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Bernardino Alimena and Emanuele Carnevale: The third school of criminal law searching for a compromise*

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The striking contrast among the several ideas brought to increase the crisis of the criminal law and to the development of the so-called Third school. This school, although it was composed of determinists and positivists, did not miss keeping alive some of the old rational traditions (Enrico Pessina)¹.

Abstract

The essay reconstructs the thought of the Italian jurists Bernardino Alimena and Emanuele Carnevale who, at the end of the 19th century, proposed a third criminal law school based on the theories that mediated the antagonistic positions of the classical school and the positive school. In particular, the new tendency rejected Lombroso's doctrine of the born criminal and showed a strong openness towards criminal sociology, in line with the propositions to reform the criminal law coming mainly from the French criminal science. The debate (that arose in the aftermath of the publication of the program of this new school) was characterized by a strong reaction of the positivists and numerous approvals from the European penalists. The last ones made famous the two jurists whose theories also echoed in Russia and Latin America.

Keywords

Italian Criminal Law, Classical School, Positive School

Summary: 1. The “middle way between the extremes”; 2. The program of the third school by Emanuele Carnevale; 3. The adhesion of Bernardino Alimena to the program of the third school; 4. The reaction of the Italian Positivists; 5. The intervention of Enrico Ferri; 6. The reply of Emanuele Carnevale; 7. The third school and the European criminal science; 8. Conclusion: the epilogue of the third school. Bibliographical References

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¹ Pessina, E., *Il diritto penale in Italia da Cesare Beccaria sino alla promulgazione del Codice penale vigente (1764-1890)*, Milano, 1906, p. 189.

1. The “middle way between the extremes”²

The research for theoretical mediation which might overcome the bitter antagonism between the two main criminal schools (classical and positivist) – which had dominated the Italian scientific debate at the end of 19th Century³ – favoured both eclecticism and uncertainties in an attempt to propose new intermediate solutions of “concentration, conciliation and agreement”⁴ which would have solved, even if only apparently, the problems most in conflict between the two currents of thought, which can be summarized in the following topics: the problems concerning the scientific autonomy of criminal law; the causality or the fatality of crime; and the social reform as the main obligation of the State in the fight against crime⁵.

In this context, the theories of the so-called “critical school” or “third school of criminal law” (or also “critical naturalism” or “critical positivism”⁶) broke through and though they distanced themselves from the radicalism of the positive school, they recognized as irreplaceable the contribution of anthropology, psychology and sociology to assess the solutions codified in the criminal law and to improve their effectiveness⁷. In fact, they rejected Lombroso’s idea of the born criminal and of the criminal types and accepted the principle asserting that “the offenders operate according to their own character, underlying the effectiveness of the social factors, which have a prevailing action over biological factors”⁸. They also considered the penalty as a psychological coercion that should have had the effect of neutralizing the criminal action of criminals and other men⁹.

² In these terms: Battaglini, G., “Bernardino Alimena”, *Rivista di diritto e procedura penale*, vol. VI (1915), p. 515.

³ On the debate between the two schools see Ferrajoli, L., *Diritto e ragione. Teoria del garantismo penale*, Roma-Bari, 1989; Da Passano, M., “La pena di morte nel Regno d’Italia (1859-1889)”, in S. Vinciguerra (ed.), *I Codici preunitari e il codice Zanardelli*, Padova, 1993, pp. 579-649; Speciale, G., *Antologia giuridica. Laboratori e rifondazioni di fine Ottocento*, Milano, 2001, pp. 139-148; Costa, P., “Pagina introduttiva (Il principio di legalità: un campo di tensione nella modernità penale)”, *Quaderni fiorentini per la storia del pensiero giuridico moderno*, 2007, 36, 1, pp. 1-39; Lacchè, L., “La penalistica costituzionale e il ‘liberalismo giuridico’. Problemi e immagini della legalità nella riflessione di Francesco Carrara”, *Quaderni fiorentini per la storia del pensiero giuridico moderno*, 2007, 36, 1, pp. 663-95; Vinciguerra, S., *Le fonti culturali del diritto penale italiano*, Padova, 2008; Sbriccoli, M., “La penalistica civile. Teorie e ideologie del diritto penale nell’Italia unita”, *Storia del diritto penale e della giustizia*, Milano, 2009, pp. 492-590; Id., “Caratteri originari e tratti permanenti del sistema penale italiano (1860-1990)”, *ivi*, pp. 591-670; Meccarelli, M., “Fuori dalla società: emergenza politica, espansione del penale e regimi della legalità nel tardo Ottocento. Una comparazione tra Italia e Francia”, in F. Colao, L. Lacchè, C. Storti, C. Valsecchi (eds.), *Perpetue appendici e codicilli alle leggi italiane. Le circolari ministeriali, il potere regolamentare e la politica del diritto in Italia tra Otto e Novecento*, Macerata 2011, pp. 465-87; Colao, F., “Le scuole penalistiche”, *Il contributo italiano alla storia del Pensiero – Diritto*, Roma, 2012; Musumeci, E., *Cesare Lombroso e le neuroscienze: un parricidio mancato: devianza, libero arbitrio, imputabilità tra antiche chimere ed inediti scenari*, Milano, 2012; Id., *Emozioni, crimine, giustizia. Un’indagine storico-giuridica tra Otto e Novecento*, Milano 2015; Pifferi, M., “L’individualizzazione della pena. Difesa sociale e crisi della legalità penale tra Otto e Novecento”, Milano, 2013.

⁴ E. Florian, “Bernardino, Alimena”, *Rivista di diritto e procedura penale*, vol. VI (1915), p. 523.

⁵ Fiandaca, G., “Carnevale, Emanuele”, *Dizionario Biografico dei Giuristi Italiani*, vol. 1, Bologna 2013, p. 460.

⁶ A. Negri, “Bernardino Alimena”, *Rivista di diritto e procedura penale*, vol. VI (1915), p. 524

⁷ Vinciguerra, S., *Le fonti culturali del diritto penale italiano*, Padova 2008, p. 86.

⁸ Pessina, E., *Il diritto penale in Italia da Cesare Beccaria sino alla promulgazione del Codice penale vigente (1764-1890)*, Milano 1906, p. 191. See also Negri, A., “Bernardino, Alimena”, in *Rivista di diritto e procedura penale*, vol. VI (1915), p. 525.

⁹ *Ibidem*.

The driving forces of this idealistic criticism against the postulates of the positive school were two procedural-penalists, Emanuele Carnevale¹⁰ and Bernardino Alimena¹¹, professors at the universities of Palermo and Modena respectively. Their ideas had been anticipated by the pioneering reflections of Giovanni Battista Impallomeni, who had tried to update the theories of the classical School in the light of the new criminal requirement¹², in contrast with the positivist approach¹³. The two scholars carried out “a compromise between criminal classicism and criminal positivism. Later they came to the lively polemics of a scientific battle”, as, in 1935, Quintiliano Saldaña, professor at the Universidad Central in Madrid, remarked in the journal *La giustizia penale* (The Criminal Justice)¹⁴.

According to the strong reconstruction offered by the Spanish professor, their theories had got over the philosophical values of the "two schools", in such a way as to place criminal law "on the axis of the legal ideal", integrating the legal requirement with the psychological and sociological one¹⁵. More specifically, they had raised criminal law from the arms of philosophy, by focusing their attention on the human person: the latter was considered the main object of interest of criminal law as compared to the other branches of law which, however, had as their objective the balance and protection of things, relationships and facts, before which the person disappeared. On the contrary,

¹⁰ Emanuele Carnevale (Lipari, 1865 – 1941) after graduating in law at the University of Messina in 1884, in 1893 he obtained free teaching in Criminal law and procedure at the University of Catania. Later he taught as full professor of Criminal law at the Universities of Sassari, Parma and Siena and finally was called to University of Palermo in the chair of Criminal law and procedure until 1934. See Finzi, M., “Emanuele Carnevale e il problema metodologico del diritto penale”, *Il Filangieri*, gennaio-febbraio 1918, pp. 1-22; Contursi Lisi, G., *L’opera scientifica di Emanuele Carnevale nel diritto criminale*, Roma, 1934; Fiandaca, G., “Carnevale, Emanuele”, *Dizionario Biografico dei Giuristi Italiani (XII-XX secolo)*, vol. I, Bologna 2013, pp. 459-60.

¹¹ Bernardino Alimena (Cosenza, 1861 - 1915) began his academic career at a very young age, teaching law and criminal procedure at the universities of Naples, Cagliari and Modena, where he became full professor in 1902. He did not practice the profession of lawyer, but held public office as mayor of Cosenza in 1889 and then deputy to the parliament. He collaborated in the codification of the Kingdom of Montenegro and participated in the work of the Ministerial Commission for the study of measures against juvenile delinquency. See Rocco, A., “Bernardino Alimena”, *Giustizia penale*, 1915, cc. 1403 ss.; Abbondanza, R., “Alimena, Bernardino”, *Dizionario Biografico degli Italiani*, vol. 2, Roma 1960; Vassalli, G., “Bernardino, Alimena”, *Almanacco Calabrese*, 1970-71, pp. 109-120; Carnevali, R., “Bernardino Alimena”, en Domingo, R. (ed.). *Juristas universales*. Vol. III. Madrid, 2004, pp. 749-750; Molena, D., *Oltre la scuola antropologica: la riflessione penalistica di Bernardino Alimena*, tesi di dottorato, Scuola di dottorato in scienze giuridiche, ciclo XXV, Università degli studi di Milano – Bicocca, 2011/12; Spangher, G., “Alimena, Bernardino”, *Dizionario Biografico dei Giuristi Italiani (XII-XX secolo)*, vol. I, Bologna 2013, pp. 41-2.

¹² Carnevale, E., “Giovanni Battista Impallomeni. “Discorso commemorativo nel primo anniversario della sua morte letto nell’aula magna dell’Università di Palermo”, in Impallomeni, G.B., *Istituzioni di diritto penale. Opera postuma curata da Vincenzo Lanza*, Torino, 1908, pp. VII-XX (XI); Gramatica, F., *Principi di diritto penale soggettivo*, Torino, 1934, p. 128. For biographical information on Giovanni Battista Impallomeni (Milazzo, 1846 – Roma, 1907) see Pace Gravina, G., “Giovanni Battista Impallomeni o del coraggio del giurista”, *Studi in onore di Antonino Metro*, IV, Milano 2010, pp. 443-467; Cocchiara, M.A., “Impallomeni, Giovanni Battista sr.”, *Dizionario Biografico dei Giuristi Italiani*, vol. 1, pp. 1106-7 e la bibliografia ivi citata.

¹³ Impallomeni, G.B., “La «Nuova Scuola» di diritto penale al Congresso Antropologico di Parigi”, *Rivista penale*, 31, XVI (1890), pp. 213-230 e 309-324.

¹⁴ Saldaña, Q., “L’ultima fase del positivismo penale in Italia. V. La filosofia e il diritto penale in Italia”, *La giustizia penale. Rivista critica di dottrina, giurisprudenza, legislazione*, vol. XLI (I della 5a serie). Parte prima. I presupposti del diritto e della procedura penale, Roma, 1935, pp. 685, cc. 680-702 (685).

¹⁵ *Ibid.*

in criminal law the main objective had to be recognized in the evaluation of the person beyond the thing, beyond the relationship and beyond the fact¹⁶.

It was an approach that could not ignore both logical-abstract investigations (a field proper to legal science) and the experimental ones (such as anthropology and sociology) as essential. In this way he tried to compose the extreme needs of the *Classical School* which, "too absorbed" in the strictly legal element, had neglected in the crime the human and social content and the personality of the criminal; and of the positive school, that had reacted against this deficiency, reaching the opposite excess of closing itself in naturalistic philosophy and biology, ending up being more materialistic than positivist¹⁷.

The merit of the third school was, therefore, the one of achieving a synthesis between the two schools "by means of political-criminal compromises"¹⁸, as Ladislao Thòt (Professor at the Argentine National University, in La Plata)¹⁹ wrote in 1935 in the journal *La giustizia penale* (The Criminal Justice)²⁰. In particular, Thòt explained that the followers of that school had affirmed, first of all, the main differences between criminal sociology and criminal law; they had supported the determinism in crime; they had denied its fatality and they had rejected the concept of the born criminal.

Their consideration of the crime had been that of a complex phenomenon, the origin of which had to be linked, above all, to social causes: that is why they considered the reform of society to be the greatest duty of the State in the fight against crime. As far as punishment, however, they argued that its aim was to be a moral value and not the defense of society²¹. This effective synthesis of the postulates of the *Third School* served as a basis for the scientific framework of its founders Bernardino Alimena and Emanuele Carnevale.

But what were the innovative theories proposed by the two founders? As far as Carnevale, the criminal system he proposed (and he analyzed through the writings *Una terza scuola di diritto penale*, Roma, 1881; *La nuova tendenza delle discipline criminali*, Catania 1892; *Critica penale*, Lipari, 1889; *Il naturalismo nel diritto criminale*, Prato 1896) resulted to be anchored to legal-philosophical bases: his theory was based on the distinction between *Criminal science* and *Penal science*. This distinction derived from the assumption according to which punishment did not have to be considered as the sole means to fight crime, since it was necessary to consider other means, such as the crime prevention one, which would have a clear prevalence after some time.

