

Prison and political violence: the impact and harm of counterterrorism policies. A comparative socio-historical analysis

Simone Santorso

The rise of maximum-security prisons. A comparative study between Italy and United Kingdom. The decades between the end of 1960s and 1980s have been characterised by radical transformation, drastic changes and an escalation of political violence. Through a comparative socio-historical approach, this paper will explore the British and Italian state actions in dealing with forms of organised political violence. The aim of this work is to investigate the role of punishment and penal policy in the design of counterterrorism strategies by comparing the Italian and British struggles against forms of organised political violence between 1969 and 1983. Specifically, this work considers and moves from the employment of categories like the internment and the criminalisation of political violence, commonly used to frame the Northern Ireland conflict, to analyse the counterterrorism strategies adopted by the Italian state during the 1970s and the 1980s. The paper aims to shed light on the role played by the prison system in the state action against organised political violence and wants to stress both the transformative impact of combining penal and counterterrorism policies, and the backlash effect of repressive punishment.

Keywords: political violence, counterterrorism, comparative criminology, history of prison, Northern Ireland conflict, lead year, maximum-security prison.

1. Organized political violence: terrorism and the criminal justice system

For the purposes of this contribution, terrorism has been conceived as a specific form of organized political violence; it is seen as «the threatened or actual use of illegal force and violence by a non-state actor to attain a political, economic, religious or social goal through fear, coercion or intimidation»¹. Social scientists have approached the role of the criminal justice system in counterterrorism strategies in different ways. For instance, Hamm's² analysis of government action on terrorism focused less on the political aspects *per se*, and more on the crimes committed to provide logistic support for their political instance.

¹ G. LaFree, L. Dugan, *Introducing the global terrorism data base*, in «Terrorism and Political Violence», n. 19, 2007, p. 184.

² M.S. Hamm, *Terrorism as Crime*, New York, NY University Press, 2007.

Attention was paid to actions aiming to provide money, weapons, training, mobility, and a false identity to members of terrorist organizations, including bank robberies, kidnappings, money laundering, and so on³. Given the nature of these forms of organized violence driven by clearly political motives, from both an analytical and a practical standpoint it might be restrictive and counterproductive to reduce them to mere criminal behaviors. The present article argues that it is a common feature of counterterrorism strategies to gradually neglect (or even deny) the political nature of such violence, however. In Italy and Britain alike, acknowledging politically-motivated criminals as terrorists marked a turning point, but the label was used to classify their actions as crimes, instead of adopting a more nuanced definition and consequently seeking different solutions⁴. One of the key factors in state intervention against political violence is the idea of deterrence, an approach based on the assumption that a given action is profitable and appealing when the benefits exceed the expected costs⁵. Effective punishment should therefore deter individuals from engaging in actions that might be profitable and bring benefits in the short term. Fear of punishment is generally pictured as the key to deterrence, though it is not the only one. In the case of highly-dangerous organized criminals (as terrorists are generally considered), there is the conviction that adopting an incapacitation model, and keeping such individuals in prison for longer and under harsher detention conditions works better in de-escalating the violence⁶. This has also been one of the main features of counterterrorism strategies based on the criminal justice system's actions. There has been strong support, on the other hand, for the argument that punishing particular individuals or groups more harshly may make them more violent in future – an argument grounded on criminological research on terrorism⁷. Gradually criminal justice system's intervention on terrorism, aimed to punish, deter, incapacitate and rehabilitation is likely to play a minor part. Action against politically-motivated prisoners has been featured in the so-called «ticking bomb» model⁸,

³ Ivi, p. 3

⁴ A. Moghadam, R. Berger, P. Beliakova, *Say Terrorist, Think Insurgent: Labelling and Analysing Contemporary Terrorist Actors*, in «Perspectives on Terrorism», n. 5, 2014, pp. 2-17.

⁵ D. Nagin, R. Paternoster, *Enduring individual differences and rational choice theories of crime*, in «Law & Society Review» n. 27, 1993, pp. 467–496.

⁶ J. Braithwaite, *Pre-empting terrorism*, in «Current Issues in Criminal Justice», n. 17, 2005, pp. 96–114.

⁷ See among the others: G. Sharp, *The Politics of Nonviolent Action*, Porter, Boston (MA), 1973; S. Atran, *Genesis of suicide terrorism*, in «Science», n. 7, 2003, pp. 1534–1539; C. McCauley, *Jujitsu politics: Terrorism and responses to terrorism*, in *Psychology of Terrorism*, eds. P. R. Kimmel and C. E. Stout, New York, Praeger, 2006.

⁸ L. Zedner, *Terrorism, the Ticking Bomb and Criminal Justice Values*, in «Criminal Justice Matters», n. 73, 2008, pp. 18–19.

leading to the suspension of human rights and the rule of law, and to the normalization of exceptional forms of state violence.

2. Punishment and counterterrorism strategies: drafting a theoretical perspective

The following pages describe and compare the counterterrorism strategies adopted by British and Italian governments in the 1970s and 1980s, concentrating on the role of punishment and detention. We argue that, while these strategies may have had some concrete effects in containing troublesome situations, they seem to have provoked a backlash effect, generating an escalation of action-reaction that raised the overall level of violence, from several points of view. The legislative novelties introduced at the time also had a long-term impact on the concept of punishment, giving rise to exceptional penal contrivances. Researchers have long discussed the impact of counterterrorism strategies and their potential repercussion⁹. Critics focused mainly on the extent to which implementing counterterrorism strategies was perceived as detrimental to the population as a whole, galvanizing a base of potential supporters for the terrorists' cause, and potentially strengthening their bonds with society. More in general, the criminological literature provides evidence of the harmful impact of a massive use of the criminal justice system, the suspension of civil liberties and human rights, the use of force by the police, and corporate/state crimes¹⁰. Criminologists have rarely investigated institutional responses to political violence from a comparative and historical perspective, however. Some more or less recent publications have considered the role of detention and prison in controlling politically-motivated organized violence¹¹, but the abuse of detention and its backlash have been largely neglected by criminological research. Many sociologists¹² judged that detention affects the identity of detainees and change society. Lemert¹³ used the term *secondary deviance* to describe how punishment reinforces prisoners' deviant identity and consolidates a positive perception of their own actions. In analyzing detention applied to

⁹ See among the others: S. Atran, *Genesis of suicide terrorism*, cit.; D. Benjamin, S. Simon, *The Next Attack: The Failure of the War on Terror and a Strategy for Getting it Right*, New York, Time Books, 2005.

