The criminalization of youth and current trends: the sentencing game

Francis BAILLEAU, Yves CARTUYVELS, and *Dominique de FRAENE*

In 2002, the French journal *Déviance et Société* put out a special issue on youth criminal justice in Europe. The socio-historical approach that guided a seminar organised by the European Research Group on Normativity (GERN) had enabled us to explore the workings of juvenile criminal justice in nine Western European countries and to examine the ways that the paternalistic welfare model of justice that characterised youth justice in most European countries in the 20th century had arisen and then evolved (Bailleau and Cartuyvels, 2002). The second phase of this work focused on testing the hypothesis of a change in the welfare model under the influence of the neo-conservative paradigm that had become dominant within the European Union (Bailleau and Cartuyvels, 2007). Finally, this new edited collection shares the findings of the last phase of our work, on *The criminalization of youth and the sentencing game*, which was conducted within a broader programme, also steered by GERN, concerning various fields in the sector of social regulation and coercion, that was funded under a call for tenders put out by the European Commission's Research Directorate[1].

As we were aware of the importance of the impacts that the socio-political history of a country and the existence of a specific cultural context may entail, we included some Northern and Eastern European countries with different social, political, economic, and cultural heritages in the analysis of our second phase of work. We subsequently found a common context in the various countries concerned by this research[2]. On the one hand, all faced the challenges of globalisation and the influence of a neo-conservative economic model, the weakening of the State and of mutualised social protection systems, ageing populations

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[1] Assessing Deviance, Crime and Prevention in Europe. CRIMPREV Project. Coordination Action of the 6th FWP, financed by the European Commission. Contract No 028300. Coordinated by CNRS – Centre National de la Recherche Scientifique. Website of the project [www.crimprev.eu].

[2] More than fifteen countries participated in the ten-year-long research into juvenile criminal justice in Europe, namely, Scotland, England, Wales, Norway, Germany, Belgium, France, Switzerland, Slovenia, Romania, Poland, the Czech Republic, Hungary, Greece, Spain, Portugal, and two other non-EU countries: Turkey, which is due to participate in the European Union in a few years, and Canada, representing North America. Some of these countries participated in all three phases of the programme, others in one or two phases, in line with the research topics that were chosen but also in connection with the research funding available in each phase of the process. We received funding from GERN, the French Justice Ministry, the Council of Europe, and the European Union to make this long-term research programme (GERN-CRIMPREV) possible.

and the increasing socio-economic vulnerability of young people. On the other hand, all also experienced an increasing dramatisation of the theme of juvenile delinquency and the temptation to criminalize deviant behaviours more under the influence of a neo-conservative current, the specific configuration of public policy networks, the weight of international legal instruments, or even the judicial system's relative autonomy. These various elements oriented the juvenile justice reforms that have taken place regarding both the primary and the secondary criminalization processes of youth offences, even though differences exist in line with each country's legal and cultural traditions.

Generally speaking, youth justice has undergone major changes in recent years in Europe. The roots of these changes lie in the challenges directed at the 'tutorial' model, which is largely associated with the ideals of the Welfare State, under pressure from the spread of a neo-conservative approach to social issues. More specifically, and beyond the different combinations of the factors of convergence and divergence specific to each country, the following common principles of change could be picked out:

1. Social intolerance in various States is rising against a backdrop of a drift to ***hard-line law-and-order policies and practices***. The deviant youth is perceived first and foremost as a social problem, a source of risk and crime that requires a response in terms of a reminder of social norms or punishment. Whilst this representation of youth as a primary source of danger and crime is not new, it seems to have become accentuated, to the detriment of a vision that saw the 'child in danger' as someone whom society also had to protect (Mary, 2003; Mucchielli, 2008).

2. Perceptions and implementation in judicial practice of the ***notion of accountability*** have also changed noticeably. Here, the changes involve maintaining or abandoning the dialectic between two levels of responsibility that were traditionally associated in juvenile justice under the welfare regimen, namely, the young offender's responsibility for his/her behaviour, on the one hand, and society's responsibility for the juvenile's education or living conditions, on the other hand. Three types of drift can be identified:

• There has been a transfer of responsibility from society to the young offender, who is considered to be more responsible for his or her delinquent action.

