JUVENILE JUSTICE ITALIAN STYLE

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The juvenile court in Italy was established many years after those in the United States and other European countries. Even after its creation problems of differentiation and staffing remained, and delays plus ineffective services continue to complicate day-to-day operations of the juvenile courts. I propose that the juvenile court in Italy has been a spurious development, reflecting contradictions between the culture of legal certainty and familism, and the adoption of a pattern of discretionary justice based on the positivism of Ferri. Operations of the juvenile court resemble rituals aimed to satisfy conflicting values. Signs are that its legitimacy has been weakened and that other forms of social control have emerged or reemerged.

This article deals with the development of juvenile justice as it has been influenced by culture and social organization in Italy. Put most generally, I examine the way in which a society responds to the strain between formal law and newly introduced means of achieving substantive or distributive justice, or what Max Weber (1967: 226) called the "inevitable conflict" authorities in different legal systems confront between an abstract formalism of legal certainty and the desire to realize substantive goals. More specifically I will describe and analyze adaptations made in a social system with an unusually high degree of emphasis on legal certainty when those with power to do so seek to institutionalize discretion as a means of dealing with juvenile crime. The inevitable conflict in this instance concerns whether, to what extent, and how children and youth should be held responsible for their misdeeds and crime.

In the United States, where the juvenile court was born in 1899, conflict arose between the tenuous jurisprudence of *parens patriae* and the views of judges loath to abandon notions of legality in processing cases of juvenile delinquency (Lemert, 1970: 73). For a number of years, however, this conflict was

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muted and sub rosa due largely to the decentralized nature of the juvenile courts, their low visibility, the scarcity of appeals, and the lack of accountability of judges involved. Beginning in the 1950s controversy over the issue of fairness, juvenile "rights," and the fallacies of "treatment" of juvenile delinquents ultimately led to increased legalization of juvenile court procedures through a variety of appellate court decisions and legislation. A dual result of this development was increased decriminalization of status offenses and greater criminalization of procedures in cases of juveniles held to have committed crimes (Rubin, 1979: chap. 12).

In contrast to the United States, the government in Great Britain was originally unwilling to make broad grants of discretionary power to its magistrates when it established juvenile courts. In trying children and youths for crimes, British courts were constrained to follow procedures similar to those used in adult courts. It was only after a finding of guilt that discretion entered by provision that the court could then consider the welfare of the child. Since the 1960s legislation in England, Wales, and Scotland has moved in a direction opposite to that in the United States and toward more rather than less discretionary handling of juvenile offenders under the aegis of generic social work, children's panels, and police cautionary schemes (Lemert, 1976: 66).

In the case of Italy it is difficult to designate a consistent trend in the changes that have taken place in its juvenile justice system. That which is most conspicuous in its history is the delay in establishing the juvenile court long after the recognition of its need, plus an equally long period required to implement the original legislation. Italy (along with Switzerland) was among the last of the Western European nations to set up a juvenile court and thereafter needed nearly forty years to completely differentiate and fully staff its operations (Baviera, 1976: chap. 16). But even with this the court in most aspects achieved only the form but not the substance of juvenile justice. While the same can be said about juvenile courts in other countries, in Italy the explanation for such a development lies in a much more profound and articulated sensitivity to the inconsistencies and ambiguities of law and in the religio-familistic values that influence its expression and administration. I will try to show that from the time of its inception the Italian juvenile court has been a spurious[1] development, or a precariously institutional-

[1] The term "spurious" derives in part from the older anthropological distinction between genuine and spurious cultures (Sapir, 1924; Tumin, 1945).

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ized form of justice likely to disappear or be replaced by other types of social control. This is apparent in the account of its labored history and in the depiction of its ongoing operations. In exploring this idea first historically then concurrently several factors emerge as more significant than others in producing differences between juvenile justice in Italy and that in the United States and Britain. Among these factors are doctrinal conflict, organizational stress, the power of the Catholic church, the ascendancy of the family, and the Italian ethos. I will show how these factors influenced, in varying degrees, the antecedents, the official actions, the ultimate creation, and the differentiation of the juvenile court. Likewise I will show their relative importance in vitiating the current working of the court by its denial of discretion, need to extract minors from the system, delay, and persisting institutionalization.

I. ANTECEDENTS OF JUVENILE JUSTICE

Italian juvenile justice, much more than American or English, developed within the context of what has been called legal culture. An important part of this is doctrine—*la dottrina*—the product of writings of professors/scholars that has had a pervasive influence on both the making and application of the law. Doctrine should not, however, be confused with actual law, for as Merryman indicates, "Doctrine is not law in Italy in the way that legislation and judicial decisions are law, but it pervades the legal process, strongly influencing legislators and judges who tend to conform not only to the doctrinal model of what law is but what their functions are" (1965: 40).

La dottrina in Italy includes a commitment to legal certainty, strict procedural legality (in the case of criminal procedure, *nullum poena sine legis*), legal science, cultural agnosticism, and the priority of enacted law. Judicial law making is alien to Italian doctrine, particularly legal realism (Tarello, 1962), and legal reasoning usually avoids any concern with concrete phenomena or their social and political consequences, focusing instead on legislation by the state, with a view to ordering and explaining principles and relationships of law.

Given this commitment it is a tenable proposition for study that Italian legal culture was not a fertile ground on which to generate a form of administrative justice granting wide discretionary power to a single judge, American style, with disposi-

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Here I use the word in the sense of "anomolous" to suggest that the Italian juvenile court was an alien development with the appearance—but not the genuine characteristics—of Italian culture.

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tions freely made in the "interests of the child." Nor, for different reasons, did it favor the separate consideration of the "welfare" of the child in the English manner although as I will show the Children's Act of 1908 was part of the thinking which informed creation of the Italian juvenile court.

The question of how to deal with children who had committed criminal acts emerged, or more accurately reemerged, with the growth of the nation-state, the apotheosis of the rational man, and the codification of law, most conspicuous in eighteenth and nineteenth-century France. The issue soon became apparent to proponents of the classical school of penology who recognized that children, along with the insane and mentally defective, were less capable than others of making reasoned responses to criminal laws. While French codifiers had to rediscover this fact, not so in Italy, where in all of the states a presumption had persisted from Roman law that those below the age of nine were incapable of malice and that only those of proximate puberty, that is, those nine to fourteen years old, were liable for punishment.[2]

As early as the thirteenth century the constitution of Sicily contained provisions establishing immunity from punishment for children who committed homicide. It exempted youths of eighteen years old from the death penalty and generally reduced the severity of punishments for minors. It also provided an early example of legislation to jail parents who failed to carry out their responsibilities to their children (Baviera, 1976: 166).

In the Kingdom of the Two Sicilies (Cambria and Sicily, 1231), youths of nine to fourteen years old who were found to have "acted with discernment" in committing crimes, were spared adult punishments and placed in a house of correction instead of prison. Similarly, those from fourteen to eighteen years old spent their terms in garrisons. Only parricides by youths sixteen years old and above were punishable by death. Finally, this penal code specified in detail how so-called discernment was to be established in court (ibid., pp. 168ff.).

There are, however, indications that judges in pre-nineteenth-century Italy applied quite severe penalties to minors in certain instances. This was part of the prevailing judicial arbitrariness that preceded the revolution in France and the Risorgimento in Italy. It was subsequently replaced by the subordi-

[2] The period discussed here is from 1231 until the unification of Italy in 1870. Baviera (1976) simply refers to the preunification period, citing Medugno (1950) as his source.

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nation of Italian judges to a ministry of justice under codified law, which in nineteenth-century criminal law meant the tenets of the classical school of penology or of its offspring, the neoclassical school; at most, however, where children were concerned, this change provided a principle of extenuating circumstances. This meant that judges sought to determine degrees of *imputabilita* ("responsibility") in cases involving minors and could lighten their punishment accordingly. In cases of repeated offenses minors could be kept in houses of correction for quite long periods.

