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Comparing Prison Systems

Toward a Comparative and International Penology

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To
the memory of my mother and father
Maria and *Rudolf Weiss Sr.*
RPW

my mother *Lily South*
and the memory of my father *Geoffrey South*
NS
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Chapter
SEVEN

The Country of Cesare Beccaria: The Myth of Rehabilitation in Italy

Vincenzo Ruggiero

This chapter is concerned with penal developments in Italy from the 1970s to the mid-l990s and addresses several themes. It critically examines the ideology of rehabilitation in Italy, notes important contradictions in Italian penal practice, law and judicial administration and, finally, it analyzes the institutional and material functions of imprisonment and the «carceral social zone» in Italy.

THE MYTH OF REHABILITATION

Every country nurtures national mythologies which allow the respective dominant cultures to feel at ease with their own inconsistencies. Think of the strong official rhetoric in France, which is based on the assumption that the country displays the ideal Republican division of power between the executive, the legislative and the judiciary. This mythology, which dates back to Montesquieu's time, keeps surviving even in the

recurrent periods when the predominance of the executive power in the country has suggested that France is governed by principles of «neo-Bonapartism». Or, take the example of Britain, where a dominant cultural presumption is that the country is the beacon of parliamentary democracy and the rule of law. The strength of this myth persists despite the criticisms of constitutional reformers, who rightly stress that half the British parliament (the House of Lords) is not elected by voters. Judges are appointed not by a democratic and transparent system but by «higher» authorities. As for magistrates, who lack any professional legal training, «their principal occupations may well be that of butcher, baker and candle-maker» (Mansfield, 1993: 207).

In the official rhetoric, Italy is the country of Cesare Beccaria; that is, the country of rational, non-vindictive, rehabilitative punishment. It is the country where imprisonment does not rest on retributivist but on consequentialist ideals. In other words, punishment in Italy is allegedly justified solely by its contingent, instrumental contribution to the resocialization of offenders (for a discussion of retributivism and consequentialism, see Duff and Garland, 1994).

Every country, in turn, attempts to preserve its national myths by means of more or less convoluted rationalizations which aim to neutralize the shortfall between its official self-image and reality. Similar to those «techniques of neutralization» commonly used by conventional criminals, these rationalizations help perpetuate the respective national mythologies. The Italian prison system can be examined against this convoluted backdrop, and its features regarded as the reflection of an intricate web of such rationalizations.

In this chapter I would like to suggest that punishment in Italy is the outcome of a rationalizing process in which the official myth of rehabilitation remains intact though penal practices keep contradicting it. The discussion of successive prison legislations is aimed to highlight such contradictions. Here, rehabilitation is treated as a «manifest» or official function of the prison system which hides a «latent» or operative function. In the final discussion, a brief attempt is made to unveil aspects of this latent function. But before engaging with the analysis, trends of imprisonment should be summarized.

The Capricious Use of Imprisonment

In June 1995 there were 50,339 prisoners in Italian institutions. This figure represented a 1.7 percent decline when compared to that of December 1994 and an 8.8 percent decline when compared with the figure of June 1994. About half the prison population was on remand and 4.7 percent were women (ISTAT, 1995). This decline followed an opposite trend which characterized the prison population between 1990 and 1994, when there was an increase from 25,931 to 55,220, respectively the lowest and highest figures in the history of the country. This capricious use of imprisonment in the country has been accounted for elsewhere (Pavarini, 1994a; Ruggiero, 1995) and its analysis will not be rehearsed here. However, one aspect deserving attention regards the types of offenders experiencing such anomalistic changes. For the last decade prisoners serving sentences less than two years have amounted to more than 80 percent of the total prison population. While the number of prisoners serving longer sentences remained virtually unaltered, it is this section of the population in custody which accounted for the intermittent drastic shifts referred to above. Even between 1985 and 1990, when the number of homicides rose considerably, prisoners serving long-term sentences remained virtually constant. «On the other hand, the bulk of the prison population upon which the changing social, legislative and judicial moods had a significant impact was formed by short-term prisoners» (Ruggiero, 1995: 48).

Are We All Reformers?

The recent history of the Italian prison system is marked by the year 1975, when new legislation came to fruition. This prison legislation was implemented in a situation characterized by concern for growing crime rates and, at the same time, distrust in the deterrent effect of custody. Overcrowding and unrest in most institutions were among the contingent reasons which made the reformist stance widely acceptable. Change to the previous prison system was also encouraged by the national association of judges and the Constitutional Court, with both arguing that prisoners should be released as soon as their rehabilitation had been achieved, rather than after their entire sentence had been served (Bruti Liberati, 1987). This proposition, which may have been prompted by the necessity to ease the management of overcrowded and volatile institutions, was also consistent with the enlightened principles put forward by Beccaria. According to the national father of penal reform, punishment per se is anathema, retribution is unacceptable and the only justification for imprisonment is the rehabilitation of offenders.

Judges, reform groups, scholars and jurists could hardly object to the prevailing reformist mood. Whether advocates of «just deserts», supporters of the Enlightenment or avowed positivists, they all felt comfortable with the principles inspiring the reform. Beccaria (1970) was not fully aware of how the abolition of the death penality would result in the increase of incarceration; nevertheless he regarded custody as «excessive», therefore as unjust, for a wide range of offenses. For example, he claimed that minor property offenses should only be punished with a fine, because theft was usually the outcome of misery and despair, a mere means of subsistence (Bonger, 1936; Melossi, 1990).