• There is greater enthusiasm for 'alternative' sanctions, often linked to contractual arrangements, which has also given rise to an ideal of 'self-responsibilisation'. Accordingly, youth offenders are supposed to realise, under the effects of sanctions or the threats of sanctions, that they are responsible for their actions, although they do not always have the

psychological, social, and/or economic resources to shoulder the consequences of failing to fulfil their obligations.

- Finally, we have also discerned a greater tendency to hold the youth's 'entourage' accountable for his/her actions by shifting responsibility to his or her family and the local community (either the geographic community or cultural or ethnic community). This occurs through local support policies for youth offenders or their families and public safety policies in the case of the geographic community, through the mobilisation of ethnic associations and other such players in the community in the case of the cultural or ethnic community.

3. There has also been a ***shift in the State's orientations and strategies in the public management of youth deviance.*** A number of countries are delegating a large number of the State's responsibilities to other and new professionals, whether under the effects of the decline of the welfare model or due to the growing influence of neo-conservative community-based approach to service delivery. In such cases, the State endorses the principle of *multi-actorial governance* in the name of the need for better management but also due to budgetary and financial imperatives. This also applies to youth policies, whether in the field of education, health or justice, which used to be the Social Welfare State's preserve. The main consequence of this new orientation is the increased surveillance of young people and families by a host of entities and the extension of criminalisation to include certain types of behaviour that used to be considered to be mere deviations from the norm and/or petty delinquency.

4. In more and more countries, both juvenile and adult justice systems are tending to focus more ***on young foreigners or young people of foreign descent.*** This has taken on spectacular proportions in Italy, for example (Nelken, 2007), but the phenomenon can also be detected in a number of other European countries, with the notable exception of the Central and Eastern European countries, which have doubtless been affected less by immigration.

5. In a counterpoint to the tougher criminal justice responses to juvenile delinquency, a ***restorative justice paradigm*** has also emerged. This restorative paradigm, which is often associated with a bifurcation in the justice system's procedures, also reflects the increased role of the public prosecutor's office in carrying out these so-called 'third way' sanctions in certain countries. The rather widespread popularity of 'restorative' sanctions can doubtless be explained by the fact that through the many arrangements that they offer, these sanctions can meet the objectives and ends of the welfare logic (education, justice, and rehabilitation) with neo-liberal or neo-conservative accents (accountability, empowerment, and responsibilisation).

6. Finally, we must not discount *the impacts of international conventions* and the obligations that they put on states, even though their influence is variable. So, in Central Europe, these conventions are helping to disseminate a certain criminal justice culture, marked notably by human rights discourses. However, their real impact is hobbled by the lack of means in these countries to carry out the legislative reforms in actual practice. In other European countries, these conventions often seem to be instruments for contesting a social welfare model of justice that does not put enough emphasis on safeguarding the minor's rights. The example of Norway, where people have realised that an administrative and medical-social child tutorial system can mask largely disproportionate, ferociously punitive practices (Hydle, 2007), is emblematic of this group.

With regard to the initial working hypothesis, the examination of the developments in criminal justice led us to conclude that whilst the paternalistic tutorial model's hegemony was clearly called into question in Europe, the avenues taken to make the break clearly differed according to the country and were linked in good part to the differential impacts of the welfare logic's transformations, the dominance of a neo-liberal or neo-conservative paradigm, and the strength or weakness of the community model in the specific national contexts (Bailleau and Cartuyvels, 2007, 277-288).

1. The criminalization of youth in its social and political context: four key factors

These elements alone justified continuing our investigation of the changes that youth justice has undergone in Europe by putting these transformations in the context of broader political and social changes. This approach also tied in with an analytical perspective that is no longer restricted to the sociology of deviance. Several authors effectively underline the fact that changes in criminal justice systems must be studied in conjunction with the development of broader economic, political, cultural and social processes. Some, for example, underline the link between the globalisation of the economy and the limits on the Nation-State's powers to explain both the State's retreat to its 'regalian' functions for the purposes of recovering its legitimacy (Garapon and Salas, 1996) and changes in the State's forms and patterns of governing. Similarly to what we ourselves were able to ascertain, others stress that differentiated developments, occurring against the backdrop of the general rise of a 'culture of

control' (Garland, 2001), can nevertheless be detected in the field of criminality depending on cultural differences between countries, the relative autonomy of the different criminal justice systems, the role of human rights, and the impact of the increasing concern for the needs and rights of victims (Tonry, 2001; Snacken, 2007).

