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Sabino Cassese,

Lo Stato fascista,
Il Mulino, Bologna, 2010

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S. Cassese, **Lo Stato fascista**,
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This book is the sophisticated result of the two-year course on *The Fascist State* held by the author at Scuola Normale Superiore (Pisa, Italy) throughout 2009 and 2010. It is a thought-provoking reading of the history of Italian Fascism, its institutions and legislation, its complex and ambiguous relation with the previous liberal and subsequent republican institutional design. Most importantly, it constitutes a rarely accurate attempt to grasp the essence of the 'Fascist experiment' far beyond the ideological interpretations that have until now been provided by scholars belonging to different political and academic trends.

Since the very first pages Cassese points out his main thesis: in order to understand the exact institutional nature of Fascism, one should read it as a 'self-representation' rather than as a political regime. It aimed specifically at providing a performance more than political representation, as Giuseppe Bottai, Minister of Corporations and National Education, stated in 1949.¹ This hermeneutical premise leads in turn Cassese to deconstruct the idea, still widely spread among contemporary scholars and historians, that Fascism represented a watershed between the liberal, pre-Fascist State and the republican, post-Fascist one. A critical revision of the historiographical myth of «Fascist totalitarianism» is urgently needed nowadays, if Fascism, as an extraordinary mixture of authoritarian and liberal institutional and legislative features, has to be analyzed *sine ira ac studio*. Identifying such features and trying to explain how they came together and got so perfectly intertwined is the twofold mission the author pursues in this book.

The volume is comprised of two main parts, respectively devoted to the question «What kind of State was the Fascist State?» and to the relationship between Fascist corporatism and the first crisis of State unity (after the one which will emerge in the aftermath of the WW II in the context of the developing globalized world). With regard to the latter, the author also touches on the

* The Italian version of this book review was published in *Jura Gentium*, VII (2011), 1.

¹ «Il regime, che non volle essere rappresentativo, si fermò alla rappresentazione. Fu sempre meno un regime, per divenire sempre più una regia»: G. Bottai, *Vent'anni e un giorno*, Garzanti, Milano 1949 (quoted in Cassese, *Lo Stato fascista*, p. 13).

progressive evolution of mass parties and on the affirmation of the so-called «multi-class State», as portrayed by Massimo Severo Giannini.²

Throughout the first two chapters of the first part Cassese highlights a macroscopic paradox emerging from both the theoretical self-representation Fascism provided and the subsequent analysis of its institutional nature. Quite apart from its proclaimed totalitarian soul, Fascism was deeply rooted in the liberal tradition that developed in the aftermath of Italian Risorgimento. This is proved by the fact that some Fascist institutional settings survived for a long time even after the collapse of the Regime. If the goal is to understand «how Fascist was the Fascist State» – quoting Guido Melis' provocative question³ – the legislative strategy adopted in those two decades has to be carefully examined. Read through such lenses, Fascism reveals its highly sophisticated strategy, insomuch as it brought successfully together compound normative materials. The brilliant result Cassese achieves is the (re)discovery of the continuity, often ignored by historians, in the threefold evolution of the Italian State, from the liberal-authoritarian one (1861-1922) to the Republican one (from 1946 onwards) running through the twenty years of Fascism.

As Cassese recalls, two thirds of the norms collected in a 1954 administrative law code date back to the Fascist regime; a significant portion of the normative settings in the inter-war period consists of pre-Fascist norms, so that their codification becomes a progressive and institutionalized transition from the liberal to the republican framework. This is exactly what Cassese refers to when he talks about «the long duration of political institutions in the 1930s».⁴

In particular, Fascist legislation integrated the previous one, yet without replacing it; it strategically developed its authoritarian features and, in some cases, revived post-unitary institutions: for example, the limits to the freedom of association referred to the registration of mutual assistance societies that was required in 1886 in order to achieve legal status. From such a perspective it is noteworthy, according to Cassese, that Alfredo Rocco himself – the legal mind of Fascism and Minister of Justice from 1925 to 1932 – when presenting the State defense laws to the Parliament, highlighted their continuity with previous legislation. He also pointed out at the homogeneity of the Fascist regime with most of the European legislations of the time. For this reason, Cassese writes that the pre-Fascism institutional framework, far from being purely liberal, had «an authoritarian structure restrained by liberal bodies».⁵ The attempt to erase the previous

² M.S. Giannini, *Il pubblico potere. Stati e amministrazioni pubbliche*, il Mulino, Bologna 1986, p. 69. On this matter, see also S. Cassese, *Lo «Stato pluriclasse» in Massimo Severo Giannini*, in AA.VV., *L'unità del diritto. Massimo Severo Giannini e la teoria giuridica*, il Mulino, Bologna 1994, pp. 11-50.

