

YOUTH CRIMINAL JUSTICE IN EUROPE AT THE INTERSECTION OF PROTECTIVE THINKING, A NEO-LIBERAL TURN, AND NEO-CONSERVATIVE IDEOLOGY

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The juvenile criminal justice systems in Europe and elsewhere in the Western world have been grappling with far-reaching transformations over the past decade, especially at the level of primary criminalisation. Canada adopted a major reform of its legislation in 2003, as did Turkey and Romania in 2005 and Belgium and Spain in 2006. Whilst the shift in direction occurred earlier in England, regular adjustments (the last one in 2006) underline the continual adaptations that are being made in its youth justice system. France, for its part, differs from the other countries by the repeated changes that have been made to its legislation since 2002. These various reforms illustrate a will to change, but they also reflect the uncertainties of political actors and lawmakers about the place that should be given to young people in a changing world. In societies that are marked by the globalisation of trade and the deficits and upheavals affecting the traditional institutions or tools for integrating young people in society, *e.g.*, training, the labour market, the family, etc., juvenile justice is trying to find its way. In their common task, which is to help certain young people effect the transition from the status of minors under guardianship to that of adults responsible for their fates, youth justice systems are oscillating between education and accountability, mediation and reparations, ensuring security and managing risks, prevention and punishment.

In line with the conclusions drawn from our previous research, we recalled in the introduction to this volume the analytical grid that we proposed to the authors to describe and explain the transformations affecting juvenile justice in Europe. In this grid, emphasis was placed on several indicators, to wit:

- the influence of *welfare* policies and their modifications in a criminal justice context that is often described as having taken a ‘punitive turn’.
- the role of *human rights* in the evolution of juvenile justice systems.
- the *victim*’s impact, in that the victim is traditionally associated with the promotion of the restorative justice current but can also contribute to toughening the reactions of the courts to juvenile delinquency.
- the media’s influence on how juvenile delinquency is seen and dealt with by social institutions.

In order to avoid confining this work to an analysis of legal texts or political declarations, we asked each contributor to examine not only the processes of primary criminalisation, but also, if not above all, the processes of secondary criminalisation. More precisely, overriding importance was given to the *practices of custody and alternative sanctions* as indicators of current developments. Some authors also analysed the *spread of a judicial logic* in dealing

with juvenile deviancy or the penetration of this way of thinking into other related fields, such as the school, social policies, and social work in their respective countries.

We propose to present our collective results with the help of the analytical grid that we proposed to the national contributors. After discussing some general findings, we shall underline the following trends:

- the media's impact on the transformations that juvenile justice is undergoing, even though some countries are holding out against the winds of 'moral panic' better than others;
- against the punitive temptation, various forms of resistance of the welfare model to primary criminalisation, but above all more effective resistance, especially by the professionals, in the way sanctions are applied in practice;
- the importance that third-way or 'alternative' sanctions responsabilise juveniles for their actions, and the risk that these sanctions may lead to the problem of net widening;
- the relative lack of influence of victims in restorative justice practices, despite their high profile when it comes to the primary criminalisation of deviant behaviours;
- the judicial logic's extension to other systems and social practices;
- the influential role played by human rights and the rights of the child, mainly in the sphere of legislation;
- the growing influence of a managerial approach in talking about the aims and functioning of juvenile justice, an influence that is often linked to striving to speed up procedures, cut costs, and rationalise civil service jobs, the privatisation of various services for implementing the measures, etc.

1. General preliminary findings

1. No explosion of youth delinquency statistics was found in any of the countries. On the contrary, the reported crime rates have remained rather stable, even declined (Canada, Scotland, and Portugal), are low (Slovenia), or poorly known (Belgium). If they are increasing, as in the case of France, this rise reflects law-and-order concerns rather than those traditionally linked to combating juvenile delinquency. As Ross Hastings underlines for Canada, developments in policies to handle youth delinquency in line with a toughening of the penal response in the primary or secondary criminalisation stage are not necessarily triggered by a rise in official delinquency statistics. They tend rather to be the products of the intersection of numerous factors, or, as Adam Crawford and Sam Lewis pointed out in our earlier publications, the fruit of a 'complex (and paradoxical) set of political, cultural, and institutional forces' (Crawford, Lewis, 2007).
2. The dramatisation of political discourse about juvenile delinquency based on a few particularly spectacular cases highlighted by the media is a reality in many countries. This does not automatically give rise to a toughening of juvenile criminal law. For example, Slovenia, Belgium, Scotland, and Germany are withstanding such pressures. And when the political players change the legal system in reaction to the punitive pressure exerted by the media and public opinion, we see resistance being put up by those responsible for actual practice on the ground. So, the three spheres likely to weigh upon developments in juvenile justice, namely, the political and media sphere, the sphere of legal formalisation (primary criminalisation), and that of practices (secondary criminalisation), are relatively autonomous. Translations occur from one sphere to the other in response to their specific ways of thinking that attenuate the unilateral pressure of one level on the other, even though patterns of influence and balances of power exist between the various spheres.

