

ACC

10000/142/982

LEGAL S/C OF ACC,
DEC. 1943 - FEB. 1944

10000/142/982

LEGAL S/C OF ACC, ITALIAN LAWS, STATUTES (REVISION OF)
DEC. 1943 - FEB. 1944

1646

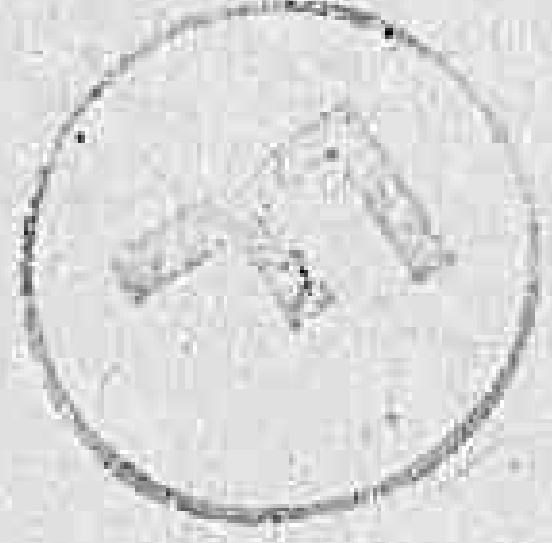
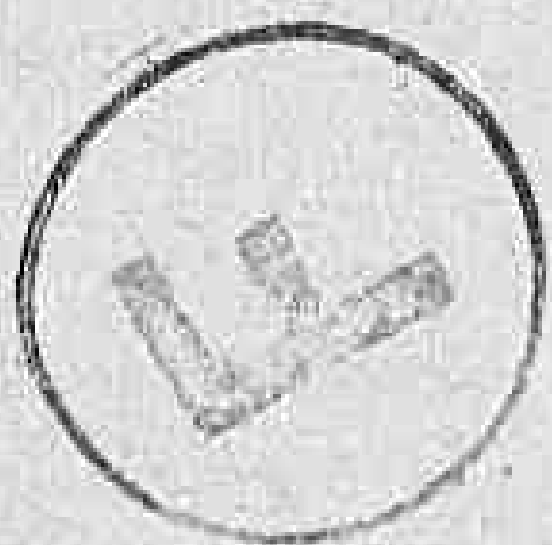
SUBJECT MATTER

Italian Law, Statutes (Provision of)

acc/12/110

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LEGAL SUBCOMMISSION OF UNITED STATES COMMISSION

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LEGAL SUBCOMMISSION OF UNITED CONTROL COMMISSION

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THIS FOLDER
CONTAINS PAPERS
FROM DEC-43
TO FEB-44
CATALOGUE

36 Bury



MINISTERO DI GRAZIA E GIUSTIZIA

Protoc. N. 851/9

Risp. al foglio N.

Riferimento: AGC/L/110.

Bari, 10 febbraio 1944

OGGETTO: Legislazione italiana sul sabotaggio e saccheggio.

ALLA COMMISSIONE ALLEATA DI CONTROLLO
Sottocommissione Legale

P.M. 151

In ordine alla nota di cui sopra, riferisco quanto appreso:
a) l'art. 15 del codice penale militare di guerra dispone che, agli effetti della legge penale militare di guerra, i reati commessi da militari italiani o da persone estranee alle forze armate dello Stato italiano a danno di militari o delle forze armate dello Stato alleato sono considerati come se fossero commessi a danno di militari o delle forze armate dello Stato italiano. La osservanza di questa norma è subordinata alla condizione che lo Stato alleato garantisca parità di tutela penale ai militari italiani ed alle forze armate dello Stato italiano.

Agli effetti delle disposizioni di questo codice, continua il citato art. 15, sotto la denominazione di stato alleato s'intende compreso anche lo stato associato nella guerra.

Ora, dal testo dell'art. 15 sopra riferito, chiaramente discende la conseguenza che l'applicazione della legge penale militare (art. 158, 159, 160 e 161 codice penale militare di guerra) o della legge penale ordinaria (art. 253, 254 e 255 codice penale comune), la prima molto più severa della seconda, è in stretta funzione col verificarsi della capacità di tutela penale garantita ai militari

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Ciò premesso, alla domanda di cui alla lettera a) della nota sopra riferita di codesta Commissione la mia risposta è la seguente: sia per i militari ~~che~~ per i civili, l'applicazione della legge penale militare di guerra o della legge ^{penale} ~~comune~~ dipende uni-

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camente dal verificarsi o meno della condizione, espressamente richiamata dal precitato art. 15 del codice penale militare di guerra, che le potenze alleate garantiscono o meno parità di tutela penale ai militari italiani e alle forze armate dello Stato italiano.

b) Mi riservo di rispondere al quesito *sull'* art. 158 codice penale militare di guerra sia stato applicato ai socotatori di installazioni militari tedesche in Italia al tempo dell'alleanza italo-germanica, non essendo per il momento in possesso dei dati occorrenti per risolvere ~~l'interrogante~~. In proposito chiederò al più presto notizie precise ai tribunali militari territoriali.

c) Non mi risulta che vi sia ^{alcuna} qualche legislazione speciale per il tempo di guerra in materia, sembrandomi tuttora applicabile la legislazione sopra specificata.

IL SOTTOSGREGARIO DI STATO

(Giuseppe de Santis)

TRANSLATION

MINISTRY OF PARDON AND JUSTICE

Ref ACC/L/110

Bari, 1 Feb. 44

SUBJECT: Italian legislation on sabotage and pilferage.

In reply to the above letter I wish to report as follows:

(a) Art. 15 of the penal military code of war provides that for the purposes of the penal military law of war, crimes committed by Italian military personnel only persons not in service with the armed forces of the Italian State to the prejudice of military personnel or of armed forces of a state allied with the Italian State, are considered as if committed against the military personnel or armed forces of the Italian State.

The above quoted Art. 15 provides furthermore that for the purposes of this code ~~xxx~~ (translator's note: i.e. of the Penal Military Code of War) the term "allied state" comprises also a state associated in war. Thus it appears clearly from the above referred to Art. 15 that the application of the Penal Military Law (Art. 158, 159, 160 and 161 of the Penal Military Code of War) or of the ordinary penal code (Art. 259, 254 & 255 ordinary penal code), the first being more severe than the second, depends directly upon the equality of penal protection guaranteed to Italian military personnel and to armed forces of the Italian State by an allied state or by a state associated in war.

Assuming this to be the law my answer to para (a) of the above referred to letter of the Legal Subcommittee is as follows:

The application of penal military law of war or of the ordinary penal law depends solely upon the compliance with the condition expressly stated in the above cited Art. 15 of the penal military code of war, that the allied powers assure an equal penal protection to Italian military personnel and to the armed forces of the Italian State.

(b) I wish to delay the answer to your query as to whether Art. 158 of the penal military code of war has been applied to saboteurs of German military installations in Italy at the time of the Italian-German Alliance, because at the moment I am not in possession of the data necessary for the answer. I shall request precise information from the territorial military tribunals as soon as possible.

(c) I do not recall that there is any special war-time legislation on this subject in this part of Italy and I think that the above specified legislation is applicable.

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HEAD QUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee.

GMF/gmf

28 December 1943.

In reply
refer to: ACC/L/110.

SUBJECT: Transmittal of Documents.

TO : G-2, Advance Group, AFHQ. (For Major Philips).

Transmitted herewith 2 copies, as requested, of the
List of Buildings in Rome and Vicinity Transferred by the Lateran
Treaty of 1929 to the Ownership of the Vatican State.

A. R. THORNTON, Major
Legal Subcommittee, ACC.

34

Memorandum on the Abdication of the King and the Italian
Institution of the "Luogotenenza"

I

Object of this Memorandum

The Allied Governments having concluded an armistice with the Government of the King of Italy, Victor Emanuele III, have been aware of a growing opposition to the Sovereign and his family from a large section of the Italian people.

AMHQ desires to be informed of the legal position if the King desires to abdicate or can be persuaded to do so by one or more of the political parties and in that event to know whether constitutionally it is possible to attain any of the following results.

1. Can the King abdicate in favour of his grandson, thus ignoring the rights of the heir apparent, the Prince of Piedmont.
2. Is there a constitutional machinery by which a non member of the Royal House can be nominated Regent to a minor king, assuming that the King and the Prince of Piedmont can be persuaded to abdicate.
3. Can a Council of Regency be appointed and by whom.

