

Juvenile justice in Belgium seen through the sanctions looking-glass

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Belgium's juvenile justice system was reformed substantially in 2006 by a law entitled 'Law regarding youth welfare, the management of minors who commit deeds qualified as violations of the law, and the reparation of the damages sustained by such actions'. The Belgian law, the very title of which underlines the diversity of objectives pursued (protection, reparations and sanctions), is doubtless a fairly good example of the hesitations that are reflected in juvenile (criminal) justice developments in Europe.

To circumscribe the stakes riding on and the impacts of the reform from the standpoints of the project's proposed criteria, i.e., the welfare influence, role of human rights, impact of the 'return of the victim', but also the impact of the media and public opinion, we propose to analyse the situation in two parts. The first analysis (Part I) concerns the *primary criminalisation stage*. It studies the new law and the changes and orientations that it reflects. The second analysis (Part II) focuses on the *secondary criminalisation stage* and the play of sanctions, primarily placement or imprisonment and 'alternative sanctions', that it involves. These two standpoints yield a more precise image of the true orientations of juvenile justice in Belgium (Part III) in view of the factors of criminalisation selected in this study.

I. Juvenile justice with a new look in Belgium: the hybridisation of models

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1. The retroactive effects of the reform

With the Child Welfare Act 1912, a protection model of juvenile justice replaced the penal response to juvenile offences by introducing ‘protection measures’ for minors who commit ‘actions that are deemed violations of the law’. This ‘para-criminal’ justice system with a vocational calling was reformed in 1965 to include minors who, although not having broken any laws, were considered to be ‘in danger’ and ‘in need of protection’. In the beginning this ‘protective system’, which revolved around the principle of a specific jurisdiction (the juvenile court) marked by the rationale of social and medical evaluation and mindful of protecting the deviant minor as well as defending society better against the seeds of delinquency through early intervention, incarnated the thinking and ambiguities of the *social defence* movement of which it was an exemplary product. The 1965 reform, which was inspired by the *new social defence* ideology, gave rise to a system that seemed to be a good translation of the ideals of *penal welfarism* in vogue in the 1960s, at least in the primary criminalisation stage. The rough outlines of this movement, as sketched by A. Crawford (2001) or D. Garland (2001), were the perception of the deviant act as the symptom of a problem, the meaning of which had to be deciphered; the vision of the deviant minor as being socially vulnerable and partially a victim of social violence; the ideal of comprehensive/understanding intervention marked by a concern to treat or reintegrate the offender; emphasis on ‘root prevention’ concerning the ‘distant’ or socio-structural causes of deviance; the subsidiarity of judicial intervention, given the “stigma” attached to this type of intervention; and, finally, the will to offer aid and assistance for minors in their surroundings and to avoid placing or locking them up.

Since the 1980s this model has come in for contradictory criticism from parties located at either extreme of the political spectrum. Four main criticisms can be picked out: 1. A *substantial gap between the welfare model’s ideals and its actual results*. Whilst the protection model was borne on a wave of social solidarity and emancipation discourse, in actual practice it has exhibited major failings in the area of general prevention (which is simply non-existent). It extends judicial intervention far beyond the boundaries of the violation in a phenomenon termed ‘net widening’. It makes central use of imprisonment/detention (*enfermement*), often for excessive periods in a system of ‘measures of indeterminate duration’. In this regard, talking about protection seems to be a ‘mystification of language’ given what actually occurs in practice. 2. This paternalistic system fails when it comes to *heeding the minor’s rights in justice*, especially with regard to major

international instruments such as the International Convention on the Rights of the Child or the European Convention of Human Rights. A legalistic criticism underlines the fuzzy boundaries of judicial intervention, the existence of measures of a ‘sanctional nature’ before any ‘pronouncement of the law’, the weakness of the procedural guarantees for minors, the judge *cum expert*’s omnipotence, and the cumulative and indeterminate lengths of the sanctions. 3. The protection model is the fruit of a bygone era and is allegedly *poorly suited to a ‘hard core’ of juvenile delinquents*, especially older minors. In a context marked by a gradual shift from the Social Welfare State to a form of Social Police State in Europe (Snacken, 2007), the ‘soft’ line taken by the protection model allegedly dispels responsibility, as its emphasis on education (over punishment) is perceived as a bonus for impunity by the young person and public opinion alike. Borne on a wave of moral panic that has been encouraged by the media, a tougher approach that is closer to that of criminal law for adults is thus gaining ground (Dumortier, 2008, 453). 4. Finally, in today’s ‘victims’ society’ (Erner, 2006; Snacken, 2007), *welfare* justice for juveniles is accused of *forgetting the victim*. The victim remains an abstract idea, despite the restorative justice experiences that are starting to come about, mainly in the northern (Dutch-speaking) part of the country.

Various reforms thus came about in Belgium to meet one or the other criticism at least part of the way. Between 1980 and 1991 assistance to ‘non-delinquent minors’ was separated from protection for ‘juvenile delinquents’. The first type of help was entrusted to the Flemish, French, and German-speaking Communities, whereas the second remained under the federal justice system’s jurisdiction. In 1994 two laws modified the 1965 law, one of 2 February and the other of 30 June 1994. They reinforced the minor’s legal position but at the same time toughened the conditions applicable to so-called ‘difficult minors’ on ‘public safety’ grounds (Dumortier, 2008). Finally, a more substantial reform, which had been preceded by various ‘punitive’ or ‘restorative’ drafts, was enacted in 2006 in the form of the ‘Law regarding youth protection, the management of minors who have committed an act qualified as an infringement of the law, and reparations for the damage/injury that said infringement has caused’.

2. The broad lines of the 2006 youth protection reform

2.1. Its general orientation

This reform was the culmination of a complex debate that underlined the existence of a myriad of fault lines expressing the divisions amongst politicians, scientists, and public opinion in the Dutch and French-speaking parts of the country. The reform belongs to a specific context marked by talk about young people's rights on the one hand and their accountability on the other; theoretical discussions about the various 'models' of juvenile justice (punitive, protective and restorative) that is fuelled by the inroads that the subject of crime and lack of public safety, which is often linked to juvenile delinquency, is making in public debate; the emergence of innovative practices, such as mediation and conferencing, designed to make reparations to the victims; but also the media coverage of spectacular incidents that brought grist to the mill of strong-arm reactions (Nagels, De Fraene and Christiaens, 2006, 7).

Five lines of force thus seem to have organised the 2006 reform. These are the legalisation of and keenness to promote a system of 'alternative sanctions' in all steps of the procedure; the introduction of restorative logic according to a 'maximalistic' approach that the text raises to the status of a priority in principle; the will to make young people and their parents responsible for their actions by making the parents partners with a major role in carrying out the sanction; the toughening of the responses for a 'hard core' of juvenile delinquents who are dealt with by the criminal law for adults or sent before the Court of Assizes; and the strengthening of the minors' rights and civil liberties in accordance with the Belgian Constitution and the International Convention on the Rights of the Child.

1.1.2. The sanctions' complex and gradual architecture: from dropping the case to diversion

The new law maintains the principle of a specific branch of justice with jurisdiction over minors who commit 'deeds qualified as infringements of the law' up to the age of eighteen, which is the age of criminal majority. Three time periods of intervention are possible under this law, as follows:

In the *pre-trial phase* in the strict sense, the law legalises Praetorian practices that had been widely used for years by allowing the prosecutor's office to drop a case without further action other than accompanying the decision by a 'written warning', '*rappel à la loi*' (reminder of the law) or 'mediation offer'. Curiously, this legalisation does not cover other Praetorian practices such as community service work (CSW) or the obligation to enrol in a training course, which could thus be considered, if we reason *a contrario*, to have become clearly illegal. What is more, the prosecutor's office may also propose a 'parental guidance

course' for parents who show a 'marked lack of interest' ('*désintérêt caractérisé*') in their under-age children's delinquent behaviour.

