TAX SYSTEM AND ANTI-JEWISH LAWS (IN THE FRAMEWORK OF THE FASCIST TAX POLICY)

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1 Introduction: absence of directly discriminatory tax rules in the Racial Laws

The R.D.L. (Royal Decree-Law) no. 1728 dated 17 November 1938 establishing the *Laws for the Defence of the Italian Race*, i.e. the regulatory text of reference implementing the racial policy in Italy, did not enforce any provision of strictly tax nature.[1]

Specifically, although the lawmaker could have considered it in the vile logic underlying these measures, none of the twenty-nine Articles composing the decree laid down any form of heavier taxation on the *"Italian citizens of Jewish race"*.[2]

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[1] The bibliography on Racial Laws is very broad. *Le Leggi Razziali: scienza giuridica, norme, circolari*, written by S. Gentile, Milan, 2010, is a recent very detailed historical and legal analysis used for broad and previous references.

[2] Those who fell under the provisions of the Art. 8 of the R.D.L. (Royal Decree-Law) no. 1728/1938 establishing their specific features: i.e. having Jewish parents or, anyhow, showing of being Jewish or supporting the Jewish religion.

As a matter of fact, the principle of legal equality characterizing also the tax system of the time[3] was totally demolished by these provisions, so nothing would have avoided the enforcement of directly or indirectly "punitive" anti-Semitic tax measures, as happened in the Nazi Germany in the same period.[4]

Although no general tax provisions were enforced, the R.D.L. (Royal Decree-Law) no. 126 dated 9 February 1939 implementing and supplementing the rules that established the ownership limits of real estate as well as of industrial and commercial business activities of the Jewish citizens, contained some tax requirements set out by the Art. 10 of the aforesaid R.D.L. (Royal Decree-Law) no. 1728/1938.

These rules intended to govern some tax effects arising from the transfers of assets subject of the racial confiscation mechanism. Specifically, in the aforesaid decree: a) the Art. 74 encouraged the asset donations from Jewish citizens to relatives *"not considered Jewish"* or to certain "praiseworthy" entities, whom were granted with the exemption *"... from the registration tax for any assignment without consideration"*, one-fourth reduction of the *"transfer tax"* and of the *"cadastral duties"*; b) the Art. 75 lightened the taxation of the deeds that returned the assets to the Jewish citizens eligible of exemption from the racial confiscation pursuant to the Art. 14 of the R.D.L. (Royal Decree-Law) no. 1728/1938; c) the Art. 76 established a favorable tax system for *EGELI* (the Real Estate Management and Liquidation Body) that was specifically created to collect the seized assets; and d) the Art. 77 lightened the taxation of the anonymous companies created to take over the companies stolen to the Jewish citizens.

However, before examining these rules (in details trying to understand how they were also permeated by an ideological connotation), it is useful to reflect on the impact of the Racial Laws on the tax system as a whole, even in case of non-specific "discriminatory" provisions, and on the different choices made by Italy and by its German ally as to taxation.

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[3] The existence of a principle of tax equality in the Italian tax system of the pre-republican period is shown, among others, by A. D. GIANNINI in the book *Istituzioni di diritto tributario*, Milan, 1938, page 35.

[4] See below §3. For a historiographical analysis of the fascist period and of its relations with Nazism, among the others, refer to: *The Jews in Fascist Italy: A History* by R. DE FELICE, Turin, 1961, that is unanimously considered a key reference for any analysis.

2 The confiscation of the assets and the ban on the exercise of any activities set out against the Italian citizens of Jewish race as a forced reduction in their ability to contribute to public expenditure

The Art. 25 of the Statuto del Regno (better known as the "Albertine Statute") dated 4 March 1848 in force when the Racial Laws were implemented, established that all the king's subjects, i.e. all the inhabitants of the kingdom, should contribute *"without distinction to the burdens of the State in proportion of their possessions"*.

This provision has to be considered the direct precedent of the principle of contributory capacity that, later, becomes the founding principle of the present tax system pursuant to the Art. 53 of the Constitution of the Italian Republic.

The "proportion of possessions" defined by the Albertine Statute is certainly a very different (and undoubtedly more limited) concept compared to "contributory capacity" established by the Constitution[5] and not only for the different binding force of the reference source setting out the tax contribution[6] but also because of the content attributable to the two concepts in their practical implementation.

