Toward a Genealogy of Social Defense

Positivist Criminology and Political Crime

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ABSTRACT There was a time when crimes of a political nature were regarded positively and seen as worthy of recognition for their intrinsic value. To our understanding today, this nineteenth-century outlook is so distant that it can be difficult to imagine its ever having been in effect. This essay examines the Italian school of criminological positivism at the turn of the nineteenth century to account for this different view of political crime. This analysis, indebted to Foucauldian genealogy, seeks to reframe the principle of social defense as an infrastructure of the penal field that allows the author to illuminate some of its operations still in use. The essay works to show that we are heirs more to criminological positivism than to the liberal tradition—and that this legacy is in fact more evident today than during past historical conjunctures.

KEYWORDS political crime, criminological positivism, social defense, Cesare Lombroso, Scipio Sighele, Raffaele Garofalo, Enrico Ferri

Contextualizing Political Crime

There was a time when crimes of a political nature—from the most classic gestures in the repertoire of social struggles to the most innovative additions to it—were regarded positively. The political element of such acts was seen as worthy of recognition for its value and was thought to distinguish them from common crimes. Such an understanding was operative within a Western historical period that we can think of as having come to an end with the advent, at the end of the nineteenth century, of penal reforms throughout Europe and beyond its borders in the form of ideas circulating globally as moments in the "travels of the criminal question."[1] One of the most debated issues in the discourse of nineteenth-century criminal reform was how to understand political crime. Differentiating it from common crime seemed to be an initial logical path to take toward its legal categorization.

Simply put, the common offender was viewed as more dangerous because they could repeatedly commit the same or similar crimes. Indeed, the issue of recidivism

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was considered crucial at that time to the extent that, according to important historical and legal accounts, it had, so to speak, "tormented" the bourgeoisie. Therefore, addressing the repeated commission of crimes, whether similar or different from one another, became the focus of criminal law at the time. In particular, this concern prompted experimentation with new punitive tactics proposed by the Italian school of criminological positivism. The school especially emphasized recidivism as the primary reason to radically rethink the penal system.[2]

The political offender, by contrast, was not perceived as a potential recidivist. Since they advocated for their ideas and goals, they should not be deemed inherently socially dangerous, in this view. One could infer that such consideration, if not respect, for the political offender also acted as a mirror, reflecting a logic according to which some individuals happened to win power struggles while others did not, but all such people deserved to be politically "recognized." In this sense, the political crime provided a certain form of recognition.

From today's perspective, this nineteenth-century liberal outlook appears distant. While contemporary criminal trials may consider mitigating circumstances—such as motives rooted in moral or social values that influence a defendant's actions—the political nature of an offense is rarely taken into account. Yet historically mitigating circumstances subtly allowed for the consideration of political elements in the evaluation of criminal acts. Unlike in the past, today defense attorneys in European countries like Italy do not expect a political justification for a defendant's conduct to "shine through" and result in a reduced sentence. Even in the most challenging cases of political lawyering, lawyers are aware that the dynamics of the political trial, as framed and promoted in the now classic *De la stratégie judiciaire*,[3] can only be detrimental to defendants or, at the very least, sound extremely dissonant and rather out of place in the current context.[4]

Admittedly, in a sort of logical short-circuit, members of the judiciary now tend to make the following argument: motives of particular moral and social value can be grounded only in the prevailing "collective conscience," and that conscience, in fact, should be sought in the orientation of the parliamentary majority—as recently stated explicitly by the Italian Supreme Court.[5] The collective conscience—essentially the term used to describe moral and social values—would, in other words, be that of the majority. Moreover, it would be "embarrassing" to grant any such mitigation to political actors who, though perhaps acting on admirable motivations, used violent means.[6] However, committing a crime—whether political or not—often involves some form of violence or resistance (for example, against a public official). What we are faced with, then, is a paradox: A sentence for disobedience can be mitigated only in favor of those who obey governmental decisions; if they had not committed a crime (used violence), the punishment for the crime committed could be mitigated.

In current political trials worldwide, courts are unlikely to provide for such mitigation of punishment. Instead, we notice the opposite trend: It is increasingly likely that, in the trial for an action that did not aim to harm human lives, the accusation is disproportionate and exemplary. This dynamic is referred to as criminalization, specifically the criminalization of dissent.[7] Prosecutors commonly designate acts or persons "terrorist" in the first instance, although this major accusation often falls away after the first stage of the trial.[8] The category of terrorism tends to encompass the old category of the political criminal, making the terrorist into the quintessential figure of political crime. In the ongoing legal debate regarding the definition of *terrorist purposes*, the focus has long been on the dual aspects of instigating "terror" and undermining constitutional order. In Italy, the 2011 addition of article 270-*sexies* to the penal code represents a significant shift, prompted by severe incidents in the UK and elsewhere. This amendment aims to bring domestic laws into alignment with the guidelines laid out in the European Union Council's Framework Decision 2002/475/JHA by providing a definition of *terrorist purposes*, which includes the behaviors that, by their nature or context, can cause serious harm to a country or an international organization; are carried out with the purpose of intimidating the population, coercing public authorities, or an international organization to perform or refrain from any act; or destabilize or destroy the fundamental, constitutional, economic, and social structures of a country or an international organization. This also includes other behaviors defined as terrorist or committed with terrorist purposes by conventions or other norms of international law binding on Italy.

The vagueness of the new article 270-*sexies* is evident and deliberate; the motives listed are not inherently qualified but gain meaning in the historical context in which they arise. The article is derived from the Council Framework Decision on combating terrorism, yet it deliberately omits the explicit specification of behaviors outlined therein. This omission is intended to avoid inadvertently excluding certain "terroristic" behaviors, based on a hypothetical shared social perception.

This essay presents a segment of a genealogy and is part of a broader project. Owing to spatial constraints, its coverage is not exhaustive. While the overall project takes a genealogical approach, this essay focuses on a specific aspect of my research: the history of a pivotal transformation in criminological thought with contemporary relevance—the emergence of a positivist tradition. The Foucauldian method guides this inquiry, beginning with a contemporary exigency and proceeding into a series of historically grounded arguments and reflections.

In particular, my aim here is to understand, through the case of the political criminal, the broader perspective on criminality that was inaugurated in the late nineteenth-century debate. The idea is to frame, through an exploration of

illegality, the functioning of legality itself, as Michel Foucault has taught us to do.[9] In this sense, I draw inspiration from his work toward a genealogy of social defense, describing it, as we will see in detail, as the primary dimension of punitive reason that remains operative to this day.

