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COLONIALISM THROUGH PENAL DEPORTATION IN  
THE ITALIAN POLITICAL AND LEGAL DEBATE. FROM  
UNIFICATION TO THE BEGINNING OF THE COLONIAL  
ENTERPRISE

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## COLONIALISM THROUGH PENAL DEPORTATION IN THE ITALIAN POLITICAL AND LEGAL DEBATE

### From Unification to the beginning of the colonial enterprise (\*)

1. Introduction. — 2. The debate on deportation at the origin of the Italian penal system. — 3. The debate of the 1870s. — 4. «The name of some men is enough»: Beltrani Scalia and the jurists' opinion. — 5. Between penal utopia and positivist culture. — 6. Conclusions: regeneration and conquest.

#### 1. *Introduction.*

Historiography has investigated the subject of penal deportation in Italy, doing so both with analysis of specific cases of penal colonies, especially on Italian soil<sup>(1)</sup>, and from the perspective of the history of legal culture. From the viewpoint of legal history, Franca Mele in the mid-1990s framed the theme within the context of penal culture by emphasizing the different interpretations and proposals of the jurists, some of whom considered the con-

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<sup>(1)</sup> Daniela FOZZI, *Una 'specialità italiana': le colonie coatte nel Regno d'Italia*, in *Le colonie penali nell'Europa dell'Ottocento*, ed. by Mario Da Passano, Rome, 2004, pp. 259-272; Franca MELE, *Le isole sono nate fatte per luoghi di pena. Pianosa e le colonie penali agricole nell'Italia dell'Ottocento*, in «Materiali per una storia della cultura giuridica», XXVI (1996), 2, pp. 359-382; Francesca DI PASQUALE, *On the Edge of Penal Colonies: Castiadas (Sardinia) and the «Redemption» of the Land*, in «International Review of Social History», 2019, 3, pp. 1-18.

struction of overseas penal colonies as a way to facilitate the re-socialization of prisoners through work, while others regarded it as a repressive measure aimed at permanently removing the perpetrators of the most serious crimes<sup>(2)</sup>. The topic was therefore developed as a chapter in the history of Italian legal culture. In more recent times, the flourishing body of studies on penal positivism, criminality, and the penitentiary question has contributed to bringing the subject back to the center of attention<sup>(3)</sup>. In some cases, historians have piercingly focused on the fact that penal colonization served not only to rid Italy of undesired persons, but also worked as an instrument of social engineering, i.e. planting the seeds of new societies and civilizational programs, also in projects of internal colonialism<sup>(4)</sup>.

At the international level, the topic has been more clearly framed in the context of colonial expansion by following the vicissitudes of those penal colonies that were veritable colonization outposts. According to Clare Anderson, convicts «were agents of imperial occupation and expansion and labour pioneers», and «all the global powers used them in order to settle and then push back national and imperial boundaries and borders»<sup>(5)</sup>. It has been highlighted that the nineteenth and twentieth centuries were

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(2) For the legal debate in Italy on the foundation of penal colonies, see Franca MELE, «Un nuovo cielo, una nuova terra». *Le discussioni sulla deportazione nel regno d'Italia dall'Unità al codice Zanardelli*, in «Materiali per una storia della cultura giuridica», 1995, 2, pp. 357-404.

(3) See, among others, Mary GIBSON, *Born to crime: Cesare Lombroso and the origins of biological criminology*, London, 2002; EAD., *Italian Prisons in the Age of Positivism, 1861-1914*, New York, 2019; for a different approach to the history of criminal law culture in Italy which does not emphasize the centrality of penal positivism see Paul GARFINKEL, *Criminal Law in Liberal and Fascist Italy*, Cambridge, 2016. On the features common to both the so-called Classic school and the Positive school, see the fundamental Mario SBRICCOLI, *La penalistica civile. Teorie e ideologie del diritto penale nell'Italia unita*, in *Stato e cultura giuridica in Italia dall'Unità alla Repubblica*, ed. by A. Schiavone, Rome-Bari, 1990, pp. 147-232.

(4) See DI PASQUALE, *On the Edge of Penal Colonies*, cit.; Elena BACCHIN, *Colonie penali. Ingegneria sociale in territori stranieri*, presentation at Cantieri di Storia X, 19 September 2019.

(5) *A Global History of Convicts and Penal Colonies*, ed. by Claire Anderson, London, 2018, p. 5.

a critical period for imperial governmentality, which underwent a reconfiguration also through penal deportation and the associated forced labor<sup>(6)</sup>. In this historiography, the topic of penal colonies is set against the backdrop of the colonial expansion and the culture of colonialism: a vision only marginally considered in the case of Italy, partly because the various projects of penal colonization, as in the German case, did not receive implementation<sup>(7)</sup>.

This article investigates the legal debate on colonial deportation as a chapter in the history of colonial culture by adopting an original approach to the sources. On the one hand, overseas penal colonies represent a phase in the 'birth of the prison' in European history: penal colonies preceded the foundation of correctional systems centered on detention in prison. They continued to co-exist with the modern penitentiary system into the twentieth century<sup>(8)</sup>. On the other hand, as Peter Redfield has argued, overseas penal colonies were nodes of geopolitical technologies of power that contributed to producing the regime of the empire, so that the imperial dimension seems inescapable<sup>(9)</sup>.

The expression 'penal colonization' carries different meanings that are intertwined: that of the colony as land (especially ultramarine land) to be occupied and cultivated (from the Latin word *colere*), and that of the colony as a place of rehabilitation for con-

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<sup>(6)</sup> Christian DE VITO, Clare ANDERSON, Ulbe BOSMA, *Introduction*, in *Transportation, Deportation and Exile: Perspectives from the Colonies in the Nineteenth and Twentieth Centuries*, Cambridge, 2019. See also David SCOTT, *Colonial Governmentality*, in «Social Text», 43 (1995), pp. 191-220.

<sup>(7)</sup> See Warren ROSENBLUM, *Beyond the Prison Gates: Punishment and Welfare in Germany, 1850-1933*, Chapel Hill, 2008; H. SCHLOSSER, *Deportazione e colonie penali come mezzo per l'esecuzione della pena in Germania*, in *Le colonie penali nell'Europa dell'Ottocento*, ed. by Mario Da Passano, Rome, 2004, pp. 55-65.

<sup>(8)</sup> Mary GIBSON, Ilaria POERIO, *Modern Europe, 1750-1950*, in *A Global history of Convicts and penal Colonies*, ed. by Clare Anderson, London-New York, 2018. On the birth of the centrality of imprisonment in the realm of penalties in the Italian eighteenth-century liberal culture, see Floriana COLAO, *Il «dolente regno dello pene»*. *Storie della varietà della idea fondamentale del giure punitivo tra Ottocento e Novecento*, in «Materiali per una storia della cultura giuridica», 2010, 1, pp. 129-156.

<sup>(9)</sup> Peter REDFIELD, *Spaces in the Tropics: From Convicts to Rockets in French Guyana*, Berkeley, 2000.

victs through work and contact with nature<sup>(10)</sup>. Moreover, the word *colonia* can also indicate a group of *émigrés* from the same country. As Ann Laura Stoler has maintained, that of 'colony' is a «protean archive» which encompasses a wide range of historical experiences and moves across different scales<sup>(11)</sup>. In this protean archive, speaking of colonies allowed the public discourse to connect the problems of the Italian migrants to colonial expansion. The latter represented a possibility for migrants to work on founding an Italian colony rather than being exploited by ruthless intermediaries or foreign enterprises. According to a large number of thinkers, the two topics were bound up with each other: many commentators maintained that founding colonies would create the conditions for a massive flow of Italian migrants to new lands where they could live under the protection of the Italian flag<sup>(12)</sup>. In this context, some observed that this flow of national migrants to the colonies should be preceded by penitentiary establishments where deportees would provide the colony with the infrastructures necessary for the birth of a free colony. However, the two options envisaged — the redirection of the migrant flow to a colony and the deportation of convicts overseas — had a fundamental feature in common: they were both state-directed operations that would bring Italian people to establish national sovereignty over overseas possessions.

For these reasons, the discourse on colonial deportation, although formally part of a strictly legal discussion, must be con-

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<sup>(10)</sup> Carlos PETIT, *Colonia*, in «Criterios», 2 (2009), pp. 21-27.

<sup>(11)</sup> Ann Laura STOLER, *Colony*, in «Political Concepts: a Critical Lexicon», 2011, 1, <http://www.politicalconcepts.org/issue1/colony/> (last visit 10/24/2019).

<sup>(12)</sup> Daniele NATILI, *Un programma coloniale. La Società Geografica Italiana e le origini dell'espansione in Etiopia 1867-1884*, Rome, 2008; Angelo DEL BOCA, *Gli italiani in Africa orientale*, Vol. 1, Milan, 2001, pp. 55-56; on the case of colonial emigration to Eritrea, see Romain RAINERO, *I primi tentativi di colonizzazione agricola e di popolamento dell'Eritrea*, Milan, 1960; Stephen BRUNER, *Leopoldo Franchetti and Italian Settlement in Eritrea: Emigration, Welfare Colonialism and the Southern Question*, in «European History Quarterly», 39 (2009), 1, pp. 71-94. On the general representation of Italian imperialism as an empire of work and migration, see Marco SANTORO, *Empire for the Poor*, in *Sociology & Empire*, ed. by George Steinmetz, Durham and London, 2013, pp. 106-165.

sidered in a context broader than criminal law. In other words, we have to enquire in what terms and to what extent the discussion on a topic per se strictly related to the world of legal theories received inputs and suggestions from the protean mass of colonial discourses.