Without going into a very interesting subject -but largely beyond what is strictly relevant here, it can be said that the principle underlying the Art. 25 of the Albertine Statute identified the distribution criterion of the sacrifice to support for public expenditure among taxpayers -like the principle set out by the Art. 53 of the Constitution, although limited it to the *king's subjects*- but it justified such sacrifice only if proportional to the *possession*[7] owned by the subject called to pay the tax. Exactly in this aspect, the former provision was diferent from the latter that, in fact, links any tax imposition -even when not directly identified in a *property*- to the payment capacity.[8]

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[5] Highlighted, for example, by A. Giovannini, *Il diritto tributario per principi*, Milan 2014, page 21.

[6] The Albertine Statute is an ordinary law.

[7] The term *possession* is written by A. D. Giannini, *Istituzioni di diritto tributario*, op. cit., page 36.

[8] The bibliography dedicated to the principle of contributory capacity is very broad. Without claiming to be exhaustive -and leaving aside the institutional manuals- please refer to: E. Giardina, *Le basi teoriche del principio di capacità contributiva*, Milan, 1961; I. Manzoni, *Il principio della capacità contributiva nell'ordinamento costituzionale italiano*, Turin, 1965; G. Gaffuri, *L'attitudine alla contribuzione*, Milan, 1969; F. Moschetti, *Il principio della capacità contributiva*, Padua, 1973; Id *The contributory capacity*, in *Enc. Giur.*, Rome, 1988; Id. *The contributory capacity*, in *Trattato di diritto tributario*, directed by A. Amatucci, Padua, 1994, volume I, page 223 et seq.; Various authors, *La capacità contributiva*, Padua, 1993. More

Moreover, there are no doubt that the *possession* referred to in the Albertine Statute were real estate, companies and wealth (i.e. income) resulting from industrial, commercial and professional activities, of which the Italian citizens of the Jewish race were, wholly or partly, deprived.

Therefore, the direct consequence of this condition was the (forced) reduction (or the total elimination) of their contribution capacity which, indeed, led to their failure to fulfil many of the tax assumptions characterizing the tax system of the time.

To become aware of this fact, it is enough to list the main tax forms in force in those years: a) the tax on land set out by the law no. 1831 dated 14 July 1864 that hit the *owner of the farmed land* yielding either a real or even a potential income; b) the tax on buildings originally set out by the law no. 2136 dated 26 January 1865, that hit *"buildings and any other buildings"* bearing even a generic capacity to generate an income; c) the tax on movable wealth set out by the Tax Code no. 4021 dated 24 August 1877 that hit all *"the income generated within the State and resulting from the mobile wealth"*, which was defined as the "new wealth"[9] achieved by an individual in a certain period of time thanks to the use of one's own sources of equity (assets or capital) or personal abilities (work); d) the additional progressive income tax set out by the R.D. (Royal Decree) no. 3062 dated 30 December 1923 that hit the total income of each natural person (considered as his/her own income and the income of any other persons in his/her availability, use or administration). Taking into account the aforesaid tax system, it can be easily realized that the racial seizure affected, reduced or totally cancelled the fulfilment of the tax imposition.

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recently: S.F. Cociani, *Attualità o declino del principio di capacità contributiva?* published in tax magazines, 2004, I, page 823 et seq. Reflection viewpoint even to be compared: please refer to different authors (curated by L. Salvini and G. Melis), *L'evoluzione del sistema fiscale e il principio di capacità contributiva*, Padua, 2014. In the comprehensive perspective of the principles of our tax system, please refer to: A. Giovannini, *Il diritto tributario per principi*, op. cit., page 21 et seq. As to the origin of the contributory capacity, please refer to the complete and very interesting "historical" analysis carried out by G. Falsitta, in his *Storia veridica, in base ai "lavori preparatori" della inclusione del principio di capacità contributiva nella Costituzione*, issued by *Riv. dir. trib.*, 2009, I, page 97 et seq.

[9] The term is written by A.D. Giannini, last work quoted, page 275.

3 The different choices made by Nazi Germany: the "punitive" taxes on the Jews

According to what just detailed, the choices made by Fascist Italy were less harsh than those made by Nazi Germany that, in fact, introduced provisions in its legal system aimed at specifically damaging (even as to taxation) the Jewish population –thus contributing to its impoverishment.