So, taking what we learnt from our previous research and from other contemporary criminological research, we chose to link this third part of our work, devoted to the changes occurring in juvenile criminal justice, to the socio-political developments surrounding these systems' deployment. The approach aimed at analysing the changes that have occurred in the criminalisation of minors in light of the current political, social, and cultural changes affecting society in Europe. We felt it would be legitimate to study the criminalisation process in conjunction with the changes in four social and political phenomena that influence the orientations of justice and juvenile justice systems:

o   *welfare* policies, which in Europe are marked by an ideal of activation;

- o   the role of *human rights,* which oscillates between a factor of criminalisation and an instrument that guarantees the "rule of law" protection;

o   the greater presence of the *victim* in justice policies and practices;

- o   *public opinion* and the *media,* whose views are often pitted against those of practitioners and researchers in the field.

In addition, we felt it made sense to go beyond the study of legal texts and writings and focus on the instruments – *placement in secure accomodation or imprisonment, alternative sanctions, and the extension of the judicial logic and forms to non-judicial measures* – which appeared to have such a significant role to play in both the primary and secondary stages of criminalisation. Following on from the two previous phases of our work, the aim here was to reveal both the *convergences* amongst the various juvenile justice systems, subject to common political and social developments, and the *divergences* or *differences* between them, which were linked to the singular cultural features of the societies concerned (the different forms of the welfare model, the greater or less influence of the embryonic neo-conservative model, the weight of social policies, the legal system's relative independence from 'infra-legal' events, and so on). In so doing, we took pains not to forget the disconnections or tensions that can exist between political discourse and its translation in the law, on the one hand, and judicial practices on the other hand, either because there can be a time lag between the moment that a legal principle is formally stated and the time it is truly adopted in practice

on the ground or because practitioners in the field can resist the changes, innovations, and guidelines that are driven from above.

2. The analytical grid: four primary factors of criminalization

2.1. The influence of the welfare doctrine and changes therein

The youth tutorial model, which dominated juvenile justice systems in Europe until the end of the 20th century, is largely associated with the ideals of the Welfare State. In European youth justice, the welfare doctrine was marked by the observance of eight principles. Emerging in the late 19th century, these "protective" principles gradually fanned out to a majority of European countries at rates that were specific to each country and in close conjunction with the changes occurring in the most fragile populations' conditions of political, economic, and social existence. These principles are as follows:

· Establishment of a strict age of minority, regardless of the nature of the offence.

· Creation of a specialised court and magistracy.

· Importance of the roles of experts and qualified intermediaries.

· Systematic consideration, before any ruling, of the youth's living conditions and personality.

· Split between the nature of the offence committed and the judicial measures or sanctions ordered.

· Implementation of a dialectic of responsibility in the juvenile court's decision: the youth's individual responsibility for his/her actions *versus* the collective social responsibility of the community/society for the youth's living conditions and education.

· Primacy of educational measures and refusal, except in 'exceptional and/or singular' cases, of sentences or sanctions depriving minors of their freedom.

· Choice of educational measures without fixed time limits and rejection of fast-track measures.

These principles, or at least some of them, are currently being challenged to various extents in a majority of countries in Europe. This weakening of the founding principles of juvenile justice is going hand in hand with a deterioration of the conditions of access to jobs for the least schooled youths, changes in the social ties and relations between generations, and a change in our relationship with collective norms. It is also taking place against the backdrop

of a major shift in the State's involvement in the employment field, especially for young people, with a lowering of labour costs, deregulation of the labour market, multiplication of types of jobs with guarantees of persistence, and the spread of schemes that waive labour laws under social and occupational integration policies (Castel, 2003).

This turnaround reflects the transition from the *welfare* policies linked to the Social Welfare State to *workfare* policies linked to the development of a *Neo-Liberal* or *Active Social Welfare State*, with the latter policies being marked by an interest in participation and negotiation but also, if not above all, by a desire to activate, empower, hold accountable, and control population groups in vulnerable situations. This state of affairs recalls A. Giddens's notion of the *Positive Welfare State,* an expression that, according to the author, underlines the replacement of a so-called protection policy predicated on the provision of State assistance by an "activation" policy aimed at mobilising individuals and families and thereby enhancing informal social control (Giddens, 2002).

