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Juvenile Delinquency between Probation and Criminal Careers

Giacomo Di Gennaro

Abstract

The focus of the criminological research is on probation and diversion measures applied in metropolitan judicial districts where juvenile deviance and criminal careers are frequent. Presidential Decree 448/1988 measures application in Naples judicial district reflects the “juvenile probation” in juvenile legislation, the problems of the local and urban organized crime context and the lack of penal welfare. The sources of analysis are an experimental sample of minors holders of the probation measure from Juvenile Court’s files, three other control sample holding diversion or conviction, the examination of the recidivism rate and criminal relapse. Both database of the General Criminal Records and the Department of Prison Administration were consulted to monitor further sub-objectives and measures the recidivism rates. The results of the research highlight the risk assessment linked to the path of deviance according to the performance of the child recovery activities implemented by the host and penal communities. Evaluations acquires even more importance if observed after the entry into force of the Law of 28 April 2014 no. 67 introducing in the criminal code and criminal procedure, both the suspension of the trial and the provisions on non-punishment for particular tenuity of the fact (Legislative Decree 16 March 2015 n. 28).

Keywords: juvenile delinquency, probation, gangs and careers

1. Introduction

Juvenile deviance and especially serious deviance is a fracture that is generated not only between the child and the victim, but also between the former and the social community. This happens both if the child is a victim and if he holds the role of offender. In both cases, the society’s negligence towards them is called into question.

In Italy, juvenile deviance is treated with a series of measures provided for by the juvenile criminal legislation and by a regulatory framework dating back to 1988 that have as a central objective to avoid that the punitive instrument has first of all a homogeneous character and at the same time produces a criminal sanctioning practice that is characterized as a punitive response that causes further harm to the child.

The judicial authority has as its primary objective the re-education and resocialization of the child in the assumption, not always valid, that the present immaturity can be corrected, i.e. guided towards a development respectful of the limits imposed by civil cohabitation.

More than thirty years have passed since the introduction in Italy of Presidential Decree 448/1988 “Approval of the provisions on the criminal trial of juvenile defendants” which reformed the juvenile trial whose matrix is based on supranational acts¹, basically aimed at making positive pedagogical intervention also with corrective purposes, a function to which gives way to a “cognitive jurisdictional model” [1]. As Pazè says: “the State trials a young person to define his responsibility for a crime and, also, to encourage him to change his conduct and to orient his life differently [2].

This objective must be associated with the attempt to settle the conflict that has arisen with the victim, through a process that goes from mediation, to the repair of the damage caused, after internal recognition of the negative value of the offense caused. In the phase, where possible, the minor’s family unit comes into play, according to the known method of the *Family group conference*, in which the extended family (including persons deemed significant indicated by the minor) can elaborate the project of the rehabilitation measure and share it with the minor [3].

This contribution will discuss the possible effectiveness of some aspects of the legislation that provides for the juvenile trial in light of the transformations that have affected the phenomenon of juvenile deviance in recent years, taking its cue from a recent sociological research conducted in the jurisdictional district of the city of Naples, the whose characteristic is precisely that of making visible some of the changes that have taken place both in the juvenile universe and in the different local contexts that make the processes of social integration and positive reorientation of deviant behaviors more difficult.

The focus of the research is the institute of suspension of the juvenile process with testing. Among all the measures provided by the criminal justice system for juveniles is the one that - inspired by the U.S. model of juvenile probation where the measure is intended as an instrument of de-prisonment - has a hybrid character. That is, incomplete compared to the US model and equally unequal to the Anglo-Saxon model of diversion.

However, it’s a measure abundantly applied by Italian judges, as an instrument that synthesizes the rationale behind the two models, but has its own elaborate identity that characterizes the novelty compared to the afflictive and retributive concept of the penalty present in the Italian criminal justice system of the fifties and sixties of the twentieth century.

The institute enhances the role of the juvenile services of the administration of justice and the unavoidable role of the social welfare services of local authorities. With probation, admissible for all crimes, education enters the process: the subject of the trial is not longer the crime-fact, but the person, we are witnessing the “possibility that in the face of the need for social recovery of the minor, the very realization of the punitive claim may retreat” [4].

The articulation of the contribution is developed by dedicating the following part, in summary form, to sociological and criminological theories that interpret the dynamics of deviance in its various manifestations, identifying the risk factors of “becoming deviant”. In the third part we present the regulatory and application system of the Presidential Decree 488/88 with particular to the institution of suspension with probation, regulated by article 28–29 of the decree and taken from art. 27 of Legislative Decree 272/89.

¹ The reference is to the Minimum Rules for the Administration of Juvenile Justice U.N., New York, novembre 28, 1985, also known as the “Beijing Rules”, UN Convention on the Rights of the Child of 11/20/89, European Convention on exercise of children’s in Strasbourg on 25/1/96.

The examination will highlight some limitations and strengths of the measure and will discuss – with reference to empirical evidence – its effectiveness with respect to the objectives and purposes of the regulatory framework. The fourth part will account for the results achieved by the research showing the results of the trial and the methodological system designed to analyze the rates of juvenile relapse and criminal relapse among minors who have been holders of different measures.

Since the recovery of the deviant child passes through the mobilization of personal and environmental resources, an objective of the research has been addressed to the study of the response of the sphere of the legal-criminal and social sub system that are most directly involved in the application of the measures and in the recovery policies, that is the communities belonging to the justice sphere, the circuit of the various professional operators, social services, the communities which they belong to.

The conclusions will highlight the need to reform the regulatory system in some parts and accompany this need with the greater and more intense dissemination of policies to prevent child deviance. They appear to be weaker in some cities due to the retreat of local and community welfare, particularly in those where many juveniles commit crimes of association.

2. What sociological and criminological literature offer to explain juvenile deviance

On many occasions criminologists and sociologists of deviance have resorted to economic deprivation and the incidence of unemployment to explain its origin [5–10]. The influence of unemployment on criminal involvement is also considered among the theorists of social control [11] and in those approaches that support the delinquent solution as a response to the scarce legitimate opportunities offered to the individual [12–15]. All radical sociology, constructivist theories and criminology based on the theoretical perspective of the Chicago School have always maintained that the levels of deviance are a function of the degree of social control: the more rigidly and formally social control is exercised, the greater will be the forms and expressions of deviance. For [16] it is the different institutions of social control that produce the outsiders (criminals, mentally ill, ethnic, religious, racial minorities) who end up acting as scapegoats or designating the boundaries of the “respectable society”. For Foucault criminological knowledge is intrinsically related to the power on which the existence and structuring of practices that regulate crime, control criminals, sediment and consolidate the relationships of force that are at the origin of the practices [17]. In short, the deviance and criminal behavior observed from the point of view of social control, end up highlighting and legitimizing the role of formal agencies of social control (from the family to educational and religious agencies, from the law to judicial institutions and the police). And also moral responsibility and duty of citizens are interfaces of control.

Thinking of social control in all its forms as a strategy and a resource used exclusively for the purposes of domination and the exercise of power, does not help to distinguish that positive function that social control mechanisms can play in guaranteeing precisely some of the fundamental goods of social life worthy of attention and from which additional ones derive: security and freedom. Moreover, the indistinct and monolithic use of the metaphor of social control also promotes the idea that those subject to control are in reality such passive subjects that they are incapable of reacting, or adapting or overturning the “controllers”, their purposes and the processes of social legitimation on which they are based, regardless of the

possibility that many of the control mechanisms may produce effects other than intentional ones.