¹⁰ See among the others: D. Whyte, *Market Patriotism and the War on Terror*, in «Social Justice», 34, 2008, pp. 111–131; L. Zender, *Terrorism, the Ticking Bomb*, cit., 2008; C. Pantazis, S. Pemberton, *Trading Civil Liberties for Greater Security? The Impact on Minority Communities*, in «Criminal Justice Matters», n. 73, 2008, pp. 15–17.

¹¹ See among the others: M.P. von Tangen, *Prisons, Peace and Terrorism. Penal Policy in the Reduction of Political Violence in Northern Ireland, Italy and the Spanish Basque Country, 1968-97*, MC Millian, Houndmills, 1998; R., O'Donnell, *Special Category. The IRA in English Prison*, vol. 1, 1968-1978, Sallins, Irish Academic Press, 2012.

¹² I.e. H.S. Becker, *The Outsiders: Studies in the Sociology of Deviance*, New York, Free Press, 1963.

¹³ E.M. Lemert, *Social Pathology*, New York, McGraw-Hill, 1951.

political violence, the work done by Sherman¹⁴ is crucial: this Author claimed that the impact of punishment on deviance is influenced by three factors: the perception of its legitimacy; the social bonds between the perpetrator of the sanction and the individual or group being sanctioned; and the chance to deny the shame associated with the punishment by seeking support from other people in the community. The politically-motivated violence that occurred in Northern Ireland and Italy was a grassroots challenge of the legitimacy of the countries' governments, and therefore of the very idea of punishment too. This brief outline helps to make the point that the perceived legitimacy of a government's enforcement of tough-on-crime policies is likely to be far more salient to the many potential supporters of political violence than to the few individuals already engaging in terrorism¹⁵. In considering the role of detention in counterterrorism strategies, the paper starts with a classification commonly applied to the troubles in Northern Ireland. LaFree et Al. identified two macro areas of the state's interventions on political violence: one based on criminal justice, the other on military force. The former was shaped by two phases: internment and criminalization¹⁶. Between August 1971 and the end of 1975, a total of 1,981 individuals¹⁷ suspected of violent actions for political motives were detained by the British authorities, both in prison and at other facilities¹⁸. They were recognized as political prisoners, not as terrorists, up until 1976. In this year, the so-called 'special status' category (according to which politically-motivated detainees were prisoners of war) was suspended, and this led to a shift towards their criminalization. In making this change, the British government aimed to reduce the perceived legitimacy of the politically-motivated criminals' actions¹⁹. The following pages explain how internment and criminalization were used in the counterterrorism strategies applied to Northern Ireland (NI), and we argue that the same two categories can be used to analyze Italian counterterrorism strategies as well. During the 1970s and 1980s, the Italian government relied on its criminal justice system to incarcerate political activists belonging to terrorist groups. In the early 1980s there were

¹⁴ L. Sherman, *Defiance, deterrence, and irrelevance: A theory of the criminal sanction*, in «Journal of Research in Crime and Delinquency», n. 30, 1993, pp.445–473.

¹⁵ G. LaFree, L. Dugan, R. Korte, *The Impact of British Counterterrorist Strategies on Political Violence in Northern Ireland: Comparing Deterrence and Backlash Models*, in «Criminology» vol. 47, n. 1, 2009, p. 21.

¹⁶ Ivi, p. 27.

¹⁷ 1,881 of them Republicans.

¹⁸ D.R. Lowry, *Internment: detention without trial in Northern Ireland*, in «Human Rights», Vol. 5, n. 3, 1976, pp. 261-331

¹⁹ K. McEvoy, *Paramilitary Imprisonment in Northern Ireland: Resistance, Management, and Release*, New York, Oxford University Press, 2001, p. 21.

almost 3,500 political detainees²⁰. The turning point for Italy's counterterrorism strategies came in 1980 with the introduction of a criminal category for terrorists. This was the climax of a course of action that went from enforcing so-called 'emergency' legislation targeting political violence to establishing special units for keeping terrorists in custody. It is important to add that the above-mentioned two phases - internment and criminalization - were not separate but overlapping parts of the same process. In employing our analytical framework, the distinction between the two relies on the identification of the terrorists as belonging to a criminal category. The adoption of this label marked the shift from a law-and-order to a ticking-bomb approach. We also need to consider the periodization carefully, as well as possible intersections. In our conclusions, we underscore the backlash effects if this model of counterterrorism based on criminal justice, and its overall negative cost-benefit balance.

