaking, and is forced to speak a language to which he should be subject to possess a grammar. In the historical reality of the nation, Fascism felt that being religious is equivalent to being Catholic. To adapt the State to

⁵⁸ Apud Michael Burleigh, *Sacred Causes: The Clash of Religion and Politics, from the Great War to the War on Terror*, HarperCollins, New York, 2007, p. 66.

⁵⁹ This excerpt of Mussolini's speech can be seen in Benito Mussolini, *Doutrina do Fascismo*, cit., pp. 32-33, note 12. "A holy war in Italy, never; the priests never mobilise the peasants against the State"; the *Duce* would say the same thing. On Mussolini's thought on religious themes, vide Didier Musiedlak, *Religion and Political Culture in the Thought of Mussolini*, in *Totalitarian Movements and Political Religions*, Vol. 6, No. 3, 2005, pp. 395-406.



*the Italian personality, it went against the Catholic Church, ended the old labour agreement and pacified the homeland tempers and religion never ceased to keep intact and intangible their autonomy from the Church. For this reason, the right to education of the new generations that the Church, curator of souls, saved for you as a matter of their exclusive competence has been reclaimed*⁶⁰.

The position towards Catholicism was, therefore, not a subject of substantive order, but of historical accident. Being that the State was the "place" of the ethical, its ultimate character could never be called into question:

*The State contains and ensures all spiritual values, including religion; it cannot be admitted without depriving the whole principle of sovereignty, supreme power to which this should subject itself in some part from the content understood in its ethical field*⁶¹.

An atmosphere of tension between State and Church erupted at the very moment in which the concordat was signed with Mussolini to make declarations about Christianity that the pope would consider heretical and threatening to the ratification of the concordat. Later, in 1931 and 1938, concrete conflicts occurred around the issue (the monopoly issue) of the education of new generations and the limits of social action of the Catholic lay apostolate framed by the Hierarchical Church (Catholic Action).⁶² Although the explicitly intense tension had been punctual, and the said conflicts were *in extremis* and always "pragmatically" composed, the contradiction became apparent between principled fascist doctrine of the State (and its placement in relation to the Church) on the one hand, and Catholic doctrine on the other⁶³. In the encyclical *Non abbiamo bisogno* promulgated on 29th June 1931, for example, the fascist regime was represented (against the backdrop of what was seen as its attempt to "completely monopolise the young people from their young age") as "a regime based on an ideology which clearly resolves a real pagan worship of the State as "a statolatry", which is no less in contrast to the natural rights of the family that is in contradiction with the supernatural rights of the Church"⁶⁴. In a declaration issued on 18th September 1938 by Castel Gandolfo, Pius XI would state:

⁶⁰ Giovanni Gentile, *Philosophy of Fascism* Cit., P. 47.

⁶¹ Giovanni Gentile *Fascism and Coltura*, Treves, Milan, 1928, pp. 173 ff. The writings of the philosopher, because of its immanent character (religion, for example, was "resolved" or "overcome" in philosophy, defined as human-spiritual immanentism), would appear in the *Index* prepared by the Congregation of the Holy Office. Having in mind the celebration of the Concordat, Gentile defines "the *Duce* of Fascism" as "the most vigilant sentinel of the essence and of the inalienable characteristic of the modern State" – *apud* H.S. Harris, *The Social Philosophy of Giovanni Gentile*, University of Illinois Press, Urbana, 1960, p. 199.

⁶² In 1931, the government would sponsor the dissolution of the Catholic Youth Clubs (though in 1927 a political orientation in the same direction related to Catholic sports organisations had already been undertaken). In 1938, the opposition of the Catholic Action in relation to racial doctrines adopted by the Fascist Power was at play (*vide infra*). [Built by Benedict XV in 1915 from the Italian Catholic lay movement, Pius XI confirmed and universalised it, trying to secure it in the concordats celebrated during his pontificate.]

⁶³ Note also that Catholic culture has continued to fear the creation of a national Church with the subordination of Church to State.