A “realistic sense of reality” has led many supporters of the new versions of the theory of social control to distinguish minor forms of delinquency from more established expressions and to explain that the willingness to enter the area of deviance or inclination to crime is not only comfortable for certain social groups or classes. The criminalization of the subordinate strata, in fact, does not make the image of crime objective if one considers that set of crimes related to financial, banking, corruption and the various economic illegalities that Sutherland first widely and well-founded referred to when he spoke of the crimes of the powerful and white-collar [18]. To point out the lower social classes as antisocial or even “dangerous” [19] for the mere fact that unemployment reigns among them risks altering reality, also because it is always difficult to demonstrate a linear causal order (i.e. that economic weakness explains the weakening of social ties and to follow many delinquent behaviors). The model of Ageton et al. [20], for example, goes in this direction: the production of crime is a function of the process of socialization that can feed or contain the structural tension that in turn makes the bonds of social control weak. It's true that one enters the area of deviance and/or delinquency, but it is equally true that one leaves and abandons deviant and criminal behavior thanks to constraints or reasons that primarily engage the person (work, cultural growth, education, marriage, family life).

A different interpretative formulation of the positive connection between the hypothesis of unemployment and crime is typical of [21] who believe - in the light of modern economic theories that refer to neoclassical assumptions - that involvement in illicit activities represents a solution to low returns on legitimate activities and a lower allocation of individual time in legal opportunities [22–24]. A society that is hypertrophically bent on “having” rather than “being” [25] inevitably pushes one to search for possessions rather than resources that characterize existence as an activity oriented to cultivate authenticity, creativity, sociality, knowledge, beauty, inner well-being.

To indicate, therefore, the marginal causality of local economies, the lack of market economy and the conditions of social disintegration, as often happens, as factors that upstream determine the various forms of deviance even serious and even claim that the territorial areas (such as the South of Italy) since they have these characteristics are playfully empirical evidence that underpin these assumptions, is a gamble. And just [21] claim that explanations of this kind, are “unidirectional” in structure, that is, they ignore the return effect that a factor has on the causal process, so much so that using a model of mutual causation explain both the instantaneous and delayed effects that crime has on unemployment, although the results of the model suggest that “*unemployment and crime are reciprocally related and that neither can be seen entirely as a cause or an effect of the other*” [Ivi: 403].

The issue is therefore more complex. The results of research in recent years show that a strong association between poor economic conditions and delinquent behavior is primarily related to homicide and serious violent crime [26–31], while property crime in Italy too [32] is linked to the proliferation of opportunities favored by urban life. This observation leads many authors to believe that the spread of wealth is not at all an antidote to the expansion of organized crime [33] and it is for this reason that in the periods of greatest economic development in Italy there has been an increase in thefts and robberies ([32], p. 41–45; [34], p. 51–65).

This interpretation is associated with the position of those authors who emphasize the intentional and freely chosen character of criminal actions, because more immediate advantages and benefits derive from them [35]. The so-called

voluntarist approach developed since the 1970s highlights exactly the relevance of the combination of actors' rationality and opportunities given. The variety of deviant and criminal behaviors, starting from the analysis of Becker [36–39] and Ehrlich [40], is explained according to the theory of choices and the resulting usefulness by parameterizing the costs.

That is, all deviant and criminal phenomena can be explained having as a fundamental unit of analysis the intentional action of rational and self-interested individuals. Since individuals “*maximize well-being as they conceive it, whether they are selfish, altruistic, loyal, spiteful or masochistic*” [39], whoever performs a criminal act or action is not irrational because he does not grasp the risk of suffering punishment, but these are part of the “calculation” that he makes by pondering: *a)* the probability of being discovered or arrested; *b)* the severity of the punishment envisaged; *c)* the benefits that he can derive from the act and any alternative gains that can be made using his time and resources if he were to devote himself to other activities, whether legal or illegal. The punishment is considered a relevant operational deterrent mechanism if the crime is to be prevented and prevented from being pursued by others.

All predatory crimes, economic fraud and illegal trafficking by criminal organizations, whether mafia or mafia, cannot be traced back to this scheme, i.e., to actions that permanently violate the law, the perpetrators of which instrumentally use illegal opportunities and means to achieve objectives and resources capable of increasing subjective benefits. The acquisition of skills, abilities, specializations in the exploitation of the various illegal opportunities is functional to the achievement of objectives, resources and conditions that seem unattainable if one were to engage on legitimate paths.

2.1 Deviant subculture and “broken home”

Wells and Rankin [41] believe that family disintegration, in a context of deviant subculture, pushes towards repeated transgression. Just as the symbolic-cultural dimension and related social practices are thematised both through the concept of subculture and through the theme of social capital. Gatti et al. [42] have shown that a deficit of social capital in a community or neighborhood is a factor that stimulates car theft more than the precarious economic condition². Some studies on collective effectiveness, then, recognize that social cohesion has the effect of containing disorder and crime because it leverages the components of citizen participation in local social organizations and the willingness to intervene in critical situations, as well as the virtuosity connected to the widespread informal local ties [43–47]. Finally, a further explanatory model of deviant action insists on the attitude that adolescents take towards institutional authority (and in particular school authority). Consequently, “the distribution of deviant acts would not have directly to do with social reality, but with the processes through which the individual forms the perception of that reality” ([48], p. 294).

Relative to family disintegration, this aspect is crossed with the formation and assimilation of the deviant subculture by Albert Cohen already in the mid 1950's. Studying youth gangs he argued that in some circumstances the subculture developed by baby gangs has a higher reference value than the family subculture,

² Social capital is a concept used and applied by both sociologists and economists and often correlated to study its negative effects on the economy and the social fabric with a micro or macro-social meaning. In this case, the authors applying it to the study of crimes take it as civiness [Putnam, 1993], or “generalized cultural dimension of interpersonal trust, tendency to collaborate, interest in the community” [42], p. 61.

especially if it has a deficit in social control [12, 14]. Cohen's thesis integrates the interpretation that Frederic M. Trasher had already produced in 1927 in *The Gang* [49] as a result of an initial ethnographic study (Chicago's Gangland) on urban gangs in the city of Chicago, followed by a later account of life in a slum on gangs in the Italian community of Boston - which became a classic of sociology - by William F. Whyte published in 1943 under the title *Street Corner Society*³. The thesis of the two authors converge on aspects whose value is still current: youth gangs revolve around a leader and are the expression of the formation of coherently structured subcultures that give rise to practices, interactions in micro contexts of daily life where participants communicate to each other the deception of the opulent society, the emptiness of a social order that the despotism of power structures even in organizing the physical space of life in the city ousted from the advantages of urban life, stigmatizing and relegating as criminal behavior, those who are not aligned on those values that guarantee the integrity of the social system. The resulting structural tension feeds that "conflictual subculture" [52] which, in strengthening internal gang cohesion, explains the behavior of each member and their propensity to use violence. It explains, according to the role assumed, the functioning of the gang but highlights the more general consequences that social disintegration produces on the social tissues. The discomfort of young people is channeled into the constitution of gangs because among the different alternatives they are the most effective identity response to the solution of the tension between aspirations and opportunities. The gangs offer the opportunity to young people of subordinate classes to solve their status problems (respect, reciprocity, consideration, acceptance, immediate satisfaction of desires). Cohen's conceptual framework calls for an answer to the question: what matters most to explain the deviant behavior of the individual, his biology, personality or environment in which he was born or lives?