The discourse on penal deportation tended to extend beyond the penal and penitentiary dimension. In fact, the state bodies engaged in the various colonial deportation projects, besides Parliament, were the Ministry of Grace and Justice, the Ministry of the Interior, which for the entire liberal age comprised the Division of Prisons, but also the Ministry of Foreign Affairs, wherein at the beginning of the 1870s a special Commission for the colonies dealt mainly with projects of penitentiary colonization as outposts of free colonies, the Ministry of the Navy, which provided information on explorations, and that of Agriculture, since the penal colonies — even those overseas — engaged in cultivation of the land. Therefore, colonial deportation was a topic inscribed within a broad context where the legal culture was intertwined first and foremost with the projects of colonial expansion and with the colonial culture. Not surprisingly, given these premises, the debate on penal deportation was carried forward by explorers, politicians, writers, experts on the penitentiary question, as well as jurists, and it paved the way for powerful suggestions that marked the development of colonial culture in Italy. All this helped the debate to acquire wide resonance.

This debate flourished immediately after national Unity. But it did not lead to the inclusion of colonial deportation in the new criminal code, not only because Italy did not possess any colony until the 1880s, as Mele put it <sup>(13)</sup>, but because of the strong opposition by a group of particularly influential jurists. Nonetheless, the discussion was anything but meaningless. The analysis of diverse sources suggests that this debate can be understood only in light of penetration by colonial themes and suggestions.

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<sup>(13)</sup> MELE, « *Un nuovo cielo* », cit., p. 403.

## 2. *The debate on deportation at the origin of the Italian penal system.*

Italy started the search for a colony to which to deport convicts immediately after the proclamation of Unity. Various attempts were made to establish penal colonies through geographical explorations, such as that by the Ministry of Agriculture official Biagio Caranti, that by adventurer G. Emilio Cerruti, and captain Carlo Alberto Racchia. They examined the possibility of colonies on Asian islands, while the idea of Assab in the Horn of Africa was soon discarded due to its climatic conditions. Besides these attempts, mention should be made of diplomatic initiatives with Portugal aimed at obtaining establishments in Angola or Mozambique, which reportedly failed because Italy was not satisfied with a territorial concession but wanted to establish its full sovereignty<sup>(14)</sup>.

Until throughout the 1860s, the initiative seemed to be in the hands of colonial expansion promoters; that is, it did not come from the criminal legal debate. In a nutshell, for some time, the issue was «penal colonization» rather than «colonial deportation»: deportation penalty was envisaged as a means to begin colonial expansion. Despite the possible resistance of the liberal culture inherited from the *Risorgimento*, which claimed to be anti-imperialist<sup>(15)</sup>, in the newborn state, this was a possibility investigated immediately, even before completion of Italy's unification.

Even though initiatives were taken by the Ministries of Agriculture and Foreign Affairs with scant reference to the world of criminal law and penitentiary theories, in those years the legal cul-

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<sup>(14)</sup> Accounts of these attempts are provided in Giacomo GORRINI, *I primi tentativi e le prime ricerche di una colonia in Italia (1861-1882)*, in Attilio Brunialti, *Le colonie degli italiani*, Torino, 1897, pp. 521-545; COMITATO PER LA DOCUMENTAZIONE DELL'OPERA DELL'ITALIA IN AFRICA, *L'Italia in Africa. Esplorazioni*, Vol. II, Rome, 1955, pp. 28-76; Roberto BATTAGLIA, *La prima guerra d'Africa*, Torino, 1958, pp. 66-88.

<sup>(15)</sup> See Maurizio ISABELLA, *Liberalism and Empires in the Mediterranean: the View-Point of the Risorgimento*, in *Risorgimento Revisited: Nationalism and Culture in Nineteenth-Century Italy*, ed. by Silvana Patriarca, Lucy Riall, New York, 2012, pp. 232-254.

ture did take deportation into consideration. The issue arose in correspondence with three different but interrelated problems.

First, the question of deportation attracted attention because it seemed a means to fight the post-unification social and criminal emergency represented by banditry. During the short parliamentary discussion on the so-called «Pica Law», which established the state of war in the South, Pasquale Stanislao Mancini, already well-known as an international lawyer founder of the modern doctrine of the 'principle of nationality' <sup>(16)</sup>, besides fighting in general against the illiberal principles of that law <sup>(17)</sup>, intervened to delete the punishment of deportation from the original project. «Deportation is a punishment that should not enter the Italian penal system surreptitiously — so to speak — if the Parliament does not subject it to studies of earnest and mature reflection», he stated <sup>(18)</sup>. Awareness: the jurist of international fame underlined that the introduction of colonial deportation was a matter of no little importance and required a real legal debate. The law finally introduced the *domicilio coatto*, a police provision bound to become an instrument for the repression of political activism <sup>(19)</sup>.

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<sup>(16)</sup> Ferdinando TREGGIARI, *Diritto nazionale e diritto della nazionalità: Pasquale Stanislao Mancini*, in *Raccolta di scritti in memoria di Agostino Curti Gialdino*, ed. by Giorgio Baldioli, Napoli, 1991, pp. 273-297; Pietro COSTA, *Civitas. Storia della cittadinanza in Europa*, Vol. 3: *La civiltà liberale*, Rome-Bari, 2001, pp. 211-213; Claudia STORTI, *Mancini Pasquale Stanislao*, in *Dizionario biografico dei giuristi italiani (XII-XX secolo)*, ed. by Italo Birocchi, Ennio Cortese, Antonello Mattone, Marco Nicola Miletti, Bologna, 2003, pp. 1244-1248; Luigi NUZZO, *Origini di una scienza: diritto internazionale e colonialismo nel 19° secolo*, Frankfurt am Main, 2012; Eloisa MURA, *All'ombra di Mancini. La disciplina internazionalistica in Italia ai suoi albori*, Pisa, 2017. On private international law aspects, see Erik JAYME, *Pasquale Stanislao Mancini: il diritto internazionale privato tra Risorgimento e attività forense*, Padova, 1988. A general profile of Mancini in *Per una rilettura di Mancini. Saggi sul diritto del Risorgimento*, ed. by Italo Birocchi, Pisa, 2018.

<sup>(17)</sup> See, in particular, the vibrant speech of 11 January 1864 against the extension of the Pica Law, where he maintained that such a provision was a «scandalous reproduction of the old despotism of the Bourbons», in M.N. MILETTI, «Mio primo amore ed esercizio», in *Per una rilettura di Mancini*, cit., p. 342.

<sup>(18)</sup> Quoted in Mario SBRICCOLI, *Storia del diritto penale e della giustizia: scritti editi e inediti*, Vol. I, Milan, 2009, p. 482.

<sup>(19)</sup> See Ernesto DE CRISTOFARO, *Introduzione*, in *Il domicilio coatto. Ordine*



Second, from the 1960s onwards deportation gained consideration because of the advent of the ‘penitentiary question’, a litmus test that would indicate the distance of the new Italian state from the barbarous despotism of pre-unitary regimes, in particular that of the Bourbons in the South, which William Gladstone after visiting the prisons of Naples defined «the negation of God erected into a system of government»<sup>(20)</sup>. Many Italian politicians and intellectuals who had participated in the *Risorgimento* were ashamed of the traditional systems of punishment and turned to penal reform<sup>(21)</sup>. The criminal emergency, indeed, brought about a penitentiary emergency, because the prisons and the various institutions of punishment (like the *bagni*) were inadequate in relation to the number of detainees. In a country where the crime rate was deemed to be the highest in Europe, jurists connected this datum with the structural weakness of the Italian state<sup>(22)</sup>. Deportation could be an opportunity to solve this problem without further exhausting the already greatly depleted financial resources of the State.

Thirdly, and most importantly, there was the movement for abolition of the death penalty. In the first years after unity, what prevented unification of the kingdom’s criminal law was above all the question of the death penalty, which had been abolished in the Grand Duchy of Tuscany but not in the other pre-unitary

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*pubblico e politiche di sicurezza in Italia dall'Unità alla Repubblica*, ed. by E. De Cristofaro, Acireale-Rome, 2015, pp. 9-25; Daniela FOZZI, *Tra prevenzione e repressione. Il domicilio coatto nell'Italia liberale*, Sassari, 2011. On the short-lived colony of *domicilio coatto* established in Assab in 1898, see Marco LENCI, *Deportati in Eritrea: il caso Assab*, in *Il domicilio coatto*, cit., pp. 207-224. Deportation as a preventive security measure and not as a punishment is not taken into consideration here.

<sup>(20)</sup> For the use of the discourse on Italian prisons in the Italoophile British movement see Elena BACCHIN, *Italofilia: Opinione Pubblica Britannica e Risorgimento Italiano 1847-1864*, Turin, 2014.

<sup>(21)</sup> See, for example, GIBSON, *Italian Prisons*, cit., pp. 7-11 and 41-66.

<sup>(22)</sup> On the influence of judicial statistics on the Italian penal debates, see GARFINKEL, *Criminal Law in Liberal and Fascist Italy*, cit., pp. 56-118. However, in the late 1880s, the *Rivista penale* edited by Luigi Lucchini, an outstanding expert on penal law, published articles that criticized the assumption of the progressive growth of the crime rate.

states. Allegedly, deportation could replace the death penalty as the apex of the penal scale in order to achieve agreement on a unified criminal code<sup>(23)</sup>. As a consequence, colonial deportation was a fundamental issue from the beginning of the debate on criminal law in Italy.

In March 1865, the deputy Stefano Castagnola proposed replacing the death penalty with deportation. Castagnola maintained that deportation was the best means to fight brigandage and thought that the British experience was unsuccessful only because deportation was used for colonization and only minimally as an instrument of expiation. The rapporteur of the criminal code bill, a jurist of the caliber of Giuseppe Pisanelli, former Minister of Justice, the co-ordinator of large-scale legal studies of international comparison<sup>(24)</sup>, stated that the issue was significant and should be considered carefully. However, the Senate rejected the proposal because its members, who were a direct expression of the Crown, did not accept abolition of the death penalty. Senator Giovanni de Foresta, rapporteur of the bill, wanted implementation of «the best system to achieve social tranquility without resorting to the death penalty» and therefore did not exclude overseas deportation. Nonetheless, he doubted that there was a real possibility to establish overseas penal colonies, given the high expenditure necessary for the purpose<sup>(25)</sup>.

