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ITALIAN LEGISLATIVE PROPOSAL OF CRIMINALISING BULLYING: GENERAL CRITICAL CONSIDERATIONS / Enrico Lanza

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Abstract: *The aim of this study is to understand if criminalising bullying is a solution to counter and prevent the phenomenon. The Italian legislative proposal of criminalisation offers hints to discuss about a general problem while underlining that the penal solution is not the answer to solve a complex social problem as bullying (and cyberbullying) is. The creation of a specific crime determines a simplification of the question because it concentrates the attention on the dyad bully-victim, without considering the essential role of the group. Taking into account the role of the group and the relationship between the bully and the group implies a systemic approach.*

Key words: *Bullying; Cyberbullying; Penal law; Criminalisation; Complexity; Systemic approach; Italy*

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1. INTRODUCTION

Nowadays bullying, especially in its cyber version, is considered a social problem of great pervasiveness, requiring effort by means of contrast and prevention strategies. In particular, it is frequent that public opinion, overwhelmed by the drama of some news episodes,[1] complains about the use of penal sanctions, not only as a repression instrument (according to retributive theory), but also – and above all – as a prevention one: the punishment would fulfil the deterrent function (Albertson, 2014; Tefertiller, 2011).

From this point of view, the relevance of promoting a cultural operation on minors has been underlined, who are the subjects normally involved in bullying episodes (in this

[1] Many researchers have put in evidence the risk of suicide for children and adolescents involved in bullying episodes (either as bullies and as victims). See, for example, Hinduja and Patchin (2010); these authors underline that "*it is unlikely that experience with cyberbullying by itself leads to youth suicide. Rather, it tends to exacerbate instability and hopelessness in the minds of adolescents already struggling with stressful life circumstances. Future research should identify and specifically assess the contributive nature of these stress-inducing experiences*" (2010, p. 217). From this point of view, it is interesting the study of Dilmaç (2009). In this study, the researcher tries to understand what factors motivate young people to cyberbully and explores the relationship between psychological needs and cyberbullying: to discover the possibility of predicting cyberbullying behaviours from specific psychological needs. According to the results of this study, aggression and succorance positively predicted cyberbullying, whereas intraception negatively predicted it; endurance and affiliation negatively predicted cyber victimisation; only the "change need" positively predicted cyber victimisation. For the differences between bullying and cyberbullying, see the research made by Lester, Cross and Shaw (2012).

article, in fact, bullying and cyberbullying are considered phenomenon exclusively concerning minors). According to this opinion, young people must be made aware that some behaviours integrate a fact characterised by a meaningful social disvalue. The widespread lack of awareness of the serious consequences that certain behaviours can have is the most worrying aspect today. Therefore, it is considered important to define general rules and, also, to provide for some criminal sanctions for specific particularly damaging behaviours.[2] In other words, to counteract bullying, it is considered necessary to create a specific penal provision.

Actually, Italian judges have applied to some cases of bullying the provision of art. 612-bis of the Criminal Code on stalking,[3] which, however, is considered unsuitable to firmly contrast the spread of what seems to be becoming a real negative behavioural model, characterised by a strong spirit of prevarication and aggression. Therefore, a specific crime should be created both for contrasting and preventing purposes: to realise retribution and deterrence as ends of punishment.

Based on this conviction, a bill has been presented in Italy aimed at the criminalisation of bullying behaviours. The project is still being examined in the Senate, most likely set aside due to the emergencies that the country is going through in this period: Covid-19 pandemic, the economic crisis, government instability, the recent (re)election of the President of the Republic and Ukrainian war.

However, it is necessary to analyse this proposal of law to understand whether the path taken by the Italian legislator can be considered adequate.

In this article, the proposal of the Italian legislator on the criminalisation of bullying will be explained and the reasons against the adoption of this solution (and, generally, against the criminal solution) will be underlined (Lanza, 2021).

