

THE BOARD OF PROBIVIRI IN SPECIAL JURISDICTION AND AS CONCILIATION BODY IN PARLIAMENTARY ACTS (1883-1893)

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Abstract: Between 1883 and 1893, seven Bills aimed at the establishment of the board of probiviri for industry followed one another in the Parliament. In the intention of the Italian legislator, this law was to become part of the wider framework of the "social legislation," as a means of pacification of conflicts between workers and employers. An examination of the parliamentary works makes resistance and doubts about the to-be-constituted boards come to light, mainly catalysed around the need to avoid the creation of a special judiciary, which went to create a *vulnus* in the principle of unity in the jurisdiction, so strongly desired and defended by the unitary legislator. The office and commission files, reports and discussions in the chamber return a vivid and polyhedral framework of the various positions taken up during the years. Opposing the side of those who bluntly against the institute, for fear that a special judge would be appointed, were the positions of those who wanted to see a mere conciliatory jurisdiction, as well as those who, of a more radical opinion, solicited a judiciary with technical competence and equity which went to fill the gap represented by the absence of a legislation regulating labour. The final draft of the law would produce a hybrid authority, with mixed judging and conciliating functions, rising questions, from its early applications, about the nature of the authority, the powers granted thereto, the rite to be followed; questions, of which a careful and shrewd doctrine would become an interpreter.

Keywords: board of probiviri, Principle of unity in the jurisdiction, special judges, arbitrators, parliamentary sessions

“Either justice is administered, or it isn’t. Either you believe the judges, administering justice empowered by the King, to be competent, intelligent, impartial, independent, and learned, and, being this remarked, to benefit from your same fate, your honour, your freedom, or just from the same respectability that favours you, thus allowing them to resolve any upcoming issue between employers and employees. Or you don’t –and I firmly trust in the Italian bench’s wisdom and professionalism, then I advise you to take actions so that justice may become so.”¹

These words were spoken by Senator Luigi Guala² while discussing the Project *Per l’istituzione dei probiviri*³ [On the Establishment of the Board of Probiviri]. They effectively represent one of the major cruxes related to the parliamentary debate taking place between 1883 and 1893 on the possibility to introduce a bench of experts in the Italian legal system; these would be devoted to decide on issues surfacing between workers and employers⁴.

It appeared clear ever since 1883, when Minister Berti first filed a project on the creation of the board of probiviri to the Camera⁵ –following the so-called social legislation efforts⁶, that the establishment of the board

¹ Translation from the Italian original, quoting from *Atti Parlamentari* (A. P.), Senato del Regno, Legislatura XVII, I sessione 1890-91-92, Discussioni, Tornata del 4 marzo 1892, sen. Luigi Guala, pag. 2595.

² As a Senator, lawyer Luigi Guala was particularly interested in the issues arising from the nascent social legislation Cfr., F. Zavalloni, *ad vocem* Luigi Guala, *Dizionario biografico degli Italiani*, vol. 60, Roma 2003, pagg. 123-124.

³ A. P., Senato del Regno, Legislatura XVII, sessione 1890-91-92, Progetto di legge n. 132.

⁴ On the contents of each project filed in the Parliament during decade 1883-1893, see G. Monteleone, *Una magistratura del lavoro: i collegi dei probiviri nell’industria. 1883-1911*, in *Studi Storici*, 1977, pp. 87-123; S. Benvenuto, *Le discussioni in Parlamento prima e dopo la L. 15 giugno 1893 n. 295*, in *Giornata lineea in ricordo di Enrico Redenti: il diritto del lavoro ai suoi primordi*, (Roma, 22 Jan 1994), Roma 1995, pp. 29-42.

⁵ A. P. Camera, Legislatura XV, sessione unica 1882-1883, Bill n. 113, filed by Prime Minister Depretis, together with the Minister of Justice Savelli and Minister of Agriculture, Industry and Commerce Berti on May 30, 1883.

