



Mafia Minors and Prison: An Unavoidable Future? Socio-Cultural Determinism, Freedom of Choice and Jurisprudential Measures to Protect Young People¹

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Abstract

This paper analyses the opposition between individual choice and social determinism in relation to mafia minors' future. In the wake of a juvenile jurisprudence that has established itself in Italy in recent decades, we investigate the role played by individual autonomous choice and the context in which mafia minors are socialized and grow up.

Keywords: *mafia minors; individual choice; social determinism; socialization; provisions de potestate.*

1. Introduction

A central methodological problem of social research is that relating to the choice of the 'starting point', that is, whether to privilege a perspective centered on the individual or a perspective centered on the social context and structure. While in the first case an 'active' individual is assumed, who reasons and who is the main cause of his actions or choices, whether they are right or wrong; in the second case the individual and his behavior are considered above all, if not exclusively, in terms of the outcomes of processes of social influence or external socio-cultural pressures from which an individual can hardly 'escape' and from which he is often determined at a behavioral level. Reflecting on the social determinants of individual choice is particularly important in some fields such as, for example, those of deviance and crime. In this context, a very interesting case study is the one concerning the Italian scenario of mafia minors, that is, those young people who are born and grow up within a deviant and criminal context of a mafia nature. It is well known how mafia-type criminal organizations recruit minors and use them for carrying out illegal activities. The goal is to educate young people in the values of honor, family, respect,

¹ Paragraphs 2, 3, 4, are by Albertina Oliverio, paragraph 1 is by Gianmarco Cifaldi.

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power, so that they undertake an 'apprenticeship' in view of the activity they will have to carry out once adults. A careful analysis of the context in which mafia minors are born and grow up highlights that socio-family ties 'determine' the future of young people who are induced to undertake a criminal path like that of their parents and which will very often lead them inevitably to prison. In fact, criminal behavior is repeated from one generation to the next, as if the fate of minors growing up in these contexts is already 'decided'.

The greater the number of risk factors that a child or adolescent experiences, the greater the possibility that they may engage in criminal behavior, although many children and adolescents who are also exposed to numerous risks grow up and become adults without being involved in criminal behavior. So, even though risk factors can help identify which children are most in need of preventative interventions, they cannot identify which of them will become dangerous or chronic criminals. However, there are cases in which some risk factors contribute very significantly to increasing the chances of children and adolescents developing deviant and criminal behavior. This is the case with risk factors attributable to the family.

2. Socialization.

How socializing institutions influence crime and what is the role of primary 'socialization' that occurs within the family where the child or young person learns how to behave at home and outside the home is a central point of interest for many socio-criminological theories. Family determines the economic conditions within which the minors live and at the same time it is fundamental in defining their values, personality, behavior. It also plays an important role in the production or prevention of criminal behavior (Gove e Crutchfield 1982). There are numerous theories that highlight how a dysfunctional family context (degraded housing, poor or inadequate parental control, child abuse) can cause a series of problems for minors and influence their behavior in terms of deviance and criminality. In particular, very relevant are family relationships (quantity and quality of interactions and relationships between family members) that develop through the process of socialization, i.e., the ways in which a child is taught cultural roles, norms and adult responsibilities. The interactions that take place within family relationships transmit important messages to the minor and it may happen that he or she does not receive adequate support, education, and supervision to ensure a positive psycho-physical and moral development. These fundamental family interactions during childhood and adolescence can have lasting effects: sometimes often positive for minors, other times not leading to healthy human development, but, on the contrary, translating into forms of conflict, violence, lack support and parental control, socialization to crime in the case of delinquent parents. For example, the children of parents who are involved in criminal behavior or activities are more likely to engage in delinquent activities than young people whose parents are not involved in crime. The arrest of close relatives (brothers, sisters, parents, uncles, grandparents) are all predictors of crime especially in the case of male minors and the arrest of the father is a predictor of the crime of the child regardless of all the other relatives arrested (Farrington et al. 1975; Farrington et al. 2001; Craig, Malvaso, Farrington 2021).

In mafia contexts the bond between fathers and sons is particularly relevant for the purposes of what we are saying. The young sons of bosses are given a sort of 'son of ...' status which implies that relationships and behaviors are established between them and the community in which they live based on this status, also because the boss's son is socially recognized as the 'rightful' heir of his father and a specific role in the context of the mafia is given to his family. The role of the father in Mafia families is very authoritarian

especially towards male children who are in fact emotionally invested with expectations and identified as his successors in the management of criminal activity (which in fact is also kept under control by the authorities).

