*Prospects for restorative justice in the juvenile justice system**

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Summary. *The present paper sustains a sociologically based reflection drawn from the models of juvenile justice and proposes the implementation of spaces thus far conquered by restorative justice through processes of penal mediation. Such a paradigm has in practice provided, while in need of further epistemological clarification, a solid account of itself in relation to the needs of the victim and the offender. Participation in mediation is suggested here as functional to the accountability of the minor, a critical step to attaining the activation of rehabilitation pathways, otherwise difficult to achieve. Such considerations may induce the legislature towards non-deferrable regulatory interventions and the juvenile judiciary towards reflecting on its own legal culture, marked by paternalistic attitudes, at the expense of choices simply made in terms of lenience.*

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Introduction

The juvenile justice system has, over time, witnessed an evolution not always directly or exclusively attributable to those choices in criminal policy aimed at aligning the tools and the target of the intervention with developing awareness in terms of childhood and adolescence. This involves a non-linear pathway, punctuated at intervals by broader and deeper social, cultural and political mutations, with subsequent implications both in terms of the concepts of childhood and adolescence as well as those of justice and punishment, within which the institutions of social control and the functions attributed to them acquire meaning.

The sociology of punishment may contribute towards clarifying the social and cultural substrate in which rulings attain their modern meaning, in order to provide an adequate basis for describing penal policy (Garland, 1990). Historical evolution therefore affects the purpose of punishment itself, yet also the techniques used: criminal justice systems are therefore both historically located and influenced. It would therefore seem both possible and useful to apply the concept of paradigm, in which heuristic value has already been employed (Berzano, Prina, 2003, Scarscelli, Vidoni Guidoni, 2008) in the sociological study of deviance and crime to the study of social control and, therefore, criminal justice, in order to represent the entirety of the approaches strengthened in different historical and social contexts, as well as the perspective shifts occurring in conjunction with the changing social and economic conditions and the questions raised by the scientific community. Within justice it is, therefore, possible to identify a number of coexisting paradigms along the same lines of justice models which serve as sets of answers historically provided to questions relating to the functioning of the criminal justice system, particularly in view of the scientific interpretation of deviance and criminality suggested by the dominant theories prevalent in a given historical moment: "the various models of criminal justice correspond to the different cultures and subcultures nevertheless operating in the practice of each order" (Ferrajoli, 2008, p. 222).

The question to which a response is sought at this point thus relates to those spaces that within the juvenile justice system may engage a restorative model that, nevertheless, itself requires clarification in terms of its meaning, functions and tools. It is therefore argued that traditional models of justice have largely failed to achieve their targets within the designated timescales, not, therefore, justifying the marginal spaces hitherto granted to the practices of restorative justice, denominated in the scientific literature as a "third way" (Bouchard, 1992, Roxin, 1992) in comparison to

rehabilitative and retributive justice. The reference to the notion of function therefore serves to provide criminal justice with a social and historical foundation. This does not mean, however, prescribing a direct, linear and rational line between the justice system and the social milieu from which it acquires shape and meaning, by virtue of the choices made within criminal policy, able to favour special interests ahead of broader social needs. Such considerations may be extended to juvenile justice, in which the social perception of the adolescents and their condition and given social expectations are, however, equally important parameters, the result of a process of social construction affecting every single age group or life stage.

From moral reform to social rehabilitation

The timeframe of interest within the present work is confined to the modern era, according to those conditions allowing for a modern conception of criminality, crime and punishment and for that which is now understood as the discovery of childhood. This implies a modern development tied to the accomplishment of the modern bourgeois family model and, consequently, the importance attributed to education and socialization, with a progressive idealization of the child and the exaltation of the processes of socialization and professionalization of educational practices, yet also of its implications in terms of expectations, demands and obligations on the part of minors. The juvenile bearer of rights becomes, at the same time, the recipient of duties and obligations.

