The Right to Educational Compensation of the Prisoners in the Italian System

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Abstract

Starting from the principle of re-education of inmates as stated in the Italian Constitution (article 27, paragraph 3) the essay wants to reflect on the meaning of “educational compensation”. The research method is based on the consultation and analysis of several pedagogical and legal documents, mainly from the Italian context. As a result the essay poses evidence to the involvement of the society as a whole in the “educational compensation” processes that take place within and outside prison, mostly in informal and embedded modes.

Keywords: learning city, transformative learning, learning organisation, educational compensation, embedded learning, adverse learning actions

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Introduction

In this paper we aim to analyse the pedagogical dimension of the re-education principle of punishment in the Italian legal system, governed by national and supranational law, in consideration of the prison context and its function in terms of preventing criminal acts and abating/reducing recidivism. We will therefore refer to the re-education function of the conviction solely in the phase of imprisonment.

At the time of writing, the Italian prison system is undergoing a reform: starting from the activation of the General States of the imprisonment (2015), the reform process has seen the approval of a decree-law (2017) which is being followed by the implementing decrees. In this text we will refer mainly to the Italian Prison Code (1975) and to some changes set forth by law.

The re-education principle, cautiously applied by the Italian constitutional jurisprudence for several decades in favour of the retribution and prevention functions (in its general and special dimensions), has seen increasing levels of promotion, until it became qualified as the main and indispensable purpose of the sentence. The question we intend to investigate is the meaning of the re-education of the convicted individual, respecting the right to the education of each individual - convicted or not - also within "training in which his personality develops" (Art. 2 of the Italian Constitution) - and going beyond repressive models and the temporary incapacitation of prisoners\(^\text{13}\).

When we speak of the (re-)education function of the punishment, from a pedagogical point of view we refer to the set of learning actions - formal, non-formal and informal - that take place inside and outside prison and that intercept the educational valencies of every moment of prison life. We think in other terms of the Bildung, the comprehensive human education of individuals aimed at a re-education in being a citizen with a reflective and transformative view. In the prison Bildung there is, indeed, the whole of the single components of the treatment programme (school, vocational training, workshops, work, the cultivation of spiritual activities, etc.), however there is much more. The entire period of punishment must aim to stimulate in the inmate processes of reflection on his actions and their meaning, from a past and future perspective, as well as processes of individual development transformation.

In this essay we will take on a deliberately legal and pedagogical approach, trying to analyse the educational dimension of the punishment also through the use of approaches and systems related to the judicial disciplines. We believe this approach can contribute on the one hand to reaffirm the learning valencies of the time of incarceration as a whole, from a rehabilitative and inclusive perspective, and on the other hand to reflect on the social responsibilities towards the incarcerated population (before and during the imprisonment).

\(^{13}\) According to these models, the task of the penal system is to prevent people convicted or at risk of conviction from harming society again, without any reference to their re-education.
The concept of educational compensation of the prisoners

The need to re-educate subjects who have violated norms of social behaviour is linked to the occurrence of an "educational harm" suffered by them before the incarceration (we refer to "adverse learning actions", Federighi, 2016), at the root of the fracture with civil society, and accentuated during the period of incarceration.

Educational impairment is associated with the development of learning disorders, which accentuate in the individual the propensity to commit antisocial and criminal acts (Brier, 1989; Bryan et al., 1982), poor autonomy of action and thought, linguistic and mathematical deficit (Brier, 1989), communication difficulties (Schumaker et al., 1982; Hazel and Schumaker, 1988).

When the educational harm occurs, we suggest that the person who suffers it should be recognized a right to educational compensation (following the logic of civil law) or the right to see compensated the harm suffered as a result of the violation of a previous contract or obligation\textsuperscript{14}, or of an unjust harm\textsuperscript{15}.