Specifically, the Jews in Germany were hit by extraordinary forms of taxation as well as by the confiscation of their assets and of the activities they could carry out thus bringing substantial earnings to the public purse used by the Reich mainly to support its huge military expenditure.[10]

In this respect, the first intervention was linked to the rules according to which the Jews were *de facto* excluded from the working activities -or, better, relegated to carry out the most humble jobs also through the (compulsory) acceptance of the jobs "suggested" by the Ministry of Labor

Besides this severe condition, the Nazi regime revoked all the tax exemptions granted to the Jewish mutual-aid associations and, finally, through a special decree dated 19 November 1938, it totally revoked their right to the benefit of the public care. So, as consequence of the new structure created, on proposal of the Secretary of State, Wilhelm Stuckart, a decree of the Ministry of Finance dated 24 August 1940 implemented a "tax of social equalization" (already planned also for the citizens of the occupied Poland, since 1934) on the (even derisory) income earned by the Jewish workers for their bonded labor.

The reason was to restore a condition of "equality" from the tax viewpoint between Jewish and German workers (hence the concept of "equalization"), since, as just said, the former, were excluded from any form of care, they would not have fulfilled any contribution obligation to which the latter were ordinarily obliged.

Another form of discriminatory taxation of anti-Semitic nature was linked to the aggravated implementation of the so-called "flight tax", which was in force since 1931 (i.e. before Hitler came to power)

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[10] Please refer to: R. Hilberg, *The Destruction of the European Jews*, Turin, 1999, page 130, after retracing the expropriation policy executed by the Nazi regime, he points out that *"The State had its part -a huge part- from the dispossession of the assets of the Jews, since it finally collected a big amount of money or other liquid assets from the revenues earned by the Jews forced to sell their enterprises: the Ministry of Finance seized most of them through peculiar taxes on wealth called Reich Flight Tax, and Expiation Payment"*.

and hit 25% of the value of the assets owned by all the German citizens, who owned assets and wanted to leave the Country. So, either the amount of assets and activities exceeding 200,000 Reichsmarks as at 31 January 1931 or the income exceeding 20,000 Reichsmarks earned in 1931 were subject to taxation.

As to this type of taxation, and to its enforcement against the Jewish population, the Nazi regime acted on two fronts: a) on one hand, it denied its disapplication to the Jews, who submitted such request because, according to Fritz Reinhardt, the Minister of Finance, although their emigration was desirable, their "last sacrifice" was deemed "necessary"[11] and, b) on the other hand (and above all), in 1934, the reference threshold of the tax levy on the assets was decreased to the amounts exceeding 50,000 Reichsmarks -with reference date fixed as at 31 December 1931- whilst the threshold on income remained unchanged but the income to be taken into account was any year income after 1931.

The mishandling of the Jewish population (of course, the most inclined to emigrate in those days) was clear: since the date fixed to appraise the assets owned was 31 January 1931, those who sold their assets (and the Jews had significant assets) to expatriate had to pay a tax on something no longer owned and, furthermore, those who earned an income higher than 20,000 Reichsmarks in any year after 1931, was taxed even on modest assets.

But that was not enough. From November 1938, Nazi Germany imposed on the Jews the "Expiation Payment" (a kind of extraordinary wealth tax) equal to 20% of the value of their assets that, due to the results in terms of revenue, was soon increased by a further 5 %.

As a matter of fact, the "Reich Flight Tax" and the "Expiation Payment" not only established two purely discriminatory tax mechanisms inexcusable compared to any principle inspiring the modern tax systems, but also created a confiscatory taxation of the Jews already brought to ruin by measures that forced them to alienate their assets and activities thus depriving them of their wealth that went to heavily swell the Reich's coffers. In short, taxation was used not only as a "punitive" measure and as a further expression of rejection of the principle of equality, but it was also a way to extort as many resources as possible from the German Jews.

[11] Refer to R. Hilberg, *The Destruction of the European Jews*, Turin, 1999, page 130.

4 The tax rules established by the R.D.L. (Royal Decree-Law) no. 126 dated 9 February 1939

After this short *excursus* throughout the anti-Semitic legislation and the tax system of the time even comparing it with the German experience, we can go back to reflect more specifically on the few provisions of pure tax nature contained in the regulatory *corpus* of the Racial Laws.