In the *pre-sentencing trial stage*, the juvenile court judge may take 'provisional measures' pending the juvenile court's adjudication as to the substance of the case and impose various obligations or prohibitions on the minor who remains in his/her habitual living conditions, including up to thirty hours of community service work (imposed for investigative purposes, not as a sanction), as well as a provisional placement measure. These provisional measures, which for the most part are cumulative, are contingent on three conditions: the existence of 'serious evidence of guilt'², the fact that they are 'not taken to mete out an immediate sanction or any other form of coercion', and the aim of the 'investigation' of the minor's person and social environment cannot be obtained by any other means.

In the sentencing stage, the juvenile court has a broad range of measures at its disposal. Unlike the earlier situation, the law henceforward provides for a gradation of the existing measures and gives the order of priority that the court must follow. The court must first envision a 'restorative offer', then a measure called 'plan proposed by the minor', and finally; guidance measures for the minor who remains in the community, placement under an open regimen, and placement in a secure facility, in that order. These measures, which are cumulative, call for the following comments:

1. The *restorative offer* and *minor's written plan*, which are new to the legal arsenal, are thus priority measures. The restorative offer takes the form of either 'mediation' or 'restorative [family] group conferencing' (*concertation restauratrice de groupe*). Whilst the court must take account of the agreement reached under this framework and its performance, the offer does not necessarily put an end to the procedure. If the restorative offer does not appear to be appropriate, the court will consider the possibility of a 'plan' proposed by the minor before any other measure.

2. *Various measures that keep the juvenile in his/her social environment* are then foreseen, with the first three (reprimand, supervision by an appropriate social service agency, and intensive educational guidance) being the only ones possible for minors under twelve. The last two (a maximum of 150 hours of education or CSW, outpatient treatment in a psychological or psychiatric care, sexual education, or substance abuse unit) are possible only for minors over twelve years. These five categories of measure may, moreover, be accompanied by other conditions.

² This condition was cancelled by the Constitutional Court, unless the measure consists of a placement in the Everberg secure federal centre (Ruling 49/2008 of 13 March 2008).

3. Next come the *measures that remove the minor from his/her environment* or various forms of placement. These include (a) placing the minor with a corporate entity that provides the supervision required for ‘positive work’; (b) placement with a person of trust or in an appropriate establishment; (c) placement in a State youth welfare institution, as of the age of twelve under an open regimen or as of the age of fourteen under a closed regimen, although secure placement is possible for a minor whose action ‘caused serious injury to the life or health of a person and the behaviour of whom is particularly dangerous’. The law introduces two innovations here: (1) the seriousness of the act committed becomes an explicit criterion of placement under one or the other regimen; and (2) in the event of placement, whether secure or not, the court must henceforward stipulate the maximum term of the measure, although its extension remains possible in the case of ‘persistent bad behaviour’ or due to ‘dangerous behaviour for the minor or others’; and (d) placement in a hospital ward, detoxification unit or facility (for drug addiction or alcoholism), or even placement in a non-custodial or secure children’s psychiatric ward. All of these placement measures may be suspended in exchange for up to 150 hours of CSW.

Finally, we must underline the fact that the protection measures *end as of the age of eighteen*. Nevertheless, in the case of bad or dangerous behaviour, or when the offence was committed before the minor’s sixteenth birthday, the measures may be extended for a determinate period until the age of twenty-three.

1.1.3. Parental training and diversion: two controversial measures

Two particular points remain to be brought to the reader’s attention:

First, the court may, as an additional measure, impose a *parental guidance course* on parents who have abdicated their parental responsibility or shown a ‘marked lack of interest’ in their child, and sentence parents who fail to comply to one week in prison and/or a fine of from 1 to 25 euros. When imposed at this stage in the procedure, the parental training is clearly a sanction, just as the sanction on ‘recalcitrant parents’ is even more clearly a ‘sentence’. This raises the question of determining whether a legal mechanism that is based on as fuzzy and subjective a concept as ‘marked lack of interest’ is indeed in compliance with the principle of legality in criminal justice pursuant to Article 7 of the European Convention on Human Rights (Krenc and Van Drooghenbroeck, 2008, 429-434). In ruling on an appeal on this issue, the Constitutional Court ‘saved’ the lawmakers by deeming that the parental

training was a ‘guidance measure’, not a sentence³. The court also remained deaf to the opinion of the Children’s Rights Committee, which, in its general observation 10 of 2007, ‘...deplore[d] the tendency of certain countries to punish parents for the violations committed by their children,’ arguing, ‘...criminalising the parents will hardly help make them active partners in their children’s social reintegration’⁴.

Second is the maintenance of the mechanism of *diversion*, which makes it possible to refer certain minors above the age of sixteen who have committed offences of a certain seriousness and for whom a protection measure is deemed inappropriate to the criminal courts for adults. However, four changes have been made to this exceptional mechanism, as follows:

- (a) The new law sets shorter deadlines to speed up the procedure.
- (b) A bifurcation has been included in the diversion principle: Either the minor is suspected of having committed an offence or crime that could come under the jurisdiction of the *Cour correctionnelle*, in which case the minor may be referred to a specific chamber within the juvenile court that will apply the criminal law and procedure applicable to adults; or the minor is suspected of having committed a crime that cannot be downgraded to this jurisdiction and he or she may be sent to trial in the Court of Assizes.
- (c) In the case of preventive detention or a custodial sentence, the diverted minor will be placed in a ‘secure federal centre’ for minors rather than in a prison for adults. As of the age of eighteen, however, the minor may be transferred to prison if the secure federal centre is full or if the minor poses a threat to life in the centre or the physical integrity of others in the centre.
- (d) Finally, when the diversion decision becomes definitive, the relevant minor comes under the ordinary criminal court’s jurisdiction for the offences committed as of the day after the diversion summons. This is much faster than was previously the case. This mechanism raises a problem at first glance, in light of the UN Convention on the Rights of the Child. The Children’s Rights Committee, which is the body responsible for overseeing the convention’s enforcement, recommended, moreover, that Belgium ‘...should ensure that persons under eighteen years of age should not be judged as adults’⁵. The committee went on to clarify, in another opinion, that this principle was ‘...not at all lessened by possible considerations having to do with the circumstances or particular seriousness of the committed offence’ (Krenc and Van Drooghenbroeck, 2008, 11).

³ Decree 49/2008, cons. B.8.2.

⁴ CRC/C/GC/10, §55, quoted in Krenc and Van Drooghenbroeck (2008).

⁵ *Ibidem*, §32.

II. The play of sanctions: incarceration and alternative sanctions

2. The incarceration of juvenile offenders in Belgium

2.1. The changes in and uses of incarceration measures

In Belgium, the public sector alone is empowered to organise the incarceration of juveniles. The facilities for this purpose, with a capacity of about 500 places, consist of institutions run by the Dutch and French-speaking Communities (public youth protection institutions) and a secure federal centre at Everberg. The latter is unique in that it is run jointly by the Federal Justice Ministry and Community bodies and is staffed by both prison officers and social service workers. To be able to enforce the new legislation, new secure federal centres of this type are planned and currently under construction to provide a total capacity for an additional 200 minors, more or less.

Taking stock of the incarceration of minors in Belgium is no easy task. The country's institutional changes have resulted in the absence of uniform statistics but also the development of different cultural sensitivities in the north and the south, for example, when it comes to punitivity (more developed in the south) and the rights of juvenile inmates (less present in the north). Nevertheless, some common trends can be discerned, although we shall illustrate them using data collected mainly from the French-speaking (i.e., southern) part of the country.

The placement institutions are, as a rule, small facilities that house from twenty to fifty young people in a series of pavilions. The institutions that the Communities manage offer two major types of placement: placement under a secure regimen, which is reserved for minors who are older than fourteen, with a few exceptions, and placement under an open regimen that is accessible to minors as of the age of twelve. The institutions also have 'specialised sections', i.e., residential, education, observation, individual, and other sections. The main difference between the two types of regimen (secure and open) resides in the greater degree of security provided in the sections under a secure regimen: The aims of the latter, which are closer to penitentiaries, are to protect society in addition to rehabilitating the offenders. Residence under an 'open regimen' is not devoid of coercive measures for all that and includes the possibility of being put in isolation, which is close to deprivation of liberty. It

thus also comes under the framework of an ‘incarceration’ of minors that has undergone three major changes in recent years, namely; the extension of capacity and rise in flows, diversification of management schemes, and shorter stays.

