

Umberto DE LUCA*

The “Juvenile Question” in the Italian Constitution: A Legal-Historical Perspective on the Preparatory Works of the Constitutional Assembly

ABSTRACT: *This article examines the genesis of Article 31, paragraph 2, of the 1948 Italian Constitution, which commits the Republic to protect motherhood, childhood, and youth by supporting the necessary institutions for that purpose.*

The study focuses on a systematic legal-historical examination of the Constituent Assembly's preparatory works – subcommittee minutes, plenary debates, amendments, and individual reports – to reconstruct the intense discussion that shaped the final wording of the provision. Drawing on earlier forms of public intervention in childhood and youth protection (from Liberal Italy to the fascist period), the Constituent Assembly redefined both the scope and nature of State involvement. Through careful linguistic and conceptual choices, any monopolistic or totalitarian approach was rejected, thereby laying the foundations for instruments capable of promoting the human dignity and free development of minors within a democratic and pluralistic constitutional framework.

KEYWORDS: *Juvenile question, Italian Constituent Assembly Preparatory Work, Protection of Youth in the Italian Constitution, State Intervention in the Protection of Minors.*

1.

Introduction: A Legal-Historical Approach to Article 31 of the 1948 Italian Constitution

The Constitution of the Italian Republic marked a crucial turning point in the construction of the modern Italian welfare state. With its entry into force, a democratic

* PhD student in Law and Innovation, University of Macerata, Italy, u.deluca@unimc.it, <https://orcid.org/0009-0006-0881-1424>.



era began, whose founding principles guided the institutional processes that culminated in the approval of the Charter.¹

In a democratic system, the meaning of fundamental rights and freedoms changes. They are no longer to be conceived as:

*'a barbed-wire fence within which the individual seeks escape against the assaults of the hostile community, but rather as the gateway that allows him to step out of his little garden onto the street, and to bring from there his contribution to the common work.'*²

The creation of a new legal order³ – in which the fundamental rights and freedoms of individuals are fully realised and are, indeed, necessary for the progress of the community – is due to the synthesising effort of the political forces that contributed to the drafting of the constitutional text.

Yet the paradigm of liberty rights is not the most significant innovation of the 1948 Constitution. While the Charter, in Article 2, 'recognises and guarantees the inviolable rights of man, both as an individual and in the social formations where his personality develops,' it also solemnly commits the Republic to 'remove obstacles of an economic and social nature which, by effectively limiting the freedom and equality of citizens, impede the full development of the human person' (Article 3).

The constitutional framework for the protection of the family, motherhood, and minors is also set in this context. The removal of obstacles that hinder the development of the person encompasses and justifies the adoption of Article 31, which imposes an active duty on public authorities to protect the family – considered the fundamental cell of society – and, in particular, to establish a support network for motherhood, childhood, and youth, as specified in the second paragraph.⁴

The revolutionary nature of this choice emerges clearly from the debates of the Constituent Assembly. Some members – rooted in the liberal tradition and concerned about the risk of excessive state interference in family dynamics – opposed an explicit constitutional provision on the protection of the family, evoking the risk of authoritarian tendencies similar to those experienced during the fascist regime. In contrast, other members of the Assembly identified the protection of the family and minors as one of the cornerstone values of the Republic.

Through Articles 29–31 of the Constitution, the regulation of the family becomes one of the pillars of the constitutional programme, focusing on the dignity and full

1 Fioravanti, 1999; Lacchè, 2023, pp. 1–33.

2 Calamandrei, 1946, pp. 15–16.

3 Gregorio, 2017, p. 551. <http://doi.org/10.62733/2025.2.5-15>

4 Bifulco et al., 2006, p. 643.

development of the human person⁵ as an individual rather than solely in relation to others.

However, despite this premise, the Charter does not define a specific status for children,⁶ generally considering fundamental rights as applicable to all, regardless of age, with the exception of political rights. *The person* is recognised as the holder of individual legal rights, and the expression “minor of age” appears only once in Article 37; the minor has a *status* within the family, school, and work contexts. The only direct reference to minors is found precisely in Article 31, paragraph 2. An integrated reading of the constitutional norms, however, suggests a more complex vision, in which the protection of the family and minors is a cornerstone of a system geared toward the protection of vulnerable persons.⁷

This study outlines the content of Article 31, paragraph 2, in the context of the Italian constitutional system and explores continuities and differences from previous legislation, particularly that of the fascist system. First, the pre-existing regulatory context from the early 20th century to the fascist regime’s interventions in the area of childhood and youth is examined. Next, the reports of the Constituent Assembly sessions in which the issue of child protection was addressed are reviewed. The choice of this method is motivated by the need to reconstruct, from a legal-historical perspective, the debate that took place around the approval of Article 31, analysing the different political and institutional positions on the appropriateness of providing constitutional directives for the protection of the younger generation. Finally, once the distinctive features of the normative frame of reference have been clarified, Article 31, paragraph 2, is re-examined, placing it in the broader constitutional framework.

2.

Legal Condition of Children in Liberal Italy

At the beginning of the 20th century, the legal protection of minors ‘appeared almost entirely absent from Italian law’⁸ and was inadequate especially when compared to other European legislations.

