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RESEARCH ARTICLE

Populist punitiveness in the Italian Populistic Yellow-Green Government

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ABSTRACT:
In this article we present a general interpretation of the recent tendency of Italian political forces to promote laws in the criminal field aimed more at producing political consensus of an emotional kind than at addressing real legal and social needs. In particular we'll demonstrate how the social trend could be classified as 'populist punitiveness', which has become stronger with the so-called populist turn of the Italian political system during the early 90s of the last century, and how it has become a permanent trait of the neo-populist forces that have dominated the Italian political scene for the past twenty-five years. In particular, we will analyse the government formed by the Northern League and the 5 Star Movement, also called the yellow-green government, headed by Prime Minister Giuseppe Conte, in power from June 2018 to September 2019. We will highlight how some of the most significant criminal laws have followed a general pattern that corresponds to a punitive vision of society, aimed at fostering feelings of fear and protection that are irrational rather than grounded. Our thesis is that the neo-populist turn of the Italian system has not only profoundly transformed the system and political structures of the country but also civil society and the public opinion, rebalancing entire spheres of the Italian social and political system.

KEYWORDS:
Italian Populism, Penal Populism, 5 Star Movement, Northern League, Populist punitiveness.

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1. Introduction.[1]

In this article we present a general interpretation of the recent tendency of Italian political forces to promote laws in the criminal field aimed more at producing political consensus of an emotional kind than at addressing real legal and social needs.

We will make use of a more specific definition of penal populism, which coincides with "populist punitiveness", meaning the populistic use of criminal justice promoted by governments and populist political forces. By referring to the political transformation of the last decades, this article aims to link two areas and approaches that are generally kept separate: penal populism studies and political populism studies. Our goal is to demonstrate how this trend could be classified as 'populist punitiveness', which has become stronger with the so-called populist turn of the Italian political system during the early 90s of the last century, and how it has become a permanent trait of the neo-populist forces that have dominated the Italian political scene for the past twenty-five years. In particular, we will analyse the government formed by the Northern League and the 5 Star Movement, also called the yellow-green government, headed by Prime Minister Giuseppe Conte, in power from June 2018 to September 2019.

We will highlight how some of the most significant criminal laws have followed a general pattern that corresponds to a punitive vision of society, aimed at fostering feelings of fear and protection that are irrational rather than grounded. As Ruth Wodak has already shown, right-wing populisms often resort to policies of fear to generate social mobilization and orient political participation. In the Italian case, however, these methods have also been adopted by non-nationalist populist political forces and not only by right-wing ones (Wodak, 2015).

Specifically, our thesis is that the neo-populist turn of the Italian system has not only profoundly transformed the system and political structures of the country but also civil society and the public opinion, rebalancing entire spheres of the Italian social and political system. Considered as a demo-consensual drift, political populism has in fact depoliticised the sphere of classical politics traditionally dominated by professional politicians, while at the same time over-politicising spheres that were not originally political, such as civil society and the justice system, transferring the logic and political consensus to these areas.

In the context of populism studies, Italy presents a clearly paradigmatic case. (Tarchi, 2015; Biorcio, 2015) In scientific literature on populism Italy is, in fact, one of the most representative and interesting cases for the alternation and co-existence of numerous populist political forces, resulting from both the strong depoliticisation of the political sphere, and, conversely, the hyper-politicisation of other spheres such as civil society and the justice system.

As we will explain later, Italian political multi-populism has also produced a particular penal populism widespread in the public opinion, shared and promoted by both left-wing and right-wing forces. In line with the theory of Marco Tarchi, who conceives of populism as a mindset characterised by specific traits, from the perspective of the criminal and justice systems, Italian neo-populisms have proven to be the expression of a punitive and authoritarian mentality, lacking of 'guarantism' – a world we will use to translate the Italian 'garantismo', meaning it lacks respect for the rule of law and for the fundamental rights in criminal procedures. In Italy the populist matrix, with its internal variations and differences, has deformed not only the political sphere (Urbinati, 2016) but also the public sphere and the social common sense.

In particular, we will try to demonstrate how a special tendency towards punitiveness has progressively developed in Italy, which, being linked to the need for the creation of political consensus by populist move-

[1] Introduction, part 4 and conclusion are by Manuel Anselmi, the other parts of this article are by Stefano Anastasìa.

ments with, of course, populist methods, we have defined "populist punitiveness", in the context of new punitiveness (Pratt, Brow, Brown, 2005), in order to trace a distinction from other punitive phenomena such as those already described and studied by Michel Foucault (Foucault 2015: 230-31).

This article is a continuation of a previous work where we identified this trend (Anselmi M. and F. De Nardis 2018) with reference to laws on immigration, the first security decree and the crime of vehicular homicide. In this article, instead, we will focus on some laws passed by the government of the Northern League and of the 5 Star Movement, the so called yellow-green government, and in particular the law on self-defence and the law implementing the so-called "security decree bis". Before illustrating these cases, we will try to provide an interpretative framework that accounts for the strong connection between political populism and penal populism, also attempting to redefine penal populism by looking at how populism uses the justice system to produce political consensus. In particular, we will try to link penal populism and political populism in a common perspective, which we have called populist punitiveness (Bottom, 1995). In this perspective we will explain why, despite the clear political differences between the different populist parties, there is a strong convergence in pursuing a model of punitive society.

Each of these legislative provisions has brought on a profound transformation in social imagination with regard to various issues, but with the same and convergent purpose, which is to increase a sense of general insecurity, legitimise narratives and social discourses that encourage private revenge, reinforce feelings of punishment that have nothing to do with the justice system, which is based on procedures and guarantees.

2. Populist punitiveness as a result of political populism and penal populism.

In criminal and criminological literature, penal populism emerged in the mid-90s of the last century as an interpretative category of the transformations taking place with decisions toward criminalisation in western countries. As is known, starting in the second half of the 70s of the 20th century, in the United States of America, and subsequently in Europe and other large Commonwealth countries with a western socio-legal tradition, the population detained began to grow without a direct correlation with crime rates (Anastasìa, 2012). This is the effect of what sociological-oriented criminology calls the social construction of deviance in processes of criminalisation. In the course of a few years, the population detained in most European countries multiplied twofold, in the United States as much as seven times. The dissemination of pre- or post-trial testing tools was of no use, and resulted in a so-called net widening effect, identified by Thomas Blomberg in 1980, with specific reference to the first experiences of diversion in the US criminal justice system.

Naturalistic explanations, based on a supposed correlation between trends in penalties and crime rates, are now viewed as being scientifically inconsistent, and scientific literature has focused on identifying the causes of this phenomenon in the interaction between the spheres of social action which have indirect effects on the functioning of the criminal system: the demographic-economic domain and the discursive elaboration of the public decision in the primary and secondary choices of criminalization. [2]

In a collective work dedicated to the policies of criminal enforcement, Anthony Bottoms (1995) for the first time linked the adjective 'populist' to the noun 'punitiveness', a term that is not easy to translate into Italian and could be placed between the propensity to punish and the effectiveness of criminal enforcement.