A similar change is afoot in criminal justice, with activation and accountability policies that bring to mind the emergence of what might be called an *Active Penal State* (Cartuyvels, 2007), borne on the same wave of ambiguity as the *Active Social Welfare State* (Dumont, 2008). Whilst some authors posit in this connection the development of a "civilisation of the criminal law system" that is deployed through the implementation of participatory, negotiated arrangements, others are more inclined to see the emergence of a *consensus-based criminal logic,* which in this case could reflect a tendency to step away from the rehabilitative model associated with the welfare perspective and to move toward the responsibilising self-control model characteristic of the *Active Penal State*. As D. Kaminski stresses with regard to adult criminal justice, the model is no longer one 'in which the State or society takes charge of rehabilitating the youth, but one that gets the young people to take charge of him/herself, to be the subject of his/her own transformation, as the result of his/her consent or acceptance. However, the fewer resources the subject of the law has, the less able he/she is to shoulder this privilege of responsibility' (Kaminski, 2006, 337).

This trend is also seen in juvenile justice through the concern to consider the youth a responsible individual rather than the victim of a situation of social vulnerability, along with the will to endow the young offender with rights. In exchange, the young deviant is required to take responsibility for his/her behaviour by contracting into specific sanctions most notably via certain reparative measures[3.] The principle of activation that can be detected in the

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[3] This requirement of participation can also be borne by the parents, for example, in the case of house arrest and parental training decisions.

various social policies does not influence adult criminal justice only. It also affects the families and communities who are pulled into the management of ordinary juvenile delinquency. Moreover, it goes hand in hand with the strengthening of the juvenile justice system's re-emphasis on punitivity, notably through the reinforcement and multiplication of placement and imprisonment measures.

This is the context of changes specific to the Social Welfare State and welfare model in which we tried to examine the transformations that juvenile justice is undergoing:

· Are we dealing with increasing criminalization of youth deviance and its handling through, for example, growing reliance on incarceration, especially for increasingly young juveniles ?

· Are youth justice professionals, who are traditionally marked by the *welfare culture*, resisting the *punitive turn* sweeping across Europe better than adult criminal justice, notably by preferring integrative and continued rehabilitative sanctions?

· To what extent is juvenile justice affected by a logic of activation and accountability to the detriment of the older aims of education and treatment?

· How are the principles of intervention that are specific to the welfare model (sectoral approaches, culture of expertise, and imposed sanctions) combined with new types of intervention that strive to go beyond this welfare model (global and multi-actorial approach; negotiation and contractualisation of sanctions)?

2.2. Human Rights: a factor of protection or criminalization?

Historically, human rights belong *to the tradition of procedural guarantees or "garantistic" tradition* (Ferrajoli, 1989) within criminal law. Their main purpose was to protect the subject of the law from the excesses of the criminal justice system (the shielding function of human rights) . The pressure that human rights exerted on criminal law helped to create a criminal justice system marked by strict principles intended to safeguard freedom and human dignity, *via.* the legal definition of the offences and sentences; the setting of sentences that are proportionate to the offences; a ban on all inhumane and degrading sentences incompatible with fundamental respect for human dignity; a procedural framework guaranteeing the accused's rights to a fair trial (reasonable deadlines, rights of the defence, etc.); and the subsidiarity of criminal law, which is used as a 'last resort' (Cartuyvels, 2005).

Today, a certain number of authors wonder about the possible reversal of the relationship between human rights and the criminal justice system in the name of the victim's rights and/or homeland security interests (Cartuyvels *et al*., 2007). In a context marked by a

belief in the *magical powers of the symbolic function* of criminal law, human rights are increasingly mobilised as the *sword* of criminal law, contributing to criminalize more actions. The results are increased petitioning of criminal jurisdictions in all areas ('penal inflation'), a toughening or lengthening of sentences in the name of their deterrent powers, a return of the belief in the effectiveness of the *penal war* on deviance, and a weakening of various procedural guarantee principles that were traditionally attached to criminal law (principle of legality and subsidiarity of criminal law, rights of the defence, presumption of innocence, etc.).

