An introduction to the birth of criminal positivism in Europe and Latin America at the end of the 19th century: rise and resistance*

Yves Cartuyvels
Université Saint-Louis- Bruxelles

Aniceto Masferrer
Universitat de València

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1. Introduction: contextual grid

In the Western world, the end of the 19th century is marked by the birth of criminology. This new discipline, which, from the outset, was created as an auxiliary science to criminal law, calls into question the traditional criminal law which was the dominating theory and practice of the time. This new "truth regime" on crimes, criminals and sentences, in the Foucauldian sense of the term[1], arises in a specific context from an epistemological, political and legal point of view.

From an epistemological perspective, that time is marked by the *advent of scientific positivism*. By distancing itself from the philosophical and metaphysical approaches that dominated until that time, scientific discourse takes a positivist turn: anchored in reality, science will, from now on, privilege an empirical approach based on observation, experimentation and testing, in order to update the laws of nature and unveil the major causes of the phenomena that are observed. First observed within the natural sciences, this epistemological attitude is quickly transmitted into the social sciences in order to study the "physical laws" and the "social laws" that govern society and its evolution. For both natural and social sciences, the belief in the axiological neutrality of an approach to knowledge resulting from power struggles and value conflicts is imposed, stripped of any regulatory and speculative ambition, valuing experimentation as the

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[1] Foucault stated that truth should be understood no so much as "l'ensemble des choses vraies qu'il y a à faire découvrir ou à faire accepter, mais l'ensemble des règles selon lesquelles on démêle le vrai du faux" (Foucault, M., Entretiens avec Michel Foucault (1977), in Foucault, M., *Dits et écrits*, t. III : 1976-1979, Paris, Gallimard, 1994, p. 160.

unique source of knowledge, and aetiology (or the search for causes) as the foundation of the scientific approach. The concept of 'common good' disappeared.[2]

In the social sciences, positivism is developed on the basis of two strong intuitions that significantly affect the birth and development of "positivist" criminology: on the one hand, there is an evolutionary view of the human species, strongly influenced by Charles Darwin's works and his *Origin of Species,* which, after its publication in 1859, breaks with an essentialist and abstract perspective on the human being. In the second half of the 19th century, the idea that the human species is not unchanging, but rather that it evolves and adapts to its surroundings is widespread, whilst acknowledging phenomena of individual regression that produce "degenerates" in a "civilized world." On the other hand, a sociological reading of social realities, thanks to the research of August Comte and Alphonse Quetelet, is aimed at mapping and providing statistics for social phenomena so that they can be better managed and controlled. A dual individual and social matrix is quickly imposed at the heart of positivism in the social sciences, in order to explain social and individual phenomena. It is based on a deterministic interpretation of human behaviour that radically questions the metaphysical assumptions of free will and responsibility.

The influence of René Descartes is undeniable.[3] The dichotomy between *res cogitans* and *res extensa* contributed to the emergence of thinkers who focus on the former – like Sartre, for whom man has an unrestricted freedom, –[4] and others who focus on the latter – like Charles Darwin or Richard Dawkins, who mainly define and characterise man by his physical or biological dimensions.[5] It goes without saying that there were other philosophers or thinkers who brought human dualism to its extreme consequences: Friedrich Nietzsche and Sigmund Freud are probably the most representative figures whose influence is still undeniable today.[6] Descartes is a rationalist, but his dualism (*res cogitans – res extensa*) paved the way for those who understood that the scientific method needed to be empirical (*res extensa*), and that even social sciences should adopt this method because otherwise they would be (dis)regarded as a mere opinion, but not

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[2] On this matter, see Masferrer, A., "Criminal Law and Morality Revisited: Interdisciplinary Perspectives", *Criminal Law and Morality in the Age of Consent: Interdisciplinary Perspectives* (Aniceto Masferrer, ed.), Dordrecht-Heidelberg-London-New York, Springer (Collection '*Ius Gentium*: Comparative Perspectives on Law and Justice'), 2020, ch. 1.

[3] There is a connection between Descartes, Bacon, Comte and the rise of legal positivism of 19th century; on this matter, see for example, Weissman, D., "Positivism Reconsidered", *The Journal of Speculative Philosophy,* New Series, Vol. 8, No. 1 (1994), pp. 1-19; see also Smithner, Eric W., "Descartes and Auguste Comte", *The French Review* Vol. 41, No. 5 (Apr., 1968), pp. 629-640. As has been stated, "positivism also adopted René Descartes's epistemology (i.e., theory of knowledge). Descartes believed that reason is the best way to generate knowledge about reality. His deductive method implies that events are ordered and interconnected, and therefore reality is ordered and deducible. This internal inconsistency eventually undermined the validity of "positivism" (http://personal.denison.edu/~kaboubf/Pub/2008-Positivist-Paradigm).

[4] Franz Adler argues that the influence of phenomenologist epistemology led Sartre to think that "[m]an chooses and makes himself by acting. Any action implies the judgment that he is right under circumstances not only for the actor, but also for everybody else in similar circumstances" ("The Social Thought of Jean-Paul Sartre", *American Journal of Sociology* 55, 3, Nov. 1949).

[5] Richard Dawkins affirms, for example, that "a mother is a machine for the optimal propagation of her genes", and that "we are machines for survival, robots blindly prepared for the conservation of those selfish molecules that we call genes" (*Das egoistische Gen*, Berlin, 1978, pp. 145 and VIII; cited by Spaemann, R., *Lo natural y lo racional*, Madrid: Rialp, 1989, pp. 27-28).

[6] On this matter, see Masferrer, "Criminal Law and Morality Revisited: Interdisciplinary Perspectives", already cited.

as a real science. Moreover, Descartes' influence contributed to erect materialism (*res extensa*) and the mathematical method as the two relevant conditions for the advancement of science. This led the social sciences to adopt the method of the natural sciences. On the other hand, existentialism led to the opposite outcome: man needs to get rid of its limitations; the body (*res extensa*) is a limitation of the human mind or reason (*res cogitans*), so technology might enable man to overcome such physical or corporeal limitations. This leads to transhumanism.[7]

On a social and political level, the end of the 19th century is marked by strong movements of social protest against the industrial revolution in several countries. The liberal constitutional state or "Police State" is in a crisis, incapable of responding effectively to the real inequalities, which the abstract principles of individual responsibility and formal equality of the liberal constitutional state do little to conceal. The fear of the "dangerous classes"[8] and the threats of anarchism favour state intervention and encourage social reforms to avoid Revolution. As pointed out by the Belgian Adolphe Prins, the time has come for Capital to make concessions if the social order is to be maintained. Likewise, mainly in various European countries, a new insurance model of the social welfare state which carries different concepts of responsibility and risk stands out[9], where logic merges with the new criminal science.

