

FROM CRIMINAL TO ENEMY: THE BIRTH AND DEVELOPMENT OF THE SCIENTIFIC POLICE AND CRIMINAL IDENTIFICATION IN ITALY

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ABSTRACT: The aim of this article is to briefly retrace the history of criminal identification techniques in Italy in order to shed new light on the legacy of criminal anthropology in policing and criminal justice in the delicate transition from liberal Italy to the Fascist regime. While identification techniques invented by Alphonse Bertillon in France spread to many countries, their deployment in Italy was different, being strongly influenced by Lombroso's concept of 'criminal man'. The 'Italian method' was introduced thanks to the efforts of Salvatore Ottolenghi (1861-1934), a pupil of Cesare Lombroso and founder of the Italian scientific police (*polizia scientifica*). This was the birth of the so-called "Ottolenghi method", used, especially during the Fascist regime, to identify not only criminals but also subversives, enemies of social order and any suspicious individuals.

KEYWORDS: Criminal identification; Scientific Police; Criminal Anthropology; Bertillonage; Salvatore Ottolenghi; Cesare Lombroso.

SUMMARY: 1. INTRODUCTION.—2. FROM THE CRIMINAL MAN TO THE CRIMINAL WORLD.—3. THE SCIENTIFIC POLICE AND THE 'OTTOLENGHI METHOD'.—4. IDENTIFYING THE ENEMY: TOWARDS THE FASCIST REGIME.—5. CONCLUSION.

1. INTRODUCTION

After the unification of Italy in 1861, there had followed a period of emergency stemming from gradual but inexorable migration from the countryside to the cities, which became increasingly crowded with social outcasts that would populate the ranks of what would become known as the "dangerous

classes”.¹ In addition, there was a question that blended with the dynamics of national-identity-building: the phenomenon of brigandage.² The new kingdom of Italy was consequently born with the symptoms of a state of *emergency*: it was perceived necessary to stem this dangerous flow of crime to build the new Italian nation successfully.³ To do this required the identification, control and, if possible, neutralization of reputed criminals. This article will illustrate the attempted creation of new techniques, based on the teachings of Cesare Lombroso (1835-1909), the founder of the Criminal Anthropology in Italy between the end of the nineteenth century and the mid-twentieth century.

The article will focus in particular on analysis of the legacy of Lombrosian criminal anthropology in a field still subject to limited attention on the part of historians, namely that of its impact on policing and the administration of justice. After briefly outlining the salient characteristics of Lombrosian theories and his “science of crime”, the article will focus on the efforts to create a scientific police and a new method of identifying the delinquent to supplant the *Bertillonage System*.⁴ Despite the development of similar identification techniques in many countries,⁵ the Italian context is quite different, being strongly influenced not only by the need for “modern instruments to fight crime” but above all by Lombroso’s teaching and ambition: “the transformation of policing into a scientific instrument”.⁶ This was the birth of the so-called “Ottolenghi method”, acclaimed abroad and sadly used, especially during the Fascist regime, to identify not only criminals but also *subversives*,

¹ On this concept in the Italian context, see P. COSTA, “Classi pericolose” e “razze inferiori”: la sovranità e la sue strategie di assoggettamento, *I sentieri della ricerca. Rivista di storia contemporanea*, 2008, 7-8, pp. 333-351.

² On this topic, see M. SBRICCOLI, La commissione di inchiesta sul brigantaggio e la legge Pica, in Id., *Storia del diritto penale e della giustizia, Storia del diritto penale e della giustizia. Scritti editi e inediti (1972-2007)*, Milano, Giuffrè, 2009, t. I, pp. 467-483.

³ See M. SBRICCOLI, Caratteri originari e tratti permanenti del sistema penale italiano (1860-1990), in Id., *Storia del diritto penale e della giustizia, Storia del diritto penale e della giustizia. Scritti editi e inediti (1972-2007)*, Milano, Giuffrè, 2009, t. I, pp. 592-597.

⁴ On Bertillon and his system, see P. PIAZZA, *Un œil sur le crime. Naissance de la police scientifique. Alphonse Bertillon de A à Z*, Bayeux, OREP Éditions, 2016; P. PIAZZA (Ed.), *Aux origines de la police scientifique. Alphonse Bertillon, précurseur de la science du crime*, Paris, Karthala, 2011; I. ABOUT, Les fondations d’un système national d’identification policière en France (1893-1914). Anthropométrie, signalements et fichiers, *Genèses*, 2004, 54, pp. 28-52 and H.T.F. RHODES, *Alphonse Bertillon, Father of Scientific Detection*, Whitefish, Literary Licensing, 2013.

⁵ On the history of fingerprinting, see S. A. COLE, *Suspect Identities: a History of Fingerprinting and Criminal Identification*, Cambridge-London, Harvard University Press, 2001. For the history of personal identification (from the Middle Ages to the present day), see I. ABOUT, V. DENIS, *Histoire de l’identification des personnes*, Paris, La Découverte, 2010 and J. CAPLAN, J. TORPEY (Eds.), *Documenting Individual Identity. The Development of State Practices in the Modern World*, Princeton-Oxford, Princeton University Press, 2001. More specifically, see E. HIGGS, *Identifying the English. A History of Personal Identification 1500 to the Present*, London-New York, Continuum, 2011 for the English context, and I. ABOUT, Les fondations d’un système national d’identification policière en France (1893-1914). Anthropométrie, signalements et fichiers, *Genèses*, 2004, 54, pp. 28-52 for the history of personal identification in France.

⁶ C. LOMBROSO, *Sull’incremento del delitto in Italia e sui mezzi per arrestarlo*, Torino, Fratelli Bocca, 1879, p. 135.

enemies of social order and any *suspicious* individuals. Indeed the ideas of Lombroso and his School under the regime were distorted and exploited to become a powerful weapon of the dictatorship for recording and controlling their political enemies.

