



# The critical review of crime: psychological and treatment aspects, statistical survey

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*Abstract: Retracing the evolution of the historical stages of the penitentiary system from the juridical and normative point of view, this article highlights those that have been the most significant legislative changes and their resulting impacts on the penitentiary system, by analyzing the role of the expert ex art 80 and putting at the center of the consideration the offender and the aim of the path of treatment undertaken. The work stems with the goal of highlighting the significance of the treatment by virtue of respect for a sense of humanity and re-education of the convict. Special attention was put on the critical reflection on the crimes committed, sharing the statistical data that emerged from a research carried out within the penitentiary system.*

## Introduction

**T**he prison is, by definition, a place of expiation of a sentence, an environment in which imprisoned individuals are temporarily deprived of their liberty for committed a crime, even a very serious one. From a human and constitutional point of view, however, prison must not be a place of suffering and therefore only of punishment, but a place in which those who are imprisoned there can understand the seriousness of the error committed and learn those rules and behavioral norms that guide society. In order to ensure that the penitentiary context can favor the correct social reintegration of the offender, the process of critical review of the offence is therefore fundamental, that is, the awareness

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of what has been committed and the consequences to which these behaviors has led, in such a way as to act functionally on the various aspects.

This process is therefore favored in the penitentiary context thanks to the presence of trained experts, such as the expert psychologist ex. art. 80, who through individual interviews and group activities promote the process of re-education and social reintegration.

The intervention to be carried out with the offender in the institutes is therefore no longer exclusively related to adaptation to life in the new context of deprivation of liberty, but it becomes mainly of a reparative nature.

The reform of the Penitentiary System (P.S.) of '75, and the most recent amendments, have in fact made possible to codify the principles of treatment and social reintegration of prisoners, also through alternative measures to detention, to which the offender can access in relation to the recognition of the crime committed, that is, to the process of critical review of the crime carried out in the penitentiary context.

The political and legal organization of today's society establishes criminal sanctions for those who violate the law, who are removed from society, which is often a central element in the structuring of deviant behaviors, and are thus inserted into the penitentiary context.

Over time the penitentiary system has undergone considerable changes and the purpose of the punishment, at first of a punitive nature, based on torture and humiliation, has taken on a re-educational objective, placing the detainee at the center of the treatment, and therefore also taking into account the dignity that characterizes him, through his gradual recovery and reintegration into society.

The prison was born, in fact, as an institution delegated to the custody of the offender pending the penalty provided for his own crime, a concept that remains for a long time; for this reason it is necessary to wait until 1700 to be able to perceive imprisonment as a real sanctioning instrument. [1]

Previously, in prison not only criminals or prisoners of war were imprisoned, but were considered subjects to be removed from society and therefore to be closed, even poor people, mentally ill, vagabonds and beggars.

An important change took place, however, starting from the eighteenth century, when the Enlightenment legal doctrine rejects the principle of punishment understood as punishment and adopts that of punishment as re-education, ensuring that the State no longer has only the right to reclude but also the obligation to re-educate. [10]

At that time, in Italy, an important change in the evaluation of the prisoner and the sentence took place with the enactment of the Leopoldine Code, which led to a substantial reform of the penalty, abolishing the death penalty and torture, and sanctioning the principle of equality before the law. [15]

Starting from the nineteenth century, prisons became the mostly widely used throughout Europe, having mainly the function of isolating the convicted and favoring, through silence and segregation, introspection and review of the crime committed.

In our country, an important turning point within the penal system took place following the Unification of Italy, when the need to standardize the detention system throughout the territory, also establishing adequate structures for these purposes.

Until then, Italy was in fact anchored to the Sardinian penal code, which placed the centre of the interests and evaluation of the crime the rank to which the accused subjects belonged, rather than the crime committed. [13]



Since then, Italy has therefore undergone great changes from the political, social and economic point of view, leading to important life improvements and an increase in the rights of both free people and prisoners.

On January 1, 1890, the Zanardelli Code came into force, which led to the abolition of the death penalty, still used quite significantly in many countries, thus favoring the spread of intra-masonry detention as a modality of expiation of punishment.

With the advent of fascism in Italy, however, we are witnessing a sharp slowdown in the changes concerning the penitentiary system; in fact, we are witnessing a stiffening and a tightening of the sentence. In the middle of the fascist period, in fact, the Rocco Code was issued in the prison context, which represents a faithful translation of fascist ideology.