Is the same upending of human rights occurring in youth justice? Historically, the trends in the tutorial youth justice system were different. The tutorial model of juvenile justice distanced itself from the criminal model starting in the late 19th century to adopt the form of an informal justice less mindful of procedural guarantees and upholding rights than adult criminal justice. Juvenile justice, being more flexible, would thus fail to uphold many of the procedural principles protecting the purported juvenile offender's rights that one finds in adult criminal justice. So, the definitions of crimes were often fuzzy, the sanctions had no time limit, and the principles of proportionality and equality before the sanction were given short shrift. Yet today, human rights and, more specifically within the framework of this approach, the focus on the rights of the juvenile, are regularly invoked in juvenile justice to justify a *return to the rule of law* in the name of protecting the rights of the child. This means more procedural guarantees in youth justice, the respect of the legality and proportionality principles, security and predictability for the juvenile on trial.

This comeback of the rule of law might, however, prove paradoxical. Ultimately, might not 'human rights talk' lead to the elimination of a special justice system for youth offenders, with the adoption of a legal model very close to the regimen of criminal law for adults, *i.e.*, proportionality, equality, and criminal law based upon the act? Might not such a turn-around facilitate the referral of young people to ordinary criminal courts? In a tough law-and-order context, human rights could also serve as a pretext for dealing more punitively with youth offenders as subjects with rights but also responsibilities. Moreover, this shift towards the accountability/punishment of minors might be accentuated in the name of protecting the victim's (human) rights or in the name of the right of actual or potential victims of juvenile delinquency to live free from fear and crime.

2.3. The influence of the victims

After decades of disinterest, the emergence of the victim movement has influenced criminal justice in Europe for the past thirty years or so. Several factors explain this. Besides the emergence of a *compassionate society* marked by a rising demand for recognition of individual suffering, M. van de Kerchove and F. Tulkens point to the following factors: '…the challenging of the State's exclusive intervention in more and more sectors of social affairs, including criminal justice…; the spread of individualism and the multiplication of subjective rights; the increased feeling of lack of safety, especially linked to the steady rise in the number of victims who do not receive compensation; the crisis of the rehabilitation model conceived of as treatment for the delinquent; the need to enhance the image of a criminal justice system in crisis in terms of both effectiveness and legitimacy' (Tulkens and van de Kerchove, 2005).

The influence of the victimisation movement in criminal affairs can be felt in three ways: it helps to toughen the reaction to deviance (Neys and Peters, 1986) in the name of the potential victims' right to live in safety and in response to the *real* victims' supposed claims; it promotes the granting of new rights to the victims in the course of the criminal trial in order to combat the classic phenomenon of secondary victimisation; and it encourages the adoption of alternative sanctions guided by the primary concern to repair the damages/injury that the victim has sustained and to help restore the social link that has been frayed by delinquency (Walgrave, 2003).

In the case of juvenile justice, the first and third orientations doubtless are the ones that weigh most heavily on the envisioned legislative reforms and existing practices. On the one hand, taking account of the *victims' interest in punishing* the perpetrators of offences is fuelling criticism of a protective system that, in pursuing its educational aims, is considered to be too empathetic towards the young offender and lacking in respect for the victims or their families (Kaminski, 2007; Nagels, 2007). This may lead to tougher sanctions and juvenile justice sliding towards criminal justice. However, on the other hand, the *victim's interest in 'reparation'* can bolster the development of alternative modes of dispute resolution, patterns fed by the ideals of *restorative justice,* to wit, police restorative cautioning, community reparation orders, mediation, family group conferences, and so on. There is no lack of schemes in juvenile justice that try to give priority to negotiated or consensual justice based upon participation and discussion, reparation of damages/injury, and bringing peace to situations of conflict. They raise a number of questions:

• What schemes in juvenile justice incarnate this restorative ideal?

・Between a *diversionary* perspective (reparative justice is an alternative to traditional sanctions-based justice) and a *maximalist perspective,* the idea is to make use of a restorative dimension, regardless of the sanction and even in the case of coercive sanctions (Walgrave, 2003). What, then, is its place in the system?