These matters are governed by the Constitution of 1848 (a copy of which is attached) and though a strong party might be willing by a coup d'etat to disregard its provisions, to compel the King to abdicate and to set up some Council of Regency without reference to any constitutional authority, in this Memorandum it will be assumed that no party would wish to act in an unconstitutional manner or if they did so Allied policy would preclude them from taking any such steps.

II

The "Constitution of 1848" (9 March 1848)

The Statuto of the Kingdom of Sardinia (Savoy, Piedmont and Sardinia) granted freely to his people, by an absolute monarch, Carlo Alberto, became the Constitution of the Kingdom of Italy when his successor, Victor Emanuele II, finally unified the country after the surrender of Rome in 1870.

Modelled on the French Constitution of 1830, originally written in French, its main dynastical object was to ensure the continuance of the House of Savoy on a throne which its members had occupied as Counts, Dukes and Kings since the XIII century (Lex Salica). On the other hand the "Statuto" was not "une Constitution rigide" (as in U.S.A.) which could not be modified by subsequent Statute; it was considered to be a constitution of the type called "ouverte" and its provisions were from time to time amended by Parliamentary Legislation. The fascist government took advantage of this conception when they introduced by Acts of Parliament the Grand Council of Fascism, the Corporations, etc. in the constitutional life of the country. Writers on Constitutional Law, both fascist and anti-fascist, are agreed, however, that though the provisions of the Statuto can be amended such amendment can only be effected by an agreement between all constitutional bodies - King, Council of Ministers and Parliament.

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III The Regency

As it is plain that a Parliament cannot be convened to amend the Statute until the Germans have been expelled from Italy, it is necessary to consider whether its provisions can be interpreted widely enough to allow the King to abdicate in favour of his grandson and to justify the nomination of a Regent or Council of Regency outside the House of Savoy.

(a) Abdication.

The King can abdicate although the Statuto does not expressly deal with this and his abdication has not to be accepted by the Cabinet or Parliament to become effective; but he must abdicate unconditionally and definitely; thus the heir apparent succeeds to the crown automatically. There are a number of cases of abdication by members of this House, the best known and more recent example being the abdication of Carlo Alberto (succeeded by Vittorio Emanuele II, the founder of Italy) after the defeat of Novara in 1849.

(b) Regency.

The problem of the Regent is very carefully and completely gone into in the Statuto. A Regent can only be nominated if the King is a minor under 18 years of age or if he is in the state of being physically unfit to reign (Arts 12 & 16). The order in which the Regency is established is as follows.

The nearest male relative (Art 12) if over the age of 21.

Another male relative if the nearest is under the age of 21 (Art 13).

The queen mother (Art 14) in the absence of male relatives.

The heir presumptive in cases of physical disability of the King if he has reached the age of 18 (Art 16).

In no case can the Regent be selected outside the Royal House. A Council of Regency is nowhere mentioned and there are no precedents to justify the view that a regent can be appointed otherwise than in accordance with the above mentioned provisions or that there is any scope for a Council of Regency. It appears, therefore, that the answers to the three questions set out in para I of this Memorandum are each in the negative and in these circumstances your attention is drawn to a possible solution of the problem - namely the Luogotenente.

IV

The Luogotenente

The Luogotenente is an old dynastic custom. The "Statuto" makes no reference to it, but many heads of the House of Savoy have appointed "Luogotenenti" or "Luogotenente" during their reign. The first instance being the rights conferred by Count Amedeo IV to his brother, Thomas, in 1521 when he appointed him "Luogotenente" to exercise the same powers as the Count himself, were he present and in full possession of his domains.

Since the "Statuto" Luogotenenti have been appointed in 1849-50-55-60-66 and finally in 1915. Though there is no constitutional foundation to this institution, it has been accepted without argument as one of the privileges of the reigning Sovereign.

The King appoints a Luogotenente when he takes command of the armies in the field or when he has to absent himself from the country for an undetermined period of time.

The Luogotenente is commonly chosen among the members of the Royal Family,

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The Luogotenente is commonly chosen among the members of the Royal Family, but there exist precedents and it is not questioned, that an outsider can be selected.

The powers of the Luogotenente are those contained in the Royal Decree nominating him. There is no limitation.

The Royal Decree is generally countersigned by the Prime Minister (Salandra in 1915).

In short, there is no reason to doubt that the King could vest into the Luogotenente all or part of the powers which he holds under the Constitution, subsequent Statutes and custom.

V

Conclusions

To secure the appointment of a Luogotenente not a member of the Royal Family, two conditions are essential.

(a) The absence of the King from his Kingdom for an unlimited period of time.

(b) The Royal Decree signed by him prior to his departure.

In both cases the King's agreement cannot be dispensed with.

Without prejudging what the powers of the Luogotenente would be, in the event of his nomination taking place, the provisions of the Royal Decree should limit their duration until the time when the Italian territory is rid of the enemy and the Italian people in a position to express themselves freely as to the form of government they intend to have.

Furthermore the King himself would have to agree to abide by the rule of the people, a declaration which, in fact, he has already made.

Finally if the powers of the Luogotenente were limited in the Decree to administrative, judicial and nonpolitical activities, his appointment might well be a way out of the present impasse, as no other solution appears to be practicable without violating both the Constitution and the fundamental Statutes of the Kingdom.

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FUNDAMENTAL STATUTE OF THE KINGDOM OF ITALY

Promulgated in Lombardy on Dec. 7, 1859.

Carlo Alberto

by Grace of God

King of Sardinia, Cyprus and of Jerusalem etc.

With Royal loyalty and paternal love we wish to put into effect that which we have announced to our beloved subjects in our Proclamation of the 8th day of the last February, whereby we intended to show - amidst the extraordinary events in which our country was involved at that time - how our faith in our subjects had grown with the gravity of circumstances, and listening solely to the advice flowing from the impulses of our hearts, how firm was our intention to adapt the destiny of our subjects to the spirit of the times, and to the interests and dignity of the Nation.

Considering the broad and strong representative institutions contained in the present fundamental Statute to be the safest means for strengthening the ties of indissoluble affection which bind the nation to our Italic Crown, that nation which offered so much evidence of faith, obedience and love, we have resolved to sanction and promulgate the Statute, in the belief that God will bless our genuine intentions and that this free, strong and happy nation will prove itself worthy ^{in so} of an increasing degree of its ancient fame - and that it will be able to merit a glorious future.

For that reason - relying on our firm conviction and Royal Authority - having heard the opinion of our Council, we have decreed and we do hereby decree the following to be the perpetual and irrevocable Statute and Law of the Monarchy:

Art 1. The Catholic, Apostolic and Roman Religion is the only State Religion.
Other cults which are in existence at present are tolerated according to the laws.

With Royal loyalty and paternal love we wish to put into effect that which we have announced to our beloved subjects in our Proclamation of the 8th day of the last February, whereby we intended to show - amidst the extraordinary events in which our country was involved at that time - how our faith in our subjects had grown with the gravity of circumstances, and listening solely to the advice flowing from the impulses of our hearts, how firm was our intention to adapt the destiny of our subjects to the spirit of the times, and to the interests and dignity of the Nation.

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Art 1. The Catholic, Apostolic and Roman Religion is the only State Religion. Other cults which are in existence at present are tolerated according to the laws.

Art 2. The State is ruled by a monarchic representative government. The Throne is hereditary according to the Salic law.

Art 3. The legislative power will be exercised collectively by the King and two chambers: the Senate and the Chamber of Deputies.

Art 4. The King's person is sacred and inviolable.

Art 5. The executive power is vested in the King exclusively. He is the Supreme head of the state; He commands all the ground and naval forces; He declares war; He concludes peace treaties, treaties of alliance, commercial and other treaties, notifying the chambers as soon as the interest and security of the State allow and adding pertinent explanations. Treaties which involve a financial burden or changes in the State territory will not become effective until the approval of the chambers is obtained.

Art 6. The King makes appointments for all State offices and issues decrees and regulations necessary for the execution of laws, but he may not suspend laws or make exceptions from their application.

Art 7. Only the King sanctions and promulgates the laws.

Art 8. The King may grant pardons and commute sentences.

Art 9. The King convokes the two Chambers yearly; He may adjourn their sessions and dissolve the Chamber of Deputies; but in the last mentioned case he must convoke another chamber within four months.

