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Extradition in Fascist Italy (1922-1943) and in Brazil of Getúlio Vargas (1930-1945) between the ascension of ‘Fascist Criminal Law’ and the survival of the liberal tradition of Criminal Law

Abstract
This paper aims to present the legal treatment given to extradition in fascist Italy and in Brazil of Getúlio Vargas to understand if the institute has suffered authoritarian torsions both on the field of internal law and on the diplomatic relations between these countries. On the Codice Rocco, the provision on extradition was meant to strengthen the repression, but the Italian treaties celebrated attached to the liberal paradigm ended up protecting the individual subjected to extradition. On its turn, if on one side the 1938 Brazilian Extradition Act relies on the elements of the institute created in the nineteenth century, it also adds important elements to the defence of a strong state. Thus, were these rules truly of a fascist origin? The hypothesis is to realize that the ‘Fascist Criminal Law’ is not quite a revolution, despite introducing major changes it cohabits with the liberal tradition of criminal law.

Introduction
Extradition is an act of cooperation, which is performed between sovereign states at the request of one of them, turning in accused or convicted person of a crime to be prosecuted or to serve an already imposed sentence. As put by Emanuele Carnevale, the late nineteenth century and early twentieth century are marked by a quest for greater collaboration in the area of common international legal assistance against crime, no matter where it happened and where they found the suspects and / or indiciates of such actions.

This work will examine the treaty between Brazil and Italy in 1932 and the domestic legislation of each country on extradition from the current criminal-legal thought in that period. Brazil had issued a special law on the subject; Italy, on the other hand, left the matter to be regulated by provisions in criminal law. The goal is to see how these laws and the treaty between Italy and Brazil are

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1 A complete synthesis about the conceptions in that period can be found in Antonio Bento de Faria, Código Penal brasileiro (comentado): noções gerais, interpretação da lei penal, extradição (Decreto-Lei n.º 2.848, de 7 de dezembro de 1940) vol 5 (2nd edn Record 1958) 87-8. He was also a Brazilian Supreme Court’s Justice.

2 At the beginning of the quotation: ‘Noi siamo in tempo piuttosto di collaborazione, che evidentemente è una cosa diversa di azione: la prima rappresenta sempre un agire distinto, per quanto associato e coordinato; la seconda, invece, è un tutto unico, è l’apice del movimento unitario, lo dico quindi azione perché guardo principalmente alla fase finale, di cui considero la presente come preparatoria, qualunque sia il corso di anni di cui essa abbia bisogno; e intanto anche per l’oggi la parola può accogliersi, intendendola in senso largo e non strettamente preciso’ Emanuele Carnevale, ‘Linee unitarie dell’azione internazionale contro il delitto’ (1933) 4 Rivista penale, 873.

3 However, that’s not means the Italian doctrine don’t wish a specific regulation about this: ‘Il codice penale attualmente in Italia segna, anche in linea di estradizione, un grande progresso sulle legislazioni che lo hanno preceduto [...] Queste poche staturizzazioni non bastano evidente a regolare una materia che presenta casi molteplici, e questioni oltremodo difficili. Cosicché, quando si tratta di concedere una estradizione, bisogna necessariamente ricorrere al trattato che lega nostro governo allo Stato richiedente e qualora il trattato manchi
composed in regards to the maintenance of the liberal tradition of the nineteenth century or to the rising authoritarianism experienced by both countries with Mussolini and Vargas in the first half of the twentieth century and their doctrinal term.

The relationship between treaty and domestic law is dialectical, because at the same time that the present domestic legislation determines the treating possibilities, the international concerts directly influence changes in the extraditional law by possessing the dynamics of international practice into a particular order, influencing the legislator’s new choices.

In this sense, criminal doctrine is a privileged locus to the extent that it builds a specific scenario on the theme, reflecting or moving away from criminal policy choices of each state. There is already historiography on the analysis of authoritarian inflows about Criminal Law. Extradition has a double valence here, due to reflections within internal and external law. It is interesting to note how the presentation of a new discourse of authoritarian hue or the maintenance of a traditional liberal discourse behaves in this particular institute.

