

Juvenile justice in Europe Between continuity and change

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‘Thus force cannot assert itself as such, as brute violence, an arbitrariness that is what it is, without justification; and it is a fact of experience that it can only perpetuate itself under the colours of legitimacy, and that domination succeeds in imposing itself durably only in so far as it manages to secure recognition, which is nothing other than a misrecognition of the arbitrariness of its principle.’

(Bourdieu, 1997)

Shaped, with country-specific variations, on a model inherited from the ‘Social Defence’ school, of which it has been one of the most faithful flag-bearers all through the twentieth century, juvenile justice has developed a ‘tutelary’ judicial model. This model brought about the implementation of an individualized form of justice, with a concern for prevention and education as well as protection and integration, and supported by a specialized jurisdiction working hand-in-hand with experts and non-judicial actors.

This ‘tutelary’ project was seriously challenged in various Western – more specifically, European – countries at the turn of the last century. In a deteriorating socio-economic situation, a social and cultural context marked by fear of crime and the rise of a mass-media-fuelled form of penal populism, juvenile justice has been caught in a crossfire of criticism. On the one hand, it has been considered rather inefficient with regard to its educational purposes, displaying excessive leniency towards youths and indifference towards ‘real victims’. On the other hand, it has been criticized for not granting enough rights and relying on punitive schemes concealed behind an ideal of protection (van de Kerchove, 1977). The ‘fuzziness’ of this flexible justice model prompted various reforms aiming to foster its coercive aspects while offering better protection for the rights of juveniles to a ‘fair’ trial.

While the emergence of a populist reading of youth deviance – matched by a corresponding political will of reinforcing the punitive system – is quite conspicuous in many European countries, no radical, generalized coercive turn has been observed in juvenile justice yet. Rather, what seems to be happening is some kind of *hybridization* process combining the ‘welfare’ heritage and the neoliberal inclination, punitive neo-conservatism and a restorative culture, a support for the logic of individualized punishments and a respect of basic rights, at the level of both primary and secondary criminalization. Besides, while similar overall developments are noticeable in all countries, they are the product of complex interactions between economic, social,

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cultural, and political factors. This explains why shared features coexist with significant national disparities reflecting each country's political and cultural heritage.

Our account of the evolution of juvenile justice in Europe at the turn of the twenty-first century will be supported by findings from a three-phase research programme we have conducted over a decade.

Phase 1 involved comparing the formation of a new institution – juvenile courts – as it developed in the main Western European countries at the end of the nineteenth century. The creation of the very first juvenile court in Chicago (1899) triggered a rapidly expanding movement, fostered by contacts among philanthropists. From the early twentieth century to the end of World War II, most Western countries followed suit. In spite of widely diverging political regimes, complex cultural and religious histories, and contrasting levels of social and economic development, this judicial model for the treatment of juvenile deviant behaviours ultimately spread across the whole continent (Bailleau and Cartuyvels, 2002).

Next, we explored the fissures in this model, which started to appear towards the end of the twentieth century. No sooner had the movement, under the pressure of international organizations and the various treaties and charters signed by most countries, started to spread globally – and more specifically in Eastern Europe after the fall of the Berlin wall in November 1989 –, than it started to be challenged in Western Europe and the United States by various neoconservative governments (Bailleau and Cartuyvels, 2007).

Finally, and third, focusing on a few emblematic aspects – variations in the management of youth custodial sentences, alternative measures or sanctions, the extension of the judicial logic to connected fields – we endeavoured to understand how the daily practices of both the courts and the various professionals involved tended to recombine, and how traditional modes of intervention could mix with these novel approaches under the pressure of an increasingly pervasive neoliberal ideology (Bailleau and Cartuyvels, 2010; Bailleau, Cartuyvels and De Fraene, 2009).

In the context of a book chapter, we cannot afford to give a country-by-country presentation of all convergent and divergent results from this decade-long program.¹ Hence, we have selected a few of the most emblematic aspects enhanced by our research and will use a two-step approach. First, we shall highlight the points of transformation of the 'Welfare' justice model that used to prevail in Europe in the mid-twentieth century. This section will focus on whatever elements have been identified in the various countries as departing from this almost 'unified' justice model typical of the second half of the twentieth century. Second, we shall present the comparative elements that account for both the convergences and divergences that occurred over time among the various studied countries.²

The transformations of juvenile criminal justice in Europe

Juvenile criminal justice during the welfare period

Our early research has enabled us to identify eight practical criteria characterizing the operational phase of juvenile criminal justice under the welfare regime:

- creation of a specialized court and magistrate;
- strict definition of an age of minority, regardless of the nature of the crime;
- importance of the role of experts and authoritative sources;
- systematic recognition, before any sentencing, of the living conditions, personality, and education of the youth;
- separation of the nature of the committed act and the prescribed measures or punishments;

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- shared responsibility regarding juvenile delinquency, as opposed to the sole individual responsibility of the youth facing the consequences of his act alone;
- primacy of 'protective-educational' measures, and limited custodial sentences, punishments, or measures;
- choosing 'protective-educational' measures of indeterminate duration, and rejecting summary procedures.

While we do build upon these criteria which characterize the stable operational model of the welfare system at the end of the Second World War, as was agreed in the various international conventions, we still observe a degree of variance among Western European nations.