Owing to the disagreement between the chambers, in November 1865, the Minister of the Interior Giuseppe Natoli instituted a commission tasked with summarizing and completing the studies on the system's reform and the scale of penalties. Soon thereafter, the Minister of Justice Giovanni De Falco appointed a commission tasked with drafting a criminal code. The two commissions worked together and were both presided over by Pisanelli.

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<sup>(23)</sup> MELE, «*Un nuovo cielo*», cit., p. 388; Mario DA PASSANO, *La pena di morte nel Regno d'Italia (1859-1889)*, in «Materiali per una storia della cultura giuridica», XXII (1992), 2, pp. 341-397.

<sup>(24)</sup> See *Giuseppe Pisanelli: scienza del processo, cultura delle leggi e avvocatura tra periferia e nazione*, ed. by Cristina Vano, Naples, 2005.

<sup>(25)</sup> BRUNIALTI, *Le colonie degli italiani*, cit., p. 279.

At the first meeting of the first commission, in January 1866, the possibility of introducing deportation was the core of the debate, since De Falco acknowledged that much had been written on the topic and many observers deemed it «a penalty very useful in various respects, especially in the conditions of our kingdom»<sup>(26)</sup>. In the following meeting it was specified that the commission should abolish the *bagni* along with the by-now unacceptable system of forced labor, and consequently «indicate whether this system could be replaced by deportation, not of the type implemented by the English with terrible consequences, but of a type that would be in harmony with today's civilization»<sup>(27)</sup>. The introduction of deportation was the first point in the summary of the questions presented on 11 March 1866<sup>(28)</sup>.

Vice-president of the commission was Federico Bellazzi, one of the politicians most committed to penitentiary reform<sup>(29)</sup>. In December 1866, Bellazzi proposed the creation of a special penal establishment on an Italian island for criminals sentenced to life imprisonment, in view of the abolition of the death penalty. Such a project would strongly impact on the 22 million of Italians, working as a deterrent, and would have the advantage of «somewhat fostering current ideas favorable to deportation» without presenting the severe flaws of proper deportation as experienced by England and France<sup>(30)</sup>. The commission worked on this penalty, which eventually received the title of «perpetual deportation to the *ergastolo*» on the proposal of the secretary of the commission Adolfo de Foresta<sup>(31)</sup>. In the meantime, from March 1866 Francesco Carrara and Enrico Pessina, two of the best-known experts on penal law, had become members of the second commission.

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<sup>(26)</sup> Minutes no. 1 of the meeting of 18 January 1866, in *Il progetto del codice penale pel Regno d'Italia coi lavori preparatori per la sua compilazione raccolti ed ordinati sui documenti ufficiali*, Vol. I, Florence, 1870, p. 10.

<sup>(27)</sup> Minutes no. 2 of the meeting of 19 January 1866, *ibid.*, p. 17.

<sup>(28)</sup> Minutes no. 7 of the meeting of 11 March 1866, *ibid.*, p. 68.

<sup>(29)</sup> *Il progetto del codice penale pel Regno d'Italia*, cit., p. 11.

<sup>(30)</sup> Minutes no. 20 of the meeting of 20 December 1866, *ibid.*, pp. 153-154.

<sup>(31)</sup> Minutes no. 22 of the meeting of 22 December 1866, *ibid.*, p. 160.

Carrara, born in 1805 in Tuscany, was a prestigious lawyer and had been professor at the University of Pisa since 1859. He was a passionate liberal, as he had fought for the unification of Italy since 1848. As an expert on penal law, he followed a natural law orientation<sup>(32)</sup>. The Tuscan jurist opposed the so-called ‘correctionalist school’, which believed that the correction or ‘reform’ of the convict was the essential function of the penalty, because this current of thought was guilty of a sort of emotional seduction that confused the ascetic and Christian principle of offender’s redemption with «the political principle of legal protection»<sup>(33)</sup>. The «unconscious movements of fear» must not influence the criminal code, as he wrote in 1860<sup>(34)</sup>.

Pessina belonged to a different generation and environment, since he was born in 1828 in Naples. Like Carrara, he was an embodiment of the liberal jurist expressed by the triad of professor, lawyer, and member of Parliament<sup>(35)</sup>. Furthermore, Pessina was also a passionate liberal, as he was convicted during the Bourbon repression after 1848. He wrote a large number of treatises on penal law whose main feature was their robust historical-philosophical structure<sup>(36)</sup>. At the beginning of the new century, the Neapolitan jurist wrote an historical account of the birth of the 1889 criminal code that acknowledged the unique role played by Car-

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<sup>(32)</sup> Francesco CARRARA, *Programma del corso di diritto criminale. Parte generale*, Vol. I, Lucca, 1867<sup>2</sup>, p. 14. Different versions of the same sentence published in other editions of this work are often quoted in historiography. See also Aldo MAZZACANE, *Carrara, Francesco*, in *Dizionario Biografico degli Italiani*, Vol. 20, 1977; Giovannangelo DE FRANCESCO, *Carrara, Francesco*, in *Il Contributo italiano alla storia del Pensiero — Diritto*, Rome, 2012; Floriana COLAO, *Francesco Carrara e il diritto penale liberale*, in «Democrazia e diritto», 1 (2012), 2, pp. 421-435.

<sup>(33)</sup> F. CARRARA, *Emenda del reo assunta come unico fondamento della pena*, in *Id.*, *Opuscoli di diritto criminale*, Vol. I, Lucca, 1870<sup>2</sup>, pp. 191-217.

<sup>(34)</sup> Quote in Floriana COLAO, *Le scuole penalistiche*, in *Il Contributo italiano alla storia del Pensiero — Diritto*, Rome, 2012, pp. 349-356.

<sup>(35)</sup> Aldo MAZZACANE, *Secolo dell'università — secolo delle professioni: le ragioni di un incontro*, in *Università e professioni giuridiche in Europa nell'età liberale*, ed. by Aldo Mazzacane and Cristina Vano, Napoli, 1994, p. 9.

<sup>(36)</sup> Marco Nicola MILETTI, *Pessina, Enrico*, in *Dizionario Biografico degli Italiani*, Vol. 82, 2015.

rara as «head of the school», which the latter used to call the «Italian school» (and the positivists later dubbed the «Classic school») <sup>(37)</sup>.

At the meeting of the commission of 25 March 1866, Carrara and Pessina agreed that the new criminal code had to establish «a scale of punishments in which the death penalty is not included». This declaration was unanimously approved, and the discussion on the deportation penalty immediately started <sup>(38)</sup>. Pessina stated that both practical and scientific reasons opposed deportation. The British experience had had «disastrous consequences», so that reasons of humanity, prudence, and economy suggested not pursuing that experiment. After all, the fact that Italy did not possess either a colony or a remote island made the idea entirely unfeasible. At most — he affirmed — the Commission could consider ‘transportation’, which was not a penalty, but only a phase of another penalty <sup>(39)</sup>. Other members agreed on this view, and the commission finally did not include deportation in the new scale of penalties. Carrara had not expressed his position, but it seemed that somehow his school had spoken <sup>(40)</sup>.

From that moment on, the commission no longer worked on colonial deportation but on Bellazzi’s idea of life-long deportation (*deportazione all’ergastolo*) to penal colonies on Italian islands. In 1866 Bellazzi, who would commit suicide soon after, declared his total opposition to colonial deportation <sup>(41)</sup>.

But, as said, the real legal debate had still not taken place. Only from the 1870s onwards did there develop the broad legal

<sup>(37)</sup> Enrico PESSINA, *Il diritto penale in Italia*, in *Enciclopedia del diritto penale italiano*, 2 Voll., Milan, 1906, p. VIII. See COLAO, *Le scuole penalistiche*, cit.

<sup>(38)</sup> Minutes of the meeting no. 17, 25 March 1866, in *Il progetto del codice penale pel Regno d'Italia*, cit., p. 126.

<sup>(39)</sup> *Ibid.*, pp. 126-127.

<sup>(40)</sup> On the complex relationship between the legal theories of Carrara and Pessina, see COLAO, *Le scuole penalistiche*, cit., and Vincenzo MAIELLO, *Pessina e la scuola classica*, in *Rileggere i maestri*, ed. by Mario Tedeschi, Aldo Mazzacane, Vol. 2, Co-senza, 2012, pp. 59-88.

<sup>(41)</sup> Federico BELLAZZI, *Prigioni e prigionieri nel Regno d'Italia*, Firenze, 1866. See Bruno DI PORTO, *Bellazzi, Federico*, in *Dizionario Biografico degli Italiani*, Vol. 7, 1970.

debate that Mancini had urged: a juridical discussion in which jurists engaged as aware actors.

### 3. *The debate of the 1870s.*

During the 1870s, the debate on colonial deportation was very animated<sup>(42)</sup>. The two persons most committed to colonial deportation were the judge Adolfo de Foresta and the adventurer Ceruti.

The judge, son of senator Giovanni, was firmly committed to defending his father's ideas on deportation. Former deputy attorney general at the Court of Appeal of Florence, since February 1866 he had been a member of the Commission tasked with compiling the new criminal code. At the end of the 1860s, de Foresta was involved in an obscure affair, when he charged the deputy of the Left Lobbia with the simulation of crime. Lobbia had denounced a scandal of political corruption and had been the victim of an ambush. On that occasion, de Foresta was contrasted by Mancini, who was Lobbia's lawyer and finally prevailed<sup>(43)</sup>. Once Mancini became Minister of Grace and Justice, he would wreak some sort of vengeance against de Foresta by moving him to a secondary seat because — he stated — the judge had been part of an «infamous political-judicial trap»<sup>(44)</sup>.

In 1872, de Foresta attended the International Penitentiary Congress of London. The Congress was the first international penal conference in world history and aimed at representing a groundbreaking meeting of professionals, state officials, penal reformers, and philanthropists providing insights into and critiques of the state penitentiary systems<sup>(45)</sup>. Here, the judge brought the

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<sup>(42)</sup> MELE, «*Un nuovo cielo*», cit., p. 368 ff.