Authoritarianism presented itself after World War I as a front-line alternative to the liberal model in the context of a world crisis. In the 30’s, Fascism found itself bounded in Italy, moving to an "Italian road to totalitarianism". Brazil, in its turn, experienced a period of uncertainty, since it had recently surpassed the Revolution of 1930, ruled by a provisional government that foreshadowed the future dictatorship claimed of Getúlio Vargas that would take place later in 1937.

A turnaround in the legal-criminal area was experienced. Fascism took role of criminal law as a regime legitimizing a discourse from the authority of imposing a strict legislation. The criminalists of the period, led by Arturo Rocco and Vincenzo Manzini, consolidated the legal technicality that closes its eyes to the civil commitment of lawyers from the previous period to keep against the role of interpreting the law, regardless of its nature, when they did not place themselves directly on defence of Fascism.

In Brazil, there is a clear succession of generations, where the imported and artificial debate among the classical, positive schools and the criminal concern in building a truly national criminal science starts to lag behind. Nevertheless, the response to the previous movement is very similar to the Italian one: Brazilian Criminal Law surrenders to the dogmatic paradigm of technical legal nature, which criminal science is reduced to the study of the criminal law in force. The figure par excellence is Nélson Hungria, which in these early years of 1930 launched several technical and educational studies.

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It is within such a political legal framework that the proposed discussion now enters. We propose to analyze the standards (treaty and domestic legislation) relating to the Italian-Brazilian case, paying special attention to the discussion about the possibility of extradition of political criminals.

1 The 1932 treaty and the domestic legislation between liberal tradition and the rising authoritarianism

Even before the rise of Vargas, but already under Fascism, Brazil and Italy began negotiations to make their second extradition treaty, which were about to be completed after the 1930’s Revolution⁸. Henceforth, Brazilian law and the sparse Italian provisions would rule only on the present gaps in the recently struck agreement.

At that time, the new Italian Criminal Code of 1930 was already in force. Extradition regulated in Article 13 served as a double discourse. Externally, it aimed to put Italy in the forefront of an early international collaboration to fight crime⁹, to the extent that it bored the maximum application speech of the institute by reducing exceptions to turn-ins¹⁰. It thus ended any distrust regarding foreign justice effectiveness¹¹, because there would not even be a need for a turning in treaty¹².

Domestically, however, such position met the proposed intensification of criminal law, a symbol of state authority, as so often hypothesized by Minister Alfredo Rocco, as the doctrine affiliated to Fascism. In this sense we celebrate the supposed possibility of extradition of political offenders, the main target of this new conception of criminal law.

From the content of the treaty, there was the promise of the brazilian plenipotentiary foreign Minister to the concert that was making reference about respect for the traditions, because: "molded
on more liberal principles and broader legal culture of our day, it constitutes a complementary to the series of approaching acts previously signed between the two countries.\textsuperscript{13}

The Explanatory Memorandum gives a great prominence, for example, to the principle of extradition of nationals, which until now appeared as a breakthrough in the nations’ concert, being Brazil the first country to set such treaty with Italy, which recently allowed such a situation with novel coding.\textsuperscript{14} In the case of extradition of nationals, Fascism and the Estado Novo took inverse directions. The possibility of extradition of nationals inserted by Article 13 of the new Italian Criminal Code was seen by the doctrine, as well as in the issue of political crime, as an avant-garde action of the regime under international collaboration.\textsuperscript{15} There would be no fear, because it was conditioned to the existence of a treaty, not merely in need of a declaration of reciprocity, and even in case of suspicion, the administrative licensing system would have further protection.\textsuperscript{16}

Among the treaties that would work under such logic, the first that Italy would subscribe to that effect was exactly in Brazil.\textsuperscript{17} At the time, the constitution of 1891 and the law of 1911 allowed Brazil to make such agreement. Putting oneself at international level as countries that gave an effective contribution to combating crime was a big motivation.\textsuperscript{18}

\textsuperscript{13} Franco (n 8) 13.