3. Whilst convergent developments amongst the various countries are perceptible, they don't differ in line with the local context¹. As we have already underlined previously, the developments that characterise juvenile justice take forms that are specific to each of the countries in line with their national judicial systems, history of social policies, and the socio-political contexts that influence them (Bailleux and Cartuyvels, 2007, 288). Here the political and institutional contexts play a considerable role: The influence of the 'detartanisation' movement in Scotland, the weight of institutional developments in a federal Belgium, and the distribution of powers between the federal and provincial levels in Canada are good examples of this. Belgium's socio-political context is not the same as Turkey's, and Scotland's cultural references are not the same as Portugal's, even though we see a relative homogenisation of practices from certain standpoints, especially under the pressure of a transformation of social policies steered by the European Commission or the weight of international conventions. We can see, for example, stepped up criminalisation of specific behaviours of certain young people in France, England, and Wales, but this criminalisation takes different paths. In France, the majority of the behaviours termed 'incivilities' have over the past few years gradually been included in the criminal code, so that they now come under a court's jurisdiction. In England, these same behaviours are treated by 'anti-social behaviour orders' (ASBOs). These last measures, which are not criminal orders, are however 'reinforced by criminal sanctions in the event of breach of the educational contract' and A. Crawford, quoted by Sam Lewis, notes that '...as a technology of control, ASBOs provide a crucial fast-track route, for some, not only into criminal justice but more importantly into prison'.

2. The media's influence: the differentiated impact of a climate of Moral Panic

The media's role in dramatising juvenile delinquency has been underlined in most of the countries under study. For Canada, Ross Hastings writes, '... youth offending continues to be a 'hot' topic in the media, and there is public pressure to respond more punitively to young offenders, especially in the case of violent offenders'. This pressure is also to be found in France, with regard to which Francis Bailleux underlines that 'the changes made in the penal ordinance of 1945 by the last few governments and the current government are the political class's 'tough' response to the numerous political and media campaigns about the ineffectiveness for 'today's youth' of education measures in open facilities and placement ordered by family court judges'. In France, the exploitation of certain extraordinary crimes for clearly political ends has led to a legal inflation that nothing has been able to hold in check, even though these 'new' texts are used very little by the judges and rarely evaluated by the officials who pushed them through parliament. Scotland is not to be outdone. Lesley McAra speaks of a climate of 'moral panic' regarding juvenile delinquency in the country. In her opinion, whilst the movement was primed by the political authorities, it has been widely taken up by the media, '... despite the fact that all the indicators show that juvenile crime rates were either stable or falling'. In Spain, the emphasis that the press regularly puts on a few spectacular crimes tends to give the impression that they represent the norm. Like it or not, these cases end up being considered by part of the population to be the common behaviour of youth offenders and incarcerating them is regularly presented as the one and only possible response to these exceptional crimes. However, as Maria Bernuz points out, this focus on confinement is not due solely to the media: '...the 'social operators' opinions on the custodial

¹ For more on this translation process, see Bailleux, Cartuyvels, Dumont, Ost (2009)

centres' functions have changed. So, in their discourse the tone has shifted from the onus of stigmatisation to messages about the possibilities that the threat of this measure offers. They feel that having the threat of placement in a secure youth detention centre hanging over an offender's head is a good way to ensure compliance with the conditions of probation'. The effect of the media's messages is not to be discounted. The media never mention the deviant acts of the overwhelming majority of 'delinquent' young people and, likewise, people are largely unaware of alternative sentencing schemes. The situation is not very different in Belgium, where the emphasis placed on a few spectacular cases has cast a dark shadow over the political and media landscape.

However, this is not a uniform trend. Both Slovenia and Portugal seem to have remained untouched enthusiastic dramatisation of the problem by either politicians or the media. Josefina Castro notes that whilst juvenile delinquency had a high profile in the 1990s, notably due to the development of private television networks, the media's dramatisation of juvenile delinquency has been much more discreet these past few years. For Slovenia, Katja Filipcic stresses that juvenile delinquency 'is not an interesting topic for the media'. What is more, young people are likewise perceived differently in Slovenia: Young people benefit from positive socio-economic and political investments in Slovenia, with delinquency continuing to be perceived as emerging with a context of exclusion. In this connection, the contrast between the juvenile delinquency statistics in Slovenia and France is interesting. In France, offences against property currently account for less than half of the actions reported by the police and *gendarmerie*, whilst one third of the reported offences committed by juveniles are linked to conflictual relations between the authorities, police, or administrations and young people in impoverished neighbourhoods. The image that is given of young people – or at least of a segment of this population – is that of a potential law-and-order risk. In Slovenia, in contrast, 'the structure of [juvenile] delinquency has not changed. In 2007 the majority of the offences committed (76.50%) continued to be property offences'. The image of youth in Slovenia remains less threatening and doubtless less interesting for the media.

In the places where the media start baying with the hounds, there is generally an impact on changes in the legal or institutional landscape. In Spain, the climate of dramatisation, linked in particular to Basque terrorism, was accompanied by a punitive turn in the primary criminalisation of youth offences, whereas in Scotland the 'moral panic' movement led to putting sentencing at the heart of the justice model, at the cost of making a break with some of the fundamental principles of the earlier child hearing system. In Belgium, intense media and political pressure came to bear directly on various one-off reforms, just as it led the government to increase the number of custody places and to create new juvenile detention centres. Also in Belgium, the way that the media treated certain extraordinary cases may have led people to challenge some of the education practices that were considered normal under the 'protectional' or tutorial system. In France, the convergence of special political interests and the interests of certain media led to a dramatisation of delinquent acts with, as a result, seven reforms of juvenile criminal laws since 2002 – and other texts, moreover, are on the drawing board.

The media's weight, the draw of exceptional cases, the press's selective treatment of youth delinquency, the selective gaze that is turned on the way the juvenile justice system works (it is usually presented as being 'laxist'), and the political and legislative relays that pick up the media's tune are all very important factors that affect the development of juvenile justice in Europe.