⁶⁴ And also like a "species of religion" and the "farce of religion" irreconcilable and contrary to" Catholic doctrine and practice". The encyclical can be found at



If there is a totalitarian regime – de facto and de jure [emphasis added] – it is the Church of the regime, because man belongs entirely to the Church, and must belong to it, because man is a creature of the Lord ⁶⁵.

Regardless of whether and to what extent there has been an attempt, not without nostalgia of the "pure" unity of the "old city", to superimpose a new liturgy to daily Italy or a fascisation of Catholicism – Catholicism as a product of Romanism – , to the fascist order was indeed innate, by the same scope of its idea, the possibility or virtuality of a community ethos replacing Christianity as an existential paradigm, as grammar of the collective existence⁶⁶.

Conversely, however, perhaps it may be said, following the philosopher Augusto Del Noce, that ultimately a Christian transcendent virtuality was present in the fascist regime, a virtuality of reinterpretation of the regime by the transformation of the *modus vivendi* that came to be established with the Catholic Church in a truly normative reality – a hypothesis that would not be able to pass the act from the entry into the war alongside the National Socialist Reich. In 1938, the fascist constitutionalist Panunzio, for example, in his general theory of the Fascist State (a work that referred everything to the State) could suggest the idea, although without abandoning an idealistic perspective and without adopting (implicitly or explicitly) a Christian point of view, that the State would constitute in the fascist vision (in contrast to the Hegelian State) an axiological penultimate:

While for Mussolini, everything exists in the State; nothing outside the State; nothing against the State; but it is not true that nothing, not the political side, but the philosophical and moral other, is above the State; for Hegel, instead, nothing is above the State, for the simple reason that the State is everything and is what God himself performed in the world... It can and should be said, rather, that the fascist State belongs to the cycle of transcendental idealist philosophy, while the Hegelian State is based on immanence, from there it is God Himself... Oriented towards the transcendence is the very recent phase of the Italian idealist thought, hence the "internal" dissolution of the current idealistic position visible in the representatives of this school descendants of Gentile. The current idealism, reversing Gioberti's position, that of transcendence

http://www.vatican.va/holy_father/pius_xi/encyclicals/documents/hf_p-xi_enc_19310629_non-abbiamo-bisogno_it.html .

⁶⁵ Cf. Emilio Gentile, *New idols: Catholicism in the face of Fascist totalitarianism* Cit., P. 163. A similar concept can be found in other universes of Christian confession: vide Graeme Smith, *Christian totalitarianism*, in *Political Theology*, vol. 3 No 1, 2001 pp 32-46.

⁶⁶ The regime would erect a Fascist Mystique school in 1930 (and Julius Evola, also the Fascist universe would know their explicitly neo-pagan minority niche). The fascist regime may perhaps say what has been said about the nature of the Machiavellian theologico-political project: "[F]or one side generally supports a 'civil religion' – Christian or otherwise – that promotes a 'functionally' civic solidarity. Moreover, attempts to revive an old sanctity, producing a new *mythos* of heroes without gods" - vide John Milbank, *Theology and Social Theory: Beyond Secular Reason*, 2nd ed., Blackwell Publishing, Oxford, 2006, p. 25.



*moving towards the immanence, from God to history, today is the inverse path from the human to the divine, from History to the Idea*⁶⁷.

The historic compromise with the representative forces of Tradition, always reaffirmed *in extremis*, did not exceed, however, a level of *modus vivendi*, revealing itself as intrinsically precarious. The regime did not bring the "Christian restoration of Italian society in a Catholic sense", as desired by Pius XI in 1929.

Terminal times of the fascist experience: *mimesis* in relation to the National Socialist politico-constitutional paradigm.

So far we have been studying the so-called *ventennio*. Now a few words must be said about the last days of the fascist politico-constitutional experience, thematising the problem of whether the axiophanic constitutional paradigm that was defined suffered or trans-mutated, in particular due to the mimicry of politico-constitutional formula that crystallised in the National Socialist Reich – one formula based on the absolute elevation of a race-based political community that identified with a concrete historical person (an community-individual), as there will be occasion to prove in the next chapter.