If we try to interpret the legal/compensatory framework in a pedagogical dimension, we interpret the category of the compensation from an educational point of view. The right to educational compensation arises and must be recognized to the convicted person by virtue of a close etiological link between two important elements. On the one hand there are the shortcomings (scholastic, educational, family, etc.) of society against him, guilty of not having contributed to creating, through adequate educational actions and with diligence, prudence and skill, honest and virtuous citizens, and on the other hand having been guilty, violator of rules of civil coexistence due to the lack and/or inadequate education to life in the polis, without denying the intentionality of certain choices of action, poorly guided or oriented. The harm also continues to be accentuated in the prison institution, to the extent that all the conditions for rehabilitation and rehabilitation of the harmed person are not in place, relying on available components, devices and resources.

Please note that we refer this construct not only to "street" crime (Carnevale, 2015:109), in which there is an evident lack of guiding values in the construction of one's life in relation to that of others and in the respect of ethical and social values, but also to many areas of illicit behaviour, barely related to situations of maladjustment and social dangerousness (we refer to illegal behaviours against the Public Administration, of a tax nature, etc.).

\textsuperscript{14}This is a contractual responsibility (regulated in Italy by Articles 1218 et seq of the Civil Code).

\textsuperscript{15}This is a non-contractual or aquilian responsibility (regulated in Italy by Articles 2043 et seq. of the Civil Code): the harm is unjust because of someone's malicious or negligent act. The fact is negligent (according to the legal references) if caused by negligence, imprudence or inexperience.
The "service" (as many erroneously perceive it, according to the positivistic conception of the crime) (Carnevale, 2015:109) that prison operators provide to prisoners, who are considered problematic, disadvantaged, fragile subjects, takes, in this perspective, the form of an "obligation" to design and implement measures of recovery, rehabilitation and growth to reconstitute the correct mutual obligation in the relationship between prisoner and prison institution, which represents the society that failed him.

With this in mind we aim to read and study the subjective position of the prisoner (convicted, awaiting sentencing, subjected to precautionary custody in prison), who must be recognized the right to be (re-)educated in relation to the fact committed and to being civis in general, but also with regard to the possibility of constructing on his own, within the prison, a path of constructing meaning, of acquisition, growth and development, to be applied on the outside once the sentence has been expiated.

**The interpretative question of the re-education principle of the prison treatment from a pedagogical perspective**

Studying education and training in prisons poses a strong pedagogical problem that highlights a deep distance between individual and collective behaviours desired in the prison context and behaviours actually practiced there.

This is not the place to revisit the well-known theories on the function of punishment (retribution and general and special prevention). Instead, we would like to try to understand its pedagogical purpose, also in view of an organic reform of the Italian system of sanctions currently under way. In other words, we would like to try to reinterpret the treatment logic adopted by the Italian legislator in 1975 and the reforming one.

It is the dichotomy between punishing (even with the use of violence) and educating, between the exercise of a coercive force that risks de-educating in regards to "justice", "legality", respect for values and constitutive principles of a democratic society and a state of law, and the practice of a spontaneous and conscious adherence to a reconstruction path of personal and professional life within the punitive context. From a pedagogical perspective, the question to be answered is how to make the period of punishment educational without reducing it to a mere moment of neutralization, segregation, idle parking and incapacitating of those who suffer it.

We analyse this problem considering the retribution paradigm of a criminal penalty, still largely underlying the criminal systems\(^\text{16}\)mitigated, however, by re-education and rehabilitation approaches (which the practice of criminal law is still struggling to

\(^{16}\)The commission of serious and alarming crimes triggers, today as in the past, not only in the victims but also and especially in the community feelings of aggression and frustration that turn into emotional needs for punishment. This is an unequivocal sign of a "rooted persistence of a retribution mentality" (Fiandaca, 1991:46; Mazzucato, 2010:121), recognizable in ordinary people and in judicial practice itself.
implement, to the detriment of the social and human costs that the penalty entails, primarily in terms of social exclusion, e.g. Pavarini, 2006). Retracing ancient conceptions (Foucault, 1976), the penalty is used to "punish" those who have caused an evil with their illicit actions, violating rules to protect human rights and civil coexistence (legal theory). Those who make mistakes first of all pay: the penalty is an evil, a suffering that serves to reciprocate the harm done by committing a crime. It expresses an exchange, the idea of a consideration, a remuneration, a retribution, unrelated to any purpose to be achieved. We refer to the "gallows culture" of Massimo Pavarini, which opposes the crime to the punishment. It is the principle of absolute justice, which nevertheless forgets the co-responsibility of society in the genesis of the crime, disinterested in the future of the individual inmate. The root problem also emerges from the very qualification of the punishment, from "poena", i.e. suffering and strain to be inflicted on the offender in response to the criminal offences committed by him. This evokes, from a historical point of view, capital or corporal punishment and imprisonment.

