Revolutionary reform in psychiatric care in Italy: The abolition of forensic mental hospitals

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Italy, of all countries in the world, may be said to provide an extreme example of the deinstitutionalisation of people with mental illness. In fact, in 1978, with the implementation of Law n° 180/1978, incorporated into Law n° 833/1978 instituting the National Health Service, Italy abolished (civil) psychiatric hospitals. Their primarily containing, custodial and surveillance functions, justified by the notion of ‘dangerousness to self and to others’ were denounced. This dangerousness concept, grounded in Article 1 of Law n°36 of 1904, stated that ‘persons afflicted with mental alienation, resulting from any cause, and who are not or cannot be cared for outside psychiatric hospitals must be confined to a civil psychiatric institution when they present danger to themselves or to others, or cause public scandal’.

Before being strongly criticized, the notion of the “dangerous individual”, deeply rooted in the positivist model and the faith of early 19th century criminologists in sound psychiatric predictions of violence, had become very attractive to jurists and legislators who became to perceive the old, classic concept of criminal responsibility deeply undermined by many elements, including changes in punishments, new meanings attributed to punishment, the new role of “public hygiene” assigned to medicine and the birth in civil law of the concepts of risk and responsibility without culpability (Focault, 1981).

While the psychiatric concept of ‘dangerousness to self and to others’ was abolished, giving rise to increasing hope and desire for a better future, without asylums – the concept of ‘social dangerousness’, as addressed in Article 203 of the Italian Penal Code dating to 1931 (Codice Rocco), persisted in the penal sector. There, notions of infirmity and dangerousness not only survived but also became cornerstones of Italian jurisprudence thanks to the ‘hot’ political climate of 1970s and early 1980s in Italy, with struggles against terrorism and organised crime. These proved a barrier to questioning traditional positions and obstructed any libertarian yearnings in favour of repressive demands.
In 1986, in a symposium at Siracusa, in Italy, one of us (GBT) gave a presentation on the theme of professional assessment of dangerousness and underlined the following position: ‘We are, perhaps, still far from the time in which our criminal justice apparatus will be able or will want to free itself from the notion of dangerousness. In fact, despite the timely and empirically well grounded criticisms, there are no premonitory signs, either in Italy or abroad, which indicate the decline – in the criminal justice system – of the institutional notion of dangerousness… We are thus in a moment of profound conflict and grave uncertainty in which libertarian yearnings are countered by strong repressive demands aimed especially at organised crime. Certainly, the notion of “dangerousness” is today at the center of these contradictions which are bitterly, and rightfully, criticized by abolitionists as overused in day to day judicial process and practice. This impasse is difficult to resolve, perhaps also because the notion of dangerousness is situated inextricably in between juridical science, behavioural science, and philosophy, disciplines which observe reality from different, frequently opposite perspectives and which in turn all contend the right of supremacy.’

The jurisprudential process slowly evolved towards the current, radical choice of criminal policy related to the abolition of forensic psychiatric hospitals. Although, in 1984, such a position had been referred to as ‘scandalous’ by Senator F. Ongaro Basaglia, wife of the father of the Italian psychiatric reformer, Franco Basaglia, two landmark legal cases assured progress. Verdicts of the Constitutional Court of 8 July 1982, n.139 and 15 July 1983, n. 249 definitively eliminated the strict presumption that inextricably intertwined lack of criminal responsibility with social dangerousness, and its consequence of restricting anyone found, after a criminal charge, to lack criminal responsibility to an indeterminate sentence in a secure psychiatric institution. Until then, Article 31, law 663/86 had mandated admission to one of the six Italian forensic psychiatric hospitals for the dangerous and insane criminal [Ospedale Psichiatrico Giudiziario (OPG)] while the ‘care and custody home’ (Casa di Cura e Custodia) was for those affected by a partial mental infirmity and considered dangerous.

The Italian Constitutional Court verdict of 2–18 July 2003, n. 253, was particularly important in promoting rights for the ‘criminally insane’. The Court declared: ‘… the constitutional illegitimacy of article 222 of the Italian Penal Code (admittance to a forensic psychiatric hospital of the criminally insane) in the part which it does not allow the judge to utilize a security measure different from that of the Forensic Psychiatric Hospital, despite the measure being foreseen by the law as suitable for assuring adequate care for the mentally insane and to overcome the problem of his/her social dangerousness.’

This verdict initially produced considerable reverberations and was, until the current decade, the subject of wide discussion among jurists, criminologists and criminal justice professionals. Such commentary aimed to underline the unconstitutionality of the rigid obligation on the judge to apply a severe closed measure (that is admission to the Forensic Psychiatric Hospital according to article 215, c. 1 n. 3, Italian Penal Code) in every case, even when a less segregating and more
rehabilitative measure, such as community residence conditional on adherence to medical treatment, would be ‘suitable for preventing opportunities for new crimes’ (art. 228, n.2 c.p) and ‘seems actually able to satisfy simultaneously both the requirements of care and protection of the patients and the control over their social dangerousness’.

As Fornari (2015) states, thanks to these legal pronouncements, the criminally and dangerous insane no longer have to be sentenced to placement in a forensic psychiatric hospital, but rather the judge has discretion to take all circumstances into account and, if he or she sees fit, to order the so called ‘libertà vigilata’ provision, rather similar, for example, to the community sentence with a mental health treatment requirement in England and Wales. The clinician must work in formal partnership with the personnel of the criminal justice system (Magistratura di Sorveglianza and Ufficio Esecuzione Penale Esterna del Dipartimento dell’Amministrazione Penitenziaria – UEPE), to ensure that the person under the order abides by all its conditions; failure to do so results in return to the Court on grounds of breaching the order and possibly in removal from the community. In general, the measure is more therapeutically effective for the person who is criminally insane and dangerous, by guaranteeing the right to health, according to Article 32 of the Italian Constitution, while maximising public safety.