Tracing the history of criminality backward, this genealogy identifies a cornerstone in criminological positivism, which derived its punitive rationale from the principle of social defense. This movement emerged in Italy from both a scientific tendency and an active group of criminal justice reformers, comprising anthropologists, physicians, sociologists, and, above all, legal scholars. The piece of the genealogy that I present here follows Foucault's exploration of social defense within the analysis of discursive practices surrounding criminal matters. Foucault entertained the idea of crafting a genealogy of social defense,[10] as clearly hinted at by the title of his 1975–76 lectures "Society Must Be Defended."[11] He considered social defense to be the true contemporary "philosophy of the penal system."[12]

To highlight this turning point in European punitive reason, I have chosen the political crime as the object of my case study. As Foucault himself wrote, the political criminal is the quintessential criminal because they consciously endanger the established social order and intend to challenge the given norm and social contract assumed to be shared by the entire political community. After the bourgeois revolution, the criminal becomes a social enemy, foreign but not external. The criminal breaks the social contract by waging war against the society to which they belong, and counter warfare no longer serves as reparation for harm or punishment for guilt, as it becomes a measure of society's protection.[13] According to Foucault, the first moral monster is the political criminal, who is pathologized at the end of the eighteenth century.[14]

This essay begins by considering the crucial distinction between common crime and political crime, showing how this distinction has functioned. My investigation dwells on the liberal tradition and its formal respect for political rights, but it also goes further to uncover the hidden legacy of criminological positivism. To account for this legacy, I isolate the principle of social defense as an infrastructure of the penal field, one that allows me to illuminate some of its operations still in use. My intent ultimately is to show that we are more heirs to criminological positivism than to the liberal tradition, and that this legacy is more evident today than in other historical circumstances.

A Crucial Distinction

The liberal protection of "political rights" was based on the idea that government interference should be limited; guarantees against the abuses of rulers were elevated to the status of fundamental freedoms. The classic example is that of the right to asylum and the prohibition of extradition—the institution through which

one state hands over an individual to another to initiate proceedings or execute a prison sentence. The ban on extradition is considered by liberals to be a basic right for criminals. However, the (perhaps unresolvable) tension between protecting institutions and guaranteeing citizens' rights, let alone the rights of political opponents, has always favored power rather than resistance to it. There are at least two types of opponents, and doctrine and jurisprudence instituted this typology: On one side are the common, or social, criminals, and on the other side are the political criminals. Let us take a closer look at what this crucial distinction means and implies.

For a long time, crimes regarded as political enjoyed certain privileges. For instance, Italy's Assize Court, with the help of juries, had jurisdiction over crimes against the security of the state. Jurors tended to look favorably, if not sympathetically, on those accused of political crimes. Above all, as was often the case, juries could understand the potentially intimidating effects of the charges coupled with the lack of evidence offered to substantiate them; they could see the police-like construction of these cases and therefore acquit defendants. Moreover, political offenders were often given amnesty. These acquittals risked benefiting anarchist associations or could lead to less exemplary forms of punishment for riots or so-called seditious strikes, phenomena that were extremely widespread at the turn of the nineteenth century.

To address this unanticipated privilege, doctrine and jurisprudence worked to find a solution that would exclude certain behaviors considered particularly dangerous from the class of political offenses. It was precisely anarchistic actions that would become the crucible for the distinction between social and political crimes. Let us take the case of extradition, which is still the most understandable example for us today of a guarantee granted to the political criminal. The case of extradition is a decisive test for the establishment of the distinction between the common criminal and the political criminal. In 1898, an international antianarchist conference was convened to decide whether to grant political asylum to anarchists. It opted to allow extradition of anarchists; it was said that anarchist crime should be considered social crime and not political crime, with all the implications that followed from this and that criminological positivism, as we will see, would soon embrace.[15]

The Liberal Approach

The problem of defining political crime is at the center of legal theorization in the late nineteenth and early twentieth centuries. It reflects the age-old question of how to balance the defense of the system with the guarantee of fundamental freedoms, especially political freedom. By placing freedom at the core of rights, the liberal state wanted to show its tolerance so as to distinguish itself from the old

absolutist system, the violent and arbitrary features of which the modern state exaggerated to praise itself.[16] However, on the one hand there is theory, and on the other hand there are practices. As Foucault argues in *Penal Theories and Institutions*, one should always add a third term if one intends to write a history of the punitive system: theories, institutions, and practices.[17]

The exemplary case of the discrepancies between these terms can be found in the work of the master of liberal penal theory, Francesco Carrara,[18] and specifically in his radical "refusal" to deal with political crime and offer a definition for it. In the chapter of Carrara's *Programma* devoted to political crimes and titled "Perché non espongo questa classe" ("Why I Do Not Explain This Class [of Crimes]"), one passage is so poignant that it deserves to be quoted in full:

> The explanation of political offenses can only be a *history*. . . . I have become convinced that the criminal jury is powerless: it will never be the arbiter of the fate of a man whom it applauds on one hand and curses on the other, without so-called punitive reason being able to make itself the arbiter of the truth, deciding between that applause and those curses. . . . I have unhappily become convinced that politics and justice were not born sisters; and that on the subject of the so-called crimes against the security of the state, both internal and external, there is no philosophical criminal law; wherefore as in practical application politics always imposes silence on the criminologist, so, in the field of theory, it shows him the futility of his speculations and advises him to keep silent.[19]

Aware of the slippery nature of the subject, the *Programma* rescues abstract forms and offers a philosophy of punishment while leaving to criminal procedures and repressive strategies the nefariousness and iniquities typical of "pragmatics."[20]

This is not to say that Carrara was not genuinely animated by the defense of freedoms and the opposition to repressive systems. For example, on the subject of workers' struggles, which were the object of fierce repression in those years, he argues, "To say that the strike must be punished for the dangers emerging from unemployed workers is nothing but policing through law."[21] Needless to say, refusing to provide a definition of political crime is not the same as implying none, as Floriana Colao appropriately points out.[22] If anything, it is tantamount to avoiding the difficult terrain on which one might attempt, probably in vain, to provide idealistic foundations for a practice that seeks to adapt to situations with ease and freedom of movement.

It is important to emphasize this conceptual slipperiness, which has considerable theoretical implications. It spurs the methodological approach that I have been developing through a close reading of Foucault, paying particular attention to his suggestions as to how one might conduct a history of punitive techniques—an

approach that provides a theoretical and analytical framework for the study of the current criminalization of dissent.[23] Here we can see it at work: If we were to accept a doctrinal reading, the liberal theory would appear to be among the most "objective" in protecting civil liberties. However, the point is that there is not only a difference in the practice of such a doctrine but also a far subtler and more dangerous hidden reasoning that remains operative. Its history is a story of nondefinition.

A Dialectic Within the System

Liberals were not the only group working on finding a solution to the ongoing problem of political offenses. Socialists and other dissenting thinkers were also involved in this effort. Liberals tended to place the language of rights and the safeguarding of guarantees at the forefront of their theories. This is reflected in a rather technical legal grammar. Socialists placed greater emphasis not only on individual rights but also on social needs and how to address them through the legal system. Positivist criminologists shared with socialists an interest in the social aspect of crime, although at times their interest was rather vague and almost apolitical. Positivists opposed liberals and the prerogatives of fundamental rights and due process of law as elevated by the liberal tradition. This is also reflected in their grammar. In particular, when compared to liberals, positivist criminologists tended to exhibit less bias and were more unrestrained in their use of repressive language. I am referring specifically to those positivist criminologists who dedicated their efforts to the examination of political crimes and the anthropology of anarchists.