³ G. Melis, *Le istituzioni italiane negli anni Trenta*, in Id. (ed. by), *Lo Stato negli anni Trenta. Istituzioni e regimi fascisti in Europa*, il Mulino, Bologna 2008, pp. 96 ff.

⁴ See specifically Cassese, *Lo Stato fascista*, pp. 23-24.

⁵ Cassese, *Lo Stato fascista*, p. 15.

«faint liberal features» and exploit the ‘black holes’ already weakening the legislative architecture developed from the 1860s up to the 1920s was the key of the successful political and institutional strategy pursued by Fascism. The institutional continuity – clearly reflected in the double function (consultative and jurisdictional) of the Administrative Supreme Court (*Consiglio di Stato*) – was accompanied by a parallel continuity, that of the technical and political personnel. The careers of Alberto De Stefani, Alfredo Rocco and Alfredo Beneduce (author of the great economic reform in the aftermath of the 1929 world financial crisis) become explicit examples of such a connection between the liberal and authoritarian façades of Italian State theory and history.

Cassese turns then to the analysis of Fascist legislative action and highlights its priority areas: press, political associations and Unions, local and national elections, government and head of government’s powers, loyalty of public functionaries, local political autonomy. Within this macroscopic framework, the author distinguishes two different levels: on one side, the legislation aimed at reducing freedom, de-potentiating democracy and centralizing political power; on the other, a wider, *Rationalisierung*-oriented kind of legislation, characterized by strong authoritarian features but never labelable as Fascist. These two constantly intertwined sides of the Fascist legislation neatly show the aforementioned continuity with the previous institutional dimension: the mastermind of the ‘negative’ legislative action of the Regime until 1932 was Alfredo Rocco (as Chairman of the Chamber, Undersecretary of Finance and Minister of Justice), whereas the ‘positive’ one was conceived and directed, until 1925, by Alberto De Stefani.

As for the strategies through which the concentration of political power within the State-government was pursued, Cassese highlights three main phases: firstly, the progressive colonization of the State by the Fascist movement through legal means (1922-1925); secondly, the ‘Statalisation’ of the Fascist movement mainly through the equalization between party-related and public offices within the ‘Great Council of Fascism’ and the assignment of ministerial powers to the Secretary of the National Fascist Party; finally, the invasion of civil society by the ‘Fascistised’ State through both the suppression of the voting right and the systematic replacement of electoral representative bodies with organic ones.

In addition to the concentration of powers, Cassese pinpoints two other key-features of the ‘material Constitution’ of the Fascist State: the institutionalised pluralisation and personalisation of power. These are undoubtedly the most fascinating pages of this fine research. The tendency of the Regime towards a pluralised configuration of political power emerges, in Cassese’s opinion, from the recurring ‘class conflicts’ occurring within guilds; the doubling of the State dimension through

the creation of special bodies⁶; the process of establishment of new public bodies (the so-called ‘entification’, *entificazione*) and the emerging «parallel administrations». However, the pluralisation of power and the maintenance of State unity ran one next to the other and coexisted harmoniously within the Fascist order, as Bottai himself pointed out in his speech to the Senate of 15 March 1930. Fascist institutions were characterized by a distribution of competences, not of interests or purposes. As Bottai put it: «Questioning, nowadays, the relation between the Council and the Parliament and perceiving the possibility of eventual interferences or contrasts means to keep nourishing a demoliberal conception of the State: that is, an inorganic State, in which institutions are detached one from the other and have no cohesion nor coordination».⁷ Hence, as the author underlines, the paradox of the Fascist State: monolithic and pluralised at the same time, it aimed at preserving the open circle between State and society to create consent but also at containing the physiological breakaway tendencies, by way of an increasing array of check systems and the unchallenged unity of political leadership.

With regard to this last point – the institutionalised personalisation of power – Fascist pursued a precise and successful strategy: it never allowed personalised power to exist outside the domain of law (as it usually happens within Caesaristic forms of government) nor it built this very peculiar, yet fragile, kind of power upon a charismatic leadership only. Quite the contrary, the personalisation of power was institutionalised in 1925: a specific law definitely spared ‘the Head of Government – Fascist Duce’ from the parliamentary sanction of the vote of no confidence and subjected him only to the royal authority of annulment. Ministers themselves, often holding a plurality of offices, were nominated by Mussolini and represented nothing more than the executors of his personal will; the accumulation of offices and the frequent change of personnel turnover, together with the combined action of the Duce’s Private Secretary and the Council Presidency Departments, became the main *instrumenta regni* in the hands of the Fascist leader.