2. FROM THE CRIMINAL MAN TO THE CRIMINAL WORLD

During his long career Lombroso attempted to identify, record and control every kind of criminals. He began ‘scientifically’ to certify differences, not only among criminals and “normal” individuals,⁷ but also among different types of offenders,⁸ in the belief that the physical condition reflects moral “monstrosity”.⁹ Lombroso’s investigation, striving to discover what a great *monstrum* lurks behind the simple thief or brigand, should be considered in this context. In this sense Lombroso embarked on a frantic search over the bodies and faces of prisoners and lunatics, in order to find the stigmata of deviance, the unmistakable, *irrefutable evidence* that a criminal is predetermined to commit evil acts because he is biologically *different* from any other human being.

In reality, the “criminal man” imagined by Lombroso was more complex than a “primitive man” or a sort of walking museum piece. Indeed, considering the overall articulation of Lombroso’s work, it is understandable that atavism constituted a milestone in his research, but it was not the ultimate solution to the ambitious question about the origins of crime. In particular, atavism especially influenced only the first edition of *Criminal Man*, which was modified and amended many times before Lombroso’s death. In particular, as showed by the analysis of the different editions of the book, Lombroso gradually refined his theories on the explanation of crime, according to clinical case studies that range from the initial thesis of the born criminal as a savage, to the theory of the political criminal as *mattoid* (an ambivalent kind of deviance between genius and insanity), and that of “occasional criminals”, defined *criminaloids*.¹⁰

In addition to biological factors of criminality Lombroso posited that the dichotomy between “normal” people and criminals would necessarily be reflected in offenders’ external manifestations. Contrary to popular opinion,

⁷ C. LOMBROSO, *Uomo delinquente in rapporto all’antropologia, giurisprudenza e alle discipline carcerarie. Aggiuntavi la teoria della tutela penale del Prof. Avv. F. Poletti*, Torino, Fratelli Bocca, 2e ed., 1878, p. 50.

⁸ C. LOMBROSO, *Uomo delinquente in rapporto all’antropologia, alla giurisprudenza ed alle discipline carcerarie*, Torino, Fratelli Bocca, vol. I, 5e ed., 1896, pp. 274-278).

⁹ On monstrosity in the works of Lombroso, see E. MUSUMECI, *Le maschere della collezione «Lorenzo Tenchini»*, in S. Montaldo, P. Tappero (Eds.), *Il Museo di Antropologia criminale «Cesare Lombroso»*, Torino, Utet, 2009, pp. 75-76.

¹⁰ On the “deviant galaxy” in the Lombrosian research, see E. MUSUMECI, *Cesare Lombroso e le neuroscienze: un parricidio mancato. Devianza, libero arbitrio, imputabilità tra antiche chimere ed inediti scenari*, Milano, FrancoAngeli, 2012.

Lombrosian research focused not only on criminals' faces or their cranial shapes, but on all physical and psychological characteristics, including their verbal (slang) and non-verbal (tattoos) manifestations, and even their artefacts: the whole "criminal world".

In short, criminality in itself was depicted as a sort of "pathology". Believing that even the criminal's language had to be insane, Lombroso began to study all forms of lexicon used by prisoners, from the written to the spoken. For this purpose, he sought every form of expression used in the Italian prisons into which he went almost daily. However, prison conditions were poor at the time, and the rights of inmates were practically non-existent. For example, in order to avoid any risk of communication, convicts were not allowed to have pieces of paper on which to write. Prisoners were thus forced to use any means available to express their thoughts during their long periods of detention. For instance, they left to posterity their sentences, proclamations, poems, or even merely their signatures, by scraping away the enamel from drinking jars, or engraving on their cell walls or the wood of their beds. Lombroso diligently analysed these expressions, publishing his results in *Palimsesti del Carcere* [*Prison Palimpsests*].¹¹

Despite being considered a minor work, it was one of the first attempts in the history of criminology to study the cultural aspects of prison life.¹² In this book, Lombroso subverted an old belief "that the prison, and especially the cell, is a sort of dumb and paralytic organism or a body without tongue and hands, only because the law had forced it to remain silent and motionless".¹³ From his analysis of the prisoners' writings came a psychological framing of the "criminal type": egocentric, detached from others, vain, vengeful, and deceptively religious. These characteristics led Lombroso to conclude not only that "criminals cannot speak the same language [as] honest men", but also that criminals "speak differently because they *feel* differently".¹⁴ This was apparent, according to Lombroso, in the recurring topics (the crime committed, sex, religion, prison, and revenge), as well as in the choice of slang, a previously undocumented secret language (or anti-language) widespread among criminals.

According to Lombroso, the biological signs of criminality were visible and served as real "stigmata", both *on the body* and *produced by the body*, betraying the criminal. He found that the "primitive" verbal language of prisoners was accompanied by a more visual language: that of tattoos, introduced by sailors returning from the South Pacific and in vogue, especially

¹¹ C. LOMBROSO, *Palimsesti del carcere. Raccolta unicamente destinata agli uomini di scienza*, Torino, Fratelli Bocca, 1888.

¹² See P. LESCHIUTTA, *Palimsesti del carcere. Cesare Lombroso e le scritture proibite*, Napoli, Liguori, 1996.

¹³ C. LOMBROSO, *Palimsesti del carcere. Raccolta unicamente destinata agli uomini di scienza*, Torino, Fratelli Bocca, 1888, p. 5.

¹⁴ C. LOMBROSO, *Luomo delinquente* [1878] now in Id., *Delitto, genio, follia. Scritti scelti*, Torino, Bollati Boringhieri, 2000, p. 436.

among prison populations and prostitutes. Lombroso saw these tattoos¹⁵ as another element of their criminal communications.¹⁶ Although tattoos were not exclusive to criminals, according to Lombroso, “tattooing assumes a specific character; a strange tenacity and diffusion among the miserable class of criminals”,¹⁷ among whom the tattoo can be considered, to use the medico-legal term, as a professional characteristic. The habit of tattooing their bodies with images representing symbols of strength or explicit allusions to sex was so common among criminals as to be a special trait among them. In other words, criminals’ use of slang and the proclivity to tattoo their bodies were evidence, according to Lombroso, that criminals were radically different from “normal men” because they were atavistic beings with the ferocious instincts of wild beasts.¹⁸ Criminals, like savages, had “violent passions, a blunted sensibility, puerile vanity, longstanding tendencies towards inaction, and very often nudity”.¹⁹ However, tattooed criminals, or “living parchments”,²⁰ sometimes surpassed primitive men in their savagery, tattooing even their genitals.²¹ This was evidence not only of their shamelessness, but also of their uncommon insensibility to pain.