2. ITALIAN LEGISLATOR PROPOSAL OF CRIMINALISING BULLYING

The issue of bullying was the subject, already in the XVII legislature (2013-2018), of a prolonged debate between the Senate of the Republic and the Chamber of Deputies, which ended with the approval of Law no. 71/2017 concerning exclusively cyberbullying.[4] The deemed persistence of the relevance of the problem has led, even in the following legislature (the XVIII), to continue the debate and to identify additional tools in order to prevent and counter the phenomenon.

In January 2019, the bill of parliamentary initiative no. 1524, on 1) the subject of preventing and combatting the phenomenon of bullying and 2) the implementation of re-education measures for minors, was presented; the new provisions should modify the Criminal Code, Law no. 71/2017, and the Royal Decree-Law no. 1404/1934.[5]

[2] These considerations have been expressed by the President of the Juvenile Court of Naples, Maria de Luzenberger Milnernsheim, during the hearing at the Justice Commission, which took place on 24th July 2019, concerning the Italian proposal of criminalisation analysed below.

[3] The Italian Supreme Court applied Article 612-bis of the Criminal Code to some episodes of bullying in sentences no. 28623 of 27th April 2017 (concerning four minors who, in the school environment, had committed physical assaults, harassment and acts of insult to another minor), n. 26595 of 28th February 2018 (concerning personal injuries and beatings that were caused by two minors to a school friend and which lasted throughout the school year, causing the victim to leave school), n. 33863 of 4th April 2017 (concerning the persecutory acts, carried out for two years, against two minors by a group of children). In the latter decision, the reference to bullying is explicit, in the first two it is implicit, in the sense that the term "bullying" never appears.

[4] Law no. 71/2017 is entitled "Provisions for the protection of minors by means of the prevention and contrast of the phenomenon of cyberbullying".

[5] Royal Decree-Law 1404/1934 created in Italy, in 1934, the juvenile court.

The aims of the proposal are:

- the prevention and the fight against bullying through criminal measures (with the amendment of art. 612-bis of the Italian Criminal Code);
- changes in the discipline of coercive measures of a noncriminal nature applicable by the juvenile court;
- the introduction of tools to assess and analyse the phenomenon in the school environment.

This proposal is in continuity with Law No. 71/2017, as some socio-educational measures are contemplated, while including bullying (and not only cyberbullying, as in Law no. 71/2017); furthermore, it expands the intervention methods, providing for the use of tools of criminal repression and a reform of coercive measures of a noncriminal nature applicable by the juvenile court to young people who engage in irregular or aggressive conduct.

Art. 1 of the proposal provides the amendment of Art. 612-bis of the Criminal Code,[6] in order to extend the crime of persecutory acts (i.e. stalking, which constitutes the "natural" reference model for typing any form of prevaricatory action) to include the conduct of repeated threats and harassment that places the victim in a condition of marginalisation: essentially, to include bullying episodes. In other words, no new crime has been proposed, but the one disciplined by art. 612-bis of the Italian Criminal Code has been integrated. The configuration of a specific criminal offense could have created greater problems than it could solve. Due to the extremely varied range of behaviours that rise to forms of bullying and cyberbullying, indeed, the normative formula could have been too general, in an attempt to include everything, discounting a lack of certainty, or excessively descriptive, like a catalogue, inclusive of heterogeneous behaviours, expressive of diverse coefficients of offensiveness. It must be noted that Italian legislation ignores a (juridical) definition of bullying (which is also lacking in this proposal). Such a definition should include elements that, from a sociological and psychological standpoint, have to be considered essential for the identification of the phenomenon: the intentionality of the abusive conduct of the bully, its recurrence over time, and the asymmetry in the relationship between the bully and the victim (Olweus, 1978; Farrington, 1993; Baldry, 2001; Menesini, 2009). It can therefore be said that bullying is characterised by a series of intentional behaviours, repeated over time, aimed at damaging the victim, facilitated by the support, even tacit, of the peer group or, at least, by its silence, originated in a pre-existing relationship between the parties; relationship that is characterised by