2 In the European context, see the model constructed by Snacken, Beyens and Tubex (1995) and the Italian translation in Pavarini 1997.

In 2003 a comparative research by Julian V. Roberts, Loretta J. Stalans, David Indermaur and Mike Hough was published, dedicated to penal populism and public opinion in five legal systems of the Anglo-Saxon tradition (USA, Great Britain, Canada, Australia and New Zealand). The authors share a definition of penal populism as the pursuit of a framework of criminal policies "to win votes rather than to reduce crime rates or to promote justice" (Roberts et al. 2003, 5). This definition is similar to the one later proposed by Luigi Ferrajoli (2008), according to which "penal populism" can be interpreted as "[...] any security strategy aimed at obtaining popular consensus demagogically, by responding to the fear generated by street crime, with a circumstantial use of criminal law which is as repressive and discarding of criminal guarantees, as it is ineffective with respect to its alleged aim that is prevention."

In this sense, the hypothesis already mentioned by Jonathan Simon (2008), according to which the transformation of the US penal system in the last quarter of the 20th century caused crime itself to become an instrument of social governance, remains the most relevant. Whereby the instrument is not so much the punitive response to a crime, it must be noted, but criminality itself, starting from its normative definition and the identification of the related contrasting strategies. Governing through crime, as the title of the work reads, is, according to Simon, what distinguishes the great transformation of American society in the last half century, putting – even before 11 September 2001 – fear at the centre of the public scene.

Denis Salas (2010), taking a step further in the analysis of the issues pertaining to penal populism, claims that: "*il caractérise tout discours qui appelle à punir* au nom *des victimes bafouées et* contre *des institutions disqualifies*" (14), thus linking the penal-populist perspective to an "antagonistic" perspective, one grounded in opposition, rather than to a governmental one. To momentarily leave aside this non-existent conflict between governmental penal-populism and an oppositional criminal-populism, it might be useful to recall the more comprehensive notion proposed by Giovanni Fiandaca (2013), "of a criminal law aimed at (or in any case conditioned by), the pursuit of populist political objectives" (97), which corresponds to the minimum definition put forward by Massimo Luigi Ferrante (2017), according to which "any instance of pursuit of public consensus that has a distortive effect on the penal system" (2) can be termed penal populism. Starting from a case study, that of the referendum held in Switzerland in 2004 on life imprisonment without the possibility or reviewing the sentence, successfully proposed by a group of victims' families, opposed by the majority of the political establishment of the Confederation and of the "experts" consulted, Garin (2012) identifies six characteristics that qualify the referendum as "an example of penal populism" (290):

- It represents an increase of the severity of the punishment.
- It constitutes an emotional and symbolic answer to crime.
- It offers an easily understandable solution to spectacular cases.
- It was initiated by a marginal group close to the victims.
- It had few supporters among the experts and criminal justice professionals.
- It became a reality because of the democratic institutions of Switzerland.

Some of these characteristics also feature in the framework we will illustrate further on. In the meantime, it is worth highlighting the emotional and symbolic dimension of the response to crime being proposed and the fact that it was able become reality "thanks to the democratic institutions of Switzerland".

Didier Fassin (2018) speaks of a "punitive moment" to describe the shift and the opening up of a new phase in the western world in the last forty years. [3]

A problem concerning the definition of penal populism does exist. It does not so much have to do with the nature of the phenomenon itself, but rather with the explanatory clarity of the combination of "penal" and "populism". If by "populism" we mean the ideology of a political movement, its "penal" qualification should indicate a populist political movement that grounds its fundamental political program in the achievement of justice through penalties and sanctions, something that would be absurd even in the worst of dystopias. Criminal law and its implementation do provide contents with a high symbolic value, at times distorted and rendered similar to renewed sacrifice rituals, however they are instruments, not ends, of any possible idea of justice. To be clear: in the name of certain notions of "good" heads have been cut off, human beings have been deported or thrown into the sea from flying airplanes, but no executioner has ever thought that these abuses are the ultimate good pursued by their political party, rather they are a necessary means for the achievement, consolidation or safeguard of something else. As with the most ancient of rituals, sacrifice is a vow (even an act of renunciation) for the wellbeing of something, not for good in itself.

Because of this, it is does not seem reasonable to add a specific penal-populist ideology to the list of other possible ones, as if the society of punishment or the good obtained with the greatest suffering possible legally inflicted were a notion in its own right of just society or common good. Criminal law and justice remain instruments of an idea of justice, where the latter does not coincide with the former, however minimally agreed upon or imposed on members of the same society. After all, also following the establishment of charters of rights and the constitutionalisation of values, the classification of offenses continues to be the most important public exercise of their specification, translating into legal norms conducts that are harmful to what is constitutionally protected on the basis of the severity of the corresponding sanctions. The fact that this exercise may give rise to abuse or distortions is our problem, it is the problem of those who – legitimately – do not recognise themselves in the selection of what is being protected by criminal law and contest its correspondence to constitutional values, or even the constitutional provisions themselves, because of a different system of values.

If, on the other hand, criminal law and justice are tools used to gain or consolidate popular consensus, as emerges in the definitions given above, it is more correct to speak of *populist punitiveness as populist use of criminal law and justice* by political and institutional actors, thus expanding our gaze beyond political parties and movements that define themselves or that are qualified as "populist" on the basis of a general way of understanding political representation. In fact, the populist use of law and of criminal justice is frequently ascribed to the so-called populist movements, due to the specific possibility of articulating criminal law in an antagonistic way, using it against the "enemies of the people"; however, the same can be said of "traditional" political actors, or even of institutional actors who, within the dynamics that articulate different powers, find themselves performing a political role, and therefore a general one, in other words not limited to the exercise of a specific power in a specific circumstance or case.

It is important to explain what is meant by 'actors' in penal populism. Actors of penal populism are all those subjects who use criminal justice for a political project of mobilization, satisfaction or representation of "popular" demands. Among them we may distinguish between "political actors" and "institutional" actors.

3 The moment Fassin writes about (2018, 11), "evidently refers to a time period [...] But it must also be understood in the dynamic meaning of its Latin etymology, that physics, in English, has continued to use to indicate movement, impulse and influence: *it is the force that determines the change we are witnessing*" (emphasis added).

The first are parties, movements and leaderships that – because of ideology, strategy or rhetoric – define themselves or are defined as populists, whether they are in government or form the opposition. To these actors we must add single issue movements, in which the punishment of the type of conduct they blame is an essential element of their proposal, and the media outlets for which the dynamics of supply and demand of criminal justice is such an important component of their editorial strategy that they try to influence and fuel it. Institutional actors of the populist use of criminal justice, on the other hand, are those actors with a public function, be they expression of political parties, such as members of the government in the exercise of their mandate, or holders of public offices in the system of prevention and repression of deviance, from the police forces to the judicial system.