3. Organized political violence in Italy and Northern Ireland

The conflict in NI dates back to 1920, when the government of the United Kingdom split the island of Ireland into two administrative regions with the aim of establishing a loyalist majority in NI to support the integration of Britain and Ireland²¹. In the years that followed, Irish republicans started a movement to fight against their country's perceived occupation by Britain. An armed struggle was deemed necessary to achieve this and led them to establish the Irish Republican Army (IRA). It is essential to clarify that paramilitary organizations loyal to Britain were equally committed to using violence to preserve the independence of NI. In the 1960s, a political campaign (known as a civil rights movement) was launched to cope with the discriminatory nature of Britain's NI colonial experience. This non-violent campaign aimed to promote the recognition of equal rights for Irish and British people living in NI. The situation deteriorated into the Derry riots of 1969 between republicans (Catholics) and loyalist (Protestants). The local government's failure to deal with the situation, and the rapid spread of the protests to the rest of NI resulted in the government in London sending the army to support the police. Over the next decade, forms of political violence became organized and institutionalized, developing into a facet of daily life in NI²². The strategy adopted by the British government merged its military intervention with actions of criminal

²⁰ S. Verde, *Massima sicurezza. Dal carcere speciale allo stato penale*, Roma, Odradek, 2002.

²¹ B. O'Leary, *Mission accomplished? Looking back at the IRA*, in «Field Day Review», n. 1, 2005, pp. 216–246.

²² Von Tangen, *Prisons, Peace and Terrorism*, cit., pp. 50-51.

justice: prison and internment played an important part in shaping the impact of the state's action in dealing with episodes of political violence. Over a twenty-year period between the 1970s and 1980s, the Italian state went through a period of ideologically-inspired forms of political violence, involving both left- and right-wing extremist groups. The massacre in Piazza Fontana (1969), and the subsequent death in custody of the anarchist Giuseppe Pinelli (wrongly accused of the carnage) is commonly recognized as the beginning of a period of escalating political violence²³. The groups embracing the armed struggle during this period, known as the *anni di piombo* (years of lead), aimed to subvert Italy's post-Fascist democracy. Among other strategies, that included having police officers infiltrate terrorist groups, or providing support for far-right movements, the Italian government also made use of its criminal justice system. These latter strategies went through two main phases, which can be separated by the moment when special legislation came into force that identified and tackled politically-motivated violence as a form of terrorism, and subsequently denied its political nature. In outlining the internment phase, it is important to stress two main differences between the situations in NI and Italy: first, the army was never involved in counterterrorism activities in Italy; and second, the suspension of the rule of law was less drastic in Italy. Due to the nature of the conflict, the criminal justice system was the only form of detention used by the Italian government. Albeit with these distinctions, it is safe to say that the emergence of the terrorist as a criminal category marked the real break between internment and criminalization. In both countries, it was only the terrorist label that distinguished politically-motivated from common criminals, and subsequently shaped the actions of the criminal justice system. The following sections briefly describe the British and Italian counterterrorism strategies based on the assumption that the Italian case can be analyzed using the same framework as for the troubles in NI.

3.1. The internment phase in NI: the Diplock courts and special prisoner status

The resurgence of the IRA in the late 1960s and early 1970s was crucial in shaping the features of the British counterterrorism strategy and the reality of its prison system. After the Derry protests, the British government introduced the Special Powers Act of 1971²⁴, which gave the Minister for Home Affairs in NI the power to restrict civil liberties²⁵.

²³ M. Lazar, *Il libro degli anni di piombo. Storia e memoria del terrorismo italiano*, Milano, Rizzoli, 2010.

²⁴ Special Power Act is a juridical tool used in Northern Ireland in the context of violence conflicts.

²⁵ By May 1972, of the 2.357 arrested 1.600 were released after interrogation (D.R. Lowry, *Internment: detention without trial in Northern Ireland*, cit., p. 274).

Following the recommendations of the Diplock Committee (1972), a number of legislative changes were introduced, and the Special Powers Act was replaced a few months after its enforcement by the Northern Ireland (Emergency Provisions) Act of 1973²⁶. This latter law was later amended with the Prevention of Terrorism Act of 1974²⁷, which was the first legislation to introduce the category of terrorism. The terrorist label remained outside the prison system, however. As of 1972, prisoner-of-war status had been granted to all the people in custody suspected or convicted of being terrorists, and this drastically reduced the impact of the terrorist criminal category. It is worth emphasizing again that internment and criminalization were not successive linear processes. The Prevention of Terrorism Act of 1974 could be seen as the root cause of the criminalization phase, creating an overlap between the two phases. The Diplock courts were abolished in 1975, marking the end of the internment phase, but the criminalization phase officially only began in 1976 when the special status of terrorists as prisoners of war was suspended. This meant that prison took center stage in British counterterrorism strategies, consistently with the periodization adopted in this article. With few exceptions, convinced IRA militants had been detained in England since the end of the 1960s, regardless of where they had been arrested. According to McEvoy²⁸, the conflict in NI changed the prison system: when large numbers of inmates were imprisoned for politically-motivated offences during the 1970s, this cast prison in the role of a key practical and ideological battleground of the conflict²⁹. The Diplock courts and the Prevention of Terrorism Act of 1974 made the prison system more relevant in Britain's counterterrorism strategy, but also increased the pressure on these institutions. The different phases of the troubles in NI led the British prison system through an uneasy period of transition. Mountbatten's report of December 1966³⁰ recommended reorganizing prisoners according to a hierarchy³¹, that reflected the risk of escape³². A report from the

²⁶ The Northern Ireland (Emergency Provisions) Act 1973 introduced the so-called Diplock court, based on non-jury trial.

²⁷ Despite the title, the Act provided for temporary powers to proscribe terrorist organisation and to examine of persons travelling between Northern Ireland and Great Britain. Only the following renewal introduced special power.

²⁸ K. McEvoy, *Prisoners, the Agreement, and the Political Character of the Northern Ireland Conflict*, in «Fordham International Law Journal», Vol. 22, 1999, pp. 1539-1576.

²⁹ Id., p. 1540.

