War, Politics, Law - And Love: Italy 1943-1946

Eric Stein
University of Michigan Law School

Follow this and additional works at: https://repository.law.umich.edu/mjil

Part of the Legal History Commons, and the Military, War, and Peace Commons

Recommended Citation
Available at: https://repository.law.umich.edu/mjil/vol32/iss3/4

This Article is brought to you for free and open access by the Michigan Journal of International Law at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Journal of International Law by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.
INTRODUCTION

In this piece I tell my story from four perspectives, ranging from the “highest”—institutional—to the “lowest”—personal.

From the first perspective I offer a glimpse of the Allied military command structure during the Italian phase of World War II.

From the second perspective, I focus in some detail on Allied military bodies established under the international law of occupation of enemy territory: the Allied Control Commission for Italy (ACC)—later the Allied Commission for Italy (AC)—headquarters of the Allied Military Government (AMG) and a point of communication with the King after the Italian surrender. Italy became a “co-belligerent” of the Allies and the King escaped from German-occupied Rome to Brindisi, the first seat of the AC.

The third perspective illustrates my work on the staff of the Legal Subcommission of the AC centering on the application of the Allied armistice agreements with Italy and close contacts with the Ministry of Justice.

The fourth perspective—a handful of personal episodes at work and “at play”—some quite intimate. In fact, “the personal” permeates the entire piece. Only a smattering of doctrine is included; if I were to
describe my methodology in general, it would be modern positivism heavily blended with policy considerations.

I. INTO THE ARMY I GO

It all began in 1942 after the Pearl Harbor disaster. I walked into the recruiting station of the U.S. Army in Highland Park, a suburb of Chicago where I had been warmly received by my cousin’s family, and volunteered for service in the wartime Army. It was a decision driven by instinct and emotion, the same forces that had made me leave Europe three years earlier. I knew, however, that—under the prevailing law—that I not volunteered, I would have been barred from citizenship forever. Shortly thereafter, I was called to Chicago for a ceremony in which I received the coveted U.S. citizenship, with the normal prerequisites of five years residence and a citizenship examination waived. It was an exhilarating feeling, marred only by the distressing thought of my family left behind. But it was also an important closure of the first phase of my life in America. On September 3, 1942, I received my order to report for induction.

I started my training in combat intelligence at Camp Ritchie, set in a beautiful landscape in the state of Maryland. It was due to the intervention of my cousin’s friend, the President of the Nabisco Corporation, that I was assigned to the special program because of my knowledge of languages. I confess that I adjusted easily to Army life, a balance between infantry training and lectures. The living facilities were incomparably superior to what I remembered of the Czechoslovakian Army. The barracks room commanders were two sensible, young and educated, non-career sergeants. I recall very little of this training period. We learned about German army organization and uniforms, shooting the M1 rifle, how to handle a code for messages and interrogate prisoners of war. Despite my notoriously clumsy fingers, I managed to keep my bunk in the required order. In fact, I was happy to be relieved of the burden of making life decisions, leaving the power in the benign hands of the superior orders.

One incident stands out in my mind. We were awakened in the middle of the night, piled up into covered trucks and driven for some time with no idea of the destination. At subsequent stops, we were ordered out in teams of two, were given a map, and told to be back at the camp before seven if we wanted any breakfast. And off we stumbled into the black night. Somehow the two of us managed to reach the camp in time. Some of our co-militants—we were told—managed to raise a sleepy farmer to learn their location on the map.
Another incident: after a class on enemy army uniforms, two lieutenants repeating to themselves: “Whorehouse outside, whorehouse outside.” It appeared they were trying to memorize the German term Hoheitsabzeichen (the sign of the highest authority, the swastika). On weekends, I would regularly hitchhike to nearby Washington, D.C., to stay with a family of law school friends. On one such Saturday, several of us hitchhikers were picked up by a U.S. Army general who insisted on driving us around a Civil War battlefield in the vicinity while we worried about missing our dates in the Capital.

II. ON TO AFRICA

When the training ended, I returned on leave in a sergeant’s uniform to Highland Park. A new chapter opened in the story. It began in late summer 1943 at a small railway station next to the Army base in Newport News, Virginia. The evening before the departure overseas, I attempted to ship a suitcase with my civilian appurtenances to my Highland Park home. The night clerk was unable to figure out the fee, and to my irritation, the shipment had to be made collect. Hours before the Liberty ship weighed anchor for “destination unknown,” a gaggle of Sicilian American GIs started a lively crap game which continued throughout the transatlantic voyage. The Sicilian dialect, I was told, was so inscrutable, that it would be used for open communication in tactical battle situations. It later transpired that our original destination was Sicily, but with the Allied conquest of the island, our ship changed its destination to the port of Casablanca.