As initially mentioned, the Racial Laws were enforced by the Articles nos. 74, 75, 76 and 77 of the R.D.L. (Royal Decree-Law) no. 126 dated 9 February 1939 that laid down the *rules to implement and supplement the provisions of the Art. 10 of the R.D.L. (Royal Decree-Law) no. 1728 dated 17 November 1938 regarding the restrictions imposed to the Italian citizens of Jewish race relevant to the ownership of real estate as well as of industrial and commercial activities.*[12]

At first sight, these provisions did not seem significant, since, as mentioned above, they just: a) granted a tax reduction in case of donation made by the Jews before the confiscation of their assets and established the reallocation of the assets seized when authorized thanks to special and verified situations leading to the exemption from the consequences of belonging to the "race" and, b) ensured a "favorable" tax treatment for the entity set up to collect the seized real assets and for the anonymous companies that took over the enterprises stolen from the Jewish population.

In truth, on closer look, it can be realized how all these provisions were permeated by a strongly ideological substratum integrated within the context of tax policies aimed at supporting the interests of the regime and, specifically, the consolidation of its racial strategy.

Let us see how it worked.

First of all -and symbolically, as already said- the Art. 74 of the R.D.L. (Royal Decree-Law) no. 126/1939 reduced the indirect taxes for the (free) assignment of assets to non-Jewish relatives. This provision clearly aimed at encouraging the voluntary accomplishment thus avoiding the subsequent confiscatory action carried out by the State. In other words -and bearing in mind the context, a small benefit was represented by the tax reduction granted to achieve the plundering of the assets of the Jewish population in advance and "in a collaborative way" as well as the chance for them to choose at least the donee of

[12] The process of expropriation of the Italian Jews became extremely harsh in the last period of the regime with an even more drastic definition set out in the Decreto Legislativo del Duce (Duce's Legislative Decree) no. 2 dated 4 January 1944.

their assets (although restricted to those accepted by the regime) rather than seeing them transferred to EGELI, the Real Estate Management and Liquidation Body established by the Art. 11 of the aforesaid R.D.L. (Royal Decree-Law) no. 126/1939.[13]

The subsequent Art. 75 reduced the levy referred to the deeds re-assigning the real estate from this body (or any other assignee) to the eligible Jewish citizen due to the so-called measure of exemption established by the Art. 14 of the R.D.L. (Royal Decree-Law) no. 1728/1938 and granted by the Minister for the Interior according to specific situations to be assessed *"case by case"* on the basis of a sort of worthy contribution given by the individual to the causes of the regime (e.g. taking part in the military campaigns and suffering of permanent physical consequences or standing out for "patriotic" value in an action).

In these cases, the exemption included, among other, the confiscation of real estate that, if already executed, entailed the need to return the seized property. Such reinstatement led to the tax liability connected to the (re)assignment of the asset that was, however, mitigated thanks to the fixed amount of the registration tax and the reduction of one-fourth of the transfer tax.

This solution of apparent "common sense" was actually veiled by an anti-Semitic ideological content that is clear just thinking over the fact that: a) it dealt with the regression from an *ab initio* groundless abuse (the confiscation) resulting in the total exemption from the tax, instead of setting a mere reduction and that b) no equal tax reduction was expected in case of donation of the (later "exempted") Jewish citizen, who decided to anticipate the confiscatory act by assigning his/her own assets free of charge to someone chosen by him/her. This deed (the revocation *de facto* of the donation, or "reverse" donation) was subject to full taxation, even though it re-established the same wealth condition: the asset re-assignment for a previous groundless plundering.

The Art. 76 also showed a marked ideological matrix, since it provided a series of tax advantages for EGELI that was empowered at first to execute the coercive acquisition, and then manage, the assets confiscated from the Jews.

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[13] For the sake of completeness, it should be noted that the R.D.L. (Royal Decree-Law) no. 126/1939 set out a special form of payment for the confiscation. The Art. 32 of the same decree provided that the payment of the transferred properties (quantified according to a specifically fixed compensation) should be made through *"...three-year certificates"* that EGELI was authorized to issue and that bear an annual interest rate of 4% *"payable in two postponed semi-annual tranche on 1 January and 1 July"*.

The first advantage concerned its classification regarding its taxable status, since it was equalized to the State Administrations as to *"all the effects of the tax treatment"*. This condition was laid down in the art. 16 of its Corporate By-laws specifying that such equalization was referred to the *"the Body's own income"*. The purpose was to ensure EGELI a position of undoubted advantage as to taxation, since it was considered the operational arm of the regime in the implementation of the racial campaign in the economic field and, therefore, an entity supporting a national interest.