In addition to this close relationship between father and male child, family environment also influences minors' behavior by providing models and opportunities in terms of criminal behavior and examples of attitudes and values transmitted in a massive way since childhood that modify the perception of what can be considered a right or a wrong behavior: families in which criminal activities are common induce minors to consider criminal behavior normal which is also positively reinforced by respect, honor, loyalty, money, courage, silence, placing it in contrast with the culture of dominant legality.

The socio-criminological theories that advance this type of explanation centered on the social dimension therefore focus on the socio-cultural context, on the processes of influence, on the deterministic mechanisms, rather than on the motivations and choices of those who belong to it. In this regard, it is possible to underline how the concept of 'differential association' can have an explanatory relevance with respect to the behavior of the subject in developmental age who is building its own normative dimension with regard to the actions to be taken (De Leo 1981). It is known that this concept is the basis of a theory that rests on nine main elements (Sutherland 1939). Criminal behavior is learned. Criminal behavior is learned in interaction with other individuals as part of a communication process (verbal and non-verbal) through interactions with primary groups (family or friends). The main part of learning criminal behavior occurs in the context of small personalized groups. Learning criminal behavior includes both learning the techniques for committing crime, which are sometimes very complicated and sometimes very simple, and learning the motives, rationalizations, and attitudes. The individual evaluates the pros and cons of following the law or violating it and who is in favor and who is not. An individual becomes a delinquent where the reasons for breaking the law are more beneficial than those for complying with it. Differential associations for or against the law may vary in frequency, duration, priority, and intensity. The learning process of criminal behavior implies all the mechanisms that are involved in any other learning. Criminal behavior is not explained by general needs and values, as non-criminal behavior is an expression of the same needs and values. The basic hypothesis of the theory of 'differential association' is that the individual is a passive actor who receives various forms of stimuli and automatically and naturally responds to them: over time he learns to associate some stimuli with some responses (precisely in line with the principles of classical conditioning to which the theory in question refers). In short, as also later hypothesized by 'social learning theory' (Akers 1985) which will rework these concepts also integrating them with that of 'imitation', the more an individual is exposed to deviant models or values, the more likely he is to implement the behavior criminal; this behavior will be repeated mainly if it is reinforced.

Considering these concepts, it could therefore be said that in certain circumstances crime is 'passed on' in family units, determining the future of young people within them. Just as happens in the 'Ndrangheta environments of the province of Reggio Calabria where we find minors who have been socialized to crime by receiving an education promoted by families which is subject to approval and support (Regoliosi 2008). In this sense, deviant and criminal behaviors will be repeated mainly if reinforced and the phenomenon of the 'Ndrangheta can therefore be considered as an expression of a differential association, emphasizing the role of family socialization to crime. What we are saying helps us to

explain the case of the 'ndrine, that is, those Calabrian mafia clans that are purely family-run. In these cases, the involvement of minors by family members themselves in illegal family activities is normal as this guarantees the perpetuation of the family's criminal activity. Obviously, this implies that the minor is socialized, trained, and educated to a 'Ndranghist conscience which is the basis of a social redefinition of ethical-moral constraints that totally 'overturns' the criteria of legitimacy and illegitimacy (Parini 2016). In this sense, the 'Ndrangheta can be considered a 'habitus' in the strict sense of the term (Bourdieu 2001), a way of being and behaving, a set of cultural codes and commonly recognized values (Sergi e Lavorgna 2016) within which family ties and the father authoritarian role are remarkably important (Sergi 2018). The family transmits and passes on from one generation to another, from father to son, the culture of the Mafia/'Ndrangheta, educating from an early age to violence, to the violation of rules and norms of civil coexistence, to revenge, to the unscrupulous management of power and bragging about criminal membership and reinforcing similar values and behaviors (Di Bella 2019). The reinforcement then acts even more clearly on minors when they enter the adolescent phase: belonging to this cultural world satisfies the young person's characteristic needs of this age, namely that of belonging to a group / community with which to establish meaningful ties, that of identifying reference models to imitate, that of giving meaning to existence which is satisfied by rites and symbols that accompany the criminal path from initiation onwards, that of autonomy that is encouraged by stimulating rebellion against the State and joining the strong and safe criminal organization (Regoliosi 2008).

