

COMUNITÀ INTERNAZIONALE

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«The corruption of habits marks the decadence of nations». The penal repression of the literary obscene in Italy between the Nineteenth and Twentieth Centuries

The aim of this paper is to analyze the legal debate on the body discipline and sexual behaviour in liberal Italy, focusing on the penal repression of the literary obscene after the Unification. Virtue and honour had represented two founding traits of Risorgimento, the prestige of the new national state demanded an educational and constant vigilant programme based on the moral habits of the population. Over and above pornography, even the literature was subject of sustained attention: the notion of obscene became an object which marked crossing frontiers between law and moral. From this perspective, paper firstly examines catholic worries as regard the spread of works offensive of good habits, as well as the opinions of new positivist currents which were re-designed the public imaginary about sexuality and reproduction in the name of appeals to objective and scientific reason. Secondly, it focus on the famous trails of Umberto Notari and Filippo Tommaso Marinetti that represented two milestones of debate as regard relationship between modesty and artistic expression. Under the outline, the problem of defence of decorum in Italy was bounded whit the edification of new project of national citizenship anchored to the respect of a rigid moral conformism which imprinted in the sexual field a rigid separation between obedience and deviance, between normality and abnormality.

«Il corrompimento del costume segna la decadenza delle nazioni». La repressione penale dell'osceno letterario in Italia tra Otto e Novecento.

Il presente contributo analizza il tema della disciplina del corpo e della sessualità nell'Italia liberale, con particolare riferimento al dibattito giuridico sulla nozione di "osceno" nell'opera letteraria all'indomani dell'Unificazione. Virtù ed onore avevano rappresentato due tratti fondanti dell'epopea del risorgimentale: il prestigio del nuovo stato unitario esigeva un programma di vigilanza costante sui costumi morali della popolazione. Al di là della pornografia, anche la letteratura fu oggetto di costante attenzione da parte dei pubblici poteri: il carattere "osceno" di una pubblicazione si avviò a diventare un campo di tensione destinato a segnare le mobili frontiere tra diritto e morale. In questa prospettiva, il contributo nella sua prima parte esamina le preoccupazioni provenienti dal mondo cattolico per la diffusione di una serie di pubblicazioni contrarie ai buoni costumi, passando poi ad analizzare gli apporti forniti della cd. scuola positiva, impegnata a ridefinire un nuovo immaginario della sessualità e della riproduzione in nome dell'appello all'oggettività e alla ragione scientifica. Nella seconda parte, l'articolo esamina i famosi processi nei confronti di Umberto Notari e Filippo Tommaso Marinetti che rappresentarono due momenti assai significativi nel dibattito sul rapporto tra il pudore e la libertà di espressione artistica. Sottotraccia, il problema del decoro nella Italia fin de siècle, si legava a filo doppio con il progetto di edificazione di una cittadinanza nazionale improntata al rispetto di un rigido conformismo che segnava in campo sessuale una rigida separazione tra obbedienza e devianza, tra 'normalità' e 'anormalità'.

1. National shame and virtue after Unification. - 2. The Catholic worries and the "elusive modesty". - 3. «In art the beautiful, in science the truth». Sexuality and language in the age of positivism. - 4. Notari Effect. - 5. An hypothesis of indecent behaviour through "disclosure" and the opinion of Vittorio Emanuele Orlando. - 6. Mafarka the futurist.

1. National shame and virtue after Unification

What was the contribution of juridical culture to the edification process of a sexual morale in liberal Italy? In what way did jurists take part in the building of mobile frontiers between the allowed and the not allowed in a territory as regards body discipline and sexual behaviour of essential importance for the definition of the collective identity of a young unifying state?

The reply to these questions can be found in contributions which are by now firmly acquired in the historiographical panorama. Starting from Norbert Elias's contributions on the process of civilization¹, until the lesson by Foucault², the theme of the body and sexuality have been an object of privileged reflection for historians of different tendencies and orientation. However, it is perhaps George L. Mosse's work which greatly contributed to pointing out the deep link between the collective dimension of sexuality and the political sphere of the 19th and 20th centuries. As is known in a 1984 text³ destined to become in a short time a classic on the topic⁴ the U.S. historian, of German origins, underlined how class values came out on top in the French Revolution which could be summed up in the etiquette of "bourgeois respectability" (associated both to a precise orientation about what regards decency and a specific behaviour towards the sexual sphere) were bound together from the final decades of the Nineteenth century and nationally inspired movements.

¹ ELIAS, *La civiltà delle buone maniere. La trasformazione dei costumi nel mondo aristocratico occidentale. Saggi*, Bologna, 1982, Italian translation by Giuseppina Panzeri (original edition *Über der progress der Zivilisation I. Wandlungen des Verhaltens in dem Weltlichen Oberschichten des Abenlandes*, Frankfurt, 1969; ID., *Potere e civiltà. Saggi*, Bologna, 1983, Italian translation by Giuseppina Panzeri (original edition *Über der Progress der Zivilisation II. Wandlungen der Gesellschaft. Entwurt zu einer theorie der Zivilisation*, Frankfurt, 1980).

² Among the numerous works of the French philosopher: FOUCAULT, *Nascita della clinica. Il ruolo della medicina nella costituzione delle scienze umane*, Turin, 1969, Italian translation by Alessandro Fontana (original edition *Naissance de la clinique: un archéologie du regard médical*, Paris, 1963) as well as ID., *La volontà di sapere*, Milan, 1978, Italian translation by Pasquale Pasquino and Giovanna Procacci (original edition *La volonté de savoir*, Paris, 1976)

³ MOSSE, *Sessualità e nazionalismo*, Rome-Bari, 1984, Italian translation by Vito Zorzi. The text develops and deepens the reflections which appeared by the author in two essays respectively *Nationalism and Respectability Normal and Abnormal Sexuality in the Nineteenth Century* in *Journal of Contemporary History*, at XXVII, no. 2, 221-246 and *Friendship and Nationhood: About the Promise and Failure of German Nationalism*, in *Journal of Contemporary History*, at XVII, no 2, 351-367.

⁴ For a re-construction of the influence of George L. Mosse's texts on the new historiographical currents: PORTER, *Storia del corpo*, in BURKE (ed. by), *La storiografia contemporanea*, Rome-Bari, 2007, Italian translation by Giampiero Cara (original edition *New Perspectives in Historical Writing*, Cambridge [U.K.], 1991). A complete re-construction of the debate raised in Italy by the works of the author is ARMANINI, *George L. Mosse l'Italia e gli storici*, Milan, 2010.

Such a coming together led to prospecting a reply to the rapid social transformations which invested Europe with a social order solidly anchored to the respect of a rigid moral conformism which marked in the sexual field a rigid separation between obedience and deviance, between normality and abnormality.

This transformation represented the outcome of a process destined to be undertaken rather gradually. The fusion of the lexicon of the nation with that of bourgeois morality led to an outcome which was destined to sweep across Europe with different chronologies, forms of intensity and developmental rhythms. However, Mosse's analysis provides a precious orientation point to explain why from the middle of the 19th century the protection of public morality represented in the old continent a theme which was constantly closely followed by parliamentary and public powers.

