World Histories of Crime, Culture and Violence

YOUTH AND JUSTICE IN WESTERN STATES, 1815–1950

From Punishment to Welfare

Edited by Jean Trépanier
and Xavier Rousseaux

World Histories of Crime, Culture and Violence

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Youth and Justice in Western States, 1815–1950

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CHAPTER 1

Introduction

Jean Trépanier and Xavier Rousseaux

The past few decades have witnessed major debates over youth justice policies. Juvenile and youth justice legislation has been reviewed in a number of countries. Despite the fact that new perspectives (such as restorative justice) have emerged, the debates have largely focused on issues that bring us back to the inception of juvenile justice: namely whether youth justice ought to be more akin to punitive adult criminal justice or more sensitive to the welfare of youths. This issue has been at the core of policy choices that have given juvenile justice its orientations since the beginning of the twentieth century. It also gave shape to the evolution that paved the way for the creation of juvenile courts in the nineteenth century. Understanding those early debates is essential if we are to understand current ones, and put them into perspective.

The emergence of a distinct status for minors occurred in the nineteenth century, through legislation, judicial decisions and practices, and through the establishment of specialised institutions. In the first part of

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the nineteenth century, imprisonment became more central than ever in the arsenal of punishments. Soon it became clear to many people that, when detained, children ought to be confined in quarters separate from those of adults, if only to protect them from the nefarious influence and immorality of adult detainees. But specialisation led to more than just physical separation. The idea of reforming children made its way, in conjunction with the view that children were led into delinquency by an unsuitable environment. Responding to their welfare needs and protecting them appeared the most appropriate way to prevent future delinquency. In the USA, the *parens patriae* doctrine had been invoked in the nineteenth century to justify confinement made without the normal procedural safeguards, in the interest of children. When the concept of separate courts for children emerged at the very end of the century, the same doctrine was used to support the creation of a new type of court (not just separate hearings from those of adults), where children's cases would be heard in an informal manner by a paternal judge concerned with the children's welfare. In the USA, the promoters of the juvenile court were called *child savers*, an expression indicative of their orientation.[1] Responding to the welfare needs of children was viewed as more efficient than punishment to prevent future delinquency.[2] Yet, depending on countries and jurisdictions, the endorsement and implementation of a child welfare or protection approach was not without hurdles, both in the institutions of confinement and in the juvenile courts.

Many publications deal with policies designed for children and youths. Some of them include a chapter or a section of a historical nature. The number of books that focus specifically on historical issues is far more limited. Among them, a good number deal with the events and policy debates that led to the creation of institutions for the confinement of children or juvenile courts. Platt's seminal work on the advent of the Chicago juvenile court stands as a remarkable example. Yet, as Garland warns us, 'do not mistake talk for action'[3]: the ways in which such institutions and courts operate must be examined, for policy intentions do not

[1] Platt's (2009) account of the creation of the Chicago Juvenile Court reflects this in its very title: *The Child Savers*.

[2] For a better understanding of what a child welfare approach means for juvenile justice, see the section on the emergence of juvenile courts in Chap. 2 of this book.

[3] Garland (2001: 21).

necessarily find their way into practice. In the case of juvenile courts, it is often assumed that this institution brought with it a welfare orientation that was enshrined right from its implementation. That misconception takes for granted that this orientation was not present in the nineteenth century; that the welfare model inspired the creation of juvenile courts in all countries; and that the welfare approach was implemented only over time. For example, Tanenhaus (2002) has argued that, in the USA, where juvenile courts were established at the beginning of the twentieth century, the process of bringing the juvenile court to become what it was meant to be, with all its characteristics, took years, if not decades, depending on the states. If we are to understand what the juvenile court was over time, we have to examine its evolution and that of its practices in the various states where it was established. This requires a type of empirical research that has gradually gained some momentum in the past two decades.[4] This book is mainly—though not exclusively—devoted to this type of research, with its ability to bring us closer to the reality of the changes that were—or were not—implemented, above and beyond the intentions of the reformers who conceived them. The first goal of the book is to reflect the way juveniles were actually treated by the judicial system and by institutions of confinement in some Western countries.

The second goal is to introduce English speaking readers to some research results that are often not accessible to them because they tend to be published in other languages. Focusing on the practice of institutions and courts means that one's attention is centred on case studies that concern a given country or place, at a given period of time. It requires working with archives more easily accessible to local researchers, who tend to write in the language of the country in which they work. An unintended—yet real—consequence is that the results of research carried out in non-English-speaking countries are little known to English-speaking readers, who often feel insufficiently fluent in other languages to overcome the language barrier and read texts in French, Dutch or German, for example. The book focuses mainly on Western countries

[4]To quote but a few examples of research on the practices of justice with respect to children and youths: Blanchard (2008), Cliche (2006, 2007), De Koster (2009), De Koster and Massin (2012), François (2011a), François et al. (2011b), Getis (2000), Hatch and Griffiths (1991), Myers (2006), Niget (2009), Niget and Trépanier (2005), Odem (1995), Quevillon and Trépanier (2004), Tanenhaus (2004), Trépanier (2010), Wolcott (2003, 2005).

or places where English is not the everyday working language: Belgium, France, Germany, Netherlands, Quebec (Canada), Switzerland. It aims to provide English-speaking readers with an understanding of how youths were dealt with by courts and institutions of confinement in those countries, both before and after the advent of the juvenile court.

One should add that language is far from the only characteristic that differentiates those countries from English language countries. Different legal traditions emerge from different cultures. Developed in England, the common law tradition has spread to numerous English-speaking countries. Western Continental Europe went its own way in developing individual national traditions influenced by other dominant systems (the French legal system was, for example, influential in the nineteenth century). In Canada, the Province of Quebec is part of both traditions. Thus, a book that is devoted largely to non-English-speaking countries will contribute to familiarise English speaking readers with cultural and legal traditions other than their own.

Overview of the Book

In addition to the first and the final chapters—this chapter and the Conclusion (Chap. 14)—the book is divided into four parts.