⁶ On institutional purposes and the contents conferred to social legislation, in the

would have implied a delicate stance from the legislator. Their influence would be enhanced on both the law regarding the relationship between *workers* and *employers*⁷, and the principle of jurisdictional uniformity stated by the Statuto Albertino and by the law on judicial system⁸; the powers to be conferred to the Institution, be it judiciary or merely

literature of the same period, see M. Minghetti, *La legislazione sociale*, Roma 1882; D. Berti, *Le classi lavoratrici e il parlamento*, Roma 1885; A. Cabrini, *La legislazione sociale (1859-1913)*, Roma 1914.

For an overview of social legislation, see A. Padoa Schioppa, *Storia del diritto in Europa. Dal medioevo all'età contemporanea*, Bologna 2007, pp. 544-547. For the first participations on the matter, see L. Martone, *Le prime leggi sociali nell'Italia liberale (1883-1886)* in *Quaderni Fiorentini per la storia del pensiero giuridico moderno* (Q.F.), 3-4, 1974-1975; to look for correlations between Civile Code and social rules in judicial culture of the same period, see G. Cazzetta, *Leggi sociali, cultura giuridica ed origini della scienza giuslavoristica in Italia tra Otto e Novecento*, in Q.F., XVII (1988), pp. 155-262; Id., *Il diritto del lavoro e l'insostenibile leggerezza delle origini*, in Q.F., n. XXV, (1996), pp. 543-572; Id., *Critiche sociali al codice e crisi del modello ottocentesco di unità del diritto*, in P. Cappellini - B. Sordi, (a cura di) *Codici. Una riflessione di fine millennio: atti dell'incontro di studio, Firenze 26-28 ottobre 2000*, Milano 2002, p. 325 e ss.; Id., *Codice civile e identità giuridica nazionale. Percorsi e appunti per una storia delle codificazioni moderne*, Torino, 2012.

⁷ On the influence of probiviri over the building of labour law, see S. Caprioli, *Redenti giurista empirico*, in *Introduzione a Enrico Redenti, Massimario della giurisprudenza dei probiviri (Roma 1906)*, Torino 1992; L. Castelvetti, *Il diritto del lavoro delle origini*, Milano 1994; P. Passaniti, *Storia del diritto del lavoro. I. La questione del contratto di lavoro nell'Italia Liberale (1865-1920)*, Milano 2006, pp. 355-413. On highlights on probiviri' contributions on collective agreements and on private employment agreements, see P. Marchetti, *L'essere collettivo. L'emersione della nozione di collettivo nella scienza giuridica italiana tra contratto di lavoro e Stato sindacale*, Milano 2006, pp. 55-81; M. Cappelletto, *Per una storia del diritto del lavoro: il contratto collettivo e i probiviri*, in *Rivista trimestrale di diritto e procedura civile*, anno XXXI, n. 3, settembre 1977, pp. 1198-1258.

⁸ The issue of a jurisdictional unity, whose expression would be the law on judicial system (r. d. n. 2626 on 6 Dec. 1865), was strongly discussed in the Senate, C. Cecchella, *L'arbitrato nelle controversie di lavoro*, Milano 1990, pag. 33.

On extension of the 1859 Sabaudic law on judicial system to the Reign of Italy, as a means aimed to favour political unity and control over Government and courts, see C. Storti Storchi, *La dignità e l'autonomia del giudice nelle opinioni del ceto giuridico lombardo sull'intervento del pubblico ministero nelle cause civili (1860-1875)*, in A. Gouron, L. Mayali, A. Padoa Schioppa and D. Simon, *Europäische und amerikanische Richterbilder*, Frankfurt am Mein, 1996, pp. 195-250.

conciliatory, and the rite on which the process of dispute resolution⁹ would be based on, in accordance or divergence with those introduced by the Civil Procedure Code of 1865¹⁰, would also be a matter of discussion. The Minister himself stated in his introductory report that a thorough examination of facts and rigid application of the jurisdictional rules in solving issues between workers and employers were inadequate, and that the judges,

“who are used to follow strictly legal criteria, obey more to the rigid precepts of law than to the sensible sentiment of equal convenience, which, posing an end to the argument, eliminates the grudge deriving from the argument itself from the disputers’ spirit”¹¹.