\textsuperscript{14} Ibid 15-21.

\textsuperscript{15} 'Rilevi particolari. 1o) La estradizione deve di regola applicarsi per tutti i delitti. Le eccezioni debbono contemplarsi nelle convenzioni e nelle leggi interne, ed è preferibile che tali eccezioni si precisino non mediante il nomen iuris, ma per la quantità e la specie delle pene […] 6o) La estradizione del cittadino non è consentita se non sia concessa per convenzione. I più eminenti scrittori – da Bernard a Fauchille, da Holzendörfl a Bluntschly, da Pessina a Fiore, da Garofalo a Longhi – invocavano la soppressione del divieto [di estradizione dei cittadini] in conformità del voto espresso nel congresso di Oxford […] Pertanto la nuova disposizione legislativa merita la maggiore lode' Adinolfi (n 10) 14; 'Condizioni dell’estradizione – la quale è regolata dalla legge penale italiana, dalle convenzioni, e dagli usi internazionali – sono (art. 13): … 3º) che l’estradando non sia cittadino italiano, salvo che l’estradazione non sia espressamente consentita nelle convenzioni internazionali. Qui è riprodotto il divieto del codice passato, ma non in via assoluta, come in quello, perché si ammette che pattuizioni espresse internazionali possano intervenire. Per tal modo è agevolata la via ad eliminare, con meditata cautela, uno dei più vecchi e forti ostacoli alla ammissibilità dell’estradizione, che non dipendeva da ragioni scientifiche, ma da diffidenze politiche' Giuseppe Maggiore, Principi di diritto penale (Zanichelli 1932) 120-1.

\textsuperscript{16} 'Notevole anche la disposizione del nuovo Codice (art. 13, ultimo capoverso), secondo cui la estradizione del cittadino non è ammessa, salvo che essa sia espressamente consentita nelle convenzioni internazionali. L’estradizione potrà essere domandata soltanto da quegli Stati, che saranno ritenuti dallo Stato italiano idonei a giudicare con le necessarie garanzie di giustizia; né ciò esclude la possibilità di rifiutare l’estradizione in casi eccezionali, essendo dal nostro diritto interno riconosciuto al Governo un potere discrezionale in tal campo, anche quando esista trattato speciale e sia stato dall'Autorità giudiziaria manifestato parere favorevole all'estradizione' Eugenio Jannitti Piramalo, Corso di diritto criminale (Colombo 1932) 68-9.

\textsuperscript{17} Vincenzo Manzini, Trattato di diritto penale, (UTET 1933) 420-1.

\textsuperscript{18} In Italy: 'Per l'art. 9 del codice abrogato il Governo del Re poteva offrire o concedere l'estradizione di un delinquente nel concorso di tre condizioni: che l'estradando non fosse cittadino italiano; che il delitto, pel quale l'estradizione fosse offerta o domandata, non costituisse un delitto politico po un altro reato a questo connesso; che dovesse precedere la deliberazione conforme dell'autorità giudiziaria del luogo, ove l'estradando si trovava. L'art. 13 ha posto nell'ultimo capoverso la prima della predette condizioni e cioè che l'estradando non sia cittadino italiano, mitigando però il divieto, nel senso che permette al Governo di estradare anche il cittadino, quando tale facoltà è espressamente consentita dalla convenzione di estradizione stipulata col paese nel quale il cittadino ha commesso il delitto. In tal modo il codice, orientandosi decisamente verso il sistema della legislazione inglese e di quella nord-americana, permette al Governo di assumere, mediante convenzioni internazionali e quindi con sicurezza di piena reciprocità di diritti e di doveri da parte degli Stati contraenti un impegno di collaborazione internazionale sempre maggiore, nella lotta contro il delitto' Carlo Saltelli and Enrico Romano-Di Falco, Commento teorico-pratico del nuovo codice penale (UTET 1930) 117; in Brazil: 'Com sobejas razões tem-se impugnado, como injustificável, semelhante restrição, verdadeiro resquício do direito de asilo,
Respecting the current Brazilian law of 1911 and the open clause of Article 13 of the Italian code, as well as the tendency of extradition treaties from the early twentieth century, one leaves the exhaustive list model for a generic clause that kept the institute job possible for all ordinary crimes (article 2).

