Narrating the crisis and legitimizing the use of emergency legislation: political crime as a premise of the authoritarian state

di MARCO PIGNOTTI
Università di Cagliari
pignotti@unica.it

Abstract: During the liberal era, from unification to the rise of fascism, many governments experimented with emergency legislation to control public order or repress the mobilization of opposing political groups. With the approval of the new penal code, political crimes remained an ill-defined offense. Consequently, Crispi and Di Rudinì implemented a state of siege on two separate occasions to condemn any attempt to spread values and principles contrary to the old constitutional foundations of the Albertine Statute.

Keywords: Liberal age in Italy, emergency legislation, political crime, political struggle, liberalism

1. To guarantee or to repress?

In 1887 the first government led by a member of the southern political class was formed under the leadership of the Sicilian Francesco Crispi. Two years later the new penal code comes into force with the aim of: «migliorare l'individuo prevenendo le recidive […] portare un vantaggio all'economia nazionale e una tutela alle persone e alla proprietà» (Adorni 1999: 364-365).[1] The draft was presented in July 1889 and contained the goal of "correcting" deviations that are far from constitutional values such as social duty and patriotism. Crispi is the last representative of the Italian Risorgimento experience to become prime minister, but he immediately demonstrates a great chemistry with the conservative majority and the Savoy court, which traditionally appreciate authoritarianism. Therefore, a figure like Crispi perfectly represents both the desire to redeem the South from the old racist conceptions and the need to secure the structure of the state by force. His goal is to govern the transformations of a changing society and to fight crimes getting increasingly sophisticated. During the 1880s and 1890s, phenomena such as urban overcrowding, the impoverishment of the peasantry, and the spread of socialist political associations took hold.

The new code was drafted by a parliamentary commission and was deeply influenced by the emerging positive school. At that time Cesare Lombroso had already published *L'Uomo Delinquente*, and great attention was paid by medical scholars to the periodical «Archivio di Psichiatria». The positivists express reservations about the approach of the new code. Cesare Lombroso points out the excessive mildness of the penal norms in his pamphlet *Troppo presto*, published in 1888 (Lombroso 1888: 14; 17-18). The Turin

[1] "Improving the individual by preventing recidivism [...] bringing advantage to the national economy and protection to persons and property". All translations in the footnotes are mine.

DOI: 10.34102/itde/2025/16336

physician considers the lowering of penalties wrong, because this will not correspond to a decrease in the criminal spiral (Montaldo 2011). This criticism influences the legislators to the point that the final text makes the code more punitive than the original setting, especially regarding the ambiguous category of "political" crimes. In the new code, guarantor elements and a repressive vision coexist. The result is a synthesis that prioritizes the maintenance of public order at the expense of individual liberties. While remaining in a liberal context, it is not clearly demarcated a boundary to avoid arbitrary recourse to emergency measures such as the State of Siege. A circumstance that occurred under the second Crispi government, in December 1893, when a "state of war" was applied in Sicily and Lunigiana with royal decrees dated January 1894, as a result of protest movements that had broken out in the previous months (Trovalusci 2023: 134-137). During the parliamentary debate following the repression, the difficulty of establishing a precise definition of "political offense" clearly emerges. On the 24th of February, 1894, the representatives of the far left, Badaloni, Ferri, Prampolini and Agnini, therefore, condemn the government: «La Camera pone il Governo in stato di accusa, ritenuto che con lo stato d'assedio, coi tribunali militari straordinarii e con le enormità commesse a danno della vita e della libertà dei cittadini, abbia, per interessi di classe e col pretesto dell'ordine, dato esempio di arbitrii e violenze repugnanti alle leggi del progresso e della giustizia sociale violando gli articoli 6, 26, 27, 28, 32, 70 e 71 dello Statuto» (PA-CoD 02-24-1894: 6646).[2]

The punishment reserved to the political mobilization through the declaration of a state of war reminds an entire political class of the period of despotism, when reactionary regimes imposed harsh punishments on the patriots of Risorgimento who fought against «il governo della sciabola, quale ultimo puntello dei più dispotici governanti» (ivi: 6679).[3] After dozens of years, such a measure appears even more unacceptable, as it is taken without the prior approval of the Parliament. The Chambers are closed by decree on the 22nd of January, and the start of the parliamentary session is postponed until the 20th of February. The military judiciary, therefore, can prevail over the ordinary one.

