

## I

## Introduction: On the Historical Significance of the *Leggi Razziali*

On the banks of the Tiber, in the center of Rome, stands the main synagogue of the city, an imposing structure surrounded by pleasant, palm-laced gardens. The size and location of the building at first create an impression of stability, even calmness, an impression enhanced by the balmy weather that envelops central Italy most of the year. Only upon turning the bend in the river does one begin to notice unusual things. A first sign is the *carabiniere*, a machine gun slung over his shoulder, guarding the entrance to the building.<sup>1</sup> Closer observation, and a bit of Italian or Hebrew, reveal the tablet that memorializes the Roman Jews killed following the deportation of October 1943 and at later stages of the European Holocaust. A truly careful observer may notice the church, across the street from the synagogue, with its admonition (in Hebrew) to return from the Jews' erroneous ways and embrace the one true faith. Some visitors may linger in the alleys behind the synagogue that constitute the oldest continuous Jewish community on the planet but were also the site of one of its greatest betrayals.

From 1938 to 1945, the Italian and then the German governments launched an assault on the Italian Jewish community from which it has never entirely recovered. The most violent part of this assault took place between 1943 and 1945 when German occupation forces, with not insignificant Italian help, deported and killed about seven thousand Jews from Rome and other Italian cities and towns. But the assault on the Italian Jews did not begin in 1943. From 1938 to 1943, the Italian government, led by Fascist dictator Benito Mussolini, imposed a series of laws that excluded Jews from the country's schools, armed

<sup>1</sup> The historical link is not always direct: security measures were enhanced following a 1980s terrorist attack but suggest the continuing uneasiness of the Jewish community sixty-five years after the war. See generally Mario Toscano, *Ebraismo e antisemitismo in Italia: dal 1848 alla guerra dei sei giorni* (Milan: Franco Angeli, 2004).

forces, and large sectors of public and quasi-public employment; placed severe limitations on their real and personal property; prohibited marriages between Jews and “Aryans” even where both partners practiced the same religion; and generally attempted to separate Italian Jews from the economic, social, and cultural life of the Italian nation.<sup>2</sup> Some Italians protested or simply ignored these laws, or else resisted them in a more passive manner. But many others observed them, and over time – even before the German occupation – the laws tended to become more rather than less rigorous in application. Although the Race Laws (at least until 1943) were not themselves genocidal in nature, the laws helped to facilitate the Italian Holocaust by weakening the Jewish community and gathering extensive information about its membership and characteristics.

The Italian Race Laws are shrouded in a sort of historical mist, resulting partially from postwar revisionism but largely from their own historical context. Because we now know that the laws were followed by a larger, infinitely more brutal assault on the Jews, there is a tendency to see them as an intermediate phase, useful primarily to set the stage for later events. This in turn has led to two related fallacies. The first – what might be called the “Good Italian” fallacy – holds that the Race Laws were never really that terrible, that they existed on paper but were not fully enforced, or that they could at least be evaded by those with the wit and persistence to do so. The second – what might be called “The Garden of the Finzi-Continis” fallacy – recognizes the seriousness of the Race Laws but sees them as part of an inevitable progression toward the Holocaust, a reading that also suggests, however indirectly, that Italian Jews were unreasonably slow or timid to respond to the threat that engulfed them.<sup>3</sup> Both of these assumptions are incorrect: The Race Laws were by and large enforced, and yet the progression toward the Holocaust would have appeared neither inevitable nor even likely to most of the participants in the summer of 1943, when the Anglo-American invasion of Sicily initiated a chain of events that led to the fall of Mussolini, the German occupation of northern Italy, and the Italian Holocaust. Indeed, had the Allies landed in northern rather than southern Italy – an operation that was at least theoretically possible – there might have been no Italian Holocaust at all, and the Race Laws would have remained the dominant event in modern Italian Jewish history.