Chronologically speaking, for instance, it appears that not all countries reform their previous juvenile justice system at the same pace. For instance, our first criterion – the creation of a specialized court and magistrates – came to fruition in 1912 in Belgium, whereas France has had to resort to a two-step process: the juvenile court was created in 1912 indeed, but a specialized magistrate was only established in 1945. While in Germany, in 1922 and 1923, two innovative bills were passed – one to protect endangered youths, the other to regulate the criminal aspects of juvenile justice; the Nazi regime, with its focus on punishment-oriented education, took a backward step. In Spain and Portugal, change was slower and development came later. Only the demise of dictatorial regimes, during the second half of the twentieth century, made it possible for a juvenile justice system conforming to the eight above-mentioned principles to emerge. In Italy, the juvenile court was established by law in 1934.

In addition to these discrepancies in the timing of reforms, other political or cultural elements hampered the synchronized evolution of European juvenile criminal justice systems. Scotland, for instance, always stood apart (especially from England and Wales) by establishing neither a juvenile court, nor a specialized magistrate. And while respecting the spirit of the welfare system, this nation always insisted on maintaining its own 'hearing system', which places the responsibility for taking educational measures against juvenile criminals into the hands of representatives of the community. Switzerland had to wait until 2002 to benefit from a unified system based on these principles. Until then, cantons were largely autonomous, and few of them respected either the spirit or the letter of the welfare system, with its eight above-mentioned principles.

While sometimes quite significant operational divergences do exist between the various national systems, such discrepancies do not fundamentally challenge the gradual harmonization process of juvenile criminal justice systems. The development of the 'tutelary' model of juvenile justice, initiated in the early twentieth century, is linked to the deployment and generalization in Western Europe of social welfare policies which in turn have to do with the social State (Castel, 1995).

This relative harmonization can be explained by the nesting of juvenile penal policies within overall social policies, of which, in most countries, they constituted but one sub-section at the time.³ Such proximity with social policies, as well as educational and cultural policies, can be explained, in the post-war context, by the predominant role and place of the young in the reconstruction and development of European economies, where youth was perceived as a key element. The preamble of the Ordinance of 2 February 1945, which in France was the stepping stone of this new orientation of juvenile justice policies, is quite typical:

France is not so rich in children that it can afford to neglect whatever may help them grow into healthy beings . . . The Provisional Government of the French Republic intends to efficiently protect minors, especially delinquent minors [. . .] They can henceforth only be

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subject to protective, educational or reformatory measures, pursuant to a regime of legal irresponsibility that can only be departed from in exceptional circumstances, and through a reasoned decision.

(Bailleau, 1996)

The anchoring of juvenile justice to 'well-being' policies also explains some of the differences that can be noticed from one country to another, depending both on their social protection system and on their system of government – central or federal. This is mainly why it remains possible to challenge the idea of converging systems, as noticed by A. Crawford and S. Lewis, who added that the various systems always constitute a 'complex – and paradoxical – assembly of political, cultural, and institutional forces' (Crawford and Lewis, 2007). Apart from country-specific differences, however, some major trends are discernible and can be classified according to the eight mentioned criteria. The combination of these criteria certainly adds weight to convergence-based analysis, all the more so since they tend to reappear in several pieces of international legislation that put pressure on national legal frameworks. The influence of international law was particularly felt when these principles were integrated to the juvenile justice systems of former Eastern European countries, when they opened up on the international community.

This relative homogeneity lasted until the 1980s in Europe. Thereafter, under the pressure of economic restructuring and youth unemployment, with a pervasive feeling of insecurity obsessively focused on youth crime, given the rise of neo-conservative trends and the neo-liberal ideology, the welfare orientation in the treatment of juvenile crime started to be challenged in many countries.

Ruptures seen at the onset of the twenty-first century

A majority of European countries, at the turn of the twentieth to twenty-first century, saw significant changes in their legislation, as well as transformations in the practice of field professionals.

England, under the influence of New Labour, was first to introduce legislative changes, with the slogan 'Tough on crime, tough on the causes of crime'.⁴ As often happens with this kind of political announcement, the first term of the proposition was carried out more effectively than the second. Other reforms, not necessarily as repressive, were implemented in other European countries. In 2002, Switzerland and Canada reformed their legislation. Romania and Turkey followed suit in 2005, Spain and Belgium in 2006. France initiated frequent and far-reaching changes from 2002, along a line inspired by US neo-conservatives.

We mentioned in the introduction that these changes were mostly oriented towards a tougher legislative stance, consisting in particular in extended custodial measures, and the multiplication of juvenile supervision and detention centers. In many European countries, the latter measures seem to be more and more routinely applied, even though in the welfare phase – as well as according to international conventions –, they should remain exceptional and only be resorted to when other options are failed. The proliferation of probation measures, which allow for the non-institutional (or 'open') treatment of young offenders as long as a set of contractual obligations is scrupulously respected, also plays a part in this toughening of the stance on juvenile crime, as evidenced by Canada prior to the reform of 2002. Before this change, Canada had had a very high rate of juvenile imprisonment, because these probation measures were strictly enforced. When minors failed to comply with the entire set of conditions, there were immediately detained for 'breach of probation', which accounted for more than 70 per cent of imprisonment measures.