<sup>(43)</sup> On the Lobbia case see MILETTI, «*Mio primo amore ed esercizio*», cit., pp. 347-348; A. ARISI ROTA, 1869: *il Risorgimento alla deriva. Affari e politica nel caso Lobbia*, Bologna, 2015. Lobbia died shortly after the end of the trial.

<sup>(44)</sup> ARISI ROTA, 1869, cit., p. 261.

<sup>(45)</sup> S.T. GÜLHAN, 1872 *London Congress and the Nineteenth Century Prison Reform Movement: An Inquiry into the Discourse of Punishment*, in «Gaziantep University Journal of Social Sciences», 16 (2017), 4, pp. 1148-1159.

matter of deportation back into play. He asserted that transportation, with compulsory labor to a colony as carried on in France, was the best punishment for severe criminals, because «it perfectly pursued the double object of all punishments, that is, the protection of society within the limits of justice, and the reformation or amendment of the convict». On the one hand, colonial deportation would protect the society «by casting out from its bosom the most dangerous criminals, avoiding the grave inconveniences of relapses, and deterring would-be criminals with the prospect of banishment from their country and family». On the other hand, it encouraged the convict «by giving him hope of becoming again useful to society and beginning a new life far from his old haunts, where he may bring his family, or, if he has none, may start a new one»<sup>(46)</sup>. In short, deportation represented an ideal solution from all the viewpoints.

These interventions did not entail success in de Foresta's career as a reformer, as he was banned from attending international meetings and national commissions (it is easy to imagine the role of Mancini in this affair)<sup>(47)</sup>. In fact, de Foresta's proposal aroused much criticism in the session devoted to deportation. The British liberal MP, George Woodyatt Hastings, former secretary of the Social Science Association, replied that the British had abolished the system of overseas deportation because it was of no use to their penal system. Besides, The Home Secretary Henry Bruce stated that deportation was unnecessary, given that, since it had ceased, the crime rate had declined<sup>(48)</sup>.

In 1873 de Foresta made a vigorous defense of colonial deportation during the inaugural speech at the Court of Appeal of

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<sup>(46)</sup> *Report on the International Penitentiary Congress of London, held July 3-13, 1872*, Washington, 1873, p. 154.

<sup>(47)</sup> As he wrote, he had to suffer — «I really do not know for what demerit» — «ostracism by new conferences and commissions»: Adolfo DE FORESTA, *La riforma penitenziaria. Né patibolo né carcere: lettera aperta del conte Adolfo de Foresta al comm. Martino Beltrami-Scalia, direttore generale delle carceri del Regno*, Bologna, 1880, p. 25.

<sup>(48)</sup> See *Report on the International Penitentiary Congress of London*, cit. See also Martino BELTRAMI SCALIA, *La deportazione*, Rome, 1874, pp. 25-26.

Ancona and in several articles published by the newspaper *L'Opinione* <sup>(49)</sup>. In his view, those condemned to death should remain in the penal colony with a regime of perpetual separation; the others should live in a regime of separation for only 1/6 of the penalty, in the ordinary regime of the penal establishment under strict discipline for 3/6, and would be free on parole for the remaining 2/6; finally, the liberation on parole was to be denied to incorrigible criminals and in cases of misconduct.

The culmination of de Foresta's commitment to colonial deportation was a book on deportation published in 1876. He still conceived deportation as a *penalty* — thus applicable to the most serious crimes — but was also fascinated by the suggestion of using it also as an instrument for social hygiene, as Marchetti underlines <sup>(50)</sup>. Indeed, according to the judge, deportation could be a public security provision replacing *domicilio coatto* (with a duration from three to ten years), and a penalty for all recidivists after the third crime, regardless of the seriousness of the offense <sup>(51)</sup>. At the core of the idea was the widespread concern about the habitual criminals who populated the urban areas in particular, because recidivism was «a sort of incumbent threat that spreads to the whole social body» <sup>(52)</sup>. De Foresta combined the stress on social fear with favor for a measure that would enhance Italy's power. Deportation could, at the same time, ensure social tranquility and encourage the beginning of colonial expansion. Moreover, he tried to address the fears of the impact that a colony of criminals would have on the indigenous people: so far, the natives had been taken into account too much because «I do not think it can be said that they suffer real damage». Instead, colonial deportation was an excellent tool to bring civilization to colonial peoples <sup>(53)</sup>. However, further on, he was ruder (and more sincere):

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<sup>(49)</sup> See BELTRANI SCALIA, *La deportazione*, cit., p. 11.

<sup>(50)</sup> P. MARCHETTI, *L'armata del crimine. Teoria e repressione della recidiva in Italia*, Ancona, 2008, pp. 117-118.

<sup>(51)</sup> A. DE FORESTA, *La deportazione*, Rome, 1872, pp. 176-178.

<sup>(52)</sup> MARCHETTI, *L'armata del crimine*, cit., p. 31.

<sup>(53)</sup> DE FORESTA, *La deportazione*, cit., p. 113.



It is a law, and I do not know whether a providential or a fatal one, that savages [...] must gradually disappear and leave their place to the European races and therefore it is not appropriate to worry too much about them, especially as it may very well happen that in the place chosen for deportation either there are no natives or they are so few and weak that they voluntarily retreat to another region<sup>(54)</sup>.

At the following International Penitentiary Congress held in 1878 in Stockholm, de Foresta, now a prosecutor in Bologna, delivered a report in which he reiterated his idea. The transportation system, with an initial period of cellular segregation, the second period of obligatory work, and finally the conditional release, was the only one that could bring «tranquility and public security», making it possible to «get rid of recidivists, *camorra*, *maffia*, etc»<sup>(55)</sup>. Also in this case, in the following discussion the prevailing opinion was contrary to deportation<sup>(56)</sup>.

From the 1870s onwards, Cerruti, an adventurous explorer who had tried to acquire an island in the South Eastern Pacific to start Italian colonization, became the most active propagandist of the penal colonies. In 1872 he published a series of articles arguing for colonial expansion in the newspaper *La Gazzetta del Popolo* of Turin and a book that specifically sponsored the penal colonization project<sup>(57)</sup>. Cerruti aimed at «making the colonial question familiar» — what he also did through the attractive description of the lands he had visited — because the colonies would have contributed both to the economic development of the nation and to improvement of the budget balance. His remarks were somewhat schematic<sup>(58)</sup>: first, he described the utility of colonies for agricultural development; second, as regards industry, the colo-

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<sup>(54)</sup> *Ibid.*, pp. 113-114; see Marco LENCI, *All'inferno e ritorno. Storie di deportati tra Italia ed Eritrea in epoca coloniale*, Pisa, 2004, pp. 81-82.

<sup>(55)</sup> *Le Congrès pénitentiaire international de Stockholm*, 15-26 Août 1878. *Comptes rendus des séances publiés sous la direction de la Commission pénitentiaire internationale par le Dr. Guillaume*, Stockholm, 1879, pp. 172-173.

<sup>(56)</sup> *Ibid.*, pp. 170-208; see MARCHETTI, *L'armata del crimine*, cit., p. 116.

<sup>(57)</sup> Emilio CERRUTI, *La questione delle colonie considerata per rapporto alle attuali condizioni dell'Italia*, Turin, 1872; Id., *Della deportazione come base fondamentale della riforma carceraria e della colonizzazione italiana*, Turin, 1872.

<sup>(58)</sup> NATILI, *Un programma coloniale*, cit., p. 30.

nies would provide Italy with the raw materials necessary for its factories; third, these factors would increase trade and the navy. For these purposes, Cerruti maintained, the establishment of penal colonies could be useful: besides favoring the emptying of prisons, it would provide workers to carry out reclamation work and build the first colony. The explorer believed that it was a very natural process for a penal colony to become a free colony over time, even losing any penal element<sup>(59)</sup>. What sharply differentiated his proposal from de Foresta's ideas was the conviction that deportation could in no way bring civilization to «semi-savage races»; therefore, it had to be implemented in unpopulated places<sup>(60)</sup>. In an article published in *La Nuova Antologia*, the most prestigious forum of debate for the cultivated Italians of the time, he re-proposed the typical content and style of pro-colonial thinkers' writings. After several centuries of «miserable municipal competitions, feudal tyranny, and foreign oppression», Italy, rebuilt as a great and strong nation, «regained an honorable place in the Congress of the nations of Europe» thanks to the «heroic sacrifices of the previous generation»<sup>(61)</sup>. Nevertheless, the rebuilt nation suffered from remarkable problems, such as financial difficulties, the need for infrastructures, reform of the penitentiary system, etc., which all could find solution in the «immediate creation of well-organized colonies»<sup>(62)</sup>. The model he had in mind was British Australia, which he had visited during his commercial travels: it was opportune that Italy founded a colony *ad usum Australiae*<sup>(63)</sup>. Cerruti's rhetoric mixed the classic *topoi* of colonial propaganda with the penitentiary question: in the colony, «the exuberant vitality of

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<sup>(59)</sup> CERRUTI, *Della deportazione come base fondamentale delle riforme carcerarie e della colonizzazione italiana*, cit., p. 59.

<sup>(60)</sup> *Ibidem.* GIBSON, *Italian prisons*, cit., p. 199, stresses further reasons of disagreement regarding the methods of imprisonment to be adopted, as Cerruti supported the Pennsylvania model, which de Foresta called a «barbaric American invention».

<sup>(61)</sup> Emilio CERRUTI, *Le colonie penali e le colonie libere*, in «Nuova Antologia di scienze, lettere ed arti», 23 (1873), 7, p. 673.

<sup>(62)</sup> *Ibid.*, p. 674.