Finally*, from a legal point of view*, the neat geometric constructions of legal positivism,[10] which dominated the second half of the 19th century, are called into question by anti-formalist approaches in law. At the turn of the 20th century, new trends such as the sociological school in France, with Léon Duguit; sociological jurisprudence, with Roscoe Pound; or Legal Realism, with Oliver Wendell Holmes in the United States, emerge to place emphasis on an empirical approach to the study of law, which cannot be separated from its application. The object of study of the science of law has become "the law in the facts", *i.e.* the law as a concrete reality as practiced in the courts, rather than a "law in the books", that is, as an autonomous and geometrical system of rules built on abstract texts. Likewise, some of these progressive lawyers, such as Pound or Holmes, highlight the need to conceive the law, from now on, as "social engineering", as a tool in the service of social transformation[11]. From a semantic point of view, the paradox is that at the birth of scientific positivism at the end of the 19th century, there is a crisis of legal positivism as seen by Kant, called in to give way or at least to be completed by an approach to law and jurisprudence that is more directly social.

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[7] The connection between Dawkins and thanshumanism has been even recognized by Nick Bostrom: "Many science advocates, such as Carl Sagan, Richard Dawkins, Steven Pinker, and Douglas Hofstadter, have also helped pave the way for public understanding of transhumanist ideas" (Bostrom, B., "The Tranhumanist FAQ: A General Introduction", p. 12; available at https://www.nickbostrom.com/views/transhumanist.pdf).

[8] Pratt, J., *Governing the dangerous: Dangerousness, law and Social change*, Annandale, The Federation press, 1997.

[9] On this, see Ewald, Fr., *The birth of Solidarity : The History of the French Welfare State*, Duke University press, 2020.

[10] See the radical version proposed by H. Kelsen in his *Pure Theory of Law* (Bauyme S., *Kelsen. Plaider la démocratie*, Paris, Michalon, 2007).

[11] See Schwitters, R.J.S., *Recht en Samenleving in verandering*, Deventer, Kluwer, 2000, pp. 180-185.

This evolution has a direct impact *in the criminal field*. Largely supported by contributions of scientific positivism, "criminal positivism" or "criminological positivism" shows the same mistrust of systematic and abstract constructions of the criminal law applicable in the 19th century. First represented by the Italian school of Lombroso, Ferri and Garofalo, to mention the most prominent figures, the "positivist protest" that marks the birth of criminology, denounces the metaphysical approach of the existing criminal law, its constitutive fictions, that is: free will, responsibility, and the refusal to envisage crime and criminals as social realities. The lax criminal discourse obsessed with Kantian retribution and oblivious to social interest is also criticized: "the sophism of the School of Law" lost in the meanderings of abstract and sophisticated constructions; the "new penology" opposes "the defence of society against 'dangerous individuals' who are also its 'natural enemies' as the priority for penalty[12].

With a clean break from the neoclassical criminal order that claims an empirical approach to the criminal question and how to address it, criminal or criminological positivism has a dual origin rooted in the history of social sciences in the 19th century. A first *anthropological* thread finds its source in the history of psychiatry, on the borders of crime and madness. Building upon the works of Lavater and Gall during the 19th century, influenced by the degeneracy discourse, *a school of criminal anthropology* is built on the idea of criminals as determined by their deep nature; degenerate beings marked by an atavism or by a biological anomaly. The psychiatrist Lombroso will take the lead of this biologising current, which singles out the criminal whose abnormality is seen on his body[13]. The second thread is sociological: represented by Ferri in Italy and, at times, excessively associated with the "French school" and Laccassagne, the *Sociological School* suggests a social interpretation of crime; placing emphasis on the effects that the surroundings have on committing a criminal act, without, however, denying the principle that the criminal has an anomaly (even if it is a moral one). A substantial part of the criminal debate at the end of the 19th century will be based on the opposition between these two approaches, a more biologising one and a more sociologising one, both of which seek to provide aetiological explanations for the commission of criminal acts and study solutions to the crime problem. By sharing a deterministic interpretation of man, these two contradictory and, at the same time, complementary threads within the same movement do not, however, draw the same conclusions regarding the response to crime. Depending on whether the criminogenic determinism is mainly linked to an action in a given context or to man's very essence, the answer oscillates between integration and elimination, between preventive action and prophylaxis.

It is in this triple context of epistemology, sociology and criminal law that the question arises of how legal or criminological positivism is not only received in Europe but also in Latin America, the geographical field of interest of our research. As highlighted above, this positivist discourse emerges in Italy in a more structured fashion before it is

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[12] Garofalo, R., *La criminologie. Etude sur la nature du crime et la théorie de la pénalité*, Paris, Alcan, 1888, p. X.

[13] Labadie, J.M., "Corps et crime. De Lavater (1775) à Lombroso (1876)", in Debuyst Ch, Digneffe Fr., Labadie J.M., Pires A.P., *Histoire des savoirs sur le crime & la peine, 1. Des savoirs diffus à la notion de criminel-né*, Bruxelles-Montréal-Ottawa, De Boeck Université-PUM, PUO, 1995, pp. 293-346.

spread elsewhere[14]. Since 1876, the publication of the *Uomo delinquente* has marked the birth of criminal anthropology and has shifted the analysis of criminal science towards the criminal individual by explaining crimes based on factors of a biological nature and especially on certain cranial defects specifically attributed to the criminal.[15] This biologising approach swiftly faced competition from a sociologising interpretation of crime which, mainly with Ferri, proposed a multi-causal theory of criminality. Criminals are thus presented as the result of anthropological, physical and social factors alike[16]. Even though positivism experiences a rapid success in Italy, the debate it stirs up in this country is quite representative of the tensions that quickly arise from a deterministic reading of crime. With the *Tierza scuola*, Lombrosianism is thereby called into question in the very country of its founding fathers from the start of the 1890s, and the quest for a third way, between the classical school's principles, which are deemed obsolete, and the excesses of positivist determinism, takes shape.

This search for a third way or of an "eclectic compromise" between criminal neo-classicism and criminological positivism is without doubt one of the most significant markers of the debates which will immediately be taken abroad. The third way is at the forefront of the discussions which, from 1888 to 1913, will stir the congresses of the International Union of Penal Law (IUPL; UIDP in French; IKV in German). Founded in 1888 by the German von Liszt, the Belgian Prins and the Dutchman van Hamel, and recording its resolutions at a series of international penal congresses, the IUPL is an important venue to discuss and spread positivist ideas. Gathering specialists from different countries, the Union offers a framework for debate where partisans of criminal classicism and members of the new positivist doctrine can interact. The former are concerned about maintaining the basic principles of criminality such as free will and criminal responsibility, the legality and proportionality of sentences or even the goals of retribution and deterrence. The latter endorsed determinism and irresponsibility, and insisted on the need to defend society against dangerous individuals by softening the basic principles of criminal law in order to prioritise social defence. Even though at the outset, the dogmas of criminal positivism and the reference to the Italian School make up the central message of the Union, over time the search for a compromise is placed at the forefront, to the point where Ferri believes that the Union has been "damaged in the limbo of eclecticism" [17].

This quest for a third way is without doubt the dominating attribute of the orientations that define the reception of criminal or criminological positivism in several countries. This compromising path makes its way between the interest roused by numerous questions and analyses fuelled by the positivist thinkers of the Italian School and the resistance produced by a global project that is considered a menace to the rule of law. In several countries, this middle path will thus lead to a double-track system of sentences and measures with a *Gesamte Strafrechtswissenschaft* perspective. Complementing the

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[14] On this regard, see Pifferi, M., *Reinventing Punishment: A Comparative History of Criminology and Penology in the Ninenteenth and Twentieth Centuries*, Oxford: Oxford University Press, 2016.