In Italy, much more than in other societies, the church has figured large in shaping the nature of juvenile justice doctrine as well as its organized expression. The church quite early gave attention to problem children through the person of a "Cardinal Protector." As early as 1703 Pope Clement XI had instituted a House of Correction for "lost adolescents" adjacent to the Hospital of Saint Michele in Ripa near Rome. Its staff "deferred" to the courts and judges, who ordered the arrests of juveniles coming to its attention, constituting, it is said, a "true and proper jurisdiction for minors" (Medugno, 1950: 179). By 1870 there were thirty-one reformatories in Italy, twenty-two for boys and nine for girls, all operated under private religious auspices. Police could place youths apprehended for "idleness and vagrancy" in these institutions, as could parents for purposes of correction. Attempts were made to segregate the youths therein by age (Wines, 1968).

In 1889 the first comprehensive Italian penal code placed the minimum age of *imputabilita* at nine years, with the possibility that minors of this age could be sheltered in an institute of correction and education. For errant minors nine to fourteen years old an inquiry into their capacity for judgment was prescribed, and depending on the findings could be given reduced sentences in a House of Correction. For youthful offenders from fourteen to eighteen years of age there were straight sentences, again reduced and to be served in a House of Correction, without any inquiry into their capacity for judgment (Baviera, 1976: 176).

In 1904 the Italian parliament, influenced by the activities of Lucy Bartlett, an English representative of the Howard Society for Penal Reform, legislated conditional sentences for juveniles under eighteen years of age who had no prior convictions (Izzo, 1957: 155). These cases could be assigned for surveillance to a Council of Patrons, composed of community representatives working under the supervision of a magistrate. Related legislation at this time forbade the arrest and charging

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of minors under fourteen who, if they had no previous convictions, could with parental consent be placed in an institution. However, judges of the time were reluctant to use the option because of the lack of facilities, particularly those that segregated petty offenders from those with more serious crimes (Baviera, 1976: 174).

A. *Juvenile Justice as a Movement: Group and Class Influences*

The movement for a juvenile court in Italy and efforts to formulate a doctrine for its legitimation emerged with public awareness of the problem of delinquency, much as it did in the United States and Great Britain. This came at the turn of the twentieth century, which saw a marked increase in the numbers of children denounced as offenders and of those entering institutions. According to Lombroso (1912–13), the number of juvenile offenders increased from 30,118 in 1890 to 67,944 in 1900. The earliest statistical data available for the present article show that the average number of minors *condannati* ("sentenced") for each year between 1900 and 1910 was 19,573, an historical peak. While the percentage of those condemned to total denunciations is difficult to extrapolate for this early period, the present statistics (4% to 7%; see Instituto Centrale di Statistica, 1976), suggest that Lombroso's figures could well be accurate. Another measure of mounting juvenile delinquency shows the number of children entering government institutions increasing from 1,115 in 1890 to 1,733 in 1900 (ibid.). By 1912 there were nine government reformatories with 2,066 inmates and eleven private institutions with 2,142 inmates (Izzo, 1957).

While there was growing concern about the increase in abandoned and delinquent children associated with migration and urbanization in Italy, there was little that was comparable to a "child-savers" movement in which middle-class activists sought to impose their morality on lower-class populations through the creation of a juvenile court (Platt, 1969). This difference in part may be explained by the fact that reform action in Italy typically has been expressed through coalitions of political parties rather than by outside, independent, issue-based groups (Mack Smith, 1969: 199). The Italian middle class has been small and inconspicuous compared to that of the industrialists, large landowners, and factory workers, a condition true even into the 1950s (Levine, 1963: 502). Labini (1975: 28) notes that reforms in the south have often been blocked or frustrated by *piccola borghesia* ("clerical-administrative workers,") whose

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main concern is *clientelalismo* ("patronage") and competition for posts, which is true even of members of leftist parties.

While the Catholic church in Italy did turn its interests to political reforms after 1900, it carried on "child-saving" activities of its own and was not disposed to see these displaced by government-operated agencies. This was made clear by the church's strong opposition to efforts to develop a special code of laws for minors that began in 1909 (ibid., pp. 14, 16).

Despite these reservations, private individuals and organizations did make public their concern with the moral and physical "protection" (*tutela*) of children. But the social context of these movements differed from those in the United States and Britain, being greatly influenced in Italy by deference to highly educated specialists in medical schools and law faculties. A case in point was that of the schools that were established by Maria Montessori, an Italian physician and authority on anthropological pedagogy, whom the minister of education appointed director of the Orthophrenic School in Rome in 1898. Later, in 1907, she was asked to set up an experimental school, the *Case dei Bambini*, in a slum district of Rome to combat vandalism by children. Significantly, however, Montessori also organized a school for the children or aristocrats and subsequently two schools for middle class children (Deighton, 1971: 388ff.).

While academic professionals helped to articulate the need for a juvenile court through conferences, reports, and publications, the more immediate recognition of the need for special laws and a court to deal with the problems of children came from issues raised by government ministers and persons identified with the legal culture, especially the prosecutors and directors of institutions. They were reacting to the increasing incidence of institutionalization of children, which in Italy at the time was largely the result of actions taken by families disorganized by the burdens and crises of poverty. This in turn was very much part of the problem of the *mezzogiorno*, or the two Italies—the impoverished south and the relatively prosperous north—which brought poor families cityward and northward beginning around 1880.[3] Many such families suffered from poverty, unemployment, and illness and were without the social ties and supports of an extended family. Children in the new environments often became problems at home and in school, unresponsive to the internal discipline of the family or unwill-

[3] Social scientists began to write on the problem of the *mezzogiorno* and the plight of emigrants in 1880, as "the state was slow to recognize its responsibility for emigrants, preferring for many decades to leave their welfare to private organizations or to the church" (Seton, 1967: 315).

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ing to work and contribute to its survival. Many such children were in effect rejected by their parents, who in this early period could denounce them to a magistrate and have them committed to an institution. In an undetermined number of cases this was done designedly as a means of getting relief from responsibility for the support of children, then later have them returned home when they were able to earn wages.[4] The practice seems to have been more common in the less developed areas of the country, where the only available institutions of reeducation were governmental:

> Notwithstanding this negative connotation . . . parents were used to bringing their children there [to the courts] and in order to give grounds for a judicial decision they were prepared to invent non-existing wrong deeds and to describe their children as deviant and out of control or perhaps even delinquent (di Gennaro and Bonomo, 1980: 16).

Institutionalization of children in Italy was encouraged by a number of factors, including the paternalism of legislators and the willingness of private organizations to assume responsibility for the care and education of children. In some areas a monastery or convent was the only available source of schooling. Many parents then and until quite recently felt that they were doing a noble thing by turning their children over to priests and nuns for education and that the child in question was fortunate.[5] As late as the 1950s an estimated 10 percent of Italy's children spent their first sixteen to eighteen years in institutions (Charnley, 1961: 34).

After 1900 the number of private institutions for delinquent minors relative to those under government auspices declined. However, the task of building or refurbishing government institutions was formidable, and there was a critical shortage of posts (beds) for juveniles condemned by the courts. Government policy began to change or perhaps became better, to be clarified, with the official designation of the care of delinquents in private institutions as a temporary alienation of an essential state function. By 1912 the numbers of delinquents in government and private institutions had reached parity. Government inspections became more rigorous and revealed signifi-

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[4] The practice was called an abuse by an early American observer (Speranza, 1914). From an Italian point of view it was an acceptable way of surviving, a form of *l'arte d'arrangiarsi*.

[5] The first recorded instance of parents placing delinquent youths in private institutions took place in Florence in 1675 in a hospice set up by the priest Filippo Franci in his monastery (Eriksson, 1976); as of 1981 the city of Genoa had over 80 religious institutions housing 3,000 juveniles (Bandini, 1981).

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cant differences between the two types of institutions; it was found, for example, that escapes were more common in private institutions and that more crimes were committed by their inmates. Inspection also revealed that staff-inmate ratios in private institutions were only half those of government institutions.[6]

In this period, 1900 to 1915, a number of organizations, associations, and institutions proliferated under the influence of science and positivism which looked to the role of the state as a policy maker; the period also saw the emergence of lay education, often with an experimental cast. The organizations in question had various purposes of protecting, treating, and educating children and youth. There were also movements to improve conditions in existing institutions. However well intentioned these developments, they furthered the confusion of ideas and practices and highlighted the conflict of attitudes and lack of uniformity between state and private institutions. Added to this was the scarcity of trained personnel for the institutions, aggravated by the movement of workers to better paying jobs elsewhere. Government administrators came to believe that the whole system of institutional care of children had become dangerously unstable and that this made the court assignment of cases very difficult. Significantly, in 1910 an attack was made on institutions for girls, all of which were still under private control. This attack charged that the religious-oriented education provided by the *suore* ("sisters") failed to effectively impress their girl charges and moreover gave them a false conception of life outside the institution (Izzo, 1957: 167). This was concurrent with the first tentative moves in Italy toward lay education.