<sup>(63)</sup> *Ibid.*, p. 675. For a defense of British overseas deportation, despite the widespread criticisms it received, see pp. 716-717.

the nation» could find a useful application and «the overflowing population of the prisons a safe haven». The penal colony would provide the labor necessary to build the infrastructures to make the settlement ready to welcome a free population. Therefore, penal colonization, besides responding to the needs of the penitentiary system, was functional to colonial expansion. Colonies were indispensable for both the development of the Italian economy and emigration. Cerruti's observations were less legal and more political and economic because they mirrored some of the classic assertions of colonial thought, for which the point of reference was the liberal economist Gerolamo Boccardo<sup>(64)</sup>.

Not surprisingly, Cerruti's ideas were taken up by Leone Carpi. A scholar of emigration who provided the first Italian statistics on emigration drawn from official data, Carpi was one of the most intense supporters of colonial expansion<sup>(65)</sup>. He was so in line with a broader discourse on emigration which presented colonization as the possibility to redirect the flow of national migrants to lands under Italian sovereignty. Carpi believed that penal colonies were useful as outposts for the formation of free colonies and devoted ample space to the explorer's writings in his voluminous studies<sup>(66)</sup>.

Nor was Carpi a jurist, but he engaged with the legal doctrine by asserting that «the theories on crime and penalties do not suffer damage from deportation»<sup>(67)</sup>. He sought to refute the most widespread arguments against deportation, especially the humanitarian ones, with the support of numerous legal opinions gathered from jurists in half of Europe. He was certain that the creation of

<sup>(64)</sup> Gerolamo BOCCARDO, *Le colonie e l'Italia: sei lezioni*, Turin, 1864. On the model of liberal colonialism, see Giulio ABBATE, *Modelli di colonizzazione. Il dibattito in Italia dal 1864 al 1890*, in «Le Carte e la Storia», 1 (2013), pp. 91-110.

<sup>(65)</sup> Raffaele ROMANELLI, *Carpi, Leone*, in *Dizionario Biografico degli Italiani*, Vol. 20, 1977; Dora MARUCCO, *Le statistiche dell'emigrazione italiana*, in *Storia dell'emigrazione italiana*, Rome, 2001, p. 62.

<sup>(66)</sup> Leone CARPI, *Delle colonie e dell'emigrazione d'italiani all'estero sotto l'aspetto dell'industria, commercio ed agricoltura*, Vol. 3, Milan, 1874, pp. 475-545. See NATILI, *Un programma coloniale*, cit., p. 32.

<sup>(67)</sup> CARPI, *Delle colonie*, cit., p. 6.

colonial penitentiaries could constitute the first step in the creation of future free colonies. Humanitarian intellectuals should consider that «bringing the light of civilization to savages even through the deportation of delinquents» was a sign of progress because, without this exceptional means, those «hordes» would remain permanently in a state of brutality and ferocious desolation<sup>(68)</sup>. Deportation was a vehicle of wealth, progress, and civilization, as the cases of British Australia and French Caledonia demonstrated<sup>(69)</sup>. Furthermore, it was particularly suitable for Italy, which lacked some factors essential for starting a colonial enterprise such as capital and industrial production in search of new markets, and could find in its social problems the inner motivation to start overseas expansion:

the excruciating phenomenon [...] of emigration, the condition of our lower classes, the painful spectacle of our convicts, of recidivists, of those freed from their prisons, and of the many slackers who infest our neighborhoods, and whom, following the example of England, one could very cautiously transform into productive men and elements of wealth and strength for our homeland<sup>(70)</sup>.

Carpi was not at all alone in linking the discourse on penal colonies to the problem of recidivism. Since the prison was ever more represented (with some reason) as a place in which convicts learned to hate society and the state rather than a place of rehabilitation, and then produced recidivists<sup>(71)</sup>, some intellectuals indicated penal colonization as a valid alternative. In particular, the topic of «habitual and triumphant crime» would burst into the pe-

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<sup>(68)</sup> *Ibid.*, p. 9.

<sup>(69)</sup> *Ibid.*, p. 32 ff.

<sup>(70)</sup> *Ibid.*, pp. 38-39.

<sup>(71)</sup> The curious invention of the prison, as Foucault called it, i.e. the construction of prison-centered penal systems, was a device whose enormous flaws were after all very well known and criticized. Overall, intellectuals maintained that the prison brought about the creation of a community of criminals who became increasingly united against the state and were bound to reinforce their criminal attitudes after their liberation. See Michel FOUCAULT, *La società punitiva. Corso al Collège de France (1972-1973)*, Milan, 2016, p. 267.

nal discourse thanks to *The Criminal Man* by Cesare Lombroso<sup>(72)</sup>.

4. «*The name of some men is enough*»: Beltrani Scalia and the jurists' opinion.

Martino Beltrani Scalia was the main opponent of deportation and conducted a fierce polemic in particular against Cerruti. Unlike the latter, quite ignorant of legal arguments, Beltrani Scalia, a Sicilian patriot who had fought for the annexation of the South to Italy, was probably the outstanding expert on the Italian penitentiary system. He was the General Supervisor of the prisons of the Kingdom from 1864, and in 1876 he became the General Director of prisons. In the meantime, in 1871, he had founded a journal devoted to the study of penitentiary systems, the *Rivista di discipline carcerarie in relazione con l'antropologia, col diritto penale, con la statistica*<sup>(73)</sup>. In 1874 he published a booklet aimed at fighting the proposal of deportation. Here Beltrani Scalia refuted the proposal of introducing the overseas deportation penalty by showing a remarkable knowledge of the historical precedents in the French and British colonies. He addressed the problem from three standpoints. First, «whatever the principles upon which the right to punish is based», deportation did not fulfill the requirements that the most eminent penal lawyers held necessary for the punishment. Indeed, the penalty did not work as an effective deterrent, since many prison inmates asked for deportation; it was not a moral punishment, for it entailed distance from family and fatherland; it was unequal, as the troubles it could cause had different intensities for different people; it was not exemplary since its execution took place far away and was not visible to citizens. Finally, overseas deportation was unjust, because whilst it seemed to

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<sup>(72)</sup> COLAO, *Il «dolente regno delle pene»*, cit., p. 144.

<sup>(73)</sup> On the significance of this journal see Francesco ROTONDO, *Il tentativo di medicalizzazione della penalità in Italia sul finire del secolo XIX*, PhD Thesis, Università degli Studi di Napoli Federico II, Naples, 2004-2005, p. 9; GIBSON, *Italian Prisons*, cit., p. 71 ff.

achieve the goal of social defense by expelling dangerous people from society, to be fair, this fact should not entail moving criminals to places where other people lived. «If the distant land was not at all isolated from every civil society», Beltrani Scalia wrote, «we believe that obliging other people, whoever they may be, to welcome the scum of our galleys would violate the law of nations»<sup>(74)</sup>.

In support of these ideas, Beltrani Scalia cited numerous historical examples showing that the much-praised experiences of the British in Australia and of the French in Guyana and New Caledonia had, in reality, been very harsh. Some fifteen years before Beltrani Scalia, the jurist Gerolamo Boccardo had likewise refuted on historical grounds the idyllic representation of the experiences of the French and British<sup>(75)</sup>. According to the Sicilian civil servant, even politicians and magistrates who supported deportation had to admit that history evidenced many inconveniences and errors in regard to that procedure. In the middle of the century, numerous protests were raised in Australia against deportation, and despite pronouncement in favor by two parliamentary committees, the government, «which better than anyone else could calmly assess the state of affairs», decided to halt it. A new commission established in 1863 had decided to downsize deportation, which became a «penal complement» for convicts with the best conduct who had already served most of their sentences. Once again, however, the government took the initiative by deciding to stop deportation forever from 1868. Also the French case was much less idyllic than the propagandists of penal colonization asserted. In his historical *excursus*, Beltrani Scalia underlined that despite repeated attempts over time to establish penal colonies, also with the aim of favoring French colonization overseas (as Louis Napoleon Bonaparte had explicitly stated in November 1850), the deportation plans always encountered remarkable difficulties and ended in failure. Deportation to Guyana, which had been represented as ideal

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<sup>(74)</sup> BELTRANI SCALIA, *La deportazione*, cit., pp. 31, 34.

<sup>(75)</sup> Gerolamo BOCCARDO, *Dizionario della economia politica e del commercio*, Vol. II, Torino, 1858, pp. 21-24.

because of its climate and geography, was impossible and ended after only ten years, which demonstrated the project's failure. After all, «if England, which did not lack the means to maintain it» had to renounce and abolish deportation, and France, «after having lavished treasures and sacrificed hundreds of lives in the implementation of the project», had to confess that it had been a mistake, how could Italy invoke these examples as a guarantee of such a risky enterprise? <sup>(76)</sup>

In general, Beltrani Scalia insisted on the social problems that deportation caused to the colonial societies and minimized the examples of good integration of former convicts into Australian society that Cerruti had presented. In his words, Cerruti had a «smart mind» and «uncommon persistence», but he had very confused ideas and limited knowledge of the existing penitentiary system, which was the target of his irony in several points <sup>(77)</sup>. Furthermore, he criticized the proposal by de Foresta because it served «an eminently repressive purpose» <sup>(78)</sup>.

Most interestingly, the Sicilian civil servant reported in the appendix of his book the opinion of some Italian and foreign jurists. His aim was to direct the discussion back to the legal field and distance it from the mere political agenda. He was aware that jurists' opinions on the subject had a different specific weight, given that the overall discussion revolved around a particular kind of penalty. As he wrote to Mancini, who at that time was a deputy:

I have prepared my work on deportation, but publishing the letters of several eminent Italian and foreign professors of criminal law [...] I believe that I would fail in my duties if I deprived the readers of your opinion about the morality and usefulness of that penalty.

Therefore, have the kindness of writing me a line on this subject, the authority of your name is enough for me, and I will be grateful to you <sup>(79)</sup>.

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<sup>(76)</sup> BELTRANI SCALIA, *La deportazione*, cit., pp. 28-29.

<sup>(77)</sup> *Ibid.*, p. 12 ff.

