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Declassified E.O. 12356 Section 3.3/NND No. 785016

ACC

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ASSUMPTION
CASES
JUNE 1944

142/290

ASSUMPTION BY AC OF POWERS TO GRANT PARDON IN INSANITY
CASES
JUNE 1944

SYNOPSIS

From: Office of the Director of Criminal Lunatic Asylums - Aversa 2 June 44.

To : Office of the Director of the Central Prison - Naples.

Subject: Proposal in regard to Ministerial rescission of Security Measures in the light of Circular No. 4551 of 29/2/44 on the subject of "Right of Pardon in Occupied Territory".

1. The importance of the action taken by the Allied Military Government in assuming the exercise of royal pardon in regard to penal sentences, which has been suspended together with all other powers of the crown during the occupation, is appreciated by this office. It is important not only because thereby an institution of high moral and social value is maintained, but also because of developments that may come from it. One such possible development is to extend this power to security measures.

2. Royal pardon has its counterpart in regard to Security measures in their rescission before the full term established by law (Art. 207 P.C.) is completed. This power lies with the Ministry of Justice and now in the absence of such a Minister should also be assumed by the Allied Military Government.

3. This is a matter that has always been considered by the writer as of prime importance in regard to penal law, designed as it is to modify and transfer its "repressive" and "preventative" aspect - Experience has shown that it results in prisoners leaving prison in a better state of mind than when they arrived, the end which the law itself has in view.

4. The reason for this lies fundamentally in human psychology, the desire for liberty is dear to man as life itself. Offering a way to liberty through good behaviour will develop just those virtues in the prisoner that he lacked when he fell into crime; it will fertilize those oases of good that exist in the most degraded of mentalities.

5. It is of particular importance as regards persons whose minds are deranged and if there exists no other reason for reintroducing the rescission of security measures generally, this particular category of offenders has great need of it.

6. There are cases where a person mentally sick who has been subjected to security measures is cured long before the time fixed by law for him to be reexamined as to his danger to society. Such a person must remain in what is actually arbitrary imprisonment and it may easily be imagined the effect this will have and what evil will result when the term of detention may be 3, 5 or even 10 years and the sickness, the root cause of his danger to society, may be cured after a few months or even a matter of days.

7. The writer has not ceased in his work on prison reform to call attention to this need. His demands have been answered by the suggestion that every criminal lunatic asylum (*ospedali psichiatrici giudiziari*) should have a special department for those who were cured before the time for their reexamination when they might adapt themselves; then, in every case, the ministerial rescission of the Security measures would be brought into effect. This is evidently the one that remains open to avoid endangering the very health of such persons, beyond its necessary

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8. In spite of the assurance given at the time of the birth of the legislation this suggestion has not been translated into practical measures. For one thing the special wards at the asylums have not yet been constructed and for another the exercise of the ministerial rescission has been parsimonious in the extreme and not inspired in the least by medical consideration as have been indicated.

9. Credit is due to this office for the perceptible shortening of the Security measures applied regarding offences due to puerperal psychosis - a typical example of a prompt cure and too long a period of security measure.

10. The failure to construct these special departments is due, as the writer has never ceased to state in the strongest terms, to the haste in which the new penal legislation was put into operation without being preceded by a reorganization of the old offices to meet the new functions, many of which underwent a complete transformation; (e.g. the changeover from segregation in cells to communal life).

11. As to second defect, the exclusively restrained exercise of the ministerial power of rescission may be largely ascribed to the small faith that persists among laymen in the efficiency of any care of mental disease, in spite of the progress that science has made in treatment and in strengthening the conviction that such diseases are just like any ordinary common diseases, born out too in the change of the name of its institutions to "Ospedale Psichiatrico Giudiziario" in place of the old lunatic with the opprobrious epithet of criminal. The old concept of "mens semper amens" still has too strong a hold over the laymen's mind.

12. However the special departments and the early rescission must together be part of the same work. The departments as places where the care may be completed and the patient convalesce, and the rescission to be the final part of that care.

13. There seems no reason why this system should not be extended also to all categories of persons subject to Security measures. Now in the light of Italian experience and that of other nations seems the time when these security measures, which are a most valuable adjunct to modern penal legislation, should be entrusted more to those whose business it is to enquire into the workings of the human mind. The problem of those dangerous to society, and its corollary of the defence of society, comes within this sphere.

14. Recently in Italy many jurists have admitted that the problems arising under the new penal legislation cannot be solved without the assistance of the medical profession. Hence there appear signs of a wedding, medico-jurist, of the parties in the struggle against crime.