With the enactment and entry into force of the code "The prison is once again proposed as an institution closed to the outside, isolated from the rest of the world, in which is not aimed at re-education, but only at segregation". [1]

Only with the enactment of the penitentiary regulations (1931) a small variation in the aforementioned context is noted since, while not renouncing the punitive mandate, the importance of the process of recovery and re-education of the of prisoners begins to be taken into account.

The centrality of man in the penitentiary context and the protection of human dignity, however, assume a central role thanks to the entry into force of the Italian Constitution.

There are two articles of the Italian Constitution concerning the penalty and its functions, namely articles 25 and 27.

In particular, Art. Article 25 enshrines in the second paragraph the principle of legality, according to which<sup>3</sup>:

*"No one may be punished except by virtue of a law which entered into force before the commission of the fact, a law that clearly must prohibit the commission of that fact and that must provide a penalty in case of transgression of the prohibition".*

Article 27 states that<sup>4</sup>:

*"Criminal liability is personal. The accused is not considered guilty until the final conviction. The penalties cannot consist of treatment contrary to the sense of humanity and must tend to the re-education of the condemned. The death penalty is not allowed."*

In the first paragraph of the aforementioned article, the principle of personal responsibility for the penalty is therefore enshrined, that is, it is established that no one can be punished for an act committed by others, without proving their real guilt.

The second paragraph of Article 27 enshrines the principle of unawareness, where it is defined as the accused can not be considered guilty, until the final sentence.

Finally, the third paragraph affirms the principle of humanization of penalties. ('Punishments cannot consist of treatment contrary to the sense of humanity') and the re-educational finality of punishment ('The penalties... they must tend to the re-education of the condemned').

In the penitentiary context, therefore, the scientific observation of the personality, the consequent interventions and treatment opportunities assumes a fundamental role, which represent the system

<sup>3</sup> Italian Constitution.

<sup>4</sup> Italian Constitution.



through which to favor the social reintegration of the convicted, an element that would facilitate the removal of the causes of social maladjustment at the base of the criminal act. [26]

The importance of taking charge of the offender and the consideration of the prisoner as a person, no longer considered as an individual to be removed from society, but as a subject who has rights and who can recover, assume an even more central role with the penitentiary reform of 1975.

Art. 1 of Law no. 354 of 26 July 1975 (“rules on the penitentiary system and on the execution of private and restrictive measures of liberty”) reads<sup>5</sup>:

*“Penitentiary treatment must be in conformity with humanity and must ensure respect for the dignity of the person. The treatment is based on absolute impartiality without discrimination [...]With regard to convicts and internees, re-educational treatment must be implemented that tends, also through contact with the external environment, to their social reintegration. The treatment is activated according to a criterion of individualization in relation to the specific conditions of the subjects.”*

Article 1 therefore establishes that within penal institutions it is not necessary to limit oneself to exercising a mere custodial action on the detainees, but a whole series of complex activities must be carried out that can be synthetically defined as “treatment”

With the reform of '75, therefore, the identification of personalized treatment assumes a central role, through the observation carried out at the beginning of the execution and continued throughout the detention process, which aims to respond to the needs of the individual and to the enhancement of the individual skills useful for social reintegration.

On the basis of Article 1 of the P.S. it is therefore defined how the treatment of prisoners must, also thanks to relations with the external environment, favor the reintegration of the same, through the increase of autonomy, responsibility, socialization and integration.

The reform of '75 therefore defines how the prison must favor the critical review of the crime by the convicted, thanks also to the constant presence of professional figures competent in the field, such as psychologists, educators and social workers, but also thanks to the work activity that is the basis of the prison re-education system, as stated in Article 15:

*“The treatment of convicts and internees shall be carried out mainly through education, vocational training, employment, participation in projects of public utility, religion, cultural, recreational and sporting activities and facilitating appropriate contacts with the outside world and relations with the family.”(1)*

The importance of the re-educational function in the prison context then assumes further relevance with the Gozzini law.

The Gozzini law is aimed at creating a path aimed at the reintegration of the offender, basing the entire detention system on the granting of benefits and permits. The latter are granted to subjects who have behaved regularly and who are not particularly dangerous.

When the subjects manifest a constant sense of responsibility and correctness in personal behavior, in the activities organized in the institutions and in any work and cultural activities, the conduct of the detainees is considered as regular.