Those who claim greater guarantees in favour of the accused denounce the use of retroactivity in the repressive measures allowed by martial law. Even a lawyer is unfairly subjected under judgement in the military court, accused of the facts of Lunigiana, although the insurgence took place before the emergency decree came into effect.[4] After all, according to the government's interpretation, «non sarebbe opportuno che i primi arrestati si sottraessero alla giurisdizione speciale». The same strategy is applied in Sicily where some of the defendants, together with the deputy De Felice Giuffrida, are charged with the crime of "eccitamento a delinquere" and put before the judgement of the war court

[2] "The Chamber places the Government in a state of accusation, considering that with the state of siege, with the extraordinary military tribunals and with the enormities committed to the detriment of the lives and freedom of citizens, it has, for class interests and under the pretext of order, set an example of arbitrariness and violence repugnant to the laws of progress and social justice, violating Articles 6, 26, 27, 28, 32, 70 and 71 of the Statute"; Parliamentary Acts (henceforth PA), House of Deputies (henceforth CoD), Debates, Legislature XVIII, February 24, 1894, p. 6646. When citing from parliamentary acts and debates the notation (PA-CoD date) will be applied.

[3] "The repressive government as the last of the most despotic rulers".

[4] (PA-CoD 02-24-1894: 6687).

due to the declared incompetence of the civil one.[5] Thirty years after the suppression of brigandage, public order and law enforcement come back again to be a matter of public record. Prominent government representatives, such as Finance Minister Sidney Sonnino, question the legitimate use of an emergency legislation that sometimes requires setting aside any «scrupolo di carattere costituzionale», if the "sacred" principle of national unity is at stake (Haywood 1999: 181-182). Political dissent expressed outside the institutional area, therefore, is not explicitly protected by the statutory rules; on the contrary, it can be repressed if it takes on the characteristics of popular mobilization. This is why Crispi is appointed president of the council "by popular acclaim" and depicted by the press as the new Titan. Authoritativeness and authoritarianism converge in his political leadership, unlike other political figures more inclined to mediation: «stringere i freni e fare…. il colpo di stato».[6] Crispi's use of force ensures both social order and the progressive and modernizing role of the national bourgeoisie (Fozzi 2010: 182 ff.). The need for emergency measures aims to prevent the implementation of a subversive plan that may shatter national integrity and benefit a foreign enemy of the Kingdom of Italy. The international enemy hypothesis is nothing but the pretext to invoke the war code, in the place of the ordinary one, and to employ the army. The foreign danger turns out to be completely unfounded; nevertheless, the state of siege is presented as a fundamental measure in order to deal with "civil war" in areas where social subversion is raging (Duggan 2000: 773).

The groundwork was laid for the construction of the myth: Crispi became the «savior of the Fatherland» (Sagrestani 1976: 138-139). The parliamentary debate closes with the political triumph of the repressive line, in view of the resounding unprecedented response obtained by the Damiani agenda: 342 votes in favour, including those of the most adverse moderate exponents (Rudinì and Giolitti) and 45 votes against, expressed by the Far Left. The Chamber of Deputies approves by a very large majority «l'azione del Governo, diretta alla tutela della pace pubblica, confida che esso saprà definitivamente assicurarla con opportuni provvedimenti legislativi».[7] To sanction the securitarian, but above all anti-socialist, turn of the government is the authorization to proceed against the honourable Member De Felice Giuffrida, accused of conspiracy, excitement to civil war and apology of crime. In fact, the parliamentary immunity provided by Article 45 of the Statute is broken, although arrest is permitted only in the face of the explicit flagrancy of the crime, a requirement completely absent in this circumstance. The infringement of the law is permitted and legitimated as far as it allows to guarantee national safety and integrity; in the words of the honourable Member Giorgio Arcoleo: «[...] non si fanno accademie e discussioni bizantine per decidere se debba o no assicurarsi la difesa dello Stato; perché […] spesse volte è dovere del Governo di passare sopra ad una legge, sembrando di violarla, pur di rispondere alle grandi, urgenti esigenze dello Stato».[8] Arcoleo is not only a

[5] "It would not be appropriate for the first arrestees to evade special jurisdiction". (PA-CoD 02-20-1894: 6501).
[6] "Tighten the brakes and do ... the coup". (PA-CoD 03-03-1894: 6882-6891).
[7] "The action of the Government, directed to the protection of public peace, trusts that it will know how to definitively ensure it by appropriate legislative measures". (PA-CoD 03-03-1894: 6910-6911).
[8] "[...] one does not make academies and Byzantine discussions to decide whether or not he should secure the defense of the State; because [...] it is often the duty of the Government to pass over a law, appearing to violate it, in order to meet the great, urgent needs of the State." (ivi: 6894).