15. But to attain our ideals the administrative machine must be overhauled. Today a time of radical revision, in opportune. Any sign of interest on the part of Higher Authority will be received with the utmost gratification by those who work between their ideals of perfection and hard reality.

16. The writer can point out many cases where the rescission of Security Measures, that power assumed, could be well applied.

Gr. Uff. Prof. Filippo Saporito
L'Ispettore Generale Sanitario.

NOTE:

Art. 207 P.C.

"Security measures may not be rescinded if the person subject thereto has not ceased to be a danger to society."

Rescission may not be ordered unless a period of time corresponding to the minimum period established by law for each security measure has elapsed.

Security measures applied by the judge may be rescinded even before the expiration of the minimum period established by law, by decree of the Minister of Justice."

Art. 208 P.C.

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Art. 208 P.C.

"After the lapse of the minimum period established by law for each security measure the judge shall reexamine the person subjected thereto with a view to discovering whether or not he is still a danger to society.

Where it results that such a person is still so dangerous the judge shall fix a new date for a later examination. Nevertheless where there is reason to believe that the danger has ceased the judge may at any time proceed to have the matter enquired into anew."

4030/2

3A

HEADQUARTERS,
REGION 3, ALLIED CONTROL COMMISSION,
APO 394, U.S.Army.

I-8090

22 June 44.

Subject : Proposed reform of prison sentences.

To : CLO, Legal Sub-Commission, ACC.

1. Herewith is sent a letter, dated 15 June 44, reference No.10909, which has been received from the Central Director of the Direzione Centrale Carceri, Naples, together with a letter, dated 2 June 44, from Professor FILIPPO SAPORITO therein referred to. English translations of these letters are also enclosed.

2. This appears to be a matter which should be dealt with by higher authority than this headquarters.

3. The letter from the Central Director has been acknowledged.

For the Regional Commissioner,

G. A. Baniet

G. A. BANIET, Major, G.I.
Deputy Regional Legal Officer.

GAB/

Naples, 15th June 1944

CENTRALE CARCERI
NAPOLI

to Hon.

ENGLISH - AMERICAN H.Q.

Prot. N° 10909

Naples

Subject: Proposal concerning the ministerial revocation
of the safety measures

Accompanied with the english translation, in double copy, I beg to hand over for the measures which that Hon. Command believes to take about, the enclosed proposal made by Prof. FILIPPO SAPORITO about the ministerial revocation of the safety measures on relation with the directions in due time issued by that Hon. Command concerning the right of acquittal on occupied territories.

With the highest consideration,

THE CENTRAL DIRECTOR
(Dr. Ermete Bonomi)



DIREZIONE CENTRALE CARCERI
NAPOLI

Addì, 15 giugno 1944

2A
1944

Prot. n. 10909

Allegati : Vari

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Onorevole

GOLLINO ANGIO - AMERINO

NAPOLI

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Oggetto : Proposta concernente la revoca ministeriale delle misure di sicurezza. -

Corredata delle traduzioni in lingua inglese, redatta in duplice copia, pregioni trasmettere per i provvedimenti che codesto On. Comando crederà di adottare al riguardo, l'unita proposta del Prof. Filippo SAROTTO circa la revoca ministeriale delle misure di sicurezza in relazione alle disposizioni a suo tempo emanate da codesto On. Comando in merito al diritto di assoluzione in territorio occupato.

Con stima.

IL DIRETTORE CENTRALE
(Dott. Ernesto Bonomi)

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 in duplice copia, preghi a trasmettere per i provvedimenti che codesto
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 in relazione alle disposizioni a suo tempo emanate da codesto On. Onorando
 in merito al diritto di assoluzione in territorio occupato.

Con stima.

IL DIRETTORE GENERALE
 (Dott. Ernesto Bonomi)



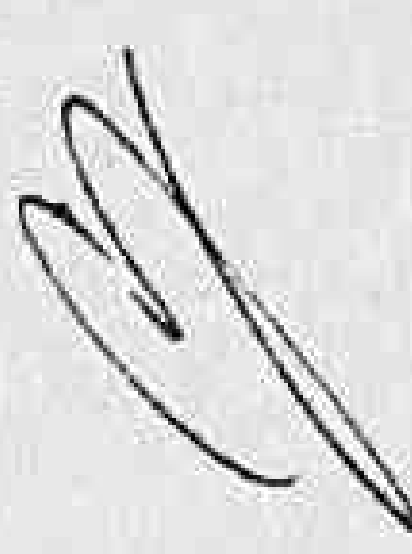
DIREZIONE
 DIREZIONE GENERALE CARCERI
 Piazza A. Fileno
 NAPOLI

1116

corroduta della traduzione in lingua inglese, redatta
in duplice copia, pregarmi trasmettere per i provvedimenti che occorsero
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in merito al diritto di associazione in territorio occupato.