In his detailed and objective analysis, Lombroso tried to study all kinds of aberrant behaviour, from criminality to madness, employing a “body-centred social-scientific” approach.²² His search was not limited to the bodies of prisoners and the mentally incapacitated, however. He even analysed several biographies of great writers, artists, politicians and poets, with the aim of understanding the “secret of deviance”, or rather, why some people emerged from the quiet pathways of so-called “normality”, either for their demerits (criminals) or their merits (men of genius).

The explanation proposed by Lombroso was not crystallised in a theory, but was constituted instead of a composite picture in which the causes of

¹⁵ Other criminologists of the time studied the relationship between crime and tattoos. See J. CAPLAN, “One of the Strangest Relics of a Former State”. Tattoos and the Discourses of Criminality in Europe, 1880-1920, in P. Becker, R.F. Wetzell (Eds.), *Criminals and Their Scientists. The History of Criminology in International Perspective*, New York, Cambridge University Press, 2006, p. 337-361.

¹⁶ C. LOMBROSO, Sul tatuaggio in Italia, in specie fra i delinquenti, *Archivio per l'antropologia e la etnologia*, 1874, 4, pp. 389-403.

¹⁷ C. LOMBROSO, *Luomo delinquente in rapporto all'antropologia, alla giurisprudenza ed alle discipline carcerarie*, Torino, Fratelli Bocca, vol. I, 5e ed., 1896, p. 341.

¹⁸ See D. FRIGESSI, *Cesare Lombroso*, Torino, Einaudi, 2003, p. 107.

¹⁹ C. LOMBROSO, *Luomo delinquente in rapporto all'antropologia, alla giurisprudenza ed alle discipline carcerarie*, Torino, Fratelli Bocca, 1889, p. 320.

²⁰ See P. LESCHIUTTA, Le pergamene viventi. Interpretazioni del tatuaggio nell'antropologia positiva italiana, *La Ricerca Folklorica*, 1993, 27, pp. 129-138; M. PORTIGLIATTI BARBOS, Le “pergamene viventi”: i tatuaggi, in U. Levrà (Ed.), *La scienza e la colpa. Crimini criminali criminologi: un volto dell'Ottocento*, Milano, Electa, 1985, p. 259-260. For more recent analysis, see A. PETRIZZO, Pelli criminali? La scuola lombrosiana e il corpo tatuato a fine Ottocento, *Contemporanea*, 2016, 1, p. 43-68 and P. LESCHIUTTA, Lombroso e i tatuaggi, in S. Montaldo (Ed.), *Il Museo di Antropologia criminale Cesare Lombroso dell'Università di Torino*, Cinisello Balsamo, Silvana, 2015, pp. 66-75.

²¹ D.G. HORN, *The Criminal Body: Lombroso and the Anatomy of Deviance*, New York-Abingdon, Routledge, 2003 [ebook version].

²² P. KNEPPER, P.J. YSTEHEDE (Eds), *Cesare Lombroso Handbook*, London, Routledge, 2013, p. 4.

criminal agency, while often having a biological substrate, overlapped and intersected with each other: to atavism was added moral insanity and epilepsy, giving rise to a form of multifaceted explanation of crime.²³ Lombroso attempted to read tattoos as a kind of visual autobiography, as intimate clues to the bearer's personality or psychology. For this reason, the attention to criminal slang and the habit of tattooing is an example of how Italy's criminal identification system (compared to those of other countries) was based not only on an individual's appearance, but also on the intimate connection between body and psyche.

3. THE SCIENTIFIC POLICE AND THE 'OTTOLENGHI METHOD'

With the foregoing as the theoretical bases of Lombrosian research, the purpose of Lombroso and his school was to revolutionise all branches of knowledge: by adding to the body of information in the newly established discipline called "criminal anthropology", the forerunner of modern criminology, he aimed to completely alter every matter having to do with the criminal man: criminal law, forensic medicine, policing, and criminal justice.²⁴ His novel conception of penal law, to be based not on free will but on social dangerousness, was accompanied by a new and pressing need: to have "new" police officers, trained according to the dictates of the new Positivistic School.²⁵ Even though the nineteenth century was an age of great transformation of police and its multiple²⁶ functions in many Western countries,²⁷ where the work of Bertillon was highly influential, the history of policing and the science of crime in Italy had an undeniable specificity.²⁸

²³ See also M. GIBSON, *Born to Crime. Cesare Lombroso and the Origins of Biological Criminology*, Westport, Praeger, 2002, p. IX.

²⁴ Obviously the birth of criminology was not only an Italian prerogative but a phenomenon that involved almost all Western countries. For recent research on the history of criminology, including comparative perspectives, see C. Fijnaut, *Criminology and the Criminal Justice System. A Historical and Transatlantic Introduction*, Cambridge, Intersentia, 2017 and P. Knepper, A. Johansen, *The Oxford Handbook of the History of Crime and Criminal Justice*, Oxford, Oxford University Press, 2016.

²⁵ On the debate between the schools of criminal law in Italy, see F. COLAO, "Le scuole penalistiche" (entry), *Enciclopedia Italiana di Scienze, Lettere ed Arti. VIII Suppl. Diritto*, Roma, Istituto dell'Enciclopedia Treccani, 2012, p. 349-356.

²⁶ On the polyvalent essence of the police and the history of the birth of the 'modern' policing see P. NAPOLI, *Naissance de la police moderne. Pouvoir, normes, société*, Paris, La Découverte, 2003.