³⁰ Lord Mountbatten, *Report of the Inquiry Into Prison Escapes and Security*, Cmnd 3175, London, HMSO, 1966.

³¹ A, dispersal; B, training; and C, local

³² The report, officially triggered by the escape of KGB spy (George Blake) from the high-security wing of Wormwood Scrubs prison in London (O'Donnell, 2012:5). Security categorisation assesses prisoners according to the level of dangerousness deemed they would present to the public were they to escape from prison. Category A detainees are defined in the report as: «[P]risoners who must in no circumstances be

Advisory Council on the Penal System³³ outlined the extent and nature of the 1968 reform's implementation. Unlike Mountbatten, Radzinowicz recommended the dispersal of toughened prisoners as the main means of containment. During the same period, the return of the paramilitary to English prisons confirmed the problems of instability in the maximum-security wings³⁴. The resolute attention paid to the so-called persistent troublemakers made the dispersal system become a punitive option rather than a security measure³⁵. After the 1968 campaign and the creation of the Diplock courts, the IRA evolved a new strategy³⁶, accepting the fact that a successful campaign could take years (the so-called Long War) and gradually came to support the political activities of *Sinn Féin*³⁷. This induced the IRA to consider the political status of its imprisoned members as a unique problem. On the one hand, the leadership realized that prisoners detained in England were at a disadvantage because of their geographical position, far from the war zone where a support system for political prisoners was already active³⁸. On the other hand, recognition of their political status as prisoners of war (POW) would be a precious tool for legitimizing the campaign in the public eye. The British government paved the way to a political dialogue outside the conventional channels. According to Mumford³⁹, secret negotiations and backchannels established with insurgents were a consolidated part of the British government's counterterrorism strategy in the colony. Between 1971 and early 1972 the IRA submitted proposals for a cease-fire in which they referred to their members as political prisoners. On 15 May 1972, Republican prisoners at the Crumlin Road jail in Belfast began a hunger strike without the consent of the IRA leadership outside the prison.

allowed to get out, either because of security considerations affecting spies, or because their violent behaviour is such that members of the public or the police would be in danger of their lives if they were to get out» (Home Office 1966: 3212-217).

³³ Lord Radzinowicz, *The Regime for Long-Term Prisoners in Conditions of Maximum Security. Report of the Advisory Council on the Penal System*, Great Britain, Parliament, Papers by Command (d'ora in poi Cmnd) 3408, London, HMSO, 1969.

³⁴ With the Radzinowicz report, it was decided to create secure facilities to hold the Category A prisoners in seven locations: Gartree (Leicestershire), Hull (East Yorkshire), Long Lartin (Worcestershire), Parkhurst, Albany (Isle of Wight), Wormwood (Scrubs) and Wakefield (West Yorkshire).

³⁵ G. Fowler, *Report of an Inquiry by the Chief Inspector of the Prison Service in the cause and circumstances of the events at HM Prison of Hull during the period 31st August to 3rd September 1976*, London, HMSO, 1977.

³⁶ T. Craig, *Sabotage! The Origins, Development and Impact of the IRA's Infrastructural Bombing Campaigns 1939-1997*, in «Intelligence and National Security», vol. 25, n. 3, 2010, pp. 309-326.

³⁷ It is a left-wing political party active in both the Republic of Ireland and Northern Ireland. Since the 1970s it is one of the largest parties in the Northern Ireland Assembly.

³⁸ R. O'Donnell, *Special Category. The IRA in English Prison*, cit., p. 2.

³⁹ A. Mumford, *Covert Peace-making: Clandestine Negotiations and Backchannels with the Provisional IRA during the Early 'Troubles,' 1972-76*, in «The Journal of Imperial and Commonwealth History», vol. 39, n. 4, 2011, p. 635.

On 13 June 1972, Whitelaw⁴⁰ agreed to discuss the IRA's proposed cease-fire and, as a concession to the Republicans, he accepted two of their conditions: (i) that all Republican prisoners be granted special status (like prisoners of war); and (ii) that they all be moved to the same prison facility and be allowed to choose their own delegation⁴¹. They were also granted a 90-minute visit per week, one food parcel per week, unlimited mail, the chance to wear their own clothes instead of the prison uniform, free association with other prisoners, and no statutory requirement to do prison work⁴². This special status was emblematic of Britain's strategy for coping with organized political violence, the main features of which can be summarized as: coordination between different agencies; secret negotiations combined with the use of penal repression; and the capacity to learn and adopt new counterterrorist techniques⁴³. As many authors have explained, the condition of IRA Category A prisoners was distinctive for their entitlements, but also for the levels of persecution⁴⁴. A statement from the PAC⁴⁵ on 27 January 1975 regarding imprisoned IRA members claimed there was evidence of «systematic victimization by prison authorities and attempts to create hostility among other prisoners»⁴⁶. The special status of political prisoners was repealed in 1976, and the criminal category of «terrorist» (introduced in 1974) was fully implemented as part of Britain's counterterrorism strategy. All political prisoners detained and interned in NI were transferred to HM maximum-security prison in Maze. The political prisoners' response was prompt and violent: six prison staff were killed in 1977.

3.2. The internment phase in Italy

The so-called *anni di piombo* period stemmed from the civil unrest of the late 1960s. A radical section of the Italian social movements became disappointed with the conservative left embodied by the Italian Communist Party and the trade unions. Activists were dissatisfied with the conventional action and political lines of the traditional parties. The episode that is believed to have triggered the violence of those years was the Piazza

⁴⁰ William Whitelaw was Secretary of State for Northern Ireland, in 1972. He was the first Secretary after UK Prime Minister Edward Heath in March 1972 established Direct Rule.

⁴¹ A. Mumford, *Covert Peace-making*, cit., pp. 633-648.