[6] According to art. 612-bis of Italian Criminal Code on stalking:
"*Unless the fact constitutes a more serious crime, anyone who, with repeated conduct, threatens or harasses someone in such a way as to cause a persistent and serious state of anxiety or fear or to provoke a well-founded fear for his/her own safety or that of a relative or a person linked to him/her by an emotional relationship or to force him/her to alter his/her life habits, is punished with imprisonment from one year to six years and six months.*"
The penalty is increased if the offense is committed by the spouse, even separated or divorced, or by a person who is or has been linked by an emotional relationship to the injured person or if the offense is committed through IT or telematic tools.
The penalty is increased up to half if the offense is committed against a minor, a pregnant woman or a person with disabilities as referred to in article 3 of Law no. 104/1992, or with weapons or by a misrepresented person.
The crime is punished upon complaint by the injured person. The deadline for filing a lawsuit is six months. The remission of the complaint can only be procedural. The complaint is in any case irrevocable if the fact was committed through repeated threats in the manner referred to in article 612, second paragraph. However, one proceeds *ex officio* if the offense is committed against a minor or a person with disabilities as referred to in article 3 of Law no. 104/1992, as well as when the fact is connected with another crime for which one must proceed *ex officio*.

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asymmetry (unbalanced power) for physical or psychological reasons. Cyberbullying then requires that these behaviours are carried out with IT and telematic tools (Lanza, 2021).

The condition of marginalisation, indicated in the proposal, is not defined in the criminal code, but the concept is recalled in the jurisprudence of the Council of State on mobbing, where reference is made to "damage from (occupational) marginalisation". According to this body, the unitary persecutory strategy is necessary to mob someone; this strategy is not substantiated in single acts expressive of the ordinary dynamics of the employment relationship (such as normal interpersonal conflicts in the workplace, caused by antipathy, mistrust, scarce professional esteem, which are not characterised by the will to marginalise the worker), but in a unitary design with the purpose of marginalizing the employee or placing him in a position of weakness. However, the concept of "marginalisation", remains quite generic, susceptible to extensive applications and exegetical doubts: therefore its perimeter must be defined taking into account the other constitutive elements of the crime of persecutory acts.

Cyberbullying is specifically punished thanks to the presence, in the second paragraph of art. 612-bis, of an aggravating circumstance (introduced by the Legislative Decree no. 93/2013, converted into Law no. 119/2013) relating to the commission of stalking with the use of technology; moreover, in this way, from a systematic point of view, cyberbullying becomes an aggravated form of bullying.

In the third paragraph of art. 612-bis, a new aggravating circumstance, which involves an increase of the penalty up to half, is contemplated. This circumstance is related to the fact committed by more than one person, and is aimed at sanctioning that group dimension which is a typical trait of bullying and an instrument of particular pressure. In the original version of the proposal, in this paragraph the additional aggravating circumstance of having committed the fact with discriminatory purposes was also stated.

Finally, in a new paragraph, once the definitive sentence has been issued, the mandatory confiscation of any IT tools used to commit the crime is provided (measure that concerns the crime of persecutory acts in general).

The admissibility of a party's complaint is maintained (and the remission of the complaint is only procedural). As in the general ruling of the last paragraph of art. 612-bis, public prosecutor proceeds *ex officio* if the offense is committed against a minor or a person with disabilities, or if the fact is connected with another crime for which it is necessary to proceed *ex officio*. In the context of bullying, which usually has children as protagonists, the autonomous intervention of the judicial authority will therefore be ordinary.

In this proposal, the legislator has not defined the phenomenon of bullying closer to its social dimension,[7] leaving the interpreter with the task of adapting the precept to reality.

In addition, the proposed amendment of art. 612-bis does not completely solve the problem of the punishment of bullying behaviours that are not among the constituent elements of stalking.

