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Declassified E.O. 12356 Section 3.3/NND No. 785021

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"TUTELA/VIGILANZA"
MAR., APR. 1944

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ACC/I/20/INT

TUTELA AND VIGILANZA

13 April 64

No .

PRECIS .

REMARKS .

I .

Notes on " TUTELA " AND " VIGILANZA "

(a) TUTELA - guardianship

(b) VIGILANZA - Vigilance or watching over.

2703

①

B

Capt. W.

1. first class, intelligent & clear note for which I am most grateful.
2. Two examples are just what I required.
3. This may be filed in a special file & headed

Tutela / Vigilancia.

J. Hunt
B.

②

S/Sgt. Wright

then file accordingly, as above.

C. G. W.

13/4/44

Lt Col. R. G. A. Spies

Note in the terms "Vigilanza" and "Tutela".

By Capt. C. G. R. Williams.

1.) For the purposes of this Sub-Commission, the meaning of these terms is best apprehended by means of concrete examples, selected from the actual working of Italian local government. English parallels may also be useful.

2.) "Tutela".

a) T.U. 1915, Art. 212 - 4.

No decision of the Giunta Comunale can be acted in without the Prefect's approval. He gives this either expressly - by re-turning it with his "visto" - or impliedly - by doing nothing for 15 days. It is his duty to see (1) that the meeting was legally constituted and (b) that the decision itself does not break the law. Thus the Prefect exercises a "tutela" or guardianship over the Giunta.

b.) T.U. 1915, Art. 217.

The Commune cannot sell land or lease it for more than 12 years or realise investments without the approval of the G.P.A. The Giunta Comunale passes its formal resolution, or "deliberazione" and submits it to the Prefect in the ordinary course (see 1 (a) above) who sends it to a member of the G.P.A. to report on at the next meeting of that body.

English parallel:- The Consent of the Minister of Health is required before a local authority can sell land or lease it for more than 7 years.

c.) T.U. 1915, Art. 170.

The Giunta Comunale must fix an establishment^{for} and the pay and conditions of service of its personnel. This must be approved by the G.P.A. and any variations the Commune may wish to make must have the like approval.

English parallel:- The qualifications and duties of the Medical Officer of Health and of Sanitary Inspectors are laid down by Orders of the Minister of Health, which have the force of law. The salaries to be paid to these Officials must be specifically approved by the Minister. Any variation of the salary must have the like approval. So must any proposal to alter or add to these officials' duties.

3.) "Vigilanza".

English parallel:- The duties of the officials of the "Tutela" are laid down by the Minister of Health.

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3.) "Vigilanza".

This expression is hardly distinguishable from "Tutela" of which it seems to form a necessary part. The two words go together, like "law and order" or "right and justice".

4.) "Vigilanza". To quote from a Circular of the Minister of the Interior to the Prefects of 24 March 1926: -

"The Provincial Inspector does not undertake an exclusive function of revision and control. He it is who should rather be the collaborator who throws light in the problems of town life and interests the administrators in them. He gives instruction and counsel: he points out the defects in the services and the failures which are taking place, and the abuses of the personnel of service. and the vigilant

attention of the Inspectors should revolve around every branch of the services
 The inspectorial function is one of pure and simple vigilance, not of substitution (i.e. the Inspector, on default of the local authority, does not take action, but only reports).
 The Inspectors should limit themselves to ascertaining the facts and to giving - when occasion arises - suitable directions to the administrators and moreover, should make the necessary reports to the Prefects with a view to such measures as they (i.e. the Prefects) may, according to their powers, think fit to adopt from the foregoing it follows that the vigilance of the Inspectors should spread itself assiduously and continuously over all public administrations in the Province"

5.) This quotation^{shows} that "vigilanza" is practically the same thing as that form of "tutela" distinguished as "tutela ispettiva".

6.) The English practice bears this out. For example: -
 The District Auditor of the Ministry of Health and his staff arrive at the offices of the local authority to conduct the annual audit. The books of account, minutes and other records are examined. The District Auditor unearths a payment of (say) £20.-- for entertaining the Chairman of the County Council, the Chief Constable and others to lunch on the opening of the new police station. This is an illegal payment. The Auditor questions the local officials about it. They produce a letter from the Minister of Health giving his express approval. This legalises the expenditure. If this approval had not been obtained the Auditor would have "surcharged" the expenditure, i.e. compelled the individual Councillors who authorised the payment to reimburse the public funds out of their own pockets.

The Italians would say that
 a.) in examining the accounts, the Auditor is exercising "vigilanza" or "tutela ispettiva",
 b.) in surcharging illegal payments, he is exercising "tutela",
 c.) in giving prior approval to expenditure otherwise illegal the Minister is exercising "tutela".

7.) Similarly, the annual inspection of the county police by H.M. Inspector of Constabulary and his report thereon to the Home Secretary upon the efficiency of the force would be an exercise of "vigilanza" or "tutela ispettiva". If the Home Secretary should decide, upon H.M. Inspector's report, that the force is

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7.) Similarly, the annual inspection of the county police by H.M. Inspector of Constabulary and his report thereon to the Home Secretary upon the efficiency of the force would be an exercise of "vigilanza" or "tutela ispettiva". If the Home Secretary should decide, upon H.M. Inspector's report, that the force is not efficient and that the Government grant is to be withheld, he would be exercising "tutela" - that form of it which the Italians distinguish as "tutela correttiva".

This and the previous example illustrate the overlapping of "vigilanza" and "tutela".