Fascism was a juridical construction and perhaps constitutionalist in its own way. The progressive changes to the Albertino Statute – changed mainly as a "full constitution" and not so much as a set of literal linguistic statements – did not fail to observe the rules of constitutional transformation by that initially planned or the rules of constitutional transformation of every consolidated moment (formalist constitutional transformation)⁶⁸. During the *ventennio*, and for the first time in Italian constitutional history, distinction – in terms of formal identity and strength – between constitutional law and common law would be made, with a true (formal) constitutional law emerging. By Law No. 2693 of 9th December 1928 – one of the great reform laws of the *Statuto Albertino* – constitutional law acquired (*ex vi* Article 12) a formal identity as opposed to ordinary law, establishing a specially qualified procedure for its emanation. The dynamic (and meaning) of constitutional transformation and the proper political environment at the end of the regime tended to point to "political status" being defined, according to the constitutionalism of the canon, in a originally fascist written constitution, or included a fully fascist *Statuto Albertino*. The order of the Grand Fascist Council approved on 14th March 1938, after deliberation on the constitution of the House of Fasci and Corporations,

⁶⁷ Cf. Sergio Panunzio *Teoria generale dello Stato fascista*, Cit. p. 18 ff., Footnote 2, referring to the interpretations of idealism of Balbino Giuliano (Minister of Education from 1929 to 1932) and philosopher Ruggero Rinaldi.

⁶⁸ According to overwhelming legal and constitutional doctrine and the dominant representation adopted by the political class of liberalism (and fascism), *Statuto Albertino*, a Constitution that framed the "political game" since the founding of the Kingdom of Italy, was considered a flexible constitution having a formal force that was not distinct from the formal power of ordinary legislation.



*"decides whether to proceed to completion/conclusion of the constitutional reform with the updating of the Status of the Kingdom"*⁶⁹.

The constitutional law seemed to be (re)imagined as maximising state power (from the power of the Government) and integrating "society" through and into the State. Law No. 2693 of 9th December 1928 establishing a new reinforced place for formal constitutional law did not fail to reveal the its new essential allocations, so "unhidding" the deep standard guiding constitutional changes actuated by the fascist political class. In the circle of subjects now defined as constitutional, fundamental rights were not included (therefore they were not part of the positive constitutional law of the fascist Revolution), subjects related to State organisation acquired constitutional status and in the process of emanation of constitutional laws a key institution of the State Party started to intervene - the Gran Consiglio del Fascism, made a constitutional body through the above-mentioned law.

As the *fascistissimi* constitutionalists noted, the Fascist State, constituting a more perfect historical achievement and finishing the concept of State, was and should be, in the superlative, a "Legal State" (State as a "domain" governed by an order of written positive norms establishing the processes of its own change). Given the body - like any other realisation of the idea of State - as a central integrator of the political Community, the fascist State also needed like any other state political community a "formal architecture" (an order of legal rules) for organisation (given the unprecedented levels of the concentration of power, the greater complexity of its organisation and the extent of its functional allocations)⁷⁰. These authors did not fail to formulate suggestions to maximise the Juridical State dimension of the Fascist State. In addition to strengthening the power of the judiciary in general, both proposed the establishment of judicial control mechanisms of the constitutionality of laws as a way to ensure consistency in the legal system (which can be called into question by the growing pluralism of normative sources) and protect the objective "values" of the political community in constitutional law⁷¹.

With the benefit of hindsight, it can be said that the *in fieri* fascist order seemed to materialise in a centre of personal power surrounded by subordinate institutions. The end of the regime recorded the flowering of a bio-political conception of order where the

⁶⁹ Attesting to the constitutional vocation of fascism, the last days of the *ventennio* were dominated by the debate among political elites and the legal community (linked to the fascist political class) on the question of codification of the fundamental principles of fascist law in a document provided with special formal value - a hypothesis seen and felt as compensation for a politically (still) unfeasible constitutionalisation (complete and true). Furthermore, in this debate, the famous and paradigmatic *Carta del Lavoro* (a document declaring large fascist material principles of ordering the coexistence in the *Polis*) would be explicitly made, by legislative process (Decree of 30th January 1941), legally binding.

