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EDITORIAL GUIDELINES

Assessment, management, and treatment of sex offenders: what is known, what is controversial, what needs further investigation

Valutazione e trattamento degli autori di reati sessuali

Georgia Zara • David P. Farrington • Franco Freilone • Friedrich Lösel

Abstract

Sex offending is considered one of the most offensive crimes in Western societies. This article presents a description of the advances in scientific and clinical studies in the understanding of sexual offending, with particular attention to risk and criminogenic needs, sexual recidivism and its assessment. It offers an overview of the treatment programmes that work most efficiently, of those that are promising, and of those that do not seem to work, and why. Much can be learnt about sex offenders from using criminal career information, and from assessing the risk dimensionally, in order to identify accurately the level of risk and the criminogenic needs that require intervention.

Keywords: sexual violence, sex offenders, criminal careers, risk assessment, treatment

Riassunto

La violenza sessuale è considerata uno dei reati maggiormente offensivi nella società occidentale. Questo articolo presenta una descrizione degli avanzamenti negli studi scientifici e clinici in tema di violenza sessuale, con particolare attenzione al rischio e ai bisogni criminogenici, al recidivismo sessuale e alla sua valutazione. Viene offerta sia una panoramica dei programmi di trattamento riconosciuti tra i più validi ed efficaci, di quelli risultati i più promettenti, e di quelli che, invece, non sembrano funzionare, sia una riflessione critica sul perché di questi risultati. Si può comprendere molto sugli autori di reato sessuale a partire da un'analisi della carriera criminale e dalla valutazione dimensionale del rischio.

Parole chiave: violenza sessuale, autori di reato sessuale, carriere criminali, valutazione del rischio, trattamento

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Assessment, management, and treatment of sex offenders: what is known, what is controversial, what needs further investigation

1. Introduction

Sex offending is considered one of the most offensive crimes in Western societies. Its consequences are damaging for the victims and their families, and, in many cases, the traumatic impact is likely to be long lasting. However, views on sexual violence are often influenced by uninformed media, and by biased information, which do not contribute to deepening the understanding of the problem, and to how to deal with its causes, but rather tend to raise social preoccupation and moral panic (Cohen, 1972).

The assumption underlying all this is, according to Janus and Prentky (2008), the notion of *exceptionalism*: sex crimes constitute a different type of offence (Lussier, 2005), and sex offenders are seen unlike other offenders (Lieb, Quinsey, & Berliner, 1998). Sex offenders are in fact seen as always dangerous (La Fond, 2005), frequently committing crimes (Miethe, Olson, & Mitchell, 2006), at risk of re-offending, more likely than other offenders to recidivate (Harris, Smallbone, Dennison, & Knight, 2009), and especially to recidivate sexually (Lieb, Quinsey, & Berliner, 1998). The general opinion is that sex offenders deserve more severe sentencing (Tewksbury, Mustaine, & Payne, 2011), should be forced into community registration and notification (Zgoba & Levenson, 2012), should be coerced to undergo treatment (Burdon & Gallagher, 2002), should face post-conviction polygraph testing (Rosky, 2012), and should be surgically sterilised or chemically castrated (Farkas & Stichman, 2002; Miller, 1998).

While it is suggested that sex offenders benefit from treatment, interventions to prevent sexual recidivism are often contrasted with social discredit (DiBennardo, 2018). As McAlinden has advocated (2007, 2012), there are dangers attached to the deployment of such pejorative views. The dangers reside in the promotion of stereotypical images of predatory sex offenders that strengthen the effects of labelling, especially when the sexual abuse is against children, by contributing to 'an enduring and privileged site of anxiety' (Ashenden, 2002, p. 199) and to professional preoccupation and fear (Munk, Larsen, Buch Leander, & Soerensen, 2013).

More severe laws (e.g. Sexual Predatory Laws) (Prentky, Barbaree, & Janus, 2015; Prentky, Janus, Barbaree, Schwartz, & Kafka, 2006) and tougher control measures (e.g. sex offender registration and notification systems – SORN; geographical restriction, monitoring movement across international borders, civil commitment, etc.) (Thomas, 2013, 2016) have been the immediate responses to the societal outcry, often neglecting what scientific research suggests about the life course prevalence and prevention of sex offending, and the treatment of sex offenders.

It would be naïve to assume that this social climate has

not had any influence on the legal, social, and policy-making responses to sex offending. This is why it becomes essential that 'emotional topics' such as sexual abuse are addressed in relation to scientific evidence (Lösel & Schmucker, 2017; Zara & Farrington, 2016) and to the ethics of responsibility (Jung, 2017).

Evidence-based interventions and policies are successful, when they offer a more complete and sound scientific perspective to a very complex and often misunderstood area of criminal careers that is 'when offending goes sexually' (Zara & Farrington, 2016, p. 308). It is not just a matter of repairing the broken things in life or fixing the damage, but also of building positive perspectives, amplifying and nurturing them, and making change possible and conceivable. Being a sex offender does not make one an eternal offender, just as being at high-risk does not mean being at high-risk forever (Hanson, Harris, Helmus, & Thornton, 2014).

The aim of this article is twofold. First, we present a description of the advances in scientific and clinical evidence in the understanding of sexual offending, with particular attention to risk and criminogenic needs, sexual recidivism and its assessment. Second, treatment findings are explained, along with an introduction about which treatment programmes work more efficiently, which are promising, and which do not seem to work, and why.

The theoretical background of this work is rooted in the paradigm of criminal careers (Blumstein, Cohen, & Farrington, 1988a,b; Piquero, Farrington, & Blumstein, 2003, 2007). The clinical and professional assessment of the intervention and treatment of sex offenders is based on the Risk-Need-Responsivity (R-N-R) Model (Bonta & Andrews, 2017).

2. Assessing the risk of sexual (re-)offending

Criminal statistics show that the rates of sexual recidivism are overall lower than for other crimes (Hanson & Morton-Bourgon, 2009; Hanson, Morton, & Harris, 2003; Harris, Knight, Smallbone, & Dennison, 2011; Harris, et al., 2009; Piquero, Farrington, Jennings, Diamond, & Craig, 2012). As Zara and Farrington (2016) claimed, this finding is counterintuitive for two reasons.

The first is explained by the *cooling-off mechanism* between criminal events, borrowed from serial homicide studies (Douglas, Burgess, Burgess, & Ressler, 2006; Osborne & Salfati, 2015), and which, in this instance, is used to denote the *time interval* between sex offences. The likelihood of relapsing into another sex crime in the short or medium term is rather low, suggesting that a mechanism of antisocial latency usually takes place before another serious and violent offence is

committed (Zara, 2005). Hanson and Bussière (1998) suggest that the risk of sexual recidivism is typically around 14% after 5 years. More recent research even suggest sexual recidivism rates at about 10% or less (e.g. Jennings, 2015).

The second explanation focuses on the *aging process* (Farrington, 1997, 2005). A sort of criminal *burnout process* (Coid, 2003) seems to influence the trend of the most active and prolific criminal career offenders. The likelihood of persisting into a sex offending career diminishes with time and, after reaching its peak between ages 18 and 30 (Hanson & Morton-Bourgon, 2005), it starts decreasing, waning substantially after age 60. Although cumulative recidivism rates increase with time, the chances that an offender will re-offend decrease the longer the offender remains offence-free in the community (Hanson, Harris, Helmus, & Thornton, 2014). Hanson and colleagues (Hanson & Bussière, 1998; Harris & Hanson, 2004; Helmus, Hanson, Thornton, Babchishin, & Harris, 2012) carried out major meta-analyses on sexual recidivism risk assessment and showed that recidivism base rates for sex offenders decline with time, as happens with many other types of violent crimes. Overall, the observed sexual recidivism rates in the studies meta-analysed increased with the length of follow-ups (e.g. 10% and 15% after 5 years; 20% after 10 years; and between 25% and 40% after 20). These average rates of sexual recidivism should be considered cautiously because they are based on old studies, diverse methods, and variable follow-up times (ranging from 5 to 20 + years) (Hanson, Harris, Le-tourneau, & Helmus, 2018).

Interpreting these results is also difficult, nevertheless these rates do not support the common belief that sexual offenders show high rates of sexual recidivism. Whereas sex offenders are proportionately more likely than other criminals to commit another sex crime, the vast majority of new sex crimes were not committed by registered sex offenders (Bureau of Justice Statistics, 2003). Many sexual offences remain undetected (Bonta & Hanson, 1994), many others are unidentified (Zara, 2018c), with many sexual offences not appearing in official records (Zara & Farrington, 2016). Furthermore, Hanson and colleagues (2018) reviewing some long-term (10 + years) studies of sexual recidivism, have observed that the highest rates seemed to occur during the first few years after release, and gradually decline thereafter (Blokland & van der Geest, 2015; Cann, Falshaw, & Friendship, 2004; Hanson, et al., 2014). As Hanson and colleagues (2018) demonstrated, after 10 to 15 years most individuals with a sexual criminal career were no more likely to commit a new sexual offence than individuals with a criminal history that did not include sexual offences.

In the US the sex recidivism rate, measured by arrests for a new sex crime, was 5.3% over a 3-year period (Bureau of Justice Statistics, 2003). In England and Wales, the proportion reconvicted for another sex offence was less than 10%, even amongst those who could be followed for up to six years (Hood, Shute, Feilzer, & Wilcox, 2002). Similar figures are found in Italy, where the proportion of offenders being reconvicted of another sex crime, over the whole convicted population, over a period of 10 years was 3.3% (Istat National Crime Statistics, 2000–2011). These Italian

figures are, however, based on cumulative re-offending data. Thus it is not possible to specifically extract from the national databank which individuals, with previous convictions for sex crime, generally reoffended, which ones reoffended sexually, which ones were first-time sex offenders, and which ones were recidivists. In order to build up a clearer picture of sexual recidivism trends in Italy, it would be necessary to have a nationalised system to gather data on recidivism, recidivism percentages and the time since the last offence committed.

In the Cambridge Study in Delinquent Development (CSDD)¹, a prospective longitudinal study of the development of offending and antisocial behaviour in 411 London males (called generation G2) mostly born in 1953 (Farrington, Coid, & West, 2009; West & Farrington, 1973, 1977), sex offending was rare. To the best of our knowledge, such an investigation still represents the longest longitudinal analysis of sex offending and sex offenders in the world using a community-based sample.

While there were 808 total convictions in the CSDD by age 50, only 1.6% ($n = 13$) were for sex offences, committed by 10 offenders (Piquero, et al., 2012). Less than 3% of the CSDD males were convicted for sex offences through age 50. The median age for sex offences was 33, which was high compared to other offences (where the median age was 28). Seven of these men committed a single sex offence, while three men committed two sex offences each. Regarding their criminal careers, six sex offenders had non-sex offences as well. While there were very few recidivist sex offenders, the probability of any recidivism for sex offenders (30%) was similar to other offenders. Sex offending varied depending on the age-ranges: offences under age 20 were mainly indecent assault on females and indecent exposure, while offences over age 30 were mainly indecent exposure or sexual assault on male victims.

After 50 years of investigation (the CSDD men have been followed from age 8 to age 61) (Farrington, 2019), no continuity in sex offending from the juvenile to adult years was found, and very few recidivists were sex offenders.

Desistance in sex offenders is hard to assess, as in any other offenders (Farrington, 2007a; Kazemian, 2007), because any residual risk that still remains provoke considerable professional and juridical preoccupations. However, it is paramount that the assessment of risk is led by scientific clarity, and not by social panic.

Hanson and colleagues (2018) designed a 25-year risk model of sexual recidivism in a large sample of over 7,000 individuals. The sample included sexual offenders from diverse settings and from the full range of risk levels, as measured by the Static-99R (Helmus, Thornton, Hanson, & Babchishin, 2012). It was found that the likelihood of new sexual offences declined the longer individuals, with a history of sexual offending, remained free from sexual offences

1 The Cambridge Study in Delinquent Development (CSDD) is one of the most important longitudinal studies in the world, which has gathered data from three generations of individuals: G2 (411 men in the original sample) + G3 (the children of G2) + G1 (the parents of G2) and the parallel generation (the female partners of G2) (Farrington, 2003, 2019).

in the community. This effect was found for all age groups and all initial risk levels. Nonsexual offending during the follow-up period increased the risk of subsequent sexual recidivism independently of the time free effect. After 10 to 15 years, the risk of a new sexual crime was similar to the risk of spontaneous new sexual offences among offenders with no history of sexual crime.

These research findings provide a few important messages to consider as relevant in risk assessment and in intervention, which can be summarised as follows:

A sex offender is not always a high-risk offender; the risk level can change (Hanson, et al., 2014).

The natural, but slow, process of aging contributes to a decline in sex offending (as in other offender groups) (Booth, 2016; Rice & Harrins, 2007, 2014).

The risk of sexual recidivism decreases the longer the offender stays away from offending while free in the community, and despite the offending opportunities around (Hanson, et al., 2018).

With time the risk of a new sex offence by offenders with a history of sex offending is likely to be equal to the risk of offenders with no previous sexual offences (Hanson, et al., 2018).

Assessing the risk of sexual recidivism needs to include mechanisms to adjust initial risk classifications to the actual risk of the individual currently reassessed (Hanson, Bourgon, McGrath, Kroner, D'Amora, Thomas, et al., 2017).

It is necessary to establish a tolerable risk level that will balance the duty to protect victims and the public, with a warrant exempting an individual, with a history of sexual offences, from carrying the label of sexual offender (Kahn, Ambroziak, Hanson, & Thornton, 2017).

The effect of interventions depends on both the quality of treatment (*external responsivity*) (Hanson, Bourgon, Helmus, & Hodgson, 2009) and the individual's responses to treatment and motivation to change (*internal responsivity*) (Hanson & Yates, 2013; Jung, 2017).

As in any other context and with other samples, changes in the psycho-social reality of sex offenders do not occur in a vacuum. Any change is likely to be linked to deliberate interventions (e.g. rehabilitation programmes). Nevertheless further consideration of this aspect requires acknowledging how many sex offenders are actually involved in treatment *versus* how many are, instead, not involved (e.g. refusers, lack of adequate programmes) or excluded from treatment (e.g. sex offenders in absolute denial) (McGrath, Cumming, Burchard, Zeoli, & Ellerby, 2010); how many sex offenders complete treatment successfully *versus* how many drop out and why (i.e. an evaluation of responsivity) (Jung, 2017),

Communication of risk should be informative to help the criminal justice system in its decision-making by also disentangling the seriousness of the crime (i.e. harm) from the risk of recidivism (Monahan, Steadman, Silver, Appelbaum, Robbins, Mulvey, et al., 2001; Slovic, Monahan, & MacGregor, 2000; Zara, 2016). These two issues should be differently assessed because they are likely to be inversely correlated as research shows (Turner, Boccaccini, Murrie, & Harris, 2015; Krauss, McCabe, & Lieberman, 2012;

Scurich & Krauss, 2014; Zara & Farrington, 2016).

Professionals have the responsibility for finding an adequate balance between a necessary diagnosis of risk and the inadequate and counter-productive stigmatisation of the sex offender that often follows after a conviction (Duwe, 2014; Lasher & McGrath, 2017; Scurich & Krauss, 2014; Soothill & Francis, 2009).

In light of the summary of these research findings, one crucial issue to address is which plausible threshold to establish for recognising sexual offending desistance. Hanson and colleagues (2018) suggest that a plausible threshold is when the risk for a new sexual offence among sex offenders is not different from the risk of a sexual offence among individuals with a history of only nonsexual crime. We believe that a more plausible threshold would perhaps be the base rate of sexual offending in the general population, and not only among offenders. However further research is necessary to test this assumption.

Studies show that the rate of sexual offences among general offenders is within the 1% to 2% range after 5 years (Kahn, et al., 2017), which is lower than the sexual recidivism rate of adults who have a conviction for a sexual offence. Despite this risk being not zero, as Hanson and colleagues (2018) pointed out, these researchers believe that a sexual recidivism rate of less than 2%, after 5 years, is a defensible threshold below which individuals, with a history of sex crime, should be released from some of the restrictions imposed by the sexual offender label. This may also involve the release from the *invisible punishment* (Hargreaves & Francis, 2014, p. 164) that follows any sexual conviction (e.g. from September 1997, in countries like England and Wales, individuals convicted, cautioned or released from prison, for a sexual offence against a child or an adult, must register on the sex offenders register under the Sex Offenders Act 1997, later amended by the Sexual Offences Act 2003).

It is at this point that a higher beneficial effect for society as a whole, and specifically for victims of sexual violence, would be achieved if policy makers implemented scientific evidence and decided to invest resources efficiently on risk assessment and risk management. Experts have pointed out the importance of differentiating risk assessment practice and instruments on the basis of types of offenders and on risk levels. From a risk management perspective, resources should be spent on higher risk sex offenders rather than on very low risk offenders, so that the prevention of sexual re-offending would gain in efficiency and efficacy, as along with the sex offenders' rehabilitation programmes.

3. Risk assessment instruments for sexual (re-)offending

The scope of risk assessment is germane to the conception of translating scientific knowledge into services for humanity and public security (Zara & Farrington, 2016). Risk assessment is not only about specifying the risk and the level of it (e.g. low, medium or high). Risk assessment is about giving a psychological and behavioural sense to it, because it is about people and their functioning in the world that psy-

chologists, psychiatrists, criminologists, lawyers, public prosecutors, judges and juries deal with professionally. Zara and Farrington (2013, 2016) suggested that risk assessment is a method and not an end. It should inform treatment and management decisions, guide and sustain prevention, and lead to adequate communication in policy making, e.g. about investment into research and intervention (Zara, 2016).

Numerous risk assessment instruments are specifically designed for evaluating criminogenic needs of sex offenders, and for assessing their risk; they can be used in psycho-criminology and forensic settings. Some are actuarial (AJ) and some are structured professional (SPJ) instruments (see tables 1 and 2 respectively). The instruments, described in tables 1 and 2, are chosen on the basis of their scientific and empirical soundness, their predictive accuracy, and their specificity for targeted groups of offenders (Farrington, Jol-

liffe, & Johnstone, 2008; *Risk Management Authority – RATED²* version 3 – 2013; Zara & Farrington, 2016, for a review).

The interest in having specialised instruments is for having an integrated approach in which clinical and risk assessment information assists decision making about criminal responsibility, social dangerousness, sentencing, alternative measures to detention, release or discharge, and specific civil orders, or remits, for probation programme admittance. Risk assessment represents the anticipatory phase before intervention, and its scope is to inform and sustain specific treatment. As for any crime, and especially for sexual violence, the identification of risk alone is a static procedure, especially when it does not lead to prevention or intervention, or does not attempt social reintegration.

Table 1 - Risk assessment instruments: AJ instruments for assessing the risk of sex violence in adults (continues)

Instrument	Type	Aims and Description	No. Items	Author(s)
ACUTE 2007	AJ	Assessing the risk for both sex/violent recidivism, and a total score for general recidivism. It is the acute counterpart of Stable 200, and it consists of seven acute factors: Victim access Hostility Sexual preoccupation Rejection of supervision Emotional collapse Collapse of social supports Substance abuse	7	Hanson, et al. (2007)
STABLE 2007	AJ	Focusing on stable risk factors to predict sexual recidivism or breach. It is a scale organised in two parts, with 12 (+ 1 for child molesters) stable-dynamic risks: Significant social influences Capacity for relationship stability Emotional identification with children (<13) Hostility towards women General social rejection Lack of concern for others Impulsive Poor problem solving skills Negative emotionality Sex drive/sex preoccupation Sex as coping Deviant sexual preferences Co-operation with supervision Static assessment should be used within the first month of supervision; stable assessment should be completed within three months and then every six months thereafter; the acute assessment to be assessed every session (but not more than weekly) (Hanson, Harris, Scott, & Helmus, 2007). The combination of acute and stable factors incrementally improve the predictive accuracy when added to the static factors assessed in Static-99 (see later). When properly used, these tools showed levels of predictive accuracy as high as other established methods of risk assessment with sexual offenders. Further research is needed particularly for 3 reasons: to determine the extent to which the stable and acute variables are related to changes in the recidivism risk; to reliably assessed changes of stable factors upon criminal behaviour; to identify rapidly truly acute factors associated with the timing of recidivism. In this last case also more frequent evaluations (daily rather than monthly) would be rather necessary.	13	Hanson, et al. (2007)

2 *RATED - Risk Assessment Tools Evaluation Directory* (August, 2013) is an on-line tool directory that facilitates periodic reviews and updates. It aims to provide a summary of the empirical evidence to offer a balanced approach to assessment and to contribute to effective and ethical practice. RATED is available at: <http://rated.rmascotland.gov.uk/>

Instrument	Type	Aims and Description	No. Items	Author(s)
Minnesota Sex Offender Screening Tool-Revised (Mn-SOST-R)	AJ	<p>Screening referral tool for commitment under the state's Sexual Psychopathic Personality and Sexually Dangerous Person Laws, and as part of the state's Community Notification Act. The MnSOST-R is used to implement laws demands that dangerous or predatory sex offenders remain incarcerated to prevent sex re-offending until treatment renders them safe to re-enter society. The 16 variables retained in the MnSOST-R are categorised as either historical/static variables or institutional/dynamic variables. The latter category refers to the offender's period of incarceration for the current or most recent sex offence.</p> <p><i>Institutional/Dynamic Variables:</i> Discipline history while incarcerated Status of chemical dependency treatment Status of sex offender treatment Age at time of release</p> <p><i>Historical/Static Variables:</i> Number of sex-related convictions Length of sexual offending history Commission of sex offences while under correctional supervision Commission of sex offences in public places Force or threat of force in sex offences Multiple acts committed against a single victim Number of age groups victimised Sex offences against a 13- to 15-year old victim Sex offences against strangers Evidence of adolescent antisocial behaviour Pattern of drug or alcohol abuse Employment history</p> <p>The developers stated that the assessing strategy behind the MnSOST-R is to develop an actuarial tool that can firmly anchor the judgement process, and not simply to make an actuarial score the sole basis of important decisions. It has not yet been validated on a new sample (Hanson, 1998), and some shortcomings are related to its experimental procedures and its ethical standards, so that it cannot support expert testimony in a legal proceeding.</p>	16	Epperson, Kaul, & Hesselton, (1998)
Minnesota Sex Offender Screening Tool-3 (MnSOST-3)	AJ	<p>Assigning low, moderate, or high-risk designations to all sexual offenders who are required by law to register. It is a revision of the MnSOST-R, and was developed on a population of adult male incarcerated offenders who were convicted of either a sex or sex-related offence. It is not appropriate for offenders who have never been sentenced for a sex/sex-related offence. It is designed to be scored based upon a file review (paper, electronic, or both). Access to official criminal records including an offender's prior criminal history is necessary. It is not necessary to interview an offender, but if an offender is interviewed and he provides credible self-report information, which subsequently becomes part of the offender's file, this information may be used to score the MnSOST-3.1. It contains 11 predictors, 9 main effects and 2 interaction [x] effects. Of the nine main effects, only three were items derived from the previous version (public place, completion of chemical dependency and sex offender treatment, and age at release). The items retained are:</p> <p>Predatory offence sentences Sentences with male victims Public place Felony sentences VOFP Harassment/stalking Disorderly conduct sentence (last 3 years) Completion of sex offender and chemical dependency treatment Age at release Unsupervised release [VOFP x Age] [Disorderly conduct sentence x Age]</p>	11	Duwe & Freske, (2012)

Instrument	Type	Aims and Description	No. Items	Author(s)
Rapid Risk Assessment for Sexual Offense Recidivism (R-RASOR)	AJ	<p>Predicting sexual offender recidivism. The brief risk scale is designed to be used as a screening procedure in settings that require routine assessments of sexual offender recidivism risk. It consists of an actuarial formula and calculate the risk level on the basis of the following static factors:</p> <ul style="list-style-type: none"> Prior sexual arrests Age Ever targeted male victims Whether any victims unrelated to the offender <p>R-RASOR does not provide a comprehensive evaluation and should not be used in isolation. It cannot assist in monitoring change over time or during/following treatment; the static factors do not help identify treatment or intervention, so its utility for risk management is limited.</p>	4	Hanson, (1997)
Sex Offender Needs Assessment Rating (SONAR)	AJ	<p>Assessing sexual re-offending risk among adult sex offenders using a weighted scoring key by clinical staff or case managers. It contributed significantly to the understanding of dynamic risk factors and is best used as a complement to other tools that measure static factors. The items are divided into two areas.</p> <p><i>Stable factors:</i></p> <ul style="list-style-type: none"> Intimacy deficits Negative social influences Attitudes tolerant of sexual offending Sexual self-regulation General self-regulation <p><i>Acute factors:</i></p> <ul style="list-style-type: none"> Substance abuse Negative mood Anger Victim access 	9	Hanson & Harris, (2000)
Sex Offender Risk Appraisal Guide (SORAG)	AJ	<p>Assessing the recidivism risk (sexual and violent) of previously convicted sexual offenders. The items are:</p> <ul style="list-style-type: none"> Living with biological parents until age 16 Elementary school maladjustment History of alcohol problems Marital status Nonviolent offence history Violent offence history Sexual offence history Sex and age of index victim Failure on prior conditional release Age at index offence DSM-III criteria for any personality disorder DSM-III criteria for schizophrenia Phallometrically measured deviant sexual interests PCL-R score <p>The tool is not simple to use; it requires more specific information than many of the other tools, some of which might be difficult to obtain.</p>	14	Quinsey, Harris, Rice, & Cormier, (1998, 2006)
STATIC-99	AJ	<p>Predicting sexual recidivism. It provides explicit probability estimates of sexual reconviction, is easily scored, and has been shown to be robustly predictive across several settings using a variety of samples. It demonstrates only moderate predictive accuracy. The items are:</p> <ul style="list-style-type: none"> Prior sexual offences (same rules as in R-RASOR) Prior sentencing dates (number of distinct occasions on which the offender has been sentenced for criminal offences of any kind) Any conviction for non-contact offences Index non-sexual violence Prior non-sexual violence Any unrelated victims Any stranger victims Any male victims Young Single 	10	Hanson & Thornton, (2000)

Instrument	Type	Aims and Description	No. Items	Author(s)
STATIC-2002	AJ	<p>Evaluating the risk of sexual and violent recidivism among adult male sexual offenders. It improves the consistency of scoring criteria of Static-99. It can be used by a wide range of evaluators (e.g. psychologists, probation officers, psychiatrists, therapists) using commonly available criminal history information. Static-2002 predicts sexual, violent, and any recidivism as well as other actuarial risk tools commonly used with sexual offenders. It is intended to assess some theoretically meaningful characteristics presumed to be the cause of recidivism risk (persistence of sexual offending, deviant sexual interests, general criminality). The items are organized into five subscales:</p> <p><i>Age:</i> Age at release</p> <p><i>Persistence of sexual offending:</i> Prior sentencing occasions for sexual offences Any juvenile arrest for a sexual offence Rate of sexual offending</p> <p><i>Deviant sexual interests:</i> Any non-contact sex offences Any male victim Young/unrelated victims</p> <p><i>Relationship to victims:</i> Any unrelated victim Any stranger victim</p> <p><i>General criminality:</i> Any prior involvement with the criminal justice system Prior sentencing occasions Any community supervision violation Years free prior to index sex offence Any prior non-sexual violence</p>	14	Hanson & Thornton (2003); Harris, Phenix, Hanson, & Thornton, (2003); Hanson, Helmus & Thornton (2010)

Notes: These tables are an adaption from Zara & Farrington, 2016a, pp. 166-220.

AJ = Actuarial Judgement or Statistical Tool.

SPJ = Structured Professional Judgement or Structured Clinical Judgement.

Hanson and Harris have developed a system with both stable and acute risk factors. Originally called SONAR (The Sex Offenders Need assessment Rating); this system has now been renamed in two parts: STABLE – and ACUTE – 2007 (SA07 = total of 20 items) and represents a collaborative long lasting effort by the Canadian Department of Corrections. The STABLE-2007 and the ACUTE-2007 are specialised tools designed to assess and track changes in risk status over time by assessing changeable “dynamic” risk factors. These assessment tools, when properly used, showed the value of combining static, stable and acute risk factors in the community supervision of sexual offenders and high levels of predictive accuracy in assessing the risk of reoffending.

VOFP: Harassment/stalking/violate order for protection/violate no contact order/violate restraining order.

Table 2 - Risk assessment instruments: SPJ instruments for assessing the risk of sex violence in adults (*continues*)

Instrument	Type	Aims and Description	No. Items	Author(s)
Risk Matrix 2000 (RM2000)	SPJ	<p>Predicting the likelihood of reconviction for a sexual or violent offence in the long term (up to 15 years) among adult males convicted of sexual offences. It is used nationally in England and Wales by the Prison, Probation and Police Services. The RM2000 utilises a stepwise approach to risk classification. For assessing risk for sexual aggression the following factors are considered in the first subscale (RM: Sexual):</p> <ul style="list-style-type: none"> Age at Commencement of Risk Sexual Appearances Criminal Appearances <p>Four aggravating factors are examined:</p> <ul style="list-style-type: none"> Sexual Offences against a Male Sexual Offences against a Stranger Single Non-contact Sex Offense <p>A second subscale (RM: Violent) is designed to assess risk for violent recidivism and is comprised of three items:</p> <ul style="list-style-type: none"> Age Violent appearances Prior convictions for burglary <p>The strength of the instruments is based on valid risk factors and explicit rules for combining factors. Robust across settings and samples. The combination of risk categories (both RM: Sexual and RM: Violent) is tabulated to produce an overall level of risk (on a 0-to-6 scale) intended for predicting sexual or other types of violence (see Kingston et al., 2008).</p>	<p>3 scales RM200 0/S RM200 0/V RM200 0/C</p>	<p>Thornton, et al., (2003)</p>
	SPJ	<p>Assessing and managing individuals considered to pose a risk of sexual violence. RSVP is an evolved form of SVR-20 (see below) and its main task is risk formulation, and not risk prediction. It can be used with adult males (aged 18 and older) who have a known or suspected history of sexual violence. A comprehensive assessment of risk of sexual violence in clinical and forensic settings needs to be conducted by experts who also must gather comprehensive case information from multiple sources. Twenty-two individual risk factors composed the instrument and these factors must be assessed along with any additional case-specific risk factors. These factors are divided into five dimensions:</p> <ul style="list-style-type: none"> <i>Sexual Violence History</i> Chronicity Diversity Escalation Physical Coercion Psychological Coercion <i>Psychological Adjustment:</i> Extreme Minimisation and Denial Attitudes that Support or Condone Sexual Violence Problems with Self-Awareness Problems with stress or Coping Problems Resulting from Child abuse <i>Mental Disorder:</i> Sexual Deviance Psychopathic Personality Disorder Major Mental Illness Problems with Substance Abuse Violent or Suicidal Ideation <i>Social Adjustment:</i> Problems with Intimate Relationships Problems with Non-Intimate Relationships Problems with Employment Non-Sexual Criminality <i>Manageability:</i> Problems with Planning Problems with Treatment Problems with Supervision <p>Each item is coded three times: for presence in the Past, Recent presence and future Relevance. Each of these ratings is on a three-point scale: no evidence, partial evidence, or definite evidence.</p>	<p>22 items</p>	<p>Hart, et al., 2003</p>

Instrument	Type	Aims and Description	No. Items	Author(s)
Sexual Violence Risk 20 (SVR-20)	SPJ	<p>Predicting the risk of future sexual violence of a particular sexual offender and to guide potential risk management strategies. The items fall within three domains of psychosocial adjustment, sexual offending, future plans:</p> <ol style="list-style-type: none"> 1. Sexual deviation 2. Victim of child abuse 3. Psychopathy (PCL) 4. Major mental illness (DSM-IV) 5. Substance use problems 6. Suicidal/homicidal ideation 7. Relationship problems 8. Employment problems 9. Past nonsexual violent offences 10. Past nonviolent offences 11. Past supervision failures 12. High density sex offences 13. Multiple offence types 14. Physical harm to victim(s) in sex offences 15. Use of weapons or threats of death in sex offences 16. Escalation in frequency or severity of sexual offences 17. Extreme minimization/denial of sex offences 18. Attitudes that support or condone sex offences 19. Lacks realistic plans 20. Negative attitude towards intervention <p><i>Other Considerations:</i> acute mental disorder, recent loss of social support network, frequent contact with potential victims or poor attitude towards intervention. SVR-20 is useful in assisting the structuring of clinical assessments, and has the advantage of incorporating a 'recent change' score (Douglas, Cox, & Webster, 1999). SVR-20 is a simplified, brief version of the RSVP, and is used in forensic mental health and criminal justice settings around the world. The SVR-20 Version 2 is an updated 20-item checklist of risk factors for sexual violence that were identified by a review of the literature on sex offenders.</p>	20	Boer, et al., (1997)
Structured Assessment of Risk and Need (SARN)	SPJ	<p>Assessing sexual offenders' risk, need and progress in treatment. It is like a clinical framework to assess the presence of personality characteristics, which research has shown to be significantly associated with reconviction. These can be grouped into four risk domains:</p> <p><i>Sexual Interests:</i> Sexual preoccupation Sexual preference for children Sexualised violence preference Other offence related sexual interest</p> <p><i>Distorted Attitudes:</i> Adversarial sexual beliefs Child Abuse supportive beliefs Sexual entitlement beliefs Rape supportive beliefs View women as deceitful</p> <p><i>Management of Relationships:</i> Feelings of personal inadequacy Distorted intimacy balance Grievance thinking towards others Lack of emotional intimacy with adults</p> <p><i>Management of Self:</i> Lifestyle impulsiveness Poor problem solving Poor management of emotions</p>	16	Webster, et al. (2006)
Violence Risk Scale: Sex Offender Version (VRS:SO)*	'atypical' SPJ*	<p>Predicting sexual recidivism and linking treatment changes to sexual recidivism. This scale is believed to fall into the category of dynamic-actuarial risk assessment. The dynamic items yielded three factors that represent sexual deviance, criminality, treatment responsivity. It comprises 26 items, of which 7 are static, 17 dynamic, and 2 responsivity factors.</p>	26	Wong, et al. (2003)

Note

* Despite the fact that it does not exist in literature a clear position for how to categorise these types of instruments, whether actuarially or clinically structured, in this analysis they are considered SPJ by looking at their structure and considering the presence of both dynamic and responsivity factors, which will also require clinical evaluation.

For instance, in various risk assessment instruments (e.g., SARN, SVR-20, STABLE, etc.), the total risk score is relevant in so far as it depends on specific risk factors or specific combinations among them. The summary risk rating cannot be interpreted strictly numerically, so that high scores definitely equal high dangerousness; the summary risk rating acts as a guideline to indicate which areas are more problematic, which are most criminogenic, and which ones need specialised attention.

What is crucial is that offenders' risk should be translated into plans for treatment and care. It follows that risk instruments should be part of a more comprehensive evaluation of the person and of their psychological functioning, and their social adjustment, so that the passage from classifying sex offenders at the group level into the individual level becomes more precise for aiding treatment and management. Risk assessment instruments are, therefore, valid to the extent that they can accurately identify the risk differently, depending also on the populations to be assessed (e.g., adults vs. adolescents; ethnic minorities; mental disordered sex offenders; developmentally disabled sex offenders; internet sex offenders; clerical sex offenders; paraphilic sex offenders; male vs. female sex offenders, etc.). The closer the demographic characteristics of the tested sample is to those of the original one used for constructing the instrument, the higher the predictive validity (Singh, Grann, & Fazel, 2011).

This synthesis leads inevitably to the importance of looking at the criminal careers of sex offenders.

4. Criminal careers of sex offenders

Under the criminal career paradigm, a criminal career is defined as the longitudinal sequence of crimes committed by an individual offender (Blumstein, Cohen, Roth, & Visher, 1986, p. 12). The criminal career paradigm offers a valuable perspective on the study of sex offenders as it is able to describe both between- and within-individual differences and changes in offending across time (Piquero, et al., 2003). Farrington (1999, 2003a, 2007b) demonstrated that a criminal career includes a time ordered sequence of events that helps researchers to focus on the time before and/or after an offence is committed: an *onset* (i.e., the first time an individual begins to offend), a *duration* (i.e., the length of offending), and an *end* (i.e., when an offender desists). The duration of the criminal career includes some important characteristics³ namely *antisocial escalation* (i.e. the orderly switching from petty crimes to more serious offences with the increasing time spent in engaging in criminal activities; its opposite is defined as de-escalation) and *heterogeneity* or *versatility* (i.e. the tendency to engage in a

variety of different crimes as opposed to specialisation). The concepts of relative stability and absolute change (Farrington, 1990, 1991, 1992) are applicable to sex offending in so far as they help to explain the development of criminal careers in sex offenders by making them serve as their own control. Differences, changes or continuity in their adjustment to life, and in the impact of risk factors and criminogenic factors upon their behaviour, can be better identified by employing within-individual analyses.