Assuming the results from the committee of enquiry on the strikes chaired by magistrate Bonasi¹², the ministerial lawsuit aimed to the establishment of a special jurisdiction relieving the ordinary jurisdiction from a number of competences on the matter, and being operative on a selected number of industrial premises only. The remaining options advanced by magistrate Bonasi (the establishment of institutions entrusted with both conciliatory and jurisdictional proxies to support

⁹ On the Bills on probiviri, the issue concerning the judge’s specialization and the special nature of the rite represented a reciprocal hindrance to the eye of the legislator, as in A. Proto Pisani, *Il “rito speciale” previsto dalla L. 15 giugno 1893 n. 295*, in *Giornata lincea in ricordo di Enrico Redenti*, quot., pp. 65-70.

¹⁰ On the code of civil procedure of 1865, without any pretense of completeness, see S. Solimano, *Code de procedure civile du Royaume d’Italie, R.D. 25 juin 1865*, in J. Hautebert e S. Soleil (a cura di), *La procedure et la construction de l’Etat en Europe XVI-XIX siecle. Recueil de teste, presentès et commentès*, Rennes 2011, pp. 241-277; M. Taruffo, *La giustizia civile in Italia dal ‘700 ad oggi*, Bologna 1980; F. Cipriani, *Il processo in Italia dal codice napoleonico al 1942*, in F. Cipriani, *Ideologie e modelli del processo civile*, Napoli 2001, pp. 3-25; A. Aquarone, *L’unificazione legislativa e i codici del 1865*, Milano 1960; G. Monteleone, *Il codice di procedura civile italiano del 1865*, in N. Picardi e A. Giuliani, *Testi e documenti per la storia del processo*, II sezione: *Codici degli Stati italiani preunitari*, XIII, Milano 2004.

¹¹ Translation from the Italian original, quoting A.P. Camera, Bill n. 113, p. 1.

¹² P. Passaniti, *Storia del diritto del lavoro*, quot., pp. 359 and foll.

ordinary jurisdiction, or institutions with conciliatory proxy only which left jurisdictional competences to the ordinary law judge) were rejected, being little responsive to the real goal of the project: to have magistrates in possession of specific technical competences who could exert precautionary peace-making actions favouring “harmony between Capital and Job”.

Projects discussed during the offices, and thereafter in commissions, highlighted that the principal controversies linked to the approval of the project related to the peculiar nature of the board of probiviri itself. Hon. Melchiorre raised perplexity during the first office in the first place, stating his will to fight against the principle of exceptionality at the base of the law, and Hon. Chimirri insisted on the Ordinary law Court not to be necessarily replaced by a special law magistrate, thus guaranteeing free-will access to the board of probiviri' system. In the view of such remarks, the office closed the discussion voting the following agenda: *"the Office approves the concept of establishing boards of probiviri in charge of conciliatory and independent arbiters concerning disputes between employers and employees"*¹³. In the same way, Hon. Di San Giuliano and Hon. Spirito, asked for the board to be on free will, and not compulsory, during the second office¹⁴.

However, the most divergent opinions on the matter raised more clearly during the commission in charge of the project. During the 15.Dec. 1883 session, Hon. Giurati spoke out against the establishment of a exceptional jurisdiction, raising doubts on the compulsoriness of the institution¹⁵. In the following sessions Hon. Chimirri, speaking on behalf of the Commission, dramatically remarked the peculiar nature of special jurisdiction court that would be introduced in the project; notwithstanding a "good seed" rooted in the conciliatory function, clearly recalling the Anglosaxon experience, he suggested not to confer the probiviri any jurisdictional power, leaving them the only conciliatory power and allowing

¹³ Translation from the Italian original, quoting Archivio storico della Camera dei Deputati (ASCD), *Disegni, proposte di legge e incarti delle Commissioni* (DPLIC), Legislatura XV, Sessione unica 1882-1883, fasc. 113.

