



Luigi Lacchi (ed.), *Il diritto del duce. Giustizia e repressione nell'Italia fascista*, Rome : Donzelli, 2015, xxxviii + 313 p., ISBN 978-88-6843-242-3.

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- 1 Centred on the relationship between repression and the administration of justice in fascist Italy, *Il diritto del duce* presents a stimulating collection of essays. These can be situated in the context in which, as stated by Luigi Lacchi in the introduction to the volume, Mussolini's regime desired that, beyond a merely repressive function, the criminal justice system reflect the fascist 'spiritual Revolution', giving shape to the "new" morality of the Italians', and establishing a 'state of justice' around which to build consensus (p. xxxviii). What measures, then, were taken to 'fascistize' the Italian criminal justice system? How did legal concepts evolve during the years of the ventennio, and how were judicial procedures and punishment of crime affected as a result? In what ways did the organs of justice and their personnel respond to these transformations and how much professional and cultural independence did they maintain from the regime? What continuities with the justice system of the Liberal State are evident, and how did fascist criminal justice compare to that of Nazi Germany and to the legal systems of coexistent liberal orders? In addressing these questions, the volume offers a set of detailed and often fascinating insights into the fascist justice system and the juridical culture underlining it.
- 2 Several of the essays in the collection consider the impact of Mussolini's rise to power on the judiciary. Indicating continuity with the Liberal State, Antonella Meniconi notes in her contribution that the relationship between the judiciary and the fascist regime largely rested on the former's traditional respect for the 'juridical orientation of government', whatever the political colour of that government (p. 80). Fascism's hold

over the judiciary was mainly achieved through an intensification of hierarchical control exercised by the Minister of Justice. Nevertheless, Claudia Storti suggests that some magistrates were disposed towards fascist forms of justice well before Mussolini came to power. In her analysis of judicial interpretation and application between 1900 and 1922 of laws governing the right to strike and to association, she argues that the Court of Cassation attempted to guarantee 'the prevalence of principles of order over those of freedom' (p. 29) by intervening to annul lenient sentences handed out by judges of lower courts who, partly influenced by socialist ideas, were sympathetic to the rights of workers. However, as Floriana Colao illustrates in her examination of trials of anti-fascists in the early years of fascist government, some magistrates continued to operate according to liberal principles, refusing to recognize the 'penal relevance of "intention" and "suspicion"' (p. 51) advanced by the new regime.

- 3 A number of contributions reveal new evidence about the Special Tribunal (*Tribunale speciale per la difesa dello Stato*), set up in November 1926 to ensure that threats against the state were addressed more effectively and expeditiously than the existing courts. Leonardo Pompeo D'Alessandro analyses the contradiction inherent in the military structure of the Special Tribunal and its political objectives. This, he argues, was resolved from the late 1920s through the transfer of responsibilities relating to the running of the Tribunal from the War Ministry to the Head of Government, and the gradual replacement of military judges. Underlining the extent to which the autonomy of the judiciary was compromised by fascism, D'Alessandro notes how the eligibility, from 1928, of ordinary judges to exercise their profession at the Special Tribunal encouraged a large number of applications, in many cases motivated, it would seem, by opportunity for rapid career advancement, though selection still depended on possession of fascist qualities. Alessandra Bassani and Ambra Cantoni identify in disproportionately severe sentences meted out by the Special Tribunal for betrayal of state secrets (*segreti politici*) the political function of fascist justice, which punished individuals as subjective 'enemies' of the Fascist State, when the offences committed did not seriously undermine state security. In a moving contribution, Matteo Petracci considers Special Tribunal sentences to criminal mental asylums in the broader context of fascism's embracing of positivist criminal anthropology for repressive purposes. Petracci hypothesises that certification of a pre-existing state of madness often served to conceal the fact that mental 'illness' exhibited by political 'offenders' was in reality a consequence of severe trauma caused by police beatings during interrogation.
- 4 The activities of the Special Tribunal should be considered as part of a new juridical order, which, in dealing with crime, was not inclined to consider extenuating circumstances. As Monica Stronati illustrates, under fascism the number of individuals pardoned and spared the death penalty dropped notably in comparison to the early years of the Liberal period. In a propagandistic show of his 'loftiness of spirit' and of the re-educational function of punishment, Mussolini restricted pardons to individuals sentenced to *confino* (internal exile) for 'minor' crimes (p. 136). In a preliminary analysis of the more-or-less unexplored justice system of the Italian Social Republic (1943-1945), Toni Rovatti examines the creation of special courts dealing mainly with fascist betrayal following Mussolini's first fall from power in July 1943, and the resurrection of the Special Tribunal. However, punishment of the 'internal enemy' was increasingly entrusted to a large number of fragmented and competing military organs, leading to highly arbitrary forms of administration of justice.

- 5 In one of three comparative essays featuring in the volume, Barbara Bushart distinguishes fascist criminal law, animated by the concept of a strong 'personified' state, which 'cannot refuse legality' (p. 119), from the Nazi concept of 'people's law'. In this vein, Giuseppe Speciale analyses the interpretation which many Italian magistrates gave to fascist anti-Jewish race legislation from the late 1930s, identifying their desire to inhibit the attempted domination of the judicial order with new racial principles. Thus, the majority of Italian judges 'did not renounce their role as interpreters of the legal system' (p. 261), when during the same period in Nazi Germany judges were expected to identify the law in the will of the people. In his analysis of the Nazi People's Court (Volksgerichtshof), Thomas Vormbaum identifies judicial procedures founded on a heuristic principle, as well as a popular style, responding to demands voiced during the 1920s, especially by the Left, to overcome 'the extraneousness of justice from the people' (p. 242). Similarly stressing continuity with previous political orders, Camilla Poesio notes how the application of fascist confino and Nazi Schutzhaft (protective custody) – in the context of both regimes' violation of the principle of *nullum crimen, sine lege* – amounted to a re-introduction of measures which had been applied for illiberal ends in Liberal Italy and the Weimar Republic. In an essay which underlines the need to consider possible similarities between fascist law and that of contemporary liberal orders, Stephen Skinner compares the formulation and application of the crime of 'vilification of the state' (*vilipendio dello stato*) in the 1930 (Rocco) criminal code with that of 'seditious libel' in English common law. In the face of a perceived communist threat, under both systems lack of a clear definition of these offences permitted a suspension of rule of law for the purpose of preserving the power of the state, placing 'the law at the service of politics' (p. 59).
- 6 Among the many perspectives contained in the volume, the attention – which for lack of space I cannot elaborate on – that several contributors in the course of their analyses pay to the roles and careers of individual members of the judiciary, during the dictatorship, should also be highlighted. Contributing to a growing body of work which explores the many dimensions of fascist criminal law, this collection of essays will prove highly informative and inspiring to scholars of legal history and fascist repression.