The other articles contained in the proposal are not particularly significant for the aims of this work.

[7] It should be remembered that the majority of international literature considers three elements as constitutive of bullying: the intentionality of the abusive conduct (the intent to inflict harm, in a direct or indirect form); the reiteration of this conduct; the asymmetry (the imbalance of power) in the relationship between bully and victim (both belonging to the peer group) (Olweus, 1978; Farrington, 1993).

3. WHY CRIMINALISING BULLYING IS NOT AN ADEQUATE SOLUTION

May the choice of criminalising bullying be considered appropriate?

Also during the hearings at the Justice Commission of the Italian Chamber of Deputies (to discuss about the bill examined in this article), the representatives of the National Bullying and Doping Observatory highlighted the boomerang effect risk that the criminalisation of bullying behaviours could trigger; moreover, if the perpetrators are under 14 years old, therefore not punishable according to Italian legislation.[8] The speakers had wondered whether, in these cases, if the conduct is carried out in the school environment, the headmaster and the teachers aware of the incident should be held responsible, pursuant to the second paragraph of art. 40 of the Italian Criminal Code:[9] with the risk of encouraging conspiratorial attitudes on the part of the school, to avoid self-denunciation, or the excess of reporting even for incidents without criminal relevance.

To stem these dangers, the speakers suggested the adoption of a method borrowed from the experience of organizational models in companies implemented in Italy with Legislative Decree no. 231/2001. In other words, it would be necessary to "proceduralise" the management of the phenomenon, through the adoption of an event management system, a sort of "school code of ethics", exactly as it happens for the compliance programs provided for in Legislative Decree no. 231/2001. Attention should be focused on training, considered as an indispensable preventive moment, and methods to manage the "crisis" that occurs when an episode of bullying is perpetrated. In this way, it will be possible, on the one hand, to improve the preparation of teachers, but also of parents and pupils, influencing the current family educational model, and, on the other hand, to inhibit that boomerang effect mentioned before. In particular, this could be done through the creation of a specific defence, which would be invoked whenever schools demonstrate that they have observed to their ethics code and have implemented all the steps of the procedure typified therein, thus avoiding the applicability of the guarantee position pursuant to art. 40 of the Italian Penal Code, exactly as it happens in the corporate context pursuant to art. 6 of Legislative Decree no. 231/2001.[10] This proposal can be considered as an expressive of a systemic approach.[11]

In defining repression policies (which should always be accompanied by serious prevention activities), it is necessary to take into account that episodes of traditional bullying above all (but this consideration is partly valid also for the cyberbullying) arise not in a context of strangers, but within the relational network of the protagonists, for the recovery of which – both victims and perpetrators – an intervention that involves that context appears necessary: and with this meaning the educational institutions and the peer group appear fundamental (Christensen, 2009).

Moreover, it is very often emphasised that bullying behaviours constitute "normal" episodes of adolescence. If this is true, if bullying is a socially accepted

[8] According to art. 97 of Italian Criminal Code, the person who committed the crime before the age of fourteen is not punishable. If he/she is socially dangerous, he/she may be subjected to security measures.

[9] In art. 40, second paragraph, of Italian Criminal Code it is provided the so called "equivalence clause": not preventing an event that you have a legal obligation to prevent is tantamount to causing it.

[10] According to this art. 6, the management body is not punishable if it has adopted and effectively implemented, before the commission of the offense, organizational and management models suitable for preventing crimes of the kind that occurred.

[11] See the report of the hearing, at the Justice Commission of the Chamber of Deputies, of lawyers Giorgia Venerandi and Antonella Follieri, representatives of the National Bullying and Doping Observatory, of 27th August 2019.

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phenomenon by young people, an individualising approach (focused on the victim or on the offender) cannot be adopted to affirm the responsibility of those who hold such behaviours, or, at least, the idea of responsibility cannot be expressed in such terms. A systemic approach would be needed, which concerns the context, the institutions – above all the school – rather than the victim-offender dyad (Aleo, 2020).