⁷⁰ According to what Costamagna detailed, "the comprehensive and totalitarian nature" of the "*Nuovo Stato*" postulated a legal order (a formal normative order), quantitatively and qualitatively more legal, because it was more complete and more intense (relative to typical state orders). Such an order would tend to be omni-comprehensive (that would be a more concrete and complete normative order - with the existence of systemic responses for the regulatory issues that fit within the potential regulative system - only in the abstract could it be singled out as an intrinsic property of any law). In that order, formal mandatory regulations issued by power would multiply and the legislative activity would follow superlatively a principle of specialisation (due to distribution and tiering inherent to the task of building a new political power incorporating the "society"). In addition, in the new constitutional ecology the idea of duty of obedience to positive law would be restored (in the context of the power promoted action of ideological integration and as a result of the reconstruction of the State). *Vide* - Carlo Costamagna, *Storia...*, op. cit., p. 163-165 and 323. Cf. Also Sergio Panunzio, *Teoria...*, op.cit. P. 49.

⁷¹ *Vide* L. Paladin, op. cit., P. 900.



influence of German ideas of the *Führerstaat* could be felt. Within the legal community, at the end of the regime, certain representative legal operators tended to "describe" the powers of central management of State life – of Benito Mussolini – in not particularly legal-rational terms, as powers not strictly internal to a legal and formal order. From Law No. 129 of 19th January 1939 – the normative provisions in which the Head of Government appeared designated as the *Duce del Fascism* – power would draw normative support for the idea that the "deputies" were linked to demonstrations of the "extra-juridical and formal" will of Benito Mussolini⁷².

Over the time of the *ventennio* one quintessentially "mono-archival" State crystallises, but it was not exactly similar to the constitutional German doctrine of the *Führerstaat*. Unlike its success in Hitler Germany, the constitutional was not, however, identified with a concrete historical person⁷³. In legal doctrine, the *Duce* symbol referred to the exceptional role of the constituent taken by Mussolini – a constituent of an eminently formal legal order – and was a figure set up as an institution provisionally occupied by a historically exceptional incumbent. In the words of Carlo Costamagna:

The problem of the "Leader" is the most delicate of all the problems posed by the organisation of the New State. We should not confuse it with the problem of Duce, i.e. the founder of the regime, nor let itself be confused by the fact that the New State, born from revolution still in progress, is updated yet in a constituent process that implies the dictatorship of that man of exception, through which the story has fulfilled its task: the creation of the new order. And, in fact, once the reasons for dictatorship disappeared, so the reasons for unity left too. If the new State is obliged to become a way of being permanent, i.e. a way of life, it cannot, given its hierarchical structure, dismiss the function of chief; even the latter does not have the extraordinary proportions from that which promoted the revolution (1938)⁷⁴.

On the other hand, in the ending times of the *ventennio*, the politico-constitutional existence begins to be constructed according to a racial idea. A resolution of the Grand Fascist Council on 6th October 1938 proclaiming a "*carta della razza*" would constitute the starting point. Next would be the emanation of a racial legislation that deviate totally and definitively from the liberal idea of equality in the *Statuto Albertino*. Specific prohibitions

⁷² Armando Jamalio, L. "*interpretazione authenticates" del Duce*, in *Rivista di Diritto Pubblico. La Giustizia amministrativa* Part I, No. 22, 1939 pp. 302-325.

⁷³ Despite the disclosure of the maximum known as "Mussolini is always right" (*vide* paragraph VIII of the Decalogue of Militiaman Fascist; in paragraph X of this book read "One thing is to be above all else to you: the life of the *Duce*"). One might argue that the *ventennio* tended to crystallise an autonomous myth about Mussolini beyond the fascist idea, an emerging "*bottom-up*" myth of popular Messianic "creation" that was not fascist.