In Italy, for example, the problems relative to the control of sexuality and defence of public decorum were doubly bound to the project to edify a national morale after the horizon of the little regional and local homelands. Virtue and honour had represented two founding traits of the ideals associated with the Risorgimento struggle, the prestige of the new national state demanded an educational and constant vigilant programme based on the moral habits of the population⁵.

It is no surprise that in this context already in 1865 the Minister of the Interior, Giovanni Lanza, had already sent around an alarmed circular to the Prefects of the Kingdom to order them to combat with greater energy the spread of licentious publications. «Obscene worthless books» the minister wrote «which are unashamedly spread round and which offend the morale and customs, dirty photographs re-produce awful rubbish. The duty of the administration was to hinder such publications from being spread and to avoid that “the very noble art of the press and photography add to the very filthy corruption». Besides, the minister went on, «the spread of these obscene figures and these little volumes of licentious narrations [...] contribute to the corruption and stirring-up of young people's vices and terrible, harmful habits not only in the morale as well as in their physical and intellectual development». It was necessary to intervene at once since «such a filthy speculation is unworthy and

⁵ BANTI - GINSBORG, *Per una nuova storia del Risorgimento*, in AA.VV. *Storia d'Italia. Annali*, XXII, Turin, 2007, pp.XXXIII-XLI; BANTI, *Sublime madre nostra. La nazione italiana dal Risorgimento al fascismo*, Rome-Bari, 2011

intolerable in a civil population of free aspiration. The corruption of habits marks the decadence of nations»⁶

About twenty years after Lanza's circular, also the Zanardelli code took on as its task that of safeguarding public morality by hindering the spread of acts of forms of behaviour against public modesty. Modifying the discipline of the Sardinian-Piedmonte code which had inserted the dispositions against those publications which had offended good habits in such a way as to excite a "public scandal" in the edict of the press, the legislator in 1889 under the article 339, punished him with an imprisonment sentence from six months to a year for having offended public modesty through writings, drawings and other obscene objects under any form which were distributed or put on sale

The different classification of the disposition, as well as abandoning the notion of the religious derivation of the "scandal" showed the legislator's intention to inspire his own actions on the principles of a clear liberal matrix, as the same Minister of Justice Zanardelli had written in his Relation to the King that accompanied the code project : «it is necessary also that the legislator does not invade the field of the morale [...] penal sanctions [...] do not hit everybody and indistinctly the facts which offend good taste and the order of the families, but only those which express in their violent characters, the insult of fraud and scandal, the repression of which is more clearly reclaimed by social interest»⁷.

Over and above what could seem at first sight a *lapsus calami* (as can be noted by the notion of "scandal" which is eliminated from the legislative text it came up again in the pen of the extent of the relationship to the code project) there was no doubt among jurists that the provisions which denied the publication and unfavourable manifestation against public decency represented an essential garrison for the collective interest. «The pornographer» a commentator of the discipline wrote «pollutes the fonts from which the life of future generations arise». Such a criticism justified the use of a penal action when faced «with those numerous publications, books, prints, photographs, illustrations» that «like poison infiltrate openly, slowly, [...] and invade the heart and the mind of the young person who feels less and less inclined towards marriage,

⁶ Quoted in CARELLI, *L'art. 339 e le pubblicazioni ed esposizioni oscene*, in *La scuola positiva*, I, 11-12, 1891, pp.529-530. On this point see also WANROOIJ, *Storia del pudore. La questione sessuale in Italia*, Venice, 1990, 20.

⁷ *Progetto del Codice penale per il Regno d'Italia e disegno di legge che ne autorizza la pubblicazione* [...], *Relazione ministeriale*, I, Rome, Stamperia Reale, 1887, 213-214.

and young ladies so that he often keeps for the nuptial bed only his physical virginity»⁸.

Analyzing what has just been written represented something more than a simple *luadatio temporis*. Under the outline, they expressed the sense of a collective disturbance, a deeply disassociated feeling that Alberto Asor Rosa, in a famous essay on the *fin de siècle* culture in Italy⁹ defined as *deprecatio temporum*. Such a feeling took on the form of a constant fear of a slow and progressive erosion of traditional values. The problems that the process of modernization of Italian society left as an inheritance for the young Italian state were many and not of little value, e.g. the growth in importance of new centres for political meetings for the parties and the trade unions, the deep changes in working dynamics, changes in the make-up of the family including the more and more urgent examples regarding women's conditions and the relationships between men and women. All this led to a sense of insecurity in the Italian bourgeoisie which was expressed through the fear of the break-up of the old valued horizon which had been the framework for the Risorgimento epic. The sense of the break-up was perceived at various levels, e.g. at a political level through the phenomenon of parliamentary transformation and through the persisting of regional feelings, at a social level through the rapid change in habits and way of thinking which were induced by the passage from a rural society to an industrial and urbanized one, and at an individual level through people distancing themselves from traditional forms of behaviour which threatened to leave man as a prey to the deeper and deeper and more and more unfathomable passions¹⁰.

Certainly on perceiving a progressive decay in their habits, there also contributed the news that arrived from Europe, as an echo of the clamorous Heinze trial celebrated in Berlin which had ripped open the veil as regards luxuries and sexual promiscuity for a good part of the Berlin *demi monde*¹¹. As regards the scandal which followed the trial, the German Emperor tried to respond

⁸ FORMICA, Title: *Oltraggio al pudore*, in *Enciclopedia giuridica italiana*, vol. XII, part II, Milan, 1915, pp.257-311, 288.

⁹ ASOR ROSA, *La cultura*, in *Storia d'Italia. Annali IV*, part II, Turin, 1975, 821-1664.

¹⁰ STEWART-STEINBERG, *L'effetto Pinocchio. Italia 1861-1922 la costruzione di una complessa modernità*, Rome, 2011, Italian translation by Maria Paci, 184 (original edition *The Pinocchio Effect. On making Italians 1860-1920*, Chicago, 2007).

¹¹ SMITH, *Prostitution and the new German Woman, 1890-1933*, Itacha, p.33; CARTER-HETT, *Death in Tiergarten. Murder and Criminal Justice in Kaiser's Berlin*, Cambridge (MA), 2004, in particular, 55-103.

with a series of measures whose aim was to protect public morality¹². This was notwithstanding the impression which had been aroused by the ample enough revelations also in Italy which were on the pages of “La cultura” magazine run by Ruggiero Bonghi, which expressed sadness and discomfort¹³ as regards the deplorable contours of an event in which the entrepreneurial upper bourgeoisie and the professionals seemed to represent the direct heirs of the aristocracy of an ancient regime with all the contours of decadence and laxity.

Bound in by a “dissipating” proletariat and a finished aristocracy and deprived of fibre, the little Italian bourgeoisie reacted by relying on the values traditionally associated with it, i.e. private property, measures, caution and savings. This last item was understood as not only economic savings, but also in a sexual sense. It was exactly this moral restraint¹⁴ behaviour which allows us to understand how the transformations which invested Italian society and fed a growing perception of habits when faced with topics of a ‘sexual nature’ which in the *fin de siècle* Italy involved the themes of marriage and divorce, of procreation and contraception, of the fall in the birth-rate, of prostitution, but also of the spread of all the sectors of the population of works and publications which presented constant re-calling to the world of sex and eroticism.