The discovery of childhood did not, however, prove sufficient, at least initially, for the detection of a specific puerocentric procedural discipline. The "great internment" (Foucault, 1976), with which institutionalization, in its still proto-modern forms and functions, replaced corporal punishment and measures of social exclusion, implicated "unruly", abandoned, insane, or otherwise marginalized youth in charitable and correctional activity, within the contemporary process of urbanization and proletarianization of the peasant masses, perceived as a threat to the public order. Houses of correction gradually spread over almost the entire country, not only creating a physical separation from adults but also providing differential treatment based on religion, education and work for the purpose of reform.

It was only during the 20th century, however, that verification of the existence of juvenile justice and rehabilitation models was possible, the gradual affirmation of which placed, not without difficulty, the needs of rehabilitation before those of social protection and the management of

childhood. Even before the protection of minors arose to the level of interest necessary to invoke Constitutional guarantees, within the particular climate marked by positivism on a scientific level and fascism on a political level, conditions were ripe for the introduction of an ad hoc body for the civil, criminal and administrative jurisdiction of minors. It would, however, be simplistic, if not mystifying, to reduce tout court the development of the juvenile court to a new humanitarian attitude matrix, neglecting the needs and expectations of society. The function of punishment and its embryonic institutions ranged between penance and moral reform, with an ambiguity consistent with that with which the social sciences viewed juvenile crime as well as with a moralizing strain marked by the moral codes of the 19th century, in essence still distinct from the notion of rehabilitation as subsequently outlined. Indeed, the retributive concept of justice emerging from the penal code of 1889 was not contradicted by the predominating correctional attitudes. The scientifically shared perception was that of a minor caught between moral and biological degeneration on the one hand and social contagion on the other, in line with the deterministic and pseudo-scientific arguments of positivism. A straying child, as a result of a relaxation in the control exercised by the patriarchal family in crisis justified new forms of control and institutionalization. The philanthropic organizations of the middle class, which certainly played a major role in the development of the court, though not perhaps comparable to that of Child-saving movement in the United States, were in all probability motivated in their commitment primarily by the moral and social need to arrest the growing presence of masses of children and adolescents in urban centres, based on the belief of the substantial convergence between poverty and deviance. The social concern for juvenile delinquency had assumed alarming dimensions, not supported by statistical evidence yet endorsed by the thesis of criminal anthropology on the incorrigibility and malice of the young.

The birth of the juvenile court marks the beginning of a process characterized by the integration of medical and psychosocial expertise, introducing sociological, psychological and pedagogical knowledge in the judicial culture and bypassing formalities in the process of gathering information and opinions in order to determine the personality of the minor. Such opinions were aimed substantially at the assessment of guilt, without altering the punitive and repressive character of interventions or sanctions, relegating re-education to an exclusively moral dimension, possible through work and education, thus affirming the retributive model of justice. Since the end of World War II, a paradigm shift has been marked primarily by the end of the authoritarianism of fascism and the pretext of control over

childhood along with the development of a welfare state model with the provision of an social services office for minors and, subsequently, with the attribution of the responsibility for the enforcement of decisions in the civil and administrative court for juveniles to local authorities. This paved the way for the complex evolution of a system interweaving care interventions with judicial interventions, with a continuous and unresolved oscillation between the need for the protection of the child and the guarantee of their procedural rights of freedom as well as social protection (Palermo Fabris, 2002, p. 23).