Scholars, no less than passive observers, have been affected by external factors. Since the Italian Jewish population in the 1930s (about forty thousand) was smaller than that of a medium-sized Polish or American city, scholars are understandably interested in Italy largely for what it has to say about

<sup>2</sup> The racial laws continued in effect in the northern portion of the country, with significant modifications, from 1943 to 1945. For the most part, this book emphasizes the pre-1943 period. On the relationship between the pre- and post-1943 eras, see Chapter Five.

<sup>3</sup> See Giorgio Bassani, *Il Giardino dei Finzi-Contini* (Turin: Einaudi, 1962). A film version, directed by Vittorio de Sica, appeared in 1970. The issue of postwar interpretations is discussed further in Chapter Seven.

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the broader Holocaust experience. This in turn has led to two principal academic themes. The first is the German–Italian relationship and the role of Nazi Germany in demanding or encouraging Italy to adopt its own racial laws. This German–Italian theme has also been extended to Axis-occupied countries, including France and the Balkan countries, where the Italian army occasionally frustrated Nazi attempts to deport Jews to Auschwitz and other extermination camps. The general conclusion of these studies is that the Germans did not pressure Italy to adopt racial laws of its own, but that the Italian army – for a variety of reasons – did resist German pressure to deport third-country Jews in a significant number of cases, saving the lives of numerous Jews in the process.<sup>4</sup> This behavior is often contrasted with that of France and other countries, who appear to have been rather more enthusiastic about the deportation program, although this difference sometimes resulted from political and military conditions rather than differing attitudes toward Jews themselves.

Scholars have likewise expressed substantial interest in the response of the Catholic Church, and especially Pope Pius XII, to the Holocaust. Although the Church is not strictly speaking an Italian institution, the pope and most high-ranking Vatican officials were Italians throughout the 1930s and 1940s, so that academics have inevitably focused on Italy – despite its relatively small Jewish population – in attempting to explain the Church’s behavior in this era. While the issue is hotly debated, the prevailing conclusion is that the Vatican itself did relatively little to protect Jews – or at least those Jews who had not already converted to Catholicism – but that individual churchmen sometimes did much more, and that the Italian Church ranked relatively high as compared to other countries on this latter score.<sup>5</sup>

Together with the above, there is a smaller although still impressive body of work on the general question of Italian Jews during the Fascist era, of which the books by Renzo De Felice (1961) and Michele Sarfatti (2000) remain the most comprehensive.<sup>6</sup> Although many of these works discuss the period between 1938 and 1943, that period is typically one subject in a longer study, so that a relatively small number of books – nearly all in Italian – focus specifically on the 1938 Race Laws. Most of these works were written by historians rather

<sup>4</sup> There were no deportations from Italy itself prior to 1943. On the differences between Italian and German treatment of Jews, see generally Jonathan Steinberg, *All or Nothing: The Axis and the Holocaust 1941–43* (London: Routledge, 1990). Other scholars have been somewhat more skeptical of Italian military behavior as we shall see.

<sup>5</sup> For a comprehensive study on the Vatican and the Holocaust in Italy, see Susan Zuccotti, *Under His Very Windows: The Vatican and the Holocaust in Italy* (New Haven: Yale University Press, 2000). On the Church and the Holocaust generally, see Michael Phayer, *The Catholic Church and the Holocaust, 1930–1965* (Bloomington: Indiana University Press, 2000). On the Church and the Jews in the centuries preceding the Holocaust, see David I. Kertzer, *The Popes against the Jews: The Vatican’s Role in the Rise of Modern Anti-Semitism* (New York: Knopf, 2001).

<sup>6</sup> Renzo De Felice, *Storia degli ebrei italiani sotto il fascismo*, 4th ed. (Turin: Einaudi, 1988); Michele Sarfatti, *Gli ebrei nell’Italia fascista: vicende, identità, persecuzione* (Turin: Einaudi, 2000). Both the DeFelice and Sarfatti books are available in English translation.

than lawyers, so that they quite understandably emphasize the political and social context of the Race Laws rather than the drafting and interpretation of specific legal provisions. The books were likewise written for a predominantly Italian audience and devote relatively little space to comparative issues.<sup>7</sup>

This book takes a somewhat different approach. It emphasizes the Race Laws rather than the Holocaust era, and – while there will certainly be occasion to discuss the role of the Church and the German connection – neither of these is a principal theme of the work. Where the book does discuss the Holocaust period, it emphasizes those aspects of the anti-Jewish program, notably the provisions affecting Jewish property, that remained primarily under Italian control in this period.