We call 'populist punitiveness' the broad notion of a "populist use of law and criminal justice" and the use of an interpretative framework centred on four items, always identifiable in each case study, which allows us to understand the extent and the specificities of the object of our investigation far beyond the affiliation to so-called or self-proclaimed populist parties, movements or leaderships). The interpretative framework we propose to use is therefore made up of the following elements:

- The actors of the populist use of law and criminal justice;
- The targets of their initiative;
- The legal and cultural instruments used;
- The social functions performed by the various instances of the populist use of law and criminal justice (Anastasìa S. and M. Anselmi, 2019).

In 'populist punitiveness' the target is critical. It is not punishment *per se* that motivates the actors – as if it were possible to conceive of an ideology of penal populism whose objective is to pursue sadistic happiness achieved through the suffering of others – but rather the identification of the "other" as opposed to the people, as its enemy, against which the instruments of the law and criminal justice are directed. Rhetorically, the populist use of law and criminal justice has two distinct potential targets: upwards, the elites that prevent people from fully exercising their own democratic prerogatives; downwards, those who are strangers to the community because of their origin, lifestyle, or personal condition. Obviously, according to populist standards, both targets constitute alien bodies with respect to the popular community, in whose name the actors of the populist use of law and criminal justice mobilise: these targets represent "them" as opposed to "us".

However, as we know, in populist rhetoric, the antagonistic "them" is a powerful subjectivity, at least enough to have taken away (or threatened to do so) power from the people. It is indeed curious that this powerful enemy is frequently identified with refugees arriving by sea, with drug addicts roaming the streets of the city, with the authors of petty serial crimes. In fact, on this point the populist rhetoric makes a distinction between the sources of danger (the "them" that must be contained, criminalised and punished) and the powerful who are the cause, the supra- or extra-national economic and political powers, the domestic establishment, indifferent to the living conditions of people, who must be politically defeated through popular mobilization against the failures caused by them (immigration, petty crime, etc.). Therefore, the antagonist that must be beaten with the populist use of law and criminal justice is always an elite, but depending on the context and, as we will see, on the political culture of its actors, these instruments can be used directly against elites, or indirectly, targeting those who are viewed as their symbolic replacements, consequent manifestations of their policies.

3. Social factors of populist punitiveness populism.

To understand how political populism is linked to penal populism and produces the populist punitiveness need to keep in mind the cultural roots of these phenomena. As we have already anticipated, the instruments behind the populist use of criminal justice are both specifically legal and more broadly cultural. The two go together as the simple employment of penal instruments is not sufficient for the purpose of populist mobilisation, that is, if it not accompanied by a more far-reaching one.

John Pratt, in his conceptual systemization of the phenomenon of penal populism (2007), identified three *cultural instruments* through which what we have termed the populist use of law and criminal justice is socially legitimised: the communicative glamourisation of the crime, the absence of statistical data in the public debate and the assertion of the paradigm of victimisation.

The glamourisation of crime is, according to its traditional explanation, the consequence of the development of mass media and of interactive capacities applied to criminological interest which renders crime, and more generally evil, a particularly attractive theme in literature, as well as in the media and in the news. Pratt's research focused on how the representation of crime in English national media changed with the appearance of TV programmes based on the spectacularisation of real facts, in which the audience is involved in an attempt at solve the cases presented. This shift can be seen also in other linguistic and cultural areas, spread by the power of international TV production oligopolies, which has led to the standardisation of television programmes worldwide. Criminal acts are repeatedly portrayed as spontaneous acts, "random and indiscriminate", as Pratt writes (134), in line with a communication strategy that aims to both disturb and thrill viewers. This glamourization of real crime is accompanied by a proliferation of criminological fiction, national and international TV series, and by the increasing importance of crime in the news. All this renders crime and danger ubiquitous in the life of TV users, with macroscopic effects recorded in all sociological surveys on the perception of insecurity and risks of victimisation.

The social construction of subjective insecurity, intended as fear of becoming the victim of crime, if not as the perception of already being one, is a critical element in the populist use of law and criminal justice, supported by the delegitimization of real data relating to the actual risk of being exposed to criminal phenomena. This is what Pratt called the de-statisticalization of the crime scene and Garland (2004, 258-261) defined "decline of expert competence" in the criminological field. As Anastasìa and Anselmi (2015, 18) wrote, destatisticalization shows the rhetorical nature of populism in the criminal field: "the arguments that animate the civil debate on legal and criminal matters always need to be subordinated to a logic of consensus and to the achievement of the objective of persuading the target, in this case citizens". Two real phenomena, the risk of victimisation and its perception, which both deserve the right attention and adequate public policies of protection and reassurance, are thus confused, generating criminal threats for reassurance purposes, without actually protecting or effectively reassuring.

The third instrument behind the populist use of the law and criminal system is the recourse to the label of victim, by the community which is portrayed as falling victim to the real or the potential perpetrators of the offence against it. "The victim movement became increasingly identified with the 'populist punitiveness' exercised by political and media forces that exploit (and seek to enhance) a free-floating 'fear of crime', and a perceived need to protect 'the vulnerable' from 'the dangerous." (Sebba and Berenblum 2013, 12).

In the United States there are laws named after victims of an offence, supposedly to bring justice to the person harmed. Also in Italy, a similar form of compensation has been recently introduced, with the public approval by the Prime Minster *pro tempore*, in front of an audience of members of the families of the vic-

tims, of the so-called law on vehicular homicide. Legally, the instrument that pays tribute to victims has been defined by Pratt as one of the founding elements of penal populism. It entails the spread of forms of reparative justice, where perpetrator and victim are placed one in front of the other in an attempt of mediation which may also include direct reparative actions by the perpetrator of the crime towards the victim. Culturally, this "rediscovery" of victimhood is part of the victimisation paradigm perfectly illustrated by Daniele Giglioli (2014), which tends to remove any form of political responsibility in the present and for the future and to confine in the past and in the "other" the distress caused by one's present condition. This instrument is a fundamental element in political populist strategies.

