The psychiatric context of the culturally motivated crime

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Abstract. This paper aims to consider the conceptual context in which psychiatry is situated when it faces to culturally oriented offense, as in the case of psychiatric evaluation as part of the criminal trial. The starting point of the psychiatric science is the concept of *normality* and his goal is to analyze and classify patterns of behavior. It is an historical concept (in time and space) and, as such, strongly conditioned by culture, customs and, nonetheless, traditions. Globalization -whose indicator is the widespread mobility of people in space- determines many problems when it comes to define the content of normal behavior, especially when we try to compare the content of prevalent behavior with behavior patterns of people belonging to cultural minorities.

Key words: psychiatry, multiculturalism, globalisation, crime

As we know, psychiatry is the branch of medicine that deals with every state of subjective distress and altered behaviour due to functional, organic or psychological causes. Therefore, we can say that his goal is to study brain lesions that cause alteration of behaviours and/or consciousness state, as well as all forms of individual conduct diseases and the experiential subjectivity, regardless of the ability to track down the causes in injury or brain dysfunction. In short, psychiatry is "the science of mental disorders" (1). In doing so, it takes into account three variables, denominated in doctrine "operational concept models": the culture (i.e. "the set of rules, customs, traditions, religious beliefs, myths, rituals"), the company (i.e. "institutes and reference codes for the approved and compliant behaviour, role expectations and status"), the personality (i.e. "bio-based and affective learning, cognitive, relational and social") (2). Each person accepts in his/her own way these three models and, according to them, he/she defines his/her own personality, his/her own *lifestyle*.

Psychiatry always tends to categorize different *lifestyles* in models, which are ascribed to individuals:

normal, pathological, deviant or delinquent. Obviously, the categorization is highly approximate (3). However this science is based on an essential milestone, that is the concept of *normality*, according to what we can differentiate one lifestyle model from the others ones (4).

It appears clear how the conceptual method, upon which this classification is based on, shows a fundamental weak link. It depends precisely on the first point itself: the definition of *normality*. In fact, the concept of *normality* seems tautological, since it is defined as the "normal individual's ability to process experiences and its data". The aim of behavioural studies would be to differentiate those deviant from *normality*, but how to do it if it is not clear what do we mean by *normality*? His boundaries are uncertain, "problematic and elusive" (5) for many reasons, mainly because "it is difficult to reach consensus on the hypothesis [...] that can exist a general and transcultural model, a universal one, of "positive" mental health" (6). This difficulty is more and more glaring as we are witnessing the rapid evolution of society's buoyancy, and the internal dynamics to it: we no longer have closed societies within the borders of a State, therefore we do not have a ho-

mogeneous culture. As we see, nowadays, the *Civil Society* tends to be universal and it is characterized by cultural ferments not only constantly mutating, but also very conflicting reciprocally.

Therefore, it is evident that the concept of *normality* (i.e. its cultural model reference) need to be continuously revised. However, why this concept - the one of *normal behavioural patterns* - still works as a starting point for the psychiatric investigation? We have also to note that, although that, in the light of the legal rules of a state order, alternately or jointly, these studies show aspects ones deviant, ones pathological or delinquent. Often, psychiatry wonders about a person's location within one or the other of the above-mentioned *lifestyles*. This is a complex process, that becomes even more complex when one's conduct is supported by a condition that *prima facie* does not seem pathological, but rather determined by reasons or explanations related to the magical world of superstition, ancestral beliefs, religious practices and cultural traditions different from the ones that are embraced by the "society" in which such conduct has been developing. For this reason, from now, we chose to refer to all of these with the single and most complete expression of *cultural reason*.

Normally - i.e. in a situation that should not and could not be considered as pathological - the reference to *cultural reasons* has a useful unifying function: it serves to reinforce one's own identity (the one of a minority) in comparison with a more stronger identity (such as the one of a majority). In doing so, it allows to give continuity between past and present and to give cohesion to a group of *migrants* (both physically and culturally) people. Nevertheless, the *cultural reasons* cease to be functional to ensure the equilibrium of a person's lifestyle in two different situations: when the encounter between different cultural patterns becomes a clash and when it is made a pathological use of it. In the first situation, it is not psychiatry to be affected as a science. Instead, in the second scenario, there are grafted typical dynamics of the disease (7), which determine the interest of psychiatry. This is emphasized by scholars in the field of the "nostalgic illness", since the "psychotic episodes associated with it" are welded with "pessimism, anxiety, apathy, hypochondriacal concerns, for demands and hostile ideas against the host environment, up to unleash "a delusional system of persecution ideas, harm, jealousy and other" (so-called paranoid psychosis), which can achieve "a pathological use of cultural content or superstitious origin, with the psychiatric field consequences (depression and paranoia) and behavioural (conduct self- and/or hetero-aggressive)" (8). In this situation we are in the field of psychotic illness.

