

Incapacitation and incarceration.

A comparison between Italy and the United States

Mariateresa Gammone^{a*}

^aUniversity of L'Aquila, Italy

Abstract

In the West there has been scarce academic reflection on incapacitation. Scholars, in general, ignore or dislike almost all aspects of incapacitation, including those related to "broken windows theory" and "zero tolerance theory". American practical attitude, on the contrary, is characterized by severe implementation of the incapacitation approach. The death penalty is an example of total incapacitation and the prison is an example of partial incapacitation: one is definitive, the other is limited in time and space.

In the United States, incarceration is hard, not only for ordinary people: when caught by investigators and prosecutors, white-collars criminals go to jail for years (even if the term "criminal" does not have easy and collectively accepted meaning). In Italy many prosecutors and police officers disagree with mercifulness, but are obliged to apply the rules of a lenient institutional system. To some observers, this leniency is due to political reasons.

In the western world incapacitation perspectives are not implemented in a coherent manner. Consequently there are not undisputed incapacitation policies and in some countries (such as Italy) even the concept and the term "incapacitation" almost do not exist. Even if the starting point of incapacitation could be found in the Italian criminology school, which discovered and emphasized the concept of dangerousness.

Keywords: *incarceration; incapacitation; criminological paradigms; Italy; United States of America.*

1. Criminological paradigms

There are various criminological consequences of a supposed great divide between East and West. In terms of incapacitation and incarceration we can see the existing differences, but similarities can also be identified along a continuum of historical and existential possibilities (Gammone 2012).

As regards the West, we develop our considerations with particular reference to countries such as Italy and the United States, because these two countries form the two extremes in the continuum of Western experiences on incapacitation.

Specific criminological paradigms exist in many parts of the world (Sidoti 1993a). In the West, on some profiles, Italy and the United States see the political predominance of very different paradigms. For example, in many of the USA states the death penalty is still enforced, while Italy represents the place in the world where the death penalty was abolished for the first time, in the eighteenth century, under the drive of Enlightenment culture. In the USA, death row exonerations fostered awareness of mistakes in death penalty sentences and changed law-and-order policies. Many states substituted death

*Mariateresa Gammone, *E-mail address: mariateresa.gammone@univaq.it.*

penalty with something very similar to a virtual death: life prison without any chance of parole (Garrett 2017). In China, as well, there are dominant specific paradigms in many criminological fields, from the organization of justice to reconciliation (Braithwaite 2015). Regarding the death penalty China is closer to the United States than to Italy, while it is clear that perhaps a major part of the Italian population would prefer to implement penal systems closer to the American or Chinese traditions, rather than implementing the Italian tradition, which is the most respectful of human rights (Sidoti 2012). To some observers, even regarding the organization of justice China is closer to the United States than to Italy. Prosecutors in Italy do not represent the government in the case brought against the accused person. They are totally independent from government and proudly represent the Constitution (Sidoti 1993b).

Along with the divergences there are also convergences between Italy and the United States. As an example of certain convergent proposals we may consider Italian prisons. There are proposals characterized by considerable and different practical consequences, just think of the abolitionist proposal. Considering ideological perspective, it is enough to remember that in a statement issued in June 2000, Antonio Martino, then Minister of Defense, said: Italian state prisons are a real "national shame", and as a solution, he proposed to entrust the administration of prisons to private firms or institutions - obviously accompanied by state control, in order to avoid easily imaginable phenomena (such as the presence of organized crime in the sector).

Incapacitation and rehabilitation are two paradigms, among the many existing ones (Gammone 2017a). These are not the only two, nor the most important, in fact there are so many other paradigms, such as those based on cost-benefit theory, according to which the basis of human actions is selfishness. Human behavior would basically be a utilitarian calculation and crime would be no exception: it would be the result of a convenience in terms of individual cost-benefit analysis in the structure of social opportunities. In this perspective, the prison serves to explain that crime does not pay: it should be better being honest. Deterrence presupposes cost-benefit theory. Incapacitation can be considered a paradigm in a sense which was used firstly in English-speaking countries, but can be understood as a research program (Lakatos 1968).

The expression "prison-industrial complex" has been used in order to describe the incarceration explosion, which has characterized the American criminal justice system (Christie 1993). There is a clear analogy between the expressions "military-industrial complex" and "prison-industrial complex" (Melossi 2015). The term "military-industrial complex" was formulated by President Dwight D. Eisenhower, in his farewell address, January 17, 1961. "We annually spend more on military security than the net income of all United States corporations. This conjunction of an immense military establishment and a large arms industry is new in the American experience. The total influence — economic, political, even spiritual — is felt in every city, every Statehouse, every office of the Federal government. We recognize the imperative need for this development. Yet we must not fail to comprehend its grave implications. Our toil, resources and livelihood are all involved; so is the very structure of our society. In the councils of government, we must guard against the acquisition of unwarranted influence, whether sought or unsought, by the military-industrial complex". To some observers there has been an evolution from the military-industrial complex to the "deep state" (loosely synonymous of a fluid network with de facto control of national government, without regard for democratically elected leadership).