Actually, although the *"leading principle of the tax law"* of the time was that *"not only the small state-owned bodies, but also the State is subject to taxation by law"*, many exceptions to this general rule were established by individual fiscal regulations[14] that, in fact, ensured the relief from, or anyhow the reduction of, the tax to be paid by the State Administrations and, therefore, by EGELI self.

On the other hand, the tax *favor* granted to EGELI was expressly shown by the provision contained in the Art. 76 of the R.D.L. (Royal Decree-Law) no. 126/1939 and in the Art. 16 of its Corporate By-laws, which decreased the registration tax, the transfer tax and the cadastral duties due by EGELI on the transfer deeds of the assets assigned.[15] But this provision also supported a direct interest of the regime that clearly intended to monetize the assets confiscated from the Jews to support the (more and more increasing) need of the state budget.

The logic behind the Art. 77 was similar to the logic of the previous provisions granting a preferential system to the anonymous companies set up to acquire the enterprises seized from the Jews; in this case, of course, the seizure procedure was more complex than for real estate, even if the general path was the same.

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[14] Again A. D. Giannini, *Istituzioni di diritto tributario*, op. cit., page 84, the quotation marks refer to the author.

[15] By implementing the general provision contained in the Art. 76, paragraph 2 of the RDL (Royal Decree-Law) no. 126/1939 according to which *"the registration and transfer taxes, the cadastral duties and the notarial fees for the assignment deeds of assets attributed to EGELI are reduced to half the ordinary amount, when it is not possible to grant it more favorable special conditions"*, as to the Art. 16 of the Corporate By-laws of EGELI the text finally amended by the D.M. (Ministerial Decree) no. 685 dated 15 September 1944 specifically set out that *"the registration taxes for the assignment deeds of the assets attributed to EGELI are reduced as follows: a) to the fixed rate of 1.50% up to the value of ITL 5,000; b) to the fixed rate of 10% for values exceeding ITL 5,000. The transfer tax, the cadastral duties and the notarial fees for the assignment deeds of assets attributed EGELI shall be reduced by half when it is not possible to grant more favorable special conditions"*.

As to our purpose, the Italian citizens of Jewish race were permitted to make a (controlled) donation of their enterprises (or the relevant holdings) to non-Jewish relatives obtaining the tax abatement established by Art. 74 of the R.D.L. (Royal Decree-Law) no. 126/1939.

On the other hand, and mainly to realize the scope of the Art. 77, the mechanism set out that:

a) The Italian citizen of Jewish race was authorized with the prior consent of the Ministry of Finance *"to transfer his/her own enterprise, or shop or factory or equity holding to people not considered of Jewish race or to business concerns duly established"* at a transfer price that had to be invested *"in registered securities of consolidation issued by and under the liability of the designated notary public"* and that could not be transferred without the authorization of the Ministry self; the preservation of the rights of the non-Jewish partners were also ruled (Art. 58 of the R.D.L. -Royal Decree-Law- no. 126/1939);
b) If no assignment was executed, the Ministry of Finance together with the Ministry for the Corporations were entitled to establish through a decree, which enterprises should be taken over by *"anonymous established or to be established companies" "...for reasons of public interest"* (Art. 60 d of the R.D.L. -Royal Decree-Law- no.126/1939).

To promote the establishment of such companies that, as already said, were expressly classified as entities pursuing a public interest -i.e. the acquisition of the seized companies with the supposed aim of their continuation- the Art. 77 of the a.m. decree established: the total exemption from the taxes levied for the deeds of incorporation, a fixed registration tax of ITL 20, and the reduction to one-fourth of the cadastral duties (and of the notarial fees) for company transfer.

Here, too, the ideology created an inequality since no equal advantages were established in case of "spontaneous" transfer under the aforementioned Art. 58.

5 The evolution of the tax system during Fascism

The racial period was not characterized by significant anti-Semitic actions of fiscal nature, but Fascism, as a whole, represented an important moment in the evolution of the tax system of our Country.

At the end of the analysis carried out so far, it is useful to briefly reflect on the features of the tax policy choices of those years, both to

realize how they were affected by the ideological conditioning of those who led them, and to understand their role in driving the reforms that outlined the structure of the tax system of the Republic since the work of the Constituent Assembly of Italy.