¹⁶ *Ibid.*

¹⁷ Negri, "Alimena, Bernardino", p. 524.

¹⁸ *Ivi*, c. 423.

¹⁹ The Argentinean legal science's interest in Italian criminal law, and in particular in the theories of the Positive School, was a recurrent reason, which arose from a trip by Enrico Ferri to South America. He had succeeded in imposing his own personality in those Latin countries and in marking the way towards new orientations for their young legislations, at a decisive moment towards the affirmation of their individuality against the English influence. Cf. Nuvolone, P., "L'Argentina e la scienza penale italiana", *Rivista italiana di diritto penale*, anno XIII, 1941, pp. 189-192.

²⁰ Thòt, L., "La politica criminale", *La giustizia penale. Rivista critica di dottrina, giurisprudenza, legislazione*, vol. XLI. Parte prima. *I presupposti del diritto e della procedura penale*, Roma, 1935, c. 422.

²¹ *Ibid.*

This conviction had led Carnevale to distinguish the object of the two Sciences (criminal and penal): the former would focus on the study of the origin, the causes, the historical development, the direct consequences and the means of prevention and repression of the crime. The object of the Penal Science, on the other hand, was intended as the study of a special form of repression and prevention: the punishment. Then, the Penal Science had to be considered as a branch of criminal science, which, owing of its importance and extension, deserved to be raised to the rank of autonomous discipline. From that difference derived the principle according to which the process of making the punishment fit the crime was due to the *Science of Penal Law*.

In order to understand the concept of punishment, however, it was necessary to establish, according to Carnevale, which was the concept of law defined as the human institution having the purpose to preserve society and receiving a coercion force from the power of the State. From that concept it derived one of the main postulates of the Third School which asserted the law having only a partial collaboration, and not an exclusive activity, in the defence of society, as the School of Criminal Sociology had taught in a different way²². It followed from this postulate that the task of punishment was the same as the law one, that is, the defense of society meant as an autonomous political entity, which was supported by its own laws, its own institutions, its own customs and its own legal and moral conscience. In fact, penalty had, above all, an utilitarian value consisting exactly in the defense of society as it was not identified with the advantage of any members of society itself and so it had absolute character. On the contrary, Carnevale considered it as a historical institution and, therefore, as changeable as any other historical phenomenon.

In addition, punishment was meant as a sort of “sufferings” to be understood the one met to the criminal in response to the perpetrated crime. It derived from the principle according to which the punishment was to be considered as a reaction against the perpetrator of a crime and having the specific view to cause him suffering, so it was possible to distinguish different types of punishment corresponding to the illegal acts.

It was, therefore, necessary to identify the concrete purpose of the punishment with its value of justice, because penalty had to achieve the defence of society by setting a healthy example. In conclusion, Ladislao Thot summed up the main theses stated by Emanuele Carnevale in the necessary distinction between criminal law and criminal sociology; the recognition of moral value of punishment; the exclusion of the materialistic-monistic foundation of criminal law, postulated by the positive school; the exclusion of the theory of the born delinquent and the type of delinquent²³.

Thot then went on outlining the doctrinal profile of Alimena – through the examination of his first works *La scuola critica di diritto penale*, Napoli 1894 and *Naturalismo critico e diritto penale*, Roma 1892 – based on the idea that criminal law

²² The reference is to the postulates of the *Positive School*. On the subject see Burgalassi, M., *Itinerari di una scienza. La sociologia in Italia tra Otto e Novecento*, Milano, 1996; Musumeci, E., *Cesare Lombroso e le neuroscienze: un parricidio mancato: devianza, libero arbitrio, imputabilità tra antiche chimere ed inediti scenari*, Milano, 2012; Stronati, M., “Ferri, Enrico”, *Il Contributo Italiano alla storia del Pensiero – Diritto*, Roma 2012; Colao, F., “«Un fatale andare». Enrico Ferri dal socialismo all’«accordo pratico» tra fascismo e Scuola positiva”, in I. Birocchi, L. Lo Schiavo (eds), *I giuristi e il fascino del regime*, Roma 2015, pp. 129-157; Latini, C., *Storia di un giurista eretico: il diritto e il processo penale nel pensiero di Enrico Ferri*, Napoli, 2018.

²³ Thot, “La politica criminale”, p. 424.

should not be confused with criminal sociology and punishment with the function of social defence. For this reason, Alimena did not agree with the thesis of the school of criminal sociology which deemed that the mental patient and the criminal one should be considered in the same way and that society should defend itself against them: if that principle had been considered as true, the means to be adopted to defend society should have to be considered different for these two categories of people.

Alimena also rejected the definition of crime elaborated by the anthropological school, which, being based on the biological, physical and social origins, had to be considered as insufficient because it did not say how the different factors of crime overlapped and acted, were meant as social factors that had a sort of influence on human evolution. This consideration led to the conclusion that the thesis of the existence of a criminal type could not be sustained, since the organic causes had only a secondary part in the genesis of the crime. Moreover, the identification between the typical offender and the degenerate one was wrong because the depravate delinquent did not physically differ from the degenerate people but not delinquent.

With regard to the purpose of punishment, although Carnevale shared the purpose that the penalty should coincide with social defence, he believed that this principle could not be considered sufficient to identify the characteristics of the penalty, as it did coincide with other institutions acting in fields different from legal ones²⁴. On the other hand, the fundamental characteristic of punishment, was its intimidating effect on the souls of members of society, while all other defence systems were merely material means of preventing or eliminating social danger.

Thot closed his essay by highlighting the traits that had most distinguished the *Third School*²⁵, that identified in its affinity in the criminal sociology, in the inclination towards the objective address of the examination of the crime and in the rejection of the criminal typology of the Anthropological School²⁶.

2. The program of the third school by Emanuele Carnevale

The “courage” to present these new ideas as the direction of a new school of criminal law coincided with the promulgation of the Zanardelli Code²⁷, which – as Franz von Liszt would have observed in 1894 – represented a compromise between the past and the future, since it brought together the old theories now inadequate, and the new theories still questionable²⁸. The conviction that the code was the result of an original orientation had been shared in Parliament by Luigi Lucchini²⁹ and Giovan

²⁴ *Ibid.*, p. 425.

²⁵ *Ibid.*, p. 430.

²⁶ *Ibid.*, p. 431.

²⁷ See Vinci S., “An Autonomous Path for the Italian Penal Code of 1889: The Constructing Process and the First Case Law Applications”, in A. Masferrer (ed.), *The Western Codification of Criminal Law, Studies in the History of Law and Justice* 11, New York 2018, pp. 131-161 and the cited bibliography.

²⁸ Von Liszt F., *La législation pénale comparée, Ier volume, Le droit criminel des États européens*, Berlin 1894, p. 120: “Les antropologues l’ont traité “d’éclectique”, oubliant que l’écletisme était nécessaire au moment de sa confection. Pour eux il est trop arriéré, pour certains juristes il est trop progressiste. C’est dire que pour le juger sainement, il ne faut pas se placer au point de vue exclusif d’une école”. Cf. Grispigni, F., *Diritto penale italiano*, Milano 1947², vol. 1, p. 78.

²⁹ For these reasons Alimena would have included Lucchini among the members of the new critical tendency of criminal law. Cfr. Alimena, B., *I limiti e i modificatori dell'imputabilità*, vol. 1, Torino 1894, p. 6.

Battista Impallomeni³⁰. This sharing determined Emanuele Carnevale's audacity to propose a new penalistic approach, in the wake of the ideas born in the International Congress of Criminal Anthropology, held in Paris from 10th to 17th August 1889.

In fact, at that Congress, it had clearly emerged the "void created around the doctrines of the jurists of the new school"³¹ (and in particular of Lombroso, Garofalo and Ferri, although the latter intervened in less drastic terms³²) against whom the voices of some French, Russian and Italian jurists rose: the French Brouardel, Lacassagne, Manouvrier and Tarde; the Russians Dekter and Dimitri Drill; and the Italians Bernardino Alimena and Giuseppe Alberto Pugliese supported the sociological dimension of the crime, in place of the physiological dimension directed to the search for criminal anomalies³³.

The "general failure" reported by the Positive School in the Paris Assembly was strongly reiterated in the concluding speech given by Brouardel, who in no uncertain terms stated that "the boat is watering from all sides"³⁴. It was a symptom of a new trend shared by many European jurists, including Franz Von Liszt of Marburg and Adolphe Prins of Bruxelles, who in 1889 founded (together with Gérard Van Hamel of Amsterdam) the *International Union of Criminal Law*³⁵, whose program valued anthropological and sociological studies aimed at determining the causes of crime and the means of combating them³⁶. Even if, according to Enrico Ferri, this Union, "despite the more logically radical tendencies by Van Hamel, has also fallen asleep in the limbo of eclecticism, more markedly personified by Liszt and Prins; so that in its annual congresses discussions and proposals have become less and less heterodox and radical, documenting once again the irremediable sterility of those medium ideas"³⁷.

³⁰ Rosenfeld, E., "Die Dritte Schule", *Mitteilungen der Internationalen kriminalistischen Vereinigung* 4 (1894), p. 16. Cf. Sbriccoli, M., "Caratteri originari e tratti permanenti del sistema penale italiano (1860-1990)", p. 619.

³¹ Impallomeni, "La nuova scuola", p. 215.

³² It was a "strong fight between Lombroso, supported by Garofalo, and all the other members of the Congress", in which Ferri tried an accommodating intervention, aimed at sustaining that the two factors, individual and social, cannot act one without the other and that, therefore, the crime is not exclusively due to sociological causes, but that it is also due to biological causes. *Ibid.*, pp. 221-2. See also Lucchini, L., *Le droit pénale et les nouvelles theories*, trad. fr. H. Prudhomme, Paris, 1892, pp. 431 ss.

³³ Impallomeni, "La nuova scuola", pp. 218-9. In particular, Tarde was opposed to Lombroso thesis according to which there were precise anatomical features, believing instead that there could only be organic and physiological predispositions of the crime, giving preponderance to the social environment. Lacassagne believed that the social condition, education, good or bad luck were the real factors of crime, so much so that criminals are recruited especially among poor and unhappy people.

³⁴ *Ibid.*, p. 324. The echo of this sociological perspective would have come up to the International Penitentiary Congress in St. Petersburg in 1890. Cf. Alimena, B., "Il Congresso Penitenziario Internazionale di Pietroburgo. Impressioni", *Rivista penale di dottrina, legislazione e giurisprudenza*, vol. XXXII (1890), pp. 299-309 (308-9).

³⁵ The International Criminal Law Union was founded in 1889 by three distinguished criminalists: Franz Von Liszt from Marburg, Gérard Van Hamel from Amsterdam and Adolphe Prins from Bruxelles. Their aim was to create a forum for intellectuals, professors and criminal lawyers to meet permanently, exchange their opinions, express their concerns, and ultimately to have a constructive impact on the development of criminal policy. The associative aim was to affirm the mission of criminal law and the fight against crime, considered as a social phenomenon. Cf. Vinciguerra, S., *Le fonti culturali del diritto penale italiano*, Padova 2008, p. 93.

³⁶ Pessina, E., "Movimento scientifico del Diritto penale in Italia nell'ultimo trentennio del secolo XIX (Capo IX)", *Enciclopedia del diritto penale italiano*, vol. II, Milano 1906, p. 732.

³⁷ Ferri, E., *Sociologia criminale. Quarta edizione con due tavole grafiche*, Torino 1900, p. 53.

In this context, it seemed that the time was ripe to propose the new direction, so much so that, in 1891, the Italian journal *Rivista di discipline carcerarie* accepted the essay entitled *Una terza scuola di diritto penale in Italia* (*A Third School of Criminal Law in Italy*), by which Emanuele Carnevale presented those fundamental concepts, elaborated by a nucleus of “independent positivists”, which “little by little, and inadvertently” hinted at becoming a Third School”.³⁸

With this essay, Carnevale highlighted the steadfast belief to bring out his perspective above the panorama of the criminal scientific debate and to propose it as a third way among those that had been used up to that moment. From this point of view, he started from a detailed analysis of the characteristics of the two schools, then he compared their merits and defects and propose new ideas that might smooth the differences of opinion out.

First of all, he pointed out the main characters of the *Classical* or *Metaphysical School* which were so identified in the following aspects: isolation in the sphere of its own studies, with the severing of any relationship with other sciences, especially with the anthropological ones; focusing its attention on a too formal concept of crime, with the abandonment of any investigation aimed at knowing the causes of the crime, organic or social, direct or indirect, near or remote; conception of criminal responsibility based on free will; definition of the limits of repression on an overwhelming idea of the individual rights in the face of the State³⁹.