In the modern landscape, the retribution idea loses autonomy. Taking up the perspective of Cesare Beccaria, it implies the personality, the determinateness, the proportionality and the unavoidability of the sentence. The basic sanctioning model is therefore such that the negativity of the unlawful act (crime) can only be answered by a reaction of the same nature, i.e. by applying a negative reaction against the offender, reproducing it with the same severity according to a requirement of proportionality (Fiandaca-Musco, 2009:704). Personality and proportionality of punishment assume a central position in the rehabilitation with the function of special prevention: the more the recipient is aware of the criminal action committed the more he feels the sanction imposed as right and proportionate and reinforces his intent of educational redemption. Punishment, in other words, even if deserved (where it really is), must tend to re-educate the inmate so that he will avoid future crimes. The Italian Constitution of 1948 states it: "Punishments must not consist of treatments contrary to the sense of humanity and must aim at the rehabilitation of the convicted" (Article 27 paragraph 3). In a famous ruling, the Italian Constitutional Court also strengthened its meaning and value, requiring the legislator to "keep in mind not only the rehabilitative purposes of the sentence, but also to prepare all the appropriate means to achieve them and the forms suitable to guarantee them" (ruling of the Constitutional Court no.204 of 1974). The means and the forms are, from a pedagogical point of view, the devices that accompany the learning actions in the prison.

So we repeat the dichotomy we mentioned earlier, which highlights the need to build an educational climate within which the punishment, "humanly understood and applied" (ruling of the Constitutional Court no.12 of 1966), must be placed to be able to re-educate the individual and transform his behaviours. Humanity and re-educational nature of the punishment complete each other, offering a solid reconstruction of the

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17 The literature on the subject of justifying theories of punishment is significant and vast, and crosses over into different disciplinary fields, such as the judicial/penal, criminological, philosophical, psychological and theological.
social bond broken by the commission of the crime and, from a pedagogical perspective, they symbiotically base the development of the personality of the inmate (also activating processes of critical reflection on the self and on one’s own act).

The arduous direction taken by law and pedagogy consists therefore in moving away from exclusively retributive and coercive practices (at least in theory) and in the contextual promotion of rehabilitative pathways that enhance every educational component of the penal system (Torlone, Vryonides, 2016).

You learn from your errors

Errors and error management for educational purposes are fields of investigation that are broader than anyone can imagine, especially for those who do educational work in complex contexts. The pedagogy of errors considers these one of the most useful educational tools, and also one of the most neglected.

Many studies of the concept of error concern the scholastic environment. The tendency is to not demonize it, but to promote it to stimulate the reflective and critical capacity in the child, with the support of the teachers.

In general, error is an integral part of the existence of man and of every human activity. There is a variety of types of error. Here we take into consideration the errors we learn from, which generate reflection and creativity, which allow us to activate transformative and learning processes. There are "painful and very unpleasant" errors (Swartz et al., 1980:16) that help to improve our actions because they allow us to "know what we should not do" (Swartz et al., 1980:16) and force us to seek help and collaboration from the people around us. This way we learn from our errors, but at the same time the error can reveal a lack of learning.

The question of pedagogical interest that we are trying to highlight here is how to manage the error of the offender so that he may begin a process of aware creation of meaning and knowledge.

In general, the error involves a "misalignment between reality considered in oneself and reality as formulated within the representations given by the individual sciences" (Piccinno, 2005:81). It is the disconnect between reality and representation, between prescriptions (including laws), rules of behaviour and the way in which an individual makes them his own in his actions.

In general terms, the phases of error management process can be identified in the following (Fig. 1):

*Figure 1. The phases of error handling*

1. offence ➔ 2. recognition ➔ 3. management ➔ 4. transformation into a new awareness of behaviour
The following are briefly analysed.