A range of tactics drive the expansion of American private incarceration. The mass incarceration tore families apart and destroyed institutional budgets, but favored one interest group: the private prison industry. In the early 1980s, private prisons barely existed in the United States, but after we have seen a massive transfer of taxpayer dollars. Annual private prison revenues for big companies have grown to billions. Therefore, these astronomical revenue figures demonstrate that private prison have big political support. Government contracts (local, state, and federal) provide the dominant source of private prison revenue. In addition to lobbying, for-profit prison companies also spend vast sums of money on campaign donations. “Between election day and the end of Trump’s first month in office, the stocks of the two largest private prison companies in the US, CoreCivic (formerly the Corrections Corporation of America) and the Geo Group, doubled, soaring by 140% and 98%, respectively. Just as Exxon learned to profit from climate change, these companies are part of the sprawling industry of private prisons, private security and private surveillance that sees wars and migration – both very often linked to climate stresses – as exciting and expanding market opportunities. In the US, the Immigration and Customs Enforcement agency (Ice) incarcerates up to 34,000 immigrants thought to be in the country illegally on any given day, and 73% of them are held in private prisons. Little wonder, then, that these companies’ stocks soared on Trump’s election” (Klein 2017: p.155).

The crisis of governability undermines the trust in the Western model. Vested interests have disturbing influence in democratic governance, especially in the American system, malignantly described as "one-dollar one-vote" rather than "one-person one-vote". Law professors show that the political theory of corruption goes far beyond bribery laws. Teachout (2016) focuses on juridical statements and juridical decisions. “The Supreme Court has become populated by academics and appellate court justices, and not by people with experience of power and politics, who understand the ways in which real problems of money and influence manifest themselves. (...) This new legal order treats corruption lightly and in a limited way. It narrows the scope of what is considered corruption to explicit deals. It reclassifies influence-seeking as normal and desirable political behavior”. Teachout highlights the concerns the American founding fathers had about corruption and provides a fair perspective on recent "populism" and "art of the deal".

In the United States the term "criminal" does not have any simple and collectively accepted meaning. A crime is an act punished by a criminal law. Consequently, we may have uncertain judgment on some actions that cannot be considered illegal, although from a moral point of view they are strongly condemned. American courts routinely hand down harsh sentences to individuals, but a very different standard of justice applies to corporations: there is an art of "backroom deals" (Garrett 2016). In its best way, crony capitalism can sometime devolve into elaborate hypocrisy, with only the mere appearance of democratic control. In 2017, the Pew Global surveys showed that a great majority of Western respondents say they do not have confidence in Western political leaders. 74% of global respondents express little or no confidence in U.S. President Donald Trump.

American practical attitude toward corruption is characterized by severe implementation of the incapacitation approach (Gammone 2017b). Incarceration is hard, not only for ordinary people: when caught by investigators and prosecutors, white-collars criminals go to jail for years (Gammone 2013).

The Italian situation is very different. From middle-class criminals to petty villains, from politicians to apartment thieves, there are legislations and jurisdictions that systematically produce low levels of incarceration. In criminological theories and in

specialized discourses on justice, the position of those who call for strict and swift justice upon the perpetrators of crime does not prevail. The approach of those who want a cautious justice prevails. In their opinion justice must be aware of the social reasons of crime and temperate towards those who are on the margins of existential happiness and economic well-being. Laws, regulations, legal decisions and judgments allow this situation. Many prosecutors and many police officers disagree with mercifulness, but are obliged to apply a lenient institutional system. To many observers, this leniency is due to political reasons.

2. Incarceration and incapacitation

The idea of progress has been defined "the soul and the guide of Western civilization". Prison is a privileged place for measuring Western progress. The classic Butterfield text of 1931, *The Whig Interpretation of History*, describes the conception of a historical evolution characterized by gradual humanitarian interventions such as those against corporal punishment, torture and cruel treatment of minors.