However, the second industrial revolution – and the related phenomena of rapid urbanisation, rural exodus, and exploitation of child labour – disrupted the previous social order. Large cities were populated by gangs of juvenile delinquents who found

5 Barile, 1984, pp. 73–101.

6 Carlassare, 1980; Barile, 1984; Colao, 2019.

7 Funaioli, 1951, pp. 132–138.

8 Guarnieri Ventimiglia, 1904.

their means of subsistence in street life and petty crime and a model to follow in criminal adults.

The Italian State's commitment to the protection of minors was characterised by limited and fragmented regulatory interventions,⁹ reflecting a still incomplete focus on child protection. The juvenile issue was mainly framed in relation to the prevention of deviance and crime rather than as a matter of social and preventive protection.

Faced with these masses of petty offenders, the problem was no longer whether the child had committed a crime with discernment or not; instead, the country faced the more complex problem of finding a solution to juvenile delinquency.¹⁰

This was the socio-legal context in which the new ideas of the *Scuola Positiva* entered Italian criminal law. The merit of this new approach was that it addressed the "juvenile question" for the first time by examining a range of factors contributing to juvenile delinquency:¹¹ hereditary factors, such as alcoholism or parental delinquency; economic factors, linked to poverty and need; and social factors, including marginalisation and material and moral abandonment.

In the 'century of children,'¹² jurists called upon the law to engage with a range of disciplines (such as pedagogy, psychology, and sociology) that appeared more suitable than the penal code for the "government" of these particular subjects.¹³

Two paths were thus pursued: that of defending society from dangerous youth, which saw punishment and reformers as tools for protecting bourgeois order; and that of researching the causes of juvenile delinquency in order to remove or mitigate them.¹⁴

The first attempt to recognise a degree of specificity for juveniles at the criminal-law level came with the Zanardelli Code of 1889. This code introduced distinctions in penalties for juveniles compared to adults, establishing four age groups and associating different corrective measures with each. However, the approach remained highly punitive and entrusted the judge with wide discretion in determining juvenile criminal responsibility. Thus, no structured protection was guaranteed; instead, a wide margin was left to the magistrate's individual discretion, with no effective correctional institutions dedicated to juveniles. Moreover, the code reflected a perception of the juvenile more as a potentially dangerous subject to be "corrected" than as an individual to be protected and supported.

9 Dalmazzo, 1910.

10 Pace Gravina, 2000.

11 Ferri, E., Fioretti, G., Garofalo, R., Lombroso, C., 1891.

12 Dalmazzo, 1911; 1922.

13 Key, 1909.

14 Colao, 2019.

The “Juvenile Question” in the Italian Constitution

On the educational front, the Coppino Law of 1877 first introduced compulsory education for children, initially setting the age limit at 9 years, later raised to 12 by the Orlando Law of 1904. These regulations, which sought to remove children from early labour, reflected an attempt to align with policies in other European countries, recognising that education could serve as a barrier to juvenile deviance. However, in practice, these measures had limited impact, as the widespread poverty in which many Italian families lived continued to force minors to contribute economically from an early age, thereby restricting effective access to education.¹⁵

There were also attempts to establish more effective forms of protection, especially for abandoned or at-risk children. Notable among these was the bill proposed by Giovanni Giolitti in 1907,¹⁶ which provided assistance for abandoned children and support for youth exposed to the risk of deviance. However, the proposal failed to secure the political and social consensus necessary for effective implementation and remained unimplemented or only partially implemented. The project suffered from a scarcity of economic resources and a still rudimentary welfare system, which made institutional support for such extensive welfare projects difficult.

In 1908, Vittorio Emanuele Orlando, then Minister of Justice and particularly attentive to the issue of child protection, issued a Circular¹⁷ in which he urged magistrates not to apply only traditional repressive measures to minors.¹⁸ Instead, he asked the courts to appoint an investigating judge specialising in proceedings against minors. Furthermore, he urged investigators to make special inquiries into the family background of minors in order to understand their personalities. Finally, he stressed that magistrates must cooperate with the Patronage Societies, which had emerged across Italy to support juvenile delinquent recovery and prevention.

The Orlando circular did not achieve the desired effect. The establishment of a judge for children was complicated, since it would interfere with the “private” order of the family, which rested on certain provisions of the 1865 Civil Code. Only a few courts

15 Ipsen, 2006.

16 Pignata, 2009;

17 Falcone, 1909; Majetti R., 1909.

18 Daggunagher, 2011, pp. 523–529.

complied with Orlando's proposals, marking the failure of this first attempt to create a specialised juvenile judiciary.¹⁹

3.

Fascist Regime's Policies for Children and Youth

Despite such reform intentions, Italy in the first decades of the twentieth century failed to develop effective legislation in the field of child protection.

The measures adopted were ineffective and limited, as they focused more on the containment of juvenile deviance than on genuine preventive protection of vulnerable children. This approach contributed to a regulatory framework in which minors, rather than being beneficiaries of protection, were viewed as potential sources of social disorder, with only limited and intermittent scope for state intervention.

Nonetheless, one important fact must be highlighted: the issue of child protection, although addressed through sporadic and disconnected legislative interventions, had entered public debate and generated, for the first time, the conviction that the state *should take* an interest in the protection of children.

19 Within this historical and doctrinal framework, the Draft Code for Juveniles (*Progetto di Codice per i minorenni*), presented in 1912 by Orazio Quarta to the Minister of Justice, Camillo Finocchiaro Aprile, emerged. The Draft proposed a radically innovative system of juvenile justice, establishing, for the first time in Italy, specialised juvenile justice institutions.