Art 10. The King and each of the two Chambers may propose laws. However, every law imposing taxes or approving the State budgets and accounts will first be presented to the Chamber of Deputies.

Art 11. The King attains his majority at 18 years of age.

Art 12. During the minority of the King, the Prince who is his closest relative in order of succession to the Throne shall act as Regent of the Kingdom, provided that he has attained 21 years.

Art 13. If the Prince, who according to the above should become Regent, is a minor and in consequence of that the Regency devolves upon a more distant relative, the Regent in office will hold the Regency until the King has reached his majority.

Art 14. In the absence of male relatives, the Regency will go to the Queen Mother.

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Art 14. In the absence of male relatives, the Regency will go to the Queen Mother.

Art 15. Should there not be a Queen Mother, the Chambers convoked by the Ministers within 10 days will nominate the Regent.

Art 16. The preceding dispositions relative to the Regency apply to the case in which the King though being a major in age finds himself physically unable to rule. However, if the heir presumptive of the Throne has completed 18 years, he shall become Regent by force of law.

Art 17. The Queen Mother is a Guardian of the King until he shall have reached 7 years; from then on the Guardianship goes to the Regent.

Art 18. Rights exerciseable by the civil power in matters of church benefices or concerning execution of remittances of any kind originating abroad, will be exercised by the King. (This Article applied to Sardinian conditions only and is now obsolete.)

Art 19. The Crown dotation computed from the average allowance of the last ten years shall be maintained during the present reign. The King will retain use of the Royal palaces, villas, gardens and accessories as well as all movables belonging to the Crown, of which there will be made an inventory under the supervision of a responsible Minister.

In the future the above mentioned dotation shall be fixed for the duration of every Reign by the first legislature upon ascension of the King to the Throne.

Art 20. The King's private property will include, apart from the property which He possesses at present as his own, all the property which He might acquire in the future for a consideration or gratuitously during His Reign.

The King may make both an inter vivos or testamentary disposition of his private property without being bound by the rules of civil laws limiting the disposable quantity. In other respects the King's property is subject to all laws governing other properties.

Art 21. A law will provide for an annual allowance for the hereditary prince after he has attained majority or before that in case of his marriage; for an appanage of the Princes of the Royal Family and of the Blood Royal on the above mentioned conditions; for the dowry of Princesses; and for rights of dower of the Queens.

Art 22. The King, upon ascension to the Throne, takes an oath in the pres-

1805

Declassified E.O. 12356 Section 3.3/NND No. 785016

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Art 22. The King, upon ascension to the Throne, takes an oath in the presence of the joined chambers to observe loyally the present Statute.

Art 23. The Regent, before entering his office takes an oath of allegiance to the King and of loyal obedience to the Statute and the Laws of the State.

Rights and Duties of Citizens.

Art 24. All citizens of the Kingdom, whatever their title or grade, are equal before the law. All enjoy equally civil and political rights and may be admitted to civil and military offices with exceptions stated by the laws.

Art 25. They Contribute indiscriminately to the expenses of the State in proportion to their fortunes.

Art 26. Individual liberty is guaranteed. No one may be arrested or brought before a court except in cases provided for by law and in accordance with procedures prescribed by law.

Art 27. The home is inviolable. No entry into a home may take place except by force of law and in a form prescribed by law.

Art 28. The press will be free, but a law will restrain abuses. However, bibles, catechisms, liturgical literature and books of prayers may not be printed without previous permission of the Bishop.

Art 29. All properties, without any exception, are inviolable. However, when a legally ascertained public interest so demands, property may be taken in whole or in part for a just compensation in conformity with laws.

Art 30. No tax may be imposed or exacted if not approved by the Chambers and sanctioned by the King.

Art 31. Public debt is guaranteed. Every obligation of the State towards its creditors is inviolable.

Art 32. The right to assemble peacefully and without arms is recognized subject to laws which may regulate its exercise conforming to public interest. This provision does not apply to assemblies in public places or places open to the public which remain entirely subject to police laws.

The Senate.

Art 33. The Senate is composed of an unlimited number of members appointed by the King for life who have attained the age of forty years and belong to the following categories.

1. Archbishops and Bishops of the State.
2. President of the Chamber of Deputies.

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1. Archbishops and Bishops of the State.
2. President of the Chamber of Deputies.
3. Deputies of three legislative terms or after six years of service.
4. Ministers of the State.
5. Under Secretaries of State (I Ministri Segretari di Stato).
6. Ambassadors.
7. Envoys extraordinary after three years of service.
8. First Presidents and Presidents of the Court of Cassation (Magistrato di Cassazione) and of the Chamber of Accounts (Camera dei Conti).

9. First Presidents of the Courts of Appeal.
10. The Attorney General (Avvocato Generale) of the Court of Cassation and Procurator General (Procuratore Generale) after 5 years of service.
11. Presidents of sections of the Courts of Appeal after 3 years of service.
12. Councillors of the Court of Cassation and of the Chamber of Accounts (Camera dei Conti) after 5 years of service.
13. Attorneys General (Avvocati Generali) or General Fiscal Officers (Fiscali Generali) of the Courts of Appeal after 5 years of service.
14. General Officers of the ground and naval forces. However, Major-generals and Rear-admirals must have held their grade during five years of active service.
15. State Councillors (Consiglieri di Stato) after five years of service.
16. Members of Councils of Division (Consigli di Divisione) after three elections to their presidency.
17. Intendants General (Gi'Intendenti Generali) after seven years of service.
18. Members of the Royal Academy of Sciences after 7 years of membership.
19. Ordinary members of the Superior Council of Public Education after 7 years of service.
20. Those who through their eminent services or merits did honor to the fatherland.
21. Those who for three years have paid three thousand liras of direct tax on account of their property or diligence.

Art 34. The Princes of the Royal Family are members of the Senate as of right. They sit immediately after the President. They enter the Senate when they

12. Councillors of the Court of Cassation and of the Chamber of

Accounts (Camera dei Conti) after 5 years of service.

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Art 24. The Princes of the Royal Family are members of the Senate as of right. They sit immediately after the President. They enter the Senate when they attain 21 years of age and acquire the right to vote at 25.

Art 35. The President and Vice-Presidents of the Senate are appointed by the King. The Senate appoints its Secretaries from its own number.

Art 36. By force of a Royal decree the Senate is constituted into a High Court of Justice to pass upon crimes of high treason and attacks on the security of the State and to try Ministers ^{IMPEACHED} ~~accused~~ by the Chamber of Deputies.

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In the above mentioned instances the Senate is not a political body.

It cannot deal, under penalty of nullity, with other than the judicial matters for which it has been convened.

Art 37. Excepting the case of a flagrant crime, no Senator may be arrested without an order of the Senate. The Senate has an exclusive jurisdiction to try offences attributed to its members.

Art 38. Acts ascertaining in a legal manner births, marriages and deaths in the Royal Family, will be presented to the Senate which will order their deposition in its archives.

The Chamber of Deputies.

Art 39. The elective Chamber is composed of Deputies selected by electoral colleges according to law.

Art 40. No Deputy may be admitted to the Chamber if he is not a subject of the King, has not attained the age of 30 years, is not in enjoyment of his civil and political rights and does not meet the remaining requirements prescribed by law.

Art 41. The Deputies represent the Nation in general and not merely the provinces from which they were elected. No imperative mandate can be imposed upon the Electors.

Art 42. The Deputies are elected for five years: their mandate ceases by force of law upon the expiration of this term.

Art 43. The President, the Vice-Presidents and Secretaries of the Chamber of Deputies are selected by it from its own number at the outset of every session for its entire duration.

Art 44. If a Deputy ceases to function for any reason, the College which had elected him will convene at the earliest possible convenience for a new election.

Art 45. Excepting cases of flagrant crimes, no deputy may be arrested or brought

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Art 44. If a Deputy ceases to function for any reason, the College which had elected him will convene at the earliest possible convenience for a new election.

Art 45. Excepting cases of flagrant crimes, no deputy may be arrested or brought before a court on a criminal matter while the Chamber is in session, without a previous consent of the Chamber.

Art 46. No debt warrant may be issued against a Deputy during the session of the Chamber or three weeks before and after the session.

Art 47. The Chamber of Deputies has a right to ^{IMPEACH} ~~accuse~~ the Royal Ministers and bring them before the High Court of Justice.

Provisions Common to Both Chambers.