The exceptions contained in Article V, are the same ones that were already present in the national legislation. This excludes the possibility of extraditing "special" crimes, among which those committed by the press, politicians and the military (Article V, 5).

An interesting new feature was the inclusion of the impossibility of extradition if the crime in the requesting country is the jurisdiction of an exceptional court (Article 6, b). This article takes on importance to such an extent that in the time of entry into force of the treaty became active in Italy the Tribunale speciale per la difesa dello Stato, and that a few years later it would be Brazil to do such experiment with the Tribunal de Segurança Nacional.

Despite both courts having jurisdiction for the prosecution of political crimes, there could be discussion in the cases of application of the "Swiss" clause under the new treaty. Thus, with the possibility of extradition by the understanding that the offense was particularly common, the question would be if the courts could judge such crimes. Both courts were created as temporary agencies, but were made permanent. It would be strange for a country to consider exceptional a tribunal similar to that which it itself holds.

From what investigated so far, there was no reference to the application of this clause from the treaty. On the one hand, we will see the expansion of the concept of political crimes in both jurisdictions with set limit on the external scope. On the other, there are studies that show a link within the police that would allow an underground action to the judicial means, typical of authoritarian regimes.
The treaty also predicted the impossibility of extradition to the death penalty, allowed in Italy, unless commitment to conversion to imprisonment (Article 7, 2nd part). Even after an amendment to the 1937 Brazilian Constitution, such possibility was opened to the most serious political crimes and murderers. The Additional Protocol of 1937 dealt only with the impossibility of extradition of nationals, a necessary adjustment to the 1934 Constitution which had been maintained by the letter of 1937.

With the blow of November 10th 1937, Brazil turns to authoritarian means. Affirmed on the idea of nationalism, a discourse of marginalization from abroad which was reflected in the laws relating to extradition and deportation was created. The Decree-Law number 394 of April 28th, 1938, sought to give new shape to extradition in Brazil. However, unlike the 1911 Law, it did not denounce treaties then in force, such as the Italian-Brazilian one of 1932 with the Additional Protocol of 1937. Their guidelines were used as additional tool in the omission of provisions about issues therein versed and indicated conditions for the establishment of new bilateral concerts.

The main emphasis of legislation was the regulation about the impossibility of extradition of nationals, definitely abandoning any possibility of cooperation as agreed with Italy in 1931. Brazil has pledged to punish the foreign agent in its own territory. The regulation was also highlighted on the impossibility of extradition of political offenders, as well as exceptions to this rule, although the warranty of non-extradition of political offenders, which appeared for the first time in 1934 Brazilian Constitution, was not repeated in the letter granted in 1937.

2 The (im)possibility of extradition because of political crimes in the authoritarianism era

Sore point in regards to extradition is the question of political crime. The changes that Brazil and Italy imposed in their domestic laws to such category in the 1930s brought further discussion to the topic.

The change of concept of political crime, laid down in Article 8 of the new Italian code generated numerous discussions in the extraditional field. However, this construction that modifies assumptions of the previous code is a recurring theme in the legal-criminal thought of the time, because the international consensus, concerned about increased collaboration, tended to restrict the concept of political crimes.

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22 Arno Dal Ri Jr., O Estado e seus inimigos: a repressão política na história do Direito Penal (Revan 2006).