Part I has one chapter (Chap. 2). It has a further introductory function, different from that of the first chapter, in that it sets the general background against which the following chapters can be understood. It presents the roots, birth and evolution of juvenile justice, starting in the nineteenth century and continuing up to the first part of the twenty-first century. Part II includes three chapters that deal with nineteenth-century responses to juvenile delinquency and deviance in England and Canada. Part III focuses on policies and practices in matters of justice in the context of the welfare orientation that characterised juvenile courts in the first half of the twentieth century. It has four chapters dealing with specific aspects of juvenile justice in Switzerland, The Netherlands, Germany and Belgium. Part IV also relates to the juvenile court in the twentieth century, but it focuses more specifically on the point of view of the youths and their families, and on what happened to them. Its four chapters tell us about how young people were dealt with by juvenile justice in Belgium, France and Canada.

More specifically, Chap. 2—by Jean Trépanier—first provides an overview of the nineteenth-century roots of juvenile justice. It then looks at

the advent and consolidation of juvenile justice under the inspiration of the welfare model in the first six decades of in the twentieth century. It shows how the justice system moved from an orientation towards punishment to one in which welfare considerations were dominant, insofar as children are concerned, during the period covered by the book (1815–1950). In order to understand better this evolution and see it in relation to contemporary debates, it was felt that this chapter should go beyond the 1950s, and include recent developments. An account is thus provided of the three decades starting with the 1960s, which can be viewed as a period of transformations during which some countries emphasised the welfare model and others questioned it. Finally, the debates and changes of the last quarter-century, which led some important countries—but not all—to weaken the boundaries separating juvenile justice from adult criminal justice, are evoked.

Being the first chapter of Part II, Chap. 3—by Peter King—focuses on the first half of the nineteenth century and explores two related developments: the development of various informal court procedures in relation to juveniles and the growth of a range of juvenile correctional institutions in England. Even in the absence of any formal legislative sanction, the practice of trying summarily children charged with a felony—instead of sending them to the higher courts of quarter sessions and assizes, as prescribed by the law—became well entrenched by the 1820s and the 1830s, especially in some large urban areas. Many were discharged, sometimes after a brief period in gaol 'for further examination'. The inspiration behind such practices was not so much the child-welfare model, which was yet to come, but rather the concern for avoiding committing children who were awaiting jury trial to prison, where they would be led into further immorality by older inmates. Parliamentary endorsement of such practice was to come later in the century. At the same time, new 'reformatory' options were developed in relation to the sentencing and punishment of juvenile offenders. As a result, the treatment of juveniles was often very different to that of adults.

Chapter 4—by François Fenchel, Jean Trépanier and Sylvie Ménard—looks at various aspects of the changes that occurred to the incarceration of boys as it moved from prisons to institutions of reform. An analysis of the population of boys sent to both types of institution in Montreal (Canada) shows that, during the second part of the nineteenth century, institutions of reform gradually replaced prisons as the place of confinement for delinquent boys. Interestingly, the advent of the juvenile court

did not involve an increase in the number of boys committed to reform schools by the Montreal court (the only juvenile court in Quebec at the time): on the contrary, that number dropped significantly upon the court's inception, whereas at the same time the number of boys committed by courts of other districts (which were ordinary courts) increased. For the boys, the change from prison to reform institution was drastic, not only in terms of place and regime of confinement, but also as regards the length of sentences. Punishment in prison was short: one month in average. But the process of reforming boys was viewed as requiring time, so that most placements in reform institutions were at least three years long. The chapter also notes some differences in the nature of the offences for which boys were sentenced to prison and to reform institutions, as well as in the age at which the sentencing occurred.

Chapter 5—by Janice Harvey—describes life in a privately run industrial school for children 'at risk' that was set up in Montreal (Canada) within a wider charitable organisation for children. The school housed young children who mainly came from families struggling with poverty and related problems. Some were admitted directly at the request of the children's parents; others were admitted under a court order, being placed there on account of the organisation's status as an industrial school. Contrary to the first group, the placement of the second group of children was financed by public funds, which contributed towards the upkeep of both groups. In practice, the two groups were merged and underwent the same treatment. The industrial school had been created by—and within—a charitable organisation (the Montreal Ladies' Benevolent Society), which had decided to extend its benevolent actions to children falling under the aegis of the Industrial Schools Act, and its charitable dimension set the tone as to how all its children would be treated. Even though institutions of this kind—particularly industrial schools—were part of the wider structure of social regulation set up to police families in the larger sense of the term, the school was run with a protective approach rather than a repressive one, within a logic that mixed both regulation and assistance.

The first chapter of Part III, Chap. 6—by Joëlle Droux and Mariama Kaba—looks at the Geneva juvenile court in its first decade (1914–1925). The 1913 Act that established this court arose from ambiguous, apparently contradictory, ambitions: removing minors from the ambit of the criminal law, re-educating them, and repressing delinquency so as to leave no offender unsanctioned. In fact, the judge

chosen to preside over the court turned out to be a rather conservative person, rather than the paternalist judge hoped for. The practice of the court shows—among other things—that the concern for re-education and other pragmatic factors were present in daily decisions. The introduction of 'persistent misconduct' as a basis for intervention that aimed to prevent future delinquency led to the imposition of important measures that can be viewed both from a welfare and a repressive standpoint. The proactive role of some parents suggests that families were not mere subjects of repression but could take an active part in procedures.

Chapter 7—by Ingrid van der Bij and Jeroen J.H. Dekker—describes changes in the way juvenile delinquents were dealt with in the first part of the twentieth century in the Netherlands, particularly in relation to the introduction of the juvenile court judge and of supervision orders. It then goes on to describe how such orders were used in practice by judges and supervisors in cases of minors charged with sexual misbehaviour (mainly girls). Supervision orders involved families. They could lead to internment in institutions or employment placements in families. Judges, who were expected to embody a paternal figure, had a significant role to play in these orders and had a fair degree of discretion to perform it.

Chapter 8—by David Meeres—addresses an alarming question posed in Germany in the immediate post-war period: how could youths reeling from the effects of war, often separated from their families and homes, and struggling to survive in the rubble-strewn streets, be prevented from becoming criminals? The task faced by the welfare authorities immediately after Germany's capitulation was daunting. How was the prevention of 'waywardness' and criminality among youth to be achieved without some recourse to the judicial and welfare system used by the National Socialist government during the war years? There was no significant shift in the politics of youth welfare in the years following the end of the war. The focus of the chapter is primarily on the practice of welfare education from 1945 to 1953, with an overview of the nationwide problem of 'wayward' youth. It also provides a more specific investigation of the situation in Berlin through an examination of juvenile court case files. An outline is first given of the juvenile welfare system in the early post-war years. The difficulties faced by welfare and judicial authorities are described, as are their effect on juvenile criminal discourse. Turning to a more detailed micro-level, individual case studies of juvenile crimes processed by the Berlin district are discussed. Finally, popular

notions and preconceptions of the causes of post-war juvenile crime are exposed, contextualising the micro-data examined before.