The book also differs from previous works in adopting a comparative law/legal history perspective in contrast to the political/social history that is dominant in the field. The goal is less to tell the chronological story of the Race Laws than to situate the laws within our existing understanding of racism and race legislation and, in turn, to determine what if anything the Italian experience can add to that understanding. A secondary goal is to situate the laws within Italian (and especially Italian legal) history: to determine what effect, if any, the specifically Italian character of the laws had on their drafting, implementation, and enforcement. A third and final goal is to assess the behavior of law and lawyers faced with an evil or destructive legal regime, but one that afforded significant opportunity for legal and personal choices.

<sup>7</sup> In suggesting that this book differs from existing scholarship on the Italian Race Laws, I do not deny that there is a great deal of previous research on the subject. The most comprehensive works are by DeFelice and Sarfatti (see note 6), although the former is somewhat out of date and has been criticized for understating the degree of antisemitism in the country. Among the more important works originally written in English are Steinberg, *All or Nothing*; Meir Michaelis, *Mussolini and the Jews: German-Italian Relations and the Jewish Question in Italy, 1922–1945* (New York: Oxford University Press, 1978); and Alexander Stille, *Benevolence and Betrayal: Five Italian Jewish Families under Fascism* (New York: Picador, 1991). Books in Italian include national studies by Alberto Cavaglion, Enzo Collotti, and Liliana Picciotto, together with studies of particular regions by Enzo Collotti, Silva Bon, Fabio Levi, and numerous journal articles. A more recent work, written in French and available in Italian, is Marie-Anne Matard-Bonucci, *L'Italie fasciste e la persécution des juifs* (Paris: Editions Perrin, 2007). See also Francesco Germinario, *Fascismo e antisemitismo: progetto razziale e ideologia totale* (Rome: Laterza, 2009). These and many other works will be cited at appropriate places in this book. While all of these are very solid works and many are outstanding, it must be remembered that many emphasize the Holocaust rather than the Race Laws period, and the great majority take a traditional historical rather than a legal or a juridical approach; that is, they typically employ a narrative rather than a subject matter focus and do not consider the process of legal (including judicial, administrative, and legislative) decision making in the manner common for legal scholars. By contrast, most juridical works have either consisted of brief articles or – in rarer cases – longer treatments of one aspect of the problem (judicial behavior, the behavior of lawyers in a particular region, etc.) rather than truly comprehensive studies (see notes 18–22). Without detracting anything from these other works I believe it fair to say that this book considers issues and problems not been previously considered in equivalent detail, especially in an English-language volume.

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The choice of these goals means that the book will be organized thematically rather than chronologically and that there will be numerous digressions into issues that appear narrow or technical in nature but that are important for understanding the operation of the laws and their effect on the broader legal system. It means further that the principal source materials will be the official legal documents – legislation and legislative history, administrative decisions, and judicial opinions – that the Italian state used to create and enforce the Race Laws during the years in question. Where appropriate, I will supplement these materials with a variety of primary and secondary sources, including letters, correspondence, and the files of national and local Jewish organizations, in an effort to determine the real-world impact of the Race Laws and the Jewish response to them. But the principal focus will remain on the laws themselves.