B. Ideological Conflict: Ferri Positivism

The stage was thus set for ideological struggle over the authority of the state and its right to control the education, reeducation, and correction of errant children and youth. The struggles came to the fore in debates over the causes and treatment of delinquency and over the form the juvenile court should take if it were instituted. The debates revolved primarily around the ideas of positivism, which were advanced by the scholarly school *la scuola positiva*, originating with Cesare Lombroso and Raffaele Garafalo but most energetically promulgated by Enrico Ferri and his followers. Positivism became for a time a powerful social movement militating against

[6] Much of what follows is taken from Izzo, 1957: 61ff.

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formalistic, deductive, abstract, and mechanical interpretation and enforcement of the criminal law (Radzinowicz, 1961: chap. 1; Ferracuti and Scardaccione, 1983: chap. 19). It went beyond mere theoretical attacks on classical penology to focus on the judicial process itself, challenging the idealized version of the detached and ultralogical judge. Ferri, sounding very much like an American realist, inveighed against "judicial license," which, he said, "is always active behind the mass of the thousand formalities of penal practice" in which the formulating of sentences is shaped by "intimate convictions" in the mind of the judge. To give Ferri's words (1967: 473ff.):

> For everyone knows that not only verdicts but also sentences are more often than not determined by reasons not brought out in argument before the court, and which are found in some secondary, lateral and unforeseen circumstances, and are not shown in the statutes or shown in the pleadings.

In even stronger language Ferri contended that Italian penal justice of his time was founded on "false convention" and the "abominable habits of judges," comparable to the "empiric medicine of savage humanity" (Ferri, 1967: 473ff.). Ferri's criminal sociology (or criminal anthropology, as it was more commonly known) sought to revolutionize penology completely, to replace imputability with scientific diagnosis based on study of the biosocial personality of the offender, to replace punishment with social defense, and to replace correction with positive therapeusis or remedial measures. While the popularity of positivism eventually waned and Ferri's ideas had only a limited effect on the penal code for adults, they nonetheless did strongly influence the thinking and deliberations of those who were seeking to establish an Italian juvenile court.

The impact of Ferri's philosophy is apparent in a circular issued in 1908 by Minister of Justice Orlanda, which recommended that the same judge should undertake both the instruction and the penal procedure against minors. The circular also urged that the judge should not limit himself to ascertaining the materiality of the offense but also be concerned with the acquisition of all information necessary to understand the direct and indirect causes, proximate and remote, through which the violation of law occurred and that such information be used not just to evaluate responsibility and to determine punishment but also to promote measures more adapted to protection of the minor (Paolucci,, 1976: 568). Despite its impressive wording, however, the circular offered little beyond the existing idea of

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extenuating circumstance and had little appreciable effect on judges' handling of cases involving minors.

C. *Official Action: The Quarta Report*

The high point of the movement to create a juvenile court and to formulate a special code for minors came in 1909 with the appointment of a royal commission, headed by Senator Quarta, to investigate the causes of delinquency and to inquire into methods for its treatment. Among the commission's twenty-six members were positivists, including Ferri, representatives of the neoclassical school,[7] and others identified with a critical naturalistic school having affinities with Catholic doctrine. A great deal of the discussion in the commission meetings took on an abstract, philosophical quality revolving around issues of imputability, maturity, free will, and responsibility. While the positivists prevailed and set the tone or theme of the ensuing report, the commission turned elsewhere for a source of practical recommendations with a "sudden discovery" that provisions of the English Children's Act of 1908 supplied a legislative model fully in accord with their positivist principles.[8] These provisions included the disregard of the exercise of any form of moral will and free choice by juvenile offenders, the adoption of measures of security and penal substitutes, indeterminacy in the amount of punishment, and above all the complete absence of any inquiry into discernment or attempts to gauge penalties according to a "metaphysical moral imputability." The positivists also were struck by the summary power that the act gave English magistrates in choosing dispositions as well as their continuing authority over implementation (Izzo, 1957: 154ff.).

The Quarta report concluded by recommending legislation to appoint a single inclusive judge in each tribunal seat with jurisdiction over crimes committed by minors under sixteen years of age, with concurrent jurisdiction over those fourteen to sixteen years of age. The report recommended against arrest and preventive detention for minors. It also set down a variety of

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[7] The exponent of the philosophy or jurisprudence of the classical school in Italy was Francesco Carrara (1889: 219n.). He held that crime is not a fact but a juridical entity, a violation of enacted law based on moral law. Imputability is a natural relationship between an act and the morality of the agent. Children are more impulsive and less restrained by reason and hence to be excused from punishment or subject to reduced penalties, depending on their discernment.

[8] Members of the commission also were well prepared with data on and discussions of juvenile courts in various American jurisdictions (Commissione Reale, 1910: 45ff.).

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possible dispositions: release with admonition, detention for up to twenty days, liberty under surveillance, asylum in a beneficent institution, and commitment to a reformatory. Adjudication was to be *in camera*, without publication of proceedings (Baviera, 1976: 173).

While it was clear that the Ferri positivists had won their battle with publication of the Quarta report and while its findings did have some impact on the revision of the penal code in 1913, nevertheless, the proposal for a special code for minors never reached parliament, despite strong support from the procurators of the Court of Appeals and from the directors of government reformatories. The urgent problems of Italy's participation in World War I intervened to turn the attention of the government elsewhere. Moreover, when the minister of justice was urged to bring the matter before parliament in 1915, the power of the Church was asserted in the Catholic press, which launched a vehement attack on the "complicated, monstrous instrument of a new bureaucracy . . . destined to exercise in the name of the state a tyranny without parallel and violate the natural rights of the family" (Izzo, 1957: 177).

Behind these protests were very real concerns that state bureaucracy would repress private initiative and that compulsory federation of private welfare agencies would pose the danger of interference with religious institutions by atheistic functionaries. The church also feared competition from lay or public welfare agencies, likewise that those institutions that were not oriented toward modern concepts of health would be substantially changed. It was also concerned that a preoccupation with the reorganization of educational institutions into a narrow uniform system to combat the degeneration of youth would alienate many interests, divorce them from Catholic institutions, and turn them away from charitable purposes (ibid., p. 178).

While it would seem that the struggle for power between the church and state in Italy and the threat that a code for minors presented to the material organized interests of the Catholic church were primary forces in blocking the creation of a juvenile court at this time, the rationale of positivism on which this movement rested ran athwart deeper and more general concerns of Italians: "it stood in open and deep opposition to the Roman Catholic philosophy of individual and social life, indeed to the whole tradition, moral and legal of the country," (Radzinowicz, 1961: 17).

Although there were legal scholars sympathetic to the ideals of the positivists, many nevertheless held serious reserva-

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tions about their philosophy. The chief appeal of positivism lay in its repudiation of the rigidity and inhumanity of nineteenth-century criminal justice and in its introduction of a new humanism into correctional practice, albeit in the guise of "icy scientism and detached realism." It also cut through the ambiguities of sentimentalism and "spiritism" in recommending measures for treatment of criminal minors, which were put forth in most lucid form by Ferri when he chaired the 1921 commission to revise the Italian penal code. Although the commission's proposal failed to be even considered for adoption,[9] a number of its provisions became the source and inspiration of the legislation that instituted the juvenile court in 1934.

Despite the obvious utility and appeal of positivism in addressing the problems of children and youth, they left a number of issues unresolved from the Italian view, namely those of individual responsibility for one's acts, amorality, determinism, pessimism, and sociocultural relativism. Committed as it was to the idea of social defense and the adjustment of the individual to society, positivism left untouched important questions about the nature of the values held by those with power over the individual. These unresolved issues in turn raised questions as to whether reeducation should be used to adapt individuals to society without consideration of the nature of that society, which might be a society of robbers or tyrants or one in which the *omertá* ("silence") code of the Mafia prevailed (Izzo, 1957: 14ff.). With the rise of Mussolini's fascist dictatorship by 1921, the issue of tyranny was no longer academic. Paradoxically, however, it was during the fascist regime that the juvenile court, ordinarily considered to be a liberal institution, finally came into being.