Chapter 9—by Jenneke Christiaens—brings us into the early practice of observation and diagnosis of juvenile delinquents in Belgium, and its significance for juvenile justice. It describes scientific developments regarding juvenile delinquency and their relation to the welfare-oriented juvenile-justice system established in Belgium in 1912. Then it takes a closer look at what aimed to be a scientific practice at the Mol Observation Centre for juvenile delinquents, complete with its instruments of observation and diagnosis. An analysis of reports issued by the centre shows the kinds of diagnoses that were used as a basis for intervention as well as the views held on the aetiology of delinquency. In view of the results, one is left with the question whether the practice stood up to its scientific promise and whether it went much beyond what may have been its common-sense roots. As some 16,000 boys were assessed at the centre over the years, one may understand the importance that this practice had for the court decisions it influenced and for the young people who were subjected to them. Belgium's 1912 Child Protection Act was clearly inspired by a child-welfare model that was applied both to children at risk and to juvenile delinquents. It opened the door to scientific perspectives that had been developed at the time about children—especially children regarded as problematic, delinquent or abnormal. However, the results of the observation of juvenile delinquents at the Mol Centre do not appear to have made a significant contribution to science.

Chapter 10—by Margo De Koster—is the first chapter of Part IV of the book. It presents the findings of a qualitative study of girl criminality in the Belgian city of Antwerp, 1912–1933, and seeks to shed light on the journeys of girls through the Antwerp Juvenile Court (under the aegis of the aforementioned Child Protection Act). The analysis does not take the court as the starting point, but rather the young female offenders themselves. Thus, a better insight can be gained into the experiences, problems and opportunities that shaped the various contexts in which the girls' conflicts with the law took place, as well as into the various agents and problem definitions that were responsible for channelling the girls into judicial institutions. This makes it possible to combine the study of illegal behaviour (offences and perpetrators) with that of the processes of criminalisation (the social reaction to crime). At the same time, this perspective allows one to learn more about two wider

questions that remain less researched for the period covered, as has been demonstrated by feminist criminological studies that map the stages and histories of women's criminal careers: (i) the interactions between informal and formal control systems; and (ii) the tensions between discourses on crime and punishment and practices of lawbreaking and prosecution. The study shows, among other things, that girls can be divided into three groups based on the offences they were charged with, and that the actors (police, parents and victims) and processes that bring them into contact with the court differ from one group to the other.

Chapter 11—by Aurore François—also examines a situation under the aegis of Belgium's child-welfare-oriented Child Protection Act of 1912, an act that is sometimes presented as the legislative culmination of the paternalistic and charitable ideology developed in the nineteenth century. The chapter is devoted to the implementation of the act, with a comparison between the periods of the two World Wars and those of peace, between 1912 and 1950. An analysis of national statistics is followed by a study of cases and judgments involving children appearing before a juvenile court (the Namur Court). Comparing the statistics and judgments with the juvenile case files—in times of war as in times of peace—shows the extent to which the correspondence between the acts alleged in judgments and the reasons set down in the case files is not all that obvious. One can thereby see the ambiguity of a welfare-oriented protective law whose implementation includes elements that appear to have been borrowed from the penal system. According to the experts of the time, the dislocation of families, country-wide misery and hunger, as well as a series of other temporary factors, brought before the judge a much vaster group of children in need of protection during the war. Yet besides all those factors, the rise in the number of juvenile prosecutions can also be regarded, as David Smith has shown for World War I in Britain, as consequences of certain moral anxieties in large sections of the respectable classes.

Chapter 12—by David Niget—focuses on the judicial treatment of juvenile sexual activities, based on the archives of the French juvenile court of Angers from World War I to the 1940s. The judicial system was marked by its reserve in the face of juvenile mores: very few minors were actually prosecuted. Social tolerance towards prenuptial activities, as well as the arrangements made between offenders and victims, by way of their families, may help to understand the relative rarity of prosecutions. Only when families failed to reach an agreement would cases be brought

to court. The new judicial system dedicated to minors, established in France in 1914, called on magistrates to take a broader view of the accused minor and of his or her family situation. This new judicial system was more empathetic, but also more inquisitive, since it increasingly aimed to protect children, even from their own environment. In sexual matters, were boys perceived, according to the common stereotype, as predators, taking by deception, or if necessary by force, that which they could not otherwise have had? And were 'girls of ill repute' assumed to be fallen women, runaways who had been left to their own devices, having to 'sell their charms' in order to survive? Court files reveal that, for some young boys who lived in social isolation, with sexual frustration and misery, sexual assaults were presented as substitute forms of sexual activities. Other boys portrayed themselves more as seducers than predators, whereas others still were considered to be mentally deficient. A different image emerges for adolescent girls, for whom prostitution was a matter of survival after running away from home, or at least a way of improving their everyday lives between jobs or when their salaries were not sufficient to pay the rent. A precarious labour market was often at fault. Thus, the representations of illegal sexual activities brought before the court emerge as being determined by gender. Depending on each minor's situation, the court was confronted with the tension between considering these minors as actors with free will and endorsing a welfare approach that would portray them as victims of the context in which they lived.

Chapter 13—by Jean Trépanier—addresses the question of whether children and their families behave as actors or mere spectators of their own fate when brought before a juvenile court. Historical studies of juvenile justice have tended to put emphasis on the role of those who planned, built and operated the system: legislators, lobbyists, judges, prosecutors, social workers and so on. Implicitly or explicitly, children and their families tended to be presented as subjects of court interventions defined as benevolent or oppressive, depending on theoretical assumptions, and no room was allowed for significant personal initiative by family members. More recent research has challenged such perspectives. This chapter presents research carried out in the Montreal juvenile court up to 1950, which gives credence to such challenges. Family members were responsible for initiating an important number of prosecutions, particularly in cases where children or youths were charged with 'incorrigibility'. Both children and family members made requests

and expressed their views. They interacted with each other as well as with court officials—who could agree or disagree with them. Philanthropists' humanitarian values as well as their class interests did play a central role in the advent of the juvenile court. But those who were its target population did not remain merely passive spectators of a fate decided exclusively by court officials.