Art 48. The sessions of the Senate and of the Chamber of Deputies begin and end at the same time. An assembly of one Chamber held while the other is not in session is ~~invalid~~ ^{NOT LEGAL}, and its Acts are absolutely null.

Art 49. Before admission to their functions the Senators and Deputies swear to be faithful to the King, to obey loyally the Statute and laws of the State, to exercise their functions for the sole purpose of the inseparable welfare of the King and of the fatherland.

Art 50. The office of a Senator or Deputy does not give rise to any right of reward or of indemnity.

Art 51. The Senators and Deputies cannot be held to answer for their opinions expressed and votes given in the Chambers.

Art 52. The assemblies of the Chambers are public. However, upon request in writing of 10 members, the Chambers may deliberate in secrecy.

Art 53. The assemblies and deliberations of the Chambers are neither legal nor valid unless an absolute majority of their members is present.

Art 54. Actions may be taken by a majority of votes only.

Art 55. Every proposal of law must first be examined by Committees appointed by each Chamber for preparatory work. After the proposal has been discussed and approved by one Chamber, it will be transferred to the other for discussion and approval; thereafter it will be presented to the King for signature. The discussions are conducted article by article.

Art 56. If a proposal of law has been rejected by one of the three legislative bodies it cannot again be brought up at the same session.

Art 57. Anyone a major in age has a right to lodge petitions with the Chambers which will order their examination by a Committee and which will, after the Committee has presented its report, deliberate whether the petitions should be considered, and in the affirmative case, either sent to the competent Ministry

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Art 58. No one may present a petition to the Chambers in person. The constituted Authorities (Autorita costituite) have a right to address petitions in a collective name only.

Art 59. The Chambers may not receive any deputation or hear anybody else but their own members, the Ministers and Commissioners of the Government.

Art 60. Each Chamber has the exclusive competency to pass upon the validity of the titles to admission of its own members.

Art 61. Both the Senate and the Chamber determine by means of an internal regulation the procedure whereby they will exercise their powers.

Art 62. The Italian language is the official language of the Chambers. However, the French language is optional for members belonging to provinces in which this language is used and for answering such members.

Art 63. The voting is performed by rising or remaining seated as the case may be or by dividing the chamber or by secret scrutiny (isquittinio). The last mode will always be adopted when voting upon a law in its entirety and in matters of personnel.

Art 64. No one may be a Senator and a Deputy at the same time.

The Ministers.

Art 65. The King appoints and recalls his Ministers.

Art 66. The Ministers have no right to vote in either Chamber unless they are members.

They always have free access to the Chambers and must be heard whenever they request it.

Art 67. The Ministers are responsible. The laws and the Acts of the Government are of no validity if not signed by a Minister.

The Judiciary.

Art 68. Justice emanates from the King and is administered in his name by the judges appointed by him.

Art 69. The judges appointed by the King with the exception of those of the Mandamento may not be removed after three years of service.

Art 70. Magistrates, tribunals and judges functioning at the present time are to be retained. The judicial organization may be changed by law only.

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Art 71. No one can be tried except by the proper judges. For this reason no extraordinary Tribunals or Commissions may be established.

Art 72. The hearings of the Tribunals in civilian matters and trials in criminal matters will be open to public in accordance with the law.

Art 73. The right of binding interpretation of law may be exercised exclusively by the legislative power.

General Provisions.

Art 74. The communal and provincial institutions and the boundaries of Communes and Provinces are regulated by law.

Art 75. The conscription (leva) of troops is regulated by law.

Art 76. A Communal Militia is established on a basis decreed by law.

Art 77. The State retains its flag: and the blue cockade is the only national cockade.

Art 78. The Orders of Knighthood (Ordini Cavallereschi) at present in existence are retained with their dotations. The latter may not be used for purposes other than those stated in their charter.

The King may create other Orders and prescribe their Statutes.

Art 79. The titles of nobility are to be retained by those who rightly hold them. The King may grant new ones.

Art 80. No one may receive decorations, titles or pensions from a foreign person without an authorization from the King.

Art 81. All laws conflicting with the present Statute are abrogated.

Transitional Provisions.

Art 82. The present Statute will enter into effect from the day of the first assembly of the two Chambers which will take place immediately upon completion of the elections. Until that time an emergency administration shall be provided for by Sovereign measures in forms followed in the past, discarding, however, the interpolations (interi nazionali) and registrations of magistrates which are abolished from now on.

Art 83. For the purpose of executing the present Statute the King reserves for himself the power to make laws concerning the press, elections, communal militia, and a reorganization of the State Council. Until a law regarding the press is published, the prevailing provisions pertaining to it remain in effect.

Art 84. The Ministers are entrusted with and responsible for the execution

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Art 84. The Ministers are entrusted with and responsible for the execution and full observance of these transitional provisions.

Given in Turin, the fourth day of March, of the Year of Our Lord one thousand eight hundred and forty eight and of the eighteenth year of our Reign.

Carlo Alberto.

the Ministers, etc.

HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee

GRU/gmf

11 January 1944.

In reply
refer to: ACC/1/110.

SUBJECT: Italian Constitution.

TO : AFHQ HCS.

I have the honour to forward for your perusal a Memorandum on the Constitution of Italy as it affects the abdication of the King and appointment of a Regent or Lieutenant which you requested this Subcommittee to prepare.

G. R. Upjohn
G. R. UPJOHN, Colonel
Chief Legal Officer, ACC.

Copy to: Deputy President ACC.
Mr. Caccia.
Mr. Reber.

*I wonder if the
Germanas would have
called for this document
or taken any notice of
its contents!!*

W. B. Sp

110

Art. 48 - Civil Code.

The Curator of a disappeared person.

If a person has not been seen in the place of his last domicile or of his last residence and has not been heard of, the Tribunal of the last domicile or of the last residence, upon application of interested parties or of presumed legal successors or of the public ministers, may appoint a curator to represent the said person in court or at any compiling of inventories or accounts or at liquidations or divisions in which said person might be interested, and who may undertake other steps necessary for the conservation of the property of the disappeared person. If there is a legal representative, no appointment of the curator will be made. If there is a procurator, the tribunal will provide solely for such acts which the procurator may not undertake.

put

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P.W. B. Communique - Dec. 2/43

Axis Occupied Italy.

Political measures: Rome radio yesterday reported that much favorable comment was heard in political circles concerning the recent government political measures, which are said to concentrate largely toward defining the form of the new Italian Social Republic.

Under the new measure (1) there will be a decentralization of administration, giving more power to the provincial officials, (2) wages will be increased from 35 to 60 %, and labor will have priority rights over capital, (3) all parasites and inactive persons will be eliminated, (4) all Jews will be sent to concentration camps, and their real personal properties confiscated and used to compensate victims of the air raids.

(Interior)

ARTICLE I

DISSOLUTION OF THE FASCIST PARTY

The organizations known as the Fascist Party (P.N.F.) is hereby dissolved and declared to be illegal. The property and assets of the said organization not heretofore taken over shall be taken by or delivered to hereby appointed for that purpose.

ARTICLE II

REPEAL OF LAWS

Articles of the Codes and existing Statutes enumerated hereunder are hereby declared to be inoperative:

(1) Racial Laws.

- (a) P.T.L. of 5 Sept. 1938 (No. 1390) converted in Law on 5 Jan 1939 (No. 99) for the defence of the race in schools. *9 Oct 1942 1420*
- (b) R.D.L. of 7 Sept. 1938 (No. 1381) in connection with foreign Jews. *13 July 1939 in 1024*
- (c) R.D.L. of 15 Nov. 1938 (No. 1779) converted into law on 5 Jan. 1939 (No. 98) extending the provisions of previous legislation in regard to schools.
- (d) R.D.L. of 17 Nov. 1938 (No. 1728) converted into law on 5 Jan. 1939 (No. 374) coordinating various legislation in connection with the civil status of the Jews marriage and excluding them from certain businesses.
- (e) R.D.L. of 9 Feb. 1939 (No. 176) extending the provisions of previous decrees to the industrial and commercial activities of Jews, their ownership of property etc.
- (f) Law of 29 June 1939 (No. 1054) regulating the professions which can be exercised by Jews (completed by Ministerial Decree of 30 July 1940 in connection with special contributions payable by Jews in various trades.
- (g) Law of 13 July 1939 (No. 1055) modified by the Law of 28 Sept. 1940 (No. 1459) limiting the free disposition by will of Jewish estates and compelling them to assume their old Jewish names.
- (h) Law of 13 May 1940 (No. 822) in relation to the status of persons of mixed race.
- (i) Law of 19 Apr. 1942 (No. 517) excluding Jews from the field of theatrical enterprise.