The new prison legislation in Italy was also consistent with utilitarian principles, which are also part of the legacy of the Enlightenment. Advocates of these principles favored reform because prison did not fulfil its role as a molder of disciplined, productive citizens. Moreover, because in the Italian context the «prison as factory» was hardly, and never had been, a realistic feature, even the mundane goal of making prisoners productive while serving a sentence could not be achieved. Prison, it was believed, did not mend the material damage caused by crime; on the contrary, it added to that damage by causing recidivism.

Finally, arguments in support of the reform legislation also came from the Italian positivist tradition. According to this tradition «therapy» aimed at individual rehabilitation and prevention, that is to say against recidivism, could often be more successful if carried out outside the prison walls (Ferri, 1929; Sighele, 1911; Ellero, 1879). Many neo-positivists would also argue that rehabilitation itself was among the most important elements which could guarantee public protection, as identified in the notion of «social defence».

Advocates of prison reform in Italy, therefore, did not need to mobilize critical or radical ideals in support of their argument. Drawing on traditional penology, most jurists, scholars and pressure groups endorsed the argument that custody had to be reformed and only used as a last resort. The Italian constitution, in turn, makes it very

clear that imprisonment, although a last resort, is not to be intended as punishment in itself, not as a vindictive measure which makes up for the offence committed (Padovani, 1990). Pure retribution is unconstitutional: Custody must lead to rehabilitation. If it does not, it has no rationale or justification.

At Odds with International Trends

One specific feature of the recent history of Italian culture of punishment is immediately apparent. This is that, unlike in other Western countries, consequentialist (reformative, rehabilitative) ideas were never completely abandoned while retributivist ideas were never actually revived, at least not officially. It has been noted that the retributivist revival, commonly associated will the decline of rehabilitative ideals during the course of the 1970s, was due among other things to the perceived failure of alternative penal treatment of offenders and a widespread pessimism in relation to reformative penality (Duff and Garland, 1994; Bottoms and Preston, 1980; von Hirsch, 1985; Hudson 1987). Disillusionment was also caused by the intrinsic limitedness of rehabilitative programs, which could only target a minority of the offending population and therefore had no deterrent effect on non-apprehended criminals. In the USA the decline of rehabilitative penality resulted in the abandonment of open sentences geared to the treatment and resocialization of offenders, and an increasing revival of «just deserts» ideas, along with the development of a fixed tariff for the punishment of offences.

In contrast, the Italian penal system taking shape in the 1970s introduced forms of differential treatment and some elements echoing indeterminate sentences. These will be briefly described later. What needs stressing here is how the official culture of punishment found it difficult to participate in the revival of retributivism, engaged as it was in the attempt to perpetuate the rehabilitative myth. The elements of flexibility and indeterminacy introduced in Italy were not deemed inconsistent with rehabilitation, even though in many cases they translated into harsher punishment. It should be noted that the official rejection of retribution in Italy gained particular strength during the post-war period, when the Constitution was drafted. The notion that punishment should pursue the rehabilitation of offenders was never officially discarded, not even in 1946, when the Italian prison institutions held thousands of «fascist delinquents» who, according to large sectors of the public opinion, would indeed have deserved some ruthless form of retribution (Neppi Modona, 1973).

Both the tradition of the Enlightenment and that of positivism, as briefly discussed above, emphasized the role of social re-education and individual therapy respectively, though the latter tradition may have endorsed longer sentences when those in custody showed no sign of benefiting from the «therapy» received. Nevertheless, both traditions found idealistic philosophies of punishment and retribution, identifiable with the thoughts of Kant and Hegel, unacceptable. According to Kant, for example, punishment should not perform any general deterrent function, nor should it be intended as a means for the resocialization of detainees (Kant, 1963; Eusebi, 1989; Gallo and Ruggiero, 1991). In his argument, punishment is not a tool but a goal, a view which contains a strong anti-utilitarian concept. People, Kant argues, cannot be «utilized»; human beings are not to be treated as a means for the achievement of secondary goals. Thus punishment is not a means for rehabilitation: The offenders are punished *because* they have committed a crime. Similarly, according to Hegel, offenders «have a right» to be punished, in that they are, with punishment, honored as rational beings (Hegel, 1949).

The official rejection of these philosophies did not result in a genuine rejection of retributivist practices. The Italian participation in the international punitive mood assumed specific traits which cannot be understood without bearing the myth of rehabilitation in mind. For example, just two months before the prison reform of 1975 was implemented, a new piece of legislation was introduced which increased police powers to stop, search, raid, detain and question suspects in the absence of legal representation (Bricola, 1975; Canosa, 1976; Rinaldi, 1987). This new legislation, known as *Legge Reale,* neutralized the effects of the decarceration process slowly initiated by the subsequent prison reform, and increased the number of individuals being processed through the criminal justice and prison systems. This explains the paradox whereby during the 1970s both decarceration and incarceration increased in the country (Ministero di Grazia e Giustizia, 1993). More prisoners were released for non-custodial treatment than ever before in the past, but at the same time more new prisoners were brought in. The most important aspect of this dynamic was that the new prisoners could not benefit from alternatives to custody because they were on remand. In other words, while forms of rehabilitation for sentenced prisoners were implemented through increased contacts with the external society, *de facto* retribution was inflicted upon remand prisoners through the denial of such contacts. Individuals never found guilty by the judiciary were being punished thanks to increased and harsher police activity. I shall return later to this specific aspect of the Italian prison system, when it will become clear that punishment is increasingly escaping the constitutional control of the judiciary. In the next sections, my concern is with the shifting of power in the penal system from the judiciary to the administrators.