In addition to these cultural instruments, which directly impact the sphere of the public opinion and its demand for quantity and quality of punishment, there are *strictly legal instruments* that are part of the populist punitiveness. An already vast literature has documented the common features of criminal policies adopted in western countries in the last decades, configuring a model of criminal law and institutional social control attributable to the populist action by political actors in competition among themselves. We can trace this action by using a framework articulated in three areas of intervention:

- The conception of prevention/punishment of deviance as a moment of indiscriminate war that makes no distinction with regard to the severity of the facts, their offensiveness and even their formal acknowledgement as criminally relevant. Such events are qualified as "emergencies", from the war on crime to the war on drugs, from the war on terror to the zero tolerance measures against forms of social irregularity. [4]
- The tendency to *maximise* the punishment by generally raising the limitations on punishment with which recidivism is disciplined (which goes as far as envisaging a special criminal law for each kind of perpetrator, and the aberrations of the US-style legislation such as the so called "three strikes and you're out" rule) and, finally, the rediscovery of capital punishment (from death penalty to life sentences).
- Attention to the harshness of punishment during the enforcement stage, in the name of the so-called "certainty of punishment", conceived of as its unavailability, which does not exclude, but incorporates into the punitive system, a large share of criminal sentences carried out in the territory, no longer inspired to the notion of social reintegration of those convicted, typical of the universalistic welfare model of the second half of the 20th century, but rather to the need to extend the network of criminal control beyond the rigid boundaries of penitentiary institutions. [5]

Finally, for what concerns the motivation of the actors of the populist use of law and criminal justice, distinct functions can be identified. As we have already seen, the actors of the populist use of law and criminal justice are all, in general terms, political actors; however, they can have very different political projects, both for ideological reasons and for the political and/or institutional function they hold. As for the political actors *stricto sensu*, the political use of law and criminal justice is obviously determined by their political role in government or opposition. If they are in government, the actors of the political use of law and criminal justice will view this as an instrument to *stabilise consensus* and the power relations within political institutions. On the contrary, if these actors are members of the opposition, the political use of law and criminal justice

4 From this point of view, it is worth mentioning the convergence of administrative and criminal sanctioning instruments in the coercive policies employed to combat social marginality. The administrative deprivation of liberty of illegally residing foreigners and the pre-penal function of mayors' orders are important examples in our country, which have a series of elements in common with similar measures implemented in other countries. See Selmini and Crawford 2017.

5 In this sense reparative justice "rather than facilitating the reintegration of offenders, … is used here to justify their continued penalization and the imposition of secondary punishment." (Pratt 2007: 145)

will be aimed at *changing the political balance*, and at gaining popular legitimisation for their political proposal.

Also actors whom we have defined as "institutional" may take advantage of these dynamics, to the extent that they play a role in a dynamic aimed at creating consensus for the exercise of their functions, in a present or future perspective. In this case, those who perform institutional functions can resort to a populist use of criminal justice not only because of their political-ideological orientation, but also to strengthen their own role and function in the eyes of the public opinion and in a context of power dynamics, to capitalise the resources connected to their role, in view of a change of function. [6]

In light of the interpretative framework proposed, the populist use of criminal law, far from being the prerogative of one faction, or having a specific political orientation, can be both "right-wing" and "left-wing", "progressive" and "conservative", depending on its target, and the functions it aims to perform. The populist use of criminal justice which targets the elites which actors want to oppose directly can be considered "left-wing", whereas the use of criminal justice directed against marginal subjects identified as symbolic replacements of the domestic or extra-territorial "strong powers" who prevent the exercise of the popular will within the borders of the national community is considered "right-wing". Similarly, the populist use of criminal justice aimed at a change in the existing power balance is considered "progressive", whereas when it is used by actors holding political or institutional roles, with the aim of stabilising a particular power balance, it is considered to be "conservative".

These are, however, distinctive categories pertaining to a single interpretative context that comprises different populist modalities of using criminal law. Its peculiarity, we have said, lies in the way its actors conceive of it, to the extent it is envisaged as an instrument of discrimination between the "us" of popular sovereignty and the "them" opposing it. The history of the political use of criminal justice, it must also be noted, is much older than its contemporary forms, and at the same time more current than the arbitrary justice systems of pre-modern sovereigns, extending into the contemporary history of constitutional states of law, through the discretionary selection of that which is deserving of criminal protection and of the concrete forms of exercise of secondary criminalisation practices. Nothing new, therefore, except that the actors of the populist use of criminal justice no longer hide behind the abstractness of criminal law and expressly identify the objective, the enemy, rather than the conduct to be criminalised. It is no coincidence that the centrality of deviant subjectivity, to which the populist use of criminal law is addressed, has given rise to two theoretical-interpretative models of a renewed criminal law of the perpetrator: the "criminal law of the enemy" (Jakobs 2003), for which – in a double track system – it is possible to do without the guarantees of liberal criminal law in the pursuit of the enemy of the community, and "actuarial justice", aimed at identifying and incapacitating (also preventively) the factors of "criminal risk" (Feeley and Simon,1994).

With the revival of a reclaimed political use of criminal justice and the explicit abandonment of criminal law of the fact, in favour of a new criminal law of the perpetrator, penal guaranties of the liberal tradition, which now seems a mere obstacle to the achievement of popular justice, disappears. Such an idea of criminal

6. One must consider, in particular, the role played by public prosecutors in a legal system such as the one in the USA and the political relevance of the exercise of their function. For this reason, these are considered as key positions in the dynamic of power and political representation, which these actors frequently access taking advantage of the position they hold and on the basis of their political use of their functions.

justice contradicts the development, albeit itself contradictory, of centuries of legal evolution, and risks perpetuating the shortcomings of criminal law – all the atrocities perpetrated in its name. [7]

4. The populist punitive turn of the yellow-green government

The increase in phenomena of penal populism has therefore been favoured by the demo-consensual drift caused by the neo-populist turn of the Italian political system.

It is important to clarify what we mean by 'demo-consensual drift' here. On the basis of the distinction proposed by the Italian legal theorist Luigi Ferrajoli (2018: 519), between forms of "active democracy" and forms of "passive democracy", in which the will of the people is manifested by adherence to a political proposal of others, we have coined (Anastasìa S. 2019: 194) the expression "demo-consensual" to designate the "new political regime, based on the detection of popular consensus rather than the exercise of popular power" which seems to have taken the place of traditional liberal-democratic regimes based on different forms of popular participation. [8]

Our idea is based on the literature on Italian political populism (Urbinati &Regazzoni 2016, Tarchi 2015, Biorcio 2015), which shows how Italy experienced a populist turn following the advent of the Second Republic, as well as how populism is a way of thinking which deeply affects both the public sphere and civil society. From the 90s onwards, the spread of Italian neo-populism has coincided with an increase in forms of penal populism as populistic use of criminal justice. In particular, this phenomenon became evident with the "Yellow and Green" government, an alliance between the 5 Star Movement and the Northern League, the latter being a nationalist and far-right party, characterized by a "law and order" idea of justice, as well as a neoliberal and conservative conception of the State.

The increasingly frequent populist use of criminal law was recorded starting with the crisis of the so-called First Republic, with the first law and order campaign, aimed at criminalising the use of drugs, promoted by the first personalist leader of the Italian Republican, Bettino Craxi, in the aftermath of his expulsion from government and in an attempt to occupy a central position in the media and in setting the country's agenda. These events were followed by the investigations into corruption that accompanied the change of the political system between 1992 and 1994 and the emergence, starting in the 1990s, of security issues that, linked to immigration, became central.