[15] On the reception of Lombroso's theories and the development of criminology in different countries, see Peter Becker and Richard F. Wetzell, **Erreur ! Document principal seulement.***Criminals and Their Scientists: The History of Criminology in International Perspective,* New York, Cambridge University Press, 2006.

[16] Marchetti, P. , "De la responsabilité au risque. L'Ecole positive et les «nouveaux horizons» du droit pénal, Chronique de criminologie", *Revue de droit pénal et de criminologie,* 2017, n. 6, pp. 562-585.

[17] Ferri, E., *Sociologia criminale*, Quarta edizione con due tavole grafiche, Torino, 1900, p. 53.

legalistic foundations and the retributive purposes of the classical criminal law, preventive, reintegrating and safety measures emerge upstream and downstream of the sentence depending on the degree of dangerousness of the criminal and the crime.

The reception of criminal positivism at the end of the 19th century and the beginning of the 20th century was not uniform. It underwent translation and reclaiming processes that depended on the specific social and cultural context of each country. At the end of the 19th century, Spain and Portugal did not have the same criminal debate as the Germanic world. Belgium or France, marked by the fear of social revolutions in the 1880s and 1890s, are not the USSR after the October Revolution of 1917. If criminal positivism enters these and other countries, it is always in a specific context which inflects the reception of a movement of more general ideas.

Our aim is to shed light on this "embedding" and "desembedding" [18] process in order to contribute to a more complete picture of the influence of criminal positivism on how crime was analysed and addressed at the turn of the 19th and 20th centuries in Europe and Latin America. For the sake of clarity, we have decided to first present how the debate proceeded in Europe starting from its point of departure in Italy; we will then examine the role of the International Union of Penal Law whose action was crucial in spreading and discussing "new ideas", before we contemplate how criminal positivism was received in different European countries. We shall then address the different contributions made to the discussion in Latin America, which are less well known to European readers, the reception of the positivist school in some American jurisdictions such as in Argentina and Brazil, a former Spanish territory and a Portuguese one, are also of great interest. A comparative approach to the reception of criminal positivism in Europe without addressing the issue in Latin America would be incomplete, as it would also require studying the Codification of criminal law. The context of both, the codification movement and the reception of criminal-law ideas, was not just European or Continental, but belonged to a much broader geographical scope: the Western world.[19]

2. The reception and discussion of criminal positivism in Europe and Latin America

2.1. Europe

1. Social defence was a key notion of penal reformism and in particular of the Italian positive school founded by Enrico Ferri. It entailed a rethinking of the tenets of penal liberalism and was based on the idea that criminal law, rather than being targeted to the protection of individual rights, should be socially oriented to collective security. The legal consequences of this approach are examined in Pifferi's essay. The choice of social defence as the rationale of punitiveness implied, in the positivist discourse, a rejection of free will as necessary condition of penal intervention and a

[18] Melossi D., Sozzo, M., Sparks, R. (ed.), *Travels of the Criminal Question. Cultural embeddedness and diffusion*, Oñati International Series in Law and Society, Oxford and Portland Oregon, 2011.

[19] Masferrer, A. (ed.), *The Western Codification of Criminal Law: The Myth of the Predominant French Influence in Europe and America Revisited*, Dordrecht-Heidelberg-London-New York, Springer (Collection 'History of Law and Justice'), 2018.

reconceptualization of responsibility in purely legal terms apart from any moral consideration. Moreover, the rather vague notion of social dangerousness became the justification of punishment, raising doubts on its assessment criteria as well as on the prerogative of the body (judicial or administrative) charged of its evaluation.

The individualization of punishment and criminal procedure, the great emphasis on prevention over repression, the need of adopting measures of social defence other than (and different from) traditional penalties were other arguments proposed by the Italian reformers, which were also deeply debated in international congresses. As Pifferi remarks, the revolutionary ideas proposed by adherents to the new school were not isolated, but were part of a broader reform movement. However, in Italy, the critical strength of penal positivism was not able to affect the legal system significantly. The Ferris' Project of penal code, drafted in 1921, embedded all the positivists principles, but was never enacted due to cultural and political resistance.

The issues of the legacy of positivism to fascist criminal law and of the influences of the 1921 Project on the 1930 Rocco code are still matters of historiographical debate. Even though Pifferi does not adhere to the continuity interpretation, nonetheless he shows how the tensions between the principle of social defence and individual safeguards survived the decline of the positive school and the fall of totalitarian regime and continued to characterize the Italian criminal law even after the enactment of the Constitution in 1948.

2. In Italy, the conflict initiated by the positivist school gives rise to the search for a third way. Promoted by Bernardo Alimena and Emanuele Carnevale, a "third school of criminal law" looks for an eclectic compromise between the excesses of the classical school, too absorbed in the abstract construction of the legal system and oblivious to the social reality of crime, on the one hand, and the excesses of the positivist school, enclosed in a naturalistic and "fatalistic" approach to crime as favoured by the Lombrosian theory of the born criminal, on the other hand.

As emphasized by Stefano Vinci in his rich contribution dedicated to *Bernardino Alimena and Emanuele Carnevale: the third school of criminal law searching for a compromise,* the two most prominent representatives of the third school fight to impose their eclectic compromise on the Italian scene from the beginning of the 1890s. In doing so, they face a storm of criticism, especially from the positivist side, with which they shared several assumptions. According to the supporters of the positivist school, the programme of "critical positivism" defended by the third school, as set out in a *Manifesto* presented by Carnavale as early as 1891, was not particularly original and was based on unfounded or incorrect criticism. The biological fatalism, for which it reproached the positivist school, for example, is out of date, since positivists also insist on the importance of social factors as causes of crime; the importance of undertaking social reforms in the fight against crime is interesting but had already been underlined by Ferri, whose theory on "criminal substitutes" and the "personality of criminal law" is criticised as a "scholastic concern". In other words, the differences are minimal, although they sometimes provide useful critical assessments but are certainly insufficient to found a "new school".

In contrast, the option of a third school is better received on the European scene, where the reaction against Lombrosianism and the focus on the sociological approach to crime is in line with the orientations given by the International Union of Penal Law. Within the Union, Tarde, Gauthier or von Liszt give credit to the "third Italian school" for having underlined the predominance of social factors as causes of crime and for providing a "sociological perspective" to the study of crime. Vinci concludes that the theories of the third school were not so original when contextualised in Europe at the end of the 19th century, characterised by the decline of Lombroso's doctrine. Still, such a discourse was courageous in Italy at the time, in a national context that was largely dominated by the representatives of the positivist school, where some of its members did not hesistate to add Alimena and Carnaval to the list of a "mollusc variety of eclectic criminalists" (Ferri).

