

Between Prison and Society: Evolution and Social Function of Custodial Punishment

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Abstract: If on the one hand the evolution of the Italian sanctioning system has contributed to shifting attention from the criminal “fact” to the evaluation of the “person” to be punished, on the other it has also determined a change in the very concept of detention institution. Indeed, without any doubt, the historical-social evolution has influenced both the function of the penalty and the techniques used to punish the perpetrator of a crime. The transition from corporal punishments to prison sentences and up to alternative punishments, has accelerated the historical process that no longer placed the torture of the prisoner, physical suffering and punishment at the centre of the sentence, but replaced them with the *humanization of the penalty*. However, it took years to embrace the awareness that making a sentence human does not only mean avoiding corporal punishment, but reasoning about the limits and consequences of forced internment without any aim of social reintegration.

Key words: detention; imprisonment; society; punishment; resocialization

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1. The Punitive Control of the Prison

The last decades of the 20th century and in the very first years of the 2000s, saw a general increase in prisoners in Europe. A superficial analysis could suggest that in countries with an increase in prisons also have an increase in crime rate, and that on the other hand, in countries where this increase is weakening, the delinquency level decreases as well.

Logic would therefore have it that the increase in the number of inmates — a phenomenon that should be closely connected to both the increase in crime and the increase in delinquency — reflects an increase of criminality. If this were not the case, it would become difficult to give plausible explanations for this trend and it would probably become convenient to resume the theory according to which society and the policies it delivers manipulate the fluctuations within the prison institution based on the needs linked to the economic context.

However, it should be remembered that the data is influenced by different variables and therefore, the analysis of the time series must be carried out with great attention for a number of reasons. One of these is that the increase or decrease in reports of a specific crime - a fundamental factor for calculating the crime rate - does not necessarily correspond to a real increase or decrease in the phenomenon. For example, the reduction in a type of crime could be the result of a lower propensity to report it and not necessarily a contraction of the phenomenon. This can happen for many reasons: in the case of gender-based violence, there may be a tendency to hide the fact

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because of shame, fear or even a lack of trust in the institutions.

The theoretical belief that increased internment can reduce crime was the main response our democratic society has provided to its people to justify the imposition of the prison system and the implementation of zero tolerance policies. However, this theory is countered by a careful reading of the data.

In Italy, especially from 2007 to 2010, the decrease in the incarceration rate of about 8.5% for every 100,000 inhabitants did not correspond to the increase in crime rate¹ that, however, saw a reduction of about 12.5%, which presumably means that imprisonment is not the right solution to the problem. In fact, the questionable need to defend oneself from a continuous increase in crime through the neutralization of the deviant through imprisonment is not justified by the data relating to the increase in crime over the years.

So, to the question are there are more people in prison because the crime rate increases, the most appropriate answer would seem to be that there has not been a substantial increase in crime rate that justifies the expansion of the role of prisons (see the years 2007 and 2010). Rather, it would be correct to reflect on the changes in incarceration policies that have likely affected the increase in the detention rate. Just think of a whole series of crimes that in the last period have been accompanied by longer and more severe penalties than a few years ago.

Even the management of the migratory phenomenon in Italy has been affected by rigid changes that could prove to be one of the plausible reasons for the increase in foreign inmates. The exponential increase in migratory flows between 2007 and 2010 in Italy has brought out the urgency to contain the phenomenon through the development of repressive internal policies against the unknown, represented by the foreigner and labeled as a disturbing element not to be welcome but to be stopped. The consequence of this approach is that public opinion is terrified by the increase in foreign crime, requiring political choices aimed at eliminating the migrant.

From 2007 to 2010 the total Italian population increased by 2% and the foreign population also underwent a substantial increase (44.1%). If in three years the percentage of Italian prisoners recorded a change of about 41%, the foreign one grows by 36.7%, representing about 37% of total prisoners in 2010. This means that, although down by 2.1% compared to 2007, the increase in imprisoned foreigners remains a figure that should not be underestimated. Especially if there are no emergency nor real security issue linked to foreigners.