*Recognizing the error*

The error recognition phase is complex because it takes into consideration:

1. the scale and significance with respect to the offender's rehabilitation aim
2. the competence in relation to the learner: recognizing it means knowing how to make it known to those who have committed it, in order to get information on the offender, on his way of building knowledge and behaviours, on the state of his cultural heritage, and on the level of responsiveness of the offender to educational actions that involve him
3. the objectives of the error in close connection with the rehabilitation purpose: the error assumes different importance and value depending on the criminal act of the offender and the aim that the criminal system takes on towards him. The educational design for managing errors will have to consider both variables to define priorities and relevance.

Analysing the causes (relevant to designing effective and quality educational interventions) of someone's errors is not a simple task. We need to interrogate the error: the path to be reconstructed is not linear at all, it requires the selection of important aspects and information for the design of the educational action, not always easy to collect and immediately available, complex in themselves and also for the interaction with other components that must be considered in the individual planning.

*Manage the error and turn it into new knowledge or behaviour*

It is in the relationship between phase 3 and phase 4 (see Fig. 1), between the diversity and quality of educational actions put in place for the offender (in addition to the normally prescribed treatment programme) and the response that they arouse in him, which activates evolutionary phenomena, from whose observation and analysis it is possible to understand the effectiveness of the educational practices (inside and outside the prison) to promote transformation and learning.

We start from the "fallibility" in the process of growth and development of each individual (Popper, 1969) that, even in the theoretical perspective of socioconstructivism, becomes a critical review tool, aimed at bringing out the committed error, interpreting it, analysing it to collect information on the way of learning, to relate to the reality of the offender and the state of his knowledge, also in terms of behaviour and of its interpretation.

The subject is actively involved in the autonomous construction of knowledge, meaning and behaviour. This process is situated in the context where he operates and develops into a social dimension of interaction between subjects and the real world through dynamics of reasoned negotiation of meanings (Vygotsky, 1980). Interaction with the
context generates learning, but also unlearning. In this constant process of constructing meaning and learning, error is all the more unavoidable given the scarcity, or complete absence, of any points of reference and "more knowledgeable others" (Vygotsky, 1980), to support the generation of a cognitive and behavioural advancement. It is therefore necessary, in order to learn from the error, also with a view to abating or reducing recidivism, to recognize its educational potential and therefore its source of learning from a rehabilitative perspective, without demonizing the offender by reason of the mistake made. It must be recognized that, through educational actions promoted for the management of the error, the offender can approach the proximal development zone (Vygotsky, 1978), in a process of continuous and gradual self-development, which determines the boundaries within which to act for the purpose of re-education and return to society. It is the quality of the educational actions, carried out inside and outside the prison walls, to support the management of the error, the cause of imprisonment, which can make the difference in the moment of problematization and accompaniment: the offender often lacks the tools, and not just cultural, to read critically his own history, his own crime experience, to construct meanings, also in relation to the environment that is often at the root of criminal behaviour.

In addition to a series of treatment interventions, including medical and psychological ones, it is important to activate educational processes to contextualize the criminal action within a self-directed path of transformation and growth of behaviours and knowledge related to them.

In other words, the retributive and rehabilitative functions of the punishment, in a pedagogical perspective, promote, with the support of professionals, actions to activate reflection and analysis of the committed mistake, aimed at encouraging the growth of the prisoner-offender-student, his conquest of autonomous awareness of the harm caused (to a wide range of subjects, in addition to the person directly offended by the crime), the production of new awareness, and the implementation of the conditions to avoid repeating the illicit conduct. The management, whether intentional and not, of the entire prison context in which the offender lives must strive in this direction. In this regard, restorative justice contains strong educational potentials, promoting in the offender, also through the support of educational process professionals, paths of reflection on the criminal act and its consequences, in particular on its victims.

An error, understood as an inadequate action in relation to an objective, if managed and controlled, can represent an opportunity for growth and transformation (gradual and with increasing awareness), a learning environment towards the fullest re-education.