In each city that was the seat of a tribunal, a single-judge magistrate (*giudice monocratico*) was to be appointed with exclusive competence over matters concerning minors. At the central level, a higher collegiate body, placed under the authority of the Ministry of Grace and Justice, was entrusted with the task of coordinating the activity of the juvenile sections nationwide, supervising the uniform application of the relevant legislation, and exercising disciplinary oversight over the specialised magistrates.

The Draft did not limit itself to the repression of offences committed by minors; it also introduced specific criminal liability for the omission or abuse of parental or guardianship duties by those persons upon whom the law imposed an obligation of protection, assistance, education, and supervision in respect of the minor. To this end, the proposed legislation expressly empowered the juvenile magistrate to exercise strict vigilance over parents, guardians, and any other persons responsible for the minor, with the power to impose sanctions, including criminal penalties, in the event of serious breach of the duties of care, maintenance, and moral and material assistance.

Through these provisions, Quarta aimed to guarantee effective protection of the rights and interests of the child by means of strengthened State oversight over the family sphere, thereby subordinating parental authority to the superior interest of the minor as determined by the judicial authority.

Notwithstanding the innovative character and systematic coherence of the proposal, the Draft was never submitted for parliamentary debate nor transformed into legislation.

On this point: Quarta, 1912; Ciolfi, 1915, p. 396.

The “Juvenile Question” in the Italian Constitution

It was this vision that guided the fascist government in addressing the juvenile question. The legislation concerning minors, enacted between 1925 and 1934, on the one hand, constituted the logical outcome of earlier debates around the need for public intervention in child protection; on the other hand, it marked the beginning of legislative modernisation under the banner of the “nationalisation of childhood,” albeit distorted and shaped by the political needs of the regime.²⁰

The indoctrination of the younger generation was a central and vital objective for the fascist regime²¹: a long-term investment intended to ensure the survival of the system, since public schools alone could not guarantee the transmission of political ideology.²²

For these purposes, large-scale public organisations were established to address the most diverse needs of young people. The competencies of these organisations included spiritual, cultural, religious, pre-military and sporting education.²³

Despite the regime’s extensive efforts in this field, the deplorable conditions in which millions of people lived remained a constant in Italian society and, as a consequence, juvenile delinquency did not stop. For this reason, the government decided to create, as a complement to this public system of intervention, a specialised magistracy dedicated to the control of juvenile deviance.²⁴

This legislative innovation was anticipated by Minister Alfredo Rocco’s Circular of September 22, 1929,²⁵ “Juvenile Delinquency and Magistrates for Juveniles”, addressed to the First Presidents and Attorneys General in the districts of the Court of Appeals.

20 Colao, 2019, p. 339.

21 Gentile, 1996, p. 491.

22 Nello, 1978.

23 Youth aged between 8 and 18 years were incorporated into the organisational structures of the *Opera Nazionale Balilla* (ONB), which, together with the *Fasci Giovanili di Combattimento*, was reorganised in 1937 into the *Gioventù Italiana del Littorio* (GIL). More specifically, children aged 8 to 14 years were enrolled in the *Balilla* formations (subdivided into *Figli della Lupa*, *Balilla Moschettieri*, and *Balilla*), while those aged 14 to 18 years constituted the *Avanguardisti*. Separate from the *Opera Nazionale Balilla*, yet integral to the regime’s system of political education and control of youth, were the organisations reserved for older fascist militants: the *Fasci Giovanili di Combattimento*, the *Gruppi Universitari Fascisti* (for university students), the *Gruppi Fascisti Studenteschi* (for secondary-school students), and the *Giovani Fasciste* (for females aged 18 to 21).

24 Even in this domain, substantial innovations were brought about by the reform of the Criminal Code and the Code of Criminal Procedure. See Sbriccoli, 1999.

25 Daggunagher, 2011, pp. 535–536.

Through this circular, Rocco called for increased judicial intervention in the *Opera Nazionale Maternità ed Infanzia*,²⁶ in order to strengthen coordination between institutions in charge of assisting minors, in the name of human solidarity.

Moreover, it stipulated that, from the following judicial year, “magistrates for juveniles” were to be established in the Courts of Appeal in Turin, Milan, Florence, Rome, Naples, and Palermo. These magistrates were not to limit their activities to the repression of crimes committed by minors, but rather ‘to call negligent parents to account for their duties.’ The Rocco Circular proved more effective than the 1908 Orlando Circular, and specialised judges began operating in major Italian cities.

The path was thus set, and only a few years later, Royal Decree Law No. 1404 of 1934 established the Juvenile Courts in Italy.²⁷

In the name of a unified approach to the juvenile question, the Juvenile Courts were granted criminal, administrative and civil jurisdiction.

In the criminal sphere, they had jurisdiction over crimes committed by minors under the age of 18.

In the administrative sphere, Article 25 of Royal Decree Law No. 1404 stipulated that the King’s prosecutor, social services, parents, and protection and welfare agencies could report cases concerning minors who offered ‘manifest evidence of irregularity of conduct or character’ to the Juvenile Courts.

Finally, Article 32 of the decree, concerning “Civil Affairs,” provided for State intervention in family matters, including the placement of children in care in cases involving abusive or incapacitated parents. Jurisdiction was not exclusive; ordinary courts decided matters concerning property interests, while Juvenile Courts decided those concerning moral issues.

