# GIUSEPPE ZANARDELLI AND THE REFORMATION OF THE LEGAL SYSTEM (1890)
# GUIDE TO AN ARCHIVE INVESTIGATION
# THE "EMBARRASSING ISSUE" OF COURTS' ABOLITION

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***Abstract:*** The essay means to reconstruct the dynamics, and the main themes below, of a technically complex and politically very delicate phase of the 1890's judicial reform taken up by the statesman and jurist Giuseppe Zanardelli: the section dedicated to the "Modification of the judicial district and improvement of the judiciary salaries" (law 30 March 1890 n. 6702).

The reconstruction is based on archive documentation, largely unpublished: not only official documents, but also personal notes, memories, letters, note books, which recorded aspirations, moods, utopic feelings, compromises nourished by historical characters who participated in the reformation movement. Their analysis, besides allowing an adequate technical comprehension of the judicature's genesis in the unified Italy and of the able and pragmatic role played by Zanardelli, could also be the opportunity to launch the gaze through a cut-out of the building that was growing. The unitary state for which the judiciary was inevitably not only one of its powers, but often also the "first line" contact between citizens and State.

***Keywords:*** Giuseppe Zanardelli; Judiciary (1890); Law 30 March 1890 n. 6702; Judiciary – Modification of the judicial district – improvement of the judiciary salaries; Unified Italy – judicial reform

The abolition of courts due to budget requirements, the distinction in the career of the judges, their disciplinary rules, and their emoluments are not, in themselves, a recent issue in the development of the Italian legislative and political history. They represent a long-course issue, born together (if not existing) in the same unitary State, which laboured to deal with a suffered and tortuous legislative process (perhaps still open, and therefore *a fortiori* in need of historical reconstruction and historiographical debate).

If it is true that, in the aftermath of the political unification, lawyers such as Giuseppe Zanardelli, from Brescia, played the leading role in the Italian legislative activity[1], in the reforming of the judiciary system, he was not only a prominent figure, but the energetic and tireless craftsman of a crucial stage, even if his role is not properly detected *in parte qua*.

In fact, if the asset as a politician and a statesman by Giuseppe Zanardelli make him one of the protagonists of post-unification Italy, his work as a lawyer is much less known and studied, with limits to the criminal code of 1889 that bears his name (On his actual contribution to which, however, debate remains open). The profiles of Zanardelli's legal activity are varied, on the other hand: not only a reformer, but also a teacher and a lawyer, on each activity a path of study was only recently feasible, yet still in progress, conducted on copious unpublished documentation in the archives in Brescia[2].

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Acronyms
ASB = Archivio di Stato di Brescia
FCAB = Archivio Fondazione Credito Agrario Bresciano

[1] A. PADOA SCHIOPPA, *Storia del diritto in Europa. Dal medioevo all'età contemporanea*, Bologna 2007, p. 557-558.

[2] For a better biographical detailing (made necessary by a number of persisting mistakes, validated by trustworthy storiography, as well), please see *Zanardelli*, in *Dizionario biografico dei giuristi italiani (XII-XX secolo)*, by E. Cortese - I. Birocchi - M.N. Mattone - M. Miletti, 2013, vol. II, *ad vocem*, with bibliography. Other storiographic detailing is also available in *Il 'cantiere storiografico' dedicato a G. Zanardelli. Rilievi di metodo e linee di ricerca*, in *Lavorando al cantiere del 'Dizionario Biografico dei giuristi italiani'* by M. G. di Renzo Villata, Milano 2013 pp. 351-371. On his activity as a teacher and lawyer, please see both *"Spiegare alle giovani intelligenze". Giuseppe Zanardelli e l'insegnamento giuridico*, Brescia 2008, and *"Quella carriera cui tendo da 13 anni". Note d'archivio per una ricerca su Zanardelli avvocato'*, in *Avvocati e avvocatura nell'Italia*

Here, in the true "mine" represented by the archives[3], winds a particularly rich loaf and harbinger of possible scientific knowledge, whose valence expands well beyond the intellectual biography (although of primarily historical interest) of the single protagonist. One of the main lintels of the post-unification State, the Italian judiciary, is concerned here: the documentation, still unpublished, on the reform of the judiciary system prepared by Giuseppe Zanardelli in 1890[4].

In particular, it is possible to rebuild the historical genesis in detail (yet not, of course, *hic et nunc*, for the limits within which the present contribution must be confined[5]) of two of the pillars of the complex rules in the reorder and reorganization of the judiciary, carried out after the rise to power of the Left, i.e. the law March 30, 1890 n. 6702 for the " Modification of the judicial district and improvement of the judiciary salaries " and the "provisions about the admission and promotions in the

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*dell'Ottocento*, by A. Padoa Schioppa, Bologna 2009, pp. 663-703; on Zanardelli as a lawyer, please see, at last, the profile drawn by A. SANDONÀ, *Giuseppe Zanardelli (1826-1903)* in *Avvocati che fecero l'Italia*, by S. Borsacchi and G.S. Pene Vidari, Bologna, 2011, pp. 258-271. On the 'Zanardellian matrix' on the port-unitary criminal code, see A.A. Cassi, *Zanardelli* e il *'suo' codice. Annotazioni d'archivio*, in 'Diritto Penale XXI secolo', IX, 2 (luglio-dicembre 2010), 2011, pp. 413 foll.

[3] Mine whose excavation permits to recover testimonials "of great importance for the not only legal history " of Italy: see A. Padoa Schioppa, *Introduzione* in *Avvocati e avvocatura*, quote (note 2), p. 20.

[4] It is largely preserved at the archive of Fondazione Credito Agrario Bresciano (from now on FCAB), while some cards are also found at the Museo del Risorgimento in Milan, as quoted in A.A. Cassi, *"Spiegare alle giovani intelligenze"*, quote (note 2), pp. 19-22.