In this socio-cultural context, minors from an early age undertake criminal paths that are accompanied by irregular and deviant lifestyles, behaviors and school discontinuity, as well as having to grow and live in a context with a high risk of involvement in vendettas between families. Their future would seem to be marked and leave no room for the possibility of perceiving and choosing alternative paths as it is a future 'inherited' by the family. Within these families, many minors are responsible for crimes for mafia association, murder, and attempted murder. In most cases these minors, once they become adults, end up in the 41-bis penitentiary regime, become bosses of their clan, or become involved in local feuds. Faced with such a strong social determinism, is it possible to propose an alternative, to restore the freedom of choice, so that these minors do not perceive their future as pre-determined by geographical or family belonging? That is, freeing individual autonomy from social determinism and making it exercisable (in the sense of 'giving back' to the child their future and their freedom of choice to allow them to free themselves from the path 'marked' by the socio-cultural context in which they are absorbed)? We believe that two ways of protecting young people are to be interpreted as oriented in a similar direction, i.e., guaranteeing the young person the possibility of exercising their own autonomy and freedom and escaping from a future made up of ever greater criminal and prison involvement.

One does not specifically concern minors of the Mafia, but in any case, minors whose deviant and criminal behaviors are often strongly marked by the social context in which they have been socialized: it is the case of, in the trial, the 'messa alla prova' (literary 'probation') of minors.

On the contrary, the other one precisely concerns the minors of the Mafia and consists in ablative or limiting measures of parental responsibility. Let's briefly see these two cases below.

3. The role of justice.

In the juvenile trial, according to the article 28 of DPR² 22 September 1988 n. 448 "Approvazione delle disposizioni sul processo penale a carico di imputati minorenni" ("Approval of the provisions on the criminal trial against juvenile defendants"), when the conditions provided for therein are met, the judge can suspend the trial and probation (literary 'mettere alla prova'), in the prescribed manner and forms, both those who are minors and those who on the date of measure has reached the age of majority, and can then declare the crime extinguished, when it deems that the probation has been successful. With the probation, the trial is suspended, and the minor is entrusted to the Juvenile Justice Services which, also in collaboration with the local authority services, carry out observation, support, and control activities for him.

As the literature underlines (Basco e De Gennaro 1997; Colamussi 2010), this probation can be ordered by the judge only when the evaluation of the fact and the personality of its author lead to consider the prospect of a re-education of the accused to be concrete. To this end, the judge must direct his investigation to the search for elements that allow him to assess whether the use of this institution is adequate with a view to re-education and the positive reintegration of the minor into society; elements to be identified: in the type of crime committed, in the modalities of its implementation, in the grounds for committing a crime, in the criminal record of the offender, in his personality, in his character and in whatever else is useful for reaching this judgment. And to acquire the knowledge necessary for the decision, the judge can also make use of the wide and elastic range of investigative tools offered by the article 9 of DPR 448/1988, possibly also asking the juvenile services to develop a re-education project (article 27 of legislative act 28 July 1989 n. 272). The social services elaborate the probation project based on the child's personal, family, and environmental resources and it is essential that the child accepts and shares the content of the project. In the event of a positive outcome of the probation, the judge with a sentence "declares the crime extinct"; the negative outcome instead entails the continuation of the procedure (art.29 DPR 448/88). Most of the prescriptions given by the judge in the probation measure concern interviews with social services, with the psychologist and educational support activities, all in view of the recovery and reintegration of the minor. Voluntary and socially useful activities are also central, aimed at the community in general and not specifically at the victim of the crime; work and study activities; sporting activity (understood as a fundamental educational tool in transmitting the importance of rules) (Dipartimento per la Giustizia minorile e di comunità 2018).

The applicability of the measure is not compromised either by the possible existence of a criminal record or by the type of crime or by previous applications on the other hand, the personality characteristics of the boy are very important, leading to the belief that his recovery is possible; in a growing personality, such as that of the minor, the single transgressive act cannot, in fact, be considered indicative of a deviant life choice. It is in reference to this point that it is worth precisely remembering the importance of the measure in view, in fact, of a re-educational legislative intervention aimed at raising awareness of the fact that the minor can often carry out deviant or criminal behavior which is the result of a wrong socialization or of the socio-cultural pressure exerted by a specific context. Therefore, it becomes essential to recognize the minor the right to act

² DPR = Decreto del Presidente della Repubblica (Act of the Italian President).

autonomously where the conditions exist, giving him the possibility to exercise his autonomy of choice and to build a future different from that assigned to him by the social context in which he grew up.