²⁷ On the origins of modern policing and criminal investigation, see C. Emsley, h. Shpayer-Makov (Eds.), *Police Detectives in History, 1750-1950*, Hants-Burlington, Ashgate, 2006; L. ZEDNER, *Policing before and after the Police: the Historical Antecedents of Contemporary Crime Control*, *British Journal of Criminology*, 2006, 46, 1, pp. 78-96 and C. Emsley, *Crime, police, and penal policy. European experiences 1750-1940*, Oxford, Oxford University Press, 2013. On the history of policing in Europe, see C. EMSLEY, *Gendarmes and the State in Nineteenth-Century Europe*, Oxford, Oxford University Press, 1999 and J-M. Berlière, C. Denys, D. Kalifa, V. Milliot (2008) (Eds.), *Métiers de police. Être policier en Europe, XVIIIe-XXe siècle*, Rennes, Presses universitaires de Rennes, 2008.

²⁸ See I. ABOUT, *Naissance d'une science policière de l'identification en Italie (1902-1922)*, *Les Cahiers de la Sécurité*, 2005, 56, 1, p. 168.

The Italian context was strongly affected by the debate on opposed models of criminal law. In particular, the aim of the well-known Italian alienist was to go beyond the rationalistic-illuminist approach of penal law²⁹ and to transform it into a science,³⁰ a legal system no longer based on the overly metaphysical concept of free will and imputability, but on the more practical concept of social dangerousness.³¹ If the goal was to defend young Italy from any possible element that could destabilize its already precarious equilibrium, it was necessary to train “scientific” policemen, based on the directives of the new Positive School, who could thus be empowered to fight crime with the innovative tools of science. Moreover, that the outmoded and disorganized police forces of the pre-unification states (i.e., the *gendarmes* and *birri* of the nineteenth century)³² were unprepared for the fight against crime was irrefutable. Not by chance, in 1871, the Chief of Police, Giovanni Bolis, stated that the degree of public and private security of Italy - thanks to a redevelopment of its police officers, was “the safest thermometer to judge the good governance of a State”.³³ If Bolis thought an authoritative body of police worthy of the new “tri-colour flag”,³⁴ Lombroso went even further, asserting that the new Kingdom of Italy deserved not only a prestigious, but also a technologically-advanced, police force.

Lombroso coined the term *scientific police* in 1879 when he first sought this radical transformation: “We must [take] in the police the same step that Sadowa taught us to [...] in the military - make it a scientific [...] force, able to [use] scientific instruments [including] photography, telegraphy, newspapers, and above all [...] knowledge of the criminal man”.³⁵ It is no coincidence that Lombroso used a military metaphor³⁶ to talk about the need to train Italian police officers to the standards of modern English policemen.³⁷ His was, in

²⁹ Moreover, according to Oddone, the need for a scientific police also originated from the abolition of judicial torture as a way of arriving at the “truth” in criminal trials during the *Ancien Régime* (V. ODDONE, *Le origini della polizia scientifica*, in U. Levra (Ed.), *La scienza e la colpa. Crimini criminali criminologi: un volto dell'Ottocento*, Milano, Electa, 1985, p. 226.)

³⁰ For a comparative perspective on the relationship between science and crime, see P. BECKER, R.F. WETZELL (Eds.), *Criminals and Their Scientists. The History of Criminology in International Perspective*, New York, Cambridge University Press, 2006.

³¹ On the concept of criminal dangerousness as “social risk”, see P. MARCHETTI, *La Scuola Positiva e i «nuovi orizzonti» del diritto penale tra pericolosità criminale e rischio sociale*, *Diritto penale XXI secolo*, 2016, 2, p. 350-378. Conversely, for a recent perspective on social dangerousness, see A. MARTINI, *Essere pericolosi. Giudizi soggettivi e misure personali*, Torino, Giappichelli, 2018.

³² See L. ANTONIELLI, S. LEVATI, *Tra polizie e controllo del territorio: alla ricerca delle discontinuità*, Soveria Mannelli, Rubbettino, 2017 and S. Mori, L. Tedoldi, *Forme e pratiche di polizia del territorio nell'Ottocento preunitario*, Soveria Mannelli, Rubbettino, 2012.

³³ G. BOLIS, *La polizia e le classi pericolose della società. Studii*, Bologna, Zanichelli, 1871, p. 5.

³⁴ BOLIS, *La polizia e le classi pericolose della società. Studii*, p. 11.

³⁵ LOMBROSO, *Sull'incremento del delitto in Italia e sui mezzi per arrestarlo*, p. 135.

³⁶ The famous battle of Sadowa in 1866 during the Austro-Prussian War determined the victory of Prussia thanks to excellent new military strategies and the massive use of modern firearms and new means of communication such as telegraph and teletype.

³⁷ See L. ANTONIELLI, (Ed.), *La polizia in Italia e in Europa: punto sugli studi e prospettive di ricerca*, Soveria Mannelli, Rubbettino, 2006.

fact, a genuine “call to arms” against those collectively called by many as an “army of crime”, advancing dangerously in the increasingly populous cities.³⁸

This call was taken up by one of his pupils, Salvatore Ottolenghi, a professor of forensic medicine who, significantly, taught the first course in *scientific policing* [polizia scientifica] at the University of Siena. In 1902 this teaching was moved to Rome, and in 1907 it was transformed into an official school, the School of Scientific Policing [Scuola di Polizia Scientifica] located close to the *New Prisons* [Carceri Nuove]. The school consisted of classrooms, as well as forensic laboratories in which to take and examine fingerprints³⁹ and criminal photographs, or “mugshots”.⁴⁰ The School’s location was not casual: its proximity to the prisons enabled its students to easily observe the prisoners as “valuable educational matter”. The most important subjects, all geared to the dictates of Cesare Lombroso’s criminal anthropology, were the technical use of fingerprints in crime-solving, developed in Italy by Giovanni Gasti, and forensic photography, attributed to Umberto Ellero.⁴¹ Some years later, in 1910, the official journal of the School (*Bollettino della Scuola di Polizia Scientifica*) was founded by Ottolenghi. The purpose of the School was therefore to create a new kind of policeman who investigated crimes in a “rational” and scientific way, instead of using “empirical methods”, which were often poorly coordinated and based upon random trends. Criminal investigations thus became more objective and effective.