2. The Catholic worries and the “elusive modesty”

In particular, with regard to the spread of works contrary to public morale and offensive to good habits, the worries of the moralists regarded not only the forms of artistic expression, but also the spread of publications, prints and erotic postcards which, even then, were the object of a popular form of business. A particularly relevant role in denouncing immorality was played by the Catholic church which, although excluded from the political debate because of the effect of *non expedit*, certainly did not give up on sounding its own voice on themes regarding habits and sexual morale. Over and above the numerous interventions of the ecclesiastical gerarchies, the programme of

¹² On the laws drawn up in Germany to protect public morality and on the reaction of German culture: LENMAN, *Art, Society and Law in Wilhemine Germany*, in *Oxford German Studies*, 8 (1973), 86-113.

¹³ Faced with the draconian measures adopted in Germany, the periodical commented «The general lowering of morale what is the reason for it and forms the environment in which evil swarms, it has too many great and deep roots, and needs totally different repairs than those which can lead to a more vigilant and rigid exercising of the public administration». See *Lettera dell'Imperatore di Germania*, in *La cultura*, X (1891), no. 40, 542-543, 543,

¹⁴ SORCINELLI, *Storia e sessualità. Casi di vita, regole e trasgressioni tra Ottocento e Novecento*, Milan, 2001, 142

Catholic intervention in the public debate on the theme of morals was intertwined with a series of experiences which came about on the basis of personal initiatives of individual citizens which gradually increased in public opinion like the Turin conference promoted by the young Filippo Meda in which there was formulated an accurate appeal to the authorities to combat the plague of pornography¹⁵ It would not be right to dismiss in a few words the experiment of the league as the product of an initiative of a group of *d'antan* moralists who opposed with all their strength the changes taking place in Italian habits. In effect there was no lack in the league of advanced positions calling for a more energetic protection as regards work and maternity. However such reprisals took on the tone of a rigid counter-position towards the modern society.

In this sense the report of the Second Convention to protect immorality was emblematic. This Convention took place in 1906 and a report was guested by the columns of the "Civiltà Cattolica"¹⁶. Among the theses discussed which were approved by the congressional assizes there was the request to extend the application of the law to protect young people's work also in public shows, the omen directed to the government for greater rigour in giving out licences for theatrical works or that of forbidding the spread in Italy of photographs, printed material and foreign periodicals which often announced «their quality from their very title», the request to reserve for the association the possibility to undertake direct actions to protect public morality and to take legal action against offences against good habits¹⁷. This was a programme that had received the «warm, ample and warm-hearted»¹⁸ adhesion from the Pontiff and that allowed the editor to consider such a congress as a witness «of the com-

¹⁵ The news of the Milan convention was also mentioned in the penal magazine run by Luigi Lucchini. In the article there were listed the topics voted on by the assembly that foresaw, among other things, «the accurate appeal to the Authorities (in capitals in the text)» for a more severe application of the norms of the penal code "because it should cease the indecent exposition and the relative selling of writings, drawings and obscene objects, to defend public morality, which is the founding basis of prosperity and greatness for the homeland». The article likewise also gave news of some «unpleasant incidents» which had disturbed the committee, like the raid by a group of «young fellows who wanted at all costs to enter the room, and which led to great confusion especially among the soutanes, as among the crowd there were ladies and many priests». *Un comizio contro la pornografia*, in *Rivista penale*, XXXIII (1891), 6, 599-600.

¹⁶ *Cose italiane*, in *Civiltà cattolica*, 57(1906), no. 4, 357-364.

¹⁷ *Ibid.*, 358.

¹⁸ *Ibid.*, 359.

mon struggle of those, who when faced with the overpowering invasion of bad habits, want to defend Christian honesty»¹⁹.

That there was a dangerous wane in morale had been made clear to Catholic opinion for a long time. More than the clamour which had been raised by the exposition at the first Venice Arts Festival (1895) of the *Supremo Convegno* by Giacomo Grosso (a painting in which there were drawn nude scenes inside a church and that led to the anathema of the ²⁰Patriarch in the city of lagoons) had been the publication in 1884 of *Intermezzo di Rime*²¹ [*Poetic Interlude*]. There is no doubt that turning over the pages of D'Annunzio's work that there was more than one reason to cause the indignation of the good-thinking people since it, rich in erotic scenes, represented a dimension of sexuality and feminine physical attributes which had been unknown up to then in Italian poetry and which made it closer in content to other European experiences. However it is opportune to note here that following on from the publication of the work there was a lot of polemic²² in which the greatest literary critics of

¹⁹ *Ibid.*, 357.

²⁰ The painting caused much polemic - especially in the Catholic press notwithstanding its obscene character had been derived by an appropriate commission of experts called upon by the Lord Mayor Selvatico. In the commission there were the names of artists and scholars from different backgrounds like Fogazzaro, Morselli, Giacosa, Castelnuovo and Panzacchi. The polemic caused by Grosso's painting had been destined to increase until in December a representative of the Venice Art Company exposed a re-production of the work in a shop window and this gesture led to the author being denounced for the contravention because article 64 for the laws on public safety for an offence against morality and public decency. In condemning the guilty person the urban magistrate of Venice stated that the painting represented an image which could offend public morale, good habits and decency. It is just as interesting to note how the magistrate observed that the filthy character of the images (one of the women painted - the magistrate observed - «is in such a pose as to show completely all the back part of her body, forming in the centre of the painting the immodest opulence of her buttocks which before and more than any other thing captures your attention») justified the seriousness of the sanction as the exposition of the work happened in a public street rather than at an art exhibition. In effect, the magistrate went on «in the expositions usually intelligent people are present, those who before art elevate the mind to the prestige of art, [...] while in the street [...] it is completely different [...] here there is not even the chance to hinder such a sight, differently from what happens in art temples [...] where it is the fathers of families jealous of the shame of their own children [...] could not hold their children prisoners at home to avoid seeing such figures [...] it would disturb their conscience and pervert their taste and heart», For the integral text of the sentence, see *Rivista penale XLIII*(1896) no. 6, 262-266. On the event see also WANROOIJ, *Storia del pudore*, as above, 45, also mentions it.

²¹ D'ANNUNZIO, *Intermezzo di rime*, Rome, 1884.

²² For a re-construction of the polemic which involved the most important literary magazines and opinions of the time like the *Domenica letteraria* and the *Fanfulla della Domenica*, see MERCI, *Alla ricerca dell'inverecundia: una polemica letteraria intorno all'Intermezzo di rime dannunziano*, in

the period took part and which dealt with its so-called obscene character. The polemic skilfully used for commercial purposes by the editor Summaruga and which used the intervention to lead to one of the first instant books of the Italian editor entitled *Alla ricerca della verecondia*²³ [*A quest for decency*] saw Luigi Lodi and Giuseppe Chiarini, Enrico Panzacchi and Enrico Nencioni up against each other where whose more or less hostile positions denounced the «low qualities and smut» present in D'Annunzio's work.