Shifting Powers

The joint implementation of the prison and the law and order legislations described above allowed for the official myth of rehabilitation to be perpetuated. This amounted to a technique of neutralization of the type defined earlier, and consisted of a shift of power between some of the actors playing a role in the criminal justice process. In the example just provided the police, prison administrations and the judiciary were all affected by the shift caused by the new law and order legislation. In turn, the prison reform of 1975, and subsequent new legislation introduced in 1981 and 1986, determined a redistribution of power among the specific actors involved in the very process of punishment, namely the judiciary and prison administrations.

The legislation passed in 1975 constituted a rupture with the past for its emphasis on rehabilitative treatment both within and outside the prison institution. However, while the right to be treated outside the prison walls was legally established, little effort was made to equip outside rehabilitative agencies with the necessary means to perform their task (Neppi Modona, 1976). The legislation passed in 1981 and 1986 slightly improved this crucial aspect by clarifying the technical procedures governing rehabilitation in the community. The involvement of local authorities, for example, became central, a circumstance which contributed to the affirmation of an important principle. This is that offenders had to be regarded as needy individuals, as clients of the local welfare system like other vulnerable and needy individuals such as the homeless, the unemployed, children or single mothers. It is beyond the scope of this chapter to discuss in detail the

norms and articles of successive prison legislation. It must suffice for me to summarize the spirit, along with the main provisions, of these legislative developments and their relationship with the official rhetoric centred on rehabilitation.

In Italy, alternatives to custody can completely divert offenders from the prison system on the one hand, and can be applied while offenders are already serving a sentence on the other. While the first types of alternatives are ruled by courts hearing specific cases and dealing with individual defendants, the second types are formally ruled by judges who are in charge of prison supervision (Padovani, 1990; Ruggiero, 1995). These judges base their decisions on reports drafted by prison governors and staff, who are required to conduct «scientific» observation of prisoners' behavior and entitled to single out those deserving non-custodial treatment. Therefore, all decisions related to probation (granted to serving prisoners), day release, permission to leave, house arrest and so on, are ultimately taken by prison personnel, who lack the training and expertise that «scientific» observation of behavior would actually require. But more crucially, these decisions are taken, as it were, by the wrong constitutional power, namely by the executive. Let us examine this point.

Although officially revolving around the constitutional concept of rehabilitation, prison reform raises important problems in relation to the redistribution of power which underlies it. First, the supervision of the prison regime, and all decisions regarding the treatment of prisoners and their resocialization, should be the prerogative of the judiciary. The interference of the prison administration in these matters can be regarded as illegitimate, the prison staff being employed by government, therefore by the executive power. Second, in differentiating between deserving and undeserving prisoners the new laws indirectly endorse a notion of dangerousness which designates the personality, life-style and potential behavior of prisoners who cannot be granted alternative treatment. These prisoners are therefore punished before they commit a crime, or rather because they can potentially commit a crime. This is at odds with the constitutional principle whereby only concrete illegal acts can be penalized: *nulla poena sine crime* (Ferrajoli, 1989). Finally, the current legislation paradoxically contributes to the deterioration of the prison condition of those who do not benefit from non-custodial measures. Because these measures are selective and strictly granted *ad hominem*, any bargaining power that the incarcerated prison population may have, as a whole, tends to decrease. As a consequence prisoners who are not given alternative treatment (e.g., non-custodial sentences) may be seen as unworthy of any effort to improve their personal condition (whether in terms of rehabilitation or simple comfort) while in custody. This contravenes the principle of equal treatment of prisoners stipulated by the Italian constitution.

The shift of power caused by the successive prison legislations, from the judiciary to prison administrations, was accompanied by amendments to the criminal code which increased penalties for a number of offenses. In this way, for example, statutory sentences regarding some offenses would exceed the limit within which non-custodial punishment could be given, with the consequent reduction of the power of judges to divert offenders from the prison system (Ruggiero, 1995). Finally, the redistribution of power also involved other prison professionals such as social workers, psychologists and probation officers. These professionals, traditionally employed by local authorities, increasingly became absorbed within the staff of central government, particularly the Ministry of the Interior, which also presides over issues of law and order. The co-existence of these two types of prison professionals is a constant matter for dispute, with those employed by the Ministry of the Interior expressing frustration for the «military» apparatus and management under which they are required to operate (Ciardiello, 1995). Moreover, should not the judiciary, rather than the agencies presiding over law and order issues, be charged with the constitutional running of prison institutions?

Zero-Sum Legislations

The notion of dangerousness allows for the suspension of the rehabilitative creed. The Italian prison legislation uses this underdefined category in order to select offenders and, at the same time, to hide its own inconsistency. Dangerousness allows, in other words, for the adoption of another technique of neutralization. It has been noted that definitions of dangerousness are as problematic as predictions of recidivism. Decisions over the dangerousness of offenders and their likelihood to reoffend offer the same probability of success as do decisions taken by «tossing a coin» (Bandini, 1987). This is one of the reasons why the concept of dangerousness was abandoned when the psychiatric reform, resulting in the closure of mental homes, was introduced in Italy in 1976. However; within the prison context, this concept was translated into that of selective incapacitation which, according to Italian legislators, was not inconsistent with the rehabilitative spirit in which the prison reform was designed.