In the absence of specific criminogenic needs related to sexual deviance (Laws & O'Donohue, 2008), such as paraphilias (i.e. intense and pathological anomalous sexual interests) (American Psychiatric Association, 2013), paedophilic interests (Seto & Lalumière, 2001), emotional congruence or identification with children (Wilson, 1999), intimacy deficits (Bumby & Hansen, 1997; Hanson & Harris, 2000; Mann, Hanson, & Thornton, 2010), and deviant sexual fantasies (Carabellese, Maniglio, Greco, & Catanesi, 2011), offenders are likely to be heterogeneous and involved in a versatile criminal career in which sex offending is one of the many types of crime they end up committing.

This differentiation is essential not only for theoretical and classification reasons (Blokland & Lussier, 2015), but especially for clinical, assessment and treatment purposes (Freilone, 2011; Hanson, 2014; Hanson & Bourgon, 2017). In those cases in which sex offenders are specialised (i.e. they have committed sex-only offences), the risk of re-offending should be assessed differently because clinical and psychopathological aspects might be more strongly involved. In fact, sexual offending is a heterogeneous category *per se* that contains various types of *hands on* (e.g., child abuse, rape) and *hands off* (e.g., exhibitionism, distribution and consumption of child pornography, internet recruiting of victims) offences. When they abuse multiple victims, the victims could be of a specific age (e.g., some preferences are for children or teenagers, or adult victims, or special needs victims, or elderly people). Some sex offenders manifest cross-age preferences (the so called *polymorphic sex offenders* who switch from children or teenager victims to adult victims, and vice versa) (Stephens, Reale, Goodwill, & Beauregard, 2017) and others show some gender crossover interests (i.e. victimising both males and females) (Heil & Simons, 2008). Some offenders commit more than one kind of only sex offences, while some offenders commit other types of offences. The former can be considered *specialised sex offenders*, whereas the latter are called *versatile sex offenders*.

Prior research found that a history of indiscriminate and diverse victim types (Hanson & Harris, 1998) and diverse sex crimes (Hanson & Bussière, 1998) is predictive of sexual recidivism risk. However, heterogeneous offending is more predictive of general recidivism (Lussier & Cale, 2013), and an overall higher frequency of offending (Piquero, et al., 2007).

This differentiation is necessary for three reasons: (1) to be able to assess the criminogenic factors that are likely to influence criminal careers; (2) to be able to assess the risk of recidivism (general, violent and sexual); (3) to be able to plan intervention and differential treatment.

3 Because of the restraint of space in this article we introduce only those features that are directly related to the main focus of the paper (e.g. sex offending); we invite interested readers to see the specialised bibliography (Farrington, 1997, 2003b; Piquero, et al., 2003; West & Farrington, 1973, 1977).

The model that seems most likely to indicate how to assess the risk and plan intervention is the Risk-Need-Responsivity (R-N-R) Model.

5. The Risk-Need-Responsivity (R-N-R) Model

The *risk principle* states that offender recidivism can be reduced if the level of treatment provided for the offender is proportional to the offender's level of risk. It endorses "who to treat". The *need principle* calls for the focus of treatment to be on criminogenic needs or dynamic psychological risk factors. It highlights the importance of identifying and targeting the specific criminogenic needs (or dynamic risk factors) of the individual in treatment. It targets "what to treat". The *responsivity principle* requires that treatment should be delivered responsively i.e. matching the type of treatment to the ability, cognitive and emotional resources, and learning style of the offenders. The respective intervention strategies often follow behavioural and social learning approaches and the style and mode of intervention should match an offender's personality, learning style, and motivation. It endorses "how to treat". This means that both the design and delivery of the treatment play a crucial role in its effectiveness, along with the general structure of the programme, which should be explicit, and should be delivered in adherence to its rationale and in respect of its design.

Adherence to these principles has shown improvement in the effectiveness of treatment rehabilitation (Bonta & Andrews, 2017; Andrews, Bonta, & Wormith, 2011; Jung, 2017; Looman, Dickie, & Abracen, 2005). More recently, Hanson, Bourgon, Helmus, and Hodgson (2009) have found strong support for the application of the RNR principles in the treatment and management of sexual offenders. Dowden and Andrews (2000) completed a meta-analysis on human service, risk, need and responsivity⁴, to explore whether programmes that addressed these principles were more effective than other programs that dealt with only clinical issues and non-criminogenic needs (e.g. personal distress, poor self-esteem, hallucination, anxiety and depression, feelings of alienation and exclusion, victimization, disorganised community, lack of ambition; see also Bonta & Andrews, 2017)⁵. The

findings were interesting: programmes that addressed criminogenic needs contributed to a significant reduction in recidivism, showing an effect size of .55, in comparison with other programmes. The RNR principles were also valid in a meta-analysis of treatment programs for young offenders (Koehler, Lösel, Humphreys, & Akoensi, 2013), and a meta-analysis on the treatment of female offenders (Dowden & Andrews 1999a). Similar results are found for sex and violent offenders.

Hanson and colleagues (2009) found evidence for the effectiveness of the RNR principles in the treatment of sex offenders. 23 studies were reviewed. They reported that treated, compared to untreated sex offenders, had lower general recidivism rates (31.8% vs. 48.3%), and sexual recidivism rates (10.9% vs. 19.2%). Those studies, which did not adhere to any of the principles, had the weakest effects, while the effectiveness of treatments increased with adherence to RNR, as recidivism decreased significantly when all three principles were tackled (Zara, 2019).

According to Bonta and Andrews (2017), and Bonta (2002), programmes that adhere to all three principles can anticipate a 26% reduction in the recidivism rate. The recidivism reduction reached an average of 17% if delivered in residential and custodial settings and 35% if delivered in community settings. Programmes that followed two principles achieved an 18% reduction, and those that included only one principle showed a 2% reduction. When no RNR principle has been considered, the mean effect even seems to be slightly negative, i.e. in spite of best intention an inappropriate program can sometimes even harm.

Lösel and Schmucker (2017) stated that the treatment of sex offenders embraces a variety of interventions and a diversity of treatment cores, ranging from behavioural, cognitive-behavioural and relapse prevention programs to psychodynamic approaches, therapeutic communities and multi-systemic therapy, and to pharmacological interventions and surgical castration (Marshall & Marshall, 2010; McGrath, et al., 2010).

Taking in mind Lösel's and Schmucker's conclusion, we advocate that treating sex offenders is a complicated clinical matter *per se*, but especially because of the differential risks and the heterogeneity of sex offenders that need to be assessed before any treatment takes place, so that such a variety of intervention programmes are necessary. For instance, it is not unusual that sex violence is combined with other forms of violence, especially when the victim is intimately known, as in intimate partner violence (IPV) (Zara & Gino, 2018). In this case, multiple risks seem to be in place, and require differential risk assessment (Zara & Farrington, 2013, 2016).

Risk assessment, as the anticipatory phase of any treatment, might require some adjustment according to the sex offender's specific needs, responsivity and readiness. The validity of treatment needs to be assessed too, along with the efficacy of interventions. All tasks require scientific coordination, methodological competence and governmental investment (Zara, 2018c). This process describes an ideal scenario that, in countries like Italy, where very few programmes for sex offenders are currently available, seems to

4 *Criminogenic needs or dynamic (psychological) risk factors* are factors that, when present, enhance the likelihood of reoffending, while when they are directly addressed via treatment reoffending is significantly reduced. Criminogenic needs (e.g. antisocial personality patterns, pro-criminal attitudes, social supports for crime, substance abuse, family/marital relationships, school/work, prosocial recreational activities) are dynamic and changeable, unlike static risk factors (e.g. criminal career features) that can only change in one direction. Higher risk offenders are likely to have a broader range of criminogenic needs and problems than lower risk offenders, and generally they respond better to treatment if the treatment matches the risk. (For a review see also Bonta & Andrews, 2017).

5 Treatments focusing on non-criminogenic needs appear to slightly increase offending rates (Andrews & Dowden, 2006), even though they might increase the sense of self-efficacy, self-esteem or reduce the anxiety level of the offenders. More studies are certainly necessary to disentangle these mechanisms that, though encouraging, do not reduce the reoffending pattern (Zara & Farrington, 2016).

be only futuristic, especially in comparison with what already happens in North America, Great Britain, and other European countries. In Italy, the Ministry of Justice does not require that offender risk assessments be conducted. Consequently, there are caveats for conducting large-scale studies on sexual offenders in countries such as Italy, with all the negative consequences related to limited research funds available, with no research on the generalisability of findings⁶.

Well replicated evidence is necessary for successful treatment. For example, a large recent study in England and Wales that evaluated the widely used core Sex Offender Treatment Program in prisons showed desirable effects, but a slightly negative result in sexual recidivism (Mews, Di Bella, & Purver, 2017). This study used the currently widely used method of Propensity Score Matching (PSM) to achieve equivalence between treatment and control groups when a randomised experiment was not possible. In contrast to Mews and colleagues (2017) a recent evaluation of sex offender treatment in Germany that also applied PSM found at least a (non-significant) tendency in favour of the treatment group (Lösel, Link, Schmucker, Bender, Breuer, Endres, et al., 2020). These and other findings underline the importance of replication of single studies to achieve a solid basis for policy and practice (Farrington et al., 2018; Lösel, 2018).

The remainder of this paper focuses on the scientific treatment of sex offenders, and summarises some of the main findings available, along with the sound methodology required to carry out such programmes.

6. Work with sex offenders, what is promising and what is controversial

In light of the pivotal studies on sex offending, the essential question is to what extent sex offenders can be treated, and the extent to which the effectiveness of treatment contributes to a reduction in the risk of general or sexual recidivism, or to a reduction in both types of recidivism. Welsh and Farrington (2012) emphasise that the prime requirement of an evidence-based approach to treatment and crime intervention is one that requires a commitment to the use of the most scientific, validated, and evaluated assessment methods and programmes. When examining the general effect sizes of sex offending treatment it is notable that they are not particularly large, but not necessarily smaller than

6 An exception to this is the project **SORAT** (*Sex Offenders Risk Assessment and Treatment*), now in its second edition, whose scientific coordinator is one of the authors (GZ). This project is the first national one that takes into consideration the necessity to set up a systematic process of risk assessment within the correctional system that anticipates treatment, and informs and promotes it. The project is funded by the Compagnia San Paolo, and involves the Department of Psychology, University of Turin, the 'Lorusso e Cutugno' Prison in Turin, the Department of Mental Health - ASL Città di Torino, the Abele Group O.N.L.U.S., and the Centre for the Study and Treatment of Violent Behaviour.

the treatment effect, effect sizes obtained with other types of intervention with other types of offenders (Hood, Shute, Feilzer, & Wilcox, 2002; Ireland, Ireland, & Birch, 2009).

A meta-analysis conducted by Hanson and colleagues (2002) included few true randomized studies, involved a vast range of treatment programmes and a total of over 9,000 sex offenders. The findings indicated that the rate of sex offending was lower for treated offenders (12.3%) in comparison with untreated groups (16.8%). Significantly, those studies that employed a cognitive-behavioural or systemic treatment approach had a reduction in recidivism ranging from 9.9% to 17.4%. This approach consists mostly of teaching sex offenders to re-organise their attitudes towards their sexual behaviour, to develop an ability to empathise with the victims, to appreciate the consequences of their sexually abusive behaviour, even when not explicitly aggressive or violent, and to learn how to control their sexual obsessiveness and their sexual needs in order to avoid further offending.

A meta-analysis by Schmucker and Lösel (2015) showed that cognitive-behavioural approaches seem to be the most promising, in so far as they are set up to move sex offenders towards a process of changing their internal (cognitive and emotive) functioning, as well as their overt behaviour, and their social adjustment to others and to life. From their conceptual evaluations of the treatment of sex offenders, some key points on what is relevant and what needs further investigation have emerged:

The characteristics of the offenders (e.g. age; heterogeneous or specialised; persists or first-time; high-risk or low-risk; psychopathic; mentally disordered; paraphilic, etc.) have a significant impact on treatment participation, completion and success. Specific risk assessment instruments take into consideration some of these characteristics (e.g. Static-99R, Stable-2007, etc.). Therefore some differentiation between offenders is required to take account of offenders' characteristics, needs and readiness to change.

The type of treatments (group *versus* individual) may vary in efficacy. The meta-analysis of Schmucker and Lösel (2015) suggested that including, at least partly, individualised modules seem to be more effective. This might have depended on aspects related to privacy and specific offender needs.

Sample size seems to be relevant in so far as it might relate to the extent to which the sex offenders are supported. Previous meta-analyses (Lösel & Schmucker, 2005; Schmucker & Lösel, 2015) found larger effects in very small samples. This could partially be due to a publication bias, but a better quality assurance in smaller studies may also be relevant.

The quality of programme delivery and integrity are important issues, and are widely recognised: best practice (Boer & Hart, 2009), and sound quality implementation leads to better effects (Lösel & Schmucker, 2005; Schmucker & Lösel, 2008, 2015).

The context of the treatment seems to make some differences to the effectiveness of programmes for sex offenders. Treatments delivered in prison seem less effective than those delivered in the community (Lösel & Koehler, 2014)

or in forensic psychiatry units (Schmucker & Lösel, 2015). This finding may be partially related to criminogenic effect that a custodial setting has on inmates. In addition, sound therapy requires coping with reality. This is, for example, not possible in custodial treatment of child abusers because there are no risk situations with children in prisons. Therefore, aftercare and relapse prevention are highly important.

The characteristics of the evaluation are not easily assessed. In their meta-analysis, Lösel and Schmucker (2017) reported that the findings on the relation between design quality and the effect of sexual offender treatment were mixed.

The transparency of the report on the evaluation is important as an expression of *descriptive validity* (Lösel & Köferl 1989) which, despite not being a characteristic of the evaluation process itself, has substantial correlations with effect sizes. There is no doubt that clear and transparent documentation of the treatment concept, implementation, outcome measurement and statistical analysis is a sound indicator of the overall good quality of a treatment program and its evaluation (Lösel, 2007, 2012). Therefore, programme evaluations should pay more attention to these issues (Farrington, 2006), and follow a sound method (e.g. the Maryland Scientific Methods Scale) (Farrington, et al., 2002).

In their work on treatment of sex offenders, Lösel and Schmucker (2017) provide a condensed overview of some general and differentiated results of meta-analyses on sex offender treatment that deserve specific attention, not least because of the clarity with which they are presented (see also their table on p. 400). There is no doubt that more high-quality primary studies and systematic integrations of the results are crucial to answer open questions, clarify ambiguities over what works and what does not, and help to turn promising findings into replicated knowledge, as Lösel and Schmucker (2017) suggest.

7. Some other issues that need to be clarified in sex offending risk and treatment

Some psychological dimensions need further investigation because their impact upon sex offending is often misunderstood (Mann, Hanson, & Thornton, 2010). They do not seem to have an impact upon risk and sexual recidivism, at least directly, but otherwise seem to be relevant to responsibility and commitment to treatment. Some of these factors are motivation, empathy and denial.

Motivation to engage in treatment is an important factor for participation and perhaps success, but it also depends upon readiness to change (Burrowes & Needs, 2009; McMurrin & Ward, 2010).

Denial is a common response in sex offenders (Zara, 2018a,b). Denial is conceptualised as a dynamic process, and various layers of masking individual difficulties (Barbaree, 1991) are included in the *dance of denial* (Happel & Auffrey, 1995). This involves maintaining a stance of innocence (O'Donoghue & Letourneau, 1993) or of defensiveness

(Rogers, 2008), deflecting attention from what was done (*absolute denial*) or recounting differently 'known knowledge' (*interpretative denial*) or minimising the consequences of what happened (*implicatory denial*) (Schneider & Wright, 2004). Research findings have shown that the relationship of denial with recidivism risk is at best indirect (Harkins, Beech, & Goodwill, 2010). Denial is an important factor in treating sex offenders (Jung & Zara, 2018; Zara, Farrington, & Jung, 2020). As such, denial should be seen as a challenge for programme improvement, rather than as an asset or a flaw of the offender *per se* (Bekyo & Wong, 2005).

Though empathy is an important dimension in human relationships, it is a non-criminogenic need and is not directly related to sex offending, and victim empathy is not a significant predictor of recidivism (Hanson & Morton-Bourgon, 2005). More important seem to be general aspects of perspective taking and specific components of empathy. In a meta-analysis carried out by Jolliffe and Farrington (2004), a common measure of effect size (the standardised mean difference) in 35 studies, 21 of cognitive empathy and 14 of affective empathy, was calculated. It was found that cognitive empathy had a stronger negative relationship with offending than had affective empathy. The relationship between low empathy and offending was relatively strong for violent offenders, but relatively weak for sex offenders. Empathy differences between offenders and non-offenders disappeared when intelligence and SES was controlled for in the non-offending and offending populations.

Jolliffe and Farrington (2004) specifically identified studies that used sex offenders exclusively as the offending group, or where sex offenders were separable from other offenders. A subset of 18 studies covering 1,752 participants, with a mean number of 52 offenders and 45 non-offenders per study, was gathered. Contrary to expectations, low empathy was more strongly related to mixed offending than to sex offending. When the mean effect size of these 18 studies was compared to that of the remaining 19, a significant between-groups difference was found (Q between groups = 4.33, $p < .04$). However, it was the mixed offender group that demonstrated the higher mean effect size at -0.31 ($p < .0001$), compared to -0.18 ($p < .0005$) for sex offenders. This result shows that the disparity in empathy between mixed offenders and controls was greater than between sex offenders and controls. The suggestion that sex offenders may have particular deficits in concordant emotional responses (affective empathy) compared to other types of offenders was not supported.

Empathy in sex offenders needs further investigation, and interventions that target it require a different focus depending on which specific dimensions of empathy are addressed (e.g. perspective taking or emotional recognition or compassion) and, also, on what types of offenders and offending are investigated. It is plausible to assume that sex offenders have some impairments, more of the affective facet of empathy that also includes the relational dimension of emotional sharing, than of cognitive empathy, that includes perspective taking and sympathy (empathic concern), which may summarise the *knowing without caring*

attitude described by Ciman, Tonnaer, and Hauser (2010). Some sex offenders are in fact quite 'empathic', which makes them very able to relate to potential victims and, also, to seduce and groom them. It would not be desirable to increase the empathy of these offenders, as they may then become more successful sex offenders.

Clinical findings suggest that there are some individuals who are difficult to treat (Freilone, 2011) or, in extreme cases, untreatable (Stone, 2006). For instance, highly deviant sexual preferences are viewed as particularly difficult (if not impossible) to treat (Lösel & Schmucker, 2017). Psychopathic sex offenders are also an extremely difficult clinical and criminological population, almost impossible to treat (Abracen, Looman, & Langton, 2008).

8. Conclusions

Much can be learnt about sex offenders from using criminal career information, and by assessing the risk, considering not simply the nature of the crime (e.g. sexual), but the heterogeneity of the criminal career. The risk of recidivism is higher when the criminal career is more versatile, not least because criminal opportunities are more common, and therefore are more frequently taken advantage of.

Longitudinal studies have shown that many changes occur in the criminal career of a sex offender. For instance most juvenile sex offenders do not become adult sex offenders; most offenders who commit sex crime, commit other crimes as well; and those sex offenders who are specialised need differential assessment and personalised treatment so as to deal first with their sexual deviance and psychopathology. The risk of recidivism for sex offenders is not significantly higher than for other offenders. Their risk declines the longer they stay out of crime while in the community. Intervention seems to work in reducing the risk of reoffending, and promoting a rehabilitated life for these individuals. Its efficacy depends upon targeting the specific criminogenic factors that contribute to sexual deviance and to the acting out of their deviancy. Much of our knowledge about sex offenders relies upon known offenders, who have been convicted for a sex crime. Certainly, much less is known about those individuals who commit sexual violence but remain undetected. More research on sex offenders using self-reports is needed. Further research needs to be carried out especially in those countries in which a great deal has to be learned about assessing differential risk and evaluating the efficacy of treatment programmes.

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Sex offenders in jail: a mini review of treatment programs and outcomes

Breve rassegna della letteratura sui programmi e sugli esiti dei trattamenti destinati agli autori di reati sessuali in carcere

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Abstract

The debate in the scientific literature about sex offender treatment and its effectiveness remains divided and controversial. Several studies have uncovered that psychological treatment reduces the risk of recidivism in such subjects (Gallagher, et al., 1999; Hall, 1995; Hanson, et al., 2009; Hanson et al., 2002; Lösel & Schmucker, 2005; Reitzel & Carbonell, 2006; Schmucker & Lösel, 2008, 2015), whilst other studies have shown that there is insufficient evidence for this conclusion (Furby, Weinrott, & Blackshaw, 1989; Harris, Rice, & Quinsey, 1998; Kenworthy, et al., 2004; Rice & Harris, 2003). In order to clarify which treatments are applied to the sex offender population in jail, together with the associations between these treatments and reduced risk of recidivism, the present study comprised a review of the literature to determine the current state of research in this area.

Keywords: sex offender, treatment, jail, recidivism risk, Italian programs

Riassunto

Il dibattito nella letteratura scientifica sul trattamento degli autori di reati sessuali e sulla sua efficacia rimane diviso e controverso. Diversi studi hanno scoperto che il trattamento psicologico riduce il rischio di recidiva (Gallagher, et al., 1999; Hall, 1995; Hanson, et al., 2009; Hanson et al., 2002; Lösel & Schmucker, 2005; Reitzel & Carbonell, 2006; Schmucker & Lösel, 2008, 2015), mentre altri hanno dimostrato che non ci sono prove sufficienti per questa conclusione (Furby, Weinrott e Blackshaw, 1989; Harris, Rice, & Quinsey, 1998; Kenworthy, et al., 2004; Rice & Harris, 2003). Al fine di chiarire quali trattamenti sono applicati agli autori di reati sessuali detenuti in carcere, nonché l'associazione tra i trattamenti e la riduzione del rischio di recidiva, il presente studio effettua una review della letteratura per determinare lo stato della ricerca in questo settore.

Parole chiave: sex offender, trattamento, carcere, rischio di recidiva, programmi italiani

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1. Introduction

Sexual violence can be defined as “actual, attempted, or threatened sexual contact with a person who is nonconsenting or unable to give consent” (Boer, Hart, Kropp, & Webster, 1998, p. 9). Such violence (Campobasso et al., 2009) is a major public health concern and the common public sentiment is that sexual offenders should receive strong punitive measures (McAlinden, 2012). Sex offenders, themselves, comprise a heterogeneous and largely diversified group reflecting a range of sociodemographic characteristics, evolutionary experiences (Di Cori, Fedeli & Sabatello, 2012), and criminal histories (Knight & Prentky, 1990). Furthermore, they present different psychopathological traits and multiple paraphilic disorders (Marshall, 2007; Grattagliano, Mele, Ieva, & Carabellese, 2008; Carabellese, Candelli, La Tegola, & Catanesi, 2010), as well as a variety of other disorders (Bogaerts, et al., 2005; Langstrom, et al., 2004; Levenson, 2004). Considering all of these variables, it is difficult to define a unique clinical and pathological profile of sexual deviants. Usually, offenders are classified according to their victim’s age (i.e., child molester, perpetrator of adolescents, rapist) and receive a specific treatment according to their group. However, the scientific literature on *sex offender treatment* and its effectiveness remains divided and controversial (Hanson & Yates, 2013).

According to the literature, the best treatment for sex offenders is a cognitive behavioral intervention based on a relapse prevention model employing individual and group therapy (Osborn, 2007). Interventions of this nature are administered across the US, Canada, Australia, New Zealand, Ireland, and the UK (see Brown, 2011, for a detailed description of these programs). The principal aim of cognitive behavioral *sex offender treatment programs* is to change the offenders’ patterns of behavior and internal processes (thinking patterns, feelings, and physiological arousal) that have been developed and maintained through learning and reinforcement, resulting in maladaptive and deviant responses associated with sexual offenses. These patterns are

then replaced with adaptive, prosocial attitudes and behaviors (Yates, 2003) that are expected to reduce the likelihood of recidivism (Dennis et al., 2012). The treatment goals also include skills acquisition, reduction of cognitive distortions, development of problem-solving strategies, improvement of social and victim perspective taking, and reduction of deviant sexual arousal (Marshall, et al., 1999; Yates, 2003; Yates, et al., 2000). Furthermore, the programs aim at helping the offenders to identify future risk scenarios and develop alternative and adaptive coping (*relapse prevention*) strategies in order to reduce the likelihood of recidivism (Dennis, et al., 2012; Laws, Hudson, & Ward, 2000).

Conventionally, cognitive behavioral treatment (CBT) is often combined with medication intended to suppress sexual appetite. When hypersexuality is present, an anti-androgen drug treatment such as *cyproterone acetate* may be administered in association with the cognitive behavioral therapy. In Western Europe and Canada in 1960, *cyproterone acetate* (CPA) was used as a preventive measure for sex offenders, as part of the sentence; CPA is an anti-androgen hormone treatment that significantly affects plasma testosterone to moderate deviant sexual behavior (Bourke, 2009). Currently, the most frequently used drug in subjects presenting sexual hyperactivity or compulsive sexual behavior is *medroxyprogesterone acetate* (MPA), which acts on the brain by reducing the secretion of testosterone. MPA is often prescribed in association with psychological treatment, such as psychotherapy. It is widely administered in Europe, specifically Germany since 1969 (for subjects older than 25 years, followed by medical and clinical evaluation), Sweden since 1993 (with consent and following an assessment of recidivism risk), Denmark since 1973 (as a replacement for surgical castration), and France since 1997 (Petruccelli, et al., 2008). In Italy, unlike other European and non-European countries, there is no law that permits the chemical castration of sexual offenders.

In order to bring a specific focus to the treatment of sex offenders, the present study involved a mini-review of the literature, using the search strings shown in **Appendix 1**.

Appendix 1

Search engine	Search string
Pubmed	(sex* offend*[Title/Abstract]) AND treatment [Title/Abstract] AND outcome [Title/Abstract]
Cochrane Library	sex* offend* AND treatment AND outcome
PsychInfo	sex* offend* [Title] AND treatment [Title] AND outcome [Title]

2. Materials and methods

Selection of Studies

The inclusion criteria were:

- descriptions or reports of sex offender treatment programs with a focus on the main outcomes; and
- year of publication between 2008 and 2019.

The exclusion criteria were:

- reviews and meta-analyses;
- articles not pertinent to the topic;
- full text articles unavailable; and
- papers not written in English.

Data Sources and Search Strategy

Three electronic databases (PubMed, Cochrane Library, PsycINFO) were searched from 2008 to 2019, with the search strings reported in **Appendix 1**. Articles were selected in accordance with the *Preferred Reporting Items for Systematic Reviews and Meta-Analyses* (PRISMA) guidelines (Moher, et al., 2015; Shamseer, et al., 2015). Two reviewers

(CM and ER) independently selected titles, abstracts, and full text publications using the inclusion and exclusion criteria specified above. Disagreements were resolved through discussion with a third reviewer (PR). The following information was extracted from all publications: participants, characteristics of the treatment, and a summary of the main study findings, with respect to treatment.

3. Treatment of sex offenders

The search retrieved 89 articles: 85 articles remained after duplicates were removed, 54 were excluded on the basis of the title, abstract, or full text (as they were not completely relevant to the topic), 19 were excluded due to the type of publication (review or meta-analysis), and 3 were excluded because full text articles were not available. Most of the excluded articles were not focused on the study population (sex offenders) or the selected topic (treatment outcome). Ultimately, 9 articles were selected for the mini-review.

The PRISMA flowchart is shown in **Figure 1**.

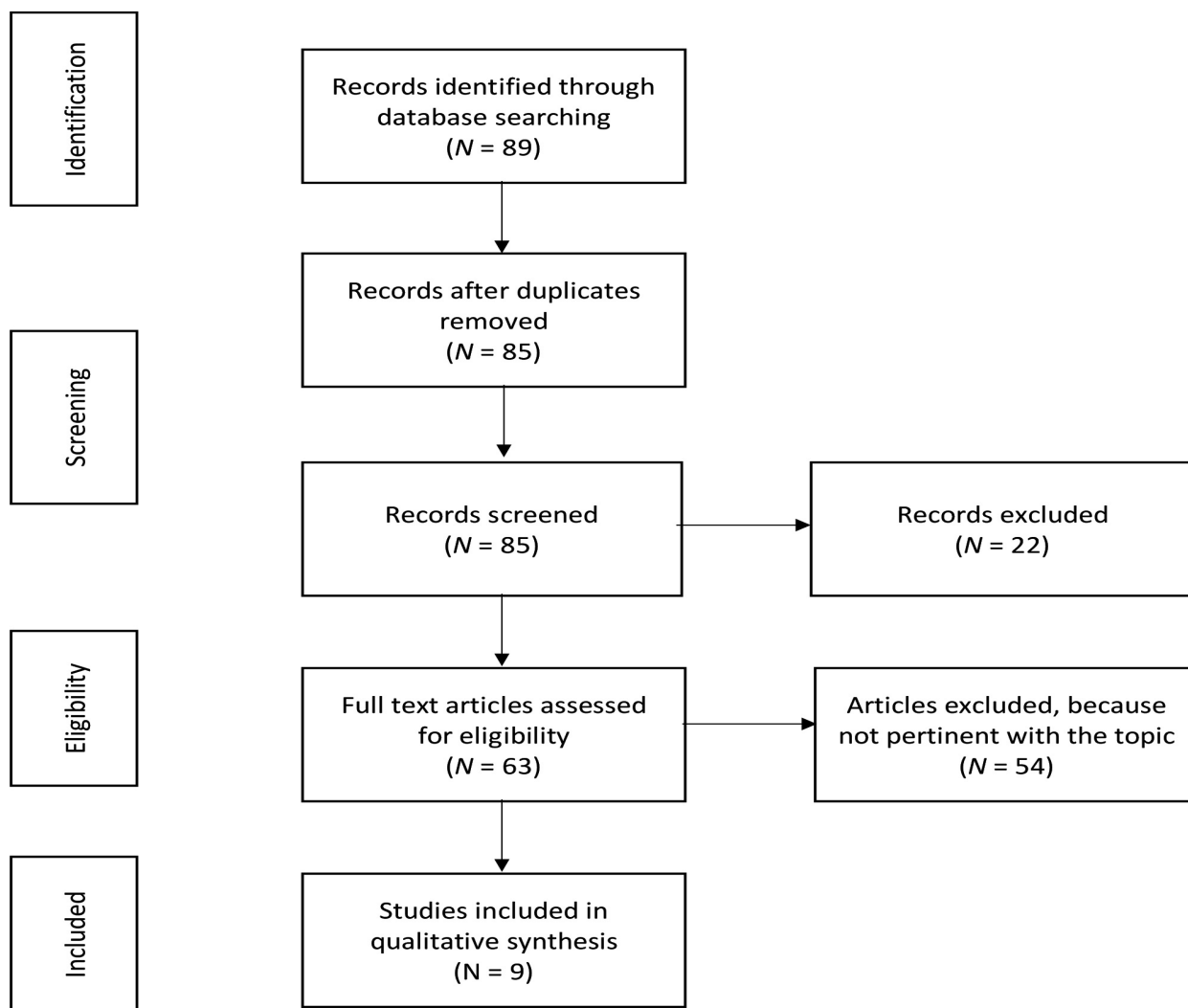


Fig. 1 PRISMA flowchart

One of the selected studies (Olver, et al., 2009) was an extension of the Nicholaichuk et al. (2000) study and described the treatment outcome of a high-intensity inpatient sex offender treatment program by comparing the sexual recidivism rates of 472 treated and 282 untreated offenders. In more detail, the researchers assessed the *Clearwater Program*—a 48-bed treatment unit for moderate- to high-risk sexual offenders, using a cognitive behavioral approach and relapse prevention. They also used the Static-99 (Hanson & Thornton, 1999) and the Violence Risk Scale–Sexual Offender Version (VRS-SO; Olver, Wong, Nicholaichuk, & Gordon, 2007) to assess the risk of sexual recidivism. Moreover, they ran a Cox regression survival analysis to control determinate variables such as length of follow-up, age at release, and sexual offending history (presence/absence of prior sexual convictions), which are recognized to be predictor variables of sex offender recidivism (Hanson & Morton-Bourgon, 2004). The results showed that treated offenders sexually recidivated significantly less often than the comparison group over nearly 20 years of follow-up.

In a later study, Olver et al. (2013) analyzed sex offender treatment outcomes in a large national cohort of Canadian federally incarcerated sex offenders. The sample was comprised of 732 offenders: 625 had completed a sex offender treatment program and 107 had not. The findings showed that the treated sex offenders reported significantly lower rates of violent – but not sexual – recidivism, after risk and individual differences were controlled for. Moreover, after dividing offenders according to risk level, the researchers found that the treated and untreated groups showed significant differences only among moderate- to high-risk offenders. Furthermore, the results highlighted that treated and untreated offenders had higher recidivism rates when they were younger (i.e., younger than 50 years at the time of release).

Later, in the quasi-experimental study of Smid et al. (2016), similar results were found. The aim of Smid et al.'s study was to assess the effect of high-intensity inpatient treatment for sex offenders. The sample was comprised of convicted Dutch sex offenders who had been discharged from prison between 1996 and 2002; 25% had not received any treatment during their incarceration whilst the remainder had received treatment. The researchers used the Static-99R (Hanson & Thornton, 2000) to retrospectively assess risk levels and compared sexual and violent (including sexual) recidivism rates between the treated and untreated offenders, controlling for level of risk. The average follow-up was 148 months ($SD = 29.6$) and the base rates for recidivism were 15.0% for sexual offense and 38.4% for violent (including sexual) offense. Only among high-risk offenders was a significant treatment effect found (40.0% recidivism); no treatment effects were found in low- and low-moderate-risk offenders.

In a recent study, Kingston et al. (2014) described the *self-regulation model* (SRM)—a nine-phase, four-pathway offense process model created specifically for sex offenders. In more detail, the researchers investigated the validity and utility of the SRM in 275 adult men within Canadian federal penitentiaries who had been convicted of a contact sexual

offense. All of the men had received treatment and showed improvements from pre- to post-treatment on a dynamic risk assessment and several self-reported treatment targets. Nevertheless, as the authors reported, given the absence of an untreated control group, they were unable to conclude whether these effects were due to treatment participation or simply the passage of time or an unknown variable.

Sowden et al. (2017) investigated the relationships between treatment readiness, responsivity variables, and treatment change with important sexual offender treatment program outcomes (attrition and recidivism) using the Treatment Readiness, Responsivity, and Gain Scale: Short Version (TRRG:SV; Serin, et al., 2005). For their sample, the researchers selected 185 federally incarcerated adult male sex offenders who had participated in the *Clearwater Sex Offender Treatment Program* at the Regional Psychiatric Centre in Saskatoon (Canada) between 1998 and 2001. The results showed that those with higher levels of education, a history of employment, higher cognitive ability, a marriage or equivalent partnership, and no serious mental illness or intellectual disability tended to show higher levels of treatment engagement across the TRRG:SV subscales. Moreover, positive treatment engagement was linked with increased risk-relevant treatment change, decreased program attrition, and reduced sexual and violent recidivism.

In another study, Olver et al. (2018) described the effects of two treatment programs: the *Correctional Service of Canada's Standard Sex Offender Treatment Program* and an early version of Rockwood's prison-based program, using CBT and *risk-needs-responsivity* (RNR). The sample was comprised of the participants in the two aforementioned treatment programs ($N = 579$ and $N = 625$, respectively) and a group of untreated men ($N = 107$) who had been incarcerated for a sexual offense. The results showed that both treatment groups displayed lower rates of sexual and violent recidivism, compared to the untreated group. Moreover, the Rockwood group demonstrated the lowest recidivism rates. Overall, the findings highlighted that prison-based treatments for sex offenders can be effective.

Howard et al.'s (2019) study had two main aims: (a) to analyze the influence of treatment delivery changes in a residential sex offender treatment program and (b) to investigate whether the recidivism rates of offenders who had completed the program ($N = 494$) were linked to differences in participant attrition rates. The total sample was comprised of 652 offenders who had been recruited from the *Custody-Based Intensive Treatment* program in New South Wales, Australia, between 1999 and April 2015 (when data were obtained). The program used CBT based on “what works” and RNR principles. The results showed that the introduction of rolling groups and an emphasis on positive therapist characteristics were associated with a significantly increased likelihood of program completion. Furthermore, it was shown that cohort attrition and reoffending outcomes were inversely related in those who had completed the program, whereby increased cohort attrition was related to significantly decreased sexual reoffending. The authors explained this finding by suggesting that the more participants resisted treatment, the less likely they

were to obtain clinically significant changes and to return to normal functioning; therefore, the greater their likelihood of reoffending.

In a recent study, Engel et al. (2018) evaluated the effects of treatment aimed at reducing dynamic risk factors (DRF) in pedophilic men at risk of reoffending, within the prevention projects of Hannover and Regensburg. Self-report questionnaires and questionnaires measuring DRF were administered to the sample, which was divided into three groups: a treatment group (TG, $N = 51$), a group of treatment refusers (TR, $N = 51$), and a drop-out group (DO, $N = 14$). The main purpose of the study was to examine if there was reduced DFR in the treatment group; accordingly, the TG were assessed before and after treatment. The findings did not reveal any differences between the three groups with respect to sociodemographic and sociosexual variables before therapy. No differences were found in education, relationship status, and whether the individuals were fathers/stepfathers. Moreover, the results showed that the offenders (TG) had decreased hypersexual behavior and offensive attitudes and were able to better control themselves in situations that put them at risk of offending (coping self-efficacy); they also showed less identification with children.