The “innovators” of the *Positive School* reacted against these principles: they blamed the *Classical School* for “apriorism, metaphysics and abstraction” and proposed ideas which were antithetical to the ones just examined. They argued, in fact, that criminal science should be kept in close and constant relationship with the other branches of knowledge, proclaiming and implementing a necessary alliance with anthropology. However, the implementation of this principle would have made crime a formula, an index, a “malefic and antisocial” potential that should have been recognized in its causes, in the related states of the psyche and in the characterizing organic signs. In this way, “the criminal man” would become an object of passionate and feverish study; his relationship with the primitive man, with the modern savage, with the moral madman and with the epileptic would be identified; the effects on the delinquent man of an infinite series of circumstances such as high temperatures, own or parental alcoholism, the variety of the race, bad education would be investigated; all the internal and external signs of the organism would be enumerated, from the complex of which it would be easy to distinguish between the criminal man and the honest one, and to identify the various classes of criminals, thus generating new categories which would take the place of the ancient ones relative to the crimes and on which the new criminal system would be founded. And again, the positivists postulated the idea of denying free will, based on the principle that the human will could not be considered free, but depended on indeclinable causes, some of which were considered to generate delinquency, according to the theory of psychic fatalism.

Moreover, the exponents of the Positive school had tried to overcome the individualism of the Classical school, trying to re-establish a balance between the social

³⁸ Carnevale, E., “Una terza scuola di diritto penale in Italia”, *Rivista di discipline carcerarie*, XIV (1891), p. 348.

³⁹*Ibid.*, p. 349.

element and the individual element. And they had also developed a new concept of punishment that was to be understood not as punishment, but as a juridical treatment of delinquency⁴⁰, thus forgetting – observed Carnevale – that the “illness of the guilty person is an essential character to the punishment”⁴¹.

The summary of the main ideas put forward by the positivists, to “demolish and rebuild” the postulates of the Classical school, allowed Carnevale to present the reflections pondered within another nucleus of scholars, moulded inside the same Positive school: they had chosen to carefully check the new proposed ideas in order to identify defects and gaps⁴². Then, the latter ones had ended up becoming critics of their own companions, moving further and further away from them and moving towards a path that, although not yet having rigid and absolute lines, was already taking a distinct form, laying the foundations for a future system which would take shape on three major principles: “1st, respect for the personality of criminal law in its scientific renewal; 2nd, causality and not fatality of crime; 3rd, social reform, as the first duty of the State in the fight against criminality”⁴³.

To expose the first concept, Carnevale affirmed that the classical School had not opened up to the study of man and society, while the positive school had gone boldly not only in the “other branches of law, but also even into the thickest and most perilous forest of social science, into the most treacherous terrain of biology”⁴⁴. The failure to define the limits of the social sciences and their impact in the field of criminal law had led to a weak the personality of the latter, making it “something uncertain and evanescent”⁴⁵. To find a remedy for these excesses, it would have been necessary to tie the different sciences together while keeping them distinct and autonomous, “so that the work in the various fields of human knowledge may be coordinated, not repeated”, so as to maintain the specific individuality of criminal law, without denaturing it or confusing it in more or less similar institutions⁴⁶.

The position taken on the subject of the causality of crime against the concept of fatality (which was considered inadmissible in the study of crime and other social phenomena) was more severe. In fact, every action had to be considered the fruit of a will determined by internal forces that had determined it at that precise moment: this means that one day, one hour before the criminal action was carried out, it would not have been possible to say which forces had acted in the mind of the offender; therefore, no one could have indicated the latter as “inexorably destined for the crime”⁴⁷. Although, in fact, it is legitimate to fear that children born and raised by murderous relatives among vices and bad examples, may start a criminal career or hope that the children of honest people never commit any crime, such presumptions are only probabilities with arbitrary or fantastic inductions: the circumstance that “a man, or a class, must necessarily run for good or for evil, is an unfounded assertion”.

⁴⁰ *Ibid.*, p. 351. Cf. Vassalli, G., “Bernardino Alimena”, in *Scritti giuridici*, IV, Milano 1997, p. 541.

⁴¹ Carnevale, “Una terza scuola di diritto penale in Italia”, p. 351.

⁴² *Ibid.*, p. 352.

⁴³ *Ibid.*

⁴⁴ *Ibid.*, p. 352.

⁴⁵ *Ibid.*, p. 354.

⁴⁶ *Ibid.*, p. 355.

⁴⁷ *Ibid.*, p. 356.

Therefore, these reasons led to the rejection of the theory of the born delinquent (characterizing the Positive school) as in contrast with the same theories advocated by Ferri: he had been the first to elaborate the idea of the factors of crime (divided into three classes: physical, anthropological and social factors) which "act together, in an indissoluble network that makes them all more or less necessary to the genesis of the crime"⁴⁸. The reciprocal influence of these forces could only have the effect of determining a non-predictable prevarication of one over the other, so that the theory of the born delinquent had to be considered absolutely unfounded.

The criticism of the positive school was followed by Emanuele Carnevale's proposal to investigate whether the causes contributing to the production of the criminal phenomenon should be considered homogeneous or heterogeneous; and if, as it seems certain, they are heterogeneous, their different nature only required a different action in terms of quantity and not also in terms of quality. So, for example, the hereditary transmission of certain instincts and misery had to be among the factors of crime, because whatever the nature and importance of each of them was, they both contributed to that disastrous result. But the first condition could never be considered a determining condition, unlike the second one. Hence the distinction between determining and predisposing causes. The determining causes were mainly of a social nature and had a greater value in the determination of the crime: however, these were unable to produce a crime on their own without the intervention of a predisposing condition (to be found among the organic or physical factors of the crime). Thus, for example, epilepsy (understood as the predisposing cause) did not lead directly to crime: it attributed only a particular conformation to the character, making a subject "a brawler, a despot in the family, or a murderer, according to the occasion"⁴⁹. Instead, the determining causes by their very nature acted in a specific way. In other words, these latter represented the direction of the forces contained in the former, and by misunderstandings made them unequivocal. In this passage resided the greatest criticism of Lombrosian school, which had never bothered to measure the importance of the occasion in social facts and, therefore, in crime⁵⁰. However, this did not mean affirming the predominance of the social causes of delinquency over the physical and anthropological causes, but it was enough to firmly deny fatalism in criminology, rejecting the concept of irresistible organic influences and asking for the qualitative and differential study of the causes of crime, the only one that could allow a hierarchical, clear and concrete classification of the same causes.

The last subject of Carnevale's criticism concerned the "social reforms, as the first duty of the State in the fight against delinquency". The problem was related to the criminal prevention that the classical criminalists did not develop in depth and did not broaden to the new horizons of the new sciences. The positivists, on the other hand, made it the privileged object of study, in consideration of their attention to criminogenesis⁵¹. According to Carnevale, even the latter limited the study of this theme because of the excessive importance given to the organic factor in the understanding of social phenomena and therefore of the crime, which would lead to the doctrine of the "born delinquent". This delimitation had generated the effect of believing that criminal prevention was ineffective for a certain number of individuals, because of the excessive

⁴⁸ *Ibid.*, p. 357. Cf. Ferri, E., *I nuovi orizzonti del diritto e della procedura penale*, Bologna, 1881, pp. 72 ss.

⁴⁹ Carnevale, "Una terza scuola di diritto penale in Italia", p. 358.

⁵⁰ *Ibid.*, p. 359.

⁵¹ *Ibid.*, p. 360.

value attributed to organic energies: the consequence was to place little trust in the action of social reforms, political changes and laws. A further brake was the hasty application of the recent “doctrine of the struggle for life”, according to which social transformations were the result of laws of nature, which needed to be welcomed with greater prudence and criticism.

And finally, the care of the most immediate needs of the most basic needs of order and security had diverted from understanding the ideal office of the State⁵²: it had been mistakenly seen in neutral terms rather than in an active perspective aimed at the progress of society, correcting trends and customs according to the ideals of the State itself. The solution proposed by the Third School overcame these limitations and proposed social reform as an essential objective of the State: through the revision of the various laws, it would attenuate antagonisms of all kinds (and especially the economic one) and achieve the elimination of incentives to crime and improve prison systems, measures against alcoholism, the spread of education, the protection of abandoned children. In this last concept Carnevale identified the main difference between the theories of the positive school and those of the third school: in fact, the former considered that the social struggle was a hard necessity, while the latter moved from the objective of social peace⁵³.

3. The adhesion of Bernardino Alimena to the program of the Third School

The sharing by Alimena of the principles postulated by the Carnevale was immediate and made manifest in one of his most famous article, entitled *Naturalismo critico e diritto penale* (Critical naturalism and criminal law), published in 1891 in the December issue of the same journal *Rivista di discipline carcerarie* (Prison discipline journal), in which the program of Carnevale was published in July of the same year⁵⁴.

In this essay, Alimena stated that positive criminology - which dealt with the natural history of crime and the biology of the offender - had reached a threshold of exaggeration: against it a new philosophical direction had been expressed, called “critical naturalism”, which was placed between the two adverse schools and which inaugurated a “third phase in criminal law”, defined as “positivist in method, but essentially critical in its content, while remaining naturalistic”⁵⁵. This movement was considered not only “natural and necessary”, but also “widespread and accentuated” thanks to recent studies carried out in Italy and abroad that had demonstrated the need for the development of critical naturalism⁵⁶, derived from the identification of the merits and defects of the anthropological school. To the latter, Alimena recognized three great merits: having founded the punitive right on the denial of free will, having revived the theory of social defense and having devoted attention to the study of the delinquent. But

⁵² *Ibid.*, p. 361.

⁵³ *Ibid.*, p. 362.

⁵⁴ Alimena, B., “Naturalismo critico e diritto penale”, in *Rivista di discipline carcerarie*, a. XXI (1891), pp. 614-626, republished in 1892 as an autonomous booklet with the subtitle: “Da un libro di prossima pubblicazione”. This indication, already reported in the note in the first edition of the essay, referred to the first book of the work *I limiti e i modificatori dell'imputabilità*, Torino 1894, pp. 1-45 of which that essay would be the introduction.

⁵⁵ Alimena, “Naturalismo critico e diritto penale”, p. 615.

⁵⁶ *Ibid.*, p. 615.

it also had very serious wrongs, consisting in having followed a kind of “biological fashion” based on an excessive trust in the theory of the social organism⁵⁷, with the effect of having confused man with other animals, of having given excessive importance to the biological phenomenon as a factor in crimes, of having identified for criminal purposes the offender with the sick, of having neglected the study of legislation and of having neglected the differential element of the penalty.

If it was unquestionable that society had to defend itself against the delinquent, the madman, the plague-stricken and the angry dog, there was disagreement about the limits of social defense and about the different defensive functions, which could not be reduced to a single one, but which had to be separated. According to the author, in fact, it was necessary to divide these functions into two groups characterized by two “very big” differences regarding the moral or material effectiveness and the immediate or future effects of the defensive means adopted. In fact, these defensive means could consist in a physical action of elimination or in a moral action on the conscience of the man, as well as having immediate effects on the individual who had produced the damage or future effects on the collectivity rather than on the individual who, having produced the evil, had demonstrated not to have suffered the impression of the threat⁵⁸. Only this second group of phenomena formed the subject matter of criminal law, since legal defence differed from any other means of social defence, because it acts not as a material force, but as a moral determinant on the conscience of its affiliates and not of the individual⁵⁹.

In this context, the differential element of the penalty had to be identified, which was characterized by the threat of an evil and by its decisive effectiveness exerted on the conscience of men: this specific element differentiated the penalty from any other defensive function.

From this reasoning, Alimena came to argue that free will should be considered a useless and dangerous element for two reasons. Firstly, because historically free will had never influenced criminal laws, being unknown to the Pythagorean and Platonic doctrines. In fact, it became important in the theological sphere with reference to the justification of eternal punishment, following the disputes of St. Augustine and Pelagius; but it could not be relevant in the legal sphere, where the questions of grace and eternal damnation should have no value. Secondly, because common opinion excluded man's indifference to good and evil, so that the crime was always considered the result of a certain character, a certain education and specific conditions⁶⁰. For these reasons, the theory that valued free will had to be rejected, since it was sufficient for Alimena to analyze volition with its reasons, as the immediate antecedent of it.

From what has been said, it was possible to identify two forms of social defense: one against the madman and the dangerous animal, insensitive to the determined effectiveness of the law; and the other against common offenders who perceive such effectiveness. In the first case, one could speak of "responsibility" for the civil compensation of the damage that weighed on the patrimony of the madman or the owner of the animal, as an external and political element that established a relationship

⁵⁷ *Ibid.*, p. 616.

⁵⁸ *Ibid.*, p. 620.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*, p. 622.

of cause to effect, not unlike the hypothesis in which involuntarily a subject had broken or spoiled something. In the second case, instead, we would have spoken of "imputability" in consideration of a different psychological and ethical relationship, felt by the same offender who, while not appreciating the moral value of his violation, was aware of having wanted to consciously perform that action. This meant that criminal laws were a means of social defence, implemented with psychological coercion, and that the objective of the penalty should be the crime and not the offender.