The reverence for re-education is upheld by the constitutional provision that expressly assigns to punishment the task of pursuing rehabilitative trajectories, according to which the personality of the offender plays a central role, abandoning the target of social recuperation as a strategy to curb juvenile delinquency. A new perspective has developed since the 1950s: the notion of the straying child is replaced by that of juvenile misfit with "unbalanced conduct and character", with a perception of deviance in terms of social disadvantage, thus justifying an individualized rehabilitation programme, supported by the dominant scientific theories of the consensualism of functionalism which emphasize the importance of the socialization shortcomings in the genesis of deviance. Such re-education was to be pursued, above all, through administrative measures, anticipating interventions in advance, relying on multidisciplinary expertise and the specialization of services, renouncing moral judgment in favour of an evaluation of a psychosocial nature. The social context, hitherto favourable to justice of a re-educative nature, inevitably sanctioned its decline as a result of the crisis of the welfare state and, more generally, the social changes occurring during the 1960s and 1970s, by virtue of which the consensualistic vision of functionalism was to lose its hegemony in favour of new theoretical perspectives on society and deviance. New perspectives thus took hold in the study of antisocial behaviour, which, starting from a conflictual vision of society, rejected approaches to etiology, focusing on the study of both the social processes through which an individual is socially perceived as deviant and the modes of reaction and adaptation to such forms of labelling. Criticism of primary and secondary processes of criminalization inevitably extended to the institutions of social control, accused of internally reproducing such processes, pursuing aims contrary to those declared by re-education and, in addition, participating, in the case of the penitentiary, in a process of the social construction of delinquency.

The rehabilitative model would therefore undergo a period of crisis during the 1970s, not only linked to a dissatisfaction regarding seemingly unjustified costs given the poor results achieved, but also triggered by

emerging social tensions and the related innovative and distinct perspectives of the analysis of deviance. The crisis of the rehabilitative model has meant, in particular, the crisis of institutionalization, extending to penal institutions and to the conditions of detention in the context of the wider struggle for civil rights. Such trends are evident in the literature, especially in the English language (Garland, 2001), pointing the finger at the failures of the prison system. Inspired by the UN Beijing rules, according to which "The juvenile justice system shall emphasize the well-being of the juvenile", the 1988 reform of juvenile criminal justice procedures has developed a self-selective system of justice which could pave the way for diversionary routes as well as minimizing the possibility of detention and, in general, its offensive potential, in the primary interests of the minor defendant and their educational needs. The punitive claim of the state is, therefore, subordinated to the needs of protecting the juvenile offender through social rehabilitation, the primary objective to be pursued even in advance of a possible conviction. The emerging concern thus becomes that about avoiding or reducing authoritarian interventions that may be regarded as obstacles in the path of growth and maturity of the juvenile, providing, furthermore, the specific competence of the range of professionals involved in their various capacities (judges, lawyers, educators, social workers, etc.). The antisocial conduct of the juvenile subjects of the reform does not therefore necessarily qualify them as delinquents. In this case the impact with the system may produce detrimental outcomes, even in the collective interest, in terms of labelling and stigmatization, which can be avoided by allowing space for alternative routes. The purpose of the procedure is not, therefore, the straightforward identification of criminal liability as provided for in the case of adults, but, where possible, the speedy removal of the accused from the criminal circuit. A justice system is thus outlined that enhances the particular preventative function and, however, betrays a "clear and unidirectional choice emerging: has an attempt not even been made to identify new, credible, effective and non de-socializing alternatives to imprisonment?" (Larizza, 2002, p. 187).

Responsibility and accountability

The measures considered by the legislature in accordance with the needs outlined above should not therefore simply represent lenience, which is, however, still identifiable at least within the rules of the Penal Code which provides for judicial pardon. The entire process, through its passages and

its results, was in all probability conceived in terms of the involvement of the juvenile from a perspective of accountability: "the judge illustrates to the accused the meaning of the procedural activities taking place in his presence as well as the content and ethical-social reasons for decisions" (Article 1, Presidential Decree 448/1988).

The assumption of responsibility is outlined as the main route within the complex endeavor towards rehabilitation and reintegration that would, in all probability, not be undertaken otherwise. Indeed, the information provided to the juvenile accused and, more generally, their possible understanding of the significance and sense of judicial choice appears to be necessary and yet not sufficient for the purposes of the ambitious construction of a process of accountability. While probation, in this sense, represents an undoubtedly significant tool, often applied too cautiously (Colamussi, 2012), alternative pathways able to pursue such objectives through the application of measures marked by the implementation of involvement and participation would appear even more advantageous, pathways that acquire precursory relevance in the context of an extended and deeper sense of responsibility. Such responsibility is thus seen as not related to the fact in itself but stemming from the fact, "the provision of the conditions in which the offender may act under their own responsibility through reparative actions towards those rights impinged and as a learning tool for responsibility" (De Leo, 1999, p. 65).