As we approached the African coast, we saw the landscape, bathed in brilliant sun: it was reminiscent of San Francisco, white structures dotting the dark green, rising background. After disembarking in Casablanca, our marching column passed a train loaded with Italian prisoners of war, captured by the Allied forces in North Africa. Clearly in high spirits, they sang the widely popular song “Lily Marlene,” and shouted in pidgin English: “We to America, you fight.” I confess to having been quite moved by the sentimental ditty.

The tents in the transfer camp at the edge of the desert were hot in the daytime and freezing cold at night. The desert looked—deserted. After some days, a small group of officers and GIs assigned to plan cooperation with the newly “co-belligerent” Italians, moved to a tent camp in Tizi Ouzou, a tiny village east of Algiers. It was there that a

1. For a somewhat similar experience of arrival in Africa (Oran), see William A. Lessa, Spearhead Governatore: Remembrances of the Campaign in Italy 13 (1985).
2. For more on Tizi Ouzou as “Tootsie Wootsie,” see id. at 18.
Military Government Training School and Holding Center were organized. Four recollections from this African episode: First, a mediocre to poor “Carmen” at the Algiers opera, and—after that—falling asleep on the roof of an Algerian school under brilliant stars. Second, crowds of Arabs in white garb and the noisy market. Third, inebriated GIs taking a potshot at a muezzin chanting high on the minaret of a mosque. Fourth, listening to a broadcast from Nazi-occupied Rome that described in detail our activities in North Africa, including the doings of “the Jew Bernstein,” a lieutenant colonel on our staff. I was tense and apprehensive about what was to come next but also greatly intrigued by my first exposure to “the dark continent.”

III. THE END OF MUSSOLINI—ARMISTICE—“CO-BELLIGERENCY”

On July 24, 1943, shortly after the Allied landing in Sicily, the Fascist Grand Council deposed Mussolini: he was promptly arrested. The coup was the result of “a double conspiracy, one led by the General Staff and supported by the King, the other by the leading members of the Fascist Grand Council.” Power reverted to King Victor Emmanuel III. Fascist institutions were abolished and Marshal Pietro Badoglio, back from retirement after a rude dismissal as Chief of General Staff in 1940, became the head of the Government. By a daring coup, a group of Nazi operatives rescued Mussolini from the jail and brought him safely to the German-occupied North. As the Allies advanced, with heavy destructive bombing, the partisans ultimately captured and shot Il Duce and his mistress and, along with a dozen other Fascist notables, their bodies were hung in a public square in Milan.

Shortly before the Allied landing in Salerno on September 3, 1943, Badoglio signed “the short” armistice agreement and later, on September 29, “the long” armistice agreement with the United States, the United Kingdom, and the Soviet Union, acting on behalf of the Governments of the United Nations. The first agreement provided for the unconditional surrender of Italy, and among others, the right of the Allies to establish
military government. The second agreement contained extensive "political, economic and financial" clauses, such as the obligation to abolish the Fascist institutions and to surrender Mussolini. Curiously, documents relating to the "long" armistice were not made public, probably to avoid a negative reaction by the Italian people.

Some may ask whether "the imposition" of an overhaul of the entire constitutional system may be seen as contrary to the Hague Convention of 1907 on the Law and Customs of War on Land that prohibits changes in the legal system on the occupied territory beyond what is required by military necessity. The more recent emerging international human rights law provides the answer.

On September 9, 1943, having overcome a fierce resistance by the German Army, the Fifth Army landed on the beaches in Salerno, thirty-five miles south of Naples; Italian forces, leaderless, retreated in chaos, but the Allied troops and AMG officers were subject to enemy fire from surrounding hills. In October, with North and Central Italy still occupied by the enemy, Italy declared war on Germany. It became a "co-belligerent"—a concept in international law that remained to be defined. In November, General Dwight D. Eisenhower, the Commander-in-Chief of Allied Forces in the Mediterranean Theater, following the direction of the Combined Chiefs of Staff, established the Allied Control Commission (ACC) to enforce the terms of the armistices with Italy "that was militarily defeated, politically at sea and left with but the barest form of government." The first head of the ACC was Major General Kenyon A.

---

9. HARRIS, supra note 3, at 105-06; Italian Armistice, supra note 8, at 748 (outlining the conditions of the "short" armistice, as presented by General Eisenhower and accepted by Marshal Badoglio on September 3, 1943).
10. HARRIS, supra note 3, at 106-07; Italian Armistice, supra note 8, at 749-54 (outlining the conditions of the "long" armistice, as presented by General Eisenhower and accepted by Marshal Badoglio on September 29, 1943).
11. MURPHY, supra note 5, at 190-91.