The post up for grabs was worth having: it was necessary to define what were the limits that shame or decorum could add to artistic expression, establish if and when a work of art could be condemned because of common decency, define the subtle differences which separated literature from pornography when the language faced so explicit a representation of the body and sexuality. If Lodi enjoyed re-calling those examples of nudity in the history of art and the cases in which the literary people from different periods had gone down the path of eroticism and of desire with «feelings which were nobly human and incapable of offending the shame of anyone»²⁴, Chiarini replied that in his *Intermezzo* D'Annunzio «had not represented nudity» and not even «shown a loving fact», but had only been on the «side of who talked about it and of the way in which it was told»²⁵ To be honest, Nencioni asserted, the work had violated certain limits which could be passed. Lodi himself had proclaimed that he was not defending lust in art as it was nothing but «an illness of the brain, a vice of the organism and all that which is not sane and serene is not beautiful»²⁶ Such an affirmation allowed Nencioni to reply on the same wavelength inviting Lodi to sincerely admit if those «sensual pleasure refinements» and if those erotic particulars that were abundant in D'Annunzio's poem were a «beautiful and sane»²⁷ thing. In short there was the atmosphere of impudent lust which was breathed in some sonnets and made the *Intermezzo* a shoddy work from an aesthetic point of view, an offence for sacred female modesty or - even to use Luigi Chiarini's words - «a true and proper danger for the robust quality and moral spirit of Italian youth»²⁸

www.griseldaonline.it.

²³ The interventions were published in the appendix in the second edition of *Intermezzo di rime* through the initiative of the editor, besides being edited autonomously, see CHIARINI LODI NENCIONI PANZACCHI, *Alla ricerca della verecondia*, Rome, 1884.

²⁴ *Ibid.*, 30.

²⁵ *Ibid.*, 74.

²⁶ *Ibid.*, 59.

²⁷ *Ibid.*, 93.

²⁸ *Ibid.*, 19.

3. «In art the beautiful, in science the truth». Sexuality and language in the age of positivism

It is not the case to delay beyond the polemic if only to underline how the heated interventions which follow the publication of *Intermezzo di rime* represented the trace of a profound change in the collective imaginary which invested the practice, the discourse and the representations of the body and the reproduction in Italy at the end of the century. The new positivist currents were, in fact, re-designing the limits of public discourse as regards sexuality in the name of an appeal to the values of progressive technology, of objectivity, of a morale deprived of metaphysical implications and founded only on a scientific reason. The sphere of the physical quality was set to become the symbolic object towards which was orientated the building of a new type of citizenship in which the required psycho-physical normality represented the essential character which separated pacific living together from deviance. It was a question of a series of instances which invested also the problem of the relationship between modesty and the artistic expression and which challenged the linguistic taboos of liberal Italy in which when faced with a continuous presence of themes relating to the body and sexuality there corresponded an extreme reluctance until nominating the sexual activities and organs. As had been effectively pointed out, the socio-biological paradigm had its own main object the dimension of the body as a privileged place to identify “asocial” behaviour, a dimension which thanks to its asserted measurability made legitimate both the aseptic and objective character of the new science, both a language to describe and to cure the “pathology” of the deviance necessarily needed a lexicon of «rare, diagnostic ferocity»²⁹

It is not surprising that in such a context, the doctor, psychologist and hygienist Paolo Mantegazza in his *Igiene dell'amore* [*Hygiene of love*] made a violent attack against the moralists and false puritans who condemned the use which was considered unprejudiced for a lexicon referring to the sexual sphere. «Do you believe that there can be modesty also for science?» Mantegazza wrote emphatically and polemically. «To this question I reply with a cut-off and frank no. For me all the background, all the records of cases of modesty in art and in science are swept away with this affirmation, that for me at

²⁹ MANTOVANI, *Rigenerare la società. L'eugenetica in Italia dalle origini ottocentesche agli anni Trenta*, Soveria Mannelli, 2004, 44.

least, takes on dignity and the strength of a dogma: In art the beautiful, in science the truth»³⁰

Anyway the problem of the language of art and of science represented a dear theme for the Italian judicial positivism which found in this very artistic relationship a solid enough ground to measure its own scientific formulation. If we think, for example, of what Cesare Lombroso dedicated to the theme of “genius”, a subject destined to return cyclically in its production and to which the scientist from Verona supplied a discussed, questionable and frankly curious level of importance for the modern reader. Genius, Lombroso wrote, represented the highest product on the moral scale which grew with the increase in sensibility, but at the same time constituted from the point of view of its degenerative qualities «a psychosis of the family of moral follies»³¹ which needed to be normalized.

We can think again of the instance, variously formulated by the individual authors following on from *Philosophie de l'art* by Hippolite Taine³², in the indissoluble nexus that bound literature to the social and cultural milieu to which the author belonged, a relationship to the readers³³ creating in them an imitative tension with respect to the literary narration as in the case promptly analyzed by “La scuola positiva” in which a husband had killed his own wife using the very modalities in which the homicide in the popular novel *Dora la figlia dell'assassino* [*Dora the murder's daughter*] by Carolina Invernizio had been describes³⁴ The ill-omened effects of the reading were emphasized in the expert's report which was on the columns of the magazine written by Vittorio Codeluppi, who was the sanitary manager of the judicial Ambrosian mental

³⁰ MANTEGAZZA, *Il pudore nella scienza*, preface to the tenth edition of *Igiene dell'amore* (1877), Florence, 1939, (1889), 6. The preface appeared also in the eleventh edition of *L'amore degli uomini* in 1892. On this theme, see; NAY, “*Nell'arte il bello, nella scienza il vero*”... “*Alla ricerca della verecondia*” in *Spazio filosofico* 5/2012, 285-295.

³¹ LOMBROSO, *Delitto, genio, follia: scritti scelti*, edited by Delia Frigessi, Ferruccio Giancanelli, Luisa Mangoni, Turin, 1995, 40. On the complex theme of genius in the work of Lombroso, see also : MORETTI, *Il genio*, Bologna, 1988, in particular, 159-163.

³² TAINE, *Philosophie de l'art*, Paris, 1881.

³³ The page of Enrico Morselli, for example, is emblematic: «Through the centuries a continuous interaction has been carried out between morale and art, but in substance it is the latter that, when it is great impresses on the former its tendencies and modifies its aspirations and principles», MORSELLI, *Sessualità umana secondo la psicologia, la biologia e la sociologia. Scritti scelti a cura del Prof. A Morselli*, Turin, 1931.

³⁴ CODELUPPI, *Uxoricidio in seguito a lettura di un romanzo*, in *La scuola positiva*, XII(1902), no. 4, 233-239.

hospital in Milan, who commenting on the clinical case which his attention was turned to underlined «the suggestive power of the reading of the novel» or the incidence on the personality of the accused person «the bad thing assimilated to the reading of novels of which he always showed himself so fond, and the greatest of those where the reader, it can be said, dives into a blood-bath»³⁵.