Cohen does not move by attributing to the breaking of family ties the weight that, instead, the spouses Eleanor and Sheldon Glueck had assigned to them and that could justify the inability of a family, although of lower social class, to adequately transmit tools and values capable of binding the young person towards a life respectful of the rules of cohabitation. For the Glueck couple, in fact, although moving in a multifactorial perspective (i.e. attributing relevance to the individual, relational and social levels), it is the "broken home" that has a strong predictive character, on a scale of probability, in influencing the origin of deviant behavior [53].

The family disruptive aspect has been taken up several times also in recent years, although combined with the influence of deviant subcultures [54], or not so much to correlate an inevitable and predictive accreditation of deviance, but to emphasize the origin of a socialization at "deviance risk" [55, 56], the onset of antisocial or aggressive behavior, the increased likelihood of involvement in deviant businesses given the low family control, the peripherally of the father figure [15], the assumption of transgressive attitudes and behaviors in pre-adolescence and adolescence ([57]; Carbone [58]), the orientation not to respect the authority and institutional order. Recent important international empirical evidence based on the method of self-confession (*self-report*) are trying to determine the "weight" and the real incidence that family determinants have or continue to have in accounting for entry,

³ Whyte [50], *Street corner society: The social structure of an Italian slum*, Chicago, IL: The University of Chicago Press. The book has been re-published in four editions (1943, 1955, 1981, 1993) and over 200,000 copies have been sold. For an interpretation of the research facility as a typical example of social anthropology research, see: [51].

stay or possibly exit from deviance and delinquency⁴. The results of research of this type confirm, first of all, that the number of officially registered crimes is lower than what is actually consumed daily. It is also confirmed, moreover, the criminal effect of the group and its attractiveness in giving rise to deviant behavior such as the use of alcohol and drugs. As well as belonging to deviant groups and youth gangs is also an important risk factor for victimization (except for bullying).

The great changes that have affected the internal relational structure of the family and its social forms (mono-parent families, reconstituted, broken up by marital breakdowns, highly unstable, cohabitations, etc.) today place the observers of deviant phenomena in front of realities of stable aggregate life once absent. This requires, therefore, longitudinal and comparative analysis between the different family forms, the disintegrated ones and the so-called “regular” families that must be developed by deepening in an articulated way only this factor, exactly as already happened with the criminal career approach [69, 70] that gave birth to the current *Developmental Life-course Criminology* (D.L.C.).

In Italy there are still no researches of this kind. We have *hic et nunc* researches that record the present and retrospective state and describe juvenile deviance through the identification of particular characteristics related to the family environment, its dynamics, or, as in the case of ISRD2 and ISRD3 empirical observations to “verify if the presence of both parents within the family unit is a preventive factor on the deviant activity of young people, compared to alternative family structures” [71]. This does not mean that the new forms of aggregation of life as a couple with children who assume the character of “family” are in themselves pathological or dysfunctional, but the new structures that the family is assuming both with respect to the mononuclear family (based on both biological parents) and single-parent-family (caused by widowhood, separation and divorce, abandonment, etc..) undoubtedly generate new experiments in daily life and scenarios of internal integration whose balances and effects on young people are of undoubted importance.

The most recent international results of ISRDS3 for the Italian side allow us to make some considerations on the relationship between family and youth deviant behavior in the wake of broken home that, in the criminological literature for years, is an area whose multiple contributions are also attentive to the need to develop prevention programs and strategies focused on parenting and family formation [72–84]. The transformation of the family structure and the bonds within it implies

⁴ The International Comparative Self-Report Delinquency Study (ISRD) is a comparative study that has been conducted for over twenty years on students of lower and upper secondary schools (ISRD1 in 1992–1993, ISRD2 in 2005–2007, ISRD3 in 2012–2014) with the aim of evaluating the spread and characteristics of deviant and delinquent behaviors, risk factors and victimization processes. It's based on questionnaires that are administered with the self-confession technique and the large sample is representative of a universe of school youth extracted from different types of schools belonging to many European countries in the increased years, including Italy, New Zealand and the United States. In the International sample ISRD2 and ISRD3 there is also a sub-sample of adolescents and young Neapolitans. For a view of the result and the methodological frame work, they can be see: [59–63]. The results of the ISRD2 for the Italian area, which was attended by fifteen cities, are in [64]. The review “Rassegna Italiana di Criminologia” has dedicated several contributions to the investigations, especially starting with ISRD2 when Italy also began to participate. For International results see, Marshall I.H. and Enzmann D., *Methodology and design of the ISRD-2 study. The Many Faces of Youth Crime: Contrasting Theoretical Perspectives on Juvenile Delinquency across Countries and Cultures*, New York, Springer 2012; Enzmann D. et al., *Social responses to offending. The Many Faces of Youth Crime: Contrasting Theoretical Perspectives on Juvenile Delinquency across Countries and Cultures*, New York, Springer 2012; Aa.Vv. *Juvenile Delinquency in Europe and Beyond: Results of the Second International Self-Report Delinquency Study*, New York, Springer 2012: 227–244. Finally, for the most recent data, see, Aa, 2015; [64–68].

changes in the family structure and also affects the quality of inter-family relationships whose impact is not secondary for the understanding of the factors that generate antisocial and deviant behavior. Italy, for example, has seen the effects of one of the disintegration factors of family cohesion - the separation of spouses and divorce - only since the nineties of the last century, while in most Western countries already in the seventies and eighties there were higher rates⁵.

The Italian data of the ISRD3 essentially realize that “the proportionally more frequent deviant behaviours are recorded among children without parents, with percentage values double or even triple those of other young people” [85]. Children who grow up in single parent families show deviant behavior with lower frequencies than those who do not have parents, but higher than young people living in families with both parents present. The variation, however, is not only with respect to the intensity but also affects the quality of the violation: young people who grow up in single parent families express, compared to those who do not share with any parent the daily set, a deviance characterized by discontinuous and slight violations, so much so that any form of theft or more serious crime is completely absent.

The subgroup of children who grow up without parental ties, regulatory orientations, stable educational standards and forms of informal social control typical of the private sphere are strongly exposed to transgressive, antisocial or deviant behavior. Despite the crisis and family deconstruction, only the quality of the emotional ties and the greater balance guaranteed to the development of the young person's personality, if offered by the “regular” family structure (i.e. the one that originates from a biological sharing and a project of “longue durée”) provide greater protection from the assumption of deviant behavior. The family climate that the two-parents groups put in place, despite all the critical issues that affect the same and in many ways even the level of conflict that sometimes reigns there, reduces the compromise educational and guidance. The latter have a greater degree of expressiveness in the case of mono-parent families and a higher and more decisive probability of being translated into juvenile malaise in the case of complete absence of the parents. The results of international research echo the final results that the Glueck couple reached in the 50s and 60s of the last century and the confirmations that most of the literature has already recorded on the subject [86–89].

