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Fears of COVID-19 Contagion and the Italian Prison System Response

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ABSTRACT

Italy was the first country outside of Asia to deal with a major COVID-19 outbreak. The first cases dated back to January 31, 2020, when two Chinese tourists visiting Rome tested positive for the virus. As the number of infections surged over the next few weeks, the world watched as Italy faced the grim reality of the dangers associated with the virus and how the nation struggled to contain it. By mid-March, the entire country was in lock down. This article chronicles the impact of the virus on incarcerated persons and the ways in which the government reacted to several prison riots that took place in response to crowded prisons, the COVID-19 outbreak, and the initial lock down measures put in place. In the concluding section, the impact of Italy's mitigation strategy on the problems of (1) prison crowding, (2) prison violence, and (3) prisoner and staff health is assessed.

KEYWORDS

Prison misconduct; prisons; prison experience; prison resources; Covid-19; Pandemic; Alternatives to incarceration; Early release mechanisms; Prison reform

Introduction: Covid-19 in Italy

Italy was the first country outside of Asia to deal with a major COVID-19 virus outbreak. The timeline began on January 31, 2020, when two Chinese tourists visiting Rome tested positive for the virus (Harlan & Pitrelli, 2020). The following week, a man who repatriated from Wuhan China, the place believed to be the epicenter of the virus, was confirmed as the third case (Za & Bastianello, 2020). Soon after, the government declared a six month state of emergency to try and contain the virus and was the first country to ban direct flights from China ("Italy Suspends All China Flights," 2020). Unfortunately, the international travel restriction did little to stop the internal spread of the virus.

The first instance of community transmission and death involved a 78-year-old man from the Veneto region in northern Italy reported on February 21, 2020 (Harlan & Pitrelli, 2020). The next day, the Prime Minister ordered a targeted lockdown of 50,000 in northern regions of Lombardy and Veneto. By March 8, with 5,900 confirmed cases, Italy extended the lockdown to include 16 million people in the Northern provinces (Harlan & Pitrelli, 2020). No travel was allowed in these areas unless for verifiable work-related activities, emergencies, or health reasons ("Coronovirus: Northern Italy Quarantines 16 Million", 2020). Schools, museums, theaters, and sporting events were closed for the entire country. People were told to stay at home as much as possible and a social distance of one meter was mandated (Kington & Sage, 2020). By mid-March the lockdown expanded nation-wide, and

all commercial activity except supermarkets and pharmacies was halted (“Coronavirus: Italy Extends Emergency Measures”, 2020).

Infections continued to surge over the next few weeks and the world watched in real time as Italy faced the grim reality of the health perils posed by the virus and how the nation struggled to contain it. On March 19, Italy reported 3,405 COVID-19 related deaths and surpassed China as the country with the largest number deaths due to the virus (Alberti et al., 2020). The government moved to the next stage in the lockdown, and the new measures included some of the most drastic steps taken by a modern democracy (Harlan & Morris, 2020). The police were given authority to stop and ask people the reasons why they were trying to leave or enter certain areas. Those needing to travel for work or health reasons were required to produce a written declaration of necessity (Sylvers & Legorano, 2020). Those who broke quarantine could face fines or a jail term (“Coronavirus: Northern Italy Quarantines 16 Million”, 2020). By the end of March, the Italian military was officially called to enforce the quarantine and the Italian police were allowed to use surveillance drones to monitor the movement of citizens (Meisenzahl, 2020).

A brief overview of the Italian prison system: crowding and Covid-19

There are 189 adult prisons in Italy; over 60,000 individuals were held in these prisons as of February 2020. Significant numbers of inmates are pretrial detainees (32.4%) and foreign prisoners (32.7%) (Institute for Crime & Justice Policy Research, 2020). Twenty five percent of the inmates are over the age of 50, the second highest rate in Europe (Antigone, 2020). Figure 1 displays the average prison operating capacity by region in 2019. Nationwide, the regional average was 119% capacity, but some individual facilities were reported to be as high as reaching a Pre-COVID-19 capacity of 194.7%, making Italy among the most overcrowded prison systems in Europe (Antigone, 2020). At the end of February 2020 Italy had a prison capacity of 50,931 and a prison population of 61,230 (Bunham, 2020).