On a closer analysis, the progress (and, more often, the regression) of the decisions made in tax matter expresses the course of the so-called *Ventennio* (Fascist Italy).

From a general viewpoint, the actions implemented "*never complied with the objective pursued as to contents, structural options and timing*[16] " and their application was often bent to the need of "chasing" resources for emergency purposes rather than for planning, since the cash requirements of the budget were increasingly conditioned by the (unreasonable) war campaigns of Mussolini and, finally, by the sudden and irreversible decline that culminated in the dark years of the World War II.

This led to an extremely chaotic system that soon rejected the favorable drive of the liberal studies (able to design a modern and fair taxation mechanism leading to the -finally- announced but never implemented individual and progressive taxation based on incomes) and focused on forms of extraordinary taxation, mainly of patrimonial or indirect nature that led to the penalization of those who already suffered from an economic situation that was anything but flourishing (the weaker social classes).[17]

5.1 The Bachelor Tax as an emblematic translation of the fascist ideology

The fascist ideology conditioned the evolution of the tax system by indirectly driving the tax choices towards the needs arising from the decisions of general politics as well as by interpenetrating the creation of some taxes.

While the terms of this "interpenetration" are quite evident in the above-mentioned anti-Semitic measures, it is interesting to note also other issues influenced the tax levy.

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[16] G. Marongiu, *La politica fiscale del fascismo*, Cosenza, 2004, page 3, who carried out systematic studies of the evolution of the tax system in those years from the historical and legal viewpoint.

[17] See again G. Marongiu, *La politica fiscale del fascismo*, op. cit., page 7.

The characteristics of the bachelor tax are enough to understand it, in fact and not by chance, it was considered *the most fascist of the taxes.*[18]

It came into force on 1 January 1927 and was an individual and progressive tax on the marital status that hit the unmarried men aged 25 to 65 not falling within the social categories "mandatorily" excluded.[19]

The tax was based on a twofold levy: a) a fixed quota exclusively linked to the age and totally disconnected from any indicator of the economic capacity for the personal sustenance, and b) an additional rate correlated to the income and, specifically, linked to the supplementary tax hitting, or that would have hit, the total income of the taxpayer.

Beyond the operational aspects of this "picturesque" tax, for the sake of our reflection, it is interesting to single out its clearly ideological content.

First of all, the tax hit bachelors, but not unmarried women. The reason was expressly explained in the Report presented to the Chamber on the occasion of the conversion of the decree that passed the tax[20] and was based on the consideration that women were not only legally inferior compared to men, but, more generally, the role they played in the society (at least, according to the vision imposed by the regime[21]) was subordinated to the decisions made by men, so it could be said that men were liable for the choice to create a family and, therefore, to realize the relevant tax assumption.

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[18] As defined by G. Marongiu, *La politica fiscale del fascismo*, op. cit., page 4.

[19] The following categories were excluded by this tax levy: a) Catholic priests and religious in general bound by a wow of chastity; b) War invalids; c) Officers and non-commissioned officers of the armed forces, who were legally forbidden from marrying; d) Disqualified for mental illness, who were legally prevented from marrying; e) Foreigners permanently resident in Italy, f) Those permanently unable to work or hospitalized in health care institutes falling under some specific provisions

[20] The Report presented to the Chamber of Deputy on 4 March 1927, that was also broadly quoted and commented by G. Marongiu, *La politica fiscale del fascismo*, op. cit., page 195 et seq.

[21] Even the "educational" and "moralizing" functions supported this regulatory action as clearly shown in another part of the Report presented on 4 March 1927. Regarding the reasons for excluding the unmarried women from the tax imposition, the Report highlighted that the objective of fascism was to restore the "traditional" role plaid by women in the organization of the family, since it appeared weakened "*... both due to doctrines based on feminism and because of the modern life that is powerfully influenced by the economic factors that encouraged the unmarried women to leave their familiar environment and promoted their independence that, very often, leads to dissolution and loose-living*". In explicit terms, as R. DE SIMONE also stated in L'imposta sui celibi, Padua, 1930, page 35 (also quoted by G. MARONGIU, La politica fiscale del fascismo, op. cit., page 196), the purpose of the lawmaker was to fight "*...the social homosexuality that has its roots in the economic emancipation of women*".