qualified jurist, but also Deputy Minister when the government led by Prime Minister Di Rudinì, in May 1898, resorted to the application of a state of siege that culminated in the tragic massacre of Milan. Arcoleo's speech raises severe objections from the parliamentary opposition, because it not only justifies the government's actions but also proposes a "pure and simple" agenda that allows Crispi not to present to the elective Chamber any justification for the action taken: «il Presidente del Consiglio non è uscito dalla legalità perché non occorre che si iscriva in una legge, sia pure lo Statuto, che bisogna difendere lo Stato dai pericoli esterni ed interni».[9] Arcoleo, a constitutional law professor at the University of Naples, reinforces the theory that a government is authorized to use force, without prior approval from the elective assembly, when it believes the integrity of institutions is at stake: «non ha bisogno di domandare voti di fiducia».[10] The professor considers the establishment of military tribunals fully legitimate, arguing that the measure is within the powers of an executive who will then be judged for his political conduct. According to his interpretation, the use of an extreme measure such as the application of a "state of war" and the suspension of ordinary guarantees, is a matter for the government alone. The state of siege, therefore, remains a decision that, in the absence of a law, takes on a political value, as Alessandro Fortis points out, and can only be evaluated in retrospect by the Chambers. These motivations led to the draft of the Damiani agenda: «io non giudico che dal solo punto di vista politico […] Io vedo nell'opera del Governo un'opera di salvazione».[11] In granting confidence to Crispi's government there is thus a mixture of patriotism and recognition towards those who participated in the repression of the Sicilian uprisings of 1860 and 1866 «quando insorgeva solo Palermo».[12] In Francesco Crispi's concluding speech, before the vote, a political class that carries around militant patriotism and experiences in the military tries to symbolically enforce its role of power, declaring that «so come avvengono le rivoluzioni, e soprattutto nel nostro paese […] Le rivoluzioni si concepiscono in Palermo ma si completano coi volontarii dei Comuni che la circondano […] così avvenne al 1848, come al 1860, come al 1866».[13] For these reasons Crispi rejected the agendas that contained a reference to a *bill of indemnity*, equating the use of the state of siege, first, to a necessary measure that still violates the law and must, therefore, be remedied, and secondly, to the conversion into law of implementing decrees of emergency measures. Any hypothesis of censure by Parliament seemed unacceptable to the government. With nearly three hundred votes to spare, the Chamber of Deputies approves, by roll call, the domestic policy adopted by the government to contain the unrest that occurred in Sicily and Lunigiana, and authorizes Crispi to promote a substantial package of measures aimed at curbing the spread of socialist and anarchist associationism (Garfinkel 2019: 170-176): «Io qui non riconosco [alla Camera] che rappresentanti della nazione: ciascuno ha la propria opinione che può essere discussa, ma nessuno può avere

[9] "The president of the council has not gone outside legality because the necessity of defending the State from external and internal dangers has not to be inscribed in a law to be effective". *Ibid*.
[10] "It does not need to ask for votes of confidence".
[11] "I do not judge that from a political point of view alone [...] I see in the work of the government a work of salvation".
[12] "When only Palermo rose up". (Ivi: 6901-6902).
[13] "I know how revolutions take place, and above all in our country [...] Revolutions are conceived in Palermo but they are completed with the voluntaries of the Communes that surround it [...] so it happened in 1848, as in 1860, as in 1866". (Ivi: 6904).

il mandato di partiti extra-legali che nella Camera non possono esistere […] non temo i socialisti alla Camera, ma non posso approvare l'opera dei socialisti e degli anarchici al di fuori del Parlamento, quando quest'opera ha per iscopo di rovesciare le istituzioni».[14]

As a result, in the summer of 1894, three bills that more severely prosecuted "political" crimes and demonstrations of political dissent were passed. Not only anarchists, but also socialists and republicans suffer the effects of persecution through restrictive measures such as forced domicile, used until then only against common criminals. Certainly, the assassination attempt perpetrated in June against the prime minister by Paolo Lega contributed to the acceleration of the repressive turn,[15] allowing Crispi to increase his consensus in public opinion. During 1894 there was a strong tension between liberalism and authoritarianism, between personal freedoms and public order. Therefore, even the entry into force of the Zanardelli Code, whose drafting was influenced by the classical liberal school, does not collide with the 1890 Testo Unico di Pubblica Sicurezza, showing all the contradictions that accompanied the life of the Kingdom of Italy, especially in the decade that ended with the so-called crisis of the turn of the century.