A further consequence of these judgements was that psychiatric experts could move on from binary ‘dangerous/not dangerous’ advice and start to advise along the more realistic and pragmatic spectrum from low risk of harm to others to high risk of harm to others, with differing attendant consequences. In this way, we saw in Italy a progressive downsizing of the number of persons diagnosed as psychiatrically dangerous and restricted in our forensic mental hospitals. This number has now reached zero, and the national forensic psychiatric hospitals (OPGs) have been closed, under Law 81/2014. This significant milestone, long called for (see Traverso 1988, among others), has been reached thanks also to another step – the passing of the Law of 14 June 2008 (D.P.C.M. 1 April 2008), which confirmed the shift of healthcare of those in the criminal justice system from the Ministry of Justice to the National Health System. In fact, starting from 14 June 2008, competencies of general and specialised penitentiary medicine, along with the economic resources previously under the Ministry of Justice, have been transferred to the National Health System, and then disbursed to Regions and Local Health Services (ASL).

This transfer of competencies, in line with principles expressed by the Council of Europe, guaranteeing a level of healthcare for prisoners, which is equivalent or identical to that of all citizens, has also brought about the creation of an Observatory to oversee the health of prisoners. This is an element of great political significance in the successive rapid evolution of the forensic psychiatric hospitals (OPGs) in Italy. This Observatory, headed by the President of the Parliamentary Commission on the Efficacy and Efficiency of the National Health Services, strongly highlighted all the criticisms of Italian forensic psychiatric hospitals, long identified as places ‘lacking in therapeutic instruments and based
exclusively on a rigidly custodial and devastating rationale...characterized by intolerable physical degradation, positioned in such a way as to uproot the hospitalized from their own environment, rendering contacts with family and acquaintances extremely difficult: finally, they are tools through which it is impossible and even absurd to realize the guideline put forth by the Constitution on the philosophy of rehabilitative sentencing and the possibility of the social reintegration of the dangerous and insane’ (Traverso, 1988).

The closure of forensic psychiatric hospitals, which occurred almost 30 years after the closure of civil psychiatric hospitals (‘manicomi’), completed on 31 March 2015, was a real revolution for our country (see also Barbuì and Saraceno, 2015; Casacchia et al., 2015). It represented the final decline of the positivist model, calling into question, at least partially, the concept of ‘social dangerousness’, and making a strong step towards a different way of treating people who are deemed dangerous and insane.

At this point, it must be stressed that, apart from the acclaim for having reached an objective desired for almost a century, such a sudden and radical change has created many difficulties in managing and treating mentally ill offenders, especially for local psychiatric health services. Further, implementation of the new healthcare structures according to the new law has meant higher financial costs for the regions.

These new residential structures, called REMS (Residences for the Execution of Security Measures), unlike the old hospitals (OPGs), may host a maximum of 20 residents. As they are seen as rehabilitation centres, their internal milieu must be based exclusively on a healthcare rationale. The time each patient has to spend in a REMS should be as short as possible, the aim being to bring to an end the so-called ‘ergastoli bianchi’ (‘white’ life imprisonment), that is indefinite in-patient detention after minor crimes. The new law states that the maximum stay in a REMS should be no longer than the length of the corresponding punishment (statutory limit) for the specific crime. The aim, therefore, is rapid assessment of mental state, transparently informing a specific therapeutic-rehabilitative plan, which fits with the maximum time the patient must reside in the centre (see Conferenza Unificata Stato-Regioni, Presidenza del Consiglio dei Ministri, session on February 26th 2015).

REMS, as structures with a fully internal therapeutic management, according to Article 6 of the agreement between the State and the Regions, are provided with ‘security services and perimeter patrols...activated on the basis of specific agreements with the Prefectures, also on the basis of information contained in the file of the inmate’.

We must stress that these new structures still face a risk that they will become small asylums of the bad old type. Thus, every step must be taken to ensure that they are not only constructed with a real ‘therapeutic milieu’ – a space aimed at encouraging cooperation in all aspects of daily life, from eating together to sharing leisure spaces, as well as participation in more specifically therapeutic activities, such as group therapy – but also maintain it. Only in this way can
sentiments of trust, sense of friendship and belonging be instilled among patients. Finally, the goal must be that of empowering patients and enabling them to engage with the positive values of the wider society.

Notwithstanding the short time between the closure of the old forensic hospitals (OPGs) at the end of March 2015 and the current moment, some significant issues have come to light with respect to implementation of the new law. These include the juridical typology of some patients, the great number of foreign patients with integration problems, problems of psychiatric urgency and the problems of sufficient staff training. They have been the subject of discussion at various conferences held throughout Italy, one of the most recent of these events being the international conference held in Pontignano (Siena) on 6–7 May 2016 organised by the University of Siena.

Only the future will allow a deeper analysis and critical evaluations of the impact of this revolutionary Italian legislation. It can only succeed with adequate economic investment, but the professions too must commit to sufficient training and, above all, to sound research evaluation of outcomes – otherwise, the progress made may not be defensible in the future, it may not last or it may not continue to become ever more effective in safely rehabilitating this vulnerable but potentially risky group of people.

References


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