The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

Id. art. 43.
13. ALLIED COMM'N, A REVIEW OF ALLIED MILITARY GOVERNMENT AND OF THE ALLIED COMMISSION IN ITALY: JULY 10, 1943, D-DAY SICILY, TO MAY 2, 1945, GERMANY SURRENDER IN ITALY 12 (1945) [hereinafter A REVIEW].
14. Id. at 19.
15. ZAMPAGLIONE, supra note 5, at 143.
16. A REVIEW, supra note 13, at 5.
Joyce. The seat of the beachhead of Allied power was Brindisi, a town on the Adriatic across "the boot" from Naples. The ACC morphed on October 25, 1944, into the Allied Commission for Italy, ultimately headed by the American Rear Admiral Ellery W. Stone. According to an official document:

The mission of the Allied Commission has been five-fold. First, to organize military government operations with the 5th and 8th Armies in direct support of combat troops; second, to render whatever immediate aid is practicable to the civilian population in the rear of the armies in order to allay disease and unrest; third, to prepare the governmental administration and economy to be turned back to the Italians as quickly as possible; fourth, to supervise execution of the terms of the Italian Armistice; and fifth, to be the spokesman of the United Nations to the Italian Government.

To gain these objectives, the Allied Commission established a national headquarters which always sits at the seat of the Italian Government and a field organization which is chiefly concerned with carrying out the first three objectives listed.

The first phase is that of direct military government in the armies which insures the security of the fighting forces' lines of communications. This is the job of the Army AMGs and the area they control is the Army zone. The second phase is that of stabilization and more systematic help to the civilian population. Such areas, once stabilized, are turned over to AMG regions (which follow the lines of Italian compartments) and where military government is still exercised. The third phase is the preparation for the turnover of territory to the Italian Government and the actual turnover thereof. While in the state of preparation, the control is AMG regional military government. After the turnover is made, the regional military government power lapses and control is exercised by liaison with the Italian authorities.

Six special divisions of the AC were established: Legal, Finance, Civilian Supply (collecting agricultural produce and controlling prices were the crucial problems), Public Health, Public Safety, and Enemy Property. On D-Day, Lieutenant Colonel Charles Poletti and his British

17. Id. at 17-18; Harris, supra note 3, at 111-12.
19. Id. at 5-6.
counterpart each landed some fifty specially trained civil affairs officers attached to assault forces.\textsuperscript{20} Despite the radical change of circumstances and the "constitution of a 'friendly' Italian Government[,]" the elaborate and cumbersome AMG system remained.\textsuperscript{21} To anticipate, Colonel Poletti, an experienced Italo-American politician, became the governor of the liberated AMG region centered in Rome. When my unit entered Rome, we found the walls plastered with graffiti: "Carlo Poletti, meno carle, piú spaghetti" (Charles Poletti, less chatter, more spaghetti). His popularity peaked when, as a Governor of the large Lazio Region, he was made honorary citizen of the city of Milan.\textsuperscript{22}

On September 8, 1943, the King, the Royal household, and a small retinue escaped from Nazi-occupied Rome to Brindisi and later to Ravello,\textsuperscript{23} a medieval settlement on a steep cliff high above the sea of Amalfi. For security reasons they carried no luggage.\textsuperscript{24} The family was lodged in the antique residence of bishops owned by an Italian duke. It was near Brindisi that the seat of the new Government (appointed by the King and headed by Marshal Pietro Badoglio) was set up.\textsuperscript{25} It transpired that this was also the destination of our small group.

In the second half of October 1943, an important conference of Allied Heads of State met in Moscow to set the policy toward Italy.\textsuperscript{26} A special Civil Affairs Section, G-5, was organized at the Supreme Headquarters. A serious difference with regard to strategy appeared between the Allies. The British insisted on throwing all available resources into the Italian and Balkan campaign while the Americans had their eyes on Normandy.\textsuperscript{27} Churchill supported the King as a bastion against Communism; paradoxically, the Russians recognized the Badoglio Government even without consultation with the Allies.\textsuperscript{28} On January 22, 1944, the Allied forces seized a beachhead at Anzio and the hand over of the Southern Provinces to the King's government followed in February without imposition of the Allied Military Government;\textsuperscript{29} but at this point the military campaign appeared at a standstill\textsuperscript{30} that lasted costly, painful months.

\begin{thebibliography}{99}
\bibitem{20} Id. at 10; HARRIS, supra note 3, at 26–28.
\bibitem{21} HARRIS, supra note 3, at 94–95.
\bibitem{22} LESSA, supra note 1, at 232.
\bibitem{23} See MURPHY, supra note 5, at 196–97, 201.
\bibitem{24} See id. at 196, 198.
\bibitem{25} A REVIEW, supra note 13, at 13.
\bibitem{26} MURPHY, supra note 5, at 208–09.
\bibitem{27} Id. at 186, 210–11.
\bibitem{28} See id. at 202–03.
\bibitem{29} A REVIEW, supra note 13, at 27.
\bibitem{30} Id. at 30.
\end{thebibliography}
IV. ON TO EUROPE: WITH THE BADOLGIO GOVERNMENT IN BRINDISI

Just three years after my lucky escape from Italy, law school, and basic training, I was merrily on my way back to Europe. I have described the first phase of the journey earlier in this Article. It was an uneventful flight from Algiers to Bari, with a stop at the airport in Catania, Sicily. Then it was by surface transportation to Brindisi, a trading port on the Adriatic with a contemporary look. The poet Virgil died here on his way home from a visit in Greece.