3. Punitive temptation and welfare resistance: from words to deeds

3.1. The development of primary criminalisation processes: between a punitive turn and the hybridisation of competing logics

In the primary criminalisation stage, the social welfare model and its rehabilitation presuppositions have not been swept away by a generalised 'punitive turn'. We can no more speak of a clear and sudden break with it in Canada and Turkey or in Europe, with the exception of France (Bailleau, 2008). Some relatively large divides exist between various countries in this respect, depending on the reform process that has taken place in each case these past few years.

Three countries, namely, France, Scotland, and Spain, have taken a rather characteristic 'punitive turn' when it comes to recent legislative developments, whilst a fourth country, England, leaves the observer more hesitant. France is without a doubt the country marked by the clearest process of breaking with past norms. Since the political right returned to power in 2002, a lawmaking frenzy has fundamentally changed the 1945 ordinance, which was marked by the social welfare ideals of education and rehabilitation, in favour of a policy of deterrence, albeit without changing the ordinance's name. Other indices underline a clearly punitive trend in France, such as the toughening of education measures and penal sanctions for youth offenders, the adoption of judicial treatment for youth offenders between the ages of 16 and 18 that is very similar to that for adults, a boom in the number of offences specific to youth, and the creation of a new range of establishments for the incarceration of young people. Scotland has also been the theatre of a very clear toughening of the statutory scheme of sanctions in the past few years, this having taken place against the backdrop of criticism of the educational model's ineffectiveness but also under pressure from international conventions. Lesley McAra points out that whilst Scotland, with its children's hearings, long stood fast against the neo-liberal Anglo-American model, it subsequently aligned itself, starting in 2002, with the dominant punitive developments in neighbouring England, despite the resistance of the professionals involved in the system. Spain, for its part, has also been marked by a fairly clear toughening of the primary criminalisation of youth offences with its law of 8/2006. The latter appears to be a response to the supposed – but not proven by official statistics – rise in youth delinquency, a certain social uneasiness fuelled by the media, or the will to combat the 'feeling of impunity' that young offenders allegedly have.

Concerning the rise in punitivity, the case of England raises some questions. The New Labour government initiated a major reform of the youth justice system in 1997 under the 'tough on crime' banner. England is often considered to be a US bridgehead in Europe when it comes to criminal justice. The course taken by its juvenile justice reforms is often analysed as the translation of a punitive logic carried by the hegemony of US neo-conservatism. In reaction to this type of analysis, which here is taken up implicitly by Lesley McAra when she underlines the Scottish system's alignment with the English punitive model, Sam Lewis retorts that the current trends 'embody various dynamics, with divergent philosophical origins and competing logics'. Our English colleague feels it is too simple to see just a 'punitive turn' in the course that has been taken over the past ten years, given that these reforms also put emphasis on a large arsenal of preventive and community measures in addition to the deprivation of liberty. In addition, she argues that the punitive dimension, albeit incontestable, is linked more to a 'neo-conservative' moralising movement marked by a certain degree of 'irrationality' than to a 'wave of neo-liberal hegemony'. According to Lewis, denouncing a 'punitive turn' in England is not only simplistic, but counterproductive as well, for it is likely to encourage a movement that we are striving to contain. Quoting Zedner (2002), 'The danger of expending our energies documenting contemporary youth justice dystopias, whilst simultaneously ignoring evidence that runs counter to the notion of a 'punitive turn', is that we may unwittingly entrench a culture that we ought to be resisting'. The argument itself is

interesting. However, it appears difficult to connect it with the findings that the author herself presents regarding the development of secondary criminalisation in this country (see below).

The legislative reforms of juvenile justice that have been adopted in three other countries, namely Portugal, Belgium, and Canada, reflect rather clearly, according to the researchers themselves, the choice of a hybridisation of logics against the backdrop of tough law-and-order pressure. In these cases, we see the maintenance of part of the social welfare heritage, with the refusal to give up a tutorial logic centred on what is in the minor's interest, competing with some new twists creating legal bases for a toughening of the sanctions. However, maintaining this protectional logic – centred on the interest of the child as it is recognised in international conventions – is not free from contradictions or ambiguity when measures in favour of the victim are introduced into the legislation, as Maria Bernuz highlights for Spain regarding the introduction of the law on private prosecution (*acusación particular*): 'The adoption of this law introduced the interest of a party other than the young person, *i.e.*, that of the victim, into the functioning of juvenile justice in Spain' (426). Nevertheless, the lawmakers of Portugal, Belgium, and Canada have withstood the tough law-and-order pressure stoked by the media better than their counterparts in France, Spain, Scotland, and England. In Canada, for instance, Ross Hastings underlines the lack of a punitive turn, as shown by the law of 2002, and goes so far as to qualify this situation as 'an exception' to the trends in the neighbouring US, and in England and France. The will expressed in Canada is to maintain a balance between the juvenile's interests, the victim's needs, concern for the community, and 'rational' management of budgetary means. This balance nevertheless remains fragile for new, more punitive, bills are currently on the agenda. The findings are identical in Portugal, where the reform of the protectional system that was embodied in two laws in 1999 reflects a hybrid perspective. According to Josefina Castro, the tutorial logic has been maintained. But it has been completed by a punitive approach guided by the concern to plug the holes in the tutorial model when it comes to uphold the minor's rights, to correct its ineffectualness regarding older young people between the ages of 16 and 21, or to react to law-and-order-minded and budgetary pressure. Belgium, finally, has followed a course similar to that of Portugal for largely similar reasons: the will to respond to public pressure, the concern to plug the legal holes in the protectional system, and interest in restorative justice experiments led Belgium's lawmakers to correct the tutorial model without dismantling it. In this country, the 2006 reform is a particularly good illustration of this hybridisation of approaches. It is marked by the overall maintenance of a protectional plan, an extended reliance on punitive responses, notably for older juveniles, and the introduction in the texts of different restorative measures.