<sup>5</sup> Law 26 July 1975 n.354.



The figure of the penitentiary psychologist was born with the Law of Reform of the Penitentiary Order of July '75.

Law no. 354 establishes the transition from a merely retributionist model of the penalty to a re-educational-treatment model, which has as its purpose the re-education and social reintegration of the offender. [1]

Article 80, specifically, states that for the performance of observation and treatment activities, the prison administration may make use of experienced professionals, who however refer not only to the field of psychology, but also to criminology, psychiatry, pedagogy and social services.

However, it is the figure of the psychologist who finds greater space in this context precisely because of the nature of the task he is carrying out and which refers to the identification of the treatment, which must respond to the particular needs of the personality of each subject, as always stated in the Penitentiary Order in article 13. [9]

The figure of the prison psychologist, as defined above, is required to perform functions of a high professional level, first of all the scientific observation of the personality.

In fact, the observation of the personality, understood as a moment of gathering information and knowledge of the detainee in its bio-psycho-social aspects, represents the method by which the social reintegration of the convicted is favored, through the removal of the causes of social maladaptation that are the basis of the crime committed.

During the structural meetings in the penitentiary context, in which the psychologist presides, it is therefore essential to encourage the increase of self-criticism and therefore the process of critical review of the crime in the prisoner, trying to rework the negative aspects of deviant experiences, or offer the offender the psychological, educational and social tools that allow him not only to facilitate the process of reflection of the criminal conduct put in place, but also try to reduce relapsing behaviors, understanding the causal links between actions and consequences.

The ultimate purpose of the prison, in fact, is not only re-educational but is also an opportunity to reflect on the crime and the motivations that led the detainee to delinquent, accompanying him towards the awareness of what has been accomplished and therefore to the responsibility with respect to deviant conduct, often starting from the sharing of emotions. [26]

The central task of contact with the detainee is therefore to promote an awareness of the crime committed, trying to understand the value and social disvalue of the actions, and leading the detainee towards a deep analysis with respect to deviant actions.

By critical review we therefore mean rethinking, within a voluntary dialogue with prison workers, the deviant conduct and motivations that have been the basis of the behavior carried out and the consequences that have resulted, towards one's family and the community, but especially towards the offended person<sup>6</sup>. [27]

The tools available to the psychologist pursuant to Article 80 and more generally in the penitentiary context, used to support and evaluate the detainee, but above all to promote a critical review of the crime committed, are many.

Among the tools and methods of treatment available to the expert pursuant to art. 80, in fact, we can identify in particular the interview, which acts as a support tool and helps the expert to detect

<sup>6</sup> See Article 27 paragraph 1 and 118 reg.es.



the mental deficiencies of the detainee inserted in a context of restriction of his freedom. Important and functional for the purpose of the reintegration of the offender are all the treatment activities that revolve around it, such as work, sport, religion, study, professional training, public utility projects and all the ludic-recreational activities organized within the institutes.

These activities are also useful in order to draw up the treatment program and the summary report with the aim of providing for the use of any benefits and alternative measures to detention.

In conclusion, with the reform of the Penitentiary System introduced by Law No. 354 of '75, we have witnessed a great change in the penitentiary context and in particular with regard to the concept of punishment. In fact, it emphasizes the concepts of recovery, re-education and reintegration of the convicted, ensuring that the penalty is no longer conceived only with a purely punitive purpose.

In addition, a central element of the reform is the introduction of the figure of the expert pursuant to Article 80 with specific psychological or criminological training, a figure that assumes a fundamental role in the process of critical review of the crime, or that awareness of oneself, of the deviant behaviors committed and of the consequences that they have had on society and in particular on the offended person.

The concept of critical review of the crime assumes a central role in the process of recovery and reintegration of the offender into society, as it not only allows the detainee to improve the understanding of himself and to promote a change, but also allows the offender, through the evaluation of the achievement of this process by the Supervisory Magistrate, to access benefits and/or alternative measures to the penalty.

In recent years, moreover, within the penitentiary context, a space for restorative justice initiatives, on a voluntary basis of the detainee, is increasingly emerging. The institution of restorative justice is a functional tool in the process of reparation against the victim, who has suffered damage and negative consequences deriving from the deviant behaviors implemented by the detainee.