Against the background of these sources, I will pose three principal questions. The first – what might be called the “universal” question – relates to the nature of the Italian Race Laws and how they differed from racial and antisemitic statutes in other countries and at different times. Among the issues that arise here are the question of content (what features did the laws have in common with other racial statutes, and which features were unique to the Italian situation) and of change (did the Race Laws become stricter or more relaxed with the passage of time, and is this progression likewise common to racial statutes or unique to the Italian situation). Of particular interest here is the relationship between antisemitism and racism directed against non-white peoples.<sup>8</sup> Italy is unusual in that, at more or less the same time that

<sup>8</sup> While there is a substantial amount of work on the history, culture, and anthropology of racism as a phenomenon, and a number of very good works by legal scholars describing particular racial regimes as I will detail, only rarely have these lines of inquiry been combined, in the form of detailed comparative studies that consider the nature of racial laws applied against different groups in different historic circumstances. This limitation appears to result in large part from the compartmentalization of scholarship, the laws restricting different groups having typically arisen in different places and at different times, and (perhaps) from a certain competition for victim status, in which each group is loath to admit that another group’s suffering could in any sense be comparable to its own. By considering a country that enacted and enforced both anti-Jewish and anti-black laws in roughly the same time period, I hope to correct at least part of this deficiency. For a classic study of race and culture, see Pierre L. van den Berghe, *Race and Racism: A Comparative Perspective*, 2nd ed. (New York: John Wiley & Sons, 1978). On the history of antisemitism, see generally Leon Poliakov, *The History of Anti-Semitism: From Mohammed to the Marranos*, trans. Natalie Gerardi (New York: Vanguard Press, 1974); George L. Mosse, *Toward the Final Solution: A History of European Racism* (New York: Howard Fertig, 1978). For an interesting effort by an American legal scholar to confront the issue of race and culture, see Ariela Gross, “Beyond Black and White: Cultural Approaches to Race and Slavery,” *Columbia Law Review* 101 (2001). For contemporary historical scholarship on the role of law in the maintenance of racially discriminatory systems, see, e.g., David Dyzenhaus, *Hard Cases in Wicked Legal Systems: Pathologies of Legality*, 2nd ed. (Oxford: Oxford University Press, 2010) (South Africa); Jane Dailey, *The Age of Jim Crow: A Norton Documentary History* (New York: W. W. Norton, 2008) (United States); Alejandro de la Fuente, *A Nation for All: Race, Inequality, and Politics in Twentieth-Century Cuba* (Chapel Hill: University of North Carolina

it was drafting the antisemitic laws, it was preparing laws and regulations dealing with its newly expanded African empire, including the present-day countries of Ethiopia, Somalia, Eritrea, and Libya. Fascist propaganda made a strong and explicit connection between the danger to the Italian race posed by Jews and Africans; many of the same practical issues, notably the definition of race and the treatment of mixed marriages, also arose in both contexts. What affect did the African experience have on the nature and content of the Race Laws, and how were parallel problems dealt with under the two sets of laws? What happened when the two laws intersected, as in the case of Jews in the African colonies and (less frequently) Africans in Italy proper? What, if any, are the parallels between the German and Italian race laws and non-European race statutes, such as the American Jim Crow or South African apartheid laws?

The second – what might be called the “Italian” question – concerns the special features of Italy and how they affected the nature and (especially) implementation of the Race Laws. Italy has a reputation for disrespect of central authority and a certain laxness or inconsistency in the enforcement of laws, although these factors are sometimes overstated. The country also has a relatively small Jewish community and – while it is hardly a stranger to anti-Jewish feeling – a somewhat weaker history of organized antisemitism, at least in the modern era, than its northern neighbors. What adjustments if any did the Race Laws draftsmen make to accommodate these special features, and were they successful in achieving the intent of the laws? Were the laws successfully enforced, and – to the extent they were not – did this failure result from a lower level of antisemitism, from the inefficiency of the Italian bureaucracy, or from some other factor? How did these outcomes differ as between different laws, governmental entities, and geographical regions, and how did the Italian experience as a whole differ from that in other countries? What effect, if any, did the historically religious rather than racial emphasis of Italian antisemitism have upon the laws, especially in cases like conversions or mixed marriages when the religious and racial approaches were most likely to differ?