As a matter of fact, the additional function of the tax was represented by the precise desire to hit "... *those who have the means and possibilities but voluntary deprive themselves of the greatest joy, which is also a high civil and moral obligation for the Country,...*" that is to create a family.[22]

This is not the place to analyze thoroughly the history and the content, the political approach (that is peculiar of the principles inspiring the fascist ideology), nor to wonder if a severe taxation really could (and generally can) affect a social behavior as intimate as that underlying the decision to create a family (that, perhaps, someone could have wanted, but without success!). What is useful in the perspective assumed here is rather to verify the actual effects produced by the tax on bachelors.

In this regard, the widely (if not unanimously) agreed conclusion is that this tax was a source of clear inequalities and did not contribute at all to the campaign of demographic growth of which it was one of the pillars.[23]

If, on the one hand, the tax structure had a strongly regressive effect,[24] since it penalized the poor people, on the other hand, and in clear contradiction with its own reasoning, it damaged the large families with dependent children considered "bachelors" for whom the father was required to pay the tax. Furthermore, the tax created a senseless disparity between these families and those who benefited from the provisions contained in Law No. 1312 dated 14 June 1928 that was also part of the measures aimed at encouraging the demographic expansion of the Country and that *granted tax exemptions to large families*, specifically setting out exemptions from any local and state dues and taxes for all the civil or military servants as well as the retirees of the State, who belonged to any group and category including those of companies and

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[22] Another quotation of the Report, also cited by G. Marongiu, op. ult. quote, page 195, is useful to understand the complete reasoning of the lawmaker.

[23] Highlighted by G. Marongiu, op. ult. cit., page 197, who adds that the inequalities introduced by the bachelor tax into the tax system were caused both to its "*...total discriminating management, and opportunistic discretion*" and "*to the inherent vices*" as well as to "*the interweaving with the complementary tax*"

[24] Again G. Marongiu, op. ult. cit., page 197 (quoting also the remarks developed by R. DE SIMONE, *L'imposta sui celibi.*, op. cit., page 106) shows its practical and undeniable evidence of the intrinsic injustices by highlighting that the strict application of the tax created an inequality because of the fixed rate due and its correlation with the variable rate connected to the complementary tax, thus proving, for example, that a bachelor with an income of ITL 1,000 had to pay a tax of ITL 75, whilst another with an income of ITL 2,000 or ITL 3,000 had to pay ITL 80 or ITL 85. So, an increase of 100% in the economic capacity (expressed in taxable income) made the tax increasing of less than 7%, but an increase of 200% made the tax increasing of less than 14%.

services with autonomous systems as well as the autarkic and pastoral institutions with seven or more children of Italian nationality.

The (irrational) consequence of this exemption (compared with the tax on unmarried men) was evident: a subject with six dependent children, two of whom "bachelors" (pursuant to the R.D. -Royal Decree- 2132/1926) bore a tax burden of ITL 748, whilst if he had seven children he would not have to pay anything.[25]

In short, the bachelor tax was not only the "most fascist of the taxes" but also the one that: a) better than any other highlights how the ideology of the regime also marked the creation of tax measures and, b) bears witness to what was the actual logical and systematic "disorder" that characterized the action of the lawmaker in those dramatic years of the recent history of our Country.

6 Conclusions

Starting from the reflections just developed, it is possible to draw some conclusions able to summarize the analysis conducted so far.

As we saw, the vile racial action undertaken since 1938 did not produce specific measures for the Italian tax system except some "less important" provisions to support the confiscatory actions against the *"Italian citizens of the Jewish race"*. In this respect, our Country differed from Germany that, on the contrary, promulgated laws even in the tax area able to establish (and implement) a direct discrimination against the Jews that contributed to seize their wealth for the benefit of the regime.

Nevertheless, these (few) anti-Semitic measures have to be considered in the wider context of the tax policy of the fascist period and, specifically, in the evolution (and regression) of the tax system of those years.

Obviously, the fascist ideology affected not only the definition of the individual tax levy (as the bachelor tax emblematically shows), but had also a significant influence on the actual progress and modernization of the tax mechanisms.