Therefore, we need to continue to reason with scientific rigor to be able to separate the pathological aspects from the ones that are instead specific of the basic structure inherent to the personality of a person belonging to a cultural minority group. The typical example is that of an exaggerated attachment (the dominant culture) to the parental role models, but that have respect for elders (in the minority culture). There are several examples, such as the immaturity of a person affective development or the poor mental capacity or the low intellectual level.

For this reason, the psychiatric investigation - even for forensic purposes - will never refer indeterminately to a group of people who hold certain *cultural reasons*, to infer *a priori* that a certain culture, a ritual, etc. are pathological. The examination must always be clinical or oriented to the individual, taking into account the four "operational concept models" that we saw above. For each person involved in a culturally motivated criminal offense must be therefore distinguished if the situation is an infirmity of mind or not.

Isolating the psychopathological component from the cultural one is not easy, but "this is the work of the psychiatrist, who must also take into account the close interrelationship between (cultural) conditions of disorientation and, consequentially, the emergence of certain forms of mental illness" (9).

The contribution of legal science

The theme of culturally oriented offense has been the subject of many legal studies during the past both in general and also in its criminal implications, especially by scholars belonging to multicultural legal systems, which were mainly the United States of America and, for the European Continent, the United Kingdom because of its membership in the Commonwealth

(10, 11, 12). Culturally motivated conflicts emerge in multicultural societies; it is in these societies that, consequently, it is sought a mean of understanding and some kind of resolution of their effects through law.

Today this issue is becoming of increasing importance also for the European Continent and its belonging Countries. These were always characterized by a substantial cultural homogeneity and so, from the perspective of each domestic legal system, this has resulted in a substantial monocultural national social structure. Consequently, ethnic and cultural minorities were considered a negligible factor and were fairly consistent with the traditional cultural majority.

Immigration and "cultural reasons"

The phenomenon of immigration for economic purposes, as well as the entry of people fleeing to foreign legal systems because of persecutions, had a quantitatively significant reduced relevance. In particular, until the Eighties of the last century Italy was an emigration Country, and thus impervious to the legal fallout of multiculturalism within its territory.

Conversely, contemporary times put us in the presence of many different people coming from all around the world, which lost its episodic dimension: currently migration is a structural phenomenon. Thus, the domestic communities - in the past so homogeneous - are turning into multicultural societies. This does not mean that the culture of the majority of the population has ceased to exist (the autochthonous one); but rather, it means that this one has to deal with many different cultures - all belonging to minorities, coming from different corners of the world and, therefore, also very different to each other - inside the same host Country's culture.

The consequences are important not only in order to guarantee a tidy coexistence of different ethnic groups, but also to settle the legal aspects that distinguish and define the behaviour of the people, both in their private and social life. So, each national legal system is always marked by a majority culture, but it is crossed by many minority cultures that do not (or are struggling to adhere) to the cultural model accepted in that specific context.

Terrorism and "cultural reasons"

The phenomenon of terrorism is also involved, creating further complications: mingling with religious or broadly cultural motives, it may not be perceived exclusively as a violation of order and security, but also as the consequence (in some respects to justify) of a past colonial domination and of a present situation unable to provide acceptable conditions for inclusion in a foreign host society. Therefore, in front of these criminal acts - strongly grafted on ideological and religious elements - someone is questioning the need to steer them only within a delinquent framework (13), not taking into account the ideological motivation that would be incurred. This approach is even more enhanced by the most recently common practice of carrying out terrorism acts for the pure spirit of emulation and not being guided by a cultural foundation. Yet, it is in these situations that emerges all the difficulty of the problem: those who implement such serious emulative conducts to be compared to acts of terrorism are undoubtedly people suffering from major mental stress, to say the least.

Lifestyles and deviant behaviour for cultural reasons

There are also legal fields of the judicial system that are particularly sensitive to cultural facts. For example, the concept of family and the interpersonal relationships are strongly characterized by the belonging culture of its components. The same must be said for that area of law which is composed of rules established to protect the values considered important and indispensable by the national legal system: criminal law is considered the ultimate, last, strongest barrier against behaviours that violate fundamental canons of coexistence (11). Therefore, it reacts - more than other legal fields - in the presence of a multicultural phenomena.

