



## Forensic psychiatry and the birth of the criminal insane asylum in modern Italy



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### ABSTRACT

This paper focuses on the creation of the criminal insane asylum in Italy between unification in 1861 and World War I. The establishment of criminal insane asylums was a triumph of the positivist criminology of Cesare Lombroso, who advocated for an institution to intern insane criminals in his classic work, *Criminal Man* (1876). As a context for the analysis of the birth of the criminal insane asylum in Italy, this essay also outlines the history of the insanity plea in Italian criminal law and the young discipline of psychiatry during the fifty years after Italian unification.

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### 1. Introduction

On May 8, 1924, the internationally renowned criminologist Enrico Ferri brought a group of students from the University of Rome to visit the criminal insane asylum of Aversa outside of Naples. According to the report on his visit sent by the director of the asylum, Filippo Saporito, to the Ministry of Justice, Ferri and his students were first taken “to observe the spectacle of a large number of patients of every legal category and of the most varied psychological types—from apparently healthy to mentally ill—involved in work that was useful both to them and to the prison administration.”<sup>2</sup> The visitors then toured the entire institution, stopping periodically to discuss specific patients and “their psychopathologies as revealed by their rooms, their clothing, and their manual and intellectual pastimes” as well as to see the “scientific laboratories” for the clinical study of these same patients. At the end of his visit, Ferri signed the required register and noted the great progress of the criminal insane asylum of Aversa toward reconciling “the need for social defense with that for human compassion.”<sup>3</sup> The Director proudly attached a copy of these favorable comments to his report to the Ministry of Justice as well as an article from a Neapolitan newspaper on Ferri’s visit. According to the newspaper, Ferri lectured during the tour of Aversa on “the concepts and postulates of the positivist school [of criminology]” and declared himself “delighted to see, in the evening

of his life, the germination of the seeds of his ideas and the affirmation of his theories and his methods.”<sup>4</sup>

As this anecdote demonstrates, the history of forensic psychiatry in Italy cannot be written without placing at its center the Positivist School of Criminology, which was presided over by the towering figure of Cesare Lombroso flanked by his two most illustrious followers, Ferri and Raffaele Garofalo (Frigessi, 1985; Gibson, 2002; Villa, 1985). Although Lombroso exaggerated when he claimed, in the preface to the second edition of his classic text *Criminal Man*, that he had been the first to apply scientific methods to the field of psychiatry, he nevertheless set the terms of debate about the role of forensic psychiatry in Italian law, courtrooms, and mental hospitals during the late nineteenth and much of the twentieth century (Lombroso, 2006, pp. 99–100). His prestige was so great, his writings so voluminous, and his efforts to institutionalize his ideas so tireless that psychiatrists and jurists during his lifetime had to proclaim an allegiance to either the traditional “classical school” of penology, which traced its roots back to the Enlightenment thought of Cesare Beccaria, or to the “positivist school” of Lombrosian criminology. Arguing that Beccaria’s philosophical defense of free will was outdated, Lombroso instead pointed to the central role of biological determinism in criminal behavior. By counting the physical and psychological anomalies that were thought to constitute signs of atavism and degeneracy, criminologists could now turn their field into an empirical, statistical science. After Lombroso’s death in 1909, lines began to blur between the two schools but many of his ideas were

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<sup>2</sup> Archivio Centrale dello Stato (ACS), Ministero di Grazia e Giustizia (MG&G), Direzione Generale (DG) Istituti di Prevenzione e Pena, Archivio generale, Atti amministrativi, 1924–25, busta 974.

<sup>3</sup> ACS, MG&G, DG Istituti di Prevenzione e Pena, Archivio generale, Atti amministrativi, 1924–25, busta 974.