Finally, three countries which did not experiment with the social welfare model, namely, Romania, Slovenia, and Turkey, are heading towards projects fairly similar to the ones mentioned above, although each has its own special twists. In Slovenia, the protection model inherited from the 'State paternalism' specific to the Communist regime remains dominant. Unlike criminal justice for adults, juvenile justice has not undergone the punitive reforms that the victim's movement, a crime crackdown context, or the examples set by other European countries, could have triggered. Still, a recent bill to create a special law on the treatment of juvenile offenders could incarnate 'the temptation to follow the European trends of tougher criminal policies'. Romania, which is likewise a former Communist country, took a different course: after adopting a severe punitive system for juvenile offenders, who were treated practically on a par with adults, in the 1990s, Romania changed tack at the turn of the 21st century. The new texts that it adopted, starting in 1998-2000, emphasised a specific justice system for juveniles, ideals of prevention and rehabilitation, the principle of criminal irresponsibility under the age of 14, taking account of 'discernment' between the ages of 14 and 16, and, as a general rule, the importance of the juvenile's personal situation or his/her

dangerousness for society in taking a judicial decision. However, Doina Balahur underlines that tensions have also become detectable in recent years between maintaining certain values specific to the ‘protectional’ school of thought (e.g., rehabilitation and reintegration) and toughening the criminal sanctions, all against a backdrop of a diversified system of responses that is opening the door to the implementation of alternative sentencing strategies. However, this country is also grappling with major difficulties to get the courts – especially the older judges – to apply this new approach and these new types of sanctions. Finally, in Turkey, the creation of justice specifically for minors is itself a fairly recent development. To cope with juvenile delinquency, that is largely associated with the process of galloping urbanisation, widening social inequality, and pervasive consumerism, the Child Protection Act was adopted in 2005 and overhauled the previous legislative framework, which dated back to 1979. However, as Verda Irtis explains, Turkey’s first youth court was created in 1987 and such jurisdictions remain very scarce even today. What is more, the way that juvenile justice works continues to be guided traditionally by the offence rather than by the minor’s personality. The oscillation between punitivity and protection in this country, with some ‘timid’ testing of restorative justice, is due less to challenging a social welfare model of justice than to the fact that the approach itself has not yet been implemented for lack of means.

3.2. Custodial practices: a punitive turn that must be put in perspective

The researchers studying France, Scotland, and Spain – countries marked by a toughening of the laws – underline a rather clear divide between primary and secondary criminalisation. This divide can be interpreted to be the expression of resistance in practice to the punitive inflation that can be detected in the texts. So, youth incarceration rates have not risen significantly in France, where, as Francis Bailleau points out, the judges are reluctant to use the new punitive measures. Similarly, antidotes to the punitive trend exist in Scotland, in the form of the subsisting infrastructure of the Children’s Hearing or via the adoption of the ‘What Works’ programme, which contains various measures guided by the ideals of reintegration and rehabilitation. As for Spain, the toughening of the primary criminalisation process for reasons of legitimisation has not produced a radical change in practices, either, even though slight increases in the lengths of spells in custody (concerning primarily target populations) can be detected. On the other hand, the political transformations induced by this toughening of primary criminalisation reflect a change in the balance of power between the legislature and judiciary when it comes to handling delinquency in Spain and France. As Maria Bernuz points out with respect to Spain, ‘So, the lawmakers, being more ‘political’ than judges, limit the juvenile court judges’ discretionary powers regarding serious offences (felonies), which are perceived as matters of general interest’

In England, the analysis proposed by Sam Lewis, who downplays the importance of the punitive turn in the primary criminalisation stage, is similar at the stage of secondary criminalisation. Of course, the legal changes in the country have been accompanied by a marked toughening of the system of sentencing with, amongst other things, a surge in the incarceration rates between 1994 and 2008. For an outside observer, the punitive turn might appear here to be a reality, if it is true, as Lewis points out, that, according to the Council of Europe’s figures for 2008, England and Wales now imprison more young people than almost every other country in Europe, with the exception of the Ukraine and the Russian Federation. However, according to our English colleague, this increased punitivity is not the only movement discerned in the country’s practices. Besides the multiplication of community prevention and intervention schemes, the social welfare culture appears to subsist in certain custodial institutions, with a concern for education being dominant. Concluding that the system has opted for punishment alone is too simplistic, given that social welfare concerns

have not disappeared and that ‘field practice challenges the political rhetoric and runs counter to the ‘proof’ given by incontestable results (detention and other statistics) that paint a majoritarily punitive picture of the juvenile justice policy and practices’. According to this reading of things, the English situation is not fundamentally different from those of the other European countries; the culture of practitioners continues to bear the social welfare stamp. It remains that, besides the existence of imprisonment rates above the European average and exceeded only by those of Ukraine and Russia, the author points out that ‘between 1994 and 2004 the number of juveniles sentenced to custody rose by approximately one-third...[and] between 1991 and 2008 the number of juveniles held in custodial institutions more than doubled’, but ‘[t]hese trends have occurred when there has been no significant rise in serious crime by juveniles’. Given such a finding, does the existence of other trends make it possible to minimise the importance of a punitive turn?