2.1.1. Extension of placement capacity and flows: the role of Article 53

Whereas total capacity in the sections with an open regimen has fallen, capacity in the sections with secure regimens for boys has increased over the past twenty years. The number of places in secure facilities rose from 10 to 119 in the French-speaking Community between 1981 and 2009 and from 70 to 130 in the Flemish Community between 1997 and 2002.

Table 1. Trends in secure placement capacity

	1980	1981	1984	1993	1997	2001	2002	2004	2008	2009
Number of secure places in the French-speaking Community	0	10	22	33	38	49	75	85	85	119
Number of secure places in the Flemish Community					70		130	130	130	130

This increase in capacity – linked to a recurrent demand on the part of juvenile court judges that was often taken up in the press – ‘logically’ generated an increase in the judges’ reliance on placement. Based on the annual admissions in the institutions as a whole, we thus see an overall increase in the flows over the past years, with the rise being relatively greater in the French-speaking than in the Flemish Community.

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Table 2. State institution admissions trends (open and secure placements combined)

	2000	2002	2004	2005	2006	Total
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						population 12-17 years old⁶
Total admissions, Flemish Community⁷	1056	1097	1200	1216	1207	433,495
Total admissions, French-speaking Community⁸	1076	1432	1608	1712	1844	328,721
Total for Belgium	2132	2529	2808	2928	3051	768,154

The rise that was observed between 2000 and 2002 was partly linked to the enforcement – used extensively by the French-speaking judges⁹ – of former Article 53 of the 1965 law, which allowed minors to be incarcerated in adult prisons for up to a fortnight in the case of an emergency and in the absence of placement possibilities. As we shall see farther on, this possibility disappeared in 2002.

Table 3. Annual admissions to youth facilities under a secure regimen and incarcerations under Article 53 for the French-speaking Community¹⁰

	1998	2000	2002	2003	2006
IPPJ Admissions (secure regimen)	88	109	332	439	526
Prison Admissions (Art. 53)	212	375	0	0	0
Total	300	475	332	439	526

Article 53 influenced the juvenile incarceration and placement policy trends in Belgium quite strongly. Due to its abusive use for retributive ends by certain juvenile courts in Belgium (De Fraene and Brolet, 2005), Article 53 was the source of a European Court of

⁶ National Statistics Institute, basic demographic data on 1 January 2006.

⁷ See Florizoone and Roose (2000) and the official data for 2003–2006 [<http://wvg.vlaanderen.be/jongerenwelzijn/statistieken.htm>].

⁸ Source: Activity reports of the General Delegation for Children's Rights for 2003–2004 and 2004–2005, including admissions to the centre at Everberg.

⁹ Some 200 to 300 committals to prison each year were recorded under this possibility in the French-speaking Community in the late 1990s.

¹⁰ Source: Activity reports of the General Delegation for Children's Rights for 2003–2004 and 2004–2005, including admissions to the centre at Everberg, combined with the Stat-IPPJ 2006 database [http://www.aidealajeunesse.cfwb.be/fileadmin/sites/ajss/upload/ajss_super_editor/professionnel/documents/adm_inistration/DGAJ-rapport_statistique_integre_2006definitif_P.pdf].

Human Rights ruling against Belgium (the Bouamar case) in 1988¹¹. Following this decision, the authorities looked for alternatives to incarceration in prison. They opened new secure sections in IPPJs but also created new private services (emergency shelters and residential centres specialised in the management of difficult minors). These new facilities, which were filled to capacity as soon as they opened, had no immediate impact on the use of incarceration pursuant to Article 53 before the article was officially abrogated in 2002. This article was one of the foundations of a ‘culture’ of short-term imprisonment for minors in certain judicial districts (especially French-speaking ones). This culture subsequently persisted in part in the hard-line crime control context of 1990-2000.

2.1.2. Diversification of incarceration schemes

The extension of the accommodation capacity was/has been accompanied by growing diversification of the types of stay according to the degree of confinement (open or secure regimen; IPPJ or federal centre), and the purpose and length of the placement¹². The official aim of this hyperspecialisation, which is illustrated below using the figures of the French-speaking State institutions, is both the result of a rehabilitative ideology and the fruit of the concern to meet the juveniles’ differentiated needs as interpreted by the judges.

Table 4. Diversity of regimens and lengths of stay in the French-speaking State institutions

	Education Open regimen	Guidance Open regimen	Shelter Open regimen	Education Secure regimen	Observation/ guidance Secure regimen
Braine-Le-Château				open-ended (30+3 places)	30 days (10 places)
Fraipont	open-ended (36 places)		2 weeks (10	3 months (10+1 places)	

¹¹ ECHR, *Bouamar v Belgium*, no 129, 29 02 1988, *Jurisprudence de Liège, Mons et Bruxelles*, 1988, n°13, p. 457.

¹² In addition to the two types of regimen there were variations in the goal of the placement (shelter, observation, guidance, or education) and its length (which could range from a fortnight to an indeterminate spell, depending on the establishment).

			places)		
Wauthier-Braine	open-ended (22 places)	40 days (10 places)	2 weeks (10 places)		40 days opening in 2009 (10 places)
Jumet	open-ended (12 places)	40 days (10 places)			
Saint-Servais	open-ended (24 places)		2 weeks (10 places)	42days (4+1 places)	
Everberg					2 months and 5 days (48+2 places)

2.1.3. Shortening the stays: a managerial objective

The shortening of the duration of placements, given the dominant practice of long-term placement that held sway up to and including the 1970s, was another major change. The federal legislation was rooted in the logic of protection and thus was fairly unconcerned about the length of the placement measure. The new law of 2006 nevertheless stipulated that the judge had to indicate the duration of the measure, which had to be in tune with the terms foreseen in the Community institutions' educational projects. In the case of placement under an educational regimen, the judge could nevertheless decide to extend the stay for reasons linked to 'persistent bad behaviour' or 'behaviour that is dangerous for the minor him/herself or others'¹³. In the case of placement in an 'education section' under a secure regimen, the minor was placed for an initial three-month term that could be renewed once and then month by month thereafter. In practice, the mean terms of stay in the French-speaking part of the country are 37.9 days under an open regimen, 88.6 days under a secure regimen, and 32.3 days in the secure federal centre at Everberg. For the 1844 placement decisions taken in 2006,

¹³ Article 37§2 of the law of 8 April 1965 modified by Article 7(2) of the law of 13 June 2006.

739 (40%) ordered a shelter regimen with a mean stay of 12.7 days. At the other end of the scale, ten young people spent more than 307 days under a secure educational regimen (Hougardy, 2007). In Flanders, the mean duration of placement in a State institution in the 1990s was about three months (Florizoone and Roose, 2000). Recent research into first-time juvenile placements in IPPJ's in Flanders covering the years from 2001 to 2003 (1436 youths) came up with a mean of 61 days. This research shows that these placements are for short and even very short terms (from one to four weeks in 35% of the cases and less than four months in 88% of the cases; only twelve minors remained in placement for more than a year) (Christiaens *et al.*, 2006).

Whilst the changes in duration of stay are important, they seem to correspond less to an educational plan, assessment of existing practices, or trend in juvenile delinquency than to managerial concerns or a case-by-case choice in response to political and media pressure. Whilst it complies as well with the stipulations in the relevant international texts¹⁴, this reduction in the term of incarceration/placement allows above all a faster turnover of cells or beds, faster justice, and '...less impunity', in line with the wishes of the French-speaking Community's government¹⁵. It also sometimes meets the need for coercive solutions that is voiced by the judges themselves.

2.1.2. Structural clogging and disorganisation of the custodial system

Despite the rise in custodial capacity and decrease in the duration of stay, the various centres are operating at full capacity. Since administrative rules prevent overcrowding, the waiting lists today are equal to the country's total placement capacity. How can we explain this constant saturation? The problem is more than one of rising delinquency, which the few available indicators do not demonstrate as occurring (Vanneste, Goedseels and Detry, 2005). Rather, it seems to be linked to judicial practices that do not tow the subsidiarity line recommended by international legal instruments regarding juvenile placement (Gryspeerd, 1987; Lemmens and Van Welzenis, 2002). The 'lock'em up' culture is a reality in certain judicial circles, as attested by the regular public denunciations of the 'lack of places' that certain juvenile court judges make.