The issue is complex also for the Italian legal order, like other European systems and those generally belonging to the West, because of their membership in the democratic State model: their fundamental principles include equality (not just formal but also substantial) of the individual, equal dignity of each one of them and of the culture that they bring, tolerance.

It appears very difficult to put together in practice all these principles with the fundamental cornerstone of the modern State: one that relies on the authority of the latter with the task of maintaining the orderly co-existence of the people within the national borders. In fact, the question is which rights are fundamental, which ones are more basic than others, which ones can be neglected and so on. Just think, for example, about the situation in which many wives of a man whose religious culture allows polygamous marriage; or, to take another example, about the situation regarding the father's educational duties towards his children in matters of clothing, acquaintances friendship (even of different sex), the possibility of self-determination in the choice of spouse, and so on. In fact, if the majority culture of European countries relies on the individual self-determination that also determines the possibility of gaining (or losing) certain fundamental rights, to other cultures this might not be true, being devolved exclusively to the father the choice about the behaviour of all members of the family.

It is clear that the coexistence of these two different models can be itself the source of major conflicts. It creates clashes among the different communities allocated on the same territory, precisely those belonging to different cultures. But, such co-existence among different cultures also creates conflicts at an individual level because he/she is simultaneously receiving conflicting rules: those of the belonging Country (that requires certain behaviour, as not to allow the daughter freedom of choices), and those of the arrival Country (that require him not to punish the exercise of this right).

It becomes difficult for the governmental authorities to establish who is right: who (the daughter) wants to marry the man she choses? Or who (the father) uses its duty to correct this behaviour (even with violent means and ways) because it conflicts with the cultural pattern of the country of origin? In determining who is right, should come into consideration a specific cultural model, or should the national authorities remain indifferent to it, since what matters is the majority cultural model? Or, again, the authorities have to consider the conduct seriously eccentric to the dominant cultural model as criminally relevant, but less grave (useful to mitigating or exonerating measures) because it is conditioned by a different cultural model? Or, on the contrary, the fact of not having been able to integrate into the host community - embracing the dominant cultural model - represents an aggravating circumstance?

It is in this dynamic that the question of the relevance (or otherwise) of the culturally motivated crime breaks into (i.e. that the fact is so severe that requires the intervention of the criminal law). The relevance of the cultural conception, the ability to discernment and, consequently, the punishment coming if one is found guilty.

Conclusions

At the beginning of our paper, we have seen that it is not easy to find a shared definition of the word *normality* even if this is considered the starting point of the psychiatry science. In particular, we have to remember that, in these last years, migration and globalisation have changed this concept. Nowadays, in fact, we can no longer speak of a culture, since many people have, at least, two culture: the culture of the belonging country and the culture of the arrival country. Is it possible a mediation? What happen when a criminal act seems to be culturally influenced? And, above all, what is culture? Perhaps, this is the major problem, since, without a clear and agreed definition, become more difficult to have a reliable and sharable reference model on which to base the fundamental right. Therefore, we need to find an agreement on the term *culture*. In fact, if the (minority) cultural model must have some significance in the decision of whether to apply a penalty to those who infringes a code that belongs to the majority cultural model or on the decision to exacerbate or reduce the punishment, it is first necessary to understand what is meant by cultural model.

A first problem consists in determining which data are relevant to a one's culture. We have to wonder if it should be taken into account the nationality, religion, social affiliation, sexual inclination, political ideology. If we have to take into account all these variables for each person, it might get to the conclusion that each individual has his own personal culture: this approach would make barely impossible any solution's attempt.

Some Italian scholars (14, 15) have solved this dilemma by stating that the membership of a person in a culture must be measured on the basis of factors that affect in a predominant way on the group's way of being as able to determine the overall personality of the individual component of the group itself. By contrast, other scholars consider that the notion of culture must not be anchored to ethnicity or nationality (16), but the rules (just culturals) which give each individual his own vision of the world: i.e. certain rules of conduct also by religious sects or political fringes, in contradiction with the norms of the dominant culture. If we think about, we can note that the first doctrinal position allows it to tackle the problem in a non-dusty manner, so this idea seems more useful in the context of a problem - that of the relevance within the criminal trial of culturally oriented behaviour - that requires solutions marked by criteria of rationality.

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