The hotel Albergo Internazionale provided living facilities for GIs and British “other ranks” as well as office space. Officers were lodged in nearby establishments. Two to a room, we settled quickly into a routine which included a regular early morning visit of a German reconnaissance aircraft: in the harbour area facing the hotel, Allied Air Forces stored three layers of greenish bombs and we wondered when the enemy aircraft might return with an assignment other than reconnaissance. “The evenings were animated by festivities enlivened by wine, women and music.” Alas, I do not recall participating in these affairs at that time.

We were part of a “spearhead” group attached to the 15th Army Group with Headquarters in Bari. The northern boundaries of Bari, Potenza, and Salerno Provinces served as a line of demarcation of “King’s Italy,” exempt from direct AMG authority. One of my first official tasks in Brindisi was to accompany two British officers—the mousey, modest Major Thackrah and the hefty, rose-cheeked bon vivant, Major Hannaford, both British barristers—to an appointment at the office of the Procuratore Generale (Prosecutor General) in the nearby city, Bari. The Prosecutor General—clearly a faithful Party member to hold such an eminently political appointment—received us in his spacious office. He was in a state of panic, expecting us to arrest him. As instructed, I informed him in my then fluent Italian, that by order of the King of Italy, he was appointed a member of the Government of Undersecretaries in charge of the Justice portfolio. The poor man, short, with thinning hair and dark eyes, was thunderstruck by this news and uncertain what to say. We returned to Brindisi and I drafted a report which was amply revised for my English. This started the standard process of my preparing drafts of office correspondence with Hannaford turning them into proper Oxbridge English—and this is how I improved my written English to a great profit for the future. My work included draft-

31. Corriere della Sera (It.), July 15, 1943 at 29.
32. See A Review, supra note 13, at 25.
33. Id. at 14, 16; Harris, supra note 3, at 122.
ing responses to Italian requests for permission to take administrative action in the Allied occupied territory, such as transfers of local judges into and out of the territory.

A major responsibility of the legal section was vetting the drafts of Italian government acts for compatibility with the armistice obligations, above all the Allied security interest, and for suitability of application in AMG territories. We designed a special procedure which is of some interest in the development of the international law of war. It meant poring over the proposed texts. After the approval of our recommendations, the texts appeared in the Official Gazette; on the last page of the issue the seal of the AC signified approval for enforcement in AMG territory. We also gave advice on the limits of Allied powers as an occupant of enemy territory under the international law of war.

At one point, we found ourselves in the middle of a dispute between the American General Mark Clark, commander of the Fifth Army, who ordered the requisition of a convent for accommodation of his troops, and an indignant Vatican in Rome asserting its control and position as a neutral. One of my early tasks—not of historical importance—was to receive and pass on a request brought by a young Italian officer: the heating in the King’s villa had failed, could we provide warm socks for him?

A leading constitutional scholar called the Brindisi Government “not only provisional: it is so to speak an antichamber or prelude of a provisional government that must be formed when all of Italy is liberated.”34 The American Political Adviser was less charitable: “[A] grab-bag assortment of military officers, diplomats, and members of King’s palace staff, was far from impressive.”35 The Government included two Jewish members, one whose Fascist past, in the opinion of Allied authorities, was redeemed by subsequent racial discrimination.36 And it was in January 1944 that the first Constitutional Assembly met in Bari.37 Six political parties sent their representatives.38 Names such as Count Carlo Sforza and the philosopher Benedetto Croce were listed among the speakers. Both had refused to have any dealings with that Government.39

At the time the Allied Council for Italy, an advisory body established by the Allied Governments, held its meetings in our hotel. I recall Sir

---

34. Piero Calamandrei, Nel Limbo Istituzionale [In Institutional Limbo], 1 IL PONTE, no. 1, 1945 at 4, 17 (It.).
35. MURPHY, supra note 5, at 198.
36. HARRIS, supra note 3, at 135.
37. id. at 136–37; M.E.P., Italian Politics Since the Fall of Mussolini: Part II, 21 BULL. INT’L NEWS 843, 844 (1944).
38. See HARRIS, supra note 3, at 132, 137; ZAMPAGLIONE, supra note 5, at 141, 145–46.
39. HARRIS, supra note 3, at 133-34.
Harold Macmillan, Maurice Couve de Murville (both future Prime Ministers of their countries), Andrei Vishinsky and others. Some five years forward, while driving past the French Embassy in Washington, I saw Ambassador Couve de Murville stepping out of the building. I stopped and called: “Do you remember the Brindisi days, Mr. Ambassador?” He smiled and waved and I drove on. And as for Vishinsky, I listened to him for hours in the United Nations during my days on the American delegation to the U.N. General Assembly when he represented the Soviet Union.