Finally, a conclusion draws together some after-thoughts that are offered to readers as a response to a number of issues brought up by the book's various chapters. It suggests a few pointers in view of building a transnational history of youth in the justice system.

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Except for Chap. 2, this book is built on case studies originating from several countries. Such case studies are not merely anecdotal. As they add to each other and become sufficiently abundant, they may support general conclusions, particularly when they are based on studies carried out in varying environments. In areas where research is relatively scarce and new, early generalisations may be ill advised. Yet, such studies may be extremely helpful to suggest new research avenues. They may lead to new or more refined hypotheses and interpretations, as they may increase the degree of certainty of otherwise uncertain conclusions.

The ways in which children have been dealt with by the institutions of justice have varied considerably, depending on time and place. Trends have emerged. Yet we must not lose sight of the nuances and differences that make each era and each country unique. Case studies are essential, both to identify trends and to understand differences. We hope that the contributions of this book and its authors will contribute to the accomplishment of these tasks.

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PART I

An International Overview

CHAPTER 2

The Roots and Development of Juvenile Justice: An International Overview

Jean Trépanier

1 Introduction

It is by referring to the birth of the Juvenile Court of Chicago in 1899 that 1999 was declared the centennial of juvenile justice.[1] Some disagree with this assertion, for two reasons. On the one hand, it has been

[1]The expression *juvenile justice* is commonly used to refer to elements of the justice system that are specialised in hearing children's cases. However clear it may seem at first sight, it carries its share of ambiguities. If it is generally admitted that juvenile justice has jurisdiction over the implementation of criminal law to children, the practice of including other types of cases such as those of children in need of care and protection or adoption cases varies with countries. Furthermore, there is no unanimity concerning the age up to which a person is considered as a *child* or *juvenile*: this limit is set at eighteen years of age in many jurisdictions, but a number of jurisdictions have opted for lower age limits, such as sixteen. Finally, as will be seen in this chapter, the question as to how different should the orientation of juvenile courts be from the orientation of adult courts has led to different answers throughout time and countries. Thus, however practical—and commonly used—the expression *juvenile justice* may be, it must be viewed as referring to a heterogeneous reality.

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claimed that other institutions than the Chicago court could have the honour of having been the first manifestation of what can be called 'juvenile justice'. The question has been raised as to whether a South Australian experiment as early as 1889–1890 did not constitute the first juvenile court, and whether the Norwegian Child Welfare Boards, instituted by an 1896 act, were not the equivalent of juvenile courts in a country that had opted for administrative rather than judicial bodies. In the USA, the renowned judge and reformer, Ben Lindsey, claimed that the first juvenile court had seen the light of the day in Colorado, where a juvenile court was indeed established through an educational law in 1899. And what should be made of the claim by Canadian J.J. Kelso, then Superintendent of Neglected and Dependent Children for the Province of Ontario, according to whom the juvenile court had a Toronto origin and was therefore a 'Canadian enterprise' that had been appropriated by 'American social workers'?[2]

The second reason is that one wonders if the juvenile justice system suddenly appeared at the turn of the twentieth century, or rather if it gradually evolved, layer by layer, to some extent like sedimentation, with sometimes subtle changes made to the legal status of minors, which would make it more difficult to pinpoint its debut. In which case, we must examine the roots of this system to seize a proper understanding.

We can better grasp the issue by defining what is meant by 'juvenile justice'. It is generally agreed that the term be employed to define specialised courts, whose jurisdiction covers juvenile offenders and, in many cases, minors in danger, and which are distinguished from ordinary courts by the separate and confidential nature of their audiences, by a lesser degree of formality of their procedures, by their specialised magistrates often assisted by probation officers (or their equivalent), and especially by the educational and protective nature of their interventions. Decisions are usually entrusted to courts, although, depending on the country, administrative bodies can also play an important role in this respect.

Thus defined, juvenile justice has existed for more than a century. Whether or not it was the first, the Chicago court corresponds to the

[2] Hagan and Leon (1977: 592). For Australia, see Seymour (1988: 68–87). For Norway, see Nyquist (1960: 139). For Colorado, see Platt (2009: 9). Despite its age (the first edition goes back to 1969), Platt's seminal work remains central to understand the creation of the Chicago Juvenile Court.

idea of a juvenile court, and the administrative body that the Norwegians instituted was a very close relative. Regardless of a precise date, the beginnings of the juvenile justice system can therefore be set at the end of the nineteenth century.

It remains that we cannot understand its emergence without looking at various developments that took place during the nineteenth century. The purpose of this chapter is to provide some ideas to understand better how these courts evolved during five or six decades after their inception. As an overview, it aims to offer a base that will help to provide a better understanding of the various chapters of the book. After having looked at some developments during the nineteenth century, we can reflect on two periods that consist of roughly two lengths of three decades each: the period in which juvenile justice emerged (1900–1930) and the period of consolidation (1930–1960). Given the book covers these specific periods, this chapter could be expected not to go beyond 1960. However, we would miss a better understanding of the juvenile justices policies of today and the debates surrounding their adoption: contemporary debates and policies can be better understood when put into perspective with what existed before. We will therefore continue by referring to the heterogeneous transformations that ensued in the following three decades (1960–1990) and we will conclude with a reference to the issues that have emerged since in the following quarter of a century (1990–2015).

2 The Nineteenth Century

The nineteenth century witnessed the gradual creation of a special status for juvenile offenders in three distinct manners: the creation of specialised institutions, the adoption of specific legislation for children, and certain court decisions.

2.1 Institutions for Children and Youths

One of the most significant events in nineteenth-century penology was the advent of the prison and the penitentiary as key instruments in reacting to crime. Imprisonment became so central that its duration became the legal standard of seriousness ascribed to offences by legislators. It was by no means limited to adults. In Britain, for example, it is estimated that about 10,000 children and young people aged 16 or less,

including 1400 girls, were sent to prison in 1840. By 1857, this number had increased to 12,500, with 1900 of them being under 12 years of age. Altogether, young people made up 10% of all persons committed to prison, a proportion that fell to 4% over the subsequent two decades. In 1903, only 10 prison sentences were imposed on children under 12, whereas 1000 were imposed on youths aged between 12 and 16.[3] Over the century, special institutions had gradually taken over the role of prisons for the incarceration of juvenile offenders. That is not to say that child-specific institutions had been nonexistent prior to the nineteenth century: as Shore and Cox remind us, European institutional initiatives to deal with the disorderly young date at least to the fifteenth century. Still, the expansion that occurred in the nineteenth century was unprecedented.[4]

Two concerns led to this change. First, the fear of cross contamination: mixing adult criminals with children was seen as a source of criminalisation for the latter. Also, as the century progressed, the desire to reform children took shape: what was wanted was a regime that would change those children.