Members of the Positive School devoted several works, with different emphases, to the crimes of anarchists, whom they usually qualified as common criminals, and those of socialists, who were generally seen as political criminals. Here common crime calls for more severe punishment than political crime. One might assume that the basis for this distinction lies in the belief that subversive challenges to the established political "pact" and form of government revealed the relativity and contingency of both.

Unlike positivist theories, which often deploy a "politically incorrect" vocabulary directed toward practical and decisive ends, liberal theories tend to avoid repressive terminology, preferring to speak of the protection of political freedoms. Opposed to Carrara are a number of authors who attempt to create lists of politically informed crimes in order, sometimes tacitly, sometimes explicitly, to encompass the broader field of social dissent. Despite these differences—interesting in their own right and worth independent exploration—a characteristic common to all groups remains. Mario Sbriccoli, perhaps the most radical of European legal historians as well as an expert on the history of *lèse-majesté*, points this out: The classical, socialist, and positive schools certainly clash, but, on closer inspection, this is not a radical clash between those who defend the system and those who want

to overthrow it. The whole dialectic takes place *within* the system.[24] Indeed, this defense has as its object precisely the system, the political class, or the government of the moment. Political offenses are seen as the easiest as well as among the most dangerous means of defense against radical minorities.

The Italian Zanardelli Code of 1889 does not define political crime. However, this is not to say that the code does not contain sanctions of a political kind. Its "equivocal solution" implies a reliance on the judges who seek on a case-by-case basis to untie the knot that comes before them. But this has nothing to do with guarantees; on the contrary, it seems to be simply a provident way of leaving the question unresolved and thus open to "pragmatics."[25] By not defining the political element of a crime, the code turns it into an empty signifier that can be filled in from time to time. It is no accident that even the current Italian code barely defines a political offense and in this sense remains in keeping with the old code. In the Criminal Code of 1930, a distinction is made between an objectively political crime, inferred from the good or interest harmed, and a subjectively political crime, characterized by the psychological motivation that drove the offender to commit it.

Let us dwell, then, on the criminological positivism that made political crime and especially political criminals and anarchists some of its main objects of interest. Let us keep in mind that this was not the case for liberals, who were interested in the subject, but as part of a doctrinal construction that centered on the systematic nature of crimes, and not the subjectivity of those who commit them.

The Positive School

Unlike the classical liberal school, the Positive School set aside formal doctrinal constructions to move toward a kind of practical theory of punishment and social defense, as well as a criminal anthropology and sociology of the crowd. My analysis of this school will center on an exploration of the ideas of four key thinkers of criminological positivism: Cesare Lombroso, Scipio Sighele, Raffaele Garofalo, and Enrico Ferri.

My argument is that their works inaugurated the history of our present, in which law and the social sciences are intertwined. It is here rather than in liberal theories that we can trace some of the matrices of the current political penal system: namely, in the forms and techniques that were developed, during the years when Francesco Carrara refused to deal with the "class" of political offenses, to empirically investigate the question of political crime as well as the figure of the political offender. Sketching a scientific method that could be applied to the analysis of criminal minds and the behavior of delinquent crowds, the Positive School set itself the task of responding to widespread phenomena of dissent, ranging from riots to sedition to revolutionary attentats, which found no place in the formal systems that the classical school was devising. While Lombroso, a physician, posed the question in the singular (as a question pertaining to the criminal individual, the

anarchist, or the socialist), Sighele, a jurist and student of the criminologist Enrico Ferri, devoted himself to the study of crowds, inaugurating the Italian school of collective psychology.

There is a crucial element to keep in mind: For the Positive School, there was no innocent intention or dispassionate love of knowledge. On the contrary, their analysis served a punitive purpose not at all concealed. In the work of the early crowd psychology scholars, there was no room to doubt that "their presiding sentiment was that of fear and their principal purpose was less to understand than to repress the crowd. . . . The first debate in crowd psychology was actually between two criminologists, Scipio Sighele and Gabriel Tarde, concerning how to determine criminal responsibility in the crowd and hence who to arrest."[26] In other words, as Clara Gallini underlines, the study of the crowd was born with the stigma of an original criminological definition and dealt with the question of the criminal responsibility of the group,[27] as we will see in detail when we turn to Sighele.

Not dissimilar from Sighele's work is Lombroso's *Criminal Man* (1876).[28] Of anarchists, Lombroso writes that they can, "once channeled in another direction . . . be most useful to the society to which they were so dangerous," since "fanaticism is stifled by discipline!"[29] To a naturalist belief, according to which crime is born in the individual, the Positive School brought an unprecedented mixture of the scientific method, applied to the most varied forms of deviance, and criminal law, applied first and foremost to behaviors considered worthy of psychiatric attention and especially to political "abnormalities."

To confirm the persistence of this legacy, we can recall Foucault's extraordinary observations on this connection:

> It seems to me that, at least in its general outlines, criminal anthropology has not disappeared as completely as some people say, and that a number of its most fundamental theses, often those most foreign to traditional law, have gradually taken root in penal thought and practice. But this could not have happened solely by virtue of the truth of this psychiatric theory of crime, or rather solely through its persuasive force. In fact there had been a significant mutation within the law.[30]

First, let us question the "truth" or "persuasive force" of such theories through the exposition of the thought of Lombroso, Sighele, Garofalo, and Ferri. Despite the differences among these figures, the unity of the Positive School can be seen in the common elements in their work: their assigning of a predominant role to hereditary factors in the genesis of criminal behavior, their insistence on the presence of morphological traits in criminal individuals and populations, and their belief that pathologies or psychic anomalies (degeneration, atavism, epilepsy, etc.) underlie the appearance of deviant manifestations.[31]

Much of criminological positivism has influenced the treatment of so-called insane offenders. It is with the Italian Positive School that anthropology and psychiatry merge epistemologically. Foucault shows how the genealogy of the medicalization of the criminal, the grafting of law and psychiatric knowledge—studied, in particular, in his courses *Psychiatric Power* (1973–74) and *The Abnormal* (1974–75)—arose in parallel with the birth of security measures, a positivist invention. Foucault is interested in the discourse of social defense, which was promoted, as we will see, by positivists throughout Europe and in the Americas. However, one feature of this discourse has been forgotten: the enduring attention that Lombroso and his disciples paid to a specific kind of crime, namely, political crime. Let us try, accordingly, to understand the archaeology of that "significant mutation within the law," which can be seen in the contemporary penal system.