Back to Brindisi and the Allied Council. I was having a drink at the bar when Sir Harold Macmillan appeared and addressed the bartender. The bartender responded, “Sir, this is a bar for GIs and other ranks only.” Sir Harold, obviously surprised, left the room. At another occasion, I overheard an exchange between a British sergeant and Colonel Gerald H. Upjohn (later Brigadier General), another British barrister, in charge of the legal section. “You bet Sir,” said the eager sergeant in response to the Colonel’s suggestion: “I don’t bet with you, Sergeant,” said the Colonel haughtily to the amusement of us Americans. Upjohn, like so many of his class, assumed a touch of a superior stance toward “American colonials,” but he was most friendly, almost cordial, with me. On his departure, he wrote me a letter of effusive praise.\footnote{Letter from Col. Gerald H. Upjohn to Eric Stein (Aug. 19, 1945) (on file with author).} My wife and I visited him in his chambers in London after the war. Still to the entertainment of both the British and American onlookers, American Major General Kenyon A. Joyce, then head of the ACC as acting Deputy President,\footnote{HARRIS, supra note 3, at 111–12.} attempted to enter the hotel and was stopped by an amply turbaned, black-bearded Indian Sikh guard who asked for the usual identification. The General searched his pockets to find none. No identification, no access. In the ensuing commotion, the head of the guard detail and others eventually persuaded the soldier to relent. General Joyce was succeeded by Lieutenant-General Mason-MacFarlane on January 16, 1944, who proceeded promptly to reorganize the Commission.\footnote{Id. at 117–18.}

V. Salute Salerno—“Hi, Queen!”—Bad News

After Allied Forces secured the beaches of Salerno, the area was for a week or more continually under fire and most of the population had fled. As the Allies pressed the combat line northward, the AC Headquarters, lock, stock, and barrel, migrated to Naples and to Salerno, which
also housed the Badoglio government. My group was quartered, quite comfortably, in the building of the Tribunal. I recall the GIs poring over the thick official folios that lined the shelves, tearing out a page that caught their attention—a memento to take home.

My work continued in the Brindisi pattern without serious interruption. I recall two memorable episodes. One day, taking my afternoon nap, I was awakened by Colonel Richard Wilmer, then head of the Legal Subcommission. “Get up, Sergeant” he said, “you must draft an abdication speech for the King; the Allied governments have decided that he must go, but he refuses. So as soon as Rome is liberated, we shall publish, without the King’s consent, the declaration of resignation in favor of his son, Umberto as a ‘Luogo-Tenente del Regno’ [Lieutenant General of the Realm].” All I had for reference at that moment was a copy of the Italian Constitution of 1848. I assume that under the impact of the threat (and my masterly draft) the King relented and had his staff write and publish “the real thing.”

The other significant event was the violent, spectacular explosion of the nearby volcano, Mount Vesuvius, with a disastrous impact on the surrounding villages. The streets of Salerno were covered with foot-deep gray ash. We were asked to help with the evacuation. I stayed behind in accordance with the principle never to volunteer in the Army. At sunset—and beyond—a pretty Italian girl I had met earlier at a local dance took long walks with me along the beach...

At Ravello, the distressed King found consolation in numismatics in the company of a local priest, and in fishing from a boat with an elderly fisherman. Queen Elena played piano and did good deeds for local charities. One day near Easter of 1944, an American sergeant from the Bronx and I were taking a walk in nearby beautiful Amalfi: the scent of flowering trees was in the air under a cloudless sky. Passing a turn on the path, we encountered the Queen and her bodyguard walking toward us. “Hi, Queen,” said my friend, addressing the impressive, tall, black-eyed woman of Montenegrin appearance. She responded in the friendliest of ways; her companion tried hard to suppress a spasm of laughter.