Today's jails are the result of the spread of reformist ideas beginning in the 18th century. In *The State of the Prisons*, the 1777 milestone, John Howard converts Dutch Protestant asceticism to London's philanthropy and Catholic monastic tradition: a new definition of punishment and penitentiary is born. Only the history of Western colonialism can hold confrontation in terms of pathos and contradictions: the good intentions and best rhetoric of the West met in prison, with all the distance that unfortunately often exists between theory and practice. There is sincere commitment to the prevention of crime; on the forefront, we find pedagogues like Maria Montessori and Anton Semenovyc Makarenko.

In the best Anglo-Saxon tradition, reflections and interventions on the prison stand out, from John Howard and Jeremy Bentham to the revolutionary innovation of John Augustus. In the history of social sciences, the Italian School of criminology (Sidoti 2008, 2016) and other criminological schools have confronted themselves discussing the jail, in an ideal and methodological controversy of great importance. In particular, just referring to prison studies many scholars scientifically defeated the Italian criminological school. They however have added that Italian criminologists were deservedly distinguished from previous correctional practices. "Lombroso's distinctive merit lay in his humanitarianism", wrote C. Goring in one of the most relevant criminological works in every time (1919: p. 11). Lombroso, Ferri, Garofalo were reformers and pioneers (Radzinowicz 1998). According to Ferri, the Italian school of criminology has taken the same historical course of development as medicine. At the dawn of the nineteenth century, the physicians still wrote that "insanity" was a moral sin of the insane. Pinel advanced the idea that insanity was not a sin, but a disease like all other diseases. The Italian School "maintains, on the contrary, that it is not the criminal who wills; in order to be a criminal it is rather necessary that the individual should find himself permanently or transitorily in such personal, physical and moral conditions, and live such an environment, which become for him a chain of cause and effect, externally and internally, that disposes him toward crime" (Ferri 1906: p. 22).

Nazi racism was based not on Italian theories, but on appreciated thinkers such as eugenicist Francis Galton. The Italian School of Criminology was intended to confront dangerousness, but also clearly intended to support a humanitarian treatment of criminals, prisoners, lunatics, and minors. Cesare Lombroso was at the origins of biological criminology (Gibson 2002; Gammone and Sidoti, 2010). However, "beset by European

critics, Lombroso took comfort in his 'almost fanatical' US followers" (Rafter 1992: p. 541).

With regard to security and control, today the dominant practical prospect is incarceration. According to authors such as Christie, incarceration was "the western world's alternative to the gulag" and, according to many authors, such as Wacquant, we have witnessed a shift "from the social to the penal state, from slavery to mass incarceration" in our recent times. He sees the simultaneous and converging deployment of restrictive *workfare* and expansive *prisonfare*.

This would represent an extraordinary reversal of the traditional route. Norbert Elias has written famous pages concerning the "psychic process of civilization". In a multi-century journey, the world's growth in social capital, the minor inequalities, the highest levels of democracy and the solidity of political systems have greatly influenced the Western way of thinking about criminals. In the 1960s the decrease and "civilization" of crime that had begun in the period of Enlightenment and Beccaria were interrupted. Steven Pinker argues that violence in the world has declined both in the long run and in the short run. Empathy is on the rise. Barbaric practices such as human sacrifice and execution by torture have been abolished, while cruelty towards women, children and animals is, Pinker claims, in steady decline.

Sometimes are sleeping even the better angels of our nature. Paradoxically, the United States, one of the countries in which the Enlightenment ideals have become more widespread, is also the country with the highest rates of incarceration, with numbers that mark a clear break in continuity. It was observed that the number of detainees began to increase dramatically after the great social and racial disorders of the 1960s. After 1968, crime in Europe too, it became a dominant theme, but in the United States the number of prisoners was only comparable with South Africa or the Soviet Union; as a percentage, it was 14 times that of Japan. Millions of people were, in various ways, subject to criminal prosecution. In addition to detainees at the federal, state, and local levels, it is necessary to count people on parole, on probation, and serving outside of the prison walls and in the community with some sort of restrictions or conditions placed on the detainment, restraint, custody; that band of citizens tripled in twenty years. A nation that is, more than any other in the world, consecrated to the principles of freedom, has become the one that more than any other in the world self-defines itself as an amass of delinquents, prisoners, and offenders (Garland 2001).

In the United States, the theme of incapacitation was rediscovered theoretically and practically. The death penalty was an example of total incapacitation and the prison was an example of partial incapacitation: one was definitive, the other was limited in time and space. Along with the incapacitation, many scholars have stressed the importance of victimology, which pose the in relieve the suffering caused by crime and especially predatory crime. In the United States, despite the resources involved in incarceration, the results were controversial. From *Human Rights Watch's* reports to *The Prison Journal*, many sources have stressed the perverse effects of incarceration. For example, aggression was very significant in prisons: at some point detainees from prison go toward society, bringing back the brutality learned during detention.