However, the main concern of the time was to find an accurate method to identify criminals, a necessary response to the increasing populations and crime rates in urban areas. Before the adoption of fingerprinting, “anthropometry”, invented in France by Alphonse Bertillon, was the dominant form of biometric identification used by law enforcement bodies. This method, also known as the Bertillon system, involved the scientific study of the measurements and proportions of the human body, and consisted of three parts: description, measurement of the criminal body, and classification. It was first used in Italy, promoted by Ottolenghi, but only briefly and minimally. Soon the Bertillon system, deemed expensive, impractical, and not useful in cases of juvenile offenders, was supplanted by the “Italian method”. Giovanni Gasti, pupil and collaborator of Ottolenghi, invented a new tool called the “*pantopometro*”, capable of measuring all parts of the body.

In addition, subsequent to the early adoption of the Bertillon system, the Italian method was integrated and improved, through the introduction of not only fingerprints, but also detailed “anthropo-biographical cards” based

³⁸ Marchetti (2008).

³⁹ On the history of fingerprinting, see C. BEAVAN, *Fingerprints: Murder and the Race to Uncover the Science of Identity*, London, Fourth Estate, 2001.

⁴⁰ On the history of police photography used at the end of nineteenth century to control and detect criminals, see J. JÄGER, *Photography: A Means of Surveillance? Judicial Photography, 1850 to 1900*, *Crime, Histoire & Sociétés*, 2001, 5, p. 27-52.

⁴¹ See A. GILARDI, *Wanted! Storia, tecnica ed estetica della fotografia segnaletica e giudiziaria*, Milano, Bruno Mondadori, 2003, pp. 35-41.

on criminal anthropology. This was the birth of the “Ottolenghi method”, completely inspired by Lombroso’s theories. In short, the body, the psyche, and the past history of the criminal were included in an anthropo-biographical card, as elaborated by Ottolenghi and his followers. This realized one of Lombroso’s dreams: the creation of a criminal law system, with its penitentiary laws focused not on the abstract offense, but on the “real” offender. Ottolenghi himself expressly dedicated his work to Lombroso, declaring that “our venerated and lamented Master [Lombroso had passed away, in 1909, one year before] had the fortune to see in the twilight of his life the long-cherished application of his doctrine, in the field [that of scientific policing] where the daily fight against crime is most fierce”.⁴²

The Ottolenghi method, established in 1902, was modified in 1914 to include more details about criminals’ lives on the biographical cards, in line with the Lombrosian anthropological and psychological approach. In particular, sections related to criminals’ biographical characteristics and moral and criminal attitudes (as a supplement to official notifications from the authorities) were added to the folders, with the specific aim of using these cards to more fully understand the person involved and “his body, his somatic constitution, his psyche, the way he thinks, the way he feels, [and] the way he wants”.⁴³

A substantial difference between the techniques used in other countries and the Italian method was the latter’s comprehensive approach, assuming that fingerprints, measurements of body parts, and photographs alone were insufficient: the criminal’s entire world was to be reconstructed from the identification folder. Simultaneously, the “Description and Identification Service” [Servizio di segnalamento e identificazione] was established to catalogue these folders.⁴⁴

It is no coincidence that the *Trattato di Polizia Scientifica* [Treatise on Scientific Police], a monumental work in two volumes by Ottolenghi and containing all the fundamental techniques of forensic science, was dedicated not only to the physical and anatomical characteristics of offenders, such as parts of the body, hair and eye colour, and the shape of the skull, but also to “functional characteristics”, such as physical activity, tics, and the tone of voice.⁴⁵ These elements of physical identification were described in the first volume; the second volume was primarily dedicated to the psychological biography of the offender as well as to judicial and forensic investigation. Mere physical identification was insufficient: psychic and biographical identification were also required in order to attain knowledge of the anthropological criminal.

⁴² S. OTTOLENGHI, *Trattato di polizia scientifica*, Milano, Società editrice libraria, 1910, v. 1, p. VII.

⁴³ G. FALCO, Cartella biografica, in E. FLORIAN, A. NICEFORO, N. PENDE (Eds.), *Dizionario di Criminologia*, Milano, Vallardi, 1943, vol. I, p. 127.

⁴⁴ G. FALCO, “Identità”. *Metodo scientifico di segnalamento e identificazione*, Roma, Maglione & Strini, 1923, p. 3.

⁴⁵ S. OTTOLENGHI, *Trattato di polizia scientifica*, Milano, Società editrice libraria, vv. 1-2, 1910-1932.

Among the biographical events noted were work experience, military service, and various habits (consumption of alcohol, contraction of disease, emigration) and sexual behaviour. Psychic identification included, for example, sensitivity and morality, as well as the detection of elements of these attributes, like posture and facial expressions. Identification of criminal slang adopted by criminals and the presence of tattoos on their bodies was thus emblematic in this context. The latter were not only physical aspects, but also psychological ones, as stressed by Lombroso himself.⁴⁶

4. IDENTIFYING THE ENEMY: TOWARDS THE FASCIST REGIME

Despite the considerable progress in forensic science and policing made by Ottolenghi's School, his legacy is partly obscured by his involvement with the Fascist regime. Ottolenghi was a "fascist Jew" - an intellectual who, despite being Jewish, swore allegiance to the Fascist regime. We do not know if his allegiance was based on belief or, more presumably, opportunism; in any case, the School continued to operate under fascism, so we are able to consider the legacy of Lombroso under the regime.⁴⁷ As it is well-known, in 1925 the *Consolidated Text of the Public Security Laws* [Testo Unico delle leggi di pubblica sicurezza] was approved, as were the so-called "ultra-fascist laws" [*leggi fascistissime*] in 1925-1926. The latter aimed to expand the Central Political Registry [*Casellario Politico Centrale*] founded in 1894, which filed the details of political opponents and potential subversives. In a similar vein, in 1930, the regime approved the new penal code (Rocco Code, named after the fascist Minister of Justice, Alfredo Rocco), clearly designed as an instrument of repression. In other words, the dictatorship used every means to strengthen and protect itself. The scientific police and their tools could not be an exception to this process of fascistisation of all aspects of Italian society. Contributing to this was the fact that, after Ottolenghi's death, the next School director was Giuseppe Falco, one of Ottolenghi's pupils and another ardent fascist.