⁷⁴ Carlo Costamagna, *Storia...*, *op. cit.*, P. 419. The leading position of fascism first appeared formally enshrined in the Statute of the Fascist Party in 1926: according to its 1st Rule: "The hierarchies of the NFP are: 1. the *Duce* ..." Law No. 240 of 2nd April 1938 underlined in a particularly symbolic form the centrality of the *Duce* figure in the order *in fieri*: The dignity of Marshal of the Empire would be granted by it, in accordance with article 2, on an equal footing to "S.M. the Emperor and King and Benito Mussolini, *Duce* of Fascism".



were imposed on "citizens" of the "Jewish race", squashing their legal capacity⁷⁵. Then the marriage celebrations between a "pure" Italian citizen and a person belonging to another race came prohibited (Royal Decree No. 1728 of 17th November 1938). Additionally, in exemption to the concordat regime, the celebration of Catholic marriages would not receive civil effects and were not transcribed. Marriage between an Italian citizen and a foreign national – who is subject to authorisation by the Minister of the Interior – was forbidden along with civil servants, the military, the NFP, as well as any other administration. Despite the legislative use of categories like the Aryan and Jewish race⁷⁶, a forum for debate would also open up about the meaning and scope of racism, specifically regarding Italian cultural and its spiritual or "blood". Underlying this specific line of final politico-constitutional transformation – at least in terms of Mussolini's strategy – was the development and declination of new *mythos* of national mobilisation, from *mythos* of an elevated self-image (from the consciousness) of the Italian national⁷⁷. The terminal times of the *ventennio* would indeed be marked by a moment of intensification of production of a communal subjectivity, when it was part and parcel of the famous anti-bourgeois campaign⁷⁸.

In any case, the declination of a racial idea, notwithstanding the previous shiver and famous Mussolinian proclamations of "sovereign contempt" for "certain doctrines coming from beyond the Alps", can be interpreted as proving the intuition of the German constitutionalist H. Heller, according to which fascist politico-constitutional grammar is characterised by the absence of "static dogmatic values" (impossible to secure without an principled anchor in Catholicism; the concentration of value in the political community considered in and of itself and disconnected from a transcendent and unmodifiable standard, could not but lead to the granting to political power of an unconditional ordering freedom)⁷⁹.

The Italian Social Republic (Saló)

Apart from the *ventennio*, Italian fascism still would know another politico-constitutional incarnation: the so-called Italian Social Republic. Before we close this first chapter on the fascist "constitutional", it is appropriate to consider the Saló Republic in order to ascertain

⁷⁵ For example, no longer would they be able to be custodians or guardians of minors or disabled people who were not Jewish; to be proprietors or exercise management companies declared of interest to the nation's defence, or that had more than one hundred employees; be owners of land exceeding a certain value; have domestic citizens of the Aryan race as employees; attend school in any order and degree (textbooks whose authors were Jewish were also banned). They would be excluded from the armed forces, public administration, the exercise of activities related to representations, trading in antiquities and art, the printing industry, street trading; they were also prevented from publishing obituaries and entering names in the phone book. Specific limits were established for their university tests. The possibility of revoking citizenship granted to them after 1st January 1919 was admitted. In the context of Italian involvement in the Second World War, from 1940, several provisions of the government would establish internment measures for the expulsion of foreign Jews object.

⁷⁶ Under the R.D.L. of 5th September 1938, No. 1390, people with Jewish parents were considered Jewish along with those who professed to be part of the religion. Subsequently, the R.D.L. No. 1728, 1938, would consider people Jewish if they were born from couples of mixed religions along with those belonging to the Jewish religion on 1st October 1938. For this dimension of "constitutional fascist revolution" see S. Labriola, *la costituzione autoritaria* Cit., pp. 269-271.

⁷⁷ Aaron Gillette, *Racial Theories in Fascist Italy*, Routledge, London/New York, 2002.

⁷⁸ The context in which they signed up included *mores* (abandonment of treatment in the second person plural) and military-choreography (adoption of the Roman step) changes. Other changes were made to the emanation of a new NFP status, a reordering of the youth organisation and education reform drafted by Giuseppe Bottai (with the new *Carta della Scuola* of 1939).

⁷⁹ Vide Hermann Heller, *Europa y el Fascism*, vers. Castilian Editorial España, Madrid, 1931.



to what extent it introduced continuity in relation to the constitutional-axiophanic patterns we emphasised before.