In three other countries characterised by a hybrid choice in the primary criminalisation stage, *i.e.*, Canada, Portugal, and Belgium, the absence of a radical ‘punitive turn’ in the secondary criminalisation stage is obvious, even though resorting to custodial measures remains an option in actual practice. The number of formal indictments and detention rates of juveniles in Canada has dropped over the past few years; as Hastings indicates, ‘more young people come in contact with the police, but fewer of them are formally indicted’. In Portugal – a country where custodial measures have always been at the heart of the tutorial system – these practices have not changed fundamentally. Whilst they remained core practice before and after the 1999 reform, Portugal, in Castro’s opinion, ‘seems to be far from a punitive turn’. There, the separation between the child protection system and that for juvenile offenders, and the budgetary objectives of cost cutting, have led rather to the closing of many custodial centres. Apparently, what is at work in recent criminal policy developments ‘is more an economic logic of resource management in line with an immediate objective of cutting costs’. In Belgium, which like Portugal is characterised by a tradition of incarceration at the heart of a protectional model, the toughening of custodial practices is, in contrast, a reality: the steady rise in the number of places in ‘secure sections’ in the IPPJs (public juvenile protection institutions), the creation of a secure federal centre in 2002, and the planned building of some new federal detention centres for a total capacity of 200 places, underline the resonance that ‘a ‘culture’ of short-term imprisonment for juveniles in certain judicial districts’ continues to have in the country. This culture of imprisonment, which is stronger in the southern (French-speaking) than northern (Flemish) part of the country, can be interpreted as a heritage of the social welfare culture and continues to hold its own.

Finally, youth imprisonment practices have not undergone any significant changes in Slovenia, Romania, and Turkey. In Slovenia, the youth incarceration rate remains one of the lowest in Europe, for both preventive detention and sentencing, despite a discernable rise after 2003. In Romania, the situation is rather one of falling incarceration rates, whilst the number of minors in custody in Turkey also appears to have fallen, especially in establishments specifically for minors. It is true that in the last case the reliability of these figures is questionable, and this makes it difficult to evaluate the situation.

4. Strategies relating to alternative sanctions: between victims’ interest and juvenile offenders’ accountability, softer penal approach and net widening

The deployment of a ‘third way’ for treating youth delinquency can be discerned in each of the countries studied, as well as in the recommendations of various international institutions (Council of Europe, European Union, and the United Nations). Certain countries are farther ahead than others in implementing these alternative sanctions, but the movement does indeed exist everywhere. The meaning of this trend, on the other hand, is harder to decipher. Indeed,

various competing strands of logic crisscross behind these ‘negotiated’ or ‘consensual’ justice sanctions that are designed to occupy an intermediate position between preventive measures and punitive sanctions.

This new approach to treating juvenile delinquency mobilises two sometimes competing objectives, to wit:

- A restorative objective in answer to the contemporary desire to take charge of the consequences of lawless actions on the individual or collective victims.
- A target of improving the administration and cutting the costs of justice by increasing reliance on ‘alternative sanctions’, so as to avoid having to go through the criminal justice system.

The first objective was to allow for the victim’s interests and sought to promote an ideal of restorative justice. The idea of reparations was then proposed to balance the social welfare model of juvenile justice, which was centred exclusively on the young people’s interest, with an acknowledgment of the concerns of the victim. This is, for example, what Belgium’s legislative reform of 1996 set out to achieve. On paper, this reform promoted maximal reliance on restorative justice in the various stages of judicial intervention. However, in practice, the roles that the victims play in these schemes are often quite limited, and this tends to attenuate greatly the restorative import of these schemes. Josephina Castro points out for Portugal, as a rule, ‘...the victim’s very limited presence in the reparations measures stipulated in the law’. As a result, ‘*mediation* as defined by the law is a very far cry from reparative or restorative action’. The situation is rather the same in Belgium: When reparative mediation is implemented, which is far from the case everywhere, ‘in actual fact, only a small percentage of the mediations lead to direct contact between the victim and presumed perpetrator of the offence...’. The situation is scarcely different in Scotland, where recent research has revealed the low level of victims’ participation in reparative initiatives, whilst in England several of the researchers whom Sam Lewis mentions underline that victims participate little in such schemes, even though that seems less true for juvenile justice than for adult justice. It is true that it remains difficult to assess the situation in this regard, for restorative justice practices remain highly localised and are characterised, as our Slovenian colleague stresses, by ‘...great disparities in the application of this discretionary power’ from one prosecutor’s office to the next.

If the place that the victim actually occupies in “third way” schemes remains limited, this may be, as Lesley McAra points out, because the “tight timescales set by broader managerialist imperatives” do not leave a lot of time to involve the victims in the process. However, it is also because these restorative measures continue to revolve around the minor, and attempt to make him/her take responsibility for the consequences of his/her delinquent actions. Rather than an alternative to the social welfare logic, these intermediate sanctions can then be grafted onto the classic tutorial objectives of education and integration so as to reinforce their effectiveness. This is the case in Scotland, for example, where ‘...the grafting of restorative programmes on to the existing youth justice infrastructure was initially intended to strengthen rather than diminish’ the impact of the social welfare model and the ways in which the restorative programmes are carried out ‘...arguably chime well with the older Kilbrandon ethos’. However, they can also be used to leverage a new orientation in the welfare logic, aimed at activation and accountability. This last perspective, which can be associated with the rewriting of welfarism under the influence of neo-liberalism, seems to be dominant. The major objective of the new sanctions is very regularly to turn the young offender into a ‘self-enterprising person’ and to have the young people and their parents take responsibility for their actions. Achieving this objective entails making use of a measure or

sanction to which the minor must consent but also in which he/she must participate actively, on pain of a penalty, as is the case in France.