The path followed by Alimena and the result achieved in his reasoning highlighted the flaws in the thinking of the *Anthropological School*, which had insisted too much on the analogy between the criminal and the sick, neglecting to look at the two moments of the effectiveness of criminal law, respectively addressed to those who have already committed a crime and to those who can commit it: the true effectiveness of criminal law would only occur in the second moment, "precisely because the penalty is not a retribution, but instead is an instrument of defense"⁶¹.

In the light of this simple and coherent reasoning, Alimena insisted on the idea that the penalty should not have as its object the criminal, but the crime, to avoid being effective only against those who had committed the crime, without having it against the community. Having as its basis the crime, the penalty would have acquired a great decisive force, also allowing the evaluation of the offender through the individualization of the penalty with the application of the ancient principle of proportionality between the penalty and the crime, for which "if a minor penalty is insufficient and a greater is superfluous, [...] only the necessary penalty is just"⁶². The application of this principle explained why the penalties changed and faded with the passing of time, depending on the development of the moral sense and the feeling of justice in the collective consciousness, whose sensitivity no longer needed medieval tortures, in view of the fact that our century "sensitive and a bit 'neurotic is moved more easily"⁶³.

All these arguments represented a synthesis of the new critical trend to which Alimena claimed to adhere: it moved away from the postulates of the "glorious traditional school of criminal law", doing without free will and understanding the penalty as a small means of defense. And even more so, it departed from the school of criminal anthropology, dissociating criminal law from criminal sociology; claiming that the penalty should have as its object the crime and not the offender and not sharing the evaluation of the criminal type and the genesis of crime.

But were these ideas enough to support the founding of a third school? A controversy arose over this question after the publication of the "manifesto" of Emanuele Carnevale, which Alimena had reconstructed, summarizing the objections raised up to that point: the lack of an original method of this new tendency⁶⁴ and the limitation of criticism to secondary doctrines⁶⁵.

The main reference was to the criticism made by Ferdinando Puglia in the aforementioned essay "Se vi sia o se possa esservi una terza scuola di diritto penale"

⁶¹ *Ibid.*, p. 623.

⁶² *Ibid.*, p. 624.

⁶³ *Ibid.* Alimena used the effective example of the spectrality of medieval churches, adorned with threatening devils and tangled snakes rather than the angels present in modern churches.

⁶⁴ *Ibid.*, p. 626.

⁶⁵ *Ibid.*.

(Whether there is or could there be a Third School of Criminal Law)⁶⁶, against whom Alimena showed open dissent. According to him, the objections formulated by the positivist Puglia should be considered erroneous for two reasons: because it was not only the method that represented the distinctive object between schools; and because the criticism made by the Third School concerned major issues and not secondary issues, such as, for example, the problem of the separation of criminal law from criminal sociology, which certainly constituted a major importance⁶⁷. Indeed, the various schools of law were connected like branches to the great trunk of philosophy: the *Classical School* tended towards Idealism, the *Anthropological School* towards materialism and the “new tendency” (to avoid using the “forbidden” word: school) was linked to critical naturalism and, while remaining experimental in its method, it was essentially critical in its content.

These concepts would have been taken up with greater strength and maturity in the proslution to the course of law and criminal procedure held at the University of Naples on 29 November 1894, collected, along with other writings, in the book *Note filosofiche di un criminalista* (Philosophical notes of a criminalist, Modena, 1911), in which Alimena would develop the fundamental lines of his thought, in a “bold attempt” to reconcile the principles of the two great schools, classical and positive⁶⁸. In fact, if in the above mentioned essay on critical naturalism Alimena had shown difficulty in using the term “school” referred to the new scientific direction, after only 3 years he would have had no problem in dedicating the Neapolitan proslution to the Critical “School” of Criminal Law: “And here I am before you, to speak to you precisely in the name of the initiators of this school which, because of the philosophical trunk from which it starts, has been called critical”⁶⁹. In it, the criminalist outlined the differences between the two great schools of criminal law and presented the “very new philosophical approach” which he defined as “critical positivism”, corresponding to a third phase of criminal law, positivist in its method, but essentially critical in its content. In fact, it did not need free will, it firmly rejected the theory of criminal types, it recognized that the crime depended mainly on social causes and not only on physical causes, and it stated that the only purpose of the penalty was the social defense.

4. The reaction of the Italian positivists

The “manifesto” presented in 1891 by Emanuele Carnevale had a great echo in the panorama of European criminal science. In 1915, in the magazine *Progresso del diritto criminale* (Progress of Criminal Law), the Author himself would have reminded us that many jurists did not like his initiative and many reproached him for his eclecticism⁷⁰.

In fact, amidst sharing and disapproval, the “manifesto” attracted the attention of many Italian and foreign jurists who, in the most famous scientific journals of the time,

⁶⁶ Puglia, F., “Se vi sia o se possa esservi una terza scuola di diritto penale”, in *Antologia giuridica*, anno V, 1891, p. 401-416.

⁶⁷ Alimena, “Naturalismo critico”, p. 626.

⁶⁸ Abbondanza, “Alimena, Bernardino”.

⁶⁹ Alimena, B., “La scuola critica di diritto penale”, in *Note filosofiche di un criminalista*, Modena, 1911, p. 4.

⁷⁰ Carnevale, E., “La Terza Scuola’ e la concezione unitaria nel diritto criminale”, in *Progresso del Diritto Criminale*, vol. VII, fasc. II, 1915, pp. 3-15 (3-4).

commented on the new scientific direction proposed. Among these, there were the Italians Camillo Cavagnari, Enrico Cimbali, Enrico Ferri, Giulio Fioretti, Cesare Lombroso, Ferdinando Puglia, Giuseppe Alberto Pugliese. But the proposal of the new address did not go unnoticed in France, Germany, Portugal, Spain, Switzerland thanks to some commentary notes published by jurists such as Gabriel Tarde, Ernst Rosenfeld, Clovis Bevilacqua, Manuel Torres Campos and Alfred Gautier⁷¹.

In the Italian scientific panorama, among the penalists who welcomed this new trend there was the lawyer Giuseppe Alberto Pugliese⁷², director of the journal *Rivista di Giurisprudenza*, who - according to the definition given by Impallomeni - was one of those scholars who had seen "with sympathy the rise of the "new school", for that set of naturalistic and sociological studies that promised to enrich science, but at the end he was disappointed and surprised by the assumptions neither positive nor legal taken from the same school"⁷³. The sharing of the theories exposed by Emanuele Carnevale led the lawyer Giuseppe Alberto Pugliese to republish his "manifesto" in the journal *Rivista di Giurisprudenza*⁷⁴, accompanied by an introductory note, in which he drew the attention of scholars to that "program", long awaited, which represented a synthesis between the other two doctrinal directions, favouring real progress for the legal sciences⁷⁵.

Others, such as the philosopher of law Giuseppe Cimbali (an opponent of the ideas of Lombroso) recognized in 1891 (journal *Lo Spedaliere*) the merit of Carnevale for having criticized "harshly and rightly" the fundamental canons of the positive school. He noted, however, the closeness of the proposed ideas to those of the classical school. Therefore, there was no justification for the emergence of a third direction⁷⁶. Or

⁷¹ Fioretti, G., "Recensione a E. Carnevale. Una terza scuola del diritto penale in Italia", *La scuola positiva nella giurisprudenza civile e penale e nella vita sociale* 8 (1891), pp. 373-5; Puglia, F., "Se vi sia o possa esservi una terza scuola", *Antologia giuridica* V (1891), p. 401-416; Puglia, F., "Condizioni attuali del diritto penale in Italia", *Antologia giuridica* VI (1892), pp. 669 e 717; Lombroso, C., "Rivista di discipline carcerarie, fascicolo XIV, 1891", in *Archivio di Psichiatria, scienze penali ed antropologia criminale* XII (1891), pp. 591-2; Ferri, E., *Sociologia criminale. Terza edizione completamente rifatta dei nuovi orizzonti del diritto e della procedura penale*, Torino, 1892, p. 399 e ss; Cavagnari, C., "Rassegna giuridica quadrimestrale", in *Il pensiero italiano. Repertorio mensile di studi applicati alla prosperità e cultura sociale* XVI (1892), pp. 489-496; Cimbali, G., "Recensione a E. Carnevale. Una terza scuola del diritto penale in Italia", *Lo Spedaliere. Rassegna trimestrale di scienze sociali e giuridiche* 4 (1891), pp. 401-2; Piccolo, D., "Bibliografia", *Il circolo giuridico. Rivista di legislazione e giurisprudenza* XXIV (1893), p. 41-7; Tarde, G., "Une nouvelle école italienne, 'le positivisme critique'", in *Archive d'anthropologie criminelle, de criminologie et de psychologie normale e pathologique*, VII (1892), pp. 208-211; Gautier, A., "Une troisième école de droit pénal en Italie", *Revue pénale suisse* V (1892), p. 57; Bevilacqua, C., "Una terza scuola di diritto penale", *Revista academica da faculdade de direito do Recife* 3 (1891), pp. 178-183; Torres Campos, M., "Una nueva escuela penal", *La Nueva Ciencia Juridica* 1 (1892), pp. 24-38; Rosenfeld, E., "Die Dritte Schule", *Mitteilungen der Internationalen kriminalistischen Vereinigung* 4 (1894), pp. 1-40; Wulfert, A., "L'anthropologie criminelle en Italie", *Revue pénitentiaire. Bulletin de la société générale des prisons* 18 (1894), pp. 128-130.

⁷² Biographical profiles of Giuseppe Alberto Pugliese (Toritto, 1845 – Trani, 1931) in: Nencha, C., *Per l'on. G.A. Pugliese*, Trani, 1909; Malcangi, G., "Giuseppe Alberto Pugliese e il Casato Nencha", *Il tranesiere*, a. XIV, 1972, n. 10, pp. 5-9; Pastore, S., "Giuseppe Alberto Pugliese, parlamentare e avvocato tranese: il dibattito parlamentare sulla legge istitutiva del collegio dei probiviri", *Risorgimento e Mezzogiorno: rassegna di studi storici*, a. 20, 2009, fasc. 39/40, pp. 215-221.

⁷³ Impallomeni, "La nuova scuola", p. 315.

⁷⁴ Carnevale, E., "Una terza scuola di diritto penale in Italia", *Rivista di Giurisprudenza*, a. XVI (1891), pp. 501-520.

⁷⁵ *Ibid.*, p. 501 nt 1.

⁷⁶ Cimbali, "Recensione a E. Carnevale. Una terza scuola del diritto penale in Italia", p. 402.

others, such as the magistrate Camillo Cavagnari, an exponent of “legal socialism”⁷⁷, which recognized the special character of this new scientific trend aimed at promoting social reform⁷⁸. However, he recognized the closeness of these ideas to those of scientific socialism and to the concepts already developed by Turati and Colajanni⁷⁹, as well as the proximity to the sociological openings already provided for by Ferri in his program⁸⁰.

Instead, the exponents of the Positive School were particularly critical of this approach: Cesare Lombroso, Enrico Ferri, Giulio Fioretti and Ferdinando Puglia vigorously responded to the proposal to establish a new scientific direction.

Fioretti⁸¹, co-director (with Ferri, Garofalo and Lombroso) of the journal “La Scuola Positiva nella giurisprudenza civile e penale e nella vita sociale” (*The Positive School in civil and criminal law and in social life*), was the first to publish a critique of the program of the third school in August 1891 (only one month after the publication of the “manifesto”). The essay opened with the question: “Founding a third school of criminal law?” to which the author replied: “Forgive my friend Carnevale, but this seems to me a melancholic idea of ... Lent. I thought two schools were too much, and how much!”. On this premise, aimed at ridiculing the idea of proposing a new penalistic approach, Fioretti declared that he had not understood the difference between the school of positivism *tout court* and that of “critical” positivism⁸².

He tried, therefore, to examine the differences proposed by the third school, which were not different at all from the positive one: in fact, the alleged “clear” distinction between the personality of criminal law and biology and sociology had already been postulated by Ferri and Garofalo⁸³; the question of imputability was treated equally in recognizing the denial of free will⁸⁴; the recognition of the greater importance of the occasion was not new, since the positivists had already drawn up the “very fundamental” distinction between born criminals and occasional criminals; the affirmation that the State has the duty to carry out social reforms in the fight against crime had already been envisaged by Ferri with the famous theory of “criminal substitutes”⁸⁵.

⁷⁷ Biographical information of Camillo Cavagnari (Marostica, 1853 – Milano, 1904) in Alpa, G., “L’avvocatura ieri e oggi”, in C. Cavagnari, E. Caldara, *Avvocati e procuratori* (G. Alpa, ed.) Bologna, 2004, pp. 7-35; E.; Tacchi, F., “Cavagnari, Camillo”, in *Dizionario Biografico dei Giuristi Italiani*, vol. 1, pp. 492-3.

⁷⁸ Cavagnari, “Rassegna giuridica quadrimestrale”, p. 493.