<sup>(78)</sup> *Ibid.*, pp. 11-12.

<sup>(79)</sup> Letter from Beltrani Scalia to Mancini, 14 March 1874, in Museo centrale del Risorgimento di Roma (Mcrr), doc. 759-1(13).

Also in a subsequent reminder letter written to Mancini, Beltrani Scalia stressed that what he needed was not a long disquisition («Holtzendorff, Röder, Thonissen, Hornung wrote me less than a page each», he reassured the jurist), but the authority of the name: «I repeat, the name of some men is enough, and I hope you will not deprive me of the authority of yours»<sup>(80)</sup>. In this way, the General Supervisor of prisons somehow succeeded in moving the discussion from penal colonization to colonial deportation.

Among the jurists cited by Beltrani Scalia, only two were supporters of overseas deportation: the priest Antonio Buccellati, who restricted the possibility only to incorrigible criminals<sup>(81)</sup>, and the liberal catholic Tancredi Canonico. In particular, Canonico had elsewhere highlighted the 'colonial connection' and encouraged Cerruti to pursue his mission, which was functional to «the growing expansion of Italy»<sup>(82)</sup>. Mancini, Paolo Tolomei and Gerolamo Boccardo argued against deportation on strictly legal bases, maintaining that it lacked some elements essential for it to become a penalty<sup>(83)</sup>. An intermediate position was expressed by Pessina and Pietro Ellero, who contended that at most Italy could begin an experiment undertaken on exceptional and transitory bases.

More unanimous were the opinions of the foreign jurists whom Beltrani Scalia interrogated: the Swedish professor of Roman Law Knut Olivecrona, Meinardus Siderius Pols, a lawyer at The Hague and future professor of criminal law, the Catalan jur-

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<sup>(80)</sup> Letter from Beltrani Scalia to Mancini, 26 March 1874, in Mcrr, doc. 759-1(14).

<sup>(81)</sup> Letter from Buccellati to Beltrani Scalia, 12 February 1874, in BELTRANI SCALIA, *La deportazione*, cit., pp. 116-119.

<sup>(82)</sup> Letter from Canonico to Cerruti, 19 September 1873, in Emilio CERRUTI, *In difesa della deportazione: memoria per confutare le critiche del cav. Beltrami-Scalia e dell'avv. D. Giuriati*, Milano, 1874, pp. 86-87.

<sup>(83)</sup> Letter from Mancini to Beltrani Scalia, 31 March 1874, in BELTRANI SCALIA, *La deportazione*, cit., p. 125; letter from Tolomei to Beltrani Scalia, 19 January 1874, *ibid.*, p. 115; letter from Boccardo to Beltrani Scalia, 15 February 1874, *ibid.*, pp. 119-120.



ist Pere Armengol i Cornet, specialized in studies on the prison system, Franz von Holtzendorff, professor of law in Munich with particular expertise in criminal and international law, Jean-Joseph Thonissen, professor of criminal law at the Catholic University of Leuven and deputy at the Belgian Parliament, and Karl David August Röder, professor of law at Heidelberg. For the Netherlands, both Röder<sup>(84)</sup> and Pols<sup>(85)</sup> stated that the majority of Dutch jurists were against deportation, and the country had already abandoned this practice, while Grevelink explained that, even though it was established by the Napoleonic code still in force, deportation was «no longer a reality». After all, the experience had proved that deportees «pass away, despite all possible precautions, in a more or less short time»<sup>(86)</sup>. Also in Sweden no jurist supported it, Olivecrona certified<sup>(87)</sup>, nor in Denmark, where the penalty had never been applied, according to Bruün<sup>(88)</sup>. The confinement had been rarely applied in Spain and only to political criminals, and the jurists unanimously condemned this practice, according to Armengol i Cornet<sup>(89)</sup>. Thonissen stressed several legal reasons for opposing such a penalty and showed that the British experience was negative. Also the French would soon abandon that practice. The picture emerging from these interventions unequivocally described an entire Europe on the way to withdrawing permanently from the use of deportation.

In sum, the vast majority of the jurists whom Beltrani Scalia consulted were opposed to overseas deportation. Thanks to his work, the conviction that the most celebrated jurists, in Italy and abroad, were all against deportation spread in the Italian Parliament<sup>(90)</sup>. Beltrani Scalia played the role of a powerful organizer

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(84) Letter from Röder to Beltrani Scalia, 30 December 1873, *ibid.*, p. 107.

(85) Letter from Pols to Beltrani Scalia, 4 February 1874, *ibid.*, pp. 92-99.

(86) Letter from Grevelink to Beltrani Scalia, 14 January 1874, *ibid.*, pp. 90-92.

(87) Letter from Olivecrona to Beltrani Scalia, 8 January 1874, *ibid.*, pp. 89-90.

(88) Letter from Bruün to Beltrani Scalia, 27 February 1874, *ibid.*, p. 79.

(89) Letter from Armengol i Cornet to Beltrani Scalia, 16 March 1874, *ibid.*, pp. 99-100.

(90) See MELE, «*Un nuovo cielo*», cit., pp. 399-400.

of culture (especially through the *Rivista di discipline carcerarie*) and built a network of jurists taking part in the public intellectual debate on deportation with all their specific weight. Indeed, as he wrote, penal deportation was a matter of «legal principles», and then it was necessary to listen to the opinions of the jurists<sup>(91)</sup>.

The authority of their names would be the key to success in that intellectual conflict.

### 5. *Between penal utopia and positivist culture.*

It was a literary success to awaken broader public opinion. In 1874 the writer Carlo Dossi, who belonged to Crispi's intellectual milieu and would later suggest to Crispi the name of 'Eritrea' for the first Italian colony, published the book *La colonia felice*<sup>(92)</sup> [*The happy colony*]. This was a 'legal novel', also termed a 'militant novel'<sup>(93)</sup>, imbued with philanthropic ideals on the reform of criminals. Gualdo, the main character, was a convict deported to an overseas penal colony, where he could start a new life by abandoning his initial hostility toward another deportee, the sage Aronne, called 'the Literatus'. The peaceful society eventually born in the colony represented the ransom for his previous criminal life as well as the victory of civilization and culture — the Literatus finally led Gualdo to wisdom — over the savage state of nature. Despite its general humanitarian tension, the novel employed a sort of linguistic deformation to describe the deportees in terms of bestiality, for which the work has been considered close to the nascent positivist language<sup>(94)</sup>.

Dossi had to disavow the ideal expressed in the novel at the time of the success of Lombroso's theories on the criminal individual. In effect, only two years later, the physician Lombroso pub-

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<sup>(91)</sup> BELTRANI SCALIA, *La deportazione*, cit., p. 35.

<sup>(92)</sup> CARLO DOSSI, *La colonia felice: utopia*, Milan, 1874.

<sup>(93)</sup> ALESSIO BERRÈ, *Alle origini del «romanzo giudiziario» italiano: la figura del delinquente tra letteratura, diritto e scienze mediche*, PhD Thesis, Bologna, 2014, p. 303.

<sup>(94)</sup> FRANCESCO LIOCE, *Dalla colonia felice alla «colonia Eritrea». Cultura e ideologia in Carlo Dossi*, Napoli, 2014, p. 41.

lished his seminal work on the criminal man that soon became a fundamental basis for the new criminology well beyond Italy's borders. As known, Lombroso shifted the focus from the crime to the criminal and consequently envisaged a repressive system based upon the assessment of social dangerousness. The central principle of the Positive school (*Scuola positiva*) that originated from his ideas was to apply a naturalistic method to criminal law, to finally overcome the vision of those traditionalist jurists who believed in «divine and eternal justice»<sup>(95)</sup>. Lombroso and the Positive school maintained that criminal law had to conform with the results of criminal anthropology and called for more severe penalties, including the death penalty, which was by now repudiated by the prevalent opinion<sup>(96)</sup>. Criminals represented the presence of atavism in modern society, and criminal law had to provide the therapy<sup>(97)</sup>. Whether the general aim was the prevention of crime or the elimination of criminals from the society, some positivists took overseas deportation into consideration because it seemed to respond to the demand for social security by granting the expulsion of criminals from society. In reality, Lombroso was skeptical about deportation's benefits: it was his method, 'scientific' because it was based upon neutral observation of natural phenomena (and crime was one of them), that led him in this direction:

many have been confident about the usefulness of deportation, which, by freeing a country from bad individuals, would favor the rehabilitation of the criminals in distant establishments. But such hopes have vanished after the verification of the infamies and the moral and material disorders into which these groups of criminals fall in New Wales and in Caledonia, where no one has ever come out improved<sup>(98)</sup>.

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<sup>(95)</sup> Cesare LOMBROSO, *L'uomo delinquente*, Turin, 1880, p. 4.

<sup>(96)</sup> Guido NEPPI MODONA, *Legislazione penale*, in *Il mondo contemporaneo. Storia d'Italia*, ed. by Fabio Levi, Umberto Levra and Nicola Tranfaglia, Vol. 2, Florence, 1978, pp. 584-607; SBRICCOLI, *La penalistica civile*, cit., pp. 194-212; GIBSON, *Born to crime*, cit.

<sup>(97)</sup> COSTA, *Civitas*, cit., pp. 444-446.

<sup>(98)</sup> LOMBROSO, *L'uomo delinquente*, cit., p. 305. Lombroso meant to speak of New South Wales.

The countries in which deportation took place were barbarized by the presence of these undesired guests, as the crime rate of New South Wales compared with that of England demonstrated. The explanation was simple: «the convicts do not work, and, therefore, to live, they must resort to crimes, which double in number»<sup>(99)</sup>. Furthermore, their countries of origin did not gain many benefits because the possibility of leaving for an exotic destination aroused desire rather than fear. Finally, deportation overseas was very expensive, as also Antonio Starabba di Rudinì and Giuseppe Zanardelli later stated<sup>(100)</sup>.