Under fascism, therefore, juvenile policies received unprecedented attention, marking a sharp contrast with the situation in Liberal Italy. The child-protection system was organised through public agencies closely linked to fascist party control and offered wide-ranging assistance to families and children. To complement this structure, the Juvenile Court was established, tasked not only with dealing with juvenile offenders but also with investigating the economic, social and cultural factors that may have led them to criminality.

However, it is necessary to reflect on a fundamental aspect, particularly in light of a comparison between fascist and constitutional legislation on the protection of

26 *Opera Nazionale per la Protezione della Maternità e dell’Infanzia* (ONMI) was a public agency entrusted with the allocation of substantial public resources for the implementation of policies aimed at: providing material and medical support to mothers and children during pregnancy, childbirth and the postnatal period; ensuring the moral and material protection of minors until the age of majority; promoting education in matters of maternity and childcare; and delivering assistance to abandoned, morally endangered, delinquent, or mentally disordered minors.

27 Majetti M., 1921, pp. 1–4; Conti, 1935; Colao, 2016, pp. 1–29.

motherhood and childhood. The considerable economic and organisational efforts undertaken by the regime must be understood as part of a broader plan to build a totalitarian state,²⁸ in which every aspect of daily life was to be brought under the control of the party-State.²⁹ Certainly, there were men and women within the regime’s institutions who were motivated by a genuine sense of solidarity with disadvantaged children and marginalised women. However, the broader context must be taken into account: a system of protection and control embedded within a fascist State that, even through welfare measures, sought to subordinate the most vulnerable segments of the population to party directives.

4.

Genesis of Article 31 of the Italian Constitution Through the Preparatory Works of the Constituent Assembly

As already noted, the need to provide specific legal regulation aimed for the protection of childhood and youth had entered public debate during the fascist regime, involving Italian institutions at the highest levels. In the immediate post-war period, this issue acquired renewed urgency: the conflict had only exacerbated the dramatic living conditions of young people in Italy, many of whom were personally involved in war operations. Public intervention in support of the younger generation was therefore deemed no longer deferrable.

During the years of democratic transition, the greatest political challenge in Italy was drafting a new Constitution for the newly formed Republic. The importance of child and youth protection is evidenced by the fact that the members of the Constituent Assembly proposed including an express institutional commitment in this regard.

The most appropriate place seemed to be the section on the family, in view of the close connection between family, motherhood, childhood and youth. Indeed, the debate encompassed different but intertwined themes: the need for constitutional legislation on the family, the concept of the family itself, and the relationship between public powers and family life.

28 Melis, 2018.

29 Costa, 112.

4.1. Two Visions Compared Within the First Subcommittee – “Rights and Duties of Citizens”

The proposal to include specific rules on the family in the Constitution was the subject of intense debate, particularly regarding the objection that it was inappropriate to regulate, through principles and rules, an area already extensively regulated by the Civil Code.

This clash, stemming from the different ideological sensibilities of the constituent fathers, emerges clearly from the records of the Constituent Assembly. Members of the main parties that had opposed the fascist regime and had found, in resistance to the dictatorship, a common basis for rebuilding the nation, were now sitting together, and their cultural distances³⁰ reemerged in parliamentary work.

This tendency, which characterised the work of the Constituent Assembly, was particularly evident in the debates of the First Subcommittee charged with drafting the Constitution with regard to social and ethical relations.³¹

With regard to child and youth protection, the First Subcommittee began its discussion on the basis of an initial normative proposal submitted during the course of the work:³²

30 Onida, 2007, pp. 33–36.

31 On 15 July 1946, for the purpose of preparing the text of the new Constitution, a special committee known as the Commission of Seventy-Five (*Commissione dei 75*) was established. The Commission was entrusted with the task of drafting the preliminary Constitution to be submitted subsequently for deliberation by the plenary Constituent Assembly.

The 75 members were divided into 3 sub-commissions: the first one was responsible for rights and duties of citizens; the second was charged with the constitutional organisation of the State and public powers; and the third dealt with economic and social relations.

A Coordination Committee (*Comitato di redazione or Comitato dei Diciotto*) was thereafter entrusted with the delicate function of harmonising, reconciling, and stylistically unifying the texts produced by the three sub-commissions.

The work of the Commission of Seventy-Five resulted in the draft Constitution (*Progetto di Costituzione*), which was transmitted to the plenary Constituent Assembly and entered the parliamentary discussion phase on 4 March 1947.

On 22 December 1947, the Constituent Assembly gave final approval to the Constitution of the Italian Republic. The enacted text was promulgated on 27 December 1947 by the Provisional Head of State, Enrico De Nicola, and entered into force on 1 January 1948.

On this point: Romanelli, 2023.

32 The provision in question, originally inserted within the first section concerning the regulation of the family, was proposed by Camillo Corsanego, Leonilde Iotti, and Aldo Moro. For the full text, see Constituent Assembly, [Stenographic Record]. Session No. XXXIII, 6 November 1946.

The “Juvenile Question” in the Italian Constitution

Article 4:

‘The State shall provide for the adequate moral and material protection of motherhood, childhood and youth, establishing the necessary bodies for this purpose.’