With respect to drug treatment for sex offenders, to the best of our knowledge, Gallo et al.'s (2018) study was the first to investigate the efficacy of administering leuprolide acetate (*Lupron*) in sex offender treatment. The study sample was comprised of 128 sex offenders. The first group ($N = 25$) received a combined treatment of *Lupron* and CBT and was compared to the other two groups: sex offenders receiving only CBT ($N = 22$) and untreated and non-sexual violent offenders ($N = 81$). Static-99 (Hanson & Thornton, 2000) was used to assess risk for sexual recidivism in adult male sex offenders and the *General Statistical Information on Recidivism Scale* (GSIR; Nuffield, 1982) was used to predict recidivism in male federal offenders. The results revealed that the Static-99 predicted recidivism rates were significantly higher than the observed rates of sexual recidivism. In more detail, concerning violent recidivism, both of the treated groups showed better results than the untreated group. Moreover, sex offenders who had been treated with both *Lupron* and CBT demonstrated a lower risk of reoffending than did untreated subjects. Finally, offenders who had received only *Lupron* had a significantly higher risk of recidivism and presented more paraphilia, compared to the only CBT group.

4. Discussion

Some of the treatment programs investigated in the selected articles appear to have been effective in reducing recidivism in sex offenders. In more detail, studies that investigated CBT approaches showed a greater reduction in recidivism in the treated group relative to the untreated groups (Olver, et al., 2018; Olver, et al., 2013; Olver, et al., 2009). Two other studies (Engel, et al., 2018; Howard, et al., 2019) showed that both treatment delivery in a residential sex offender treatment program (via the introduction of rolling groups and an emphasis on positive therapist characteristics) and re-

duced DRF were associated with a significantly increased likelihood of program completion and decreased hypersexual behavior and offensive attitudes. Furthermore, in Sowed et al.'s (2017) study, positive treatment engagement was linked with increased risk-relevant treatment change, decreased program attrition, and reduced sexual and violent recidivism. In another study (Kingston, et al., 2014), which compared a pre- and post-treatment group on dynamic risk assessment and self-reported treatment targets, improvements were found between the two groups. However, as clarified by the authors, the absence of an untreated control group did not enable them to determine with certainty whether the effects obtained were due to treatment participation or to unknown noisy variables. Moreover, as reported above, medication intended to suppress sexual appetite is often combined with CBT in treatment programs for sex offenders. The research of Gallo et al. (2018) revealed lower observed rates of sexual recidivism within subjects who had received treatment compared to those predicted by the Static-99. In particular, offenders who had been treated with both *Lupron* and CBT had a lower risk of reoffending compared to those who had not received treatment and those who had only been treated with *Lupron*.

5. Treatment programs for sexual offenders in Italy

In line with ISTAT data (collected through interviews in 2015 and 2016), in Italy, it is estimated that 8.816.000 (43.6%) women between the ages of 14 and 65 have suffered some form of sexual harassment; it is further estimated that 3.118.000 women (15.4%) have suffered sexual harassment in the past 3 years. Sexual harassment has also been detected against men: it is estimated that 3.754.000 men (18.8%) have suffered it during their lifetime, and 1.274.000 in the past 3 years (6.4%). Furthermore, according to ISTAT data in 2017, out of 60.000 prisoners in Italy, 3.215 were incarcerated for crimes of sexual violence (art. 609 *bis* of Italian penal code) (approximately 5%); of these prisoners, 61 were women. In total, 661 prisoners were incarcerated for sexual acts with a minor (art. 609 *quater* of the Italian penal code); of these prisoners, 23 were women (Caso, Da Ros & Matano, 2011).

In Italy, persons who are suspected and convicted of a sexual crime are confined to specific sections in detention centers called "protected sections," in order to guarantee their safety and protect them from punitive reactions by "common" prisoners. Common prisoners often engage in stigmatized behavior towards sex offenders, such as social exclusion, isolation, and psychic violence (e.g., denigration), as well as physical violence (e.g., beatings) and sexual violence, as a form of revenge. As a consequence, sexual offenders often suffer from poor detention conditions and, in many cases, unequal treatment during intramural work and recreational activities. Moreover, some studies have highlighted that all the stigmatized behaviors toward prisoners and the freedom's deprivation are recognized as risk factors for prisoners' mental health and are also considered predisposing factors for suicide (Fazel & Baillargeon, 2011; Kupers, 1999;

Green, et al., 1992; Roma, et al., 2013; Skegg & Cox, 1991).

An extremely alarming fact is that, in Italy, the assessment of recidivism risk is practically non-existent: no research or survey has been published on this subject; therefore, there are no national guidelines governing the implementation of targeted intervention programs. Treatment and rehabilitation programs for sex offenders must be independently and autonomously initiated by prisons' executive director, without ministerial directives and national scientific committee's acceptance. However, Italy has recently joined the Lanzarote Convention, according to which all states are meant to implement programs aimed at reducing and preventing recidivism. According to the Italian penitentiary law (art. 13 and 13 *bis* O.P.), convicted sex offenders have the right to undergo penitentiary treatment in line with scientific observation of their personality. Despite this, to the best of our knowledge, there are no recent researches that examined the personality of prisoners through the use of personality questionnaires, and consequently there are no clues about the attitude of these subjects towards the tests, and the possibility that they may present *underreporting*, *faking-good* and *faking-bad* profiles, as they are strongly motivated to present themselves in a favorable light in order to obtain secondary benefits. This tendency to *underreporting*, *faking-good* and *faking-bad* is widespread in all those contexts where personality characteristics of subject are assessed (Burla et al., 2019; Giacchetti et al., 2020; Mazza et al., 2019, 2019b, 2019c; Mazza, Monaro et al., 2020; Orrù et al., 2020; Roma et al., 2020; Roma, Marchetti, Mazza, Burla, & Verrocchio, 2020; Roma et al., 2019, 2019b; Roma, Pazzelli, Pompili, Girardi, & Ferracuti, 2013; Roma, Piccinni, & Ferracuti, 2016; Roma, Pompili, Lester, Girardi, & Ferracuti, 2013; Roma et al., 2014; Roma et al., 2018). Such observation is meant to be made prior to and throughout the treatment and is carried out by the GOT (Observation and Treatment Group)—an interdisciplinary working group within the penal institution. The GOT consists of the institution director (who presides over and coordinates group), a legal-pedagogical educator, a social worker, a doctor, and a professional expert in psychology and criminology (*ex. art. 80 O.P.*). In addition to observing an inmate's personality, the GOT also reflects on the results of the observation, anti-juridical behavior, the

motivations and consequences of the offender's actions, and the possibility of repairing the consequences of the crime (e.g., compensating the victim). The prisoner, once he/she has become aware of the treatment proposals, is asked to sign a treatment pact to confirm his/her awareness and willingness to actively participate in the recovery activity. The participation requirements differ according to the project. Generally, subjects are required to be of age and sentenced at least in the first degree, know the Italian language, have no problems with alcohol/drug addiction, and have no full-blown psychopathology requiring additional treatment.

With respect to treatment programs, as cited above, no information on rehabilitative projects (in term of promoters, number of recipients, methodology, and outcome assessment) is publicly available. The lack of a central institution to evaluate treatment initiatives, according to international standards and empirical research, could lead to continued investment in projects demonstrating poor outcomes. To fill this gap, the authors of the present study conducted a survey for over 1 year, aimed at investigating the ways in which sex offenders are treated in Italy, the methods and techniques that are used for their treatment, and the results that have been achieved. However, despite repeated requests to obtain specific data on sex offender treatment programs and their outcomes at a variety of institutions, no replies were offered, beyond the data reported below. In contrast to demonstrating data transparency, Italian institutions' opacity in terms of their procedures and treatments precludes international comparisons and leaves Italy behind on the global stage.

To the best of our knowledge, there are 190 penitentiaries in the Italian territory. Amongst these, there are 112 protected sections, of which 40 (38 male, 2 female) are formally established for sexual offenders. In addition, three prisons are specifically dedicated to sex offenders: Altamura (84 inmates), Vallo della Lucania (55 inmates), and Lanusei (32 inmates) (data up to date as of August 29, 2019).

In 2016, a survey was conducted with 30 penitentiaries to investigate sex offender treatment programs between 2014 and 2016. In total, 51 projects were examined, of which 10 had already concluded. In Italy, the first treatment initiative for sex offenders was implemented at the detention center of Lodi.

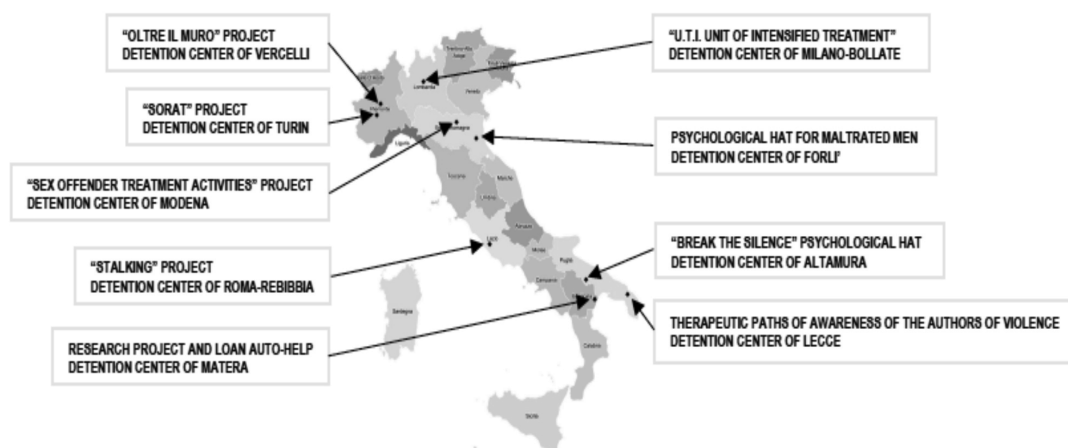


Fig. 2 Survey performed in October 2017

Within the penitentiaries, some projects had been developed to deepen the professional skills of prison officers called to interact with this particular type of prisoner. Largely, these projects were inspired by those carried out in other European countries. The *Working on Lessening Fear* (WOLF) project was the first project to be co-financed with European funds and was presented and managed in 1998 to 1999 by the Department of Penitentiary Administration, in cooperation with the governments of Belgium and Holland and the University of Siena. Within the project, the innovative management scheme that had previously been introduced in the Biella and Lodi institutes was adopted, whereby sex offenders were included in specific programs managed by a multi-professional team. The project continued with the FOR-WOLF project, which focused on training operators by strengthening their motivation to work with sex offenders and providing them with accurate information on the size of the phenomenon and its social and practical pathological implications. After that, numerous projects followed, dedicated to the treatment of sexual offenders.

In the Milan-Bollate detention center, a project for the treatment and rehabilitation of sex offenders in intensified treatment units started in 2005. The project aimed at eliminating the sub-culture that considers sex offenders a prison sub-population that must be isolated, and rehabilitating prisoners by actively and positively reintegrating them into social life. Although the project is still active (and funded), no study is found to have validated its effectiveness empirically. Numerous other projects were also implemented but later terminated due to lack of funding. Among these were the programs implemented at *Oltre la Colpa* and *Spiragli* (Piedmont); *Grow Inside Let's Face it Violently*; *Liberation Project Italy*; *For the Evaluation*; the *Treatment and Support of Prisoners for Sexual Violence*; *Maltreatment, Sexual Violence and Child Pornography* in Lombardy; *Against Children Sex Offenders* (AGSE) in Rebibbia NC; and the programs implemented at the Pordenone, Lucera, and Foggia detention centers. Other projects that were ultimately interrupted include those of Prato and Pesaro, which had been successful in developing significant skills and experience in the treatment of sex offenders.

6. Conclusion

The few studies found in accordance with the PRISMA guidelines (Moher, et al., 2015; Shamseer, et al., 2015) that met the inclusion criteria suggest that psychological treatment for sex offenders in European and non-European countries has an important effect in sex offender treatment and reduces the risk of recidivism in such subjects. In particular, CBT has been shown to be most effective for this purpose. Moreover, the combination of drug therapy with psychosocial treatment entails further positive effects in the outcome of sex offender treatment programs.

With respect to the Italian scenario, only minimal data are available. These data indicate that, while treatment initiatives have been implemented in recent years, the lack of

evaluation of treatment efficiency makes these projects incomparable and devoid of scientific evidence-based results.

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Sex offenders: valutazione del rischio e rischi della valutazione

Sex offenders: risk assessment and risk in assessment

Carla Maria Xella

Abstract

Sex offenders treatment, aimed to prevent recidivism, is performed in many Countries. In Italy, so far, punishment is the only way to manage this issue. No scientific evaluation of recidivism risk is performed as well, every assessment being referred to clinical judgment. The recidivism risk is not the same for all sex offenders, as well as their criminogenic needs. For this reason, it is important to evaluate each risk profile, to design a sound, individual treatment program. Most diffused sex offenders' assessment tools are presented, some of which have been or are being validated for Italy: Risk Matrix 2000, Static-99R and STABLE 2007. The risks of a risk assessment performed per se, i.e. used to classify and not as a guideline to treatment, are also explained.

Key words: sexual crimes, sex offenders, risk of recidivism, risk assessment tools

Riassunto

I trattamenti per la prevenzione della recidiva negli autori di reati sessuali sono una realtà in molti Paesi, mentre in Italia non abbiamo che iniziative isolate e mal finanziate. La risposta del sistema giudiziario è prevalentemente retributiva e la valutazione del rischio di recidiva viene effettuata solo sulla base del giudizio clinico, notoriamente poco predittivo. Poiché i sex offenders non presentano tutti lo stesso rischio di ripetere il reato, in molti Paesi si è cercato di affinare la valutazione del rischio di recidiva usando strumenti validi e predittivi, anche allo scopo di effettuare un trattamento mirato ai fattori criminogeni. Vengono qui presentati gli strumenti più utilizzati nel mondo, con particolare attenzione per quelli già validati per l'Italia (Risk Matrix 2000) o in corso di validazione (Static-99R e STABLE 2007).

Parole chiave: Reati sessuali, autori di reati sessuali, rischio di recidiva, strumenti di valutazione del rischio

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1. La valutazione del rischio di recidiva per gli autori di reati sessuali in Italia

La prassi della valutazione scientifica del rischio di recidiva per i reati sessuali, reati di così grande impatto sociale e con conseguenze così gravi sulle vittime, fa ormai parte della routine giudiziaria di molti Paesi europei, oltre che di Canada e Stati Uniti, dove la valutazione scientifica del rischio è nata e si è sviluppata. La valutazione del rischio di recidiva, con gli interventi che ne conseguono, è considerata un asse portante della prevenzione di ulteriori reati e quindi della protezione della società.

In Italia invece, a un costante clima di allarme, quando non di vera e propria caccia all'“orco”, si accompagna l'assenza di qualunque misura di prevenzione, essendo l'inasprimento delle pene l'unico approccio fin qui utilizzato per accostarsi al problema.

In teoria, il Legislatore ha previsto la possibilità, per i condannati per reati sessuali (L. 78/2013), alla partecipazione a “un trattamento psicologico con finalità di recupero e di sostegno”. La recente Legge 69/2019, nota con il nome di Codice Rosso, oltre a inasprire nuovamente le pene, ha anche introdotto per costoro la possibilità di “*seguire percorsi di reinserimento nella società e di recupero presso enti o associazioni che si occupano di prevenzione, assistenza psicologica e recupero di soggetti condannati per i medesimi reati*” e addirittura la possibilità di ottenere la sospensione condizionale qualora accettino di partecipare (a proprie spese) a “*percorsi di recupero presso enti e associazioni che si occupano di prevenzione, assistenza psicologica e recupero di soggetti condannati per i medesimi reati*”.

In pratica però le cose stanno molto diversamente: i finanziamenti per i programmi trattamentali sono in genere erogati da Enti locali o privati o dipendono da progetti europei che non possono garantirne la continuità; quanto alla sospensione condizionale, è molto raro che sia applicabile per questo genere di reati, per i quali, come abbiamo detto, vengono comminate pene sempre più lunghe. Ma, cosa ancora più grave, nel nostro Paese non esiste alcuna presa in carico specifica dopo l'uscita dal carcere, né nel caso della concessione di misure alternative alla detenzione, né tantomeno dopo la scarcerazione: non si prevedono percorsi di reinserimento sociale per i casi meno a rischio, supervisione prolungata per i casi realmente problematici, men che meno obbligo di trattamento per i casi più gravi.

D'altra parte, non è prevista né per gli operatori carcerari, né per gli operatori deputati all'esecuzione penale esterna (UEPE) una formazione specialistica sulla presa in carico degli autori di reati sessuali: tanto che è a “enti e associazioni” esperte che si delega ogni eventuale trattamento.

Quanto alla valutazione del rischio, è noto che, per es-

sero ammessi a permessi e misure alternative alla detenzione i detenuti per reati sessuali devono sottoporsi a un anno di osservazione, in genere effettuato del cosiddetto Gruppo di Osservazione e Trattamento (GOT) composto dal Direttore dell'Istituto in cui sono ristretti, dall'educatore di riferimento, dall'assistente sociale incaricato del caso, dall'ispettore comandante della Polizia Penitenziaria e da uno psicologo. Da tale osservazione dovrebbe dedursi anche quanto sia probabile una reiterazione del reato una volta che il detenuto venga rimesso in libertà, e infatti il termine “rischio di recidiva” appare spesso nei documenti prodotti dal GOT, così come in altri documenti legali.

Ma come viene effettuata questa valutazione? In Italia, ad onta del costante allarme relativo a questo genere di reati, non esistono strumenti validi di misurazione e quindi la valutazione viene condotta unicamente basandosi sul giudizio degli operatori che sono a contatto con il reo. Un tipo di giudizio che, come vedremo, non dà alcuna garanzia di attendibilità.

2. Perché una valutazione scientifica del rischio di recidiva

La percezione del rischio per ogni tipo di reato sessuale è – non solo in Italia – estremamente elevata: per il grande pubblico, anche colto, e perfino per gli operatori del settore, il rischio di recidiva per questi reati è stimato come molto elevato, in una percentuale che va dal 62% (Pham & Ducro, 2006) al 75% (Levenson, et al., 2007). Il rischio reale potrebbe però essere stato sovrastimato. Una delle ricerche più complete in questo campo (Hanson & Bussière, 1998), una meta-analisi di 61 studi di follow-up su un numero complessivo di 23.393 soggetti basata su un criterio restrittivo di *recidiva*, cioè la presenza di una nuova condanna, ha rilevato difatti che il tasso di recidiva medio nei 5 anni successivi alla rimessa in libertà dopo una prima condanna per reati sessuali è solo del 13,4%. Il che indicherebbe che l'86,96% del campione non ha commesso un reato sessuale nei 5 anni successivi alla scarcerazione o quantomeno non ha subito condanne per quel tipo di reato.

Questi dati hanno trovato conferma in studi successivi (Harris & Hanson, 2010; Hanson et al., 2012; Beech, 2009; Garombo et al., 2015; Olver et al., 2013), così come è stata confermata l'utilità dei programmi di prevenzione della recidiva, che questo rischio riducono della metà (Yates, 2013; Olver et al., 2013; Marshall, 2010; Grady et al., 2015). È importante peraltro rilevare che si tratta di un rischio di recidiva *medio*: vi sono quindi alcuni autori di reato il cui rischio di recidiva è quasi nullo ed altri per i quali la recidiva è relativamente probabile.

A titolo di esempio, nella tabella che segue sono riportati (in percentuale) i tassi di recidiva risultanti da una meta-analisi su un numero complessivo di 7.740 *sex offender* (Harris e Hanson, 2004):

	5 anni	10 anni
Gruppo misto	10-15	15-20
Vittime adulte (stupro)	14	21
Vittime infantili familiari (incesto)	6	9
Vittime infantili extrafamiliari (femmine)	9	13
Vittime infantili extrafamiliari (maschi)	23	28

Proprio questa disomogeneità ha reso evidente alla comunità scientifica quanto fosse urgente la costruzione di strumenti *validi* per la misurazione del rischio di recidiva, sessuale e generica, per coloro i quali avevano commesso un reato di natura sessuale. Assodato che coloro che commettono questo tipo di reati non sono tutti uguali, diventa essenziale individuare, monitorare e possibilmente trattare coloro che hanno maggiori probabilità di passare di nuovo all'atto.

Su questa base si fonda infatti il principio *Risk-Need-Responsivity* (RNR) enunciato per la prima volta da Andrews e Bonta et al. (1990) in relazione agli autori di crimini generici, poi rielaborato in ricerche e studi successivi (Bonta 1996; Andrews & Bonta, 2003; Bonta & Andrews, 2007; Andrews, Bonta & Wormith, 2011). In base al principio RNR, i programmi di prevenzione della recidiva criminale, per essere efficaci, devono essere differenziati rispetto a:

- *Rischio*: ogni autore di reato deve ricevere un trattamento di intensità proporzionale al rischio personale di commettere di nuovo un reato;
- *Bisogni*: i fattori o bisogni criminogeni devono essere individuati chiaramente e il trattamento dev'essere mirato su di essi;
- *Responsività*: la possibilità di imparare dal trattamento va massimizzata attraverso l'impiego di programmi di tipo cognitivo-comportamentale, commisurati alla motivazione, alle capacità e alle risorse dei soggetti.

In altre parole, il principio RNR consiglia di impiegare nel modo migliore le risorse disponibili, indirizzandole soprattutto su persone ad alto rischio di recidiva, concentrandosi sui fattori personali che determinano tale rischio, utilizzando strategie trattamentali di comprovata efficacia e tenendo conto delle differenze individuali.

Perché questo principio abbia un senso, bisogna quindi aver chiaro:

- Quali sono i fattori *effettivamente* collegati alla recidiva;
- In che misura un soggetto presenta tali fattori.

3. I principali strumenti

Alla fine degli anni '90, l'unico metodo utilizzato per valutare il rischio di recidiva era il giudizio clinico non strutturato, ossia una valutazione effettuata dall'operatore in base alla propria esperienza clinica e alle proprie conoscenze professionali. Purtroppo, come abbiamo detto più sopra, in Italia questo è ancora l'unico metodo utilizzato in ambito penitenziario e su di esso si basano le decisioni relative a ogni detenuto, per esempio la concessione o meno di permessi premio e di misure alternative alla detenzione. Si consideri che il giudizio clinico non strutturato ha una capacità predittiva molto bassa ($r=.10$) (Hanson e Bussière, 1998).

Proprio a causa della scarsa predittività del metodo "classico" di valutazione, Hanson e Bussière hanno individuato nella loro meta-analisi i fattori che più correlavano con la recidiva sessuale. I fattori individuati erano più di 70, ma per costruire i primi strumenti si privilegiarono quelli che maggiormente correlavano con il rischio di recidiva e che potevano essere misurati in maniera relativamente semplice. Si trattava dei fattori *statici*, non modificabili nel tempo, in particolare: variabili demografiche, come l'età e lo stato civile; variabili legate alla storia criminale, come la presenza o meno di precedenti; variabili legate al tipo di vittima scelta.

Come si è detto, i fattori individuati erano più numerosi, e vedremo più avanti che saranno presi in considerazione grazie ad altri strumenti di *assessment*, ma è interessante per ora notare come nello studio di Hanson e Bussière si evidenzia la mancanza di correlazione con la recidiva di alcuni fattori che, nel sentire comune e nel giudizio clinico dei valutatori, assumono invece grande importanza predittiva: la mancanza di empatia per le vittime, ad esempio o l'assunzione di responsabilità per il proprio reato. L'importanza delle implicazioni criminologiche ed etiche di questi risultati non è da sottovalutare. Qui c'è da aggiungere però che secondo gli stessi autori "l'accuratezza predittiva della maggior parte delle variabili singole è bassa (.10 - .20)": il passo successivo diventa quindi quello di combinare tra loro le variabili che appaiono più significative, con lo scopo di ottenere strumenti che abbiano migliore efficacia predittiva.

Sulla base dello studio citato, e combinando tra loro i fattori che apparivano più correlati con la recidiva, sono stati sviluppati gli strumenti *attuariali* di valutazione del rischio: *Sex Offenders Risk Appraisal Guide* (SORAG, Quinsey et al., 2006), *Minnesota Sex Offender Screening Tool* (MnSOST, Epperson, Kaul e Hesselton, 1998), *Sexual Violence Risk-20* (SVR-20) (Boer et al., 1997), *Rapid Risk Assessment for Sex Offenders Recidivism* (RRASOR) (Hanson, 1997), *Structured Anchored Clinical Judgment* (SACJ) (Thornton, 1997) poi divenuto SACJ-*Min*.

La combinazione di queste ultime due scale ha dato origine alla Static-99, poi divenuta Static-99R e Static 2002. Nel Regno Unito, la scala Risk Matrix 2000 ha sostituito nell'uso comune il SACJ-*Min*.

È bene precisare che tutti questi strumenti, così come quelli di cui parleremo più oltre, sono stati validati per una popolazione di soggetti *maschi* e *adulti* (maggiori di 18

anni), arrestati per almeno un reato di natura sessuale che implicasse il contatto diretto con la vittima. Nessuno di questi strumenti è quindi utilizzabile per donne, adolescenti o autori di reati senza contatto (per esempio detenzione e diffusione di pedopornografia) o per persone che non siano state mai arrestate.

Nel caso delle donne, il tasso di recidiva molto basso (inferiore al 5%) (Cortoni, Hanson & Coache, 2010; Cortoni, 2016) non ha finora incoraggiato la ricerca di strumenti specifici; per quanto riguarda i fruitori di pedopornografia, sono allo studio modifiche degli strumenti finora in uso (Seto & Eke, 2011); nel caso degli adolescenti, le linee guida internazionali (ATSA, 2017) raccomandano una valutazione quanto più possibile ampia e accurata a ogni livello che riguarda la vita del ragazzo, oltre all'uso di uno strumento specifico per l'*assessment* del rischio di recidiva come il J-SOAP-II (Prentky & Righthand, 2003).

La Static-99R, in base a un recente sondaggio effettuato dall'ATSA (*Association for the Treatment of Sexual Abusers*) (Kelley *et al.*, 2017) appare essere lo strumento attuariale più utilizzato nel mondo, con la sola eccezione del Regno Unito dove invece è comunemente utilizzata la scala Risk Matrix 2000. La capacità predittiva dei due strumenti è abbastanza simile, con un lieve vantaggio per la Static-99R secondo alcune ricerche (Hanson & Morton-Bourgon, 2005; Kingston *et al.*, 2008; Helmus *et al.*, 2013).

La Risk Matrix 2000 è per ora l'unico strumento tradotto in italiano. La scala è stata oggetto di uno studio di validazione interna da parte di Garombo *et al.* (2015) e viene utilizzata come strumento di valutazione del rischio presso la Casa Circondariale di Vercelli. Purtroppo, manca invece una validazione *esterna* dello strumento. Come osservano gli autori, in Italia non esistono dati sulla recidiva dei reati sessuali, né esiste un sistema di monitoraggio dell'autore di reato una volta che questi è uscito dal carcere. Diventa quindi praticamente impossibile verificare se e quando si sia verificata una recidiva e con che grado di attendibilità questa sia stata prevista dallo strumento.

La Risk Matrix 2000 consiste di tre scale predittive del rischio di recidiva: la RM 2000/S, per la recidiva sessuale, la RM 2000/V per la recidiva violenta, la RM 2000/C che è una combinazione delle prime due scale e ha lo scopo di predire sia la recidiva sessuale che quella violenta. I fattori considerati sono: Età al momento del rilascio, Accuse per reati sessuali, Accuse per reati violenti, Vittime di sesso maschile, Vittime sconosciute, Assenza di relazioni a carattere coniugale, Reati sessuali senza contatto, Furti con scasso. Il punteggio varia tra 0 e 6 punti e le categorie di rischio sono 4: basso, medio, alto e molto alto.

I fattori considerati dalla Static-99R sono simili a quelli della Risk Matrix 2000.

- Convivenze (costituiscono un fattore protettivo)
- Tendenza ad esercitare violenza anche non sessuale: la presenza di reati di violenza non sessuale nell'attuale condanna o reati violenti precedenti;
- Presenza nel fascicolo personale di reati sessuali precedenti e presenza di reati sessuali senza contatto.
- Numero di condanne riportate per qualsiasi reato

- Tipo di vittime: l'aver fatto vittime extrafamiliari, o sconosciute, o di sesso maschile aumenta il rischio di recidiva.

I dati necessari alla compilazione della scala vengono desunti principalmente dal fascicolo giudiziario del soggetto. È altamente consigliabile che l'operatore si limiti ai dati acquisiti, e non "arricchisca" il responso della scala con sue valutazioni personali, che ne diminuiscono l'attendibilità. Nella revisione del 2016, è stata apportata una modifica per quanto riguarda le categorie di rischio.

A differenza della Risk Matrix 2000, la Static produce 5 categorie di rischio: molto basso, sotto la media, medio, superiore alla media e molto superiore alla media. Data la disparità dei risultati delle diverse ricerche, e dato anche il fatto che il tasso di recidiva varia da un Paese all'altro e anche nel corso del tempo, nell'ultima revisione della scala (2016) si è scelto di optare per una definizione di rischio *relativo*, vale a dire misurato in base allo scostamento dal tasso *medio*, che viene definito sulla base dei tassi effettivi di recidiva dei reati sessuali, aggiornati periodicamente.

Come si è detto, in Italia non esistono dati sui quali potersi basare, la scala può quindi essere usata a titolo puramente indicativo e sperimentale.

La Static-99R possiede una buona predittività fra i diversi strumenti utilizzati, anche se non ottimale (ROC = .77), ma ha il difetto di essere, appunto, statica, cioè di non dare alcuna indicazione clinica su come maneggiare il rischio: essendo basata sulla storia passata del soggetto, non si può che prendere atto del suo maggiore o minore rischio di recidiva al momento in cui viene rimesso in libertà.

Nei sistemi giudiziari che prevedono un intervento di reinserimento nella società e di prevenzione della recidiva per gli autori di reato sessuale (*risk management*), è stato quindi indispensabile dotarsi di strumenti diversi: strumenti che consentano di identificare fattori sui quali sia possibile intervenire.

Per questo motivo la nuova generazione degli strumenti di valutazione del rischio è stata quella dei predittori *dinamici*: si intendono con questo termine caratteristiche di personalità relativamente stabili, ma suscettibili di trattamento e quindi di cambiamento. In base al principio RNR, su questi fattori è necessario indirizzare gli sforzi per ottenere risultati positivi. Harris e Hanson nel loro lavoro condotto nel 2000 (Hanson *et al.*, 2002) per conto del Ministero della Giustizia della Columbia Britannica, hanno individuato alcuni fattori sicuramente legati, su base statistica, al rischio di recidiva e hanno costruito (Hanson *et al.*, 2007) le scale STABLE-2000 e STABLE-2007. Si tratta di una intervista semi-strutturata che mira a definire un profilo personale di rischio per ciascun soggetto.

I 13 item della scala sono raggruppati in 5 cluster:

- Influenze sociali significative
- Deficit di intimità (capacità di relazioni stabili, identificazione emotiva con i bambini, ostilità verso le donne, rifiuto sociale/solitudine, mancanza di interesse per gli altri)
- Autocontrollo generale (impulsività, scarse capacità di *problem solving*, emozioni negative/ostilità)

- Autocontrollo sessuale (ipersessualità, uso del sesso come strategia di coping, interessi sessuali devianti)
- Collaborazione con la supervisione.

Il punteggio di ogni item va da 0 a 2 e anche qui le categorie di rischio variano da bassa (punteggio 0-2) ad alta (>13). Se i dati della Static-99R vengono integrati con quelli della STABLE, la predittività migliora fino a .81.

Una terza scala, la scala ACUTE (Hanson *et al.* 2002; Hanson & Harris, 2010) completa la serie ed è strutturata con lo scopo di segnalare agli operatori che hanno in carico l'autore di reato sul territorio i fattori di rischio acuti e contingenti. Mentre la STABLE identifica i fattori di rischio più rilevanti, la ACUTE valuta se tali fattori sono al momento attivi. Quindi la STABLE è pensata per poter essere ripetuta a una distanza di almeno un anno – per poter valutare gli eventuali cambiamenti – mentre la ACUTE può essere utilizzata anche a distanza di una settimana: si tratta infatti più di una griglia di osservazione che di una intervista vera e propria.

Una corretta siglatura della STABLE 2007 richiede che vengano raccolte in modo adeguato le informazioni necessarie. Lo strumento è quindi corredato sia di un manuale, che viene costantemente aggiornato sulla base dei nuovi dati di ricerca, sia di una guida all'intervista strutturata.

Come per la Static, è fondamentale che l'intervista con il soggetto non sia l'unica fonte di informazione a disposizione dell'operatore: per alcuni item (ad esempio il rapporto con le donne, o l'impulsività, o la capacità di *problem solving*) è consigliabile servirsi anche di altre fonti: operatori, familiari, dati di archivio.

La Static-99R e la STABLE vengono utilizzate in Italia esclusivamente in via sperimentale e indicativa, non avendo ancora una traduzione e una standardizzazione italiana. Data però la loro diffusione e i risultati in termini di predittività verificati in molti paesi del mondo, un gruppo di clinici e ricercatori del C.I.P.M. (Centro Italiano per la Promozione della Mediazione), in collaborazione con il Dipartimento dell'Amministrazione Penitenziaria e con il Dipartimento di Giustizia Minorile e di Comunità, ha intrapreso un progetto di traduzione e validazione dello strumento. Il C.I.P.M. gestisce dal 2005 una Unità di Trattamento Intensificato per gli autori di reati sessuali e un Presidio Criminologico convenzionato con il Comune di Milano, che costituisce idealmente una prosecuzione del trattamento intramurario e un progetto di presa in carico clinico-criminologica (Giulini & Emiletti, 2018; Garbarino & Giulini, 2018). Sono attualmente operanti varie sedi decentrate a Roma, Firenze, Cagliari, Piacenza, Pavia, Genova. Gli operatori del C.I.P.M. hanno effettuato una formazione a distanza sulla siglatura di entrambi gli strumenti e a breve potranno formare altri operatori. Nel progetto è previsto che il DAP possa fornire anche i dati sulla recidiva a tutt'oggi mancanti.

4. I rischi della valutazione

Da quanto abbiamo visto fin qui, appare chiaro che la valutazione scientifica del rischio di recidiva per gli autori di

reati sessuali ha, nel corso del tempo, acquisito soprattutto il carattere di linea guida per il trattamento, sia in contesto carcerario che sul territorio. E questo è appunto ciò che accade, o quanto meno, quanto è stabilito per legge in altri Paesi come il Canada, gli Stati Uniti, l'Inghilterra, la Lettonia, i Paesi Bassi, la Danimarca.

Gli scopi principali sono due: il primo, quello di individuare i soggetti veramente ad alto rischio e su questi concentrare gli sforzi di prevenzione, sia per maggior protezione della società, sia per offrire anche ad essi l'opportunità di un trattamento – come dal testo della Raccomandazione CM Rec (2014) 3 del Consiglio dei Ministri degli Stati Membri – secondo il principio RNR (più trattamento ai soggetti più ad alto rischio), risparmiando quindi risorse preziose. Il secondo, quello di strutturare programmi individualizzati, i soli realmente efficaci (Hanson *et al.*, 2009), che considerino in maniera prioritaria i personali fattori criminogeni dell'individuo, valorizzandone i fattori di protezione.

Gli strumenti che abbiamo descritto, in particolar modo la STABLE, consentono infatti di tracciare, per ogni soggetto, un personale profilo di rischio.

Non tutti i fattori sui quali è costruita la STABLE sono infatti presenti in egual misura in ciascun soggetto: per alcuni, la presenza di interessi sessuali devianti sarà il principale fattore di rischio, per altri lo sarà l'isolamento sociale, per altri ancora l'impulsività generalizzata. Sia nel trattamento individuale che in quello di gruppo, questi saranno gli obiettivi sui quali indirizzare il lavoro.

Il trattamento "taglia unica" si è dimostrato infatti non solo poco utile, ma addirittura controproducente: in Gran Bretagna, il programma statale di trattamento per autori di reati sessuali (SOTP), uguale per tutti e basato sulla rigida osservanza dei manuali guida, è stato completamente rivisto dopo i risultati negativi evidenziati nel 2017 dal Ministero della Giustizia (un aumento di recidive nei detenuti trattati rispetto a quelli non trattati) (Mews *et al.*, 2017).

Oggi i programmi sono differenziati in base ai diversi livelli di rischio dei partecipanti e tengono conto in modo assai più deciso dei fattori protettivi presenti nella vita di ognuno.

Gli strumenti di valutazione del rischio sono quindi un utile strumento a disposizione di chi si occupa del trattamento di questo tipo di rei.

I rischi di un loro uso improprio sono però sempre presenti. Innanzi tutto, per applicare le scale di valutazione è necessaria, come si è detto, formazione specifica, effettuata da trainer riconosciuti con vasta esperienza nel campo e, almeno per i primi tempi, è opportuna una supervisione periodica.