8.) "Tutela" and "Vigilanza" are not fascist inventions:

They are much older than Fascism. These Italian theories however, were very useful "cover" for the Fascists, under colour of which they could extend the party control into every sphere of administration.

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9.) G.P.A. in sede di tutela.

This means a sitting of the G.P.A. as an administrative body e.g. when it is exercising its powers to approve certain acts of the Communes. Sometimes the phrase is "in sede amministrativa" which is the same thing.

The expression is necessary in order to distinguish these functions of the G.P.A. from its functions as a court of law, i.e. the G.P.A. "in sede giurisdizionale" or "in sede contenziosa".

10.) In Italy as in most Continental countries, there exist two concurrent systems of law - the ordinary and the administrative - each with its own courts, its own rules ^{of} ~~and~~ procedures, its own legal principles and its own reported decisions. Very broadly, the scope of the administrative law is this, that if it is desired to sue an administrative authority on the ground of an administrative act, the action must be brought in the administrative court ^{where} ~~where~~ it will be decided according to administrative laws. The G.P.A. "in sede giurisdizionale" is such an administrative court.

11.) The administrative law is a complicated matter and the borderline between it and the ordinary jurisdiction ill-defined. It is a matter which concerns Legal rather than this Sub-Commission. For our purposes it is sufficient to note that the constitution of the G.P.A. is different when it sits as a court of administrative law, thus:-

G.P.A. in sede di tutela	
Prefect (or Vice-Prefect Vicario)	G.P.A. in sede giurisdizionale Prefect (or Vice-Prefect-Vicario)
2 Consiglieri di Prefettura	2 Consiglieri
Intendente di Finanza	
Ragioniere Capo	
4 Citizen Members	2 Citizen Members.

12.) This note has been compiled from the T.U. of 1915, articles in the Nuovo Digesto Italiano (the Italian "Halsbury"), & other works of reference.

13) Major Thacker's note is annexed.

Alfred Thacker

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Alfred Thacker
Capt.

12 April 1944

T./25/3/44.

NOTES ON THE DOCTRINE OF "VIGILANZA" AND "TUTELA" IN LOCAL GOVERNMENT.

The following notes are based upon the Fascist doctrines as expressed in their own text books and upon the Fascist Consolidated Text of the Law of 3 March 1934 No. 383 which regrouped and coordinated the organs of local government, providing for what was called the "vigilanza" and "tutela governativa" or governmental supervision and guardianship of provincial and local bodies. These duties were entrusted to the representative organs of the central government in the provinces, namely the Prefect with his prefectural staff, advisory council and rectorate, and the most important "Giunta Amministrativa" whose dual composition is noted below.

Juridical and self governing bodies and persons - "Enti autarchici" - are subject to the "vigilanza" or control of the State. This results from the doctrine of autarchy (self government) that attributes to the "Enti" the capacity and right of auto-administration and reserves to the state the right of controlling and watching over them.

The intervention by the State in the activities of the "Enti Autarchici" can be distinguished according to its subject matter and extent. The State ensures above all that the acts performed by the self-governing bodies are in conformity with the letter of the law. This kind of vigilance constitutes the thing called "tutela giuridica" or juridical guardianship which is sanctioned by the power to annul acts performed by autarchic bodies in violation or by erroneous application of a rule of law. The "tutela giuridica" is a normal attribute of the State in respect of all self governing bodies.

The State may also intervene exceptionally in cases expressly provided for by law to ensure that the acts of "Enti autarchici" are opportune, and has the power to amend them. This is an example of what is termed "tutela economica".

From the standpoint of the time at which it is exercised, the "tutela" can be of a preventive or repressive character. The preventive "tutela" consists in intervention by the State before the act is performed, and this happens on every occasion that the authorization of the State or the opinion of one of its consultative organs is necessary (e.g. advice of Prefectural Council on communal contracts). The repressive "tutela" is exercised in cases of economic or juridical "tutela" when the organs of the State exercise their right to annul or modify an act and do not deem it worthy of approbation.

Finally the "tutela" may be of three kinds:-

Corrective, inspectoral and substitutive.

It is termed "correttiva" when it is exercised in the preventive or repressive form; "ispettiva" if exercised by way of inspection or control especially directed to ascertain the functioning of the officials and servants of the "Enti" superstitutive when the State organs substitute them.

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It is termed "correttiva" when it is exercised in the preventive or repressive form; "ispettiva" if exercised by way of inspection or control especially directed to ascertain the functioning of the officials and servants of the "Enti" supervised; and "sostitutiva" when the State organs substitute themselves for those of the "Enti autarchici" in order to perform some obligatory act which the latter have failed to carry out.

Composition of the Giunta Provinciale Amministrativa.

The G.P.A. sitting in administrative Session was composed as follows:-

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Prefect or Vice-Prefect (President), a Provincial Inspector, 2 Prefectoral Councillors (nominated at the commencement of every year by the Prefect), the Chief Accountant of the Prefecture, 4 effective and 2 waiting members (designated by the Secretary of the National Fascist Party and chosen from amongst juridical, administrative and technical experts.)

Sitting in its ordinary administrative capacity its functions are of three kinds: (1) Control: (2) Consultative: (3) Administrative activities.

Composition of the Giunta as a Jurisdictional body.

The G.P. sitting as a judicial body was composed as follows:- Prefect or Vice Prefect (President), 2 Prefectoral Counsellors, 2 members designated by the N.P.A.

The judicial competence of the G.P. extends to the administrative acts of the self governing bodies placed under "tutela" or guardianship with right of appeal to the Consiglio di Stato on questions of jurisdiction, excess of powers and violation of laws when such are not within the jurisdiction of the ordinary or other courts.

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