3. The discussion initiated by the positivist school in Italy rapidly spread to the international scene. Amongst other initiatives, the International Penitentiary Congresses (1846-1950) and the meetings of the International Union of Penal Law (1889-1913) played a significant role in the dissemination of positivist ideas and their corresponding discussions. In their contribution "The Argentina participation in the International Penitentiary Congresses (1872-1950)", Esteban González and Jorge Núñez analyse the role played by the Argentinian delegates in the international penal and penitentiary exchanges. The framework for this analysis, though, is much more complex as it involves the mechanisms of international relations belonging to a specific sphere of knowledge, the importance of the International Penitentiary Congress for public policy planning, and the difficulties that emerging governments faced in their efforts to engage in sustained diplomatic relations of a scientific nature during this period. From early on, Argentina demonstrated interest not only in participating in the International Penitentiary Congress, but also in importing knowledge on penal systems.

But changing local circumstances conditioned Argentina's participation in the successive iterations of the event, which in turn meant different levels of commitment to the discussions that were held therein. Argentina's participation in the congress from 1872 up to 1950 can be divided into three categories: 1) participation of Argentinian experts in the penal and penitentiary question, as is the case for the congresses in Washington (1910), London (1925) and The Hague (1950); 2) participation by members of the diplomatic corps who had no ties or experience in the prison field – or, if they did, their participation was not noteworthy (for example, in Stockholm (1878), Rome (1885), Saint Petersburg (1890) and Brussels (1900) –; and 3) an outright absence, such as at the congresses in London (1872), Paris (1895) and Budapest (1905).

The contribution tries to cover a long period of almost a century and has therefore been divided into two parts: 1872-1905 and 1910-1950. The temporal division is not arbitrary, but linked to a new concern of the Argentine State to have a strong presence in these international scientific meetings by assigning the best experts. The article is based mainly on two primary sources: the documents available at the Historical Archive of the Argentine Foreign Office and the references to Argentina in the records of the International Penal and Penitentiary Congress, which for a number of years have been made almost fully available at the École Nationale d'administration Pénitentitaire's digital archive. The authors also reviewed secondary sources such as the reports of the Ministry of Justice and Education and the publications issued in Argentina on the

country's participation in various editions of the International Penitentiary Congress. Finally, in an attempt to join the national and international levels, González and Núñez give an account of Argentine political and social developments, especially in the penitentiary field, during the period in question (prison reforms, the construction of model establishments, the Criminal Code sanction, the import of criminological ideas, etc.). In short, this thoroughly documented article intends to raise an issue that rarely receives attention for Argentine prison historiography. In addition, it contributes to historical studies about on international relations, diplomatic exchanges and expert knowledge of networking technologies.

4. In his contribution, "About the concept of the 'dangerous individual' in turn-of-the-century penal reform: Debates on recidivism, *état dangereux*, indeterminate sentencing, and civil liberty in the International Union of Penal Law, 1889-1914," Richard Wetzell continues the examination of international networks and organizations as a crucial arena of the penal reform movement in the late nineteenth and early twentieth century. Alluding to Michel Foucault's famous article on the "concept of the 'dangerous individual' in 19th-century legal psychiatry" in its title,[20] Wetzell's article begins with an overview of the founding of the International Union of Penal Law (IUPL) – *Union Internationale de Droit Pénal (UIDP)* in French, *Internationale Kriminalistische Vereinigung (IKV)* in German – by three professors of criminal law (the German Franz von Liszt, the Belgian Adolphe Prins and the Dutchman Gerard Anton van Hamel), the Union's penal reform agenda, and the major topics discussed at its congresses. In its central sections, the article provides a close examination and analysis of the IUPL's debates, at its international congresses from 1889 to 1913, on arguably the most central issue in the penal reform agenda pursued by the IUPL and its founders, namely, how to treat recidivists, "incorrigible habitual criminals" or "dangerous" criminals (the terminology varied over time), and the closely related debates over indefinite security detention and indeterminate sentencing as the preferred remedies for dealing with such "dangerous" criminals.

In analyzing the patterns of argumentation in these debates as well as their development over time, the article develops three arguments. First, it demonstrates that even though critical voices regularly called the existence of "incorrigible" criminals as well as the concept of "dangerousness" (*état dangereux*) into question, the IUPL's leadership continued to press for aggressive measures against a target group of repeat offenders that remained ill defined. In this respect, therefore, the debates reveal the IUPL's utter failure to live up to its promise of basing penal policy on empirical criminological and penological research. Second, the article reveals that civil liberty concerns played an important role within the IUPL by showing that prominent members repeatedly and eloquently objected that subjective criteria for "dangerousness" and indeterminate sentencing posed serious threats to individual freedom. As the author explains, these critical voices came mostly – although not exclusively – from IUPL members from two countries: Third-Republic France, where political culture was infused with the legacy of the French Revolution and where the transportation of multiple recidivists to penal colonies obviated the need for indefinite detention at home, and Tsarist Russia, where liberal jurists were experiencing the dangers of arbitrary state power at first hand. Finally, the article carefully analyzes the role of the three IUPL founders in these debates in order to offer a nuanced comparison of the penal reform agendas of Liszt,

[20] Foucault, M., "About the Concept of the 'Dangerous Individual' in 19th-Century Legal Psychiatry," *International Journal of Law and Psychiatry* 1 (1978), pp. 1–18.

van Hamel, and Prins, from which, in most respects, van Hamel emerges as the most radical reformer among the three. While Prins was initially the most moderate (rejecting indeterminate sentences), over time his push for aggressive measures of social defense almost completely displaced his civil liberty concerns; Liszt, the author argues, occupied a middle position between his co-founders.

5. In his contribution on *Zweckgedanke, Social Defence and Transnational Criminal Law: Franz von Liszt and the Network of Positivist Criminology (1871-1918),* Karl Härter examines the influence of Franz von Liszt (1851-1919) on the construction of criminological positivism at the end of the 19th century in a context marked by a strongly intertwined national and international context. In Germany, the "*Franz von Liszt-Schule*" proposed a new *gesamte Strafrechtswissenschaft* (integrated criminal law science), inspired by a utilitarian perspective (the *Zweckgedanke im Strafrecht*) that clearly distanced itself from the theoretical and retributive approach of the liberal classical criminal school. But what Härter emphasizes is that such a new integrated approach to criminal science, already prepared in Germany decades before by a criminological discourse *before it officially came into existence*, developed in close connection with the international discussion on positivism. To be sure, as a founder of the International Union of Penal Law (IUPL/UIDP/IKV) along with Prins and van Hamel, von Liszt created an intermediary structure between international criminology and German jurisprudence, avoiding a direct doctrinal clash between national schools of thoughts. But he mainly contributed to the discussion and dissemination of his *gesamte Strafrechtswissenschaft* at an international level and thus encouraged the transnationalisation of criminological positivism. On this note, one of Härter's conclusions is that von Liszt's impact was less on national legislation, but rather concerned the internationalisation of criminal policy, social defence and the *Zweckgedanke im Strafrecht*.