È necessario poi avere *tempo*, sia per raccogliere i dati dal fascicolo giudiziario, sia per effettuare l'intervista semi-strutturata. Soprattutto, è necessario utilizzare i dati così raccolti in maniera corretta, per lo scopo che ha guidato gli autori delle scale e che ispira anche la nostra legislazione in materia di esecuzione penale (L.354/75): la pianificazione di un trattamento individualizzato, misurato sui reali fattori criminogeni dell'autore di reato.

Queste condizioni sono molto difficilmente realizzabili

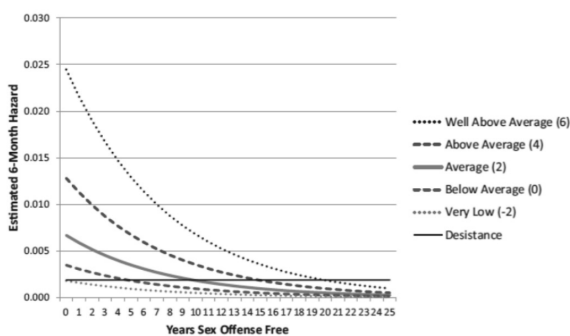
in Italia. Del fatto che gli operatori (educatori e/o psicologi) preposti all'osservazione dei detenuti autori di reati sessuali o della loro supervisione sul territorio non ricevono alcuna formazione specifica abbiamo già detto. Né è un mistero che il loro carico di lavoro sia già molto imponente. Soprattutto in Italia non è previsto alcun trattamento per cui questi strumenti possano divenire una sorta di linea guida.

Il primo rischio è quindi che la valutazione, una volta che si riesca a farla, finisca per essere null'altro che un ulteriore stigma per l'autore di reato.

I livelli di rischio di Static e STABLE sono dati *relativi*, che vengono confrontati con la probabilità di recidiva dell'autore di reato sessuale *medio*. Se però, come in Italia, manca qualsiasi dato sulla recidiva, ha poco senso parlare di rischio basso, medio o elevato: basso, medio o elevato rispetto a cosa? È molto probabile invece che questo venga letto come un dato *assoluto*, che evoca la probabilità assolutamente irrealistiche che abbiamo citato più sopra.

Aggiungiamo a questa un'altra criticità: la valutazione andrebbe ripetuta nel tempo, perché il rischio di recidiva può cambiare: ad esempio, dopo 5 anni trascorsi senza commettere reati diminuisce drasticamente. Nei contesti in cui esiste una presa in carico dell'autore di reato, si tendono quindi a perpetuare restrizioni, obblighi, iscrizione negli appositi registri e trattamenti che non hanno più una vera ragione di essere (K. Hanson, 2018; K. Hanson & Thornton, 2019). Una ricerca longitudinale su 7000 soggetti seguiti per 25 anni ha mostrato come, dopo 5 anni trascorsi senza commettere reati, i profili di soggetti a rischio molto alto e quelli a basso rischio tendono ad avvicinarsi, fino a sovrapporsi nel corso dei 25 anni di osservazione.

Years to Desistance According to Initial Risk Levels



Fonte: Hanson 2018

In un contesto come quello italiano, senza programmi trattamentali specifici dentro e fuori dal carcere, senza operatori che sappiano come interpretare i dati delle scale, il 'rischio' principale è che la valutazione sia un ulteriore marchio negativo o, nel migliore dei casi, che resti semplicemente lettera morta.

5. Conclusioni

Perché, quindi, tradurre e adattare Static-99R e STABLE 2007 per il contesto italiano?

Perché un uso alternativo, più corretto, è possibile.

Il C.I.P.M. di Milano utilizza la Static-99R e la STABLE 2007 per la valutazione del rischio di recidiva sia nell'Unità di trattamento Intensificato attiva presso la CR di Milano-Bollate, sia nel Presidio Criminologico Territoriale del Comune di Milano, che gestisce dal 2005 (Giulini & Xella, 2011). Le due scale sono state anche usate nel corso del progetto europeo ACSE, che ha permesso negli anni 2014 e 2015 lo sviluppo di un programma trattamentale anche presso la C.C. di Rebibbia Nuovo Complesso, a Roma. Qui, la scala STABLE è stata utilizzata per strutturare un piano di gestione del rischio individuale per ogni detenuto e continua ad esserlo come guida del trattamento presso il Presidio Criminologico Territoriale gestito a Roma dal C.I.P.M. - Lazio romano (Xella, 2014, 2017).

Uno studio di validazione, quantomeno interna, di questi due strumenti può quindi offrire uno stimolo per sviluppare quei programmi trattamentali individualizzati che compaiono nella nostra legislazione fin dal 1975 (L.354/75).

La sfida dei prossimi anni, per quanto riguarda questo settore, sarà poi quella di formare adeguatamente gli operatori ad un loro uso che sia veramente proficuo ed efficace, per una maggior sicurezza della società.

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Persecutor and victim in the juvenile sexual crimes

Persecutore e vittima nei reati sessuali dei minorenni

Ugo Sabatello • Simona Stefanile

Abstract

In the existing literature on the Juvenile Sexual Offenders (JSO), there is a total eclipse of the victims and especially of the relationship between the victim and the perpetrator. Work on JSOs is aimed at improving the understanding of the phenomenon, trying to identify those variables useful for diminishing heterogeneity. The victims, on the other hand, are considered solely and exclusively as a function of the offender or rather as one of the possible variables that can improve their classification, like personality characteristics, criminal history, and so on.

The purpose of this article is to take into consideration the misconceived link between victim and perpetrator through three directions: the perpetrator as a victim; the perpetrator in the legal system; the perpetrator's relationship with particular types of victims.

Keywords: Juvenile Sexual Offenders; victim-offender overlap; relationship between victim and offenders; evaluation of JSO; Juvenile Justice System

Riassunto

Nella letteratura esistente sui Juvenile Sexual Offenders (JSO), vi è una totale eclissi delle vittime e soprattutto della relazione che intercorre tra vittima e persecutore. I lavori sui JSO sono finalizzati a migliorare la comprensione del fenomeno, cercando di identificare quelle variabili utili a diminuirne l'eterogeneità. Le vittime, invece, vengono considerate solo ed esclusivamente in funzione dell'autore di reato o meglio come una delle possibili variabili che possono migliorarne la classificazione, al pari delle caratteristiche di personalità, della storia criminale etc.

Lo scopo di questo articolo è quello di prendere in considerazione il legame misconosciuto tra vittima e persecutore attraverso tre direttrici: il persecutore come vittima; il persecutore nel sistema giuridico; la relazione del persecutore con particolari tipi di vittime.

Parole chiave: Juvenile Sexual Offenders; victim-offender overlap; relationship between victim and offenders; evaluation of JSO; Juvenile Justice System

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1. Juvenile Sexual Offenders (JSO)

The term Juvenile Sexual Offenders (JSO) is used to define both a legal category of offenders and a phenomenon (the sexual offense) associated by the following parameters: 1. age of the offender between 14 (legal limit set for the imputability in our Country, pursuant to art. 85, co 2., art. 97 of the criminal code) and 17 years; 2. type of crime perpetrated: sexual offense punished pursuant to art. 609-bis and following of the Criminal Code; 3. type of proceeding managed against them: prosecution (according to Article 448/88).

The guidelines developed by the American Academy of Child and Adolescent Psychiatry (AACAP, 1999) show the whole spectrum of sexual crimes in the developmental age by dividing behaviors based on the presence or absence of physical contact between victim and perpetrator (at one extreme of the continually found behaving as obscene phone calls, exhibitionism, voyeurism on the other caresses and touching, up to rape) (see Shaw, 2002, for the classification of the typology of crimes of abuse / sexual exploitation).

In contemporary nosography, despite the recent revision of the DSM, remains a diagnostic uncertainty concerning the problems of sexual behavior in children (Vizard, 2006) which contributes to leave a wide margin of discretion during the evaluation. Unfortunately, the research on Juvenile Sexual offenders due to the type of crime committed (so-called "odious crime"), was greatly influenced by a prejudice of the social kind that considered it almost impossible to attribute to minors sexual crimes earlier considered to be the exclusive prerogative of adults (Di Cori & Fedeli 2010; Di Cori et al. 2008; Veneziano, Veneziano & LeGrand, 2000). This aspect has contributed to slow down the research on the phenomenon ending up underestimating the spread of the same. The first systematic researches, in fact, are placed only at the beginning of the 90s and, right from the start, have shown a remarkable heterogeneity of this population with respect to the motivations that lead to committing sexual crimes, to the type of sexual crime committed and to the possible ways of treatment (Kaplan, Becker & Martinez, 1990; Veneziano et al. 2000; Worling & Curwen 2000; Hunter, Figueredo, Malamuth & Becker, 2003; Hunter, 2000; Saleh & Guidry, 2003; Richardson, Kelly, Graham & Bhate, 2004 ; Richardson, Graham, Bhate & Kelly, 1995).

Veneziano & Veneziano (2002) define it as "a complex population" characterized by manifestations common to different nosographic frameworks that place it on the border between problematic development, psychiatric pathology and antisociality (Andrade, Vincent & Saleh, 2006;

Hunter, 2000; Hunter, Hazelwood & Slesinger, 2000; Shaw, 2000, 2002; Di Cori et al., 2010, 2012; Sabatello, 2011; Sabatello & Stefanile, 2016).

The Italian and international epidemiological studies indicate that this is a constantly increasing "behavior" often undersized by the reluctance to denounce the offender (especially if it is known and linked by a family relationship) (for more information on the epidemiology of crimes committed in Italy, please refer to the USM data and ISTAT data processing).

At the present time, an exhaustive classification of the phenomenon is not available, an aspect which is affected by the presence of prejudice in the methodological structure of the design of the research conducted (Seto & Lalumière, 2010) which underlines highlighting excessive differences and similarities between the two groups of offenders (violent and sexual). However, the theoretical dissertations concerning the Juvenile Sexual Offending have focused, and in part sedimented, on two opposing positions for etiology and dynamics of criminal behavior. It follows that adherence to one or the other theory involves, of course, consequences on the different methods of management, publication, and treatment of this population (Camerini, Di Cori, Stefanile & Sabatello, 2018). Briefly, the General Delinquency Explanation does not consider justifiable the distinction between perpetrators of sexual and violent crimes underlining how sexual crime is simply an expression of a more general tendency to antisociality (Seto & Lalumière, 2010; Worling & Langstrom, 2006; Loeber, Farrington, Stouthamer-Loeber & Van Kammen, 1998; Quinsey, Skilling, Lalumière & Craig, 2004; Caldwell, 2002; Prentky, Pimental & Cavanaugh, 2006; Worling & Curwen, 2000). On the opposite side, instead, there are supporters of the Special Explanation of Adolescent Sexual Offending who highlight the presence of specific risk factors and risk mechanisms for JSOs (See, for example, Worling & Langstrom, 2006; Veneziano & Veneziano, 2000, 2002; Driemeyer, Yoon & Briken, 2011; Van Wijk, Vermeiren, Loeber, Hart-Kerkhoffs, Doreleijers & Bullens, 2006; Van Wijk, Mali & Bullens, 2007) which differentiate them significantly from the JVO sample (Seto & Lalumière, 2010; Seto, Harris & Lalumière, 2015, 2016; Fanniff & Kimonis, 2014) and highlight that only a small group of sex offenders also commit violent crimes (Driemeyer et al., 2011; Van Wijk, Vreugdenhil, van Horn, Vermeiren, & Doreleijers, 2007; Zakireh, Ronis & Knight, 2008; Figueredo, Sales, Russell, Becker & Kaplan, 2000).

Another possible distinction concerns the choice of the victim, so the research differentiates between a JSO child, in which the victim is a prepubertal child and JSO peer/adult in which the victim is the same age or older than

the persecutor. The two sub-populations seem to differ in type and characteristics and not only in practice and choice of the victim (Knight & Prentky, 1993; Seto & Lalumière, 2010; Aebi, Vogt, Plattner, Steinhausen & Bessler, 2012; Leroux, Pullman, Motayne & Seto, 2014; Joyal, Carpentier & Martin, 2016).

2. The eclipse of the victim

In various cases of violent or criminal acts studied in the literature, attention is usually paid to the characteristics of the victim and the perpetrator, deepening their personality structure, behavioral and social aspects, in order to improve the understanding of the protagonists of the story and from there to implement of preventive (*ex-ante*) or rehabilitative/therapeutic (*ex-post*) strategies. However, for some types of crime, especially in cases of interpersonal violence (for example, violence in intimate relationships, pedophilia, bullying, witnessing violence), an analysis now focused on one or the other proposes again a idea of rigid and categorical dualism that provides a limited, and not very useful, range of information precisely because it does not explain the particular form of relationship that binds, often indissoluble and invisibly, the two protagonists of the story. The introduction of a new interpretative paradigm within psychodynamic theories, such as that of a Relational Mind (Bromberg, 1998; Renik, 1995; Aron, 1996/2004; Mitchell, 2000/2002; Lingiardi & Dazzi, 2011) and neuroscientific (Panksepp, 1998), like that of the Agonistic behavior or Dominance/Submission motivational/emotional system, helps to connect the past with the present, the representations with actions, the victim with the persecutor, emphasizing the importance, in addition to complementarity of their neurobiological reactions, of the real relationships between the protagonists and of their unconscious connivance (Dicks, 1967/2009). On the other hand, in the course of phylogenetic and personal development, the competitive system that, during adolescence comes to contrast the attachment system (Giacolini, 2009, 2016, 2018), contemplates both figures of the victim as of the persecutor.

In the relationship then, above all, the more intense and pathological it is, the more we find the traces of those fundamental defects in the process of integration of the Self, which provide us with privileged access in the reactualization of the “here and now”, of the relational defective ones experienced in the “there and then” of primary relationships. We often find that violence against the victim, not just any victim, can hide an extreme attempt to protect their fragile psychological Self (Fonagy & Target, 1995). The emphasis on the relationship aspect also plays an important role in our penal code, not only on the accusatory side, which sanctions those crimes that occur within particular forms of bond with more severe penalties (for example: incest, relationship between a teacher and a learner), but also in a reparative sense (for further information see the works carried out by Patrizia Patrizi, Gaetano De Leo, Vera Cuzocrea, Gilda Scardaccione, on restorative justice).

If all these elements synthesized previously appear more

and more to find their validation also in research, we find something very different in the existing literature on JSOs, in which there is a total eclipse of the victims and above all of the relationship between the victim and perpetrator. All the JSO works are aimed at improving the understanding of the phenomenon, trying to identify those variables useful to diminish the heterogeneity. The victims, on the other hand, are considered solely and exclusively as a function of the offender or rather as one of the possible variables that can improve their classification, like personality characteristics, criminal history, etc. The variables with which the victims are described, however, appear to be scarce, so much so that the parameters most frequently used are only gender and age. The relationship between victim and perpetrator receives an even worse fate. The terms “relationship” or “bond”, when considered, are treated as potential and important “confounding factor” or an element that can “soil” the relationship between two variables, thus introducing a “background noise” that must be controlled to increase the statistical power. The “bond” variable is therefore inserted for purely numerical reasons and not for cognitive purposes. Thus, not only do the interpretative and explanatory hypotheses of a violent process and relationship remain unexplored and not considered, but also those internal and external factors that could provide a greater typification and motivation to the act on the part of the author of a sexual offense. Furthermore, if the age variable appears uniform and homogeneous as a parameter because the defining limits appear to be fairly shared at the level of literature, as well as at a regulatory level, the victim-perpetrator link variable lends itself to definitions that are not always shared, often very broad and contradictory, that vary from research to research. Consider, for example, that the term “relationship intrafamilial victim” (Joyal et al., 2016) is an ambiguous term that may include siblings, siblings who share a single parent, those acquired for recomposed family, cousins, children of the foster home, etc. In essence, all those subjects who have physical proximity to the perpetrator, and sometimes of blood, but do not provide any information on the type of bond and on the quality of the same. The term “known victim” is even less defined, meaning by this term a person who is not bound by bond of kinship with the perpetrator. A non-binding marker is instead the label “unknown victim”. But even in this case, we know nothing about the process by which that perpetrator identified that victim and not another. In the examination of literature, in essence, we find the same defect of symbolization that characterizes the mental functioning of many JSOs: the “hole” found with respect to the victim and the relationship with the victim has a close and intimate resonance with the representative “hole”, structural and identity often typical of these minors (Di Cori, Fedeli & Sabatello, 2012). The action of the JSOs seems to take place in the hole, liquidated, according to the theoretical currents, as antisocial and criminal behavior or as a re-enactment of the ancient abuse suffered, in any case the literature on the subject gives us an image of the absence of recognizable psychological plot, narratable and thinkable, in which the same humanity of the minor seems to get lost, dissolved by the reprehensible crime he committed.

We must not forget that especially in adolescence the theme of the management and expression of aggression (Giacolini, 2009, 2016; Giacolini & Sabatello, 2019) binds, overlaps and often overlaps with the nascent theme of sexuality. In this phase the “genital” body assumes an important role in the adolescent’s identity, “claiming” on the intrapsychic side a re-signification and a revision of the internal and relationship dynamics that is then expressed on the interpersonal side through the image that progressively he creates himself and his new sexed body (Freud, 1905/1970; Verde, 2007; Novelletto, Biondo & Monniello, 2000). The aggression to the victim and his dehumanization reveals and, in many cases, reveals precisely the altered self-image these minors have as well as the impasse of the mirroring function deriving from the precocious and painful relational experiences that have worked as a distorting mirror for them (Di Cori et al., 2012; Verde, 2007; Winnicott, 1958/1975; Stern, 1985, 1995). Aggressiveness, to the extent that it goes beyond conservative boundaries and the boundary between Self and other, becomes destructive in the first place of Self-Other differentiation, in a process that denies “the common humanity” (Meotti, 2006) of the victim and at the same time it also negates the human nature of the perpetrator, fueling a vicious circle of dehumanization – desubjectification – objectification (Bollas, 1995/1996; Volpato, 2011, 2012; Jeammet, 1998; Carabellese, Vinci, Catanesi, 2008) in which object relations are placed at the service of unique desires of the Self. The desubjectification of the object then becomes a defense with respect to experiences of emptiness and agony that threaten the subject’s Self, making it experience a painful condition of dependence and passivity on the object that, through action, are magically and omnipotently nullified (Verdi, 2007, Di Cori et al, 2012).

The act on/with the victim then appears as an important key to access that reveals the poverty of both the world of internal representations and the limited ability to establish real relationships with a subject other than oneself. Deprived of moral and juridical judgment, the act of crime thus appears to be a form of communication that must be codified and symbolized, returning a personification both to the author, to the victim and to their relationship.

The victim, in fact, seems to carry out the function of the self for the perpetrator who, by denying her psychic existence as a subject other than himself, repeats, sometimes in a compulsive, uncontrolled and dissociated form, the primitive unpleasant experience in an active form, through the object capture / incorporation (Di Cori et al, 2012).

3. The choice of the victim

The research shows a high incidence of sexual abuse among siblings that would be even more frequent than those that occur by a parent. Often the type of abuse perpetrated appears severe (with use of force and complete sexual acts). However, partly due to the reluctance to report these types of abuses, partly due to the problems described above concerning the categorization criteria, this “subgroup” is little

studied within the literature. In recent research conducted by Joyal et al. (2016) the need to consider this group individually was highlighted, as it presents, regardless of the victim’s age, a high incidence of previous abuse both on the side of sexual victimization and on the side of physical victimization. In a research conducted by Sabatello and Stefanile (in press) on a sample of 79 male offenders divided into three groups (24 sex offenders against peer/adult; 19 against child; 33 violent) was found in the evolutionary histories of the JSOchids a marked dysfunctionality of the family system that manifests itself primarily in the greater incidence of abuses or better of simultaneous or sequential experiences of maltreatment (Van der Kolk, 2014), in particular the presence of sexual abuse (36,9%) both direct and witnessed, of physical and emotional abuse. The evidence of a greater prevalence of traumatic experiences, especially of a sexual nature, within this sub-group of JSOs, is complex and paradigmatic and avoids a linear perspective of a simple re-enactment of the original trauma suffered. For a percentage of JSOs, especially children, who have suffered concrete violence, the act of crime can represent an attempt to re-gain a sense of self-unity through identification with the aggressor (Di Cori et al., 2012). For other sex offenders, past traumatization is the precursor of sexual behavior only if it interacts with other risk factors present in the individual’s ecosystem (ibidem). The JSO child group, however, turned out to be a borderline group of evolutionary risk that presents greater risk factors than the JSO peer/adult and shares significant risk factors with the JVOs (this also overlaps with the research conducted by Joyal et al., 2016). Furthermore it was found that in general the JSOs and more specifically those who abuse children and/or siblings, present considerable difficulties in the social area characterized by: isolation, poor social relations, introversion (Mattingly, 2000; Seto & Lalumiere, 2010; Milloy, 1994; Di Cori et al., 2008; Sabatello, 2011; Joyal et al., 2016). Van Wijk, van Horn and collaborators (2005) believe that there is a link between isolation and the presence of distortions of thought: “This syndrome of social deficit and disabilities [...] may lead to all kinds of distorted thoughts and fantasies (cognitive distortions) that may ultimately predispose committing a sex offense” (p.31). It has been found that sex offenders who commit sexual harassment on children and especially on siblings, compared to sex offenders against peers/adults, have less adaptive social skills (social anxiety, fear in heterosexual interactions) and greater social isolation (Katz 1990; Hsu & Starzynski, 1990; Van Wijk, van Horn, Bullens, Bijleveld & Doreleijers, 2005; Joyal et al., 2016). The choice of the child and/or blood type victim, again, does not seem to us to be linked only to greater ease of access. We believe that there is an epistemic error which causes the availability to be confused with the perversion of the link. Many researches underline that for these two groups there is a dysfunctional family system characterized by the intergenerational violation of boundaries (Kerig, 2003; Minuchin, 1974/1976) that facilitate exposure and/or actual abuse (Dazzi & Madeddu, 2009).

We must also report a confused and never evaluated area, so there is no data available, in which the sexual ap-

prenticeship is confused and sometimes becomes violence and crime, represented by situations of prolonged institutionalization involving minors. These are the situations of violence, of which they know who is dealing with the developmental age, in which the living in common in a situation of (de) affective and sexual deprivation facilitates the occurrence of predatory sexuality in which the theme of dominance is more significant of sexual motivation.

4. Victims /offenders overlap

In the specialist literature the overlap between the phenomenon of victimization and that of offending is well established (Jennings, Piquero & Reingle, 2012), with an increase in incidence in adolescence and a similar trend in different countries and ethnic groups for various types of crimes of a violent and non-violent nature (Baeckley, Caspi, Arseneault, et al., 2017). Victims and perpetrators are often the same subjects and share many evolutionary risk factors and risk behaviors (Broidy, Daday, Crandall, Sklar & Jost, 2006; Lauritsen & Laub, 2007; Schreck, Wright & Miller, 2002; Schreck & Stewart, 2011; Jennings, Higgins, Tewksbury et al., 2010; Jennings, Park, Tomsich, Gover & Akers, 2011). "Offenders are more likely than non-offenders to be victims, and victims are more likely than non-victims to be offenders" (Entorf, 2013, p.3). Precisely because of this large overlap, according to some authors, to understand a phenomenon one must necessarily consider the other as well (Lauritsen & Laub, 2007).

However, despite the presence of several empirical and often clinical findings, there are still few studies that simultaneously consider the evolutionary nature of this overlap during development. In fact, most of the data available to us come from studies that separately dealt with offending and victimization. As noted by Beckley et al. (2017) "we haven't study that has examined the link between childhood risk factors, assessed during the first decade of life, and later victim-offender overlap, and datasets for doing this work are few. Childhood risk factors have been identified in studies of victimization, but few studies can test differentiated victim-offenders from comparison groups of pure offenders and pure victims" (p. 25).

Although there is a greater proliferation of studies on the victim offenders overlap, less attention toward examining the sexual victimization and sex offending overlap has been provided within the international scene (Jennings, Zgoba, Maschi & Reingle, 2014; Seto, 2008), especially in adolescence, and only marginally was the relationship between victim and perpetrator taken into consideration.

The clinic and the research on child abuse also testify that the experiences of abuse can result in phenomena of repetition of violence in an active form. Although the incidence of experiences of child sexual victimization in the stories of young abusers is very variable (between 30% and 70%) and therefore represents a very controversial fact (the relationship between previous abuse and juvenile sexual offending is not always clearly visible), it seems certain that previous traumatic experiences may represent important

pathogenetic precursors of deviant sexual behaviors (see Vizard, Monck & Misch, 1995; AACAP, 1999; Seto & Lalumiere, 2010). In the case of child victims of abuse, there are factors of vulnerability, of risk (such as the early experiences of chronic stress) that - although they are not an exclusive factor - can contribute to other risk factors in the criminogenic determinism of deviant sexual behavior (Di Cori & Fedeli, 2010).

The fact that a traumatic experience experienced by a child can be perpetuated through a "cycle of repetition of abuse" depends on the complex relationship and balance between risk factors and protective factors, of resilience, which intervenes by increasing or decreasing the probability that violence repeats itself even between generations. Instead, among the protective factors capable of reducing the likelihood of a repetition of the abuse, it is possible to include: adequate social support, the presence of a supportive environment, prompt and qualified treatment during childhood or adolescence. The lack of adequate responses in terms of the protection of the young victim (when not even the exacerbation of the conflict or the increase in the sense of powerlessness linked to paths hardly modeled on the psychological needs of the victim), can negatively orientate the effects in the short, medium and long-term trauma, and increase the evolutionary risks for the onset of deviant or abusive behavior in adulthood.

Perhaps due to the complexity of these causes, a "historical" and simplistic hypothesis often invoked to describe the phenomenon of both sexual offending and victimization is the "cycle of violence" (Finkelhor, 1984; Finkelhor, Moore, Hamby, & Straus, 1997; Jespersen, Lalumiere & Seto, 2009; Jennings & Maeade, 2016; Jennings et al., 2014).

On the basis of this assumption, reinterpreted in a probabilistic and of concausality key, Jannings et al (2014), based on some research on the victim-offender overlap among violent and sex crimes and on the finding that most of the victims are also perpetrators and vice versa (Jennings et al. 2012), conducted a study on stratified random sample of 654 offenders aged 50 and older from one state's correctional administrative database. We cite this study because it has been "one of the first to investigate the victim-offender overlap between sexual victimization and sex offending simultaneously, and as such, seeking a broader understanding of the link between these two outcomes" (p. 1476). The study in question provides evidence to support the overlap for these specific crimes by highlighting how individuals who were younger than 16 who were victims of abusive sexual contact and victims of sexual assault/rape were significantly more likely to be sex offenders. Within the family context, additional risk factors have been identified, some of which act simultaneously for both sex offending and sexual victimization (such as early experiences of emotional abuse or neglect), others only for sexual victimization (such as physical neglect and witnessing family violence) in the two forms considered abusive sexual contact and sexual assault / rape (Jennings et al. 2014, 2016).

On the basis of clinical and research experience, Di Cori, Fedeli and Sabatello (2012) underline how the serious forms of negligence (sometimes associated with episodes of traumatic sexualization) and the object relations character-

ized by emotional distance, by the sense of abandonment, from the inconsistency of the structuring and regulating function of the other, they create deficient conditions in the area of representations and symbolizations of external and internal reality, as well as in the organization of identity itself. Poverty in internal object relations often translates into what research indicates as the difficulties in establishing valid intimate relationships and an inability to manage interpersonal relationships. Hence the absence of the ability to feel and to represent one's pain which often results in an insensitivity to pain and suffering inflicted on the victim, in an inability to inhibit aggression and to assume the consequences of one's actions. Juvenile who do not commit sexual assaults/crimes are inhibited by the empathy they feel towards potential victims (Ward, Yates, & Long, 2006). Hanson (2003 cited in Lopez, 2019) believes that the "a-empathic" reaction is determined by three starting conditions: an emotionally ambivalent, contradictory or indifferent relationship; a perspective-taking deficit; an inappropriate mode of coping with the perceived suffering of others. Grabell and Knight (2009) have identified in the development window between 3 and 7 years a particularly predictive period of vulnerability for future abusive behavior. During the pre-school period, the authors continue, those abilities of flexibility and cognitive inhibition develop, involved in the implementation or not of sexually abusive behaviors.

The sexual offending, however, is a multi-determined phenomenon, concerning which traumatic experiences are undoubtedly important for the important pathogenetic factors (Di Cori et al., 2012) but cannot be considered the only elements. With respect to the role played by traumatic experiences in the etiopathogenesis of abusive behaviors and in victimization processes, we recall that trauma is not only an objective event but is above all a subjective event and is, for this reason, closely connected to the attribution processes (emotional, cognitive and motivational) with which each of us interpreted a given phenomenon (Sabatello, Thomas & Verrastro, in press). From an evolutionary perspective, it seems to us that the aspects linked to individual development, the structure and functioning of the child are decisive in determining the outcomes of the trauma. The possible structuring of a traumatic syndrome, lasting in the medium or long term, depends on different factors, which Anna Freud (1936/1967) has already identified with: (1) the nature and intensity of the event, (2) the sensitization due to a previous trauma, (3) the hereditary factors, congenital that can influence the level of functioning of the defenses, (4) the chronological age and stage of development at the time of the trauma, (5) the environmental conditions at the time of trauma, (6) the pre-existing personality.

More recently, research on the outcomes of trauma from abuse has attracted the attention of clinicians to complex traumas and to factors of vulnerability and resilience able to orient the victim's psychopathological destiny (age and sex of the child, level of pre-traumatic functioning and vulnerability indexes present in the subject's history, existence of protective factors in the family or, on the contrary, the presence of chronic parental dysfunctions and inadequate

methods of treatment, availability of resources and adequate socio-welfare structures to support the child and the family) (Di Cori & Sabatello, 2015).

Therefore, even in the case of "traumatic" objective events, the negative consequences on development are generated only if these experiences interact with a previous vulnus of individual origin (such as social difficulties, lack of intimate relationships and impulsiveness) and of environmental origin.

The Adverse Childhood Experiences are attributable to cumulative processes (Complex Trauma), and not to single circumscribed events, capable of increasing the subject's vulnerability and the risk of persisting the disorder of sexual behavior (sMarshall & Marshall, 2000; Anda, Felitti, Bremner, Walker Whitfield et al, 2006; Anda, Croft, Felitti, Nordenberg, Giles et al., 1999; Felitti, & Anda, 2010; Finkelhor, Shattuck, Turner, Ormrod & Hamby, 2011), of antisocial behavior in age adult (Seto, 2008) or victimization (Haynie & Piquero, 2006).

5. Consequences at the legal level

The not always simple task of the expert, in criminal matters, and of the clinician, during the treatment, is to be able to discriminate between sexual conduct characterized by normal exploration and that which outlines the conduct of abuse. The defining limits between the two behaviors, however, are not at all so categorical and simple to define. At the juridical level, abuse is defined as the behavior that: 1. is carried out without the consent of one of the two parties (giving consent to a sexual act means, synthetically, that there is an understanding of what is proposed, the evaluation of the alternatives possible and an evaluation of the consequences of the actions, the voluntary decision); 2. it is consumed within an unequal power relationship; 3. is the result of a coercion (Ryan & Lane, 1991; AACAP, 1999; Shaw, 2002; Di Cori & Fedeli 2010).

At the trial level, the presence of these elements, if proven, sanction the guilt of the Juvenile (Carabellese, Vinci & Catanesi, 2008). However, some Authors (Di Cori & Fedeli 2010; Di Cori et al. 2011), in consideration of the cognitive-emotional peculiarities of this evolutionary phase, raise several objections to the legal automatism and to the adult-morph criteria with which they could be evaluated and judged Juvenile.

The specialist literature on the subject clarifies that there are significant differences between adult offenders and Juvenile from a criminogenetic point of view, of the stability or relevance of risk factors and protection factors, of personality functions and of the meaning that the crime itself takes into account the specific evolutionary phase (Camerini et al., 2018; Borum, Bartel & Forth, 2006; Di Cori & Fedeli 2010; Abbate, Arbarello & Stefanile, 2018). Moreover, "few development periods are characterized by many different levels. Changes related to pubertal development, the definition of the social role, cognitive development, scholastic changes, and the emergence of sexuality" (Eccles et al., 1993, p.90).

It is precisely on the basis of the multiple changes faced by the adolescent and his ability to adapt to them as well as on the evident difference between evolutionary phases (adult/adolescent) which is an enterprise that is not always easy to prove in court until that point and what behavior constitutes in this evolutionary phase a coercion, whether or not it is sexually appropriate to the age and even in which case two persons are to be considered effectively co-etaneous (in a maturing sense and not only in age sense) (Di Cori & Fedeli 2010). Even when we are confronted by frankly deviant sexual behaviors on the basis of the *modus operandi*, of the repetitive and compulsive nature of the action, of the more or less violent modality, on the psychic level they could represent incongruous conducts and/or exploratory practices that are “acted” in an attempt to integrate a sexual identity that is neither mature nor modulated (Di Cori & Fedeli 2010; Di Cori et al. 2011; Camerini et al., 2018) both of the victim and the persecutor. We recall that in this evolutionary phase some sexual exploration behaviors become a crime when they become aware of the adult or according to the context in which they occur, but juveniles may not realize that they have committed a crime. The recent research conducted by Grattagliano et al. (2018) on an Italian sample of 31 JSOs between the ages of 14 and 20, despite the narrowness of the sample and the difficulty in generalizing the results, puts in evidence just as for most JSOs (in this study 70% of respondents) the reason given for the abuse commission was “try out a new experience”; in a small percentage of cases violent tactics were adopted while in most cases confusing tactics were used between the game, the affective demonstration and the sexual approach that only in the final analysis were perceived by the victims as violent. Moreover, in the 52% of cases, all in the charge of the Social Services Offices, which had not fully realized that they had committed an offense, most offenders also used detachment and moral disengagement with prevailing defense mechanisms, attribution of responsibility to the victim, minimization of the act up to the attribution of responsibility to the other persons or the surrounding event (Grattagliano et al, 2012; Grattagliano et al 2018). The belief that he did not commit sexual violence is one of the main predictors of recurrence (Lopez, 2019).

These aspects are of considerable importance not only at the moment of evaluation but also for the identification of the most suitable measure for the minor. The juvenile penal process, governed by the Presidential Decree September 22 n. 448/1988, is based on the responsibility and not on the punishment of the minor, also through the reparation of damages and the resolution of the conflict generated by the crime. For this reason, most of the interventions aimed at juveniles who commit crimes take place with alternative measures to detention. Among these, the putting to the test, governed by the articles 28 and 29 of the Presidential Decree of 22 September 1988, n. 448, is an alternative measure centered on the idea of “giving responsibility” to the adolescent author of the crime, in a perspective for which responsibility is no longer the necessary condition of punishment, but a point of arrival of the criminal course (De Leo, 1998).

Conclusions

Within the JSO literature, we find a lack of attention, if not completely absent, to the victim and the relationship between victim and perpetrator. Although we can understand that attention to the phenomenon of sexual offending committed by adolescents is more recent than the amount of literature present on their adult counterparts or on other phenomena of interpersonal violence, even committed by adolescents, we believe that if they are not held in the three protagonists of the story (victim, perpetrator and their relationship) make a logical error, even a psychological one, colluding with the same archaic defense mechanisms put in place by the offender with the risk, always present, of making a judgment based on the act itself, if lacking the necessary understanding of the perpetrator. David Finkelhor (1989, cited in Kjellgren, 2010, p. 19), one of the most important researchers in this field, argued that “We have to explain ... the emotional roots, the sources of gratification behind the behavior and the sexual arousal components. We are here to explain what emotional needs are and to be resolved by foraging into deviant sexual contact. How it gets insinuated sexually rehearsal thinking, how it gets insinuated into sexually behaved rehearsal thinking, mixes into masturbation and various other kinds of rehearsal sexual behavior, and how it finally breaks out and leads into action, then impulsive repetitions, and so forth”.

The considerations made in this article concerning the shortcomings in the literature as well as the detection of the co-presence of victimization aspects in the perpetrators, although not exhaustive for the subject, make us reflect on the pragmatic implications related to rehabilitation/therapeutic programs and on the type of judicial measure adopted. Despite the due differences between victim and perpetrator, we believe that attention to the co-presence of victimization aspects in the offerers and viceversa must be well received within the rehabilitation programs for offenders and those for the protection of the victim. The observation that the same person can be both a victim and a perpetrator necessarily involves a review of the specific client programs and the introduction of more complex treatments that take into consideration the needs of the person (Jennings et al., 2012). Empathy training must aim at specific deficits since non-directional interventions may be ineffective or iatrogenic (Lopez, 2019). At the same time the results of the research by Grattagliano et al. (2018), which appear to be congruent with our assessments carried out at children’s neuropsychiatry, highlight the lack of awareness of these adolescent with respect to the crime committed as well as the adoption of a confusing and confusing relationship in which the victim fails to be seen as other than itself, endowed with its autonomous individuality, and still the same author does not perceive himself as an agent of the committed action. We find ourselves in a non-trivial legislative paradox that signals the considerable distance between the understanding of the adolescent as a person and the rehabilitation for the crime that he committed. In the absence of a symbolizing function, whether it is entrusted to a therapeutic path for the boy or it is per-

formed by the appropriately identified legal actors, the answer provided by the penal system risks becoming a mere juridical automatism in which alternative penalties are inflicted without there being for minors, a ritualized moment in which one can pass from action to thought. Translated into psychological terms, we are not giving back to the perpetrator or the victim their subjectivity, the meaning of their actions and their humanity.

