



**UNA VIA D'USCITA**  
**Per una critica della**  
**misura di sicurezza**  
**e della pericolosità**  
**sociale. L'esperienza**  
**dell'Ospedale Psichiatrico**  
**Giudiziario nello**  
**Stato di Minas Gerais**

Virgilio De Mattos  
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[A way out. A critique on security measures and social dangerousness. The experience of the Psychiatric Unit in the State of Minas Gerais]

“...Si tibi ..compertum est Aelium Priscus in eo furore esse, ut continua mentis alienatione omni intellectu careat, ...diligentius custodiendus erit ac, si putabis, etiam vinculo coercendus, quod non tam ad poenam quam ad tutelam eius et securitatem proximorum pertinebit...” \*

Marcus Aurelius, “Digestus”, 1, 4, 18

The effective management of psychiatric patients who have violated the penal law (formerly the “criminally insane”) is difficult for several reasons, including the survival of some obsolete norms in the penal codes of various countries. On one hand, these norms exempt the mentally incompetent defendant from the regular penalty (or reduce the penalty if the subject is “partially incompetent”). On the other hand, two millennia after Marcus Aurelius’ *Digestus*, the norms prescribe the enforcement of security measures – generally the confinement in a psychiatric secure unit (in Italian Ospedale Psichiatrico Giudiziario, OPG) for a period of time proportional to the degree of “social dangerousness” (a concept with a rather shaky scientific basis) as assessed by psychiatric expertise. In the real world, this paves the way to a replication of the security measures, resulting in confinement for a much longer time (not infrequently for the rest of the subject’s life) than that of the imprisonment of a “mentally competent” criminal. It is true that the laws of different countries often offer the possibility of alternative measures, e.g., the entrustment to a psychiatric service, to a community for the care of psychiatric patients, etc. Such an alternative, however, is seldom exploited for one or more of several reasons: the limitations in the services’ resources; the reluctance of various parties (the family to start with) to take the responsibility for the management of a “socially dangerous” (or “potentially dangerous”) person; the stigmatizing misconceptions of many people, who are scared to death by the firm belief that the “criminally insane” will reoffend (which of course can happen, but not more frequently, and perhaps less frequently – see later – than in the case of “sane” criminals after their release from jail); and so on and so forth.

At least in Italy, a remarkable exception concerns bosses of powerful and wealthy criminal organizations. These can pay some of the best lawyers and pressure and/or bribe selected forensic psychiatric consultants, who certify that the guy is mad and must be transferred from a jail to an OPG. Afterwards, additional “expertises” are aimed at obtaining the release from the OPG via an “alternative measure”, e.g., the hospitalisation in a comfortable private clinic with only nominal surveillance, where bosses are practically free to resume the direction of their criminal organizations. And sooner or later the release is obtained upon certification of healing. Fiddling with such mechanisms can be dangerous for your health: e.g. in 1982, professor Aldo Semerari, director of the Institute of Forensic Psychopathology at the Rome University and a well paid forensic psychiatric expert (e.g., he provided expertises in favour of several members of the notorious Roman “Gang of the Magliana”), was assassinated and beheaded in the surroundings of Naples. He had been found “guilty” of double-crossing; that is, taking money from two rival camorra gangs to provide expertises certifying the insanity of both the respective bosses.

The book by De Mattos belongs to the same “180” series of monographs mentioned in a recent review

[Guarire si può. Persone e disturbo mentale. *Ann Ist Super Sanità* 2013;49(3)319-20, Review by Giorgio Bignami, in English]; and this, thanks to the long-term relations between the author, a Brazilian socio-criminologist and political scientist, Italian psychiatrists of the Trieste group, and jurists and criminologists, particularly two of them to whom the book is dedicated: Alessandro Baratta (+ 2002) and Raffaele De Giorgi (University of Salento), both among the leaders respectively in the field of socio-criminological studies on deviance and the law, and in that of theories of social systems (De Giorgi also has a long experience of research and teaching in Latin America). In fact, increasingly significant exchanges between the Trieste group and Brazilian mental health workers were started by seminars and conferences held in Brazil by Franco Basaglia in 1978-9, *i.e.*, shortly before his demise in August 1980 (see Franco Basaglia, *Conferenze brasiliane*, Roma, Raffaele Cortina, 2000). These relations were facilitated by the incorporation in the eighties of the Trieste Mental Health Service in the newly founded WHO Collaborating Center for Research and Training in Mental Health in Italy, whose first president was the late director of the Istituto Superiore di Sanità, Francesco Pocchiari, until his demise in 1989.