These accountability and participatory dimensions of the sanction dominate the discourse about practices of restorative sanctions in Belgium, England, Spain, Canada, or Portugal, where the concept of 'accountability and education for law' has been made the pivotal concept of the new juvenile justice system. As Ross Hastings points out, they nevertheless come up against the young people and their families' actual capacities, given that their situations are often those of great social vulnerability: 'There is relatively little the Youth Justice System can do to address developmental risk factors or the social contexts in which they are most likely to emerge. Given the limits of its mandate, its skills and its resources, it is often the case that the best it can do is respond to an act without really being able to address the situation that led to it. There is relatively little the youth justice system can do to build the capacity of families or communities, and even less it can do to reduce social inequality and the sense of exclusion and hopelessness that are the breeding grounds for a significant portion of youth offending'.

When placed in the community, these measures or sanctions also reinforce a type of local or community social control. This takes the form of either 'multi-actorial governance' or a network intervention model that mobilises the members of civil society, *i.e.*, families, non-specialised social and community workers, volunteers, private players, etc., in conjunction with the State. They also usually underline a shift in power from the trial judge to the prosecutor's office. So, in France, more than 80% of the cases concerning minors are settled in the prosecutor's office without the juvenile court judge's intervention, whilst in Canada the police have additional powers allowing them to settle a certain number of cases themselves without the judge's intervention.

If these restorative measures or sanctions reflect a change in the social welfare approach, we must then ask whether they are part of a movement of participation and emancipation that is sometimes associated with the *active welfarism* current or do they instead reflect an extension of the surveillance culture, of a society of surveillance that can be associated with a neo-liberal inflexion (Mary, 2003). This question can be tackled through the classic problem of net widening. Are these sanctions alternatives to 'punitive' sanctions, especially imprisonment, or do they complement them? If we do not include Slovenia and Romania, the net widening hypothesis is borne out rather widely. It is the case in England, where prison sentences have risen sharply over the past few years; in Belgium, where the number of places in secure institutions is increasing; in Spain, where the new restorative sanctions seem to be used to handle petty offences that previously would have been dropped altogether rather than being used to avoid custodial measures; in Canada and Portugal, where the principle of 'bifurcation' is evoked in the treatment of juvenile offenders; and even in France, where the use of alternative sanctions has gone hand in hand with a sharp drop in the shelving rates for petty cases.

5. The spread of judicial logic to other social systems

The matter of judicial net widening can also be tackled by looking at the transposition of a judicial approach to treatment to other institutional sectors concerning young people. Are Dan Kaminski *et al.* right when they underline a new slant that takes the form of 'an approach to social relations that is increasingly legalistic (increased reliance on the law), even 'criminalistic' (increased reliance on criminal law), and social policies that prefer to 'lock up' individuals and their problems (those that they have as well as those that they create) in asylum centres, 'correctional centres', or specific neighbourhoods rather than having to confront them? In a word, are they right when they posit that a reactive, defensive, and

individual reading of problems and other social conflicts prevails?' (Kaminski *et al.*, 2001, 32). Whilst not all of the contributors to this volume considered this question, those that did emphasised the importance of such drifts.

For Spain, for example, Maria Bernuz highlights the changes in the country's child protection policies, which used to be autonomous from the Juvenile Justice Department. Whilst previously the usual techniques of protecting children from situations of negligence, maltreatment, and abandon were deployed according to a social assistance model, this is no longer necessarily the case. As our Spanish colleague explains, 'aside from the fact that these measures and their durations are proposed to the young people and their families by the youth workers,' the measures taken to deal with fourteen-year-old offenders who remain under the aegis of the Child Protection institutions 'remain very close to...judicial sanctions'. We find the same type of practice in England with respect to prevention policies, of which the various anti-social behaviour (ASB) measures are emblematic. The goal that New Labour announced in multiplying this type of initiative was to attenuate crime rates. We know that these ASB measures, especially the ASBO (anti-social behaviour order) can lead to criminal sanctions or penalties if the young person fails to comply. This possibility is one of the consequences of the spread of contractual logic to support protection and social aid measures and it illustrates the spread of the judicialisation of social relations to other fields than the judicial one.

In France, as in Canada and England, the spread of judicial logic is particularly discernable in schools. Actually, two movements can be detected: increasing reliance on the police to settle differences between young people or between young people and teachers inside the school grounds on the one hand; disciplinary measures inside the school that increasingly make use of judicial dispute resolution rules on the other hand. This new tack, as Ross Hastings notes, stems from the fact that 'other spheres, especially schools and local communities, are managing problem youth or youth in difficulty by adopting the tendency of the criminal justice system to individualize responsibility and privatize solutions'. These techniques are not neutral when it comes to bringing grist to the criminal justice system's mill, as Sam Lewis points out: 'It seems, then, that the demise of informal social controls, coupled with developments in policing policy and practice, may be propelling increased numbers of young people towards formal criminal justice interventions'. In her opinion, the mainstream adoption of this type of response stems mainly from the disappearance of informal social controls. For Canada, Ross Hastings also notes that the new ways of managing public budgets are pushing many players to try to outsource the costs of taking charge of malfunctions onto other agencies. The result, in both cases, is a rise in the criminalisation of youthful behaviours and attitudes that were previously largely ignored by the criminal justice system. It is interesting to note in this connection that Slovenia – a country where juvenile behaviours have come in for little criminalisation – decided to abandon this type of procedure in schools after testing it in the 1990s: 'With the amendment of the Elementary School Act, the powers for setting the procedures concerning the breaking of school rules as well as determining the educational measures imposed on the rule-breakers will be transferred back to the school after 1 September 2009'.