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Idiopathic vs acquired pedophilic behavior: a critical analysis

Comportamento pedofilico idiopatico e acquisito: un'analisi critica

Cristina Scarpazza • Andrea Sigfrido Camperio Ciani • Stefano Ferracuti

Abstract

Acquired pedophilia is a rare but underestimated condition. Acquired pedophilic behavior refers to the insurgence of pedophilic tendencies as result of a neurological disorder, that cause a fracture between behaviors observed prior and after the brain insult. Acquired pedophilia widely differs from idiopathic pedophilia. The current review of the literature summarizes the actual knowledge on the differences between acquired and idiopathic pedophilia in the following aspect: etiology, neural correlates, modus operandi, possible treatments and legal consequences. We conclude underlying that appreciating the possibility of an acquired origin of pedophilic behavior is of utmost importance, for clinical and forensic reasons. An interdisciplinary approach must be acted in all cases under observation.

Keywords: acquired pedophilic behavior; behavioral fracture; modus operandi; interdisciplinary approach; neurological insult

Riassunto

La pedofilia acquisita è una condizione rara ma sottostimata. Per comportamento pedofilico acquisito si intende l'insorgenza di tendenze pedofiliche come conseguenza di un disturbo neurologico che causa una frattura comportamentale tra i comportamenti manifestati dal soggetto prima e dopo l'insorgenza del danno cerebrale. La pedofilia acquisita differisce dalla pedofilia idiopatica. Questa revisione della letteratura riassume le conoscenze attuali sulle differenze tra pedofilia acquisita e idiopatica nei seguenti aspetti: eziologia, correlati neurali, modus operandi, possibili trattamenti e conseguenze legali. Il lavoro si conclude sottolineando che essere consapevoli della possibile origine neurologica della pedofilia è estremamente importante, sia dal punto di vista clinico e forense. Un approccio interdisciplinare dovrebbe essere adottato in tutti i casi sotto osservazione.

Parole chiave: comportamento pedofilico acquisito; frattura comportamentale; modus operandi; approccio interdisciplinare; insulto neurologico

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1. Introduction

On June 2016, a 30 years-old man (R.H.) was given 22 life sentences for serious sexual assault against a minimum of 71 children. During the hearings, R.H. revealed some of the stratagems he employed to procure victims, such as taking children out on day trip from foster homes and escorting them home from their own birthday party. He produced child pornography and he shared photos of his crimes with other pedophiles. He was proven to be fully aware of his behaviors, that were carried out in a logical, reasoned and predatory way. He said that “impoverished kids are definitely much easier to seduce than middle-class kids”, revealing his thoughtful selection of his victims. His neurological and neuropsychological examinations were normal. R.H. is one of the many developmental pedophiles that mostly come to public attention.

In 1862 a 78 years-old man (H.) without previous criminal record was charged with child abuse (von Kfrafft-Ebing, 1897). He sexually assaulted a 13 years-old child while he was playing with lizards. The man touched the child penis saying: “this is a beautiful lizard”. After his arrest, doctors realized that, while his body was healthy, his cognitive functions were severely impaired: his language was tangential, his memory was severely impaired, he was not able to understand basic legal rights, he demonstrated not to appreciate the moral and legal disvalue of the behaviors he was charged with. The man was then diagnosed with dementia and was held not responsible for the criminal offenses he was charged with. To our knowledge, this is the first documented case of acquired pedophilia.

Although idiopathic pedophilia is widely known and described in the literature (e.g. Hall & Hall, 2007; Seto et al. 2009; Tenbergen et al. 2015 for reviews), little is still known regarding acquired pedophilia. The term acquired pedophilia refers to the insurgence of pedophilic interest and behaviors in previously heterosexual men (it has never been described in women so far) after a brain insult. Indeed, despite it is widely known that neurological disorders are commonly associated with psychiatric symptoms, it is less evident and clear that a number of neurological disorders can show a predominant behavioral and sometimes bizarre presentation and for this reason can sometimes be mistakenly diagnosed as psychiatric (Butler & Zeman, 2005; Keshavan & Kaneko, 2013). This is the case of acquired pedophilic behavior. Acquired pedophilia is still under-investigated in literature probably because it is a rare phenomenon. However, to have a good knowledge of the differences between idiopathic and acquired pedophilia is of utmost importance both from the medical and from the forensic point of view. Acquired pedophilic behavior differs from idiopathic pedophilic disorder in many aspects: eti-

ology, underlying neural correlates, *modus operandi*, possible therapies and legal consequences. This short review is structured to clarify the differences between these two different forms of pedophilic behavior. The importance of this review lies in the moral, medical and legal consequences of a mis-diagnosis: forensic consultants should be appropriately trained to identify possible acquired pedophilia cases in order to select the most effective therapy and the most adequate punishment. Thus, in cases of suspected acquired pedophilia, a transdisciplinary and neuroscientific evaluation, including MRI, should be performed (Scarpazza, Ferracuti et al. 2018).

2. Etiology

The first important difference between idiopathic and acquired pedophilia lies in etiology: while idiopathic pedophilia is categorized within psychiatric disorders, acquired pedophilia clearly has a neurological origin. Idiopathic pedophilic disorder is considered to be a psychiatric disorder included within the paraphilias in the DSM 5 (Beech, Miner, & Thornton, 2016). It is present throughout the individual's life and it does not have a clear etiology. For this reason, idiopathic pedophilia is also called developmental pedophilia, to identify the form of pedophilic behavior that is present throughout the individual's life. Hereafter, we will refer to developmental pedophilia. Diagnostic criteria are still highly controversial. DSM-V to diagnose a paraphilia requires an “intense and persistent sexual interest other than sexual interest genital stimulation or preparatory fondling with phenotypically normal, physically mature, consenting human partners”. The condition must cause distress to the individual “whose satisfaction has entailed personal harm, or risk to harm to others” (DSM-V pag. 685-686). Offenders usually denies the sexual interest and the DSM-V states that when there is “substantial objective evidence to the contrary” (DSM-V p 696) the diagnosis can also be made. For paedophilia the DSMV requires sexually arousing fantasies or urges or behavior, involving sexual activity with a child of (mostly) 13 years or younger for a period of at least 6 months. The age of the victims should be at least 16 years and minimum 5 years older than the child. This condition is present since young adulthood, and different psychological and environmental theories have been proposed (Doshi, Zanzrukiya & Kumar 2018; Temberger et al. 2015).

Contrarily, acquired pedophilic behavior refers to a sexual urge toward children that emerges later in life as a consequence of an acquired neurological condition with clear neurologic etiology. Cases of pedophilia associated with brain damage have been described in patients with fron-

totemporal dementia (Mendez, 2010), brain tumor (Burns & Swerdlow, 2003), clivus chordoma (Sartori et al., 2016), surgical lesions (Devinsky, Sacks, & Devinsky, 2010), hippocampal sclerosis (Mendez & Shapira, 2011), multiple sclerosis (Frohman et al. 2002). These neurological insults seem to produce a “*behavioral fracture*” in the overt behavior manifested prior and after the brain disease insurgence (Scarpazza, Pellegrini, et al., 2018; Scarpazza, Pennati, & Sartori, 2018). To further discuss the causal role of neurological disorders on the insurgence of pedophilic behaviors, two cases are of particular relevance (Sartori et al. 2016; Burns & Swerdlow, 2003). In both cases, pedophilia emerged as a symptom of a tumor: a *clivus chordoma* (a slow growing tumor of the notochord, in this case displacing the hypothalamus and compressing the orbitofrontal cortex, (Sartori et al., 2016) and an hemangiopericytoma in the right orbitofrontal cortex (Burns & Swedlow, 2003). In both cases, a *restitutio and integrum* of the symptomatology, including pedophilic urges, was documented after the surgical resection of the tumor, decreeing the causal link between the brain tumor and the pedophilic urges. In both cases, the tumor regrowth was accompanied by a re-insurgence of pedophilic interest, and a second surgical resection resulted again in a disappearance of the symptoms.

3. Neural correlates

The second important difference between developmental and acquired pedophilic behavior lies in their neural correlates. While developmental pedophilia is associated with subtle structural and /or functional abnormalities, acquired pedophiles clearly showed some evident neuroanatomical alteration.

According with its psychiatric etiology, developmental pedophilia is characterized by brain functional alterations or subtle structural alteration without evident neuroanatomical abnormalities (as for instance, brain tumor or lesions) (Mohnke et al., 2014). Indeed, psychiatric disorders have long been considered “functional” disorders, without a significant neural substrate. Despite in the last two decades neuroimaging research revealed that, using sophisticated statistical analysis on neuroimaging data, it is possible to observe neuroanatomical abnormalities in psychiatric disorders as well, literature has so far failed in identifying a consistent neuroanatomical substrate for psychiatric disorder, whom are still devoid of reliable biomarkers. This is true for pedophilia as well: quantitative voxel-based morphometric studies that demonstrated volume reductions of the right amygdala, hypothalamus, and septal regions (Poeppl et al., 2013; Schiltz et al., 2007), structural deficits of temporal cortices and fiber bundles (Cantor et al., 2008; Schiffer et al., 2007), and morphologic abnormalities of orbitofrontal cortex and basal ganglia (Schiffer et al., 2007). Further alterations appeared in areas in the parietal lobe (Cantor et al., 2008; Schiffer et al., 2007) as well as the cingulate cortex, insula, and cerebellum (Schiffer et al., 2007), when comparing pedophilic with nonpedophilic men. These alterations, which show a considerable variability be-

tween studies, seem to be congenital or to emerge very early during life, encompassing brain regions involved in sexual arousal (Tenbergen et al., 2015), such as the amygdala and the hypothalamus. The functional and structural brain alteration in developmental pedophilia are excellently summarized in two recent reviews (Mohnke et al. 2014; Tenbergen et al. 2015). Two critical points are worth noting: first, the inconsistent results available in the literature are the results of statistical analysis comparing a group of pedophiles versus a group of non pedophiles men. It is still not known whether the group level results can be useful to make inferences at the level of the single individual. Scientific research is still investigating this topic (Scarpazza et al., 2016; Vieira et al., 2019; Lui et al., 2019) and it is thus still not known the clinical implication of the group level results. Second, as pedophilia has high comorbidity with psychiatric disorders (Eher, Rettemberger & Turner, 2019), it is not possible to disentangle whether the results obtained so far truly reflect subtle neuroanatomical alterations of developmental pedophiles or whether these results are more likely to reflect structural alterations of the comorbid psychiatric disorders.

On the contrary, evident structural brain alterations emerging later in life are pivotal for the diagnosis of acquired pedophilic behavior. In acquired pedophilia, neuroanatomical alterations are clearly available in each individual patient, thus inferences can be made for each patient. Crucially, these alterations are in causal link with the insurgence of pedophilic urges. The neural network involved in the onset of this pathological behavior is still not fully understood, as it includes the right orbitofrontal cortex (Burns & Swerdlow, 2003; Fumagalli, Pravettoni, & Priori, 2015), the right amygdala (Devinsky et al., 2010), the right globus pallidus (Mendez & Shapira, 2011) the hypothalamus (Frohman, Frohman, & Moreault, 2002; Miller et al., 1986; Sartori et al., 2016), the hippocampus bilaterally (Mendez & Shapira, 2011; Mendez, 2010; Mendez et al., 2000), the basal ganglia bilaterally (Mendez & Shapira, 2011). These regions seem to be associated with a network involved in diminished behavioral control (Mohnke et al., 2014).

4. Which reliable neural basis in acquired pedophilic behavior?

As described in the previous paragraph, the brain insults leading to pedophilic behavior onset were spatially heterogeneous, including the frontal cortex, the putamen, the hippocampus, for instance. As each region impaired by the brain insult is part of a network of brain regions working in synergy, we tried to identify the neural network consistently impaired across patients with acquired pedophilic behavior. In a preliminary study, brain lesions of patients with acquired pedophilic behavior identified in the literature ($n = 10$) were manually delineated and were used as individual seeds in a resting-state connectivity analysis using data from 20 healthy subjects. Functional connectivity to each lesion

was determined by calculating the correlated time course between each lesion location and every other brain voxel using the resting-state data from each individual normal control. These correlations for all 20 subjects were then combined to calculate a T-score value for each voxel. Finally, maps from all patients were combined to create a conjunction analysis that identifies the network involved in

every patient with acquired pedophilia (Darby et al. 2017).

The results of this preliminary analysis revealed that all brain lesions in individuals with acquired pedophilia were functionally connected to the orbitofrontal cortex (See Figure 1). These brain regions are known to be involved in impulse inhibition and in the neurophenomenological model of sexual arousal (Stoleru et al. 2012).

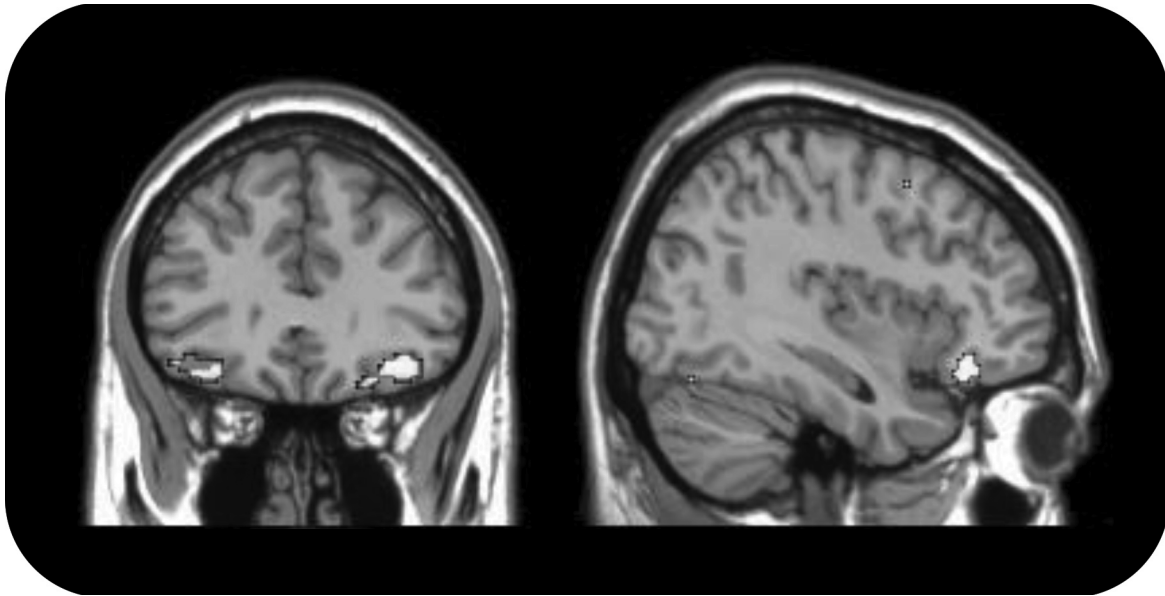


Figure 1. Results of the analyses we conducted revealing the brain regions consistently involved in acquired pedophilia.

5. Modus Operandi

The third important difference between developmental and acquired pedophiles lies in their *modus operandi*. While the *modus operandi* of developmental pedophiles has been described as predatory, the one of acquired pedophilia is usually impulsive.

Developmental pedophiles are described to actively search for victims, organize their action, mask their sexually abusing behavior, enforcing victim's silence, using psychological and physical violence (Hall & Hall, 2007; Miranda & Corcoran, 2000) and, if caught, might deny their behavior (Fagan et al. 2002; Hall & Hall, 2007). The first studies which specifically analyzed the *modus operandi* of sexual offenders against children were conducted in the late 1980s. These studies clarified that offender has to choose his hunting ground, that is, the places where he is likely to encounter a potential victim and the time when he is going to offend. Following these decisions, the offender has to select a victim according to his/her erotic value (age, gender and physical characteristics), to his/her vulnerability (physical and/or psychological) and to his/her familiarity. Finally, the offender has to decide how he is going to approach the victim and which strategy he will adopt to get the victim involved in sexual activity. These early studies provided crucial data to understand the strategies adopted by sexual offenders against children to commit their crimes. For instance, offenders have been found to gradually desensitize

the victim to physical contact before moving to sexual touch (Berliner & Conte, 1990; Christiansen and Blake, 1990). Offenders also use some type of coercion and threats (Berliner & Conte, 1990; Budin & Johnson, 1989). Using a sample of 226 adult offenders, Leclerc, Carpentier & Proulx (2006) studied the impact of several factors, such as the age of the victim (0–13 years old), on the likelihood of adopting a manipulative, a coercive or a non-persuasive strategy to involve the victim in sexual activity. They found that adult offenders who sexually abuse older children were more likely to use a manipulative, rather than a non-persuasive strategy. Thus, developmental pedophiles offenses are planned in detail.

Contrarily, individuals with acquired pedophilia usually lack of premeditation (Gilbert & Focquaert, 2015; Sartori et al., 2016) and do not attempt to disguise their criminal behavior (Burns & Swerdlow, 2003; Mendez & Shapira, 2011; Sartori et al., 2016; Scarpazza, Pellegrini, et al., 2018; Scarpazza, Pennati, & Sartori, 2018). The selection of the victims is not thoughtful as a result of the absence of premeditation. For instance, one patient described in the literature abused his own daughter (Raniero et al., 2011), another one abused his own step daughter (Gilbert & Vranic 2015), another one was a pediatrician and abused his patients in front of the parents (Sartori et al., 2016), another one masturbated in front of a school that was just outside his home (Scarpazza et al., 2018). These latter behavior can also be observed in dementia patient or in per-

sons with severe intellectual disability. In other words, they victimized children even if the likelihood to be discovered is very high. These probably reflect the impulse discontrol that characterize patients with acquired pedophilia (Mohnke et al., 2014) and it might be considered in anatomic clinical correlation with the consistent neural basis identified in the previous paragraph.

6. Possible treatments

The fourth important difference between developmental and acquired pedophilia lies in the possible treatment. While developmental pedophilia is the primary condition that needs to be treated, acquired pedophilia can theoretically be treated by treating the underlying neurological condition.

There seems to be no evidence to suggest that developmental pedophilia can be changed and no treatment is effective unless the pedophile is willing to engage in the treatment (Hall & Hall, 2007, Stone et al., 2000). Instead, psychotherapeutic interventions are designed to increase voluntary control over sexual arousal, reduce sex drive, or teach self-management skills to individuals who are motivated to avoid acting upon their sexual interests (Seto, 2009). Despite psychotherapy is an important aspect of treatment, debate exists concerning its overall effectiveness for a long-term prevention of new offenses (Hanson et al. 2005, Langton et al. 2006, Hall & Hall, 2007). For this reason, psychotherapy is often coupled with androgen deprivation therapy (ADT), by which the individual's testosterone level is lowered to a pre-pubescent level, thereby eliminating or severely reducing sexual urges (Thibaut et al., 2010), or with the administration of selective serotonin reuptake inhibitors, that represent a non-hormonal treatment that has been suggested for paraphilias in general and for specifically for pedophilia (Stone et al. 2000, Hall & Hall, 2007). Interestingly, after a year of combined psychotherapy and pharmacotherapy, pedophiles individuals still show sexual interest for children, whereas their frequency of urges decrease (Schober et al., 2005), indicating that, while urges can be managed, the core attraction for children does not change (Schober et al., 2005; Hall & Hall, 2007). Critically, offenders commonly do not comply with psychological and medical treatments (Fagan 2002; Stone et al., 2000) being at high risk of sexual recidivism (Seto et al., 2004; Seto, 2009; Hanson et al., 2003; Hanson & Morton-Bourgon, 2005).

Contrarily, acquired pedophilia can theoretically be addressed by treating the underlying medical condition (Sartori et al., 2016). For instance, pedophilia can recede after surgical resection of the tumor causing it (Burns & Swerdlow, 2003; Sartori et al., 2016; Gilbert & Vranic, 2015). So far, no sexual recidivism has been described in individuals free from the neurological disorder causing pedophilia, being pedophilic urges only recurrent only when the neurological disorder itself re-occur, as explained in the paragraph on etiological origin.

7. Legal Consequences

The four important differences described in the previous paragraphs, namely etiology, neural basis, *modus operandi* and treatments, could potentially have a decisive impact on offenders' judicial consequences.

The legal consequences for developmental pedophiles are always severe and insanity is not commonly considered. Indeed, according with the *actio libera in causa* principle, developmental pedophiles, who are aware of their abnormal urges and of the moral and legal disvalue of their potential behavior and who are cognitively intact, should not put themselves in the condition being in the same place with children. Their planned and strategic behavior is instead an indication of their voluntary decision to hunt children.

On the contrary, insanity is a relevant matter for acquired pedophiles. Indeed, both the ability to understand the moral and social value of one's own action and the ability to exert control over impulses are pivotal to the capacity for self-determination. As individual with acquired pedophilia usually lack of these abilities, insanity becomes a relevant and controversial issue in these cases (Gilbert & Focquaert, 2015). For these reasons, individuals with acquired pedophilia might be considered not fully liable for their pedophilic behavior (Burns & Swerdlow, 2003; Devinsky et al., 2010; Gilbert, 2013; Gilbert & Vranic, 2015; Gilbert et al., 2016; Scarpazza, Pennati et al., 2018). However, only few cases, summarized in Table 1, are available in the literature and the legal consequences are rarely reported. The identification of a neurological disorder in a defendant charged with pedophilia could be *per se* sufficient to claim his lack of accountability. Whether or not an offender manifesting acquired pedophilic behavior should be held responsible needs to be delicately assessed on a case by case basis (Gilbert, 2013; Gilbert & Focquaert, 2015).

Author's&date	Country	Aetiology	Moral Judgement	Impulse discontrol	Legal consequences
von Krafft-Ebing, 1897	France	Dementia	Impaired	Not clear	Not Responsible
Lesniak et al. 1972	Poland	Tumor in the right frontal lobe	Impaired	Impaired	n/a
Regestein et al. 1978	n/a	Meningioma involving the right frontal lobe	n/a	n/a	n/a
Miller et al. 1986	USA	Tumor in the brainstem and hypothalamus	Impaired	Impaired	n/a
Mendez et al. 2000, case 1	California	bvFTD	Impaired	Impaired	n/a
Mendez et al. 2000, case 2	California	Bilateral hippocampal sclerosis	n/a	n/a	Responsible
Frohman et al. 2002	USA	Multiple Sclerosis (hypothalamic lesion)	Preserved	Impaired	Responsible
Burns & Swerdlow 2003	USA	OFC neoplasm	Preserved	Impaired	Not responsible
Solla et al. 2006	Italy	HHD in PD	Preserved	Impaired	Not applicable
Prahlada Rao et al. 2007	India	unknown	Preserved	n/a	Not applicable
Devinsky et al. 2009	USA	Gangoglioma that caused a kuver-bucy syndrome	Preserved	Impaired	Partially responsible (26 months)
Mendez and Shapira, 2011, case 2	USA	bvFTD	Impaired	Impaired	n/a
Menzed and Shapira, 2011, case 3	USA	Frontal variant AD	n/a	n/a	n/a
Menzed and Shapira, 2011, case 4	USA	Globus pallidus lacune	n/a	Impaired	n/a
Menzed and Shapira, 2011, case 5	USA	PD	Preserved	Impaired	Imprisoned (not clear whether insanity was considered)
Menzed and Shapira, 2011, case 6	USA	Hungtington's disease	Impaired	Impaired	n/a
Menzed and Shapira, 2011, case 7	USA	Pallidotomy for PD	Preserved	Impaired	n/a
Raniero et al. 2011	Italy	Genetic FTD	Impaired	Impaired	Not applicable
Fumagalli et al. 2014	Italy	Frontal lobe Brain Injury	Not clear	Impaired	n/a
Gilbert & Vranic 2015; Gilbert et al. 2016	Slovenia	Tumor (glioblastoma multiforme) in the left frontal lobe	n/a	n/a	Pending
Alnemari et al. 2016	United stated	temporal and frontal encephalo- malacia	n/a	n/a	n/a
Sartori et al. 2016; Scarpazza et al. 2018	Italy	Clivus Chordoma	Impaired	Impaired	Responsible
Scarpazza et al. 2018, case 1	Italy	bvFTD	Impaired	Impaired	n/a
Scarpazza et al. 2018, case 1	Italy	Fronto-parietal meningioma	n/a	Impaired	n/a

TABLE 1. Cases of acquired pedophilia in the literature

Abbreviations: AD: Alzheimer's disease; HHD: Hedonistic homeostatic dysregulation (neuropsychiatric complication described in patients with Parkinson's disease, characterized by misuse of and addiction to dopaminergic drugs); PD: Parkinson's disorder; OFC: Orbitofrontal Cortex; bvFTD: Behavioral variant of fronto-temporal dementia; n/a: Information not available (not reported in the paper); not applicable: the patient never acted his pedophilic urges.

8. Conclusion

Appreciating the possibility of an acquired cause of pedophilic behavior is of utmost importance, for clinical and forensic reasons. (Scarpazza, Pennati, et al., 2018). An interdisciplinary approach must be acted in all cases under observation (Burns & Swerdlow, 2003; Rainero et al., 2011; Sartori et al., 2016). The identification of a neurological condition gives opportunity to treatment that otherwise would be denied. Furthermore the forensic evaluation of a person with a neurological condition correlated with pedophilic behavior cannot be the same of a person with developmental pedophilia. In the latter case the behavior is expression of an ego-syntonic desire, were the antisocial component is clearly understood, and a degree on control of voluntary behavior can be acted, as usually demonstrated by victim selection and modus operandi. In acquired pedophilia the person develops urges and behavior that are not congruent with the previous personal sexual history and often does not have a clear understanding of the situation. In these acquired cases a strong consideration of insanity defense can be considered by the expert evaluation.

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When 'message laws' create perpetual panic: the case of sex offender registries

Quando le 'message laws' creano panico morale perpetuo: il caso dei registri dedicati ai *sex offenders*

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Abstract

This contribution defines 'Megan's Laws' as 'message laws', that is, those penal laws that carry a message not only coherent with the cultural impetus supporting their adoption but also anticipating something that is not (yet) acceptable to manifest openly in Western politics. First, we describe how this message is generally considered more important than the actual results produced by these laws in terms of efficiency, and how it also intervenes on issues causing waves of moral and perpetual panic. Second, we observe how, in the specific case of sex offender registration and notification laws, two important messages are at stake: that sex offenders deserve perpetual punitivity and that the community has the right/duty to control their behaviours. Finally, we suggest that 'message laws' can be considered a wake-up call on maintaining the democratic project.

Keywords: Megan's Laws; message laws; moral panic; perpetual panic; sex offender registry.

Riassunto

Le leggi che hanno introdotto i registri dedicati ai *sex offenders* (cd. *Megan's Laws*), sono state definite "message laws", leggi penali che veicolano un messaggio non solo coerente con la spinta culturale che ne sostiene l'adozione e l'applicazione ma che anticipa ciò che non sarebbe accettabile manifestare nel campo politico delle società occidentali. In primo luogo, si evidenzia che tale messaggio è ritenuto più importante rispetto alla valutazione dei risultati dalle leggi in termini di efficacia, contribuendo così a cristallizzare ondate di panico morale in fenomeni di *perpetual panic*. In secondo luogo, si procede all'analisi del duplice messaggio veicolato da tali leggi: i *sex offenders* meritano una punizione e la comunità ha il diritto/dovere di controllare il loro comportamento.

Parole chiave: Legge Megan; message law; panico morale; panico continuo; registro dei sex offender.

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1. Registration and Notification Laws in the USA and beyond

Since the State of California first introduced a sex offender registry law in 1947 (Welchans, 2005, p. 125), obliging the perpetrators of certain crimes to register with the local law enforcement agency (California Office of the Attorney General, 2002), similar laws have been issued not only in the United States but also in many other parts of the world. Such laws provide for the establishment of registers with different levels of public accessibility to the information contained (so-called 'community notifications'), sometimes accompanied by forms of residency restrictions and other common civil sanctions, such as using GPS tracking systems to monitor the location of sex offenders (Comartin, Kernsmith, & Kernsmith, 2009).

In 1994, the US Congress adopted House Resolution 324, the Wetterling Act, which required every US state to institute sex offender registries available to local law enforcement agencies. With the subsequent adoption of House Resolution 2137 of 1996, commonly known as Megan's Law in reference to the murdered child Megan Kanka, states lost their discretion on whether these registers were available to the public, and could only decide on which information was relevant to public safety (Levenson, Brannon, Fortney, & Baker, 2007). In an attempt to implement sex offender registration laws with a legislative federal frame, House Resolution 4472 of 2006, known as the Adam Walsh Act or Sex Offender Registration and Notification Act (SORNA), fixed the standard to which each state must conform, particularly regarding the kind of crimes to register and the information to be made publicly available; in every year in which a state fails to comply, its federal funds for the administration of justice shall be reduced by 10%.¹ In the last 25 years, a growing number of nations have legislated on registration systems for sex offenders, but very often, particularly in European nations, without providing for specific registers. These laws typically only intervene on criminal record databases, limiting access to the police and judicial authorities or, at most, to those who can prove a specific interest. This is why the sex offender registration laws introduced in France, Germany, Ireland, Argentina, and South Africa do not provide for public notification systems or public registry websites (unlike in the USA). In the UK, however, 'Sarah's Law' of 2013 enables individuals to apply to their local police officials to

find out if any person is a registered sex offender. Meanwhile, Australia has a central registry, the Australian National Child Offender System (NCOS, formerly ANCOR), which has been operational since 2004; however, the systems of notification vary territorially, and only the State of Western Australia has a public sex offender registry.²

Though the public and lawmakers, especially in the US, are generally supportive of sex offender registration and notification policies, usually called Megan's Laws (Comartin et al., 2009; Levenson, Brannon et al., 2007; Rosselli & Jeglic, 2017), scholars remain sceptical about these laws' potential to protect children, prevent sex crimes, and provide a sense of security for citizens through vigilant surveillance and collaboration between law enforcement agents and citizens (Levenson & Cotter, 2005, p. 50). They suggest, as the next section will more extensively detail, that these policies are affected by emotional responses to sexual violence, serve a symbolic purpose, and are ineffective according to empirical data (Lussier & Mathesius, 2019): per se, they do not seem to curtail sexual crimes (Maurelli & Ronan, 2013) and also diminish the chances of offender reintegration by limiting opportunities for housing, employment, and social support (Levenson & Cotter, 2005; Levenson, D'Amore, & Hern, 2007; Zevitz, 2006).

2. The SORN measures between deterrent efficiency and emotive answer

Sex offender registration and notification (SORN) policies have spread rapidly due to the conviction that sex crime perpetrators are highly recidivist, besides being highly specialized in sex crimes. However, the results of research suggest that, in reality, sex offenders are less recidivist than other types of criminals – with only 14% reoffending over five years (Hanson & Morton-Bourgon, 2005) – and that their tendency to specialization, though existing, is lower than speculated (Magers, Jennings, Tewksbury, & Miller, 2009; Tewksbury, Jennings, & Zgoba, 2012; Zimring, Jennings, Piquero, & Hays, 2009). More precisely, the research conducted by Sandler, Freeman, and Socia (2008) found that 95% of the sexual crimes recorded in New York from 1986 to 2008 were committed by individuals with no previous record of such offences. This suggests that the large economic investments needed to realize SORN measures (Zgoba, Witt, Dalessandro, & Veysey, 2008) have often delivered little

1 For a more complete analysis of the federal legislative evolution, see Office of Justice Programs, Legislative History of Federal Sex Offender Registration and Notification, <http://www.smart.gov/legislation.htm>,

2 See SMART Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking, Global Overview of Sex Offender Registration and Notification Systems, April 2014 and 2016.

impact on security. This finding is reinforced by the non-significant results in most studies to have measured the impact of SORN measures on reducing sex crimes and/or other crimes committed by people in general (Ackerman, Sacks, & Greenberg, 2012; Bouffard & Askew, 2017; Lussier & Matheius, 2019; Levenson & Zgoba, 2015; Maurelli & Ronan, 2013).

However, these measures' limited success in reducing the number of sex crimes does not necessarily mean they are also ineffective in reducing the recidivism of registered sex offenders, being their specific objective. Several researchers have tried to systematize studies evaluating the impact of SORN measures in this regard, but they have struggled to challenge the impression that these policies produce very limited (if any) concrete results. Among others, Harris, Levenson, Lobanov-Rostovsky, and Walfield (2018) conclude that the effects on recidivism appear marginal, with a modest impact only regarding offenders at high risk of recidivism, evaluated with appropriate assessment scales. Connor and Tewksbury (2017) reach the same conclusion by analysing studies in Arkansas, Iowa, Massachusetts, New Jersey, New York, and Washington. Finally, Tewksbury and Jennings (2010) conclude that these policies have 'little if any effect' (see also Tewksbury et al., 2012). It should also be considered that studies interviewing registered sex offenders have revealed the significant negative impact of such registers on rehabilitation, creating difficulties with employment and relationships, instances of harassment, stigmatization, and persistent feelings of vulnerability, both for the registered subjects and their families (Bensel & Sample, 2017; Bowen, Frenzel, & Spraitz, 2016; Evans & Cubellis, 2015; Mercado, Alvarez, & Levenson, 2008). According to those interviewed, being 'supervised' by the community to which they belong would not deter repetition of the deviant behaviour (Connor & Tewksbury, 2017); on the contrary, some researchers have speculated that these difficulties might have the paradoxical effect of increasing recidivism, rather than decreasing it (Tewksbury & Lees, 2006).

To complete the picture, it must be noted that the cost of implementing so-called Megan's Laws is so high that it consumes resources needed for other policies directed to the rehabilitation treatment of sex offenders, the provision of support services for victims, and the prevention of other forms of sexual assault. The field of action on sex crimes is also restricted: SORN policies place more emphasis on the violence perpetrated by a stranger than that by a partner or acquaintance, creating a distorting effect on the representation of sexual violence that also influences the predisposition of public policies (Wright, 2003). In this sense, sex offender sanctions are part of the recent shift towards punitive-style justice (Comartin et al., 2009), which not only seems ineffective by neglecting the necessity of rehabilitation but also produces a stigmatization effect that pushes the offender into isolation, which could also raise the likelihood of recidivism.

It is worth considering these aspects more widely: if these laws are truly so ineffective laws, why are they considered so necessary?

The answer to this question, we must start from the

concept of moral panic (Jenkins, 2004; Walker, 2010; Zgoba, 2004), defined as an explosion of emotive waves that overwhelm society and cause policy makers to take immediate decisions. In other words, adopting this perspective, the sex offender sanctions have been adopted as a form of 'acting out' in a moment of strong anxiety linked to sexual crimes; they are 'expressive' policies elaborated to temporarily calm the worries of the population, without in-depth consideration of how to make them really effective.

It must immediately be pointed out, though, that this interpretation doesn't fit well because, in their effects, sex offender laws lack the temporariness typical of the measures introduced at times of moral panic; on the contrary, despite some of these laws being introduced following assaults that shook/shocked public opinion, beginning with Megan's Law itself, Lytle (2019) has demonstrated the diverse 'variations' in such laws over time in as many as 50 states. Besides, the level of preoccupation with the phenomena of sex crimes, measured through Google trends from 2004 to 2012 appears stable, with few fluctuations (Burchfield et al., 2014). In line with these findings, we think that the answer to our question lies in the concept of 'perpetual panic' (Burchfield et al., 2014; Klein & Cooper, 2019; Klein & Mckissick, 2019; O'Hear, 2008). Our idea, which we intend to deepen at the theoretical level using the case of SORN measures, is to broaden (rather than abandon) the category of moral panic through the concept of perpetual panic, here defined as a form of moral panic widespread among today's society, non-volatile, and accompanied by ineffective repressive measures whose cultural messages amplify both the panic itself and punitive demands. We think, in fact, that one of the levers of the constant preoccupation with and of the punitive desire with respect to sex offenders (Klein & Mckissick, 2019) should be attributed to the registers and to the cultural contents they carry.

3. From moral panic to perpetual panic

The concept of moral panic (Cohen, 1972; Young, 1971) has been associated with a cohesive and empowered group of people becoming increasingly preoccupied with another category of subjects, the so-called 'folk devils', identified as hostile³. To be considered as moral panic, this preoccupation must have two characteristics: being disproportionate to the real threat and volatile, such that after the explosion – which occurs with the complicity of the media and policy makers – it must decline rapidly (Goode & Ben-Yehuda, 1994).

However, this volatility tied to the volatility of moral panic has caused some perplexity, particularly with reference to sex crimes, which, from the 1990s, have given rise to a form of continuous preoccupation (Jenkins, 2004) – a perpetual panic (Burchfield et al., 2014; Klein & Cooper, 2019; Klein & Mckissick, 2019; O'Hear, 2008) or a kind of

3 For a recent application of these notions in the green criminological field see Brisman and South (2015). On this, see also Natali (2016; 2019) and Natali and Cornelli (2019).