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Considering this overall legislation-toughening trend, other European countries have either refused to follow suit, or found some kind of balance between the securitarian tendencies of governments, which usually enjoy popular support, and the resistance offered by the professionals involved in operating this institution.

The German case is particularly enlightening in this respect. In Germany, the various professionals maintain a strong cohesion: thanks to frequent consultations and colloquia gathering youth magistrates, educators, social workers, psychologists, etc., a consensus can be reached on how young offenders should be treated. The consensual decision reached through these encounters and exchanges is then publicly and collectively endorsed. This collective mobilization has made it possible to resist the political pressure arguing for a toughening of the legislation. Today, Germany stands as one of the European countries that has best succeeded in maintaining the ideals of the welfare phase, even improving the conditions of its implementation. In Germany, young offenders can be legally treated until the age of 21, with many current experiments even pushing that limit up to 23. By way of contrast, France is increasingly applying adult-oriented dispositions to young offenders aged 16 and above.

Meanwhile, Belgium is trying to maintain a balance between 'repressive' demands from both the public and the authorities – following a series of particularly gruesome crimes that mobilized the population – and the resistance offered by professionals. Simultaneously, new youth custodial schemes have been developed to meet this coercive pressure while still developing, under the influence of academia, alternative measures based on the principles of restorative justice (Walgrave, 2000).⁵ The 2006 legislation reform is three-pronged: the objectives are to protect, to repair, and to punish, which does indeed account for this quest of a balance between opposite pressures.

Spain, which is confronted with the issue of the Basque separatist movement, has toughened its legislation to counter urban violence in the Basque province, but also as a response to pressure from the victims' movement. In practice, resistance or inaction from professional bodies has been an efficient way of circumventing the influence of this toughening of primary criminalization. Alternative measures have been developed to replace detention, and the public prosecutor keeps playing an important part in the dejudicialization process through classifications and alternative measures for petty offences.

In Slovenia, the protective model inherited from the communist regime's 'State paternalism' remains dominant. Unlike adult criminal justice, juvenile justice has been spared the punitive reforms that could have been sparked by victim organizations, a securitarian context, or the example of other European countries. A recent special bill on the treatment of juvenile offenders, however, might be interpreted as signaling the temptation of embracing the European trend towards a toughening of penal policies.

France has chosen an alternative way. Since 2002, about a dozen bills modifying the Ordinance of 2 February 1945, which served as the stepping stone for the development of education-based judicial treatment policies, have all been passed. All these amendments lean towards the toughening of both incriminations and measures/penalties, and have contributed to the gradual alignment of the treatment of juvenile offenders aged 16 and above with that of adults. Moreover, new procedural channels have been implemented. These have upset the classical operating mode of the courts by enhancing the role of the public prosecutor – the '*parquet*', which in France is subordinate to the political power – at the expense of juvenile judges. In terms of the treatment itself, probation measures and custodial penalties or sentences have been promoted to the exclusion of anything else. While the last closed educational facility had been shut down at the end of the 1970s, a 2002 bill of law reinstated these institutions with the creation of the *Etablissements Pénitentiaires pour les Mineurs*, i.e. new prisons entirely devoted to

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juvenile criminals. The extremely high operating costs of such facilities means that many urban educational centres had to be shut down, and the resources of non-institutional educational teams have been severely strained. Faced with this repressive orientation, field professionals have tried to get organized and to maintain some form of educational treatment of young offenders. The situation today is rather confusing, with on the one hand the heavy pressure applied by the public prosecutor on the orientation and procedures, and on the other hand specialized professionals – magistrates or educators – who try to maintain some educational orientation. What is being tested is the capacity of resistance of these professionals against repressive orientations when, unlike their German counterparts, they find it difficult to mobilize collectively in order to get their voices heard.

These various examples testify that while a general trend towards a toughening of juvenile criminal treatment does exist in Europe today, it is by no means one-sided. Apart from the specific orientations of France, whose fundamentally repressive turn looks like an exception in Europe (Bailleau, 2008), most European countries seem to display a shared willingness to also emphasize other dimensions, such as making young offenders more responsible. Many reparation, mediation, and probation measures have been promulgated in the various countries and adopted at the international level. The goal of these new measures used to make young criminals accountable for the consequences of their actions. As such, this new objective can fit into a toughening agenda; however, in most cases, it can also contribute to maintaining some of the educational goals of the previous phase. Hence, more often than not, what happens is that educational objectives go through a hybridization process that enable professionals to maintain a demarcation between the treatment of adults and that of the youths, while still meeting part of the needs or pressures of public opinion and governments.

Factors explaining the evolution of juvenile justice policies

These contrasting views of juvenile justice policies in Europe in the early twenty-first century can only be properly understood if set in a social and economic context that, in spite of the gradual harmonization of social policies fostered by the European Commission, remains fairly national. A few salient facts need to be mentioned for the proper evaluation of this national framework and its influence on juvenile justice policies. Depending on the socioeconomic, political, or cultural environment in which they are at work, these elements may have quite dissimilar influences at the European level. While in some cases they contribute to the general convergence of European youth justice policies, in other, less frequent circumstances, they may in fact sharpen the contrast. One example is the overall trend towards encouraging the accountability of young offenders, which has been implemented in many countries, thus throughout Europe, spurring the development of reparation or mediation measures that contribute to a welfare-oriented treatment. In France, however, this has led to the gradual alignment of the treatment of 16-year-olds and above on the treatment of adult offenders.

