

**THE PENAL TREATMENT OF ITALIAN AND FOREIGN MINORS WHO COMMIT CRIMES. AFFINITIES AND DIFFERENCES . THEIR PLACEMENT IN THE EDUCATIONAL PENAL COMMUNITIES. PROJECTS OF THE REHABILITATION AND SOCIAL INCLUSION . CRITICAL ISSUES AND PROSPECTS OF REFORM. RESULTS OF A RESEARCH.**  
**Michela Patti \***

## **INTRODUCTION**

*"Although it is daring explore the unknown, it is even more investigate the well-known"*

Kaspar Hauser

In this paper I examined a very sensitive issue to this day in many countries of the world: minors who commit heinous crimes.

The extreme violence of some crimes and specially of the murders committed by teenagers in recent years, that has been told in great detail by the press and television, has led the public to believe that juvenile crime has become one of the emergencies of our country.

There are many questions that arise:

- *Why do minors kill and commit heinous crimes?*
- *Are killer minors little monsters?*
- *Are killer minors "bad" born or do they become "bad"?*
- *What and how much influence do the neurobiological factors in the commission of such heinous crimes?*
- *A deficit psychic can "cripple" the empathic abilities of the child, affecting their ability to understand and desire as well as on the eligibility of these?*
- *What are risk factors bringing a minor to become a criminal and / or to commit heinous crimes?*
- *What are action courses and institutional responses to juvenile murder ?*
- *What are pathways rehabilitation? What are the proposals?*

## **1. THE DRAMA OF THE ADOLESCENCE**

Adolescence is a phase of transformation and transition that begins at puberty and ends with entry into the adult world. The etymology of the word implies "Adolescere", which in Latin means to grow, emphasizing even more the concept of change and evolution beneath.

This double movement, denial of his childhood on the one hand, the looking for a stable status as adult by the other, constitutes the very essence of the "crisis", the "mental process" that every teenager goes through.

## **2. THE DEVIANCE .....SOME THEORY**

A canonical definition wants the deviance as behavior that violates expectations institutionalized in a given social norm. This rule appears to be divided into two components: the institutionalized expectations, represented by an ideal answer mode, and the penalty or punishment as a result of the violation of this expectation.

For the French sociologist Emile Durkheim (*L'éducation morale*, 1903; *Education et Sociologie*, 1922) , "an act is criminal because it contradicts the conscience of society". However, it should be noted that the responses of the community, to a same deviant act, change in space and time. For this reason it is customary to speak of the relativity of deviance in relation to the geographic area and to the socio-political situation. The theme of deviant behavior has given rise to a long debate and to a succession of theories designed to explain the origins of these criminal actions.

## **3. ANTISOCIAL DEVELOPMENT IN THE CHILDREN. RISK FACTORS AND PROTECTIVE FACTORS**

A careful analysis of the phenomenon of juvenile crime not only cannot be separated by the exam of the factors that are the basis of a criminal personality, but must also consider the environment in which it develops (Bacchini, D., Fiorito, A. 2003) .

To understand the nature of the motivations that lead to criminal conduct of the teenager necessary it is to make use of:

- An approach "generalized" - represented by the knowledge of all phenomena related to the company that is influenced and effects on many people
- An approach "individualistic" which aims to identify the existence of a threshold of criminal-genetic vulnerability to various factors , that belongs to every

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individual, trying to relate one's being with the environmental influences existing and establishing their reception, internalization, sublimation and / or rejection, and the reactions they cause.

**4. "MULTIFACTORIALITY"**

According to an objective assessment, therefore, the criminal conduct requires a global vision that takes account simultaneously of the social causes of crime , of the imbalances and injustices of society, and of the different ways the individual's response to environmental and organization insults . For this reason we talk about MULTIFACTORIALITY of the deviant behaviors, that is a combination of different factors.

We can say, in conclusion, that ascertained the absence of a specific gene that leads to crime, it is clear that to determine the criminal conduct of a child, as well as that of an adult, there must be a true interrelationship between social factors and biological and psychological development of the child which interact in different ways and with different intensity and determination according to the individual and of the situations surrounding it (Zara G, 2005) .