3. Notari Effect

It is true that the attention of the scuola positiva and the Italian judicial culture on the theme of literature and of the limits imposed on it by decorum and morale was destined to get heated again with regard to the event which involved Umberto Notari. This journalist, a writer and founder of one of the most prestigious magazines of the Milanese avant-garde, i.e. “Il verde e l’azzurro”, had published the novel *Quelle signore (Scene di una grande città moderna)*³⁶ [*Those Ladies. (Scenes from a modern City)*] where the adventures of Marchetta, a prostitute who was a “guest” in one of the most famous whore houses of the city were told. The text represented an irreverent and ruthless criticism on the hypocrisy of its own society by offering a portrait of a vast sample of humanity faced with the task of facing up to the basest part of their own desires which they can openly confess to. Between the velvets of the rooms of the Venere Moderne Hotel there were to be found a dirty old man who took advantage of his own desires, a young penniless poet but also the president of the law-courts who was deluded by the women who paid the protagonist only to admire her in silence, the reactionary general (Bava Beccaris?) fruit of love *en travesti*, the deputy and his young lover who so as not to create a scandal secretly met in the brothel. As could be foreseen the book

³⁵ *Ibid.*, 238. It is interesting to underline how the doctor, after having observed the presence of the vice of infirmity of mind in the accused person at the moment of committing the crime, pursued so in his exposition «Uses to always retain until we are called to give our judgement on a delinquent which uses are used not only to establish the level of responsibility which await the accused, but also to indicate to the Magistrate the means for a true and beneficial social preventive treatment, we retained ourselves authorized to not reply to the task which had been proposed for the residual claims was alienated or not from his mind but we added “Although up to today G. is not delirious, is not mad in the strict sense of the word, his psychical shapeless organization produced by being inherited and the environment makes him however eminently anti-social : hence for him a regime is necessary which disciplines his bad tendencies and eventually attenuates them : for our Society it is necessary that he is placed in a situation which makes it impossible for him to cause harm; all this can be obtained by closing him up for an indeterminate period of time in a judicial mental hospital”» *Ibid.*,239.

³⁶ NOTARI, *Quelle signore: (scene di una grande città moderna)*, Milan, edited by the author, 1904.

immediately attracted the curiosity of the readers but also the attacks of the moralists who attacked the authors through a violent, polemical campaign which led to Notari being denounced for indecent behaviour.

In the trial which took place at the law-court in Parma the defence college included the socialist lawyer Agostino Berenini, Cesare Sarfatti, as well as the expert for Filippo Tommaso Marinetti. Naturally public opinion was stirred up by the notoriety of the members of the defence college, but above all by the material of the contention which over and above arousing the *pruderie* of the readers seemed to follow faithfully (even though with the necessary difference) the French events which had accused among others, Gustave Flaubert who after the publication of *Madame Bovary* had been incriminated with the accusation of offence against morale.

As is known, the judge Pinard, even though he did not renounce hectoring in a moralizing tone on how literature should represent an edifying exercise for the conscience of the readers and that it should always be proposed as chaste and pure not only in its forms and in its expressions, he had absolved the great French writer as he judged *Madame Bovary* to be a novel which was certainly dangerous, but it did not merit a penal sanction because it contained a criticism of the condition of provincial life and the destructive parabola of Emma who had forgotten her condition as a wife and mother and in the end had committed suicide³⁷ There was also in the substance the outcome on the pronouncement by the court in Parma that absolved Umberto Notari by agreeing to the defence thesis and recognizing in *Quelle signore* a quick criticism to the scourge of prostitution and female exploitation. In the sentence it said in fact that : «it does not integrate the crime of offence to shame committed through writing [...] the work of the writer who, a common phenomenon in ancient and modern literature, exposes through artistic intentions the human document in all its condemnation with the aim of denouncing the scourge of prostitution or branding a social environment»³⁸

This was a sentence that if on the one hand it admitted that for the configuration of the crime as regards article 339, then specific malice was necessary and, so, the specific intention of the author to offend public modesty, it lent a *stricto iure* to more perplexities from the moment that it re-connected the non-existence of the character of obscenity of the writing to the fact that the book was written for a definite class of people who possessed the “cultural

³⁷ SITI, *Il romanzo sotto accusa*, in MORETTI (edited by), *La cultura del romanzo*, Turin, 129-194; see besides, *ibid.* 168-171 for the closing speech by Ernest Pinard against Flaubert's novel.

³⁸ *Sentence of the law-court of Parma, ibid.*, 168-171.

instruments” to not misunderstand the objectives of the author³⁹ however it undoubtedly welcomed the *zeitgeist* of the new century following on from literary realism that it was not always art which possessed the means to create the beautiful and that however it could be entrusted to the real fact⁴⁰.

The verdict of absolution by the law-court did not let the curtain come down on *Quelle signora*, rather it represented only the first act in a long and complex judicial battle which would see the Milan writer as a protagonist. Notari, showing a notable nose for business, was skilfully able to exploit the *battage* provided by the trial and was able to insert into the appendix of the novel in the second edition a synthesis of the debate and an extract from the verdict of absolution⁴¹. Taking everything into account the involuntary promotion gifted by it being accused of indecency towards modesty revealed itself to be the winning card because it added to the novel’s commercial good luck which was almost without precedents as witnessed by the over two hundred thousand copies sold (an incredible figure even for that period) and by the numerous re-printings of *Quelle signora* (the latest in 2008).

The exceptional editorial good luck of Notari’s novel went hand-in-hand, however, with a careful control of it on the part of the zealous Attorney-General of the King and his Milan office, which on its own account did not waste time in incriminating against the author. What had finished under the lens of the judicial organs had been exactly the publication in the second edi-

³⁹ On this aspect of the sentence see the criticism by Alfredo Sandulli who defined such a motivation as being obviously absurd from the moment that reasoning in this way would lead to depending the existence of the crime on a circumstance which was totally fortuitous and that in the book would not end up with simple or ignorant people who did not possess the means to evaluate the artistic finality of the author. SANDULLI, *Arte delittuosa*, Naples, 1936, 455.

⁴⁰ This was a sentence which, in effect, represented an exception in the panorama of jurisprudential arrests and of doctrinal opinions, which bound together the perfect quality of which article 339 with the objective fact of the lesion of public modesty, without any evaluation on the psychological behaviour of the author to offend good habits and morale. It was significant as regards the theme of literary obscenity and the opinion that shortly afterwards would be expressed by Vincenzo Manzini: «with regard to literary writings, for which by their nature, they are destined to the generality of people (except scientific-literary works) it must be retained obscene without exception all that which is a verist description of things and of immodest facts, whatever is the intention of the author (who has shown through his immodest wish that he is necessarily conscious of the effects of the fact itself) and whatever is the literary quality of the work». MANZINI, *Trattato di diritto penale*, volume IV, Turin, 1911, 662.

⁴¹ NOTARI, *Quelle signora (scene di una grande città moderna)*, Milan, 1906. The novel carried on the title page the eloquent wording: «A novel which was put under arrest and was put on trial for indecent behaviour. Absolved through the non-existence of the crime (sentence 23rd June, 1906, Royal law-court of Parma)».

tion of the novel with the account of the trial, such a publication contravened the dispositions as set out by the edict on the press which had forbidden the edition under any form of the acts to be rendered in a debate which was to take place behind closed doors.