Con stima.

IL DIRETTORE GENERALE
(Dott. Ernesto Bonomi)



REGISTRATO
DIREZIONE GENERALE CARCERI
P. U. 20. 2. 1940
NAPOLI

D I R E C T I O N

of the

LUNATIC-ASYLUM

(Judiciary)

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Prot. 3360 tit. 10 Fasc. I

Aversa, 2nd June 1944

to

CENTRAL PRISONS DIRECTION

N a p l e s
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Subject: Proposal concerning the ministerial revocation of safety measures on connection to the circular letter N°4551 dated 29/2/944 having for subject: "Acquittal right on occupied territories".

To this Direction's attention did not escape the importance of the measure taken by the Allied Military Government, stating, as on circular dated 29th February last, that the sovereign grace office concerning penal sentences, which remained suspended with the other Crown's powers during the occupation, has now been taken upon by the Military Governor.

That importance, believes who is writing the present, does not only stay in the measure's intrinsic value, as it establishes the continuity of an office having a high moral and social significance, innate to the penitentiary Institutes life, but also for the developments of which it is susceptible.

It is to consider the possibility

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English

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At the top of those developments is to consider the possibility of the measure extension to the similar ground of "Safety Measures" and for which same proposal is stated.

It is well known that the sovereign grace finds its correspondent, compared with the safety measures, in the revocation of the said measure, before the time, corresponding to the lowest period established by the law has elapsed (art. 207 u.c.C.P.)

Now, being that measure at the competence of the Ministry of Justice, it seems advisable that this authority should be also taken by the Allied Government during the absence of a Ministry.

In effect, he finds himself on the top of a serie of orders, which whole consists on what can be called, and from several years considered by the undersigned, the standpoint of the awarding side of the penal laws and concerning regulations, destined

to integrate and mitigate, on the executive ground, under the strictly repressive and preventive point of view.

There cannot be anybody not looking to an ideal justice, worth of such a name and considered, specially on his sociological content, residing in the rational use of these two powers.

They are, in fact, those which affirm its efficacy, particularly in the practical and positive government of the Institutions where are collected the people who offended the law, awaiting the treatment the best falling out according to the aim which the law itself assigns to the sentence. All this with the desire that the prisoners when leaving the Institutes will become better than they were at the moment they entered there.

Of course it is understood that among all the powers employed for that difficult job, the rewarding means, cleverly associated and interlaced with punishing means, are in the hands of the penitentiary Manager, two levers, which manoeuvred with ability, will make much easier his duty.

The power of those levers is completely reposed in a main point of the human psychology, individual and collective, which has its sources in the instinctive life: we are talking about the love for liberty, which accompany the men from their ancillary origin and will not leave them for ever and ever, as consubstantial with the life it is unsuppressable as the life itself.

As many other man, and under some point of view, more than every other man, also the prisoner has incoercible yearnings for his own release and does not neglect any means which can drive him to it with a certain advance. Showing him the way to maintain a good behaviour means to influence his good will, polarizing it on those ethical and practical objectives of which he was in want of or were insufficient at the moment he perpetrated the crime.

That means also to fertilize those moral cases, which, knowing how to look for it, will always be found also in the most degraded psyche, in a word that is to call a re-educational work of sure practical results, specially there where it inserts itself in the whole therapeutic work which aim at the healing of the degeneracy

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That means also to fertilize those moral oases, which, knowing how to look for it, will always be found also in the most degraded psyche, in a word that is to call a re-educational work of sure practical results, specially there where it inserts itself in the whole therapeutic work which aim at the healing of the degeneracy organic substratum, for the indissolvable bond which ties the physique to the moral, therefore the conquests following on this ground have as presupposition that improvement action, and are the most salutary complement.

If the rewarding action can lead to such results on the penal execution ground, conceived to exert a moderating action of the punishment, it is to understand to which consequences brings about the latter, where it remains standing, arbitrator to exercise upon the prisoner's soul all the depressing action of which it is able to.

This condition takes a special importance in comparison with lunatic people, and particularly in some kind of illness; it is pos-

sible to affirm that if there would be want of other reasons to introduce into the law the possibility of the anticipated revocation of the safety measure, the special necessities of this category would have been enough.