However, if on the one hand it is easy to observe the increase in inmates in Italian prisons, especially at certain historical moments, on the other it is certainly more complex to establish the reasons. The crisis of the Welfare State has contributed to amplifying this situation. However, reducing the explanation of this trend to the collapse of the Welfare State alone would mean trivializing the issue.

The new criminal policies should also be considered, which became more repressive towards the end of the twentieth century due to a fear on the part of the community, which requires intense state intervention. A fear not supported by real data, but rather influenced by a social alarm amplified by the new mass media responsible for psychological terrorism.

2. Overcrowding, Suicide and Alternative Measures in Prison

In the research, to evaluate the state of detention in Italy and the trend of recidivism, the tendency of some indicators and their probable relationships with certain variables were considered. The starting point is the

¹ The crime rate (processed by the author) is given by the submitted reports divided by the total reference population. The crimes reported relating to 2015 refer to 31/07 — taken from the Interior Ministry on the progress of crime in Italy. The other data comes from the site <http://www.demo.istat.it>; <http://www.giustizia.it> (DAP) and are re-processed by the author.

overcrowding rate.

In the last year, the prison numbers have started to grow again, so Antigone opens the XIII Report on Italian prisons. From the early 1990s to 2015, the prison population increased by 3.6%, undergoing strong periodic fluctuations due to recurrent clemency measures, which forced a continuous reinterpretation of the phenomenon. However, if we only considered the time span from 2010 (peak of internments) to 2015 (decrease in the same), it would be possible to think of a reduction in the incarceration rate.

In 2010, when the government declared a national state of emergency due to prison overcrowding, the detention population had reached unprecedented levels in Republican history. Since then, a series of interventions have been launched that have led to a significant drop in the number of inmates (i.e., the “prisons emptying” or “prisons saving” Law). However, in the last 6 months of 2017, 56,436 inmates were registered in Italian prisons, compared to 54,653 admissions at 31 December 2016. An increase of 1,524 inmates in a semester that does not bode well for the future, as it confirms the trend of increasing incarceration already recorded previously and that today seems to be progressively accelerating.

The reform season that the Italian prison institution has undergone in recent times has led in 5 years (from 2010 to 2015) to a decrease of about 16,000 prisoners and it is not surprising that this decline was followed by an improvement in the indicators that traditionally are used to record the state of crisis of the prison system. However, in what direction is this trend going today?

The overcrowding rate at the end of 2010 was 151%, at the end of 2015 it was 105%, while at 31 December 2016 it was 108.8%. On 30 April 2017, however, there was an overcrowding rate of 112.7%, the highest since 2010.

Leaving aside 2010, the year in which a prison emergency was declared, between 2015 and 2016 in the face of a prison overcrowding that went from 105% to almost 109%, it was mostly subjects awaiting sentence (+814) and final convicts (+1,504) who increased the prison entry figure. A tendency towards preventive detention, therefore, which has once again seen Italy in the crosshairs of the European Court. Indeed, according to the statistics of the Council of Europe, among the reasons for prison overcrowding, one of the main factors is the very high percentage of prisoners awaiting trial. This factor also influences the suicidal figure, as 39% of the accused takes their own life.

Considering in addition to the legal position also the nationality of the detainees, we can see that, from 2015 to 2017, with a more or less constant increase in prisoners and the overcrowding rate, the number of foreign detainees also increases, together with the component of the accused individuals. The analysis of the data shows that, in the years considered, the general crowding of the prison was influenced by the increase in foreign detainees and/or accused individuals (probably those belonging to the most marginal groups of society). This could mean that, following the difficulties in managing immigrants, an increase in imprisonment has also developed for political purposes.

The consolidation of a feeling of collective intolerance towards foreigners has generated in recent years policies of expulsion based on their forced elimination, including through imprisonment. Even if the hypothesis that foreigners commit crimes were confirmed, it would be necessary to analyze which are the most frequent crimes and how a welcoming society responds to their emergencies. This is fundamental for analyzing a relationship between crimes, reception policies and expulsion policies.