A gradual process of institutional specialisation began to take place. In France, for instance, initial attempts to separate youths from adults involved special quarters in prisons as early as the 1820s.[5] However, the most important trend led to the creation of institutions designed specifically for children and young people. Under titles as divergent as youth prisons, youth penitentiaries, reform prisons, reform schools, industrial schools, penal colonies ('colonies pénitentiaires'), agricultural colonies and houses of refuge, such institutions were established in several countries. To quote only a few examples, one may refer to cases in England (Parkhurst, Kingswood, Redlodge, reform and industrial schools), Germany (Raue Haus), France (Mettray and Petite Roquette), Belgium (St. Hubert), The Netherlands (Nederlandsch Mettray), Switzerland (Serix-sur-Oron), Canada (L'Île-aux-Noix, St. Vincent-de-Paul, Institut St. Antoine and Penetanguishene) or the USA (Houses of Refuge,

[3] Radzinowicz and Hood (1986: 624, 627).

[4] Shore and Cox (2002: 11–14) and Shore (2003: 116–118).

[5] See for example Dupont-Bouchat et al. (2001), Chap. 3; Petit (1990: 283) and Dupont-Bouchat (1996: 33).

particularly in New York, Boston and Philadelphia, as well as various reform schools). Such Western examples were also followed in the East, most notably in Japan.[6] Australia, where England sent many of its convicts, felt the need to create an institution (Point Puer) for the youngest of them.[7]

While these institutions at first appeared only minimally different from adult prisons, their sponsors changed their approach. As has been shown for England,[8] studies and reports on delinquent youth, as well as public interventions by such social reformers as Mary Carpenter and others, contributed to the diffusion of new ways of perceiving delinquent children and how to react to their behaviour. After experimenting—and rejecting—a Boys' Prison (at Parkhurst), emphasis was placed on setting up reform schools, whose official goals were no longer to punish but to reform youths. Breaking away from the principles of criminal law that provided for a punishment proportional to the seriousness of the offence, courts came to order the custody of youths for periods of time deemed sufficient to ensure the required moral treatment. Furthermore, placements were not to be delayed until children were seriously involved in delinquency, but rather to be used in a preventive manner at the first signs of delinquent behaviour. A dual system of industrial schools (for neglected children) and reform schools (for delinquent children) was set up; this regime inspired some British colonies, which adopted it in the second half of the century.[9]

Whether or not these institutions lived up to the expectations they had created is another matter. The point remains that, at a time when imprisonment was becoming more and more common as the central penal measure, an important movement aimed at giving a special status to the internment of children, so that they be treated differently from adults. And the orientations proposed by this movement foreshadowed those that would give shape to juvenile courts.

[6] See for example Yokoyama (1997: 3) and Yoshinaka (1997: 297–298).

[7] See Seymour (1988: 8–14).

[8] See for example Radzinowicz and Hood (1986, 133–227), May (1973) as well as Pinchbeck and Hewitt (1973, Chap. 16: 431–495).

[9] For New Zealand, see Morris (2004: 247). For an example of a Canadian province (Quebec), see Fecteau et al. (1998), particularly at p. 96.

2.2 *Specific Laws for Minors*

The legal status of minors also gained its peculiarities. The French Penal Code of 1810 provides an example by introducing, for the minor under the age of 16 who acted without discernment, an acquittal joined with a measure 'to correct his own education'.[10] The minor who is capable of discernment, meanwhile, enjoyed the mitigating circumstance of minority, which resulted in a lesser sentence than an adult. This scheme would be extended to other continental European countries where French influence was felt. For their part, the common law countries adopted laws that promoted the use of summary proceedings (so as to reduce pre-trial detention with adults), and reduced the penalties in certain cases. England adopted this route as of 1847, and Canada from 1857. Some lawmakers even required that juvenile cases be heard separately from those of adults. Such was the case for the states of Massachusetts (1874) and New York (1892), where laws were passed separating minors' trials from adults'.[11] In Canada, the 1892 Criminal Code provided for the possibility of private trials for children, a disposition that was reinforced in 1894. In France, the same objective was pursued not through legislation but by a circular of the Chancellery in 1898.[12] It should be added that some practices developed as early as the first half of the nineteenth century, even in the absence of any legislative framework. This was the case in England, where the practice of trying summarily children charged with a felony—instead of sending them to the higher courts of quarter sessions and assizes, as prescribed by the law—became well entrenched by the 1820s and the 1830s, especially in some large urban areas. Many were discharged, sometimes after a brief period in gaol 'for further examination'. This avoided committing children to prison awaiting jury trial, where they were encouraged to further immorality by older prisoners.[13]

It may also be pertinent to recall that the end of the century saw the adoption of various laws aimed at children in danger. Examples can be found in the Roussel law passed in France in 1889; in the Belgian law of

[10] Robert (1969: 75).

[11] Ventrell (1998: 26).

[12] See Radzinowicz and Hood (1986: 618–623), Trépanier and Tulkens (1995: 20–25), Ventrell (1998: 26) and Robert (1969: 78–79).

[13] See Peter King, Chap. 3, this book.

1891 on vagrancy (as in the bill of 1889 on child protection, of which a redrafted version later became the 1912 Act); in the Canadian province of Ontario legislation on the protection of neglected children of 1893. Along with the adoption of such laws, we note the setting up of children's aid societies and other organisations dedicated to child protection, some of which were called to assist the juvenile courts after their creation.

We could expand this list of laws without adding much interest. The important thing to note is that in the late nineteenth century laws already conferred upon minors a special legal status, a status pointing at different and separate treatment from that of adults, and it finds grounds for justifying state interventions to assure the protection of minors.

The legitimacy of government intervention did not, however, rest on laws only: court decisions were to provide important foundations.