If, in fact, in comparison of simple delinquents, the principle has an only merely and exclusively re-educational value, as a psychological push to an autogovernment and autocontrol, presupposition of the social new adaptation, for the lunatics of every grade and form, it has a different value connected with the several illness and varying in order of itself development, therefore the necessity to heave in the measure with the clinical occurrences and vicissitudes.

There are, in fact, cases on which the mental illness causing the safety measure, may be to end a long time before the period fixed by the law for the new examination of the social danger of the confined is falling, so this remain standing, nevertheless his contain has been emptied, giving so to the confinement a real arbitrarily character and it may be supposed which terrible evidences that can produce in cases which the detainment reaches 3, 5 and sometimes also 10 years instead of a few months and sometimes a few days of illness which caused the dangerousity of the prisoner.

Who is writing, during the works for the penitentiary reforms, which called the attention of the reformers upon that dissension which established itself between the biological-clinical element and the juridical-administrative one, more considerable as the reformation took as own foundation, besides others, also that to create and armonize those two elements with the aim to overcome on that way, also the dissense between the two schools - the positive and the classic one - which by that time were both contending for the legislative ground.

It was answered that to those inconveniences, in the cases noticed, it would be provided in two different manners: before everything with the creation in the judiciary psychiatric hospitals of special sections, in which could get into the prisoners whose clinical healing happened before the falling of the new examination

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This measure, as it can be seen, in those cases, was loosing much of its formal character and gained the value of a substantial act of justice as it was the only one way which remained open to eliminate the evident hurting of moral and material interests and the health itself of the prisoners, in consequence to the protracted detainment, which lasted more than what necessary and over the aim which the legislator intended to attain.

But the assurance given while the legislative formation was on the way to be worked out have not, until now, been made of prac-

tical efficiency and adequated at the end to which it had to be used fore, as, by one side, the special sections of the judiciary psychical hospitals, so as was longed for could not be formed and on an other way of the ministerial revocation has been made a use too parsimoniousness, and not always inspired to the suggestion of the clinical events in the way above mentioned.

It has to be attributed to a particular success of this Direction for the safety measure abbreviation of some typical cases, adapted for those morbose crimes due to puerperal psychosis, which seems to be the most typical representation of the antagonism between the prompt healing and the too long period of the safety measure, those crimes are included in the chapter 10 of the new code and concerning those committed against the health and integrity of the descent where they are treated with particular rigorosity.

The failed special sections constitution came with the hastiness with which people wanted to experiment the new legislation, which, as the undersigned had occasion to notice opportunely, had to be preceded by a preventive reorganisation and a sufficient equalisation of the old offices to the new one, some of those had such a transformation to appear, under some point of view, so as a overturning of the old one (typical the passage made from the close confinement to the life in common) and all that to avoid, as it could be foreseen, and has already happened for the precedent penitentiary reformation made during 1889-90, that everything finished in the changing of the institutes denominations put on the doors entrance of the establishments.

For the second inconvenience, namely to the limited use of the ministerial revocation, the fault is on the biggest part to lay on the little credit given by the profane men, to the healing of mental diseases, though the progress which the science has made on the therapeutic ground, strengthening always more the opinion of her intimate affinity with common diseases; and a sign of it is the generalized denomination for the institute, which is now instead of the old one of LUNATIC-ASYLUM with his horrible predicate "CRIMINAL" that of JUDICIARY PSYCHIATRIC HOSPITAL. The apophthegm of "amens semper amens" tyrannized still to much the opinion of many people and is not enough permuted and tempered by an other

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Any way the two manners suggested for the healing of the dissonance between biology and right, special sections and anticipated revocations, has not to be intended as opposed or substituted, but as integrative elements one to each other, as two phases of an only one process, as two times of an only one cycle. The special section is to be intended as a place to get into subjects in which the healing can be seen and where the healing may be consolidated and corroborated, giving to it the real value of a convalescentary,

the anticipated revocation as final complement and concluding all the series of prophylactic and assisting measures, of which the administration makes use for a sure action in the part to her reserved in the fight against crime.