The relationship between incapacitation and crime rates is far from clear, in Italy as elsewhere (Haapanen, 1990; Zimring and Hawkins, 1995). In fact, what seems to be clear in Italian penal policy is the paradox whereby campaigns against specific offenders deserving incapacitation turn into increased penalties for either those who are not the target of these campaigns or offenders in general (Pavarini, 1994a; Ruggiero, 1995). «Faith rather than measurement is now, as throughout penal history, the engine for current reliance on general incapacitation in penal policy» (Zimring and Hawkins, 1995: 74). However, it is the specific translation of the concept of incapacitation into that of «social defence» which seems to grant its acceptability in the Italian context. Social defence, in its turn, does not exclude an element, if vague, of rehabilitation, as will become clear in the discussion that follows.

Article 90 of the prison legislation introduced in 1975 became notorious in the eyes of most Italian reformers. With this article legislators had intended to warn that punishment in the community and other alternative measures were not to be regarded as part of an irreversible decarceration process. Article 90 denied what all other articles of the prison law seemed to affirm, as it stipulated that rehabilitative and resocializing treatment be interrupted when security concerns prevailed. Security became the key notion which could guarantee but at the same time suspend prisoners' rights. This one article of the law encapsulated the possibility of annulling the whole law of which it was a part along with its rehabilitative underpinning (Pavarini, 1994b). Article 90 could be invoked «in exceptionally serious circumstances related to order and security, when the rules of treatment must be partly or wholly suspended» (Pavarini, 1994b: 214). But these «exceptionally serious circumstances» came to be seen less as contingent than as permanent when political prisoners began to fill Italian institutions in the second half of the 1970s. Article 90 could only apply for a limited period of time, normally three months, but could be extended if prison administrations expressed persistent security concerns. The suspension of rehabilitative treatment regarded individual prison institutions rather than individual prisoners, and consisted of censorship on

correspondence, high surveillance on visitors, the limitation of collective internal activities and the banning of all resocializing external activities.

It is against this background that high security prisons were established. The specific «emergency» that gave rise to these special institutions was, in the mid-1970s, the surge of armed forms of struggle from the Left. These forms of struggle were the continuation, if extreme, of widespread social conflicts, with more than 200 clandestine armed groups operating in Italy during the 1970s (Curcio, 1993; Ruggiero, 1993; Moretti, 1994). Between the late 1970s and the mid-1980s more than 20,000 «political offenders» were processed in one way or another through the criminal justice system. The top figure regarding political prisoners of the Left was reached in 1983, when they accounted for about 4,000. The political activists who were processed through the criminal justice system in Italy were faced with an apparatus which, according to many commentators, was reminiscent of the Holy Inquisition. Emergency laws, which were introduced immediately after the prison legislation, were based on a somewhat medieval «philosophy of suspicion». The courts were less interested in establishing the judicial truth than they were in condemning political beliefs and ascertaining indirect rather than personal responsibilities. Arrests would be made on the basis of the physical contiguity or the political similarity of those arrested with those in prison. An example: Imprisonment could easily become the institutional response to those who were too deeply involved in prison reform campaigning, as the very choice of this field of political activity came to be seen as suggestive of the dangerousness of those involved.

«Social defence», a notion mobilized against the emergence of political armed struggle, did not annul the rehabilitative- element included in the prison legislation. In the official rhetoric even political prisoners could be «rehabilitated», provided that they distanced themselves from their past, or reported their associates to the authorities (Ruggiero, 1993). In these cases, of course, there was no longer need for society to «defend itself». Differential treatment and flexibility became the rationalizations of a system falling short of its own officially-stated principles. However, political prisoners only represented one of the «emergencies» allowing for such rationalizations, as in years to come they were to be followed by drug traffickers and members of organized crime.

Social defence, dangerousness and differential treatment survived throughout the 1980s and l990s and within the different prison legislations. Currently, although some prison establishments are still regarded, at least by prisoners, as high security institutions, the official definition of «security» does not apply to specific prison establishments, but rather to specific prisoners. In other words, prisoners whose rehabilitative program has been halted bring their «special» condition of imprisonment with them when transferred to other institutions. On the other hand, each prison now includes a high security unit where the ideals of rehabilitation are suspended. Those held in such units are commonly those who have undergone disciplinary sanctions while serving a sentence, or have in some way threatened the smooth running of the institution and caused problems to order and security.

A piece of legislation introduced in 1986 abolished Article 90, though it stipulated that strict surveillance rather than rehabilitation be applied to: (a) those who jeopardize security and upset order in the institution; (b) those who, through threats and violence, hamper the rehabilitative activities of other prisoners; (c) those who establish a climate of subjugation among other prisoners. While these categories are vaguely defined and are subject to discretionary interpretation by prison governors, a final category of prisoners for whom rehabilitation programs are not deemed viable is instead very clearly identified. This category includes offenders who have shown little willingness to be «rehabilitated» while serving previous prison sentences, irrespective of the offence committed. Arguably, this category is designed to penalize inmates who have been particularly active in internal struggles for prisoners' rights or have been involved in disturbances.