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(2) Fascists Privileges.

- ✓ (a) Law of 23 May 1940 (No. 609) granting advantages to fascists wounded for the sake of the Fascist cause.
- ✓ (b) R.D. of 9 July 1940 (No. 1156) extending similar advantages to "squadristi" and old fascists.

(3) Civil Code of 1942.

Articles 1, 91, 155, 292, 348, 404, embodying various enactments regulating the status of Jews.

(Interior)

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(3) Civil Code of 1942.

Articles 1, 91, 155, 292, 348, 404, embodying various enactments regulating the status of jews.

(4) Penal Code of 1931.

Articles 282- Para. 3 of Article 289 - Article 290 in regard to offences against the honour of the Head of the government and the Grand Council of Fascism.

(5) Contributions to P.N.F.

Ministerial Decree of 22nd. Aug. 1941 (1942-344) establishing the amount of contributions to be paid by industrialists, traders, agriculturists, artisans and other professions to the P.N.F.

ARTICLE IIIOFFENCES

No person shall -

- (1) promote assist or attend at any public or private meeting of the Fascist Party or any organization designed to replace it;
- (2) use or permit to be used any building or other premises for the purposes of conducting any meeting, business or other affairs of the Fascist Party;
- (3) print, publish or circulate or have in his possession with intent to publish or circulate any printed or written matter issued by or on behalf of the Fascist Party;
- (4) wear or have in his possession any badge or insignia of the Fascist Party or attire himself in such a manner as to suggest membership of the Fascist Party;
- (5) make, collect or receive any subscription to the funds of the Fascist Party;
- (6) take or receive any oath or give or receive any undertaking or promise to the Fascist Party;
- (7) do any other act whatsoever intended or likely to promote or sustain the Fascist Party.

For the purpose of this decree the Fascist Party shall include any organization designed to replace it.

ARTICLE IVPENALTIES

Any person violating the provisions of this Proclamation shall, on conviction by an Italian or Allied Military Court be liable to imprisonment or fine, or both, or according to law.

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ARTICLE VEFFECTIVE DATE

This decree becomes effective as of the date hereof.

Reggenza - Abolition

Extracts from "Istituzioni di Diritto Pubblico"
by Prof. Silvio Lussana.

P. 152 para 76. The Regency and the "Reggenza" (Lieutenancy). The regency is said to be that institution by which, given the incapacity of the monarch to exercise the rights which devolve upon him, this exercise is confided to a person who in the place of the incapacitated King exercises the functions of the Crown.

The causes which give rise to the regency are:
The state of minority of the King which produces (sole hypothesis) the juridical incapacity and the physical impossibility to reign in which the King finds himself.

The regency devolves upon the persons who are designated in the Statute (art. 11.16): it has as its object the exercise of all the activities and functions belonging to the Crown, in the name of the King.

Of the "Lieutenancy" the Statute does not speak: it differs substantially from the Regency in so much as it is a temporary delegation made by the King to some other person of the royal functions or of part of these.

The delegation may be partial either as to attributions, amount or extent of territory of the State for which the delegation is conferred.

Anyone may be chosen by the King as his "Reggente": however it is customary to follow the order established by the Statute for conferring the regency.

P. 153 para 77. Abdication. The loss of the Crown is exemplified by renunciation, other than by the death of the King, as is natural. This institution, which is not...

the functions of the Crown:

The causes which give rise to the regency are:
The state of minority of the King which produces (solely by itself) the juridical incapacity and the physical impossibility to reign in which the King finds himself.

The regency derives upon the persons who are designated in the Statute (art. 11.16): it has as its object the exercise of all the activities and functions belonging to the Crown, in the name of the King.

Of the "discontinuity" the Statute does not speak: it differs substantially from the Regency in so much as it is a temporary delegation made by the King to some other person of the royal functions or of part of these.

The delegation may be partial either as to attributions/amount or extent of territory of the State ~~for~~ in respect of which the delegation is conferred.

Anyone may be chosen by the King as his "delegatario": however it is customary to follow the order established by the Statute for conferring the regency.

p. 153 para 77. Abdication. The loss of the Crown is exemplified by renunciation, other than by the death of the King, as is natural. This institution, which is not regulated by the law, has a single precedent with us in the abdication of Carlos Alberto after the unhappy day of Novara.

Abdication must be understood also as renunciation to the throne: it can be done on reaching majority: must be absolute and irrevocable — unconditional and not subject to delays — unpartisan in regard to the other successors (neither to their advantage nor detriment).

[P.T.O]

This is a personal act of the King, not of the government: therefore it may not be commissioned by the ministers: it must result from an authentic act, has no need of acceptance, neither by law nor by an act of either chamber.

It becomes effective by simple communication to the ministers ^{by} whom the notice is given to the two branches of Parliament.

These characteristics and the mode of abdication are drawn from the ~~preceding~~ ^{precedent} recorded of 1848.

(1)

Not for release
 Herewith translations of a letter and draft of part of a proclamation of abdication by the King received from

and also translation of part of the Statute of 1848.

It is not felt that too much attention should be paid to the draft proclamation which appears to be juridically unsound in relying on the preamble to the Statute of 1848 which contains no principle applicable to the present circumstances but was merely descriptive of the background at that time.

If the question of abdication becomes a serious probability and therefore the appointment of a regent of vital importance the matter will have to be considered by the highest Italian legal authorities who are not yet available here. It seems that the following points will arise for consideration

1. The Constitution does not expressly provide for abdication, Art 16 merely provides for a regency during the reigning King's incapacity and the regent acts for the old King.

2. It appears therefore that abdication can only be carried out by some legislative act.

3. Legislative power is exercised collectively by the King and the two chambers *Apd* (Art 3 & 56). As the King is now the only body capable of acting it would seem that in this emergency he would have power to make a valid act of abdication and on remotion by his son to make provision for the appointment of a regent for his grandson pending the convening of the chambers to ratify his act.

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4. Probably it would be better in the King's act of abdication to follow by analogy the constitutional provisions dealing with the regency (Arts 12 & 16) and to obtain a recommendation of the King's relatives or if this is not possible to pass over those who are absent on the plain ground of their

(2)

incapacity to act.

The above points are set out merely to focus attention on the problems that seem to arise, and to justify the feeling here that the proposed draft is entirely on the wrong lines and would only give a valuable opportunity to German commentators to express derision.

FUNDAMENTAL STATUTE OF THE KINGDOM OF ITALY

Promulgated in Lombardy on Dec. 7, 1859

Carlo Alberto

by Grace of God

King of Sardinia, Cyprus and of Jerusalem etc.

With Royal loyalty and paternal love we wish to put into effect that which we have announced to our beloved subjects in our Proclamation of the 8th day of the last February, whereby we intended to show - amidst the extraordinary events in which our country was involved at that time - how our faith in our subjects had grown with the gravity of circumstances, and listening solely to the advice flowing from the impulses of our hearts, how firm was our intention to adapt the destiny of our subjects to the spirit of the times, and to the interests and dignity of the Nation.

Considering the broad and strong representative institutions contained in the present fundamental Statute to be the safest means for strengthening the ties of indissoluble affection which bind the nation to our Italic Crown, that nation which offered so much evidence of faith, obedience and love, we have resolved to sanction and promulgate the Statute, in the belief that God will bless our genuine intentions and that this free, strong and happy nation will prove itself worth of an increasing degree of its ancient fame - and that it will be able to merit a glorious future.

For that reason - relying on our ^{firm conviction} freedom and Royal Authority - having heard the opinion of our Council, we have decreed and we do hereby decree the following to be the perpetual and irrevocable Statute and Law of the Monarchy:

Art 1. The Catholic, Apostolic and Roman Religion is the only State Religion.

Those which are in existence at present are tolerated according to the laws.

With Royal loyalty and paternal love we intend to show - amidst the 8th day of the last February, whereby we intended to show - amidst the extraordinary events in which our country was involved at that time - how our faith in our subjects had grown with the gravity of circumstances, and listening solely to the advice flowing from the impulses of our hearts, how firm was our intention to adapt the destiny of our subjects to the spirit of the times, and to the interests and dignity of the Nation.