¹⁴ According to Article 37(b) of the International Convention on the Rights of the Child of 20 November 1989, the placement of a minor must be *for as short a spell as possible*.

¹⁵ Youth Assistance Plan of 19 May 2006, Ministry of the French-speaking Community.

The conventional response to such saturation consisted above all in creating additional places, which were filled just as quickly, thereby triggering further complaints of clogging in the system despite the faster turnover of residents. This confirms the hypothesis advanced by criminologists, that extending placement capacity does not reduce the saturation of placement facilities but, on the contrary, leads to a chain reaction of self-reproduction of the system (Dunkel and Snacken, 2005). The organisational variables – in this case placement capacity – weigh just as heavily on the courts' decisions as their perceptions of the seriousness of the offences, especially as these decisions are heavily influenced by the practical possibility of their enforcement (Vanhamme and Beyens, 2007; Faget, 2008). Consequently, the placement decision is sometimes predicated less upon whether it is the right solution for the young person than the availability of places at the time, which is confirmed by the high turnover rate of juveniles from one institution to the next and between institutions¹⁶.

To try to act upon judicial practice, the 2006 law contains a series of precautions to limit the possibilities of placement in IPPJs, whether under an open or a secure regimen. It defines placement as 'an educational and protection measure...[that] is also analysed as a coercive measure leading to a deprivation of liberty'¹⁷, which intimates that it is reserved 'for situations of serious delinquency'¹⁸. Moreover, the lawmakers have set more specific access thresholds, referring in so doing to the provisions of the Criminal Code. For the secure regimen, for example, the act must correspond to an offence for which 'a sentence of five to ten years in prison or a more severe sentence'¹⁹ is foreseen. However, the text's effectiveness in overcoming the constant clogging of institutions remains to be shown, to the extent that the processes of interpreting, qualifying, and requalifying the law allow a certain room for manoeuvre in evaluating the situation (Jaspart, 2008).

When it comes to the social situation of juveniles subject to custodial arrangements, the limited sociometric information available confirms the over-representation of young people from families in uncertain socio-economic situations (De Fraene and Brolet, 2005; Hougardy, 2007). In 2006, the 1160 young people in the French-speaking Community who were subject to a placement measure had an average age of 16 years and 2 months, and 81.4% of them were boys. As for their schooling, 45.7% had not attained their elementary school

¹⁶ For 2006, 1844 placement decisions were taken concerning 1160 young people, which means that 36.1% of the minors were subject to more than one placement in a year (Hougardy, 2007).

¹⁷ Act on youth protection, the management of minors who have committed an act qualified as an infringement of the law, and reparations for the damage that said infringement has caused, 13 June 2006, *Exposé des motifs*, *op. cit.*, p. 17.

¹⁸ *Exposé des motifs*, *op. cit.*, p. 18.

¹⁹ Act on youth protection..., Article 37, §2^{quater}.

certificates. These young people were enrolled above all in training and academic programmes with little prestige and leading to few employment options. Finally, only 30% of the young people in placement lived with their two parents and more than 10% had lost at least one of their parents. To top it off, only 40% of the fathers and 25% of the mothers had income from a job or their own business (Hougardy, 2007).

1.2. Alternative sanctions and *restorative justice*: A diversity of practices

1.2.1. Alternative sanctions or net widening?

The historical development of ‘alternatives’ to gaol began in the 1980s, which was a period marked by the trends of dejudicialisation, de-institutionalisation, and keeping young people in their social environments, which in turn fuelled the search for new forms of intervention and alternatives to institutionalising them (Christiaens, 2002). At this time, a CSW measure that was allowed by the 1965 law but had not been used was reactivated at the initiative of a Flemish judge in Mechelen (Peeters, 1986). This practice encouraged field experiments carried out jointly by judges and psychologists, youth workers, and social workers in Charleroi, Brussels, and Liège, that is, in the French-speaking part of the country. These initiatives spread to the entire country in the 1990, but with sometimes different ‘accents’ (focusing more on symbolic restoration in the south and restorative mediation in the north) depending on the (regional) Community policy.

The deployment of these ‘alternatives’ raised several questions. First of all, the fact that the power to carry out these protection measures was vested in the Communities government created a differentiated regional area in which their implementation developed. It is thus difficult to measure the exact scope of this practice, especially since the fragmentation of the statistics on youth protection, including the use of these ‘alternative’ measures, makes it impossible to compile a table giving the specific numbers. Next, the use of alternative measures in Belgium since the 1980s shows that they have not functioned as alternatives to placement or imprisonment, but rather as an alternative to dropping the case outright or reprimanding the minor. As such, they have given grist to the ‘net widening hypothesis’ mill. Finally, the Belgian data show a tendency for judicial intervention to be stepped up in cases concerning non-delinquent minors, minors ‘in danger’, and socially vulnerable minors.

1.2.2. *The (current) alternative sanctions scheme: low level of use and Community-related differentiation of practices*

As stated above, the 2006 law formalised existing practices regarding alternative sanctions such as ‘community service work’ and ‘training orders’. It also formalised the priority of restorative justice by officialising ‘perpetrator-victim mediation’ and family group conferences (Van Fraechem, 2001). In addition, the reform raised the possibility of a provisional ‘house arrest’ measure to the status of a mainstream practice, along with reliance on ‘parental training’ as an alternative measure.

In the absence of recent general statistics, research into the juvenile court judges’ practices and the logic subtending their adjudications in Belgium in 1999 shows that alternatives were used (relatively) little (Vanneste, 2003). ‘Alternative measures’ made up only 4.2% of the decisions taken under the public prosecutor’s purview, whilst 16% of the juvenile court adjudications concerned CSW and 26% of their adjudications were placements in IPPJs. This research confirms, moreover, the huge differences that exist from one judicial district to the next.

As we have already pointed out, the fact that carrying out the measures is a Community power created a differentiated area for their development in the north and south. Over a twenty-year period, decisions in favour of CSW boomed in the French-speaking Community, with a total of close to 1200 measures in 2004 (Vanneste, 2005, 25). On the other hand, mediation, although considerably increased, seems to have been used less in the French-speaking Community²⁰ than in Flanders, where it took root and rapidly became one of the most frequently applied ‘alternative measures’. Even within the Communities, the heterogeneity of practices seems to be a significant reality. In 2005, for example, in the French-speaking Community, 39 mediation warrants (*mandats*) (public prosecutor and judges combined) were registered for Brussels, which is a district with more than twenty judges, whereas the district of Namur with just seven judges issued 49 warrants, and the three judges of the district of Huy issued 53 warrants.

Given the timid success of mediation in the French-speaking Community, the current issue is to determine to what extent its recent legalisation and priority status will lead to the mainstreaming of mediation and a relative harmonisation of practices across the entire

²⁰ For the French-speaking districts, the mediations ordered by the public prosecutor’s office concerned an average of 250 minors per year between 2001 and 2004, whereas those ordered by a judge concerned 140 minors a year over the same period (Vanneste, 2005, 25).

country. An analysis of the situation in Brussels provides some inklings of an answer to this question (Deveux, 2006). Whilst all of the judges interviewed said that they were in favour of mediation, they admitted to proposing it very seldom, even not at all. In the public prosecutor's office's phase, mediation was not seen as an alternative to referring the case to the courts, but rather as an alternative to simply dropping the case. Certain deputy prosecutors expressed disappointment in the measure, saying that they used it little because of what they felt was its high failure rate. The 41 warrants transmitted to the department that organises mediation allegedly culminated in seven agreements in 2003, whilst the score was three agreements for 35 warrants in 2004. According to the deputy prosecutors, the failures were linked to a great extent to the victims' refusal to be part of the process. What is more, the judges explained that they resorted more easily to other measures such as the *rappel à la loi* (call to order - admonishment) and reparative measures, which offered avenues of quicker intervention and better oversight of the case. The judges who make the substantive rulings (trial phase), for their part, see the measure less as a way to dejudicialise the cases than as an instrument to gain information about the minors and their surroundings. To explain the under-utilisation of mediation they also mention the overload of work, retrenchment to daily routines, and the need to use custodial sentences as a short-sharp-shock.