The general perception of the increase in delinquency in Italy is an error of analysis that has prompted our political class to intervene (in order to obtain popular consensus for electoral purposes) through dangerous laws.

Indeed, analyzing crime in Italy, it is clear that today there is no increase in crime that is worrying to the point of justifying new laws or supporting a climate of perennial alarmism. There are only crimes that have a cyclical trend, and which, in order to be properly evaluated, require a sound long-term interpretation (at least ten years): in the case of prisons, a wrong social analysis leads to the development of containment policies (e.g., foreigners in prison) and consequent repressive strategies that are unlikely to produce change.

Antigone's research shows that when the numbers increase, also in relation to the statutory capacity of the institute, the prison environment worsens from all points of view, and the prisoners today are increasing, although crimes decrease significantly.

In 2015, the total number of reported crimes amounted to 2,687,249, against 2,812,936 in 2014. In recent decades, the decline in some crimes has been enormous: in 1991 there were 1,916 murders, compared to 397 in 2016. In June 1991, however, there were 31,053 inmates. So the killings were five times more, but those who ended up in jail were twice less. Between 2014 and 2015, all crimes that should create greater social alarm decreased: sexual violence (-6.04%), robberies (-10.62%), thefts (-6.97%), usury (-7, 41%), voluntary homicides (-15%). Between 2014 and today, crimes have decreased without the adoption of rules that significantly change the legislation. Despite this, the inmate population started growing again.

The explanations can be traced back to two circumstances:

- between 2010 and 2014 there was great public attention on prisons and their overcrowding, and police officers were asked to reduce the repressive pressure;
- in the meantime, thanks to the approaching political elections, a security campaign based on the "perception" of insecurity was restarted, adopting a repressive attitude towards people on the margins of society.

In addition to analyzing the correlation between overcrowding and the nationality and legal position of prisoners, the author also examines the relationship between overcrowding and the prison climate. When we talk about a "healthy" prison environment we are not referring only to the dilapidation of the structure or the presence of essential goods: if prisons returns without reason to the attention, it is inevitably the worst prisons, i.e., the ones characterized by presumed innocents, foreigners and an increase of short sentences. This reality prompts us to highlight a link between an increase in the overcrowding rate and a rotten prison climate.

A second indicator that I consider is suicide: in 2010, 8.1% of suicides per 10,000 inmates were recorded in Italian prisons, in 2015 the percentage dropped to 7.4% and in 2016 to 7.2%. The suicide of a person deprived of liberty is primarily a failure of the state: where the state authority in exercising its monopoly in the use of force is unable to prevent this use of legitimate violence from reconciling with need to safeguard the body and health of the offender, this use of force undergoes a profound delegitimization.

The analysis of the data shows a reduction in the phenomenon, especially in recent years: if for the whole 2000 suicide cases have constantly exceeded fifty per year, the latter period showed a significant decrease. This is a positive fact, which is explained by various factors: on the one hand, the attention to the phenomenon by the prison administration has increased, on the other the process of improvement of the detention conditions following the Torreggiani sentence.

In the literature, the existence of a link between suicide and prison trends has been demonstrated: in the phases in which the criminalization of urban marginality increases, suicide rates in prisons are higher, while in moments of openness to the outside and of de-incarceration there is a decrease in the phenomenon.

Faced with an extreme gesture such as suicide in prison, for a long time experts have talked about the

subject's mental distress. However, some studies, especially from America, have shown that the correlation between the high number of suicides and the number of subjects suffering from psychiatric pathologies is not sufficient to explain this occurrence, rather it would be correct to reflect on the link between suicide and prison environment. This thesis has also been supported on the national scientific scene, so much so that in the most recent studies the attention has shifted from endogenous and pathological variables referred to the authors of these gestures, to exogenous variables, of a social and institutional nature.