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For that reason - relying on our ^{firm conviction} wisdom and Royal Authority - having heard the opinion of our Council, we have decreed and we do hereby decree the following to be the perpetual and irrevocable Statute and Law of the Monarchy:

Art 1. The Catholic, Apostolic and Roman Religion is the only State Religion. Other cults which are in existence at present are tolerated according to the laws.

Art 2. The State is ruled by a monarchic representative government. The throne is hereditary according to the ^{Salic} ~~Salic~~ law.

Art 3. The legislative power will be exercised collectively by the King and two chambers: the Senate and the Chamber of Deputies.

Art 4. King's person is sacred and inviolable.

Art 5. The executive power is vested in the King exclusively. He is the Supreme head of the state; He commands all the ground and naval forces; He declares war; He concludes peace treaties, treaties of alliance, commercial and other treaties, notifying the chambers as soon as the interest and security of the State allow and ^{adding appropriate communications.} ~~communicating with them at His convenience.~~ Treaties which involve a financial burden or changes in the State territory will not become effective lest the approval of the chambers is obtained.

Art 6. The King makes appointments for all State offices and issues decrees and regulations necessary for the execution of laws, but he may not suspend laws or make exemptions from their application.

Art 7. Only the King sanctions and promulgates the laws.

Art 8. The King may grant pardon and commute sentences.

Art 9. The King convokes the two Chambers yearly; He ^{may} ~~can~~ adjourn their sessions and dissolve the Chamber of Deputies; but in the last mentioned case he must convoke another chamber within four months.

Art 10. The King and each of the two Chambers ^{may} ~~can~~ propose laws. However, every law imposing taxes or approving the State accounts will first be presented to the Chamber of Deputies.

Art 11. The King must be at least 18 years of age.

Art 12. During the minority of the King, the Prince who is his closest relative in order of succession to the Throne shall act as Regent of the Kingdom, provided that he has attained 21 years.

Art 13. If the Prince, who according to the above should become Regent, is a minor and in consequence of that the Regency devolved upon a more distant relative, the Regent in office will hold the Regency until the King has reached his majority.

Art 14. In the absence of male relatives, the Regency will go to the

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Art 14. In the absence of male relatives, the Regency will go to the Queen Mother.

Art 15. Should there not be a Queen Mother, the Chambers convoked by the Ministers within 10 days will nominate the Regent.

Art 16. The preceding dispositions relative to the Regency apply to the case in which the King though being a major in age finds himself physically unable to rule. However, if the heir presumptive of the Throne has completed 18 years, he shall become Regent ^{by force of law} ~~in his own right~~

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Art 17. The Queen Mother is a Guardian of the King until he shall have reached 7 years; from then on the Guardianship goes to the Regent.

Art 18. Rights pertaining to civil power in beneficial matters or concerning execution of provisions of any kind originating abroad, will be exercised by the King.

Art 19. The Crown dotation (allowance) computed from the average allowance of the last ten years shall be maintained during the present reign. The King will retain use of the Royal palaces, villas, gardens and accessories as well as all mobile property belonging to the Crown, of which there will be made an inventory under the supervision of a responsible Minister.

In the future the above mentioned dotation (allowance) shall be fixed for the duration of every Reign by the first legislature upon ascension of the King to the Throne.

Art 20. The King's private property will include, apart from the property which He possesses at present as his own, all the property which He might acquire in the future for a consideration or gratuitously during His Reign.

The King may make both an inter vivos or testamentary disposition of his private property without being bound by the rules of civil laws limiting the disposable quantity.

Art 21. A law will provide for an annual allowance for the hereditary prince after he has attained majority or before that in case of his marriage; for an appanage of the Princes of the Royal Family and Blood on the above mentioned conditions; for dowry of Princesses; and for allowances of the Queens.

Art 22. The King, upon ascension to the Throne, takes an oath in the presence of the joined chambers to observe loyally the present Statute.

Art 23. The Regent, before entering his office takes an oath of allegiance to the King and of loyal obedience to the Statute.

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Art 23. The Regent, before entering his office takes an oath of allegiance to the King and of loyal obedience to the Statute and the Laws of the State.

Rights and Duties of Citizens.

Art 24. All citizens of the Kingdom, whatever their title or grade, are equal before the law. All enjoy equally civil and political rights and may be admitted to civil and military offices with exceptions stated by the laws.

Art 25. They contribute indiscriminately to the expenses of the State in proportion to their fortunes.

Art 26. Individual liberty is guaranteed. No one may be arrested or brought before a court except in cases provided for by law and in accordance with procedures prescribed by law.

Art 27. The home is inviolable. No entry into a home may take place except by force of law and in a form prescribed by law.

Art 28. The press will be free, but a law will restrain abuses. However, bibles, catechisms, liturgical literature and books of prayers may not be printed without previous permission of the Bishop.

Art 29. All properties, without any exception, are inviolable. However, when a legally ascertained public interest so demands, property may be taken in whole or in part for a just compensation in conformity with laws.

Art 30. No tax may be imposed or exacted if not approved by the Chambers and sanctioned by the King.

Art 31. Public debt is guaranteed. Every obligation of the State towards its creditors is inviolable.

Art 32. The right to assemble peacefully and without arms is recognized subject to laws which ^{may} regulate its exercise conforming to public interest. This provision does not apply to assemblies in public places or places open to the public which remain entirely subject to police laws.

The Senate.

Art 33. The Senate is composed of an unlimited number of members appointed by the King for life who have attained the age of forty years and belong to the following categories:

1. Archbishops and Bishops of the State;
2. President of the Chamber of Deputies.

3. Deputies of three legislative terms or after six years of service.

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Art 33. The Senate is composed of an unlimited number of members appointed by the King for life who have attained the age of forty years and belong to the following categories:

1. Archbishops and Bishops of the State,
2. President of the Chamber of Deputies.
3. Deputies of three legislative terms or after six years of service.
4. Ministers of the State.
5. Under Secretaries of State (I Ministri Segretari di Stato).
6. Ambassadors.
7. Envoyees extraordinary after three years of service.
8. First Presidents and Presidents of the Tribunal of Cassation and of the Chamber of Accounts (Camera dei Conti).
9. First Presidents of the Tribunals of Appeal.

Attorney

10. The/General (Avvocato Generale) of the Tribunal of Cassation and Procurator General (Procuratore Generale) after 5 years of service.
11. Presidents of sections of the Tribunals of Appeal after 3 years of service.
12. Counsels of the Tribunal of Cassation and of the Chamber of Accounts (Camera dei Conti) after 5 years of service.
13. Attorneys General (Avvocati Generale) or Fiscal General Officers (Fiscali Generali) of the Tribunals of Appeal after 5 years of service.
14. General Officers of the ground and naval forces. However, Major-generals and Rear-admirals must have held their grade during five years of active service.
15. State Counsels (Consiglieri di Stato) after five years of service.
16. Members of Councils of Division (Consigli di Divisione) after three elections to their presidency.
17. Intendants General (Gl'Intendenti Generali) after seven years of service.
18. Members of the Royal Academy of Sciences after 7 years of membership.
19. Ordinary members of the Superior Council of Public Education after 7 years of service.
20. Those who through their eminent services or merits did honor to the fatherland.
21. Those who for three years have paid three thousand liras of direct tax on account of their property or industry.

Art 34. The Princes of the Royal Family are members of the Senate as of right.

They enter the Senate when they

1702
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Art 34. The Princes of the Royal Family are members of the Senate as of right. They sit immediately after the President. They enter the Senate when they attain 21 years of age and acquire the right to vote at 25.

Art 35. The President and Vice-Presidents of the Senate are appointed by the King. The Senate appoints its Secretaries from its forum.

Art 36. By force of a Royal decree the Senate is constituted into a High Court of Justice to pass upon crimes of high treason and attacks on the ~~security~~ ^{integrity} of the State and to try Ministers ^{IMPEACHED} accused by the Chamber of Deputies.

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In the above mentioned instances the Senate is not a political body. It can not deal, under penalty of nullity, with other than ^{the} judicial matters for which it has been convened.

Art 37. Excepting the case of a flagrant crime, no Senator may be arrested without an order of the Senate. The Senate has an exclusive jurisdiction to try offenses attributed to its members.

Art 38. Acts ascertaining in a legal manner births, marriages and deaths in the Royal Family, will be presented to the Senate which will order their deposition in its archives.

The Chamber of Deputies.