**5. NEUROBIOLOGICAL AND TEMPERAMENTAL RISK FACTORS**

The behavior and personality of the child may also be influenced - among other things- by biological factors. The "biological heritage and the criminal genetic heritage " is composed of two different entities with each other but proceeding in parallel: the intrinsic biological factors and extrinsic ones.

Physical and verbal aggression, cruel behavior toward people and animals, disturbance of social conduct that affects the very young often have their roots in the brain, that is , it would be the result of some neural dysfunction, rather than being induced by the environment (family and otherwise) in which they grow. (Anderson, S.W., Bechara, A., Damasio, H., Tranel , D., Damasio , A.R. - 1999). Several studies have shown that , many young people suffering from this disorder (regardless of age of onset) are dysfunctional in the neural centers of emotions (Brower, M.C., Price B.H. – 2001; Blair , R.J.R. - 2007).

Neurobiological mechanisms and brain dysfunction play a key role in all youngsters with social conduct disorder.

**6. METHODS OF THE RESEARCH**

I tried to form a comprehensive view of the issue through a double perspective of analysis: theoretical and practical. I started with the theories developed by various experts about the matter and I have integrated my research with the empirical analysis carried on the base of the data resulting from judicial cases.

The aim of the research, conducted in a multi-disciplinary perspective, is precisely to analyze the phenomenon of the youth condition and deviance, specially in relation to the methods of reception in educational communities .

Specifically, we analyzed about 100 cases in criminal matters - some treated by my law firm - of teens placed in the community - over a period of 11 years (2000-2011).

For each of the judgments examined were put in evidence the following items related to the fact homicidal: age, gender of the author, commissive mode (to be understood as referring the weapon used), motive, premeditation, any contribution of people in the crime, place in which the crime was committed, the child's behavior after the murder (attempt to sidetrack the investigation, the confession ...), relationship with the victim, geographic origin, family characteristics, underground of the crime .

Particularly was investigated the role played by the temperamental and neurobiological factors in the evolutionary process that leads to acting out violently, and the interactive process (interplay) between genes and environment. First, we addressed the issue of the aggression in relation to neuropsychological dysfunctions and then we went on to analyze the impact of a low level of temperamental factor of pro - sociality on violent behavior. Specifically, then, we examined : the role of the empathy, the neuro-psychological ability to perceive the suffering of others and consequently trigger the inhibition of behavior as well as the cause of it and the presence of deficits and / or mental changes that have contributed to alter the empathic abilities of the child.

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We crossed quantitative and qualitative data. The various cases have been read, also, in an optical multidisciplinary, i.e. not only in legal terms but also psychological and criminological .

The intention is to verify from a practical point of view the theoretical considerations, as well as to expose the way in which services (prison and territory) operate in the choice of routes and projects to be implemented. We have examined the re-education and social reintegration programs for to ensure that juvenile offenders follow a path of evolution and growth that could help them not only to understand the negative values of the offense that they were committed, but also to recover their identity engaging them in pro-social activities that would allow them to empathize with others.

Finally, considering that not sufficient the answer punitive of the ordering to combat these heinous conduct, we have moved to identify preventive tools and rehabilitating direct at the control of violent impulses. Looking ahead, we evaluated the opportunity to direct training, as it occurs especially in the United States, at the development of emotional intelligence.

In addition, we analyzed the punitive responses that currently offers our criminal justice system by outlining the possible options for reform.

## **7. RESULTS**

Introduction: with my research, I have not any pretense or intention of standardizing the phenomenon of the juvenile murder and the behavior of the minors who commit heinous crimes.

Nor is it possible to find a solution in every case.

The results , in fact, do not allow a discussion different from that casuistic.

From the evaluation work, comparison, analysis and re-visitation about different cases, many problematic issues emerged:

1) the trend of the complaints for the murders committed by child, for whom was started the prosecution, is almost constant ,amounting to 2 or 3 murder for every year .

2) the murders were committed in the vast majority from the Italian people

3) the average age at the time of commission of the offense is 16 years, notwithstanding the presence of individuals at the limit of imputability, or the threshold of adulthood.

4) the context and the background of the crime, is no more that of a poor and violent family , but that of "normal" family, wealthy and at least in appearance, united and serene.