Discussion among the members of the Subcommittee focused on two crucial aspects. First, for some members, this wording appeared capable of seriously threatening the autonomy and freedom of the family.³³ Second, concern arose that this provision would allow the State to intervene in the education and training of youth according to political criteria, thereby undermining the freedom of families – to whom primary responsibility for the protection of youth belongs – and even the freedom of young people themselves, who, during the fascist years, had been enrolled in the regime’s organisations and subjected to party propaganda. What drove the debate in the Subcommittee was the concern that the State may once again exercise a monopoly over education of youth.³⁴

The balance between political forces, the gravity of the moment, and the objective difficulty of establishing a new order in the country influenced the progress of the work. For these reasons, the choices of the constituent fathers often represented difficult compromises between competing political orientations.³⁵

33 Camillo Corsanego, having first declared his fundamental opposition to the inclusion of the provision – which he deemed unsuitable for inclusion in a Constitution – nevertheless proposed the addition of the following qualifying phrase: ‘with particular regard to those children whose parents are unable to exercise parental authority.’

The President of the First Sub-Commission, Umberto Tupini, expressed serious reservations concerning any formulation that might undermine the independence of the family from State control. In the course of the debate, Tupini emphasised that, under the preceding dictatorial regime, the State had arrogated to itself the power to interfere in the education and upbringing of children within the family sphere, and warned that any trace of such an approach would be wholly incompatible with the democratic institutional order then being established.

See Constituent Assembly, [Stenographic Record]. Session No. XXXIII, 6 November 1946.

34 Giorgio La Pira and Ottavio Mastrojanni, notwithstanding their markedly different ideological premises and ideological backgrounds, expressed convergent concerns united by a single common denominator: the fear that the proposed provision might open the door to the establishment by the Republic of one or more organisations analogous to the Opera Nazionale Balilla, which, during the 20-year fascist period, had in fact assumed comprehensive control over the education, assistance and ideological formation of children and young persons from 8 to 21 years of age.

Such acute sensitivity to the political implications of terminology even led Giorgio La Pira to propose the outright suppression of the word “youth” from the text of the article, on the ground that the term had become irredeemably compromised by its intensive use in fascist propaganda and institutional practice.

See Constituent Assembly, [Stenographic Record]. Session No. XXXIII, 6 November 1946.

35 Romanelli, 2023.

This motivated constituent fathers to promote different compromise versions of the article.

To prevent the possible resurgence of fascist-type organisations, Camillo Corsanego put forward a proposal to amend the article as follows:

'The State shall provide adequate moral and material protection of motherhood, childhood and youth, establishing and encouraging the necessary bodies for this purpose.'

The article, amended as proposed by Corsanego, seemed to dispel the spectre of a monopolistic state approach to the protection of childhood and youth.

It was the wording "*establishing and encouraging*" that allowed the approval of the text that became the last paragraph of Article 25 of the Draft Constitution:

Article 25:

'It is the duty and right of parents to feed, instruct, and educate their children. In cases of proven moral or economic incapacity on their part, the Republic shall assume responsibility for these duties.

Parents owe the same duties to children born outside of marriage as they do to those born within it. The law ensures that children born outside of marriage are granted a legal status free from civil and social disadvantage.

The Republic shall ensure the protection of motherhood, childhood and youth establishing and encouraging the bodies necessary for this purpose.'

A further amendment, introduced during the drafting, did not alter the meaning of the discussed article but took on a strong symbolic and normative meaning. It is the *Republic*, and not the *State* ("The Republic shall provide...") that is entrusted with this responsibility.

Although this may appear to be a minor change, in reality, this shift marks the beginning of a gradual process of abandoning a State-centric idea of the protection of youth.

4.2. Final Discussion in the Plenary Assembly

The debate then moved to the Plenary Assembly and took place between 15 and 23 April 1947. The political confrontation that had occurred in the Subcommittee, caused by the different political tendencies of the constituent fathers, was fully reproduced at this stage.

The “Juvenile Question” in the Italian Constitution

The core issues were the same. On the one hand, the liberal component opposed placing the family (and family relations) ‘under special surveillance of the Republic.’³⁶ On the other, there was concern about granting the State a monopolistic role in the education of young Italians, as had happened during the years of the regime.³⁷

The deputies of the Italian Communist Party clearly expressed their support for the approval of Article 25 of the Draft Constitution.³⁸ In their speeches in the Plenary Assembly, they strongly advocated the need for the Republican State to intervene in the protection of motherhood, childhood, and youth, by allocating adequate financial means, enacting special legislation on youth, coordinating the activities of the

36 This position was forcefully articulated by Mario Tumminelli, representative of the *Partito dell’Uomo Qualunque*, who sharply criticised the inclusion of the provision in the Constitution and issued a stern warning to his fellow Assembly members. In his view, the cumulative effect of Article 25 (as then drafted) was that ‘the child, the youth, the adult, the family—everything falls under the protection of the Republic, which thereby suppresses all private initiative and absorbs individual personality within the vast and intrusive tentacles of a State that penetrates everywhere, provides for everything, lays down general rules on education, and grants allowances to families together with other measures.’

Tumminelli directly attacked the members of the Christian Democratic Party and the Italian Communist Party who supported the adoption of the provision, in his words: ‘when the child grows up, the Republic undertakes its protection “by promoting and establishing the institutions necessary thereto,” which in practice means a new G.I.L. [*Gioventù Italiana del Littorio*]. The organisations are already in place: on the Communist side, the Fronte della Gioventù; on the Christian-Democrat side, the boy-scout movement.’

See Constituent Assembly, [Stenographic Record]. Session No. XCII AM, 17 April 1947.