Restorative justice is, in fact, a tool capable of enhancing the process of reflection that the individual detainee carries out, in order to increase the desire to repair the errors committed.



STATISTICAL SURVEY

AGE	CONVICTION	CRITICAL REVIEW	AGE	CONVICTION	CRITICAL REVIEW
74	LIVE SENTENCE	BPRC	52	30 YEARS	BPRC
39	15 YEARS	PRC	30	LIVE SENTENCE	NO REVIEW
70	20 YEARS	BPRC	64	LIVE SENTENCE	BPRC
58	20 YEARS	BPRC	66	LIVE SENTENCE	BPRC
58	LIVE SENTENCE	BPRC	61	LIVE SENTENCE	BPRC
51	LIVE SENTENCE	BPRC	51	LIVE SENTENCE	BPRC
37	30 YEARS	PRC	62	LIVE SENTENCE	BPRC
47	30 YEARS	PRC	47	LIVE SENTENCE	PRC
68	LIVE SENTENCE	BPRC	48	30 YEARS	PRC
67	LIVE SENTENCE	BPRC	29	30 YEARS	NO REVIEW
30	21 YEARS	NO REVIEW	53	LIVE SENTENCE	BPRC
48	LIVE SENTENCE	PRC	52	30 YEARS	BPRC
51	17 YEARS	BPRC	58	LIVE SENTENCE	BPRC
31	LIVE SENTENCE	PRC	53	LIVE SENTENCE	BPRC
51	30 YEARS	BPRC	53	LIVE SENTENCE	BPRC
40	16 YEARS	PRC	59	25 YEARS	BPRC
62	20 YEARS	BPRC	48	30 YEARS	PRC
60	30 YEARS	BPRC	59	LIVE SENTENCE	BPRC
37	16 YEARS	PRC	51	LIVE SENTENCE	BPRC
52	24 YEARS	BPRC	49	25 YEARS	PRC

LEGEND:

BPRC=GOOD DEEP CRITLCAL REVIEW

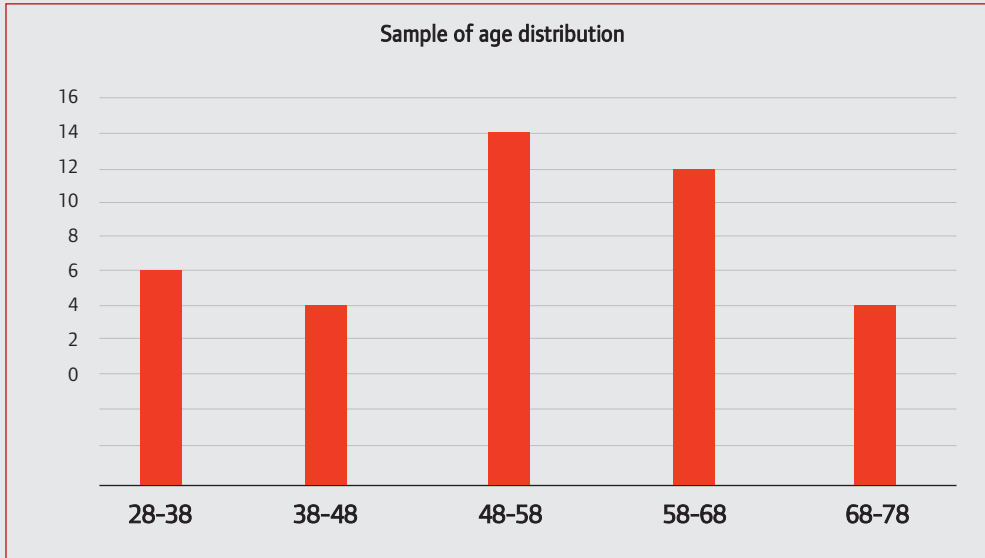
PRC=PARTIAL CRITICAL REVIEW

TOTAL DETAINEES = 40

- PRISONERS UNDER THE AGE OF 30 (18/30) = 3 ABSENCE OF CRITICAL REVIEW
- PRISONERS UNDER THE AGE OF 50 (30/50) = 11 PARTIAL CRITICAL REVIEW
- PRISONERS OVER 50 YEARS OF AGE = 26 GOOD AND DEEP CRITICAL REVIEW

AGE OF SAMPLE BY CLASSES	AGE
28-38	6
38-48	4
48-58	15
58-68	12
68-78	3
<b>Total</b>	<b>40</b>