In the last year of his life Zanardelli, as President of the Council, will present, with the Minister of Justice Francesco Cocco Ortu, a new reform proposal; the *Relazione al disegno di legge sull'ordinamento giudiziario presentato alla Camera dei Deputati nella seduta del 12 febbraio 1903* (in Atti parlamentari, Camera dei Deputati, Documenti, leg. XXI, 2nd session 1902-3, doc. 294) is briefly traced in C. Danusso, *L'opinione pubblica e il giudice unico di prima istanza: il dibattito sul progetto Zanardelli di Riordino della magistratura (1903)*, in *Processo penale e opinione pubblica in Italia tra Otto e Novecento*, F. Colao, L. Lacchè e C. Storti (ed.), Bologna 2008, pp. 195 foll.

[5] The latter, therefore, is proposed to highlight the methodological guidelines for a much more thorough research that deserves to be conducted, with the aid of the unpublished documentation, here also quoted, in a short time and locations appropriate to the commitment it entails.

courts", set forth in the law June 8, 1890 n. 6878. Moreover, the latter was carried out together with another crucial piece of the articulated mosaic represented by the judicial reform: the general judiciary regulation issued[6] by Royal Decree of November 10, 1890 n. 7279, which was prepared on the basis of a draft personally studied and outlined by Zanardelli[7].

Due to the inherent limits of this contribution, a brand new look in the archives is proposed in the following pages dedicated to the first of the two pillars of the reform, the law March 30, 1890 n. 6702, by referring to the next occasion to complete the diptych designed (and, as we shall see, elaborately built) by Zanardelli.

If the post-unification policy on the reform of judiciary is deeply rooted in our Risorgimento, it certainly constitutes one of the many threads of the entangled historiographic node clumping around this period. It is still the subject of clinically examined controversy[8], a survey in the archives (in official documents, but also personal notes, memories, letters, note books) which recorded aspirations, moods, utopic feelings, compromises nourished by historical characters who participated in the reformation movement. Not only the two "antagonists" of this story, the political class

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[6] According to the proxy conferred on the Government by article 19 of law No. 6878 of 1890; on this latter an overview in C. Danusso, *Il reclutamento dei magistrati nel dibattito del tardo Ottocento*, in Rivista di Storia del Diritto Italiano, 84, 2011, (pp. 151 foll.) pp. 196-199 .

[7] It is preserved in manuscript package bound undated, under the term "Disposizioni per l'attuazione della legge 8 giugno 1890 n. 6878, serie III" at ASB, b. 86. His close examination allows to detect as the design outlined by Zanardelli has remained substantially unchanged in definitive R. D. on November 10, 1890 n. 7279.

[8] […after many debates and many controversies on the Risorgimento, endlessly thought about, exalted and desecrated, we cannot say that today's historiography has reached now all the conditions for a judgment objectively balanced on this historic event]; A. Cavanna, *Ragioni del diritto e ragioni del potere nel codice penale austriaco del 1803*, in *Cunabula iuris. Studi storico giuridici per Gerardo Broggini*, Milano 2002, pp. 101-144 (pp. 101-102). In fact, the Risorgimento remains "one of the main nodes - if not "the" node par excellence- of the Italian contemporary history ": O. SANGUINETTI, *Letture del Risorgimento: una panoramica (1815-2000)*, in *La rivoluzione italiana. Storia critica del Risorgimento*, (a cura di M. Viglione), Roma 2001, pp. 397 foll., to which reference should be made for a updated historiographical report.

and the judiciary, but also the public opinion[9], could be the opportunity to launch the gaze through a cut-out of the building that was growing. The unitary state for which the judiciary was inevitably not only one of its powers, but often also the "first line" contact between citizens and State[10].

The process of political-administrative centralisation[11] started by the newly born post-unification State, defined by the historiography with the appropriate double formula "Piedmontization" and "Steam unification"[12], could not comprehend the judiciary, whose priority was, in the intentions

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[9] The role of the later in the dynamics of criminal justice was explored from the abovementioned volume *Processo penale e opinione pubblica*, quote. (n. 4); please see also the nicely written essay by L. Lacchè, *Per una teoria costituzionale dell'opinione pubblica. Il dibattito italiano (XIX)*, in Giornale di storia costituzionale, *Opinione pubblica. Storia politica costituzione (XVIII-XX s.)* n.6/II, 2003, pp. 273-290.

[10] Zanardelli (who was up-to-date for what contemporary readings were concerned, also of a legal nature; see Cassi, "Spiegare alle giovani intelligenze", quote. (note 2), pp. 137 ss.) proves to be aware of the friction that could occur between the citizen and the dynamic physiological state judiciary,

> [hence the increasing intervention of that power to protect the rights and interests of each that [was] the Judicial Authority. On the other hand, the progressive unwinding of democratic institutions in the countries governed in popular regime [contributed] itself to increase [sic] the moral importance and political functions of the judiciary. Since the more [were] the reliefs the citizens [enjoyed], the wider the field in which [they could] exercise their authority, and more secure and inviolate [was] the empire of the law to be maintained, so that the freedom of someone [might not urn into] each other's offence]

Report on the bill concerning the changes to the judicial district and the improvement of salaries of the judiciary, in: AP, Camera dei Deputati, Documenti, leg. XVI, 4th session1889-90, n. 4, p. 2.

[11] R. Romanelli, *Centro e periferia: L'Italia unita*, in *Il rapporto centro periferia negli stati preunitari e nell'Italia unificata*, Atti del LIX congresso di storia del Risorgimento italiano (L'Aquila-Teramo, October 28-31, 1998), Roma, Istituto per la Storia del Risorgimento italiano, 2000, pp. 215-248 (see also Id. *Centralismo e autonomie*, in Idem (a cura di), *Storia dello Stato italiano dall'unità a oggi*, Roma 2002); P. Calandra, *Storia dell'amministrazione pubblica in Italia*, Bologna, 1978, pp. 55 foll.; C. Pavone, *Amministrazione centrale e amministrazione periferica da Rattazzi a Ricasoli (1859-1866)*, Milano 1964;.

[12] R. Bonini, Disegno *storico del diritto privato italiano (dal codice civile del 1865 al codice civile del 1942)*, Bologna 1982, p. 17; C. Ghisalberti, *La codificazione del diritto in Italia (1865-1942)*, Roma-Bari 1997, p. 14.

of the Savoy political class, to ensure at least the loyalty to the government through appropriate appointment and control mechanisms[13].