None of the great innovations imagined (and announced, too) were actually carried out, when between 1922 and 1923, Alberto De Stefani became Minister of Finance at first and Minister of the Treasury then. On the contrary, the reformist thrust that drew on many of the projects of the previous years and, specifically, those worked out by the

[25] This practical example also comes from G. Marongiu, op. ult. cit., page 198.

liberal scholars was almost immediately lost and, even in fiscal field, the State action soon ended up confronting itself with an increasingly unskilled and extemporaneous ruling class, with an ineffective bureaucratic mechanism, with the need to fill the state coffers devastated by the growing war expenses and, worth to be highlighted, with the rampant propensity to tax evasion that was fought more theoretically than practically.[26]

At the end of the war, Italy was destroyed both from the material and from the moral viewpoint. Even the tax system was characterized by a series of measures that could hardly be traced back to a "system" and that were the result of the regression just said.

Despite the precarious bases, a path of "reconstruction" could, anyhow, start and immediately found its first decisive turning point with the work of the Constituent Assembly of Italy, but it was (at least partially) brought to completion with the Tax Reform implemented in the Seventies.

The whole reflection on the contents that the nascent Fundamental Charter should have dedicated to the tax system and, specifically, to the construction of Art. 53, was permeated by the attention to the creation of a tax system characterized by fair mechanisms of the peers' contribution to public expenditure.[27]

It is not by chance that the concept of taxation based on representation, equality, social solidarity and progressiveness was pondered -and finally enforced in the approved provisions, since our founding fathers wanted not only to explicitly mark the difference with the recent past but also, and above all, to represent the "pole star" of a reforming process that, overcoming the existing inefficiencies, would

[26] It is already evident in the introduction of his extensive study: G. MARONGIU, op. ult. cit., page 6. He significantly highlights how tax evasion was a trait of that "new" man that fascism wanted to "create" and identified a *"permanent ethical-political fragility of Italians on this front"* that found its way into the regime that did little or nothing about it, not only as to actions of real contrast but also as to the creation of functional tax mechanisms able to ensure greater equity.

[27] As pointed out by A. Giovannini, *Il diritto tributario per principi*, op. cit., page 21, the decision to place the Art. 53 in the Title IV dedicated to the "political relations" was already significant, since it means *"...to highlight how the tax capacity expresses, first of all, a regulatory criterion of the relations among peers and between peers and the State: a criterion to safeguard their own rights but, at the same time, the grounding basis of their obligation to contribute(such as other obligations, like voting, defending the Fatherland, being faithful to the Republic and obeying to the Constitution and the Law)"*.

have created a modern and efficient tax system able to support the moral and economic revitalization of our Country.[28]

It was an ambitious objective that, if we look at what happened in the following years, cannot be deemed to be fully achieved.

For many years, taxation in Italy has relied on many taxes set out by the Albertine Statute and, as already said, only in the early Seventies, an extensive reform structurally changed the tax mechanisms, in particular setting out IRPEF (the personal income tax) and establishing the principle of progressivity, whose definition strongly animated the debate in the Constituent Assembly.

Certainly the choices made at that time, established a *corpus* of general principles that, as said, can be read today in our Constitution and that are inspired, even in the tax field, by the democratic values that the fascist period, and especially the vile racial phase, had totally trampled on.

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[28] It is significant, in this sense, the discussion that animated the sitting on 23 May 1947, at the end of which the text of the final Article 53 was approved and that was expressly focused on the principle of progressivity. During that meeting, Mr. Scoca presented a detailed report that started from the inefficiencies, especially as to fairness, coming from the pre-republican period. He remarked that "*....The basic guidelines of our tax system are still permeated by the concept of proportionality, but it is a lame proportionality*" as shown by the fact "*that most of the revenue from direct taxation is still hitting the three classical assets: land, buildings and mobile wealth and is reckoned on objective or real base and at constant rate whilst the revenue on global income, which is reckoned on personal basis and according to a progressive rate, is very low compared to the former*" that was "*the most convincing evidence that the system of direct taxation is based on proportionality*". Mr. Scoca himself went on pointing out that "*direct taxes turn the levy into indirect thus resulting in a reverse progression, because they are mainly hitting consumptions, so they burden more on the weaker social classes*", thus determining that the distribution of the tax charge was "*not progressive or even proportional -but regressive*" and being "*a serious social injustice, it must be replaced by a pondered and serious tax reform*" based on the principle of contributory capacity and the criterion of progressiveness well inserted in "*a Constitution like ours that is based on the principles of democracy and social solidarity*". Please refer to *Storia veridica, in base ai "lavori preparatori" della inclusione del principio di capacità contributiva nella Costituzione*, op. cit., page 97 et seq. for a comment to the contents of the discussion that led to the definition of the art. 53 at the Constituent Assembly of Italy.