D. The Creation of the Juvenile Courts as a Fascist Improvisation

Whether a juvenile court would have been established in Italy had there been no fascist dictatorship has to remain problematical. Whether it occurred because the problem of delinquency had become critical in an objective sense or whether it was socially constructed in a phenomenological sense are questions not easily answered from available materials. Generally, however, it was believed that the abandonment, abuse, and neglect of children had greatly increased during the postwar pe-

[9] According to informants, Ferri was considered to be an advocate of judicial socialism, which meant that the 1921 proposal for revision was deemed too radical for Mussolini's fascist regime to accept.

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riod when fascism came to power (Rende, 1935: 29). Moreover, the number of delinquent children and youths admitted to institutions more than doubled between 1931 and 1935 (Instituto Centrale di Statistica, 1976: table 54).

At the same time political developments and the climate of opinion focused more and more attention on the plight of children and problems of the family. It is safe to hold that the fascists' abiding concern with the revitalization of Italian society and their moves to extend political control into all areas of life gave added impetus for the emergence of a special court for juveniles. Fascist policy sought means to further national power by increasing the number of vigorous, healthy Italians, primarily through action to strengthen the order, unity and morality of the family. This led to extensive organization and various widespread programs to improve the health and care of infants and mothers and to provide recreational activities for youths and workers. Youth were, as far as possible, organized according to age: Those under fourteen years became *Balilla*, those from fourteen to eighteen years became the *Avanguardisti*; emphasis was on discipline, the refunneling youth behavior, and the cooptation of gangs into the youth movements.

But there were difficulties in recruiting lower class youth and parental resistance. In addition "dangerous" or "unreliable" youth were excluded from the organizations. Thus the juvenile court was seen as a means of extending control over youths on whom psychological persuasion failed as well as a way of combatting juvenile delinquency (Marotta, 1984: 15ff.; Gregor, 1979: chap. 8).

The establishment of the juvenile court in 1934 came about in a piecemeal fashion: partly by the use of existing penal, civil, and procedural codes, partly by revisions to these codes, and partly by new provisions (Corsi, 1934: 101ff.). Some judges were already functioning as juvenile judges following a 1929 circular by the minister of justice creating a special section in the ten main Courts of Appeal to which the procurators could remit cases of minors for instruction and judgment (ibid., p. 100). The Rocco penal code revision in 1930 had raised the age of imputability from nine to fourteen years but lowered the age for full responsibility from twenty-one to eighteen. The revision also introduced a series of sanctions for juveniles even when they were deemed not responsible, among them commitment to a judicial reformatory (Vasalli, 1974: 1039).

What emerged as the juvenile court reflected older ideas of neoclassical penology, the positivism of Ferri and others, and

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the interests of the fascist regime in discipline and control, coupled with a reluctance or inability to differentiate its organization fully. The enabling legislation retained imputability, discernment, the determination of maturity for minors between the ages of fourteen and eighteen, denunciation, and trial and sentencing with diminution of the penalty. For some writers these measures in the context of fascism stood for repression and coercion of respect from youth for the new social order (Marotta, 1984). At the same time the penal code continued to provide for the moral reeducation of children and youth, and it would be incorrect to say that it reflected no genuine solicitude for the welfare of juveniles.

This last fact is apparent from the creation of Observation Centers, along with the juvenile court, in the appellate court districts with broadly conceived health, welfare, and child protection services. These were staffed by professionals, members of the community, and community agency representatives. Physical, hereditary, moral, and behavior problems as well as criminal acts of minors were all bases for referrals to the centers. Families, schools, nurses, and patrons of juveniles could send minors to a center if they "behaved in a manner to reveal a tendency to commit misdemeanors" (Corsi, 1934: 94). Evidently the centers provided means whereby the older practice by which families shifted responsibility for rearing their children elsewhere was perpetuated.

The reform schools—*case di rieducazione*—authorized under the 1934 law brought together ambivalent ideas and practices of both prevention and repression, analogous to the contradictory tendencies toward punishment and treatment in American institutions for delinquents. This was most conspicuous in provisions of the new laws giving the juvenile court jurisdiction over minors categorized as having strayed, or *traviamento*, which is variously translated as "perversion," "corruption," "deviation," or literally in code terms, "when a minor under eighteen years of age through habitual behavior gives manifest proof of straying and has need of correction." In effect minors below fourteen years, even though they were presumed to be irresponsible, could be subject to confinement in institutions, as could those between fourteen and eighteen years who were officially found to be immature.

It is in these provisions that there arose some of the greatest strain between the emphasis of Italian legal doctrine on legal certainty and precision and the laws fathering the juvenile court. One critic, questioning the logical integrity as well as the constitutionality of the law on *traviamento*, argued that it did

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not respect the principle of legality nor the principle of jurisdiction, and further that it was not "natural correction" but rather administrative action preventing not criminal conduct but conduct against morality (Nuvolone, 1956). While the law was phrased very generally, it tended to subsume behavior such as running away from home, school absenteeism, family nonconformity, and prostitution, which are analogous to status offenses in American states.

The lack of concern for the practical consequences of adjudication made Italian judges at least in part ill-fitted and ill-disposed to use administrative procedures. A related criticism, reminiscent of that leveled against American juvenile courts in earlier years, was that the denunciation or charge of straying often was not sufficiently proved to justify the curtailing of freedom of minors. It is held that decisions by Italian juvenile judges in many such cases merely confirmed the judgment or action by the police (Marotta, 1984). The scarcity of trained personnel available to staff institutions made the claim that they would reeducate errant youth a hollow one. This, together with the fact that the preponderance of institutional youth were of low socioeconomic status or without families, contributed to what Italian writers have called their emargination or isolation from society (Bandini *et al.*, 1977).

In 1956 the law was changed by replacing the term *traviamento* with that of social maladaption—*irregulari per condotta o per carattere* ("irregularity of conduct or character"). But the new definition was no less ambiguous than the old and drew the same criticisms of illegality. Equally criticized was the use of administrative dispositions of minors on grounds that they were actually forms of coercion in disguise and that the rationales for their use were hypocritical (di Gennaro, 1981: 9).

E. The Failure of Differentiation

In modern society values, ideologies, and doctrines have to be expressed and satisfied through social organization. This is true no less in law than in other institutional areas. In the case of the Italian juvenile court efforts at its organization were greatly complicated by deference to the ambitious theoretical goals of Ferri's doctrines and the resistance of the judiciary to differentiation and fragmentation of the courts, as well as its reluctance or inability to incorporate administrative-style adjudication. The attendant stresses have received attention in discussion of the issues of specialization and autonomy. One such stress has to do with the differentiation of judges. Ferri and

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other positivists had long held that civil and penal judges should be separated and that the latter should receive special education in biopsychological sciences to prepare them for their special tasks. But no such judges nor any provisions for their unique training existed when the juvenile court came into existence. The solution that sought to satisfy the positivist doctrine as well as other needs was to establish an ordinary tribunal for juveniles with penal, civil, and administrative powers staffed by three judges: the presiding judge from the Court of Appeals, a first- or second-grade career judge, and a citizen-judge chosen from persons qualified in the fields of biology, psychiatry, criminal anthropology, or pedagogy.

In form this resembled the panels of the juvenile courts in England, Wales, France, Poland, and Russia, although in England the chief magistrate as well as his two associates were nonprofessional or nonstipendary. In the other countries the associate magistrates were appointed primarily to gain broad or popular representation in justice process. The Italian solution was a serious, designed effort to achieve some kind of extralegal scientific precision in the adjudication of minors' cases. One result of all this was that the roles of the career judge and the presiding judge became ambiguous since they were expected to acquire and apply specialized knowledge in their jobs yet remain primarily committed to the pursuit of doctrinal legality.