5) preliminary investigations are characterized by the use of various professionals (doctors-lawyers, psychiatrists, criminologists, psychologists, educational psychologists) called to make a technical contribution to the assessments and decisions of the judiciary.

6) Then , by the Court is strong the use of the lay components who are experts in the psychiatry and psychology

## **8. RESPONSES OF THE PENALTY SYSTEM**

In Italy , an institutional response to juvenile crime has been given by the DPR September 22, 1988, No. 448, which includes new figures and new legal institutions, including socio-educational communities for teen-agers entering the criminal circuit.

The cases of children who commit heinous crimes are dealt with by the juvenile justice system, as follows.

- ❖ Very often a defendant requires his/her case definition with the summary proceedings which leads to the discount of 1/3 of the detention;
- ❖ in several cases, and especially when minors are seen as able to undertake a re-education and rehabilitation process , a period of proof in an educational community is granted;
- ❖ when a minor is acquitted for the total insanity in most cases the security measure of judicial reformatory is applied and to be executed in the form of placing in an educational community;
- ❖ they can adopt precautionary measures, even if not always in prison;

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- ❖ In some cases a teenager was acquitted for lack of ability to understand and will due to immaturity (Article 98 of the Criminal Code);
- ❖ In other cases a very severe condemnation was pronounced.

The suspension of the trial and a period of proof in an educational community is applied to satisfy the need to punish a person who has committed an offence, but even to re-socialize him , to rehabilitate him and to give back to the world a not more deviant personality( Stone, M.H. - 1993)

The inclusion in the community is also a measure provided by the Juvenile Criminal Code, a measure that is usually taken when the family has not an affective and educational context "good enough" to act as a protective factor from the implementation of criminal behavior .

The most contentious issue is certainly the involvement of the same adolescent in the decision to start a way of life in a community structure and his/her total wholehearted adhesion to the established route.

**The foreign teen-agers have the biggest problems . For reasons of space, I cannot report detailed results of my research. They will be published. For any clarification you can contact me at my e-mail.**

According to what has been found , it was possible to make some concluding remarks and propose the "answers" that could improve the experiences and suggest something that also goes "beyond the community" (Gazzaniga M.S. 2005).

### **9. THE EMOTIONAL INTELLIGENCE**

The text " Emotional Intelligence" by Daniel Goleman in 1995, suggests that the lack of emotional learning of the young generation is behind the phenomena of destructive and self-destructive violence by students. The "Emotional Intelligence", for Goleman, is the ability of the teenagers , to get in touch with their emotional life, is the ability to detect the onset of aggressive impulses and being able to control and guide these, by modulating the anger; is the ability to understand the feelings and those of others, to respect them and take them into account in order to develop a social life rich and satisfying. The United States and many European

countries have many years experience of training courses, for students of public and private schools, based on the development of emotional intelligence. It demonstrated experimentally how such experiences produce positive results, such as: improving the ability of students to recognize and understand their own feelings and those of their peers, the definition of a greater ability to control and guidance of emotional and mental resources, so avoiding anger, reducing the conflicts and violence, improving the communication between peers and between generations in the school.

The weak or absent awareness and the lack of self-control of feelings on the part of the students, the poor growth of their "emotional intelligence" is often lead to deviant behavior, anti-social and violent.

### **10. A CASE FOR EXAMPLE ...? DEFINITELY A GREAT EXCITEMENT**

*"One night at a dinner for the collection of funds for the construction of the Family House Project Jonathan, where were present some disabled children who attend the so-called "Leisure AIAS Piacenza" , I have been called, as President of the AIAS, to explain the project. Before doing so, I did watch the video-spot of the family home, the contents of which is particularly intense and exciting. At the time to talk, I said that I had very little to say, since the video had already spoken in my place. later, I called to replace me for the thanks Fabio, Down boy who attends our "leisure" and that I presented as my official delegate of the evening.*

*Fabio, not at all intimidated by having a microphone in hand and in front of one hundred and twenty people, started the thanks. I do not know exactly what he said and I do not know if his words are remembered by the present people . What's left is an emotional wave indescribable. Silence fell in the room and the excitement was cut with a knife.*