The notion of dangerousness underpinning special or «particular» forms of surveillance is not based on the perceived likelihood that prisoners will reoffend. In other words, it is not embedded in the belief in individual deterrence: Dangerousness is referred to the behavior adopted within the prison institution, irrespective of recidivism (Pavarini, 1994b). Again, it should be noted that decisions regarding special or particular surveillance on prisoners are taken by prison administrations, who inform the relevant supervising judge from whom they invariably receive permission for their decisions. There is, however, a summary procedure, under emergency circumstances, whereby prison administrations are allowed to press ahead with special surveillance of prisoners, and advise judges afterwards. However, the definition of «emergency circumstances» is itself arbitrary, and therefore attracts widespread criticism.

Although these practices could be described as anti-constitutional forms of «punishment inflicted within punishment», they do not fail to find justification in the official rhetoric. It is stressed that if we want to safeguard the general principles of rehabilitation, we also have to identify specific cases in which rehabilitation is unlikely to work. In other words, the proper treatment of some depends on the ill-treatment of others, and the survival of constitutional forms of punishment requires the occasional denial of constitutional principles themselves. This argument echoes similar views aired by supporters of the death penalty in the USA, where taking the life of murderers is presented as the best way to demonstrate respect for human life. Nevertheless, it should be obvious by now that public debate over the possibility of reintroducing the death penalty, while in Italy was abolished with the defeat of fascism, would cause too much embarrassment and would require an overt rejection of the rehabilitative ideals that legislators could not afford.

That these ideals of rehabilitation belong to the national mythology became even more clear when new rules for the treatment of offenders allegedly involved in organized criminal activity were introduced. This new emergency legislation was geared to the nature of offenses rather than to the personality of offenders, and unlike the example provided above, it ruled the suspension of rehabilitative treatment on the basis of individual behavior outside rather than inside the prison institution. Introduced in 1~91, the new rules identified specific categories of offenders who could not be rehabilitated except in extraordinary circumstances (Mosconi, 1991). Drug traffickers and extortionists were among the categories of offenders identified, in other words offenders who, in the official wisdom, are typically associated with the Mafia.

According to these rules, which are still in operation, non-custodial alternatives can be granted to alleged members of organized crime only after the police and customs issue favourable reports regarding them. These reports have to assess the dangerousness of offenders and ascertain whether or not they have severed contact with the organized criminal group with which they were previously associated. Again, this procedure is at odds with the constitutional division of powers, in that prison regimes become dependent on decisions made by enforcement agencies rather than by the judiciary.

The final blow to the rehabilitative myth was dealt by legislators when, within the

emergency rules discussed above, the new category of «collaborator» was introduced. This category designates offenders who provide detailed information that can be used for the prosecution of members of organized crime, and also includes those who have committed serious offenses such as murder. These «repented» members of organized criminal groups (968 in 1994) have access to rehabilitation programs and non-custodial alternatives (La Stampa, September 6, 1995).

This is the most controversial piece of legislation introduced in Italy over the last 20 years, because it ends up only benefiting those who occupy the high ranks of organized crime, who are in a position to provide relevant information about their associates and the overall structure of the criminal groups of which they are a part. In contrast, so-called «soldiers» of criminal organizations, who are unable to provide such information and often ignore the identity of their «officers», are denied rehabilitative treatment. It should not sound surprising that even in the face of such an unjust piece of legislation, the official rhetoric still invokes Beccarian mythologies, as turncoats and «supergrasses» are publicly described as the epitome of successful rehabilitation.

The Drug Crisis

Before 1982 the use of illicit drugs was not criminalized, and only supply brought a prison sentence. Users were dealt with by administrative courts and encouraged to undergo some form of therapeutic rehabilitation outside the prison system. In 1982 all this changed, as users were no longer encouraged but obliged to undergo therapeutic treatment if they intended to avoid custodial punishment. Processed through the criminal justice system, they could be given house arrest or supervision in the community if they volunteered to attend therapeutic agencies or residential communities. In 1986 the therapeutic choice was dramatically reduced for «recidivists», in the sense that users convicted for the third time could no longer opt for therapy but would incur imprisonment (Solivetti, 1994).

The harsher legislation of 1986 reflected the international war on drugs led by the Bush administration, but was also the result of increasing public alarm over the involvement of organized crime in the production and trafficking of illicit substances (Ruggiero, 1992; Ruggiero and South, 1995). However, the social panic fed by traffickers resulted in more users and small dealers being incarcerated (Ruggiero, 1995). This caused a dramatic congestion of the prison system, with about 30 percent of the prison population being officially described as drug addicts. As for the therapeutic option offered to users charged with an offence, reality soon belied theory. First, users with short sentences may discard therapeutic communities, which they perceive as being as punitive as custody. Moreover, if they face relatively short sentences, they may not bother to apply for therapeutic treatment outside the prison system because by the time their application is processed their sentence may have been fully served. Second, those who predict that their drug using career will continue may calculate that it is unwise to blow the opportunity of non-custodial treatment, from which they can only benefit twice, and may prefer therefore to serve a custodial sentence, while saving therapy for the future. Third, those who are willing to accept rehabilitation m therapeutic communities may just find out that all places in such communities are taken.