The populist use of law and criminal justice became more accentuated in Italy with the beginning of the 18th legislature. In fact, in the general elections held March 4, 2018, none of the three main electoral alignments (5 Star Movement, Center-Right Coalition, Center-Left Coalition) reached an absolute majority in the two Chambers and it took almost three months to form a new government sworn in by two parties (5 Star Movement and Northern League) from different electoral alignments. The 5 Star Movement and the Northern League had not only become both politically characterized in a populist sense, but had also increasingly treated criminal threat as a central issue and as an instrument to build consensus. In both parties this threat had become a constitutive element of their political vocabulary. A trend towards populist punitiveness in-

7. "The history of punishment is certainly more horrendous and infamous for humanity than the history of crime…it is no exaggeration to say that the total number of punishments imposed in history have had a human cost, in terms of blood, lives and mortifications, incomparably higher than that ascribable to the totality of crimes ."(Ferrajoli 1989: 382)

8 The development and effects of the growing bipartisan consensus around the populist use of criminal justice in the twenty years of the 'Second Italian Republic' (1994-2013) are analyzed in Anselmi (2015).

creased during the "Yellow and Green" government, where the presence of the Northern League was strong, as a right-wing, nationalist and neoliberal party. As stressed in other studies and research on different contexts, such as India and the US, neoliberal ideology has contributed to a development of a vindictive idea of justice.

The Northern League became an important player in the Italian political scene as a representative of the autonomist forces of the regions in Northern Italy. However, during the 11th legislature, which lasted from 1992 to 1994, on the occasion of its first serious political test, the party resolutely sided with the anti-corruption pool of magistrates headed by Milan prosecutors whose investigations caused a real tsunami in the political system of the first Republic. The Northern League went so far as to invoke the death penalty for those found guilty of corruption, during a flamboyant performance by the member of Parliament Luca Leoni Orsenigo in the Lower House, on March 16, 1993, who waved a tied rope in front of Government and the majority. In the following years, the Northern League – in addition to repeatedly putting forward economic and institutional federalist proposals – continued to invoke and, when in power, implement a populist use of criminal law, connoting it in an increasingly clear sense, also in light of its political and institutional position: following its first "anti-establishment" exploit, it began to target social marginalization and, in particular, migrants, all generically defined as "illegal" and therefore deserving of punishment, possibly in the form of expulsion from the national territory. It is in this context that, well before the emergence of the political and media phenomenon of Matteo Salvini, the current head of the Northern League, the single actions taken by his predecessors must be collocated: the promotion by Umberto Bossi of a repressive anti-immigration crackdown, carried out by the second government led by Berlusconi (2001-2005) with the introduction of the so called "Bossi-Fini law" (Law No. 189 of 30 July, 2002), and the so called "Security package" presented by Roberto Maroni, Minister of the Interior and member of the Northern League, at the beginning of the 16th legislature, on the occasion of the first meeting of the fourth Berlusconi government (2008-2011), which once again focused on "illegal immigration", but also on "widespread petty crime" and criminal organizations.[9] In this context, when Matteo Salvini became head of the Northern League (on December 15, 2013), he reinforced the nature of the proposals put forward by the party on repressive and criminal measures, with particular reference to migrants and social marginality, making these points the main asset of the political offer of the League, pre-eminent also compared to the original autonomist or federalist claims regarding the territories of Northern Italy. Thus when the first Conte government was formed, Salvini claimed the position of Minister of the Interior in order to continue his campaign on security and criminalization of social marginality from the most important position in government.

The 5 Star Movement, on the other hand, faced the test of forming a government after a single term in opposition, during which it had mainly focused on denouncing the impunity of the powerful, be they corrupt politicians, greedy entrepreneurs or criminal organizations in general. The 5 Star Movement had inherited the tradition of the anti-corruption and anti-Mafia civil mobilization and articulated it by developing a political proposal that was openly justicialist, based on the belief that it is always possible to resort to a criminal or procedural law to defeat the criminality of the powerful. If the Northern League, therefore, implemented a "right-wing" populist use of criminal law, aimed at targeting social marginality, the 5 Star Movement used

[9] See https://www1.interno.gov.it/mininterno/export/sites/default/it/sezioni/sala_stampa/speciali/Pacchetto_sicurezza/index_2.html, accessed 1.3.2020.

"left-wing" arguments, with the aim of punishing the "powerful" inside the establishment, who usurp the power of the citizens.

The miraculous formation of the first Conte government was indeed cemented precisely by this criminal-populist vocation shared by the two majority parties. The common populist political attitude, together with ignorance, if not contempt for the principles of liberal criminal law [10], allowed the two political forces to reach a programmatic agreement thanks to an original "government contract". [11] As the then Prime Minister *in pectore*, Giuseppe Conte, civil lawyer and professor of private law, knew well, this type of contract does not take into account the motivations behind the choice to enter the agreement: for each party what counts is what they manage to gain for themselves, and at what price. The contract of what has been called the "government of change", assures that the two political forces signing it are guaranteed their claims to criminalization, are added together in the populist use of criminal law, which is neither "right-wing" nor "left-wing", as they certainly would have liked to claim, but rather simultaneously "right-wing" and "left-wing", against both the elites and social marginality.

Even just skimming through the government contract one notices how pivotal the repressive and securitarian proposal are. Five of the nine paragraphs of the chapter dedicated to "timely and efficient justice" refer to criminal justice. This chapter is followed by the one dedicated to "immigration: repatriation and a stop to related business", and shortly after by the one dedicated to "fighting corruption". Finally, another chapter, titled "security, legality and public security forces", lists other specific issues linked to criminalisation, namely illegal occupations and nomad camps.

This pan-penal compendium also comprises, among others, some of the main points that actually shaped the course of action of the Northern League-5 Star Movement Government: from yet another amendment to the law on legitimate self-defence, strongly backed by the League, [12] to the new anti-corruption law ("legge spazzacorrotti", a law, it must be noted, intended to "sweep away" not so much corruption but the "the corrupt"), which also provides, among other things, that the statute of limitation is suspended from the judgment of first instance until the final judgment becomes enforceable – a measure backed by the 5 Star Movement – and amendments to immigration and asylum legislation contained in the so-called "security decrees".

The contract states that self-defence is "always legitimate": "in consideration of the principle of inviolability of private property, the reform and extension of the legitimate defence of one's home is foreseen, eliminating the elements of interpretative uncertainty (with particular reference to the evaluation of the proportionality between defence and offence) which hamper the full protection of the person who has suffered an intrusion in his home and workplace". Indeed, Law No. 36 of 26 April 2019 tends to invalidate the principle of proportionality between offense and defence, by considering the latter as being always legitimate in the event of danger or of an unspecified "aggression", and even though the purpose may be to defend property rather than people. Furthermore, liability for any possible excess in exercising this right, for any action that exceeds the already rather permissive conception of self-defence, does not apply if the author is in a state of "serious emotional disturbance" caused by the circumstances. When the President of the Republic approved the law, he also felt compelled to specify, with a letter addressed to the Presidents of the Chambers and to the

[10] See G. Fiandaca, *Intorno al diritto penale liberale*, in https://discrimen.it/wp-content/uploads/Fiandaca-Diritto-penale-liberale.pdf (accessed 5.3.2020)

[11] Available at the address: https://download.repubblica.it/pdf/2018/politica/contratto_governo.pdf (accessed 5.3.2020).