This goal was pursued especially entrusting wide powers to the Minister of Justice in the matter of recruitment and career development for magistrates[14], by fact allotting the judiciary in a position of dependence from the Executive, making the guarantees of non-removability laid down in the Albertine Statute vain[15]. Under the latter profile in the debate on the new judicial system, the tongue turned to the aching tooth, also known as the cover of numerous vacant seats. This theme was walking distance with that of the emoluments of judges. It was almost unanimously regarded as excessively low level, with consequent damage to the reputation of the judiciary and of its function.

In fact, it had been complaining from many parties (and the Minister Keeper Zanardelli took good note of it) that the most talented young people coming from Law faculties would rather dedicate themselves to the exercise of legal professions or to administrative careers, rather than undertake the office of Judge, harbinger of modest salaries, living in places which were often very far from home and to the uncertainty of the

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[13] P. Saraceno, *I magistrati italiani dall'unità al fascismo*, Roma 1988 p. 58 foll. For a more up-to-date reference framework, please see now A. Meniconi, *La magistratura italiana*, Bologna 2012.

[14] M. Taruffo, *La giustizia civile in Italia dal '700 a oggi*, Bologna, 1980, p. 139.

[15] Actually, the initial government policy was to transfer a certain number of magistrates from Piedmont in the new provinces, motivating these choices with the need to spread judicial staff that already knew laws and subalpine judicial systems well; in reality, it was often a trick to remove 'undesired' elements. However, the official motivation was weak, because the organogram of the Savoy provinces was too limited to achieve the "Piedmontisation" of the new Italy (and in fact about half of the new organogram staff was carried out by appointment, for direct choice of minister of justice, lawyers and notaries; see C. Guarnieri , *Magistratura e sistema politico nella Storia d'Italia* in R. Romanelli (a cura di) Magistrati e potere nella Storia europea, Bologna 1977 pp. 241-2711997). The "unofficial" one had to clash with the strong resistance from subalpine judges to their destination in courts of central Italy and, more importantly, in southern Italy. The statutory principle of the non-removability of judges appointed by the King (art. 69) was therefore often circumvented; but it was in fact also compressed against the higher magistracies: see. A. Capone, Destra e sinistra da Cavour a Crispi, Torino 1981, p. 209.

progress in the career itself[16].

The need for coverage of judicial seats in the national territory required an expansion in the staff, that however, in turn, not only increased the level of expenditure, and consequently forced a strict "wage policy", but led to lower the requirements threshold (and therefore of the professionalism) of magistrates:

> in order to be able to recruit as many magistrates were necessary to cover the seats that were annually vacant… the requirements that first were applicable to those undertaking this career had to be lowered, because the number of candidates had become inferior tothe need. But the administration of justice did not certainly [have] an advantage in taking this measure[17].

With the law of December 23, 1875 n. 2839, a the less restrictive criteria modification[18] was, in fact, expected to the access to the legal functions, thus allowing the entrance to the judiciary also to *the courts' junk*[19]. Crispi

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[16] ["There are two causes for the low level wherein the judiciary lies in recent years. The first is the excess number of magistrates that need meet the not excessive quantity of the various seats of the individual existing courts. The second cause is the rule by which the dismissed officer… believing to have mighty wings shies away from the judicial career to be given to the career of patronage; of the judicial career, the young man nothing else smells than the modest salary, almost poor, the inconvenience of living far from native place and the uncertainty of the progression of his career. In the court, on the other hand, in the lively imagination of their twenty years, they see nothing more than many profits, fame and the honours, while they avoid considering the infinite disorders of lawyers belonging to the patronage and to the legal profession, which lack any means of work and decent livelihoods. Fallen in the most human of disillusionment; and after having uselessly wasted the best years of their existence, they knock in older age, incredibly numerous at the gates of the ministry of grace and justice to obtain, such as maximum of all the favours, the appointment to Magistrate.. ".]

So the notes of Zanardelli express concerning on the report of Righi on the conditions of the judiciary; see FBCAB, envelope 5, file II.

[17] Notes by Zanardelli, in ASB, envelope 852, sheet n. 164.

[18] In particular with the lower limits of pension required for direct appointment as magistrate and increasing the cases of exemption from the practical examination.

[19] […It was the last straw, it was the law December 23, 1875 to open new doors in *sacrarii* of justice, with the scraps of the Court, and allow these will enter them, as hundreds had joined from 1876 onwards, even without exams and this in the aftermath of

himself- Zanardelli noted in his work notes[20]- thought the time had come to return the judiciary their prestige and independence.

Therefore, in spite of the "mini" 1875 reform - and indeed, by reason of it - the judiciary was considered totally inadequate to the needs of the time[21]. In the aftermath of its adoption, numerous proposals were submitted for reform *"in that both the ministers and by parliamentary initiative, successively followed in guiding the judiciary issue"*[22].

All the Keeper Ministers in succession had constantly in mind, even with different modality and timing, the goal of reforming the judiciary, but none of their proposals was filed in the parliamentary procedure[23], in spite of

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their departing from school desks: at 21 years"]. These are the words of Corbell, transcribed by Zanardelli in his work papers regarding the justiciary in Italy in 1886; in FBCAB, envelope 5, file II.

[20] ["The country cannot wait because it's already twenty years since the needs of justice have been growing and cause continuous ranting here inside the House, without seeing any results"]; words attributed, *de relato*, to Crispi from the notes of Zanardelli on the intervention of the on. Castelli; FBCAB, envelope 5, file II.

[21] The minister Tajani, in a report given by Zanardelli, argued that "the law of 1865 had no the repose of public opinion, if not for a brief moment"; in: FBCAB, b. 5, File II.