Bullying occurs when the various educational agencies, from family to school, are unable to contain the drive of aggression present in some children and, above all, to transform it into a constructive drive. From this point of view, it is a social problem rather than an individual one, and this must be the perspective to study and contrast it; otherwise the risk is to focus only on the individual, who inevitably has responsibilities, but forgetting that it is the whole system that has allowed a person to trample the rules of the community. However, the presence of bullies and victims is not enough to have bullying, but there must also be a group that observes, participates, does not intervene, and allows rights to be mortified (Rossetti, 2018).

The penal-centric approach contradicts this essential social dimension; however, it expresses a simplification of the problem.

If the merely penal solution appears strongly reductive, it cannot be overlooked that bullying appears as one of the new manifestations of juvenile deviance, characterised by aggression against the physical or moral person of the other: if traditionally the juvenile deviance has been expressed with the aggression to the patrimony of others, today the way of aggression to the other person, especially if different or weaker, appears to be prevalent. Furthermore, these behaviours concern not only the marginal segments of the population but also children of the middle bourgeoisie; they have no basis in social exclusion but in the generational divide; they do not belong only to males, but also to girls;[12] and when goods, rather than people, are attacked, they are mainly the goods of the community and not of individuals (Moro, 2019, p. 594).

Bullying is the indicator of a discomfort that does not have a primarily economic-social matrix, as it is in the traditional reading of juvenile deviance, but derives from a general malaise, which receives nourishment from intergenerational communication difficulties.

The spread of the phenomenon of bullying, combined with its pervasiveness, feeds its interpretation as a social problem, a source of danger, and therefore to be subjected to control, stimulating the idea of repression and punishment as the only possible answers. Instead, the preventive approach (which requires a careful family, environment, and social context) and the promotion of social well-being (through empowerment, prosocial behaviours, and so-called life skills) are fundamental (Civita, 2006).

Bullying, in fact, is a systemic, group, and contextual notion, whose definition is possible only in these terms: precisely, of group and context. In other words:

1) bullying seems to have a primarily psychosociological matrix;
2) it is a social notion, in the sense that
    a) the bully, in order to fully fulfil his role, needs a group;
    b) concerns behaviours held in groups,[13] by those who look at the image of themselves, in the relationship with the environment (primarily the group, but not only);

[12] See Barlett and Coyne (2014); it's a research concerning the sex differences in bullying and cyberbullying.
[13] About the behaviour of bystanders in cyberbullying see Van Cleemput, Vandebosch, and Pabian (2014). The aim of this study is to further investigate the personal and context-related determinants of different possible

c) it concerns conduct determined by frustrations and insecurities, in the relationship with the social environment;

3) the approach can only be sociological (i.e., systemic-contextual); therefore, bullying must be the subject of systemic analysis (of systems theory).

The group, in fact, plays a very important role inside the adolescents' behavioural dynamics, for their growth and for the construction of their identity, because it facilitates emancipation from adults and stimulates forms of positive aggregation.[14] Although this type of aggregation is generally a growth factor for the adolescent, in some cases it can become a risk factor for individual development. It is then explained how it can sometimes lead to the cancellation of the inhibitions present in young's and to the fulfilment by them, together with other peers, of criminal conduct that the individual would not engage in (Calvanese and Bianchetti, 2005, p. 1417).

The choice to create a specific crime to repress bullying seems to constitute a solution, first of all, useless, for the existence (and the sufficiency) of multiple other types of crime that can be used to sanction the bully conducts,[15] and, above all, contradictory with the characteristics that institutional intervention must have towards the protagonists of this phenomenon: children to be educated, not to be punished. A specific incriminating norm would be a way of simplifying (by forcefully bringing it back into binary, interindividual logic) a complex problem: not complicated, but complex; which requires a multifactorial, systemic approach (Aleo, 2020).