⁴² C. Crawford, *The Compound System: An Alternative Penal Strategy*, in «Howard Journal of Criminal Justice», Vol. 21, n. 1-3, 1982, pp. 155-158.

⁴³ J. Soule, *Problems in applying counterterrorism to prevent terrorism: Two decades of violence in Northern Ireland reconsidered*, in «Journal of Terrorism», Vol. 12, n. 1, 1989, pp. 31-46.

⁴⁴ R. O'Donnell, *Special Category. The IRA in English Prison*, cit.

⁴⁵ Prisoner Aid Committee: Legal body which supported IRA prisoners

⁴⁶ PAC, 1975 in R. O'Donnell, *Special Category. The IRA in English Prison*, cit., p. 303.

Fontana massacre in Milan in 1969, when a bomb killed 17 people - an attack later claimed by far-right social movements. The escalation of violence is not discussed here, though its echo behind the prison walls was significant⁴⁷. According to Moss⁴⁸, «the countervailing imposition of harsher penalties for violent offences and possession of weapons was in fact provoked by the rapid increase in ordinary crime which characterized the 1970s and was of far more concern to Italians than political violence». For example, members of the far-left *Gruppo XXII Ottobre*⁴⁹ operating in the city of Genoa were arrested as ordinary criminals, accused of crimes committed to support their political activities, and their political nature was denied by the court⁵⁰. In 1974, the Red Brigade (*Brigate Rosse*, BR) kidnapped the state prosecutor Mario Sossi. The organization demanded that members of the *Gruppo XXII Ottobre* be released in exchange for Sossi's life. Genoa's chief prosecutor, Francesco Coco, convinced the judges to release the prisoners, but persuaded the magistrates to arrest them again as soon as the BR had released Sossi. The BR did not react straight away, but a few years later Coco was assassinated⁵¹. This episode gives us a good idea of how the Italian government was fairly confident that ordinary legislation and the traditional tools of criminal justice would suffice to put a stop to political violence. This casts the application of the conceptual framework of internment to the Italian case in a new light: during the internment phase, there was a constant overlap between common crimes and politically-motivated offences, although the latter were dealt with and negotiated differently. De Vito⁵² described the prison system of the late 1960s as being characterized by an intensification of prisoners' protests and revolts, which facilitated the enforcement of the reform of 1975. During the 1970s, the incarceration of many political activists for crimes associated with their political activities turned prisons into a major political battleground. It was only with Law 497 of 14 October 1974, and Law 136 of 24 May 1975⁵³ - which gave

⁴⁷ V. Ruggiero, *Armed Struggle in Italy: The Limits to criminology in the Study of Political Violence*, in «British Journal of Criminology», n. 50, 2009, pp. 713.

⁴⁸ D. Moss, *Italian Political Violence 1969-1988: The Making and Unmaking of Meanings*, Geneva, UNRISD, 1993, p. 41.

⁴⁹ Gruppo XXII Ottobre was an Italian terrorist organisation; the group was established on 22 October 1969 and all the members arrested by police in 1971. They were inspired by the Uruguayan Tupamaros.

⁵⁰ E. Spaventa, *The Rule of Which Law? The Use of Legal Language in the Rhetoric of the Anni di Piombo.*, in *Imagining Terrorism: the Thetoric and Representation of Political Violence in Italy 1969-2009*, ed. P. Antonello, Leeds, Routledge, 2009, p. 117.

⁵¹ L. Weinberg, W. L. Eubank, *The Rise and Fall of Italian Terrorism*, Westview Press, Boulder, 1987, pp. 62-63.

⁵² C. De Vito, *Camosci e Girachiavi. Storia del carcere in Italia. 1943-2007*, Roma-Bari, Laterza, 2009, p. 62.

police broader powers to arrest and question suspects, tap telephones, search premises, and established more flexible rules on the police's use of firearms – that the Italian government introduced the idea of legislative tools designed to defeat politically-motivated crimes. The law of 1975 also introduced various measures to restrict the freedom of political 'criminals', even if they had yet to be convicted of a crime; the mere suspicion of the authorities sufficed. The label of 'terrorist' was ultimately introduced in 1980. By 1975, a large proportion of the first historical generation of political activists who embraced the use of violence for political purposes were in custody, giving the authorities the impression that they had consigned political violence to history. But Italy's politically-motivated prisoners started to see prison as a battleground: members of the NAP (*Nuclei Armati Proletari*)⁵⁴ and BR actively encouraged rioting in prisons, exerting a disruptive influence on ordinary prisoners. Political prisoners began to claim they were prisoners of war and, instead of seeking to be separated from ordinary prisoners, they tried to enroll them in their political struggle⁵⁵. The years between 1975 and the end of 1979 can be seen as part of the internment phase, albeit with some distinctions. The differences between the Italian and British internment phases are quite substantial. For a start, the Italian state never acknowledged the political nature of certain prisoners, and never adopted non-penal forms of detention. Nonetheless, the sense of emergency, and the need to waive the ordinary rule of law represented (to a variable extent) the main features of both countries' use of internment as a counterterrorism strategy. As the level of political violence subsided, and the number of arrests rose, Italy's left-wing groups became more fragmented. This led the armed struggle to turn slowly into a private matter, with a more constrained clash with the state, and an exacerbation of the violence. The rapid replacement of the historical leaders by new activists, and the arrival of the criminalization phase escalated the violence up to the kidnapping and murder of the Italian Prime Minister Aldo Moro in 1978. Compared with previous episodes, this prompted a drastic change of approach: the government refused to negotiate with the BR, implicitly marking the start of the criminalization phase. The second generation of political activists faced the entire variety of state repression. They were exposed to extreme levels of oppression such as are experienced in democratic states only when governments perceive themselves as being directly at risk. The end of the 1970s

⁵⁴ The Proletarian Armed Nucleus (NAP) were an extremely left-wing terrorist organization. They were born in the spring of 1974 and were active until 1977

⁵⁵ V.S. Pisano, *The Red Brigades: A Challenge to Italian Democracy*, in *The New Terrorism*, eds. W. Gutteridge, London, Institute for the Study of Conflict, 1986, pp. 184-199.

was also when prisoners and their status began to be seen as a problem. This was when the state built maximum-security facilities to house politically-motivated violent offenders, and police violence increased.