・When they are present as alternative sanctions, do these schemes truly propose an alternative to another way of handling deviance in young people, or do they more simply help to *widen the net*?

・How are these alternative forms of conflict settlement perceived by the parties involved?

It is also worthwhile, in this respect, to compare the schemes and objectives that are preferred in countries with different political and religious traditions. Indeed, countries with a Roman-Germanic tradition, that are marked by a Catholic heritage, and strongly attached to a highly centralised model of the State do not necessarily consider such informal dispute resolution's schemes the same way as countries that are influenced by an Anglo-American culture, marked by Protestantism, and much more open to community conflict management (Archibald, 2003).

2.4. The media and public opinion

In our societies, the media can impose views on the public – an effect that is all the more powerful in that it remains veiled – by offering its audiences frames for interpreting the social world. The selection of social affairs, facts and events that are likely to 'make the news' is indeed anything but neutral and constructivist analytical schemes have revealed the role played by the media in various areas, especially during the emergence of *moral panics* (Cohen, 1972).

This phenomenon, which has largely been revealed by researchers interested in the role played by the media through their handling of crime and fear-of-crime issues, does not spare juvenile delinquency or the way it is handled by the judiciary or administration. In most Western countries, youth crime has become a key issue in the political and media spotlight. The European public is exposed to very broad media coverage of events linked to juvenile delinquency, and this exposure is not without effect, even though 'individuals are never passive with regard to the information that they receive. The media's role is more that of "framing": They do not deliver ready-made thoughts, but structure public opinion around a few major topics' (Erner, 2006, 75).

The media thus present juvenile delinquency as a particularly alarming social issue. The emphasis that is regularly put on the sharp rise in the rate and seriousness of youth crime

leads to heightened popular anxiety, pressure exerted on the political players, and, ultimately, tougher judicial policies on deviant youth. It is true that the image of juvenile justice is often distorted as much by the media coverage given to sensational cases, as by criticism of a lax judiciary that allegedly lets delinquent youth get off scot-free. As a counterpoint, the imposition of tough sanctions, often in the form of placement or imprisonment, is regularly brought up as a solution for the decried situation.

This presentation of juvenile delinquency is often made at the price of a gap between the perception of the problem that is proposed by the *virtuous triangle* of the media, public opinion, and politicians, on the one hand, and the real-life experiences of the professionals working in the juvenile justice system and the knowledge gleaned by researchers on the other hand. This gap leads to the situation of *multiple ignorance* that Doob and Roberts (1988) speak of, along with Snacken (2000), between the judicial system and the public when it comes to their respective images and expectations. This divide, which is broadened by the media, between how the problem is perceived and how it is handled by the juvenile justice system, was moreover denounced in a European Economic and Social Committee (EESC) opinion on 'The prevention of juvenile delinquency. Ways of dealing with juvenile delinquency and the role of the juvenile justice system in the European Union' of 15 March 2006. This opinion effectively called for developing 'well-designed information policies to help put the over-dramatised perception of the issue', which it showed to be of minor importance compared with adult crime, 'into proper proportion'[4].

The impact of the media's treatment of these issues on the construction of public opinion is not negligible. The existence of a feeling of fear linked to the media's coverage of crime is known to have a direct influence on people's policy preferences. According to Sotirovic (2001), the media's portrayals influence people's knowledge of events and the ways that they are affected by them. They also orient their preferences for a type of punitive or crime prevention policy. According to the same author, the preference for prevention policies requires complex thought processes, whereas the preference for punitive policies is allegedly linked to a feeling of fear fuelled by an emotional, summary presentation of events. Now, it does indeed appear that the ways that crime topics are treated are largely dominated today by simplified approaches ('infotainment', televised special reports) that play more on emotions or compassion than on the audience's ability to think (Sotirovic, 2001; Dubois, 2002). In addition, 'the steadily increasing sophistication of the media's means and the increase in air

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[4] Official Journal of the European Union, 2006/C 110/13.

time generated by the multiplication of television channels increase the visibility of serious delinquent actions in the public's eye, thereby creating the impression that the phenomenon of delinquency itself is on the rise. The increase in the phenomenon's visibility is taken for growth of the phenomenon itself' (Trépanier, 1999).