Lombroso: The Criminal Man and the Anarchists

Lombroso argues that "the criminal man" is a born criminal. According to this deterministic conception, such a man would be blameless or an involuntary offender; in any case, he is not free to choose between criminality and the "straight and narrow." He biologically carries the primitiveness of his predecessors, for it is inscribed in his body and psyche. The criminal man has evil tendencies by nature. He thus loses the attribute of responsibility associated with liberal freedom and is no longer measured against other subjects who are equals, but instead exceeds the confines of normality.

While at first Lombroso's analysis traces abnormality to physical causes, it gradually incorporates psychic, social, and climatic factors in the service of a multifactorial analysis that is still the basis of the social sciences.[32] Having thus clearly shifted the emphasis from the crime to the criminal, Lombroso's "science" took the initial name *criminal anthropology*. His methods for revealing "atavism" included the measurement of certain body parts and the study of physiognomic criteria, systematically sought in subjects who had already experienced internment and thus could not constitute natural or "virgin" data. His theories' links with racism have been highlighted by historians, foremost among them George L. Mosse, while his connection with fascism has been underlined by Mary Gibson.[33]

Yet the Positive School is more contradictory than it may seem. Lombroso saw himself as a progressive socialist, taking an interest in social issues to solve them as best he could, while arguing against harsh repression and advocating the need to prevent crime (rather than cure criminals) through an appropriate economic policy that would silence discontent by eliminating its causes. Thus, in Lombroso's work, social Darwinism—the law of the survival of the fittest as the winner in biological battle—coexists with a kind of socialism of intent, or rather a generic ideology of progress. With Rodolfo Laschi, Lombroso published the ponderous *Il delitto polit-*

ico (1890), in which the political criminal is defined as one who turns against custom, rule, and tradition.[34] His is an offense against the law of inertia, which wants gradual and not sudden changes, in keeping with the general human propensity for conservatism. As Lombroso writes in *Gli anarchici* (1894): "The majority . . . is misoneic," that is, conservative;[35] hence movements that seek to break violently with the status quo would not be appreciated by the majority. Resulting from a change desired by a majority, revolution is, on the contrary, positively conceived and does not constitute a political crime, since it would be the victorious advent of a new paradigm and political arrangement. The first condition for an act to be a crime is that it be the work of a minority, according to Lombroso. When the majority approves is, "crime" becomes normal action.[36]

While Lombroso grasps the changing nature of criminal sanctions as related to the times and not fixed moral factors, he is explicitly evolutionist and argues that only once a historical process has been victoriously concluded can it retroactively be called a revolution and have its legitimacy certified. On the contrary (and here his language is clearly borrowed from the biological sciences), "revolts or seditions"—as he defines them—are "fruits of an artificial incubation at heightened temperature, of embryos predestined to die."[37] The primary source of political criminality would be classical education, on which "depends that adoration of violence which was the starting point of all our revolutionaries":[38] anarchy is "the idea of the protest of a sincere or insane soul." And the attribution of insanity seems to be based substantially on the absurdity of aims: "None, or very few, of these aims are attainable," but there is "here and there some oasis not without a future."[39] These are usually individual anarchist positions, but should they spread to communities or groups, they will grow only more dangerous and absurd. Like Sighele, Lombroso believes that an individual can make correct decisions, but a group certainly cannot; its behavior would be unreasonable by definition.

Among the sharp critics and interpreters of the positivist criminological project and its dangerous contradictions is the legal historian Mario Sbriccoli. In his cutting critique of Lombroso, Sbriccoli writes that, according to Lombroso, "the institutions, manifestations, and actions of constituted power are so unimpeachable that only a madman or a sick person can oppose them."[40] Political offenders are confusingly presented as born criminals or madmen and moral lunatics, but also as criminals driven by passion: in short, as unclassifiable figures. On the one hand, then, political offenders are pathologized.[41] And they are equated with hysterics, who are strictly women, of course! On the other hand, the classic distinction between common and political crime is reformulated. Lombroso intuits that common and political delinquency are not motivated by the same "passions." He ends up showing the "irregularities" that political offenders present with respect to his theory of "atavism." Anarchists may be epileptic or hysterical or mad.

Then there are the "mattoid" anarchists, "difficult to diagnose because their characters are negative, without remarkable physiognomic or cranial anomalies, without marked delusions . . . with a well-preserved moral sense . . . a love of society that goes as far as altruism."[42] Then there are the criminals who act out of passion, the exact opposite of natural-born criminals.[43]

How should we respond to the anarchist? For Lombroso, prophylaxis is central. "The main characteristic of these political crimes in offenders who commit crimes of passion and occasion is . . . an unsuitability in its perpetrators . . . to the form of government under which they live and against which they commit their criminal action." While common offenders should be "eliminated from the civilized world," it is enough to separate political offenders from the environment by means of temporary punishments, "as it may happen . . . that long before the expiration of their sentences public opinion about the extent of their acts has changed."[44] Lombroso could not have said it more clearly or more violently: The political criminal is acceptable, whereas the common criminal, emblematized by the anarchist, is not worthy of being part of civil society.

Sighele: The Delinquent Crowd and Collective Responsibility

In Sighele's work, the focus shifts from the individual to the collective, from criminal anthropology to collective psychology. In a sort of homage to Lombroso, author of *L'uomo delinquente*, Sighele calls his most famous essay *La folla delinquente* (1891).[45] Here the group becomes of crucial interest and is seen as an agent of subversion. It is in this historical moment that subversion is seen as the very potential of the social.[46] Sighele's work develops Lombrosian theses, which themselves remained centered on the individual: The politically criminal individual was central to Lombroso's theories, and collective phenomena could be involved (as in the case of anarchists) only implicitly. As a further development of the preventive and punitive proposals inspired by Lombroso's thought, in Sighele we find a subjective focus (on the offender) typical of criminological positivism, rather than a focus on the deed that was typical of the classical school. However, now abnormality and delinquency are attributes not only of the individual but also of the crowd.

The despicable vision promoted here is that of a barbaric crowd that causes human beings to regress to a primitive stage and perform acts that individually they would not perform. The crowd is the quintessential framework for the anthropological and social factors that compel its members to commit crimes, Sighele argues. Like Lombroso, Sighele appeals to the instincts. Regression to the primitive returns in *La folla delinquente* and becomes a key theme for the Positive School.

A twofold jurisprudential trend can be seen in efforts to deal with crimes of the crowd at the turn of the century. On the one hand, the diminished faculties of the individual who participates in collective phenomena lead to their diminished

responsibility and qualify as a mitigating factor; on the other hand, because it is the crowd that creates this condition in the individual, the latter can be punished for the very fact of participating in an action that undermines their will and capacity to understand.