Criminalising bullying means circumscribing within a "closed system" a phenomenon that has inextricable relationships with the surrounding environment. It means adopting, as has been said, a simple (simplistic) approach to a complex problem.

In fact, in bullying, personal and social factors are intertwined (factors of social interrelationships of the individual with the peer group and, more generally, with the context), and for this reason understanding the phenomenon and, above all, the role and meaning of each variable is very hard (Smorti and Ciucci, 2000, p. 34).

It is clear that the criminal dimension can (must be) left to operate with reference to single facts (episodes that integrate specific criminal forms), but the phenomenon

reactive behaviours of bystanders of cyberbullying: "joining in," "helping the victim," or "doing nothing". The Authors underline that, differently from traditional bullying, the role of bystanders in cyberbullying is still insufficiently studied.

[14] In the literature, you can see the essay by Fansten, J. (1991). *La fracture du myocarde*. Paris: Editions Gallimard. Italian translation: (1994). *Segreti da ragazzi*, Milan: Einaudi scuola; the story about a group of schoolmates, who collaborate to help their friend Martin, left alone for the sudden death of his mother, to survive, hiding from everyone what had happened, to save him from being placed in a dreaded public welfare facility.

[15] In Italian Criminal Code the crimes that a bully can realise with his/her behaviour are, for example: substitution of person (art. 494), instigation to suicide (art. 580), beatings (art. 581), personal injury (art. 582 and art. 583), defamation (art. 595), production, dissemination, transfer and possession of child pornographic material (art. 600-ter and art. 600-quater), kidnapping (art. 605), sexual violence, including group sexual violence (art. 609-bis and art. 609-octies), private violence (art. 610), threat (art. 612), stalking (art. 612-bis), illicit dissemination of sexually explicit images or videos (art. 612-ter), torture (art. 613-bis), illegal interference in private life (art. 615-bis), unauthorised access to an IT or telematic system (art. 615-ter), violation, theft and suppression of correspondence (art. 616), dissemination of fraudulent filming and recordings (art. 617-septies), theft (art. 624), robbery (art. 628), extortion (art. 629), damage (art. 635), damage to information, data and computer programs (art. 635-bis), damage to IT or telematic systems (art. 635-quater), harassment or disturbance to people (art. 660). The code also provides for some aggravating circumstances that may be relevant to bullying: art. 61 n. 11 ter (concerning the commission of a crime against a minor within or next to education or training institutions) and art. 604 ter (concerning the commission of crimes with the purpose of discrimination). In the special legislation, it's important the offense of art. 167 of the privacy code (concerning the unlawful processing of personal data).

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must be treated as a whole, regardless of the criminal measure, to prefer systemic criteria: only in this way we can hope for the effectiveness of the intervention.

If bullying is not viewed as a systemic-relational phenomenon, if it is believed that even a single behavior can constitute it, then bullying becomes only a particular motivation for acting, a prevaricatory intent that expresses the criminal measure of the individual perpetrator, but that does not require special institutional attention: differently from the attention that is guaranteed in the ordinary way to minors involved in criminal offenses.

However, the problem persists because bullying has no particular relevance outside of the systemic dimension.

In this context, the educational (and not punitive) task today appears even more burdensome than in the past due to the way in which social life – a necessary step for responsible maturation – takes place and develops. If it is true, in fact, that today's children are not fully aware of the meaning and consequences of their actions, as highlighted by the President of the Naples Juvenile Court, it seems quite unlikely that the acquisition of this awareness will pass through the criminalisation of their conduct. The creation of the crime would have only symbolic meaning: as mentioned before, it would express a cultural operation towards minors, who must be made aware of the fact that some behaviours integrate a crime characterised by a serious social disvalue.