The reader must be warned that the original edition of this book was published in 2006, therefore one cannot expect to find updated information in the author's text. Additional information for the years 2005-2010 is given in the Introduction by the translator Ernesto Venturini, a former coworker of Basaglia, and also in many footnotes by the author, by Venturini, and by the editor of the Italian edition, Silvia D'Autilia. These additions provide a clear and well documented comparative analysis of the Italian and Brazilian histories and present situations in the mental health field, including OPGs. As concerns Italy, the inquiry of the Senate Public Health Commission led by professor Ignazio Marino, which documented unbelievable misdoings (part of the Commission's video can be viewed via <http://www.youtube.com/watch?v=A535K-IjVjg>), led to the approval of an *ad hoc* law (2012/9, modified by law 2013/57) which prescribes the closure of OPGs. The subsequent to-ing and fro-ing of national and regional *ex lege* provisions is not yet completed, therefore it is still impossible to foresee how many of the interested subjects will continue to be confined in regional mini-OPG's; or viceversa liberated thanks to alternative measures based on strong support by Mental Health Services, including personalised care, rehabilitation programmes and provisions aimed at solving a variety of problems, including housing and work. This problem is handled very clearly in De Mattos' book, since in Brazil it often happens that after a subject confined in an OPG is certified to be "not any more socially dangerous", he continues to be confined indefinitely in a different (generally smaller) structure with a different label (geriatric hospital, rehabilitation unit, therapeutical residence, etc.)

The first part of this work is a stimulating historical, cultural and political analysis of the progressive escalation of internment measures aimed at criminal, insane, criminal insane, socially dangerous, troublesome, un-

productive and quite a few other types of subjects with undesirable profiles – all of them deprived of most or all of their citizens' rights (from this viewpoint the provisions in our 1948 Constitution and 1978/180 psychiatric law and in the Brazilian 1988 Constitution and 2001/10,216 psychiatric law are quite similar; in addition, the Brazilian Constitution forbids life sentences, of which life confinement in an OPG, or some substitute of it, is practically an equivalent). As concerns the destinies of mentally disturbed criminals, the judgment of the author on the role of psychiatry is even more drastic than that on the role of other apparently more responsible parties, including legislators and judges: *e.g.*, "... since penal right groped its way concerning the concept of non-liability, whereas psychiatry, in its deliria of conquest, supported such a concept, it often happened that false arguments and false solutions were offered..." (p. 107); of this, quite a few examples are given, including those concerning recent neo-lombrosian trends based on neuroscientific "evidence". The author's pessimism concerning not only the present but also the future is explicit: he wanted the book's title to be "Without a way out", but the Brazilian publisher imposed the more optimistic (and marketable) "A way out".

The second part of the book is devoted mainly to a critical analysis of ten representative cases, *i.e.*, former OPG patients who were certified as not being any more "socially dangerous", but could not be liberated for the reasons outlined above (one of them, for example, came from a village where health services were totally absent, with the nearest psychiatrist 300 km away). A small special hospital was created for them, where conditions were practically indistinguishable from those of the OPG in which they had been previously confined. *Pace* the Constitution and the psychiatric law.

Some light at the distant end of this tunnel is provided by the description in the last part of the book (updated to 2009 in Venturini's introduction) of a special programme which started in the year 2000 in Belo Horizonte (about 2,500,000 inhabitants), the capital city of the State of Minas Gerais (about 20,000,000 inhabitants, *i.e.*, about one tenth of the total population of Brazil); an initiative that gained official status after the coming into force of the aforementioned 2001 psychiatric law. This "Programme of Integral Attention" to the psychiatric patient guilty of a crime, launched by a Belo Horizonte court in collaboration with Mental Health Service workers and administrators, is aimed at terminating, whenever possible, the confinement of patients (or former patients) of OPGs, relying on a series of coordinated professional and other interventions. The results so far obtained are exceptionally good (see p. 31): in the first 10 years, 1058 cases examined; 755 patients enrolled in the programme; 489 already definitively acquitted; 266 still under the judge's surveillance, of which 210 already liberated and living with their families or in therapeutical residences; the remaining ones still under the judges' security measure and the Mental Health Service's intensive care; but with only 25 subjects out of 755 still in confinement. And last but not least, a recidivism rate of only 2%, a world-

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wide record both for this type of subjects and for “sane” criminals after their release from jail.

These results obtained with limited resources are a clear message for those Italian regional governments whose decrees predispose the transfer of a high percentage of our OPG patients to regional miniOPGs: *i.e.*, secure units for 20 inmates each, but with the possibility of combining two or three units in the same building or compound, resulting in confinement structures substantially larger than a “cosy” therapeutic residence or community; and often quite far from the original residence of the inmate (*e.g.*, the distance between the Northern part of the province of Viterbo and two of the new Latium miniOPGs to be located in an old hospital in Subiaco is about 200 km, at least two hours and a half by car). Alas, “if we want things to stay as they are, things will have to change”, as in the famous statement by the bold and shrewd Tancredi in Lampedusa’s *The Leopard*.

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