'fixation' (Lancaster, 2011) – that does not seem capable of being overcome.

Traditionally, some scholars have interpreted moral panic within the frame of 'moral regulation' (Cornelli, 2008; Critcher, 2009; Garland, 2008; Hier, 2011), as a particularly intense and critical moment of emotive activation that characterizes the daily process of defining and re-defining what society intends to defend and from what it wants to distance itself. We perceive that by starting from this interpretation, already open to the idea of a continuous moral panic, it is possible to understand what is happening in late-modern societies and why some forms of panic seem not only incessant but also, in some sense, distinctive of contemporary times. More precisely, the connection identified by David Garland (2008) between moral panic and Durkheim's concept of collective excitement, closely linked to that of the Sacred, is crucial. In *Elementary Forms of the Religious Life* (2008), Durkheim identifies the Sacred with what is separate and forbidden. The distinction between Sacred and Profane unites all cultures, with 'sacredness' attributed to some objects that are not, per se, superior to profane ones but are differentiated through specific rites. The emotive state of 'collective effervescence', which characterizes the phenomenon of moral panic, is found precisely in the wake of the Sacred vs Profane distinction, and expresses itself as a kind of 'electricity' that brings the community to a state of collective exaltation when, through a crime, the Sacred is attacked.

According to Garland, 'a precondition for the recurring investment of the mass media and the political class in panic-producing processes is, no doubt, the emotional energy and collective excitement that are unleashed whenever a mass public can be provoked into feeling passionate outrage, together with all the opportunities that this energy provides' (2018, p. 18).

Far from being a 'hysterical' reaction, the collective excitement – so useful for mass media and policy makers – performs the vital function of starting the process of defining and re-defining the Sacred, and serves to continually delineate the boundary between the Sacred and Profane (a function of 'moral regulation'), thereby re-enforcing social ties. Adopting this perspective entails re-dimensioning the manipulative role exercised by mass media and policy makers in starting moral panic (Cornelli, 2008), and taking seriously a public's collective emotions and demands for security (Williams, 2018). In other words, collective effervescence can certainly assume twisted forms, uniting strong subjects against weak subjects or scapegoats, but according to this interpretation, it is not possible to dissociate society from the emotions it contains; though often contradictory and exaggerated, they are of vital importance as social glue. This does not deny the relationships of power (Garland, 2008), but rather serves to focus attention on what bubbles within the collective subconscious and, therefore, on the deep/hidden grammar of society.

The recourse to punitive instances to re-establish the confines of morality and social order through resorting to intimidation is a constant trait of modern penal history. In *Punishment and Modern Society* (1990), Garland highlights

how rationalization and bureaucratization of the penal apparatus have been the most significant developments of penal history in the last 200 years, modifying the ways of perceiving and using punishment. The emergence of professional bureaucracies coincided with the progressive reduction of punitive narratives from official narratives about criminality, because they were considered shameful and uncivilized; the same period, starting from the XIX century, witnessed the birth of a scientific criminology and a scientific penology with the function of affirming a new 'rationality' tending to utilize any technological tool for controlling criminality. The nation state thereby founds its legality on the ability to guarantee social order, and in this new socio-institutional context, criminal judgment assumes a symbolic value different from that of the past: not only sacred and sacrificial ritual, with the function of tragic representation of the events and of purifying those who attend the representation, but above all lay ritual, which alone has the function of containing violence and restoring social peace. More precisely, as the ritual par excellence, the trial established the truth about the perpetrator's guilt, supported by a narrative woven by professionals capable of delimiting the state of disorientation and collective effervescence produced by the crime through a 'return to order', ultimately guaranteed by imposing a proportionate sanction.

At the same time, however, reflecting mainly on Durkheim's theory of punishment, Garland (1990, 2001) stresses how rationalized forms have never completely monopolized the penal field and how, in times of crisis for the treatment ideology, the sensation that the penal justice system cannot contain the violence becomes a widespread cultural trait. With the crisis of grand narratives, the advent of the consumer society and the risk society, and the emergence of Web 2.0, bringing the proliferation of information and of ways to access it: we are seeing a phase of progressive crumbling of the Sacred, supplanted by a condition of unceasing emotional boiling. Consequently, the 'return to order' has become increasingly precarious and the excitement has assumed an incessant and structural character, sometimes assuming 'neo-tribal' forms (Bastide, 1975; Binik, 2014, 2016, 2017; Garapon, 2001; Maffesoli, 1988).

Nevertheless, not all the phenomena capable of triggering reactions of moral panic have lost the element of volatility, influenced by the macro-tendencies of contemporary society. One means through which moral panic becomes stable and perpetual is the fixing of moral regulation in laws with a strong cultural message. In the case of SORN measures, far from restoring an ideal and sacred image of society, these 'message laws' can create a double 'looping effect': on the one hand defining categories of outcasts and so reinforcing negative identities (Hacking, 1999); on the other hand, feeding the condition of collective effervescence of the social group.

4. Megan's Laws as Message Laws

In referring to SORN measures as 'message laws', we adapt hate crime scholars' expression of 'message crimes', whose

primary purpose is to carry a message. From a cultural perspective, hate crimes are interpreted as message crimes meant to create fear, hostility, and suspicion, and thereby reaffirm the hegemony of the perpetrator's group and the 'right (appropriate)' subordinate identity of the victim's group (Perry, 2001, p. 10). For this motive, hate crimes are acts of violence (not necessarily physical) that can also be committed by a single individual, but their significance extends beyond the victim to pervade the whole community and, therefore, also affect the perpetrator, who feels they are acting in the name of or for a group in order to re-establish that order which assigns to each his 'proper' place (a place not here and certainly not beside me), and which is perceived as threatened or violated (Cornelli, 2019). However, as James Jacobs points out, the hate crimes laws themselves can be considered to prioritize the message they carry over their tangible effects: 'In truth, to the extent that the hate crime laws send a message, they send the message to the minority and victims groups that welcome such essentially symbolic statements as valuable to their broader agenda' (Jacobs, 2002, p. 483).

More generally, one speaks more openly of 'acting out' policies, of 'penal populism', and of 'symbolical legislation' to indicate a criminal policy that renounces, from its very premise, any appropriate and effective intervention in terms of legal operations: it only aims to affirm, on a meta-judicial level, principles, values, and cultural positions, or sometimes simply the fact that those with the power to decide are taking action, regardless of the effectiveness thereof. Such criminal policy frees itself from any evaluation of efficiency with respect to its aim, instead assuming a relevance that exclusively expresses a cultural message. This is certainly not a novelty of recent decades: as a rather consolidated socio-criminological tradition that can be traced back to Durkheim, the penal system is intrinsically characterized by a strong symbolism as its primary Sacred function is to stabilize the moral boundaries of a community. However, in times when the discourse about fear – intersecting the decline of the welfare state, the de-territorialization of the law, the global primacy of financial capitalism, and the phenomenon of migrations – becomes insistent in undermining the models of social coexistence, it becomes easier to recognize the purely expressive significance of interventions in the penal field (Ceretti & Cornelli, 2018).

In this sense, Megan's Laws can be defined as 'message laws' that, regardless of their real effectiveness principally intend to convey a message coherent with the cultural impetus that supports their adoption and application. They are not only a key element of a general 'acting out' crime policy but also address crimes with a strong cultural connotation. The sex crime laws certainly express intolerance towards a person guilty of particularly reprehensible crimes, but they forget the cultural dimension that characterizes sex crimes, concentrating exclusively on protecting the community from the evil of sex offenders. Besides, the punitive emphasis is, almost exclusively, on uniformly categorizing sex offenders (always less sensitive to the diversity of behaviour); this category is particularly vile even within the already strongly stigmatized higher-level category of criminals.

In this sense, the message carried by SORN measures is characterized by the ability to express obliquely that which is not (yet) acceptable to manifest openly in Western politics, namely: 1) that sex crime perpetrators deserve perpetual punishment; and 2) that the community has the right/duty to control their behaviour, sometimes (as explored below) in a neo-tribal way. These messages can only feed the condition of 'perpetual panic', removing from the rule of law the sacred and fundamental capacity of favouring 'closure': an umbrella term referring to overcoming the discomfort of a loss – in this case, the hurt inflicted by a sex crime (Bandes, 2009).

4.1 Perpetual punitivity

One of the messages of SORN laws lies in indicating that the perpetrators of different kind of sex crimes form part of a single, ignominious category of sex offenders deserving perpetual punishment. Though registration is usually time-limited (sometimes extending for up to 20 years), the use of websites to notify the public about the presence of a sex offender makes the right to be forgotten very difficult to exercise in reality, even once the legal term expires.

Moreover, research concerning these themes has proven citizens' awareness that people convicted of sex crimes encounter difficulties in finding a job, a house, and stable social relationships. In a study in Washington, for example, 84% of participants recognized these problems, although 80% of the sample defined SORN measures as very important (Lieb & Nunlist, 2008).

This creation of 'perpetual criminals', born of the demand to protect the community, concentrates the attention of institutions and the community on sex offenders at the expense of interventions for supporting the victims, of differentiated treatment for individual sex offenders, and of cultural improvement in the community towards opposing gender stereotypes and prejudices in which many sex crimes are rooted. Moreover, though born to address widespread anxieties and worries, these laws ultimately consolidate a climate of perpetual panic: awareness of the presence of 'perpetual criminals' does not reassure but, rather, consolidates a generalized restlessness towards the internal enemy, which one tries to keep at a distance but is unable to expel; an enemy that is threatening because of his ambivalence in being near/far, as us/our opposite, no longer a criminal/not yet a citizen.

Returning to Bataille's distinction between a left (impure) Sacred and a right (pure) Sacred, the act of sex in sex crimes transmigrates among the forms of the Sacred, changing from a vital, procreative act to a horrible crime, and concurrently causing both repulsion and attraction. It disgusts and depresses yet also attracts, because each object has a left aspect and a right aspect, and one of the two can be more important than the other (Bataille, 1988).

Within this theoretical frame, we think that SORN measures, making sex offenders both near and far, reinforce the ambivalence that connotes collective effervescence: it is always possible for anyone, at any time of day, to use their

home computer to discover if there is a monster in the neighbourhood and, therefore, *get closer* to the sex offender while simultaneously taking steps to *move him away*, as an impure individual.

This condition of ambivalence could be key to interpreting the mixed results of studies that have tried to detect the extent of neighbours' fear concerning the presence of a sex offender in their neighbourhood: in some cases, the registers seemed to restrain the fear; in others, they emphasized it (Beck, Clinger Mayer, Ramsey, & Travis, 2004; Beck & Travis, 2004; Caputo & Brodsky, 2004; Kernsmith, Craun, & Foster, 2009; Levenson et al., 2007; Trivits & Reppucci, 2002). Following our interpretation, the registers: instil fear by warning of the presence of a dangerous subject in the neighbourhood; contain it by giving the chance to get closer in a protected way and at a distance (via the web); and emphasize it by making individual citizens feel responsible for their own safety.

In other words, the State abdicates its containment function by failing to state clearly that a penalty has been served and that the subject is ready to return to society because he is no longer dangerous. On the contrary, it returns to society subjects that it continues to define as dangerous and deserving of perpetual punitivity, creating conflicts about their residential collocation (see Williams, 2018) and entrusting to the local community the function of finding information on their presence and of taking appropriate measures.

4.2 The punitive shift towards a surveillant community

Megan's Laws not only express a message of intolerance towards those who commit particularly reprehensible crimes: they also consolidate the idea, by now widespread for many decades in the USA and more recently in many European nations, that the State and its law enforcement agencies cannot guarantee security and that the community must take the law back into its own hands and actively watch over itself. This marks a real change in the penal field, characterized by a new 'culture of control' (Garland, 2001) and crossing diverse tendencies of contemporary western societies described by an extensive body of literature. National states are losing the centrality that characterized them for several centuries due to globalizing economic trends (Habermas, 1998). On the one hand, this implies the spread of the free market ideology as the cure-all solution that also impinges on the penal field (Wacquant, 2009) through the privatization of policing and prisons (Bayley & Shearing, 2001; De Waard, 1999; Loader, 2000). On the other hand, government responsibility over social phenomena is shifting to the local level, rebuilding the concept of community,⁴ so evocative and rich in possibilities but whose ambiguity and political implications have been widely discussed (Crawford, 2012). The community's re-emergence seems to re-propose the fixity and rigidity of the concept of 'people' as

a territorial articulation that rejects dynamism, ambivalence, and friction (which are all key elements to define the concept of social capital: see Binik et al., 2019). At a time of crisis for both national and local welfare systems, of punitive regulations for social problems, and of measures to regulate urban life that emphasize local level governance of social insecurity (such as civility laws in the USA, the ASBO, anti-social behaviour order, in the UK, and administrative orders in Italy and France), the community is understood as a healthy social body that must defend itself. It is ill-suited, therefore, for the role of re-integrating the perpetrators of crimes into society as part of the penal welfare system. Regarding this, public policies have a crucial role in immunizing the community against any possible 'impurity' (Ceretti & Cornelli, 2018). The defensive logic of immunization follows many paths: it crosses the flourishing sector of the security industry, employing ever-more-sophisticated products and services of private policing across increasingly widespread private areas and a growing number of public areas; gives rise to forms of vigilantism, of neighbourhood watch, and of spontaneous control of the community through social media-based warning systems; and informs new visions of the city and new ways of planning building and space (McLaughlin & Muncie, 1999).

The public registers of sex offenders follow the path drawn by the new penal ideology, confirming its cultural background of the necessity to entrust society governance to a mix of neo-punitivism and cultural surveillance that could be defined as 'neo-tribal' (Maffesoli, 1988). The expression 'neo-tribalism', however much it might recall the idea of a social tie, concurrently offers the image of a fragmented society, in which the 'effervescences' – as Durkheim warned – can cause perverted and destructive forms of solidarity, thereby endangering the sex offenders themselves. To illustrate, Mercado et al. (2008) examined the perceptions of 138 sex offenders in New Jersey and found that almost half (48%) had been physically threatened or harassed and 11% had been physically assaulted. Similar results were found by a study involving 443 registered sex offenders across Pennsylvania, Texas, and Wisconsin: 42% had been harassed in person and 14% physically assaulted due to their status (Frenzel, Bowen, Spraitz, Bowers, & Phaneuf, 2014).

Research on the effects of surveillance measures, such as CCTV systems and neighbourhood watch schemes, indicates that a community that defensively watches over itself does not necessarily produce positive effects in terms of social reassurance and enhanced ability to face problems (Rosenbaum, 1987; Williams & Ahmed, 2009; Wright et al., 2015). Indeed, this has often been found to negatively impact on the key elements for community stability of social (Sampson & Raudenbush, 1999) and institutional trust (Goold, 2009; see also Cornelli, 2014), causing social fragmentation (Ali, 2016; Chan, 2008; Patel, 2012).

The result is a community ever more mistrustful and gripped by its own fears – by the forms and representations it gives to individual fears – that lack a political and institutional channel and so circulate obsessively, thereby structuring the discourses, policies, and practices in a perpetual moral panic.

4 For an interesting discussion of the concept of community in criminology, see Walklate and Evans (1999, p. 5).

5. Conclusions

This article defined Megan's Laws as 'message laws', evoking the idea of penal laws that carry a message not only coherent with the cultural thrust supporting their adoption and application but also anticipating that which is not (yet) acceptable to manifest openly in Western politics. This message is generally considered more important than the actual results obtained by the laws in terms of effectiveness, and intervenes on issues that cause waves of moral panic, contributing to their crystallization into phenomena of perpetual panic.

These measures seem like Freudian slips: only apparently casual (in the sense of disconnection from one another and lacking an overarching ideology), they are indirect manifestations of a kind of collective unconscious and constitute a channel through which thoughts that would otherwise be censured find space to express themselves. In the case of SORN measures, we have observed two important messages: sex offenders deserve perpetual punitivity and the community has the right/duty to control their behaviours. In other words, what emerges from the depths of the collective subconscious is a widespread feeling of mistrust in democracy – characterized by checks and balances, the rule of law, inclusive thrust, and forms of representation – is no longer adequate to guarantee safety and wellbeing (Cornelli, 2018). In this case, the 'message laws' can be considered a wake-up call on maintaining the democratic project.

It must be considered that the SORN laws we have discussed, which provide for the establishment of open public registers, are an almost exclusively American phenomenon. As stated earlier, other western nations have instituted registers, but very often for the sole use of law enforcement agencies or otherwise only accessible through procedures requiring official authorization. In effect, this kind of law forms part of what Garland calls 'collateral consequences': 'the imposition of disqualifications, exclusions, banishment, deportation and public criminal records as a consequence of a criminal conviction [...] many of them imposed by local administrative laws and regulations' (2017, p. 4). Together with high imprisonment rates, penal supervision as constraint and control, low use of criminal fines and reparations, high use of extreme penalties (death penalty and imprisonment for life without possibility of parole), sentences length and time served in prison, they distinguish the USA as anomalous compared to other Western nations (Garland, 2017).

This limitation to the American context of both the laws and literature on this theme suggests it may be premature and misleading to generalize the effects and the cultural messages studied with reference to Megan's Laws to the SORN laws of other nations. However, we think that studying the dynamics of affirming perpetual panic through message laws in the field of sex crimes could be useful and current for observing what might also happen in Europe. In fact, in the public debate on security in some European nations, there are continual appeals to the necessity of adopting measures to restrain sex offenders that recall the Ame-

rican collateral consequences of a criminal conviction, from chemical castration to forms of media punishment. To some extent, a climate of perpetual moral panic has also taken root in these nations, and understanding the reasons why it has not produced laws similar to those in the USA can be an extremely useful research theme in terms of policy making.

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Il trattamento giudiziario del sex offender: vecchi limiti, nuove opportunità

The judicial treatment of sex offenders: old limits, new opportunities

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Abstract

Over the years, the discipline of sexual crimes has undergone numerous legislative interventions aimed at changing its scope and stiffening its penalties. It starts from the law 15 February 96, n. 66 up to the red code, law n.69, 19 July 2019, which came into force in August 2019. The law in question promises to activate a fast, effective and preferential lane to complaints of sexual offenses for the benefit of the victims, at the same time ensuring speedy investigations also through the adoption of precautionary and preventive interventions, obviously respecting the fundamental principles guaranteed by the Constitution. Moreover, also providing treatment opportunities for abusers, even sexual abusers. Here, the authors will analyze in particular the characteristics of the atonement of the penalty both in prison terms and in alternative measures concerning the perpetrators of sexual crimes, the latter marked by the changes envisaged in terms of treatment. Alongside new treatment opportunities for sex offenders, there are difficulties in accessing and programming them.

Keywords: Sexual abuses, sex offenders, prison treatment, alternative measures treatment

Riassunto

Nel corso degli anni la disciplina dei reati sessuali ha subito numerosi interventi legislativi volti a modificarne la portata e ad irrigidirne le pene. Si parte dalla legge 15 febbraio 96, n. 66 fino ad arrivare al codice rosso, legge n. 69, 19 luglio del 2019, entrata in vigore nell'agosto del 2019. Tale norma ha come ratio l'attivazione di una corsia preferenziale, rapida ed efficace, per le denunce di reati sessuali a vantaggio delle presunte vittime, garantendo al tempo stesso speditezza alle indagini anche attraverso l'adozione di interventi cautelari e preventivi, sempre nel rispetto dei principi fondamentali garantiti dalla Costituzione. Peraltro, prevedendo opportunità trattamentali per gli autori di abusi, anche sessuali. Nella presente riflessione gli autori analizzeranno in particolare i caratteri dell'espiazione della pena sia in regime carcerario che in quello delle misure alternative riguardanti gli autori di reati sessuali, queste ultime segnate dalle novità previste in termini di trattamento. Accanto a nuove opportunità trattamentali per i sex offender si segnalano difficoltà nell'accesso e nella programmazione delle stesse.

Parole chiave: reati sessuali, sex-offender, trattamento intra-carcerario, trattamento extra-penitenziario

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1. Introduzione

In ambito giuridico, criminologico e psichiatrico-forense sussiste la necessità di individuare con la maggiore precisione e accuratezza possibile il livello di pericolosità sociale ed il rischio di recidiva nei soggetti autori di reati sessuali. L'ottica è, evidentemente, ridurre il più possibile il rischio di reiterazione di reati che suscitano riprovazione ed allarme sociale, specie in coloro i quali sono a più elevato rischio.

Gli autori di reati sessuali sono ritenuti, infatti, a rischio di recidiva criminale (Harris, Smallbone, Dennison, & Knight, 2009) e, soprattutto, da tempo gravati da evidenze che dimostrano un più accentuato rischio di recidiva specifica (Lieb, Quinsey, & Berliner, 1998), per quanto più recentemente, siano emerse riserve a riguardo (Jennings, 2015). In chiave preventiva, in specie quando il rischio è più elevato, da anni in molti paesi gli autori di reati sessuali sono "invitati" al reinserimento sociale ed alla reintegrazione – facendo leva su benefici previsti dalle leggi, su veri e propri obblighi derivanti da norme specifiche o ancora su cornici normative che rendono possibile la messa in cantiere di programmi tesi al recupero –, in altre parole a compiere percorsi trattamentali anche personalizzati, dimostratisi efficaci (Yates, 2013; Olver, Nicholaichuk, Gu De Wong, 2013; Grady, Edwards & Pettus-Davis, 2015).

Nel nostro Paese le iniziative volte al trattamento ed alla prevenzione di tale tipologia di crimini, per quanto abbiano suscitato risonanza e siano stati lodate ed apprezzate per la loro apparente efficacia (Xella, 2017), sono state spesso affidate all'attivismo di singoli piuttosto che ad una programmazione di sistema, né la legislazione è sembrata favorire tali iniziative, lasciate spesso all'intuizione ed al lavoro di pochi "capitani coraggiosi" (Giulini & Xella, 2011) che hanno operato senza l'opportunità di riscontri oggettivi longitudinali, a cui sinora non è stato possibile accedere.

Numerosi studi di revisione sistematica della letteratura con tecniche di meta-analisi hanno verificato l'efficacia di programmi di intervento rivolti ai *sex offender*, mirati alla prevenzione della ricaduta nel comportamento criminoso. Sono le uniche strategie, per quanto non generalizzabili nella loro efficacia, che dimostrano una certa ricaduta nel limitare il rischio di recidiva.

Attualmente, le principali opzioni terapeutiche disponibili sono rappresentate da trattamenti psicoterapici e psico-farmacologici o da una loro combinazione (Winder et al., 2019; Zara, 2019; Harrison et al., 2020). I trattamenti ad impronta cognitivo-comportamentale, condotti in setting di gruppo, sembrano il modello psicoterapico maggiormente efficace, associato a una riduzione del rischio di recidiva compresa tra il 22% ed il 33%, specie quando vengono considerate finestre di follow-up più lunghe (Ken-

worthy, Adams & Bilby, et al. 2004; Hanson, Bourgon, Helmus & Hodgson, 2009a; Giulini & Xella, 2011; Kim et al., 2016; Ter Beek et al., 2018; Mpofu et al., 2018; Gannon et al., 2019).

Il modello terapeutico cognitivo-comportamentale si basa sull'ipotesi secondo cui il rischio di recidiva dei *sex offender* sarebbe legato alla presenza di distorsioni cognitive circa gli effetti psicologici delle condotte sessuali sulle vittime (Pomilla 2018; Steel et al., 2020). La psicoterapia cognitivo-comportamentale prevede infatti una serie di tecniche specifiche, volte a rafforzare in setting di gruppo l'intelligenza emotiva del *sex offender*, migliorare le sue strategie di regolazione emotiva e correggere le distorsioni cognitive, incrementando così nel soggetto la consapevolezza del carattere disfunzionale del suo comportamento (Schmucker & Lösel, 2017).

Alcuni studi suggeriscono peraltro, che l'efficacia degli interventi cognitivo-comportamentali sul rischio di recidiva sia maggiore per gli adolescenti autori di reati rispetto agli adulti e risulti essere ottimale quando il trattamento è effettuato da psicoterapeuti supervisionati e specializzati su questa tipologia di utenza (Ter Beek et al., 2018; Gannon et al., 2019).

Per quanto riguarda i trattamenti farmacologici, gli inibitori selettivi della ricaptazione della serotonina si sono dimostrati efficaci, specie sugli aspetti compulsivi dei comportamenti sessuali disfunzionali (Khan et al., 2017). Fra gli altri farmaci utilizzati, i sali di litio e gli antipsicotici depot da tempo hanno dimostrato la loro efficacia nello stabilizzare l'umore e in una certa misura nel controllo degli impulsi dei *sex offender* (Turner et al., 2018).

Più controverso invece (Ward, 2010) e nel nostro Paese almeno lontano dall'essere preso in considerazione, il tema del trattamento ormonale, contemplato invece in altri Paesi¹. Abbiamo volutamente escluso in questa sede la que-

1 Si tratta di un trattamento farmacologico in uso nell'ordinamento di diversi Paesi del mondo come parte della pena e come forma di prevenzione per i reati di stampo sessuale. A differenza del trattamento chirurgico, invasivo ed irreversibile, la cosiddetta castrazione chimica non ha effetto definitivo e la funzionalità sessuale riprende dopo aver interrotto la terapia ormonale inibitoria. Sono 13 i paesi europei dove la castrazione chimica è prevista sia in termini di pena sia come opzione volontaria del reo, essi sono: il Belgio, la Francia, la Germania, il Regno Unito, la Finlandia, la Svezia, la Danimarca, la Norvegia, la Estonia, la Polonia, la Lituania, l'Islanda e l'Ungheria. In Germania, Svezia e Finlandia questa pratica è preclusa prima di aver compiuto 20 o 25 anni a seconda della legge del luogo. Ad ogni modo in Europa l'adesione del reo è volontaria ed informata, in Belgio seppur non è prevista dalla legge può essere proposta dal giudice come condizione di accesso alle misure alternative alla detenzione. La castrazione chimica è obbligatoria in Russia se il reato è commesso a danno di minore di anni 14, in Macedonia per i pedofili recidivi e in Polonia nei

stione dell'ormono-terapia perché, a differenza di altri paesi dove è ritenuta efficace nel contribuire a ridurre il rischio di recidiva nei *sex offender* (Thibaut et al., 2010), in Italia non si ritiene possa qualificarsi come "trattamento", in senso sanitario. Il Comitato Nazionale di Bioetica ("Il problema bioetico della sterilizzazione volontaria", 20.11.1998) lo ha qualificato infatti "indebita violenza" nei confronti del reo, privo dei requisiti fondamentali (trattamento indicato per determinata patologia) oltre che intimamente intriso di risvolti impeditivi in termini di violazione di principi costituzionalmente protetti dell'art. 32, co. 2, Carta Costituzionale². Non superati anche dall'eventuale consenso del condannato, per violazione dell'art 5 cc.³, nonché dell'art. 27, co. 3, Carta Cost⁴.

Particolari resistenze al cambiamento li pongono poi i *sex offender* con più spiccata componente psicopatica (Prenky et al, 2006), fra gli offender con i più alti tassi di recidiva criminale, anche se non necessariamente specifica e con minore o nulla propensione al ripensamento empatico della relazione con le proprie vittime, la cui resistenza al cambiamento terapeutico solleva anche questioni di politica penitenziaria e sanitaria e, conseguentemente, scelte di natura etica importanti.

È stato sottolineato peraltro come, proprio quanti fra i *sex offender* dimostrano scarsa compliance al trattamento sono ad alto rischio di recidiva specifica (Seto et al., 2004; Carabellese, Vinci, & Catanesi, 2008; Seto, 2009; Hanson & Morton-Bourgon 2005).

A partire da queste brevi considerazioni iniziali, in questa sede vorremmo provare a riflettere in particolare sulle problematiche connesse ai percorsi trattamentali intra ed extra-carcerari dei *sex offender*, sulle opportunità/difficoltà normative e legislative del nostro Paese e infine sulla sua evoluzione nel corso di questi anni.

La domanda da porsi è se è possibile fare qualcosa in

casi di violenza sessuale su minori o parenti. In Indonesia e in Asia i giudici hanno potere di ordinare la castrazione chimica per i condannati per violenze sessuali su minori di anni 16. La castrazione chimica è prevista anche in Nuova Zelanda, Argentina, Israele e Australia. Negli Usa la castrazione chimica ha carattere di pena per cui è obbligatoria ed è praticata in Oregon, Louisiana, Montana, Florida, Georgia, California, Wisconsin e Texas; in quest'ultimo stato è prevista anche la castrazione chirurgica, ma solo previo consenso.

L'efficacia del trattamento ormone-inibitorio, specie se associato ad un approccio psicoterapico, si è dimostrata valida nel contenere il rischio di recidiva (Thibaut et al. 2010), sebbene gli effetti siano rinvenibili soprattutto sulla componente compulsivo-pulsionale della sessualità (Schober et al. 2005) piuttosto che sull'interesse riversato dal *sex offender* sull'oggetto dei propri interessi sessuali, che persiste invece inalterato, almeno nei pedofili (Schober et al. 2005; Hall & Hall, 2007), la tipologia cioè più odiosa e fra quelle a più alto rischio di recidiva specifica fra i *sex offender*.

- 2 Carta Cost., art. 32, "Nessuno può essere obbligato a un determinato trattamento sanitario se non per disposizione di legge. La legge non può in nessun caso violare i limiti imposti dal rispetto della persona umana".
- 3 Atti di disposizione del proprio corpo, art. 5, cc "...sono vietati quando cagionino una diminuzione permanente della integrità fisica, o quando siano altrimenti contrari alla legge, 579 cp, all'ordine pubblico o al buon costume, art. 32 Costituzione".
- 4 Carta Costituzionale, art. 27, "...omissis...le pene non possono consistere in trattamenti contrari al senso di umanità e devono tendere alla rieducazione del condannato...".

termini di recupero e di dissuasione dal reiterare certe condotte sessuali "per" e "con" i *sex offender* e, se sì, come farlo in maniera efficace e verificabile nel tempo, all'interno di una cornice normativa e legislativa che renda possibile raggiungere l'obiettivo ma con il supporto – accesso ai dati, risorse economiche, competenze – delle istituzioni coinvolte. Si tratta evidentemente, di una scelta di sistema.

Per procedere nella nostra analisi riteniamo utile analizzare preliminarmente la cornice giurisprudenziale, normativa e di ordinamento penitenziario, per giungere infine alla recente legge n. 69 del 19 luglio 2019 che, per gli obiettivi di questo lavoro, sembra aprire scenari trattamentali più ampi, sebbene non di semplice e diretta programmazione.

2. Legge n. 38 del 23 Aprile 2009; custodia cautelare in carcere; arresto obbligatorio in flagranza; patteggiamento; sospensione condizionale della pena

Cominciamo con le disposizioni di legge sulla *custodia cautelare in carcere*, misura inizialmente ritenuta necessaria nei confronti degli accusati di certi reati sessuali – che è stata in seguito rivista – e che sembra poco attenta ad una apertura verso un'ottica trattamentale. Esigenze di politica repressiva e di difesa sociale indussero il legislatore dell'epoca ad emettere norme penali e penitenziarie particolarmente severe, con inasprimento delle misure sanzionatorie volte a neutralizzare ed isolare i soggetti responsabili di crimini sessuali. Fu modificato l'art. 275, co. 3, cpp⁵, prevedendo in automatico la custodia cautelare in carcere anche per i delitti di cui agli artt. 609bis⁶, 609quater⁷ e 609octies⁸; automati-

5 Criteri di scelta delle misure, Art. 275, co. 3, cpp, "La custodia cautelare in carcere può essere disposta soltanto quando le altre misure coercitive o interdittive, anche se applicate cumulativamente, risultino inadeguate. Quando sussistono gravi indizi di colpevolezza in ordine ai delitti di cui agli articoli 270, 270-bis e 416-bis del codice penale, è applicata la custodia cautelare in carcere, salvo che siano acquisiti elementi dai quali risulti che non sussistono esigenze cautelari. Salvo quanto previsto dal secondo periodo del presente comma, quando sussistono gravi indizi di colpevolezza in ordine ai delitti di cui all'articolo 51, commi 3-bis e 3-quater, del presente codice nonché in ordine ai delitti di cui agli articoli 575, 600-bis, primo comma, 600-ter, escluso il quarto comma, 600-quinquies e, quando non ricorrano le circostanze attenuanti contemplate, 609-bis, 609-quater e 609-octies del codice penale, è applicata la custodia cautelare in carcere, salvo che siano acquisiti elementi dai quali risulti che non sussistono esigenze cautelari o che, in relazione al caso concreto, le esigenze cautelari possono essere soddisfatte con altre misure".

6 Violenza Sessuale, Art. 609bis, cp: "Chiunque, con violenza o minaccia o mediante abuso di autorità, costringe taluno a compiere o subire atti sessuali è punito con la reclusione da sei a dodici anni...omissis.

7 Atti sessuali con minorenne, Art. 609quater, cp, "Soggiace alla pena stabilita dall'articolo 609-bis chiunque, al di fuori delle ipotesi previste in detto articolo, compie atti sessuali con persona che, al momento del fatto: non ha compiuto gli anni quattordici; non ha compiuto gli anni sedici, quando il colpevole sia l'ascendente, il genitore, anche adottivo, o il di lui convivente, il tutore, ovvero altra persona cui, per ragioni di cura, di educazione, di istruzione, di vigilanza o di custodia, il minore è affidato o che abbia, con quest'ultimo, una relazione di convivenza...omissis.

8 Violenza sessuale di gruppo, Art. 609octies, cp "La violenza sessuale di gruppo consiste nella partecipazione, da parte di più persone riu-

simo tuttavia dichiarato illegittimo da numerose sentenze da parte dei Giudici di legittimità sin dal 2010⁹ e successivamente modificato con la l. n.47/2015.

La Corte ha, dunque, escluso la legittimità di presunzione di adeguatezza automatica della custodia cautelare in carcere per i reati enucleati dalla l. n. 38 del 2009 per cui il livello minimo necessario (Illuminati, 2015; Spangher, 2015; in senso critico, Carnevale, 2015) di garanzia è stato ripristinato con l'intervento riformatore del 2015, n. 47, che con l'art 49¹⁰, ha modificato nuovamente il 2° e 3° periodo dell'art 275, co. 3, cpp, recependo le indicazioni della Consulta.

Dal combinato disposto dei commi di cui all'art. 275¹¹ (così come modificato dalla legge n.47 del 16 aprile 2015) appare evidente come la misura carceraria sia tornata a rappresentare l'*extrema ratio* da applicare quando le altre misure coercitive o interdittive risultino inopportune sia in termini di adeguatezza che di gradualità.

Il legislatore ha infatti individuato ipotesi di presunzione assoluta di adeguatezza della misura cautelare in carcere per i reati ricompresi nel secondo periodo del 3° comma¹² ed ipotesi di presunzione relativa riguardanti le esigenze cautelari, che devono essere considerate sussistenti, a meno che non vi sia prova della loro assenza. Tale presunzione relativa è prevista per i delitti di cui all'art. 51, commi 3-bis e 3-quater cod. proc. pen., nonché in relazione ai delitti di omicidio (art. 575 c.p.), prostituzione minorile (art. 600-bis c.p.), pornografia minorile (art. 600-ter c.p.), iniziative turistiche volte allo sfruttamento della prostituzione minorile (art. 600-quinquies c.p.), violenza sessuale (art. 609-bis c.p.), atti sessuali con minorenne (art. 609-quater c.p.) e violenza sessuale di gruppo (art. 609-octies c.p.). Il giudice, in presenza

di reati sessuali, è tenuto ad applicare la custodia cautelare in carcere salvo che siano acquisiti elementi dai quali risulti che non sussistono esigenze cautelari o che, in relazione al caso concreto, tali esigenze risultino essere salvaguardabili con misure meno afflittive.

La l. n. 38/2009, inserendo la lett. d-bis all'art. 380, co. 2, cpp,¹³ ha peraltro previsto l'*obbligatorietà dell'arresto* (prima facoltativo) in flagranza di reato per il delitto di violenza sessuale, ex art. 609bis, ad esclusione dell'ipotesi meno grave prevista al co. 3, e per il delitto di violenza sessuale di gruppo, art. 609octies, cp. (il quale è un reato plurisoggettivo a concorso necessario) e per il delitto previsto nell'art 380, co. 2, d-ter, atti sessuali con minorenne di cui all'art. 609quater, co. 1 e 2, cp.¹⁴. L'arresto obbligatorio è eseguito dalla polizia giudiziaria, il presupposto per procedervi è la flagranza che si configura quando tra la commissione del reato e la sua scoperta intercorre un brevissimo lasso temporale.

Quanto alla *applicazione della pena su richiesta delle parti*, art. 444 cpp (cosiddetto patteggiamento)¹⁵ è preclusa per i reati sessuali considerati più gravi, tra cui, ad es., violenza sessuale semplice o aggravata, atti sessuali con minorenne e violenza sessuale di gruppo. Da ciò deriva che nelle ipotesi ritenute dal legislatore meno gravi non vi è ostatività per i sex offenders di accedere al patteggiamento e godere di tutti i benefici previsti dalla scelta del rito. Resta fermo il fatto che all'imputato per violenza sessuale è preclusa l'applicazione della pena su richiesta, nel caso in cui la pena superi 2 anni (soli o affiancati a pena pecuniaria). La pena base prevista per il reato di violenza sessuale è attualmente di sei anni di reclusione per cui appare evidente l'impossibilità per l'imputato di accedere al rito in questione.