If, nowadays, adolescents are only apparently socialised because the many experiences they live do not correspond to an adequate maturation process, the idea of criminalising bullying appears dissonant: since the actions of these boys who behave like bullies seem to be dictated more by their empathic incapacity than by a delinquent will. And, on the other hand, as already mentioned, there are many criminal norms that punish individual conducts in which the bully's action can consist.

Instead, what is argued in the doctrine seems acceptable: "There are no bullies, there are teenagers who behave as bullies. To claim that a teenager is a bully is to make him/her believe that he/she has no alternative of behaviour. Therefore, attributing a negative identity to the adolescent puts him/her in a condition that makes him/her believe actually bad and dishonest. Conversely, communicating to a teenager that he/she has behaved like a bully allows him/her to put himself/herself in the third person with respect to the action, with the consequence of better understanding that what is wrong is not his/her person but that particular attitude" (Balloni, Bisi and Sette, 2019, pp. 282-283).

And in this moment institutional intervention becomes fundamental, precisely, from a criminological point of view, to avoid that labelling process that can be the prerequisite for a deviant career. Since these are minors and students in the development phase, their possible errors and transgressions should be accepted and understood in a supportive perspective, recalling the educational and caring responsibility of adults and the whole community, before attributing to children and young people negative stable statuses (Arcari and Provantini, 2019, p. 42).

It is clear that bullying constitutes an individual and social problem that affects the serenity of child growth, which sometimes marks them irreversibly and requires commitment and perseverance in law enforcement. The question is whether the chrism of the penalty is useful in achieving the protection of the young person, both victim and offender.

Compared to the latter, the consolidated idea, even at an international level, is that criminal intervention, more than merely punitive, must be educational: an opportunity for maturation, for the development of a personality still in formation.

Compared to the victim, whose role is often also linked to his/her condition of fragility, it is more significant to invest in improving self-esteem, in strengthening the character, rather than hoping for the effect induced by the bully's punishment.

The fact is that bullying is a phenomenon that belongs entirely to the world of children and that must therefore be addressed with an educational intervention on children, not with the ablative and simplifying solution of the penalty: that, even when it is carried out in the name of recovery, it already symbolically expresses a break between the offender and society.

Young people often only need a guide who knows how to stimulate their sense of personal responsibility (of an idea of responsibility understood as a path), who has confidence in their possibility of change (Aleo and Di Nuovo, 2011).

In one of I. McEwan's stories, taken from *The Daydreamer*, Barry Tamerlane is a boy with normal appearance, who manages to override others due, on the one hand, to his ability to immediately transform his desires into actions and, on the other hand, to the fear that everyone had of him, for the reputation he enjoyed. Peter, the protagonist, at one point in the story realises that Barry's power depended on the role played by the group: "*we are the ones who dreamed of him as the bully of the school*", he says; "*he is not stronger than any of us; all his strength and power, we dreamed of it; we have made him what he is*" (McEwan, 1994). And so he manages to free himself from the yoke of the bully, assuming, however, in his turn the clothes of the bully. Peter starts ridiculing Barry for his characteristics of normality (the plumpness, the braces on the teeth, the help given to his mother in washing the dishes at the end of the birthday party, the old stuffed bear in the bedroom), and he is helped by the group who, relieved by the defeat suffered by the one who had frightened them for so long, carries out his function of reinforcement of the bullying action.

In McEwan's uplifting story, Peter realises what he has done, feels no satisfaction with his bullying, and can only try to apologise to his partner by starting a friendship.

At the base of the abusive behaviours of bullies, there usually seems to be learning and revenge: 1) learning, in one's own environment (primarily family), of aggressive behavioural methods; 2) revenge against wrongs, oppression, and the frustrations suffered. To stop the phenomenon, children need to learn more and be protected from the injustices they suffer.