As argued by Ceretti, this is viewed as "not being responsible of and for something, but as a path that leads individuals in conflict to being responsible (responding towards one another)" (Ceretti, 1996, p. 204), thus providing a relational dimension to the concept of responsibility. In the absence of such clarification, the highlighting of responsibility for the conduct in question at the expense of accountability for future consequences may lead in opposing directions to those presently outlined, legitimizing purely punitive measures, absolved of the task of identifying any ultimate function such as the specific educational needs and rehabilitation of the offender. Such a scenario has been witnessed in recent years as a consequence of the aforementioned crisis of the ideology of treatment and the goals of rehabilitation, resulting in the widespread affirmation of neo-retributive cases, with a tendency to which the Italian juvenile system seems largely immune.

The trajectories of criminal justice are thus once again located and included within social dynamics: free market societies are marked by a tendency to perceive individuals as responsible for the damage they cause and allow for the risk of coming down on those assuming responsibility, while cultures that promote greater solidarity agree that such damage be

absorbed by the group, thus providing for the existence of collective responsibility (Garland, 2001). This thus presents "the justification of social (and institutional) reactions that place exclusive emphasis on the individual responsibility of those who makes a mistake or fail to keep pace, premise of the introduction of policies of repression and segregation and the dismantling of those social policies that supported the path of the weakest" (Prina, 2003, p. 30).

Against the backdrop of the gradual loss of confidence in a justice model designed and constructed in terms of utility rather than the assurance of punishment, conditions have, however, developed for the assertion, albeit partial and limited, of an additional and distinct paradigm, developed independently through practice in some specific contexts even before their theoretical elaboration. Such a paradigm is referred to in the limited but distinguished Italian literature (Ciappi, Coluccia, 1997, Scardaccione, 1997, Mannozzi, 2004, Reggio, 2010), on the subject as "giustizia riparativa"; an umbrella term, often used rather casually, applied to all practices that leave the parties involved deciding together on how to deal with the consequences of a crime. Interest on the subject in the Italian scientific landscape has appeared limited for some time, as may be observed from a cursory glance at the scientific production regarding the specific analysis of the only tool used in practice, mediation, sometimes declining to enquire more deeply as to its epistemological status. A lack of sharing in regard to the nature and functions of such a paradigm may be perceived, within which, delineated with sufficient clarity, is located the dichotomous distance between an approach attributing intrinsic value to both meeting and communication and an opposite orientation for which a merely instrumental value is reserved according to the reaching of a final agreement on restoration. In any case, it appears possible to identify a general convergence in attributing full meaning to restoration, certainly beyond a mere economic counter-balance of the material damage caused by the offender considered, in its general dimension, as the recovery of lost property, but also the sense of safety, dignity, self-confidence, respect and harmony (Braithwaite, 2002). This equates to a model of criminal justice that considers criminal action not as a mere breach of a codified rule but as a conflict between two people, thus highlighting the psychological, social, interpersonal as well as material implications, calling those involved into processes of comparison and exchange. This is a paradigm in antithesis to the widespread demand for a return to the fundamentally retributive dimension of punishment yet that can also be read as consistent with the interactionist and confrontational perspective established in recent years, according to which a dynamic, natural and relational dimension is

attributed to conflict which therefore justifies relational forms of management and rejects, in its extremity, claims of expropriation and the removal of conflict by the State as inappropriate and harmful.