For prison education, the challenge is to gain the cognitive and intervention tools able to give each educational action ever greater levels of effectiveness in a re-educational sense, that is, the awareness and correction of past errors to avoid committing crimes again.
Penalties (incarceration and probation)

Let us briefly mention the issue of the penalties set forth in the Italian criminal system. Incarceration, the deprivation of personal freedom, stands out among the criminal penalties that in modern times have taken an almost hegemonic role, reinforcing the "prisoncentric" nature of the penal response (destined to produce the well-known phenomenon of prison overcrowding, often leading to intolerable levels of incivility and insecurity). Criminal law does not explain why this was chosen as the penalty of reference and the only option of punishment. The fact is that this criminal justice policy has contributed to affirming the traditional autarchy of incarceration facilities, subject to the logic of "total institutions" (Goffman, 2001), which seize part of the time and interests of those who depend on them, offering in exchange an "encompassing" world (character accentuated even more in the institutions specialized in maximum security or in rigid custody, as per Article 41-bis of the Penal Code, for association-related crimes).

However, the system also provides for the execution of penal sanctions in an external penal area (so-called probation) to promote alternative measures thanks to initiatives linking prisons with the territory. Just to mention some, these measures include a trial assignment to social services and in special cases, house arrest and special house arrest, outside assistance for minors, parole and early release.

The external penal area, in the recent Italian reforms of the punishment system, tends more and more to assert itself in response to the need for rehabilitation of the offender. The intent is also to permanently reduce the number of prisoners and to implement the principle of subsidiarity or extrema ratio regarding the use of incarceration (proposing a different system of penalties, also in compliance with the indications of the European Court and the Constitutional Court), always paying attention to the multipurpose function, or rather, essentially and mainly the re-education purpose of the sentence (inside and outside prison) to avoid the risk that the alternative measures become mere instruments of deflation of the prison population.

The incentive system

The topic of incentives in the penal system also deserves a mention. Again, with a view to rehabilitation, the educational theory of incentives was translated into the judicial field (not only in Italy) by introducing a flexibility of the sentence in the executive phase. The supervisory magistrate has the option to modify the quantity and quality of the sentence, following criteria of effectiveness and regularity/stability in the progression of the individual within his own path of re-socialization, rehabilitation and re-education. This path, with gradual steps regularly followed in their consequentiality, can be fuelled

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18 The distinctive elements of the total institution are: 1. the removal and exclusion from the rest of society of imprisoned subjects; 2. the formal and centrally administered organisation of the place and its internal dynamics; 3. the control from above of the members/subjects.

19 Making prison an alternative measure and not the other way around (Flick, 2015:331).
by rewards (e.g. bonus leave permits, outside work, parole, licenses), on the basis of technical reports that give account of activities of observation and analysis of the inmate within prison life. It is not enough to not have behaved contra legem during the incarceration. It is necessary that the inmate/convict has "proved his participation in the rehabilitation work" (Art. 54, par. 1 of the Italian Prison Code) to be eligible for benefits such as early release, with rigid calculations related to the duration of the incarceration.

However, the incentive understood as negotiating selfish and opportunity interests ("the more you give me, the more I give you") risks activating "adverse educational actions" and defeat the educational aspect of the "reward" (in addition to the retribution aspect of punishment) by virtue of the prison exchange between inside and outside (often anticipated in the procedural phase with the plea agreement). The exchange takes place because it is the subject of negotiation, even though on the basis of a sort of preliminary investigation through the collection of reports and the "information statement" by the prison institution hosting the prisoner.

Access to reward benefits, on the other hand, can play an educational role, if accompanied by processes of management of the learning values of the external contexts where the sentence is served. The topic refers to the opportunity to rethink and design the penal system as a whole as a "learning city" (OECD, 1993, 1973; Osborne, 2014; Longworth & Osborne, 2010; Federighi, 2016).