The debate around the types of political crimes registers a violent discussion in the Chamber of Deputies, when the new motions regulating public order are submitted. Among the many speeches dissenting from the repressive approach adopted by the government, the one by Pietro Nocito, an authoritative professor of criminal law and procedure at the University of Rome, stands out. Nocito defends a garantist line and proposes a penal culture that values political mediation. Therefore, he rejects the hypothesis of the crime of incitement by the press: «si dice che l'istigazione deve essere fatta *pubblicamente*. Non è forse la stampa un mezzo di pubblicità» (PA-CoD 07-07-1894: 11397-11398).[16] The risk of restricting freedom of the press is real, as deputy lawyer Enrico Ferri also points out. The criminalization of social dissent becomes the political objective of the executive, as it does not limit itself pursuing the typical criminal modalities of anarchism: incitement to commit a crime, apology of a crime and excitement to disobedience of the laws. The government adds to this group an unprecedented offense: the manifestation of hatred against a social class, which especially refers to socialist propaganda (PA-CoD 07-07-1894: 11404-11405).

[14] "I do not recognize here [in the Chamber of Deputies] that representatives of the nation : each one has his own opinion which can be discussed, but no one can have the mandate of extra-legal parties which cannot exist in the Chamber [...] I do not fear the socialists in the Chamber, but I cannot approve the work of socialists and anarchists outside of Parliament, when this work has for its purpose the overthrow of institutions". (Ivi: 6906).

[15] Paolo Lega is a young carpenter who attempted to kill Crispi with two revolver shots. Police tried to identify behind the act of a single individual the plot of an organized conspiracy. In reality, Lega turns out to have no political background. During the trial held in Rome on July 19, Lega declares that he committed the act: «not out of personal hatred but as an act of protest against certain privileged classes and oppressors [...]. I considered the events that happened in Italy, the massacres ordered by the government and decided to make an act of social vindication. I proposed to strike a man who is responsible for so many evils but not him as a man but as the most important person in the state». Cfr. Testimony of Paolo Lega reported in «Il Secolo», July 20-21, 1894.

[16] "It is said that incitement must be done *publicly*. Doesn't' the press serve as a means of publicity?".

2. Code and the political crime

At the end of the parliamentary debate, despite a fierce opposition from the far left, the measure obtained a very large majority: the "political offense" is now equivalent to any other crime, as the legislature preferred to protect the status quo and social order instead of guaranteeing freedom of expression. During the preparatory phase of the new penal code, there seems to be a tendency to define more clearly the category of political crime, in order to distinguish common crimes from the manifestation of thought and freedom of association. In fact, the new code reserves many articles for the institution of extradition for political crimes (Colao 1986: 2-3); not only «per il carattere relativo più che assoluto, locale più che generale» of the criminal class taken into account,[17] because what is considered a "political crime" in one state, may be considered legal in a territory subject to a different sovereignty. As a result, political extradition is protected similarly to political asylum. A measure widely resorted to by refugees in exile in the decades preceding Unification, as Giuseppe Zanardelli acknowledged: «questa esclusione […] doveva tanto più gelosamente essere scritta nel codice italiano, poiché dell'asilo ai profughi politici meno d'ogni altro Stato potrebbe fare buon mercato l'Italia, che dovette sì a lungo fruirne per tanti de' migliori suoi figli». Afterwards, this initial mildness is outclassed by a repressive tendency when faced with the category of "political crime". Prior to the advent of the new code, Italian penal doctrine identified the political crime with a conduct that has the potential to subvert the institutional structure of a state (Colao 1986: 5-7). Therefore, the social harm caused by a political crime is judged less serious than the imbalance caused by common delinquency. The guarantor structure of legal liberalism stipulates that political crime is condemned only when it reaches excesses and not for its ideological content. As a result, a milder treatment is given to the dissenting defendant than to the common convict, both on a strictly procedural and substantive level. In addition, the presence of the popular jury in the Assize Courts results in widespread benevolence toward defendants. In this regard, the trial held in 1875 in Florence proves significant: a group of internationalist militants on charges of conspiracy with armed gangs came out acquitted in the absence of concrete evidence from the police. The same outcome occurs in 1876 in Bologna: the sentences handed down to a group of conspirators charged with incitement to civil war and armed revolution against state forces are annulled thanks to the jury of the Court of Appeal. Ten years later, even at the major trials for the Mantua uprisings of *La Boje!*, the jury of the Venice Court of Assizes acquitted the peasants of charges of damaging property, livestock, land and of threatening the security of the state (Davis 1989: 285-288). The judiciary is, consequently, often forced to single out lesser charges in order to obtain a minimum sentence from the ordinary courts, as with the anarchists tried in Rome in 1883, who were sentenced to more than three years' imprisonment for the crime of "associazione di malfattori" and not on the charge of "cospirazione contro lo Stato" (Casanova, Santosuosso 1976: 30-31).