37 Echoing the same concerns as Tumminelli, Giambattista Bosco Lucarelli spoke forcefully in the plenary sitting against the approval of Article 25, grounding his opposition in an explicitly Christian conception of social order according to which ‘children belong, first and foremost, to the family.’

In his submission, the Republic must under no circumstances repeat the errors of fascism, which ‘had torn children away from their families, placed a musket in their hands and dispatched them to be educated in the barracks of the G.I.L.’

See Constituent Assembly, [Stenographic record]. Session No. XCII afternoon, 17 April 1947.

38 Fausto Gullo, speaking on behalf of the Italian Communist Party during the plenary sitting, described the approval of Article 25 as ‘more timely and necessary than ever’ and provocatively criticised the provision not for its substance, but on the contrary for being censurable precisely because ‘it does not contemplate an even broader scope of State intervention.’

See Constituent Assembly, [Stenographic record]. Session No. XCV afternoon, 18 April 1947.

various institutions dealing with problems affecting youth, as well as morally and materially supporting associations already involved in the education of children.³⁹

At the end of the debate, the Constituent Assembly, at its session on 23 April 1947, approved Article 25 in the following formulation:

'The Republic shall facilitate with economic measures and other provisions the formation of the family and the fulfilment of related duties, with special regard to large families.

Protects motherhood, childhood and youth by encouraging the necessary institutions for this purpose.'

The disappearance of the phrase "*establishing and encouraging*" did not go unnoticed, indicating that the terms of the State's commitment to the protection of motherhood, childhood, and youth constituted a crucial point of compromise.

The term "*establishing*" evoked too strongly the idea of fascist youth organisations and the invasive role of the State.⁴⁰

Moreover, for the same reason, the term "*bodies*" was replaced with the broader and more neutral "*institutions*." This shift indicates that the provision was not intended merely to encourage the establishment of public bodies or agencies, but also to promote specific legislation in the field of childhood and youth protection.

The text of Article 25 was transferred by the Drafting Committee to its current location as Article 31, closing the set of articles devoted to the family.

39 This was the position articulated by Giuliano Pajetta, likewise a member of the Italian Communist Party, who identified three fundamental policy guidelines that the Republic was duty-bound to pursue in this domain: 'The first is that the organisational structure of our State and governmental action must provide for the adoption of special legislation capable of coordinating the activities of the various public and private institutions concerned with youth-related issues, thereby ensuring that such issues receive effective resolution. The second aspect consists in the establishment of a State agency specifically dedicated to youth welfare, an agency that could immediately commence operations by taking over the entire complex of assets, premises and facilities formerly belonging to the G.I.L. The third aspect concerns the provision of moral and material support to those youth associations that are already actively operating in the field.'

See Constituent Assembly, [Stenographic Record]. Session No. XCVII afternoon, 19 April 1947.

40 The circumstance that the compromise ultimately achieved within the Constituent Assembly rested upon a shared determination to impose stringent limits on public intervention in this domain of social life is further evidenced by the rejection of a supplementary article proposed by Giuliano Pajetta.

The text of the amendment, which was not approved, read as follows: 'The Republic shall ensure the physical development of youth and promote their economic, moral and cultural advancement. To this end, the law shall provide for the establishment of appropriate State agencies and shall guarantee the moral and material support of the State to freely constituted youth associations.'

See Constituent Assembly, [Stenographic Record]. Session No. XCVII, 19 April 1947.

5.

Brief Considerations on Article 31 of the Italian Constitution

Article 31 of the Constitution has a two-pronged character. The first paragraph complements the constitutional protection of the family already established by Articles 29 and 30 – which define the family as a natural society founded on marriage – entrusting the Republic with the constitutional task of facilitating, through economic measures and other provisions, the formation of the family and the fulfilment of its functions, with particular regard to large families.

The second paragraph identifies the protection of motherhood, childhood, and youth as a priority objective of public policy. Once again, it is the *Republic*, with the complexity of its articulations and structures, that is entrusted with this task.

The family is the privileged, though not exclusive, place of growth and protection of children and their needs. In this sense, Article 31 forms a coherent system with the constitutional provisions immediately preceding it (Articles 29 and 30), closing the circle of the new constitutional focus on family and filiation issues.

A new paradigm of juvenile law was inscribed in Aldo Moro’s Report⁴¹ to the Constituent Assembly, regarding a “natural incapacity to exercise a right” on the part of the minor, which was not to be an obstacle to the “recognition of the developing person to become a fully realised human being.”

According to Moro, the ‘contingent immaturity imposes the choice of legitimate representatives of the minor, to guarantee an educational direction that does not compromise in the child that formation of a person, which constitutes for him the affirmation of dignity that is the basis of a democratic constitution.’ The formula proposed by Aldo Moro, therefore, recognises the primary role of the family and criticises excessive State interference: the State should not replace parents but complement their educational action.

However, there is no doubt that the current text of Article 31 of the Constitution imposes a weighty obligation of considerable significance in the area of the protection of motherhood, children, and youth.

In his Report⁴² submitted to the First Subcommittee, Camillo Corsanego argued that the State must recognise and protect family unity, promote the indissolubility of marriage, and guarantee moral and legal equality between men and women. In his view, parents have the primary right to educate their children, with the State

41 Committee on the Constitution, I Subcommittee. Aldo Moro’s Report on the principles of social cultural relations.

42 Committee on the Constitution, I Subcommittee. Camillo Corsanego’s Report on family relations.

intervening only to supplement and supervise. It demonstrates, therefore, a middle way between State non-intervention and the monopoly feared by some constituents.