¹⁴ *Ibidem*.

¹⁵ *Ibidem*.

them to proceed exclusively *ex aequo et bono*, perceiving that the choice of a jurisdiction court "conflicts with our judiciary institutions and with the most eminent scientific authorities' opinion"¹⁶.

The clear imprint left by Chimirri during the offices and the commission marks the creation of two frontlines, each one followed during the parliamentary debate: should the probiviri be recognized a judiciary, or a merely conciliatory, power? It is likely that the institution would have been upset in its base presuppositions, if the commission had followed the will, emerging from the last session, to file a newer project in the wake of Hon. Chimirri's remarks: the aversion towards any special law court would have led to the creation of a different body, with conciliatory, yet not judiciary, functions.

When a new project was filed in 1890¹⁷ under proposal of MoP Antonio Maffi¹⁸, a large amount of the debate was allowed in the first place to the issue concerning probiviri as a special court effectively or not effectively "*aiming to civil equality*". The major argumentation offered to contrast the perplexity of those who –both academics and enthusiasts in Law, saw the institution as a privilege for few people and the negation of justice, focused on the fact that the associations would have created jurisdiction, and, when lacking rules and code regarding working conditions, they would have decided on equity¹⁹.

¹⁶ Translation from the Italian original, quoting *Ibidem*, sedute del 5 e 15 febbraio 1884.

¹⁷ A.P. Camera, Legislatura XVI, IV sessione 1889-1890, Disegno di legge n. 129, presentato dal deputato Maffi Antonio nella seduta del 6 marzo 1890.

¹⁸ First "worker" MoP elected to the Camera in 1882, was often an opponent of the Bills on "social issues", of which he was complaining about the inadequacy to meet the needs of the working world. He devoted a paper written in practical cutting to the colleges of probiviri *Guida dei probi-viri per le industrie: con l'introduzione sulla locazione d'opera dell'avv. C. Cavagnari*, Milano 1899 and 1900. For a thorough profiling of Maffi, see a D. D'Alterio, *ad vocem* Maffi Antonio, in *Dizionario biografico degli Italiani*, vol. 67, Roma 2007, pp. 266-268.

¹⁹ "Who ignores (...) how lamentable the almost absolute silence in our code on the employment contract is? No rule on salaries, nor on working hours, nor on the way the work itself should lend itself, no rule on the responsibility of the factories for any damage that may be suffered for him by the worker ". Translation from the Italian original, quoting

For a better understanding of Maffi's argumentations, it is necessary to point out that the institutions described in the bill he filed were composed of a conciliatory office and a panel of judges with jurisdictional function, the access to which was only allowed after trying to solve the argument in the office. The number of categories, subject to the jury, seemed to fill a legislative gap that the growing national industrialization was intensifying: it dealt with negotiated or to-be-negotiated salaries, the price of a completed or still in-progress task, the agreement on working hours and shifts, the special observation of working contracts, task flaws, salary changes due to different raw material quality, or working machinery, damages to machines or factory properties caused or suffered by the worker, compensation entitlement due to abandonment and layoff before completing a task, termination of an employment or internship contract, and, as a general clause, any criticism concerning the conventions between workers and employers.

From that moment on, the mixed conciliatory-jurisdictional function would be the main theme in the background of any parliamentary debate,

V. Polacco, *La nuova legge sui probi-viri con particolare riguardo alla capacità giuridica delle donne e dei minorenni*, in *Monitore dei Tribunali*, anno XXXIV, 16 Sep 1893, p. 721.

In legal science at the end of the Nineteenth Century the sensitivity was alive towards the opportunity to introduce a private social code in the legal system to regulate the new legal facts of the world of work, see E. Gianturco, *L'individualismo e il socialismo nel diritto contrattuale. Prolusione al corso di diritto civile letta nella R. Università di Napoli*, Napoli, 1891; G. Salvioli, *I difetti sociali del codice civile in relazione alle classi non abbienti ed operaie. Discorso letto nella Solenne inaugurazione degli Studi nella R. Università di Palermo il giorno 9 novembre 1890*, Palermo 1890; G. Vadalà Papale, *Diritto privato e codice privato sociale*, in *Scienza del diritto privato*, I, 1893.