The new Penal Code introduces criminal conspiracy among the offenses in order to facilitate the prosecution's persecutory activity against those who are tried for a politically motivated crime.[18] Behind this choice, there is the desire to reduce the prevailing

[17] "Because of the relative rather than absolute, local rather than general character". *Progetto per il Codice penale del Regno d'Italia*, cit., p. 68.
[18] *Ibid.*

absolutory tendency in the work of juries, which generally express a more favourable custodial measure to the political offender, namely the *reclusione* in lieu of the more afflictive *detenzione*, as the first one does not subject the convicted person to silence and hard labor. Once again, the milder vision of the draft undergoes substantial adjustments at the request of the conservative majority of the committee. In the case of ideological crimes aimed at offending the person or the dignity of the Sovereign, the Regent, the Crown Prince, the Senate or the Chamber of Deputies, the final proposal opts for the punishment of imprisonment (Articles n. 104, 117, 118, 120, 131).[19] On the other hand, in the last decade of the nineteenth century, new forms of social conflict emerged, resulting in a renewed need for state protection at the expense of garantism. Phenomena such as the organization of workers' and trade union associations, together with more massive anarchist propaganda, fuelled a sense of insecurity in public opinion, as in the case of the subversive movements that occurred with the 1893 mobilizations in Sicily. In this circumstance the institutions followed a line of stiffening in a repressive sense, although it was disguised through a vast modernization of the state administration favoured by the last Crispi government (Sbriccoli 1973, 1974). If the French penal tradition conceptualizes the political offense as a threat against the order in its highest expression (protection of the monarchy, the form of government, the Constitution, the order of succession to the throne and parliamentary functions) a part of Italian jurisprudence considers it necessary to broaden the definition, including threats to the corporate order, its values and its relations of production. Private property, production system and institutional structure are posed on the same level.

In the years following the Florentine bombing and the insurrectionary project in Bologna, the events at Villa Ruffi and the attempted regicide carried out by Passannante, a definition elaborated by the lawyer Ferdinando Mecacci emerges, in which are *political* both crimes that «per ragione dello scopo che si propongono, non abbiano altra causa che il cambiamento della forma di governo o l'indirizzo politico di esso», as well as those committed through «la stampa, da chi avrà fatto pubblica adesione a qualunque altra forma di governo, o manifestato voto o minaccia della distruzione dell'ordine monarchico» (Mecacci 1879: 64-65). The defence aim, thus, focuses both on institutional and socio-economic frameworks. As a result, the punishment for political crimes registers harsher sentences in the final draft of the penal code, while the pro-guarantee approach is scaled back. The text represents a compromise between Francesco Carrara's legacy of rejecting the category of "political crimes" and the persecutory aspirations expressed by the emerging legal class. The Commission's minutes reveal a desire to avoid a definition of "political crime", because in this way it is more automatic to sanction all the different types of ideological crimes. In this regard, Francesco Auriti proposes a list of requirements to identify the "political crime", while Emilio Brusa considers it impossible to work out a rigid definition,[20] considering as more appropriate to leave the judiciary free to

[19] *Allegato B. Tavole dimostrative della Commisurazione delle Pene ai singoli reati secondo il progetto,* in "Progetto del Codice Penale per il Regno d'Italia", cit., pp. 745-800. *Verbale n. XIX, seduta antimeridiana del 2 marzo 1889*, in "Codice Penale per il Regno d'Italia. Verbali della Commissione istituita con Regio Decreto 13 dicembre 1888", cit., pp. 288-302.

[20] See *Minutes No. XVI, session February 28, 1889*, in *Verbali della Commissione istituita con Regio Decreto 13 dicembre 1888*, cit., p. 245.

identify the crime on a case-by-case basis. Nevertheless, the desire to sanction political dissent spreads throughout the code, providing relevant prison sentences against both political antagonism and social subversion. As a result, the category of "political" englobes crimes of opinion, association and assembly, especially when the aggravating circumstance of "lesa maestà" is combined with them. Crimes of offence against the honour, reputation and decorum of parliamentarians and public officials are illustrative examples of this phenomenon. On this matter, it is possible to identify an *escalation* with regard to the manifestation of dissent, which, in both mild and more radical cases, is punished for mere intentionality rather than actual factuality. Specifically, in the section of "Delitti contro la Patria" (Article 115), three to five years of imprisonment are provided for anyone who destroys or defaces the flag or other emblem of the state in a public place.[21] Closely related to the verbal or symbolic manifestation of dissent are the offences of defamation against the King, the Regent and the Crown Prince (Art. 122), insulting the Chamber of Deputies and the Senate (Art. 123) and the institutions of the Kingdom (Art. 126).[22] Of a much different level is the punishment reserved for the one who brings offense, by words or acts, to a member of Parliament, a public official or an agent of the public force (Art. 194). In this case, it is not an act of political dissent, but of disrespect for authority,[23] while specific aggravating factors are provided in the next article (Art. 195), if the use of violence or threats occurs: the meaning of which, however, again implies much ambiguity.