4. The criminalization phase: terrorist prisoners

The second instalment of the counterterrorism strategies adopted in NI and Italy based on the countries' criminal justice systems involved a process of criminalization. As discussed earlier, the case of NI can be framed within the following chronological periods: internment from 9 August 1971 (enforcement of the Special Powers Act) to 5 December 1975⁵⁶; and criminalization from 26 March 1976 (the end of special prisoner status) to 6 October 1981⁵⁷. The two phases are clear-cut, and supported by a specific, consolidated literature. The special status for political prisoners was the real link between the two phases: though not officially recognized, neither in legislation nor in Home Office or prison rules, this concept was used by the state to refer to political prisoners⁵⁸. The British government suspended their special status in an effort to tackle the political prisoners' protests and their gradual politicization of the prison environment⁵⁹. This underscores the core role of prison in Britain's counterterrorism strategy: the label of *terrorist* promoted the idea of prison as a mechanism for removing such extremely violent individuals from society and contributed to the creation of modern maximum-security facilities. By doing away with their special status and introducing the idea of the terrorist prisoner, the government tried to eradicate the symbolic distinctions that set the politically-motivated apart from the ordinary prisoners. In practical terms, this meant a stricter enforcement of the rules (including having to wear uniforms), the removal of any form of separation for political prisoners, and the end of any chance to elect representatives. This was associated with rigorous interrogations, the employment of special police forces, and suspension of rights. The government's new *ticking-bomb* approach was to manage the conflict in NI as a security problem rather than a political issue, shifting the frame from the political enemy to the terrorist. Before applying the criminalization category to the Italian case, we need to clarify a few points. According to the definition adopted earlier, it would seem easier to

⁵⁶ The last 46 people who had been interned under the Diplok court were released.

⁵⁷ James Prior, then Secretary of State for NI, announced some changes in prison policy to stop political prisoners' hunger strike.

⁵⁸ R. O'Donnell, *Special Category. The IRA in English Prison*, cit., p. 321.

⁵⁹ For a more detailed account see Ivi, pp. 130-176.

distinguish clearly between the phases of the Italian counterterrorism strategies. But the terrorist label introduced with Law 450 of 12 May 1977 was only fully enforced with Law 15 of 6 February 1980, and of 31 December 1983. During this time, the Italian state brought in major reforms dealing with citizens' rights, police power, and the prison system, as well as building maximum-security prisons for politically-motivated criminals. Before its special legislation, Italian counterterrorism strategies had always been considered rather restrained⁶⁰ – possibly a by-product of Italy's fragmented political system and fragile statecraft. We can therefore analyze the Italian case adopting the following periodization: the internment phase lasted from 22 May 1975 to 15 December 1979⁶¹; and the criminalization phase from 6 February 1980 to 31 December 1983. It is also important to mention that the legislation passed in 1980 was an evolution of laws dating from 1977. In other words, in the years between 1977 and 1980 there was an overlap between the two phases, as happened in the NI conflict (where the overlap occurred between 1974 and 1976). In both cases, the criminalization phase was characterized by the suspension of prisoners' rights, an exacerbation of the dehumanizing effects of prison, and the use of torture and police brutality. The criminalization process delineated an exceptional status and the label of terrorist allowed the authorities to disregard the rule of law in the public's interest.

4.1 An end to special status and the advent of the criminalization phase in NI

In 1975, the Gardiner Commission published its report on what requirements and powers, consistent - to the maximum extent practicable in the circumstances - with the preservation of civil liberties and human rights, were needed to deal with terrorism in NI⁶². This report put an end to any special status for political prisoners. From 1976 onwards, the UK recognized imprisoned IRA members (and any other terrorist prisoners) merely as criminals, denying the political nature of their actions. This marked the adoption of a new strategy, placing the emphasis on terrorism, and the government's reactions based on the rule of law and the use of judicial structures. By highlighting the criminal and terrorist nature of the IRA's subversive activities, the government detracted from the political

⁶⁰ B. Vettori, *Terrorism and counterterrorism in Italy from the 1970's to date*, in *Transcrime*, Report n.14, Trento, Università di Trento, 2007.

⁶¹ Decree Law n. 625/1979, later converted in law n. 15/1980.

⁶² Lord Gardiner, *Report of a Committee to Consider, in the Context of Civil Liberties and Human Rights, Measures to Deal With Terrorism in Northern Ireland*, Cmnd 5847, London, HMSO, 1975, p.1.