The analysis of the institutional and legislative action of the Fascist State in the first half of the book follows the Arendtian path, in that it deconstructs the heuristic category of (imperfect) ‘totalitarianism’ that historians, beginning with Giovanni Amendola in 1923, have typically used to interpret the essence of the Regime. Since 1985 Emilio Gentile has proposed again the definition of

⁶ Next to the Police the Fascist regime created the Voluntary Troops for National Security and the Special Service of Political Investigation; next to the legal system, there was the Special Tribunal for State Security; within the legal system, the Labor Judiciary. On this very last point, suffice it to recall the excellent contributions by G. Neppi Modona, *La magistratura e il fascismo*, in ‘Politica del diritto’, 1972, pp. 563 ff.; Id., *Diritto e giustizia penale nel period fascista*, in L. Lacché, C. Latini, P. Marchetti e M. Meccarelli (eds.), *Penale, Giustizia, Potere. Metodi, Ricerche, Storiografie. Per ricordare Mario Sbriccoli*, Università di Macerata, Macerata 2007, pp. 341-378.

⁷ Cassese, *Lo Stato fascista*, p. 19, n. 17 (my translation).

Fascism as a «totalitarian experiment» or, better, as a «totalitarian Caesarism».⁸ Such an interpretation, recently supported by Dormagen's research on the Fascist State and para-State administrative personnel,⁹ has been adversed by Guido Melis,¹⁰ who has called for a more precise and careful understanding of the normative materials assembled during the twenty years of Fascism. Cassese undoubtedly agrees with the latter. He stresses the heterogeneous nature of the Fascist institutions throughout the 1930s and recalls the fact that Fascism never had a systematized 'theory' as such (contrary to what Fascist main political actors often declared). It brought together the liberal-Hegelian suggestions coming from Giovanni Gentile and the national-statist ideas of Alfredo Rocco. Moreover, Fascism had many different souls (popular-demagogic, authoritarian, totalitarian) within itself: this is the reason why, rather than a Fascist State, historians should more properly refer to the constellation of Fascist States. Cassese suggests to distinguish between a first phase (1922-1925), in which a severance occurred with the pre-existing statutory legalism, after the adoption of the State defense laws and the so-called «leggi fascistissime», and a second, more mature phase (1930-1943), in which the State developed towards corporatism, specific policies were launched in reaction to the world economic crisis and the racial laws were passed.

This is also the reason why the organic State was weak and powerful at the same time: its legislative and institutional action focused on a restricted number of issues (with a special emphasis on civil society and the State-person) and potentiated the authoritarian features of the previous legal framework. It strengthened State influence on civil society while calling for the former to be socially accountable to the latter. As Mussolini himself put it, Fascism eliminated 'electionalism', but disseminated the public-political arena with State and social organizations (of corporatist, youth, paramilitary, cultural, after-work nature). From a macro-political perspective, the organic State constantly made the liberal State and the Fascist movement interact and contaminate each other: after the 'Fascistisation' of the former, it aimed at the normalisation of the latter and at the definite institutionalisation of the Fascist party.

The last chapter describes the process of the replacement of political representation with the corporatist one. The author does not purport to provide a general account of Fascist corporatism (for which the works of Maier, Schmitter and Gagliardi¹¹ are recalled) but provides a careful

⁸ E. Gentile, *La via italiana al totalitarismo. Il partito e lo Stato nel regime fascista*, NIS, Roma 1995.

⁹ J.-Y. Dormagen, *Logiques du fascisme. L'État totalitaire en Italie*, Fayard, Paris, 2008.

¹⁰ G. Melis, *Le istituzioni italiane negli anni trenta*, in Id. (ed.), *Lo Stato negli anni trenta. Istituzioni e regimi fascisti in Europa*, il Mulino, Bologna 2008, pp. 91-107.