The participation of young people of immigrant descent in 'alternative measures', especially restorative measures, seems to pose problems in some districts. Certain judges in Brussels (Deveux, 2006, 42) explain that the presence of second-generation immigrants tends to hobble the use of mediation for juvenile offences: 'Mediation is not African, North African..., they do not want to discuss things and it is not possible to impose mediation on them...'. Other judicial staff from this district explain that they have to deal with young people of immigrant descent who do not challenge themselves enough and almost always deny the facts. 'We are in a Judeo-Christian culture...for example, admission, admitting to one's guilt, is something that we do more easily than people of Moroccan culture'. Another judge explained that mediation required the parents' involvement in the process, which was difficult with parents who did not speak French easily. These excerpts from their statements give us a glimpse of an ethnically differentiated perspective on restorative measures that legitimates the under-representation of young people of immigrant descent in this type of treatment. The other side of the coin refers us to the large numbers of these very same young people (Christiaens, 2006; Vanneste, 2003), and generally speaking of young people in insecure situations, in the IPPJs.

1.2.3. (Restorative) mediation: a success story in Flanders?

In Flanders, community service work and other training orders, called *leerprojecten*, although seldom used in the beginning, rose quickly. In 2001 the total number surpassed the number of CSW orders in the French-speaking Community, and then crossed the threshold of 1400 in 2002 and 2003 (Vanneste, 2005, 25). In contrast, the number of such measures dropped sharply in 2007 (to about 550 for the year), probably due to the new law, which did not approve these measures at the public prosecutor's office stage. Mediation had spectacular success in the northern part of the country: Whereas 600 young people were referred to the mediation services in 1999, close to 3500 minors suspected of having committed delinquent acts were involved in restorative mediation ordered by a public prosecutor's office or juvenile court judge in 2007, i.e., just eight years later²¹.

The success of mediation in Flanders is linked to the history of these practices (Van Doorselaere, 2005) and the theoretical framework of restorative justice that was brought to the forefront by the work of a team of researchers from Leuven (KUL) led by Lode Walgrave. Under Walgrave's influence, the pilot experience of family group conferences, inspired by a precedent in New Zealand, developed in Flanders (Vanfraechem, 2004) was formally included in the juvenile justice system by virtue of the law of 2006. Juvenile court judges in Flanders opted for thirty-two measures of this type in 2007 [www.osbj.be]. Another element that contributed to the progression of restorative justice ideas in Flanders refers to the role played by the *Ondersteuningsstructuur Bijzondere Jeugdzorg* (OSBJ) (Special Youth Welfare Support Structures). Under an agreement signed with the Flemish Community, the OSBJ was given the function of promoting restorative justice (Claes, 2002, 259).

The success of restorative practices in Flanders must be put into perspective, however. The annual data on perpetrator-victim mediations and family group conferences reveal a much more modest degree of success [www.osbj.be]. In actual fact, only a small percentage of the mediations led to direct contact between the victim and the presumed perpetrator of the offence (9% in 2005). Less than half (44%) of the mediation undertaken actually "goes to term" and a large proportion of the mediation that is initiated (48% in 2005 and 56% in 2007) consists of no more than a simple initial meeting between the perpetrator or victim and the mediation service. Finally, despite the rise in the total use of such measures in Flanders, major local divergences could also be discerned. For instance, the Antwerp district accounted for

²¹ All figures about mediation practices in Flanders (with minors) can be found on the website of OSBJ (*Ondersteuningsstructuur Bijzondere Jeugdzorg*) in the different annual reports [www.osbj.be].

one-third of the mediation initiatives proposed in Flanders in 2005, whereas other districts made absolutely no use of this possibility (Van Doorselaere, 2005, 210). These disparities can be explained by the courts' policies (for example, that of 'zero tolerance'), the types of dispute that they handle, the judges' professional cultures, the means and attitudes of the supervisory services with which the judges issuing such orders must treat, and the state of relations between these services and the judiciary.

3. The factors of criminalisation between active welfarism and neo-liberal/conservative guaranteeism, restorative justice and punitive populism

If we recall the indicators chosen for our analytical grid in the introduction, the juvenile justice reform and sanctional practices in Belgium reflect, to various degrees, a development around three major orientations, namely, a shift in the welfare model of justice (the broad lines of which were maintained) towards an ideal of activation; the deployment of a neo-liberal/conservative rationale marked by a sometimes hard to decrypt dialectic between a discourse of rights and a concern to punish; and a taking account of the victim that encourages a restorative orientation, a tendency counterbalanced by the weight of punitive sense or awareness of victimhood that has been stoked by the media on the basis of a few particularly spectacular incidents

3.1. From Penal Welfarism to Active Penal Welfarism

According to Cavadino and Dignan's typology, Belgium belonged to a welfare model marked by 'conservative corporatism', following the example set by other European countries such as Germany, France, Italy, and even the Netherlands (Cavadino and Dignan, 2006; Snacken, 2007). These systems are marked by a relatively mixed economy and the existence of (increasing) social inequality, the maintenance of a welfare state (with rights that henceforward had strings attached), and criminal justice thinking that revolved around rehabilitation. These are also 'inclusive' systems in which emphasis is placed on the social causes of marginality, where the State's calling to intervene is aimed at integrating marginal and/or deviant citizens and views on crime are relatively less harsh. Given this model, the recent developments in juvenile justice definitely reflect a shift in this welfare regime ideal, even though most of the welfare underpinnings remain firmly in place. They doubtless

confirm Garland's position when he stresses that the changes occurring in criminal justice are above all cultural changes within an institutional framework, the structure of which has not been fundamentally challenged (Garland, 2001).

The continued welfare influence is perceptible in both the discourse about and provisions of the reform, but also in the sanctions that are meted out. For the Justice Minister, the new legislation must not modify fundamentally a protection system that she considered to be '90% effective' and the main objective of which was to 'protect young people better and give them every chance and all help to become a part of our demanding society'²². The title of the new law began, moreover, with the words 'law regarding youth protection', even though it was also completed by two other phrases ('the management of minors having committed an act qualified as an infringement of the law' and 'reparations for the damage/injury that this act has caused') that underline straight off that 'penal welfarism' is not the only direction that the law takes. The welfare ties can be discerned again when it comes to the maintenance of 'guardianship, education, and preservation measures' to react to 'acts deemed infringements', the role played by the specific court for juveniles, which remains the cornerstone of the system, with what continue to be largely discretionary powers. Paternalistic logic and expert appraisal schemes remain in place in a system that maintains the possible perverse effects of such components with a certain denial of the minor's rights, decisions taken before the law is rendered, albeit in the minor's interest, the possible cumulative performance or extension of various measures, and the absence of strict boundaries on the seriousness and time frames of the measures. When it comes to the practices themselves, we must underline the extension of judicial intervention to non-delinquent minors and the maintenance of typically protective schemes such as community service work and training plans. We see, moreover, that the rehabilitative ideology remains quite strong within the IPPJs, with the presence of a large staff of psychologists and social workers and practices that are keen to set the institution for juveniles apart from prison.