The pretext of the accusation reserved for the author sounded like a true and proper gloves-off challenge for “La scuola positiva” which entrusted its comment on the event to a war-like editor’s note *Judicial persecution of the novel Quelle signore and the psychology of the magistrates*⁴² It was not the first time that the repressive action of the magistrates as regards morality was censured by “La scuola positiva”. In 1905 the periodical directed by Enrico Ferri had published a note⁴³ in which between irony and sarcasm he had commented on the news on the censure reserved by the English judges as regards *Contes scolastiques* by Balzac and by finding again set out by the English press’s opinion of twenty-two copies which had not been sequestered and destroyed at the judicial offices in Manchester by concluding that the judges «had each taken a copy to read comfortably at home the happy pornographic tales written by Balzac!».

In the article space was also given to the event which had involved the editor Bideri from Naples who in his *Canzoniere napoletano* had published «two light-hearted songs» *Il Tressette* and *Il segnale dell’allarme* which cost the editor the impoundment of the publication and a sentence for indecent behaviour under article 339. The periodical pointed out that at the appeal the lawyer Ernesto Brangi had presented a «notable memory» on the judicial concept of obscenity. Using the various acceptances of actions which went against good habits, the lawyer had distinguished between indecency understood as contraventions against common social norms, immorality as an act contrary to ethical principles and finally obscenity understood as an act contrary to collective modesty. Between these actions the only one punished through the penal sanction was obscenity, but because an act had to be retained obscene the lawyer Brangi concluded that the teaching of the Appeal Court was not sufficient for a simple allusion towards committed acts or that they desired to carry out, but it was also necessary that there was an explicit and precise description of the «dirty or voluptuous» action⁴⁴.

⁴² *The judicial persecution of the novel Quelle signore and the psychology of the magistrates*, in *La scuola positiva*, XVII(1907), no. 1, 60-63.

⁴³ *Saggi di “pruderie” inglesi e italiane*, in *La scuola positiva*, XV(1905), no. 3, 644-646.

⁴⁴ *Ibid.*, 645.

The law-suit involving Notari did not represent any more a local case, it brought into play the liberty of artistic expression which had taken care to underline this note in the case which dealt with the editor Bideri who was faced with a light-hearted song, while in the case of *Quelle signore* it was a question «of a true and proper work of art». That justified the completely different reaction on the part of “La scuola positiva”. To end by being the object of railing on the part of the periodical was the reactionary mentality of a generation of magistrates ready to give in to the desire of revenge and the darkening requests of the committees. Anyway, the incrimination made towards Notari represented a true and proper judicial absurdity. «A writer» “La scuola positiva” wrote polemically «that a person so as to become famous must necessarily conquer the favour of public opinion» must necessarily have the right once absolved of the defaming accusation and such as to alienate the sympathy of the public like that of an offence against modesty to make known by any means possible the recognition of innocence and therefore also through the publication of the extracts of the acts of the cause. Not only this, the periodical went on but because of the inconsistency of the accusation against Notari, there was also a clash with a simple, somewhat banal consideration «Why did Notari undertake to publish fifty days after the summary of the trial, while the summary itself was published more or less everywhere by all the newspapers in Italy (including the Milan ones) during the debate without any Attorney-General in the kingdom (including Milan) without anyone raising objections?»⁴⁵.

4. An hypothesis of indecent behaviour through “disclosure” and the opinion of Vittorio Emanuele Orlando

After Notari’s trial in Milan, who now acted as if he were the saviour of free thought, he did not waste time in denouncing again the hypocrisy of the guilty moralists in his own mind of having ordered a true and proper judicial conspiracy against him. The reply of the writer took the form of an amusing journalistic provocation. In his role as director of “La giovane Italia” Notari took care of, on his periodical, a column where in the form of letters addressed to the king he commented on them through irony on the main events talked

⁴⁵ *La persecuzione giudiziaria del romanzo “Quelle signore” e la psicologia della magistratura*, already quoted, 63.

about as regards habits in Italian society. The day after the circular signed by the President of the Cabinet Luzzatti who had represented a strait without any precedence on pornography, the writer from Milan wrote a brilliant article entitled *La coltivazione della foglia di fico* [*The cultivation of fig-leaf*] in which he took on the imaginary role of a zealous county member of society safeguarding public morality who held a surreal dialogue with an Attorney of the King whose task it was to carry out the circular and to dispose of the impoundment of the obscene and immoral publications. Faced with this citizen who read in great detail parts of the book which were extremely erotic, the scandalized Attorney arranged immediately the impoundment of all that “filth”, but his indignation was destined to change into surprise when the magistrate learnt that the scandalous parts of the books which had just been read dealt with ...biblical *Song of Solomon*.

Even though they were in a light tone Notari’s message hid a deep, alarming signal: the Luzzatti circular represented a serious danger because by not distinguishing between pornography and art would have opened the doors to an indiscriminate repression on the part of the magistrates ready to strike with their axe-like censorship even the Bible, the Greek and Latin classics, «Theophile Gautier, Zola, Balzac [...] a good part of the romantics, all the verse writers and very many among the symbolists. In short four fifths of the greatest poets, of the most formidable prose writers, four fifths of the artists, true artists»⁴⁶.

He did not have to wait long to find the reply on the part of the Milanese magistrates to Umberto Notari’s provocation. Showing little fair play the judges once again formulated the accusation of indecent behaviour against the writer from Milan who was guilty of having violated with *La coltivazione della foglia di fico* the precept sanctioned by article 339. However the charge formulated against Notari presented a problem which was anything but easy to resolve from a judicial point of view. To be precise, the writer had limited himself in his article to quoting in detail passages taken from other works (besides the Bible, among the references there figured the *Diologues of Courtesans* by Luciano di Samosata), also apart from the (questionable) character of the obscenity of the passages, what allowed a perplexity on the fact to be expressed more was that the simple re-production of others’s works could take on the forms of an action forbidden by penal law. It was without any doubt that the literary publication that presented the character of obscenity justified

⁴⁶ NOTARI, *Con la mano sinistra. Lettere aperte a Vittorio Emanuele III*, in ID., *Opere*, vol. IV, Milan, undated (but 1908), 147-169, 159.

the application of article 339 of the Zanardelli code, but *quid iuris* in a different case in which the author had limited himself to reporting on abridged versions, to referring to passages with an erotic content, present what's more in works open to the public? Was it taking on the form of an hypothesis of obscene acts through "spreading" literary works?