Prior to the advent of fascism, Ottolenghi pointed out that the purpose of scientific policing was to combat the frustrating phenomenon of recidivism and, more generally, to identify criminals who, having once committed a crime, had managed to escape justice. In 1910 he wrote about the benefits of *description* [segnalamento]: "the advantages will be immense in the field of identification [...] to recognize fingerprints, to reveal false identities, to track fugitives, to follow the steps of the most dangerous criminals".⁴⁸

Nonetheless, with the advent of fascism, the scientific police became slowly but inexorably a deadly tool through which to control the regime's polit-

⁴⁶ LOMBROSO, *Sul tatuaggio in Italia*, pp. 400-403.

⁴⁷ GIBSON, *Born to Crime. Cesare Lombroso and the Origins of Biological Criminology*, p. 212.

⁴⁸ OTTOLENGHI, *Trattato di polizia scientifica*, v. 1, p. VIII.

ical opponents and enemies, as demonstrated by the numerous identification cards of socialists and communists, including that of Italian Communist Party leader, Palmiro Togliatti, identified in August 1926. Also of note is the 1937 identification card of Marxist activist Altiero Spinelli, which reflected his 1927 sentencing by the Special Tribunal for the Defence of the State, reportedly for “political reasons”, and his subsequent exile to the islands of Ponza and Ventotene. Despite the underlying ideology of criminal anthropology (which is permeated by materialism and empiricism, when compared to fascist spiritualism) these Lombrosian theories became, contrary to expectations, an irreplaceable means to control *all potentially dangerous* people. Undeniably, as appropriately underlined by Mary Gibson, “what attracted fascist administrators to the anthropological-biographical dossier was not a dedication to science but the prospect of collecting vast amounts of data on a widening circle of individuals. Those convicted, or even suspected, of crimes could be labelled dangerous and kept under surveillance”.⁴⁹

Criminal folders and other instruments developed and used by the scientific police were gradually employed less to fight crime and more to pre-classify potential political enemies. However, this author does not share Gibson’s opinion that support from the School for fascist imperialism “flowed logically from the scientific racism of early positivists like Lombroso”⁵⁰ The idea that racism was a crucial factor in Lombroso’s work is a misconception that, thanks to the backing of leading scholars, still lingers today.⁵¹ In fact, the concept of race had only a marginal role in Lombrosian criminal anthropology. Race was indeed much more relevant in the works of some of his more or less faithful pupils, such as Alfredo Niceforo.⁵²

In the context of the difficult attempt to shift attention from the abstract study of criminal law to that of criminal man, with the aim to prevent crime, every factor, no matter how minor, had to be examined, from physical to psychic conformation, and including the social and geographical origin of the individual, according to Lombroso. Moreover, at that time, the role of race was undisputed by scientists, but Lombroso himself was of Jewish heritage and he had declared himself, albeit somewhat awkwardly, against the spread of anti-Semitism.⁵³ On the contrary, the racism that slowly began to pervade

⁴⁹ GIBSON, *Born to Crime. Cesare Lombroso and the Origins of Biological Criminology*, p. 150.

⁵⁰ GIBSON, *Born to Crime. Cesare Lombroso and the Origins of Biological Criminology*, p. 151.

⁵¹ It will suffice to recall the judgments expressed at the end of the 1970s by historian George Mosse, who mentioned Lombroso’s born-criminal theory as the inspiration behind the Final Solution. G.L. MOSSE, See *Toward the Final Solution. A History of European Racism*, New York, Howard Fertig, 1978 and, some years later, the American paleontologist Stephen Jay Gould, who blamed Lombroso for his pseudo-scientific theories, inception of racism and biological determinism. See S.J. GOULD, *The Mismeasure of Man*, New York, Norton, 1981.

⁵² On this topic, see P. MARCHETTI, *Razza e criminalità. Un dibattito italiano di fine Ottocento, in* L. LACCHÈ, M. STRONATI (Eds.), *Questione criminale e identità nazionale in Italia tra Otto e Novecento*, Macerata, Eum, 2014, p. 127-140.

⁵³ R. FINZI, *Il pregiudizio. Ebrei e questione ebraica in Marx, Lombroso, Croce*, Milano, Bompiani, 2011 [ebook version].

Fascism occurred well after⁵⁴ Lombroso's death, for several complex reasons (ranging from the spread of eugenics to political opportunism).⁵⁵

Similarly, it is overly simplistic to see the authoritarian traces of the Rocco Code merely as a distortion of the positivist theories, when we should acknowledge that the Fascist regime itself was a complex and multi-faceted phenomenon. It is nevertheless true that many fundamental principles of the Positivist School (such as that of "social defence" or rather the need to protect society from crime by *preventing* it) were adopted and used by the Fascist regime for its own ends. The new penal code approved in 1930 took a peculiar shape, becoming a true and proper fascist criminal law,⁵⁶ veering strongly towards extreme statism and authoritarianism that did not mesh at all with the principles of the Positivist School,⁵⁷ especially its more progressive wing.⁵⁸ Positivists were inspired by legal socialism,⁵⁹ the "social question" and the aim of using legal science positively to transform society.⁶⁰ Through direct study of the criminal and their world, Lombroso aimed to integrate law with real life, in order to establish an individualised system of punishment, rather than a moralist criminal law, which on the one hand used scientific theories to create easy "enemy" stereotypes, both internal and external, and on the other hand used Catholic principles to adopt a conservative and moralistic

⁵⁴ The real "racist turning point" of the Fascist regime was in 1938, with the publication of the *Manifesto degli scienziati razzisti (Manifesto of Racist Scientists)* in which the term 'stock' [stirpe] was definitively replaced by that of 'race' [razza]; the birth of the magazine *La Difesa della Razza (The Defence of the Race)*; and the approval of the race laws that initiated the fascist persecution of Jews.