And who does not see how in this system and in the corresponding technical apparatus, it would be possible to keep all the lunatics and all the other categories of authors of crimes which enter in the safety measure dominion? Now after about five lustre of experiences made in Italy with the combination of those made by other countries, seems the moment come in which the institute of the safety measure, which represents indeed, one of the most valuable acquisition of the modern penal legislation, has to be entrusted to a more efficient protection of that science which wants to penetrate the mystery of human soul. The problem of social dangerously and the similar one of the social defense enter among those mysteries, they are rather one of the most typical expression, so to justify, still to-day, after millenniums, the cry raised by the psalm: "delicta quis intelligit?" That is a cry which could only very slightly be tempered, from only a few years and only with the biological science work and the sociological one also, from when the delinquent could be submitted of the most detailed examinations of his body and soul, in the great atmosphere of naturalism, started by Charles Darwin and brought to splendid results by the work of Anglo-saxon psychologist and sociologist (Spencer, Bain, Maudsly, James etc. etc.).

In that atmosphere, following the strictest clinical method, no different of that followed by the medical doctor on the sick's bed, many of those which appeared, at one time, as inviolated secrets of spirit have been discovered, and many are those which the science is sure to discover in a near future. From here the significant phenomenon, for which, in Italy in these last months, in order of experiments made, many jurists and the less vincolated and preconceived of the school, are now leaving apriorismes and intrinsigent of earlier time, and are not afraid to state that many problems, in the executive ground, created by the new legislation, on the top of which is the one of the social dangerously, are only of competence of the biologist, or that at

utmost periphery.

On what may consist and in which way such a transformation will be possible is a problem which requires a treatment for itself and the moment would be very well choiced now being the moment yet of remaking all the old social mechanism.

Every sign of agreement for the treatment given by the Superior Authorities, would be heartily received by the few dreamers which since many years are hoping about, while they refine and whet their dreams in the crucible of the daily experience and the test of the concrete reality.

For what is referring to the particular which has given occasion for this notes, it is noticed that if the institute of the revocation or ministerial grace of the safety measure should be also taken, as suggested with this modest proposal, among the measures issued, who is writing would be glad to notice some cases to which the rewarding measure would be, on his opinion, well applied.

THE SANITARY GENERAL INSPECTOR
Signed: Gr. Uff. Prof. Filippo Saporito



DIREZIONE
DEL
MANICOMIO GIUDIZIARIO

GABINETTO

Prot. n° 3360 Tit. IO Fasc. I

Aversa, 2 giugno 1944

ALLA

DIREZIONE CENTRALE CARCERI
N A P O L I

OGGETTO: Proposta concernente la revoca ministeriale delle misure di sicurezza in relazione alla circolare 29/2/44 n° 4551 all'oggetto "Diritto di assoluzione in territorio occupato".

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4/4
Non é sfuggita a questa Direzione l'importanza del provvedimento adottato dal Governo Alleato, di cui nella circolare 29 febbraio u.s., secondo il quale l'esercizio della grazia sovrana in materia di condanne penali, rimasto sospeso insieme agli altri poteri della Corona, durante l'occupazione, viene assunto dal Governatore Militare.

Tale importanza, a parere di chi scrive, risiede non solo nel valore intrinseco del provvedimento, in quanto stabilisce la continuità di una funzione di alto significato morale e sociale, insito alla vita degli Istituti Penitenziari, ma sibbene anche per gli sviluppi di cui é suscettibile. Al culmine di questi sviluppi é da consi-

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derare la possibile estensione del provvedimento al campo affine delle misure di sicurezza e per cui si prospetta analoga proposta.

E' risaputo, infatti, che l'istituto della grazia sovrana trova il suo corrispettivo, in ordine alle misure di sicurezza, nella revoca della misura, prima che sia decorso il tempo corrispondente alla durata minima stabilito dalla legge (art. 207 u.c.C.P.). Ora essendo questo provvedimento di competenza del Ministro della Giustizia, sembrerebbe opportuno che questo potere sia assunto anch'esso dalla Autorità Alleata, nella assenza del Ministero.

Esso, infatti, si trova al vertice di una serie di disposizioni, il cui complesso costituisce quello che si può dire, e già da anni considerato da chi scrive, come l'aspetto premiale delle leggi penali e relativa regolamentazione, destinato ad integrare ed a temperarne, nel campo della esecuzione, l'aspetto strettamente repressivo e preventivo, e non è chi non veda come una giustizia ideale, degna di tal nome e considerata, specialmente, nel suo vivo contenuto sociologico, non possa non risiedere nel razionale uso di quelle due forze.