However, a closer reading of Article 31 suggests another programmatic orientation. Indeed, the text seems to entrust the Republic with a broad mandate in the protection of motherhood, childhood, and youth, supported by the power to foster institutions necessary for that purpose.

It is precisely the open-endedness of this clause (which characterises the norm as a true *programmatic provision*) that highlights the breadth of the instruments to which the Republic *must* have recourse to regulate this delicate matter.

This is a mandated task that constituents entrusted to the new Republic, as Nilde Iotti had strongly requested in her report submitted to the First Subcommittee.⁴³

Iotti, an influential member of the Italian Communist Party, emphasised the essential role of the State in protecting the family and minors, proposing that the Constitution recognise the family as the fundamental nucleus of society and stressing the need for economic support for larger and poorer families. 'Motherhood cannot continue to be regarded as something of a private nature,' Iotti argued. 'The prosperity of the Nation and the development of future citizens depend on it, and society cannot remain indifferent if mothers live in precarious hygienic, sanitary and nutritional conditions, and if children are raised in environments that are morally and materially unsuitable for their development.'

A relevant contradiction emerges from this latter aspect: the words of Nilde Iotti seem to echo fascist rhetoric, which saw population growth as a guarantee for the future of Italy and considered the forced education of the youth masses to be the best way to form future citizen-soldiers. This contradiction reinforces the concerns expressed by some constituent fathers regarding the inclusion in the Constitution of an article that would commit the State to the protection of childhood and youth.

The issue becomes even more complicated given that the most fervent supporters of extensive State intervention in the protection of the younger generation were members of the Italian Communist Party, one of the main forces of the anti-fascist front in Italy.

6.

Final Remarks: The Innovative Approach of Article 31

The analysis offered in the preceding pages suggests that the relationship between the juvenile policies of the fascist period and the commitment enshrined in Article

43 Committee on the Constitution, I Subcommittee. Nilde Iotti's Report on family relations.

31, paragraph 2, of the 1948 Constitution is considerably more complex than a simple narrative of either continuity or outright rejection would allow.

Materially and even terminologically, significant lines of connection are unmistakable: the fight against juvenile delinquency, the protection of abandoned children and destitute mothers, and the creation of specialised courts and public assistance agencies – all themes that traverse the two eras with remarkable persistence. Yet the meaning and purpose of these instruments undergo a profound transformation.

In the fascist framework, child-protection policies, however innovative when measured against the fragmentary measures of Liberal Italy, ultimately served the construction of a totalitarian order. Institutions such as the Juvenile Court of 1934 and the *Opera Nazionale Maternità e Infanzia* were designed not only to alleviate hardship but, above all, to integrate the youngest and most vulnerable segments of the population into the hierarchical and mobilising logic of the party-State. Assistance was therefore inseparable from control, and the child remained, ultimately, an object of national strategy.

The debates of the Constituent Assembly reveal an acute awareness of this dangerous precedent. The repeated linguistic adjustments – from “*the State shall establish*” to “*the Republic shall encourage the necessary institutions,*” and from the singular *State* to the plural and democratic *Republic* – were deliberate attempts to avoid renewed monopolistic interference in family life and education.

Far from signalling a retreat, however, Article 31 affects what may be described as a quiet but decisive reorientation: the same social needs that once justified an expropriative intervention are now placed at the service of an emancipatory project grounded in the removal of obstacles to human dignity (Article 3, paragraph 2). The child is no longer a resource of the nation but a person *in fieri*, whose full development the Republic is constitutionally bound to facilitate without supplanting parental responsibility.

This slight yet radical inversion of purpose within a partly inherited institutional structure appears to constitute the distinctive contribution of the Italian constitutional model. Rather than rejecting the technical and organisational advances of the fascist period or pretending they never existed, the Constituent Assembly chose to redeem and re-found them within a democratic framework centred on the indestructible primacy of the human person, with specific regard to minors.

The child is still seen as an *object* of protection rather than as a *subject* with specific rights worthy of protection. Nevertheless, the constitutional system as a whole can be seen as the framework⁴⁴ within which a different view on the issue of minors will develop in the following decades.