Actually the special knowledge of the magistrates in juvenile court came from their experience with a large number of cases gained in a short period of time. This supposedly prepared them for permanent assignment to the court. But this situation presented a problem similar to that sometimes described by American judges who disliked assignment to juvenile courts on grounds that there they were not likely to "learn much law." In any case the hope for the emergence of a corps of specialist judges for the juvenile court in Italy was not fulfilled, for "all of this could not be realized because it encountered the insurmountable obstacle of finding judges willing to accept such an objective, which imposed an unjustified career limitation on the function of those of the first or second grade" (Baviera, 1976: 332).

In 1956 a further move to increase the specialization of the juvenile court came with legislation requiring that a fourth judge—a woman—be included in the panel in the belief that she would infuse special insight into adjudication by virtue of her sex as well as her scientific expertise. This plan, however, became gratuitous and the female judge a supernumerary inasmuch as women had by this time already entered the ranks of

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career judges. It also brought the problem of the tied votes that could result when the panel disagreed. In such instances the penal code required that the case be dismissed and the defendant freed. Yet Italian law specified that this held only for penal and not for administrative proceedings, and, as will be noted, large numbers of minors' cases are handled administratively.

Thus while judges absorbed a great deal of practical experience as juvenile court magistrates and while the characteristics of the court made it specialized, the ideal of a body of specialized judges did not materialize. From my observations of the juvenile courts in Italy and other countries, it is questionable whether the presence of lay specialists on the courts actually adds to the proceedings. In England, France, and Poland the nominal quality of their participation is conveyed by humorous references to them as "furniture" or "book ends." However, this is not so true in Italy, where a more egalitarian spirit prevails and where heated discussion and split votes do occur. The question here, more clearly put, is whether the nonlegal judges do in fact contribute expertise.

Perhaps this can best be answered by noting that currently the actual investigations of cases in which minors are held for observation are carried out by social service workers and psychologists. Furthermore, in serious cases, which usually go on appeal, the appellate panel may and often does assign the case to psychiatrists and clinical psychologists for examination, testing, and diagnosis.

According to information given to the author in interviews, the idea of separate penal and civil judges has always been rejected in Italy. Hence, the role of the juvenile magistrate has never been even clearly defined, let alone capable of generating esteem for and confidence in those who take on this role. Indeed, one Italian authority has unequivocably stated in his work on the law of minors that the pretense of integrating law and various sciences is harmful because to achieve it would require an entire lifetime of study (ibid., pp. 233, 236). Significantly, the Italian Constitution of 1948 forbade the creation of any more specialized judges. This problem, which *in re* the juvenile courts is more or less endemic, has concerned European jurists for some time and has been the subject of a number of international conferences.

The issue of autonomy of the Italian juvenile court overlaps that of specialization. It revolves around such issues as the identity of the judges within and outside judicial divisions, the location of the juvenile courts, the responsibility for their surveillance, and appeals. The problem of autonomy arose first be-

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cause juvenile courts, while theoretically located in appellate court districts, were actually located in capitals of the various regions of Italy, which are cities with high delinquency rates. In earlier years their separation from other courts was largely fictitious because they were staffed by ordinary judges serving as general judiciary. In practice these judges did double duty as both ordinary judges and juvenile magistrates.

The problem of the double load of the juvenile magistrates was exacerbated in 1967, when the adoption law was changed to help solve the problem of abandoned children, whose numbers had grown relatively large. Special adoption in contrast to traditional patrimonial adoption (to gain an heir) was added to the tasks of the juvenile magistrates, who numbered 126 for all of Italy in 1970 (Pocar and Ronfani, 1978: 614). This was finally remedied by increasing the number of judges following a study of the problem and recommendations made by the Consiglio superiore della Magistratura (1974).

The autonomy of the juvenile court was only fully realized at this time, although there was earlier evidence of its de facto separate status. Thus the court has had no examining judge as is used in adult criminal courts but rather is served by a judge in the Office of the Public Minister, who is a local or regional official and who uses a summary procedure. A substitution for this judge must come from the same district, and the rule concerning the nonremovability of judges that is applicable to the juvenile court is a district rule. Finally, there is a separate section of the Court of Appeals for minors and a special procedure for carrying cases to cassation. Since 1971 supervision of the juvenile courts has been determined to be at the district level (Baviera, 1976: 240).

II. THE CAST OF SUBSTANTIVE JUSTICE

Thus far the analysis has relied on historical materials to support the idea that juvenile justice in the American or British mode, with emphasis on the individualized treatment of delinquent youth, was ill-suited to Italian legal doctrine and that its adoption in Italy created serious difficulties in differentiating a special role for judges. Moreover, the ideal of integrating legal and expert knowledge through the creation of specialized panels of juvenile judges based on the rationale of Ferri's positivism was impractical; it both delayed the creation of the juvenile court and precluded its full legitimation. Thus the courts acquired a spurious quality, more culturally synergistic than genuine.

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To pursue these ideas further I observed hearings in several juvenile courts in Rome and Florence and interviewed judges, prosecutors, lawyers, officials in the Ministry of Justice, social workers, educators, clinical psychologists, and correctional workers. I also questioned a few *Carabinieri* ("police") plus the general at the head of their organization. In addition I obtained data from two reports on the workings of the juvenile court in Genoa prepared by Bandini (1981; 1982). Finally, I drew on twenty-five case histories of juvenile delinquents and their families in Rome prepared by Franco Ferracuti in 1981. These data helped to illuminate the substance of Italian juvenile justice as opposed to its formal nature.

Substantive justice presumably tempers the enforcement of the rules of law by using the discretionary powers of judges or administrators to consider particular features of individuals and their situations. Such powers are clearly stated for use in the treatment and prevention of delinquency in Italy according to the official doctrine of the Ministry of Justice that I was given in 1981 (Ministero de Grazia, n.d.). The extent to which individualization actually occurs in the treatment of delinquent minors is questionable at least. It must be kept in mind that juvenile justice doctrine is not of one piece but rather a mix of older, formalistic, classical jurisprudence with an overlay of positivism, threaded with the values of a familistic legal culture and more remotely affected by certain aspects of Italian culture in general.

A. The Denial of Discretion

The formal tradition in Italian juvenile justice is conspicuous in the observance of strict procedural legality in criminal justice for minors as well as for adults. There can be no waiver of prosecution; the Italian Constitution (art. 112) requires that the public prosecutor must act to institute proceedings when supplied with information that a crime has been committed; failure to do so is itself a crime. Moreover, there is no plea bargaining between prosecutor and defense attorneys.[10] Nor is

[10] All informants, lawyers, judges, and psychiatrists, who were queried on this emphasized that there is no plea bargaining in Italian justice. The main reason is that lawyers have little to bargain with. There is nothing like a preliminary hearing in which they can contest evidence; lawyers are not allowed to be present at pretrial questioning of the accused by the prosecutor; and they are not permitted to see his record, hence no "discovery." At trials lawyers submit questions in writing to the judges, who then put the questions to the defendant or to witnesses. More important, there is no "great writ" to free defendants, who may be kept in prison for months or years prior to trial. A final commentary by a lawyer on the absence of plea bargaining was that "no one could trust another's word in that kind of situation." A law passed in

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there anything like diversion programs or informal probation for juveniles. The same observation applies to police, whose task is to determine if a crime has been committed and to bring the facts to the attention of a magistrate. Thus for juveniles there are no "adjustments within the department," no "police probation" as found in some places in America, no diversion schemes and no police cautionary schemes such as exist in Britain. Nor are there juvenile bureaus in Italy comparable to those in the United States, although some Italian police departments have female police to deal with juvenile prostitutes.

While there are judicial statistics in Italy there are no comparable police statistics. Of course it is unrealistic to expect a complete absence of the use of discretion by police in any setting; *carabinieri* in more isolated areas may practice *fermo*, an informal arrest made in the interests of preserving order that permits intoxicated persons, quarrelsome women or minors who are involved in petty crimes or become a nuisance to be held in jail without a charge and then released (Maraspini, 1968: 115ff.). City police also may withhold charges if a child's offense is a petty one, such as stealing a bird from a pet store (Belmonte, 1979: 56). According to statements made in my interviews with *carabinieri*, they may not act if the victim of an offense is persuaded to withdraw the complaint; under some circumstances they may also turn a drug offender over to the custody of a family member rather than make an arrest.