Several positions have clarified the convergence process between the application of restoration and those of heterogeneous abolitionist currents. Building on the work of Rawls (1993) and the "overlapping consensus", Ceretti (1998, p. 33) argues that mediation can be offered in highly complex modern society as a location of intersection and social cooperation in which to constructively compare individual reasons. A social auto-regulation such as the ability to set rules, viewing conflict as a dynamic rather than destructive factor: "setting down rules with respect to conflicts", Ceretti suggests (1998, p. 35) could be the slogan, or the paradigm, of today's social actor. The mediation model elaborated by Morineau, the most common model in Italy, seems to confirm this perspective. A humanistic model, with which a cathartic value is attributed to mediation, detached from the instrumental identification of a definitive restorative agreement: "Mediation accepts disorder. It is a time, a place, in which one may express their differences and recognize those of others. It is a meeting where one will discover that our conflicts are not necessarily destructive, but can also be generators of a new relationship" (Morineau, 2004). Vianello (2009, p. 10) argues however that "restorative justice marries the consensual notion of community that perfectly represents the abstract and ahistorical conception of society that critical criminology is committed to deconstructing, with particular reference to its claim to be able to provide clear guidance as to those values "worthy of protection". In the analysis of Pavarini, mediation germinates in the problematic spaces and situations abandoned by formal systems of control, unable to produce order, inasmuch as it is overly developed, mainly as a result of the crisis of the systems of primary socialization (Pavarini, 1998, pp. 8-12).

Indeed, the current appeal of restorative practices can be traced, at least in part, to mere deflationism, in the economy of systems often congested by case loads and penal "bulimia". While in Italy such germination occurred only within the juvenile system, it occurred fundamentally by extrapolating mediation from its restorative frame and reducing it to a mere tool for the re-education of the juvenile (Ghetti, 2004), debasing its deepest meaning. Penal mediation undoubtedly represents the most well-known and widespread use of restorative justice, able to ensure the direct participation of the parties involved in the management of meanings, consequences and implications of a crime, thus also promising more satisfactory results with regard to the accountability of the minor. This results primarily in the possibility of becoming directly aware of the consequences stemming from

their behaviour, thus adopting the outlook of the other, in a context that goes beyond a subjective perception in terms of obligation and coercion, in the presence of a third and neutral figure devoid of any adjudicative or decision-making power. The task of seeking internal solutions therefore lies with the parties directly involved. Participation signifies direct involvement in the process, the informal dimension of which places people, rather than formal rules, in a central position. Procedural rules are superseded by those of respect, listening and dialogue, recognizing the other as a person rather than a part, as an interlocutor rather than as an adversary.

Mediation, according to the most frequently identifiable definition in the Italian language literature on the subject, can be understood as a "a process, commonly formal, with which the mediator attempts, by means of exchange between the parties involved, to enable them to compare their own viewpoints and seek help towards identifying a solution to their conflict" (Bonafè-Schimt, 1992, p. 16), a solution which may contain symbolic forms of restoration, prior to the material. The formalities referred to relate to the examination of the various stages that constitute the mediation, which, understood in terms of the articulation of the case, are not resolved during the fundamental moment of the meeting. Mediation adopts a new way of thinking about informal, horizontal and participatory and non-coercive justice, especially designed according to the neglected needs of the victim yet also functional to the requirement and needs of the offender and the community. The direct encounter produces, as outlined, a plausible awareness on the part of the offender as to the significance of their conduct, the consequences of which they are called upon to address.

According to one of the best known and most considered theories often cited in support of restorative justice, positive effects in terms of deviance, recidivism and social reintegration are possible by leveraging a feeling of shame devoid of those stigmatizing attitudes embodied in the sense of shame that normally accompanies punishment. This may include, Braithwaite (1989) argues, a "shame re-integration" where, on the contrary, it is the outcome of social disapproval expressed in relation to the damage caused, rather than to the individual as the offender, as part of a relational context. The effect of disapproval on behaviour is mediated by the emotions aroused, which may lead to repentance and acknowledgment of the harm done by the offender and allow space for forgiveness from others, thus reinforcing the link with society and producing a real deterrent effect. The offender giving consent to mediation is offered a tempting opportunity to escape from a criminal process whose obvious negative implications are in all likelihood related both to social stigma and to a possible final conviction. Such intuitable considerations constitute as probable the already

implicit risk of the probation institution in terms of a consensus instrumentally provided by the defendant, attracted by what may be perceived as mere procedural benefits.