Nevertheless, the supportive and inclusive, but also paternalistic and intrusive, spirit of the welfare model is no longer seen in the same light today as forty years ago. When it comes to the texts, two elements are significant in this regard: Of the six criteria that must guide the judge's intervention, 'what the person concerned stands to gain' comes last and no longer

²² L. Onkelinx, *Note cadre concernant la réforme de la loi du 8 avril 1965 relative à la protection de la jeunesse*, (General memorandum on the reform of the Youth Protection Act of 8 April 1965), March 2004, 1.

seems to have the centrality that it used to have²³. Next, the understanding attitude of the welfare logic that emphasised society's responsibility for generating deviance regularly gives way to an ideal of accountability and activation that places responsibility in the individual's camp. This is true for the minor, to whom both the prosecutor's office and the court 'proposes', in the provisional stage and sentencing stage alike, measures that assume the minor's consent and engagement, e.g., 'restorative offers' and the 'youth's written plan'. The mediation and other service measures underscore a tendency to make the young person the agent of his/her own sanction in order to make him/her responsible for both the offence committed and his/her pathway in life²⁴, even if this means turning a blind eye to the social conditions that generated the act 'by reducing [the act] to a conflict between the young person and victim and/or his/her immediate environment' (Nagels, De Fraene and Christiaens, 2006) or making it easier to blame the minor him- or herself if a measure fails. However, this is also true for the minor's parents, who are likely to be called in and sanctioned by a fine if they fail to appear without a valid reason, or invited or required to take 'parental training' if they show 'a marked lack of interest in the delinquent behaviour' of their child. Whilst the potential stigma of judicial intervention so decried in the welfare logic no longer seems to pose a problem here²⁵, its potential effects remain highly controversial.

When it comes to incarceration and placement, a fairly similar trend can be discerned. The rehabilitative roots that characterise the public institutions seem forced to reach a balance with managerial and controlling logic that leaves little room for the ideals of (occupational) integration and returning to school. This induces a deficit of meaning in work that is dominated by managerial thinking (short stays, high turnover), disciplinary micro-penalty (Foucault, 1975), control over people's private lives, and cognitive behavioural techniques, and leads gradually to a culture that could well be a culture of control or self-control centred for the most part around strict observance of norms and striving and reach a level of 'good' or 'correct' behaviour. As for the alternative measures, the net widening that they comprise also puts them in a more general culture of social control. Keen to encourage young people to become aware of and responsible for their actions, it might symbolise the transition from the 'Social Welfare State' to the 'Active Social Welfare State' even more than the incarceration/placement practices, following a pattern that is rather similar to the trends

²³The Constitutional Court nevertheless underlined in this regard the binding/coercive nature of Article 3 of the International Convention on the Rights of the Child and the concept of 'the child's interests', Ruling 49/2008, B. 14.2, 14.3. and 14.4.

²⁴ Onkelinx, *op. cit.*, pp. 5 and 9.

²⁵ For more on this point, see Garland (2001).

detectible in other public policy areas aimed at people in vulnerable socio-economic situations, such as social and employment policies (Smeets, 2006; Dumont, 2008; Franssens, 2008). The ‘responsibilising’ trend consequently triggers the same critical questions and those raised by the activation processes that have arisen in related fields (Dumont, 2008). Is the participatory contractualisation of the sanctions a way to the thinking individual, considered to be an agent of his or her own development, involved and ultimately autonomous (positive version)? Or is the impact above all one of transferring responsibility from the community to the individual (and his or her parents) by placing the sanction’s failure to produce results on the shoulders of a ‘submissive individual’ (Bonvin and Moachon, 2005) or a new ‘subject of allegiance’ (Kaminski, 2006), through consent that is given, of course, but under conditions of free will and enlightenment that can be called into question. For Bouverne-De Bie and Roose (2005), the adoption of a social welfare point of view that emphasises ‘the individual’s responsibility in the development of personal skills to answer one’s own questions and needs’ makes it possible to explain ‘the fact that society sanctions individuals who are not good entrepreneurs of themselves’ Whilst it is possible to detect, in the earlier protective practice, indicators of the thinking aimed at activating and responsibilising young people and parents (Dumortier, 2006), a clear change in the way social problems are managed has clearly been made in this regard.

3.2. Are more rights synonymous with greater punitivity? The ambiguities of punitive neo-liberalism

The legal loopholes in the protection model of juvenile justice have been the butt of recurrent broad criticism in Belgium. In this regard, a certain number of corrective measures linked to the need to comply with the Belgian Constitution and the International Convention on the Rights of the Child are perceptible. These concern the general obligation to explain the reasons for an adjudication that henceforward applies to the juvenile courts in connection with a list of factors and circumstances that the judge must take into account; the obligation to give special reasons that is incumbent on the judge when he or she wishes to combine several measures and/or conditions; the obligation to specify the maximum length of certain placement measures; the will to introduce clearer age thresholds – 12 years, 14 years – for certain measures, the taking account of the nature and/or the seriousness of certain acts to justify a placement or diversion measure, the concern for introducing a gradation in the measures and to give a clear preference to keeping the minor in his or her surroundings; and

the right to legal counsel for all appearances before the examining judge, even if the law provides for an exception, according to which the examining judge may have a private meeting with the person in question²⁶. These provisions contain various elements that tend without contest to objectivise the individual's legal protections and to narrow the gap between this current of law and offence-based criminal law, which is traditionally associated with the canons of a 'democratic criminal law' (Tulkens and van de Kerchove, 2007). Similarly, the incarceration policy has clearly been influenced by the rights discourse: Here we recall the Bouamar decision of the European Court of Human Rights with its impact on abrogating the former Article 53 of the 1965 and the emergence, in its wake, of a rather strict regulation in the French-speaking Community that led to a rather drastic reduction in the practice of solitary confinement in IPPJs²⁷ (De Fraene and Brolet, 2005).

The progress made by the rights discourse nevertheless remains limited and ambiguous. This is due first of all to the fact that the desire to maintain a less formal style of justice fits poorly with the requirements that are linked to the strict observance of the rights and freedoms guaranteed by the Constitution and/or international conventions and the concern for compliance officially exhibited by lawmakers in this regard doubtless reveals the limits of the plan (Krenc and Van Drooghenbroeck, 2008). In effect, a certain number of problems remain, whether in respect of the possible combination of measure, diversion and how to carry it out, measures that are proposed to or imposed on a minor who is presumed innocent before a judge's adjudication, the fact that the prosecutor's action is not automatically extinguished in the even of successful restorative mediation²⁸, the joint or separate regimen of placement of minors and young adults in the secure federal centres, or even the 'parental training' as a sanction and the 'fuzzy conditions' under which it is imposed (Krenc and Van Drooghenbroeck, 2008). Next, this is because the price to pay to 'objectivise' protective juvenile law might also be that of increased criminalisation or tougher punishment, processes that Krenc and Van Drooghenbroeck stress might well be 'encouraged' or even 'imposed' by the law enshrined in the European Convention on Human Rights and, even if to a lesser extent, by the Convention on the Rights of the Child (Krenc and Van Drooghenbroeck, 2008). To back up this line of argument, we can cite the extension of diversion from the juvenile court's jurisdiction that provides for the application of adult criminal law; the creation of

²⁶ See T. Moreau's criticism (Moreau, 2007).

²⁷ Decree of 18 July 1989 on the organisation of the Observational and Correctional Education Establishments Group of the French-speaking Community, *Le Moniteur Belge/Het Belgisch Staatsblad*, 10 November 1989.

²⁸ The Constitutional Court approved this parliamentary decision, even though it ran counter to the Committee on Children's Rights' tenth recommendation (Ruling°50/2008 of 13 March 2008, cons. B.15.12).

‘juvenile prisons’ by the ‘Everberg Law’ of 1 March 2002; reference to the ‘seriousness of the act’, ‘damage/injury and consequences for the victim’, ‘earlier measures’ already taken, and ‘public safety’ to guide the court’s adjudication; the fine or prison sentence for parents who are reluctant to take ‘parental training’; even the possibility of extending the measures until the juvenile’s twenty-third birthday, which is likely to push the duration of protection measures closer to sentences’s duration. Still, we must avoid making this last point too adamantly and idealising the past, for the ‘flexibility’ of the protection model did not prevent the slide into tough law-and-order measures and punitive excesses that exposed the system to criticism of a ‘mystification of language’. Must the discourse about rights be condemned because of the possibility that it could be used for other purposes? The courts’ practices and empirical studies will make it possible to decide.