The growth of incarceration would be in contrast to that age-old decline in violence that has been described by so many authors and has become very famous; equally well-known is another opinion: many people prefer incarceration to rehabilitation and believe that decline of violence in the US is linked with high rate of incarceration. They think very

simply that if the criminals are in jail, they are incapable of committing new crimes outside the prison.

3. Italy and the United States

James Q. Wilson makes his first appearance on the scene of academic and political debate with an article titled "Crime and the Criminologists" in *Commentary* magazine, in 1974, then revisited and republished several times. His famous anthology volume, since his first publication in 1983, featured authors who would have had strong recognition in subsequent years, such as Richard Herrnstein, Travis Hirschi, and Charles Murray (who wrote on incarceration in an incisive manner). The new perspective promoted by Wilson was at the center of the then forgotten other analysis, such as the one on the incapacitation, which had important precedents.

In the United States, some Rand Corporation studies mark the origins of a new reflection on incapacitation, along with Wilson's interventions (his article on broken windows theory appeared in 1982, written with G.L. Kelling). The reflection on incapacitation is born as a new paradigm, even if the theme of incapacitation is very ancient: it can be found in classical doctrines, which include the extreme measures (hand cut or death penalty) up to jail or chemical castration of sex offenders, in differently determined ways, according to the times and the geography.

In the United States, during the 1960s and 1970s, the police was entrusted with considerably less power to investigate and prosecute individuals, based on suspicion rather than on definite evidence of illicit actions. Broken Windows Theory in the 1980s introduced a change in concepts and policies. According to the theory, the environment signals its security situation to the people, including to potential criminals. By maintaining an ordered environment, individuals are dissuaded from causing disarray and commit crimes. Environments filled with mayhem, such as broken windows or graffiti, indicate a lack of surveillance and the consequent cost-benefit analysis on the incapacitation to commit crime without control, investigation, prosecution, with an increase in illegal activity. In the late 1980s and early 1990s, the civility laws provided legitimization for incapacitation of "uncivil" activities in urban spaces. Incapacitation converted in incarceration. These civility laws effectively bolstered severe incarceration by incapacitation of behaviors considered socially unacceptable, such as drunkenness, sitting or lying on sidewalks, sleeping, urinating, and begging in public spaces.

Even in American sociological and criminological literature there is enormous resistance to discuss incapacitation. Abound reductive visions, which for example tend to confuse incapacitation and predictive policing.

Incapacitation and rehabilitation have often intertwined. Even charities have been contributed to various spurious kinds of incapacitation. The "placing out" system was devised by Christian charities in the nineteenth century to alleviate urban disorder. Fearing that children raised amid poverty would become degenerate adults, concerned religious Americans developed relocation programs to rescue "innocent" youngsters from horrible poverty. Reformers went somewhat further in their efforts to move away from a prison-like approach to dealing with juvenile indigence; for instance, at times they have placed numerous Native American children in non-Native American homes, in the East and Midwest, in order for them to absorb "the values of work and the benefits of civilization" (Margolin and Montijo 1995). There are many kinds of incapacitation *with the best intentions*.

From the Reagan era onward, there was a great deal of criticism towards incapacitation concepts, which were in a sense old, but were successfully reassembled in an approach presented as a new paradigm. From the analysis of Zimbardo to the theory of broken windows, a theoretical thread was found that wore a new ideal and new canvas, certainly new in the indications of institutional choices, completely different from the past. Just the prisons became a clear reference to differentiation; it was said: we went from the Welfare State to Warfare State, from rehabilitation to incarceration. Because of the politically correct clash, the community of sociologists and criminologists was clearly divided.

One key element was the reflection on the "dangerous offender", with a strong accentuation of crime that is "serious". The consequences in terms of incarceration were immediately clear and explicit, although it was emphasized that in theory it would have been possible to pay particular attention to serial predators, as a result of the reduction of incarceration in relation to casualties: "One desired spinoff of selective incapacitation would be a reduction in prison overcrowding". Many talked about a new paradigm, and new penology, although in the 1930s there had been an important use of the concept of incapacitation. Less severe forms of incapacitation are often concerned with partially disabling rather than totally disabling offenders from reoffending. The person is restricted only in a partial aspect of his existential possibilities. Partial incapacitations comprehend condemnations such as disqualification from driving, prohibition to participate in certain sports events or curfews.