⁷⁹ *Ibid.* In fact, although Carnevale had declared that he did not want to confuse his theories with those of scientific socialism, he admitted that with this last direction his school could have had greater affinity.

⁸⁰ *Ibid.* The reference is to the theory of the criminal substitutes of Ferri, which would have made it possible to mitigate and correct the antagonisms of every nature existing in society.

⁸¹ For a biographical profile of Giulio Fioretti (Napoli 1862-ivi, 1914) see Marchetti, P., “Fioretti, Giulio”, *Dizionario Biografico dei Giuristi Italiani (XII-XX secolo)*, Bologna 2013, vol. 1, pp. 876-7.

⁸² Fioretti, “Recensione a E. Carnevale”, p. 373.

⁸³ *Ibid.*

⁸⁴ *Ibid.*, p. 374.

⁸⁵ According to Mario Sbriccoli, the theory of criminal substitutes developed by Ferri since 1883 demonstrates his progressive attention to the political-social dimension of the criminal problem and the initial lack on that same ground. Cf. Sbriccoli, M., “Il diritto penale sociale, 1883-1912”, in Id., *Storia del diritto penale e della giustizia. Scritti editi ed inediti (1972-2007)*, Milano 2009, p. 833.

In addition, he reproached Carnevale for having referred only to the works of Ferri, not examined as a whole, but only from "those sides that he likes to consider for the sake of polemics", neglecting to mention the writings of Garofalo and Lombroso, which were an indispensable complement to the positivist system⁸⁶. An overall view would have made it possible to understand that the divergence of opinions was an indispensable condition for the fruitfulness of the Positive School. In fact, it had a very broad program, which could also include the critical positivism of Carnevale, whose efforts would be more effectively served to the common cause, rather than being wasted in his ambition to found a Third School⁸⁷.

In line with the opinion expressed by Fioretti, Lombroso in a short blurb published in the same year 1891 in his journal *Archivio di Psichiatria, scienze penali ed antropologia criminale* (Archive of Psychiatry, Criminal Science and Criminal Anthropology)⁸⁸ denounced the presumption of establishing a new school on the basis of simple reasoning and not of facts which would have justified the proposal of a new direction⁸⁹.

And again, the Sicilian lawyer Ferdinando Puglia⁹⁰, in an article published in the issue of November of the journal *Antologia giuridica* (Legal anthology) entitled "Whether there is or could be a third school of criminal law"⁹¹, argued that the median theories proposed by the Carnevale were not sufficient to found a new movement, yet they demonstrated that the debate between the two schools would end only with the prevalence of one over the other. In fact, the proposed name of "critical positive school of criminal law" showed that it also moved in the orbit of "positive" science (as opposed to metaphysical science). Furthermore, the alleged differential characteristics consisted in mere corrections of some aspects of the same positive school: therefore, the doctrinal foundations were certainly not questioned⁹².

5. The intervention of Enrico Ferri

Immediately after the publication of the third school programme, Ferri sent a personal letter to the Carnevale in which he reproached the jurist that his proposal to establish a new direction was completely illusory. This invective would have been reproduced in 1892 in the introduction of the third edition of Ferri's book entitled "Sociologia criminale" (Criminal sociology), in which the author would not have spared on negative judgements to the new "eclectic" approach that claimed to lie between the extremes of the two schools: on the contrary, far from being rational and fruitful, it represented "a degree of incomplete evolution, aborted and of lesser mental power"⁹³.

⁸⁶ Fioretti, "Recensione a E. Carnevale", p. 373.

⁸⁷ *Ibid.*, p. 375.

⁸⁸ On this topic see Marchetti, P., "Cesare Lombroso e l'«Archivio di psichiatria»", in L. Lacchè, M. Stronati, eds., *Una tribuna per le scienze criminali. La 'cultura' delle Riviste nel dibattito penalistico tra Otto e Novecento*, Macerata, 2012, pp. 69-96.

⁸⁹ Lombroso, "Rivista di discipline carcerarie . . .", pp. 591-2.

⁹⁰ Biographical information of Ferdinando Puglia (Messina, 1853 - 1909) in Tolasi, V., "Puglia, Ferdinando", in *Dizionario Biografico dei Giuristi italiani*, vol. II, p.1633.

⁹¹ Puglia, F., "Se vi sia o se possa esservi una terza scuola di diritto penale", in *Antologia giuridica*, anno V, 1891, p. 401-416.

⁹² *Ibid.*, p. 407.

⁹³ Ferri, E., *Sociologia criminale. Terza edizione completamente rifatta dei Nuovi orizzonti del diritto e della procedura penale*, Torino, 1892, p. 29. Although not expressly mentioning them, the

In particular, Enrico Ferri accused this new tendency of apriorism, arbitrariness and temporariness, because he claimed to determine the resultant between the two schools, without the positive school having yet reached its full expansion. Moreover, even if the two “currents” had completed their path, the effort to seek an intermediate solution between the two directions would have been useless, since the same criminal science would have reached the same goal with the passing of time⁹⁴. The claim to realize this “marriage of convenience” between the old criminal law and the young positive science was, therefore, a “vain and infectious work”, if not even ridiculous, in view of the difference in scientific method between the two addresses, so it was not possible to identify a middle ground⁹⁵.

Therefore, the claim to give rise to a "third school" was unacceptable and the following theories formulated by Carnevale in 1891 were unsustainable: respect for the personality of criminal law in its scientific renewal; the causality and non-fatality of crime; social reform, as the first duty of the State in the fight against crime. All these points were criticized by Ferri, who believed first of all that in scientific thought there were only two main roads: “deductive apriorism” and “inductive positivism”. Next to these roads there could not be another, but only small trails. Therefore, those three "schismatic" points presented by Carnevale had to be considered secondary or incorrect.

According to Ferri, the first one, relating to the concern of the personality of the criminal law, had to be considered merely scholastic: in fact, regardless of the name given to the branch of the law (criminal law or criminology or criminal sociology), its object was to study the crime as a natural and social phenomenon and to indicate the means of legal-social fight against it. Instead, the second point was the result of a misunderstanding, since no positivist jurist had ever spoken of the fatalism of the crime, but rather of causal or natural determinism: in fact Lombroso (the author most accused of biological fatalism) had found that the born delinquent could not commit crimes for favorable environmental conditions. The third point was absolutely unjustified, because the positive school was the first to develop the theory of social prevention (criminal substitutes), insisting on the minimum effectiveness of penalties in the fight against crime and proclaiming that social ills need social remedies⁹⁶.

These clarifications led Ferri to believe that these theories constituted only partial disagreements, even useful as a critical assessment for the positivists: however, they could certainly not found a third school of criminal law. He therefore denounced the eclecticism of this approach, which was the symptom of “cerebral shyness”⁹⁷. The denunciation against the eclecticism sustained by Ferri in 1892 would have found proselytes among his followers, including Cavagnari, who recognized the merit of the "master" for having been able to triumphantly fight the theories of the "champions" of a

contextual temporal collocation of Ferri's book (published in 1892) to the aforementioned programmatic writings of Carnevale and Alimena (published in 1891) make it clear that the latter were the recipients of such invectives, to which the author did not spare the accusation of having found a "convenient art to make a career".

⁹⁴ *Ibid.*, p. 30.

⁹⁵ *Ibid.*, p. 31.

⁹⁶ *Ibid.*, p. 400, Note 2. On this topic see Latini, C., *Storia di un giurista 'eretico'. Il diritto penale e la Scuola positiva di Enrico Ferri*, Napoli, 2018, p. 20.

⁹⁷ Ferri, *Sociologia criminale*, pp. 400-1, Note 2.

third school of criminal law⁹⁸, based on "convenient eclecticism" between old and new ideas⁹⁹.

This severe criticism would have been taken up again by Ferri in the fourth edition of the book *Sociologia criminale* (Criminal sociology), published in 1900, in which the critique of Carnevale's program would be included in the introduction to the volume, where, with greater emphasis, Ferri would include Alimena and Carnevale in the "mollusc variety of eclectic criminalists", whose attempt to found a third school was "meanly aborted"¹⁰⁰. These considerations were based on the content of the previous edition of the same book, in which Ferri had argued that the third school could not live and prosper, because partial disagreements could not be sufficient to constitute a scientific school¹⁰¹. He concluded, therefore, by considering that the third school "was born unhappy and in early death found relief from his pain", with the only benefit of having earned university professorships to its founders Carnevale and Alimena, who would never have had them, as happened to Majno, Florian and Sighele, if they had declared themselves members of the positive criminal school¹⁰².

6. The reply of Emanuele Carnevale

The negative opinions expressed against Emanuele Carnevale's project led him to intervene in defence of his proposal, in December 1891, from the pages of the Sicilian journal *Antologia giuridica*, which prof. Giuseppe Speciale defines as "one of the many papers that gave voice to the science of law at the end of the nineteenth century"¹⁰³.

In this context, Carnevale published an article entitled *La nuova tendenza nelle discipline criminali* (The new trend in criminal disciplines), in which he listed the main objections raised against his program, which summarized in three key points: the denial of the possibility of a new school, on the basis of the consideration that there were only two ways, metaphysics and positive; the lack of originality of the founding principles of that new direction, moreover common to the doctrine of Lombroso and Ferri; and the secondary nature of the new theories proposed, which could not be considered sufficient to establish a distinct school¹⁰⁴.

In particular, Carnevale referred to the criticism of Fioretti, Puglia and Lombroso¹⁰⁵, whose observations were in line with those sent to him privately by Enrico Ferri in the aforementioned letter, to which he had already replied publicly with an "open letter" in the issue of October of the journal *Rivista di Giurisprudenza*¹⁰⁶, the

⁹⁸ Cavagnari, "Rassegna giuridica quadrimestrale", p. 492.

⁹⁹ *Ibid.*

¹⁰⁰ Ferri, E., *Sociologia criminale*, Torino, 1900⁴, p. 31.

¹⁰¹ *Ibid.*, p. 32.

¹⁰² *Ibid.*, p. 36.

¹⁰³ Speciale, *Antologia giuridica*, pp. 13 e 29; Id., "Il diritto e le nuove scienze tra feconde intersezioni e cincludenti commistioni («Rivista di sociologia», «Antologia giuridica», «Il Circolo giuridico», in L. Lacchè, M. Stronati, eds., *Una tribuna per le scienze criminali. La 'cultura' delle Riviste nel dibattito penalistico tra Otto e Novecento*, Macerata, 2012, pp. 119-166.

¹⁰⁴ Carnevale, E., "La nuova tendenza nelle discipline criminali", *Antologia giuridica*, anno V, 1891, pp. 593-611 (593).

¹⁰⁵ *Ibid.*, p. 593, Note 1.

¹⁰⁶ Carnevale, "Del nuovo indirizzo", p. 551.

content of which was re-proposed in this new essay, and enriched by further elements to counter all the arguments highlighted by the other positivists.

First of all, Carnevale contested the exclusivity claim of the "two great master ways" of *deductive apriorism* and *inductive positivism*, which would have made it illusory to speak of a third school: on the contrary, he considered it an illusion to consider that, in the current state of science, those two methods could represent a dividing sign of the various schools, in view of the partial coexistence of both in the different directions, so that it was not possible to use only that criterion to distinguish them¹⁰⁷. Instead, it was necessary to look at the substance of the doctrines, and the *Third school* differed from the others certainly in its content.

The second objection concerned, then, the three basic principles of the new approach, consisting in respect for the personality of criminal law; in the causality, not fatality of the crime; and in the social reform as the first duty of the State in the fight against crime.

The first element was criticized by Ferri in his personal letter, on the basis of the consideration that this approach corresponded to purely scholastic concerns. Carnevale replied that these were not sterile academic minutiae, but, on the contrary, a scientific necessity aimed at examining and comparing every fact connected to the criminal phenomenon: the latter was the object of criminal law, whose distinct personality had to be understood and respected among all the instruments of social defence.

To reject the criticism on the second point, Carnevale recalled the sociological studies of Ferri, who in the second edition of *I nuovi orizzonti* (The New Horizons) had supported the foundation of the idea of incorrigibility as a result of anthropological investigations conducted¹⁰⁸; had recognized among the usual criminals "a class of individuals physically and morally unfortunate since birth, who live in crime for a congenital need for organic and psychic adaptation"¹⁰⁹; and had admitted the idea of a born delinquent as a consequence of congenital tendencies¹¹⁰. These quotations confirmed the validity of the theory of the causality of the crime advocated by Carnevale.

At the third principle, Fioretti had opposed the fact that Ferri had already proposed criminal substitutes as a social reformist perspective on the part of the State: but, as Carnevale observed, these instruments were affected by a clear logical contradiction, deriving from the tendency to generalize and confuse, which ended up putting together the most disparate and distant things¹¹¹. The heart of the problem was, therefore, not reached: it was represented by the need to eliminate the antagonisms of every nature, first of all the economic ones, existing within society¹¹².

¹⁰⁷ Carnevale, "La nuova tendenza", p. 595.