Sighele was a jurist. Rather than being interested exclusively in collective phenomena, he was concerned with the problem of the responsibility of the collective and how to punish it effectively, as opposed to the classical school's concern with individual responsibility. In fact, reading Sighele's text, one can see that his problem was essentially that of finding a normative solution to the difficulty of punishing a phenomenon that was as new as it was widespread and worrying for the ruling classes: the entry of the masses into politics. This does not negate the fact that, for Sighele, collective psychology was more relevant than criminal law for evaluating and punishing the delinquent crowd.[47] It means that the only solution that the jurist could propose was a legal one. Reading Sighele, we can see this trend:

> Science feels that the irresponsibility for crimes committed by a crowd cannot be proclaimed because science knows that the social organism—just like any other organism—always reacts, in this case just as in any other, against anyone who threatens its conditions of life. To be the object of this reaction means to be responsible: if the reaction is, therefore, fatal and necessary, so, too, is the responsibility.
>
> But who is responsible?
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> . . . [C]ommon sense responds: the entire crowd must be responsible. And science, after attempting to unravel the mysterious complexity of causes that determine the crimes committed by a crowd, and after seeing how these causes are so interrelated and blended that their individual values cannot be determined, is also forced (if it is to remain accurate and sincere) to give the same response as common sense: the entire crowd must be responsible.
>
> The response cannot go beyond this collective name for the crowd, this vague and undetermined entity, given that only the crowd contains all the anthropological and social factors that participate in the production of crimes committed by its members. It seems that to attribute responsibility to a more determined and precise entity—the individual—would be an error because all the elements of these crimes do not exist in the individual: the individual would only be one of the causes rather than the whole set of causes.
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> But is it possible for the crowd to be responsible? Is this collective responsibility a possibility in today's world?
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> In the past, collective responsibility was the only form of responsibility.[48]

What is the positivist contribution to this debate? According to Gallini, Sighele and the Positive School blame modernity from which the collective emerges as a new

political force. Social struggles are framed as criminal and political crimes; this framing is at the heart of criminological positivism, and it remains useful for new readings of the social that move in an obscurantist and reactionary direction.[49] Collective acts of the masses, which are unprecedented, complex, and difficult to deal with, pose a series of questions that the judiciary, influenced by pioneering texts such as Sighele's, finds itself called on to resolve on a case-by-case basis.

An exemplary case is that of the 1890 conviction by the Supreme Court of Cassation of an internationalist association "whose regulations invite the working masses to compete in order to acquire their own share of property," thus infringing on the right to property that would be exclusively individual and could not be enjoyed collectively. Here it is evident that "the mere existence" of the organization is seen and judged "as a danger 'in itself'"; the very fact of associating with "malefactors," as the anarchists were called, even without any criminal action having been attempted, is a crime. Thus not only were violent demonstrations criminalized; so too were antagonistic forms of association outlawed, especially anarchist ones, since socialists could at least enjoy the favor of influential politicians and lawyers. Moreover, it should be emphasized that, although the decisions were not always unambiguous, "the judiciary considered social conflict criminal in itself far beyond the provisions of the penal code, which incriminates not the 'class struggle,' but its violent and dangerous manifestations."[50]

This is not merely a matter of naivete; for the positivists there is also an explicit intent to prevent and suppress any form of dissent, which is considered so absurd in itself that it is elevated to madness. Gallini has pointed out that criminological positivism brought together a set of circulating ideas, cloaked them in scientific garb, and rendered the indefinable "realistic," while making legal guarantees seem "naive." The positivists thus created a "lexicon of the obvious," in a fifty-year plethora of treatises, speeches, articles, pleadings, pamphlets, and reform proposals that today have been all but forgotten.

These texts have a remarkable ability to tap into common sense, drawing on emotions, tendencies, and judgments, only to reaffirm them as "prevailing opinion." "Prevailing opinion" means those attitudes that, even if solemnly contradicted by the reality of historical forces—the widespread workers' and peasants' struggle of those times—are shared by the large part of society that does not identify with these forces.[51] In this sense, we catch a glimpse of what is today considered so-called majority opinion, to which moral and social value should be attributed.

Garofalo and the Internal Enemy

The term *criminology* is owed to Garofalo, who coined it as the title of his major work, *La criminologia* (1885). Here the notion of imputability is radically detached from individual responsibility (from free will) and, in a deterministic approach,

punishment is based on the anthropological and especially psychological traits of the offender. While criminological science in general can perhaps be attributed to the Enlightenment theories of punishment, it is undoubtedly the positivist view that had the greatest influence on nascent social science, on which it has conferred a clinical, correctional twist that social science has not yet overcome.[52]

In the work of Garofalo, the criminal becomes society's internal enemy. He is described as a savage who reveals by his "anachronism" the primitive traits of an early stage of human evolution. And indeed, criminals are defined as the most harmful of minorities. Society suffers every day from the horrible spectacle of a few abnormal beings, Garofalo states.[53] These are the years when the social sciences were born, and, in order to overcome the individual/state binary established by the Enlightenment, criminologists sought a middle ground, namely, society, over which to proclaim their jurisdiction.[54]

The repetition of the same or different offenses by the same offender seemed to give rise to a particular fear for "society." Indeed, in the work of the Positive School, recidivism was one of the telltale signs of an instinctive and incorrigible delinquent; the liberal school, by contrast, considered it the result of a common "circumstance that aggravates the quantity but does not change the quality of the punishment." In other words, for the positivists, "recidivism is a symptom, an element for the classification of criminals for the consequent application of special treatments according to the form and degree of fearfulness that relapse into crime makes it possible to detect."[55]

In Garofalo's works, objective and subjective criteria merge, and it is precisely recidivism that "objectively" demonstrates "subjective" social dangerousness, embodied by the offender. Inserting himself into a debate that had already been opened by the classical school, Garofalo finds the perfect place for the subjective criterion of fearsomeness based on a tangible, objective premise: namely, the repetition of crimes. This is how the "first" criminologist overcame the classical criteria by which crimes were grounded in the objective relationship between the harm caused and the punishment commensurate with it.