The concept of public violence against state administration is expanded to include the more punitive view of some members of the Commission, influenced by the social and psychological impact caused by the internationalist attempts in Bologna and Florence. In this case, the perpetrator of *vis publica* is the one who uses violence or threats "ad un pubblico ufficiale o ad un agente della forza pubblica nell'esercizio delle sue funzioni o per causa di esse, o per semplice odio all'Autorità".[24]

> Questa modificazione mi è stata suggerita dalla considerazione che il delitto contro una persona rivestita di pubbliche funzioni è delitto contro l'Autorità, in quanto tra il fatto del colpevole e la persona presa di mira vi sia un nesso di relazione, quale appunto consiste nel motivo che determina il fatto, avvenuto a causa delle sue funzioni […].[25]

The model outlined by the new code blurs the definition of public official, which becomes extremely nebulous, and makes it difficult to identify the person who is guilty of

[21] See art. 115, c.p., 1889. See *Verbale n. XVI, seduta 28 febbraio 1889*, in *Verbali della Commissione istituita con Regio Decreto 13 dicembre 1888*, cit., pp. 259-260.
[22] See arts. 122-126, c.p., 1889.
[23] Next to imprisonment, the alternative of a fine is provided: between fifty and three thousand liras, if the offense is directed at a law enforcement officer, between three hundred and five thousand liras, if directed at another public official or a member of Parliament (Art. 194, Penal Code 1889).
[24] "To a public official or an agent of the public force in the performance of his duties or because of them, or out of simple hatred of the Authority". *Progetto del Codice penale per il Regno d'Italia preceduto dalla Relazione ministeriale*, cit., p. 322.
[25] "This modification was suggested to me by the consideration that the crime against a person holding public office is a crime against the Authority, insofar as between the fact of the offender and the person targeted there is a connection, which precisely consists in the motive that determines the fact, occurred because of his functions". *Ibid*.

the crime against public administration (Colao 1986: 226-227). On the other hand, the protesting nature of crimes committed symbolically by the crowd against places and symbols of public administration transpires very frequently in the trials held at the end of the century. Even in this circumstance, the harshness of the penalties confirms the persecutory will of the legislature, which intends to create a strong deterrence towards any kind of political and social mobilization. The punishments, indeed, include nighttime segregation and daytime silence, during which the convicted person is spurred to reflect on his or her mistakes and do penance, and at the same time has to work, as labour is considered an activity that carries with it disciplinary and reintegrative effects. A further snub to the offender's right of expression turns out to be Article 198, which deprives the offender of the opportunity to prove the truth, notoriety of facts or qualities attributed to the offender.[26]

It is necessary to linger on the criminal category against public administration with regard to the associative aggravating factor, since it was this requirement that justified in January 1894 the recourse to the state of siege in Sicily and the subsequent approval of the anti-anarchist laws (Trovalusci 2023: 142-143). The 1848 statutory text does not contemplate any article in this regard, as it merely recognizes «il diritto di adunarsi pacificamente e senz'armi» (art. 32): no other collective freedom is protected by the constitutional charter. Conversely, an explicit distinction is made between public and private assembly, two different attributions which authorize public security to suppress a public mobilization (Pace 1967: 241-243). In contrast to the Belgian and French constitutional charters of 1831, which grant right of assembly and right of association, the Albertine Statute records a non-incidental omission that responds to a precise political direction, which allows the executive to resort to emergency measures according to the degree of protection that wants to be granted to the freedom of association. Progressive jurists infer freedom of association from Article 32 itself, as rights belonging to the same *genus*. However, the practice adopted by Crispi, and later on by Di Rudinì, justifies the repression of those forms of associationism that have assumed an ideological character hostile to monarchical and constitutional principles.