On October 1, 1944, the Fifth Army entered Naples welcomed by cheering multitudes; but the city was in a dreadful state. The supply of food, bottling of water, and caring for crowds of refugees in a typhus epidemic were AMG priorities. “Defascistization” was in progress: the percentage of officials dismissed, even of teachers, was actually rather

43. Id. at 120, 144.
44. A REVIEW, supra note 13, at 36–38.
45. Id. at 19.
46. Id. at 19–22.
small, but the mayors of all communes were dismissed. Some 1500 Fascists on the Allied blacklist were interned for various periods of time.47

It was in May 1944 that I received the first news of the killings of my parents and the death of my younger sister—with only my older sister and one of her two sons surviving.48

VI. ON TO ROME: HARD CASES, NEW GOVERNMENT—A ROMANCE

The original Allied plan was to take Rome by landing airborne troops there by October 1943, but the plan was abandoned.49 Not until June 4, 1944, did the Allies take Rome and the intervening months were immeasurably costly to both Allied soldiers and Italians.50 Allied troops entered the Eternal City to the wide acclaim of the Romans just 36 hours before the D-Day landing at Normandy. The city was left unscathed, both from the Allied bombings and German occupation, but the critical needs of the population along with some 200,000–300,000 refugees were straining Allied resources.51 Political life and labor organizations revived with a vengeance and the AC initiated relations with the Committee of National Liberation in Rome.52 Marshal Badoglio resigned and Ivanoe Bonomi, a former pre-fascist Prime Minister and Chairman of the Rome Committee of National Liberation, became Prime Minister of the two quickly successive coalition governments.53 The AC arrived in Rome on July 15 with a new head, the American Admiral Ellery W. Stone as Acting Chief Commissioner.54 The AC took over the pretentious fascist Palazzo delle Corporazioni where I was assigned a large office facing the via Vittorio Veneto in the center of the city. Some stability was achieved in 1945 when Alcide de Gasperi, a Christian Democrat, became Prime Minister.55

Back again to the personal. Our group was lodged in a hotel near the main railroad station. I had the pleasure of sharing the room with René Dreyfuss, well known throughout Europe as an auto racing champion, and later, as owner of a successful French restaurant in New York. My

47. Harris, supra note 3, at 19, 48–49.
49. Murphy, supra note 5, at 194–95
50. Id. at 195.
51. A Review, supra note 13, at 41.
52. Id.
53. Id.; Zampaglione, supra note 5, at 146–47.
54. A Review, supra note 13, at 42.
55. Lessa, supra note 1, at 253.
wife and I frequented his eatery after the war. Back in Rome, one evening, after the standard Army dinner, René lay down on his bed and conjured up a fantasy French dinner: “I would start with Vichyssoise . . .” and he proceeded with the most elaborate recitation of a French menu, making us both nostalgic.

In mid-February 1944—to return to more serious affairs—General Mason-MacFarlane had nearly completed the fusion of the ACC and AMG and it seemed a moment for smoothing out working relations with the Italian administration. I was introduced to the General in his lovely villa in connection with my work. He was charming and quick to grasp issues, but he did not appear to be in the best of health. He had a reputation of being contemptuous of Italians. To our surprise, our first interlocutor in Rome was the new Minister of Justice, Palmiro Togliatti, the head of the pre-war Communist Party, who returned from wartime exile in Moscow. He had a nondistinctive face with thin, metallic spectacles, and appeared uneasy, evidently anxious to avoid any hint of ideology. In his public statements, he admitted “past mistakes” of the party and called for a united front “side by side with the Socialist comrades and Catholic workers.” He was quickly succeeded as Minister of Justice by the affable politician, Umberto Tupini. The old crew of Hannaford, Thackrah, and myself enjoyed the weekly visits to the Palace of Justice. At times I went alone to see ministerial officials.

As the line of combat moved north, the AMG and the AC faced an overwhelming challenge: disarming some 50,000 partisans armed with weapons taken from the Germans and dropped by Allied aircraft. They carried out massive summary executions, but no one fought the Germans more heroically. North of the River Po the number of partisans was estimated at 300,000. A threat of Communist takeover became more serious from day to day.

In Rome, the work of the Legal Subcommission, if anything, intensified. The Court of Cassation, the supreme court of the land, was re instituted. I was greatly impressed by Judge Ettore Casati who crossed enemy lines to be appointed First President of that Court. The duties of the Subcommission embraced, first and foremost, reactivation of the Italian courts “in disrepair after twenty years of Fascist neglect,”

---

56. See HARRIS, supra note 3, at 142–43; A REVIEW, supra note 13, at 31–32.
57. AFHQ Psychological Warfare Branch, Summary of the Italian Press from Apr. 14 to 25, L’UNITÁ (It.), Apr. 29, 1944, at 5.
58. LESSA, supra note 1, at 204, 225–26.
59. Id. at 225.
60. Id. at 229.
61. A REVIEW, supra note 13, at 44.
62. HARRIS, supra note 3, at 166.
63. A REVIEW, supra note 13, at 44–45.
preparation of Allied proclamations, certification of decrees passed by the Italian Government in AMG territory as described earlier, the interpretation of the still-secret Armistice terms, fighting a rampant black market through AMG courts with the assistance of civilian squads, and last but not least, review of the more important decisions of AMG courts.64 The courts worked at three levels: Summary, Superior, and General,65 with an appeal to the AC Headquarters in serious cases. The total number of cases they handled was estimated at 148,642.66