The third – what might be called the “legal” question – concerns the role of law and the legal profession in the creation and implementation of the Race Laws. As compared to Hitler’s Germany or Stalin’s Soviet Union, Fascist Italy offered at least a limited amount of independence to judges and lawyers, and a courageous few used this independence to ameliorate or limit the damage resulting from the laws. But others expanded them – and, by providing technical assistance in drafting and interpreting the Race Laws, lawyers were indispensable in making the laws effective. Italian legal philosophy, which reflected a strong positivist influence and envisioned (at that point in time) a relatively restricted range for judicial interpretation, may also have conspired to make the laws more effective and resistance more difficult. What effect did these

Press, 2001) (Cuba). A further comparative perspective is provided by Vivian Grosswald Curran, “Racism’s Past and Law’s Future,” *Vermont Law Review* 26 (2004).

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factors have on the Race Laws, and how did they differ from other countries? Did the formally legal character of the laws, notwithstanding their apparent immorality – which in any case is likely to be more visible now than it was at the time – help to explain their reception by the Italian population and the Jews themselves? What are the lessons for the training of future lawyers and the prevention of further Holocausts?

Although I emphasize governmental sources, no study of the Race Laws would be complete without some mention of the response by ordinary Italians and by the Jews themselves. Accordingly, I have included two chapters (Five and Six) that discusses these issues, although here again emphasizing verifiable, written correspondence from individuals and organizations, especially those with legal implications, rather than postwar recollections. The first of these chapters (Chapter Five) also considers the local administration of the Race Laws in two Italian cities (Ferrara and Turin), providing a balance to national sources and raising the always important issue, in Italy, of regional differences.

The organization of the book reflects the concerns related above. Following this introduction, the ensuing three chapters are organized on an institutional basis. Chapter Two emphasizes the drafting of the Race Laws, and Chapter Three addresses their administration by the *Demorazza*<sup>9</sup> and other parts of the Italian bureaucracy and Chapter Four their interpretation by the judicial system. As a general rule, these chapters emphasize selected areas of interest, like the treatment of mixed marriages and the provisions regarding Jewish businesses, rather than a broad historical survey. Chapter Five considers the issue of general Italian (local and national) responses, and Chapter Six considers the behavior of the Jews themselves. Chapter Seven presents my conclusions regarding the principal themes and subjects outlined above. It is my hope that this scheme will permit those who agree with my analysis to benefit from it, while those who disagree will be free to reach their own conclusions based on the original sources.

I suggested above that I will be taking a primarily legal or juridical approach to the Race Laws, involving detailed examination of laws, judicial opinions, and administrative decisions. This approach may be jarring to some readers, in two distinct but related ways. The first involves the choice of source materials. As a lawyer, I will place a disproportionate emphasis on unusual or borderline cases, such as attempted evasions of the restrictions on Jewish property or cases involving interreligious marriages, in the hope that these “extraordinary” cases

<sup>9</sup> Ministero dell’Interno, Direzione generale per la demografia e la razza (Interior Ministry, Department of Demography and Race), the government agency charged with primary jurisdiction over the Race Laws. Most of the employees of the *Demorazza* – a relatively small number – appear to have been career bureaucrats rather than individuals chosen for their antisemitic or other ideology, although the long-time director, Antonio Le Pera, had somewhat stronger antisemitic credentials. See Chapter Five.



can shed light on the “ordinary” operations of the provisions in question. This methodology will be familiar to law professors, who regularly teach strange or improbable decisions in order to illustrate the workings of the day-to-day legal system. It may seem stranger to nonlawyers, who will wonder why, against a backdrop of war and genocide, we should worry what a usufruct was or how the law dealt with various bizarre permutations in mixed marriage cases. But I think that it is precisely such cases that enable us to investigate the theory and practice of the Race Laws and to place them in a continuum of contemporary and later racial statutes. Borderline or “hard” cases are especially important if we wish to determine the strictness with which the laws were enforced and the attitude of the participants – both Italian authorities and Jewish victims – to them. Chapter Five, which focuses on enforcement of the Race Laws in two cities (Ferrara and Turin), will to some degree restore this balance by emphasizing the large number of routine cases that, while less intellectually significant, were perhaps more typical of day-to-day experience.