Art 39. The elective Chamber is composed of Deputies selected by electoral colleges according to law.

Art 40. No Deputy may be admitted to the Chamber if he is not a subject of the King, has not attained the age of 30 years, is not in enjoyment of his civil and political rights and does not meet the remaining requirements prescribed by law.

Art 41. The Deputies represent the Nation in general and not merely the provinces from which they were elected. No imperative mandate can be imposed upon the Electors.

Art 42. The Deputies are elected for five years: their mandate ceases by force of law upon the expiration of this term.

Art 43. The President, the Vice-Presidents and Secretaries of the Chamber of Deputies are selected by it from its forum at the outset of every session for its entire duration.

Art 44. If a Deputy ceases to function for whatever reason, the College which had elected him will convene at the earliest possible convenience for a new election.

Art 45. Excepting cases of flagrant crimes, no deputy may be arrested or

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Art 44. If a Deputy ceases to function for whatever reason, the College which had elected him will convene at the earliest possible convenience for a new election.

Art 45. Excepting cases of flagrant crimes, no deputy may be arrested or brought before a court on a criminal matter while the Chamber is in session, without a previous consent of the Chamber.

Art 46. No debt warrant may be issued against a Deputy during the session of the Chamber or three weeks before and after the session.

Art 47. The Chamber of Deputies has a right to ^{accuse}~~accuse~~ the Royal Ministers and bring them before the High Court of Justice.

Provisions Common to Both Chambers.

- Art 48. The sessions of the Senate and of the Chamber of Deputies begin and end at the same time. An assembly of one Chamber held while the other is not in session is ~~illegal~~ ^{NOT LEGAL}, and its Acts are absolutely null.
- Art 49. Before admission to their functions the Senators and Deputies swear to be faithful to the King, to obey loyally the Statute and laws of the State, to exercise their functions for the sole purpose of the inseparable welfare of the King and of the fatherland.
- Art 50. The office of a Senator or Deputy does not give rise to any recompense or indemnity.
- Art 51. The Senators and Deputies can not be held to answer for their opinions expressed and votes given in the Chambers.
- Art 52. The assemblies of the Chambers are public. However, upon request in writing of 10 members, the Chambers may deliberate in secrecy.
- Art 53. The assemblies and deliberations of the Chambers are illegal and invalid if ~~the~~ ^{an absolute} majority of their members is not present.
- Art 54. Actions may be taken by a majority of votes only.
- Art 55. Every proposal of law must first be examined by Committees appointed for each Chamber/preparatory work. After the proposal has been discussed and approved by one Chamber, it will be transferred to the other for discussion and approval; thereafter it will be presented to the King for signature. The discussions are conducted article by article.
- Art 56. If a proposal of law was rejected by one of the three legislative bodies it cannot be brought up at the same session.
- Art 57. Anyone a major in age has a right to lodge petitions with the Chambers which will order their examination by a Committee and which will, after the Committee has presented its report, deliberate whether the petitions should be

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Art 56. If a proposal of law was rejected by one of the three legislative bodies it cannot be brought up at the same session.

Art 57. Anyone a major in age has a right to lodge petitions with the Chambers which will order their examination by a Committee and which will, after the Committee has presented its report, deliberate whether the petitions should be considered, and in the affirmative case, either sent to the competent Ministry or deposited in Offices for proper action.

Art 58. No one may present a petition to the Chambers in person. The established Authorities (Autorita costituite) have a right to address petitions in a collective name only.

Art 59. The Chambers may not receive any deputation or hear anybody else but their own members, the Ministers and Commissars of the Government.

Art 60. Each Chamber has the exclusive competency to pass upon the validity of the titles to admission of its own members.

Art 61. Both the Senate and the Chamber determine by means of an internal regulation the procedure whereby they will exercise their attributes.

Art 62. The Italian language is the official language of the Chambers.

However, the French language is optional for members belonging to provinces in which this language is used and for answering such members.

Art 63. The voting is performed by getting up and sitting down, by separation, and by secret vote. The last mode will always be adopted when voting upon an entire law and in matters of personnel.

Art 64. No one may be a Senator and Deputy at the same time.

The Ministers.

Art 65. The King appoints and recalls his Ministers.

Art 66. The Ministers have no right to vote in either Chamber unless they are members.

They always have free access to the Chambers and must be heard whenever they request it.

Art 67. The Ministers are responsible. The laws and the Acts of the Government are of no validity if not signed by a Minister.

The Judiciary.

Art 68. Justice flows from the King and is administered in his name by the judges appointed by him.

Art 69. The judges appointed by the King with the exception of those of the Manciamento may not be removed after three years of service.

Art 70. Magistrates, Tribunals and Judges functioning at the present time are to be retained. The judicial organization may be changed by law only.

Art 71. No one can be withdrawn from his natural judges. For this reason

which this language is used and for answering such members.

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Art 70. Magistrates, Tribunals and Judges functioning at the present time are to be retained. The judicial organization may be changed by law only.

Art 71. No one can be withdrawn from his natural judges. For this reason no extraordinary Tribunals or Commissions may be established.

Art 72. The audiences of the Tribunals in civilian matters and trials in criminal matters will be open to public in accordance with the law.

Art 73. The right of binding interpretation of law may be exercised exclusively by the legislative power.

General Provisions.

Art 74. The communal and provincial institutions and the circumscription of Communes and Provinces are regulated by law.

Art 75. The military levy is regulated by law.

Art 76. A Communal Militia is established on a basis decreed by law.

Art 77. The State retains its flag; and the blue cockade is the only national cockade.

Art 78. The Orders of Chivalry at present in existence are retained with their dotations. The latter may not be used for purposes other than those stated in their charter.

The King may create other Orders and prescribe their Statutes.

Art 79. The titles of nobility are to be retained by those who rightly hold them. The King may grant new ones.

Art 80. No one may receive decorations, titles or pensions from a foreign person without an authorization from the King.

Art 81. All laws conflicting with the present Statute are abrogated.

Transitory Provisions.

Art 82. The present Statute will enter into effect from the day of the first assembly of the two Chambers which will take place immediately upon completion of the elections. Until that time an emergency administration shall be provided for by Sovereign measures in forms followed in the past, discarding, however, the ad interim provisions (interi nazionali) and registration of magistrates which are abolished from now on.

Art 83. For the purpose of executing the present Statute the King reserves for himself the power to make laws concerning the press, elections, communal militia, and a reorganization of the State Council. Until a law regarding the press is published, the prevailing provisions pertaining to it remain in effect.

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Art 83. For the purpose of executing the present Statute the King reserves for himself the power to make laws concerning the press, elections, communal militia, and a reorganization of the State Council. Until a law regarding the press is published, the prevailing provisions pertaining to it remain in effect.

Art 84. The Ministers are entrusted with and responsible for the execution and full observation of these transitory provisions.

Given in Turin, the fourth day of March, of the Year of Our Lord one thousand eight hundred and forty eight and of the eighteenth year of our Reign.

Carlo Alberto.

the Ministers, etc.

DRAFT.SECRET - BRITISH MOST SECRET?FROM :

A.C. Legal Sub-Committee on Italian Laws.

TO :

Chief Legal Officer, Legal/Commission, H.Q. Allied Commission.

SUBJECT :

Preliminary Report on Examination of Italian Civil, Penal and Shipping Codes.

DATE :

11 Oct 43.

Mission &
Terms of
Reference.

The Sub-committee as under, having for mission the examination of Italian Laws with a view to the revision of all those

"involving discrimination on the grounds of color, creed or political opinions" (ref. ACC/1014 dated 20 Sep 43, Appendix 'B'?) para (9) first proceeded to examine the following :-

- (a) Italian Penal Code - Text of 19 Oct 1930 in English (British Foreign Office Edition. H.M. Stationery Office 1931).
- (b) Italian Civil Code - Text of 16 Mar 1942 in Italian (Edition, Carlo Colombon Rome).

- (c) Italian Navigation Code - Text of 30 Mar 1942 in Italian (Edition - Libreria dello Stato, Rome).

An approximate translation only of the articles of the ~~code~~ ~~translation~~ Codes here dealt with is given in the Appendix attached to this report, no access to technical dictionaries having been afforded.

Report.

The articles of the respective codes, scheduled hereunder, are deemed to call for investigation as being either "discriminatory" per se, or involving principles or betraying tendencies contemplated in the above quoted terms of reference.