2.3 Court Decisions

Of all judicial decisions relating to children in the nineteenth century, some emerge due to the impact they had on the future orientations of juvenile courts: they are the decisions of US courts extending the doctrine of *parens patriae* to children viewed as vulnerable.

In colonial America, the role of public authorities had been to sustain the family-based system of discipline, not to replace it. However, the growth of population as well as industrialisation and urbanisation introduced drastic changes in American society. Between 1750 and 1850, the population increased from about 1.25 million to 23 million.[14] More and more people moved from rural areas and villages to live in towns that grew constantly. Shops and factories replaced the home as a major workplace. Youths—especially from poorer families—could not be placed in families as servants or apprentices as easily as they had been before. Special institutions were viewed as alternatives in order to take charge of some of the vagrant, neglected and delinquent children. In fact, no real distinction was made at the time between delinquent and neglected children. The expression *juvenile delinquency* 'was increasingly used to single out the suspicious activities of groups of lower class (often immigrant) children who occupied a netherworld in the bowels of the nation's

[14] Empey et al. (1999: 39).

growing cities and who were perceived to be either living entirely free of adult supervision or serving as pawns of depraved parents'.[15] The Refuge movement would focus on those 'salvageable' neglected children, possibly guilty of minor offences, whereas children guilty of serious crimes were maintained in the adult system.[16]

A court case involving the placement of a young girl in a house of refuge was to have a major impact on the use of the legal *parens patriae* doctrine as a basis for the intervention of the state when families failed to meet their responsibilities. A constitutional issue was at stake: were not such placements subject to the due process requirements of the Bill of Rights, which is part of the US Constitution? In 1838, the seminal decision in *Ex Parte Crouse* provided the House of Refuge movement with the legal justification it needed.[17] Mary Ann Crouse had been committed to the Philadelphia House of Refuge upon her mother's complaint, but without her father's knowledge, on the grounds that such a placement was in her own interests for she was beyond her parents' control. After he became aware of the fact, her father filed a *habeas corpus* petition, alleging that his daughter's incarceration without a jury trial was unconstitutional.[18] The court invoked the doctrine of *parens patriae* to reject the father's argument. It was the court's view that the House of Refuge 'was not a prison (even though Mary Ann was not free to leave), and the child was there for her own reformation, not punishment (even though Mary Ann was probably treated very harshly, a fact the court did not review)'.[19] According to the court, the 'infant has been snatched from a course that must have ended in confirmed depravity; and, not only is the restraint of her person lawful, but it would be an act of extreme cruelty

[15] Schlossman (1995: 365).

[16] Ventrell (1998: 22).

[17] This case has been summarised by a number of authors. See for example, Ventrell (1998, 23), Schlossman (1977, 8–10; 1995, 366), Laberge (1997, 137–139) and Fox (1970, 1205–1207). The appeal decision can be found in *Ex parte Crouse*, 4 Whart. 9 (Pa. 1839) [*Reports of Cases adjudged in the Supreme Court of Pennsylvania, in the Eastern District*, by Thomas I. Wharton, vol. IV. Philadelphia: T. & J.W. Johnson & Co., 1884.].

[18] The Sixth Amendment to the US Constitution requires that: 'In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury […]'.

[19] Ventrell (1998: 23).

to release her from it'.[20] The *parens patriae* doctrine served as a basis to justify the intervention of the state for the good of the child: '[…] may not the natural parents, when unequal to the task of education, or unworthy of it, be superseded by the *parens patriae*, or common guardian of the community? […] The right of parental control is a natural, but not unalienable one'.[21] This decision legitimised the right of the state both to intervene and remove children from family situations which might lead them towards criminality, and to do so without meeting due process requirements applicable in criminal procedures. A series of similar decisions followed in other cases during the next decades, thus consolidating the basis upon which the juvenile court would eventually rest.

So if the nineteenth century was not that of juvenile justice, it nevertheless put in place foundations on which the latter would be built some years later. At the end of the century, the creation of a new status for minors was well under way. Special institutions, legislation and court decisions had contributed to that development. The view was then widely shared that children were to be treated differently and separately from adults. The legal basis for interventions aimed at preventing future delinquency was ascertained and endorsed by the courts. Although these courts were not 'juvenile courts' in a twentieth-century sense, it was evident that a special justice for juveniles had already taken root. Reform schools, however, were no longer viewed as a panacea. A new institution would be welcomed to sustain the legitimacy of the *parens patriae* approach. This would be the juvenile court.

3 The Emergence of Juvenile Courts (1900–1930)

If this evolution is crucial to understanding the advent of the juvenile court, other factors must be considered as well. As the century passed, new conceptions of childhood emerged, influenced by thinkers such as Johann Pestalozzi, Friedrich Froebel and G. Stanley Hall. A new emphasis was placed on childhood and on proper rearing by parents—particularly mothers. As middle-class children did not have to contribute to the family economy, it was felt that they were to mature in the family

[20] *Ex Parte Crouse*, 4 Whart. 9 (Pa. 1839) at 11.

[21] Ibid.

setting. Mothers were to play the key role in this complex and important educational task. A new ideal of motherhood emerged, in which the home and the responsibility for child rearing became a woman's domain. Yet some middle-class women who were well educated and part of a social, political and economic elite through kinship or marriage felt frustrated with such limitation to the private home sphere. Child saving could be viewed as an extension of their maternal responsibilities and consequently, provide them with an acceptable public role. Platt and Clapp have described how this led prominent women from Chicago to play a key role in the creation of the Chicago Juvenile Court.[22] Once the court was in place, women's organisations continued to exert their influence on the court, thus creating what Knupfer has called 'a formidable "female dominion" in Chicago's juvenile court'.[23]

In the latter part of the nineteenth century, the emergence of the Positivist School of criminology challenged the assumptions of the Classical School, which presented criminal behaviour as the result of free rational choices. Offending behaviour was increasingly considered the product of biological, psychological and social forces that were beyond the offender's control. It was hoped that scientific research would help to better understand and control these factors and thus prevent crime. Based on scientific findings, the reform of some criminals was deemed possible. This belief brought support to the *parens patriae* approach, which assumed that children could be prevented from leading a life of crime if they were removed from the evil influences of their milieu and reformed while they were still malleable. Eventually, interventions would come to be entrusted to professionals trained with a scientific approach.