[22] These are words spoken by Zanardelli in the report on the draft law n. 95 of the III session 1889, resubmitted at the Camera in the following session, *Atti Parlamentari, Camera dei Deputati, Documenti, leg. XVI, sess. IV, N. 4.*

[23] The failure of previous reform attempts is summarized in the speech by the honourable Della Rocca at the Chamber of Deputies when the floor was given to Minister Keeper Zanardelli:

"up from 1865 the Government was empowered to make a proposal for a new judicial district, but the government is not believed to exercise this option. In 1866 the Commission called 'of the fifteen' made proposals in this sense, which however were not followed. In 1867 the Budget Commission took the initiative also to ask the government to do a similar reduction, but this initiative had no fulfilment. In 1868 the keeper De Filippo presented a draft law for modifications to the judicial district, but it was not discussed. In 1871 the Minister De Falco filed a similar proposal, which was the same, in 1874, minister Vigliani did the same. In 1875 he repeated the proposal. In 1870 - I forgot - there was also a proposal in this direction. In 1877, the minister Mancini proposed a reform of the judicial district but without results. In 1879 Tajani made a comprehensive proposal for a total reform of the judiciary, but that proposal had no discussion. In 1885 Tajani himself offered another complete diagram that was widely studied; but no deliberation was reached…". See *Atti Parlamentari (AP ), Camera, Discussioni, legislatura XVI, sessione VI,* session on February 22, 1890.

the fact that (or, vice versa, because…) the presence of lawyers, and specifically of magistrates, was substantial in the Parliament [24].

When Zanardelli agreed to enter the Crispi government (which, indeed, did not agree with all his political line[25]), he returned to the guide of the Ministry of Justice in 1887, and profoundly and immediately committed on this front. As it appears from the sources, it can be indeed said that his main concern was not the criminal code, which will be then named after him[26].

He did it, however, by following a different *modus operandi* from its predecessors, less ambitious but more concrete; by keeping the strategic goal (reform of the judiciary), he changed his tactics. In the face of the previous failure, he maintained a reform profile which was much more cautious, but (just because of this) fraught with effective results. By plotting the coordinates that he would have followed with dogged perseverance along his entire government activity, he abandoned the project of a reconstruction *ab imis fundamentis* of the judiciary (which was proved to be utopian), and pursued partial reforms instead, but with perseverance and determination and firmness, especially following two

[24] P. Saraceno, *Alta magistratura e classe politica dalla integrazione alla separazione*, Roma, 1979, p. 35

[25] In the opinion of a careful historiography on Zanardelli, the fundamental difference between the two statesmen was the fact that "the northern minister, who was born and grew up in a province as 'white' as a few, [favoured] the fight against the clerical danger, while the president of the Council of Ministers [was] more and more persuaded that the 'Red ones'[were] to be considered the new and more formidable enemies of the State": see R. Chiarini, collaboration (in time) with Crispi. In: *Figure del Risorgimento italiano. G. Zanardelli 1826-1903. Il coraggio della coerenza,* Ginevra-Milano, 2003, p. 68. It must be said that even the deep differences in foreign policy and financial kept them apart.

[26] If nothing else, because the to-be-promulgated code would not be able to fully deploy its effects without the support of a properly renewed judiciary system. But this was only one of the many and serious elements ("*special and inescapable urgencies*", see *infra* in the text) that made a judicial reform indispensable.

Other, on Zanardelli's priorities, in G. Frigo, *L'eredità giuridica e forense di Giuseppe Zanardelli alle soglie del 21° secolo*, in: G. Zanardelli, *L'Avvocatura: discorsi (con alcuni inediti)*, Milano, 2003, p. XXVIII. About the criminal codification activities personally carried out by the Brixian (stronger than *sub specie juris* legal historiography has recognized so far), see. A.A. Cassi, *Zanardelli* e il *'suo' codice*, quote (note 3).

guidelines that Zanardelli would maintain parallel. That in fact, as stated, will culminate in two laws promulgated in 1890 at only a few months distance from the modification of the districts (which was connected the economic regime of the magistrates[27]), and access to the courts.

The opportunity of such a working line was explicitly highlighted by Zanardelli in relation to the draft reform. The minister noted that "*there were special and inescapable urgent issues*"[28] which were incompatible with the long time of an overall (and complex) reform, and this was confirmed when he intervened to the Camera during the parliamentary debates, in the belief that "*it [wasn't] thing worthy of statesmen, worthy of legislators, to suddenly and completely subvert all interests, all the traditions of the judicial life of a country*"[29].

Zanardelli therefore would consider "*wise and better accomplishing the purpose, to deal with the difficulties in various shots*"[30], by making gradual changes in the judicial institutions in force in order to pursue a reform "extrinsic" to the orders of the administration:

> Economies are of two sorts. The former spring out of reforms we could define intrinsic to the laws and to the judiciary orders. Other reforms, of an extrinsic kind, which consist in suppressing district courts, tribunals or national courts[31]

They had therefore to proceed to the "suppression of district courts,

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[27] See below note 39 and corresponding text.

[28] Ministerial Report to the draft entitled "Modifications to the judicial district and improvement of the salaries of the judiciary": "Every delay interposed to improve the fate of the judiciary is a source of serious damage to the repubblic ..."

AP, Documenti, Legislatura XVI – 4th session1889-90, n. 4, p. 3; also in: Discorsi, Camera dei Deputati, March 25, 1903, p. 619.

[29] Discorsi, Camera dei deputati, February 21, 1890, p. 540. Also in: AP, Documenti, Legislatura XVI , 4th Session 1889-90, n.4, p. 6 : "… I would add that upsetting too many interests and too many habits at a time with a general change in jurisdictions would not be proof of political wisdom, and on the other hand would make the solution to the problem more complex and awkward".

[30] AP, Documenti, Legislatura XVI, 4th Session 1889-90, n. 4, p. 2.

[31] "Le economie sono di due sorte. Le une si ricavan da riforme che potremmo dire intrinseche alle leggi ed agli ordini giudiziarii. Le altre di riforme, estrinseche, che consistono nel sopprimere corti, tribunali o preture"; so in various notes and clipboards on the jurisdicial, handwritten by Zanardelli, FBCAB, b. 6, file III, cc. 126.

tribunals, or national courts", not only in the name of a drastic "expenditure cut"[32], but of an efficient reorganisation of the resources, both human and professional ones, according to the principle of having "*few but good officials, and well-paid*"[33].