For a better understanding of the different instances and proposals of which legal science became bearer in that period about the inadequacy of the civil code to respond to new legal facts, see P. Grossi, *Scienza giuridica italiana: un profilo storico, 1860-1950*, Milano 2000, pag. 22-28 and pp. 57-61, and by the same author, *'La scienza del diritto privato' – Una Rivista-progetto nella Firenze di fine secolo 1893/896*, Milano 1988, and A. Padoa Schioppa, *Storia del diritto*, quot., pp. 575 e 585, and by the same author, *Dal Code Napoléon al Codice Civile del 1942*, in *Rivista di diritto civile*, anno XXXIX, 1993, pp. 531-553; G. Cazzetta, *Responsabilità aquiliana e frammentazione del diritto comune civilistico*, Milano 1993, p. 143 and foll.; P. Beneduce, *Questione del "metodo" e critica allo "Stato indifferente" nella cultura giuridica italiana di fine Ottocento*, in *Materiali per una storia della cultura giuridica*, 13, 1983, pp. 57-84.

anticipating but somewhat leaving unresolved the crux on the real features of the board of arbitrators; features the Legal Science started to inquire into as soon as the law establishing the aforementioned institution entered into force²⁰.

The project planning did not encounter any impediments in the offices, maybe also thanks to a change in the legislator's sensitivity who, in those years, was about to discuss bills about the charge of responsibility on occupational accidents to workers and on the establishment of a National Welfare Fund for workers²¹. The only sign of disapproval appeared during the fourth and fifth offices. In particular, Hon. Giannelli and Hon. Gianolio saw pitfalls in the project deriving from the establishment of a special jurisdiction that was allowed to penalize and amend; Hon. Di San Giuliano from the fifth office asked for the enforceability to be limited to the decisions relating to the agreed employment contracts, while Hon. Curioni agreed on accepting the project only on a conciliatory bases -excluding the jurisdictional function, that he considered useless, if not dangerous²².

The work in Committee, chaired by the Hon. Maffi, still raised the unresolved relationship between ordinary courts and special courts, between civil code and special legislation as a hindrance to the project admission; this was well taken in shorthand in the repartee between Hon. Curioni, who

"is not speaking out against the establishment of a new law, acknowledging its social need, he's speaking against a new jurisprudence acting as a step back"

and Hon. Maffi, who

²⁰ For a reconstruction of the debate and the positions in doctrine about the nature, or lack, of the probiviri as courts of equity, see C. Latini, *"L'araba fenice". Specialità delle giurisdizioni ed equità giudiziale nella riflessione dottrinale italiana tra Otto e Novecento*, in QF, 35, 2006, pp. 595-721, especially pp. 680-695.

²¹ G. Cazzetta, *Responsabilità aquiliana e frammentazione del diritto comune civilistico*, quot.

²² ASCD, DPLIC, Legislatura XVI, sessione II, 1889-1890, fascicolo 129.

"agrees to acknowledge the lack of a code on the matter, but considers worthwhile the establishment of a jurisdiction capable of delivering elements useful to a codification"²³.

As the 22 May 1890 Camera files report, the disagreement was composed by giving priority to social needs that had an urgent necessity to be regulated and that justified the instant establishment of a board of arbitrators "*who immediately take action and fill, through practice and equity, the lack in the legislation*"²⁴. It did not slip away the spokesperson that the answer to social emergencies could have been avoided by the Parliament passing an employment code that would be subject to interpretation and enforcement of the ordinary court. However, the vehemence and complexity of the "new social happenings", together with a generalized distrust feeling about the ordinary courts' ability to handle them, were prevailing upon the possibility to follow the slower and libertarian ordinary path.