¹⁰⁸ Ferri, E., *I nuovi orizzonti del diritto e della procedura penale. Seconda edizione interamente rifatta con una tavola grafica sulla criminalità in Europa*, Bologna, 1884, p. 210.

¹⁰⁹ *Ibid.*, p. 233.

¹¹⁰ *Ibid.*, p. 239.

¹¹¹ Carnevale, "La nuova tendenza", p. 607.

¹¹² *Ibid.*

The last objection came from Puglia, according to whom the new ideas were not sufficient to justify the rise of a third school, being secondary differences and mere theoretical corrections.

Against these, Carnevale responded that the new direction - shared by other talented jurists such as Poletti, Tarde and Liszt¹¹³ - arose from the disapproval of some results achieved by the exponents of the Anthropological Criminal School¹¹⁴: they had altered the true nature of criminal law science, disregarding the importance of the social environment in the production of crime and having little confidence in repression and prevention, education and reforms of society¹¹⁵. The positivist nature of the supporters of the new approach imposed on them, therefore, the strict obligation to separate themselves from that group, to demonstrate whether a different application of the positive method was possible. After these observations, it was of little importance to affix the nickname "school" to this new scientific movement, supported by several voices, among which Carnevale was said to be the last representative: "this touches me little: [...] denied the name, the thing will remain"¹¹⁶.

The reply of Carnevale led Puglia to intervene again on the subject with a further contribution published in 1892 in the journal *Antologia giuridica*, in which the Author presented the *Current conditions of criminal law in Italy*, reviewing the latest achievements of the positive school and the most significant criticism received. Among these, there was also the criticism of Emanuele Carnevale, whose thought was summarized¹¹⁷, commented and contested by Puglia, which pointed out his inaccuracies. First of all, he believed that the autonomy of the science of criminal law was a principle affirmed by the positivist direction, after an erroneous approach followed in the early days¹¹⁸.

As for the theory of the born delinquent, he claimed that no one had ever said that a person should commit crimes only because he had degenerated organically, but, on the contrary, it was stated that certain psycho-organic conditions predispose to the crime. And he added that it should be considered an exaggeration to believe that the real causes of crime should be sought in the social environment¹¹⁹. The last point concerned the prevention of crimes which could not be neglected: however, this object of study was the responsibility of the sociologist and not of the criminalist¹²⁰.

Therefore, Puglia reiterated the groundlessness of the critical objections raised by Carnevale in his most recent intervention in view of their secondary importance. In fact, these objections did not concern any fundamental principles such as the aim of punishment in the defence of the legal order; the study of the causes of delinquency divided into physical, social and anthropological; the classification of the criminal types and the consequent different repression in terms of quality and duration. While the

¹¹³ *Ibid.*, p. 608 nt. 3.

¹¹⁴ In controversy with Fioretti, who had suggested preferring the name "Critical positivism" to the name "Third School", Carnevale declared that he preferred the name "School of Criminal Anthropology" to that of "Positive School", in view of the fact that positivism in general should not be anyone's monopoly. *Ibid.*

¹¹⁵ *Ibid.*, p. 609.

¹¹⁶ *Ibid.*, p. 611.

¹¹⁷ Puglia, "Condizioni attuali", pp. 669, 670, 717.

¹¹⁸ *Ibid.*, p. 669.

¹¹⁹ *Ibid.*, p. 670.

¹²⁰ *Ibid.*, p. 717.

distinction of criminals into a greater or lesser number of classes was to be considered of secondary importance; as well as the greater or lesser influence that the social factor exerts on the crime.

In addition to the theories of Carnevale, Puglia also looked to the other promoters of a third school, including Tarde, Alimena and Pugliese. The first had expressed doubts about the anthropological characteristics of criminals, but he had not denied the existence of the criminal type, which was not to be distinguished from normal man, but from cultured man and virtuous man. In essence, he admitted that the criminal type was a professional type, to which only the lifestyle and environment attributed particular characteristics: instead, the nature of crime could not be deduced from them.

With reference to the penalty, the French jurist observed that the criminal action was the result of the combination of two factors, the character and the social environment; that the action of the individual was singular, unique in itself; that the development of criminal anthropology would allow to apply special treatment to each offender¹²¹. From these theories, it emerged that the principles affirmed by Tarde were not in contradiction with the cornerstones of positive criminal science, in consideration of the fact that the French author did not deny that the criminals had particular characteristics and that the progress of criminal anthropology would allow to apply to each offender the treatment most in conformity with his nature¹²².

Puglia then passed to examine the figure of the lawyer Pugliese, who since 1883 had accepted the fundamental doctrines of the positive school then emerging, without ever deviating from it, so he did not understand the reason why he could be a supporter of the new critical direction. And again Alimena, who seemed to have moved away from the positive school "because of misunderstandings", having declared that the reasons for his detachment were due to the fact that criminal law should not be confused with criminal sociology; that the penalty should target the crime and not the offender; that the evaluation of the criminal type should come after that of the honest type; that the genesis of crime was mainly the result of very complex social causes¹²³. The theories proposed by Alimena – on which Puglia had already intervened in a pungent review published in the Neapolitan journal *L'Anomalo*¹²⁴ – were considered unfounded or in any case insufficient to destroy the fundamental principles of the *Positive School*¹²⁵.

In particular, Puglia focused on Alimena's criticism of the object of the penalty, which was aimed at the crime and not at the offender. Puglia considered this theory had many weaknesses, because the object of the penalty had to necessarily concern both the

¹²¹ *Ibid.*, p. 721. The references of Puglia are to Tarde, G., *La criminalité comparée*, Paris, 1886; Id., *La philosophie pénale*, Paris, 1890. Cfr. Borlandi, M., "Tarde et les criminologues italiens de son temps (à partir de sa correspondance inédite ou retrouvée)", *Revue d'Histoire des Sciences Humaines* 2 n. 3 (2000), pp. 7-56.

¹²² Puglia, "Condizioni attuali", p. 721.

¹²³ *Ibid.*, p. 722. The reference is to Alimena, "Naturalismo critico".

¹²⁴ Puglia, F., "Naturalismo critico e diritto penale", *L'Anomalo* IV (1892), pp. 33-45. Sulla rivista *L'Anomalo*, fondata e diretta a Napoli dal medico legale molisano Angelo Zuccarelli cfr. Rotondo, F., "Angelo Zuccarelli e la rivista «L'Anomalo». Una riflessione sull'antropologia criminale di fine Ottocento a Napoli", in L. Lacchè, M. Stronati, eds., *Una tribuna per le scienze criminali. La 'cultura' delle Riviste nel dibattito penalistico tra Otto e Novecento*, Macerata 2012, pp. 191-219.

¹²⁵ Puglia, "Naturalismo critico e diritto penale", pp. 33-34.

crime and the offender and in order to have a truly scientific criminal system it was necessary to make not only the classification of the crimes, but also that of the offenders¹²⁶.

On the basis of all these considerations, Puglia insisted on demonstrating the impossibility of admitting the existence of a third school of criminal law or a new trend in criminal disciplines, on the basis of the consideration that only two schools were possible: the positive and the classic one. Instead, the critical direction was found in both schools and the divergence of opinions on some topics could not be sufficient reason to create other systems, but it could only cause confusion.

Meanwhile, Carnevale had not been intimidated by criticism from the positivists, and continued undaunted to carry out his project: on 12 May 1892, in fact, he held in Palermo, at the seat of the scientific society *Il Circolo Giuridico*¹²⁷, a conference on the topic *Delusioni e speranze nella scienza criminale* (Delusions and hopes in criminal science¹²⁸), which was welcomed with great favor by the public¹²⁹. In it, the author retraced the glories of the classical school and the proselytes gathered by the introduction of the positive method, which called for the alliance of punitive law with natural sciences.

The attempt proposed by Lombroso and Ferri seemed destined to be successful in Italy and abroad, as it promised to carry out a scientific action capable of lowering the level of crime: however, it soon turned out to be a “real scientific disappointment”¹³⁰. They, in fact, did not succeed in the intent. Their efforts proved to be a failure because of a “philosophical capital error” connected to a fatalist vision of the “naturalness” of social phenomena: this vision determined a “placid resignation” to all injustices and evils and led to the belief that the power of educational action was ineffective compared to the “iron law of natural heritage”¹³¹. Therefore, the main vice of those theories – now felt by many – was identified in the fact that they had given too much weight to physical and anthropological factors compared to social ones, which were placed by Carnevale at the basis of “a new school in our science”¹³².

7. The Third School and the European Criminal Science

¹²⁶ Puglia, “Condizioni attuali”, p. 723. The Author would return to the subject again in 1893 with an essay entitled “Carattere obiettivo del diritto di reprimere” (Objective character of the right to repress), published in the journal *Archivio di psichiatria*, in which he faced the problem of the object of the punitive magisterium, which the metaphysical criminalists and some positivists identified in the crime and not in the delinquent, as professed instead by the anthropological school. Puglia, F., “Carattere obiettivo del diritto di reprimere”, *Archivio di psichiatria*, vol. XIV (1893), pp. 241-9.

¹²⁷ “Il Circolo giuridico” (The Juridical Circle) was a scientific society set up by Luigi Sampolo (Palermo, 1825 - 1905) with the intention of creating a meeting place between doctrine and forensic practice. The homonymous journal of legislation and case law was founded in 1870 with the aim of promoting and extending the culture of the legal and political social sciences. Cf. Cocchiara, A., “Sampolo, Luigi”, *Dizionario Biografico dei Giuristi Italiani*, vol. II, pp. 1780-1.

¹²⁸ Carnevale, “Delusioni e speranze nella scienza criminale”, *Il circolo giuridico. Rivista di legislazione e giurisprudenza* 23 (1892), p. 113-125. Also published in the form of an independent booklet in Palermo in 1892, pp. 3-15.

¹²⁹ *Ibid.*, p. 3 nt. 1.

¹³⁰ *Ibid.*, p. 11.

¹³¹ *Ibid.*, p. 9.

¹³² *Ibid.*, p. 10.

The negative opinion expressed by the most tenacious followers of the *Positive school*, such as Lombroso, Ferri and Puglia, was compensated by the appreciation coming from other European jurists. The latter acknowledged the merits of the promoters of the *Third school*, whose ideas were defined by Ernst Rosenfeld as a reaction against anthropology and an emphasis of sociology. These ideas were close to the sociological orientation taken by the International Criminal Union and could have solved the existing conflicts between the most extreme positions that would clash in Brussels in August 1892 at the Third Congress of Criminal Anthropology¹³³.

Therefore, the foreign penalists reconstructed the terms of the scientific debate that developed in Italy, making precise references to all the interventions that followed the proposal formulated by Carnevale and Alimena, towards which they expressed their positive opinion. So Gabriel Tarde hoped for the success of this new direction, while suggesting not dwelling on unnecessary polemics such as the existence of a third school¹³⁴. And again Alfred Gautier, professor of criminal law at the University of Geneva, described the ambitious and daring project of his Italian colleague¹³⁵, to whom he acknowledged the merit of having based his theories almost exclusively on the social causes of the crime, even if his program did not shine in breadth and precision, since it was still an incomplete system. He then dwelt on the reaction of the positivists who accused him of desertion for provoking a schism within their school¹³⁶, within which there were, in reality, disagreements and divergences symptomatic of weakness and disintegration¹³⁷.

He also reported that he was particularly impressed by the almost perfect conformity of Carnevale's thought with the statute of the International Union of Criminal Law, of which the Italian jurist embodied without doubt "what one might call the average temperament of this Union", with reference to the mission of criminal law in the fight against the social phenomenon of crime¹³⁸. The "social point of view" was therefore - also in the analytical reconstruction offered by Rosenfeld - the most peculiar aspect of the third school¹³⁹, the core of which was common to the reform movement

¹³³ *Ibid.*, p. 4: "Ein aktuelles Interesse knüpft sich an die inneritalische Bewegung aus doppeltem Grunde. Wir stehen in den Tagen des dritten kriminalanthropologischen Kongresses (August 1892 in Brüssel), wo man sich vielleicht den Anschauungen der terza scuola nähern wird. Und zweitens findet die kräftige Betonung des soziologischen Elementes einen Widerhall bei der Internationalen kriminalistischen Vereinigung".

¹³⁴ Tarde, "Une nouvelle école italienne", p. 211: "Est-il nécessaire d'ajouter que nous souhaitons le succès et aussi, et surtout, le développement de leur point de vue? Je me permets de leur donner un conseil: qu'ils ne s'attardent pas en polémiques inutiles sur le point de savoir si c'est bien une troisième école qui vient de pousser sur la féconde terre italienne, ou seulement un nouveau rejeton de la *nuova scuola*".

¹³⁵ Gautier, "Une troisième école", p. 57: "Au premier abord, ce titre paraît un peu ambitieux, un peu hors de proportion avec l'importance même du travail; prétendre développer les principes d'une école nouvelle dans une brochure de moins de vingt pages, il faut pour cela serait-on tenté de se dire, toute l'audace de la jeunesse".