Moreover, the strategic choice to follow the path of the partial reforms, ringing the reorganisation of chancelleries and the secretaries[34], the abolition of the courts of commerce and the unification of the Court of Cassation in criminal matters[35], had produced excellent results up to that moment[36].

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[32] "Even in the case that my colleague the Honorable Minister of the Treasury made a few million available to improve the conditions of the judiciary to which he also nobly belonged, even in this case, I would take the chance for raising salaries in higher degree…but I would suggest to decrease the number; so this solution of the problem is not only a financial need, rationally, intimately inseparable from the goal that we must accomplish".

See Discorsi, Camera dei deputati, February 21, 1889, p. 549.

[33] "It seemed to me so much better to adopt, also with respect to the judiciary, the wiser attitude: a few, but good employees, and well-paid, so to reach the purpose of decreasing the number of magistrates, suppressing the most useless judicial seats".

See. Discorsi, Camera dei Deputati, February 21, 1890, p 549.

[34] June 29, 1882, law # 835 that reformed the judicial registries service by modifying the method of tax collection proceedings.

[35] Speaking at the Camera, in relation to the method chosen by the Keeper to change the judicial district, in the session of December 1, 1889, Righi, lecturer of the Commission for the unification of the Court of Cassation on criminal matters, said: "this is…the reason why we in the Committee and especially me, ...could, with a glad heart and boundlessly willing, support this bill, which does not mark more than only one step in rearranging the judicial of the Kingdom… I believe the choice of the means to achieve the same goal is purely a matter of method, which must be resolved by the Keeper, who is a technical and law-wise man, but who must also be a politician, and be put in contact with the thought of the people by means of the consulate of the country in the way he is; he knows, following the flowing of time, which is the best method to achieve the ultimate goal". In *A. P., Discorsi, Camera*, p. 987.

[36] Acknowledged even by those who sometimes were out of step with the Keeper:

"There cannot be any doubt that the Minister Zanardelli, by leading this reform to completion already being designed by his predecessor Taiani since 1879, has rendered a great service to the cause of reform of the supreme judiciary. In fact, you can say that he won this case in favour of unification; although the current state of affairs does not represent anything but the agony of the regional Courts of Cassation and that may not be

Therefore, abandoning some of his delegated powers from the Camera, Zanardelli put the abolition of Tribunals aside, focusing on the courts. This choice not only answered the requirement not to radically change the judicial system, but also, lucidly and perhaps even with a pinch of cynicism, got to a very "empirical" issue that was revealed to be one of the most delicate problems of the Italian judiciary: the problem of slow progression of careers. However, it did not skip the gentleman from Brescia that the abolition of the courts would have removed further "vertical space" from the promotions of the judges in the lower grades, if proceeding in the more drastic direction of rewriting the districts,. On the basis of this consideration, the conviction was expressed that they could make important savings also through the review of organizational map of the same courts, without the need to abolish them[37].

Moreover, if you considered that the number of district courts was far greater than that of the courts, it was then clear that the number of those that they would have been able to suppress without prejudice to justice was higher:

> the suppression of several national courts offends[ed] already too many susceptibility and hits[hit] so many local and private interests …that it would not have certainly benefited from an increase in the difficulty of the issue, which was already quite serious and delicate, made harder by the decrease of the courts, thus promoting a dangerous coalition of those who would feel affected by one or other of the two measures[38]

On the other hand, the spending cuts would have allowed the increase

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differently accepted but as precarious in attitude. Otherwise, it would be the most monstrous of the absurdities that human mind has ever been able to conceive in theme of legal system. In truth, what have we got now, if not two degrees of judgment of supreme court, in the areas that are not within the exclusive competence of the Court in Rome? And what more sickening issue than this, towards the attitude, the goal, the service, the authority of the Court of Cassation? It could not be there a greater denial of the rightful legal sense, that this of a four Courts administering the law…" In: L. Mortara, *Istituzioni di ordinamento giudiziario*, Firenze, 1896, p. 222.

[37] "as far as the Courts were concerned, for economies' sake, you [could] provide even through the revision of the organograms of the courts themselves" in Discorsi, Camera dei deputati, February 21, 1890, p. 539.

[38] See the handwritten notes by the stateman, in: ASB, b. 852, n. 164, sheet 1.

of emoluments of judges, making them more decorous and ensuring greater independence of the magistrates themselves[39]. Therefore, in the face of the vote on May 24, 1888 with which the Camera showed a willingness to see the number of seats in both the national courts and of district court limited, the Government was focused on the reduction of the first, by implementing a review of the roles of the collegial judiciary and increasing the level of the salaries of judges lower than the 4000 Lira, postponing the question relating to seats of tribunals to another moment.

Zanardelli introduced himself with such relish as tireless worker, who "*consecrated long day and night hours to his studies, and from the fulfilment of his duty, more than from any other award, he drew sweet consolation*"[40]. In fact, if his attitude towards study is documented[41], the Brixian dedicated a careful analysis bordering the painstaking to the organization of the work of the judges. The amount of material collected and studied by the gentleman from Brescia to prepare his project for the reform of the judicial districts is proof to this: personal notes, articles from newspapers, correspondence, documents where the suggestions received from judges, lawyers and colleagues were collected statistical data[42]. An important aspect, which can here only be reported, is the comparison made by Zanardelli with the situation in other States[43], from which *the huge difference emerged between our own salaries and those of foreign countries*[44].

The available data of the Keeper showed how many dyscrasias in workload there were between the different courts and how appropriate it

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[39] AP, Documenti, Legislatura XVI – 4th session 1889-90, n. 4, p. 3-5: *"In the midst of this society of ours, where all the classes of citizenship try, through the free and enlightened exercise of their own forces, to procure a higher prosperity for themselves, most of the magistrates, and precisely the ones that live closer to the people, live miserably, with serious detriment of their decor,; not only, but also with a prejudice against the common trust in social justice".*

[40] See Discorsi Parlamentari di Giuseppe Zanardelli – published [posthumously] for deliberation of the camera dei Deputati, on January 28, 1904, v. III, Roma, 1905, p.640

[41] A.A. Cassi, *Spiegare alle giovani intelligenze*, quote., *passim*.