*Excitement and surprise at seeing a Down boy to stay that way on stage and say things creepy. With the heart and the intellect. There was a girl sitting in front of him, he started crying and while Fabio was talking, crying more and more. Finally, after a moment of silence, applause liberating. Fabio has placed the microphone on the table, he approached the girl and he has embraced strong this women , causing a flood of tears.*

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*This is the Aias of Piacenza: an association that since November 1970, beating itself continuously, not only for the care of people with disabilities, but also for their dignity and for the protection of the rights of persons with disabilities . So for all those people with disabilities who, as written by masterfully Joseph Pontiggia in the dedication of his book "Born Twice", "struggling not to become normal, but himself.*

So says Claudio Tagliaferri, a renowned civil lawyer, president of AIAS Piacenza, but especially Man that has decided to support in the struggle for life the most "weak", the so-called "Different", "other". One example among many, who struggle in various Italian country, for the weak and they can open our minds to new scenarios. Listen to his testimony, has not only enriched my life, but I was involved in his life plan. As my eyes looked, not only, the intense light that emanated from eyes of the lawyer Tagliaferri, who spoke of the family home, but also the excitement in gestures of his hands and of his face, and my ears attentive listened to avoid losing a comma, my mind has galloped away and wondered: if this was the thread that knots the others? It's a question I ask myself and I ask the reader. I tried to give an answer. Right? Wrong? I do not know. Meanwhile, I tried. In other situation and in this paper, I argued that in order to re - educating the young man who breaks the law, first of all you need to convey positive emotions. But also the so-called "Normal people", sometimes do not capture the emotions, who are awakened also thanks to testimonies such as that of the lawyer Claudio Tagliaferri.

## **11. CONCLUSIONS**

It is important to understand that the exclusion generates violence. And violence in turn generates additional exclusion. One must therefore reverse the punitive approach that so many failures, injustices and additional suffering has produced for many young people, and instead to promote the reinstatement of responsibilities realizing, so, a recovery of dignity and quality of life.

Even the "Guidelines (see in the website: [www.giustizia.it](http://www.giustizia.it)) on social inclusion for persons subjected to measures of the Judicial Authority" issued in 2008 by the Ministry of Justice through the National

Consultative Commission and Coordination for Relations with the Regions, Local Authorities and Volunteering have stated that "..... the state, the regions and local authorities in implementing the principles of sincere cooperation and subsidiarity, together must take the responsibility of combating social exclusion even of persons subject to judicial measures , in awareness that investments for intervention on social problems in general and orientated towards inclusion affect on the phenomenon of relapse, on the security of the territories and on the quality of life of the community.

*The necessary economic investments should not in fact be considered an increase in costs for the community, but on the contrary, in the long run, a productive investment in terms of social security ; the culture of personal services must become more and more a civil and political heritage of the area that aims to pursue justice, security and law [...].*

The European Parliament is alarmed by the increase in youth violence, particularly in schools and has repeatedly called for the institution of an integrated strategy at national and European level, bringing together prevention, judicial and extrajudicial measures and social inclusion.

The same concepts - although regard to the penal system in general and not specifically to the juvenile justice - were expressed , in an excellent way, during the conference held at the University of Salerno, Friday, October 31, 2014, organized by the chair of criminal law, headed by Prof. Andrea R. Castaldo ( Secretary General for Europe of International Center of Economic Penal Studies) entitled " Crisi e riforma del Sistema Penale ("Crisis and reform of the penal system")

There has been talk of guarantees and certainties and of changes in the Italian criminal justice system so as to throw a bridge to the future.

I conclude with the words used at the opening that are a beacon for this paper: "Although it is daring explore the unknown, it is even more investigate the well-known".

With the sentence quoted on Kaspar, Paul Watzlawick et all. began to write "Change", (Ed. Ubaldinis Astrolabe, January 1974), a text whose main theme is that of change.

Usually, you look at the past, at the experience for the solution of problems that are present, regardless of the

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fact that you may run into error because you get to make choices that are appropriate for a given case, but not they are for others. In doing so, is perpetrated the error. It so important that the individual put himself able to see the problem from different perspectives, questioning the common sense of reality. Central engine of change is to find new points of observation, looking at reality with different eyes. Only by practicing this skill that is inherent in man, these evolves reaching even to the resolution of problems that arise later.

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