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Sono esse, infatti, che affermano la loro efficacia, soprattutto nel governo pratico e concreto della vita degli Istituti ove si adunano le varie masse di offensori della legge, in attesa di subirvi quel trattamento che meglio risponda ai fini che la legge stessa assegna alla pena, culminante nell'aspirazione che i colpiti, nell'atto di lasciare gli Istituti che li ospitarono, diventino migliori di quel che erano nell'atto in cui ne varcarono le porte. Si comprende di leggieri come, nel giuoco delle tante forze che devono essere rivolte a quel difficile compito, i mezzi premiali, sagacemente associati ed intrecciati ai mezzi punitivi, costituiscano, nelle mani del penitenziarista, due leve, che, abilmente manovrate, ne facilitano non poco l'opera.

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La potenza di queste leve è tutta riposta in un dato fondamentale della psicologia umana, individuale e collettiva, che ha le sue radici nella vita istintiva; alludiamo a quell'amore per la libertà, che accompagna l'uomo dalle sue origini ancestrali e lo accompagnerà fino alla consumazione dei secoli, perché, consustanziato con la vita, è insopprimibile come la

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vita stessa.

Come ogni altro uomo, e; sotto certi aspetti, più che qualunque altro uomo, anche il prigioniero ha i suoi aneliti incoercibili per la propria liberazione e non trascura alcun mezzo che ad essa possa condurlo con una certa anticipazione. Additargliene la via nei buoni orientamenti della sua condotta vuol dire potenziarne i poteri volitivi, polarizzandoli verso quegli obiettivi etici e prassici che difettarono del tutto o si rivelarono insufficienti nel momento della caduta nel delitto; e vuol dire anche fecondare quelle oasi morali, che, a saperle ricercare, sempre si rinvencono anche nella psiche più degradata dal punto di vista delle carenze dei sentimenti che stanno a base della civile convivenza; vuol dire, in una parola, compiere opera rieducativa di sicuri effetti pratici, specie laddove essa viene ad inserirsi nel complesso di quelle opere terapeutiche che tendono a risanare il sostrato organico della degenerazione, per il vincolo indissolubile che lega il fisico al morale, onde le conquiste perseguibili in questo campo hanno come presupposto quell'azione bonificatrice e ne sono il più salutare complemento.

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Se a tali risultati può condurre l'azione premiale, sul terreno della esecuzione penale, intesa quale elemento moderatore della azione punitiva, si comprende a quali conseguenze possa condurre quest'ultima, laddove essa rimanga sola in piedi, arbitra di esercitare, sull'animo del detenuto, tutta l'azione deprimente di cui è capace. Questa condizione assume una particolare importanza nei confronti dei malati di mente e specialmente per talune forme di malattie; si può, anzi, affermare che, se altre ragioni fossero mancate per introdurre nella legge la possibilità della revoca anticipata della misura di sicurezza, sarebbero bastate le speciali esigenze di questa categoria di colpiti. Se, infatti, nei confronti dei semplici delinquenti, il principio ha valore puramente ed esclusivamente educativo, quale spinta psicologica all'autogoverno ed all'autocontrollo, presupposti del riadattamento sociale, per gli infermi di mente di ogni grado e di ogni forma, esso ha un valore diverso, connesso con le singole malattie e variabili a norma degli sviluppi delle medesime, onde la necessità di ingranare il provvedimento con gli eventi e le vicende cliniche.

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Vi sono, infatti, dei casi in cui la malattia mentale, dante causa alla misura di sicurezza, può cessare molto prima che scada il termine fissato dalla legge per riesame della pericolosità sociale dei colpiti, sicché questa rimane in piedi, malgrado che si sia svuotata del suo legittimo contenuto, dando così allo stato detentivo carattere di vera arbitrarietà. E si può immaginare come questa arbitrarietà assuma sinistri risalti nei casi in cui la durata della detenzione tocca la ragguardevole cifra di 3, di 5 e perfino 10 anni, nei confronti dei pochi mesi, e talvolta perfino dei giorni, di durata della malattia, generatrice della pericolosità.

3 Non mancò chi scrive, durante i lavori per la riforma penitenziaria, di richiamare l'attenzione dei riformatori su questo dissidio che veniva a stabilirsi tra l'elemento biologico-clinico e l'elemento giuridico-amministrativo, tanto più rilevabile per quanto la riforma aveva assunto come proprio fondamento, tra l'altro, anche quello di conciliare ed armonizzare quei due elementi col proposito di superare, a tal modo, anche il dissidio tra le due scuole - la positiva e la classica - che, a quel tempo, si contendevano il campo della legislazione. Fu risposto che a quegli inconvenienti, nei casi segnalati,

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si sarebbe provveduto in due modi: innanzi tutto con la creazione, negli ospedali psichiatrici giudiziari, di reparti speciali, nei quali potevano essere raccolti coloro dei quali la guarigione clinica erasi verificata prima del termine pel riesame, ponendoli, così, in condizioni di poter adottare, nei loro riguardi, i criteri di governo consoni al loro nuovo stato; in ogni caso, poi, si sarebbe fatto uso della revoca ministeriale della misura di sicurezza.