23 'Art. 113 - A Constituição assegura a brasileiros e a estrangeiros residentes no País a inviolabilidade dos direitos concernentes à liberdade, à subsistência, à segurança individual e à propriedade, nos termos seguintes: [...] 31) Não será concedida a Estado estrangeiro extradição por crime político ou de opinião, nem, em caso algum, de brasileiro'.

24 'Ma la tendenza odierna dottrinale, in ogni modo, in relazione alla pratica degli Stati, sembra accettabile nel senso di una dichiarazione delle eccezioni all'eccezione, non lasciando più passare sotto il manto della delinquenza politica reati che veramente non vi rientrano, onde vien meno la ragione dell'esclusione dell'estradizione' Ugo Conti, 'Estradizione e delinquenza politica' 106 RP (1927) 356.
Considerable doctrine – generally enthusiastic to Fascism – defended the thesis that Italy would have started to allow extradition of political crime, by having omitted in his Article 13\textsuperscript{25}, the prohibition in Article 9 of the Zanardelli Code\textsuperscript{26}. Saltelli and Di Falco emphasize that this choice reflects the high disapproval the fascist State gives to political crimes deserving of severe punishment anywhere\textsuperscript{27}.

Galdino Siqueira and Eduardo Espínola Filho accepted such a position in Brazil\textsuperscript{28}. The latter was supported by a quote from Ugo Aloisi extracted from the article “Extradition” in the Nuovo Digesto Italiano, legal encyclopedia of wide circulation in the fascist period\textsuperscript{29}. However, it seems that...
the Brazilian treatise did not look to the text as an entire work, because Aloisi himself, despite appearing to be in favor of the measure, highlights the humorous opposite effect that the definition of Article 8 produced on the external front.\footnote{Forum historiae iuris} Fascism concern in expanding the concept of political crime created a discrepancy in the effects between the internal and external plans. On the other hand it provided a greater possibility of punishment in Italy as it expanded the list of behaviors that could frame this particular category of offenses that had a particular court with an exception procedure.\footnote{Forum historiae iuris} On the other, the second part of Article 8 of Rocco Code\footnote{Forum historiae iuris} went against the principle of preponderance. Thus preventing international collaboration on the part of Italy, since setting the crime subjectively political it accepted the preponderance even if partially. In addition to Aloisi such a current counted with Vincenzo Manzini.\footnote{Forum historiae iuris}

Moreover, Italy had not agreed to such a possibility in any treaty, rather the opposite, as in the case of the treaty between Italy and Brazil.\footnote{Forum historiae iuris} The treaty of 1931 would have placed the parties in a position of international consensus on the matter. In the words of Chancellor Afranio de Mello Franco, "it appears from the foregoing that the Extradition Treaty with Italy, even in the case of...
political crimes, followed our conventional law, where Brazil is part and it followed ancient traditions in the practice of the institute.\(^{35}\)

In fact, it was signed keeping the protection to the political criminal, contrary to what had already been set in Italy, in avant-garde position in the external front, but reactionary position in the internal front. The extradition of a political criminal by Italy would restrict to the possibility of a promise of reciprocity grounded in a disobedience to mutual comparison between Articles 8 and 13.\(^{36}\)

Even with the only opening provided by the insertion of the Swiss clause in the treaty it did not convince Manzini, because the broad discretion afforded to the requested State would easily render the arrangement useless.\(^{37}\)

The Brazilian act of 1938, already inside the authoritarian spirit of national security laws and the Constitution of 1937, showed the possibilities of opening the impossibility of extradition of political offenders in the paragraphs of its Article 2.º, § 2.º innovated by placing a series of political movements, if they acted with violence, to be excluded from the bounty of non-extradition.

Bento de Faria understood that such crimes, by violating a universal feeling about the established order, deserved punishment anywhere.\(^{38}\) Such argument is based on a doctrinal consensus on the subject since the anarchic attacks appeared in the late nineteenth century. The punishment, according to the author, would really be worthy if such movements have a political program and are accepted by some civilized nation.\(^{39}\) It is interesting that by the end, the minister says that the only modification with respect to the previous law was the issue of extradition of nationals.