We know, however, still little on the influence that the conjugal conflict produces on the juvenile components both if it deals with two-parents groups that ex-couples exited from separations and divorces. Or more still the family nuclei “recomposed”. ISRD3 offers some analytical elements, but the causal links are still too blurred to be certain correlations. Moreover, family forms have become so diversified that the same gender relationships, the new parental figures replacing parents, the multiplication of paternal and maternal figures, the transformation of the quality of bonds in family relationships, the side effects of high daily youth exposure to social networks, are still elements of knowledge too general to be reliable but certainly very important dimensions to understand how to prevent and contain youth discomfort and deviance.

⁵ From 1995 to 2015 in Italy the average number of separations and divorces for thousand marriages went from 158.3 to 339.8 and from 79.7 to 297.3 respectively. See, Istat, *Matrimoni, separazioni e divorzi. Years 2015*, Roma 2016: 8. In recent decades, the number of marriages for thousand inhabitants in the EU-28 has decreased from 7.9 in 1970 to 4.8 in 2008 (last data available in Eurostat) and that of divorces from 1.0 in 1970 for thousand inhabitants to 2.0 in 2010, or double. The variation within the countries ranges from 3.6 in Latvia in 2012 to 2.8 in Denmark, 2.4 in Estonia, 2.2 in Germany, 2.0 in Austria, 1.7 Poland, 0.9 Italy.

2.2 The different boundaries of social behavior

Research and the existence of predictors of deviant behavior does not allow the use of single-causal models, let alone explain deviant actions by nomothetic asserts. Recent empirical investigations invite researchers to distinguish between criminal act and criminal behavior, and not to confuse the results resulting from the interaction between factors with those resulting from the isolated assumption of individual variables [90]. Just as formulating a definition of deviance based solely on the violation of the norm is improper, both because norms vary in time and space, and because it is the reaction expressed by the community that accounts for the relevance assigned to the norm. Moreover, those who control, define or legitimize the normative system may also have the power - through appropriate mechanisms - to attribute meaning to acts that are intrinsically no longer transgressive. Giving meaning to behaviors is a dynamic act and much depends on the cultural and social stability of a community. Connote a behavior is the outcome of the interaction between the cultural, social, economic and institutional component whose influences vary in a diachronic and synchronic sense. The areas within which social behaviors can be identified are various, labile and mobile as shown in **Figure 1**: in addition to social conformity there is the space of social diversity that Sumner identified with the concept of “folkways” to indicate those cultural rules (established values) that designate what is appropriate from what is not appropriate in certain situations⁶.

The more a society is characterized by pluralism of values and ethics, multiculturalism and multi-ethnicity, the more accepted are behaviors that elsewhere - in more closed societies - would be identified as different. Ideology and religion often contribute to making behavioral boundaries rigid and to activating processes of religious, cultural and gender discrimination processes. Forms of social discrimination can give rise to social reactions that turn into occasional deviance or become stable. The space of social deviance is contiguous, but different from the previous one and bases its definition on the fact that there is a violation of the rules, norms, shared obligations that formally nourish the expectations underlying the different roles occupied by individuals and the different behaviors recognized as legitimate.

The development and evolution of deviant behavior can be such that the acts carried out no longer violate socially agreed upon rules and regulations but the laws. When the violation concerns the law, the codified criminal law, it means that we are no longer in the boundaries of deviance but in those of delinquency, especially if the transgression is repeated. In this case, since the law is more universal in character, i.e. valid for all citizens and social categories, the concept of delinquency relates to that set of actions and behaviors in which the plaintiff makes the violation of a criminal law visible, commits a crime. We are in the sphere of secondary deviance of which Lemert speaks [92]. He considers delinquency a social construction of social reaction and it does not represent a more serious behavior than social deviance because, even in this area, fall the so-called “crimes without victims” [93], i.e. those crimes such as drugs, prostitution, gambling, homosexuality, abortion and other practices that are an example of laws that prohibit such acts and not as a substantiality of criminal law. Meanwhile, they are crimes because a community or state reorganizes its social life through social control.

Formal control is exercised by distinguishing between irregularity, illegality and crime. Violation can affect the administrative, civil, labour, fiscal, economic, criminal and penal areas and this is an example of constant decriminalization or selective

⁶ Sumner [91]. These are dominant cultural models, simboli repertoires that decline rules of conduct in different spheres of human behavior and that the more stable, prescriptive and shy of change, the more easily the members of a community or society perceive other behavioral executions as different.

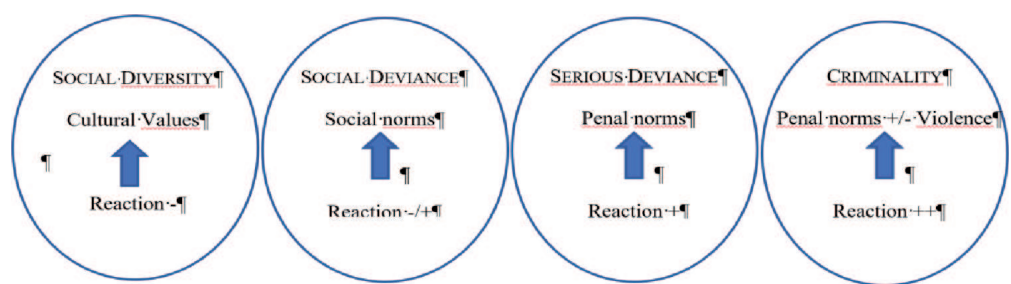


Figure 1.
Ideal boundaries among areas.

criminalization of conduct functional to make the area of delinquency mobile: some crimes (muggings, thefts, robberies, sexual assaults, murders, kidnapping, etc.) are perceived and defined as serious and receive strong disapproval because they are socially defined, stigmatized on the basis of a “natural objectivity” that associates a strong responsibility of the author regardless of the criminogenic effects of etiquette. Other crimes (fraud, corruption, tax evasion, violation of labour laws, social security, tax, insider trading, illegal construction, pollution, etc.) are “downgraded” to forms of illegality not suffering the labelling of crimes and are perceived as expressions of the insufficient exercise of coercive power by the State (what Myrdal called the “soft State”) [94] or because widely spread suffer numerous exceptions often being defined and represented as mere irregularities. The area of deviance and delinquency in some cases overlap and suffer a similar social reaction, in others they are distinguished and the same author suffers a different labelling by virtue of occasion, social status, gender, age, ethnicity, social context, actual assumption of the role and deviant lifestyle. It can be argued that everything that is delinquent is deviant, but not everything that is deviant is delinquent. In delinquent acts there is a content that refers to individual choice; remaining in the condition of “deviant individual” signals that the process of psycho-social evolution of actions, reactions and counter-reactions has been overcome subjectively by choosing a criminal career. Sykes and Matza [95] believe that the deviant decides to “position himself” in the chessboard of life in a momentary condition adverse to the social order, mitigating the effects of social control through cognitive strategies called “neutralization techniques” implemented by anyone who assumes transgressive, deviant or criminal behavior and useful to solve problems of cognitive dissonance with the dominant value system, thus allowing to overcome the sense of shame or guilt.

The different approaches highlight single aspects, but in reality the formal modeling of the micro–macro interrelation is still far away. Criminology and sociology of deviance research still have to strive to determine “how and where existing theories combine” [96], p. 246 and rather than using the same variables over and over again it is necessary to integrate the different theories into a coherent whole.