What shared factors have influenced the – sharp or not-so-sharp, depending on the countries – punitive turn taken by juvenile justice? At the end of our research, we have retained five of them. First, in a deteriorated socioeconomic context, the image of the young has been significantly altered. Given these circumstances, mass media influence has weighed in on the toughening of juvenile justice in various countries. Similarly, the growing interest for victims of crime may have played the same role, even if this interest for victims may foster different tendencies at the secondary stage of criminalization. Next, the impact of human rights to counter the ‘paternalism’ of the tutelary justice model, as well as the development of new forms of penal

managerialism associated with an ideology of risk and a decrease in social funding, have altered the arrangements typical of youth justice under a welfare regime. Finally, the influence of these factors, which may either, at times, contribute to harmonizing or to contrasting juvenile criminal policies in Europe, has to be interpreted against the backdrop of the specific national political and cultural contexts in which these are at play. Depending on this context, these factors won't bear as heavily or have the same impact on juvenile justice developments.

The socioeconomic situation and image of the young

In the majority of countries, youth unemployment has only been getting worse these last few years. Post-Fordism has produced an entire class of youth who are socially excluded from the job market, and whose numbers are significantly higher than those of adults.⁶ More and more of them are unable to find a stable job before they reach the age of 22–25. From the moment they reach the end of schooling or vocational training to the time they finally get a job, they experience a protracted period of inactivity which is particularly favourable to the development of certain transgressive activities for those with a shaky family or social environment (Lagrange, 2001).

Such recent developments have had an extremely negative impact on the image of the young among the general population. From a positive image – the foundation of economic development, the future of the country –, youth today has gone, in many countries, to being perceived as a danger, the source of a shared social insecurity which is embodied in the deviant behaviour of some inactive youths. More often than not, this negative representation focuses on immigrant youths from the most recent sending countries, who are used as symbols by xenophobic political movements. In some countries, this negative image is exclusively attached to children of recent immigrants. Italy is a case in point: the juvenile criminal justice system is almost exclusively focusing on this foreign-born population. In this country, diversion mechanisms, which have been legalized in 1988 and make it possible to quickly exit the penal system, are mainly used for indigenous youths.

This twofold degradation – of the image of the young, or at least some of them, as well as of their socioeconomic situation – does not appear in every country: some of them have maintained a generally positive image of their youth. Germany, Slovenia, and Scotland are the most emblematic representatives of this minority trend, which partly explains why these countries have made little or no changes to their model of judicial treatment of delinquent youth, maintaining a significant impact of the welfare model.

The media, moral panic, and penal populism

Pondering the weight of the media in the development of this new punitive orientation with any degree of precision is a difficult task. However, a recent trend has become noticeable in European countries: governments seem to have become increasingly prone to promoting legislation changes on the spur of the moment, following some tragic event that has been put in the spotlight by the print or electronic media. Such legislative changes follow a rather set pattern in that something *will* be toughened – either the prescribed penalties or the conditions of execution of the measure or penalty.

While the political agenda of the 2006 legislative reform in Belgium was clearly inspired by a specific, gruesome media-publicized news item, the emblematic example of this disturbing trend is in fact to be found in France. As noted by Bailleau:

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the amendments made by recent administrations, as well as the current administration, to the 1945 penal ordinance are the 'firm' response of the political class to a number of media-political campaigns on the theme of the inefficiency of non-institutional, educational or foster care measures prescribed by juvenile court judges regarding 'today's youth' youth judges.

(Bailleau, 2009, p. 444)

In this country, the exploitation of certain crimes towards ends that clearly transpire as political had generated an unstoppable wave of legislative inflation, even though these 'new' bills are rarely used by magistrates and seldom evaluated by the policy-makers who had them passed in the first place. Similarly, England and Wales have had more than their fair share of emotional discourses demonizing juvenile offenders, which has led to 'penal populism' and the subsequent rise in youth detention figures (Field and Nelken, 2010).

With respect to this problem, L. McAra mentioned the paradoxical situation of Scotland, where juvenile delinquency, under the combined pressure of the media and the political scene, has become a cause for deep concern in the population, even though all indicators showed that juvenile crime levels were either contained or decreasing (McAra, 2010). This paradox can be explained by the publicity garnered by several rare but sordid news items involving unruly youths. As noted by Maria Bernuz about Spain (Bernuz, 2010), the repetition and amplification of these isolated facts by the media ultimately produced some kind of trivialization which led people to consider these outstanding facts as the usual behaviour pattern of their youth. In such circumstances, the only approved solution left – indeed, the solution demanded by the population – is the imprisonment of juvenile offenders. Then, little by little, this punitive fever contaminates field professionals, who increasingly perceive custodial measures as a useful tool for applying pressure on the youths they are working with in a non-institutional context.

This kind of media hype is highly problematic in the sense that however scattered they are, such news items are rarely put into a proper perspective. No mention is ever made of the ordinary, benign delinquency of most juvenile offenders, or of the efficiency of alternative educational measures that impact most of them. Only a few countries – including Portugal and Slovenia – seem to be free of this media frenzy that hampers the developments of youth justice in Europe.