Also the third chapter of the judicial epic by Notari finished with an absolution. But the fact was that the judicial matter raised by his article was anything but irrelevant and was witnessed by the attention paid to the event by the "Rivista di diritto e procedura penale" founded in 1910 by Adolfo Zerboglio and Eugenio Florian. In a note⁴⁷ at the time of sentencing the co-director Adolfo Zerboglio went through the main points of the provision of the Milanese college underlining how as it was lacking in correct facts was the subsistence of a damaging character for Notari's conduct. It was certainly true Zerboglio agreed that the legislator in foreseeing the requisites of incriminating behaviour as regards article 339 had not foreseen the specific aim for which the author acted and, thus, the application of a penal sanction came from the objective, damaging fact of public modesty, independently from any inquiries from the finality which guided the action of the agent. However, in the case in point, there was lacking the psychological behaviour on Notari's part, the knowledge of representing himself with a form of behaviour as foreseen and sanctioned by the penal disposition. That was in line with the principle and excluded the subsistence of malice as regards the meaning of article 45 of the Zanardelli code. In other words, the jurist from Turin went on, he was absolutely indifferent to the aims of the judicial objectivity of the crime that Notari had published the incriminating passages not to excite public scandal, but only to protest against the dangerous effects of the Luttazzi circular. Indeed what excluded the subsistence of the crime was the error or the false representation of reality as regards the attitude of the passages to offend modesty: «Notari who prints a page of Luciano and some sentences from the Bible which go around the world and are not troubled, must retain that they are obscene in the sense required by law. He has his publication, it is not obscene, in the guise of a person who takes possession of something belonging to someone else and maintaining it is his own. Effectively he takes something belonging to another, but he is not guilty of theft, since by an error of fact, for him it is "his"»⁴⁸

⁴⁷ ZERBOGLIO, *L'oltraggio al pudore nella riproduzione di opere letterarie*, in *Rivista di diritto e procedura penale*, II(1911), vol. II, part. II, 251-256.

⁴⁸ *Ibid.*, 255. It is interesting to observe that this thesis which had as an effect that of re-calibrating the

Over and above Zerboglio's notations, a determining influence on the outcome of the trial itself, they covered a series of opinions *pro veritate* formulated among others by intellectuals like Ferdinando Martini, Vincenzo Morello and by three justice ministers: Scipione Rocchetti, Camillo Finocchiaro-Aprile and Vittorio Emanuele Orlando⁴⁹.

In particular, the letter worked on the limits that art or science ended up establishing for the indictment of those types of conduct contrary to public modesty. «The difficulties begin» Orlando established «when it is a question of recognizing and establishing scientifically the distinct reason which separates the vile behaviour of a crime from the noble behaviour of a work which is socially fertile, while the material fact which must be applied is equal»⁵⁰. In such a case, however, to help the interpreter it was important to determine the objective which had moved the author, which was a perfectly natural motive at the basis of that conduct which excluded in nuce any sanctions as a consequence of article 339. Besides whenever the legal system did not want to attribute relevance to the motives for which the act came into being, the abstract, harmful act of public modesty would determine the harmful consequences, «a point at which no enquiring person, no censor of the censors from the time of the blindest and most unreasonable despotism would ever have pushed themselves»⁵¹ However to be absent from penalties, Orlando went on «the State itself that sets up chairs for professors and their salaries so that they read and illustrate the authors from Greece and Rome, in whose pages consecrated by immortality [...] there stands out from time to time, completely without veils and without leaves, the reality of life, now enticing and flattering, now cynical and brutal»⁵² or when it allowed «that in museums and galleries» there were «admirable nudes which made white the marble and which beat on the canvases?»

relevance of the psychological element from the area of guilt to that of a typical fact (with all the connected relapses on the dogmatic level, for example the theme of error) presented significant support as when the *Rivista di diritto e procedura penale* (in particular Eugenio Florian) had underlined the crime of slander. On this Italian penal reflection, see CERNIGLIARO, *Libertà di stampa e teoria psicologica della diffamazione*, in PADOA SCHIOPPA - DI RENZO VILLATA - G.P. MASSETTO (eds. by), *Amicitiae pignus, Atti in onore di Adriano Capanna*, Milan, 2003, 243-338.

⁴⁹ The text of the opinions is published in the appendix to the fourth volume of the works of the Milanese writer, see NOTARI, *Con la mano sinistra*, already quoted, 171-234.

⁵⁰ *Il giudizio di tre ministri di Grazia e Giustizia - S.E. l'On Vittorio Emanuele Orlando*, in NOTARI, *Con la mano sinistra*, already quoted, 181-204, 204.

⁵¹ *Ibid.*, 197

⁵² *Ibid.*, 198.

The conclusion of the great Sicilian jurist was clear and could not allow replies: with the publication of his article the author did not intend at all to offend modesty, but to discuss a question of a judicial, political character about the intervention of the state in repressing pornography: «Notari does not offend modesty, a thesis discusses. This thesis of his will be good or will be bad, it can be applauded or censured, never punished»⁵³ In short, Notari's thesis could also be a wrong thought, «but it is always a thought which tries to make itself respected with intellectually adequate means. Punishing a thought as a crime, in 1911, would be an offence against civilization and much more so than that Notari's article could be considered an offence against modesty»⁵⁴

5. Mafarka the futurist

The atmosphere of a true and proper call to arms aroused by the Notari event represented the moment when the judicial culture of the first part of the twentieth century was most united, i.e. when the freedom of artistic expression was threatened by the repressive action of the magistrates. Naturally, however, the clamour and the extraordinary resonance of the event on public opinion allowed and the emblematic example was represented exactly by Umberto Notari's *Quelle signore* the mediatic resonance of the trial to be exploited as a self marketing means and a self-promotion instrument and visibility. Such a relief showed what the climate was that accompanied another excellent hypothesis of the trial for indecent behaviour to be understood, i.e. what was celebrated before the third penal section of the law-court in Milan in 1910 that had as a protagonist Filippo Tommaso Marinetti with his *Mafarka il futurista* [*Mafarka the futurist*]⁵⁵ and that ended with the author being absolved.

It was a futuristic, visionary and eclectic novel where sexual and exotic fantasies recalled mythology and war as a social, regeneration instrument. *Mafarka* was Marinetti's first literary work after its publication in the famous manifesto *Uccidiamo il Chiaro di Luna* [*Let's Murder the Moonshine*]. With the latter *Mafarka* shared the aim of trying to provoke through *épater le bourgeois* and challenging conventions and respectability. The deep, anti-bourgeoisie burden of futurism had as a natural addressee the public with the aim of substituting the traditional detached enjoyment of the work of art with a direct and immediate involvement which set off new energy and vitality through surprise,

⁵³ *Ibid.*, 202.

⁵⁴ *Ibid.*, 204.

⁵⁵ MARINETTI, *Mafarka il futurista*, Milan, 1910.

the unforeseeable, the surprising gesture. It was a question of a dimension which could find in the judicial trial an ideal election terrain by ascertaining its polemical and agnostic character by transforming the debate into a true and proper judicial battle in which art and reality were merged into a sort of lengthening of a literary experience.