Immediately after the first edition of *The Criminal Man*, on 10 July 1876, Dossi wrote a letter to Lombroso in which he admitted that his novel had professed an ingenuous trust in the healing of criminals: it had been an error because Lombroso had made the horrific diagnosis that human perversity was incurable<sup>(101)</sup>. Admittedly, his penal utopia had to be questioned. Lombroso himself in the second edition of the book explicitly criticized Dossi's novel on the question of the validity of the deportation<sup>(102)</sup>.

Nonetheless, the novel continued to foster the legal and political debate dealing with both the model of Italian colonialism and the penal scale, and despite Lombroso's position most of the jurists of the Positive school adhered to the «scientific party of deportation»<sup>(103)</sup>. A couple of years after the formal acquisition of Assab Bay by Italy, the lawyer and journalist Alessandro Lioy gave a lecture at the Società Africana d'Italia that was also the product of suggestions from Dossi's book:

in one of those moments when thought runs to the most disparate things, I passed from reading [...] *La colonia felice, utopia lirica di Carlo Dossi*, to a newspaper, where I read that the government considers undertaking work in the dock of Assab as soon as possible. Thus, my mind went to that Italian colony, which [...] remains in the limbo of great things that are still to begin!<sup>(104)</sup>

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<sup>(99)</sup> *Ibidem*.

<sup>(100)</sup> MELE, «*Un nuovo cielo*», cit., p. 400.

<sup>(101)</sup> LIOCE, *Dalla colonia felice alla «colonia Eritrea»*, cit., p. 42.

<sup>(102)</sup> BERRÈ, *Alle origini del «romanzo giudiziario» italiano*, cit., pp. 311-312.

<sup>(103)</sup> *Ibid.*, p. 312.

<sup>(104)</sup> Alessandro LIOY, *Colonia penitenziaria ad Assab*, Naples, 1884, p. 3.

The audience reportedly applauded the lecture, which recalled that the story of Gualdo, «the murderer turned into an honest worker thanks to isolation, the colony, the family», represented «the prototype of penitentiary science»<sup>(105)</sup>. So Lioy thought: why not unite the political commitment to the new colony of Assab — officially under Italian sovereignty since 1882 — with the amount of benefits coming from the establishment of a penal colony? In short, why not found a penal ‘colony’ in the first ‘colony’? Establishing penal colonies, indeed, would have been the real reform that the Italian penitentiary system needed: the state of idleness and the terrible conditions in which Italian inmates often lived represented «the grave of human beings whom society has forever rejected from its bosom»<sup>(106)</sup>. After all, French New Caledonia and British Australia were glaring examples of the possible outcome of an Italian penitentiary in the Horn of Africa<sup>(107)</sup>. In Lioy’s words, deportation was the opportunity to build a new ideal society: he followed the description of the French *rappor-teurs* on New Caledonia, to which the rioters of *la Commune de Paris* had been deported:

[in Noumea] people have fun, have lunch together, spend the evenings together in each other’s homes, dance in the governor’s house; there are beautiful little fashionable women; makeups arrive from France in six weeks across half of the globe. People are served by the deportees who have better conduct: in the morning they leave from the penitentiary, and return there in the evening; they get ten francs per month; they are called *les garçons de famille*; some of them are good guys<sup>(108)</sup>.

These suggestions were partly based upon the *Souvenir de la Nouvelle Calédonie* by Henry Rivière, who was a man of letters and officer of the French navy, the protagonist of the conquest of Tonkin, first published in 1881<sup>(109)</sup>, and upon the writings on New Caledonia by the explorer and colonial officer Charles Le-

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<sup>(105)</sup> *Ibid.*, p. 4.

<sup>(106)</sup> *Ibid.*, p. 21.

<sup>(107)</sup> *Ibid.*, pp. 7-13.

<sup>(108)</sup> *Ibid.*, p. 8.

<sup>(109)</sup> Henry RIVIÈRE, *Souvenir de la Nouvelle Calédonie*, Paris, 1881.

mire<sup>(110)</sup>. The core of Lemire's book was description of the great Kanak rebellion of 1878, in whose repression the convicts were involved. Rivière had concluded that there was no specific reason for the revolt, but only a general one: «the great cause of insurrection, one might say the only one, is the antagonism that we have always seen, between the conquerors and the conquered». As a consequence, the black races had to be absorbed or disappear, because «they differ too much from the white race for their instinctive mores which have never progressed, an invincible reluctance to work, their complete indifference to a civilization whose benefits they cannot appreciate because they do not need them»<sup>(111)</sup>. Lioy did not use such racist statements, which did not match the humanitarian tone of his discourse; rather, he emphasized the great success of having a revolt repressed by former criminals: what better demonstration of the reform of convicts through deportation? «In the army of soldiers and sailors, who for ten months had to fight against the insurrection, people condemned for the Paris Commune took an energetic part. Anarchy at the service of order!»<sup>(112)</sup>

The French experience with deportation to New Caledonia played here a role opposite to that performed in the theories of Lombroso. Only four years later, the French example was cited in the Chamber to refute the validity of deportation. The Minister of Grace and Justice Zanardelli explained that the punishment did not work at all, because in France some convicts committed new crimes in order to be deported:

the most dangerous evildoers desire it in preference to establishments of punishment so that they commit new crimes [...] to be deported. [...] And indeed, the outdoor life, the distant land, arise in the imaginations of these people, who, among the attractions of the unknown, are surrounded by hopes and seductions<sup>(113)</sup>.

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<sup>(110)</sup> Charles LEMIRE, *La colonisation française en Nouvelle-Calédonie et dépendances*, Paris, 1877.

<sup>(111)</sup> RIVIÈRE, *Souvenir de la Nouvelle Calédonie*, cit., p. 281.

<sup>(112)</sup> LIOY, *Colonia penitenziaria ad Assab*, cit., p. 10.

<sup>(113)</sup> G. CRIVELLARI, *Il codice penale per il Regno d'Italia*, Vol. 2, Torino, 1891, p. 162 (session of 15 November 1888).

In 1888, also Nocito, a deputy since 1876, blamed the French use of deportation. In the French penal colonies, deportees' lives had been tragic: «execution by mutilation or dismemberment, as practiced by barbarians: it is death by cannibalism, as happened to some French deportees in New Caledonia who fell into the Kanaks' hands»<sup>(114)</sup>.

Instead, in that same year, senator Tullo Massarani once again referred to Dossi's novel when arguing to support overseas deportation. Dossi, «a man whose determination earned him a place in the President of the Cabinet's inner circle», had described the penal colony as a place where convicts could abandon the fight against each other and start a new fight against themselves, e.g., the battle for personal improvement (and, thus, for civilization)<sup>(115)</sup>.

The most comprehensive catalog of styles and keywords of the utopian discourse on punishment and in particular on deportation is undoubtedly set out in the booklet on the prison issue written by Adolfo de Foresta in 1880. The occasion of the writing was publication of the study by Beltrani Scalia on prison reform, which, in presenting empirical data and the history of different systems with the usual expertise, had reiterated the author's aversion to deportation<sup>(116)</sup>. De Foresta's defense of deportation was expressed in utopian prose, starting from the suggestive title *Neither scaffold nor prison*, and the choice of terms such as «regeneration», instead of the classic «reform»<sup>(117)</sup>. He envisaged not an improvement of the prison system, but a radical change which would lead to abolition not only of the death penalty but also of imprisonment itself: «this invention, I state, will disappear over time, like slavery, torture, and inquisition have disappeared,

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<sup>(114)</sup> *Ibid.*, p. 148 (session of 2 June 1888).

<sup>(115)</sup> *Ibid.*, p. 159 (session of 8 November 1888). The quote was from DOSSI, *La colonia felice*, cit., pp. 14-15.

<sup>(116)</sup> Martino BELTRANI SCALIA, *La riforma penitenziaria in Italia: studi e proposte*, Rome, 1879.

<sup>(117)</sup> DE FORESTA, *La riforma penitenziaria. Né patibolo né carcere*, cit., p. 63, where it is made clear that along with the convict it was Italy itself that needed to be regenerated.

like the scaffold will disappear»<sup>(118)</sup>. De Foresta presented a plan that was even cheap: it was not necessary to allocate numerous guardians to the penitentiary colonies because «the convicts should be governed by moral authority, by the awe of superiors and the sense of their own personal interest rather than force»<sup>(119)</sup>. This utopian discourse did not preclude realistic considerations on the dramatic increase of the Italian crime rate or the poor conditions of prisons and *bagni*. Above all, it did not preclude emphasis on the fact that deportation was consonant with the legitimate aspirations for social defense because, in regard to the most severe crimes, the only possible weapon was «the total and definitive expulsion from the social body that suffered from the offense»<sup>(120)</sup>.

Significantly, the final part of the booklet was not devoted to the penitentiary question as such but to Italy's colonial project. The most criminal delinquents, once transported to a distant land, would be «purified by work and distance» and would form over time a «new Italian homeland» which would constitute an «honor of the metropole» like Australia for England<sup>(121)</sup>. Very explicitly, the creation of a penitentiary colony would constitute the beginning of a larger colonial enterprise:

The colony abroad will give us credit and influence, will provide us with the basis to establish [...] other free colonies, where our emigration will be directed for the benefit of the country, and the Italian flag and name will not be reduced to the present sad condition of not having across the globe, beyond the borders of the country, any sovereign possessions<sup>(122)</sup>.

The absence of colonies would have blocked the expansionary force of the only authentic «Latin race» and de Foresta expressed his heartfelt concern for Italy, which risked «remaining limited to

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<sup>(118)</sup> *Ibid.*, p. 16.

<sup>(119)</sup> *Ibid.*, pp. 43-44.

<sup>(120)</sup> *Ibid.*, p. 22 (removal from society), 23 («healthy terror»), (to get rid from «the major riotous and recidivist ones») et alt.

<sup>(121)</sup> *Ibid.*, p. 57.