Importantly, unlike the Italian case, the whole discussion about the concept of political crimes is out of the new Brazilian Criminal Code of 1940. Such code left the political crimes to the exceptional legislation. That way, the political dissension would be criminally fought duplicating the 'legality

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\(^{35}\) Verifica-se do exposto que o Tratado de Estradção com a Itália, ainda no que se refere aos crimes políticos, seguiu a nossa lei, o direito convencional em que o Brasil é parte e antigas tradições nossas na prática do instituto’ Franco (n 8) 32.

\(^{36}\) È inutile dire che la omissione intenzionale dell’art. 13 fece apparire il legislatore del 1930 come inovatore e, quasi, rivoluzionario. Ma la fretta di questa deduzione è evidente. Anche nel vigore del c.p. 1889 un trattato Internazionale avrebbe potuto obbligare l’Italia ad estradare per i delitti politici, non potendo il codice penale, che è una semplice legge, sopprimere tale possibilità. Lo stesso deve dirsi per il c.p. 1930, mutatis mutandis [...] L’art 13 era dunque tutt’al più una manifestazione implicita di intenzione con riguardo ad eventuali trattative diplomatiche e niente altro di questo; ma come manifestazione di intenzione doveva considerarsi deplacé. In ogni modo la prassi diplomatica dello Stato italiano successiva al c.p. 1930, confermò pienamente il principio della non estradabilità per i reati politici come dimostrano le Convenzioni con [...] il Brasile del 28 novembre 1931 (art. 5)’ Rolando Quadri, ‘Estradizione: diritto Internazionale’ in Enciclopedia del diritto (Giuffrè 1967) 38.

\(^{37}\) ‘Reati connessi a reati politici. – Questi reati non sono presi in considerazione del vigente codice penale (e però non sono considerati reati politici), bensì invece dalla maggior parte delle convenzioni d’estradizione, che li equiparano, date certe condizioni, ai reati politici. Le convenzioni italo-brasiliana del 1931 [...] ad es., escludono dall’estradizione i reati connessi a reati politici, “salvo che il fatto costituisca principalmente un reato comune”, lasciando alle Autorità dello Stato richiesto ogni apprezzamento in proposito. Si è così stabilito un criterio di prevalenza assai vago e indeterminato’ Manzini (n 17) 427.

\(^{38}\) ‘Pouco importa que essas formas de delinquência (anarquismo, nililismo, comunismo, socialismo ou as que lhes sejam equiparáveis com outras denominações), resultem do desenvolvimento de um programa qualificado como – político [...] Sendo tais criminosos universalmente perigosos, daí resulta para os Estados o dever de direito internacional – da prestação de maior assistência reciproca em persegui-los’ Faria (n 1) 137.

\(^{39}\) ‘È certo que certa nação europeia adota princípios subversivos das instituições sociais, como a abolição completa do direito de propriedade. Nem por isso, nos países como o nosso, a propagação de tal credo há de perder o aspecto de atentado contra a sociedade’ Ibid 137-8.
level\textsuperscript{40} to the legal-criminal order. The material force of the legality principle was mitigated with the creation of exceptional laws to control the political dissent, the innovations on extradition of political crimes also included.

Nélson Hungria faced the subject on several occasions. An example is his of the National Security Act of 1935. He was disappointed about the new dispositions that clashed with the traditional rulings on the subject\textsuperscript{41}. To justify this situation, he quoted Francesco Carrara’s Programma di Diritto Criminale where it was explained how difficult it was to build a scientific construction of the subject\textsuperscript{42}. In classical Carrara’s words, ‘when politics enter by the door, justice runs away through the window’\textsuperscript{43}. According to the Italian jurist, if it was impossible to construct a philosophical Criminal Law on political crimes, one should focus on the positive Criminal Law; therefore Carrara himself took a stand regarding the legislative productions of the time. However, Hungria escaped from the thinkers of the penalistica civile\textsuperscript{44} approaching the criminal-legal technicality when exempted himself of judging the legislator’s work, that did not make any distinction between communists, anarchists and other ways of political dissent\textsuperscript{45}.