In such a context we can understand how in the Milanese trial of *Mafarka il futurista* the density of the judicial topics discussed ceded to the demands for the spectacular quality of the judgement. With the presence of Luigi Capuana as an expert, the “eloquent body”⁵⁶ of the lawyers Innocenzo Cappa, Cesare Sarfatti and Salvatore Barzilai embodied the figure of the lawyer as a true and proper “athlete” of the word ready to inflame the public by inflaming the traditional, legal liturgy. It is significant, in this sense, that Barzilai in his harangue before a public made up of «very many ladies of the elegant Milan society who were all representatives of the Italian critics and numerous futurists a band of vigorous and resolute young people »⁵⁷ reserved, all in all, very few words for what represented the true and proper *punctum pruriens* on the judicial level of the crime for which article 339 or the subsistence of the specific malice and thus, the principal intention of the agent to violate with his conduct public modesty while he concentrated his attention on the characters of Marinetti’s work and on the mission of art. «Marinetti has written a book to be talked about» Barzilai asserted «a book which arouses enthusiasm on the one hand and reprehension on the other, but it is great art»⁵⁸ corroborating his proposition with quotations of the praise attributed to the writer by Rachilde on “*Mercure de France*” and by Ettore Janni on “*Corriere della Sera*”. Or Cesare Sarfatti who preceded his plea with an accurate appeal, towards the judges : «If you retain *Mafarka il futurista* a work of art you have neither the competence nor the jurisdiction to judge it, because [...] the law-court is incompetent in judging not a work of art. Let’s be clear I said the law-court because then every judge in his home and in friendly conversations can be more competent than everyone else. But the law-court judge on literature is nonsense : something which is outside art and outside law»⁵⁹.

⁵⁶ The reference to the text regards the volume by BENEDEUCE, *Il corpo eloquente. Identificazione del giurista nell’Italia liberale*, Bologna, 1996.

⁵⁷ *Il processo e l’assoluzione di Mafarka il futurista col discorso di F.T. Marinetti la perizia di Luigi Capuana, e le arringhe dell’On. Salvatore Barzilai, di Innocenzo Cappa, dell’Avv. Cesare Sarfatti in MARINETTI, Distruzione Poema futurista*, Milan, 1911, 4.

⁵⁸ *Ibid.*, 29.

⁵⁹ *Ibid.*, 31.

Marinetti being absolved seemed to replicate in his argumentative way what had been emitted as regards his association with Umberto Notari. After branding the author as a writer of decidedly obscene passages in which the sentence says «the most efficient description of lascivious couplings, lubricant manifestations of disgusting cynicism, the frequent allusions to those parts of the human body that had the significant name of pubes make up all the material»⁶⁰ and have confirmed that the law strikes the obscene character of the writing independently of any intention to offend modesty or any pretended artistic finality of the writing, the Milanese court suddenly changed its argumentative trajectory and surprisingly absolved Marinetti pointing out the lack of the requirement of the publicity missing in the incriminating conduct or because the exterior part of the writing was completely permissible and that, according to the court, there could be perfected the crime described in the precept of article 339 which required that the obscene object be exposed or distributed to the public.

It was a question of a situation which lent itself to be easily criticized and to being defined as a solution which was compromised given that it attributed relevance to a distinction between the internal content and the exterior form of the work which were completely absent from the perceptive meaning of article 339 of the Zanardelli code. However it had the undoubted merit of allowing on the practical level the exclusion of any form of judicial control on the opinions and expressions of the writer as seemed to emerge from what Aristo Mortara among the most worthy of the Milanese guild had written⁶¹. In his harangue, Salvatore Barzilai had synthesized these thoughts of the High Magistrate⁶² «Let's suppose that a book with a perfect exterior has been put on

⁶⁰ *Sentence of the law-court in Milan on 10th October, 1910*, in *Rivista penale*, LII (1910), Supplement, 395.

⁶¹ MORTARA, *A proposito di un recente decisione in tema di oltraggio al pudore commesso a mezzo della stampa*, in *La giustizia penale*, II(1896), no. 2, 1368-1379.

⁶² With regard to the concept of exposing in public obscene work, Mortara made a distinction between the offer made to the public and the offer made for the public. The offer is made to the public, the magistrate from Milan agreed «every time it is followed in a public place in which everybody can circulate freely or in a public street where all the citizens can walk around. It is made for the public when the access to the place where the exposition takes place, it is subordinate to certain modalities» as, for example, paying for a ticket or the material exposition of a copy of a book whose contents are obscene. «An exposition of such a nature» Mortara went on «does not miss out on its character philologically speaking [...] but loses it juridically because the legislator in striking out against offences made on good habits has tried to defend public modesty which can be offended independently from any wanted act by a private citizen». Mortara himself did not hesitate to have recourse to Adolphe Franck's efficient for-

sale, that it has an unusual title, but its contents are decidedly obscene. Who will be able to corrupt that experience or sale offer? [...] Certainly those who will acquire the volume and in the secret of their home will have completed reading it [...] The demoralization is not inherent in the fact of the announcement [...] but it is as a consequence of the fact that whoever wanted the book to be acquired and graze on their mind with weird narrations that it contains, they will not be offended by public habits, but indeed by private ones». But if that were true, Barzilai went on «private or individual morality must provide for the individual citizens, what re-enters the domestic upbringing and does not touch the legislative dimension. The choice of literature and thus acquiring a good and useful rather than an immoral and damaging book, cannot be allowed even indirectly to re-enter the penal code»⁶³

It is true the trial against *Mafarka il futurista* represented one of the last attempts used by the Italian judicial system to mark across the mobile boundary of modesty a limit between public morality and private morality. Naturally there were other trials which left no stone unturned against the avant-garde futurists to try them for indecent behaviour. In 1914 there was the famous trial against Italo Tivolato for his *Elogio della prostituzione* [*In Praise of prostitution*] of pro which was published on the “Lacerba magazine”, however even something had begun to move backstage in the scenarios of Italian culture and society.

After the carnage of The First World War the aim of provoking futurism ended up by giving relief to the nationalist cause as the adhesion of numerous important exponents of the regime showed. It is not by chance that many of the protagonists mentioned in this article like Notari, Barzilai, Marinetti, Tivolato will each follow in their own way the destinies of this dictatorship.

Perhaps, besides making up for the well-known Gramscian metaphor which described the futurists as disobedient scholars re-called to order by an ‘elementary school teacher’ who had himself been years before fiercely anti-bourgeoisie⁶⁴ could underline the climate of a true and proper generational clash which affected Italian society after The Great War⁶⁵.

mula to substantiate the notion of public modesty safeguarded by the legislator means «the right of every honest man to be able to go out accompanied by his own wife and his own children without their looks and their habits being compromised» Ibid, p.1374, see FRANCK, *Philosophie du droit penal*, Paris, 1864, 140 for the exact place.

⁶³ *Il processo e l'assoluzione di Mafarka il futurista col discorso di F.T. Marinetti la perizia di Luigi Capuana, e le arringhe dell'On. Salvatore Barzilai, di Innocenzo Cappa, dell'Avv. Cesare Sarfatti*, quoted, 27.

⁶⁴ GRAMSCI, *Quaderni dal carcere*, Edizione critica dell'Istituto Gramsci, edited by Valentino Giarrata-

The March on Rome and the institutionalization of the regime would have replaced the revolutionary utopias and the instances of the re-birth of Italian society from its first fascist experience in the name of the pressing demands from the government and from the approval of public opinion. From that moment on those themes of a sexual nature and the control over the morality of the citizen would represent one of the main cornerstones of the politics of the regime to restore the old certainties with the new order.

na, Turin, 2014, 124, 115.

⁶⁵ In the panorama of juridical historiography an analysis of the generational clash and of the deep lacerations left by The Great War is in ABBAMONTE, *La politica invisibile. Corte di Cassazione e magistratura durante il fascismo*, Milan, 2003, in particular 34-44.