Finally, a certain erosion of the political polarization in the analysis of these issues of deviance, doubtless connected to the crisis of the Social Welfare State, has been ascertained (Castel, 1995). Talk revolving around the causes of delinquency has been replaced today by a consensual vision that views youth crime as the responsibility of the individual or his/her family. This shift in the analysis could indeed be in part the consequence of the gradual homogenisation of political and media discourse about juvenile delinquency. The question then becomes that of determining the role of the media in the minor's development as a *figure of unsafety and crime,* and the impact that media projections have on social representations of juvenile deviance. On the other side of the fence, we must ask how the people working in the field of juvenile justice and researchers are organising to combat the phenomenon of *multiple ignorance* to which the media contribute and to oppose the abusive simplifications with which the media's scripts abound.

3. The schemes that were chosen

In order to ensure consistency of analysis and the comparability of different countries' youth justice systems, each researcher treated three priority schemes on the basis of the experience and state of knowledge specific to his/her country. These schemes were studied from the angle of the transformations that affect both primary criminalization (the production of criminal laws and policies) and secondary criminalization (the enforcement of the criminal laws and policies, institutional functioning, and practices of those who work within the system). The idea was thus to use both the legislative texts and reforms that they embodied but also the practices that they approved in order to evaluate the ongoing transformation processes by the yardstick of the four factors previously identified.

The roles of the judges and other professionals working in the system are obviously key elements of the analysis, for two reasons. First, whilst a large number of today's reforms and changes come from above, according to a *top-down* way of thinking, and have legislative impetus or political discourse as their common starting points, others are built more broadly from below, according to a *bottom-up* approach. Whilst the former are less attentive to the real needs and working conditions of the players on the ground, in terms of both structures

and professional cultures (Snacken, 2000), the latter, on the contrary, tie in with an interactive process of public policy development that is in tune with the realities of the field (van de Kerchove and Ost 1988; Lascoumes, 1990; De Fraene, 2003). Second, the study of judicial or para-judicial staff practices makes it possible to pinpoint possible gaps between the principles that are decreed by the political administrative apparatus and their local translations when it comes to their implementation, *i.e.*, the capacity for resistance or subversion etc. Here the analysis makes it possible to examine the extent to which the hypothesised mutations from one model to another are found in each jurisdiction and to assess more accurately the impact of professionals within the field of youth justice, who in some countries seem to be resisting pressure to be more punitive.

3.1. The placement/imprisonment of young people and developments in this trend

An increase in custodial measures for young people, along with a similar trend for adult offenders, has been discerned in many European countries. This is due to either an increase in the number of detention measures or a lengthening of the sentences that are handed down (Aebi *et al.*, 2007). All forms of deprivation of freedom were taken into account in this study of juvenile offenders, *i.e.*, measures executed in custodial centres and prisons, educational centres, secure vocational training facilities, and so on.

The trends in custody are obviously crucial for assessing the impacts of the four factors of criminalization studied here. This is because a *logic of "prisonization"* meets the criticism levelled at the *accountability-eroding* effects and failures of the protective welfare model of juvenile justice (Bauman, 1999). It can be deployed in the name of the victim's (human) rights and the public's right to live in safety. It often reflects a desire to fall in line with the repressive injunctions that are broadcast by the media and satisfy the victims' supposed wishes for punishment.

3.2. The development of alternative sanctions

The ideal of a *third way* between prevention and punishment is present in juvenile justice and exemplified by the adoption of alternative measures or sanctions: community reparation orders, mediation, family group conferences, mandatory care, schooling or vocational training, a ban on frequenting certain individuals or places, and so on. These measures are often subject to very strict and limiting conditions and can culminate in restrictions on

movements or even house arrest. These *alternative dispute resolution* measures, as illustrations of a negotiated justice that is mindful of the victims, represent an interesting alternative to punitivity and the public's supposed clamouring for punishment. They are often presented as the incarnation of a new model of justice in the community. However, they have a rather ambiguous or paradoxical relationship with human rights: Whilst they pay little heed to the rule of law principles put forward by human rights, they can nevertheless also serve human rights by protecting minors from frequent reliance on punitive thinking revolving around retribution.