[42] On the importance given by Zanardelli to Political Sciences, see ibidem, pp. 91 foll.

[43] Ibidem, pp. 140 foll.

[44] Discorsi parlamentari, Camera dei deputati, February 21, 1890, p. 542.

was to decrease the less active ones. On the other hand, in order to decide which of the 1819 national courts listed, were the ones to suppress

> the criterion of work burden could not be taken as unique and exclusive criterion to keep or abolish a district court[45].

It seemed once again to be a compromise choice, geared to the prudent calibration of opposing interests.

The keeper was well aware that many national courts, despite having very little workload, could not be deleted without causing considerable inconvenience to the citizens, and that they could not certainly "*completely deprive them of the benefits of the administration of justice*"[46].

Zanardelli, persuaded about the need to proceed with great caution in what he defined the 'embarrassing issue'[47] of the abolition of courts, opted for a choice that could reconcile local interests (enjoyment of justice by the citizens of peripheral locations) and common good (rationalisation of the judiciary): he held the tiller steering in the direction *to suppress the Office of magistrate in these small and isolated districts, keeping the legal judiciary office*[48]: The magistrate of the district resulting from the aggregation of two or more districts, preserving their ordinary business in major urban centres of the (new and expanded) constituency, would be transferred in a predefined day - of each week or every fortnight, "*according to the seasons and the number of business*"[49] - in the capital or in the deleted district regional capitals "to administer justice".

This direction was not certainly unanimously shared[50], but Zanardelli,

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[45] AP, Documenti, Camera, Legislatura XVI, 4th session1889-90, n. 4, p. 7

[46] ASB, b. 852, n. 164, foglio 7.

[47] A. P., Camera, Documenti, Legislatura XVI, 4th session 1889-90, n. 4, p. 8.

[48] Ibidem.

[49] A. P., Camera, Documenti, Legislatura XVI, 4th session 1889-90, p. 8.

[50] There was the opinion, annotated by the Brixian Gentleman, of people like Cesarini, who believed that it was not a convenient choice, considering the major expenses: "Because if it were only to clear an expense entry from the budget, in the Personnell category, which you should then necessarily list in equal proportion, if not higher, in the category justice expenses for allowances; judicial transfers…: anybody can see it is only a vicious circle, a phantasmagoria; and we would never recommend to put the people in such distress, to spread discontent among them, which already is too much, and push

persuaded of the practical advantages that this would have resulted in, defended it with firm obstinacy, not without resorting to irony, noting that "*these people did not care have a district court judge who lived there by night, what mattered instead was that he took audience*"[51].

The pressure of local interests to defend even the smallest offices was very strong and Zanardelli knew that "the thankless reducing task"[52] would certainly have turned on "dissension" where those districts were that had to be deleted. Referrals, recommendations, pressures came not only from Members who did not intend to lose important electoral quotas in their colleges, affected by the reduction of district courts, but also by municipalities, by provincial councils and members of the same judicial order. The Minister was oriented in the direction of not indulging beyond measure in local favouritism even in areas of "political competence", as demonstrated by the concern of the Municipality of Gargnano. Fearing the abolition of the local magistrate[53], they sent a telegram on January 20, 1889 asking the keeper to take into consideration the necessity of maintaining the judicial seat, which was established in 1853, since, by that time, road conditions had remained unchanged[54].

Zanardelli only answered vaguely, by deferring to the general criteria and evoking long periods of time and likely delays[55].

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them to the extreme remedy of obtaining justice from their own hand against the difficulty of acquiring it from the legal courts, without the economy being adequate to the sacrifice that their asked"; see FBCAB, b. 6, file III.

[51] Discorsi, Camera, February 27, 1890, p. 575.

[52] These are the Keeper's words in a letter to a friend of his, Teresa Curi, in:ASB, CZ, b. 86.

[53] That the district of Gargnano was among those to suppress is demonstrated by a series of personal notes of Zanardelli, inserted among the studies for the modification of the judicial districts, where he considered the situation in his province, and according to whom the following seats were to be suppressed: Rovato, Ospitaletto, Leno, Adro, Rezzato, Bagnolo, Bovegno, Gargnano, Preseglie, Bagolino, Pisogne and Montichiari in: ASB, b. 852.

[54] See ASB, CZ, b. 852.

[55] Among the others, the abovementioned "domestic" affair:

Rome, 22 January 89/ Municipality in Gargnano/The reduction in the number of national courts for which I am preparing a draft law will not be carried out earlier than a few years later. For now we are only discussing the general criteria through which to proceed to this reduction. This most honourable representation may be assured that the

The pressures that the Keeper was constantly put on made him well understand that defining the new district by subjecting a draft law to the Parliament would mean handing the reform hostage to the local interests that every Member was concerned to assert, in order to maintain the judicial offices that were in the district of their constituency.

Zanardelli, in other words, understood that he was supposed to present a bill where provision was made for the reduction of judicial seats within certain limits set by law, without going too dangerously in detail, and reserving the executive decision on the number and the seats by decree. It would be so to avoid excessive resistance during parliamentary debate with a consequent significant decrease of the pace of the reform's implementation[56], which was, instead, urgent and indefectible, since *the evil was so serious that, without a ready remedy, it would become irreparable*[57].

The Minister, therefore, established a practice inaugurated in the aftermath of the legislative unification[58], asking the Parliament for the right to prepare the reform of constituencies by royal decree, not without believing that the Government would make use of a Committee of

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circumstances indicate… in the most appreciated telegram on the 20th it will be held on the best regards and that I will personally happily do whatever possible to correspond to the wishes expressed…"; in ASB, b. 852.

In his letter to Teresa Curi on June 29, 1890, however, he added that "more or less" the mentioned Magistrate – the one in Martinengo - seemed difficult to maintain, given that it was a Magistrate with a very low workload; in: ASB, CZ, b. 86.