The prison context to support the prisoners' growth

Education, training and work are central aspects in the life of every individual, essential for the conscious construction of their identity (also professional) and their independence (also economic\textsuperscript{20}). This centrality is also confirmed for the inmate population: denying the right to education, training, development of one's personality and work to those who erred is not punishing the inmates for the crimes committed, but rather depriving them of relationships, future plans and the educational compensation we mentioned. The point of arrival of the process of learning with a transformational perspective is the reconstruction by the inmate of a relationship with society, which represents the context and the cause of his crime. In this regard, there is also talk of a corrective function of the sentence, aimed at changing the mental attitude and the underlying values of the inmate, rehabilitating him before himself and society. Reconstituting this relationship, also recognizing the prison institutions as "cognitive systems" (Federighi, Torlone, 2015), capable of transforming into an educational function the knowledge that is available within them, means putting the prisoner in a condition of conscious redemption (provided that the offender understands the sentence imposed and does not consider it unjust or disproportionate).

From a pedagogical point of view, the interesting point is to understand and reflect on the meaning of the punishment, possibly combined with the recognition of incentives for

\textsuperscript{20} We do not address here the well-known question of the prisoners' work (quality, economic conditions).
each individual inmate within a project of personal and social realization defined and constructed with the inmate himself, going beyond stimuli (as few as they are) coming from the penal law and from the practice of punishing that it regulates (while recognizing the afflictive and preventive functions of the penal sanction, in addition to the educational one).

The pedagogical intent in the study of prison contexts is to enhance everything that can promote the growth of the inmate, developing his potential while also exalting the educational potential of the environment in which he lives, helping to activate transformational processes (respecting his dignity as a human being). The important pedagogical issue concerns the planning and implementation of adequate educational actions with those who perform an educational function for the inmate population, based on the full accomplishment of each individual's re-education, starting from the prison context. These actions, combined with other interventions included in the treatment programme, must aim to improve the offender, to re-educate him and to re-socialize him so that he can find his full realization and not be dangerous for society. In this perspective, prison, far from being a school of crime and illegality, contributes to recovering responsible citizens (previously detoured), provided that there are spaces for rehabilitation and growth projects, aware or otherwise (e.g. self-education, work, relationships, etc.).

The execution of the sentence becomes the moment of recovery of the convicted through the enhancement of his potential, his personal fulfilment and the satisfaction of his requirements, questions, needs for change. The collection of educational interventions that the prison institution offers to every inmate, with its rules, procedures and restrictions (also physical in nature due to the difficulty of interacting with the outside world), also contributes to the recovery and integral development of the prisoners' personality. From a place of mere custody, the prison becomes an institution that in itself has educational components for the promotion of the person and for his personal and social rehabilitation. The "controlled persons" (Goffman, 2001) become an active part and co-constructor of systematic and critical educational actions, which originate and take place within the prison, constantly revisited and adapted to new paths of individual improvement.

The pedagogical specificity lies therefore in the analysis of the learning valencies of context, as well as in the study of the value of educational purposes and methods in the activities, relationships and dynamics that permeate the prison environment. Last but not least, pedagogy is called upon to identify those who, by virtue of their solid knowledge of individual prisoners, are in a position to manage individual growth actions.
"Treatment prison" between pedagogy, criminal law and learning organisation

The "treatment" - a positivistic word, recurrent in the Italian punishment system - as defined in its individual elements by the prison system\textsuperscript{21}, still remains a little-defined concept. It translates into norms and practices that are implemented "in separated or non-separated spaces for a more or less forced community aiming to pursue the objective of reducing, containing and combating the social, economic, cultural etc. deficit which marked the experiences of the inmate's life in order to be able to return him to society without his deficits and therefore with a prognosis, a prospect of easier social integration" (Pavarini, 2003:7).

The legislator's language from 1975 harks back to ancient psychiatric approaches: it speaks of "scientific observation of the personality" and "individualized treatment". On the model of the clinical sciences, it refers to a process of observation, diagnosis, prognosis (Pavarini, 2003). Instead, there are no references to educational and pedagogical approaches, in terms of designing educational actions - not just formal - with a transformative approach, aimed at the growth and personal development of the prisoner through the acquisition of attitudes, behaviours, values and knowledge.