3. Between probation and diversion: the suspension of the trial with the probation of the minor defendant

For years, child crime in European countries has faced the dual challenge of bringing juvenile justice to justice: or to respond with more severe sanctions to the increasing quantity and quality of manifestations of serious deviance, or to respond to the safety demands of the population that is experiencing this escalation by implementing effective prevention strategies. The design in the various states varies between a protectionist and compassionate vision of the *Welfare Model*, to a more

secure and legalistic inspired by the *Justice Model*⁷. The juvenile deviance that is manifested today in Italy is no longer - in many respects - the one that preceded the debate on minors and followed the approval of the d.p.r. 448/1988. Young adolescents and minors approaching the age of majority, although they live in a “liquid” society [98] and for this reason are more fragile, have a greater reflectivity and have tools to acquire information quickly.

The migratory processes still in the eighties were very contained and the phenomenon of non-accompanied minors was scarce. Today we are faced with the second generations and the transition from temporary immigration to permanent settlements and in many cases definitive, with the transformation of work immigration into population immigration. Juvenile deviance was not yet in many southern cities an expression of child involvement in organized adult crime groups; in the North there were no bands of Latinos MS13, “Latin Kings” or crimes of foreign immigrant minors, or the jihadist radicalization on the web and the family disintegration, although already launched on a critical ridge following the constant increase of the constant increase in separations and divorces, it had not yet been affected by the effects of globalization and individualization. Indeed, the new climate of consumerism in those years was facilitated by the growth of female presence in the labour market; although the family still relied on the poorly breadwinner arrangement. The digital generation did not exist and the phenomenon of hypertrophic digital visibility was far away and with it the range of computer crimes related to pornography, cyberbullying, challenges (e.g. Blue Whale, Binge Drinking etc.) or the sexual exploitation of children online.

Often sanctions and recovery conflict because the penalty always has a quid of coercion, while the subject facing a recovery project is called voluntarily to join. The *probation system* modeled in Italy with the Presidential Decree 448/1988 and specifically the institute of testing (m.a.p.) was designed to make dialectically and concretely more balanced the tension between punishment and recovery. It represents a toolbox for those who work with those who enter the juvenile criminal circuit because, by introducing strategies to combat crime designed ad hoc, offers attempts to reconcile the defense of the community and the protection of the educational needs of the juvenile offender.

The suspension of the trial with the evidence of the accused is a peaceful expression of it (art. 28–29 d.p.r. 448/88, art. 27 d.Leg. 272/89). While drawing inspiration from the American model of *juvenile probation*, where the measure is intended as an instrument of de-imprisonment⁸, departs from these because the Italian judge

⁷ According to the welfare model, any problem of deviant behavior is traced back to mechanisms of marginalization and to the inadequacy of the society held responsible for criminal conduct. The recovery of the offender responds to a priority need with respect to the punitive claim of the state. The justice model, on the other hand, starting from a vision of the individual responsible for their actions, enhances the principle of the proportionality of the penalty to the crime, considering the punitive intervention centered solely on the crime and not on the personality. Thus, [97].

⁸ The criminal policy model of *probation* has been developing in the United States since the mid-nineteenth century. In the american system, however, the evidence removes the inmate from the sentence. The judge decides on the basis of the opinion of the *probation officer*, expressed through a *Pre Disposition Report* (PDR), in which he provides elements concerning the personality of the offender, the type of crime, the circumstances in which it took place, thus facilitating the judging body in establishing whether or not to test and in establishing the conditions thereof; the probation officer also follow the minor for the entire duration of the test, verifying that he meets the conditions imposed, and preparing a Case Closing Report (CCR) in which he describes the progress of the test. In the event a positive assessment, the sentence will be declared extinct, in the opposite case the minor will be brought before the judge who will impose a new sanction, more severe than the previous one. On juvenile probation in Europe, see [99].

can choose to use the m.a.p. before reaching the issuance of a judgment. So, it's customary to speak of trial probation ([100], p. 290). The proof that ends with a positive outcome (art. 29 d.p.r. 448/88) allows to put an end to the judicial case through the extinction of the crime leaving the child free from any stigma at least criminal, being that the same is not mentioned even in the Criminal Record configuring itself, in this sense, as a hypothesis of deviation from the normal course of the process, an example of *diversion* [101] therefore, that de-criminalizes the author of the crime de-formalizing the judicial system⁹. The existence in the Italian legal system of the mandatory prosecution prevents the implementation of deviation procedures with respect to the promotion of criminal prosecution if the Public Prosecutor has become aware of a *notitia criminis*, limiting recourse to them only in the trial or execution phase. This is why m.a.p. is presented as a measure halfway between probation and diversion. A *hybrid* [102]. Since 1992, the measure has been adopted intensively, following a rising path (see **Figure 2**) whose national increase in 2018 reached even 363.6%.

Although other institutions are provided by the legislator governing the juvenile criminal trial ("irrelevance of the fact", Art. 27 of Presidential Decree 448/88) and "judicial forgiveness" (Art. 169 of the Criminal Code), this frequent use according to some can be interpreted as a result of its effectiveness demonstrated over the years thanks to the improvement of the related educational paths [103], for others - and it is our opinion - its use has turned into abuse [104] as functional to exercise social control and to mask the compassionate attitude of most of the juvenile judiciary resulting from the application of less burdensome measures [105].

Erected as a symbol of the re-educational innovation promoted with the reform of the late eighties against the previous correctional approach, the m.a.p. condenses a sentence perspective centered on the special-preventive deterrence represented by the trial path of the juvenile where the delinquent act must be understood as a manifestation of a temporary discomfort related to being an adolescent. This pedagogical-reductive conception of m.a.p. prevails over the retributive-punitive idea that privileges punishment for the crime committed.

The trial probation must be considered, therefore, a form of post-stroke investment, since all parties invest a share of themselves, or of their time, or of their work, or of their expectations, in order to reach the realization of the trial path. If a trial does not produce real repentance in the subject or is exploited, or used as a ploy to circumvent their responsibilities, this results in loss for all those directly or indirectly involved. If, on the other hand, it generates a healthy change by offering the evidence a life alternative far from deviance, then the benefits produced will reverberate not only on the defendant but also on society in general, encouraging the construction of horizontal relationships of collaboration and reciprocity

⁹ The problem of systemic deformalization reaches its maximum expression precisely with the measurement of the suspension of youth procedural hearing for probation (art. 28 dpr. 448). It consists in the power, recognized to the judge, to alter crime-assessment-sanction paradigm, overcoming the casual logic of consequentiality between fact and reaction, in order to prefer a functional type model to the objective to be achieved. In such a context, the actors of the procedure will play a priority role and, essentially, they will be rentirely recognized a function previously attributed to the law. The Enlightenment concept of law had identified the form of law as the only possible means of protection against the excesses of authority; the subjecting of the individual to the rules, the impossibility of reviewing them, the attribution to the judge of a purely applicative task correspond to a dogmatic conception of law, consisting in the automatic traslation from form to reality. In a complex reality, such as today, the guarantee is no longer found only in the forms of the law, but is carried out by the evaluative and decision-making capacity of those who intervene in the proceedings. Hence the tendency, at least, to favor the collegial form of the judging body.