In particular, in *Di un criterio positivo della penalità* (1880), "The criterion for determining punishment is related to the culprit's fearsomeness, inferable from the crimes committed, which constitute the result of an objective criminal gravity, graded according to the social alarm produced by the deed, and a subjective gravity, dependent on the tendency of the criminal subject to commit other crimes subsequently."[56] The project, we might say, of "the politics of law" that becomes explicit in Garofalo and remains in force up to the present day is that of a fight against criminals and the elimination of crime from society. This effort would latch on to a social desire and take on the guise of a veritable mission. The most innovative feature of Garofalo's work is that this desire is attributed to a "newborn" soci-

ety. Internal enemies must be eliminated by means of a war on crime: "The time has come to proclaim war on crime in the name of civilization as the watchword of penal science. We are dealing with a distinctly social function—and one that ought not to be trammeled by the narrow views and faulty reasoning of the juridical school," Garofalo writes.[57]

But what is crime? More importantly, how is political crime defined? Social or natural crime is described as an injury to basic altruistic feelings, a part of moral sense considered necessary for the individual's successful adaptation to society.[58] Natural crime remains distinct from political crime, whose special immorality is not incompatible with the altruistic sentiments that are the basis of morality, according to the Neapolitan criminologist. Without further specification, Garofalo calls for punishing such political conduct, usually subsumed under the rubric of disobedience against authority, through the "normal" state reaction.[59]

Ferri and Social Defense

A professor in Bologna, Enrico Ferri was "the most radical advocate of social defense."[60] His famous tract *I nuovi orizzonti del diritto e della procedura penale* laid out the "definitive" legal premises of the Positive School in 1880, influencing many jurists.[61] Ferri was a politician as well as a lawyer. He saw criteria such as the personality and dangerousness of defendant as far more important than other factors. It is easy to understand why, when one considers that crime was then seen as more a social fact than a legal one.[62] In fact, Ferri liked to be recognized as more a sociologist than a jurist: His work relied on a positivist and socialist conception of law as primarily a social phenomenon, one to be investigated empirically through the scientific method instead of through the kinds of academic doctrines typical of the classical school.

The minister of justice Ludovico Mortara, in 1919, appointed a ministerial commission chaired by Ferri with the aim of advancing "the reform of criminal legislation, in order to achieve, in harmony with the rational principles and methods of the defense of society against crime in general, a more effective and secure safeguard against habitual delinquency."[63] Ferri's *Progetto* (1921) was an ambitious preliminary draft of the Italian Penal Code in which the core theories of the Positive School were consecrated. The project sought to base the penal code on the dangerousness of the individual rather than the seriousness of the crime. Hence even minor crimes, to the extent that they were committed by a person who was considered socially dangerous, were to be punished with a harsher penalty than serious crimes.

The *Progetto* was meant to update the entire penal architecture, which was presented as the normative culmination of the European search for a criminal law congenial to the new desire for social control over the masses.[64] Here the ambiguity of the concept of social dangerousness—which could not but be recognized by its

promoters—is exploited to its most authoritarian ends. The project explicitly posits that courts should privilege the ambiguous category of social dangerousness as a prerequisite for punishment, in open opposition to liberal principles.

In the *Progetto* we find a distinction between politically informed crimes and common crimes: "Political-social crimes are those committed exclusively for political reasons or in the collective interest." The enduring tension between respect for fundamental rights and punitive power, or freedom and authority, to some extent enters a new phase with Ferri. The liberals' concerns with individual guarantees, and first and foremost with the presumption of innocence, are here openly defined as "exaggerations," and the need for society to be defended is at the center of theorization. The individual and its freedoms are now replaced by society and its defense. Ferri radically opposes classical postulates and assumes that the offender is an abnormal subject, hence not morally responsible for their actions. The concept of legal responsibility eliminates the distinction between chargeable and nonchargeable subjects; punishment as retribution for the commission of a crime is replaced by a preventive sanction designed to eliminate the causes of deviance and dangerousness.[65] The sanction "ultimately must not have a fixed term but last as long as necessary for the individual to become fit for free life," Ferri writes.[66]

Ferri's *Progetto* was not approved: The so-called technical school would win the day, and the 1930 Criminal Code bears the name of Alfredo Rocco. "Legal technicalism" was the rallying cry of Rocco and Vincenzo Manzini, who founded the Italian Society for Criminal Law Studies in 1920. The legal-technical approach sought to continue the tradition of classical criminal science but at the same time to be open to the modern experimental perspective. This eclecticism makes Rocco's technical approach interesting. Although the liberal influence on Rocco has been emphasized more than the positivist one, according to many scholars the latter is clear on closer examination.

Criminological positivism permeates the current Italian Criminal Code and does so despite the negative judgments publicly expressed by the members of "technical" school against the Positive School. Rocco bluntly denounced the *Prolusione Sassarese* (1909) for what he saw as its barbarization of criminal science, a "criminal law without law," degraded to the status of anthropology, sociology, and criminology.[67] Yet, unexpectedly, Rocco was designated by Ferri, the father of social defense, to succeed him as professor at the University of Rome. Academic and political relationships became intertwined, leading to unexpected developments.

The debate on the continuity between positivism and fascism, and on the role that the school of social defense played in the Rocco Code, shows no signs of subsiding. There are some factual elements, in addition to the *liaisons dangereuses* between individuals who have spent their lives shifting political alle-

giances and changing masters. It is true that the Rocco Code, promulgated under fascism and still in force, was not based on the positivist concept of social dangerousness. However, the two-tiered system of penalties and security measures, based on the positivist invention of social dangerousness, made this very principle penetrate the "technical" code. Dangerousness also forms the basis for determining recidivism, an obsession for positivists and a principle that was adopted in the current code, where it is considered an aggravating factor in determining punishment.

With the Rocco Code, political crimes take on a negative connotation, marking a radical shift from liberal theories and the 1889 code. The privilege previously granted to politically motivated crimes ends, with political crime now considered worse than even the most heinous common crimes. Political crimes would no longer come before juries.[68]

Case law during this period was heavily influenced by positivist theories too. One notable example is the 1920 massacre at Palazzo d'Accursio in Bologna, which occurred during the early stages of the fascist rise to power. The judges faced significant challenges, given the limited technology of the time, in identifying the perpetrators. Instead of dropping the case owing to lack of evidence, the judiciary used the recent concept of crowd crime to address the evidentiary difficulties, extending criminal responsibility to "moral" perpetrators.[69] It is crucial to remember that the principle of social defense had already become a central element of legal culture—and, in public discourse, criminal law was no longer viewed as a sign of legal civilization, but rather as the most effective means of prevention and repression.

The Principle of Social Defense

We can now understand why this aspect of the code is not at all obvious to us today. For this principle of social defense to be concretized, what had always remained unspoken had to be put down on paper. The liberal school would never have embraced a perspective so well-suited to enhancing the authority of the state. It believed in the duty of criminal law to protect the weaker party, which is to say the one targeted by punitive power: the criminal, or the accused. With their awareness that one is not born a criminal but can always become one, liberals knew that criminal law had to be a safeguard for citizens. Positivists, on the other hand, expressly made criminal law as convenient a power as possible in the hands of the state. Codification projects in Europe and beyond—as demonstrated by the Latin American positivist tradition as well—were heavily influenced by the Positive School. It also must be kept in mind that positivist concepts were sometimes incorporated into traditions that still boasted of their "classicism."