"how can you presume, for example, that a Court judge may have all the technical skills required among the multiple issues of working hours, rates application, products quality and flaws: and, above all, how can you expect a worker not to feel puzzled when he is to speak a language that's, due to the peculiarity of the argument, almost incomprehensible to the judge, who, in turn, will speak in an unintelligible language to him?"²⁵.

The comparison with the French, Belgian, and Austrian legislations, which were already confident with the arbitrators experience in the form of special jurisdiction for the sole employment arguments, finally conferred the conciliation office the power to conciliate the disputes, and the jury the power to decide over the arguments between employers, businesspeople

²³ Ibidem, debate of 22 March 1890.

²⁴ Translation from the Italian original, quoting A.P. Camera, Legislatura XVI, IV sessione 1889-1890, Relazione della Commissione Proposta di legge n. 129-A, presentato dal deputato Maffi Antonio nella seduta del 6 marzo 1890, Seduta del 22 maggio 1890.

²⁵ Translation from the Italian original, quoting Ibidem, p. 2.

and employees, upon previous compulsory try with the conciliation office and in an unappealable way, with value limit at five hundred lira. The peculiar nature of the institution was furthermore underlined by the modality by which the institution was formed: its members were chosen by election from two lists, the first with names of business leaders, and the second with names of workers and supervisors.

The end of the Term did not allow the bill to be filed, but during the 25 April 1891 debate, MoP Maffi tabled the very same bill coming from the Commission to induce a faster and more favourable procedure²⁶. The Government itself contributed with another corrective project to Maffi's²⁷. Minister Chimirri himself, who as a MoP had contrasted the board of arbitrators considering them a dangerous exceptional court in 1884, considered its establishment unavoidable.

“May the class of entrepreneurs and the working class (...) find in themselves an intimate jurisdiction that, together with the conciliatory mission, add the effectiveness of a moderating action over the littlest disputes and over the infractions to the discipline of work; may they administer a prompt, price-worthy jurisdiction, free of the rigour and formalism of ordinary jurisdiction (...) and inspired by benevolent criteria of equity more than by the strict rules of jurisprudence”²⁸.

However, the true aim hiding behind the lawsuit was that of reducing the unbridled range and the damage to the principle of unity of jurisdiction that a special court like the one presented the previous year, and then presented again, by Maffi would have caused. The Government placed more emphasis on conciliation and mediation functions of the board of arbitrators than on judging: defusing the causes of friction and turning off the germs of discord were possible only with the mediation of experts and

²⁶ A.P. Camera, Legislatura XVII, I sessione 1890-1891, Bill n. 117, file by MoP Maffi Antonio during debate on 25 April 1891.

²⁷ A.P. Camera, Legislatura XVII, I sessione 1890-1891, Lawsuit n.136, filed by Minister for Agriculture, Industry and Business Chimirri together with Minister of Law Ferraris during debate of 16 May 1891.

²⁸ Translation from the Italian original, quoting *Ibidem*, p. 1.

composers with careful technical knowledge. Resorting to the judgment of the latter was a subsidiary, residual solution, absolutely and necessarily limited to a limited order of disputes. The balance the Government struggled to reach to safeguard access to the ordinary jurisdiction resulted in a conciliatory power extended to all the essential aspects of employment contracts, already reported in the Maffi project, and to a jurisdictional power, to be addressed only after having tried the compulsory conciliatory way, and not exceeding the value limit of one hundred lira. It also specified that all the disputes between workers and employers on salary and working hours should take into consideration only the already negotiated agreements, leaving out the still-to-be-negotiated aspects. Beyond this value, the judiciary competency returned to the ordinary court, had the conciliar way failed. For what the proceeding was concerned, it should be inspired by the value of orality, promptness, freedom of evidence collection, the minutes was executive and the jury's judgment was unappealable.