It was emphasized in the premise that the theme of incapacitation has not great attention in the current Italian academic field (Zagrebelsky 1992; Stella 2006). Much more attention is reserved to other issues, such as the inhumane conditions of some prisons (Anastasia 2013; Anastasia and Corleone 2009). After Lombrosian approach and after Fascism, the public mood was very progressive. In Italy there has been some reflection on incapacitation, but it has remained absolutely minor and peripheral. According to some, there would be a paradox: among many common people and among many public servants working in repressive institutions, prison is considered an institution that has the primary function of preventing criminals from committing other crimes. However this primary function does not have much space, in Italian scientific literature (Gammone and Sidoti 2012).

Many Western scholars, in general, neglect all aspects of incapacitation, from "theory of broken windows" to "zero tolerance theory", because they think that the two theories both have a political propensity, even if this is not true. In some authors the lack of reflection on incapacitation is often linked to an explicit (and, of course, legitimate!) preference for different thematic aspects. In other authors, however, these theories and these thematic areas are known and cited, but they are clearly rejected. According to them, punishment, imprisonment, death penalty do not serve anything, on the basis of documentation deemed incompatible from a statistical point of view (even though few data are controversial as those referring to the measurement of the effects of incapacitation)

On the recent revival of incapacitation, the starting point is the 1980 US elections, with the unexpected success of Ronald Reagan, who was president for all the 1980s. Between 1960 and 1980 there was a constant annual increase in crime rates, which had led to a growth of 300 percent. After constant annual increases, in 1982 the number of the most serious crimes decreased by 3 per cent, and in 1983 by 7 per cent. At that time an important political turnaround took place, under many profiles, including the way in which crime and prison were considered.

The theme of rehabilitation was always considered to be a priority in the United States; especially when dealing with first offenders guilty of small crimes. The "Father of Probation", John Augustus, was born in the United States; in the initial part of nineteenth century, he made the first pioneering efforts in the world to campaign for non-custodial sanctions. With Reagan's presidency, from that moment on, a different and moderate approach becomes an institutional priority. In the extreme, conservatives said that Americans had to choose between an intervention that worked (incapacitation) and an intervention that did not work (rehabilitation). It was believed that if prison and incapacitation were not enacted, the consequence would inevitably be a higher percentage of crimes. In this perspective, the prison would be a sure tool to reduce crimes, as opposed to rehabilitation, which would be a beautiful but unrealistic utopia. In the fiery climax of those years, the political and ideological confrontation was immediately preeminent. Sidoti's analysis takes into account some explanatory factors of trend change (other important factors, such as demographic ones, have been omitted to simplify the argument, even though it is acknowledged their relevance). At the beginning of the 1960s, the United States "had not yet completed the path that was a feature of European history: a widespread public intervention in many areas of social life for preventive and welfare purposes. At the beginning of the 1960s a public opinion stream was formed, which became the majority in the elections, first with Kennedy's presidency, and then with Johnson's presidency. In 1964, the US government solemnly declared a war on poverty; President Johnson's National Crime Commission, led by Ramsey Clark expressed concepts that become classics in this regard: fighting poverty, education, the contrast of inadequate housing and unemployment are the best ways to fight crime. A law in favor of civil rights is a law against crime. The money spent on schools is money spent against crime" (Sidoti 1998: p. 82).

Along with the declared war on poverty, the United States began another undeclared war against Vietnam, and a huge amount of money that could have been used in one direction was then used in the other direction, with the result that in one sense both wars were lost. In the 1960s, a belief was dominant: the "paradox of poverty in the midst of abundance" had to be combated, a view shared by democrats and even by many Republicans.

It is important to insist on these profiles, because probably we are in a similar scenario, over time, when the policies of Presidents Bush and Obama (which in many respects were homogeneous) have been radically questioned by Donald Trump's election. At the basis of the new approach established with the advent of the Reagan Presidency, there was the reworking and rediscovery of ideas that existed in English-speaking-Saxon culture, but which had been prematurely judged as old, obsolete, archaic, from Swift's *modest proposal* to the *uncontrolled geometrical growth* of Malthus, from W.G. Sumner to Social Darwinism. In a new sociological and criminological perspective, old heuristic sets were taken up: theories, concepts, hypotheses, diagnosis, prognosis, therapies, prescriptions, practical and interpretative specifications. These doctrinal and heuristic sets, albeit old-fashioned and different, had a new common enemy: the welfare state, immigration, leniency, and above all, faith in education and rehabilitation.

It was a Great Retreat, but not everywhere in the West. Incapacitation in Italy is an underestimated theme and sometimes treated, even from a criminological point of view, as related to those who are not fully self-sufficient: a mere assertion of the inability to act. The rehabilitation paradigm is always preeminent. In some treatises, incapacitation is dealt

with in the specific criminological sense, but it is peripheral, considered to the importance given to other themes, which are considered to be paramount.