[56] "…who would not foresee what struggles and rivalries on local interests and what different points of view would cross the path of such a discussion? It should be added that, in the best-case scenario, drawing the new constituency would require a very long time, which would be subtracted to the study and discussion of other important topics that are standing at the Chambers": notes by Zanardelli in ASB, b. 852, n. 164, sheets 10 and 11.

[57] These are the words used by Minister Salvelli during the December 14, 1883 session, and reported during an intervention at the Camera by hon. Calvi; in Discorsi, Camera, February 19, 1890, p. 1026.

[58] With the law April 2, 1865 n. 2215, the Camere had authorized the Government to publish a new judicial district by royal decree; the law on the unification of legislative Veneto provinces and Mantua (March 26, 1871, n. 129) authorized the Government to constitute a new judicial district, with the only obligation to hear from the provincial representatives.

competent and impartial men, selected partly from the Camera and the Senate (a sort of delegation of the Parliament) and partly between senior officials of the State, and not without considering he should hear the opinion of provincial councils, in order to avoid any "*neglect of the real needs of the populations, an uneven appreciation of the various natural economic, and legal elements*"[59].

The ministerial decree draft called for, next to the aforesaid topographic criteria[60] (art. 2), a protection standard (art. 3) which would make it possible, *in special topographic or climatological circumstances*[61], to maintain the judicial seat in the chief town of a magistracy intended, by virtue of those criteria, to be suppressed, establishing the obligation for the magistrate to keep hearing on pre-set days.

The position of those officials who had been made redundant was then managed: placed in availability regime for three years (art. 6), the Government could rely on them for a *useful service*; at the end of the three years, unless rights to a pension or allowance raised, they would have been exempted from service (art. 7). In any case, until the number of officials in service had not been reduced to the one established in new positions, new appointments could not be made.

Article 8 of the ministerial project formulated one of the focal points of the entire reforming operation: "with the sums available due to the reduction in organic personnel assigned to the national courts, the district courts and courts of appeal", the Government was authorized "to increase the salary" of members of the judiciary in service.

On May 6, 1889, the ministerial project entitled "Modifications to the judicial district and improvement of the salaries of the judiciary" was therefore first submitted to the Camera, in which the guidelines and the accurate preliminary work of the keeper merged. The committee chaired

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[59] A. P., Documenti, Legislatura XVI, 4th session 1889-90, n. 4, p. 8.

[60] "…the amount of the affairs of which they are aware, of the population, territorial extension, topographic position, climatological conditions, of the distances and the state-of-art of road communications, the daily interest relationships, of the comparative importance of the different inhabited centres, and of the local traditions". See. A. P., Documenti, Camera, Legislatura XVI, 4th session1889-90, n. 4, p. 15.

[61] A. P., Documenti, Camera, Legislatura XVI, 4th session 1889-90, n. 4, p. 9.

by the honourable. Serra and that had Cuccia[62] as lecturer was to express on this text, proposing changes. Consideration of the close correspondence between the latter and Zanardelli bears witness to how close they were the relations between the Government and the Commission, and reveals the impact of the Keeper in the work carried out by the Commission itself.

In fact, Zanardelli spent considerable energies so that the project would become a reality, as evidenced by the many letters with which he urged the members 'friends' to take part in the parliamentary work, alerting that *a bill of vital importance for the [our] judiciary would have been presented*[63]. Such 'mobilisation'[64] offered the measure of the resistances that Zanardelli knew he needed to overcome[65].

On June 17, 1889, Cuccia, as a lecturer, presented the report and the Commission draft law to the Camera.

It is not even possible to mention the work of the Commission[66] and the energetic conscientiousness with which first the keeper welcomed the invitation (expressed on a confidential basis[67]) to provide supporting

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[62] In the Commission the following Members were also participating: Campi, the Secretary, Barazzuoli, Bonacci, Demaria, Florenzano, Grimaldi, and Righi.

[63] "Rome, May 4, 1889. My dear, I pray you…to be in Rome to work in the offices, on Thursday 9, since on that morning, a bill I will introduce on Monday will be on the agenda and it is of extremely vital importance for our judiciary. A Thousand kind regards"; see ASB, b. 852; This is a draft of a letter, followed by a list of names to which perhaps it had to be shipped, with pinned "those to be called by first name, and those to be called by family name".

[64] A few days before writing to his friend Basteris Zanardelli, recalled the importance of the reform and 'mobilised' him on this purpose: "My dear Basteris thank you for your affectionate card, and in the name of this affection I beg you to be here soon after the reopening…come and support the law on the decrease of district courts, since it is all intended to improve the destinations of the judiciary whose fate to none more that you can be naturally in the heart. Looking forward to you on the first days of the month, and meanwhile…yours faithfully, G. Zanardelli"; signed letter dated April 28, 1889 in ASB, b 852.

[65] Basteris's answer to his "dearest friend" did not hide the fact that the project was experiencing difficulties which were "not easy to overcome in the parliamentary system"; letter dated Turin, May 1, 1889 in ASB, b. 852

[66] A.P., Camera, Legislatura XVI, 3rd session 1889, Documenti, pp. 3 foll. It must therefore be referred to in puncto quo in another appropriate venue..

[67] *"Dear Zanardelli, I hereby send you confidentially the text of the law the way it came*

documentation[68] and, then, retorted point on point to the number of unacceptable- according to him, change proposals made by the commissioners[69].

It should be emphasized, however, that the influence of the Keeper on the outcome of the work in the Commission was unquestionable: change proposals 'survived' to the persuasive activities of the Minister were highly formal.

Once forwarded to the elective Chamber on February 17, 1890[70], the

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*out of the Commission studies and of the lecturer. Please, read it and let me get the appropriate suggestions, keeping in mind that the day after tomorrow I will read it to the Commission along with the report - and that I wish as much as you do this draft law to be approved. Soon, Cuccia"*; letter written on the letterhead of the Camera dei Deputati-regional council for the budget, dated June 14, 1889, in ASB, b. 852.