[12] It should be recalled that a previous amendment to the non-punishability in the case of self-defence was also promoted and achieved by the Northern League with Law no. 59 of 13 February 2006, passed during the 14th legislature, that is, the fourth Berlusconi government, with the Northern League part of the majority.

Prime Minister,[13] that "the new legislation presupposes, in conformity with the Constitution, the possibility to objectively define the scope of serious disturbance, and that the latter is effectively determined by the concrete situation in which it occurs": seemingly warning that the legislation, abstractly, could give rise to constitutionally illegitimate interpretations.

Clearly the law passed was the result of a campaign in defence of honest Italians against foreign robbers, promoted by the leader of the League and Minister of the Interior, who even expressed his personal solidarity with a prisoner convicted of attempted murder after having shot a person at point-blank range for having attempted to steal gasoline, but who had already been immobilized and rendered harmless. To determine the actual relevance of the issue in agenda of the Italian justice system, it will be enough to consider the data (even if partial) provided by the Ministry of Justice to the Senate on the occasion of the related parliamentary debate: between 2013 and 2016 five cases of culpable excess of self-defence were heard in court. An exemplary case of de-statisticalization.

For what concerns the 5 Star Movement, the most boasted measure was the anti-corruption law known as "spazzacorrotti" (Law No. 9 of 9 January 2019), which targets a particular type of crime, that perpetrated by the powerful, unvaryingly the most hated by the public opinion, and specifically crimes committed by civil servants and public officers. The law provides for criminal, procedural, penitentiary and prevention rules inspired by the principle of maximum criminal and non-criminal penalty,[14] including the new reform of the statute of limitations.[15] The contract states that "an effective reform of the statute of limitations is needed, in parallel with recruitment in the justice sector, in order to be able to guarantee fair and timely trials and prevent their duration from becoming an element of denial of justice." Furthermore, the law simply provides that the statute of limitation is suspended starting from the judgment of first instance, meaning that a trial has no longer any time limitations within which to take place. Apparently contradicting its programmatic premises, the normative content of the law corresponds to the "justicialist" campaign of the 5 Star Movement against penal guaranties, which has resulted in a situation in which many, also notable defendants, have become legitimately exempt from justice, with the paradoxical result of exposing the Italian justice system to the violation of the constitutional and conventional principle of the reasonableness of the length of proceedings, which is ultimately assured precisely by the statute of limitation. Needless to say, in this case too, the amendments to the national legislation are scarcely effective, also with regard to the declarations of the proposers. According to data from the Ministry of Justice, [16] in 2017 in Italy almost one million trials (994,484) were held, of which 12.6% was affected by the statute of limitation (in total less than 126,000). The reform promoted by the 5 Star Movement has cancelled the statute of limitations only with regard to those defendants pending appeal or awaiting to be heard by the Supreme Court, and not prior to the judgement of first in-

[13] See "Legittima difesa: Mattarella promulga e scrive ai Presidenti delle Camere e al Presidente del Consiglio", in https://www.quirinale.it/elementi/28587 (accessed 5.3.2020).

[14] Among others, as far as this article is concerned, see V. Mongillo, "La legge 'spazzacorrotti': ultima approdo del diritto penale emergenziale nel cantiere permanente dell'anticorruzione", in Diritto Penale Contemporaneo, n. 5/2019, pp. 231-311.

[15] See G.L. Gatta, "Una riforma dirompente: stop alla prescrizione del reato nei giudizi di appello e di Cassazione", in https://archiviodpc.dirittopenaleuomo.org/d/6440-una-riforma-dirompente-stop-alla-prescrizione-del-reato-nei-giudizi-di-appello-e-di-cassazione (accessed 5.3.2020)

[16] See https://www.agi.it/fact-checking/riforma_prescrizione_quanti_processi-6604981/news/2019-11-24/ (accessed 5.3.2020).

stance, when the courts often resort to the statute of limitation to reduce the number of pending trials. Of the 126,000 prescriptions recorded in 2017, less than 29,000 occurred while pending appeal or awaiting the hearing of the Supreme Court. The result is that, based on the figures of 2017, the reform seems to have affected less than a quarter of the prescriptions and 3% of the trials held annually. Certainly for those citizens who are forced to undergo lifelong-trials [17] this is not a serious violation of a constitutionally protected right, to be freed from charges not ascertained in court after a reasonable period of time, on the contrary; however, what is indicative is the way the populist use of criminal law has been revered to the detriment of the rights of individual citizens, which have been sacrificed in the name of political consent.

5. The "security decree bis"

With the approval of the so called "security bis" Decree-Law No. 53 of 14 June 2019, entitled "Urgent provisions on public order and security", promoted by the first Conte Government, clearly in line with the first decree-law No. 113 of 2018 on immigration and public security of the same Government, in turn known as the "security decree", [18] the Italian penal system has gone even further in the implementation of a punitive vision of justice and of institutional social control, provoking the prompt negative reaction of those commentators who embrace a vision based on criminal guarantees. [19]

Nonetheless, on August 5, 2019 the Senate approved the converting Decree-Law of June 14, 2019, which provides for tougher sanctions. The final version of the law introduced numerous novel elements that can all be attributed to three main areas: the first relating to the provisions aimed at contrasting illegal immigration; the second concerning public order and security; the third relating to violence at sporting events; and finally, a fourth area concerns the effectiveness of administrative action in the domain of security policies.

1. Regarding immigration, the "security decree bis" envisages a series of measures aimed at creating a void around migrants (Natale, 2019), with administrative sanctions aimed in particular at persons aiding migrants, starting with the vessels of NGOs that carry out search and rescue operations at sea. As is stated in the premise, the decree intends to tackle the alleged regulatory inadequacy of international law and of previous national laws. By promoting a narrative and a propaganda based on the imminent risk of invasion of immigrants, not reflected in the data, which, on the contrary, strongly point to the opposite trend, the "security decree bis" has provided for measures aimed at closing ports and putting an end to the activities of migrant smugglers, but also those of many NGOs that for years have been working to save migrants at sea. Art. 1 of the decree law modifies Art. 11 of the Consolidated Law on immigration (legislative decree 286/1998) and explicitly provides for the limitation and prohibition of entry and transit of ships in territorial waters. Art. 2

[17] See Luigi Manconi, "L'ergastolo del processo", in *la Repubblica*, 3 Dicembre 2019.