⁵⁵ See A. BURGIO, (Ed.), *Nel nome della razza. Il razzismo nella storia d'Italia, 1870-1945*, Bologna, Il Mulino, 1999 and F. CASSATA, "La difesa della razza". *Politica, ideologia e immagine del razzismo fascista*, Torino, Einaudi, 2008.

⁵⁶ On this topic, see especially L. LACCHÈ, *Il diritto del duce. Giustizia e repressione nell'Italia fascista*, Roma, Donzelli, 2015 and S. SKINNER (Ed.), *Fascism and Criminal Law: History, Theory, Continuity*, Oxford-Portland, Hart, 2015. In addition, on the continuity between Liberal Italy and the Fascist regime, see P. GARFINKEL, *Criminal Law in Liberal and Fascist Italy*, Cambridge, Cambridge University Press, 2017.

⁵⁷ See E. MUSUMECI, *The Positivist School of Criminology and The Italian Fascist Criminal Law. A Squandered Legacy?*, in S. SKINNER (Ed.), *Fascism and Criminal Law: History, Theory, Continuity*, Oxford-Portland, Hart, 2015, p. 35-58.

⁵⁸ The Positivist School of Criminology was not a monolithic institution but rather a melting pot stemming from the different approaches of its three main founders, Cesare Lombroso, Raffaele Garofalo and Enrico Ferri, also defined as "the Holy Trinity" of the Positivist School (A. WALSH, *The Holy Trinity and the Legacy of the Italian School of Criminal Anthropology*, *Human Nature Review*, 2003, 3, 1-11). For this reason, it is not possible to share Marques' opinion on the supposed independence of the Positivist School of Criminology from Lombrosian Criminal Anthropology as well as the idea that Lombroso's work, after his death, became only "a relic cherished by a somewhat eccentric family and a few disciples" (T.P. MARQUES, *Crime and the Fascist State, 1850-1940*, London, Pickering & Chatto, 2013, p. 43).

⁵⁹ On this phenomenon, see P. GROSSI, *History of European Law*, Malden, Wiley-Blackwell, 2010, pp. 123-125.

⁶⁰ Such an aim is clearly apparent from reading the titles of many works from scholars belonging to or affiliated with the Positivist School, such as *La lotta di classe nella legislazione penale [The class struggle in criminal justice]* (Adolfo Zerboglio), *Ingiustizie sociali del codice penale [Social injustices in the criminal code]* (Eugenio Florian), or *Il delitto e la questione sociale [Crime and the social question]* (Filippo Turati).

tone.⁶¹ It must not be forgotten that the intent of the Positivist School was to banish the belief that crime was a “sin” and that punishment represented “atonement”, and to replace this approach with a criminological and sociological one. Despite the many ambiguities evident throughout Lombroso’s work (for example, he was a socialist, yet at the same time favoured the death penalty in some cases), he probably would have preferred a society very different from that of the Fascist era, perhaps a secularised society in which science could be a means of liberation and human evolution. It suffices to recall Lombroso’s criticism of the narrow-minded and chauvinist attitudes that subsequently became characteristic of the ideal Fascist man.

On the contrary, fascist criminal law as well as the “fascist police”, liberally drawing on the “positivist galaxy”, used positivistic weapons in a totally instrumental and anti-democratic way.⁶² For this reason it can be said that with the advent of Fascism, the Lombrosian legacy was dissipated, especially in the fields of law, policing, and criminal justice.

5. CONCLUSION

Among the numerous areas affected by Lombroso’s work, scientific policing is certainly one of the most significant. However, it should be noted that it would be wrong to consider simply that all the most negative aspects of the Fascist regime were derived from the application of Lombrosian theses (from racism to the regime’s colonialism to the most repressive parts of the penal code). Indeed, fascist juridical culture took a completely different path following the ideals congenial to its politics, translating into the gradual elimination of individual rights.⁶³

According to Mussolini’s well-known motto, “all within the State, nothing outside the State, nothing against the State”, one of the fundamental ideas of Fascism was the centrality of the State, and the legal reform undertaken by the Justice Minister Alfredo Rocco, with the support of his brother Arturo Rocco and other jurists, such as Vincenzo Manzini, was directed precisely towards strengthening this idea. Political violence, one of the key elements of the so-called *Fascist revolution*, was cunningly disguised as Fascist law. As Rocco himself stated, emphasising the need to spread the new Fascist spirit

⁶¹ On the debate on the problem of individualisation of punishment, see M. PIFFERI, *Reinventing punishment. A comparative history of criminology and penology in the nineteenth and twentieth centuries*, Oxford, Oxford University Press, 2016.

⁶² On the *fascistisation* of police culture, see J. DUNNAGE, *Mussolini’s Policemen: behaviour, ideology and institutional culture and representation and practice*, Manchester, Manchester University Press, 2012, pp. 37-76.

⁶³ See A. MAZZACANE, La cultura giuridica del fascismo: una questione aperta, in Id. (Ed.), *Diritto, economia e istituzioni nell’Italia fascista*, Baden-Baden, Nomos, 2002, p. 1-15 and, for the autonomy of juridical culture under Fascism, P. CAPPELLINI, Il fascismo invisibile. Una ipotesi di esperimento storiografico sui rapporti tra codificazione civile e regime, *Quaderni fiorentini per la storia del pensiero giuridico moderno*, 1999, 28, I, p. 175-282.

throughout the legal system, “the old law would be replaced by the new law: Fascist legality”.⁶⁴ In other words, the fascist legal system was based only apparently on the classical principle of *nullum crimen sine lege*, which was amended in the sense adopted by Fascist legal scholar Giuseppe Maggiore, who stressed that the Regime must consider as a crime not only every act violating a previous law but also every act offending the State’s authority and deserving of punishment “according to the will of the Duce, sole interpreter of the will of the Italian people”.⁶⁵

For one thing, there was an increase in the quantity of categories of offences (the Special Part of the Rocco Code, dedicated to crimes and the related sanctions, was composed of 494 articles, whereas under the 1889 Zanardelli Code the equivalent part consisted of 395 articles). Moreover, the layout of chapters reflected the hierarchy of values to be protected.⁶⁶ Not by chance, the first chapters addressed crimes against the personality of the State, public administration, public policy, and all other crimes that were related to the public sphere of the State.⁶⁷

In this context it is clear that the scientific police and its affiliated techniques (from the development of fingerprinting to the improvement of identification using the biographical folders) were instrumental in the political violence of the regime. A decisive role in the fascistisation of the scientific police was undoubtedly played by Giuseppe Falco, representative of a group of post-Lombrosian scholars. To his medical training, Falco added the skills derived from criminal law lessons and criminology taught to him by Enrico Ferri, and began collaborating with Ottolenghi, up to his succession as director of the School in 1934.