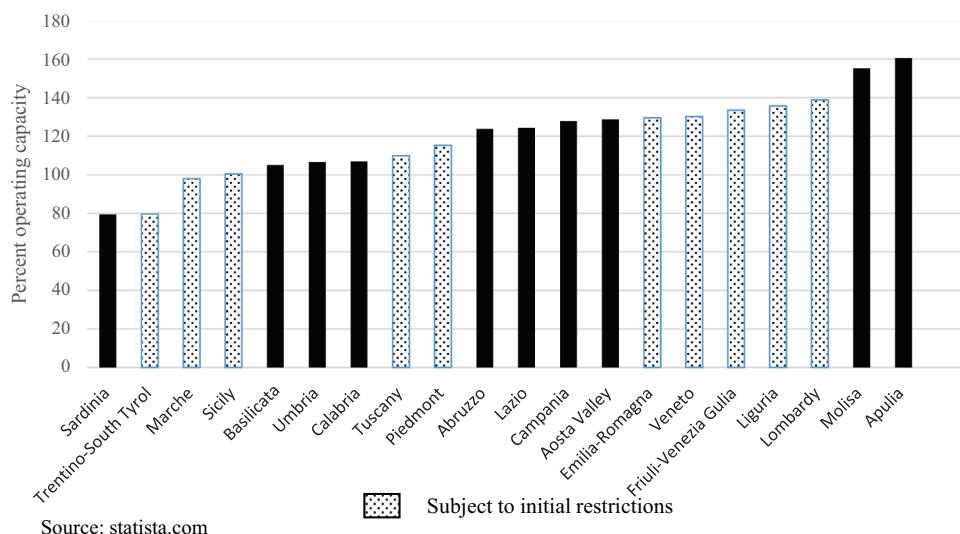


Figure 1. Italian prison operating capacity by region in 2019.

Overcrowding was of concern because the recommended precautions against coronavirus spread such as quarantines, social distancing, and sanitation were difficult to implement under such conditions (Raghavan & Loveluck, 2020). Like many countries, the Italian prison system had been struggling with overcrowding in many of its facilities in recent years. For example, in 2013, the European Court of Human Rights demanded that Italy take steps to alleviate overcrowding. Complainants in the *Torreggiani and Others V. Italy* human rights case heard by the court alleged that three inmates were being held in a 9 square meter cell designed for one person allowing each only 3 square meters of personal space. There were also complaints about a lack of hot water and inadequate lighting in the cells (European Court of Human Rights Registrar, 2020). Recommendations made by the court to alleviate crowding included reducing pretrial detention and making greater use of alternatives to prison sentences, but any progress made to reduce incarceration levels appears to have been short lived. In 2012, the year before the case, the imprisonment rate was 110 per 100,000 and decreased to 88 in 2014, but by 2018 the rate increased back up to 99 (Institute for Crime & Justice Policy Research, 2020), fueled in part by an increase in sentence length over the last ten years with 27% lasting more than 10 years (Antigone, 2020).

Prison-based mitigation strategies

The Justice Ministry's immediate plan to prevent COVID-19 contagion was to restrict access into and out of prison facilities. Starting at the end of February, initial restrictions on access to prisons applied to people coming to work in facilities from communities with high numbers of infections, located mainly in northern Italy (European Organisation of Prison and Correctional Services.org, 2020). Inmate transfers out of prisons located in highly affected areas, called "red zones", were also suspended. In Figure 1 the northern regions are highlighted and in all but two of the regions the operating capacity was at or greater than 100%. As infections continued to rise at alarming levels throughout the country, the restrictions were soon extended to the entire penal system and additional measures were established to prevent the spread in prisons.

The additional restrictions promulgated by the Italian government included the temporary suspension of treatment programs that involved participation from people in the local community, the curtailment of work related activities serving the facilities that involve people coming in from outside, and the substitution of in person visits with relatives or third parties other than defense lawyers with phone calls or other available technology. Video conferencing and other remote attendance would also be available for incarcerated persons to receive hearings, but only when possible. Judicial authorities were advised to extend release time for those already out on leave, but temporarily suspend the granting of prison bonus leaves and supervised releases (European Organisation of Prison and Correctional Services.org, 2020).

The links between crowding, Covid-19, mitigation strategies, and prison violence

In the early stages of the Covid-19 outbreak in Italy's prisons, prisoner advocacy groups warned that inmates were growing increasingly anxious about their vulnerability to the virus given the crowded conditions in which they were living and the lack of information about the virus (Winfeld, 2020). Fears about infection, combined with restrictions on family

visits and the anxiety about the possibility of having to endure even longer delays in already burdened court system, escalated tensions to the point where violent protests broke out in 24 prisons throughout Italy in early March that involved an estimated 6,000 inmates (Roberts, 2020). The unrest led to 13 deaths among detainees and 59 injured guards. The prisoner deaths were attributed to overdoses that happened after detainees raided prison pharmacies (Bunham, 2020).

One of the largest riots happened at the Modena prison. Six inmates died after they broke into the prison infirmary and overdosed on methadone, which is used to treat opioid dependence (Winfeld, 2020). Inmates set mattresses on fire and took two guards hostage during an escape attempt. They were stopped by the riot police, but enough physical damage had been done to the prison to require the relocation of inmates to temporary facilities. Inmates from other prisons also started fires. Flames from a mattress fire in Pavia prison could be seen from more than half a mile away and led to the evacuation of part of the facility (Nadeau, 2020).