¹³⁶ *Ibid.*, p. 62: "Cet accueil ne pouvait guère être que défavorable; donnant le signal d'une défection, d'un schisme dans les rangs des positivistes, l'auteur devait s'attendre à être traité, par les coryphées actuel de cette école, de trouble-fête et de transfuge".

¹³⁷ *Ibid.*, p. 64.

¹³⁸ *Ibid.*, p. 65: "Quand nos statuts définissent la mission du droit pénal comme la lutte contre le phénomène social de la criminalité, quand ils ajoutent que la peine ne doit pas être isolée des autres remèdes sociaux, ni faire oublier les mesures préventives, il semblerait presque que ce soit M. Carnevale qui les ait rédigés!"

¹³⁹ Rosenfeld, "Die dritte Schule", p. 29: "Es ist also auch hier wieder der der «dritten Schule» eigentümliche soziale Gesichtspunkt, der den Ausschlag gibt".

which had involved European criminal law in recent years¹⁴⁰. And this was the main reason for the consensus expressed by the European penalists on the proposals made by the two “intelligent and active Italian criminalists” that – according to Manuel Torres Campos, exponent of the “Spiritualist School” – deserved a lot of consideration, especially “after the Paris Congress and the establishment of the International Union of Criminal Law, as a result of the exaggerations observed by the same anthropologists at the Lombroso school”¹⁴¹.

Thanks to the favourable opinion expressed by the Spanish professor, the third school would also have an echo in Latin America, where in 1892 the Venezuelan jurist Francisco Ochoa would have greeted with enthusiasm the third school of criminal law, which promised great benefits for the criminal science¹⁴². And in Brazil, where Clovis Bevilacqua in the journal *Revista academica da Faculdade de Direito do Recife* expressed (already in 1891, even before Torres Campos) his great satisfaction with that new direction: he criticized Carnevale for not having formulated a complete program of the third school (which would have deserved a complete and solid book rather than a booklet of a few pages), but for having only drawn attention to this new direction, in the belief that it would dominate the future landscape of criminal science. The declared sympathy for the ideas proposed by Carnevale led the Brazilian jurist to request a more developed work on the subject, which would allow to connect all the points of contact between the dissidents of the positive school that, day after day, became more and more numerous.¹⁴³

The echo of the Third School also spread to Russia, where Antoine Wulfert, professor of criminal law at Jaroslaw university, dedicated a volume to the positive anthropological school in Italy (in Russian language)¹⁴⁴: in the second volume published in 1893, he defined the new direction as a renewal of the classical Italian school of Beccaria and Carmignani. In particular, he recognized Alimena’s great merit in having demonstrated exactly the autonomous and independent position of science and criminal legislation with respect to the criminal sociology, whose idea was completely absent in the school of Lombroso. And this idea was mentioned among the fundamental theses of Carnevale’s booklet, which had affirmed the autonomous nature of criminal law

¹⁴⁰ *Ibid.*, p. 39.

¹⁴¹ Torres Campos, “Una nueva escuela penal”, pp. 37-8. According to the author, the new school was a “necesidad que se impone” to remedy the exaggerations of the anthropologists of the school of Lombroso. However, he did not share the denial of free will put forward by the third school, as it was contrary to the theories of the spiritualist current: “Hay espiritualistas, entre los cuales me cuento, que non son opuestos à los progresos legittimo y à las verdades solidamente demostradas por el método experimental, y, por tanto, que podrian formar parte también de la novisima escuela. Acéptese un amplio programa que solo admita hechos y generalizaciones verdaderamente demostrados, y podrán contribuir, manteniendo sus convicciones, à los adelantos futuros”.

¹⁴² Ochoa, F., “La Escuela Penal Antropológica”, *Estudios Jurídicos*, Maracaibo, 1892 (published also in Id., *Estudios sobre la escuela penal antropológica*, Maracaibo, 1899, pp. 1-31): “Ella surgirá de ese concurso de investigaciones y estudios que se practican en la gran revolución que se está operando en el campo de la ciencia penal, y no se inspirará seguramente en ese determinismo fatal é inflexible que proclama la escuela antropológica, sino que, cualesquiera que sean los límites que se señalen al libre albedrío, habrá de tomar como base el elemento subjetivo y buscar la noción de la imputabilidad en la intención del agente, en la conciencia con que él haya ejecutado el hecho punible”.

¹⁴³ Bevilacqua, “Una terza scuola di diritto penale”, p. 178-180.

¹⁴⁴ Wulfert, A., *La scuola antropologico-positiva di diritto penale in Italia. Uno studio critico* (in lingua russa), Jaroslaw, vol I, 1887 e vol. II, 1893 (Vul’fert, A., *Antropologo-pozitivnaja shkola ugolovnogo prava v Italii. Kriticheskoe issledovanie*, Jaroslavl’, vol 1, Tipografija V. V. Islen’eva, 1887 e vol. 2, Tipografija M.X. Fal’k, 1893).

deriving from the specific quality of punishment as a sensitive evil, capable of acting on the will with the example of punishment. In summary, the Russian jurist had also expressed a favorable opinion towards the theories of the two Italian authors, who had introduced a rational delimitation between the various disciplines that go back to more general and broader purposes of punishment, which restore the bases of criminal law on the rational and social nature of man and claim his place in the strictly legal element, which had been expelled from criminal law in some contemporary works¹⁴⁵.

The effective reconstruction of Wulfert explained the reasons for the consensus reached abroad by the theories of Alimena and Carnevale, who had been able to grasp and summarize the new perspective of international criminal law aimed at making criminal law independent of other sciences and to temper the rigidity of the positive school¹⁴⁶. The third International Congress of Criminal Anthropology, held in Brussels in August 1892 (attended by Bernardino Alimena, then professor of criminal law at the University of Naples) would have highlighted the sociological foundation of this new direction, sanctioning the end of Lombroso's doctrine: in fact, in that place, the theory of the criminal type was definitively shelved, while the idea of a pre-eminence of the social causes in the genesis of the crime was welcomed¹⁴⁷. In particular, Dr. Jules Dallemagne, director of the autopsy service of the Brussels hospitals, claimed that the anatomical theories of the Italian school were too restrictive and that the invention of the "born delinquent" was a "premature, artificial creation"¹⁴⁸. Brussels University Professors Houzé and Warnots argued that Lombroso's theory of "born delinquent" was a hybrid creation and that the distinction between delinquents and not delinquents was arbitrary, because honesty could not be deduced from the criminal record. Russian judge Jakrewski, General Attorney in Kharkoff, stated that the Italian School of Criminal Anthropology had its day; while Moritz Benedikt of the University of Vienna denied the theory of a criminal type, stating that the forms of degeneration found in criminals were also found in many normal men¹⁴⁹.

¹⁴⁵ Wulfert, "L'anthropologie criminelle en Italie", p. 130: "Enfin, en résumant mes opinions sur les deux auteurs italiens j'affirme «qu'ils introduisent une délimitation rationnelle entre les diverses disciplines qu'ils remontent à des fins plus générales et plus larges de la pénalité, qu'ils rétablissent les fondements du droit pénal sur la base de la nature rationnelle et sociale de l'homme et revendiquent sa place à l'élément strictement juridique, qui a été expulsé du droit pénal, comme l'âme humaine de la psychologie dans certains travaux contemporains". Cfr. Wulfert, *La scuola antropologico-positiva*, vol. II, p. 563.

¹⁴⁶ Cf. Escobar Cerda, R., "Disertación sobre la ciencia penal. Especialmente sobre las teorías de Lombroso", *Revista Forense Chilena*, Tomo XIV, 1900, p. 726 nt 23. Cfr. Carnevali, R., "La ciencia penal italiana y su influencia en Chile". *Política criminal*, n. 6, 2008, A4-6, pp. 1-19.

¹⁴⁷ *Actes du Troisième Congrès International d'Anthropologie Criminelle tenu a Bruxelles en Aout 1892 sous le haut patronage du Gouvernement*, Bruxelles, 1893; "Il III° Congresso internazionale di Antropologia criminale a Bruxelles", *Rivista penale di dottrina, legislazione e giurisprudenza*, vol. XXXVII, 1893, pp. 180-6.

¹⁴⁸ *Ibid.*, p. 181. According to Dallemagne, the external influences and pathological conditions of the individual had to be taken into account. The motive of crime relates exclusively to the needs of the individual, such as nutrition, reproduction and social advancement. These observations were contradicted by Dr. Cuylits, a medical-alienist exponent of the Belgian mental medicine society, who refuted the idea of the overwhelming influence of the need for nutrition on crime and criticized having neglected the essential factor of moral will. The Dallemagne reworked the metaphysical arguments of his contradictor and defended the theory of need with the diagram by Ettore Denis, in which the curve of crime is almost equal to that of wheat. Finally Dimitri Drill, a Moscow lawyer and publicist, opposed to Dallemagne for having diminished too much the influence of social factors.

¹⁴⁹ *Ibid.*, p. 183. Benedikt claimed to know personally an entire band of Hungarian bandits, all perfect gentlemen and heroes.

And again Von Liszt, dwelling on the greater importance of social factors rather than anthropological ones in the production of crime, noted that the school of Lombroso had died prematurely, before reaching maturity, “but the school of criminal anthropology isn't dead, it won't die. There was criminal anthropology long before Lombroso and it will exist long after him”¹⁵⁰. He also acknowledged the merit of the “third Italian school” for having underlined the predominance of social factors, shared by the International Union of Criminal Law, which, however, did not deny the value of anthropological and biological factors¹⁵¹. But he did not believe that this approach could constitute a new school, recognizing the existence only of the classical school and the so called “positive school of criminal sociology”¹⁵². While declaring that he belonged to the latter school, von Liszt recognized great value to the exponents of the Classical School, which he considered a possible ally in the study of criminal law¹⁵³.

The same opinion was also expressed by Gabriel Tarde, who, while not recognizing the existence of a third school, admired its prudence and wisdom, expressing his praise and sympathy in view of its sociological foundation¹⁵⁴.

According to Tarde, the exclusive sociological basis, if on the one hand it was a merit, on the other hand it represented an error of approach, since the study of criminal law could not ignore biology. Therefore, Alimena's and Carnevale's theory of the preponderance of social factors over physiological ones was flawed in form, since the use of the term “preponderant” had to be considered improper and had to be replaced with “decisive” with reference to the action of social causes¹⁵⁵.

The reproach of the exclusive sociological foundation led Benedikt to accuse the promoters of the Third School of Marxism, with reference to the idea that a social revolution would abolish crime¹⁵⁶. For these reasons, the third school could not be

¹⁵⁰ *Actes du Troisième Congrès International d'Anthropologie Criminelle*, p. 333. *De l'importance respective des éléments sociaux et des éléments anthropologiques dans la détermination de la pénalité*. Report by M. von Liszt.

¹⁵¹ *Ibid.*, p. 334: «Ce que nous voulons, Mesdames et Messieurs, c'est étudier la criminalité dans l'ensemble de ses causes; ce que nous voulons, c'est étudier la pénalité dans ses effets sur la criminologie; ce que nous voulons, enfin, c'est que la législation pénale prenne les résultats de ses recherches comme base dans la lutte contre le crime».

¹⁵² *Ibid.*: «Pour moi, il n'y a que deux écoles, et pas une troisième école; l'école de Lombroso est morte. Nous, Congrès d'anthropologie criminelle, nous représentons l'une de ces écoles, et nous pouvons l'appeler école positive de sociologie criminelle. C'est celle qui étudie la pénalité par la méthode inductive».

¹⁵³ *Ibid.*, p. 335: “La seconde, c'est l'école classique de droit pénal. Il y a, Messieurs, parmi les partisan de cette école, des personnes d'une haute compétence, d'une grande valeur scientifique, dont les vues se rapprochent des nôtres et qui pourraient être nos alliées; elles pourraient nous aider dans nos études et, avec nous, faire l'application des résultats de ces études”.

¹⁵⁴ *Ibid.*, p. 336: “Voilà deux caractères de la Terza Scuola, son positivisme, son déterminisme. Il y a un troisième caractère: elle est sociologique. C'est un caractère essentiel et positif, celui-là. Et en effet, Messieurs, si vous y réfléchissez, vous verrez que ce qui a manqué jusqu'ici à l'école classique et aussi à l'école anthropologique, c'est une sociologie”.

¹⁵⁵ *Ibid.*, p. 337.

¹⁵⁶ *Ibid.*, p. 343: “La troisième école italienne est formée des partisans de Marx. L'erreur fatale du marxisme est l'idée qu'une révolution sociale abolira les crimes. Si cela était vrai, un congrès criminel n'aurait rien de mieux à faire qu'à se déclarer pour cette révolution. Aucun de nous n'y pense. Une telle révolution ne peut que très peu changer la nature des hommes, elle ne fera pas disparaître le dégoût du travail, le goût des trucs, les passions, etc., qui représentent les germes des crimes. Cette révolution ferait disparaître un grand nombre de faits criminels causés par la misère, mais, d'autre part, apparaîtraient sur

preferred to the school of Ferri: instead, it would have been desirable to seek a line of conciliation and cooperation between the *Anthropological school* and the *Classical one*, building a bridge between these two directions that would have allowed to identify points of contact towards a common goal: the improvement of society.