Of the many cases on which we worked, one proved particularly fascinating. On July 6, 1945, in the North Italian village of Schio, still under AMG rule, fifty-four persons confined in the local jail were shot to death by masked men.67 A large majority of the inmates “were suspected of collaboration with the Germans, and other political crimes.”68 Seven partisans were brought before an AMG court which sentenced three to death, two to lifetime imprisonment and acquitted two.69 On our recommendation, the Chief Civil Affairs Officer commuted the three death sentences to life imprisonment and confirmed the rest of the judgment.70

The reasons given for the holdings: all persons involved were Italians and only Italian, not AMG law, was violated. In 1889, Italy was among the first nations of the world to abolish the death penalty; it was reinstated by the Fascist Code and abolished again by the first Bonomi government in August 1944.71 But, at the time of the massacre, the Bonomi decree was not yet applicable in the area of the Schio village, meaning the death sentences were properly imposed under the Code; however, had the accused been charged in the territory restored to the Italian Government, they could not have been sentenced to death, even in an AMG court.72 The Chief Civil Affairs officer thus concluded:

In deference to the pre-fascist concepts of punishment under Italian law, which the present Italian Government has reaffirmed, because I consider that military authorities governing under the law of occupation in a civilized state are but custodians of its fundamental legal institutions, and because I do not conceive it to be Allied policy toward Italy to override Italian basic concepts

---

64. See id. at 45, 81–82.
66. Id. at 204.
68. Id.
69. Id.
70. Id. at 342.
71. Id. at 342–43.
72. Id. at 343–44.
of justice with respect to a civil crime committed by Italians against Italians, regardless how such a crime would be dealt with in Allied countries, the death sentences . . . are modified to sentences of imprisonment for life.\textsuperscript{73}

The case, I believe, adds to the growing field of international law of war; it also illustrates the complex multifaceted policy considerations that seep into the legal process under stressful wartime conditions. After my return to the United States, I received a letter from a colonel on the AC staff regarding the piece I had published on the Schio tragedy: "I gave [the article] to the Admiral. His letter is enclosed. In all my dealings with him, I have never seen him more pleased. When I told him you had gone through the war as a sergeant, he was amazed."\textsuperscript{74}

As if the Schio case were not complex enough, before me is a memorandum I wrote for the Chief Legal Officer, dated February 28, 1944, in the case of a Yugoslav citizen, sentenced for manslaughter by a local Yugoslav civil court in Italian occupied Yugoslavia applying Yugoslav law. The answer in the case depended upon whether or not the court, sitting under the authority of the King of Italy, had jurisdiction over the defendant. The complex inquiry into sources of international law of war and literature is beyond the confines of this Article. Two cases played in packed court rooms that posed a dilemma to the AMC Court: a man and woman charged with syphoning off oil from a broken Allied pipeline: one with serious kidney illness, the woman pregnant. Suspended sentences were imposed.\textsuperscript{75}

"Defascistization" or "epuration" moved to the center of political and legal activities. A series of spectacular trials of top fascists consumed public attention. As an example, I have found in my materials a record of the prosecution against four Italian businessmen for criminal collaboration with the German occupiers throwing light on the life-determining choices that these men had to make, balancing the forced supply of goods to the Germans and secretly supporting the underground partisans. The inquiry was terminated for lack of evidence of the crime of cooperation.\textsuperscript{76}

The Italian anti-fascists showed signs of impatience: Allied authorities "should not be surprised that the Italian people are confused, perplexed when there are such pro-Nazi and profascist shepherds of the

\textsuperscript{73}Id. at 343.
\textsuperscript{74}Letter from Col. John K. Weber to Eric Stein (Feb. 12, 1947) (on file with author).
\textsuperscript{75}HARRIS, supra note 3, at 172.
\textsuperscript{76}Record of Proceeding of the Procurator General and Decision of the Investigating Councilor in Proceeding against Stacchini Er. Ch., Momma, Stacchini Er., Feb. 18, 1945.
..." And again: "Certain poor officers who have rained down on us from distant America and foggy England . . . give way to the insistent invitations of local small fry aristocracy, ex-gerarchi who now masquerade as liberals, ex-hosts of the Germans who pass as convinced friends of the Allies. . . . Who can resist them? They have warm houses, good food, a well-stocked cellar, a daughter who speaks a few words of English, etc. . . . ." At one such dinner, I recall an American captain rising with a glass of wine to declare proudly: "Fango nei occhi" (mud in your eyes) to the puzzled looks of the Italians since no such saying exists in their language. The political influence of the military government was indirect and was felt mostly in Army zones where it offered a model of fairness and stability; it discouraged unrest not by force but by providing supplies, financial assistance, public health measures, public safety, and refugee relief, all of which disheartened rebellion or revolution.9