18 For further reading, among others, see F. Curi (ed. by), *Il decreto Salvini immigrazione e sicurezza*, Pisa, 2019, and G. Santoro (ed. by), *I profili di illegittimità costituzionale del Decreto Salvini*, Rome, 2019

19 Associazione di Studi Giuridici sull'Immigrazione, *Il D.L. n. 53/2019, convertito, con modificazioni, nella L. n. 77 /2019. Analisi critica del c.d. "Decreto sicurezza bis" relativamente alle disposizioni inerenti il diritto dell'immigrazione,* at https://www.asgi.it/wp-content/uploads/2019/09/2019_Commento-decreto-sicurezza-bis_13_9_.pdf (accessed 28.12.2019); S. Calabria, *I respingimenti in mare dopo il cd. decreto sicurezza-bis (ed in particolare alla luce del comma 1-ter dell'art. 11 del d.lgs n. 286/1998)*, in http://www.questionegiustizia.it/articolo/i-respingimenti-in-mare-dopo-il-cd-decreto-sicurez_29-07-2019.php, (accessed 28.12.2019); A. Natale, *A proposito del decreto sicurezza-bis*, in http://questionegiustizia.it/articolo/a-proposito-del-decreto-sicurezza-bis_20-06-2019.php, (accessed 28.12.2019); S. Zirulia, *Decreto sicurezza-bis: novità e profili critici*, in https://www.penalecontemporaneo.it/d/6738-decreto-sicurezza-bis-novita-e-profili-critici (accessed 28.12.2019).

of the decree provides for detention of the vessel and heavy economic sanctions for conduct consistent with the international legal order and constitutional principles, in the name of undefined reasons of public order. Also, the legislative provision in question simultaneously involves the Ministry of Defence, the Ministry of Infrastructure and the Ministry of the Interior.

In fact, if before blocking access to ports fell under the responsibility of the Minister of Infrastructure and Transport, mainly for general reasons of public order, security and navigation, with the "security decree bis" the Ministry of the Interior also becomes responsible for these measures which now reflect a securitarian vision. The security decree thus generates numerous conflicts with the constitutional provisions and international rules on human rights and the rescue of people, as the President of the Republic, Sergio Mattarella, promptly noted in a letter accompanying the converting law addressed to the Prime Minister and the Presidents of the two Chambers, [20] and in the decision of the Tar of Lazio of 14 August 2019, [21] relating to the ban on the entry into Italian territorial waters of the Open Arms ship with refugees on board. The "closure of ports" was at the centre of what was perhaps one of the most fierce political disputes over consensus of the last years. Indeed, statistical data not only point to the flagrant contradictions spread by the media narrative, but have also shown that the vision being promoted is indeed generated with the sole purpose of gaining political consensus.

Above all, the "security decree bis" promotes a discriminatory conception of law at a social level, by which a social group (that of migrants) receives unequal treatment compared to other human beings, and is even viewed as a threat similar to that posed by an enemy attacking national borders. In fact, the idea of an imminent and uncontrolled aggression underlies the actions envisaged by the "security decree bis" and has often been used as the main argument in support of these measures by the Minister of the Interior Matteo Salvini.

Ultimately, the "security decree bis" promotes a "special" migration law aimed at making humanitarian intervention impossible, on the basis of the idea that migrants pose a threat to the homeland.

2. The second area is that of public order and security. On this point, the "security decree bis" shows its securitarian nature, because it provides for the increase in penalties for protests in the streets, public protests in general and unauthorised or violent protests that make it difficult to identify participants, by means of helmets or masks, for example. The establishment of harsher penalties, which are also in this case mostly administrative, is in all respects an attack on one of the most traditional systems of expression of liberal democracy, the freedom of expression and thought and, therefore, of political dissent. Implementing harsher penalties and sanctions challenges the principle of proportionality that should govern the criminal system. The ultimate goal seems to be the criminalisation of dissent, increasing sentences or introducing new aggravating circumstances even tougher than those envisaged by Consolidated Law on public security of 1931, enacted under fascism.

20 *Decreto sicurezza bis: Mattarella promulga e invia lettera ai Presidenti di Senato, Camera e del Consiglio dei Ministri*, in https://www.quirinale.it/elementi/32104 (accessed 28.12.2019).

21 Order no. 5479 established the violation of Art. 98 of the Montego Bay Convention and Art. 10 of the Hamburg Convention on Maritime Search and Rescue, which provide that the ship's captain has the obligation to save people in danger and to lead them, without exposing them to further risks, to a safe port, that is where there is no risk of being subjected to inhuman, cruel or degrading treatments or torture. In the case submitted to its attention, the TAR recognised a situation of "exceptional gravity and urgency", and ordered the suspension of the ban on the entry of the ship into Italian territorial waters.

3. A third area is that of the laws aimed at contrasting violence on the occasion of sporting events. In addition to a general increase in penalties, the introduction of *flagranza differita* (deferred arrest) allows to arrest a person without an order of the Judicial Authority, also 48 hours after the alleged offence has been committed. Also in this case, a law that reflects a way of conceiving offenders as enemies is applied to supporters at sports events and a special criminal law is legitimised, entailing the risk that this type of law might be extended to other social typologies and to other contexts. Certainly also in this case it is possible to speak of the differentiation of criminal law (Pepino, 2009)

Once again, sporting events are treated as a matter of public order only, by which a legal construct is permanently codified, namely *flagranza differita*, initially introduced in our legal system as a temporary measure. As on other occasions, sport is a testing ground for repressive measures that weaken guarantees and fundamental principles of criminal and procedural legislation, in open violation of Art. 13 of the Constitution.

These three areas of intervention of the "security decree bis" clearly show how the Italian justice system is increasingly conceived of in punitive terms by political forces that aim to implement an unequal criminal law or simply to create a breach in the system of guarantees connected to the rule of law of liberal democracy.

6. Conclusion: populist punitiveness as a road to a non-universal society

The laws we have analysed – laws on illegal immigration, vehicular homicide, the law on so-called urban security, and, above all, the "security decree bis" – clearly show that in Italy, in the last decade at least, there has been a tendency to elaborate a new legislation on matters of criminal law that focuses on strengthening repressive actions, stressing their symbolic and punitive value. A new type of intentionality is inferred in the legislator, who is driven by the need to communicate an action that is in all respects a "crackdown", or in any case an increase of penalties motivated by an alleged ineffectiveness of the existing legislative system. These are laws designed more to elicit a specific effect in society, to respond to emotional needs and media-induced urgencies. The insistence on the perception of security, and therefore of alleged insecurity, with an increasingly minimal reference to objective reality, demonstrates the rhetorical nature of these interventions.

The main argument used is always collective reassurance, though the goal is actually to use new criminal legislation to produce or maintain political consensus. The type of society pursued is a punitive society in which the concept of fear is fundamentally both a premise and an element of deterrence. We may say, indeed, that what we are witnessing is a policy of criminal law aimed at a negative and punitive exemplarity, where democratic guaranties, social inclusion and positive prevention of crime based on a progressive transformation of society are completely ignored.