The Commission, chaired by Hon. Gallavresi, maintained the Government law unchanged²⁹. Mistrust towards the Institute was manifested in the first office by MoP's Mussi, who claimed not to be very positive of a project that established a Special Court, but accepted it for political and social reasons, and Zeppa, who, in disagreement with the privileged legislations -among which those promoted by the Bill, considered those dispositions of little social use³⁰. Within the Commission the setbacks expressed in the past did not come out. The centrality held by the conciliatory function, in place of the jurisdictional function -reduced to minimal and unimportant disputes, had made it acceptable to the most reluctant commissioners. The emphasis on conciliation activities required to arbitrators responded, as well as the need to prevent the jury from invading the ordinary judicial authority, such public policy requirements, to serve as a safety valve against strikes and coalitions.

During the 21 January 1892 debate at the Camera, and after all the amendments had been rejected, on the one hand, it was expected that,

²⁹ A.P., Legislatura XVII, I sessione 1890-91, Documenti, Disegni di legge e relazioni, relazione della Commissione al disegno di legge n. 136-A, filed on 19 June 1891.

³⁰ ASCD, DPLIC, Legislatura XVII, sessione I, 1890-1891, fascicolo 117.

once introduced, the board of arbitrators could then become an arbitration court in agricultural disputes in particular³¹, and on the other hand, it was pointed out that a strong conciliatory function, to the detriment of the jurisdictional function, would have deeply undermined authority and the prestige of the Institute, and would frustrate one of the purposes for which the law had been filed: *"workers can have justice without being forced to make higher costs to their forces"*³². To bring attention back to the goodness of the project released by the Commission, and at the end of the general debate, Minister Chimirri firmly declared that the new Institute, even though responding to social needs, could not violate the judicial system based on art. 71 and 68 of the Statute, and it had to move as little as possible by the rules of the civil law³³.

Passed to the Senate, the project encountered more obstacles there³⁴. Sen. Guala had to declare his dislike for special courts by criticizing both the choice of giving the disputes, even within the conciliatory office, to the board of arbitrators

"...the head of the Court, who receives from society much more delicate conciliar missions other than to combine workers and industrialists, for example, between spouses, could very well be the conciliator"³⁵.

and the choice of establishing them in a few places only, according to the Government's need, thus determining an outstanding disparity of treatment, a damage to the juridical equality between workers³⁶. Sen.

³¹ A.P., Camera, Legislatura XVII, I sessione 1890-91, Discussioni, debate of 21 January 1892, Hon. Ferrari Luigi, p. 5315.

³² Translation from the Italian original, quoting A.P., Camera, Legislatura XVII, I sessione 1890-91, Discussioni, debate of 22 January 1892, Hon. Miceli, p. 5336.

³³ A.P., Camera, Legislatura XVII, I sessione 1890-91, Discussioni, debate of 23 January 1892, Hon. Chimirri, p. 5352-5352.

³⁴ A. P., Senato, Legislatura XVII, I Sessione 1890-91, Paper n. 132.

³⁵ Translation from the Italian original, quoting A.P., Senato, Legislatura XVII, I sessione 1890-91, Discussioni, Tornata del 4 marzo 1892, sen. Guala, p. 2596.

³⁶ *Ibidem*, p. 2596.

Rossi took a very similar stand, being against all forms of legislation that would absolve social tasks.

When the last bill was finally introduced on 1st December, 1892 by the Minister for Agriculture, Industry and Commerce, Lacava together with Minister of Justice Bonacci³⁷, it was given for granted that the Institute would cover a conciliatory function in the first place, in the belief that disputes between capital and labour were born more often from misunderstandings. The rise in the value of disputes submitted to the jury to three hundred lira stemmed from the fact that a different value would have frustrated the expectations of the parties to a fast, price-worthy, accessible, and technical proceeding. The value limit was opposed by the Commission³⁸, and the final report together with the new draft provided to secure it in two hundred lira, reducing the jury's competence³⁹.