Riots in several prisons resulted in dozens of escapes. From Foggia prison about 50 inmates escaped and from Rebibbia around 30 inmates broke out (Winfeld, 2020). Most were apprehended a short time after their escape (Nadeau, 2020). In the San Vittore prison in Milan, prisoners waived a sheet to the outside with "Indulto" (Italian for pardon) painted on it. Prosecutors responded by going up on the roof to listen to complaints about overcrowding and demands for better treatment. According to one prosecutor's account, the prison was holding 1,200 inmates in the facility that was originally designed to house 700 inmates (Winfeld, 2020). Inmate-rights groups launched complaints about the lack of testing inside prisons across the country and that the low number of confirmed cases among the incarcerated was not reflective of the current situation (Nadeau, 2020). The penitentiary police union was also going public with concerns about the lack of sufficient support from the government to prevent the spread of the virus or to manage anxious, angry inmates (Winfeld, 2020).

By mid-March the Italian government announced further measures intended to relieve overcrowding, support workers, and implement protocols for the handling of infected persons (European Organisation of Prison and Correctional Services.org, 2020). To relieve overcrowding, eligible persons who had 18 months or less of their sentence to serve would be released to home detention or other private healthcare facilities. Those excluded from eligibility were persons imprisoned for mafia related crimes, terrorism, kidnapping for ransom, international drug trafficking, domestic violence, habitual offenders, and the inmates who participated in the recent prison riots. Those with more than 6 of 18 months to serve in home confinement would be subject to electronic monitoring. These strategies had a significant impact on the level of crowding in Italy's prisons. The Counsel of Europe (2020) reported that Italy released 9.4% of its prison population during the height of the outbreak, largely resulting from the early release decree and by the end of June was operating at 106% capacity with a population of 53,579 (Institute for Crime & Justice Policy Research, 2020).

In addition to inmate-focused mitigation strategies, the Italian government also adopted measures to protect prison staff. Support for prison officers came in the form of an increase in the 2020 budget to pay for overtime, the addition of 1,100 new penitentiary police agents, and access to protective equipment. Specific protocols relating to the testing and treatment of infected inmates as well as those with potential exposure were further established by the

Ministry of Health to prevent the spread. Some prisoners were enlisted to help produce much needed protective equipment. In one facility where inmates had been producing sheets and pillowcases for all Italian prisons, shifted to producing surgical masks that would be distributed first to staff, then to prisoners, and last to others with reasons to be at the prisons (“Coronavirus, Contagions in San Vittore.” [2020](#)).

COVID-19 in Italian prisons

In early March 2020, Covid-19 infections had been detected in four prisons (“Coronavirus, Contagions in San Vittore”, [2020](#)). Prison staff and human rights monitors had been warning of an impending public health emergency given the poor living conditions in many of the prisons. Recognizing the potential for Covid-19 outbreaks in prisons, the guarantor of prisoners representing the Municipality of Milan filed a complaint with the Public Prosecutor about reported ill treatment of inmates in a local prison. The complaint referenced reports from several sources which convinced the guarantor to request that the government formally investigate the allegations of mistreatment and conduct inspections of the facility (“Coronavirus, Contagions in San Vittore.”, [2020](#)).

On April 2, 2020 the first prisoner died of Covid-19 ([Cingolani et al., 2020](#)). By mid-May, 137 inmates tested positive for the coronavirus and four had died. Penitentiary staff were also affected, with 202 testing positive ([Povoledo & Bubola, 2020](#)) leading to the death of two officers and two doctors ([Antigone, 2020](#)).

What works? Assessing the short-term impact of the Italian model

The World Health Organization praised the approach established by the Italian health professionals to prevent contagion in prisons and suggested their efforts serve as a model for others to follow ([World Health Organization, 2020](#)). Much of the praise centered on the fact that since 2008 tasks and duties relevant to inmate healthcare were under the auspices of the Ministry of Health rather than the Ministry of Justice. Confidence in the ability of the Ministry of Health to oversee the administration of healthcare in prisons led some healthcare professionals to claim that prisons were the preferable location to house potentially infected inmates since the prison is where they were more likely to receive necessary healthcare and keep the virus contained ([Malta et al., 2020](#)).

Other Italian health experts have voiced skepticism about the ability of legislative measures to limit the spread of the virus given the structural and situational circumstances unique to the prison environment. [Camposeragna \(2020\)](#) reported that the commitment to adequate healthcare in prisons is lacking given that there are no provisions by the Health Ministry that guarantee health services offered in prisons would be the same as those offered to the community, a stark reality expressed in the (pre-COVID-19) 1 to 315 ratio of doctors to inmates, an estimate far below the ratio 1 to 200 required by law.