The second case, on the other hand, constitutes a jurisprudential area that has long since been undertaken first by the Juvenile Court of Reggio Calabria and, subsequently, by other juvenile courts, to address the problem of minors growing up within families of 'ndrangheta. These are legal interventions that consist of provisions *de potestate* to protect minors of the 'Ndrangheta and provide for the forfeiture or limitation of parental responsibility of fathers and mothers involved in mafia-type criminal organizations and the removal of children who are entrusted to other families or social structures located in different areas of the national territory far from the Calabrian one. They are prepared in cases where serious damage to the right of the minor to be educated is ascertained in line with constitutional principles and with the values of civil coexistence, i.e., where indoctrination, education and 'Ndrangheta socialization prevent normal development of the minor cause irreversible damage to his moral and psycho-physical growth as well as to his future. These measures are inserted in the context of the State's crime reduction policies in the form of legal interventions aimed at restoring freedom of choice to 'Ndrangheta minors and starting from the (methodological) assumption that in those contexts young people lack freedom of choice with respect to their future. Therefore, 'Ndrangheta is not chosen, it is inherited (Di Bella 2019): in most cases, mafia minors follow the path of their parents and their future therefore seems to be determined by family membership however, these children are not 'irrecoverable criminals', but they can be helped by letting them know other realities and possibilities of life in addition to their family existence, that is by making them 'free to choose'. In other words, it is a question of guaranteeing children from family backgrounds of organized crime adequate protection for regular psycho-physical growth, ensuring the satisfaction of their needs and the typical needs of childhood and adolescence, through the promotion of the values of legality and the enhancement of the specific potentials, inclinations, and resources of the minor and young adult (Accordo Quadro 2017).

The legal references are different including the Italian Constitution and the Convention on the Rights of the Child (UN Convention of 1989 ratified in Italy with Law 176 of 1991) which, since the preamble, states that "the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding", and in article 3 paragraph 1 states that: « In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration». This matches article 330 of the Italian Civil Code regarding the 'Forfeiture of parental responsibility on children' which states: The judge can pronounce the forfeiture of parental responsibility when the parent violates or neglects the duties inherent to it or abuses the relative powers with serious prejudice to the child. In this case, for serious reasons, the judge can order the removal of the child from the family residence or the removal of the parent or cohabitant who mistreats or abuses the minor. In essence, the mafia or 'Ndrangheta family is assimilated to a family within which minors are mistreated or neglected as the educational, support and care needs commonly recognized as necessary for healthy and correct growth by civil society are ignored. We can therefore logically insert criminal indoctrination within those abusive conducts that harm the minor and identify it as a failure to fulfill duties within parental responsibility. This criminal

indoctrination falls perfectly within the range of situations described by art. 572 of Italian Penal Code (Anyone who [...]mistreats a family member or in any case cohabiting, or a person under his authority or entrusted to him for reasons of education, instruction, care, supervision or custody, or for the exercise of a profession or an art, is punished with imprisonment from two to six years), since the family member acts with the intention of placing the minor in a context of unlawfulness, inducing young people to violent or deviant behavior (Stati generali della lotta alla criminalità organizzata 2017).

The objective of these legal provisions *de potestate* is twofold: on the one hand, guaranteeing minors a path of individual and social growth up to the age of majority so that they can actively gain autonomy in life and work, on the other hand, eradicating and dismantling a criminal culture by preventing its transmission through primary socialization.

4. Conclusion.

Therefore, despite social determinism imposed by family socialization (a cultural humus made of immersion in antisocial values and family miseducation), the freedom of choice for a different future of 'Ndrangheta minors can be safeguarded with legal instruments aimed at providing further educations or different socializations that can still play an important role in the formation of the subject. All this can thus be fully implemented with the help of an entire organizational system protecting the minor also from a psychological point of view. This is particular important from a methodological point of view in social sciences explanation because it comes back to adopt a perspective à la Boudon that puts at the center of the analysis the individual who is active, thinks, and acts intentionally in order to pursue his own objectives, thus being able to exercise his own decision-making autonomy capable of freeing him from social determinisms (Boudon 1980). In conclusion, the same kind of theoretical arguments could be generalized to all those deterministic circumstances involving a 'radicalization' of thoughts and lifestyles 'leading' minors to deviant and delinquent behaviors: the importance of ensuring the possibility of an individual choice free from social determinism is something that must therefore also be guaranteed through legal cases such as those seen above.

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