The result is that the main political crimes listed in the Brazilian national security laws and the Rocco Code, in other words, the crimes of attempted subversion of the order\textsuperscript{46}, cease to be political offenses for extradition if practiced by members of these political movements. We have here an

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\textsuperscript{40} ‘Entra così nell’ordinamento, frutto quasi di una ineluttabile fisiologia, un duplice livello di legalità [...] Il dualismo nelle regole e nelle pratiche repressive che si viene affermando non riguarda, peraltro, la sola tutela dell’ordine pubblico: non si tratta soltanto di giurisdizione contro amministrazione, di codice penale contro legge di pubblica sicurezza, di giudici da un lato (che amministrano il diritto) e polizia dall’altro (che tutela l’ordine e la sicurezza). Il duplice livello di legalità discerne i “galantuomini” dai “birbanti” destinandoli a differenti filières punitive, fa prevalere l’opportunità politica sulla regola giuridica, lo scopo sul diritto’ in Mario Sbriccoli, ‘Caratteri originari e tratti permanenti del sistema penale italiano (1860-1990)’ in Luciano Violante (ed), Storia d’Italia legge, diritto, giustizia – Annali 14 (Einaudi 1998) 139-141.

\textsuperscript{41} Nélson Hungria, ‘A lei de segurança’ (1935) September RT 318.

\textsuperscript{42} Nélson Hungria, ‘A evolução do Direito Penal brasileiro’ (1943) July RF.

\textsuperscript{43} ‘Ingenuo, un tempo io credetti che la politica dei liberi reggimenti non fosse la politica dei despoti: ma le novelle esperienze mi hanno pur troppo mostrato che sempre e dovunque quando la politica entra dalla porta del tempio, la giustizia fugge impaurita dalla finestra per tornarsene al cielo’ Francesco Carrara, Programma del corso di diritto criminale, Vol 7.(Fratelli Cammelli, 6th edn 1898) 674-5.

\textsuperscript{44} ‘Una caratteristica permanente dell’esperienza penalistica italiana sta dunque nella durevole centralità delle questioni penali nelle diverse fasi della vita politica del Paese. Ad essa si correla un tratto distintivo che riguarda la vocazione, per così dire, della scienza e della cultura giuridica penali, impegnate con un loro spirito peculiare, storicamente caratterizzato, intorno alle ragioni ed ai modi del proibire, del prevenire, del giudicare e del punire. Si tratta di quella specifica attitudine dei penalisti italiani [...] che ho gia’ avuto modo di designare come penalistica civile’ Sbriccoli (n 40) 145.

\textsuperscript{45} ‘Haja vista a nossa recente lei de segurança – dec. N. 38, de 4 de Abril de 1935 – que, na defesa da ordem politico-social entre nós dominante, não faz descerrime algum entre os brutaes discípulos de Bacunine e o “olho de Moscou” ou o mystico sigma indígena [...] Deixemos, porém, de lado o aspecto reaccionario do decreto numero 38, apadrinado, aliás, pela Constituição de 16 de julho, para o apreciarmos como parte integrante do nosso direito constituido, que é o que é, e não o que devia ser’ Hungria (n 41) 312.

\textsuperscript{46} Although the Vargas Era (1935-1945) these are not political crimes more often, because the difficulty of the legal framework and perpetration, compared with the propaganda crimes and associative ones, cfr. Diego Nunes, Le “irrequietas leis de segurança nacional”. Sistema penale e repressione del dissenso politico nel Brasile dell’Estado Novo (1937-1945) (UnIMC 2014) - http://ecum.unicam.it/796/1/Diego_Nunes_testi_Lei_de_seguran 3C3%7a_nacional_UniMC.pdf. However, they are the most serious crimes because once accomplished would change the political order would cause a revolution, and the accused would not be criminals, but victorious.
effective nonsense, because Article V of the treaty designated the requested State as the competent authority.