Dr. Heger, professor of physiology at the University of Brussels, in the final summary of the conference reiterated this last concept, stating that "the barriers have been broken down, men of the most opposing views have decided to march towards a common goal: the improvement of society¹⁵⁷".

8. Conclusion: the epilogue of the Third School

At the end of the nineteenth century, the overall opinion was that the theories of the new direction proposed by Alimena and Carnevale were not very original. In 1898, the Spanish lawyer Constancio Bernaldo de Quirós claimed that the third school was a "reflux movement" which attenuated and transformed the most peculiar characteristics of the positive school, with the intention of adapting them to the penal system in force, without highlighting the great contrasts and dissonances¹⁵⁸. While, in the same year, the French jurist Raymond Saleilles considered that the exponents of this mixed school had at least the merit of having claimed the traditional function of intimidation and general prevention of punishment¹⁵⁹, responding to popular sentiment of justice¹⁶⁰.

Apart from the contemporary judgments expressed, it must be considered undeniable that the theories advocated by Alimena and Carnevale would have

la scène beaucoup de personnes qui, quoique prédisposées, sont protégées aujourd'hui contre de tels actes par leur position sociale aisée".

¹⁵⁷ *Ibid.*, p. 475. *Compte rendu des travaux de la session, par M. Heger, vice-president*: "Ainsi, ce grand résultat a été obtenu: des barrières sont tombées, des hommes appartenant aux opinions les plus opposées ont décidé de marcher vers un but commun: l'amélioration de la société. Et, résultat non moins désirable, d'autres barrières ont été maintenues ou élevées, car on ne peut être l'allié de tout le monde. Ces barrières maintenues parce qu'on les reconnaît nécessaires, ce sont celles qui séparent le présent du passé, l'«École d'en arrière», comme le disait Benedikt dans son pittoresque langage, de l'«École d'en avant». Il n'y a pas de place ici pour les écoles intransigeantes, qui refusent d'avancer avec nous, qui refusent d'accepter au jour le jour les résultats précis de la science expérimentale: *nous ne faisons, nous ne ferons jamais aucune concessioni sur la méthode*".

¹⁵⁸ De Quirós, C.B., *Las nuevas teorías de la criminalidad*, Madrid 1898, p. 225. Sull'Autore cfr. Alonso Burgos, J., *Marginalidad y delincuencia en la España de la Restauración (1875-1923). Una introducción a la obra de Constancio Bernaldo de Quirós; estudio preliminar a Figuras delincuentes y Figuras delincuentes en el Quijote*, Jaén, 2008; Herreros, G., "Semblanza de Bernaldo de Quirós", *Revista Jurídica*, n. 64, mayo 1904; Jiménez de Asúa, L., *La larga y ejemplar vida de Constancio Bernaldo de Quirós. Estudio preliminar a El espartaquismo agrario andaluz*, Madrid, 1974; Aa.Vv., *Estudios a la memoria de Don Constancio Bernaldo de Quirós*, México, 1960.

¹⁵⁹ Saleilles, R., *L'Individualisation de la peine. Etude de criminalité sociale*, Paris, 1898, p. 114.

¹⁶⁰ *Ibid.*, pp. 114-5: "Il est donc inadmissible de ne pas tenir compte du sentiment populaire qui veut qu'une réprobation publique atteigne le crime, sentiment peut-être absolument injuste, si le crime est la résultante fatale du déterminisme universel, mais sentiment dont le droit pénal, tant qu'il en sera ainsi, devra se faire l'expression; sinon ce serait la moralité publique elle-même qui risquerait de sombrer tout entière; et ce serait un bien autre risque pour la sécurité sociale. Ce n'est pas à dire assurément que l'on ne puisse concevoir la possibilité d'une morale sociale indépendante de l'idée de liberté, base traditionnelle de l'idée de sanction; mais jusqu'alors cette conception est restée comme le privilège d'un petit cénacle de philosophes très délicats, d'une finesse d'analyse très pénétrante, d'une beauté d'âme toute particulière". On the historical-social approach of Saleilles cf. Mazzarella, F., "Dialoghi a distanza in tema di socialità e storicità del diritto. Italia, Francia e Germania tra fine Ottocento e primo Novecento", *Quaderni fiorentini*, 44, 2015, t. I, p. 400.

contributed to the development of the subsequent criminal science. In fact, their "eclecticism" would have dominated the scene of criminal science at the beginning of the new century, while the debate between the Classical and Positive Schools was weakening and Arturo Rocco's technical-legal approach emerged¹⁶¹, towards which Carnevale would not have spared a severe invective, considering it deficient and out of time¹⁶². In this context, the postulates of the Third School relative to the penalties, imputability, social dangerousness and security measures would have been affirmed as criminal principles of common sense (which would have been accepted in the so-called Unitary Criminal School of Guglielmo Sabatini¹⁶³) and engraved on the subsequent Italian codification, anticipating its contents¹⁶⁴.

Some Italian penalists were witnesses of their value. At the death of Alimena in 1915, they remembered him in the journal *Rivista di diritto e procedura penale*¹⁶⁵. Among these, Enrico Altavilla, Mauro Angioni, Giulio Battaglini, Emanuele Carnevale, Ugo Conti, Alfredo de Marsico, Giovanni Battista de Mauro, Eugenio Florian, Vincenzo Manzini, Ambrogio Negri, Giulio Paoli and Alessandro Stoppato highlighted the importance of the scientific work carried out by the colleague who died prematurely at the age of 54, who had the merit of renewing, refreshing and deepening all the problems of criminal law ranging from the foundation of the right to punish to those on imputability, on crime, on delinquent and on trial and punishment¹⁶⁶.

The death of Alimena and the renewed appreciation of his theories (which had seen adherence to jurists such as Michele Angelo Vaccaro, Francesco Poletti, Giuseppe Alberto Pugliese and Filippo Turati¹⁶⁷) led Carnevale to publish in 1915 an essay entitled *La terza scuola e la concezione unitaria nel diritto penale* (The third school and

¹⁶¹ Grispigni, F., "La odierna scienza criminale in Italia", *La Scuola positiva*, 8 1909, pp. 269-271; De Luca, F., "Di alcuni principi fondamentali della criminologia nell'attuale momento storico", *Rivista di diritto e procedura penale*, 1 1912, pp. 705 ss.; Altavilla, E., "Il primo convegno della società italiana di antropologia, sociologia e diritto criminale e la segregazione a tempo indeterminato", *Rivista di diritto e procedura penale*, 1 (1915), pp. 81 ss.; De Mauro, G. B., "L'indirizzo odierno degli studi di procedura penale e il nuovo codice italiano", *Rivista penale*, 77 1913, pp. 329 ss.; Finzi, M., "Emanuele Carnevale e il problema metodologico del diritto penale", *Filangieri*, 43 1918, pp. 1 ss. Cfr. Sbriccoli, "Il diritto penale sociale", pp. 574 ss.

¹⁶² Carnevale, E., "Il perfezionamento del metodo giuridico e la concezione integrale del diritto criminale", *Rivista penale*, vol. LXXXIV, 1916, pp. 501-517. According to the author, the theories advocated by Rocco led to a "disincarnation" of criminal law, as they distanced it from reality and practice, reducing the criminal science to an empty formalism.

¹⁶³ Cf. Lucchini, L., "Una nuova «scuola» e una nuova Rivista", *Riv. pen.*, LIII, 1927, vol CV, fs. II, *Cronaca*, pp. 196-8; Sabatini, G., "Il programma della Scuola penale unitaria", *La scuola penale unitaria. Rivista critica internazionale di dottrina-giurisprudenza e legislazione*, 1927, pp. 2 ss.; Sabatini, G., "Vecchie e nuove polemiche sull'indirizzo unitario", *ibid.*, 1930, pp. 3-6; Gramatica, *Principi di diritto penale soggettivo*, p. 131 e 235; Reina, V., "Commemorazione accademica di Guglielmo Sabatini", *Arch. Pen.*, 1950, pp. 283-7; Colao, F., "Le scuole penalistiche", *Il contributo italiano alla storia del pensiero – Diritto*, Roma 2012; Lo Russo, S., "Sabatini, Guglielmo", *DBGI*, vol. 2, Bologna 2013, pp. 1762-3; Garfinkel, P., *Criminal law in liberal and fascist Italy*, Cambridge 2016, pp. 457-9. A proposito del nuovo indirizzo unitario, Carnevale ne rivendicava l'idea originaria. Carnevale, E., *Diritto criminale nel nuovo Codice Penale*, Roma, 1931, p. 8 nt 3.

¹⁶⁴ Il riferimento è al progetto Ferri del 1921 ed al codice Rocco del 1933. Così Vassalli, "Bernardino Alimena", p. 544. Secondo Finzi, M., "La raccolta degli scritti di Emanuele Carnevale", *L'Opera scientifica di Emanuele Carnevale nel diritto criminale*, vol. I, *La fase odierna*, Roma 1934, p. 28, il Codice italiano si avvicinava senza dubbio agli indirizzi intermedi, come appunto quello propugnato da Alimena e Carnevale.

¹⁶⁵ *Rivista di diritto e procedura penale*, vol. VI (1915), pp. 513-530.

¹⁶⁶ *Ibid.*, p. 525.

¹⁶⁷ Rosenfeld, "Die Dritte Schule", pp. 11 ss.

the uniform concept in criminal law)¹⁶⁸, in which he took up the programmatic lines proposed since 1891 and demonstrated the farsightedness of the principles formulated by him¹⁶⁹, summarised as follows: unitary conception of criminal law; unity of punishment with other means of defence; unity of the moral element with the political one in the consideration of crime; connection of criminal law with the other branches of law, while distinguishing it in its own character; unity of the human and social content and legal form in the study and treatment of criminal law; unity of the objective and vocation of criminal proceedings, in the face of the dualistic concept of the contrast between the interests of punishment of offenders and the protection of the innocent¹⁷⁰.

The scientific commitment of Emanuele Carnevale earned him the tribute of the publishing company *Il Foro Italiano* who in 1934 promoted the publication of a three-volume collection of his most important writings, the first of which contained the testimonies offered by the criminalists Silvio Longhi, Marcello Finzi, Domenico Rende, Enrico Altavilla, Pasquale Arena, Gaetano Contursi Lisi, Giulio Battaglini, Arturo del Giudice, Adolfo Zerboglio, Enrico Romano-Di Falco, Nicola Palopoli, Francesco Cutinelli, Giuseppe Casalnuovo and Antonio Visco. These contributions made it possible to recognize the important achievements of the *Third School*, which had aroused for many years a fruitful debate in Italy and abroad. It had also contributed to consolidating certain fundamental ideas which would be incorporated into the Rocco Code, such as: the unified conception of criminal law, the principle of moral responsibility, the effectiveness of the penalty, the inadequacy of repression and the need for other defensive means, the higher consideration of the interests of the State and society with respect to individual activity¹⁷¹.

In fact, as noted by Emanuele Carnevale in his essay *Diritto criminale unitario nel nuovo Codice Penale* (Unitary criminal law in the new Penal Code), published in Rome in 1931, the Italian criminal codification had transposed the formula of the unity of the criminal law advocated by him¹⁷², linking the various institutions, essentially and logically, to the original centre of the penalty¹⁷³, as well as accepting the principle of the ethical-educational aim, the canon of moral responsibility, the humanitarian inspiration and the discipline of the amendment of the offenders¹⁷⁴.

Ending, the theories of the *Third School* assume particular significance when one considers the period in which Alimena and Carnevale had the courage to promote this new direction, which turned its back on those already in existence and which would have built the foundations of modern penalism, based on a moral idea of responsibility, on the individualization of punishment, on the adoption of security measures by the judge and on the opening of criminal law to the contributions of psychology and other sciences¹⁷⁵.

¹⁶⁸ Carnevale, E., “«La terza scuola» e la concezione unitaria nel diritto criminale”, Roma, 1915 (estr. da *Progresso del diritto criminale*, vol. VII, fasc. II, 1915).

¹⁶⁹ *Ibid.*, pp. 16-19, in nota.

¹⁷⁰ Carnevale, “«La terza scuola» e la concezione unitaria nel diritto criminale”, pp. 6-7.

¹⁷¹ Cfr. Arena, “Emanuele Carnevale e la concezione integrale del diritto criminale”, *ivi*, pp. 75-6; Cutinelli, “Il pensiero giuridico di E. Carnevale”, *ivi*, p. 139.

¹⁷² Carnevale, E., *Diritto criminale unitario nel nuovo codice penale. Contributo sistematico (Idee di ieri, di oggi, e di domani)*, Roma, 1931, p. 10.

¹⁷³ *Ibid.*, p. 12.

¹⁷⁴ *Ibid.*, p. 76.

¹⁷⁵ Vassalli, “Bernardino Alimena”, p. 547-8. According to the author, Alimena’s work is also marked by the aspiration to a method that will be that of the future criminalist: the return to that great vision of

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