One of the more problematic issues of mediation and of the different means of restorative justice is thus revealed; the latter of which can potentially undermine the credibility and disappoint expectations, thus preventing its implementation. The risks as hitherto outlined can, however, be partially limited, primarily through the action of "filters" exercised by the magistrate and, above all, by the mediator. It falls to the latter to separately and personally contact the offender involved in order to introduce and prepare them for a probably unknown activity and solicit their consent. The mediator may at this stage be able to decipher the attitudes of instrumental interest and evaluate subsequent actions accordingly. Secondly, although the participation of the juvenile offender in question is engaged, it does not necessarily compromise the effects and consequences of an experience whose impact may be striking. While it is certainly true that any teleologically oriented rehabilitation activity should look to the offender as a subject and not an object of an intervention conducted unilaterally, in the case of mediation participation is inherent to the experience itself, the emotional impact of which may go beyond undeclared concerns and interests. Such considerations should, however, not arrive at the proposal of coercive mediation, carried out in the absence or against the consent of the parties concerned.

The horizontal dimension of participatory and restorative justice helps, furthermore, to better understand the reasons of an involvement that, for the offender, may be functional to the perception of any final agreement in terms of compensation as being fair or compared to a judicial ruling which, as an imposition, may be perceived as unfair. The perspective is that of providing a non-negative remedy to their criminal actions, not through the endurance of punishment but constructively and creatively, taking steps towards the victim in order to repair the consequences of the offence committed. Indeed, social rehabilitation appears to represent a positive route due to the nature of the extremely low level of stigmatization in reparative practices, especially when compared to that of the criminal trial and an eventual execution of a sentence. The dimension of accountability and rehabilitation around which the consent of those attributing an indispensable rehabilitative institutional function to forms of social control may therefore converge does not exhaust the objectives of restorative justice. Restorative tools are also and above all designed in relation to the demands and needs of the victim, often described in the literature as the "forgotten parties" of criminal justice systems, often frequently a juvenile

who, in the Italian juvenile criminal process cannot be constituted as a civil party. While the maximalist model focuses on restoration as the defining moment, the implications for the victim can be of more immediate perception and, in the case of the dialogic model, issue directly from the inherent nature of the tools themselves, such as participation, dialogue and communication. Participation means an opportunity for the victim to express their suffering, to be heard, to see eye to eye and ask questions directly to those who are the cause of their suffering, in the hope of being able to overcome and thus reduce their sense of vulnerability.

The Italian experience

Mediation was introduced in Italy during the mid-1990s, at the initiative of certain juvenile judges supported by social workers and local authorities, in the belief that they could import a tool already familiar elsewhere into the Italian system. The judges identified a dual entryway within the gaping cracks of the juvenile justice process, introducing mediation from the bottom up, in the absence of any indications or reference regulations, and without a broader and more general grassroots movement in support of the initiative. Until that period it cannot be said that restorative practices were entirely unknown in practice, especially in light of the provision in Article 28 of Presidential Decree 448 (paragraph 2: the court may issue prescriptions to restore the consequences of the crime and promote reconciliation of the juvenile with the victim of the crime), and through certain activities occasionally carried out by social workers in the field of juvenile social services, predominantly consisting of the offender reading out a written apology or making symbolic payments to charitable institutions.

However, the judges were impelled along the route towards mediation by the goal of accountability of the juvenile offender, considering the rehabilitative model as the most effective in terms of relapse (Ghetti, 2004, p. 100). Such observations would seem to confirm the re-educative potential of this institution but, at the same time, reveal the poor permeability of forms of justice not strictly limited to the offender and rehabilitation, notions requiring new ways of thinking about justice and a redefinition of categories long taken for granted. The risk is posed by reducing mediation to a simple technical trade-off, forgoing the wider implications, searching for new answers to old questions. The Italian system, "so persistently and pervasively through correctional and rehabilitative rhetoric" is "inevitably led towards declining everything,