Questo provvedimento, come si vede, in questi casi, perdeva molto del suo carattere formale di grazia ed acquistava il valore di un sostanziale atto di giustizia, in quanto che era la sola via che rimaneva aperta per eliminare la evidente lesione di interessi morali e materiali e della salute stessa dei colpiti, conseguenziali della detenzione protratta oltre il necessario, al di là dei fini voluti dal legislatore.

8 Senonché, le assicurazioni date durante il travaglio della formazione legislativa non si sono, finora, tradotte in fatti di efficacia pratica ed adeguata al fine cui erano rivolte, perché, da una parte, i reparti speciali degli ospedali psichiatrici giudiziari, così come erano stati vagheggiati, non hanno finora potuto essere costituiti, e, da altra parte, dell'istituto della revoca ministeriale delle misura di si

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curezza si é fatto sempre un uso proprio parsimonioso, né sempre ispirato ai suggerimenti emananti dagli eventi clinici nel senso suindicato.

Si devono attribuire ad un particolare successo di questa Direzione alcuni tipici casi di sensibili abbreviazioni della misura di sicurezza, applicata per quei reati morbosi dovuti a quelle psicosi puerperali, che sembrano la più tipica rappresentazione dell'antagonismo tra la pronta guarigione e la proprio lunga durata della misura di sicurezza, essendo essi compresi in quel titolo X° dei delitti contro la sanità ed integrità della stirpe, che il nuovo codice penale ha trattato con particolare severità.

7 La mancata costituzione dei reparti speciali derivò dalla fretta con cui si volle avventurare verso l'esecuzione la nuova legislazione penale, la quale, come non aveva mancato di avvertire tempestivamente chi scrive, avrebbe dovuta essere preceduta da un preventivo riordinamento e da un sufficiente adeguamento dei vecchi organi alle nuove funzioni, alcune delle quali avevano subito una trasformazione così radicale da apparire, almeno sotto certi aspetti, addirittura, come un capovolgimento delle antiche (tipico il passaggio dal regime di

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segregazione cellulare a quello della vita in comune) e ciò per evitare, come era stato anche previsto e come già era avvenuto per la precedente riforma penitenziaria del 1889-90, che tutto si risolvesse nella lustra di un cambiamento delle leggende rappresentative delle denominazioni degli Istituti sulla loro porta d'ingresso.

Quanto al secondo difetto, e cioè all'uso eccessivamente ristretto della revoca ministeriale, esso va ascritto, in gran parte, alla poca fede che riscuote, presso i profani, la guarigione delle malattie mentali, malgrado i progressi che la scienza ha conseguito nel campo della terapia, avvalorando, ogni dì più il concetto della loro intima affinità con le malattie comuni; e ne è indice la denominazione, ormai generalizzata per l'Istituto, in cui la cura si compie, di Ospedale psichiatrico giudiziario, in luogo di quella antica e sorpassata di Manicomio col suo ripugnante predicato di criminale, cui ineriva un certo senso di fatalità e di inesorabilità. L'apoteigma dell'amens semper amens tiranneggia ancor troppo la opinione dei più e non è ancora abbastanza permeato e temperato da un altro messaggio della scienza e dell'esperienza, che esso ha fondamento di ve

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rità solo in certo settore, il quale é poi uno dei meno estesi del vasto campo della psichiatria; un settore che la psichiatria stessa deve potere individuare e che, quindi, non può sfuggire al controllo tecnico sia periferico che centrale.

Comunque, i due mezzi suggeriti a sanare il dissidio tra la biologia e il diritto, reparti speciali e revoche anticipate, non devono intendersi come contrapposti o sostitutivi, bensì come elementi integrativi l'uno dell'altro, come due fasi di un unico processo, come due tempi di un medesimo ciclo. Il reparto speciale va, infatti, inteso come luogo di adunata per soggetti nei quali si sia delineata la guarigione clinica e dove la guarigione possa essere convalidata e corroborata, conferendo ad esso il valore di vero convalescenziario; la revoca anticipata come complemento finale e conclusivo di tutta la serie di adempimenti profilattici ed assistenziali, di cui l'Amministrazione si avvale per una retta e più sicura azione, nella parte ad essa riservata per la lotta contro il delitto.