Given the content of Article 8 of the Italian Criminal Code and conceptual layouts of successive national security laws of Brazil\textsuperscript{47}, in both cases of broad spectrum, such conduct would always be considered a political crime in the territory, to the extent that communism was the main opposition to authoritarian regimes then present in Brazil and Italy. No wonder that the main defendants of political processes before the courts of both countries were the leaders of the national Communist parties.

Even if restricting the interpretation to anarchism, the situation worsened because the actions taken as a classical anarchist movement were punished in domestic law within the same laws that dealt with political crimes. Therefore, to Manzini, the expansion of the concept of political crime by Article 8 ended up considering acts of anarchism and terrorism as political crimes\textsuperscript{48}.

Conclusion

The authoritarianism of Fascism reached the institute in the criminal code in 1930. If the original idea was the extinction of the clause, the concept of political crime prepared in the same code prevented its effectiveness, since the excessive internal amplitude was expressed as a restriction on international level. Moreover, there even were resistances that would prevent concerts from being performed without such a clause, which the Italian-Brazilian treaty is exemplary.

The Brazilian Extradition Act of 1938 also brought authoritarian inflows. It aimed to achieve a certain communist movement, the enemy of the constitutional regime, as noted in the preamble to the Constitution of 1937. The expansion was intended to free the country of undesirable elements.

However, it was realized that such a search to the fullest extent of the criminal law, in the case of political crimes, came to create a paradox: the more repressive domestically, the less power on the external front. The Italian-Brazilian case turns out to be interesting. The inclusion of authoritarian elements in the internal legislation masked by a liberal vanguard position, possible only in the duality

\textsuperscript{47} The first National Security Act (Lei n. 38/1935) concepts came as complements to the crime of subversive propaganda in Article 22, but ended up becoming general: \textquote{Art. 22. Não será tolerada a propaganda de guerra ou de processos violentes para subverter a ordem política ou social (Const., art. 113, n. 9). § 1º A ordem política, a que se refere este artigo, é a que resulta da independência, soberania e integridade territorial da União, bem como da organização e actividade dos poderes políticos, estabelecidas na Constituição da República, nas dos Estados e nas leis organicas respectivas. § 2º A ordem social é a estabelecida pela Constituição e pelas leis relativamente aos direitos e garantias individuais e sua protecção civil e penal, ao regime jurídico da propriedade, da família e do trabalho; à organização e funcionamento dos serviços públicos e de utilidade geral; aos direitos e deveres das pessoas de direito público para com os indivíduos e reciprocamente}. The concept remains virtually unchanged in Decreto-Lei n. 431/1938: \textquote{Art. 1º Serão punidos na forma desta lei os crimes contra a personalidade internacional do Estado; a ordem política, assim entendidos os praticados contra a estrutura e a segurança do Estado, e a ordem social, como tal considerada a estabelecida pela Constituição e pelas leis relativamente aos direitos e garantias individuais e sua proteção civil e penal, ao regime jurídico da propriedade, da família e do trabalho, à organização e ao funcionamento dos serviços públicos e de utilidade geral, aos direitos e deveres das pessoas de direito público para com os indivíduos, e reciprocamente}.

\textsuperscript{48} \textquote{Per il vigente codice penale i delitti anarchici, o terroristici in genere, sono indubbiamente delitti politici. Qualche convenzione, peraltro, li esclude dal novero dei delitti politici, agli effetti dell’estradizione} Manzini (n 17) 432.
that extradition allows, does not achieve success internationally. In this arena, both countries end up taking more conservative positions.

Therefore there's no way to talk about "a fascist criminal law" as a stand-alone experience. This design is not only used to postulate a liberal tradition, but sometimes it had to be lenient to legitimize themselves also in times which the authoritarianism had more adherence.