The victims' movement and the offender accountability movement

In connection with media influence, one has to mention the irresistible victims movement, which has a growing influence on the organization of criminal justice. Juvenile criminal justice is no exception in Europe, although the influence is generally more discernible at the level of primary, rather than secondary, criminalization. Quite often, victims will be mentioned when some toughening of the legislation is on the agenda to tackle a media-political emergency situation. However, this rarely happens in the normal course of the operations of the judicial apparatus, where their presence is scarce and their interests hardly taken into account.

This paradox regarding the position of victims is particularly noticeable through the generalization, in Europe, of mediation or reparation measures, in which victims are supposed to be involved. Such measures play an increasingly significant part, both at the public prosecutor's office and in courts. The reparative logic is meant to address criticisms pertaining to the functioning of juvenile justice under the welfare regime, which is perceived as focusing excessively on the young offender while ignoring the victim. This new operational model addresses two contemporary demands, which explains its success. First, it is one of the main avenues taken

by public prosecutors to implement the new 'zero tolerance' requirement, which has been popularized by the American neoconservative movement through its European avatars (Mary, 2003; Harcourt, 2006). Second, it is not labour-intensive and makes it possible to process many cases in a short time. It thus satisfies cost-efficiency requirements imposed upon the judicial treatment, while still formally satisfying media-political demand for zero tolerance. Besides, it seems to be meeting the victims' needs. The drawback, however, is that in most countries, victims do not make themselves known. As highlighted by J. Castro about Portugal, what does transpire is usually 'an extremely feeble presence of the victim in legally prescribed measures of reparation', from which it follows that 'mediation is far removed from any reparative or restorative aim whatsoever' (Castro, 2009, p. 311). The same can be said of Belgium, Spain, Scotland, or England. To explain this situation, L. McAra argues that the restorative logic contradicts another imperative of the managerialist ideology, namely the acceleration of procedures, which stands in the way of involving either the perpetrator or the victim in the criminal procedure.

The success of these reparative measures can also be explained by their ideological flexibility. While put forward by social workers and magistrates with the specific aim of addressing media-political pressure, they still make room for the educational approach inherited from the welfare logic. In Scotland, the practical terms of restorative programmes have made it possible to reconcile the political demand of a judicial intervention on juvenile offenders and the traditional, community-based educational practice derived from the former Kilbrandon ethos. However, this restorative approach can also coexist with a neo-conservative approach through the obligation made to young offenders to recognize their full responsibility in committed crimes. This form of accountability paves the way for a convergent treatment of criminal youths and adults, in a punitive perspective, as illustrated by the French example (Bailleau, 2011). Finally, such measures may convey a neoliberal view of accountability by contributing to turning the young into 'entrepreneurs of the self'. Not only are they expected to take responsibility for their deeds and agree to the measure, but they also must agree to take part in the measure or, as is the case in France, receive a quasi automatic penalty. In this respect, these new measures are at odds with the traditional practice of youth magistrates, who, for one thing, only imposed the measure at the end of a 'paternal' justice process, and besides, in their sentencing, would resort to some form of accountability dialectics whereby they tried to strike a balance between societal responsibility and the personal accountability of the youths, with respect to their living conditions and education.

This responsibility- and participation-oriented understanding of the penalty dominates the practice of reparative penalties in Belgium, England, Spain, and Canada, as well as Portugal, a country that has organized its new model of juvenile justice around the pivotal concept of 'law-induced responsabilization and education'. This vision, however, as mentioned by R. Hastings about Canada, runs up against the practical capacities of the youths and their families, who often find themselves in situations of major social vulnerability:

The juvenile criminal justice system can only do so much as per the risk factors and the social context in which they are most likely to appear. Given the limitations of its mandate, and its capacities and resources, it is often led to tackle some action without really being able to treat the situation that led to it. The system itself cannot do much to reinforce the capacities of families and communities, and even less to reduce social inequalities and the feeling of exclusion and despair in which a significant part of young offenders has been raised.

(Hastings, 2009, p. 359)

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International regulations and human rights

Human rights and charters regarding the judicial treatment of youth offenders have played a key role in the transformation of the rules and operational model of juvenile criminal justice in EU-candidate Eastern European countries. The reference to Human Rights and Children's rights, for instance, has significantly influenced the reform of juvenile justice in Romania.

Human rights, however, have also played a key part in the transformation of youth justice in Western Europe from the 1980s onwards. Historically, these international laws have first been used as a stepping stone for a critique of the 'paternalist' operational model of juvenile justice and its disregard for the young offenders' right to a 'fair trial'. In certain countries, such as Portugal, the reference to a rights discourse triggered the development of a 'guarantist' view of the welfare model. In other countries, such as France, Canada, or England, this rights discourse has had little weight. In Belgium, however, the Children's rights discourse has featured prominently in the 2006 reform. In Scotland, there are more resistances, insofar as integrating the European convention on human rights has sparked debates on its compatibility with the traditional 'children's hearing' community system, which does not require any intervention from a professional magistrate.

The contribution of the human rights discourse is thus an ambivalent one. By fostering the application of formal procedural rules, it may encourage some form of punitive spiralling and an alignment on adult procedures in the name of either juvenile accountability or victims' rights. Conversely, however, as evidenced by the case of Slovenia, a strong discourse on human rights may suffice to counter penal toughening tendencies or, as seen in Turkey, may contribute to the specific status of youth finally being taken into account in judicial procedures, even though this differentiation may not always find a practical application, due to adverse socio-economic conditions. Finally, it may help to restrain the arbitrariness of certain so-called 'educational' measures that are sometimes taken without any regard to duration.