<sup>(122)</sup> *Ibid.*, p. 58.



the strip of classic land that constitutes it, and our sturdy and gracious race [...] will not expand elsewhere»<sup>(123)</sup>.

In short, the discourse shifted from the penitentiary field to the colonial one. Also racial considerations were involved, as when de Foresta worried that the Italian immigrants in South America, who forcibly lived under another flag, would gradually disperse their race into the Spanish one. In the end, the author seemed to invert the means and the end: «the only means» to help the government establish a transoceanic colony was «that of a penitentiary establishment»<sup>(124)</sup>.

## 6. *Conclusions: regeneration and conquest.*

The criminal code of 1889 — the expression of «a society in which repressive conceptions in criminal matters were progressively being mitigated in harmony with humanitarian principles» and the postulates of liberal constitutionalism<sup>(125)</sup>, «monument to liberty in Italy that was so scantily liberal»<sup>(126)</sup> — did not eventually foresee deportation. Nonetheless, from the 1870s onwards, the proposal to found overseas penal colonies had animated a broad public debate. Italian jurists were involved in a discussion that concerned the function of the penalty but ended up becoming a chapter of a much different problem, i.e., the usefulness of colonialism. For this reason, since the beginning, colonial deportation was on the lips of colonial expansion's propagandists, who had little to do with jurisprudence and theories on prisoners' correction but succeeded in becoming interlocutors of jurists. In the controversy that opposed Beltrani Scalia to Cerruti, there was the former's fight to remain within a discourse on legal principles and penitentiary problems, not accepting its subjugation to other questions, such as colonial expansion. It is no coincidence that the Si-

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<sup>(123)</sup> *Ibid.*, p. 59.

<sup>(124)</sup> *Ibid.*, p. 60.

<sup>(125)</sup> Carlo GHISALBERTI, *La codificazione del diritto in Italia 1865-1942*, Rome-Bari, 1985, p. 172.

<sup>(126)</sup> SBRICCOLI, *La penalistica civile*, cit., p. 194.

cilian bureaucrat addressing Cerruti's ideas underlined that the scholars of legal science were «the most competent men [...] to judge the question with legal principles, by which penal laws must first of all be shaped»<sup>(127)</sup>.

Since the discourse extended beyond legal science's borders, some of those who animated the debate were members of geographical societies, explorers, persons of letters who yearned for colonies as idealized places of regeneration and conquest. They sometimes tried to engage legal arguments. Carpi, who was not a jurist, sought to face the legal arguments against deportation but generically concluded that the perfect technology of punishment did not exist and the only possible universal formula to follow was the biblical sentence «I have no pleasure in the death of the wicked; but that the wicked turn from his way and live»<sup>(128)</sup>. Also Cerruti tried to use arguments related to the situation of Italian prisons and theories on convicts' reform. The position of de Foresta was particular because he was a judge but not a professor of law, and, in his theory, the legal reasoning merged on the one hand with a utopian description of a world without prison, and, on the other, with an overt imperialistic view in which the native people had to gradually disappear from the territory of the colony.

Two different elements contributed to spreading the colonial suggestion within the debate on deportation. First, utopia. For the German case, it has been noted that the supporters of deportation rather than solo-repressive ideas were bearers of a utopia<sup>(129)</sup>. In the Italian debate, the utopian discourse was used, besides de Foresta, by the writer Dossi, the journalist Lioy, and others. On closer inspection, Beltrani Scalia's writings aimed at deconstructing the idealized lexicon of the pro-deportation supporters and bringing the debate back to its concreteness consisting of statistics, numbers, historical experiences, and legal principles. The Sicilian civil

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<sup>(127)</sup> BELTRANI SCALIA, *La deportazione*, cit., p. 35.

<sup>(128)</sup> Ezekiel 33:11.

<sup>(129)</sup> RICHARD J. EVANS, *Tales from the German Underworld: Crime and Punishment in the Nineteenth Century*, New Haven, 1998; ROSENBLUM, *Beyond the Prison Gates*, cit., pp. 75-77.

servant adopted an anti-utopian discourse. The penitentiary problem was not a matter of utopias.

Secondly, science. According to positivism, on the one hand, social security required the expulsion of individuals held incompatible with civil society; on the other, a savage land could be the best place for recidivists and born criminals, who were affected by atavism precisely like the natives of the uncivilized parts of the world. In reality, the demand for social security escaped the boundaries of legal positivism, and most of the Italian jurists shared it, regardless of adhesion to a school, as a recent account has shown<sup>(130)</sup>. Obviously, the two elements overlapped in some authors: for instance when de Foresta expounded a natural law whereby the indigenous race would disappear before the stronger European ones. And this leads to a fundamental point: the image of the indigenous peoples functional to the imperialistic narrative on overseas deportation.

In the pro-deportation discourse, the indigenous peoples of the colonies played a rather minor role. They were passive and savage subjects who had to make room for — or disappear in favor of — the European convicts. In the second half of the 1860s, the General Director of Prisons Giuseppe Boschi tasked Cerruti (according to Cerruti's words) with finding a territory where «the indigenous people could be rapidly repressed or absorbed by the Italian emigration»<sup>(131)</sup>. Canonico, who was in contact with Cerruti and sponsored his project, stated that deportation required that the native populations were «still quite wild in order to exclude the danger of the penal colony becoming an instrument of corruption for them»<sup>(132)</sup>. According to Carpi, European deportees could bring the light of civilization to the savages<sup>(133)</sup>. As noted, de Foresta held that the indigenous races would certainly disappear, and the problem was to understand whether the Ita-

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<sup>(130)</sup> GARFINKEL, *Criminal Law in Liberal and Fascist Italy*, cit., has termed this widespread orientation «moderate social defense».

<sup>(131)</sup> CERRUTI, *Le colonie penali e le colonie libere*, cit., p. 678.

<sup>(132)</sup> Letter from Canonico to Beltrani Scalia, 22 March 1874, in BELTRANI SCALIA, *La deportazione*, cit., p. 123.

<sup>(133)</sup> CARPI, *Delle colonie*, cit., p. 9.

lians would be among the races that benefited from it or not<sup>(134)</sup>. Natives could also be useful for the sort of deportees who would turn into civil men: Lioy, for example, was enthused by the example of the repression of the Kanak revolt by the deportees of the Paris Commune. In this case, natives could be an instrument for the elevation of the convicts, which could not occur in a civilized land. Their state of wildness was a positive element of the landscape in which the convicts would insert themselves: they were «errant hordes or primitive tribes», as the positivist jurist Raffaele Garofalo later put it<sup>(135)</sup>.

The savage inhabitants of the colonies and the national criminals ended up being part of the same semantic field. Arcangelo Ghisleri, one of the most perceptive anti-colonial intellectuals of the late century, maintained that many intellectuals denied the humanity of barbarians in the name of the superior civilization, and in the same way criminals and the mentally ill were reduced to «useless encumbrances on our social coexistence» in the name of social defense<sup>(136)</sup>.

In those years, some of the most distinguished exponents of the legal culture succeeded in promoting a criminal code that foresaw neither the death penalty nor overseas deportation. From the sources analyzed here it is clear that the final choice not to introduce the penalty of deportation was the result of the opposition raised by most of the jurists involved in the debate (in particular, of the specific weight of certain persons<sup>(137)</sup>) and the strategy of the General Supervisor of Prisons, who became General Director in 1876.

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<sup>(134)</sup> DE FORESTA, *La riforma penitenziaria. Né patibolo né carcere*, cit., pp. 58-59.

<sup>(135)</sup> Raffaele GAROFALO, *Criminologia: studio sul delitto, sulle sue cause e sui mezzi di repressione*, Turin, 1885 (but here quoted from Turin, 1891), p. 254.

<sup>(136)</sup> Arcangelo GHISLERI, *Le razze umane e il diritto nella questione coloniale*, ed. by R. Rainero, Milan, 1972, p. 42.

<sup>(137)</sup> See Fulvio CAMMARANO, Maria Serena PIRETTI, *I professionisti in Parlamento (1861-1958)*, in *Storia d'Italia*, Vol. 10, *I professionisti*, ed. by Maria Malatesta, Turin, 1996, pp. 521-589.

Nevertheless, the fact that the legal culture's strong core opposed deportation and won this battle did not mean that these jurists were contrary to colonial expansion. Instead, it meant that they did not accept exploiting for political purposes a debate that should have been purely legal. They did not oppose the colonial idea in itself, as some of their comments showed: the presence of a mass of Italian criminals in the colony could be a burden for a good colonial government; the deportees would be a «dead weight (*zavorra*)»<sup>(138)</sup>, in Nocito's words, which would impede the superior nation's endeavor to civilize the natives. As a matter of fact, colonial rulers would provoke a long controversy over the human quality of the men brought into the colony<sup>(139)</sup>. If we want to find a distinction criterion, we can state that the more liberal intellectuals supported this position, while those more imbued with authoritarian ideas favored deportation as an instrument of colonial expansion. However, it was not support for colonial enterprise that distinguished between the two factions.

In short, colonial expansion represented a possibility for both sides of the discussion. Significantly, it was a staunch opponent of overseas deportation who started the Italian colonial enterprise, the highly appreciated international lawyer Mancini, who, in 1882, as Minister for Foreign Affairs, provided a legitimization of colonialism more effective than the need for penal colonies<sup>(140)</sup>.

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<sup>(138)</sup> *Camera dei Deputati, Atti parlamentari Legislatura XVI — 4ª sessione — Discussioni — Tornata del 14 maggio 1890*, Rome, 1890, p. 2852. See LENCI, *Deportati in Eritrea*, cit., p. 210.

<sup>(139)</sup> See Nicola LABANCA, *Oltremare. Storia dell'espansione coloniale italiana*, Bologna, 2002, p. 373.

<sup>(140)</sup> See Olindo DE NAPOLI, *Race and Empire: The Legitimation of Italian Colonialism in Juridical Thought*, in «The Journal of Modern History», 85 (2013), 4, pp. 801-832.