3.3. The impact of a society of victims: between restorative justice and penal populism

The victim’s influence on the reform of the 1965 law and the debate that surrounded it is clear. On the one hand, taking the victim into account encouraged the adoption of a restorative perspective, which was presented as a priority in the texts. On the other hand, the concern for the victim, fuelled by various highly publicised cases, contributed greatly to the ‘get tough’ attitude that permeated discussions about this reform. Like children’s rights, interest in the victim can be seen as a Janus figure, with a ‘gentle face’ on one side and a ‘harsh’ one on the other.

3.1.1. The victim’s influence or the ideal of restorative justice

The advocates of restorative justice have underlined the merits of creating a place for the victim in juvenile justice via informal mediation procedures since the early 1990s. For the juvenile offender, meeting the victim of his or her actions, they argue, would encourage an educational process of awareness-raising and avoid the stigma of judicialisation. For the victim, it would reduce the feeling of secondary victimisation and the empathy that a physical meeting produced would keep his or her punitive drives in check. For civil society, a sanction that was mediated by the community would help to strengthen social ties (Weitekamp and Kerner, 2002).

The new legislation incontestably gives this restorative perspective a chance. It makes the ‘restorative offer’ a priority, provides for mediation or family group conferencing

possibilities in the various stages of sentencing and pre-sentencing intervention from a ‘maximalistic’ perspective, but also sees such measures as complementing other measures with a protective and/or educational purpose (De Fraene, 2008). This choice leaves a number of questions unanswered: If mediation no longer necessarily serves as a diversion measure, won’t its use simply widen the criminal justice net even more (Dumortier, 2008)? In the absence of clear criteria, which offences and which minors will be involved in these procedures? Will the victims agree to play the game and participate in the proposed procedures, and will this effectively affect their demands for punishment? Current practice gives us little reason for optimism regarding the answers: First of all, the available data on restorative justice show that victims are little inclined to participate in the proposed mediation procedures; next, it seems that the net widening hypothesis is borne out; and finally, alarming indicators of a two-track justice (a bifurcation) are detectible.

3.1.2. Victim, media, and public opinion: the infernal triangle?

The victim’s eruption on the scene presents another equally important facet. In Belgium, the Van Holsbeeck case – a fatal stabbing committed by two minors to facilitate the theft of an MP3 player – illustrates this well (Kaminski, 2008). The victim’s (or rather, the victim’s parents’) call for ‘understanding’, which was widely circulated by the media, led to strong polarisation in this case between the roles of the victim and a minor who was readily presented as someone who was radically ‘different’, the perpetrator of violence that was all the more dangerous in that it was ‘senseless’, incomprehensible, and inexcusable. This polarisation was accompanied by a clamouring for punishment that was widely disseminated by the media on behalf of the victim and his family, but also as the spokesman of a public opinion that the very same media had to a great extent shaped.

The highly publicised *fait divers* produced a form of moral panic in this case that increased the pressure on the country’s politicians, social scientists, and justice system alike. The first group had to react to the media tidal wave by vying with each other and the public in their demands for punishment²⁹, speeding up the legislative reform process and touting its ‘sanctional’ merits, creating new punitive facilities, and adopting emergency measures to put an end to what the media deemed ‘scandalous’ protective practices. Three examples occurring a few years apart illustrate this phenomenon quite well: In 1981, the decision to create a

²⁹ See ‘CD&V wil minderjarige criminele, voor volwassenenrechter’, *De Standaard*, 8 June 2007 [www.standaard.be].

secure state institution in the French-speaking Community that was opposed by a great many MPs and lobbies was clinched by the case known as the ‘Courcelles killer’ involving a minor who killed a young adult. Twenty years later, in 2002, the Everberg Federal Youth Detention Centre – a secure facility – was created with astonishing speed in reaction to intense media agitation. Finally, in 2006, the creation of ten additional places for secure detention was announced in 2006, in the wake of the Van Holsbeeck affair.

For social scientists, it became difficult to make any statements, as distancing themselves from the dominant media opinion was readily interpreted to be a sign of unacceptable insensitivity to the plight of victims. As the consensus around the victim constrained changes of tone and public statements of the problems, some investigators jumped on the dominant discourse bandwagon. Finally, the judiciary were the targets of ‘therapeutic’ expectations that can be judged unrealistic, with complete disregard for the primary ends of their intervention (in this case, resocialising the minor and preventing juvenile delinquency). Some perfectly legal and legitimate (from the standpoint of juvenile protection) judicial practices were then challenged, as the Van Holsbeeck case once again illustrates: refusal of protective judicial treatment for one of the two perpetrators, educational sorties in the course of the placement that were perceived as evidence of ‘laxness’ or scorn for the victim, incomprehension of a twenty-year sentence when a maximum of thirty years was possible, and so on.

Here, taking account of the victim had exactly the opposite effect of that for which the ideal of restorative justice strives: the expression of a criminology of *Alter* (Garland, 2001), whose voice is henceforward silenced.

References

- BAZEMORE, G. and WALGRAVE, L. (eds). (1999). *Restorative juvenile justice: Repairing the harm of youth crime*, Monsey, New York: Criminal Justice Press.
- BONVIN, J. M. and MOACHON, E. (2005). L'activation et son potentiel de subversion de l'Etat social. In VIELLE P., POCHET Ph., and CASSIERS I. (eds). *L'état social actif. Vers un changement de paradigme ?*. Brussels: Belrin, Peter Lang, pp. 63-92.
- BOUVERNE-DE BIE, M. and ROOSE, R. (2005). Over ouderstages, of: de maatschappelijke logica van een beschermingssysteem. *Panopticon*, 1, pp. 35-44.
- BROLET, C. and DUMORTIER, E. (2004). Où va la protection de la jeunesse ? De la peur de la répression et la réforme du droit de la jeunesse. In *Les dossiers de la Revue du Droit Pénal et de Criminologie - La réaction sociale à la délinquance juvénile*. Brussels and Bruges : La Charte/die Keure, pp. 99-115.
- CAMMAERT, F, WINKELMANS, L., Van ALBERT, K., CHRISTIAENS, J. and PONSAERS, P. (2004). *Monitoring van effectiviteit inzake alternatieve sancties*. UGent: unpublished research report ordered by the city of Antwerp.
- CAVADINO, M., and DIGNAN, J. (2006). *Penal systems : A comparative approach*. London: Sage.
- CHRISTIAENS, J. and DUMORTIER, E. (2002). Wanneer de nood hoog is, is de gevangenis nabij : over de afschaffing van artikel 53 en de invoering van de jeugdgevangenis. *Tijdschrift voor jeugdrecht en kinderrechten*, 2, pp. 53-57.
- CHRISTIAENS, J., ELIAERTS, C., ENHUS, E. and CURTIS, L. (2006). *Geplaatste delinquente jongeren en recidive*. Ministerie van de Vlaamse Gemeenschap – Afdeling Gemeenschapsinstellingen., unpublished research report.
- CLAES, M. (2002). Voorstelling van de V.Z.W. Ondersteuningsstructuur Bijzondere Jeugdzorg. *Panopticon*, 3, pp. 258-260.
- CRAWFORD, A. (2001). Vers une reconfiguration des pouvoirs ? Le niveau local et les perspectives de la gouvernance. *Déviance et Société*, 1, pp. 3-32.
- DEFRAENE, D. (2008). La priorité à l'offre restauratrice... Les convoyeurs attendent-ils ?. In MOREAU, T., RAVIER, I. and VAN KEIRSBILCK, B. (eds). *La réforme de la loi du 8 avril 1965 relative à la protection de la jeunesse. Premier bilan et perspectives d'avenir*. Liège : Éd. Jeunesse et Droit, pp. 117-136.