Great scholars, from Durkheim to Dewey, rightly pointed out that education was the decisive problem, above all because the birth of a modern industrial, urban, literate and democratized society. However education is not the only problem to be considered. Today, we are exiting industrial society and entering a post-industrial society, and, for that new world, educational models are still under construction, both regarding prisons and the society at large, outside prisons. Rehabilitation paradigm, in particular, presents difficulties in terms of individual responsibility and the unwanted consequences of human actions.

Incapacitation must be distinguished from dissuasion and deterrence. Dissuasion means to persuade people to refrain from illegal action. Dissuasion is to be achieved by convincing people and discouraging to engage in confrontation or threaten violence. Deterrence means warning of punishment, including with *deterrence by denial*, which means persuading people not to do wrong things by explaining that wrongdoings will be defeated. In other words, if the laws do not discourage a person from admitting wrongdoings (the goal of dissuasion), they might discourage him from using them (the goal of deterrence by denial - that is, that he will not be able to achieve his operational objectives). Incapacitation is just another thing: it is not concerned with the causes of the offense, as is the case with moral examination, or with the therapy of the offender, as is the case with rehabilitation, or with the nature of the offense, as is the case with retribution. The rights of the victim have preeminent consideration. The overall aim of incapacitation is to prevent the offenders from reoffending in the community.

Incapacitation is often indispensable, for example against offenders such as terrorists and mafia criminals (Gammono 2014). There are so many other serious and hateful crimes committed and their perpetrators spread concern and fear. The fact is that the theme of incapacitation is related to the theme of danger and often this point is not perfectly clear even among scholars, accustomed to considering the concept of punishment in reference to three theories: rehabilitation, deterrence, retribution (Sidoti 2012). Incapacitation is often neglected, even if it has distinct roots and distinct reasons, not only with respect to rehabilitation and retribution, but also with respect to deterrence. There are various contaminations; for example, in prisons incapacitation can coexist with the rehabilitation purpose; conceptually, inability does not want to threaten or injure: it just wants to prevent the repetition of crime, in order to protect the potential victim (Viano 1990; Audet, Katz 1999).

According to many observers (Davigo, Ardita 2017; Davigo and Sisti 2012) incarceration must first be applied to white-collar criminals (because they often produce, in quantity and quality, greater damage than street offenses). According to the same observers, the state must be scaring, as a "necessary evil", but in Italy prison does not discourage white collar criminals. Therefore, they systematically repeat their transgression, because they are not "afraid", discouraged by sanctions (prison in the first place, but not only). A paradox could be seen: prison is very important against their odious crimes, but in prison there are not enough white collar criminals that should instead be there.

To critical observers there is no incentive in Italy to behave well, but there are incentives to behave badly and so everyone behaves badly. The crimes of those who fill the prisons are easy to commit but also it is much more difficult to make a financial prosecution than to make a prosecution against a car theft. In the last few decades, in the

West, the middle class has become increasingly smaller, there has been an impoverishment of the low positions and a shameful enrichment of those holding top privileged positions. In the past an administrator earned ten times the wages of his workers, now he/she earns one hundred times more. While there are situations in which people "need" to steal, in Italy a large part of those who steal are privileged and rich. This is not to say that Italians are all thieves, in fact Italians are for the most part victims of an unfair system and for this reason, and elections often give the idea of resignation.

Incapacitation in Italy has been underestimated and does not appear to be a topic of concern: neither for professors and nor for white-collars - as widely demonstrated by Italian chronicles. Apart from exceptions, resignation wins in many areas - along with its great allies, such as underestimation, ignorance, and expectation. Galbraith's picture of the affluent society was exaggerated; however it gave a reasonable image of political stability in a prosperous economy. Now, at least 15 million people in Italy live in deteriorating situations in the peripheries but also in urban centers. Insufficient and ineffective investments, massive degraded buildings, occupation of houses, unlawful disposal of waste, are some of the problems Italy faces in peripheral neighborhood like Zen in Palermo, Secondigliano in Naples, São Paulo in Bari, Dams in Genoa and Tor Bella Monaca in Rome. In those degraded areas, for years drugs have been the main economic activity (Sidoti 1994a). Now residents are living in a more difficult situation. The lack of effective policies regarding incapacitation, dissuasion, deterrence, has been combined with the lack of effective welfare policies and fight against poverty.

Where there is no incapacitation, there is incapacity. Not only the degraded areas are experiencing a devastating crisis; even the most famous Italian "art cities" seem overwhelmed by difficulties, with garbage piling up near containers and horde of beggars at every corner. In Venice, Florence, Rome, and in many other beautiful cities, many observers see systematic depletion of the historic-artistic heritage that was the unrepeatable mark of the country.