E chi non vede, come, in questo sistema e nei corrispondenti apparati tecnici, si possa aspirare ad inquadrare non soltanto gli infermi di mente ma tutte le categorie di autori di delitti che entrano nel dominio delle misure di

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sicurezza,⁹ Oramai, dopo circa tre lustri di esperienze compiute in Italia, in concorso di quelle compiute in altre Nazioni, sembra essere giunto il momento in cui l'istituto delle misure di sicurezza, il quale rappresenta, senza dubbio, una delle più preziose acquisizioni della moderna legislazione penale, debba essere affidato ad un più efficace patrocinio di quella scienza che aspira a penetrare i misteri dell'animo umano. Il problema della pericolosità sociale e quello correlativo della difesa sociale, entrano nel novero di quei misteri, ne sono, anzi, una delle più tipiche espressioni, tanto da giustificare, ancor oggi, dopo molti millenni, il grido lanciato dal salmo: "delicta quis intelligit?" E' un grido che ha potuto essere appena appena temperato, da pochi decenni e solo ad opera delle scienze biologiche e sociologiche, da quando, cioè, il delinquente ha potuto essere sottoposto ai più minuti scandagli del suo corpo e della sua anima, nella grande atmosfera del naturalismo, inaugurato da Carlo Darwin e condotto a meravigliosi sviluppi soprattutto per opera di psicologi e sociologi anglosassoni (Spencer, Bain, Maudsly, James etc.)

In questa atmosfera, sulla scorta del più rigido metodo clinico, per nulla dissimile da quello che segue il medico al letto dell'ammalato, molti di quelli che apparivano, un tempo, come segreti

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inviolabili dello spirito sono stati penetra-
ti, né pochi sono quelli che la scienza promet-
te ancora di penetrare. Di qui il fenomeno, ab-
bestanza significativo, per il quale, in questi
ultimi mesi, in Italia, in seguito degli espe-
rimenti compiuti, molti giuristi e i meno vin-
colati ^{preconcetti} di scuola, abbandonando ~~gli~~
apriorismi e intransigenza dei primi tempi, non
si peritano di affermare che non pochi dei pro-
blemi, nel campo della esecuzione, creati dalla
nuova legislazione, in cima ai quali trovansi quel-
lo della pericolosità sociale, siano di pretta
competenza del biologo o che, per lo meno, fonda-
mentalmente non possono essere avviati a razio-
nali e fruttuose soluzioni se non mediante la
duplice azione del biologo e del giudice, in
piena solidarietà di intenti, nel più intimo
connubio tra la scienza e il diritto. In questo
binomio "giudice-biologo" è tempo, oramai, che
si incardini solidamente la lotta contro il de-
litto, in tutte le sue fasi e in tutti i suoi
aspetti.

Ma per raggiungere questo seducente i-
deale, la cui importanza sociale non può sfug-
gire ad alcuno, è necessario che la grande mac-
china amministrativa, che regola la raccolta e
il governo degli uomini, intorno ai quali quei

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problemi si accendono, trasformi radicalmente i suoi congegni, in modo da assicurare l'armonico funzionamento dei due termini di quel binomio, nella mutualità della loro rispettiva azione, senza discontinuità di sorta dal centro fino all'estrema periferia.

In che cosa possa consistere e in che modo siffatta trasformazione del mondo e della Amministrazione carceraria possa compiersi è problema che esigerebbe una trattazione a sé, e bene se ne avviserebbe la opportunità, in quest'ora di radicali revisioni e rifacimenti dei vecchi meccanismi sociali. Ogni segno di gradimento della trattazione, da parte delle Superiori Autorità, sarebbe accolto con vera esultanza da parte dei pochi sognatori che da lustri sperano, mentre affinano e perfezionano i loro sogni nel crogiuolo della quotidiana esperienza e nei cimenti della concreta realtà.

2 Per quanto si riferisce al particolare che ha dato luogo a questi accenni, si avverte che, qualora l'istituto della revoca o grazia ministeriale della misura di sicurezza venisse anche assunto, secondo questa modesta proposta, fra i provvedimenti emanati, non mancherebbe chi scrive di segnalare qualche caso a cui quel provvedimento premiale andrebbe, a suo avviso, bene applicato.

L'ISPETTORE GENERALE SANITARIO
(Gr. Uff. Prof. Filippo Saporito)