A main interest of Härter's analysis in that respect is the choice to examine central concepts of von Liszt's integrated law science, such as dangerousness (*Gemeingefährlichkeit*) and social defence, given the discussions they generated at the various congresses of the IUPL. Closer to Ferri's social explanation of crime than to Lombrosian endogenic approach, even if he did not fully reject the role of anthropological factors as causes of crime, von Liszt focuses on social dangerousness (and not only recidivism) as the key driver of punishment and favours the use of a dual-track system of judicial punishment – indefinite preventive and subsequent security measures – to combat crime. On those issues, von Liszt's and his followers' perspectives are adopted by the IUPL, which enables Härter to write that the IUPL (in German: IKV) "approved concepts and narratives which other crucial figures of German positivist criminology and von Listz's network (…) propagated to some extent".

However, the transnational dimension of von Listz's work is not only theoretical. Härter underlines that, according to von Liszt, the concepts of dangerousness and social defence also involve international crime issues such as anarchism - probably under the influence of Lombroso's book *Gli anarchici* (1894) - or trafficking in women and transnational *Zweckstrafen* such as transportation and extradition. Once more, the discussion reached the IUPL, in an attempt to develop the transnational dimension of *Strafrechtswissenschaft* on concrete international issues. However, von Liszt was less

successful in this instance, even if some of his proposals (on extradition, for instance) would be endorsed years after his death.

6. In Belgium, A. Prins played a central role in the dissemination of criminal positivism. An eclectic thinker, Prins was also an enlightened reformer who intervened in the political, social and penal arenas. Professor at the Université Libre de Bruxelles, an adherent of the progressive movement based on positivism that dominated at this university with the "School of Brussels", Prins quickly understood the need for social reforms to safeguard the existing political system: if the bourgeoisie wished to maintain the social order and avoid the temptation of revolution, it had to make concessions to the working classes. In the turbulent context of the final decades of the 19th century, Prins positioned himself as a defender of the burgeoning social welfare state and as a promoter of the insurance logic that characterises it. Author of numerous contributions in social, labour and constitutional law, he also promoted various social reforms aimed at protecting the rights of the more vulnerable classes of the population.

In a world where the boundaries between the working classes to be integrated, and a deviant sub-proletariat to be controlled are blurred, Prins drafts an integrated criminal science project complementing the labour and social reforms. By transferring into criminal law the risk logic that was developing in civil law, Prins proposed to fill the gaps of the classical criminal law with social defence laws at the edges of the system for “dangerous” persons who slipped through the cracks of the social net.

Influenced by the discussion initiated in Italy by Lombroso, Ferri and Garofalo, co-founder with von Liszt and van Hamel of the International Union of Criminal Law, Prins was an eclectic thinker, always searching for a third way between extremes. Critical of the metaphysical (mis)conceptions of the neoclassical school, he was also suspicious of the excesses of the positivist project. Its influence on the penal scene in Belgium was decisive: at the crossroad between law and politics, Prins is at the origin of a dual track system, initiating numerous laws based on positivist principles which still complement the Penal Code of 1867 today. He also called for a reform of the penitentiary system and introduced the principle of a gradual system that includes suspended sentences and conditional release. A social reformer, Prins imposed his reform project on the penal scene in the name of the very same priority: maintaining social order.

7. In the Netherlands, the influence of criminal positivism or criminological positivism is inevitably linked to the figure of G.A. van Hamel (1842-1917). Professor of criminal law at the University of Amsterdam, one of the founding fathers of the “Tijdschrift voor Strafrecht”, van Hamel was also a member of the “Liberal Unie”, a centrist political party defending moderate social reforms, and active in the field of healthcare and juvenile protection in Amsterdam. As John Vervaele explains, van Hamel resembled Prins in Belgium, “a perfect combination *in personam* of law and politics”. As Vervaele’s contribution relates, van Hamel started as a rather conservative lawyer, adhering to the (neo)classical school of which the 1886 Dutch penal code is still the expression. It is from 1880 onwards that van Hamel begins to adopt a more critical view of the dogmatic and metaphysical approach of the dominant criminal law discourse in the Netherlands, influenced by his liberal philosophical background (the doctrine of the

libre examen) and a secular ethical approach of Law. Like Prins in Belgium, his interest in social reform guides him towards an approach to crime as a "real fact" and not only as a pure juridical abstraction, a change that becomes more solid when, in 1884, he discovered the "*Marburger Programm, der Zweckgedanke im Strafrecht*" published by von Liszt. Participating in various international congresses, especially in those organized by the *International Penitentiary Commission* and the *International Congresses of Criminal Anthropology*, van Hamel is strongly impressed by the "*gesamte Strafrechtswissenschaft*" proposed by von Liszt as well as by "*Criminalité et repression. Essai de science pénale*" published by Prins in 1886. Sharing with those two prominent scholars the project of a new goal-oriented criminal policy, based on scientific statements and aimed at protecting the society against crime, he joined them to create the International Union of Penal Law (IUPL/UIDP/IKV) in 1889.

However, what makes the analysis of van Hamel's thinking more difficult is that, unlike von Liszt or Prins, he never completed an elaborated theoretical penal project and that most of his ideas are to be traced back to scattered texts and contributions which may be compared to his main publication, a *Manual on Dutch Criminal Law*, whose second edition published in 1907 is dedicated to Prins and von Liszt. Proposing a chronological approach, Vervaele shows van Hamel's interest in classic themes of criminological positivism including criticism of the dogmatism of the classical school (Carrara), the promotion of social defence as a priority, a classification of criminals based on their social dangerousness and possible reintegration (or lack thereof), as well as a dual track system of sanction supported by legal punishment and indefinite sentences for the "customary incorrigibles". Two particularities can be underlined from this list: the first being an interest in white-collar criminals, whom van Hamel seeks to include in his typology; and the second being, like Lombroso and von Liszt, a focus on "anarchist terrorism," whose violence is seen as a threat for "the pacific evolution of social institutions".

To conclude, Vervaele states that, if clearly influenced by the evolutionary perspective endorsed by the Italian school, van Hamel nevertheless remained "a rather conservative reformer" when compared to Prins or von Liszt. It seems hard to drawn a line in a very eclectic work, where the relationship between social defence goals and general principles of criminal law remain "in the dark". Although interested in the new horizons of criminological positivism, van Hamel's eclecticism probably reflects the need to embed the criminological positivistic inputs in a dogmatic criminal law that he never abandoned.

8. Austria represents an interesting case that has largely been neglected by criminal law historians up until now. Yet, as a territory characterised by a "high cross-border mobility" at the end of the 19th century, the Habsburg Empire experienced an important scientific in- and out-migration of scholars that amplifies the resonance in Austria of the debate between the "classical school" and the new positivist criminology that flourished in Germany. After having underlined the role of the International Union of Penal Law and the part taken by the Austrian representatives of both fields in the IUPL, Schennach's contribution emphasizes the eclectic nature of the discussion in Austria, as illustrated by the creation of several scientific journals open to representatives of the two schools. Followers of von Liszt such as Vargha, Gross, Lammasch or Stooss remain prudent or ambivalent and never directly attack the representatives of the classical

school who remain dominant in the country. Among the followers who are more or less convinced by the new conception of crime and criminal as "social fact", the concept of free will seems sometimes difficult to forsake, as well as general and special prevention or "retaliation" goals of punishment. Suspended sentences and conditional release, on the one hand, indefinite sentences, on the other hand, also raise ethical questions. And the reflection on crime and criminal, in Vargha's writing, for example, sometimes shows constructivist accents that sound closer to a Durkheimian or even interactionist perspective than the realist or naturalist etiological criminology of the time.