The spread of the judicial logic to other fields is also contributing to judicial net widening. However, as Ross Hastings points out, it is very difficult to give a statistically documented answer to this question of the spread of judicial thinking to other institutions or sectors of life in society, for '...most of the organisations record their data in terms of their investments (how much they spent and what they spend their money on) and production data (the types of programme and service that they provide and the types of client that they serve). In other words, the organisations attach importance to the types of statistic that are useful to them from a managerial point of view. They invest much less in research and assessment, in part because such activities are difficult and expensive and in part because negative outcomes

could be dangerous for an organisation'. This doubtless explains why most of the researchers did not answer this item in our analytical grid.

6. The impact of human rights: from the implementation of the “rule of law” in the tutorial model to the subsistence of a specific youth justice system

Whilst human rights concerns play a major role in the juvenile justice system reforms all over, it is not in the same proportions or necessarily to meet the same needs or objectives. When references to human rights were made, they were either to correct ‘rule of law’ flaws in the social welfare model (Belgium, Portugal, Spain, and Scotland) or to encourage the creation of a juvenile justice system that upholds the rights of the child in countries where such references were scarce (Turkey and Romania). The fact that ‘human rights’ were not mentioned in certain countries (Canada, England, and France) raises some questions. This omission obviously does not provide grounds for concluding that human rights or their influence is less important in such countries than elsewhere. For example, the organisations in charge of monitoring compliance with international human rights conventions are issuing some serious reservations about the reforms under way in France today.

In some countries, the reference to rights has been used as a driving force to bolster the guarantees in the social welfare justice model. So, in Portugal, the intervention of the Children’s Rights Committee weighs upon the reform debate, underlining the importance of taking care in particular that the rights of young people over 16 years of age are fully protected within the juvenile justice system. In Belgium, speaking about rights was a powerful lever in the 2006 reform, as the previous protectional system was largely challenged due to the lack of clarity and precision of the measures or sanctions of indeterminate duration, which were thus left up to the appreciation of the all-powerful judge. So, the International Convention on the Rights of the Child set the landmarks of Belgium’s juvenile justice reform. Similarly, Scotland’s integration of the European Convention of Human Rights fuelled the debate on the compatibility of its clauses with the Children’s Hearing, notably because of the procedural guarantees envisioned in Article 5.

As Maria Bernuz states with regard to Spain, we must point out that ‘welfarism’, ‘guaranteeism’, and ‘anti-guaranteeism’ mix or clash regularly in the name of the interest of the child or the victim. Reference to rights can be made to counter the social welfare model of juvenile justice and its excesses, as has been in the case in Belgium. Inversely, it can be used to consolidate an aspect of the welfare model of justice, as was the case in Scotland, where focussing on rights made it possible to reinforce a key element of the Kilbrandon philosophy, namely, the young offender’s participation in the judicial process. Similarly, by invoking the principle of sanctions that are proportionate to the offence, the rights discourse can limit the social welfare model’s drift towards custodial sanctions with no set terms that can run for years. However, it can just as well encourage a punitive escalation by formalising the judicial procedure or by aligning it, with very few exceptions, with the procedure for adults, in the name of the juvenile’s responsibility or as a function of the consequences of his/her behaviour for the victim². Finally, rights can also be invoked to slow down the mutation of a justice model. For example, they can be used to oppose the adoption of ‘informal’ justice schemes

² France’s former Justice Minister Rachida Dati stated that, from the victim’s point of view, it mattered little whether an assault was committed by a young adult or a minor: ‘When a minor behaves like an adult, he/she must know that he/she is in theory subject to the same sentence as that faced by an adult’, *Libération*, 2 July 2007.

aimed at restorative goals. This finding replicates what Alvaro Pires had already argued a few years ago (Pires, 1995), and is underlined in this volume by Josefina Castro when she mentions the reservations of Portuguese legal scholars and judges about the more informal procedural options that characterise the 'third way'.

Finally, the talk about rights takes contrasting directions in those countries that have no social welfare heritage. International and European human rights and children's rights texts are widely influencing the specific principles of Romania's juvenile justice legislation. In Turkey, raising awareness of the issue of human rights is important in view of the perspective of joining the European Union, especially since 2000. Nevertheless, the influence of rights issues remains marginal in the area of juvenile justice: 'the issue of the child's rights compared with those of adults seems to remain in the shadow of [the country's] political and civil agendas'. Inversely, in Slovenia a very powerful child rights advocacy movement opposes harsher juvenile criminal justice. Discourse 'presenting minors above all as victims who need protection and help' and underlining the need to protect children from abuse at the hands of adults has been discerned in this country.

7. The managerialistic turn: The neo-liberal influence on juvenile justice

Whilst the punitive turn must be put in perspective, managerial thinking is weighing heavily on the juvenile justice reform projects or reforms (being) adopted in many countries. Several indicators of this trend, once again documented more by the researchers in some countries than in others, have been regularly highlighted. These indicators, which are associated with a neo-liberal current, are separate from the 'punitive turn', which is more characteristic of a neo-conservative trend. We review them here to conclude with four findings that seem representative of a more general evolution.