<sup>4</sup> ACS, MG&G, DG Istituti di Prevenzione e Pena, Archivio generale, Atti amministrativi, 1924–25, busta 974. The article, titled “L’on Ferri ad Aversa con gli studenti della Scuola d’applicazione giuridico-criminale,” was published in the prominent Neapolitan newspaper *Roma* on May 11, 1924. For another positive evaluation of Aversa from the same period, see Rusticucci, 1918.

redeployed by fascist administrators under new names and for purposes that he might not have approved. Only after World War II was the biological character of Italian psychiatry successfully challenged, although some remnants of positivism remain even in current criminal law.

Despite Lombroso's fame as the "maestro" of the positivist school, which was proudly labeled the "Italian school" in his native country, his theories did not go unchallenged and therefore shaped only certain policies toward the identification and treatment of insane defendants in criminal courts. The majority of Italian judges and jurists have always remained loyal to the classical school, which taught that criminals break the social contract out of free will and therefore deserve punishment. This principle underlay the legal definitions of insanity in the penal codes of liberal and fascist Italy, although it was attenuated under the Rocco Code of 1930, which is still in effect. The influence of the positivist school was strongest in two other areas: the re-definition of the insane criminal as an individual marred by constitutional or degenerate physical and psychological abnormalities; and the shaping of a new institution, the criminal insane asylum (*manicomio criminale*) for the treatment of mentally ill criminals.

In addition to the rift between the classical and positivist schools, the Italian history of forensic psychiatry is also complicated by the diversity of the large group of doctors, lawyers, sociologists, and criminologists who identified themselves as disciples of Lombroso. On the one hand, the strength of the positivist school came from its size; for example, Lombroso listed 68 collaborators in the first issue of his journal, *Archives of Psychiatry, Criminal Anthropology, and Penal Sciences*, in 1880, a number that climbed to 107 ten years later.<sup>5</sup> Such a large group was able to extend its tentacles, and therefore Lombroso's ideas, into many areas of Italian public life as it included administrators of police, prisons, mental hospitals as well as lawyers, jurists, and members of parliament. On the other hand, most adherents to positivism never followed Lombroso blindly, but critiqued certain aspects of his thought or developed new branches of it after his death. Thus it is misleading to represent positivism as a unitary school identified solely with Lombroso or to label Italian psychiatry in general as narrowly Lombrosian. But because of his preoccupation with crime—both as a theoretician and as a prison doctor—Lombroso dominated the development of specifically forensic psychiatry during the liberal period following Italian unification in 1861, and his followers remained in positions of power under fascism.

This article focuses on the clearest triumph for positivism in the field of forensic psychiatry between Italian unification and World War I: the creation of the criminal insane asylum. Strengthened and expanded under fascism, this institution outlived the famous and radical "Basaglia law" in 1978, which ordered the closure of all "civil" mental institutions in Italy.<sup>6</sup> Yet criminal insane asylums—now called "judicial psychiatric hospitals" (*ospedali psichiatrici giudiziari* or OPG)—have continued to operate into the twenty-first century, still under the jurisdiction of the prison administration. Only in 2012 did parliament finally pass a law to close the OPGs within a year and replace them with some type of medical unit whose form has not yet been specified.<sup>7</sup> As context for this analysis of the birth of the criminal insane asylum, the first two sections of this paper outline the history of criminal law and the young discipline of psychiatry during the first fifty years of Italian unification.

<sup>5</sup> Some of these were foreign scholars, showing Lombroso's international reputation. The *Archives* changed its title periodically, at times substituting neuropathology and/or legal medicine for penal sciences. "Psychiatry" and "criminal anthropology" remained constant in its title, showing their centrality to Lombroso's enterprise.

<sup>6</sup> "Civil" asylums, also called "common" asylums, are regular mental hospitals in which patients are admitted under civil law or voluntarily. The "Basaglia law" is the popular label for the Legge 13 maggio 1978, n.180, which was the result of a long and passionate campaign by the psychiatrist and asylum director, Franco Basaglia.