From their attitude and comments, the *carabinieri* at least do not seem to put a high priority on arresting minors, instead usually acting only when complaints are received or when offenses come to their attention directly, *in flagrante delicto*. Many, perhaps even a majority, of the *carabinieri* have origins in the south of Italy and can appreciate the problems of poor families from that region from which many juvenile offenders come. A lay appellate judge, also a consultant for the *carabinieri*, described to the author a probable confrontation with a minor as follows:

> They would be polite, they would be friendly and would be seeing things from their point of view. After all you [the minor] are a poor bastard from Calabria. Let us see what can be done. Can you send the boy

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1981 allows a kind of bargaining if it is a first offense and if the sentence for the offense is less than six months. However, there is little use of this provision in minors' cases because many of the defendants have prior offenses and because the court can use other dispositions. For an informal account of Italian justice see Levine, 1963: chap. 9; for a scholarly account of criminal justice in civil law countries see Merryman, 1969: chap. 17, and Spotts and Wiser, 1986: chap. 3.

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Table 1. Juvenile Arrests in Italy and California, 1977–80

Year	Italy	California
1977	23,301	313,955
1978	25,579	286,512
1979	19,034	297,507
1980	20,676	286,007
Population, ages 10–17, in 1980	7,367,378	3,030,210

Sources: Istituto Centrale di Statistica, 1983: p. 6, table 5; 1976: table 52; California Department of the Youth Authority; 1985: p. 19.

back home? Can your father there take the boy for two months? Let's get him out of here.

How much of this mediating work ordinarily occurs is difficult to say. However, in recent years the attention given to student unrest, drug abuse, Mafia crime, and terrorism has greatly downgraded police interests in the offenses of minors. Some idea of the low priority given to juvenile crime problems can be gained from Table 1, which compares the total numbers of arrests of juveniles in Italy and California during a four-year period. Over fourteen times as many arrests of minors were made in California as in Italy in 1980. When a correction is made to account for differences in population of the two places, the number rises to twenty-eight times as many arrests in California as in Italy. The proportions of those arrested from the populations at risk, youths between the ages of ten and seventeen, did not differ significantly. Of course allowance must be made for the fact that California police screen out many cases; their total probation referrals were only 144,268. However, this still amounts to somewhat over fourteen times as many court referrals in California as in all of Italy in 1980.

This comparison and others that could be made must be set against the strong feelings that Italians were said (by informants) to have against the idea of police discretion, which for them conjures up connotations of Mafia corruption and the political uses of the police during the fascist regime, reinforced by memories of those who suffered persecution and imprisonment at that time for dissent.[11] These ideas and feelings were

[11] It is most likely that the strong—even vehement—feelings of Italian legal professionals against allowing any police discretion are a post–World War

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conspicuous in the attitudes of the prosecutors and judges I interviewed, and, along with other factors,[12] help to sustain the culture of strict legality. One group of five judges made a point of informing the author of how strongly they disapproved of what they saw as the excessive power of American police.

The absence of the legitimized use of police discretion in arresting minors on its face appears to be a denial of the doctrine of individualized justice for minors in the Italian system. It compels police either to use discretion covertly, to ignore many offenses of minors, to ignore complaints, or to discourage them—a more likely response. Since quite early in the history of American and British juvenile courts the police became agents for determining which cases were processed, it may be argued that police discretion is a generic necessity in any juvenile court system. This is particularly true if the juvenile justice system deals with more than strictly criminal offenders, namely early correction or prevention of delinquency. Police are obviously better situated than other court officials to experience or appreciate the immediate complex of circumstances surrounding juvenile delinquency. To a lesser extent this is also true of the public prosecutor. Leaving what is essentially a screening process to judges who, removed in time and place from juvenile actions, is at best a distortion of the implicit and explicit ideas in juvenile justice if not a contradiction of the formal statement on individualized treatment issued by the Italian Ministry of Justice (Ministero di Grazia, n.d.). Put more directly, it attaches an anomalous function to the role of judges, who must then spend time and energy ridding the court of cases that should never have been there in the first place.

B. Extracting Minors from the System

The penal measures for juvenile offenders currently in use in Italy have remained comparatively unchanged since the adoption of the penal code of 1931. This means that minors fourteen years old and over can be found guilty and punished like adults, with sentences mitigated by no more than one-third. Given this rigidity of the legal system and the ideals of

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II phenomenon. One historical study indicates a kind of official recognition that the use of discretion by police has been inherent in their preventive activities, since the mid-nineteenth century. The police are said to have been an extension of the magistrate's jurisdiction under certain circumstances, becoming a "branch office of the positive law which codifies the present situation." Although this statement obviously is a legal fiction, it reflects the durable commitment to legal certainty in Italian law (d'Orsi, 1972: 137).

[12] The social control of judicial morality or the legal culture in the Ministry of Justice is described in di Federico, 1976.

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individualized and discretionary treatment of minors, judges are faced with a task that, if taken literally, would be most difficult to complete. A former juvenile judge recognized the problem, saying that " 'the rigidity of the system from which discretion is banned, should be taken into account when discussing the legal and practical remedies for subtracting as many juveniles as possible from the imposition of a penal sanction' " (di Gennaro and Bonomo, 1980: 16).

The task the judges confront is one of maintaining the appearance of legality while doing something else. The rate of attrition of cases is strikingly high, helped along, as I will show, by cases that more or less "get lost." Hence relatively few of the cases processed actually receive formal sanctions, a conclusion qualified only by the fact that criminal cases of minors that are discharged may then be taken up as civil cases.

It is difficult to present accurate data on the processing and disposition of cases in Italian juvenile courts because cases carrying over from previous years are counted among those entering the system in any given year, and those of a given year may be lost or deferred. The most complete statistics on the subject come from a 1974 study (Consiglio Superiore della Magistratura, 1974: 26ff.). This gives the total numbers of minors denounced, the recommendations of the instructional judge (*procuratore*, or "prosecutor"), and dispositions by the juvenile court panels for the year 1969–70. The number of minors denounced in that year was 43,158, with those processed (instructed) by the prosecutors being 30,873, although a somewhat larger number were actually disposed of by the various juvenile courts. The prosecutors recommended deferring action in 9,481 cases. Cases were disposed through either hearings in chambers or trials, as Table 2 shows.

Judges estimated that between 70 percent and 90 percent of minors are currently released through a finding of immaturity. Actually the percentage for the 1969–70 year was 36 percent, although quite possibly this has increased more recently. The great majority of these were minors under fourteen years of age whose cases are simply "filed." About 37 percent of the rest were freed through judicial pardons and amnesty.

Interviews with judges further indicate that there is a kind of tariff operating in the decision making by court panels: For the first offense a finding of immaturity is made, for the second a judicial pardon is granted, for the third offense a suspended sentence, and for four or more offenses incarceration. Apparently it is only after substantial proof through prior record and other factors that courts conclude that the minor is a hardened

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Table 2. Disposition of Cases of Juvenile Offenders in Italy, 1969–70

Hearings in Chambers		Trials		
Disposition	N	Disposition	N	Total
Judicial pardon	3,821	Judicial pardon	2,830	6,651
Amnesty	5,446	Amnesty	719	6,165
Extinction of offense	1,939	Extinction of offense	262	2,201
Nonimputability	2,266	Nonimputability	671	2,937
For meritorious reasons	1,527	Acquitted	993	2,520
———		Condemned	1,722	1,722
Archiviation*	9,492	———		9,492
Author of offense unknown	1,125	———		1,125
Total	25,616		7,197	32,813

Source: Consiglio Superiore della Magistratura, 1974: 26, 28.

* The cases were filed in archives without further action.

or habitual offender—a *caso perduto* ("lost case")—and must be treated severely. However, there is great variation in procedures between jurisdictions.

It is clear that the Italian system works in favor of the minor toward whom considerable net leniency is shown. Although a judicial pardon may by law be given only once and when the sentence is not for more than one year, appearance of the minor in a different judicial district may result in judges there granting another such pardon if they can somehow collapse the offenses involved (Meucci and Scarcella, 1984: 101). In contrast to the judicial pardon the suspended sentence may be given more than once, and even if a minor is incarcerated the sentence can be changed at any time, the next day if necessary.