The "treatment prison", as regulated by prison provisions, highlights the complexity of an organisational system that tends towards the (prison and re-education) treatment of the inmates (held and convicted). In prisons, the difference applied by the regulations is towards the recipients of the treatment (Art.1 Italian Prison Code and Art. 1 of Italian Presidential Decree 230/2000). It is divided into:

- prison treatment, for defendants subjected to measures depriving personal freedom (pending trial or final sentence of conviction or imprisonment for precautionary reasons). The goal of treatment is to "support their human, cultural and professional interests". If they request it, they are admitted to educational, cultural and work activities organised for the inmates (the reference is always to structured and intentional activities). This is the set of rules and principles that inform life in prison
- re-educational treatment, for convicts and inmates. The aim of the treatment, in addition to the one just stated for the accused, is to "promote a process of change of the personal conditions and attitudes, and of the family and social relationships that are an obstacle to a constructive social participation".

However, the process of "change" interpreted with a pedagogical approach, i.e. "transformative learning" (Mezirow, 2000, 1991) is a growth objective, common to the entire population of prisoners (Fig. 2). By the very fact of being in the prison, each

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\textsuperscript{21} The treatment mainly uses a series of activities (Article 15 of the Italian Prison Code, paragraph 1-2) such as: activities that are educational (e.g. compulsory education, secondary education, university centres), training (offering that varies depending on the prison), work, cultural, recreational, sporting or religious.
prisoner is exposed to processes of individual change (for better or worse, depending on the quality of the educational actions of which he is a part), intentional or not.

Figure 2. The interaction between transformative learning and the "treatment" prison

Recognizing the prison institution as a source of learning by itself contributes to activating endogenous processes of organisational change (Torlone, 2015) - promoted and managed by "transformational managers" (Foglio, 2011:37) - depending on the organisation's continuous improvement and growth of the detained population. The change compared to a prisoner exposed to informal learning processes in prison (see below) is intended as assumptions, knowledge, points of view and values considered no longer valid and replaced with new assumptions, knowledge, points of view, values that take the place of the previous one as a result of a critical reflection on their validity.

(Re)educate informally in the prison context

The most important and significant learning processes (also in quantitative terms) are those of an informal, structured nature while serving time, in a manner incorporated into each moment of the sentence period. From the more structured and procedural actions (interviews, searches, access to the health service, etc.) to those that are less, if not at all, structured and unintentional (e.g. contacts with prison staff).

Several studies show that in a complex system, such as the prison organisation, individuals develop a culture in which the processes of knowledge socialization and informal (and incidental) learning are more important and significant than formalized training actions. It is ultimately a question of recognizing the learning valencies (De Sanctis, 1975) of the various components of the prison system, although not perceived as such, which promotes self-learning processes. These valencies are neither manifest nor declared, but must be made manifest so that the training processes in which prisoners are involved become legible, such as school or course programmes.
This set of experiences and moments of daily life strongly affects the lives of those who live there, contributes to training them, to educating them or dis-educating them, albeit in a less obvious and explicit way, less open to being planned or structured than other educational experiences (intentional, organised and structured, such as a course, a workshop, a seminar, etc.). The recurrence and pervasiveness of these experiences make them particularly important, even more so than other educational dimensions. They can contribute to creating virtuous or wrong life stories of the individuals who are entrusted to be "re-educated" and "rehabilitated". Pervasiveness is linked to continuity: they are learning processes that are always active, every day, all day, arising at every moment of contact and relationship between the prisoner/learner on one side and the custody magistrate, prison police officers, other in-house staff, other inmates, external experts, and the prison organisation on the other.

These processes are aimed at acquiring and producing knowledge and behaviours during the course of every activity of prison life (from the request for a leave to the communication of visits and the participation in hearings, etc.). Both the individual prisoner and the prison institution intentionally manage "non-training" activities which, however, generate more or less aware training and growth or de-growth processes.

Thus, the prisoner’s re-education also takes place through the processes of informal learning, incidental learning and embedded learning, which we consider to be complementary to "traditional" interventions carried out within the "formal" prison institution (university hubs, vocational training courses, school education). We do not delve into the study of other, albeit important, approaches, such as situated, self-directed, experiential and tacit learning, action learning, and the communities of practices, which would risk widening excessively the subject of analysis.