It is noteworthy to point out Emanuele Gianturco's⁴⁰ opinion, state Justice Undersecretary during the bill debate at the Senate on 5-6 June, 1893. Wishing for a vote in favour of a modest law, he invited to reflect on the lack of a jurisdiction "aimed to labour agreements and a set of rules on industrial matters like the one other European countries had put to use". According to Gianturco, it was that lack in jurisdiction in particular that imposed to put those arguments between employers and employees into a judge's hands -whom he did not hesitate calling "special", so that he could create those principles at the core of a new labour legislation⁴¹, basing them more "on a direct, immediate intuition of practical needs" than "on jurisdictional knowledge". Therefore, Gianturco excluded any hesitation towards a new magistrate jurisdiction, by pushing on the technical experience and equity of the arbitrators on the one side, and by highlighting its

³⁷ A.P., Camera, Legislatura XVII, I sessione 1890-91, Documenti, Disegni di legge e relazioni n. 84, filed during debate of 1 December 1892.

³⁸ ASCD, DPLIC, Legislatura XVIII, sessione I, 1892-1893, fascicolo n. 84.

³⁹ A.P., Camera, Legislatura XVII, I sessione 1890-91, Documenti, Disegni di legge e relazioni n. 84 A, filed during debate of 3 February 1893.

⁴⁰ For a better understudy of the profile of Emanuele Gianturco, see F. Treggiari, Gianturco Emanuele, in *Dizionario biografico dei giuristi italiani*, vol. I, pp. 992-994 and following credits.

⁴¹ A.P., Senato, Legislatura XVII, Discussioni, debate of 6 June 1893.

empirical and practical nature, even if completely new, on the other side, tracking the path for the legislator and the following coding of the principles emerging from the good practice.

Wearily, and after ten years of preparation inside the parliamentary premises, the Bill was promulgated on 15th June, 1893, and it immediately piqued the academics' and practitioners' interest⁴². When the outcomes of the Enquiry on the reforming law for industrial arbitrators were published in 1904, data in possession of the Bureau of Labour showed the self-evident failure of conciliation in the arguments competing the local jurisdiction in place of the judiciary court⁴³.

The keypoint on the special powers to be conferred to the probiviri and on the proceedings to be enforced in the arguments, which the legislator from the 1880's had solved in favour of a more "intimate, familiar" jurisdiction not opposing the ordinary jurisdiction, was strongly recurring, under different shapes, and was again asking new and urgent answers, towards which an attentive doctrine acutely and critically construed⁴⁴.

⁴² Publications flourished immediately commenting the law. Among them is the noteworthy C. Lessona, *Codice dei probiviri: legge e regolamento sui probiviri nell'industria, con formulario degli atti inerenti al loro funzionamento commentati coi lavori preparatori, con la legislazione, la dottrina e la giurisprudenza*, Firenze 1894.

⁴³ Ministero di agricoltura, industria e commercio, Ufficio del Lavoro, *I probiviri industriali. Inchiesta per la riforma della legge 15 giugno 1893*, Roma 1904, p. 57-59.

⁴⁴ Just a few years after the enforcement proposals for amending the law on arbitrators were presented; to the point, see P. Marchetti, *L'essere collettivo*, cit., pag. 59-60.

Among the most important speeches on contemporary legal science highlighting the lights and shadows of the arbitratorial jurisdiction, see L. Mortara L. Mortara, *Sui collegi dei probiviri per l'industria (dalla fondazione a tutto l'anno 1900)*. *Atti della Commissione per la statistica giudiziaria e notarile. Sessione del giugno 1902*, in *Annali di statistica*, 1903, n. 104, pp. 180-211; A. Ascoli, *La riforma della legge sui probiviri*, in *Rivista di diritto commerciale*, 1903; L. Mortara, *Per la riforma della legge sui probiviri 15 giugno 1893*, in *Giurisprudenza Italiana*, 1904; E. Redenti, *Massimario della giurisprudenza dei probiviri*, Roma 1906; E. Redenti, *La riforma dei probiviri*, in *Rivista di diritto commerciale*, 1910; A. Sfratta, *Compromessi e lodi stabiliti fra industriali senza le forme dei giudizi*, in *Rivista di diritto commerciale*, 1907.