Economic factors, managerialism, and risk management

Some countries are obviously confronted with structural socioeconomic difficulties that restrain their ability to intervene in or reform the field of juvenile justice. Romania, for instance, pressured by its integration in the European Union, has amended its legislation and aligned it on the various international charters. Today however, implementation appears highly problematic in practice. The material as well as human resources required to implement compliant educational practices are lacking. Magistrates – elderly magistrates in particular – are struggling to adjust their practices to the new approach; and again, the resources needed to train them, and to recruit and train a new generation of social workers, are in scarce supply. Turkey, which is expectantly awaiting integration into the EU, also has amended its legislation to make it compliant with international regulations. Again, however, means and resources are an issue: children's courts, for instance, could not be extended to the entire country, and it is impossible in practice to segregate juvenile inmates from adults.

Economic pressure, combined with the imperatives of a new trend in managerialism aiming to cut costs by streamlining juvenile justice operations, are making themselves felt in the other European countries as well, however. Obviously, these are not confronted with the massive, far-reaching demands of a complete overhaul of their juvenile criminal justice system. Still, they do have to cope with the burden of a new form of governance, of neoliberal inspiration, that is currently spreading throughout Europe under the influence of the European Commission, consistently undermining existing social arrangements. Most reforms – from the acceleration of

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procedures to quick trials through alternatives to litigation and probation measures, etc. – are partly inspired by one ideal: ‘good management’ of public funds, as measured by internal cost-efficiency criteria and short-term estimates of costs vs. benefits for the system itself. With such approaches, procedures inherited from the welfare period are considered unproductive and unprofitable, and thus become an issue.

This new managerial governance has several consequences. It is not unusual, for the sake of a self-labeled ‘pragmatic’ approach, to see educational treatment operations being downsized in the name of cost efficiency. The preferred model is one of surveillance, where youth accountability is entrusted to the family or the community, or even, in the context of certain probation measures, to the youths themselves, who then take responsibility for their own ‘reformation’. The influence of the budget management model in this field of juvenile delinquency should not be underestimated. In the words of R. Hastings, referring to Canada:

The combination of restricted mandates, insufficient resources, and pressures toward diversion appears to be converging towards allowing a number of youths to journey through the system until their career is already well advanced. As a result, the juvenile criminal justice system is confronted with having to treat a relatively high percentage of youths with a complex history of multidimensional problems.

(Hastings, 2009, p. 359)

This is confirmed by J. Castro, who, in Portugal, noticed ‘an intensification of process standardization, be it in the treatment of situations, or with regards to resource management and the control of work processes’ (Castro, 2009, p. 309).

Another aspect that should be emphasized in this managerial context is an emerging trend towards the privatization of a number of social services which are strongly involved in children’s courts operations. In Spain, for instance, M. Bernuz notes that the implementation of judicial measures – both non-institutional and custodial – is increasingly being privatized. According to her, this leads to the quick development of economic profit-oriented forms of treatment of juvenile criminals at the expense of the traditional logic of educational support.

‘Scaled approaches’⁷ with ‘risk-need’ orientations constitute a third avenue for development in some (mostly Anglo-Saxon) countries. This orientation signals the growing impact of the risk-management ideology on juvenile justice, which increasingly tends to resort to standard forecasting indicators. The ‘risk-need’ logic,⁸ which sometimes recycles indicators inherited from the welfare logic, entails a transfer of responsibility that leads to an individualization of risk, as attributed to personal deficiencies that have to be reformed ‘through cognitive behavioral programmes or techniques’. As emphasized by L. McAra about Scotland, the youths are perceived here as ‘rational and responsible individuals’ with an ability to make ‘positive choices’ in order to reduce, by themselves, any risks entailed by their deviant behaviors. In Belgium, this logic is also discernible in treatment institutions, where the culture of rehabilitation now has to reckon with a logic of behavioural responsabilization that leaves less room for long-term vocational development and insertion, or return to school. More generally, it can be said that in most of the European countries that have been studied, the discourse of ‘responsibilization’ through cognitive behavioral training ‘has become the ‘new rehabilitation’ of the risk era’ (Gray, 2009, p. 451). One effect of this discourse is to convey a transfer of accountability: the ‘deficit’ signaled by the behavior gets individualized, or even linked to some managerial ‘malfunction’. It is not, however, considered to be associated to structural, socioeconomic changes impacting the young. By the same token, this reading of the deficit fails to beg the question of what means are afforded to the youths to address integration deficiencies.

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The influence of the politico-cultural context

We have noticed that in England, the Labour Party had won the elections with a slogan whose first segment – ‘tough on crime’ – ultimately proved to have been taken more seriously than the second part – ‘tough on the causes of crime’. Apart from this example, it should be noted that the social problem of youth deviance receives fluctuating amounts of attention depending on the place and time, and that responses tend to vary with political orientations.