My social life centered on the extensive family of our official Italian legal advisor, Pasquale Chiomenti, a well established legal practitioner and son-in-law of Dean Vasarelli of the Malpensa Rome Law Faculty, and his brother-in-law Giuliano, an expert in criminal law. On one weekend Hans Busch, then of the Army Transportation Pool, appeared on a powerful motorcycle. Hans, the son of the famous conductor of the Dresden Symphony Orchestra, was himself an accomplished musician and later a member of the Music Department at Indiana University. With me sitting on the back seat, we drove to Florence: the road was in a dismal state, a result of systematic bombing; it took us some time to recover from the bumpy ride. But we attended an opera performance in the most expensive seats: Hans was engaged in helping with the revival of the company. One evening, Hans, the writer Klaus Mann (the son of Thomas Mann), and I were dining in a Roman restaurant and speaking mostly in German. Two robust American MPs approached and demanded identification.

It was at this time that I also met the beautiful Elena. I have before me a series of photographs, including one showing her in a festive costume with a large lute in her lap. We saw each other often in a variety of surroundings. One weekend, Colonel Hannaford offered me the use of his official chauffeured car. Elena and I drove in the elegant limousine to

77. HFHQT Psychological Warfare Branch, Summary of Italian Press, ITALIA LIBERA (It.), Feb. 17, 1944, at 15.
78. Id.
79. LESSA, supra note 1, at 253. I have found one instance of a scathing criticism of the AMG and AC, focused on what the author felt was inadequate planning, hopelessly inefficient execution, rampant bureaucracy, and delays with tragic effects, and further proposing a qualified civilian should be the theater commander; See Maurice F. Neufeld, The Failure of AMG in Italy, 6 PUB. ADMIN. R. 137 (1946). From my perspective, this unqualified condemnation goes too far.
a spa outside Rome, a convent of German nuns who rented out rooms. We met the Mother Superior in her office, comfortably reclining at her desk with a lit cigarette (we gave her several packs) and both windows open to air out any evidence of the sinful act. We were assigned separate rooms in different wings, connected by a long, dark corridor. But it took only a pocket flashlight to traverse the distance at night—as long as I was back before the early morning bells. Elena was my only serious wartime romantic entanglement: we planned for a common future in the United States, but these plans evaporated quickly after my re-integration in America—a common post-war experience of American soldiers. By way of a contrast, Hans Busch married his charming Roman woman and brought her to Indiana, but the couple divorced not long thereafter and she returned to Rome.

**Coda: War's End, Comedy of Errors, and the Non-Native's Return**

Germany surrendered on May 7, 1945, a week after Hitler’s suicide and less than a month after the sudden death of President Roosevelt, then in the first year of his fourth term in office, and the swearing in of Vice-President Harry S. Truman as President. Japan surrendered on August 14, 1945. The war was over! The AC was abolished on January 31, 1947. An American anthropologist working as a Civil Affairs Officer, who "governed" dozens of towns in the combat zone, concluded that the AMG is generally recognized as having been highly successful while the Allied Commission is "often spoken of as something of a failure." There might be a touch of bias in this sweeping judgment . . .

Deep down I still feel on the defensive for not having been exposed to enemy fire.

With the connivance of a Harvard Law School friend, then a major at the North African Headquarters, I received the order to join the AMG unit planning for occupation of Germany, located in Paris. I left Rome and the many friends with a sense of nostalgia. It was late August 1945.

Reporting in Paris, I was advised that the planning unit had already left for Germany: I was to wait for further orders. I was assigned lodging in the Petit Palais, an art museum now stripped and converted into a

---

83. LESSA, supra note 1, at 230.
84. Id. at 247.
dormitory. One detail indicative of the GI social life in the French capital: each soldier exiting in the evening was offered a pack of contraceptives. Days and weeks went by with Paris slowly emerging from the wartime gray. After a few days, I moved to stay with a family of American friends in Versailles, then still under wartime pall. I walked, read, and socialized. The gardens were spectacular, the palace closed. Finally, on October 20, 1945, I received the order to return to my job with the AC in Rome. Upon arriving, I found the Commission in a somnolent state of dissolution. There were many departures. For me, it was the usual Army waiting time. My request for travel to Prague was approved by the AC but vetoed by the higher instance—probably as coming too early after the cessation of hostilities. At last, the order to return to America. On my Army jacket I wore the Bronze Star of the U.S. Army and the Order of the Italian Crown and Military Cross.

One last memory: dragging my duffle bag down the plank of the Liberty ship and stepping onto the ground of these United States to the warmest welcome of my Highland Park cousins and a strong feeling of coming home. It was marred by the thought of my perished family and the question: What next?

The date of my discharge was February 6, 1946.