In a span of fifteen years, suicides in Italian prisons have significantly decreased from 47 cases in '92 to 39 cases in 2016, with an evident peak in 2001 (69 cases). By calculating the suicide rate per 10,000 inmates, a more or less decreasing trend is evident, steadily going down since 2000. This decrease in the phenomenon should not reassure us. On the contrary, quantitatively it remains a serious occurrence, especially if we consider that Italy is the European country with the greatest distance between the incidence of suicide among free people compared to those imprisoned. Although Italy is one of the countries in the world with the lowest suicide rates, these rates increase among people deprived of personal freedom, to become among the highest in Europe: the prison population in Italy kills itself among 9 and 21 times more than the free population. A fact that requires precise questions on the quality of our prisons and the effectiveness of the prevention programs adopted.

Suicide remains among the main causes of death of the prison population.

Indeed, if we compare the trend of suicides with that of natural deaths in prison we see that, on the one hand, suicides in the last 30 years make up at least one third of the total deaths in Italian prisons (this means that every 3 people who lose their life in our prisons, at least 1 dies from suicide), on the other hand, it is impressive how the lines representing respectively the cases of suicide and natural deaths continue over time on a parallel course, almost as if suicide were a structural factor of death in prison.

Despite this, suicide in recent years has slowed down, unlike suicide attempts and self-harm. This data is to be studied with caution, because it is conditioned by the criteria adopted by prisons in interpreting the facts. However, cases of self-harm, from 2007 onwards, have increased rapidly in Italian prisons and what appears significant is that this increase did not stop in the years in which the number of prisoners decreased. Indeed, in the last two years there has been a new increase, reaching a number of cases just under 9000 units. This data reflects the internal change in Italian prisons: a prison population made up mainly of marginal subjects (foreigners, drug addicts, drug dealers), who identify the suffering of the body as the only way to obtain attention, listening and support.

As regards the second variable (nationality), self-harm is more common among foreign prisoners than among Italian ones. Indeed, considering that the percentage of foreigners present in the last year is around 34%, the numbers on self-harm show a double incidence of the phenomenon compared to the total inmates. This is probably because foreigners — identifying themselves as weak subjects — will have more difficulty than Italians in claiming their rights. On the other hand, the number changes in relation to suicides, which is almost the same between Italians and foreigners.

As at 31/12/2016, out of a total of 8,586 cases of self-harm and suicides, 5,179 are foreigners while 3,407 are Italians, with a respective percentage of 60% and 40%.

As regards the incidence of the suicidal phenomenon in relation to the legal position, in almost half of the cases we are faced with people for whom the presumption of innocence should be still valid. This shows that the state authority is unable to avoid pre-trial detention.

The third indicator analyzed are alternative measures.

As regards the correlation between alternative measures and legal position, initially the prerequisite for their granting was the applicant's prison status, in particular after an observation period of at least three months. Law no. 663 of 10 October 1986 established that the offender could access alternative measures also after a period of freedom during which he or she had demonstrated a real possibility of rehabilitation and reintegration.

As for the correlation between alternative measures and nationality, the data shows that out of a total of 51,579 alternative measures granted in 2016, 83.3% of them concerned Italians (42,964) and 16.7% foreigners.

Finally, as regards the third and last variable, that relating to the prison environment, the alternative measures are born with specific objectives, primarily to stop the internal criminalization process, that is, avoid that the prison climate can make a prisoner worse.

The other objectives are the deflation of the population and the reduction of recidivism.

For the former, such measures look like alternative to imprisonment, although their implementation could turn into the well-known phenomenon of net widening, intended as an extension of criminal control for which alternative measures are added to the detention numbers.

For the latter, studies show the existence of a direct relationship between the way a sentence is served and the commission of new crimes.

Our Prison System identifies three types of alternative measures: probationary assignment to social service, house arrest and semi-release.

In twenty years, the detainees on probatory assignment have increased by 60.3%, going from 8,269 cases granted in 1997 to 13,259 in 2017, on the other hand, the semi-release was reduced by -56%, going from 1,803 cases to 793. House arrest is the most fluctuating alternative measure, registering a considerable increase towards the end of the 1990s, with a peak in 2013, and remaining more or less constant until 2017.

In any case, the total of alternative measures granted from 1997 to 2017 went from 10,866 cases to 24,088, registering a percentage increase of 122%.

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