<sup>7</sup> Art. 3-ter of Decreto Legge 22 dicembre 2011, n. 211 confirmed by Legge 17 febbraio 2012, n. 9. The new law does not clearly indicate what type of institution will replace the OPGs. For the text of these two laws, see <http://www.sanita.ilsolo24ore.com/Sanita/Archivio/Normativa%20e%20varie/LEGGE%20CARCERI%20CON%20OPG.pdf?cmd=art&codid=26.1.61982420> (accessed July 15, 2012).

Next, a legislative history of the establishment of the earliest criminal insane asylums is followed by a social portrait of their inmates and their daily experience. Born out of an impulse to both discipline and cure, these new institutions embodied the contradictory nature of positivist psychiatry. Before World War I, the humanitarianism of early psychiatrists and the liberalism of the parliamentary regime tempered their potential for abuse. Under fascism, the regime introduced "security measures" against "dangerous" persons and the institutionalization of ever wider sectors of the population, including the mentally ill, in the name of social defense. These repressive policies survived the founding of the Italian Republic in 1946 and have still not been fully dismantled today.

## 2. Criminal law and the insanity plea

According to Vincenzo Manzini, the author of an authoritative and much reprinted textbook on criminal law, the traditions of both Canon law and the statutes of the medieval Italian states recognized insanity as an impediment to punishment as early as the thirteenth century. He thus pronounced early Italian law to have been superior to that of Germany, which was "crude" in its refusal take mental condition into account in legal proceedings (Manzini, 1981, v. 2, p. 112). However, medieval and early modern courts often failed to enforce this legal exemption from punishment for the insane, with witches constituting the prime example in the writings of nineteenth-century liberal jurists bemoaning past legal injustices. After the defeat of Napoleon in 1815, many of the restoration states in Italy, most notably the Kingdom of Piedmont, retained some version of Article 64 of the French Penal Code (1810), which absolved defendants who, at the time of their crime, were insane or compelled by an irresistible force.

After unification in 1861, the Italian parliament passed no new criminal code until 1889, thus failing to set clear and unified judicial guidelines across the peninsula. The main stumbling block to parliamentary action was a sharp debate over the death penalty, but the question of legal responsibility was also divisive. Thus, until 1889, two different criminal codes co-existed within the new nation: the Piedmontese code of 1859 and the Tuscan code of 1853. The former was extended to the majority of provinces as they were liberated and voted to put themselves under the rule of King Victor Emanuel II of Piedmont. Only the region of Tuscany held out against this process of "piedmontization" because local statesmen contended that their penal legislation, which had abolished capital punishment, was more progressive and therefore superior to that of Piedmont. Both codes included extenuated punishment for the insane, but on different grounds. According to Article 94 of the Piedmontese code, "no crime exists if the accused was in the condition of absolute imbecility, insanity, or morbid fury when he committed the act or if it is a question of a force which he could not resist" (*Codice Penale per gli Stati di S. M il Re di Sardegna*, 1882, p. 37). Article 34 of the Tuscan code was simpler, shielding from indictment anyone who had acted without "consciousness of his acts or freedom of choice" (Miletti, 2007, p. 323).

For almost thirty years, until the passage of the so-called Zanardelli Code in 1889, lawyers and psychiatrists argued over the merits of each definition and the appropriate wording for a new national definition of legal responsibility. To a great extent, the participants in this debate broke down into two factions: those who upheld the traditional eighteenth-century principles of the "classical school," which stressed the centrality of free will, and those who supported the new "positivist school" that traced the etiology of serious crime to biological and psychological determinism. The classical school was composed predominantly of lawyers, most notably Francesco Carrara, Luigi Lucchini and Enrico Pessina, who accepted the need to exempt the insane from indictment, but believed that judges should retain control of such decisions. The positivist response came mostly from psychiatrists, led by Lombroso and Augusto Tamburini joined by jurists such as Ferri and Garofalo. They supported a medical definition of assessing legal

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