Table 1 - sample distribution



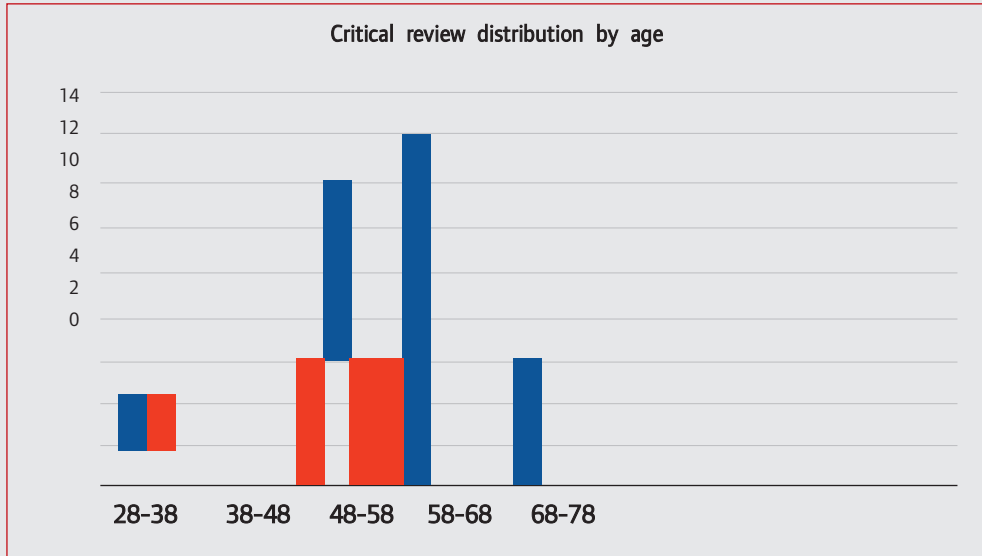
AGE OF SAMPLE BY CLASSES	AGE	Penalty with final sentence		
		bet. 10 - 20	bet. 20 - 30	Life sentence
28-38	6	1	3	2
38-48	4	2	1	1
48-58	15	1	7	7
58-68	12	0	4	8
68-78	3		1	2
<b>Total</b>	<b>40</b>			

Table 1.1 - Sample distribution of the penalty applied by final judgment

AGE OF SAMPLE BY CLASSES	AGE	No review	Critical review	
			PRC	BPRC
28-38	6	3	3	0
38-48	4	0	4	0
48-58	15	0	4	11
58-68	12	0	0	12
68-78	3	0	0	3
<b>Total</b>	<b>40</b>			

Table 1.2 - Sample distribution with critical review





**Highlight that the modal class is the good critical review and increases with the increasing of the Age**

SENTENCE	No Review	PRC	BPRC
Between 10-20 year	0	3	4
Between 20-30 years	2	5	6
>30 years	1	3	16

Table 1.3 - *Relationship between punishment and critical review*

Based on the psychological investigation that I was able to perform on the inmates thanks to my professional experience in the field, it can be highlighted how the critical review of the crime increases with age and not based on the sentence.



## Conclusions

In our personal experience, which is currently taking place at the Spoleto Detention House, it was able to notice how the process of critical review of the crime in the detainee does not always take place in relation to the real and authentic will to change.

With regard to the different experiences and therefore the possibility of coming into contact with prisoners of different age groups and above all with a different type of sentence, we could in fact note that younger boys with lower sentences, or subjects with serious problems related to drug addiction, are more oriented to the search for tricks, in order to access alternative measures to punishment, rather than to carry out a real introspective analysis of oneself and therefore to achieve a profound critical review of the crime.

On the contrary, in the conversational activities with prisoners, present in the Spoleto Detention House and subjected to rather long restrictive measures, we were able to see a more authentic willingness to work on the critical review of the crime committed, precisely with the aim of undertaking a path of change that can then allow him to live outside a daily life based on principles of legality and morally correct conduct.

During the interviews and reflections with respect to the deviant agitations, it is often the prisoners themselves who understand that they have "lost": the loss is certainly greater than what they have gained by carrying out criminal actions. They realize that taking stock of their lives, in terms of costs and benefits, the loss is certainly greater than the illicitly obtained gains, since it is not only an economic loss, but also concerns family relationships, friends, freedom and the emotional-sentimental sphere.



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