[Cingolani et al. \(2020\)](#) claim that legislative dictates do not sufficiently support containment efforts including social distancing, voluntary isolation for suspected cases, and health care for positive cases given current prison conditions. They further argued that the lack of a plan to conduct large scale testing of the inmate population would render

primary and secondary prevention efforts futile. Given the difficulty of restricting the close inter-personal contacts that inevitably occur in crowded prison settings and the legislative failure to provide valid measures to reduce the risk of infection in such environments, they concluded that the only concrete alternative to control the spread was to significantly reduce the number of prisoners.

Concluding comments: the past as prologue to long term prison reform

Italy had recently experimented with a large-scale pardon of prisoners in 2006 to relieve crowding. In July of that year, the government implemented an unanticipated collective pardon of those with a sentence of less than three years resulting in the release of about 37% of the total prison population. The pardon was followed by substantial increases in crime in the 2006–2008 period (Drago et al., 2017). Intense media coverage of crime right up to the next election in 2008, along with public opinion attributing the crime increase to the pardon, and by extension the ruling party, proved costly to the incumbent party in the 2008 election cycle (Drago et al., 2017).

Concerns about potential political fall-out from the 2020 dictate to release inmates to prevent Covid-19 contagion have also been reported. The left leaning government currently in power can't afford to appear soft on crime (Roberts, 2020), especially since the far right opposition party is presumed to be more capable of managing the crime problem (Drago et al., 2017). These concerns came to fruition when it was reported that although the early release decree in response to COVID-19 excluded inmates housed in maximum security and persons convicted of mafia related crimes, hundreds of offenders sentenced for mafia type offenses managed to get judicial approval for early release after officials decided they would also consider early release for those whose age and health conditions made them susceptible to COVID-19 dangers ("Hundreds of Mafia Members Leave Prison", 2020).

Specific public attention focused on requests for release by mafia bosses who had originally been sentenced under article 41-bis of the Italian penal code, which included physical isolation and the suspension of privileges specifically for this group of serious offenders in an effort crack down on the decades old serious problem with mafia related crime (Povoledo & Bubola, 2020). Although ineligible for early release under the decree, a number of Mafioso managed to get judicial approval for release because their advanced age or health conditions made them especially vulnerable to the virus – even though the isolation requirement under 41-bis had already kept them segregated from the general prison population and less likely to get infected. The release of several high-profile elderly mafia bosses sparked public outrage that led to the resignation of a top prison official (Taylor, 2020). Judicial authorities subsequently revoked the house arrest of at least one Mafioso and put the cases of other released mobsters under review (Povoledo & Bubola, 2020).

The COVID-19 pandemic continues to unfold across the world and the Italian experience with containment will continue to evolve. As of this writing, there have been 251,713 reported infections and 35,225 deaths in Italy (Worldometers, August 12, 2020). Italy's experience as one of the first modern democracies to deal with a major COVID-19 virus outbreak does offer some noteworthy insights into the philosophy about the role that prisons play in modern society. Indeed, some underlying assumptions about the purpose of incarceration were fundamentally challenged in the face of a highly contagious and deadly virus for which traditional health, justice, and penal institutions were ill prepared to manage.

Italy's initial response to prevent contagion was to curtail movement into and out of prisons, effectively seeking to disconnect prison facilities from the community and isolate prisoners. While a main goal of incarceration is incapacitation where prisoners are kept separate from the rest of society for public safety, the prison, as an institution, is closely connected to the community through the people that work there, the family members who visit, and the prisoners who will eventually return home. In the face of a highly infectious virus such as COVID-19, it is naive to think that prisons can be quickly and effectively isolated without consequence. The fear of infection, further isolation from family and community, and the slowing of procedural justice in Italy's initial response created anxiety and anger that erupted into riots.

The second assumption challenged by the COVID-19 crisis has to do with the view that many hold of prisons as places of punishment and retribution and how those perceptions work to limit prisoner's rights and the level of health care governments were willing to provide in the interests of virus containment. Cingolani et al. (2020) remind us that the Italian constitution dictates that in depriving persons of their freedom, "there must be full respect of their rights to health, life, and personal integrity" (p. 3). The curtailment of prisoner's rights in the interest of common good, in this case the prevention of COVID-19 contagion, implies that they too would be entitled to reasonable protections to prevent infection. However, prisoners are unlikely to benefit from protections because crowded prisons conditions make it impossible to effectively implement even basic prevention measures, such as social distancing or isolation for suspected cases. This imbalance in prisoner rights vs. health will be perpetuated if the Italian government remains unwilling to engage in long term, sustainable solutions to reduce crowding. Such issues are not new to the discourse on prison reform, but the pandemic certainly exposed the long term physical neglect of prisons and revealed the health, political and justice challenges that Italy and other countries face in meeting prison needs that will be necessary to manage infectious disease outbreaks in the future.

Disclosure statement

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