As mentioned above, almost one-third of Italian prisoners are described as habitual drug users, while about 10% are HIV positive (Accattatis, 1995; Ruggiero, 1995). According to the prison legislation the «right to health» should be guaranteed in every institution, therefore harm reduction strategies adopted outside should also be available in prison. The debate over the distribution of syringes and condoms in prison is currently very heated, with officers opposing the former for «security» reasons (they fear that prisoners would attack them with blood-stained needles), and some prisoners rejecting the latter for fear of being labeled and consequently bullied as homosexuals (Maisto, 1995). That prisons are not the ideal place for individuals suffering from serious health problems was stipulated by the Italian High Court (Corte Costituzionale) in 1994, when it was established that all HIV-positive prisoners, both convicted and on remand, should be released (Maisto, 1995). Inevitably, sections of public opinion and the media reacted to this by arguing that gangs of HIV-positive criminals would soon roam the streets and perpetrate offenses which, statutorily, could not be prosecuted. Two «AIDS-gangs» are said to be already in operation in Turin, where perpetrators are stigmatized for wanting to live «high» the last years of their life by raiding banks (La Stampa, August 26, 1995; La Stampa, September 16, 1995).

The Extremes of Differential Treatment

In 1994, the prison population in Italy reached 55,000, a record figure in the recent history of the country, and a figure which is double the official capacity of all custodial institutions (Cascini 1994). About 20 percent were non-nationals, with the majority of these being citizens of African countries (Ministero di Grazia e Giustizia, 1993). The rate of imprisonment of minorities is all the more striking when we consider that non-nationals only form about 2 percent of the total population.

Sections of Italian public opinion would associate immigrants with illegal drug trafficking and dealing, thus sharing a stereotype which is also prevalent in other European countries. That this is indeed a stereotype is shown by official statistics indicating that only 20 percent of non-nationals are serving a sentence for drug offenses. The high percentage of minorities in Italian prison institutions should be explained, by looking at a number of cumulative disadvantages that they experience both within and outside the criminal justice process. For example, estimates suggest that half non-nationals are «illegal» immigrants, as they overstay after their visa has expired. Their «illegal» status renders them vulnerable both in the face of employers and in that of the police. If arrested, they have poor legal representation and end up being penalized more harshly than their Italian counterparts (Cottino et al., 1994). Once in prison, they find it harder to benefit from pre-release and other non-custodial forms of treatment. Day release for work, for example, is granted to those who can rely on networks of acquaintances, friends and relatives outside. Minority prisoners can hardly rely on such networks, and many may even ignore the existence of charitable organizations which could support their application for work outside.

Similar disadvantages are experienced by women prisoners, who form about 4 percent of the total prison population (Campelli et al., 1992). About 45 percent of them are serving sentences up to three years, and 75 percent are officially defined as drug addicts. Although the type of offence and the relatively short sentences would suggest that women are in a good position to be granted some forms of alternative punishment, the reality is that this is more difficult to obtain for women than it is for men. Explanations of this incongruence vary, and include suggestions that perhaps women,

in particular women drug offenders, are more stigmatized than their male counterparts. It may also be the case that the lifestyle and social condition of women offenders is regarded as less «amenable» to rehabilitation, because the majority of women in prison are more economically disadvantaged than male prisoners, and because they often lack support from family members, partners, friends and agencies which could facilitate their rehabilitation in the community (Ruggiero, 1995).

Women and minorities occupy one of the extremes of differential prison treatment in Italy, a condition which they share with other vulnerable prisoners whose lifestyles makes them «untrustworthy». Take the example of younger offenders, who are usually single and are therefore deemed more unreliable. Because it is assumed that they bear no responsibility for dependants and that theirs is an «irregular» and unpredictable conduct, «young first-time offenders may be treated worse than consummate recidivists» (Ruggiero, 1995: 63). An example of the other extreme of differential treatment, which indeed concerns «consummate recidivists», is provided by corrupt politicians who began to experience Italian prisons in the early 1990s. Most of these are released after a brief «taste» of imprisonment as their social dangerousness is deemed negligible. A new piece of legislation passed in August 1995 stipulated that for all offenses which bring sentences of less than four years, remand in custody could be reduced to one month. All politicians were released, amid sensational protests from other prisoners and their relatives, including clashes between the police and prisoners' wives in Naples (La Repubblica, August 4, 1995).

Ironically, this new legislation on remand permitting the release of corrupt politicians and businessmen was also the result of long-standing pressure from prison reform groups and prisoners' organizations. Given that almost half the prison population in Italy was on remand, it was suggested that entire sectors of the judicial process were in danger of disappearing. Let us explain why. The trial was no longer ascertaining guilt and determining sentences, because both processes were in fact carried out before the trial itself took place. The phenomenally high percentage of prisoners on remand indicated the enormous power wielded by investigative judges who, pending court hearing, could decide whether a defendant could be released and when. This practice of punishing defendants «in advance» ran parallel with the decline of the power of courts, which were often faced with cases already dealt with, and with defendants already «punished», by investigative judges. The final pronunciation of guilt and the determination of the appropriate penalty were becoming redundant: The trial itself no longer existed (Fassone, 1994).