Nonostante le statuizioni di cui sopra si sono registrate sentenze che invece dispongono in senso favorevole¹⁶ al cd

nite, ad atti di violenza sessuale di cui all'articolo 609-bis. Chiunque commette atti di violenza sessuale di gruppo è punito con la reclusione da otto a quattordici anni...omissis.

- 9 Corte Costituzionale, Sent. 21 luglio 2010 n. 265, in cui si dichiara illegittimità costituzionale del secondo e terzo periodo nella parte in cui nel prevedere che, quando sussistono gravi indizi di colpevolezza in ordine ai delitti di cui agli artt. 600 bis, co. 1, 609-bis e 609 quater cp, è applicata la custodia cautelare in carcere, salvo che siano acquisiti elementi dai quali risulti che non sussistono esigenze cautelari, non fa salva, altresì l'ipotesi in cui siano acquisiti elementi specifici, in relazione al caso concreto, dai quali risulti che le esigenze cautelari possono essere soddisfatte con altre misure".
- 10 L'art. 4, co 1: Il secondo periodo del comma 3 dell'articolo 275 del codice di procedura penale è sostituito dai seguenti: "Quando sussistono gravi indizi di colpevolezza in ordine ai delitti di cui agli articoli 270, 270 -bis e 416 -bis del codice penale, è applicata la custodia cautelare in carcere, salvo che siano acquisiti elementi dai quali risulti che non sussistono esigenze cautelari. Salvo quanto previsto dal secondo periodo del presente comma, quando sussistono gravi indizi di colpevolezza in ordine ai delitti di cui all'articolo 51, commi 3 -bis e 3 -quater, del presente codice nonché in ordine ai delitti di cui agli articoli 575, 600 -bis, primo comma, 600 -ter, escluso il quarto comma, 600 -quinquies e, quando non ricorrano le circostanze attenuanti contemplate, 609 -bis, 609 -quater e 609 -octies del codice penale, è applicata la custodia cautelare in carcere, salvo che siano acquisiti elementi dai quali risulti che non sussistono esigenze cautelari o che, in relazione al caso concreto, le esigenze cautelari possono essere soddisfatte con altre misure".
- 11 Art. 275 cp, co.1 e 3 prima parte e 3bis.
- 12 Ex art. 270, 270-bis e 416-bis c.p. per i quali permane la presunzione assoluta di adeguatezza dell'estrema misura custodiale.

- 13 Arresto obbligatorio in flagranza, art. 380, co. 2, lettera d) bis cpp: delitto di violenza sessuale previsto dall'art. 609 bis escluso il caso previsto dal co. 3, e delitto di violenza sessuale di gruppo previsto dall'art.609 bis cp; lettera inserita dall'art. 2, co 1, lettera b), del DL 23 Febbraio 2009, n. 11, convertito nella l.23 Aprile 2009, n. 38".
- 14 Lettera aggiunta dalla lettera e) del comma 1 dell'art. 5, L. 1° ottobre 2012, n. 172.
- 15 Applicazione della pena su richiesta delle parti, Art. 444., co.1 bis, cpp, sono esclusi dall'applicazione del comma 1 i procedimenti per i delitti di cui all'art. 51, commi 3 bis e 3 quater, i procedimenti per i delitti di cui agli artt. 600 bis, 600 ter, primo, secondo, terzo e quinto comma, 600 quater 1, relativamente alla condotta di produzione o commercio di materiale pornografico, 600 quinquies, nonché 609 bis, 609 ter, 609 quater e 609 octies cp, nonché quelli contro coloro che siano stati dichiarati delinquenti abituali, professionali e per tendenza, o recidivi ai sensi dell'art. 99, co. 4 cp, qualora la pena superi 2 anni soli o congiunti a pena pecuniaria". Comma inserito dall'art. 1, l.12 giugno 2003, n. 134 poi così modificato dall'art. 11 della l. n. 38, 6 febbraio 2006, e dall'art. 5, co.1, lett L, della l. 1 ottobre 2012, n. 172.
- 16 Tribunale di Trieste, sent. 30.10.2018, in cui si dispone che: previo riconoscimento delle circostanze attenuanti generiche prevalenti sulla contestata aggravante, ritenuta la continuazione e applicata la riduzione per il rito – ai sensi dell'articolo 444 c.p.p. applicava a (omissis) la pena di due anni e sei mesi di reclusione, condizionalmente sospesa, per i reati di cui agli articoli 81 cpv. e 609-bis c.p., arti. 609-ter c.p., n. 2, e art. 609-septies c.p., n. 1, contestati. Avverso l'indicata sentenza, il Procuratore Generale territoriale propone ricorso per cassazione, affidato a un motivo, con cui deduce vio-

patteggiamento “allargato” ma tali pronunciamenti sono stati dichiarati illegali da parte della Corte di Cassazione¹⁷. La sentenza è nulla se la pena è ridotta con il patteggiamento per un reato escluso dal rito premiale, appunto i reati sessuali più gravi.

A proposito della *sospensione condizionale della pena*, art. 163 cp¹⁸, vi è da dire che questo è un istituto giuridico attraverso cui al reo, con condanna non superiore ai due anni di reclusione, è sospesa l'esecuzione della pena per il termine di cinque anni se la condanna è per delitto e di due anni se la condanna è per contravvenzione. Se il condannato nel periodo di sospensione non commette nuovi reati ed adempie agli eventuali obblighi imposti dal giudice, il reato si estingue senza che abbia luogo né l'esecuzione della pena principale né quelle accessorie (ed eventuali).

L'accesso alla sospensione condizionale della pena, in relazione ai reati di carattere sessuale, è stato oggetto di intervento legislativo recentissimo, ex l. 69/2019. In sostanza, in caso di condanna per uno dei delitti elencati nel co. 5 dell'art. 165 cp¹⁹, (comma inserito dall'art. 6 comma 1, L. 19 luglio 2019, n. 69) l'accesso a questo beneficio è condizionato dalla partecipazione a specifici percorsi di recupero presso enti o associazioni che si occupano di prevenzione, assistenza psicologica per soggetti condannati e recupero di soggetti condannati per medesimi reati. Gli oneri derivanti dalla partecipazione ai corsi di recupero di cui all'art. 165 cp, sono a carico del condannato.

La scelta repressiva del legislatore italiano è, peraltro, ancora evidente considerando il fatto che per i reati sessuali più gravi è esclusa la sospensione dell'esecuzione delle pene

lazione di legge, in relazione all'art. 444 c.p.p., comma 1-bis, avendo il g.i.p. erroneamente ammesso l'imputato al rito speciale, nonostante il delitto di violenza sessuale aggravata rientri nel catalogo di quelli in relazione ai quali è espressamente escluso l'accesso al “patteggiamento allargato”.

17 Corte di cassazione, sez. III, sent. 13.05.2019 n. 20483: ...va ricordare che il “patteggiamento allargato” – ossia il caso in cui la pena detentiva applicata su accordo delle parti è superiore a due anni, soli o congiunti a pena pecuniaria, ma non a cinque anni – è precluso per i procedimenti aventi ad oggetto una serie di delitti espressamente indicati dall'articolo 444 c.p.p., comma 1-bis, tra cui, ai fini che qui rilevano, quelli di cui agli articoli 609-bis e 609-ter c.p., nonché in relazione a determinate tipologie delinquenziali, come nel caso di recidivo reiterato... Va perciò affermato che... per effetto della non dovuta riduzione, la pena applicata è illegale... La sentenza deve perciò essere annullata senza rinvio.

18 Sospensione condizionale della pena, art. 163 cp; Nel pronunciare sentenza di condanna alla reclusione o all'arresto per un tempo non superiore a due anni, ovvero a pena pecuniaria...omissis...il giudice può ordinare che l'esecuzione della pena rimanga sospesa per il termine di cinque anni se la condanna è per delitto e di due anni se la condanna è per contravvenzione...omissis...

19 Obblighi del condannato, art. 165 cp; “...omissis.. Nei casi di condanna per i delitti di cui agli articoli 572, 609bis, 609ter, 609quater, 609quinqies, 609octies e 612bis, nonché agli articoli 582 e 583octies nelle ipotesi aggravate ai sensi degli articoli 576, primo comma, numeri 2, 5 e 5.1, e 577, primo comma, numero 1, e secondo comma, la sospensione condizionale della pena è comunque subordinata alla partecipazione a specifici percorsi di recupero presso enti o associazioni che si occupano di prevenzione, assistenza psicologica e recupero di soggetti condannati per i medesimi reati...omissis...”. Tale comma è stato inserito dall'art. 6 comma 1 della L. 19 luglio 2019 n. 69.

detentive, art. 656 co. 9, lettera a), cpp²⁰, in quanto ricompresi nell'elenco dei cosiddetti reati ostativi, art. 4bis Ordine Penitenziario. In definitiva l'accesso alla sospensione dell'esecuzione della pena e la possibilità di espirla in regime di misura alternativa alla detenzione diventa assai arduo per l'autore di reati sessuali più gravi – si pensi ai reati commessi in danni di minori – che certamente sono i più odiosi e suscitano maggiore allarme, ma che sono anche quelli gravati dal rischio di recidiva più elevato e di conseguenza proprio per questo sarebbero quelli a cui rivolgere valutazioni di praticabilità più accurate e verso cui indirizzare maggiori risorse (Andrews, Bonta & Wormith, 2011). Da combinare eventualmente agli obblighi che il giudice potrebbe imporre al reo che accede alla sospensione della pena il che potrebbe, in un'ottica appunto trattamentale, rendere più composito e strutturato il percorso di recupero del *sex offender*.

Sul come attuare tali percorsi di recupero, ampio spazio è lasciato all'iniziativa di “enti o associazioni” ed agli accordi che, in periferia, le singole istituzioni carcerarie possono instaurare con essi, ma non vi è nulla di strutturato.

3. Sospensione dell'esecuzione della pena e delitti sessuali

L'art. 656 cpp stabilisce che, quando deve essere eseguita una sentenza di condanna a pena detentiva, il Pubblico Ministero emette ordine di esecuzione con cui, se il condannato non è detenuto, ne dispone la carcerazione. Tuttavia, nel co. 5 si prevede che il Pubblico Ministero sospenda con decreto l'ordine di esecuzione della pena detentiva quando questa non sia superiore ai 3, 4 o 6 anni (a seconda dei casi specifici), al fine di agevolare l'accesso alle misure alternative alla detenzione.

La sospensione dell'esecuzione non può essere concessa più di una volta per la medesima condanna ed il co. 9 specifica i casi in cui la sospensione non può mai essere concessa, rinviando ai casi elencati nell'art. 4 bis ord. pen. (l. 26/1975, n. 354 e successive modificazioni) ove è elencato un vero e proprio catalogo di reati “ostativi”, portatori di particolare allarme sociale, tra quelli di matrice sessuale riconnessi *juris et de jure* ad una presunzione di pericolosità che comporta un divieto di sospensione dell'esecuzione delle pene, anche se brevi (cioè inferiori ai 3 anni di reclusione).

Prima delle modifiche legislative, parte della dottrina e della giurisprudenza ritenevano che sulla base del tenore letterale della disposizione, il divieto della sospensione dell'esecuzione della pena detentiva non operasse per i delitti

20 Esecuzione delle pene detentive, art. 656 cpp, “Quando deve essere eseguita una sentenza di condanna a pena detentiva, il pubblico ministero emette ordine di esecuzione con il quale, se il condannato non è detenuto, ne dispone la carcerazione... omissis... La sospensione dell'esecuzione di cui al comma 5 non può essere disposta: a) nei confronti dei condannati per i delitti di cui all'art. 4 bis della legge 26 luglio 1975, n. 354, e successive modificazioni... omissis”.

di violenza sessuale commessi al di fuori del vincolo associativo, mentre si applicava per il delitto di associazione per delinquere finalizzata alla commissione delle varie fattispecie di violenza sessuale²¹. Altra giurisprudenza considerava invece ostativo alla sospensione della carcerazione anche il delitto di violenza sessuale per se stesso considerato²².

In seguito, il legislatore è nuovamente intervenuto sull'art. 4 bis dell'ord. pen., con la l. del 6 febbraio 2006 n. 38²³, aggiungendo nel catalogo dei reati ostativi alla sospensione della esecuzione della pena detentiva breve anche quelli di violenza sessuale di cui all'art. 609bis, 609 ter²⁴, 609quater e 609octies cp. Le Sezioni Unite, con intervento chiarificatore²⁵ hanno asserito che il divieto di sospensione dell'esecuzione della pena, ex art. 656, co. 9, lettera a) cpp, per effetto della modifica apportata alla normativa penitenziaria con la l. 38/2006 opera, dopo l'entrata in vigore, anche per gli specifici illeciti penali in materia sessuale di cui agli art. 609bis e seguenti cp, pur commessi al di fuori del vincolo associativo. In altri termini, i condannati per violenza sessuale semplice o aggravata per atti sessuali con minorenni e per violenza sessuale di gruppo, non potranno accedere ai benefici penitenziari se non dopo aver trascorso almeno un anno di detenzione intramuraria e solo a seguito di specifici percorsi e valutazioni della personalità, così come in ultimo previsto ex l. 69/2019, che condiziona l'accesso a questo beneficio previa partecipazione a specifici percorsi di recupero presso enti o associazioni che si occupano di prevenzione, assistenza psicologica e recupero di soggetti condannati per medesimi reati.

In pratica, un'apertura ad opportunità trattamentali, subordinata al rispetto di determinate condizioni. Vedremo in seguito, quando affronteremo la L. 69/2019, cosa questa preveda a proposito degli specifici percorsi di recupero di cui si parla.

A riguardo invece della collocazione intramuraria dei detenuti per reati sessuali, che appare, alla luce di quanto appena detto, condizione preliminare per il *sex offender* che voglia scegliere di percorrere strade finalizzate al cambiamento delle sue condotte sessuali, sempre che sia ritenuto "idoneo" dopo osservazione degli esperti, è noto come essa segua una logica di collocamento particolare proprio in ragione della tipologia di reato commesso. Anche questo è un aspetto, a nostro parere, di cui tenere conto nella prospettiva del nostro lavoro.

4. Sezione protetti

Gli autori di reati sessuali sono collocati, com'è noto, all'interno di sezioni carcerarie particolari, separate, ove trovano ospitalità autori di condotte cosiddette "infami", quali ad esempio ex poliziotti e collaboratori di giustizia, oltre ai *sex offender*. Questi detenuti espiano la pena isolati, in sostanza in regime di doppia privazione di libertà, al fine di tutelare la loro incolumità dagli altri detenuti, che per cultura e prassi consolidata non accettano, anzi disprezzano, la commistione con protagonisti di determinate tipologie di crimini, soprattutto quelli contro donne e bambini considerati vittime deboli, fragili. Di fatto i detenuti *sex offender* sono limitati nello svolgimento di ogni attività ricreativa, lavorativa, sportiva o culturale non potendo partecipare o condividere con i detenuti interni in altre sezioni del circuito carcerario tali attività. Essi vivono in regime quasi di isolamento "perché non è consentito loro di svolgere alcuna attività trattamentale se non nel contesto della sezione e quindi senza scambi con altri soggetti. Questi condannati finiscono per essere gli esclusi dagli esclusi, di fatto come 'ibernati', con istinti e pulsioni pronti a sciogliersi al ritorno in libertà, forse ancora più esasperati. Quindi spesso nulla o quasi il carcere riesce ad incidere sul pericolo di futura recidiva" (Palmisano, 2015).

In passato tale collocazione ha costituito elemento facilitatore di programmi di osservazione e/o trattamentali intracarcerari, come è avvenuto a partire dal programma WOLF.

Ricordiamo, infatti, che nel 1998 il Ministero di Giustizia-Dipartimento dell'Amministrazione Penitenziaria, presentò il progetto *Working On Lessing Fear (WOLF)* finalizzato al trattamento dei condannati per reati sessuali su minori, nonché alla formazione degli operatori penitenziari addetti al loro trattamento, che coinvolse il personale di 71 istituti penitenziari e dei relativi Uffici di Esecuzione Penale Esterna (Mariotti, Culla, & Zinna, 2001).

5. Articolo 4 ordinamento penitenziario l. 354/1975

Il DL n. 11 del 2009, convertito nella l. 38 recante "misure urgenti in materia di sicurezza pubblica e di contrasto alla violenza sessuale nonché in tema di atti persecutori", ha esteso il numero dei reati da comprendere nell'articolo 4bis Ord. Pen. Esso prevede che vi sia un trattamento differenziato per una determinata tipologia di reati considerati ad alto spessore criminale, questo anche per rispondere ad esigenze social-preventive in quanto, *de plano*, vi è presunzione di pericolosità in ragione della tipologia di reato. In questa sede saranno citati solo i reati di stampo sessuale tralasciando gli altri di natura differente.

La norma prevede che il condannato per i delitti di cui agli artt. 600 cp, 600bis, co. 1, cp, 600 ter, co. 1 e 2, cp²⁶, 609octies cp, possa beneficiare dell'assegnazione al lavoro

21 Corte di Cass. Sez. III, n. 33329/2003; n. 22724/2005; n. 44617/2005; Cass. Sez. I, n. 22163/2005; n. 5870/2006.

22 Corte di Cass. Sez. III, n. 1443/2000; n. 26832/2004; Cass. Sez. I, n. 8058/2004.

23 Disposizioni in materia di lotta contro lo sfruttamento sessuale dei bambini e la pedopornografia anche a mezzo internet.

24 Circostanze aggravanti, art. 609 ter, co. 1, n. 1, modificato dall'art. 13 co. 2, lett. a) e co. 2, modificato dall'art. 13 comma 2 lett. b) della L. 19 luglio 2019 n. 69.

25 Corte di Cass. Sez. Un., 30 maggio 2006, n. 24561.

26 Art. 600 cp, "Riduzione o mantenimento in schiavitù o in servitù", art. 600Bis, co. 1, cp, "Prostituzione minorile", art. 600Ter, co. 1 e 2, cp, "Pornografia minorile".

esterno, permessi premio e misure alternative alla detenzione solo nei casi in cui collaborino con la giustizia a norma dell'art 58ter, ord. pen.²⁷. Quanto all'art. 4 bis, co. 1quater, ord. pen.²⁸, prevede (anche alla luce delle modifiche apportate, in ultimo, dalla l. 69/2019) che per i reati in esso contemplati l'assegnazione al lavoro esterno, permessi premio e misure alternative possono essere concessi solo sulla base dei risultati dell'osservazione scientifica della personalità condotta collegialmente per almeno un anno; tale disposizione non si applica al reato di cui all'art. 609bis solo se risulti applicata la circostanza attenuante contemplata nello stesso articolo.

Il Magistrato di Sorveglianza, assunto il parere degli operatori che hanno seguito il condannato, decide sulle misure alternative da applicare tenendo sempre in considerazione eventuali criteri di pericolosità, che deve risultare inesistente o quantomeno fortemente attenuata. La norma nulla dice tuttavia in merito a quando l'osservazione debba avere inizio, né si esprime sulle metodologie da seguire ed eseguire. Di conseguenza, in assenza di dettami specifici si ritiene che l'osservazione scientifica debba avvenire secondo le modalità previste dall'art. 27 e 28, DPR 230/2000²⁹. Con tutte le incertezze conseguenti, derivanti

primariamente dalla non necessaria presenza di competenze specifiche che invece l'osservazione personale, la valutazione del rischio di recidiva ed il giudizio predittivo sulla riuscita del trattamento, almeno nel caso dei *sex offender*, dovrebbe viceversa necessariamente prevedere.

Nel primo comma quinquies dell'art. 4bis ord. pen.³⁰ si stabilisce inoltre che per i reati contemplati in epigrafe, qualora commessi nei confronti di minorenni, il Magistrato di Sorveglianza o il Tribunale di Sorveglianza valuti l'eventuale esito positivo della partecipazione al programma di riabilitazione specifica a norma dell'art. 13bis, ord. pen.³¹. Anche in questo caso è richiesto un giudizio di pericolosità che deve risultare inesistente o quantomeno attenuato sulla base di tali elementi; quando il giudizio è positivo il Magistrato o il Tribunale di Sorveglianza determina la concessione delle misure alternative. L'adesione volontaria del reo al trattamento e la riuscita positiva dello stesso sono, nell'attuale sistema legislativo, preliminarmente indispensabili per eventuali percorsi riabilitativi, compreso il ritorno in libertà del condannato. Vi è da aggiungere, come nota critica, che la positiva riuscita del percorso trattamentale intrapreso rischia di essere giudizio inevitabilmente affidato all'esperienza dei singoli, senza quel necessario supporto oggettivo che sarebbe invece fortemente auspicabile.

27 Persone che collaborano con la giustizia, art. 58 Ord. Pen., "I limiti di pena previsti dalle disposizioni del comma 1 dell'articolo 21, del comma 4 dell'articolo 30ter e del comma 2 dell'articolo 50, concernenti le persone condannate per taluno dei delitti indicati nei commi 1, 1-ter e 1-quater dell'articolo 4bis, non si applicano a coloro che, anche dopo la condanna, si sono adoperati per evitare che l'attività delittuosa sia portata a conseguenze ulteriori ovvero hanno aiutato concretamente l'autorità di polizia o l'autorità giudiziaria nella raccolta di elementi decisivi per la ricostruzione dei fatti e per l'individuazione o la cattura degli autori dei reati...omissis...".

28 Divieto di concessione dei benefici e accertamento della pericolosità sociale dei condannati per taluni delitti, art. 4bis, ord. pen., 1-quater. "I benefici di cui al comma 1 possono essere concessi ai detenuti o internati per i delitti di cui agli artt. 583 quinquies, 600bis, 600ter, 600quater, 600quinquies, 609bis, 609ter, 609quater, 609quinquies, 609octies e 609undecies del codice penale solo sulla base dei risultati dell'osservazione scientifica della personalità condotta collegialmente per almeno un anno anche con la partecipazione degli esperti di cui al quarto comma dell'art. 80 della presente legge. Le disposizioni di cui al periodo precedente si applicano in ordine al delitto previsto dall'articolo 609bis del cod. pen. salvo che risulti applicata la circostanza attenuante dallo stesso contemplata".

29 Regolamento recante norme sull'ordinamento penitenziario e sulle misure privative e limitative della libertà, art. 27, Osservazione della personalità: "L'osservazione scientifica della personalità è diretta all'accertamento dei bisogni di ciascun soggetto, connessi alle eventuali carenze fisico-psichiche, affettive, educative e sociali, che sono state di pregiudizio all'instaurazione di una normale vita di relazione. Ai fini dell'osservazione si provvede all'acquisizione di dati giudiziari e penitenziari, clinici, psicologici e sociali e alla loro valutazione con riferimento al modo in cui il soggetto ha vissuto le sue esperienze e alla sua attuale disponibilità ad usufruire degli interventi del trattamento. Sulla base dei dati giudiziari acquisiti, viene espletata, con il condannato o l'internato, una riflessione sulle condotte antiggiuridiche poste in essere, sulle motivazioni e sulle conseguenze negative delle stesse per l'interessato medesimo e sulle possibili azioni di riparazione delle conseguenze del reato, incluso il risarcimento dovuto alla persona offesa...omissis...". Art. 28, Espletamento dell'osservazione della personalità, "L'osservazione scientifica della personalità è espletata, di regola, presso gli stessi istituti dove si eseguono le pene e le misure di sicurezza...omissis...".

6. Trattamento, consenso e valutazione di pericolosità

Il concetto di *trattamento* trova la sua collocazione nell'ord. pen., l. 354/1975, in linea con la funzione rieducativa della pena³² mentre l'individualizzazione del trattamento è spe-

30 Art. 4bis, ord. pen., co.1 quinquies, "Salvo quanto previsto dal comma 1, ai fini della concessione dei benefici ai detenuti e internati per i delitti di cui agli articoli 583quinquies, 600bis, 600ter, anche se relativo al materiale pornografico di cui all'articolo 600quater 1, 600quinquies, 609quater, 609quinquies e 609undecies del cod. pen., nonché agli artt. 609bis e 609octies del medesimo codice, se commessi in danno di persona minorenne, il magistrato di sorveglianza o il tribunale di sorveglianza valuta la positiva partecipazione al programma di riabilitazione specifica di cui all'articolo 13bis della presente legge".

31 Trattamento psicologico per i condannati per reati sessuali, per maltrattamenti contro familiari o conviventi e per atti persecutori, art. 13bis, ord. pen., "Le persone condannate per i delitti di cui agli artt. 600bis, 600ter, anche se relativo al materiale pornografico di cui all'art. 600quater 1, 600quinquies, 609quater, 609quinquies e 609undecies del cod. pen., nonché agli artt. 572, 583quinquies, 609bis, 609octies e 612bis del medesimo codice, possono sottoporsi a un trattamento psicologico con finalità di recupero e di sostegno. La partecipazione a tale trattamento è valutata ai sensi dell'art. 4bis, co. 1-quinquies, della presente legge ai fini della concessione dei benefici previsti dalla medesima disposizione...omissis...", come modificato dall'art. 17 comma 1 lettera a) della Legge 19 luglio 2019, n. 69; Co. 1 bis: "le persone condannate per i delitti di cui al comma 1 possono essere ammesse a seguire percorsi di reinserimento nella società e di recupero presso enti o associazioni che si occupano di prevenzione, assistenza psicologica e recupero di soggetti condannati per i medesimi reati, organizzati previo accordo tra i suddetti enti o associazioni e gli istituti penitenziari". Tale comma è stato inserito dall'art. 17 comma 1 lettera b) della Legge 19 luglio 2019, n. 69.

32 Carta Costituzionale, art. 27, co. 3.

cificato nell'art. 13 ord. pen.³³. Il trattamento rieducativo mira al reinserimento sociale del soggetto a seguito dell'espiazione della pena. Esso è svolto prevalentemente nel circuito carcerario e solo quando ne ricorrono i presupposti il reo ha accesso a forme di esecuzione penale extramurarie quali, ad esempio, permessi premio o lavoro all'esterno o all'esecuzione della pena in misura alternativa alla detenzione.

I reati sessuali ricompresi nel catalogo dei reati ostativi (art. 4bis, ord. pen.) considerati affetti da pericolosità presunta, rischio recidiva elevato e spiccato disvalore sociale, hanno indotto il legislatore a privilegiare il trattamento rieducativo del detenuto durante l'esecuzione della pena, in quanto *“il nostro legislatore ha scelto di prendere in carico e di tentare la rieducazione del condannato”* (Fadda M.L., 2011).

L'ordinamento penitenziario, art. 13bis, prevede il trattamento psicologico per i condannati di illeciti sessuali particolarmente gravi, la cui partecipazione, previo *consenso*, è valutata ai fini della concessione di benefici. Ciò, insieme all'osservazione scientifica della personalità, ex art. 13 ord. pen. ed in combinato disposto con l'art. 27, DPR n. 230/2000, rappresenta un vero e proprio *“patto trattamentale”* con l'autore di reati sessuali. L'osservazione è condotta da équipe di solito costituita dal cosiddetto Gruppo di Osservazione e Trattamento (GOT), composto dal Direttore dell'Istituto di pena, dal comandante della Polizia Penitenziaria, dall'educatore di riferimento, dall'assistente sociale incaricato del caso e da uno psicologo. È noto *“come gli autori di reati sessuali appaiono caratterizzati da atteggiamenti difensivi particolarmente rigidi e resistenti alla cura che si traducono anche in forme di negazione e minimizzazione. La difficoltà ad accedere alla propria sfera emotiva per questi soggetti comporta anche l'incapacità di comprendere la sofferenza della vittima. L'offerta di un aiuto trattamentale appare pertanto determinante per favorire la possibilità di una comprensione della criminogenesi e della criminodinamica e può stimolare anche un cambiamento interiore in una prospettiva di prevenzione della recidiva”* (Emiletti L. et al., 2012, pp. 56-57).

Il rischio di recidiva, ovvero la valutazione della *pericolosità* del reo, è infatti uno degli elementi fondamentali che il Tribunale dovrà valutare ai fini della concessione delle misure alternative e di eventuali trattamenti extra-carcerari al *sex offender*.

Va da sé che, a nostro parere, solo realtà carcerarie che si sono dotate di competenze specifiche a riguardo, anche attraverso forme di collaborazione con professionalità esterne, hanno la possibilità di giungere a valutazioni metodologicamente verificabili, assunte sulla scorta di strumenti validati ed obiettivi. Ricordiamo in proposito

33 Individualizzazione del trattamento, art. 13, ord. pen., *“Il trattamento penitenziario deve rispondere ai particolari bisogni della personalità di ciascun soggetto, incoraggiare le attitudini e valorizzare le competenze che possono essere di sostegno per il reinserimento sociale. Nei confronti dei condannati e degli internati è predisposta l'osservazione scientifica della personalità per rilevare le carenze psicofisiche o le altre cause che hanno condotto al reato e per proporre un idoneo programma di reinserimento...omissis...”*.

l'esperienza della Casa Circondariale di Vercelli, dal cui lavoro ha preso origine la validazione italiana (Garombo et al., 2015) del Risk Matrix 2000 (Thornton, 2010), fra gli strumenti di assessment del rischio di recidiva di reati sessuali più utilizzati in ambito forense; o ancora l'esperienza di Milano-Bollate (Giulini & Xella, 2011) che ha trovato poi risonanza e prosecuzione in percorsi anche extra penitenziari sostenuti dal Comune di Milano.

7. Rischio di recidiva e strumenti di valutazione

Secondo alcuni studiosi (Ackerman et al, 2011; Seto et al. 2004; Seto, 2009), gli autori di reati sessuali gravi presentano una probabilità molto elevata di ricommettere reati della stessa indole, per quanto si tratta peraltro di assunto non condiviso interamente da altri Autori (Hanson et al, 2009; Harris et al, 2011; Piquero et al, 2012; Zara, & Farrington, 2016).

L'équipe di esperti incaricata di osservare scientificamente la personalità dell'autore di reati sessuali durante il trattamento intra-carcerario o in via preliminare per la concessione di condizioni meno afflittive (vedi sospensione condizionale della pena, sospensione dell'esecuzione della pena, misure alternative alla carcerazione) dovrebbe tener conto primariamente del rischio concreto di recidiva. Tanto al fine anche delle misure che il Magistrato di Sorveglianza vorrà applicare al termine dell'anno di osservazione. Per quanto tale tipologia di reati sia gravata da una presunzione di pericolosità specifica, la rieducazione ed il reinserimento del condannato anche per reati sessuali è obiettivo costituzionalmente garantito.

È, peraltro, evidente che obiettivo primario dell'accesso a sistemi premiali alternativi alla detenzione in carcere, con inserimento in percorsi trattamentali specifici, è proprio quello di ridurre la probabilità di recidiva specifica attraverso misure che al tempo stesso si focalizzano sui fattori predittivi di nuovi atteggiamenti illeciti e ne riducono il loro perpetrarsi.

Una dettagliata analisi dei fattori di rischio che potrebbero portare alla commissione di un reato della stessa specie è, dunque, condizione fondamentale per tutti gli operatori di giustizia, i quali dovrebbero in tal modo disporre di criteri e strumenti di valutazione adeguati sia durante l'osservazione intramuraria che durante eventuali percorsi trattamentali extra-murari.

Va detto tuttavia che, ad oggi, nel nostro Paese, solo il Risk Matrix 2000 è strumento di valutazione del rischio di recidiva validato e che l'uso di tale strumento è ben lontano dall'essere diffuso. Né abbiamo notizia di strumenti di gestione dei rischi individuati e di valutazione di efficacia nel tempo dei trattamenti intrapresi, procedendo le équipe carcerarie per lo più sulla scorta di giudizi personali e della esperienza costruita sul campo, giudizi non verificabili con strumenti oggettivi, che espongono l'esperto ad un'assunzione di responsabilità (Coluccia et al., 2017; Giulini & Xella, 2011; Gualtieri et al., 2020; Xella, 2014), di natura anche professionale in ambito riabilitativo, da tempo nota (Catanesi, Carabellese, Rinaldi, 1998).

8. Codice Antimafia, misure di prevenzione e... ingiunzione terapeutica per i sex offenders

Sempre al fine del giudizio di sociale pericolosità, riteniamo opportuno analizzare anche la normativa in vigore sulle *misure di prevenzione*. Naturalmente prenderemo in considerazione solo ciò che attiene il fine della nostra riflessione.

La legge n.161 del 2017 ha modificato il sistema delle misure di prevenzione del cosiddetto codice antimafia, d.lgs. n.159 del 2011, ampliando il numero dei soggetti destinatari delle misure di prevenzione. Nel d.lgs. n. 159, conosciuto come *Codice Antimafia*, è possibile trovare una significativa forma di tutela anche per i reati di violenza di genere. La norma è destinata ai soggetti socialmente pericolosi, dediti alla commissione di reati diretti alla integrità fisica o morale dei minorenni, la sanità, la sicurezza o la tranquillità pubblica, art. 1, co. 1, lettera c)³⁴, tra cui appunto ben possono collocarsi pedofili ed autori di violenze sessuali.

I soggetti destinatari devono essere dotati di spiccata pericolosità sociale, attuale e fattiva, deducibile da pregressi comportamenti recidivanti posti in essere nei confronti di vittime vulnerabili.

Il giudizio di pericolosità deve essere formulato su situazioni concrete e accertate sulla base del contesto sociale frequentato abitualmente dal soggetto che ha commesso l'illecito ed in cui questi vive, delle denunce, dei procedimenti penali e dall'esistenza di reati consumati, meglio se acclarati con sentenze definitive. I dati accertati devono essere in grado di giustificare l'applicazione di misure di prevenzione. Tale è la condizione richiesta dalla Corte di Strasburgo³⁵, che ha imposto l'obbligo di fondare il giudizio di pericolosità sulla base di elementi concreti, accertati con sentenza irrevocabile o dotati di gravità indiziaria se ancora in pendenza di accertamento, escludendo dagli elementi di prova valutazioni meramente soggettive dell'autorità proponente, qualora non supportate da riscontri fattuali oggettivi³⁶.

Con la riforma del 2017, n. 161, anche i soggetti indiziati del delitto di cui all'art. 612bis, cp. (atti persecutori), sono ricompresi tra i possibili destinatari delle misure di prevenzione, art. 4, co. 1, lett. i-ter, d.lgs. 159 del 2011, anche se ancora non raggiunti da condanna definitiva, come accade per gli indiziati dei reati di mafia e di terrorismo, da tempo tradizionale campo applicativo di misure di prevenzione particolarmente incisive proprio in ragione dell'al-

larne sociale che destano queste fattispecie di reati. In precedenza, il delitto di atti persecutori aveva già una misura di prevenzione applicabile, il cosiddetto ammonimento³⁷. Tale estensione ha consentito ai Tribunali italiani "*l'applicazione della misura di prevenzione della sorveglianza speciale di PS con ulteriori prescrizioni a tutela della persona offesa dal reato, - fra le quali, con il consenso dell'interessato, anche la cd ingiunzione trattamentale anche parallelamente alla celebrazione del processo penale per lo stesso tipo di reato a condizione, ovviamente, della accertata esistenza di un ampio materiale probatorio posto a fondamento della sussistenza del delitto*" (Roia, 2019).

La Sezione Misure di Prevenzione del Tribunale di Milano, compiendo un importante passo in avanti e introducendo condivisibile innovazione, ha disposto una *ingiunzione terapeutica* nei confronti di un soggetto già più volte condannato, ed indagato per reati di indole sessuale, con riconosciuto – da perizia disposta – patologico discontrollo degli impulsi sessuali. Nonostante le pene detentive inflitte il Tribunale riscontrava l'assenza di effetti positivi della detenzione sul piano educativo, preso atto della sistematica ricaduta del comportamento illecito, appunto connesso ad un disturbo della sessualità non controllabile. Per queste ragioni, secondo il Tribunale, poteva essere concretamente "*collocato nella categoria di cui all'art. 4, co. 1, lett. i-ter del D.lvo 159/ 2011 come modificato dall'art. 1, co. 1, lett. d), l. 17 ottobre 2017, in quanto gravemente indiziato della consumazione anche del delitto di atti persecutori commesso in danno della vittima*"³⁸, il Collegio, previo consenso del reo, disponeva una ingiunzione terapeutica al fine di "*seguire un piano di intervento trattamentale che lo porti, attraverso indicazioni di tipo clinico terapeutico realizzate dagli esperti incaricati, a prendere coscienza del forte disvalore delle condotte violente e persecutorie poste in essere nei confronti della vittima*"³⁹, in tal caso individuato nel CIMP, Centro Italiano per la Promozione della Mediazione.

Tale misura fu adottata congiuntamente ad altre, tra cui il divieto di frequentare i luoghi normalmente frequentati dalla persona offesa, l'obbligo di mantenersi in ogni caso ad almeno 1000 metri di distanza dalla persona offesa e di allontanarsi immediatamente in caso di incontro assolutamente occasionale, di non detenere e portare armi, di non effettuare qualsiasi comunicazione con la parte lesa con ogni mezzo epistolare, telefonico, telematico.

