



### F2 *Iter Criminis* and *Mens Rea*: A Methodology to Understand an Offender's True Intention Based on a Revision of the Concept of Guilt in Italian Criminal Law

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**Learning Overview:** After attending this presentation, attendees will understand the importance the Italian legal process provides to the criminal path (*iter criminis*), seeing as it is fundamental to undertaking an evaluation of an offender's true *mens rea* or the degree of culpability or insanity.

**Impact on the Forensic Science Community:** This presentation will impact the forensic science community by acquainting attendees with the advantages of using a criminal path legal model, which can split the criminal's behavior and thus define his actual intent and mental state.

A criminal path study can also ascertain whether the offender suffers from insanity, which may prove useful during the trial from a psychiatric and psychological point of view, with definite advantages for the defense, the accused, and the jury. In Italy, the criminal path is associated with an attempted crime, as set out in article 56 of the Italian criminal code. It is used to identify the moment in which the illegal activity of an agent becomes punishable. Article 56 states that: "whosoever carries out acts clearly intended to commit a crime, is responsible for an attempted crime, if the action is not completed or the event does not occur." In Italy, Article 56 is occasionally placed with such specific incriminatory laws as attempted murder (art. 56, 575 Italian Criminal Code).

The criminal path consists of the following parameters: (1) ideation, in which the offender sketches out the initial purpose on which the crime is based. In fact, the agent outlines in his psyche the criminal idea he wants to commit, which is then manifested by its conclusion; (2) preparation, where the agent arranges everything needed to execute the crime; (3) execution, where the agent carries out the conduct required for the crime to occur; and (4) perpetration, when the crime is committed. To be precise, the crime has been completed with all the elements defined by criminal law.

Intention must not be confused with the agent's volition, since it appears because of criminal intention. In fact, the latter constitutes the guilty party's true evil animus (cited in art. 108 of the Italian Criminal Code). Volition is seen as the manifestation of criminal intent (the latter is *mens rea* in the United States and *dolo* (malice) in Italy), which is completed with the offender's action. Volition is maintained until the crime has been concluded; even mental pathologies leading to incapacity to understand and to want can be inferred once a reliable diagnosis of the criminal path has been undertaken (as they are attached to the latter). In this regard, forensic neuroscience should also be considered. Regarding conscience and volition of action (*suitas*), what about taking criminal responsibility into account with criminal psychiatry? If this is not done, liability is correlated to the ability to be in full possession of one's faculties. Article 85 of the Italian Criminal Code states that no one can be punished for an act seen by law as a crime "if, at the moment of the act, [that person] was not responsible" and that "those who are in full possession of their faculties are responsible." It can be said that consciousness and volition may be considered as separate from a capacity to understand and to want, since mere consciousness and volition do not include the ability to comprehend the negative social value of actions that the offender performs and which, perhaps, in a moment of sanity, would never have been carried out (art.85, Italian Criminal Code). Finally, a full legal and scientific model will be suggested that can be used to evaluate an individual's actual *mens rea* through the criminal path.

#### *Mens Rea, Iter Criminis, Liability*