meaning of the troubles in NI. Their special status aimed to mitigate the prison experience of politically-motivated offenders. It «minimized the institutionalizing and dehumanizing impact of conventional prison»⁶³. With its abolition, the state clearly wanted to individualize prisoners and disrupt the sense of their belonging to a community. This emerges in an excerpt from an interview in which an IRA prisoner described his detention after his special status came to an end: «This is the set up. There's no IRA in here. There's no organization in here. Each one of you is an individual. You'll address me from here on in as 'Sir'»⁶⁴. This new phase of Britain's counterterrorism strategy aimed to shame political prisoners by casting them as terrorists. Among the benefits political prisoners had enjoyed was the acknowledgement of their representatives and organization, which gave them the chance to negotiate with the prison authorities. They had also been segregated from the common criminals, they could refuse to wear prison uniforms, and abstain from prison work. The new model reshaped their detention by removing these privileges, making them the battleground for political prisoners. In September 1976, the first IRA prisoner to reach Maze prison (known as the H-Blocks) in Long Kesh, refused to wear the prison uniform. The prison authority would provide no alternative clothing and, to avoid being naked, he wrapped himself in a blanket. By May 1977, about 400 prisoners were wrapped in blankets in protest against the imposition of the prison uniform. This became the *great leveler*⁶⁵ in an open and detailed debate among prisoners about the way ahead. Hunger strikes had been successful in achieving their political prisoner status in 1972, so they seemed the obvious choice. In the H-Blocks, the first hunger strike began on 27 October 1980, initially involving 7 prisoners, and 3 women⁶⁶ and 30 men had joined the strike by mid-December. The authorities responded by making the strikers' living conditions worse, depriving them of their ordinary entitlements to association, visits, exercise, and any activities outside their cells. The protesters also lost any remission of their sentences, which were doubled. The prisoners felt that the handling of their protest was part of the government's strategy to enforce a harsher policy, as one probation officer confirmed: «The instructions to break the prisoners came from the highest levels of government

⁶³ C. Crawford, *Long Kesh: An Alternative Perspective*. Unpublished M.Sc Thesis, Cranfield Institute of Technology, 1979, p. 49.

⁶⁴ A. Feldman, *Formations of Violence: The Narrative of the Body and Political Terror in Northern Ireland*, Chicago, University of Chicago Press, 1991, p. 153.

⁶⁵ L. McKeown, *Unrepentant Fenian Bastards: The Social Construction of an Irish Republican Prisoner Community*, [Unpublished] D.Phil., Thesis, Belfast Queen's University, 1998, p. 323.

⁶⁶ Mary Doyle, Mairead Farrell and Mairead Nugent (all IRA).

because the policy was ... to make them 'conforming prisoners' ... It was seen as a transitory step towards normalization, the acceptance of the prison uniforms and of prison rules in their entirety»⁶⁷. The hunger strike ended in 1981 with a transition to a long-term protest strategy to improve the prisoners' life behind bars. The final paragraph in the statement declaring the end of the strike reveals the defeat of the H-Block prisoners: «we reaffirm our commitment to the achievement of the five demands by whatever means we believe necessary and expedient. We rule nothing out. Under no circumstances are we going to devalue the memory of our dead comrades by submitting ourselves to a dehumanizing and degrading regime»⁶⁸. Criminalization as a counterterrorism strategy directly engaged prison managers in enforcing policies and rules to obscure the political nature of the politically-motivated prisoners. The state was intent on break the IRA prisoners by any means. Torture was used during interrogations and unjustified, extreme brutality was used by prison staff in enforcing rules. Prison had literally become the battleground in a fight to the death between the IRA and the British Prime Minister Margaret Thatcher⁶⁹. According to LaFree et Al.⁷⁰, the criminalization phase ended in 1981, when attention shifted from inside the prisons to the outside world due to an escalation of violence.

4.2 Emergency legislation and maximum-security prisons: the criminalization phase in Italy

With the decree No. 450 of 12 May 1977, the Justice Minister attributed exceptional powers for coordinating security inside and outside Italy's penitentiary institutions to Carlo Alberto Dalla Chiesa, a general in the military police. In 1979, Dalla Chiesa's powers were extended by a further decree (No. 625 of 15 December) later converted into Law 15/1980, which also reinforced previous legislation offering repentant terrorists a reduction of their sentences. The 1977 legislation can be seen as the beginning of a process that led to the criminalization phase of Italian counterterrorism policies. The first step Dalla Chiesa took was to create maximum-security prisons. Between 18 and 26 July 1977, more than a

⁶⁷ Ex-probation officer, in Feldman, *Formations of Violence*, cit., pp.191-192.

⁶⁸ B. Campbell, L. McKeown, P. O Hagan, *Nor Meekly Serve My Time: The H-Block Struggle 1976-1981*, Belfast, Beyond The Pale Publications, 1994, p. 264.

⁶⁹ D. Moen, *Irish Political Prisoners and Post Hunger Strike Resistance to Criminalisation*, in «British Criminology Conference: Selected Proceedings. Papers from the British Society of Criminology Conference, Liverpool, July 1999», Vol. 3, 2000.

⁷⁰ LaFree, Dugan, Korte, *The Impact of British Counterterrorist*, cit.

thousand prisoners were transferred by hundreds of police officers from ordinary prisons to the five maximum-security facilities, which were outside the normal prison system⁷¹. The next year, another eleven new facilities, or blocks⁷² within ordinary prisons (eight for men and three for women), were added to the list of maximum-security institutions. By the end of 1980, these institutions as a whole contained a special category of extremely dangerous, violent criminals, the vast majority of them labelled as terrorists⁷³. The new policy and pragmatic approach were a clear example of how the state was gradually politicizing its detention facilities. The law passed in 1977 permitted a highly intrusive level of surveillance by prison staff and ensured that prisoners had to apply specifically for numerous privileges that were automatic in the so-called 'normal' prisons. The 'special' prisons served two purposes: to isolate politically-motivated prisoners, and to exacerbate the dehumanizing impact of imprisonment in order to erode their political identity⁷⁴. The prison authorities censored the political prisoners' correspondence, limited their visitors, denied them access to information (newspapers, magazines, radio, etc.), gradually isolating them from the outside world. This was associated with other forms of dehumanization: no communication with other inmates; a gradual impoverishment of the material living conditions, with fewer hours spent outside the cells, and no opportunity to receive parcels or buy foodstuff. Staff brutality and torture gradually became the means to manage the daily lives of politically-motivated criminals⁷⁵. During the 1970s and early 1980s, prison became one of the pillars of the Italian government's counterterrorism strategies. The pragmatic approach extended to suspects captured by the police and detained in prison, where they were initially treated with brutality and tortured (even though the authorities lacked sufficient proof for a prosecution). The strategies for interrogating prisoners were described as torture in Amnesty International's report in 1984⁷⁶. The transformation of prison into a constitutive part of the conflict led to the generation of a 'prison front' that came to dominate the attention of left-wing militants. For instance, the Red Brigade was engaged on the prison front, its organization entrusted to the leader of the BR's group in

⁷¹ These were located in Cuneo, Fossombrone, Trani, Favignana and Asinara.