4. CONCLUSION

The culture of creating criminal offenses to solve a (social) problem – of identifying a person responsible for the fact – expresses not only a simplifying logic but, above all, an approach that we can define, paraphrasing Jonas, de-empowering with respect to those who have the task (the responsibility) of defining and implementing social rules: that community which, as Jonas argues, must bear the weight of the legacy to be left to the new generations (Jonas, 1979). Responsibility must be identified in the choices of value and in the definition of priorities. In this context, the individual is only the weak link in the chain, which pays for the inability of pursuing ethically sustainable models.

For this reason the words of Simone Weil on the penal function, on the pedagogical role that punishment must play, and on the contradiction between an ideal of justice to be pursued (in a society in which it is necessary to elaborate a declaration of duties towards the human beings) and the way in which justice is administered (not only in its real, historical moment, but already at the definitional, normative, level of creation of the cases) are still valid: expressive of an ideal in which, through the suffering of

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punishment, the offender recovers the sense of justice and thus regains his/her place in the human community (Weil, 1949).

Today, of course, reintegration should rather be understood in the Braithwaite meaning: a moment of a process of empowerment that helps the offender to regain a socially shared action, without the need for an amendment through the suffering of the soul (Braithwaite, 1989).

Furthermore, Weil herself, treating public action as an essential tool for the realisation of the collective good, underlines the importance of education, which consists in giving rise to motives. The indication of what is advantageous, what is mandatory, and what is good, belongs to teaching. Wanting to lead human creatures towards goodness by indicating only the direction, without having made sure of the presence of the necessary motives, is equivalent – she says – to wanting to start a car without petrol, pressing the accelerator.

Children, therefore, must be educated in the complex meaning that this term presupposes: directed towards a goal first of all, but not only, by example, but certainly not with fear and hope generated by threats and promises. However, the educational task towards the most difficult subjects is a difficult objective to pursue, which cannot be delegated to the "simple" solution of punishment, devoid of those connotations of justice that make it an instrument of reintegration into the social fabric of the person who made a mistake.

Excluding the usefulness of criminalisation does not want to represent a viaticum towards the de-responsibility of the minors, quite the opposite. Starting from the conviction that it is necessary for everyone, from a very young age, to fully understand the meaning of their actions (and the consequences that may derive from them), it is essential to intervene when an episode of prevarication occurs. The problem is the choice of the way to intervene, with the main – inalienable – goal of the maturation in each of the senses of responsibility towards oneself and towards the community of which one is a part. A "complex" approach is needed, which looks at the dynamics of reality, which tries to understand and condition them, but which appears to be the only truly capable of helping society grow.

It is a question of looking at the act committed by the young man/woman as if it were a mistake. From a scholastic point of view, the error is overestimated since it is considered a lack, while the error is information, useful for the teacher and later for the pupil. It allows us to understand the causes and to intervene on these (which can be very different: psychological, family, sociological), in order to treat, according to good Hippocratic medicine, not so much the symptoms but the causes, while the punishment considers only the symptoms (Morin, 2014).

We must never forget that the violence of young people is a cry, a request for help, since they live in a disoriented society. And we must also remember that we, adults, have built this society. We are therefore responsible for it. It is up to us to propose new models, new structures (Morineau, 1998).

When the discipline of criminal proceedings against juvenile defendants was renewed in Italy in 1988, many had feared that the innovative, atypical solutions contemplated therein could favour the impunity of the youngest and, consequently, the increase in juvenile delinquency. Instead, these tools, in the judicial reality, have proven their effectiveness, have been wisely implemented by the judges, and have made it possible to face the "problem" of juvenile delinquency effectively, with de-formalised solutions. And the quality of the results led to the export of the most important remedies (processual probation and the declaration of irrelevance of the fact above all), with some – moreover, questionable – adaptations to the adult system. This experience should

constitute the spur to experiment new paths today, to adopt alternative methodologies to the traditional ones, to prefer a systemic, multifactorial and contextual approach, to the formal and simple logic, which, as we have said, is not able to intercept the complex dynamics that characterise our time.

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