*Translation of
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Decree Laws,
Constitutional
or Organic
Laws.

The actual situation as affecting the marginally noted laws is not known, the original texts or abrogations thereof not being at present available for investigation.

Comparisons
with
Pre-Fascist
Laws.

The Codes submitted to examination having been promulgated under the Fascist regime a comparison with pre-Fascist texts would be necessary in order to ascertain if any omission from or modifications to these (by means either of codification or decree)

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have produced any of the effects to which the terms of reference allude, i.e. whether there are grounds for some restoration as well as recission.

The commentary on the Navigation Code by Lt. Com. Musmanno is attached as an annexure, *together with any necessary translations.*

Penal Code :

	<u>Page</u>	
Art. 8,	5	Political Crime Committed Abroad.
" 11.	4	Renewal of Proceedings (Vide 138 & 201)
" 112 (1)	32	Agravating Circumstances.
(Nota : This principle already figured in the Code of 1889 and should be consulted and compared).		
Part VIII	56	Administrative Police measures
Arts 199 to 237		Ch I Personal Police measures
		(Vide Arts 164, 176, 177, 179 (1), 417, 692, 701, 713.)

NOTA : The repugnancy, or otherwise, of these police measures and their effect upon the penalties under the articles indicated in parentheses will largely depend upon the degree of political bias, if any, exercised by the Judicial Police services under post Fascist Government.

Included in the Judicial Police is the "Milizia Volontaria per la Sicurezza Nazionale", a purely Fascist political party police.

In any event the precise nature of the extra-judicial police supervision to be exercised under these articles calls for closest investigation.

Articles 46, 48, 54 and 55 of the abrogated Code of 1889

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provided for a certain measure of police supervision and should be consulted and compared.

	<u>Page.</u>	
Art 271	79	Anti-National Assens.
" 273	79	Unlawful Constitution of Assens with an International character.
" 274	79	Unlawful Participation in above Assens.
" 290	83	Vilification of Constitutional Institutions.
" 293	84	Aggravating Circumstances.
" ³ 314	88	Authorisation or Demand for Proceedings (vide 290 and ref to the Grand Council of Fascism).
" 339	96	Aggravating ciros - re Secret Assens (vide 112 supra).
" 416	115	Assen for Purpose of Delinquency - (Vide last para).
Art 509	137	Non-observance of the Rules Governing Labour Relations and the decisions of the Labour Magistrate.
 <u>NOTA :</u> See See Appendix 'B' for explanation of nature of jurisdiction of Labour Courts under Fascist Corporate Industrial Organisation.		
Art. 595	160	Defamation (vide last para.)
" 604	162	Act committed abroad to prejudice of Italian National.
" 625	168	Aggravating circumstances.
" 683	184	Publication of Secret Debates of Grand Council of Fascism.
" 699	187	Unlawful carrying of arms.

APPENDIX 'A' to REPORTTO CHIEF LEGAL OFFICERdated 7 October 1943.Testa della Carta del Lavoro Sec I. (p.3.) :

"The Italian Nation is a organism having purposes, life span, means of action Superior in strength and duration to those of the individuals, be they separate or banded together, and which is attained completely in the fascist state.

Sec. XXIII (p.16)

The employment offices are constituted on a circulating basis under the control of the corporative agencies of the State. Employers are obligated to take workers from these offices. These (offices) are given the power to choose from among those inscribed in their registers, giving preference to those who belong to the Party and to the Fascist Syndicates, in accordance with Seniority.

Libro Primo Delle Persone e Della Famiglia.Art 7. (P.21) Juridical Capacity.

xxx " The limitations of juridical capacity deriving from membership in certain races are established by special laws".

Art. 83 - Matrimony celebrated before Ministers of Cults admitted into the State. A marriage celebrated before Ministers of Cults admitted into the State is regulated by the provisions of the following chapter, except in the event it is fixed in special laws concerning such a matrimony.

Art 91.(p. 37) - Diversity of race or nationality - "Marriages between persons belonging to different races are subject to the limitations imposed by special laws. xxxi"

Libro Secondo - Delle Successioni.

Art 147 (p. 46) : Duties owed to children - Matrimony imposes upon both parties to the marriage the obligation to care for, educate and instruct their progeny.

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Art 147 (p. 46) : Duties owed to children - Matrimony imposes upon both parties to the marriage the obligation to care for, educate and instruct their progeny.

Education and instruction must conform to the principles of national fascist morality and sentiment.

Art 155 (p.47) : Provisions with regard to children.

"xxx. If one of the parties to a marriage is of non-aryan race, the Court shall decree, barring grave obstacles, that the children considered to be of aryan race, be entrusted to the care of the spouse of aryan race".

Annex 'A', page. 2.

Art. 292 (p. 71). Prohibition against adoption due to diversity of race.

Adoption is not permitted between citizens of Aryan race and persons of other races.

The King or his delegated authority can accord dispensation from the observance of this provision.

Art. 342 (p. 79). Marriage of a non-aryan parent. A parent of non-aryan race, having children considered to be of aryan race, who remarries and whose spouse is a person of pure aryan race, loses parental control over his children, and the guardianship over them is to be entrusted preferably to one of the ancestors of aryan race.

Art. 343 (p. 50). Choice of Guardian.

"xxx. The guardianship of citizens of aryan race cannot be entrusted to persons belonging to a different race."

Art. 404. (p. 91)

"xxx. Custody of minors - Conditions for legitimization. Prohibition because of diversity of race.

"xxx. Legitimization cannot be requested by persons of non-aryan race except in the event that the minor belongs to the non-aryan race.

Libro Terzo - Property.

Art. 611 (p. 163) Corporative Discipline.

State Goods are subject to the discipline of corporative organization in relation to their economic functions and to the exigencies of national production.

Art. 635 (p. 167) Requisitions. When grave and urgent public, Military or civil necessity occurs there can be decreed a requisition of real or personal property. The owner will be entitled to a just indemnity.

The rules relating to requisitions are determined by special laws.

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Libro Terzo - Property.

Art. 811 (p.163) Corporate Discipline.

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The rules relating to requisitions are determined by special laws.

Libro Quinto - Fonti nell'Ordine Corporative.

Art. 2196 Registry of the Enterprise.

Within thirty days of the beginning of the undertaking, the entrepreneur who is engaged in commercial activity must request registry in the registry office having authority in the premises, of the following matters:

1. Surname, and name, Name of father, citizenship and race.
2. firm name.
3. Object of the enterprise.
4. Principal office of the enterprise.
5. The Surname and name of the managers and holders of powers of attorney.

Libro Quinto - Societa

2295 - Act of Constitution - The deed of constitution shall indicate :-

- 10) Surname, baptismal name, father's name, address, citizenship and race of the member.

20)

(vide: Art. 1 p. 21 citing "Special Laws").

2328 - Act of Constitution. The corporation shall be constituted by public deed. The deed of constitution shall indicate

- 10) Surname, baptismal name, father's name, address, citizenship and race of the member.

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(vide: Art. 1 p. 21 citing "Special Laws").

2475 - Constitution. The corporation shall be constituted by public deed.

The deed of constitution shall indicate

- 10) Surname, baptismal name, father's name, address, citizenship and race of the member.

20)

(vide: Art. p.21 citing "Special Laws").

2422

2518 - Act of Constitution. The corporation shall be constituted by public deed.

The deed of constitution shall indicate

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Political Limitations placed upon Jurisdiction of Labour
Courts.

The Italian Labour Charter approved by the Grand Fascist Council

21 April 1927 in Declaration V provides as follows :-

"The Labour Court is the organ by which the State intervenes to regulate labour disputes, whether these depend upon the observance of agreements and other existing regulations, or upon the determination of new working conditions";

and in Declaration XII states :

"The action of the Syndic, the work of conciliation of the corporative organs, the sentences of the Labour Court, guarantee that the salary shall correspond to the exigencies of the conditions of livelihood, the possibilities of production and the results of labour".

The Code of Civil Procedure sets out the machinery of the jurisdiction of the Labour Courts in the matter of Corporative industrial labour disputes - Arts 409 - 466 - giving jurisdiction to the Labour Sections of the Courts of Appeal and also to the Tribunals and Praetorial Courts. But no case can reach a hearing before these civil courts unless it has been previously submitted to an appropriate corporate association formed within the framework of the Fascist Charter.

The result of the filtering of all such cases is that political discrimination limits the jurisdiction of the civil courts to a selected class.

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