All in all, as Schennach underlines, the followers of von Liszt's ideas were never real *Doppelgänger*, in a debate where "von Liszt adversaries significantly outnumbered his adherents". Among those, Hugo Hoegel did not conceal his deep antipathy for the new school of thought that "threatens the fundament of science of criminal law". An advocate of the free will theory, a supporter of the retributive and deterrent functions of punishment, Hoegel rejected any kind of determinism and criticised the key element in a project to reduce punishment to a purely utilitarian tool. Among others, his warnings against the dangers of a system endorsing preventive custody, protective incarceration without the requirement of a penal act or the categorising of criminals are illustrative of the gap that may separate the two schools. Perhaps more so than in other countries, the Austrian debate illustrates the areas of tension that exist in the penal discussion at the time between a neoclassical approach based on Kant and a utilitarian perspective that could possibly be correlated to Bentham's legacy[21].

9. Still in the German sphere of influence, social defence ideas, inspired by the Italian school and von Liszt, were of crucial importance in the drafting of a national Swiss Penal Code in 1937. From the 1870s onwards, critical voices of a positivist stripe question the foundations of a liberal criminal law that was endorsed by most of the existing cantonal codes and cross-fertilised the efforts of those who seek to create a national criminal code. Under the impetus of Carl Stoos (and also Emil Zürcher), such efforts result in the drafting of a 1937 Criminal code "inspired by and strongly committed to a social defence perspective that sought to address crime by using scientific expertise and individualized sanctions".

As Urs German explains, the criminal law reform in Switzerland adopts a "dual-track system", with a set of security and treatment measures for "abnormal" or/and dangerous criminals (recidivists, mentally-impaired offenders, juvenile delinquents) that complement the regular penalties system based on classical principles (proportionality) and objectives. Such a dual-track option, not especially original in the social defence perspective, as Ferri in Italy or Prins in Belgium had already considered them years before, also introduced conditional sentencing, probation or warning for the "occasional" offenders whose rehabilitation is to be encouraged.

In a country characterised by a complete absence of criminology as an academic discipline, penal reform follows a pragmatic path, resulting in a compromise between the new social defence ideals and the existing criminal law. From the outset, reform efforts were indeed criticised by representatives of a conservative wing, probably more concerned with maintaining a retributive criminal law than anxious to defend the rights

[21] On Bentham as precursor of a "Criminal Safety Law", see Jung, A., *Jeremy Bentham et les mesures de sûreté en droit actuel: Suisse et Belgique*, Genève, Zurich, Bâle, Schulthess Médias Juridiques, 2008.

and freedoms threatened by the *sécuritaire* ideology of social defence. “To reform without a revolution” was the aim, in a project that was nevertheless influenced by a growing risk-oriented conception of deviance and an attempt to integrate the penal law project in a broader social policy.

10. France is often presented as a place of resistance to the theses of the Italian Criminogical School. Founded by Alexandre Lacasagne, the “School of Lyon” is supposed to have proposed a sociological reading of the causes of crime, offering an alternative to the biologistic approach of the Italian School. In her contribution, Martine Kaluszinski shows us that the reality is more complex.

From the very beginning, Lombroso's works appear in French medical circles and Alexandre Lacassagne, for instance, also knew his “Lombrosian temptation”. It is only at the International Congress of Criminal Anthropology in 1885 that Lacassagne openly expressed his criticism. Emphasizing that criminal anthropology was rooted in a French background (Gall's phrenology and the degeneration theory elaborated by Morel), Lacassagne prudently questions core notions of Lombrosianism such as atavism and fatalism in order to stress the “social milieu” as the principal cause of crime. Without totally rejecting any biological determinism, Lacassagne restrains the importance it has by explaining that the criminal is “a microbe” that “only matters the day it finds the broth that ferments it”, *i.e.* a social milieu that brings a person to turn to crime. Introducing a social perspective on crime, Lacassagne could also underline the importance of social responsibility in the production of crime.

But the “resistance” to Lombrosianism and more largely to the Italian School perspectives also rose among legal experts. Important scholars including Gabriel Tarde, Alexandre Saleilles or Camois de Vince resist the new ideas and methodology of the criminological school. On the one hand, the denial of free will and responsibility is perceived as a danger for the entire penal system and even for the moral principles on which society is built. On the other hand, the new Italian doctrine threatens the fundamental principles of the criminal law system. Analysing at length the positions of Tarde or Dubuisson, Kaluszinsky shows to what extent the questions of free will and responsibility play a key role in the position of the French lawyers who share a common mistrust towards the theories of criminal irresponsibility.

Such a resistance does not allow us to conclude how innocuous the Italian school’s influence was in France at the end of the 19th century. The will to maintain a “Republican criminal law” does not prevent the passage of a law on relegation for multiple recidivists in 1885, whose emergence is clearly of “positivist” inspiration. But if notions such as danger and prevention spread in the modern criminal law, as elsewhere in Europe, the anthropological legacy was infused more broadly in theoretical medical circles (with debates on eugenics, for example) than in legal or penitentiary practices.

11. In dealing with “The reception of the positivist school in the Spanish criminal doctrine (1885-1899) ”, Masferrer makes clear from the beginning of his article that the Spanish criminal-law science of the 19th century remained generally faithful to an eclectic position until the end of that century, halfway between the classical school (Beccaria, Lardizábal) and the new positivist theories that emerged in the last third of

the 19th century coming from Italy (Lombroso, Ferri, Garofalo) and other European jurisdictions such as France (Lacassagne, Aubry, Magnan, Feré), Germany (Krause, Röder, Kurella, Baer, Naecke), Belgium (Prins, Dallemagne, Moureau, Bidez, Semal), etc. In this regard, the main Spanish criminal lawyers (Joaquín Francisco Pacheco, Alejandro Groizard y Gómez de la Serna, Tomás María de Vizmanos, Cirilo Álvarez Martínez, and so forth), as well as the vast majority of professors and teachers who taught criminal law courses in Spanish universities at the end of the century, adhered to the postulates of the classical –or rather neoclassical– school, giving some relevance to certain aspects of utilitarianism, as did some of the leading French experts in criminal law who defended this eclecticism (Rossi, Tissot, and Ortolan).