As the value of commitments to institutions was being questioned, the establishment of children's aid societies in some places prompted the practice of home placements and intervention with parents. The latter were largely considered as responsible for their children's problems and were therefore viewed as targets for interventions. In Canada, a good example may be found in the province of Ontario, where an 1893 provincial act provided for the establishment of children's aid societies with a view to encourage the use of community-based measures for neglected

[22] Platt (2009) and Clapp (1998).

[23] Knupfer (2001: 48). On women as referees at the Chicago Court, see Tanenhaus (2004: 50–53).

children. These societies developed approaches that emphasised leaving such children in their families. Help and supervision was to be provided to families if this were to prevent placing children in institutions. For those involved in this children's aid movement, these policies and practices were perceived as so highly effective for neglected children that, through the institution of probation, it was suggested that they be further extended to delinquent children as well. Probation was viewed as nothing more than what was already being done by children's aid societies for neglected children. Hence, children's aid societies had been paving the way for probation, which was to come with juvenile courts.

The practice of probation had also been initiated in some other countries in the last part of the nineteenth century. For example, Wolcott reports that Michigan was one of the US states to offer probation services, beginning in 1873.[24] In England, there were demands to adopt the Massachusetts system to put juveniles on probation. Some benches of magistrates took up the call and, by 1900, there were 100 men and 90 women police court missionaries working principally with juveniles. This initiative led in 1907 to probation being placed on a statutory basis.[25]

That context made it possible for the beginning of the twentieth century to witness the advent of the juvenile court. Laws were passed in a good number of countries within a short period of time. The Illinois act creating the Chicago court (1899) is often presented as the first such enactment. As mentioned earlier, there have been claims that other countries or states came first. Still, it seems to be widely assumed that the Chicago court was the first of its kind to be created by a specific act with the characteristics then attributed to juvenile courts. In any case, it provided a model that was largely replicated in the following years by the juvenile court movement. Despite criticisms, it aroused an enthusiasm that is well illustrated by the comment of such a highly respected figure as Roscoe Pound that the American juvenile court 'was the greatest step forward in Anglo-American law since the Magna Carta'.[26]

The first three decades of the twentieth century were a period of intense development. Legislation enacting juvenile courts (or equivalent

[24] Wolcott (2005: 56).

[25] Bentley (1998: 16).

[26] Roscoe Pound (1957). *Guide to Juvenile Court Judges*. New York: National Probation and Parole Association; quoted by Krisberg (2006: 7).

non-judicial bodies such as Scandinavian child welfare boards) goes back to that period in many Western countries. One may find such examples in Norway (1896); Illinois (1899) soon followed by other US states where, twenty years later, all states but three had passed laws to the same effect[27]; Sweden (1902)[28]; Denmark (1905)[29]; England and Wales, Ireland and Canada (1908); Portugal (1911); Belgium, France and Switzerland (1912); Hungary (1913); Spain and Poland (1918); Netherlands[30]; Germany (1923)[31]; New Zealand (1925); Greece (1927); and Austria (1928).[32,33] Some Asian countries also followed suite, like Japan in 1922. In India, the *Report of Indian Jail Committee 1919–1920* made important recommendations on the treatment of children, including the creation of children's courts with procedures 'as informal and elastic as possible'[34]—a recommendation that

[27] Empey et al. (1999: 45).

[28] Janson (2004: 396) and Sarnecki and Estrada (2006: 474).

[29] Kyvsgaard (2004: 354).

[30] Concerning the debates and laws that were passed in the Netherlands in the first quarter of the twentieth century, see Dekker (2010: 110 ss.).

[31] Germany passed a Juvenile Welfare Act in 1922 'that established the institutional framework for all child welfare programs in the 1920s' (Dickinson 1996: 154; see more generally Chap. 6). A Juvenile Justice Act followed in 1923 to establish juvenile courts for juvenile delinquents. Attempts to legislate juvenile courts inspired from the American Chicago court had attracted significant support in the early 1900s, but had failed because of opposition from traditional jurists. Still a legal expedient made it possible to create juvenile courts at the local level without national legislation. This was done first at Frankfurt am Main in 1908. The example was quickly followed in other cities, so that by 1913 there were 556 such juvenile courts. See Dickinson (1996: 49–50) and Dünkel (2006: 226).

[32] Bruckmüller (2006: 263).

[33] The information concerning the various legal systems has been gathered from a number of sources, whose references are too numerous to be listed here and to be repeated constantly throughout the text. Among those references, one may quote a few that cover more than one country, such as the following: Bailleau and Cartuyvels (2002), Dupont-Bouchat et al. (2001), Junger-Tas and Decker (2006), Kashefi Esmaeil Zadeh (2005), Rosenheim et al. (2002), Tonry and Doob (2004), Trépanier and Tulkens (1995) and Winterdyk (1997, 2002). One may also refer to a book published under the auspices of the Association Internationale des Magistrats de la Jeunesse et de la Famille (1994), a version of which was later published in English under the direction of McCarney (1996), which includes a historical chapter by Ruth G. Herz.

[34] Quoted by Kumari (2010: 66).

led to the enactment of various children's bills in different Indian states from the beginning of the 1920s to the end of the 1940s.[35] In some countries, legislation came only after juvenile courts had been tested for some time.[36]

The laws of those countries were not all similar. Each of them bore the mark of national or regional legal tradition as well as that of influential people, pressure groups and political compromises. Yet ideas and models circulated through national borders and contributed to debates. One model stood out as particularly influential: that of US juvenile courts, whose orientation was much in line with the *parens patriae* doctrine. Although some differences could be found between legislation passed by various US states, the first law adopted in that country—the 1899 Illinois law[37] creating the Chicago Juvenile Court—was quite typical of similar US legislation that would come in the following years. Its last section reflected its orientation:

> This act shall be liberally construed, to the end that its purpose may be carried out, to-wit: That the care, custody and discipline of a child shall approximate as nearly as may be that which should be given by its parents […].

Judicial procedure as well as the choice of measures imposed by the court must reflect this paternal—if not maternal, as some have suggested[38]—approach. A perspective that has been called a *child welfare* approach: ensuring children's welfare was viewed as more efficient than punishment to prevent future delinquency.

Contrary to the Classical School and liberal ideology of the nineteenth century, children's offences were not viewed as the deliberate result of

[35] Kumari (2010: 67–68).