The aim of social defense lay at the heart of the "reformist" project of the International Union of Criminal Law, founded by Franz von Liszt, Adolphe Prins, and

Gérard Van Hamel in 1889. Van Hamel's intellectual and political trajectory offers an example of the mixture of social, reformist, sociological, and positivist strands: Starting from neoclassical premises (and once a pupil in Amsterdam and Leiden of Anthony Modderman, father of the Dutch penal code), Van Hamel began by questioning the legitimacy of punitive power and ended up, through his interest in the social dimension of criminal law, embracing positivism and the notion of social defense as the primary function of punishment.[70] We owe to Prins, a follower of the Italian positivists, a decisive text in the birth of the Belgian school of social defense: *La défense sociale et les transformations du droit pénal* (1910). In his 1882 Marburg lecture "Der Zweckgedanke im Strafrech," Liszt, an exponent of the so-called sociological school, focused on the function of punishment, which would essentially provide special prevention, through which the criminal would be subjected to social defense measures aimed at reducing or eliminating the risk of recidivism. The emergence of new forms of criminality, above all political, posed challenges to the criminalists, sociologists, and criminologists of the time who responded by merging the idea of a renewed form of repression with their innovative interest in prevention.

However, the principle of social defense did not originate with the Positive School; it has a long history. Foucault traces it back at least to the Middle Ages, although he does not elaborate further.[71] According to Alessandro Baratta, who, like Foucault,[72] emphasizes the presence of this principle in the theoretical formulations of the Enlightenment, it is certainly present in the penal workings of the liberal matrix. However, the step that deserves to be emphasized is precisely the one that leads from social defense as a "justification" for criminal law to social defense as an "operational means," as theorized by the Positive School.[73]

As Michel Senellart notes,[74] there are at least two versions of the concept, one weak and one strong. The formulation of the "ideology of social defense"—the weak version—can be traced back to the school of Cesare Beccaria.[75] The strong version, theorized by the Positive School, is also the more explicit formulation, in which social defense sustains the right to punish and becomes the infrastructure for the criminal system. The crucial shift in this concept follows from the fact that, whereas for the classical school society had to be defended against the offense—what harms society—for the Positive School society must be defended against the offender, or society's internal enemy.

What is important for a genealogical excavation is the persistence of the social defense principle today and its capacity to hide its original matrices and attach itself to practices, thus becoming "natural" (i.e., naturalized). Social defense does not have a normative foothold, and yet it has become part of the dominant philosophy in legal science and part of contemporary common sense.[76] "Few notions are so commonly evoked," and "these multiple uses demonstrate after all that the term 'social defense' corresponds to an authentic reality of our time," Marc Ancel, the father of the new

social defense, wrote only fifty years ago.[77] What I have argued is that this coupling occurred because of the intertwining of criminal law and criminological positivism.

Conclusion

"Only insidiously, slowly, and as it were from below and fragmentally, has a system of sanctions based on what one *is* been taking shape": Foucault could not have stated it any more clearly.[78] To analyze this centuries-old process is to write a judicial history in which the criminal is as central as the crime. What I have shown is that this long history of punitive techniques, yet to be written, could rely on certain emergences at the heart of a "newborn" society: the emergence, and the emergency, of the dangerous individual (Lombroso) and of criminal crowds (Sighele). Corresponding to this emergence and to this emergency is the theoretical elaboration of the criminal as a social enemy (Garofalo), as a minority opposing the majority in a society that defends itself through the exercise of the right to punish, seen as a social function (Ferri).

The duty to fight crimes and criminals still resonates today as a paradigm of punitive power. The Enlightenment project of penal law as an *extrema ratio*, which has always carried with it the traces of the primal reminder, "punish to the minimum and respect freedoms to the maximum," seems far away indeed. It is not difficult to see how the majority takes the place of truth and expands everywhere, no longer granting even mitigation to the "minority," whose opposition is seen as absurd and incomprehensible by the prevailing "collective conscience," as the Italian judiciary calls it. The claim that the majority is the sole bearer of this conscience—conservative and reformist far more than revolutionary—constitutes nothing less than the overture to *Gli anarchici*. This is not because it was a spontaneous, preexisting Lombroso's sociology, but because through texts like his a set of widespread prejudices was able to rise to the rank of science. In an insidious way, after this elevation in rank, a duty of loyalty seems to have been formed, one touted by the majority and the governments and classes that promote it.[79]

Political crime is the medium through which this transition takes place, since the justification for punishing it lies precisely in its offending the "freedom of the majority." It thus allows for the emergence of political-punitive techniques constructed in opposition to minorities.[80] In other words, the thesis being put forward here is that political crime, which has received relatively little scholarly attention, was a focal point of interpretive efforts and a battleground to which criminological positivism would dedicate years of theoretical work. The category of political crime became central to the theory of social defense. In this sense, the Positive School transformed something implicit into a theory that was explicitly articulated. As Foucault emphasizes, the political criminal is the quintessential criminal because this figure consciously breaks the social contract that the penal system reflects and safeguards. Although Foucault is concerned primarily with the abnormal, the

insane offender, he cannot overlook the fact that the criminal's pathologization starts with the first moral monster, the most significant one, that emerged at the end of the eighteenth century: namely, the political criminal.[81] This is particularly evident in the work of Garofalo, in which the criminal turns into internal adversary. Initially, the concept of the criminal was shaped by the idea of an external enemy par excellence, a foreigner questioning the state's political power. However, as the masses entered the realm of politics, they too developed their own perspectives and political interests to protect. Anyone who violated the social contract was labeled a criminal. The once purely political external enemy, who existed outside the social contract, could now be considered part of the dangerous classes residing within the same society as those in power. They became political criminals, representing an internal threat because they were bound by the same social contract as those responsible for administering punishment.

The fascist criminal code was certainly decisive in this operation; it was founded on the theoretical elaborations that preceded it and had already constructed crime not as an injury to a good but as an affront to authority, within a system in which the "social" and the collective preceded the individual. If anything was to be refined, it was the entity that would enact such social defense. It could not be the whole of society that moved against the criminal.[82] The crucial contribution of fascism was that its theory of the state was able to name the agent of the now definitely established function of social defense. The loose concept could thus, without running into major theoretical or practical problems, take on the guise of the defense of the state or at least of society through the state. In this one-dimensional society, the state is "authorized to repress crime because" the state is the part of "society that is not delinquent, the interpreter of . . . the behavior of the criminal."[83] It is perfectly in keeping with the principles of positivism that one should be unable to question power. It is the state that must be the "focus of the practical implementation of social defense measures," as an expression not of the "ruling class" or of a "hegemonic political force," but of "society," defined as a gathering of subjects without contradictions.[84]