⁷² These were Novara, Termini Imerese, Nuoro, the Agrippa wing of the Pianosa's island prison and subsequently Palmi, Badu and 'Carros and Ascoli Piceno. In a second moment also the female detention facilities of Messina, Latina and Pisa.

⁷³ This has been formally defined as *circuito dei camosci* - chamois circuitry

⁷⁴ Verde, *Massima sicurezza*, cit., p. 45.

⁷⁵ S. Naria, *I duri. Storie, volti, voci del popolo della mala*, Milano, Baldini & Castoldi, 1997.

⁷⁶ Amnesty International, *Torture in the Eighties: Northern Ireland, Voices for Freedom, An Amnesty International Anthology*, Amnesty International Publication, London, 1984.

Rome, Giovanni Senzani. The BR's work on the prison front was behind several episodes of rioting, prison officer kidnappings, and other action to take control of the prison environment. In 1981, the BR kidnapped a judge, Giovanni D'Urso, as a reaction to Law 15/1980, and claimed that his life was in the hands of the action committee in prison: the committee's demands were met and the judge was found alive. Criminalization as a counterterrorism strategy kept the prison authorities busy, and such acts of rebellion resulted in retaliation measures, which sometimes took the form of beatings and abuse⁷⁷. While physical violence and vehement repression - which focused no longer on individual prisoners, but on whole prison sections - were effective in 'bending' the political prisoners and exacerbating their deprivations, the motivational horizon of the armed struggle against the state, and relations with organized and consolidated armed movements outside have enabled Italy's political prisoners to resist in what they define as *concentration camps*⁷⁸. As already stressed elsewhere⁷⁹, the criminalization phase culminated in what has been described as a period of dissociation. The gradual loss of motivation prompted by the dismantling over time of the political organizations that engaged in the armed struggle, combined with the chance to leave the maximum-security prisons, encouraged many politically-motivated prisoners to collaborate with the authorities and take advantage of the dissociation law, which was introduced in 1982 and expired in December 1983⁸⁰.

5. Some conclusions

Prison, and more broadly the criminal justice, represented a core means for the counterterrorism strategies of both Italy and Britain. The comparative model proposed in this article might help to frame the employment of criminal justice in counterterrorism strategies and I believe this could be applied to other conflicts, with the right periodization and weight between the two phases. In fact, the article demonstrated how, in both cases, the employment of criminal justice based strategy was shaped by two phases: internment and criminalisation. Those two stages can be understood as part of a continuum, characterised by overlaps and by an increase of the conflict. As demonstrated in the previous pages, the two main phases of this strategy are distinguished by the full employment of the terrorist

⁷⁷ S. Santorso, *Lotta armata e repressione: dagli speciali alla dissociazione*, in *Visto Censura. Lettere di prigionieri politici in Italia (1975-1986)*, Bologna, Bebert Edizioni, 2017, p. 59.

⁷⁸ Ivi, p. 61

⁷⁹ *Ibid.*

⁸⁰ A. Jamieson, *Collaboration, New Legal and Judicial Procedures for Countering Terrorism*, London, Research Institute for the Study of Conflict and Terrorism, 1993, p. 15.

label. In the Northern Irish conflict, the terrorist label was introduced in 1974, although it remained outside prison until 1976, due to the special status category, which prevented its full deployment until that year. Italy, while has never officially recognised the political nature of these organisations, started to fully embrace the terrorist label only from 1980. On one side, this distinction is due to the different nature of the two conflicts: a colonial effort and the struggle for a different idea of society. On the other side, it is necessary to consider the history of the two states. During the 1970s Britain had undoubtedly a more consistent and consolidated statecraft capacity compared to Italy, which was younger and still recovering from the fascist period. However, in both cases, the climax of the criminal justice based strategy was represented by the employment of the terrorist label. The path that led to the employment of the terrorist label has been characterised by an escalation of repression, exacerbation of punishment and suspension of rights. The terrorist category allowed the states to employ the so-called ticking bomb approach to formulate arguments to justify the use of torture and rights suspension within the prisons. As argued by Zender⁸¹, by using this approach the criminal justice system accepts the exception to become the norm, in that way the state gains the licence to escalate violence and repression behind the rule of law. In both cases, the normalisation of the *state of exception* became the ruling principle for the deployment of counterterrorism strategies outside and inside the prison system. Despite the criminological literature shows that harsh criminal justice interventions to reduce terrorism produce counterproductive effects and that it is a stably unrestful approach, this has become the constitutive part of future state actions against political organised violence. The use of harsh forms of punishment, torture and the suspension of rights for political prisoners could be placed on the realm of state form of revenge rather than on state willingness to stop violence.

Simone Santorso
University of Hull – UK
Department of Criminology and Sociology
Wilberforce Building, Cottingham Road,
Kingston Upon Hull, HU6 7RX
s.santorso@hull.ac.uk

⁸¹ Zender, *Terrorism, the Ticking Bomb*, cit., p. 18.