- DE FRAENE, D. and BROLET, C. (2005). Institutions et pratiques d'enfermement des mineurs en Belgique. In CHRISTIAENS, J., DEFRAENE, D., DELENS-RAVIER, I. (eds). *Protection de la jeunesse. Formes et Réformes*. Brussels : Bruylant, pp. 3-26.
- DE FRAENE D., CHRISTIAENS J. and NAGELS C. (2005). Le traitement des mineurs délinquants. Justice restauratrice et centre d'Everberg. *Courrier hebdomadaire* du CRISP, 1897-1898.
- DEVEUX, E. (2006). *La médiation auteur-victime au tribunal de la jeunesse de Bruxelles. Une ressource inexploitée ?*. Mémoire présenté en vue de l'obtention du grade de licenciée en criminologie. Brussels : Université Libre de Bruxelles.
- DUMONT, D. (2008). Vers un Etat social « actif » ?. *Journal des Tribunaux*, 6300, pp. 133-139.
- DUMORTIER, E. (2006). *De jeugdrechter in twijfel. Onderzoek naar het ontstaan en de praktijk van de kinderrechter (België, 1912-1965)*. Dissertation. Brussels: Vrije Universiteit Brussel.
- DUMORTIER, E. (2008). La lutte des modèles en matière de délinquance juvénile. In MOREAU, T., RAVIER, I. and VAN KEIRSBILCK, B. (eds). *La réforme de la loi du 8 avril 1965 relative à la protection de la jeunesse – Premier bilan et perspectives d'avenir*. Liège : Éd. Jeunesse et Droit, pp. 453-460.
- DUNKEL, F. and SNACKEN, S. (2005). *Les prisons en Europe*. Paris : L'Harmattan.
- ERNER, G. (2006). *La société des victimes*. Paris : La Découverte.
- FAGET, J. (2008). La fabrique de la décision pénale. Une dialectique des asservissements et des émancipations. *Champ pénal/Penal Field*, 22 May 2008. URL [<http://champpenal.revues.org/document3983.html>].
- FLORIZOONE, B. and ROOSE, R. (2000). De bijzondere jeugdbijstand: feiten en cijfers. *Welzijnsgids – Welzijnszorg, Bijzondere jeugdbijstand*, 35, pp. 87-130.
- FRANSSEN A. (2008). L'État social actif : une nouvelle grammaire des risques sociaux. In CARTUYVELS Y. (dir.). *Les ambivalences du risque. Regards croisés en sciences sociales*. Brussels : FUSL, pp. 113-148.
- GARLAND, D. (2001). *The Culture of Control*. Oxford: Oxford University Press.
- GEUDENS, H., SCHELKENS, H. and WALGRAVE, L. (1998). À la recherche d'un droit sanctionnel restaurateur. *Journal du Droit des Jeunes*, 173, pp. 3-21.
- GRYSPEERDT, I. (1987). De rol en de functie van de R.O.O.T. *Contactblad voor Jeugdbescherming*, (2), pp. 13-24.

- HOUGARDY, L. (2007). *Institutions Publiques de Protection de la Jeunesse et Centre fermé provisoire d'Everberg. Rapport statistique intégré 2006*. Rapport à l'intention de la Direction Générale de l'Aide à la Jeunesse.
- JASPART, A. (2008). Les mesures de placement en IIPJ. In MOREAU, T., RAVIER, I. and VAN KEIRSBILCK, B. (eds). *La réforme de la loi du 8 avril 1965 relative à la protection de la jeunesse : premier bilan et perspectives d'avenir*. Proceedings of the colloquium of 31 May-1 June. Liège : Éditions Jeunesse et droit, pp. 209-221.
- KAMINSKI, D. (2006). Un nouveau sujet de droit pénal ?. In DIGNEFFE, F. and MOREAU T. (eds). *La responsabilité et la responsabilisation dans la justice pénale*. Brussels : de Boeck, pp. 323-360.
- KAMINSKI, D. (2008). Médias et réaction à la délinquance. In MOREAU, T., RAVIER, I., and VAN KEIRSBILCK B. (eds). *La réforme de la loi du 8 avril 1965 relative à la protection de la jeunesse – Premier bilan et perspectives d'avenir*. Liège : Éd. Jeunesse et Droit, pp. 59-78.
- KRENC, F. and VAN DROOGHENBROECK, S. (2008). La réforme au crible de la protection des droits de l'homme. In MOREAU, T., RAVIER, I. and VAN KEIRSBILCK, B. (eds)., *La réforme de la loi du 8 avril 1965 relative à la protection de la jeunesse – Premier bilan et perspectives d'avenir*. Liège : Éd. Jeunesse et Droit, pp. 453-460.
- MOREAU, T. (2007). La réforme de la protection de la jeunesse. Analyse des dispositions entrées en vigueur le 16 octobre 2006. Unpublished, CPU.
- NAGELS, C., DEFRAENE, D. and CHRISIAENS, J. (2006). La réforme de la protection de la jeunesse (2004-2006). *Courrier hebdomadaire du CRISP*, n°1937-1939. (il n'y a pas de pages ; c'est un[†] numéro complet de revue
- ONKELINX, L. (2004). *Note cadre concernant la réforme de la loi du 8 avril 1965 relative à la protection de la jeunesse*.
- OP DE BEEK, T. (2002). Over jeugddelinquenten en zevenmijlslaarzen. *Tijdschrift voor Welzijnswerk*, 242, pp. 51-56.
- PEETERS, J. (1986). Les mesures alternatives au tribunal de la jeunesse de Malines. *Revue de droit pénal et de criminologie*, 5, pp. 465-471.
- SMEETS, S. (2006). *Nouveaux uniformes et État social actif : vers une recomposition du champ de la sécurité en Belgique*. Thesis, PhD in criminology. Brussels :Université Libre de Bruxelles.
- SNACKEN, S. (2007). Factors of criminalisation – A European comparative approach. *Crimprev Info*, 2bis, 1-18.

- TULKENS, F. and van DE KERCHOVE, M. (2007). *Introduction au droit pénal. Aspects juridiques et criminologiques*, 8th Edn. Brussels : Kluwer.
- VAN DOOSSELAERE, D. (2005). La médiation auteur mineur-victime : formes et conditions de la réforme. In CHRISTIAENS, J., DEFRAENE, D. and DELENS-RAVIER, I. (eds). *Protection de la jeunesse. Formes et Réformes*. Brussels : Bruylant, pp. 207-217.
- VANDAMME, W. (2002). In de naam van de veiligheid : de installatie van een jeugdgevangenis. *Panopticon*, 3, pp. 260-264.
- VANFRAECHEM, I. (2001). Herstelgericht groepsoverleg. *Panopticon*, 4, pp. 390-391.
- VANFRAECHEM, I. and WALGRAVE, L. (2004). Herstelgericht Groepsoverleg voor jonge delinquenten in Vlaanderen. Verslag van een actieonderzoek. *Panopticon*, 6, pp. 27-46.
- VANHAMME, F. and BEYENS, B. (2007). La recherche en *sentencing*, un survol contextualisé. *Déviance et Société*, 31(2), pp. 199-228.
- VANNESTE, C., GOEDSEELS, E. and DETRY, I. (2005). Pour une histoire chiffrée de quarante années de protection de la jeunesse : quelques repères utiles. In CHRISTIAENS, J., DEFRAENE, D. and DELENS-RAVIER, I. (eds). *Protection de la jeunesse. Formes et Réformes*. Brussels : Bruylant, pp. 3-26.
- VANNESTE, C. (2001). *Les décisions prises par les magistrats du parquet et les juges de la jeunesse à l'égard des mineurs délinquants*. Brussels : INCC, 35.
- VANNESTE, C. (2003). Les logiques décisionnelles des magistrats du parquet et des juges de la jeunesse à l'égard des mineurs délinquants. *Revue de droit pénal et de criminologie*, 2, pp. 232-263.
- VANNESTE, C. (2005). « Origine étrangère » et processus décisionnels au sein des tribunaux de la jeunesse. In QUELOZ, N., BUTIKOFER REPOND, F., PITTET, D., BROSSARD, R. and MEYER-BISCH, B. (eds). *Délinquance des jeunes et justice des mineurs. Les défis des migrations et de la pluralité ethnique*. Bern and Brussels : Staempfli and Bruylant, pp. 631-649.
- WALGRAVE, L. (1982). *De bescherming voorbij. Ontwerp voor emanciperende jeugdkriminologie*. Antwerp and Arnhem: Kluwer/Gouda-Quint.
- WEITEKAMP, E. and KERNER, H.-J. (eds) (2002). *Restorative Justice. Theoretical foundations*. Cullompton UK: Willan Publishing.