[68] The letter dated Rome, May 28, 1889, written on letterhead paper from the Minister's office - Ministry of grace, justice and Ecclesiastical affairs is written and signed by Zanardelli: "My dear Cuccia, I hereby send you… the entire documents, namely:

- the table of averages for surface, people and workload of the national courts in the different regions;
- the one of the cities divided in more national courts;
- the circular we talked about, for which it is superfluous for you to renew your recommendation in writing for both your personal and exclusive confidential use;
- the data relating to the justices of the peace in France and Belgium;
- the printed law of the senatorial Commission about the previous draft with modifications to the judiciary.

From a day to the other I will send you what is left. With heartfelt affection, I repeat myself. Yours, G. Zanardelli".

See ASB, b. 852.

[69] ASB, b. 852, N. 183, Pp. 1 foll. Zanardelli, for example, did not think it appropriate to "eliminate the criterion of comparative importance of the various population centres in the designation of the seat of the new national courts, adding that most of the times, it [was] the only one that [could] rightly decide between several rivals centres".

[70] The project did not arrive there effortlessly: the works of the Parliament of the III Session 1889 were interrupted by a crisis of the Government; with the new Session Zanardelli filed it again to the Chamber in the session on November 28, 1889, asking it to be considered at the state of report, as it was customary to the Chamber to take up in the phase it had reached in the previous session:

"I have the honour of presenting to the Chamber two drafts that had already been presented in the previous session: one to change the judicial district and to improve the salaries of the judiciary, …and I ask that it can be adopted to the state in which they were in the previous session" in: A. P., *Discorsi*, November 28, 1889, p. 972). The draft n. 95 of

draft law had to be fiercely defended by the Keeper, who declared himself surprised by the numerous and aggressive opposition[71] that he was facing in the parliamentary debate[72].

Making use of his political skills and rhetoric, and alternating replication to the objections, point after point, and displeased indifference to the critics[73], Zanardelli managed to bring the draft law on "Modifications in the judicial district and the improvement of salaries of the judiciary" to be approved by the Camera, with the vote by secret ballot on March 1, 1890. Ten days later, the text arrived at the Senate of the Kingdom, who released law n. 6702 on March 30, 1890 after a much shorter debate.

Two brief but significant observations can be made at the end of this (first and concise) 'retracement' of one of the fundamental axes of the post-unification judicial reform.

The number and the vehemence of resistance encountered from the (first *tranche* of the) reform by Zanardelli are only apparently disproportionate compared to the "poor technical complexity of the project"[74] and should not be welcome as a surprise. On the contrary, such

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the III Session 1889 came to the debate before the elective Chamber on February 17, 1890.

[71] To limit ourselves to the area of Brescia, the one from which perhaps the greatest pressures to the Brixian Minister of Justice came, it is possible to indicate the stiff censure (because of the political and financial inappropriateness and antidemocratic project) formulated by the hon. Di Sant'Onofrio: see *La Sentinella bresciana*, giornale quotidiano, anno XXXII, n. 50, giovedì 20 febbraio 1890; A.P., *Discorsi*, Camera, February 18, 1890, p. 985.

[72] "I am very surprised, seeing so strong an opposition to be raised against the present bill. When I filed it, I would not believe it, nor supposed. Since I was no more than the executor of the will of the Camera, I wouldn't do less than accept the invitation on unanimous proposal from the Budget Commission, from the Chamber themselves in session on 24 May, 1888; so that I could not have imagined I would face such opposition for having obeyed the orders that the Camera had given me", in Discorsi, Camera, February 21, 1890, pp. 538-539.

[73] He stated he did not mean to answer both Toscanelli and Ferri, because the Parliament shouldn't "*be the field of personal grudges or rhetorical exercise*"; which of course derived in a series of lively replies between the two Members of the Parliament; see: *La Sentinella bresciana*, February 26, 1890.

[74] P. Saraceno, *La magistratura nelle riforme Zanardelli*, in: *Il Parlamento italiano*, Milano-Cremona, 1989, vol. IV, p. 178.

disagreement offers the measure of how the "technical legal" element of the reform was to touch the exposed nerves of the post-unification judiciary and of the political-constitutional element implied in it.

In addition, the law March 30, 1890 n. 6702 delegated the Government to change the constituencies - according to the demo-topographical parameters desired and defended by the Keeper - by the decree. This circumstance was a double-edged sword: on the one hand, in fact, the Government reserved a much more agile and suitable implementation tool to focus and to reach the individual concrete reality of the voting districts; on the other hand, precisely for this reason, it became the compensation chamber to a new and even more tempestuous wave of pressures, good righting moment, protests and counter-proposals (compared to what happened in the parliamentary committee and the Camera). The outcome of the law implementation offers a significant confirmation: of the 600 national courts that had to be deleted on the basis of the parameters approved by the legislation, only half of them got suppressed.

In this perspective, and in the face of the resistance encountered, the latter highlights the political skills and the legal competence demonstrated by Zanardelli in desiring and defending this project, perhaps the most "embarrassing" one - as the same Keeper of the Seal had well understood[75]– of the reform of the legal system. He went out to touch, in order to erase them, certainly 'minor', yet historically consolidated, judicial seats, centre of gravity to political satellite activities and of economic importance.

As stated earlier, a little more than two months after the final approval of the law on "Modification of the judicial district and improvement of the judiciary salaries", the "provisions about the admission and promotions in the courts" were promulgated, the other of the two pillars in the reform of the legal system implemented by Giuseppe Zanardelli.

We will follow some of the steps in detail through the discussion of unpublished documentation archive on a further occasion[76].

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[75] *Above* note 47.

[76] At the same time, without breaking the limits within this note, whose vocation being the supply of an incisive and slender historiographic contribution, limited in extension and accompanied by a apparatus of terse notes. It goes without saying that a systematic

reconstruction of the judicial reforms by Zanardelli (the one addressed here and the one from 1903; see above note 4) remains a historiographical operation beyond the intent of these contributions and must find all other editorial allocation, in comparison to contemporary doctrinal debate and to the more overall issues of the liberal state and its constitutional history. Of whose allocation, however, the present essay, together with others that might follow, aspires to be the first draft for a track through almost unexplored territories so far.