However, Spanish criminal doctrine was fully aware of the existence of the new theories and that they had their defenders. In 1898, Constancio Bernaldo de Quirós published a book entitled *Las nuevas teorías de la criminalidad* (Madrid: Hijos de Reus). He was the criminal lawyer most convinced of the bounties of the positivist school. Despite this relevant work, Masferrer shows how the positivist school in Spain never constituted "a compact and definite nucleus": not many lawyers carried out rigorous studies defending the Italian positivist school. Besides Rafael Salillas, who was a doctor and a criminologist apart from being a lawyer, the author explores the eclectic figure of Dorado Montero –more correctionalist and 'social defender' than representative of the positivist school–, the "critical positivism" of César Silió –who abandoned the topic after publishing *La crisis del derecho penal*–, and Bernaldo de Quirós –who might be considered as the criminal lawyer most committed to Criminal Anthropology–. Masferrer also analyses other authors who were somewhat critical of the *Nuova Scuola*: Aramburu, Silvela, Amor y Naveiro, Arredondo, and Bravo Goyena. Among them, Aramburu's criticism was the most rigorous one, respected and influential, probably because, leaving aside his prestige as a criminal law expert and Chancellor of his university; he was able to carry out –in his *Nueva ciencia penal*– a brilliant presentation and, at the same time, a consistent critique.

Masferrer concludes that while it is true that positivism had a strong impact in Spain towards the end of the 19th century, critical stances predominated. The author suggests that this might not have changed at the beginning of the 20th century.

12. The article by José Franco-Chasán focuses on characterising Dorado Montero and stressing his highly prominent, transitional character. Having lived between two centuries (19th and 20th) and between two hugely predominant schools (the Neoclassical and the Positivist ones) endowed him with a very critical assessment of the main European doctrinal trends. Thus, he shed some light on the reigning confusion and on oversimplifying schemes which took place in the course of those centuries. The criminal lawyer from Salamanca enjoyed a renowned prestige and provided wise academic guidance (praised by some national and international scholars, such as Jiménez de Asúa, Welzel, Bernaldo de Quirós, Mezger, Álvarez-Buylla or Antón Oneca himself). Sometimes labelled as an 'eclectic', he clearly falls into his own, indeterminate sphere with a *sui generis* positioning within the doctrine. It has been spotted between 'critical positivism' (or Vaccaro's *Terza Scuola*) and what we may call a 'positivist correctionalism'. His main strength, though, lies in his intellectual capacity of determining every nuance in the transition from the Neoclassical School to the Positivist Schools. Even if it might seem like an oxymoron at first, Dorado Montero possessed an

outstanding knowledge of the neoclassical postulates, as well as an exceptional ability to pinpoint its state of the art. On the contrary, as some other authors often assert, it does not simply mean that in Spain the traditional Neoclassical School won the battle over positivism, but that the Neoclassical School changed on its own. He identified that even the neo-classicists were thinking in terms of the new positivist common ground, and also found that there was a more general swift to a new positivist-shared scenario (yet with their differences between the schools), rather than a battle of two different schools in two completely different environments.

Franco-Chasán's article addresses the creation and articulation of such complex thought in which several sciences and often opposed aspects (such as his initial faith and his latter, tired atheism) were set. The article aims to have an introductory character, because understanding Dorado Montero and his many sharp edges is quite complex. For this, seven main components influencing and shaping his understanding were considered, namely: Christian views, relativism, positivism, Krausism, socialism, anarchism and sociology. That concatenation of influences has a direct influx on two topics which were his main concerns: the existence/absence of free will and the rationale for legal responsibility. Indeed, within Dorado Montero's approach, as one will observe, his core thought matches the two aforementioned fundamental aspects upon which Criminal law is founded.

13. The article by Pedro Caeiro and Frederico de Lacerda da Costa Pinto aims to assess the impact of positivism on Portuguese criminal law. For this purpose, the authors carry out a characterisation of the legal context around 1880 which, due to particular political circumstances, finds its roots back in the liberal revolution and the Constitution of 1822. Between those temporal benchmarks, two trends emerge which, despite their different genealogies, play a complementary rather than an antithetical role: on the one hand, the consolidation of the ideals of the Enlightenment and the liberal program inherent in the paradigm of the Neoclassical School; on the other hand, the progressive concern with special prevention. The former led to a consistent call for the humanisation of the sanctioning system, with the abolition of cruel and infamous penalties (and later, the death penalty and all lifelong sentences, including imprisonment and relegation), together with the reform of prison facilities and the enforcement regime. The latter trend focused on special prevention and rehabilitation through the penitentiary system and would gain momentum with correctionalism and by importing the works of Roeder and Krause. Caeiro and Costa Pinto argue that, to a certain extent, correctionalism has prepared (and in some cases anticipated) the emergence of positivism, by furthering an organicist view of society and shifting the focus of penal intervention from the criminal offence to the offender.

The authors point out that the reception of positivism in Portuguese law was part of a much wider cultural movement with strong political ties, due to the close connection with republicanism and its endeavour to create a new, modern social order. Their analysis of the influence of positivism on criminal law and criminal justice covers three dimensions: the research and practice of scientists (in particular, doctors and alienists); the theory and teaching of criminal law (in particular, at the university); and legislative and institutional action in the field of criminal justice (particularly in the enforcement of sanctions). Scientists clearly took the lead in the adoption of the positivist programme and furthered a brand new perspective in the realm of criminal justice: crime and offenders are not a 'metaphysical' topic, but rather a pragmatic nuisance that requires an

effective response by the state, which in turn, can only be based on true knowledge of the phenomenon. As a consequence, it is necessary to study the endogenous (bio-psychic) or exogenous (social) causes of criminality through the experimental method, so that they are positively identified and can be successfully countered. However, positivism had a modest impact on the research and teaching of Portuguese criminal law. Few scholars embraced the positivist program fully and their influence did not last long. Nevertheless, mainstream academia has assimilated some of its elements, namely concerning the usefulness of a sociological approach to crime and the revision of the theoretical framework applicable to unaccountable and dangerous offenders. The same topics have caught the interest of the public bodies responsible for drafting and reforming criminal justice, and a series of legal mechanisms and institutions were directly inspired by positivism. Some of them lasted for a long time, as they were shown to be useful for the dictatorship (1926-1974) to manage certain social groups.

Caeiro and Costa conclude that, despite its powerful rise in the scientific field, positivism had a limited and quite specific influence on Portuguese criminal law. However, it did not substantially alter the theoretical structures inherited from the Neoclassical School, nor did it permanently modify the rehabilitative ideal brought about by the prison system, which remains a resilient feature of Portuguese criminal law.

14. In Europe, the reception of criminological positivism is particularly interesting in the Soviet Union after the October Revolution of 1917. As evidenced by Maria Filatova in her contribution on the "*Reception of social defence in the RSFSR and the USSR"*, early 20th century Russian criminal law doctrine was very much influenced by the sociological criminal law school, and the revolution of 1917 allowed even the most extreme positivist concepts to become part of the law, at least for a while.

In the first years after the Revolution, revolutionary lawyers insisted on creating a new legal system, which was totally different in all aspects from the old one, opposing and excluding the latter. The attempts of the revolutionary authority to get rid of any signs of imperial law gave rise to discussions on the content of a Soviet criminal law definitively cleared of the former "bourgeois law" and designed to defend the new socialist system. The greatest struggle was carried out by N.V. Krylenko, who took an extremely critical approach to the former law of the imperial regime. Being responsible for revolutionary tribunals and later working as prosecutor, Krilenko played an important role in the reception of positivist ideas in the RSFSR and later in the USSR, insisting on instituting the concept of dangerousness of the person and a class approach to punishment. As can be seen from the first revolutionary legal acts and the definitions of crimes therein, the criminal law of that first period after the Revolution (1917-1922) focused on the protection of the new social order and the interests of leading classes (proletariat and peasantry). Many social defence concepts seemed to be quite convenient for founding the new criminal law: replacement of guilt by dangerousness, admission of legal analogy in criminal law, the rejection of retribution as the basis and measure of the response to deviance, social defence measures instead of punishment were some of the most explicit signs of the positivist heritage.