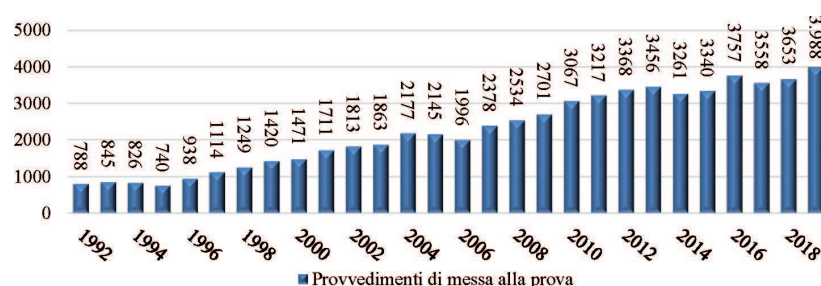


Figure 2.
Evidence issued in the Italian courts. Years 1992–2019. Source: Our processing on data Department of Juvenile and Community Justice.

between citizens and institutions involved (courts, social services, police, third sector, civil society).

These premises have stimulated new questions of knowledge and inspired the Italian legislator to rule on non-custodial measures and reform of the sanction system by extending the testing to adult defendants and introducing into our legal system the new c.d. *adult probation*¹⁰, entrusting the accused to the social service to carry out a programme involving activities of social importance.

That said, there are limits in the regulatory framework of 448/88. First of all, the interest of the minor is the one evaluated by the judge, not the one evaluated independently by the defendant even if, pending the trial, he became of age. This paternalistic approach of the juvenile trial contrasts with the rights of the victim, who according to the EU Directive 2012/29 is entitled to it even if he or she is a minor.

A contrast that prevents the development of the responsibility of the juvenile defendant, even of the one who has come of age and that restorative justice aims to pursue together with the satisfaction of the rights of the victim violated by the crime. In addition, there is a discrepancy in the criteria of application - resulting from a high discretion of the judge - both with regard to the type of crime and the manner in which the measure is issued.

Again: the set of rules does not take into account the involvement of minors in criminal organizations, preventing more particular re-educational treatment and perhaps far from the local context of origin. In the third order there is a concept of the crime as a violation of legal assets and not also of the subjective rights of the victim of the crime itself (as Directive 2012/29 of the European Parliament and of the Council indicates). Therefore, the victim is considered by the legislator of 1988 as excluded from the juvenile criminal trial (art. 10 d.P.R. 488 of 1988) and even if after the entry into force of the normative decree the practice of criminal mediation has spread, without however making any legislative changes, it appears to be a politically correct operation, but which does not produce any result.

A further aspect concerns the cultural and normative alignment of the m.a.p. to the 1989 UN Convention “on the Rights of the Child”. Moreover, even in the current juvenile criminal trial, in spite of the Council of Europe’s ECR¹¹ and the EU Directive 2012/29 binding on all EU States, the victim is completely absent or little considered, so that the direct damage caused to him/her and the conviction to remedy it is not yet instilled in the child’s educational strategy. Another important limit: when the social services take charge, it is not sufficient to evaluate only the outcome on the basis of the positive judgment of the evidence granted (often very

¹⁰ For a detailed analysis of the law 28 April 2014, n. 67, “*Delega al governo in materia di pene detentive non carcerarie e disposizioni in materia di sospensione del procedimento con messa alla prova*”, see [106].

¹¹ European Council, Rec 20 of 2003.

formal) without taking care of the permanent risks of relapse. In addition, not setting a limit to the granting of m.a.p. is not a good thing, rather it is a viaticum to its instrumental use by the minor or his lawyers.

Finally, what is the sense of a concession of m.a.p. to minors almost of age who have already experienced it other times and show an evolution of deviant behavior towards higher degrees of gravity?

4. Empirical evidence and research findings

The research was carried out between 2012 and 2017 in the judicial district of the Juvenile Court of Naples¹² and has developed as an assessment of the application of Presidential Decree 448 and in particular as an examination of the performance of juvenile probation in a context where serious deviance, juvenile crime is essentially indigenous. 287 files of juvenile offenders receiving m.a.p. (out of 882) were analyzed between 2000 and 2007 by the Juvenile Social Service Office (USSM). This set constituted the experimental sample of which it was also possible to draw a profile of the child tested. The sample was compared with three different control samples among those against whom a sentence of “irrelevance of the fact” art. 27 d.P.R. 448 (N_{c1} 199 subjects out of 523), those who have benefited from the “judicial forgiveness” art. 169 cp. (N_{c2} 286 out of 2518) and those sentenced to imprisonment (N_{c3} 238 out of 914).

The general objective of the work was to evaluate the performance of juvenile probation in the indicated district going beyond the sole verification of positive or negative outcomes with which the trial may end and including a longitudinal analysis that takes into account the biography of the subject post-trial. A monitoring of the operational practices of psycho-social recovery interventions over a limited, albeit broad, period.

To achieve this goal it was necessary to articulate further operational sub-objectives, such as:

- a. to estimate, with respect to the sample of m.a.p. subjects, the recidivism rate derived from the interrogation of the databases of the Criminal Records, as well as to estimate the so-called criminal relapse rate, derived, instead, from the interrogation of the databases of the Department of Penitentiary Administration;
- b. compare these rates with those determined with those who have benefited from other measures or other definitions provided within the juvenile criminal justice system such as: judgment not to proceed for irrelevance and judgment of judicial forgiveness;
- c. identify the recidivism rate among those who have received a prison sentence.

To trace the *profile of the minor in m.a.p.* was built and validated according to the pre-testing procedure, a detection board that allowed the implementation of a data matrix. Four macro-areas were explored: in the registration books, judicial, socio-economic, as well as related to the educational content of the project (**Figure 3**).

The sample observed (N_{s1} 287) is strongly marked with respect to gender, 92.3% male and nationality, 95.1% Italian, in line with the general trends of both juvenile

¹² The territories that fall within the jurisdiction of the Juvenile Court of Naples, besides the administrative centre, are provinces of Avellino, Benevento and Caserta.

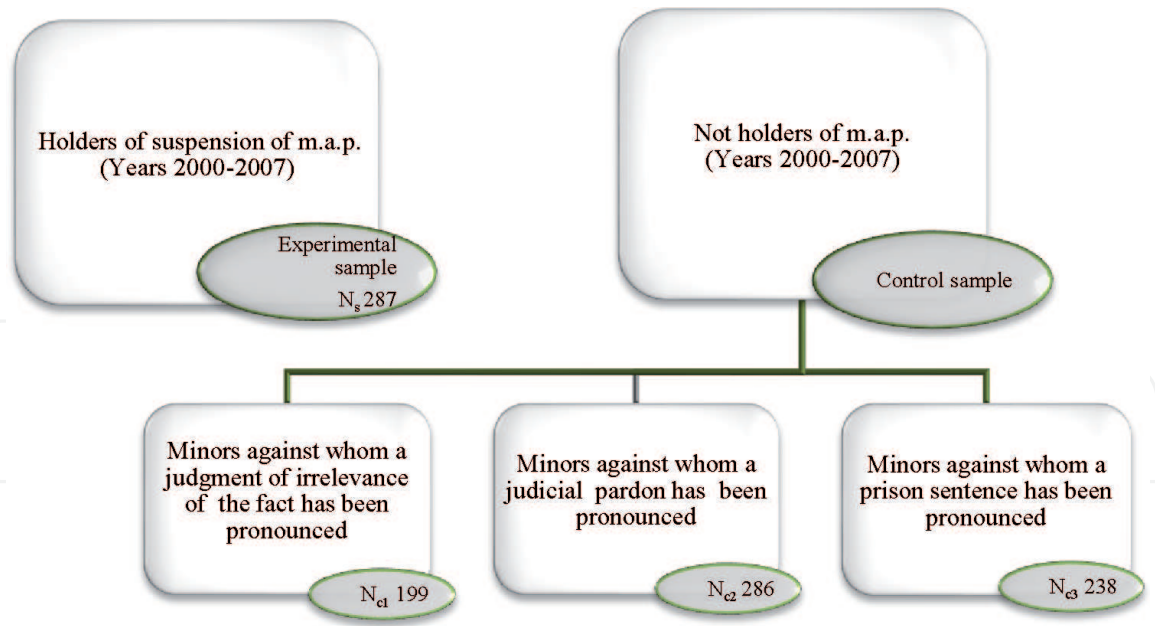


Figure 3.
By comparing the experimental and control samples.