Table 2 shows that the majority of cases, 25,616, were disposed of in chambers, where neither prosecutor nor attorneys were present. Notably at this juncture over nine thousand cases involved minors under age fourteen and were more or less routinely filed once the ages of the juveniles were ascertained. Minors given judicial pardons *in camera* usually were those who committed minor offenses or contraventions for which they confessed. Those pardoned after hearings had contested the charges, or else the hearing was held to communicate a sense of the seriousness of the criminal act and responsibility for it. In some jurisdictions where the caseload is heavy, judges prefer to give more pardons in chambers.

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A significant feature of the Italian juvenile courts, with no parallel in American and British courts, is the discharge of cases by a finding of amnesty. Amnesties, usually for offenses with penalties of no more than three years, have been declared in Italy in sixteen of the years between 1944 and 1980. Consequently if the minor's offense came under an amnesty category, he would forthwith be freed from any further criminal processing. While the granting of amnesties has been greatly abused in Italy according to some (Cappelletti *et al.*, 1967: 318n.), it nevertheless offers one more legalistic means whereby juvenile courts can spare minors punishments and clear their cases from further processing.

In 1980 4,382 minors were sentenced in the Italian juvenile courts, or around 20 percent of all those brought into the system. By comparison, in California almost 34,500 cases were placed on probation, committed to the state Youth Authority, or remanded to an adult court (California Department of the Youth Authority, 1985: 19); this was about 75 percent of the number of cases that came into court with new petitions (46,750).

A large proportion of the sentences of less than two years given to Italian minors are suspended and then followed by alternative dispositions, such as fines, placement with social services, or partial institutionalization. It is difficult to compare Italy with other jurisdictions such as California in regard to the incarceration of juveniles because the institutions, if not the entire correctional systems of the two places, differ so greatly. In any case the most important observation that can be made is that while there has been relatively little change in the policies and practices of committing juveniles to institutions in California and probably in most American states, there has been a genuine move to deinstitutionalization in Italy. There the trend in recent decades has been to incarcerate fewer and fewer youths in judicial reformatories or prison schools. By 1981, according to a Ministry of Justice spokesman, there were only about 200 inmates in penal institutions for minors in all Italy. In 1980, while 693 minors entered such institutions, their census at the end of the year was only 144 (Instituto Centrale di Statistica, 1983: 570, table 198). In recent years incarceration sentences have tended to be changed or shortened due generally to a growing disillusionment with institutions and specifically to a belief that putting minors in such places does more harm than good.

There is a type of secondary or shadow institutionalization that can occur after a judge clears a juvenile of charges or

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Table 3. Movement of Cases through Offices in the Italian Juvenile Court System, 1980

	Procurator	Tribunal for Minors	Court of Appeals
Entering cases	44,603	35,283	1,346
Cases processed	40,038	38,966	1,578
Cases pending at year end	32,369	21,183	638

Source: Istituto Centrale di Statistica, 1983: 289, table 75.

grants a judicial pardon, for the court may then act in a civil capacity and place the youth in a reeducational institution. In 1980, 504 cases were newly institutionalized in this manner, but again the number so held at any one time is much lower (ibid., p. 522, table 167). Generally these numbers, like those of minors sentenced to reformatories, have been declining.

C. Delay

One of the outstanding characteristics of Italian juvenile justice is delay, as Table 3 makes clear. To understand these data note that cases processed by the prosecutor, the tribunal, and the Court of Appeals included not only cases new in 1980 but also those going back as far as five years. Explanations for the delay and the large backlogs of cases at different phases of the justice process were not completely satisfying. Some observers have noted that the Italian legal system generally acts very slowly due to inadequate staff and facilities. In the past, at least, magistrates often had no secretaries and much recording and transcribing had to be done by hand; only recently have typewriters begun to be used; papers and documents continue to pile up in great profusion in many courts. Other accounts for delay pointed to pressures for postponement that were cumulative because the cases had to pass through so many points. Some pressures came from the police, the prosecutors, and the magistrates themselves. Other pressures were connected with the Mafia, Camorra (a Mafia type society in Naples), and terrorism. By 1984 the large number of imprisoned adults awaiting trial had become critical and provoked public agitation.

An added reason for the delay is that police have difficulty locating minors and their parents or other relatives, in part because their communication systems are only beginning to be modernized. Many minors become adults before their cases reach the stage of hearings and disposition, at which time alter-

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native measures available for minors may be inapplicable. Amnesty is often used as a disposition for such cases. Parents and minors may learn that this delay works in their favor and urge lawyers to arrange for postponements or more simply just make themselves hard to locate. Magistrates may even be well aware that this is happening but acquiesce in the pretenses.

A few judges in the north of Italy and possibly elsewhere use delay advisedly as a means of treatment, adhering to the philosophy of "maturing out" delinquents. One judge uses continuances more or less deliberately, holding out a judicial pardon as a reward for a minor who avoids further offenses. The prosecutor in the same jurisdiction observed to the author that he "can keep offending minors in the Observation Center for a few days" as a way of trying to change their attitudes and behavior. Time spent in such centers, along with the imposing of fines, may well have become the chief sanctions applied to delinquent minors in the majority of cases in Italy.

The court delays and the backlog of unprocessed cases contribute to the bureaucratization of the system in larger centers. Some court officials have complained that the result of this situation has been for panels to routinely declare minors immature and thus clear the cases. There is also some feeling that many panels lack real interest and commitment in the cases. Even among the more dedicated prosecutors and magistrates there is a kind of disillusionment and cynicism about the workings of the juvenile justice system along with a feeling that not very much can be done about the problems. A prosecutor in Rome commented on the occasional harsh sentences given to minors for serious crimes without careful consideration of circumstances of the offense and without heed to alternative measures that might be used; this tends to reinforce the sense of a system that is not working well.

D. Persisting Institutionalization and Inadequate Services

Probably the most serious issue in Italian juvenile justice has to do with the commitment of socially maladjusted minors to institutions for reeducation. Although these are civil commitments, they take place through the same court that issues criminal sentences, and the institutions to which the juveniles are sent are ordinarily part of those where criminal offenders are held. While there is currently less utilization of such reeducational institutions than in the past, the older pattern of their use in one way or another by disrupted families remains. This happens through contact with social service agencies and

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the office of the prosecutor, whose assistance is sought to deal with welfare and disciplinary problems of families and their children. One-half or more of the cases that reach Italian juvenile courts do so by these paths (Bandini, 1981), which contrasts sharply with the statistics for American jurisdictions such as California, where the overwhelming majority of referrals come from police.

The correlation between family poverty and deprivation and the processing of children as cases of delinquency emerges in a highly distinctive manner in Italy. The problem of abandoned children, to an extent inherent in the strong family system of Italy, enters into this pattern. The change in the adoption law in 1971, done to mitigate the problem of abandonment, was not as successful as hoped, and the numbers of children in institutions actually increased during the 1970s. Government funds to provide welfare assistance were either inadequate or heavily drained by management costs, which meant that mothers seeking to continue to care for their children found it difficult to do so and often became hard cases for the courts. Likewise the government provision for counseling services to assist families or mothers were inadequate or even nonexistent in many areas (Pocar and Ronfani, 1978: 612, 615–17, 636–37).

Beginning in 1975 legislation provided that social services for minors processed by the juvenile courts should be removed from the Ministry of Justice and established in offices at the regional and local levels. However, this change has not worked well; local communities have not organized these services as planned and their response has been very uneven. In Rome, in 1984, for example, nineteen social workers served between seven hundred and eight hundred delinquents in preventive centers and on *libertá controllata* (which is similar to probation). In addition in the administrative (civil) division twenty-nine social workers were carrying about one hundred cases each. Services include placements in foster homes, but there was only one communal home for children in all Rome. In contrast Genoa, with less than half the administrative cases as Rome, had twenty such homes at this time.