3. Anti-anarchist laws: the repression of class hatred

The lack of concrete statutory protection of the right of association allows the assumption of restrictive and persecutory norms and practices on legislative, judicial, administrative and executive levels, especially when directed against individuals suspected of contributing to social and institutional disorder. Consequently, the tendency to identify any form of aggregation as a subversion aimed at threatening state security and public order materializes. In fact, the Code criminalizes and prohibits specific types of associations, such as the following: «l'associazione armata», which is against independence or unity of the state, against members of the monarchy and the Constitution, or directed to provoke an insurrection against the powers of the state (arts. 131-133); «l'associazione a delinquere», considered socially and publicly dangerous; and, finally, «l'associazione relativa al reato

[26] See art. 198, c.p., 1889.

di cospirazione» (Art. 134), which is sanctioned because it furthers foreign domination and national disruption.[27]

In the specific case of «delitti di associazione per delinquere» (Art. 248-251), a shift occurs leading the focus from a political to a social level. The threat of dissent connected with these types of crimes falls under the section dedicated to crimes against public order, considered by Zanardelli to be acts that «attacca[no] il buon assetto o perturba[no] il regolare andamento del vivere civile, ancorché non sia stata recata una lesione immediata a verun diritto privato o pubblico».[28] A criminal association, formed by five or more persons, exists where there is *intent* to commit a crime against «la giustizia, o la fede pubblica, o l'incolumità pubblica, o il buon costume e l'ordine delle famiglie e contro la persona o la proprietà».[29] Each individual gathered for this purpose is punishable even just for taking part in it. The *iter criminis*, thus, coincides with the planning stage: the association is punished in the strict sense, as the crime and intent are only presumed and, therefore, placed in the sphere of potentiality. In the absence of factual proves, the manifestation of thought is sufficient to incriminate a suspect. The Code provides *reclusione*, *detenzione* or *multa* for those who incite to commit crimes (Art. 246) and for those who make «l'apologia di un fatto che la legge prevede come delitto, o incita alla disubbedienza della legge, ovvero incita all'odio fra le varie classi sociali in modo pericoloso per la pubblica sicurezza», as the famous Art. 247 pronunces.[30] Special attention is paid to the public character of the two crimes: the attention of the Authority can be recalled in the case of a crime committed in private; but in order to disrupt public order, the production of a "scandal" of public resonance, conducted by a potential bearer of social disorder, is necessary.

Stricly related to associated crimes is the third title of Testo Unico di Pubblica Sicurezza, in which the reference to "dangerous classes" emerges as explicit. The use of this category reveals a process through which is given a unique placement for offenses classified as "socially dangerous" and for those identified as "politically dangerous". The social deviant, as vagrants and idlers are thought to be, can also be associated with any political opponent who threatens public order manifesting his dissent outside the Parliament (Adorni, 1999: 363-364).

4. Conclusions

In conclusion, during the work of the Commission responsible for drafting the final text of the Code, antithetical positions regarding the concept of "public order" emerge, as revealed by the title of the Zanardelli Code referring to acts of incitement to civil war and criminal conspiracy ("associazione a delinquere"). The debate pits, on the one hand, those

[27] Ivi: 287-288.

[28] "Attack the good order or disturb the regular course of civil life, even though no immediate injury has been caused to any private or public right". *Progetto del Codice Penale per il Regno d'Italia preceduto dalla Relazione ministeriale*, cit., p. 394.

[29] "Justice, or public faith, or public safety, or morality and family order, and against the person or property". See art. 248, c.p., 1889.

[30] "The apologia of an act which the law provides as a crime, or incites disobedience of the law, or incites hatred between the various social classes in a manner dangerous to public safety". See art. 247, c.p. 1889.

who want to sanction offenses against public order only when they actually produce *harm*, against, on the other hand, those who want to sanction manifestations of thought as well *(danger offenses*), because they want to control dissent in all its forms. A compromise is finally reached: an act to be criminally relevant must threaten public tranquillity, even without causing actual disturbance (Colao 1986: 22-23). The preparatory act is, as a result, highly impeachable and can be punished only for the potential of damaging public order in the future. The choice is formally translated in the Code through the use of the *nomen iuris* "fact directed to," criticized by Brusa for its appeal to preventive measures. In fact, it could authorize authoritarian governments to persecute any kind of social and political mobilization, since these measures: «rasentano molto da vicino, o sono addirittura leggi eccezionali, che male si addicono ad un Codice penale». Giacomo Costa, on the contrary, recognizes a nature of "special dangerousness" to this type of crime, which admits the use of exceptional measures.[31] As a result, the hardening of positions ends up resolving in the replacement of the designation "fact directed to" with mediated expressions such as "acts of execution" and "actions directed to", whose reference to the accomplishment of the act is hardly questioned in the case-law. The doctrine opts, therefore, in favour of identifying an intermediate offense related to the concept of apology in order to fill the normative gap. It adds a clause including the so-called «delitto di incitamento all'odio tra le classi sociali» in article 247, thanks to which «public exhortations within demonstrations», street rallies and even chants and shouts are comprised when «seditiousness» is detected (Colao 1986: 52-53).