On 29th September 1943, "the operation of the new republican fascist State has been initiated" (quoting the exact terms of an official communication of the day). Until its final constitutional form was approved in a 'Constituent', the *Duce* would assume "the chief functions of the new republican Fascist State"⁸⁰. The fascist project should now take on a new concrete form – a "National State of work" – but a fundamental axiophanic decision by an integral and integrating (mono-archy) State continued to be at stake⁸¹. A look at the constitutional project entitled the "Constitution of the Italian Social Republic", the document destined to become the Constitution of the new Republic (but that did not come into force) reveals it⁸².

The first two articles "recounted" the fascist idea of political community (a political community taken as monistic and absorbent, and an end in itself). According to Article 1:

[T]he Italian nation is a political and economic organism in which its strain of civilian, religious, linguistic, legal, ethical and cultural characteristics are fully realised. It has life, will and superior ends in power and durability to individuals, isolated or grouped, that at any time are part of it.

Art. 2 specified:

*[T]he Italian State is a social Republic. It is the full legal organisation of the nation. The Italian Social Republic has as its supreme purpose: the conquest and preservation of Italian freedom in the world, as it unfolds and develops all of its powers and performs in the international consortium, founded on justice, the civil mission entrusted by God, marked by 27 centuries of its history and living in the national consciousness of the well-being of working people, through their moral and intellectual elevation, increasing the country's wealth and its equitable distribution, due to the income of each of the national community*⁸³.

⁸⁰ About the Republic of Salò, see: Giorgio Bocca, *La Repubblica di Mussolini* Oscar Storia Mondadori, Milano 1994 reimp. 2009 pp 211-213; 155-170 and Guglielmo Negri, *Il Quadro Costituzionale, Tempi and Istituti della Libertà*, Seconda edizione, Giuffrè, 1995, pp. 66 ff.

⁸¹ To use the expression - "*Stato nazionale del lavoro*" - from the post-fascist Italian Social Movement.

⁸² This project can be viewed in G. Negri and S. Simoni, *Le Costituzioni inattuato*, Editore Colombo, Rome 1990. The manifesto, adopted by the first national congress of the Fascist Republican Party held in Castelveccchio in Verona (the famous Verona Manifesto 17th November 1943), also contained indications of constitutional politics.

⁸³ The so-called Manifesto of Verona states – paragraph 9 – that the "base of the Social Republic and its main object is manual, technical and intellectual work in all its manifestations". "Profit-sharing by workers" was suggested in paragraph 6. Subsequently, Decree No. 375 of 12th February 1944 would give concrete steps towards the socialisation of enterprises.



In it, a declaration of rights and duties (Articles 89-101) was consecrated in which individual rights were paradoxically given a genetic matrix, bidding an "objective" national teleology. In fact, in the terms of Article 93:

*Civil and political rights are granted to all citizens. All subjective rights, public and private, involve the exercise of duty in accordance with the national purpose from which they were granted. In this respect the State guarantees and protects the exercise*⁸⁴.

Not missing the repetition of the "ingredient" of the religion and State: under Article 6

*"the apostolic Roman Catholic religion is the only religion of the Italian Social Republic"*⁸⁵.

The political order was now directly and immediately constructed from the figure of the *Duce*, but in terms of its institutionalisation. The *Duce* institution was configured as the central director of the State (*vide* Articles. 35 and SS), keeping, however, an organic pluralism in the structuring of the powers and functions of the State. The *Duce* would exercise executive power directly and through government (which was an autonomous body, but with the Ministers and the Head of Government being appointed by it (*vide* Articles 45 and 49-56)). The legislature power would exercise it in collaboration with a "Chamber of Labour Representatives" (*Camera dei Rappresentanti del Lavoro*), elected through universal suffrage and representing working people (*vide* Articles 17-34); and also with the Government – Article 40 ⁸⁶. Interestingly, the "symbolic" power of the constitutionally consecrated *Duce* even included the power to grant titles of nobility (Article 48), which seems unique from the point of view of constitutional history. The existence of a Constituent Assembly was also envisaged, defined as the representative of the "living forces of the Nation", and built as an expression of state institutions and societal organisations recognised by the State. This Assembly would elect the *Duce* every seven years (the *Duce* could only be re-elected once – this was an express will of Mussolini, it seems), change constitutional law and pronounce on great issues of national interest at the request of *Duce* or (by a two-thirds majority) the House of Representatives (Articles 14-16).