A second objection is more philosophical in nature. In applying legal methodology to the Race Laws, some may object that I have taken the laws too seriously, treating them as valid legal provisions when they will strike many as illegitimate or even criminal in nature. To consider this argument, a bit of background is useful.

Broadly speaking, there are two approaches to the study of law and the Holocaust. One view, loosely associated with theories of natural or immutable law, views the Holocaust as a fundamentally illegal or extralegal phenomenon – a sort of collective murder and robbery – that should not be dignified by attributing to it the language of law and legal reasoning. This is the view suggested although never precisely stated by Lon L. Fuller in his famous exchange with H. L. A. Hart regarding the legality of various formally adopted but substantively immoral laws – involving “Aryan” Germans as well as Jews – taken by the Nazi regime (“[t]o me there is nothing shocking in saying that a dictatorship which clothes itself with a tinsel of legal form can so far depart from the morality of order, from the inner morality of law itself, that it ceases to be a legal system”).<sup>10</sup> A similar view has been attributed to the German scholar Gustav Radbruch, whose “jurisprudence of values” (*Wertungsjurisprudenz*) was in part a response to the excessive positivism that was thought to have paved the way for German judicial acceptance of Nazi legislation during the

<sup>10</sup> Lon L. Fuller, “Positivism and Fidelity to Law – A Reply to Professor Hart,” *Harvard Law Review* 71 (1958), 660. I take some liberties with the Hart-Fuller debate in that their exchange concerned legal philosophy rather than historic analysis. It must also be noted that Fuller never adopts a full-fledged natural law position, although he does suggest that he – in contrast to Hart – finds credible that the radical positivism of German legal thinking helped to facilitate Nazi abuses (*ibid.*, 657–61). For a provocative study of jurisprudence and the Holocaust, emphasizing the importance of the Holocaust as a legal (and not merely extra-legal) phenomenon, see David Fraser, *Law after Auschwitz: Towards a Jurisprudence of the Holocaust* (Durham: Carolina Academic Press, 2005).



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Third Reich.<sup>11</sup> A version of this outlook is reflected each time that we, in day-to-day parlance, refer to the Nazis as “criminals” and the Holocaust as a “crime against humanity” or with similar words. Although most commonly applied to the Holocaust itself – that is, the deportation and extermination of the Jews during the 1941–5 (1943–5 in Italy) period – this view is frequently extended to the less extreme antisemitic actions, such as property confiscations, bans on mixed marriages, and other losses of political and civil rights that preceded the extermination program (i.e., the Nuremberg Laws in Germany and equivalent legislation in other countries). Indeed, there is a broader tendency to treat the entire Fascist era as illegal or aberrational in nature, an attitude reflected in postwar French and Italian commentators who viewed the Vichy and Salò regimes (although not the pre-1943 Fascist government) as inherently illegitimate and all or some of their (especially political) actions as lacking proper legal status.<sup>12</sup>

An alternate view, loosely associated with legal positivism, suggests that the Holocaust era legislative provisions were in fact laws, albeit evil and unjust ones: The tools of legal analysis are thus correctly applied to these provisions even though the laws were immoral in nature and one might hope that they will remain isolated and discredited phenomena. This is in essence the position taken by Hart in his exchange with Fuller, where he expresses concern that the confusion of law and morality will ultimately weaken respect for law and create unnecessary confusion between the disciplines, or, put differently, that a law may be too immoral to be respected but does not thereby lose its status as law.<sup>13</sup> This latter view has historical, if not jurisprudential, validity in that the antisemitic measures were generally speaking viewed as laws by those propagating and (in many cases) those victimized by them, and – at least until the point of actual murder – bore formal aspects of legal phenomena such as enactment by legislatures, administration by executive agencies, and (within certain limits) interpretation by judicial bodies. It is also surely worth noting that the Holocaust itself originated in a country that (together with Italy itself) was noted as a stronghold of legal positivism, although in fairness racially

