

Criminal liability is personal. Precisely.

Counter-manifesto on the Moretti case. On 2 July 2026, in la Repubblica and Il Sole 24 Ore, a paid page appeared in defence of a citizen who is never named, and whom everyone recognises. We reply.

Counter-manifesto · whitecollarcrimes.it · 9 July 2026 Download the PDF ↓

1. An advertisement, not an appeal

The text circulating as “the jurists’ appeal” on the Moretti case is not an act of legal scholarship. It is a purchased page: at its foot, the sponsor — Partecipazioni Italia, of the Webuild group. More than two hundred and fifty signatures, predominantly the leadership and the voices of business, with some illustrious names from academia and the bar. It appeared in the days when, every avenue of appeal exhausted, a powerful man was entering prison like any other convicted person.

Whoever wants to understand what the public voice of the law in Italy has become should start with the form: it speaks by paid advertisement. And the advertisement is paid for by the company. The form, here, is already the whole of the content.

2. The principles stated are right. And that is precisely the point.

The appeal demands that criminal liability “be founded on the facts, on the conduct actually carried out, on the powers actually exercised and on the causal link, never on function alone”. Unimpeachable words. They are, to the letter, a description of what the judges did.

The conviction of Mauro Moretti for the Viareggio massacre — thirty-two dead, more than a hundred injured — is not an edict: it is a finding that passed through a first instance, two appeals and two judgments of the Court of Cassation, and that reconstructed specific choices, powers actually exercised, a reasoned causal link. One may dissent from that finding: the instrument is called an appeal, and it was exercised to the very end.

The appeal, note well, does not point to a page, a passage, a document in which the judgments supposedly convicted “for function alone”. It cannot: it would have to quote them, and the judgments say the opposite. It therefore does not defend a violated principle; it insinuates a fact — that four judicial panels applied what they declare they did not apply

— without taking on the burden of proving it. In a trial this has a name: assertion without proof. In the newspapers, evidently, it is enough to pay for its publication.

There is one serious argument in the appeal, and it deserves a head-on reply: the fear that foreseeability, at the summit of immense organisations, may be reconstructed with hindsight. But the judgment of negligence is, by construction, an *ex ante* judgment: it requires a precautionary rule that pre-exists the fact and risk signals legible beforehand — and the judgments had to identify them, not presume them, measuring them against the actual powers of those who could have organised safety and did not.

If, instead, the complexity of the organisation sufficed, by itself, to make the event unforeseeable for those who govern it, complexity would become a licence of unaccountability: the greater the power to organise, the lesser the duty to answer — the exact reverse of the principle by which power and responsibility walk together. That is why whoever delegates retains the duty to choose, to equip and to supervise. Hindsight is an objection for an appeal: it was raised, argued and adjudicated. Lost in the trial, it cannot be bought back in the newspapers.

3. The fraud of labels

Here is the point the academic signatories cannot ignore, because they teach it. Negligence — foreseeability and avoidability of the event, breach of a precautionary rule, the exigibility of the conduct due — is the category that criminal-law science built precisely as a bulwark against strict liability. It is the heart of Article 27 of the Constitution as the Constitutional Court has read it since judgment no. 364 of 1988: no punishment without culpability. And it is the ground on which the Joint Chambers, in the ThyssenKrupp case, fixed the criteria for judging — with rigour, not by position — the conduct of those at the top of complex organisations.

In the lecture hall, all this is taught as a conquest of civilisation. In the advertisement it is turned on its head: when the convicted man is the summit of the summits, the negligence that has been established is rebranded “liability by position”. The thing is given a new name in order to be rid of the thing: it is the most classic fraud of labels. But a category that works only when it acquits is no longer a scientific category. It is a service.

4. If they were consistent

Let us take the thesis seriously, to the very end. If every conviction for negligence of someone who governs a large organisation is, as such, liability “by position”, then the negligence of those at the top does not exist and cannot exist: no finding, however meticulous, would save it. Whoever believes this should have the courage of the consequences: let him openly propose the abolition of negligence liability for those who direct, organisational immunity by statute. It would be an enormous thesis, but an honest one, and it could be debated in the light of day.

None of the signatories proposes it, and none will. Because negligence must remain alive in the lecture hall — the textbooks, the courses, the teaching office are founded on it — and die in the courtroom, but only for certain defendants. The two theses do not stand together. It is one or the other: either negligence is a category, and then it applies to the powerful too; or it is a privilege, and then let there be the frankness to say so.

5. Interest dressed as principle

There is an old, and always instructive, way of reading these documents: look at who is speaking, and for whom. The appeal presents itself as a defence of universal principles — legal civilisation, the Constitution, the person. The signatures and the sponsor tell of a particular interest: that of those who fear the trials of business, endure them or defend against them. Among the signatories there is no shortage of professionals who assist, and will assist, the leaders of the Italian economy in the trials of tomorrow: their signature is not an opinion *pro veritate*, it is an anticipated defence brief, filed today for the clients of the day after tomorrow.

All legitimate. But everything must be called by its name: this is a party speaking, not legal doctrine. When the interest of the few succeeds in presenting itself as the principle of all, we are not before legal thought: we are before its ideological function.

6. One-way garantismo

Every day, in Italian courtrooms, doctors, site foremen, small businessmen, nameless officials are convicted of negligence under the very criteria the appeal denounces as barbarity — and for them no page comes out, no signature is mobilised, no conference is moved. A *garantismo* — the zeal for due-process guarantees — that wakes only once, when power is in the dock, and sleeps all the other times, is not *garantismo*: it is a privilege that has learned the lexicon of rights.

And since the appeal invokes the facts, let the facts speak: the only fault of position, at Viareggio, was to live in Via Ponchielli.

7. The void we mean to fill

We write because almost no one else can. The public voice of criminal law is by now spoken, in very large part, by jurists who defend economic power for a living; what is written here, for professional reasons, they cannot say. This collective — academics, lawyers, judges, public prosecutors — exists to fill that void. We have no pages to buy: we have the court records, and anyone can verify them.

We do not ask for exemplary punishments. We do not celebrate anyone's imprisonment. We ask for the one thing that Articles 3 and 27 of the Constitution, read together, demand: that the criminal law weigh the powerful and the unknown alike.

We do not ask for exemplary punishments. We ask for equal punishments.

whitecollarcrimes — a collective byline; guarantor: Avv. Luca Santa Maria

Join the counter-manifesto

The counter-manifesto is open to signatures. No page to buy: only your name, if you wish. Every signature is verified before it appears in the list; those who prefer not to expose themselves may choose a confidential signature, which is counted without the name being published. The email address serves only for verification: it will not be published or passed to third parties.