In Crispi's vision, the intention to collect information on political opposition members culminates, after brushing the limits of constitutional legality, in the anti-anarchist laws of July 19th, 1894, which criminalize all forms of associations, aimed at subverting the social order, and the right of speech through the press (Romanelli 1979: 364-365). The need to extend to the printed press the applicability of the criminal offence "incitement to crime" proves the fear experienced by the government in regard of the mental vulnerability of the illiterate and ignorant populace, considered to be easily subjugated by newspaper articles that incite, in the words of Crispi, «l'odio per i propri simili, invece che l'amore della patria e della libertà, e dichiarano, citando Proudhon, che la proprietà è un furto» (Duggan 2000).[32] Giolitti's perspective is diametrically opposed to Crispi's. But the majority of deputies, even those critical of the suspension of the statute rules, such as Francesco Spirito, do not hesitate to point at the piedmontese statemen as the main culprit for what had happened in Sicily, for not having promptly dissolved the Fasci. Giolitti, in fact, rejects the class hatred clause contained in Article 247 of the Penal Code, especially in regards to protest movements that are the product of economically and not politically motivated claims (as in the case of the Mantuan uprisings or those of the "famine" at the end of the century), based on the famous principle that "prevention is better than repression".[33]

[31] *Verbale n. XXVI, sessione del 9 marzo 1889*, in *Codice Penale per il Regno d'Italia. Verbali della Commissione istituita con Regio Decreto 13 dicembre 1888*, cit., pp. 472-474.
[32] "Hatred of one's fellow man, instead of love of country and liberty, and declare, quoting Proudhon, that property is theft".
[33] (PA-CoD 02-28-1894: 6773).

References

ADORNI D. (1999), *Francesco Crispi. Un progetto di governo*, Firenze, Olschki.
CANOSA C., SANTOSUOSSO L. (1981), *Magistrati, anarchici e socialisti alla fine dell'Ottocento in Italia*, Milano, Feltrinelli.
COLAO F. (1986), *Il delitto politico tra Ottocento e Novecento. Da delitto fittizio a nemico dello Stato*, in «Quaderni di Studi senesi», Milano, Giuffré.
DAVIS J.A. (1989), *Legge e Ordine. Autorità e conflitti nell'Italia dell'800*, Milan, FrancoAngeli.
DUGGAN C. (2000), *Creating the Nation. The life of Francesco Crispi*, Roma-Bari, Laterza.
FOZZI D. (2010), *Tra prevenzione e repressione: il domicilio coatto nell'Italia liberale*, Roma, Carocci.
GARFINKEL P. (2019), *Criminal Law in Liberal and Fascist Italy*, Cambridge, Cambridge University Press.
HAYWOOD G.A. (1999), *Failure of a dream. Sidney Sonnino and the rise and fall of Liberal Italy 1848-1922*, Firenze, Olschki.
LOMBROSO C. (1888), *Troppo presto: appunti al nuovo progetto di codice penale*, Torino, Fratelli Bocca.
MECACCI F. (1879), *Dei reati politici*, Roma, Tipografia del Senato di Forzati e comp.
MONTALDO S. (ed.) (2011), *Cesare Lombroso. Gli scienziati e la nuova Italia*, Bologna, Il Mulino.
PACE A. (1967), *Libertà di riunione*, in *La pubblica sicurezza*, a cura di P. BARILE, Vicenza, Neri Pozza Editore, pp. 239-272.
ROMANELLI R. (1979), *L'Italia liberale 1861-1900*, Bologna, Il Mulino.
SAGRESTANI M. (1976), *Italia di fine secolo. La lotta politico-parlamentare dal 1892 al 1900*, Bologna, Forni.
SBRICCOLI M. (1973), *Dissenso politico e diritto penale in Italia tra Otto e Novecento. Il problema dei reati politici dal Programma di Carrara al Trattato di Manzini*, Quaderni Fiorentini per la Storia del pensiero giuridico moderno, Milano, Giuffré.
SBRICCOLI M. (1974), *Crimen laesae maiestatis. Il problema del reato politico alle soglie della scienza penalistica moderna*, Milano, Giuffré.
TROVALUSCI S. (2023), *The Last Titan of the Risorgimento. The myth of Francesco Crispi in liberal Italy 1876-1901*, Roma, Viella.