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Notes

1. Melossi et al., *Travels of the Criminal Question*.
2. See Marchetti, *L'armata del crimine*; Hofinger, *Recidivist*. For a more comprehensive discussion that also involves the issue of recidivism and crime in connection with the emerging industrial bourgeoisie, see for example Foucault, *La société punitive*; Pifferi, *Reinventing Punishment*. On the relevance of recidivism within the Italian school of positive criminology, see Pifferi, *Limits of Criminological Positivism*; Pessoa Vila Nova Filho, *A trajetória do positivismo criminológico*.
3. Here I am referring to Vergès, *De la stratégie judiciaire*.
4. Halliday et al., *Fighting for Political Freedom*. I developed this issue in Chiaramonte, "Case for Legal Technique."
5. Italian Corte di Cassazione, section 6, July 1, 2020, no. 19764.
6. Judgment of the Court of Turin, April 27, 2015.
7. This is a new area of study linked primarily to critical criminology and the sociology of movements. Research in this field, often in collaboration with others, has helped revive this line of inquiry, which had been largely neglected after the politically engaged 1970s. This is why I feel justified in mentioning it. See Chiaramonte, *Governare il conflitto*; Chiaramonte, "Right to Freedom of Assembly"; Chiaramonte and Selmini, "La criminalizzazione del dissenso"; Chiaramonte and Senaldi, "Criminalizar los movimientos sociales"; Di Ronco and Selmini, *Criminalisation of Dissent*.
8. I have extensively investigated this matter as part of my ethnography, focusing on the criminal trials associated with one of Italy's most significant and enduring social movements—the No TAV movement. This movement, a key player in one of Europe's most critical struggles, has been opposing the high-speed train project connecting Turin and Lyon since the 1980s and continues to be active. Chiaramonte, *Governare il conflitto*; see also Norris, "Entrapment and Terrorism"; Vegh Weis, *Towards a Critical*; Watts, *Criminalizing Dissent*.
9. Foucault, "Subject and Power."
10. Foucault, "About the Concept."
11. Foucault, *"Society Must Be Defended."*
12. Foucault, "La stratégie du pourtour."
13. Foucault, *La société punitive*.
14. Foucault, *Abnormal*.
15. See Colao, *Il delitto politico*, 37–42.
16. See Sbriccoli, "Dissenso politico."
17. Foucault, *Penal Theories and Institutions*.
18. Carrara, *Programma del corso*.
19. Carrara, *Programma*, 635. Unless otherwise noted, all translations from Italian are my own. The original text reads "La esposizione dei reati politici non può essere che una *storia*; . . . Come dottrina filosofica io mi sono convinto che il giure penale è impotente: che esso non sarà mai l'arbitro delle sorti di un uomo al quale applaude una parte e impreca l'altra, senza che la così detta ragione punitiva si possa fare arbitra del vero fra quel plauso e quelle imprecazioni. Dirò la ultima parola; io mi sono sventuratamente convinto che politica e giustizia non nacquero sorelle; e che nel tema dei così detti reati contro la sicurezza dello

Stato, così interna come esterna, non esiste diritto penale filosofico; laonde come nella pratica applicazione la politica impone sempre silenzio al criminalista così, nel campo della teoria gli mostra la inutilità delle sue speculazioni e lo consiglia a tacere."

20. Sbriccoli, *Dissenso politico*, 638.
21. Sbriccoli, *Dissenso politico*, 513. For an approach that seeks to bring out how the relationship between freedom and authority, or the individual and the state, is resolved by "fair" legal protection, see Colao, *Il delitto politico*; on the contrary, for an interpretation that sees Carrara's systematics as an expedient to avoid covering up those political crimes that, in any case, would have found a place in practice, see Accattatis, introduction.
22. Colao, *Il delitto politico*.
23. Chiaramonte, *Governare il conflitto*.
24. Sbriccoli, *Dissenso politico*, 653.
25. Sbriccoli, *Dissenso politico*, 657–59.
26. Reicher, "Psychology of Crowd Dynamics," 185.
27. Gallini, introduction.
28. Lombroso, *Criminal Man*.
29. Lombroso, *Gli anarchici*, 113, 128.
30. Foucault, "About the Concept," 14.
31. Nye, "Heredity or Milieu," 336.
32. Melossi, *Stato, controllo sociale, devianza*, 61.
33. Mosse, *Toward the Final Solution*; Gibson, *Born to Crime*.
34. Lombroso and Laschi, *Il delitto politico*, 337.
35. Lombroso, *Gli anarchici*, 33.
36. Lombroso, *Gli anarchici*, 34.
37. Lombroso, *Gli anarchici*, 35.
38. Lombroso, *Gli anarchici*, 22.
39. Lombroso, *Gli anarchici*, 26.
40. Sbriccoli, *Dissenso politico*, 684.
41. Foucault, *Abnormal*.
42. Lombroso, *Gli anarchici*, 59.
43. Lombroso, *Gli anarchici*, 69.
44. Lombroso, *Gli anarchici*, 120.
45. Sighele, *Criminal Crowd*.
46. Gallini, introduction, 16.
47. As can be seen from Ferri's reply to his student's text: "Tanto per la critica probatoria, quanto per la valutazione della responsabilità, val più un'oncia di psicologia che un quintale di diritto criminale con o senza il D maiuscolo" (As much for evidentiary criticism as for the evaluation of responsibility, an ounce of psychology is worth more than a quintal of criminal law with or without a capital *L*) (quoted in Colao, "I delitti della folla," 641).
48. Sighele, *Criminal Crowd*, 56–57.
49. Gallini, introduction.
50. Colao, *Il delitto politico*, 51–54.
51. Gallini, introduction.
52. Baratta, *Criminologia critica*.
53. Garofalo, *Criminology*.

54. Melossi, *Stato, controllo sociale, devianza*, 54.
55. Ruggiero, "L'importanza del progetto," 292–93.
56. Camponeschi, "Raffaele Garofalo."
57. Garofalo, *Criminology*, xxix.
58. Garofalo, *Criminology*, 33–34.
59. Garofalo, *Criminology*, 400–401.
60. Colao, "Un 'fatale andare,'" 130.
61. Ruggiero, "L'importanza del progetto," 289.
62. Colao, "Un 'fatale andare,'" 131.
63. Royal Decree 14-9-1919 n. 1742.
64. Colao, *Il delitto politico*, 150.
65. Marchini, "La responsabilità legale."
66. Ferri, "Relazione sul progetto preliminare," 12.
67. See Neppi Modona, "Il positivismo penale," and Coco, "Arturo Rocco."
68. Colao, *Il delitto politico*, 300–313.
69. Colao, *Il delitto politico*, 230.
70. Vervaele, "Gerhardus Antonius van Hamel."
71. Foucault, *La société punitive*.
72. Foucault, "About the Concept."
73. Colao, *Il delitto politico*, 341.
74. Senellart, "L'ennemi intérieur."
75. Baratta, *Criminologia critica*.
76. Baratta, *Criminologia critica*.
77. Ancel, *Social Defence*, 1.
78. Foucault, "About the Concept," 18.
79. See Canosa, *Le libertà in Italia*.
80. Sbriccoli, "Dissenso politico," 654–65.
81. Foucault, *Abnormal*.
82. Foucault, *La société punitive*.
83. Colao, *Il delitto politico*, 242–43.
84. Colao, *Il delitto politico*, 342–43.

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