During the interwar period, the rise of Nazism to power has induced a toughening of the legislation on juvenile crime, which attached a strong value to penalty-based education. Similar movements have been reported in Spain, Italy, Greece, and Portugal whenever far-right movements and governments have tended to dominate the political scene. Outside such exceptional episodes of extreme political polarization, isolating the influence of the political sector on the practical response to youth criminality is a difficult task; in fact, economic and demographic conditions appear to have a much stronger impact. This can be explained by the relatively small scope of juvenile crime as a social phenomenon, but also by the low level of seriousness of most offenses. This form of criminality – bar outstanding criminal news items – is not likely to mobilize either the political class or the population in periods of economic growth and improving living conditions.

On the other hand, whatever specific form of governance characterizes a given country does matter. In Germany, Canada, or Belgium – countries with a significant culture of political compromise –, it appears that any reform of the legislation on youth is a lengthy process that necessitates multiple consultations or prior experimentations before any bill of law can even start to be drafted. The said law, in any case, will usually turn out to be little more than the product of various compromises, and certainly not a radical change in the treatment of juvenile criminals.

Conversely, the French example epitomizes the political vagaries of uninhibited penal populism, combined with a conflictual mode of governance (Bailleau, 2008; Salas, 2012). For more than a decade, the same conservative party has been governing France, headed by one man – Nicolas Sarkozy – who embodied these excesses to the extreme.⁹ Regarding juveniles, he has originated about a dozen Acts, all of which were intended to gradually, stroke by stroke, erase the educational and social specificities of the Ordinance of 2 February 1945 – which stemmed from the programme of the *Conseil National de la Résistance* – in order to align the status of youth on that of adults, especially with regards to juveniles aged 16 and above. Though rebuked several times by both the French Constitutional Council and the European Council, he systematically sought to divert disagreeing legal opinions by producing more texts. His tenacity has raised many a commentator’s eyebrows: where could such a dogged persistence ultimately come from? In the words of a former minister of Interior:

The question of the origins of the almost maniacal doggedness with which such an experienced politician as Nicolas Sarkozy has indulged, for ten whole years, in a frenzy of ever newer laws destined to ‘reform’ the 1945 ordinance will probably remain long unanswered.

(Joxe, 2012, p. 201)

While, then, new punitive trends do emerge in juvenile justice, associated with managerial strategies on the backdrop of the revival of some risk ideology, national political and cultural idiosyncrasies sometimes strongly affect how they are conveyed and received.

Conclusion

The initial objective of the present discussion was to emphasize the convergences and/or divergences in whatever developments were noticeable to this day in the treatment of juvenile crime in Europe. In other words, following this re-reading of the available comparative literature, is it possible to discern features that could be interpreted as characteristic of convergent transformation of juvenile criminal justice in Europe? Rather than trying to univocally answer this question, we offer here a few conclusive remarks pertaining to both the approach and outcomes.

1. We begin by pointing out the difficulties of comparative research on juvenile and criminal justice (Nelken, 1997).

Divergent political and cultural environments as well as discrepancies in legal traditions and institutional contexts sometimes make the quest for relevant comparative indicators rather arduous. Similar signifiers – ‘risk management’/‘*gestion du risque*’, ‘educational measure’/‘*sanction éducative*’, for instance – do not necessarily refer to the same signifiers in every country. Similarly, the treatment schemes pertaining specifically to juvenile justice – detainment, probation measures, restorative mediation – seldom find an exact equivalent in other countries, even when inspired by what is thought to be a shared tradition or philosophy. The comparative approach is made even more difficult whenever national particularities combine with local idiosyncrasies during the implementation phase of justice schemes. While, in the vast majority of cases, legislative systems – primary criminalization – are national, their implementation at the secondary level may vary from one region (sometimes even from one city) to the next. In Belgium, for instance, juvenile justice is not necessarily carried out similarly in the southern, French-speaking part of the country, and in the Dutch-speaking North.

2. Another reason why this comparison is a difficult exercise is the ever-present gap between the influence of macro-social factors such as the decline of the welfare state and the rise of economic neoliberalism, and how this translates in practice in terms of the judicial treatment of juvenile delinquency. While these factors do highlight universalist tendencies, the implementation thereof is subject to many variations because of national or local idiosyncrasies.

Depending on the era and how it is inscribed in specific sociopolitical and philosophical contexts, it is said that ‘the criminal question travels’ (Melossi, Sozzo, Sparks, 2011), which usually involves the dissemination of a common vision based on a widely shared penal rationality. Such was the case in Europe in the late eighteenth century, which saw the inception of a new, modern penal rationality promoting the liberal vision of the rule of law. In order to serve this political vision, modern penalty broke up with the principles of *Ancien Régime* penalty (Foucault, 1975) and introduced a brand of punitive rationality that was largely influenced by the Enlightenment (Cartuyvels, 1996). The pattern was repeated in the late nineteenth century, when a Welfare-based penalty emerged, replacing or completing the fundamentals of classic penal law. At that time, the new penalty, based on science and expertise, along with a concern for normalization and reintegration, was meant to serve the needs of the ‘protective’ vision of the social State (Garland, 1981). And today, in this era of triumphant neoliberalism, most Western countries have to cope with the decline of the Welfare penalty and its rehabilitationist ideal, a vision that has been gradually set aside by a punitive turn imported from the United States, according to some (Wacquant, 2009), or a form of actuarial, risk-ideology-based ‘new penology’ (Feeley and Simon, 1992) or ‘culture of control’ (Garland, 2001) according to others, or even,

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as a more prudent, postmodernistic interpretation suggests, by a mix of influences oscillating from disciplining to Welfare (O'Malley, 2006).