¹¹ C.S. Maier, *La rifondazione dell'Europa borghese. Francia, Germania e Italia nel decennio successivo alla prima guerra mondiale*, il Mulino, Bologna 1999 (I ed. De Donato, Bari 1979); P. C. Schmitter, *Ancora il secolo del*

examination of its main features, in order to inscribe it within the crisis of the State. From this methodological perspective Cassese is disciple of Bernardo Sordi, who suggested looking at Fascist corporatism as a «revealer of complexity»¹². In particular, the author successfully tries to enter the internal mechanisms of the Fascist State and to shed light upon the relation between the domains of economics and politics, between the self-government of the professions and the corporatisation of political representation. Corporatism became, from this point of view, an ideology, a sort of compromise between capitalism and communism, the beginning of a «new political civilization»¹³.

Cassese highlights three different levels of corporatism in the Fascism experience (pertaining to Unions, corporations *stricto sensu* and political parties) and emphasises the double nature of the Fascist syndicate as representing the whole working class, yet while progressively falling under the State's control. This is exactly what Gramsci refers to when he writes about the attempt to «incorporate the economic resistance organisms into the mechanisms of the bourgeois State».¹⁴ Cassese also touches on the proliferation of the so-called «privilege bodies» (*enti di privilegio*) – quoting Demaria¹⁵ – as the distinguishing feature of the corporatist organisation of industries and trades throughout the Regime.

However, the issue of political representation (in keeping with Leibholz's studies¹⁶) is at the heart of Cassese's analysis. Fascism downplayed 'suffragist sovereignty' and explicitly declared that political representation did not *per se* mean the parliamentary organization of power. Suffrage was considered unable to guarantee the «full and absolute» contact between the masses and the State, as it was considered to be corrupted by two birth defects – the mere ratification of decisions already taken by parties' secretariats and the electoral 'localization' that founded the principal/agent relation on constituencies. Only corporatist representation, moving beyond the purely electoral dynamics, was deemed able to turn the voting citizen into a producing one. While political representation occurs *uno actu*, the corporatist one is dynamic, perpetual and never circumscribed within the periodic cycle of elections.

On this point, Cassese neatly highlights the two-fold strategy pursued by the Regime: firstly, through the Law of 17 May 1928, No. 1019 («Reform of political representation»), the whole

corporativismo? (1974), in M. Maraffi (ed.), *La società neocorporativa*, il Mulino, Bologna 1981; A. Gagliardi, *Il funzionamento delle istituzioni corporative*, in 'Il mondo contemporaneo', 2007, n. 1, pp. 43 ff.

¹² B. Sordi, *Corporativismo e dottrina dello Stato (Italia). Incidenze costituzionali e amministrative*, in A. Mazzacane, A. Somma e M. Stolleis (eds.), *Korporativismus in den südeuropäischen Diktaturen*, Vittorio Klostermann, Frankfurt a.M., 2005, pp. 129 ff.

¹³ On corporatism as ideology, see P. G. Zunino, *L'ideologia del fascismo. Miti, credenze e valori nella stabilizzazione del regime*, il Mulino, Bologna 1985.

¹⁴ See Cassese, *Lo Stato fascista*, p. 103.

¹⁵ Ivi, p. 125; see also G. Scagnetti, *Gli enti di privilegio nell'economia corporativa italiana*, CEDAM, Padova 1942.

¹⁶ Let me just recall G. Leibholz, *La rappresentazione nella democrazia*, edited by S. Forti, with an introduction by P. Rescigno, Giuffrè, Milano 1989.

Kingdom turned into one national constituency (under Art. 1); secondly, the Law of 19 January 1939, No. 129 established the Chamber of Fasces and Corporations in place of the Chamber of Deputies. Santi Romano praised with great enthusiasm such a development of institutional representation within the Fascist State when he presented Law No. 129 to the Senatorial Commission: «True representation cannot be attained until the Assembly which is in charge of it does not mirror, in its own structure, an institutional and sound social organization rather than transitory and contingent groups of individuals».¹⁷ Quoting the remarks by Sergio Pannunzio: «the people is active and sovereign due to its belonging to the party and to the Unions».¹⁸ However, both Pannunzio and Volpicelli ignored, in their theoretical-political observations, the role of those who were not party or syndicate members, and the election of the party and syndicate representatives. They focused more on the top-down dimension of representation than on the bottom-up one. According to Cassese, these two flaws significantly weakened the abovementioned ideology of a full and constant contact between the State and the masses and ultimately turned the Chamber of Fasces and Corporations into a giant with feet of clay.

¹⁷ Cassese, *Lo Stato fascista*, p. 133 (my translation).

¹⁸ Cassese, *Lo Stato fascista*, pp. 133-134.