Rilevata dunque la pericolosità sociale del soggetto in questione, requisito necessario per l'applicazione della misura di prevenzione, fu disposta la misura preventiva in uno spirito fortemente trattamentale, ponendola in stretta correlazione con la condizione "patologica" dell'autore del reato.

Un provvedimento senz'altro significativo.

Il Tribunale, infatti, ritenne opportuno affiancare alle

34 D.lgs 159/2011, Le misure di prevenzione personali, Soggetti destinatari, art. 1, co 1, lett. c) "coloro che per il loro comportamento debba ritenersi, sulla base di elementi di fatto, comprese le reiterate violazioni del foglio di via obbligatorio di cui all'articolo 2, nonché dei divieti di frequentazione di determinati luoghi previsti dalla vigente normativa, che sono dediti alla commissione di reati che offendono o mettono in pericolo l'integrità fisica o morale dei minorenni, la sanità, la sicurezza o la tranquillità pubblica", Lettera così modificata dall'art. 15, comma 1, lett. a), D.L. 20 febbraio 2017, n. 14, convertito, con modificazioni, dalla L. 18 aprile 2017, n. 48.

35 Corte Edu, grande camera, sentenza 23 febbraio 2017, De Tommaso contro Italia.

36 In tal senso, Corte di Cassazione Sez. Unite, 23 marzo 2010, n. 13426.

37 Art. 8 DL 3 febbraio 2009, n. 11, convertito in l. del 23 Aprile 2009, n. 38.

38 Decreto del Tribunale di Milano, Sezione autonoma misure di prevenzione, numero 58/18 RG MP.

39 Decreto del Tribunale di Milano, Sezione autonoma misure di prevenzione, numero 58/18 RG MP.

misure preventive limitative più tradizionali anche quelle a maggiore valenza trattamentale, con l'obiettivo di tutelare sia le vittime certe (ex-moglie) che quelle potenziali, cioè tutte le altre donne che "malauguratamente" avessero avuto contatti col soggetto. E a tanto si spinse posto che le misure carcerarie sino a quel punto utilizzate non avevano determinato né recupero né azione protettiva, se non per il tempo ovviamente della detenzione. Si tratta di Sentenza certamente innovativa, un precedente importante, che se sarà seguita da altri analoghi provvedimenti potrebbe effettivamente ampliare le opportunità di percorsi trattamentali specifici per i *sex offender*, da saggiare attraverso specifiche ingiunzioni affidate – come nel caso richiamato – a strutture sanitarie esterne ad alta specializzazione, da coniugare naturalmente con le misure tese a tutelare legittime esigenze di sicurezza sociale.

9. Legge n. 69 del 19 Luglio 2019 (codice rosso)

Veniamo infine al cosiddetto "codice rosso" che rappresenta la novità ultima in tema di opportunità trattamentali dei *sex offender* e punto di arrivo della nostra riflessione. La l. n. 69 del 19 luglio 2019, recante "modifiche al Codice Penale, al Codice di Procedura Penale e altre disposizioni in materia di tutela delle vittime di violenza domestica e di genere" è entrata in vigore il 9 Agosto 2019 ed è meglio conosciuta come *codice rosso*. Il "codice" ha modificato la normativa previgente con l'obiettivo di apportare una protezione più ampia ed efficiente alle vittime di violenza domestica e di genere. Allo stesso tempo sembra aver ampliato le opportunità trattamentali, fornendone un'esplicita indicazione ed una più strutturata concertazione. Anche per il codice rosso analizzeremo solo le novità introdotte ai fini della nostra riflessione.

Articolo 5, l. 69/2019: formazione degli operatori di polizia

La Polizia di Stato, l'arma dei Carabinieri ed il Corpo di Polizia Penitenziaria che esercitano funzioni di pubblica sicurezza, di polizia giudiziaria e che intervengono nel trattamento penitenziario delle persone condannate per i reati di cui agli artt. 1, 2, 3⁴⁰ della legge 69/2019 dovranno attivare presso i rispettivi istituti di formazione specifici corsi obbligatori per il personale individuato dall'amministrazione di appartenenza. Il tutto entro dodici mesi dall'entrata in vigore della suddetta legge.

Articolo 6, modifica all'art. 165 del Codice Penale in materia di sospensione condizionale della pena

Il nuovo comma aggiunto all'art. 165, dopo il co. 4, cp, prevede che nei casi di condanna per i delitti interessati dalla riforma, la sospensione condizionale della pena è subordinata alla partecipazione specifica a corsi di recupero presso enti o associazioni che si occupano di prevenzione,

40 Artt. 572, 609 bis, 609 ter, 609 quater, 609 quinquies, 609 octies, 612 bis e 612 ter cp, ovvero degli artt. 582 e 583 quinquies cp nelle ipotesi aggravate ai sensi degli articoli 576, co. 1, n.ri 2, 5 e 5.1, 577, co. 1, n. 1, 2 co. 2, del medesimo codice penale.

assistenza psicologica e recupero di soggetti condannati per i medesimi reati, il tutto con oneri a carico del condannato.

Articolo 13, modifica gli articoli 609 bis 609 ter, 609 quater, 609 septies e 609 octies del Codice Penale

Con questo articolo sono state aumentate le pene per i reati di violenza sessuale (artt. da 609bis a 609 octies). Il delitto di violenza sessuale, art. 609bis, è punito con la reclusione da 6 a 12 anni a fronte della disposizione precedente che prevedeva una pena dai 5 ai 10 anni. All'art. 609ter che disciplina le circostanze aggravanti si sostituisce la pena "da 6 a 12 anni" con "la pena stabilita dall'articolo 609bis (6-12 anni) aumentata di un terzo", ciò in ragione dell'aumento della pena base.

Inoltre è previsto che sia sempre circostanza aggravante l'ipotesi che la violenza sessuale sia posta in essere nei confronti dell'ascendente, dal genitore anche adottivo o dal tutore indipendentemente dall'età della persona offesa; in precedenza l'aggravante era costituita dall'aver commesso il fatto a danno di minori. A tal proposito vengono inasprite le pene qualora la violenza sessuale sia commessa nei confronti di minori di anni 14, in tal caso la pena base prevista per il reato base, art. 609bis, è aumentata della metà (si giunge così ad una pena che va dai 9 ai 18 anni).

Qualora il reato di violenza sessuale sia commesso nei confronti di minore di anni 10, la pena base prevista per l'art. 609bis è raddoppiata (si giunge quindi ad una pena che va dai 12 ai 24 anni, a fronte dei precedenti, 7-14 anni); se la violenza sessuale è invece perpetrata a danno di un minore di anni 18 ma maggiore di anni 14, la pena base prevista per l'art. 609bis è aumentata di un terzo (si giunge quindi ad una pena che va dagli 8 ai 16 anni, a fronte della precedente che aveva una forbice sanzionatoria che andava dai 6 ai 12 anni). Quanto alla violenza sessuale di gruppo, art 609octies, le pene aumentano "da 8 a 14 anni" a fronte dei precedenti "6-12".

Articolo 17 della L.69/2019, modifiche all'art. 13bis della l. 26/07/1975, n. 354, in materia di trattamento psicologico per i condannati per reati sessuali, per maltrattamenti contro familiari o conviventi e per atti persecutori

Per effetto delle modifiche apportate, è attualmente previsto che i soggetti condannati per i delitti di cui agli artt 572, 583 quinquies, 612bis, cp., possono sottoporsi a un trattamento psicologico con finalità di recupero e di sostegno.

I soggetti condannati per i delitti di cui al co.1 dell'art. 13bis, della l. n. 354⁴¹, possono essere ammessi a seguire percorsi di reinserimento nella società e di recupero presso enti o associazioni che si occupano di prevenzione, assistenza psicologica e recupero di soggetti condannati per i medesimi reati.

41 "Le persone condannate per i delitti di cui agli artt. 600 bis, 600 ter, anche se relativo al materiale pornografico di cui all'art. 600 quater 1, 600 quinquies, 609 quater, 609 quinquies e 609 undecies cp, nonché agli artt. 572, 583 quinquies, 609 bis, 609 octies e 612 bis del medesimo codice, possono sottoporsi a un trattamento psicologico con finalità di recupero e di sostegno. La partecipazione a tale trattamento è valutata ai sensi dell'art. 4 bis, comma 1 quinquies, della presente legge ai fini della concessione dei benefici previsti dalla medesima disposizione".

simi reati, organizzati previo accordo tra i suddetti enti o associazione e gli istituti penitenziari.

La rubrica dell'art. 13bis della l. n. 354/1975, "trattamento psicologico per i condannati per reati sessuali in danno di minori" è sostituita da "trattamento psicologico per i condannati per reati sessuali, per maltrattamenti contro familiari o conviventi e per atti persecutori".

10. Discussione

Altri Paesi europei hanno da tempo affrontato la questione del rischio di recidiva dei *sex offender* con scelte trattamentali specifiche (Carabellese et al., 2012). L'obiettivo primario resta quello di ridurre in termini accettabili tale rischio, per quanto possibile evidentemente. Lo hanno fatto con il ricorso a misure anche estreme – si pensi ad esempio al registro degli autori di reati sessuali previsto in alcuni paesi – in risposta forse più a richieste pubbliche di sicurezza sociale che alla reale efficacia delle misure proposte; in altri casi attraverso previsioni normative specifiche anche premiali, prevedendo percorsi trattamentali, farmacologici e/o psicoterapici, talvolta obbligatori, affidati a pluriprofessionalità formate in maniera esclusiva sul trattamento di tale tipologia di reati. Il trattamento ormonale è parte, in molti paesi, di tale ventaglio di opportunità trattamentali.

L'efficacia di tali opzioni trattamentali dipende da molti fattori, legati in primo luogo alle motivazioni del reo, alle risorse psicologiche che è in grado di attivare (Zara & Farrington, 2016), al suo profilo di personalità (Lösel & Schmucker, 2017); talvolta la risposta è nulla, ad esempio nei *sex offender* con spiccata componente psicopatica, predatoria (Abracen, Looman, & Langton, 2008). Un ruolo fondamentale svolgono competenza e professionalità degli operatori coinvolti, l'aver una capacità di assessment adeguata, di analisi e interpretazione dei fattori – di rischio e protettivi – influenti in gioco. Anche il fatto che il trattamento sia intra o extra-carcerario, a quanto pare incide, avendo quest'ultimo margini di successo apparentemente più elevati (Lösel & Koehler, 2017).

La breve disamina fatta delle norme che regolano il trattamento intra ed extra-carcerario degli autori di crimini sessuali nel nostro Paese dimostra che solo negli ultimi anni sembrano essersi davvero aperte a logiche e politiche trattamentali, attraverso una più modulata ed ampia previsione di opportunità.

La l. 161/2017 e la l. 69 del 2019, congiuntamente alla citata sentenza (Roia, 2019) della Sezione Misure di Prevenzione del Tribunale di Milano, sembrano aprire a nuovi scenari ed opportunità trattamentali per gli autori di reati sessuali. Siamo convinti costituiscano importanti occasioni, che necessitano di accordi strutturati fra amministrazioni penitenziarie ed operatori competenti e specificamente formati a riguardo. È degno di nota a riguardo che lo stesso "codice rosso" dedichi attenzione alla formazione del personale delle forze dell'ordine, oltre che della polizia penitenziaria che nello specifico contribuisce, attraverso l'osservazione, all'adozione di misure premiali alternative alla carcerazione.

È discutibile invece, a nostro parere, che gli oneri per la partecipazione a corsi di recupero presso enti o associazioni che si occupano di prevenzione, assistenza psicologica e recupero di soggetti condannati per reati di natura sessuale, momento preliminare e necessario per l'accesso ad esempio alla sospensione condizionale della pena, sia posta a carico dell'interessato. Condizione che finirà per premiare chi, fra i *sex offender*, ha maggiori risorse e non la concretezza e fattibilità del percorso trattamentale, che deriva dall'analisi dei fattori personologici, di rischio e protettivi, a cui invece la letteratura internazionale dà importanza essenziale.

Anche il forte inasprimento delle pene previste per i reati sessuali costituisce a nostro avviso segnale contraddittorio sulla reale volontà del legislatore di favorire effettivi percorsi di recupero, tesi al cambiamento delle condotte sessuali dei *sex offender* ed al loro reintegro nel contesto sociale in maniera più "sicura". Può essere ragionevolmente "indigeribile" l'idea che un molestatore sessuale possa ritornare "libero" nella società molto prima che espia la pena, ma se uno degli obiettivi (non l'unico) della pena è rieducativo, se non si vuole che resti solo "sulla carta", bisogna avere il coraggio di scelte efficaci, che consentano il raggiungimento del minor rischio di recidiva possibile. Tanto nell'interesse comune, dell'individuo e della collettività.

È comprensibile che su un tema così "sensibile" vi sia cautela, ma se il recupero deve essere un'obiettivo, se l'ottica del trattamento è davvero in grado di ridurre efficacemente il rischio di recidiva, riteniamo sia preferibile che l'accesso a tali opportunità si svolga sul piano della trasparenza scientifica, ovvero della valutazione delle concrete possibilità di efficacia del trattamento, valutate caso per caso, attraverso programmi individualizzati, gli unici che abbiano dimostrato efficacia (Hanson, Bourgon, Helmus, & Hodgson 2009), piuttosto che su rigide preclusioni ab origine.

Il rischio, altrimenti, è di "premiare" chi riesce magari a districarsi meglio fra le pieghe delle norme e non chi ha più chance di riuscita, alla luce di trasparenti e documentate valutazioni dei fattori di rischio e protettivi, con il ricorso a strumenti validati e attraverso efficaci percorsi trattamentali.

In definitiva la l. 69 del 2019, il codice rosso, sembra aver strutturato anche nel nostro Paese opportunità trattamentali extra-carcerarie per gli autori di reati sessuali meno stigmatizzanti.

Si tratta certamente di un primo passo che potrebbe però portare alla formulazione di progettualità specifiche ed a collaborazioni importanti in tema di trattamenti per i *sex offender*.

Resta tuttavia inalterata la sensazione di farraginosità, di scarsa fluidità dei percorsi trattamentali per gli autori di reati sessuali che i cambiamenti normativi, accanto all'inasprimento delle pene ed alla tutela delle istanze di sicurezza sociale previsti, non sembrano essere stati in grado di chiarire completamente. Si ha la netta sensazione, per certi versi, che il legislatore non fosse davvero convinto della efficacia e dunque della possibilità di reale recupero del *sex offender*, ipotesi che viene proposta ma non realmente perseguita, di cui non se ne fa carico realmente; al momento appare più una previsione marginale che la preoccupazione centrale, che resta quella punitiva.

Manca poi un tassello dal nostro punto di vista fondamentale; qualsiasi percorso, trattamento, strada di recupero intrapresa o giudizio di recidiva formulato dovrebbe seguire regole scientifiche chiare e trasparenti, contemplare verifiche in concreto di fattibilità ed efficacia (per i progetti), e di consistenza (per i giudizi prognostici). Tutto ciò sarebbe a nostro avviso garanzia per il condannato ma anche per chi è chiamato ad operare, o ad emettere pareri, in un ambito così complesso e difficile.

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Roberto Cornelli • Oriana Binik • Lorenzo Natali

Bisogna aver visto. Il carcere nella riflessione degli antifascisti

Edizioni dell'asino, Roma, 2019

Ho amato molto, leggendolo, questo testo nel quale Patrio Gonnella – docente di Sociologia del diritto e presidente dell'associazione Antigone – e Dario Ippolito – docente di Filosofia del diritto – ripropongono il numero monografico pubblicato dalla rivista *Il ponte* nel marzo 1949 col titolo «Carceri: esperienze e documenti», a cura di Piero Calamandrei. Tra i testimoni consultati da Calamandrei molti protagonisti della lotta antifascista che conobbero il carcere per esperienza diretta e al centro dei vari interventi le condizioni materiali della detenzione: lo scarso igiene a far da protagonista assoluto, la psicologia della detenzione nei suoi rapporti con la temporalità, la spazialità, le relazioni di potere; e, insieme, le ipotesi di miglioramento della situazione.

L'introduzione di Calamandrei esordisce riprendendo un intervento parlamentare di Filippo Turati del 1904, dopo che aveva conosciuto il carcere da oppositore politico, che ha successivamente pubblicato in un opuscolo dal titolo *Il cimitero dei vivi*: «Le carceri italiane rappresentano l'esplicazione della vendetta sociale nella forma più atroce che si sia mai avuta: noi crediamo di aver abolita la tortura, e i nostri reclusori sono essi stessi un sistema di tortura la più raffinata; noi ci vantiamo di aver cancellato la pena di morte dal codice penale comune, e la pena di morte che ammanniscono a goccia a goccia le nostre galere è meno pietosa di quella che era data per mano del carnefice; noi ci gonfiamo le gote a parlare di emenda dei colpevoli, e le nostre carceri sono fabbriche di delinquenti, o scuole di perfezionamento dei malfattori» (p. 21).

Sono infatti in molti i testimoni che ribadiscono nella loro la testimonianza che, nonostante il fascismo si facesse orgoglio di avere inasprito le pene in durezza – e Calamandrei ricordi la manleva data con l'art. 16 del Codice di Procedura Penale del 1930 agli agenti di pubblica sicurezza per fatti compiuti in servizio, o le parole di Mussolini quando istigava apertamente gli esperti di discipline penitenziarie a non cedere alla tentazione di convertire le carceri in «collegi ricreativi piacevoli» per eccessiva simpatia verso i detenuti – il regime non ebbe necessità di interventi significativi sul carcere (come del resto, si potrebbe osservare, sul manicomio) per renderlo «fascista». Queste due istituzioni erano già in sintonia col regime per l'autoritarismo e i rapporti di potere che sono ad esse connaturati, e semmai si possono trovare più dissonanti in società democratiche.

Così, per il matematico Lucio Lombardo Radice se le «squadre» e il Tribunale speciale erano brutture tipicamente fasciste, le condizioni del carcere erano invece qualcosa di più antico – e viene in mente leggendo queste parole la memorialistica carceraria di epoca risorgimentale e postunitaria, e penso ad esempio a *Galera* scritto da Tullio Murri nel 1922 – che il fascismo, a parte l'eccezione di episodi di violenza o ferocia più efferata, si era limitato a perpetrare. Così, non appartengono al fascismo: «l'automatismo della vita; la riduzione della vita del detenuto alla pura, vacua sopravvivenza, senza preoccupazione alcuna per il «fuori» e per il dopo; la corruzione, il privilegio al più abbiente, lo sfruttamento del più debole, insomma il gioco elementare, brutale, lo scontro delle forze al disotto dell'apparente perfetta geometria del regolamento»; né il fascismo aveva creato (ma solo esasperato) lo stato di assoluta, indifesa soggezione del detenuto » (p. 73). O il fatto che la testimonianza del detenuto poco ascoltato trovi dal direttore, il Magistrato, il cappellano; mentre poi il medico «ha poca voce in capitolo». Però, Lombardo Radice si rende ben conto che mettere in discussione il carcere significherebbe «scardinare uno dei pilastri fondamentali dello Stato liberal-borghese [...] quello stato di cui tanti esaltano la bella e degna costruzione, essendosi però dimenticati di andare a vedere cosa c'è nei sotterranei» (p. 74).

Quanto troviamo, quindi, nelle testimonianze raccolte da Calamandrei sul carcere fascista, potrebbe valere a suo giudizio anche per il carcere italiano anche cinquant'anni dopo Turati, in un'Italia passata per il fascismo e ora libera; e potrebbe, infondo, scrivono ora Gonnella e Ippolito, avere valore anche oggi, a oltre un secolo di distanza: «Bisogna avere visto un carcere per comprenderne la natura afflittiva, fatta di diritti negati ben oltre quanto esplicitamente indicato nella legge; la sua essenza programmatica, fondata su messaggi vessatori e di sottomissione del carcerato alle regole non scritte della galera; la sua forza espressiva, consistente nella simbolicità del rapporto asimmetrico tra custode e custodito; il suo carattere strategico, teso a non mutare i rapporti di dominio tra le classi sociali. Saranno gli sguardi verso il basso o verso l'alto dei prigionieri, l'odore di caffè o di marcio presente nelle celle, il silenzio o il frastuono, la vita o l'assenza di vita che c'è nelle sezioni, la previsione o meno di spazi interrati per l'isolamento disciplinare, le divise militari o l'assenza di uniforme nello staff penitenziario alcuni degli indicatori

utili a comprendere l'effettiva funzione sociale della pena carceraria» (p. 9).

Così, l'impressione fin da queste prime pagine è che il carcere abbia attraversato questo secolo abbondante di storia italiana, dalla società liberale al fascismo alla liberazione e via via fino a noi, cambiando nelle normative, nelle aspirazioni e nel mandato formale ma rimanendo simile nella sostanza, con i suoi odori, il suo ritmo lento, quasi immobile, i silenzi e i rumori, i piccoli abusi che ne scandiscono la vita quotidiana.

Vittorio Foa si sofferma sulla psicologia della detenzione e focalizza, con grande lucidità, la sua caratteristica centrale nel rapporto con la temporalità: «L'aspetto principale dell'alterazione psicologica del recluso riguarda, secondo me, la sua sensazione del tempo, sensazione che condiziona tutte le altre sensazioni ed ha conseguenze serie, che investono a fondo l'intero sistema punitivo. A partire dal quarto o dal quinto anno di reclusione (ne ho constatato in me stesso l'inizio verso la fine del terzo anno), coll'attutirsi dei ricordi di azione e il meccanizzarsi di ogni movimento, il tempo si vuota e si fa geometrico e spaziale. Si ripensa il passato o ci si rappresenta il futuro come in esteriore contemplazione priva di legami colla volontà ormai assente. La stessa lettura, anche se intensa, finisce col fornire una serie di schemi lineari ed inerti, soprattutto quando non è concesso di scrivere e di raccogliersi quindi, se non altro, nella volontà di scrivere: in carcere non ci si fa una cultura. Il tempo non si misura perciò più dal suo contenuto di azioni: le stesse unità diventano dei recipienti, geometricamente delimitati, che si tratta di riempire con unità di tempo geometricamente minori e alcune conseguenze di questa deformazione del tempo sono note: i giorni in carcere passano molto lentamente, i mesi e gli anni passano velocissimi» (p. 27). La perdita della dimensione del tempo genera così nel recluso una metamorfosi, che fa pensare al racconto di Kafka, e porta ogni recluso a sentirsi, dopo i primi anni, un ergastolano.

E anche a Giancarlo Pajetta, il "ragazzo rosso" che ha fatto anche esperienza di carceri minorili, non sfugge il fatto che il carcere non può essere percepito, conosciuto attraverso un'istantanea; il carcere non è tanto luogo, è soprattutto «tempo che si distende, ora per ora, per degli anni» (p. 88). Per conoscere il carcere bisogna farne quindi esperienza nel tempo. Così, ritornando da politico affermato su quei ricordi giovanili, il dirigente comunista non nasconde l'amarezza di constatare che del carcere quattro anni di democrazia sono riusciti a cambiare tanto poco, e insieme il dovere, che avverte, che la nuova classe dirigente s'impegni perché, nel ricordo di tanti che hanno conosciuto il carcere per ideali di giustizia, in carcere i "cristiani" non siano trattati come bestie.

Ancora Foa, poi, si sofferma anche sulla dimensione spaziale della pena: «L'architettura delle carceri, con quell'accavallarsi di muraglie lisce e respingenti, non serve solo a segregare i delinquenti dal mondo esterno, ma è fatta in modo da scoraggiare qualsiasi interessamento morale del pubblico a quel che succede dentro, è fatta in modo da placare nel disinteressamento totale le coscienze eventualmente turbate» (p. 31).

Altiero Spinelli focalizza invece il tema dei rapporti di potere quando scrive: «Il governo dei guardiani e dei direttori è dispotico, mancando in questa società ogni divisione di poteri tra i governanti; e si verificano perciò abusi e ingiustizie di ogni genere. Ma anche a questa mancanza di diritti ci si abitua» (p. 41). Nel carcere, perciò, lungi dal poter migliorare: «Il prigioniero è spento a tutte le bassezze, a tutte le ipocrisie, a tutte le viltà per riuscire a convincere i suoi superiori che egli ha buona condotta. E il superiore: fornito com'è di potere dispotico, tende inevitabilmente a considerare come buona condotta il comportamento umile e servile» (p. 43).

E ancora la psicologia dell'istituzione carceraria è al centro del contributo, davvero prezioso, dell'economista Riccardo Bauer per il quale a regolare la vita del carcere, scrive, è innanzitutto la paura, quella di pochi disarmati di fronte a gruppi numerosi di uomini che si sono macchiati spesso di delitti gravissimi, e il suo reciproco, quella imposta al detenuto come principale strumento di governo. E poi l'ipocrisia che gli è richiesta, la delazione, la routine e l'evitamento di tutto ciò che da essa si discosti, la riduzione insomma del detenuto a "cosa": «il detenuto ideale è per l'autorità vigilante un uomo chiuso in una nuda cella, strettamente incatenato al muro, incapace di un gesto, anzi di un pensiero» (p. 110). Sotto la legge della paura, vengono così analizzati la psicologia del direttore, dell'agente di custodia, la episodica aperta violenza (il "santantonio"), l'alimentazione, il lavoro, l'igiene che in tutte le testimonianze che vi si soffermano è descritto come a livello più che carente (ed è difficile non pensare che, oltre che effetto di incuria e dello scarso potere di cui dispone il detenuto, questo non sia anche più o meno inconsapevolmente un modo per umiliarlo e soggiogarlo) e i servizi sanitari – spesso approssimativi e operanti comunque all'interno di un sistema asimmetrico e sotto lo spauracchio della simulazione – e poi ancora la rieducazione, ridotta di fatto in quel contesto a un inganno, la carenza di educatori, l'assistenza esterna insufficiente dopo la scarcerazione. E addirittura la permanenza in alcuni casi della segregazione cellulare, o le strutture vetuste come nei casi limite di Santo Stefano e Portolongone.

Mario Vinciguerra, già collaboratore di Giovanni Amendola al "Mondo", ripercorre la storia del carcere per fermarsi in particolare sulla questione della sanità in ambito penitenziario: «due sono le categorie di mali che mietono nel penitenziario: la follia e la tubercolosi» (p. 57). E per rilevare, a proposito della prima, la palese iniquità dell'art. 148 C.P., che vuole che per il malato di gravi malattie mentali non sia prevista la sospensione della pena come per quello di gravi malattie del corpo, ma l'invio al Manicomio criminale (e c'è da riflettere sul fatto che al superamento di questa norma palesemente iniqua si sia giunti solo con la sentenza n. 99 della Corte Costituzionale del 1 aprile 2019, dopo che era stata la chiusura dell'OPG a renderla di fatto inapplicabile).

Non c'è un medico dedicato al carcere a tempo pieno, perché troppo basso sarebbe il trattamento economico, e così il medico che si occupa del carcere ha la maggior parte del suo impegno fuori in altre attività. Il quadro della sua posizione è tracciato a tinte efficacissime: a volte è egli

stesso disonesto, altre nei primi mesi di “entusiasmo umanitario” tenta di resistere e contrapporsi all’istituzione, ma poi è costretto a cedere alla “generale baratteria” carceraria. Sono pochi quelli d’indole più battagliera, che ottengono poco e a costo di sforzi immensi, finendo per inimicarsi l’amministrazione che ama soprattutto la vita tranquilla; e alla lunga rinunciare (p. 65).

Augusto Monti, il letterato che fu maestro di Cesare Pavese, racconta la bella storia di un ragazzo sardo rimasto per caso incastrato tra la legge dello Stato e quella della malavita, che dopo una detenzione inizialmente fortunata e l’impegno nella sanità incontra, da capo-infermiere, i principali esponenti dell’antifascismo a partire da Gramsci... Li cura, li favorisce, ne riceve istruzione ed elevazione morale. Una storia virtuosa, che si verifica però nonostante il regime fascista e nonostante il carcere: ma se il carcere non serve a promuovere vicende come questa, né a nient’altro di bene, Monti conclude, il problema è allora sostituirlo, e capire con cosa possa essere sostituito.

Gli aneddoti carcerari proposti dall’economista Ernesto Rossi, sempre in ambienti fetidi e infestati da cimici – un tema così rilevante da monopolizzare la testimonianza di Emilio Lussu – si fanno molto interessanti quando riguardano l’incontro con la pazzia e con la simulazione.

Negli spaccati di vita nelle carceri femminili dell’operaia Adele Bei, tra la durezza del carcere e gli spazi di solidarietà ricavati tra compagne di pena leggiamo che: «La cosa più atroce che si possa vedere nelle carceri italiane è il letto di forza [...]. Nessuno potrà mai immaginare l’impressione che io provai [...]: passeggiavo nella corte durante l’ora di libertà, sola perché la monaca si era allontanata, sentivo un lamento venire da una porticina che dava sul corridoio delle celle di punizione. Mi affacciai svelta svelta perché m’era stato proibito di parlare con chiunque, ebbi il tempo di vedere nel mezzo di una di queste celle un letto di ferro fissato nel pavimento e sul pagliariccio stava distesa una povera donna che, con un lamento che sembrava tanto il rantolo di un moribondo, chiedeva aiuto. Era legata con grosse cinghie somiglianti ai finimenti dei cavalli, mani e piedi, al letto di ferro. Un’altra cinghia attraversava il corpo ed una al collo così stretta da renderla immobile. Sollevò appena la testa e mi disse “Così ci fanno morire, noi povere condannate”. Quando ritornò la suora, alle mie proteste per queste mostruosità sentii rispondermi: “Se non taci leghiamo pure te”» (p. 103).

Il carcere, con anche l’insufficiente attenzione all’inserimento sociale dopo la scarcerazione, non è affatto rieducativo ancora per Spinelli, anzi all’opposto è scuola di delinquenza molto più che luogo di ravvedimento: «Lo si tiene in compagnia di altri delinquenti. Le conversazioni più eccitanti fra condannati sono quelle che vertono sui loro delitti, sugli errori commessi che hanno portato alla loro scoperta, sull’ammirazione per i delitti rimasti impuniti. Accade perciò che riacquistata la libertà il delinquente si trova in una società con cui non ha più legami, tenuto in sospetto per il suo passato, con una ancor minore capacità di autodisciplina, con una educazione a delinquere e con il miraggio ambivalente di ritornare in quel luogo sicuro che è il carcere» (p. 45).

Sono commuoventi le lettere dall’infermeria del carcere, dove per la tortura e l’incuria perse la vita, di Leone Ginsburg alla moglie Natalia, come anche quella di Gaetano Salvemini alla famiglia, mentre Luciano Bolis getta una luce sulle vicende e i disagi particolarmente accentuati del “transito” da un carcere all’altro. Ester Parri evoca la propria esperienza e quella del marito, e altri spaccati di vita carceraria, come tra l’altro la spesso non sempre facile convivenza tra politici e comuni, sono offerti da Francesco Fancello, mentre Carlo Levi riflette con una breve ma intensa poesia e un’immagine efficace sulla condizione detentiva.

Sulla situazione del personale penitenziario riflette Vinciguerra, per il quale neppure l’istituzione del Magistrato di Sorveglianza, introdotta dal Codice Rocco, può risolvere molto nella generale sciattezza dell’istituzione e nella pessima formazione del personale di ogni livello: «In quest’aria soffocante delle carceri italiane si confondono carcerati e carcerieri: tutti carcerati, in fondo. Bisogna cambiare l’aria» (p. 68). Ma l’aria, nonostante anche i coraggiosi afflati riformisti degli anni ’70 e l’impegno di tanti operatori onesti, neppure oggi sembra cambiata abbastanza.

Chiudono infine il volume gli atti della seduta della Camera del 27 e 28 ottobre 1948, nella quale, a partire da una proposta di Calamandrei riformulata dal democristiano Tambroni, viene istituita una Commissione permanente di vigilanza sulle condizioni dei detenuti e sui metodi utilizzati dal personale carcerario.

Da parte di questi uomini e donne, che hanno appena scontato il carcere e liberato l’Italia per farne un Paese migliore, non mancano qui e là proposte di riforma penitenziaria che, da una parte, guardano in qualche caso alla prospettiva coraggiosa dell’abolizione del carcere, un obiettivo che si sarebbe visto riemergere come utopia praticabile negli anni ’70-’80, con accenti tra loro diversi, nelle riflessioni di Michel Foucault, Nils Christie, Louk Hulsman, Thomas Mathiesen o per l’Italia Alessandro Baratta e il movimento, di breve durata, *Liberarsi dalla necessità del carcere*, guidato da Mario Tommasini e rilanciato nel 2016 dall’Associazione Sapereplurale.

Ma, dall’altra parte, si misurano anche con la realtà del carcere con molto pragmatismo. Così Foa conclude il suo pensiero sul tempo detenuto con l’idea che per i detenuti comuni la “coscienza dei tempi” è forse immatura per una riforma nel senso di un’abolizione totale delle pene detentive, anche per l’autocondanna, ma nessuna pena dovrebbe però superare i tre-cinque anni. Per i detenuti politici, scrive poi con duro realismo, l’unica pena possibile è quella di morte, perché ogni giorno in più trascorso in carcere aumenta in essi l’odio verso coloro che l’hanno inflitta.

Anche Spinelli pensa che la soluzione più auspicabile, anche se di difficile realizzazione, sia l’abolizione del carcere o al più possano esservi pene dure ma brevissime, e per il resto il confino che isoli il reo dall’ambiente criminogeno.

Adele Bei traccia le premesse per lei essenziali per una seria riforma del carcere: formazione del personale; studio della psicologia del carcerato; miglioramento delle condizioni igieniche e lavoro, scuola, biblioteca; proibizione al personale picchiare o insultare; abolizione del letto di forza o altri simili mezzi.

Anche Bauer dà i suoi suggerimenti: la divisione dei detenuti sulla base di affinità di reato e di bisogni, in particolare tra rei contro il patrimonio o contro la persona (con i “bruti” da assegnare a “trattamento psichiatrico appropriato”, e che il mondo della psichiatria sia disponibile e, soprattutto, attrezzato per recepire quest’aspettativa ci sarebbe da riflettere); il fatto di affiancare all’attività del Magistrato quella dello psicologo, da porre allo stesso livello mi pare di capire, e dell’educatore; una fase di osservazione, direi criminologica, subito dopo la condanna e prima dell’espiazione; l’affidamento alla polizia penitenziaria dei soli compiti di sorveglianza materiale e quello di ogni altro compito a un corpo di educatori; la diffusione di lavoro e studio. Un programma radicale, insomma, in questo caso, che rotta ogni ambiguità prende sul serio l’obiettivo della “riabilitazione” e può essere definito senz’altro decisamente orientato in senso trattamentale, con tutte le possibili obiezioni e riserve che ciò evoca.

E il medico Pasquale Marconi chiude la rievocazione della sua esperienza carceraria con qualche raccomandazione: «Penso che la società debba difendersi segregando i delinquenti; penso che questa segregazione debba rappresentare una punizione per l’offesa alla legge, cioè alla convivenza. Ma penso che la privazione della libertà sia sufficiente pena e che debbano esse rimosse tutte le altre cause di sofferenza ai detenuti. Se i legislatori e i giudici avessero avuto la fortuna di fare questa esperienza, forse misurerebbero il carcere a mesi, a settimane, a giorni, e non ad anni. Il freddo, il caldo, la fame, gli insetti, la cella, sono crudeltà ingiustificabili. Il personale carcerario deve essere

molto accuratamente scelto, educato e formato per assistere i detenuti con lo stesso animo col quale gli infermieri assistono gli ammalati. L’ozio forzato, le celle affollate rappresentano una pena inutile e una scuola di perversione [...]. Il servizio medico e religioso devono essere espletati con particolarissima cura» (p. 173).

Riecheggia le parole di Dostoëvskij o di Tolstoj sulla detenzione Vincenzo Baldazzi, per il quale il sistema repressivo e punitivo in vigore, con i suoi rituali autoritari, le condizioni igieniche umilianti, la privazione affettiva e sessuale ad altro non serve che a esacerbare l’animo del detenuto, minarne il fisico, abbruttirlo. Al centro del suo programma di riforma stanno quindi miglioramento delle condizioni detentive, istruzione e lavoro.

È più ambizioso di lui, infine, Michele Giua, il quale guarda a un futuro dove il diritto penale possa essere abolito e, convinto dell’inutilità del carcere come è organizzato in quel momento in Italia, avversa in primo luogo l’ergastolo e le pene di lunga durata. Cella di punizione a pane e acqua, letto e camicia di forza e “santantonio” pongono l’uomo al di sotto dell’animalità e hanno come solo risultato costringere il detenuto, come scrive anche Bauer, all’ipocrisia. Perciò, almeno per cominciare: «Se non si può giungere all’abolizione del carcere, si possono però abolire i “poteri discrezionali” del direttore e temperare, minimizzandolo, il regolamento carcerario» (p. 202).

L’Italia repubblicana e democratica partiva dunque, rispetto al carcere, con buone intenzioni e mi pare che quella dei due curatori di provare a rilanciarle oggi, in un clima securitario, sia stata perciò un’ottima idea.

Paolo Francesco Peloso