INSTITUTIONAL AND MATERIAL FUNCTIONS OF IMPRISONMENT

The Italian prison system is characterized by a high degree of differentiation and flexibility, whereby elements of rehabilitation coexist with elements of retribution. I have tried to show how these two sets of elements are interconnected, and how the recourse to retribution for some is commonly justified as the price to pay if rehabilitation for others is to be pursued. This paradox is part of the effort made by official commentators to preserve an image of the prison system based on Beccarian principles. The prison system as described above is the result of an ideological reconciliation of punishment within a tradition in which the word punishment itself is officially banned. I have mentioned how the concept of dangerousness is utilized in such an ideological fashion and how it feeds the myth of rehabilitation even in the face of «special» forms of prison treatment. In the remaining part of this chapter I would like to develop the analysis of flexibility and the coexistence of rehabilitation and «special» treatment further. Leaving aside the official interpretations of punishment, this final discussion will focus on the its latent function. This analysis relates to the debate engaged in Italy during the course of the 1970s, when the first high security units for prisoners were established. The replacement of high security units with «special» surveillance and treatment does not make that debate obsolete, rather it makes it a useful starting point for the analysis of the current prison situation.

Broadly distinguishing critical approaches to the analysis of punishment, two extreme positions can be observed: the former emphasizes the institutional function of imprisonment, while the latter emphasizes its *material function*. The first is embedded in the notion of retribution and, in its extreme manifestations, presides over the destruction of bodies. The second pertains to the productive use of bodies. Of course, analyses adopting a mixed approach to punishment are numerous, but it may be important here to focus on these two extreme positions and regard them as ideal-typical. In order to locate this debate, reference must be made to two classics of the respective approaches: Rusche and Kirchheimer on the one hand, Michel Foucault on the other. According to Rusche and Kirchheimer, both individual and the general deterrence pertain to the *material* sphere of society and are addressed to the classes which are the potential clientele of the prison system. The treatment of offenders, in other words, is to be analyzed against the background of the productive process and the labor market. Therefore, during depressions and with a labor surplus, there is a lowering of salaries and a correspondent deterioration of prison conditions. Ideally, this surplus labor should be destroyed, as should other commodities whose availability on the market is excessive. Consequently, the prison population, which is a sector of the surplus labor force, can also be destroyed. Prison conditions become more severe because they must be less eligible than the worst possible condition outside (Rusche and Kirchheimer, 1939). Conversely, in periods when the commodity of labor is scarce, its reproduction becomes of crucial importance for the productive process, and as a consequence prison conditions will improve. Even offenders, in such circumstances, will be «persuaded» to become productive.

On the other hand, according to what I define as the institutional approach, typified by the work of Foucault, prison constitutes the emblem of the modern disciplinary universe; it is a metaphor which is less addressed to prisoners themselves than to society as a whole. Foucault's analysis of the Panopticon is widely known, but it is worth revisiting in order to locate his argument within what I have artificially characterized as an institutional approach. The major effect of the Panopticon, in Foucault's view, is «to induce in the inmate a state of conscious and permanent visibility that assures the automatic functioning of power» (1977: 201). Surveillance must be permanent in its effects, even though it can be discontinuous in its actions: Power should tend to make its own actual exercise unnecessary, while rendering itself independent of those who exercise it. Let us identify one aspect of Foucault's thinking that helps our analysis.

A two-way current is set up between dominators and dominated. That is, there exists an interaction between the two poles of the disciplinary universe, without which the mechanism itself could not function. This principle is already present in Bentham's architectural-institutional paradigm, in which a certain arrangement of space is expected to induce an internalization of power and norms: Self-discipline is expected to lead to

the self-management of norms. Coercion, ideally, should be exercised by prisoners on themselves. This metaphor aims to describe and explore the «much wider (and more contemporary) theme of how domination is achieved and individuals are socially constructed in the modern world» (Garland, 1990: 134). To establish whether this is achieved by means of physical violence or by the manipulation of the mind is otiose, the focus of Foucault's argument being the subjects to whom this metaphor is directed rather than the more or less brutal forms of coercion addressed to them. To Foucault, the clientele of prison is not simply formed by citizens as productive beings, but by citizens as citizens, therefore as emotional, social, sexual beings who interact with the institutions, with one another and with their own «knowledge». These beings do not only occupy a position in the productive process, but also in the power diagram which holds society together.

When high security institutions were first created in the mid-1970s in Italy, many wondered where this «anomalous» form of punishment came from. How could diverse forms of treatment and unequal intensities of punishment coexist in the same prison system? And what was the purpose of such an overt bypassing of the constitutional principle of equal treatment of all offenders carried out by the very supporters of the constitution?

The analytical responses to these dilemmas covered a wide range of the political spectrum. According to some groups of political prisoners on the Left, the rationale of maximum security institutions was only accountable for in terms of political warfare. Prison performed a strictly institutional function. The new regime, in its most brutal manifestation, was prompted by purely military necessity — the state had to destroy its armed enemies. In this view, the existence of a military machinery of punishment within legality testified to a social war in progress (Collettivo Prigionieri Politici, 1978; 1983).

In the opinion of some moderate scholars, high security prisons, despite their outstanding destructive overtones, were to be interpreted in the context of a so-called period of emergency. When social unrest subsides, it was suggested, more congruent forms of punishment based on Beccarian principles would once again be adequately devised (Magistratura Democratica, 1979). Again, this interpretation emphasized the institutional aspects of imprisonment, and omitted the consideration of any relationship between punishment and the economic sphere.