<sup>11</sup> For a provocative series of papers on the Hart-Fuller exchange and Radbruch’s role in provoking that exchange, see “Symposium: The Hart-Fuller Debate at 50,” *N.Y.U. Law Review* 83 (2008), 993. For the classic (prewar) statement of Radbruch’s philosophy, see Gustav Radbruch: “Legal Philosophy,” in *The Legal Philosophies of Lask, Radbruch, and Dabin* (Cambridge: Harvard University Press, 1950), 43–224. Radbruch’s philosophy and his arguable change of heart in response to the Nazi experience find an Italian reflection in the work of Piero Calamandrei, whose prewar views were tested by the experience of Fascism; see Chapter Four.

<sup>12</sup> See Chapter Seven.

<sup>13</sup> H. L. A. Hart, “Positivism and the Separation of Law and Morals,” *Harvard Law Review* 71 (1958), 615–21. Positivism is generally associated with the view that law is what the sovereign power acting in the appropriate manner says it is, even though it may be viewed as contrary to religion, morality, or other values. Prewar Germany – and to a slightly lesser extent Italy – were especially identified with legal positivism, although there were contrary trends, as seen in the work of Giorgio del Vecchio and other scholars. See Chapter Four.

discriminatory statutes and other large-scale denials of human rights, including the American Jim Crow laws and apartheid in South Africa, have existed in countries with a wide range of legal and political systems and situated at various places along the natural law versus positivism divide.

Each of the views above are amply reflected in the Holocaust field, with the former (illegal or extralegal) view perhaps more strongly represented among those who study Germany and Eastern Europe and the latter (legal) interpretation more strongly represented among those who study France, Italy, and other Western European nations, where antisemitism took an initially less genocidal form and the appearance of legality tended to be maintained for a longer period. There is also a temporal distinction, with the period before June 1941 typically being viewed with a more “legal” lens and the extermination program itself as more “extralegal” in nature. Put a little bit differently, most scholars agree that the Holocaust ceased at some point to follow legal procedures and could no longer be effectively understood by reference to legal terms and analysis, but the question of when and where this point was reached varies substantially between different scholars and different countries.

Without taking sides in the jurisprudential debate, I believe that the Italian case is one in which a legal analysis is particularly fruitful, at least for the period before September 8, 1943, when Italy remained an independent country and there was as yet no extermination program as opposed to discrimination policy.<sup>14</sup> A juridical approach seems to be consistent with the behavior of the Italian authorities, who enacted and administered the laws by means not wholly dissimilar from those used for other statutes, and of the Italian Jews themselves, who at least superficially complied with the laws although viewing them as unjust or even illegitimate in most cases.<sup>15</sup> It is difficult if not impossible to understand the behavior of the oppressors or their victims without recognizing that both viewed the laws as having formal legal sanction even if many obviously had moral or ethical qualms about them. It is likewise questionable to view the Race Laws (or the entire Fascist period) as anomalous or extralegal in character when each had numerous precedents in European and Italian history and shared features with race-based statutes in other parts of the globe. Indeed, as one prominent scholar has noted, most of the individual anti-Jewish provisions in Germany (and by extension Italy) had already existed in one place or another in Europe, so that the laws were in many respects a reversion to earlier practice rather than a new departure.<sup>16</sup>

<sup>14</sup> See the historical survey later in this chapter.

<sup>15</sup> As compared to Germany, where a large-scale bureaucracy was established to deal with Jewish issues, the agency charged with administering the Race Laws (the so-called *Demorazza*) was rather small, and much enforcement took place through the regular prefects, police, and judicial system.

<sup>16</sup> For a side-by-side comparison, showing provisions of German anti-Jewish laws and their antecedents in canon (i.e., church) law, see Raul Hilberg, *The Destruction of the European Jews*, 3rd ed. (Teaneck: Holmes & Meier, 2003), 7–9. Many of the provisions cited by Hilberg,