Social work administrators interviewed in Rome indicated that even those social services that were established did not work well. In some cases staff workers lacked the training and understanding necessary for their job. The influence of the Catholic church, which receives government funds to help finance its own child welfare institutions, tended to slow the development of such facilities as the lone communal home in Rome. Local government councils, which fund and apply policy

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for such services, often have ideologues among them—communists—who have little comprehension of or sympathy for social work. Programs may be planned by persons who have little appreciation of the realities of life for minors and their families living in poverty. In one instance a program for slum children in northern Italy was placed in a middle-class summer resort, with the predictable outcome of disastrous thieving and disturbances on the local beaches. Finally, it was noted that judges were often reluctant to delegate to social workers powers such as those implied in *libertá controllata*. This in turn tends to reflect the conservatism of legislators, who formally define such power as a license to experiment.[13]

A recent assessment of the success of the actual treatment of delinquent minors concludes that

> the present legislative provisions in the field of juvenile delinquency tend to depart from the old penal conception, substituting for the concept of punishment, that of medical-pedagogical measures adapted to the personality of each subject. It must be emphasized that this tendency towards individualized treatment, in forms as yet experimental, have resulted for the most part in failure (Marotta, 1984: 33).

If pessimism is expressed by those concerned with the treatment phase of juvenile justice in Italy, it is equally true that at least some among the judiciary continue to find fundamental problems with the legal basis of the juvenile court. These criticisms include both the resistance of local entities to legislation mandating the organization of services for the juvenile courts and the more basic problem of the confusion between the penal and administrative functions of the judges. Two possible reforms have been proposed: One is the complete decriminalization of all offenses by minors and the treatment of all such problems by the use of reeducation; the other is to return penal hearings of minors to ordinary tribunals, with a sharp distinction being made between the repressive and the protective phases of procedure in cases of minors (Meucci and Scarcella, 1984: 95ff.).[14]

III. CONCLUSION

At the beginning of this article it was proposed that the Italian juvenile court may be a spurious or paradoxical develop-

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[13] This appears to be a basic difference between Italian and American law, as demonstrated by the strong resistance of American judges to legislative prescription of judicial authority in the juvenile courts. See Lemert, 1970: 41.

[14] For a number of articles dealing with current problems and queries

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ment in which efforts were made to reconcile a form of discretionary justice with a system of law that apotheosizes legal certainty. Evidence for this idea came from sociohistorical materials emphasizing the long delay in establishing such a court and the equally long period needed to evolve an adequate organization with sufficient judicial personnel and social services.

Further testimony that the Italian juvenile court is more of a symbolic demonstration or a set of rituals than a vehicle of substantial justice is the relatively small number of minors who are actually sanctioned. While in the past the numbers who were sanctioned by incarceration was larger, the meaning of such incarceration must be sought rather than assumed. There is a real question whether in retrospect incarceration was not in essence the aggregated use or exploitation of available government and church institutional care in the interests of abandoned children and impoverished families rather than an expression of widespread punitive impulses toward minors or of a collective desire to "treat" them.

While falling short of being the product of purely symbolic legislation and law in the sense argued by Arnold (1955) and Aubert (1966), Italian juvenile justice nevertheless clearly reflects compromises between salient values of Italian culture. Formal arrest and processing of offending minors, with careful attention to the selection of lawful dispositions and careful consideration of questions of imputability and immaturity (on which there is an extensive literature), satisfy the values of legal certainty. The priority of these values is insured by the presence of a prosecutor committed to a career in the Ministry of Justice and subject to its control. The values that motivate judges within the legal constraints are less easy to fathom, but they undoubtedly express in different ways the familism that is central to Italian culture and guarded by the church. Thus Barzini has called the family the first source of power in Italian society, "the fundamental institution in the country, a spontaneous creation of the national genius . . . the real foundation on which the social order rests" (1980: 190).

The place of familism in the legal culture is attested by the fact that the Italian Constitution recognizes the family as a "natural society" (art. 29). It also recognizes the rights of individuals to pursue self-help through private organizations to assist those in need. According to di Gennaro and Bonomo (1980:

about juvenile justice in Italy see Scuola Di Formazione Del Personale Per Ea Rieducazione Dei Minorenni.

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7), the law asserts that the rights of minors are to be enjoyed within the family and presumes that the family will minister to their needs. In this view the role of public officials is one of nonintervention, positive only in the sense of providing the minimal means to meet the needs of children, particularly when no adversarial issues exist between parents and child.

This is not to say that Italian judges are unaware of the necessity for public authority to assume a more positive role in protecting the rights of minors and to take jurisdictional control when no effective head of a family exists. They do recognize that the traditional authority of the *padre-padrone* peasant family has been either attenuated or disappeared under the stresses of urbanism and industrialism. Moreover, they also recognize the rights of individuals apart from families, as, for example, the rights of women in the areas of property, divorce, and abortion (Pocar and Ronfani, 1978: 619, 624, 633). But given the limitations of available services and facilities, it is still likely to be true that juvenile court intervention works best when residual resources within the family or extended family can be used to solve the problems of minors. This was illustrated for the author by one appellate case in which the judges spent the best part of an entire morning working out a divided custody arrangement that satisfied the various relatives involved.

It must be remembered that Italy is a relatively poor country and that life there is hard, even pitiless, for most people and that the hold of detached humanitarianism and dedication to specific reformist causes is weak at best. Survivalism comes closest to describing the national ethic, which usually means contriving arrangements through interpersonal networks that advance the cause of the individual and his family and protect them against precipitous misfortunes.[15] The motivation and commitment, or lack of commitment, of juvenile court panels must be understood in the context of values that expect little from law and public institutions in the solution of everyday problems. When paternalism is exercised by judges it is likely to be in the form of routine indulgence or leniency or acquiescence with arrangements made by families and private organizations.

A final commentary on the burden of this article *in re* the anomalous nature of the Italian juvenile court can be taken

[15] Barzini has commented on the strange absence of literature on the informal workings of Italian society, which he describes as "infinite manoeuvres and labryinthine intrigues, the conspiracies, the plots and counterplots necessary to prosper even modestly in Italian life" (1980: 229).

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from an interpretation of changes in Italian juvenile justice offered by de Leo (1983). Noting the decline in both denunciations and the number of minors jailed or imprisoned from 1970 to 1979, he asserts that this, along with other signs, indicates a decline in the criminalization of the behavior of minors due to a basic change in the social conception of delinquency as justification for their social control. By this he means that the creation of the juvenile court extended social control over children and youth by defining or redefining problems of their schooling, supervision, parental discipline, poverty, and comportment that come under their jurisdiction. He attributes this change in conceptions to the salient problems of terrorism and drug dependence, which have modified patterns of social control. De Leo further notes that adolescence in Italy is now prolonged to the age of twenty-eight or even thirty, with more instability found in the eighteen to twenty-eight age group than among those from fourteen to eighteen years old.

De Leo finds that juvenile justice in Italy has lost both its credibility and its legitimation and that the social prestige of juvenile court judges has diminished markedly, with the result that fewer judges seek the role as a career and are migrating to other sectors of the justice system. The loss of credibility of juvenile justice owes much to the fact that its purported objective—reeducation—has produced results contrary to this goal, yet the paternalism dominant in institutions established for this purpose prevents their being redefined in punitive terms. Hence a belief has grown that they and related social services cannot produce consistent results of any kind.

The countertrends, according to de Leo, are seen in a renewed social definition and legitimation of the family, church, school, mass culture, and sport as forms of social control. Confirmation of this can be seen in the increase in numbers of members of marginal groups—in-migrants, Asians, Africans, Palestinians, and Gypsies—entering the justice system.

The data on which de Leo's statements rest are rather limited, and the ten-year trend in arrest and incarceration rates of minors may very well reverse itself. Still, his interpretation is plausible and certainly consistent with the line of thought if not the facts presented here. However, another interpretation of the anomalous nature of the Italian system of juvenile justice, not entirely at odds with the thesis of this article, is that its flaws, imperfections, and often seemingly perfunctory operation are an expression of Italian values that favor weak public agencies of social control and that are based on the distrust and alienation that Italians feel toward the institutions that govern

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them. Two writers have called Italians "natural Jeffersonians" from long experience preferring weak rather than strong and effective government (Spotts and Wieser, 1986). A similar view is expressed by Barzini (1980: 191), who asserts that Italians, by historically relying on the family in times of crisis, have actually promoted anarchy and fomented chaos that rendered useless the development of strong political institutions.

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