According to some socialist commentators, on the other hand, the high security model represented a major tendency towards the development of unreformable prisons, a hard-core of «institutional abduction» (Pavarini, 1986). In their opinion, other forms of control were operating simultaneously, based on ethnic segregation, cultural and social isolation, which made «soft» forms of punishment redundant (Melossi, 1980). In this view all prisons were destined to become high security establishments, their *institutional function,* associated with the destruction of prisoners, being tendentially prevailing in all Western penal systems.

The much discussed concept of bifurcation also gained some attention in this debate. This concept was introduced in Italy when the political movements of the Left reached their peak (Melossi and Pavarini, 1977). In the Italian context, particularly harsh sentences were imposed either upon members of armed political groups or members of organized crime, while a relatively reduced severity, or even decarceration, was the response to other offenses. The persistence of the former types of offenders, however, allowed this apparent bifurcation to exist, though the very same prisoners could experience both harsh and lenient punishment depending on their «behavioral career» as prisoners. Contrary to the analysis of Bottoms (1977), it became clear that bifurcation did not describe a characteristic trait of the prison system vis-à-vis two different types of offenders, but rather a dual possibility faced by all offenders. I shall return to this point.

According to successive specifications, it is inappropriate to draw a neat line between harshness and leniency, with the first characterizing punishment for serious offenders and the second treatment of «ordinary» offenders. Trends observed in many European countries indicate that the latter are met with increasing degrees of severity, even though they are punished in the «community» (Hudson, 1993). Disciplinary aspects and the emphasis on surveillance are becoming inescapable traits of «alternative» penalties to the point that the very survival of non-custodial alternatives could be put in danger if these traits were to disappear (Ruggiero et al., 1995). However, this analysis also seems to center on purely *institutional aspects* of punishment, focused as it is on the intensity of pain delivered by the penal system, whether in closed or in open environments. In this analysis one cannot avoid detecting a very orthodox view of the state, whereby the central locus of control resides in paramilitary institutions such as the prison system and the police, with both devoted to the management and repression of the «working class». This argument fails to consider the segmentation, competition and the diverse forms of identity which are found within the «working class», and overlooks how these are constituted by many forms of internal, and even internalized, social control. Moreover, while implicitly evoking Marxism, this analysis leaves aside a central Marxist concept, namely that the strongest source of social control in our society is to be found in the wage relationship itself (van Krieken, 1991). The power of penal and social control outside the prison walls is not to be forgotten.

THE CARCERAL SOCIAL ZONE

I have mentioned that analyses of punishment which utilize a mixed approach—that is, analyses which emphasize both institutional and material functions—are numerous. I would like to pursue this further. *The contemporary prison system in Italy can be identified as a synthesis of both the institutional and the material function.* Although the former seems to be prevailing, the latter is far from having become redundant. The institutional function is undergoing a technical evolution and manifests itself in the metaphorical annihilation of those prisoners who are deemed impervious to treatment. The material function, in turn, is also undergoing wide modification. We can still employ the term «material» because it conjures up a notion of productivity, but suggest that it should not be assimilated to the notion of the workhouse nor with that of «prison as factory» of early capitalism. Prisoners' work and exploitation are mainly to be found beyond the prison walls, notably in those social areas where marginalized activities and precarious jobs intermingle with overtly illegal activities. We could term these areas the *carceral social zone* to which a variety of forms of control and punishment are addressed, including, when softer forms prove unsuccessful, the threat of maximum security confinement and the consequent physical and mental destruction. In such a system, the general and individual deterrent roles of punishment are not only directed to highly politicized prisoners or to serious offenders but to the marginalized, underemployed and unemployed populations which characterize contemporary societies. One should consider that the different degrees of severity which inform the

prison system are organized in a continuum rather than set in a bifurcation. Lenient punishments, in other words, can evolve into increasingly harsh ones when prisoners refuse to conform. The rationale of leniency, therefore, cannot be understood if it is divorced from the existence of severity. It is the combination of the two, or rather the potential use of different degrees of leniency and harshness, which constitute the synthesis between institutional and material functions of imprisonment.

As for the material function of imprisonment itself, this is now addressed to the precarious labor force, namely that *carceral social zone* identified above which hosts the marginalized, the underemployed, the occasional workers, the petty criminals and all others whose lifestyle and economic activity straddle legality and illegality. This section of the population is «trained» to **???** the carceral social zone like its counterpart in the **???** «trained» to the discipline of industrialism. Prison **???** at lowering their social expectations, an aspect which **???** to the notion of rehabilitation. Leaving aside Beccarian **???** the techniques of neutralization which attempt to revive **???** are deemed rehabilitated when they accept to stay **???** specific sector of the working class which inhabits the social carceral zone. To mobilize overarching definitions such as «the working class» is to miss an important distinction. Ironically, one is regarded as rehabilitated when one accepts to work in precarious activities, in underpaid jobs, and last but not least, by implication, in the criminal economy. Of course, to accept this analysis implies the consideration of crime as one of the other occupational options available to this specific sector of the working class (Ruggiero and South, 1995).

In conclusion, this interpretation is consistent with the existence, in Italy and elsewhere, of a large labor force involved in casual work and/or in illegal economic activities. This «criminal labor force», and the adjacent marginalized labor force, constitute the «repository» of the prison population, the human reserve upon which custody, with its diverse degrees of harshness and rehabilitative rhetoric, projects its shadow.

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