These major global trends, however, regardless of how they are interpreted, also get systematically reshaped in the process of their practical implementation, depending on each country's specific political and social context. Similarly, this translation into practice is largely influenced by the particular cultural and legal traditions in which social control devices are inscribed. In other words, while the influence of major global trends needs to be taken into account when analysing the penal question and its developments, caution should be in order when dealing with 'grand narratives', with their universalist tendencies towards emphasizing exclusively the converging elements in penal policies (O'Malley, 2004), while neglecting discriminating components that could highlight resistances or local specificities. It seems to us that this holds true both for those readings that emphasize one dominant aspect – the punitive turn under the neoliberal and neoconservative influence –, and those that, as a principle, favour the hybridization of influences in order to blunt the impact of certain dominant factors.

3. This assessment – that an inescapable tension exists between convergences and divergences – has largely guided our research agenda on contemporary developments in juvenile justice. On the one hand, we were aware of the fact that 'Globalization has not produced homogeneous systems of youth justice across the world because as youth justice policies are translated into practice, widespread national, regional and local diversity remains, under the influence of distinctive socio-political and cultural contexts' (Gray, 2009, p. 444). On the other hand, however, we considered it relevant to probe – beyond local idiosyncrasies – the influence of noticeable 'key trends' in the developments of juvenile criminal justice at the European level. This is what justified the option of first testing, as a central priority, the influence of neoliberalism on youth justice, and only then, the impact of other factors such as the return of the victim, the human rights discourse, or the role of the media.

Having reached the end of our 'journey', three insights can be drawn. First, 'hybridization' might well be the name of the game in European juvenile justice developments. While discrepancies do exist between the various European countries, in most of them the main issue seems to be a 'volatile and contradictory penalty' (O'Malley, 1999) proceeding from the quest for hybrid compromises between a motley assortment of visions and influences. Thus, in most countries, what can be observed – albeit with varying degrees of intensity – is the development of managerial strategies of neoliberal inspiration, a conservative-oriented punitive toughening process, resistances from the welfare culture, and the emergence of a restorative rationality. This also explains the success of certain schemes such as probation measures, which had the advantage of meeting the criteria of several of these competing logics.

Second, this hybridization cannot cover the existence of dominant trends that pervade the whole process everywhere, even though the practicalities vary among countries, depending on their cultural heritage or political evolution. For instance, the managerial logic seems to be far more influential in England and Wales than in Italy, the punitive turn far more important in France than in Portugal, Welfare resistance more pronounced in Belgium, Germany, or Scotland. In other words, the 'hybridization' process does not entail any notion of equilibrium between the various overlapping areas of influence.

Finally, more than a 'punitive turn', the true innovation that can be noticed in juvenile justice systems might well be technological. Whether speaking of 'dangerous youths' or 'risk youths', harnessing the risk created by a new, 'dangerous class' of youths is no recent project. Fairly recent, however, is the idea of resorting to novel techniques of risk identification (risk assessment

tools in place of psycho-social approaches) as well as new risk management models (cognitive behavioral training in place of therapeutic and educational interventions). This particular trend, imported from the Anglo-Saxon world (Castel, Castel and Lovell, 1979), has uneven penetration rates in the various countries, from 'major' in England to 'almost nonexistent' in Italy (Field and Nelken, 2010). Endowed with an aura of 'objectivity' that deterministic sciences are considered to be devoid of, and in line with the ideals of contemporary management culture, it might gradually manage to inch its way to respectability.

Notes

- 1 For a detailed account, readers are referred to Bailleau and Cartuyvels (2002; (2007); Bailleau, Cartuyvels and De Fraene, (2009); and Bailleau and Cartuyvels (2010) which review the findings of this research programme.
- 2 Germany, England, Belgium, Scotland, Spain, France, Greece, Hungary, Italy, Norway, Poland, Portugal, the Czech Republic, Romania, and Slovenia; plus two non-European countries: Canada and Turkey.
- 3 To many jurists, because of this closeness from social protection systems, youths seemed to have been removed from the realm of penal law. See for instance Robert (1969).
- 4 Epitomizing this transformation are two major pieces of legislation: the 1998 Crime and Disorder Act and the 1999 Youth Justice and Criminal Evidence Act.
- 5 This is reminiscent of the role played by Professor L. Walgrave of Katholieke Universiteit Leuven (See Walgrave 2000).
- 6 EUROSTAT, *Europe in Figures: Eurostat Yearbook 2008*, Luxembourg, Office for Official Publications of the European Communities, 2008. See also Furlong and Cartmel (2004).
- 7 About England, see Bateman (2001).
- 8 On this 'risk-need' logic, see Maurutto and Hannah-Moffat (2006).
- 9 Before being elected President of the French Republic in 2007, Nicolas Sarkozy was twice minister of the Interior: 2002–2004, then 2005–2007. It is in this capacity as Minister of the Interior that he has managed to pass through parliament, or even ruthlessly imposed upon the then Minister of Justice, many extremely repressive texts, in spite of oppositions from his own party. As President of the Republic, he picked up and pushed forward some of the contentious bills, while promoting others in the same vein: the penalization of youth behaviours, the aggravation of punishments, the will to reduce the autonomy of magistrates, the exclusive promotion of custodial options as a response to crimes and offences, etc.

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