A special question is raised here by conditional judicial measures and the judicial consequences of the minor's failure to fulfil the obligations that are linked to alternative sanctions. Such breaches of obligations can effectively speed up the institution of more severe options, notably in the form of placement or imprisonment, as shown spectacularly by the Canadian example (Hastings, 2007).

These conditional sanctions are playing an increasingly important role in the judicial treatment of youth offences in many European countries. Whilst they are taken on various levels of the juvenile justice system, and frequently upstream from the juvenile court judge's intervention (by the police, public prosecutor's office, etc.), they are implemented by new professionals outside the traditional judicial professions. Here the analysis focused on the conditions' imposition: Why such conditions? Which young people are made subject to their tutelage? However, it also looked at the possible breach of these conditions and its impact on the decision taken: Who ascertains the breach? In what circumstances are breaches reported or overlooked? What type of condition follows the failure to meet conditions?

3.3. The extension of judicial logic or its penetration into justice related fields

The borders of justice are markedly more porous than they used to be. *In terms of form,* in some countries networking and multi-actorial governance is replacing the compartmentalised sectoral approach characteristic of the welfare model of intervention. This new way of operating is conducive to opening up various institutions such as schools, vocational training institutes, social work bodies, and mental health centres, to the professions of the juvenile justice system (de Coninck, Cartuyvels *et al.*, 2005).

This interpenetration movement is reflected by two trends:

• On the one hand, certain institutions dealing with children or young people are outsourcing conflict resolution, as for example problematic behaviour in school. These problem situations

are then referred to bodies or professionals situated inside or on the edges of judicial institutions, such as prevention and mediation services.

• On the other hand, these institutions are calling more and more upon the law and justice systems to manage conflicts that arise within their bounds: Either they ask for help in the form of direct intervention by the police and judiciary, or they import judicial conflict settlement approaches that they sometimes apply much more rigidly than the judiciary itself. Some see in this trend the development of a *social magistracy* (Donzelot and Wyvekens, 2004).

The extension of this judicial logic beyond the judicial institution's boundaries is also seen *in terms of substance.* Under the tutorial system, the ideal of protecting a juvenile or child in danger was what allowed this extension, triggering criticism of the *cancerisation of social control* in certain countries starting in the 1980s. Today, it is notably through the notion of *incivilities* (or anti-social behaviour) that the youth justice system can extend its sway over new situations[5]. The notion of incivility[6] is a blurry concept, close in some respects to that of '*trouble de voisinage*' ("private nuisance"), designating a motley set of what are deemed to be disturbing deeds and behaviours that upset the community (Bachmann and Basier, 1984), without their truly fitting the legal contours of a criminal offence.

Here, too, these two lines of development – at a formal and substantive level – challenge the conventional parameters of the welfare doctrine in justice. They oppose the principle of the subsidiarity of criminal law's intervention that is dear to the classic philosophy of human rights and question the roles of the victimisation process and the media in the rising criminalization of heretofore non-judicial situations.

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This analytical grid, combining four elements for interpreting the developments ascertained in the way youth justice operates (*i.e.*, the transformations of the welfare doctrine, the role of human rights, the victim's point of view, and the media) and applied to three schemes (*i.e.*, custodial practices, alternative sanctions, and the extension of the judicial approach), has been

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[5] The use of this term was formerly linked to victimisation inquests, but has taken on a more popular meaning, as used today, through the importation of the 'zero tolerance' and 'broken window' theories from North America (Harcourt, 2006).

[6] In France, the term 'incivility' has practically disappeared from the specialists' vocabulary since 2002 and the many amendments made to the 1945 Ordinance since then. The legislative changes enacted over this period made it possible to include some of the most emblematic behaviours into the criminal code, as a rule in the form of new offences carrying a sentence of one year in prison, as a result of which they may be handled by conventional judicial procedures.

proposed to the researchers. Given the data available in their country, his/her own research, and the different organisation of academic disciplines in their countries' universities, each of them undertook this comparative exercise.. Each of them strove to answer the questions raised by the course taken by the youth justice system in his/her respective country, taking account of the country's history, culture, and socio-economic development. We should like to thank them all for their active participation in this collective work. It contributes to the development of shared scientific knowledge and, hopefully, will bolster resistance to regressive temptations or onslaughts when it comes to our duties to educate our younger fellow citizens.

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