The main elements that characterize informal learning refer to learning generated by any type of action, whose object is both knowledge and behaviour, and which is not necessarily identified with improvement paths given the full or partial lack of intentionality. Eraut (2004) distinguishes between "deliberative", "reactive" and "implicit" informal learning, due to the degree of intentionality and consequent reflection of the individual involved: in implicit learning there is no time to reflect and define problems, there is time only to learn and increase your knowledge.

This form of learning is encouraged or discouraged by the organisation one belongs to, especially in those in which learning organisation culture is strong (Argyris and Schon, 1978; Senge, 1990; Watkins and Marsick, 1993).

On the other hand, "knowing is a process not a product" (Bruner, 1966:72): ideas and concepts are formed, transformed and reproduced constantly through experience lived in a given context (Kolb, 1984); experience modifies their aspects, contents and facets through the unfolding of interrelated phases that end with the creation of new knowledge, even tacit (Polanyi, 1967). This process of continuous transformation of
daily experience interprets, enriches and takes place through and inside the prison system. All the actions that take place in it - even those that do not seem to have educational purposes - have within them learning as a by-product (Fig. 3) (Marsick and Watkins, 1990). Learning is incidental, generated by interpersonal relationships, by the culture of the organisation, by trial and error, by the results obtained from a task (Marsick and Watkins, 1990, 2001; Kerka, 2000) or from a service that one is called to perform, even if it is often invisible (Eraut, 2004) and not always recognized by the prisoner.

Figure 3. Learning as a by-product of the activities carried out in the prison

And thus it is possible to state that the intentionality of the prisoner is not a characterizing element of every educational process, but only of those that fall within its treatment plan under Articles 1 and 13 of the Italian Prison Code and Art. 29 of Italian Presidential Decree 230/2000. Conversely, organisational educational intentionality is pervasive and requires pedagogical reflections to control its (dis-)educational/learning valencies.

With this in mind, stating that the exclusion of a particular category of prisoners from rehabilitation treatment due to their dangerousness, both inside and outside the prison (Articles 4-bis and 41-bis of the Italian Prison Code\(^{22}\) - and therefore to ensure and protect order and security - implies their lack of re-education and the fulfilment solely of the social preventive function meets the limits linked to the belief that one can be "trained" or "educated" exclusively by structured actions included in the treatment programme.

Conclusions

\(^{22}\) These are prisoners who are part of organised crime, mafia, terrorist organisations, but also inmates held for crimes of particular social alarm (e.g. sex crimes). They are subjected to a harsh punishment regime on the basis of the type of crime committed. Even though they have been raised, the issues of constitutional legitimacy have been declared unfounded by the Italian Constitutional Court (by way of example, we mention ruling no. 410 of 23 November 1993; no. 35124 of 14 October 1996; no.135 of April 2003; no.190 of 28 May 2010, http://www.cortecostituzionale.it/default.do, 12/2015).

With particular reference to the regime referred to in Article 41-bis Pen. Code, the law provides for the suspension of "normal rules of treatment" (paragraph 1) and "the right to suspend, in whole or in part, (...) the application of treatment rules and prison regulations" of the Prison Code "that may stand in concrete contrast with the requirements of order and security" (par.2).
Reading the criminal system in terms of a cognitive system (Federighi and Torlone, 2015) means including pure informal and embedded learning processes (where the informality is associated with the intentionality of the organisation that "manages" the daily life, the rules, the activities of prisoners), with which every element of the prison context is permeated and involving all the subjects who live there. The educational potential of this context is strongly linked to the culture of the learning organisation, or the set of devices, values, rules, procedures, etc. that the prison organisation puts in place for the re-education of prisoners (none excluded). The organisation as such (in its activities inside and outside prison, in the diversity of all the personnel involved - from the custody magistrate to the prison and external staff, in the adopted organisational models) - is called upon to carry out educational functions in every moment of daily life prison. It is necessary to have full awareness at every level in order to direct the educational action of management, operators and prisoners.

Recognizing the educational potential of the context and the foundation of purpose of the punishment imposes a reflection on the need to eliminate the possibility that - even informally or accidentally - "unfavourable educational actions may be put in place" in spite of the constitutional dictate.

As a whole, the treatment programme is useful for the rehabilitation of the prisoner only if and to the extent that it is consistent with the training potential put in place by the organisation.

References