To add to the body of knowledge of the study of criminal identification advocated by the School, in 1921 Falco published the first edition of his work “*Identity. Scientific Method of Description and Identification*” [“*Identità. Metodo scientifico di segnalamento e identificazione*”] in which he analysed the biological methods of identification and description. Along the lines traced by Bertillon, Falco emphasized the importance of the guidelines of the School of Scientific Policing, which interpreted description [segnalamento] not only as an instrument useful to determine identity, but also as indispensable for

⁶⁴ A. ROCCO, Legge sulla facoltà del potere esecutivo di emanare norme giuridiche [1925], in Id. (Ed.), *Discorsi parlamentari*, Bologna, Il Mulino, 2005, p. 257.

⁶⁵ G. MAGGIORE, *Diritto penale totalitario nello Stato totalitario*, in *Rivista italiana di diritto penale*, 1939, 11, p. 160.

⁶⁶ The provisions of the Code’s special part were structured as follows: I Crimes against the Personality of the State; II Crimes against Public Administration; III Crimes against the Administration of Justice; IV Crimes against Religious Sentiment and against Piety to the Dead; V Crimes against Public Order; VI Crimes against Public Safety; VII Crimes against Public Faith; VIII Crimes against the Public Economy, Industry and Commerce; IX Crimes against Public Morality; X Crimes against the Integrity and Health of the Stock; XI Crimes against the Family; XII Crimes against the Person; XIII Crimes against Property.

⁶⁷ See, for example, F. COLAO, G. NEPPI MODONA, M. PELISSERO, Alfredo Rocco e il codice penale fascista, *Democrazia e Diritto*, 2011, 1-2, p. 184-185.

attaining knowledge of the offender's personality. It was thanks to Falco's efforts that Ottolenghi's identification cards, created after the advent of the regime, were subsequently developed and expanded. In 1925, Falco faithfully devoted himself to both Lombrosian teachings and the Fascist regime, and developed new forms for insertion into the identification folders, extending them again after approval of the Rocco Code in 1930.

In the new folders, Falco's imprint is clearly quite congenial to fascist dictates and the new system of criminal law. The cards consisted of four parts: the "description" section [parte segnaletica] containing the general description; the "biographical" section [parte biografica], divided into two subsections - objective data (*modus operandi*, nature of the crime committed), and its psychic characteristics (emotion, intelligence, culture, idleness) in relation to the criminal's capacity [*capacità a delinquere*];⁶⁸ the "administrative-judiciary" section [parte giudiziaria-amministrativa], relating to information regarding the offender (criminal records, recidivism, application of security measures, inclination to crime); and finally, the "synthetic" section [parte sintetica], containing official judgements regarding the offender's *social dangerousness* and *correctability*. It is evident how this complex and articulated scheme reflected the so-called "double-track" system,⁶⁹ adopted by the Rocco Code, which, in addition to traditional punishments, prescribed security measures, according to the level of social dangerousness of the offender, or rather, the judge's prediction about the possibility of their committing new crimes in the unknowable future.⁷⁰

If it is true that Lombroso's Positivist School sought to replace the model of criminal law based on free will with one based on dangerousness, Fascism instead applied both criteria, thus producing an instrument capable of multiplying penalties.⁷¹ Once again the Fascist legislators had taken possession of and distorted the Lombrosian legacy. Moreover, at the behest of the Minister of Justice, Alfredo Rocco, in 1931 the School of Scientific Policing in Rome was transformed into the Criminal Museum [*Museo Criminale*], renamed in 1975 as the Criminological Museum [*Museo Criminologico* – MUCRI].

Furthermore, even the individuals subject to these measures had now changed: the "criminal tide"⁷² that Lombroso sought to address in the second half of the nineteenth century coincided substantially with the "dangerous classes" after Fascism's dramatic expansion and transformation: to the hardened criminals, idlers, and vagabonds were now added "subversives" and "po-

⁶⁸ As stipulated by Article 133 of the Penal Code (relating to *seriousness of the crime*).

⁶⁹ See, for example, A. BITONTI, «Doppio binario» (entry), in *Digesto delle discipline penali*, Torino, Utet, 2005, p. 393-414.

⁷⁰ See A. MANNA, *Imputabilità e misure di sicurezza*, Padova, Cedam, 2002. On security measures and their comparative legal-historical analysis, see also E. MUSCO, *La misura di sicurezza detentiva. Profili storici e costituzionali*, Milano, Giuffrè, 1978.

⁷¹ E. DEZZA, *Le reazioni del positivismo penale al codice Rocco*, *Diritto penale XXI secolo*, 2011, X, 2, p. 433.

⁷² LOMBROSO, *Sull'incremento del delitto in Italia*, p. III.

litical opponents” of the regime. Lombroso and Ferri’s social defence concept was thus transformed by the regime into political violence against “the enemy”. This is also evident from Falco’s writings wherein he specified that the function of the biographical cards should be to support criminal justice, but above all to achieve a “general prophylaxis” and a “moral remediation” by extending the application of identification not only to criminals, but to anyone: “the biographical card, which contains the personality of the citizen[,] must be born, therefore, with the citizen himself, just as with every citizen their identity and civil status are born”.⁷³ In other words, anyone could be controlled and recorded by the regime according to the fascist motto “Distrust everything. Do not trust anybody! [*Diffida di tutto. Non fidarti di nessuno!*]”.

⁷³ FALCO, Cartella biografica, p. 129.