1. **A possible 'marketisation' of the judicial institution and the practices of social work alike**, that goes hand in hand with the privatisation of the professional services that are linked to the justice system. This phenomenon has been highlighted in Scotland and Spain, where certain sectors of judicial management are considered to be 'markets' to be won by private players. The latter are using private management strategies and positioning themselves to run correctional education and/or custodial measures. This is the case in Spain, for example, where Maria Bernuz states 'a privatisation of the performance of judicial measures (custodial and non-custodial)', thereby changing the judicial system's way of operating so that it is now guided more than before by the criterion of 'efficiency'.
2. **The importance of a discourse on the 'rationality', 'effectiveness', and 'efficiency' of youth justice and the eruption of a 'risk-needs' and 'what works' language**. For Scotland, Lesley McAra writes, this discourse is helping to replace the former practitioners in the field by new 'multi-agency partnerships', to transform the strategies of action (the setting of goals and results to achieve, national standards, pre-established deadlines, risk assessment, etc.), and to mobilise new funding sources. These reforms aim for efficiency in the short term and are often detrimental to the longer-term quality and effectiveness of the handling of cases. In Portugal, Josefina Castro has detected 'an intensification of the standardisation of procedures, either out of a desire to standardise the handling of situations or out of a concern to control resource management and work process'. In Belgium, the managerial concern is leading to giving preference to shorter custodial sanctions so as to increase the 'turnover rate', encourage faster judicial procedures, and implement a larger but also

more superficial control over ‘at-risk juveniles’. Within the educational or custodial centres, the moorings in rehabilitation must also come to terms with a philosophy of control that leaves less and less room for the ideals of schooling and occupational integration.

This search for efficiency, to the detriment of an in-depth multidimensional social approach, gives preference to the immediacy of judicial-type responses and, amongst the latter, encourages the mobilisation of diversionary schemes to reduce the judicial system’s operating costs. The problematic consequences of this choice have been underlined in Canada: in wanting to treat problems too quickly and superficially, the same problems resurface later and burden the judicial system. Ross Hastings writes, for example: ‘... there is a perception that the combination of limited mandates, insufficient resources and the pressures to divert cases is conspiring to let many young people slip through the system until their career path is relatively well advanced. The result is that the youth justice system finds itself dealing with a relatively larger percentage of cases of youth who are experiencing complex and multidimensional problems’.

3. **Emphasis on ‘risk management’, associated with the probability that the offence will be committed.** Putting such emphasis on ‘risk management’ as underlined here by Ross Hastings for Canada was developed relatively little by the researchers. It is mentioned for England, in connection with a new intervention model developed by the YJB, the Scaled Approach, which ‘aims to ensure that interventions are tailored to the individual and based on an assessment of their risks and needs’. Whilst Lesley McAra likewise mentioned it regarding Scotland, this aspect is particularly highlighted in the judicial regime/system for 14 to 18 year olds in Romania. In this last country, the court’s decision relies in particular on a ‘pre-decisional’ report conceived of as a ‘risk assessment tool’. However, this report, which must evaluate the intensities of various risk factors on a scale of from 1 to 5, is not binding on the judge, who can also base his/her decision on other elements. In France, the creation of a new ‘*rétenion de sûreté*’ (additional custody) measure for minors 15 years old and above to follow the detention period *per se*³ is contingent on a committee of experts’ assessment of the risks that society is likely to run if the young person is allowed to go free. This risk assessment allows the prefect to postpone the minor’s release year after year if progress has not been seen. This measure, which was initially supposed to be used in ‘exceptional’ cases, shows how this notion of risk is gradually infiltrating the judicial sector. If risk management is a growing reality in the practice of youth justice, we can nevertheless hypothesise that, in a justice model that is still largely rooted in a social welfare culture, the ‘dangerousness’ ideology, more aimed at the individual, keeps the overdevelopment of a more anonymous risk culture in check⁴.
4. **A change in the image of the young deviant, under the influence of cognitive behavioural ideology.** The development of a cognitive behavioural view of deviant young people and their problems is underlined in a number of countries. For Scotland, Lesley McAra mentions a construct of the juvenile delinquent as a ‘rational and

³ This measure allows a judge to intern a minor who is fifteen years old or older for a renewable one-year term after he has served his prison sentence without a specific limit being set on this additional term of custody (Law No. 2008-174 of 25 February 2008).

⁴ On the opposition between dangerousness and risk, see Castel, 1981.

responsible individual'. The young deviant becomes a sort of 'self-strategist' who is asked to make 'positive choices' that are in line with what society expects of him/her, on pain of being degraded to the rank of a 'flawed consumer' if he/she does not take the right decisions. The influence of behavioural theories is also underlined in the way educational follow-up is carried out in Portugal. In Belgium, it can be perceived in the functioning of secure institutions, where a culture of control and self-surveillance is deployed using sometimes infantilising behaviourist techniques. The spread of conditional sanctions for juveniles places the notion of a contract at the heart of the sanction, and facilitates the implantation of this vision of 'self-entrepreneurship' at the heart of the judicial system.

Being centred on a 'strict compliance with norms and the desire to arrive at 'good behaviour', the development of cognitive behavioural ideology is probably one of the most significant indicators for determining the advances of a neo-liberal culture of control and management in youth justice. Whilst, in contrast to the neo-conservative approach, the cognitive behavioural approach does not 'moralise' the issues surrounding the deviant behaviour, it contributes greatly to its 'technologisation' and reflects its gradual depoliticisation. That may be the major stake riding on the hybridisation of social welfarism, moral neo-conservatism, and neo-liberal adaptive management theories.

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