even the 'new', through the only vocabulary it knows or, rather, the one it knows best" (Pavarini 1998, p. 14). The initiative of the judiciary was possible, firstly, by levering the rule that in the course of preliminary investigations provides findings on the personality of the juvenile, their family, social and environmental conditions, for decisions that go beyond the degree of maturity and responsibility and also involve a prognosis regarding future behaviour. The prosecutor and the judge may hear from "individuals who have had dealings with the minor and hear the opinion of experts, even in the absence of any formal ties" (Article 9 of Presidential Decree 448/1988). Such a rule, during pre-trial, leaves the possibility open for the judge and the prosecutor to attempt a restorative pathway, transferring the case to the offices of mediation, thus avoiding not only a sanction but also the beginning of the process and realization of a path towards diversion. The second rule, the interpretation of which leaves room for mediation, provides for the suspension of the trial and the probation of the juvenile (Article 28 of Presidential Decree 448/1988).

Probation constitutes a measure that was, more than any other, reason for enthusiasm in the promulgation of procedural rules, whose spirit and basic principles is still seen as the perfect synthesis: de-stigmatization, deflation, adequacy, self-selectivity etc.. The limit of this innovative institution lies in its position, in the balance between punishment and rehabilitation: "the main node at its base, according to many experts, which renders the management of probation difficult, is namely that its prescriptive function is difficult to reconcile with its educational function" (Mestitz, 2012a, p. 21), a risk that probation only partially shares with mediation, in consideration of the purely horizontal and participatory nature of the latter. The legislature being slow to respond, it was the juvenile magistrates who were to acknowledge the moral suasion exercised in recent years at a supranational level by the UN and, in particular, the Council of Europe, through which Member States have been repeatedly requested to provide mediation as a service available at every stage of the criminal process, subject to the consent of both parties, even providing a "sufficient autonomy" in the practice of mediation by the penal system.

The inertia of the legislature in the juvenile field seems only partially surmounted through practice, in terms of the manifest need for the systematization of practices that, in the absence of regulations and central coordination are largely heterogeneous assumptions, methods and aims. Such a situation prompted, in 2008, the Department of Juvenile Justice to revise penal mediation "Guidelines", essentially reproducing the "Guidelines for a better implementation of the existing recommendation concerning mediation in penal matters" of the European Commission for

the Efficiency of Justice (CEPEJ) of the Council of Europe. The legal vacuum, undoubtedly an obstacle to the broader application of mediation is not, however, cause for discontent among all juvenile judges willing to apply it, due to the broader discretion granted to them in the absence of regulatory constraints and the fluid character which mediation thus assumes (Ghetti, 2004, p. 91). Indeed, such a situation further enhances the role of the judiciary, to which the CEPEJ guidelines attribute a significant role in the implementation of proactive mediation in terms of both the information for parties as well as its application. The discretion necessarily granted by a system designed to meet the specific educational needs of the accused allows magistrates certain room for manoeuvre in which aspects of internal legal culture such as a set of values, beliefs and ways of thinking inevitably come into play. Such a situation is amplified in the juvenile system, in which the judiciary appears as a "relatively small and cohesive group, which has frequent opportunities to meet and exchange experiences, is composed of opinion leaders, its own trade association and, above all, an official press organ that allows for the spreading of opinions and operational trends" (Mestitz, 2012a, p. 40).

This helps towards an understanding of the reasons for independent initiative on the part of the juvenile judiciary in terms of the application of mediation that, in an apparently paradoxical manner, does not translate into significant numbers and percentages, given a legal culture distanced from the principles underlying mediation itself. An attitude still prevails oscillating between paternalism and welfarism, which enhances the protection of the minor at the expense of their autonomy, since the courts "consider themselves as personal guardians of the minor and take charge of the objective to defend and protect the child, to decide what is in his/her best interests" (Mestitz, 2012a, p. 28). Such an attitude may be confirmed by citing the application of a "provident" approach to probation as well as the unconstrained "scattergun" use of large number of lenient measures (Colamussi, 2012, p.161) "The data examined show that the criminal trials of minors, except for those treated with probation orders, often tend to end with a stalemate and the punishment of deviant minors thus becomes in practice the criminal trial in itself because judges, even when imposing penalties, apply lenient measures" (Mestitz, 2012b, p. 123). The particularly low incidence of mediation is not solely attributable to the preference of judges, since there is not always a mediation centre to which a case may be referred, determining inconsistent application to an ever greater extent and a situation which corresponds on a practical working level to differentiation in terms of the training of mediators, resources available and techniques adopted.