crime recorded in the country, where the constant prevalence of complaints against male minors is observed, both with the more limited readiness of judges to apply the probation measure to foreign defendants because of the difficulties of implementation that are often encountered¹³. In fact, it is in the regions of the Centre-North of the country that the involvement of foreign minors is greater: the complaints reach almost 39%, compared to 8% in the southern regions¹⁴.

Expecting that the trial path was positive for almost 86% of the minors in m.a.p., for the remaining 14% the negativity is motivated by “non-adherence to the program” (56,1%), commission of a new crime (34,1%), other reasons (9,8%). The nuclear family structure is based on the bad breadwinner function of the father who in 45.2% sees him perform a private job and in 33.5% public, while in 65.2% of cases the mother does not work¹⁵. The cultural capital of parents is very low (54%), compared to 39.3% with medium and 6.7% medium-high education¹⁶. The proband, instead, for the 78% is in possession of a medium license, followed by a 15% holder of elementary license and a 6.6% of higher license. The school commitment affects 41.8% of minors in m.a.p., compared to 37.9% who works of which 39.8% occasionally and 34.7% permanently but not regularized.

Examination of the files of the experimental sample shows that only almost 23% of legal practitioners were aware of the existence of previous pending loads. The

¹³ See, [107–110].

¹⁴ Di Pascale M., *Distribuzione e modificazione della delinquenza minorile*, op. cit., pp. 204 e ss.; nonché Di Pascale M., *La criminalità minorile nelle città metropolitane italiane*, in G. Di Gennaro e R. Marselli (a cura di), *Criminalità e sicurezza a Napoli. Secondo Rapporto*, Napoli, FedOAPress, 2017: 56 ss. Inoltre, vedi Raspelli S., *Baby gang di minori stranieri immigrati in Italia: uno studio esplorativo*, Milano, Fondazione ISMU, paper novembre 2016.

¹⁵ The family work employment index was not significantly correlated (r Pearson = $-.38$) with the position of the minors charged with further crimes in addition to the one for which the trial is being carried out. Only 37.5% of the sample (out of 68.8% of the total) comes from a family whose employment rate is low.

¹⁶ The cultural capital of the parents appeared to be a strong predictor of the outcome of the test course. 70% of minors who received a negative outcome have parents with low education.

age of the proband should not be understood, then, as criminal onset, indeed these subjects could already be considered recidivists, in a literal and not legal sense.

Although the art. 28 of the d.PR. speaks of juvenile, 25,2% of the subjects - that is the over-eighteen-years-olds - has been recipient of the m.a.p. in a time that varies from one to over four years after the commission of the crime. If we add to these the share of eighteen-year-olds, the percentage rises to 56 points: more than half of the sample has concretely carried out the trial period as an adult!

It seems legitimate to ask: what is the value and what could be the effectiveness of a rehabilitation practice if the crime was committed years ago? It is clear that this conflicts with the primary objective of juvenile justice to ensure a rapid release of the child from the criminal circuit.

With regard to the judicial position of the juvenile ex ante the m.a.p. in 46.3% of cases awaits the trial and the application of the evidence on the loose. In fact, one of the fundamental criteria governing the provision or not of precautionary measures in the juvenile criminal trial is the non- interruption of educational processes already in place (Art. 19 of Presidential Decree 448). Therefore, where there are no particular precautionary requirements (art. 275 c.p.p.), it is good for the subject to continue with the normal course of life, also to avoid being burdened by unnecessary stigmatizing labels.

Compared to the application of the typical precautionary measures prescribed for the juvenile ritual, instead, from the data the following distribution emerges: prescriptions 7,7%; permanence in house 20,4%; placement in community 18,6%; precautionary custody 6,7%.

A further element can be deduced from the observations obtained from the cross-table between the place of residence of the subject and the place where the crime was committed: in 71.7% of the cases, the place where the crime was committed and the place of residence of the offender coincide, indicating a low level of criminal territorial mobility¹⁷. The maturation and practice of a deviant subculture overlap with the same urban space. Here again an inevitable question: does it make sense to return the child to the family, to relationships, to that environment that directed him to the deviant experience knowing that these are high risk factors?

In fact, the information on the percentage of correctness in crimes tells us that in 79.9% of cases the subject has acted in complicity with other people of which 40.6% with adults, 53.8% with minors and 5.6% is mixed complicity¹⁸. In addition, when the subject acts as a member of a dyad or a group his action becomes more ruthless and violent. It is the strength that comes from the pack that

¹⁷ Territorial criminal commuting and territorial criminal mobility are very low in the life cycle of the juvenile age and this for two reasons: a) the tendency to carry out acts in company (or with another minor or with older young more adult) whose complicity is limited to those contiguous relationships, interactions and aggregation models that mature within shared residential spaces; b) the need to operate in places not very far away where the conditions fulfill the fundamental "hunting" requirements: knowledge of the territory; escape route; count on ad hoc protections that can be activated; infungibility of the victims.

¹⁸ The only national study produced by the Department for Juvenile Justice records that in 38% of cases the crime is committed individually while "the cases of co-incidence represented 62% of the total, with a prevalence of crimes committed with other minors"; see, Dipartimento per la Giustizia Minorile-Centro Europeo di Studi di Nisida, *La recidiva nei percorsi penali dei minori autori di reato*, Gangemi, Roma 2013: 48. Studies carried out in the district of Bari and Foggia (Puglia) also show that the majority (63.3%) of the crime is committed in conjunction with other children and this data is transversal to the three groups considered by the research: those who have benefited from the put to the test (68.5%); the group of repeat offenders (65%) and the group of non-repeat offenders who did not benefit from probation (58.3%); see, [111].

legitimizes and exalts the accomplishment of actions that perhaps alone would condemn or hesitate to carry out.

We speak of crimes such as sexual violence, committed in conspiracy for 86.7% of cases; or robberies, 92.6%¹⁹. The seriousness of the crime does not affect the application of m.a.p. which, moreover, as said, can be given several times²⁰. Certainly, the discretion of the judge in not a few cases can become an arbitrary use of judging power, since the judge is called to decide whether or not to suspend the trial simply on the basis of a predictive effort and the same opinions of the operators (social workers, psychologists, educators) are not binding for the purposes of the decision, so much so that there are no residual decisions of a routine nature.