⁸⁴ Point 10 of the Verona Manifesto read: "private property, the fruits of labour, individual savings and the integration of the human personality are guaranteed by the State. It should not become a physical and moral disintegration of the personality of other men through labour exploitation".

⁸⁵ In accordance with Articles 7 and 8 other religions were allowed, since they do not observe principles and rites contrary to "public order and morality"; public worship would be allowed, except limitations and responsibilities established by law. The Manifesto of Verona stated that the "religion of the Republic is the Roman Catholic. Any other worship that does not contrast with the law is respected".

⁸⁶ It is responsible for the power to appoint judges, and the law to organise judicial organisation (*giurisdizione*) – *vide* art. 61 ff.



Conclusions

Interwar regimes usually classified as "right-wing and non-democratic" stand out on the map of modern politics, more precisely on the map of major politico-constitutional (and religious) forms, by their identification of the political community, considered in and of itself, as the supreme good. In all these regimes the political community enjoyed the founding and ordering status of eminent good, though not in all, however, was an absolute good constructed (think, for example, in certain "authoritarian constitutionalisms" still carrying an ingredient of liberal "political metaphysics"), and some politico-constitutional orders were structured or limited by reference to a Christian-Catholic rule beyond the political (the so-called Austrian State or the second Francoism, for example)⁸⁷.

The fascist regime can be said to have raised the political community to a true *absolutum*, having been considered as something unconditionally valuable and an omnicomprehensive ordering reference. As seen before, the process of fundamental (re)institutionalisation of the fascist regime defined and followed an eminently national-state idea; moreover, it built a public orthodoxy in which the State figured as an absolute principle; in the field of negotiations between the political and the (traditional) religious – vital for the crystallisation of the regime – the self-referentiality of the fascist principology, its *ultima ratio* character became clear⁸⁸. It was as if the theme that was behind the new constitutional experiences of the interwar period had been stated here, nakedly, as the absolute and sole rector.

Given its universal-civilizational character, it is possible to speculate whether Italian fascism would have not built, at least virtually or vocationally, one of the new grammars of the collective existence of a more or less pure type that tended to crystallise in modernity, one of the projects of

*"new consensus on the good to replace the medieval consensus on the good"*⁸⁹.

⁸⁷ On this see also, in addition to our doctoral dissertation (Pedro Velez, *Constitution and Transcendence: the case of community regimes of the interwar period*), Pedro Velez, *On the modern secular-religious City: theologico-political mapping and prospective*, in *Foreign affairs*, No. 18, 2010, pp. 217-238 - http://idi.mne.pt/images/rev_ne/2010_12_n_18.pdf .

⁸⁸ Here and there, one seems to point, more or less explicitly, to a characterisation of the essence of the Italian fascist regime as a superlative updating the project of the idea of State - vide above: Marcel Gauchet, *À l'épreuve des totalitarismes...* Cit., Pp. 348 ff. (Chapter VIII, «Le fascisme en lui-même of quête»); David D. Roberts, *The totalitarian experiment in twentieth-century Europe*, op. cit., pp. 271 ff. Also in the interwar literature: vide Rudolf Smend, *Constitucion y Derecho Constitucional*, Centro de Estudios Constitucionales, Madrid, 1985. For a topography of views about Italian fascism, see Emilio Gentile, *Qu'est-ce que le fascisme? Histoire et interpretation*, French version, Gallimard, Paris, 2004 maxime p. 67 ff.

⁸⁹ In order to use expressions and intuitions from William T. Cavanaugh in *Killing For The Telephone Company: Why The Nation-State Is Not The Keeper Of The Common Good*, in *Modern Theology*, vol. 20, No. 2, 2004, p. 418, note 59.