As has been noted (Donini, 2007), this is a general approach to criminal law that resembles the criminal law of the enemy, whereby the deviant subject and those who violate a rule are treated as unrecoverable subjects that must be controlled and repressed as internal enemies.

This is, in our opinion, the most important point that conceptually links penal populism to political populism: a polarizing pattern whereby a part of society is negativised in favour of a complementary part, one's own, considered positive (Anastasìa S. and M. Anselmi, 2018). The Manichaeism inherent in populism, which recalls Schmitt's friend-enemy opposition, has two social effects: it is highly productive in terms of political consensus, but is depriving and damaging with respect to the procedures of law and the fundamental guarantees of the judicial system. We are referring to the impossibility of any mediation between the two parties, because the party that views the other as negative, as being the enemy, (more specifically it is the punitive and dominant common sense against offenders or subjects portrayed as such) makes mediation and

understanding impossible, and always seeks an oppositional and repressive modality. There is an implicit authoritarianism, therefore, that moves in a direction opposite to that of the defence of the democratic guaranties, of the belief in the rehabilitation of offenders and in the classic principles of criminal law.

References

Anastasìa S. (2012), *Metamorfosi penitenziarie. Carcere, pena e mutamento sociale*, Ediesse, Roma.

(2019), 'L'uso populista della giustizia e del diritto penale', *Ragion pratica*, n. 52: 191-210, DOI: 10.1415/93462

Anastasìa S. and M. Anselmi (2018), 'Penal populism in the multi-populist context of Italy', in P. Blokker and M. Anselmi (eds), *Multiple Populisms: Italy as Democracy's Mirror*, London: Routledge, pp. 164-178.

Anselmi M. (2015), 'Populismo e populismi', in S. Anastasìa, M. Anselmi, D. Falcinelli, *Populismo penale: una prospettiva italiana*, Padova: Wolters Kluwer Cedam, pp. 1-19.

Anselmi M. and F. De Nardis (2018), 'Italian Politics between Multipopulism and Depoliticization', *Revista Internacional de Sociología*, 76(4), https://doi.org/10.3989/ris.2018.76.4.18.006

Associazione di Studi Giuridici sull'Immigrazione, *Il D.L. n. 53/2019, convertito, con modificazioni, nella L. n. 77 /2019. Analisi critica del c.d. "Decreto sicurezza bis relativamente alle disposizioni inerenti il diritto dell'immigrazione*, https://www.asgi.it/wp-content/uploads/2019/09/2019_Commento-decreto-sicurezza-bis_13_9_.pdf (accessed 28.12.2019);

Biorcio R. (2015), *Il populismo nella politica italiana. Da Bossi a Berlusconi, da Grillo a Renzi*, Milano: Mimesis.

Bottoms A. E. (1995), 'The philosophy and politics of punishment and sentencing', in C. Clarckson and R. Morgan (eds), *The politics of sentencing reform*, Oxford: Clarendon Press, 17-49.

Calabria S. (2019), *I respingimenti in mare dopo il cd. decreto sicurezza-bis* (ed in particolare alla luce del comma 1-ter dell'art. 11 del d.lgs n. 286/1998), in http://www.questionegiustizia.it/articolo/i-respingimenti-in-mare-dopo-il-cd-decreto-sicurez_29-07-2019.php, (accessed 28.12.2019).

Cornelli R. (2008), *Paura e ordine nella modernità*, Milano: Giuffrè**.**

Cusumano E. (2019), 'Humanitarians at sea: Selective emulation across migrant rescue NGOs in the Mediterranean se', *Contemporary Security Policy* 40:2, 239-262, https://doi.org/10.1080/13523260.2018.1558879.

Donini M. (2007), 'Diritto penale di lotta. Ciò che il dibattito sul diritto penale del nemico non deve limitarsi ad esorcizzare', *Studi sulla Questione criminale*, 2(5). DOI: 10.7383/71536.

Farneti P. (1971), *Sistema politico e società civile*, Torino: Giappichelli.

Ferrajoli L. (2018), 'Democrazia e populismo', *Rivista AIC*, 3: 515-524.

Forti G. (2000), *L'immane concretezza. Metamorfosi del crimine e controllo penale,* Milano: Cortina Raffaello.

Garland D. (ed.) (2001), *Mass Imprisonment. Social Causes and Consequences*, London: Sage.

Garland D. (2004), *La cultura del controllo. Crimine e ordine sociale nel mondo contemporaneo*, Milano: Saggiatore.

Natale A. (2019), *A proposito del decreto sicurezza-bis*, in http://questionegiustizia.it/articolo/a-proposito-del-decreto-sicurezza-bis",20-06-2019.php (accessed 28.12.2019).

Pavarini M. (1997), 'La criminalità punita. Processi di cancerizzazione nell'Italia del XX secolo', in *Storia d'Italia. Annali 12. La criminalità*, Torino: Einaudi.
Passarelli G. and D. Tuorto, (2018), *La Lega di Salvini Estrema destra di governo,* Bologna: Mulino.
Pepino L. (2009), 'Le migrazioni, il diritto, il nemico. Considerazioni a margine della legge n. 94/2009, *Diritto, immigrazione e cittadinanza*, 4: 9-20, 10.3280/DIRI2009-004002
Pratt J. (2007), *Penal Populism*, London: Routledge.
Roberts J. V., L. J. Stalans, D. Indermaur, M. Hough (2003), *Penal Populism and Public Opinion. Lessons from Five Countries*, New York: Oxford University.
Roiati A. (2016), 'L'introduzione dell'omicidio stradale e l'inarrestabile ascesa del diritto penale della differenziazione', *Diritto Penale Contemporaneo*, 1-19, ID: 151535434.
Sebba L. and T. Berenblum (2013), 'Victimology and the sociology of new disciplines: A research agenda', *International Review of Victimology*, 1: 7–30, DOI: 10.1177/0269758013511657.
Taguieff, P.A. (2006), *L'illusione populista*, Milano: Bruno Mondadori.
Tarchi M. (2015), *Italia populista. Dal qualunquismo a Beppe Grillo*, Bologna: Il Mulino.
Urbinati N. and D. Ragazzoni (2016), *La vera seconda Repubblica. L'ideologia e la macchina*, Milano: Cortina Raffaello.
Wacquant L. (2013), *Iperincarcerazione. Neoliberismo e criminalizzazione della povertà negli Stati Uniti*, Verona: Ombre corte.
Wodak R. (2015), *The Politics of Fear: What Right-Wing Populist Discourses Mean*, London: Sage.
Zirulia S. (2019), *Decreto sicurezza-bis: novità e profili critici*, in https://www.penalecontemporaneo.it/d/6738-decreto-sicurezza-bis-novita-e-profili-critici (accessed 28.12.2019).

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