As a consequence of this radical revolutionary-positivist turn, some important and basic principles of criminal law were excluded. However, most of them, such as guilt or "revolutionary legality," were restored soon after and, by the end of the 1920s, the main

fundaments of a pure revolutionary criminal law, based on Marxist philosophy and influenced by a sociological approach of criminal law, were less noticeable. Nevertheless, concludes Filatova, it would be unfair to deny the role played by criminal positivism in the Soviet legislation as it drew attention to the social factors of crime and to the importance of the criminal as a "real person" influenced by their environment and not as a pure abstraction in the liberal criminal law tradition.

2.2. Latin America

15. In their contribution "Ascension and decline of positivism in Argentina", Enrique Roldán Cañizares and Matías J. Rosso analyse the reception of the positivist school in Argentina. Since the mid-1880s, some glimpses of the reception of the discourse "in the name of science" on the criminal issue can be observed from theoretical developments by Cesare Lombroso and his disciples. The fact that positivism began to permeate the Argentinian intelligentsia during this particular period and only in a university context, was no coincidence. From the 1880s onwards, Argentina experienced one of the most notable periods of economic growth, which meant the opening up of the young country. A new world was opening for the Argentinian nation, and with it came new ideas from all corners of the globe. Thus, by 1885, some researchers had begun their studies of 'criminal anthropology' at the insane asylum in the city of Buenos Aires. Imbued with the new doctrine, the University of Buenos Aires took another step forward, creating the Society of Legal Anthropology in 1888: an institution that became a new and powerful advocate of the positivist current, where the first works under the influence of the positivist teachings in Argentina began to see the light. All of their works were clearly influenced by the thoughts of Lombroso, Ferri and Spencer, and the French school, while Spanish positivists were not even taken into consideration. Nevertheless, and despite this Spanish absence, Argentinian authors and thinkers were recognised and valued in international academic circles.

The ideas of positivist criminology produced in the European context quickly spread and were debated in the fields of medicine and law, giving rise to a rapid process of cultural importation of these specific ways of thinking about the criminal issue. Positivist criminology quickly became a discourse of authority, both in academia and in politics. However, the importation of these views was not absolute. They were nuanced depending on the readings that Argentinian intellectuals made of them. Many postulates were accepted without discussion, while others were reformed and even suppressed from both academic and political discourse.

Nevertheless, most researchers have focused on the influence of positivism in the intellectual and university environment, the importance that the Italian current acquired soon after setting foot in the Rio de la Plata being undeniable. However, the expansion of ideas among privileged minds is of no use if they do not find accommodation in legal texts. The reality is that positivism ended up disappearing in Argentina. The passing of the years and the impossibility of applying a truly positivist system caused a decrease in the support of the Italian doctrine in Argentina, until it practically disappeared. One might wonder whether positivism had no real impact in Argentina during its golden age. The truth is that while its legislative impact was practically nil, some contributions within the scope of prison reform are noticeable. Did positivism triumph in Argentina to

the point of transforming criminal law and Argentine society itself? Not at all, and the author describes the reasons that explain this phenomenon.

16. In his article, Ricardo Sontag shows how Brazilian historiography has often discussed the "influence" of the *scuola positiva* in Brazil between the end of the 19th century and the first decades of the 20th century. Outside Brazil, many analogous studies have also been carried out: if it is a peripheral country, the emphasis usually falls on influence; if it is a central country (in this case, Italy), the emphasis usually falls on its twin concept: diffusion. More recently, there has been research that has tried to avoid the unidirectional tendency and the lack of precision of the concept of influence/diffusion. The historiographical critique against unidirectional analysis of cultural relationships that has been growing in the last decades invites us to follow this kind of path. Yet, it is a methodological challenge to withdraw from unidirectional depictions when one of the legal cultures analysed tended to act as a simple reception pole (the Brazilian legal culture) and the other one (the Italian legal culture), as a diffusion pole.

Even so, Sontag intends to experiment with some new methodological ways of analysing such a situation withdrawing from unidirectional depictions. Then, in the light of a critique of the concept of influence, his work seeks to raise some new historiographical possibilities through analysis of some of the pioneers of *scuola positiva* in Brazil – such as João Vieira de Araújo and Francisco Viveiros de Castro – and of the Brazilian appropriation of the scheme "scuola classica" versus "scuola positiva".

When the Italian *scuola positiva* arrived in Brazil, how this cultural circulation functioned, how Brazilian positivists addressed the new penal code issued in 1890, and, above all, what the relationship between the *scuola positiva*'s ideas and the previous Brazilian legal tradition was – these are some of the topics addressed by Sontag's article. Given that the Brazilian legal tradition in the 19th century was different from that which the Italian positivists found when elaborating the scuola classica concept, this space of memory was occupied in Brazil by other elements. In Brazil, it was impossible to elaborate the past opponents of the *scuola positiva* with powerful treaties such as Francesco Carrara's *Programma del corso di diritto criminale*, but there were other elements absent from Italian legal culture, such as two national penal codes (corresponding to 1830 and 1890.)

In addition, the article also notes a difference between the willingness of Brazilian lawyers to insert themselves into the international criminal debate and their willingness to translate the results of these debates into a reform program applicable in the short or medium term for the Brazilian context. Clearly more important was their insertion into the international debate. Furthermore, this article was able to elaborate an interpretation that is not based on a sender-centric approach for the comprehension of a set of sources permeated by sender-centric visions (influence, diffusion, and so on). It seems a paradox, but it is actually the typical historiographical operation that was uncovered by Sontag's article: on the one hand, to take the sources' discourse seriously; on the other hand, historiographical narrative should not turn into a repetition of the sources' discourse; that is, the flexible use of historiographical theoretical tools for the comprehension of the past is unavoidable for historians.

To sum it up, the abovementioned works reflect the rise and relevance of criminal positivism in Europe and Latin America at the end of the 19th century, but also the uneasiness and resistance it triggered in many civil law jurisdictions, as the title of this article – and of the whole research project behind it – reads. Most of the articles clearly show the limits of criminal positivism in the Western world, although some of them might be even furtherly explored.[22] All contributors would be notably satisfied if the final outcomes published in this issue of *GLOSSAE* might contribute to shed light on a fascinating part of the Western criminal law tradition that deserves an interdisciplinary approach by legal historians, criminal lawyers and legal philosophers.

[22] As it will be done soon by Michele Pifferi (ed.), *The Limits of Criminological Positivism. The Movement for Criminal Law Reform in the West, 1870-1940*, Abingdone, 2021 (forthcoming).

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