Poverty remains high in Italy, and is slightly up. According to figures published by Italian statistics institute, 4.742m people are in absolute poverty during 2016, 144,000 more than in 2015. "Absolute poverty" means being unable to buy a basket of goods and services "essential to a minimum acceptable standard of living" (Sidoti 2012).

One of the ideological pillars of the European Union is the freedom of circulation of goods, capital and people. This ideological principle has become more and more effective due to the growing interconnection of communication systems. However, there is also a downside. Many youths in Africa are underemployed. In some areas, climate change, terrorism, famine and wars are causing severe social unrest (Sidoti 1996b, 1997). This clandestine migration between Africa and Italy has spiked in recent years. Overall arrivals are up: Africans are fed up with the lack of opportunities in their home countries and are escaping at higher-than-usual rates. The ability to prevent (and to incapacitate) an unwanted conduct is absent in many Italian sectors, inside and outside national borders. The same problem is present in many countries, but in Italy it has specific characteristics.

4. Political corruption and incapacitation

The decisive role played by civic participation in modern democracy is explained in a large literature, from Robert Michels' views about political parties to Joseph Schumpeter's elitist theory of democracy.

In order to explain as much as possible my approach to the problem of incapacitation (its minimal role in the Italian theoretical debate and in the Italian public policies), I'm

mainly referring to Sidoti's analyzes, which in various ways and on various profiles, I'm reporting and summarizing.

The Italian economy was once a success story. Italy made a glorious transition from shattered Second World War loser to the world's fifth mightiest economy. After the Second World War, from 1946 to 1991, the average annual increase in overall gross domestic product was the highest in the world (after Japan); still in the 1980s Italy's annual rate of growth was among Europe's highest. In 1992 and 1993 Italy achieved the best export performance of any major industrialized country. This history of extraordinary economic successes was suddenly and abruptly interrupted, coinciding with a furious political confrontation on the issues of legality that began in 1992 and which is still ongoing, characterized by experiences that have become known all over the world: "Clean Hands operation" and "Anti-Mafia movement". On the Mafia, the incapacitation policies have been implemented in a masterly way (Sidoti 2012); on corruption the incapacitation policies have not been implemented at all.

It was only after the killing of Judge Giovanni Falcone and its security guards, in 1992, that the Italian politicians promoted a new regulation on prisons, the "41-bis law", which severely changed custody for mafia bosses by introducing secluding measures and solitary confinement. This is the strictest legislation on incapacitation existing in Italy. The state was forced to react as it never had before. The mafia groups had to face a counter-offensive on an unprecedented scale; they were overwhelmed.

Until 1992, being in prison for a mafia boss was like staying in a kind of restrictive and incommode hotel from where they could nevertheless continue to exert their leadership, ordering strategies and tactics. The new regulation of 1992 was a literal application of the logic of incapacitation. Perhaps it is one of the best applications (for consistency and for profitability) of this logic within a Western democratic system. This regulation has been severely contested (in a wide and very diversified ensemble, which goes from the lawyers of the mafia to the purists of extreme democratic leniency), but it worked very well. The major Sicilian mafia bosses have died in prison, while they were subjected to this type of severe incapacitation. Precisely because the incapacitation in Italy has been applied with great success in this sector (and practically only in this sector), the fact that it has not been implemented in any other sector must be carefully spelled out.

The resistances are in the political, cultural, academic areas. The political resistance is motivated by the fear of a large part of the politicians that the incapacitation policies could be used against them and against their own electorate (obviously not the whole political class is homogeneous: only the majority rejects the incapacitation policies). Cultural resistance is linked to the Italian tradition, which is the most tolerant and democratic in the world. The academic resistance is linked to the pre-eminence of Catholic, Marxist, radical ideologies, which have found fertile ground in the Italian ideological tradition and attentive ears in that part of the political class that does not want to be questioned its parasitic domination of Italian society.

For years, from the late 1940s to the early 1970s, western governments enjoyed an unprecedented period of tumultuous productive growth, with improving economy, rising incomes, and soaring living standards. Italy was heavily impacted by the international financial crisis of 2007–2008, which is reputed by many experts to have been the worst global crisis since the Great Depression of the 1930s. Italy's economy contracted by over 9% since 2007 and faced 13 quarters of recession. The period from 1970 saw a number of important economic and social changes that initiated a long-term upward trend in the level of public debt. Since the 1970s, the welfare spending (pensions,

social services, wages, and many further subventions) has caused a high level of government fiscal engagement. On the one hand, higher levels of public expenditure were caused by institutional changes such as the foundation (for political reasons), in 1970 of regional political administrations. On the other hand, the greatest reason of the increase of public debt lies in the peculiar economic difference of the Southern regions of Italy. There are enormous regional disproportions between the highly industrialized and dynamic North and the rural southern Mezzogiorno areas, where poverty, unemployment, and organized are problems rooted in a long history. In his reflections, communist theoretician Antonio Gramsci emphasized the "absolutely antithetical conditions" of Northern and Southern Italy at the time of the Italian Unification in 1861. South and North of Italy had a very different economic and social history for more than one thousand years.