Specifically, magistrates sustain to have chosen the route of mediation based on the presumed possibility of being able to involve the victim as well as on the assumption of the existence of a pre-existing relationship between the parties involved (Ghetti, 2004), in the absence of which a meeting is evidently perceived as meaningless. Typically, this involves crimes of a personal nature, such as grievous bodily harm, abuse and intimidation, crimes frequently, and not coincidentally, located within a relational context (Buccellato, 2012, p. 59), while offences committed by juveniles predominantly involve property. A total preclusion is not observed in the case of serious crimes and, nevertheless, a widespread belief prevails, not only in Italy, that in such cases restorative justice is not feasible, primarily given the difficulty of obtaining the consent of the victim. The refusal by the latter is the main reason for which around half of cases are sent back without having experienced any "attempt" at mediation. When, however, consent is given, mediation records consistently positive results with significant percentage rates in excess of 80% (Buccellato, Ciuffo, Mastropasqua, Scivoletto, 2009; Buccellato, 2012). Nevertheless, it should be observed that the high percentages recorded might, at least in part, be influenced by the filter at the base of judiciary and the selection of those cases to be referred and the exclusion of those cases which may reasonably be expected to fail.

Conclusions

Within the context of the juvenile justice system, practice in jurisprudence has identified two distinct basic pathways: one ending in institutionalization, the other, on the contrary, either not beginning or ending with the application of generally lenient measures. In relation to the first case, restorative justice outlines a route to be followed with great difficulty if conceived as an alternative to trial and detention, at least as long as those socio-cultural and family factors persist which facilitate long-term criminal behaviour and for which mediation may have a minimum success rate. Indeed, the number of detained juveniles in Italy, among the lowest in Europe, is largely characterized by the presence of foreign juveniles, either sentenced or remanded in custody, for whom the application of alternative measures was deemed ineffective and mediation witnessed limited application. Within all hypotheses regarding detention as an inevitable response to an enduring need for social defence, mediation can, as is already taking place elsewhere, still be legitimately activated and developed during the execution phase for the benefit of the parties

involved, the victim and offender, for those reasons as stated above. In all other cases, penal mediation may represent a context in which to recognize instances of protection, participation, accountability and rehabilitation that "traditional" justice arbitrarily and often frantically seeks, with poor outcomes both in terms of the needs of victims and offenders as well as of society more generally.

The essential implementation of restorative practices within the juvenile system remains, however, not only at the will of the legislator marked by inertia, but also and above all of the magistracy which, while undoubtedly and clearly focused on the needs of juveniles, as required by the legislature itself, develops responses that tend to focus on forgiveness, understanding and leniency at the expense of responsibility, commitment and participation. These latter objectives may even be pursued hypothesizing extended mediation practices which include the participation of the parents of both the offender and the victim, if a minor; a practice that has already been successfully tested in some countries (i.e. New Zealand, Australia, England, Sweden, US), for example through family group conferencing, a kind of mediation extended to their family members, in order to empower the families and enhance their ability to organize themselves and take care of the child. Such involvement has already been frequently experimented in Italy, yet the need for the implementation of follow-up studies to monitor outcomes in the longer term is evident.

It is therefore essential that more careful reflection be carried out in terms of the possibilities offered by restorative justice, not only in terms of the role of mediation in criminal cases, but also within the framework of a growing social unrest with a criminal justice system that does not appear to be able to provide appropriate responses in terms of attention to the victim, responsibility or rehabilitation.

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