
by Michele Sarfatti

Michael A. Livingston is professor of Law at the Rutgers School of Law, Camden. His areas of research are tax law, comparative law, and law and the Holocaust. *The Fascists and the Jews of Italy. Mussolini’s Race Laws, 1938-1943* has been published in the book series of the American Society for Legal History. It explores the content and implementation of Italian anti-Jewish laws from 1938 to 1943 – which were the years in which the Fascist regime was not yet engaged in a murderous persecution – leaving out the years from 1943 to 1945, marked instead by arrests and deportation. The author takes a highly original approach, even if compared to studies published in Italy. His reconstruction and observations are therefore of considerable significance for the advancement of research and debate both in Italy and internationally.

Livingston examines the content and implementation of the anti-Jewish laws by placing them within the general framework of Italian juridical norms and administrative life, devoting but little attention to the history of Italian anti-Semitism as the laws’ background. He also compares some of the results of his analysis with other scholars’ views of anti-Semitic legislation in Nazi Germany and Vichy France. In this regard, he argues, in the wake of Richard H. Weisberg, that “the Holocaust must be considered in a sophisticated manner that takes into account each nation’s legal and intellectual traditions rather than in a linear fashion that asks whether a country was ‘more’ or ‘less’ anti-Semitic on a single, unitary scale” (p. 12). This approach, although rarely adopted, is correct and it is only thanks to it that the author is able to explain that “there are vital differences between Italy and other countries, which provide significant insights into Italian history and the broader Holocaust era” (p. 21).

According to the author, the laws enacted by Mussolini were well suited both to what might be acceptable in a country which, up to that moment, had officially not been anti-Semitic, and to the existing Italian administrative and juridical system. Thus, what the Fascist regime did was to create “a new, uniquely Italian approach to the anti-Semitic problem” (p. 25).

After expounding the differences existing between Fascist and Nazi anti-Jewish legislations and concrete implementation, Livingston points out that, although
in some respects Fascist anti-Semitism was (until 1943) not as harsh as Nazi anti-Semitism, simplistic comparisons ought to be avoided. Proper consideration should instead be given to the different kind of totalitarian state existing in Italy and in Germany, to the importance that legal and extra-legal measures had in the two countries and to the preeminence assigned to anti-Semitic policies rather than to other political priorities.

Many chapters in the book deal in great detail with the laws, their implementation, the reaction of the people persecuted, the judicial proceedings of individual cases. As for the latter, the author again takes up a topic that has been much debated in Italy, namely that of the actions of some judges, notably in Turin. In his view, some of the important judgments by the courts should be seen as an indication that the judges wished to abide by the general legislative framework (which included pre-Fascist laws still in force) rather than as proof that they meant to sabotage anti-Jewish laws or at least to protect the persecuted person. He thus raises the question of the “ambiguities of resistance and collaboration” (p. 156), an issue that concerns not just anti-Semitism, but the entire twenty years of Fascism in Italy.

With regard to Jewish response to persecution, Livingston describes both the reactions of individuals and those of the organization that since 1931 represented all persons belonging to the Jewish faith: the Unione delle Comunità Israelitiche Italiane (Union of Italian Israelites Communities). The focus of his interest is on what the victims felt they might ask and obtain, rather than on any actions on their part aimed at preserving their identity and values. Examining a long letter sent by the Union in 1939 to the Minister of the Interior (i.e. Mussolini himself), he reaches the conclusion that it “focuses on issues that were still subject to change (local ordinances, the press campaign, the as yet incomplete real property and professional limitations), rather than challenging the underlying validity of the laws” (p. 213), an attitude “not much different” from that of any person or association trying as best it could to mitigate the effects of an unavoidable calamity.

On some points I find myself unable to concur with Livingston’s views, as when he maintains that the Italian definition of “belonging to the Jewish race” was not “purely (...) biological-racist,” but rather “hybrid,” being based on an “approach (...) partially religious or cultural” (pp. 37-38, 40). I am still persuaded that the former of these interpretations is the correct one. I base my view on the case (which never actually occurred, yet can be rationally assumed) of a person christened at birth, having sixteen “Jewish” great-great-grandparents, whose descendants had all been christened: in Fascist Italy that person would
inescapably be classed as of “Jewish race” (as in Nazi Germany). It follows that the approach chosen by Mussolini was uncompromisingly “biological-racist.” The overall critical assessment of the book is positive, both with regard to the research carried out and also because it opens up or reformulates important questions. One of these is the comparison between the various anti-Semitic systems in 20th century Europe. According to Livingston, when comparing them one should not focus only on the violence, however vicious it may have been. In his opinion, the study of the Italian system shows that: “...the legal procedurally correct nature of a racist system – while avoiding some short-term excesses of a full-blown criminal enterprise – may in the long run make the system stronger rather than weaker” (p. 119). It is a question that is open for collective consideration.

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