Considering that the most serious indictment has been reported, 52% of the crimes ascribed are against property, 24% against the person and the remainder for so-called other crimes. Specifically, among the first, robbery dominates with 64.4%, followed by theft (23.5%) and with lower percentages extortion, damage, handling of stolen goods²¹. Among the crimes against the person, personal injury (31.9%), crimes of sexual violence (21.7%), manslaughter 14.5% and with lower values those of brawl, will-full murder and attempted murder. The other crimes are drug trafficking (63%), crimes against the public administration (17.1%) and, more residual, weapons possession, conspiracy and traffic violations.

Finally, the problem of recidivism and criminal relapse²². In the two initial tables below we have summarized the results found between the different samples. In the third reported the data of other researches that allow the comparison.

The criminal relapse rates detected for the experimental sample of N1 287 subjects receiving the m.a.p. are 18.5%. This value is interposed between 15.1% produced by the sample of subjects who were granted a judgment of irrelevance of the

¹⁹ The neapolitan metropolitan area in the period between 2004 and 2017 recorded the highest number of robberies followed by Milan and Rome, but with an almost total indigenous component; see, Di Pascale [112]. A positive correlation (r Pearson = .82) emerged in our sample between the low or average capital endowment of the parents and the propensity to carry out robberies by minors, which affects 82.7%; while minors whose parents have a medium-high cultural capital are in 24% of cases involved in drug dealing (r = .57).

²⁰ The average duration of a trial run recorded in the sample is 12 months (38.1%); for crime against the person and for the category of other crimes, the duration of the trial is respectively 44.1% and 43.3%, below the average. The duration of the trial for crimes against property for 46.9% coincides with one year. Personal injuries can be occasional, robberies plus an orientation to serious deviance this would explain why crimes committed against the person aren't subject to a longer probationary period than those against property.

²¹ The comparison with the same criminological researches indicated and the National study referred to report much lower percentages and the same entry into the Italian juvenile criminal circuit is mainly determined by the carrying out of thefts (27%) and robberies (8%).

²² To study the recidivism rate, a comparable criterion was used between the samples and the indicator was evaluated after 5–6 years from the date of the first crime. Therefore, recidivism must be understood not only according to the technical-legal meaning referred to in art. 99 of the Criminal Code, as in the sense of “relapse into a new crime”. The Central Criminal Records database and that of the Department of Penitentiary Administration (DAP) were interrogated with different name lists – provided by the Juvenile Court and the Center for Juvenile Justice in Naples – corresponding to the samples adopted in the survey. The outcomes produced by the first source made it possible to derive the recidivism rate, as the sentences of conviction, or acquittal, became irrevocable. The feedback received from the DAP allowed the calculation of the criminal relapse rate, obtained from the calculation of the entries in a prison attributable to a single person for the commission of a new crime. In this last regard, there is an obligation to clarify that, given the particularity of this source, it is not certain that the subjects not present in the DAP databases have not committed any further crime.

fact (N_{c2} 199) and 24.1% of those against whom a judgment of judicial forgiveness was pronounced (N_{c2} 286). To these is added the data that belongs to the sample of N_{c3} 238 subjects who between 2000 and 2007 entered a prison for minors as a result of a prison sentence (**Tables 1** and **2**).

Reference samples	Sample units	Subjects who have committed a crime as adults and have an entry into IPA	Percentage of criminal relapse
M.a.p.	287	53	18,5%
Irrilevance of the fact	199	30	15,1%
Judicial Pardon	286	69	24,1%
Prison	238	150	63%

Source: our processing on data Department of Prison Administration.

Table 1.
Percentage of criminal relapse differentiated by sample.

Reference samples	Sample units	Subjects who have committed at last one crime as adults and has received a sentence from the Court	Percentage of relapse
M.a.p.	287	71	24,7%
Irrilevance of the fact	199	47	23,6%
Judicial Pardon	286	92	32,2%
Prison	238	134	56,3%

Source: our processing on data by Central Criminal Records.

Table 2.
Percentage of relapse differentiated by sample.

If in the first three samples the data produced already open to wide considerations, since we speak on average of a relapse in crime attributable to one in five subjects who had originally been granted a measure designed specifically for minors (testing, irrelevance of the fact and judicial forgiveness, measures that in practice interrupt the crime-penalty contract), the data obtained from the sample of former juvenile offenders open to a nefarious scenario, even if expected. Out of 100 former juvenile offenders, about 63 adult offenders have committed at least one new offense for which they entered a Prison for Adults (**Table 3**).

Reference territory	% estimated relaps	Book
Italia	23%	[113]
Bari	18%	[111, 114]
Caltanissetta, Catania, Catanzaro, Messina, Palermo, Potenza e Reggio Calabria	17%	[115]
Napoli	24,7%	[116]

Table 3.
Relapse estimated in different researches that report data on juvenile recidivism.

5. Conclusion

For the recovery of the deviant juvenile it is relevant that the policies of the juvenile criminal justice system intersect with those of the institutions and the private social sector that at different levels care about their recovery and protection. The mobilization of personal and social resources is important.

The deepening of the response of the spheres of the legal-criminal and social subsystem directly involved in the application of measures and recovery policies has provided indications on the limits outside the regulatory framework.

The service for the conciliation and penal mediation represents a fundamental junction of the d.P.R. 448 and a substantial reference of the restorative justice both on the victim's and the community's side, because it tries to heal the evil caused by the offender, and on the offender's side, because it rebuilds his identity and reconnects with the victim and the community.

Well, for the years observed as the temporal axis of the research, it has been noted that it has been arranged in an increasingly ascending form, however, only in 19.3% of cases it was possible to concretely start the meetings. A percentage, this one, that can be said without doubt to be even more unsuccessful if we think that just in 2000 between the City of Naples and the Centre for Juvenile Justice of Naples a first protocol of understanding was stipulated to respond to the need to identify a neutral place in which the intervention aimed at conciliation between the parties was distinct from the one in the judiciary.

The examination, then, on the methods of reception in the communities of the territory of the subjects in m.a.p. (conducted on a total of 19 residential facilities of the Campania Region) has allowed us - through in-depth interviews with managers and operators on the basis of a prepared track - to detect and understand the experiences gained by those who deal with children in m.a.p. daily.

The analysis of the material has shed light on some problems and critical issues related to the community intervention with this specific category of users, among them: the effective individualization of educational projects; the inadequacy that characterizes the tools for evaluating the quality of community intervention used by institutional services; the low participation of social workers in the programming activity; the insufficient investment in training and professional updating of operators and managers of the structures; the failure to take off the restorative pedagogy in individualized educational projects.

If they remain unchanged, it is difficult for the strategies and good practices, which we have intercepted, to have positive interactive and sequential effects both for the prevention and for the fight against serious deviations.

The path to be pursued and the one on which to propose and invent operational models and practices is the one indicated by the Council of Europe in Rec 2003 where (art. 8) indicates the new ways of treating serious juvenile deviance and what the role of juvenile justice must be: *"to develop a wider range of measures and sanctions applicable in the community, which are innovative and more effective. These measures should directly target criminal conduct and take into account the needs of the offender. They should also involve the offender's parents or guardian (unless this is considered contrary to the aim to be pursued) and, where appropriate and whenever possible, allow mediation, reparation of the harm caused and compensation to the victim"*.

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