The Italian economy is burdened by a huge public debt. Public spending covers current outflow (salaries, services, etc.) and investments. The country's national wealth is four times larger than its public debt and Italy is the world's eighth-largest economy, but interests take oxygen away from the country. For political reasons, there has been no rigor and current governmental spending has augmented. Politicians have chosen to increase public debt without funding investments. Many say that Italians and public debt are like two shipwrecked people tied to the same raft: if one is too heavy and goes under, the other is also pulled down.

In the years of the cold war, there was a steep rise in the cost of being in politics, after the great social uproar of the late 1968, the "red scare" grew to the same level. The political class preferred to create huge autonomous sources of finance either using public economy or inventing other means of intervention. For some years this mechanism, which started in the 1950s, did not create difficulties for the economic development of the country. But with time it achieved terrifying proportions. "From the 1960s, Italy was affected by *hyper-politicization*: from universities to hospitals, from the judiciary to the opera houses, the parties politicized many public organizations and increased by promises the growing appetite for jobs. One of the first consequences of this abnormal enlargement of political activity has been the disappearance of the sense of the state as the seat of rational and impartial powers" (Sidoti 1993c: p. 145). The supreme consequence of the high cost of politics was an almost bureaucratized system of kick-backs (Sidoti 1994b).

During the cold war, everyone knew that the cost of clientelism was paid by an enormous corruption network. In Italy more than a million people are in full-time politics; they are therefore professional politicians in the strict sense: for some of them politics is a vocation, for some of them it is a means of gaining a living, and for some of them it is a career for upward social mobility. They *live off* politics. "There are two ways of making politics one's profession: Either one lives 'for' politics or one lives 'off' politics. (...) The distinction hence refers to a much more substantial aspect of the matter, namely, to the economic. He who strives to make politics a permanent source of income lives 'off' politics as a profession, whereas he who does not do this lives 'for' politics" (Weber 1919: p. 14).

In Italy incapacitation of bad politicians is very difficult. In part they are the backbone of the functioning of the country (because they cover important public roles at various administrative levels) in part they dominate the same elective assemblies that in theory should make the laws to depoliticize the country (Berggruen and Gardels 2013). Aside from the ideology of rights, that of duties should also be valued. For some observers, the political crisis with which advanced western societies have been grappling since the early

seventies is essentially cultural; they advocated the necessity of constraints, duties and virtues (Ionescu 1984).

In the West today, Berggruen and Gardels say, we no longer live in "industrial democracies", but "consumer democracies", which resulted in short-term thinking, paralyzing partisanship, and demanding populism. Today's democracies survive in a multi-polar world where no single power dominates and in which many national experiences are becoming culturally very atypical (Luce 2017). Polyarchies have free associations, fair elections, inclusive institutions, civic rights, freedom of expression, and critical information. However, these sacred principles unwillingly favor the proliferation of contradictory centers of power. The best institutions of democracy have been heavily complicated by the *vetocracy* of dissentious groups.

To many observers, the lack of extended incapacitation policies has determined large discontent and discomfort. Strenuous governmental support for a relentless clean-up of political corruption appears incomplete, controversial, and mendacious to the majority of the population. In a popular culture where descriptions of awful politicians abound, the worst villains are the hypocrites who dictate morality and behave very differently. From 1992 onward, surveys have indicated that too many people are not confident in politics; a high percentage are disappointed, angry, indifferent, demoralized, and even terrified. In almost all the advanced democracies, voters are skeptical or in revolt; in Italy, worst confusion is dominant: not only old certainties and loyalties are dead, but also many people are unsure about their savings, retirements, jobs, and personal integrity. Not much has changed since Clean Hands. From this point of view, in the last twenty years the situation has profoundly deteriorated.

In conclusion, in the western world incapacitation perspectives are not implemented in a coherent and ruthless manner. Consequently there are not undisputed incapacitation policies and in some countries (such as Italy) even the concept and the term "incapacitation" almost do not exist. Even if the starting point of incapacitation could be found in the Italian criminology school, which discovered and emphasized the concept of dangerousness (Sidoti 2006).

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