44 Onida, 2007, pp. 56–60.

Bibliography

- Barile, P. (1984) *Diritti dell'uomo e libertà fondamentali*. Bologna: Il Mulino. <https://doi.org/10.1007/s00146-021-01149-5>
- Bifulco, R., Celotto, A. and Olivetti, M. (eds.) (2006) *Commentario alla Costituzione: Art. 1-54*. Milano: UTET.
- Calamandrei, P. (1946) 'L'avvenire dei diritti di libertà' in Ruffini, F. (ed.) *Diritti di libertà*. Torino: La nuova Italia, pp. 7-56.
- Carlassare, L. (1980) 'Posizione costituzionale dei minori e sovranità popolare' in De Cristofaro, M. and Belvedere, A. (eds.) *L'autonomia dei minori fra famiglia e società*. Milano: Giuffrè, pp. 39-53.
- Ciolfi, C. (1915) *Il codice dei minorenni e un imperioso problema sociale*. Macerata: Stabilimento tipografico dell'avv. Filippo Giorgetti.
- Colao, F. (2016) 'L'albero nuovo si piega meglio di quello vecchio. La giustizia educatrice per i minori nell'Italia liberale', *Historia et ius: Rivista di storia giuridica dell'età medievale e moderna*, 2016/10, pp. 1-29. <https://doi.org/10.12120/2464-8914/12652>
- Colao, F. (2019) 'Il diritto per i minori, i diritti dei minori: Itinerari nell'Italia del Novecento', *Italian Review of Legal History*, 2019/5, pp. 318-383.
- Conti, U. (1935) 'Sul tribunale per i minorenni', *Rivista di diritto penitenziario*, 1935/1, pp. 67-77.
- Costa, P. (1999) 'Lo "Stato totalitario": un campo semantico nella giuspubblicistica del fascismo', *Quaderni Fiorentini per la storia del pensiero giuridico moderno*, 1999/18, pp. 285-399.
- Daggunagher, E. (2011) 'La disciplina "per circolare" della delinquenza minorile (1870-1940)' in Colao, F., Lacchè, L., Storti, C. and Valsecchi, C. (eds.) *Perpetue appendici e codicilli alle leggi italiane: le circolari ministeriali, il potere regolamentare e la politica del diritto in Italia tra Otto e Novecento*. Macerata: EUM, pp. 515-544.
- Dalmazzo, F. (1910) 'Il groviglio e l'insufficienza delle disposizioni vigenti e del progetto Giolitti per i minorenni traviati e abbandonati', *La Scuola Positiva nella dottrina e nella giurisprudenza penale*, 1910/4-5, pp. 195-205.
- Dalmazzo, F. (1911) 'Le risoluzioni e le caratteristiche del primo congresso internazionale per il tribunale dei fanciulli', *La Scuola Positiva nella dottrina e nella giurisprudenza penale*, 1911/6, pp. 428-432.
- Dalmazzo, F. (1922) 'Il secondo Congresso internazionale per la protezione dell'infanzia', *Rivista Penale di dottrina, legislazione e giurisprudenza*, 1922/95, pp. 173-180.
- Falcone, L. (1909) *La circolare Orlando e la delinquenza nei minorenni*. Roma: Società Tip. Leonardo da Vinci.

The “Juvenile Question” in the Italian Constitution

- Ferri, E., Fioretti, G., Garofalo, R. and Lombroso, C. (1891) ‘Il nostro programma’, *La Scuola Positiva nella giurisprudenza civile e penale e nella vita sociale*, 1891/1, pp. 5–8.
- Fioravanti, M. (1999) *Costituzione*. Bologna: Il Mulino.
- Funaioli, G.B. (1951) *L’evoluzione giuridica della famiglia e il suo avvenire al lume della Costituzione*. Firenze: Mazza Editore.
- Gentile, E. (1996) *Le origini dell’ideologia fascista (1918–1925)*. Bologna: Il Mulino.
- Gregorio, M. (2017) ‘Dallo Stato sociale alla democrazia sociale: Le riflessioni della dottrina costituzionalistica italiana nella prima età repubblicana’, *Quaderni Fiorentini per la storia del pensiero giuridico moderno*, 2017/46, pp. 518–552.
- Guarnieri Ventimiglia, A. (1904) *La famiglia moderna*. Torino: Unione tipografica editrice.
- Ipsen, C. (2006) *Italy in the Age of Pinocchio: Children and Danger in the Liberal Era*. New York: Palgrave MacMillan.
- Key, E. (1909) *The Century of the Child*. New York – London: G.P. Putnam’s Sons.
- Lacchè, L. (2023) *La Costituzione nel Novecento: Percorsi storici e vicissitudini dello Stato di diritto*. Torino: Giappichelli.
- Majetti, M. (1921) ‘I tribunali dell’infanzia’, *Rivista delle discipline carcerarie e correttive*, 1921/46, pp. 1–4.
- Majetti, R. (1909) *La circolare del ministro Orlando circa la delinquenza dei minorenni*, 11 aprile 1908. Roma: Tipografia Italiana.
- Manzella, A. (2021) ‘Il manifesto della Costituzione’, *Quaderni costituzionali*, 2021/4, pp. 965–969.
- Melis, G. (2018) *La macchina imperfetta: Immagine e realtà dello Stato fascista*. Bologna: Il Mulino.
- Nello, P. (1978) *L’avanguardismo giovanile alle origini del fascismo*. Bari – Roma: Laterza.
- Onida, V. (2007) *La Costituzione*. Bologna: Il Mulino.
- Pace Gravina, G. (2000) *Il discernimento dei fanciulli: Ricerche sulla imputabilità dei minori nella cultura giuridica moderna*. Torino: Giappichelli.
- Pignata, M. (2009) ‘Per un codice dei minorenni: Il contributo di Antonio Guarnieri-Ventimiglia’ in Cernigliaro, A. (ed.) *Themis: Tra le pieghe della giustizia*. Torino: Giappichelli, pp. 135–158.
- Quarta, O. (1912) *Progetto di codice dei minorenni: Voti della Commissione*. Roma: Stamperie reali.
- Romanelli, R. (2023) *L’Italia e la sua Costituzione: Una storia*. Bari – Roma: Laterza.
- Sbriccoli, M. (1999) ‘Le mani nella pasta gli occhi al cielo: La penalistica italiana negli anni del fascismo’, *Quaderni Fiorentini per la storia del pensiero giuridico moderno*, 1999/28, pp. 818–850.