[36] An example of such a situation is that of Germany, where specialised courts for young offenders were set up in various cities as of 1908. One year later, 70 such courts existed throughout the Reich. Still, formal legislation was not passed until the 1920s. See Wössner et al. (2011: 385).

[37] *Illinois Juvenile Court Act*, 1899 Ill. Laws 131.

[38] See for example Platt (2009), whose Chap. 4 is devoted to 'maternal justice'. See also Odem (1995), whose Chap. 5 deals with 'maternal justice in the juvenile court', and Myers (2006), whose Chap. 4 deals with the same issue.

free and rational decisions. As mentioned earlier, delinquent behaviour seemed to be associated with factors external to the offender (such as genetic factors, family environment and social surroundings), over which he had no control. If then, as the Positivist School argued, the offence is the result of causes over which the offender has no control, punishment therefore becomes irrelevant. The offender should not be punished for what his environment made him. Instead, he should be protected from those factors that contributed to his becoming a delinquent. Meeting children's needs for welfare and protection was by no means viewed as conflicting with the aim of protecting society, but rather as the best means to achieve this goal, thus blurring the distinction between delinquent children, on the one hand, and neglected or dependent children on the other. 'Through abused or unhappy children, it is the elements of "the army of crime" that can be seen haunting the discourse of philanthropy and criminology' of the late nineteenth and early twentieth century.[39] A child-welfare approach would be appropriate for both delinquent and neglected children. That is reflected in the fact that, in the laws of some states, both groups were merged together. In the words of the main promoter of the Canadian Juvenile Delinquents Act of 1908, 'there should be no hard and fast distinction between neglected and delinquent children, but that all should be recognized as of the same class, and should be dealt with a view to serving the best interests of the child'.[40]

The rejection of the principle of proportionality and determinate dispositions was another consequence of the welfare model. Aiming at punishment, classical criminal law demands that the nature and duration of the penal sanction be in proportion to the gravity of the offence. This is decided at the time of sentencing, prior to its execution. If, however, the aim is no longer to punish but to protect the child in order to prevent future delinquency, this requirement loses its relevancy. The choice of measure should address the individual needs of the child. The measure should be applied (and prolonged or changed) as long as these needs exist. The law should therefore invest the judge with vast discretionary powers, enabling him to choose the nature and duration of the

[39] Dessertine and Maradan (1991: 2).

[40] W.L. Scott Papers, October 27, 1906, Public Archives of Canada, cited by Leon (1977, 154).

measure in terms of these needs, as well as to adapt the measure from time to time in accordance with their evolution. Proportionality of the punishment to the offence and the obligation to determine the duration of the sanction in advance were perceived as constraints that should be eliminated. Thus, juvenile court laws left the judge full latitude in his choice of measure and allowed him to order its termination midway or whenever he felt it had made the desired effect. Once found guilty of an offence (whatever it might be), the youth would often become a ward of the court until the age of majority. Some laws enabled the judge to take new measures at any time during this period, even in the absence of any new offence. The need to adapt the initial measure or to adopt new measures would be dictated by the evolution of the child's need for protection.

As for procedural safeguards, they appeared inconsistent with a child welfare approach. Why should one grant a child some rights that would enable him to protect himself against interventions that were viewed as required in his own interest? Would that not be against his interest? An informal procedure is preferred, allowing a simple and direct communication between the child and a benevolent judge who is expected to look after the child's interests.

Not any court, nor any judge, were felt appropriate to adequately implement such a philosophy: a special court was needed, with a setting that would enable the judge to address children and parents in a personal manner. Two key actors would be needed in that court: the juvenile court judge, assisted by a probation officer. First and foremost, the juvenile court judge should be a fatherly, benevolent and protective figure. He should be selected for his human qualities and his ability to understand children and communicate with them. The function of the juvenile court judge that was developed in the USA was often cited as a model by proponents of juvenile courts in various countries.

An interesting representation of what some reformers intended to achieve can be found in the British parliamentary debates, when the Under Secretary of State for the Home Office, Mr. Herbert Samuel, spoke in favour of the Children's Bill in 1908 and referred to juvenile courts as they were developing in some countries:

> It was the very essence of the idea of juvenile courts that they should have as much privacy as possible. A juvenile court was a place in which magistrates, as a rule specially chosen for their qualifications in this regard,

> […] wanted to get away from the whole character and surroundings of the ordinary police Courts, from the criminal atmosphere and the somewhat unsavoury public that attached to and frequented the ordinary Court of Summary Jurisdiction. They wanted to get away from the procedure in which the terrified child was placed high up in a dock, surrounded by numbers of police and with a crowd of persons in the background, too frightened to tell the truth or to understand what was being said, and completely uninfluenced by the proceedings. What was desired was that in a sort of parental way the magistrate should come into close personal relations with the child and speak to him in a more human fashion than was possible in the ordinary surroundings of a police Court.[41]

Of course, other motivations could play a role in this desire to alleviate the theatrical component of judicial interventions, such as reducing the prestige that some children could draw in their milieu from seeing their delinquent exploits reported publicly in open court; or avoiding the popular emotion that some court decisions could generate; or also to counter the reaction of parents who would miss their children's court hearings, for fear of the shame that would fall upon them because of the public character of hearings.[42]

For countries where tradition required several judges hearing the same case and collectively arriving at a common decision, this vision of a judge for juveniles pointed to the issue of the single judge, as opposed to a bench of several magistrates. The institution of the single judge was viewed by many as necessary to aim towards paternal justice 'with simplicity and intimacy'.[43] But it raised concerns and strong opposition: could the child and his family not be subject to the whims of a person whose considerable powers are not offset by confrontation with the views of other judges? The single judge was accepted by some countries, like Belgium, but was rejected by others, like France.

It is, in fact, the very functions of the court and trial that were at stake with the new juvenile judge, at least in common law countries. In

[41] British *Parliamentary Debates*, October 19, 1908, vol. 194, pp. 803–804.

[42] Donzelot (2005: 95).

[43] These words are those of Henri Carton de Wiart, the Belgian Justice Minister, during the parliamentary debates on the adoption of the 1912 Act. Quoted by Trépanier and Tulkens (1995: 87).

the accusatory system of these countries, the role of the prosecution is to present proof of the guilt of the accused and demand an appropriate punishment, while that of the defence is to see that the rights of the accused are protected. It is up to the judge to decide between the two points of view and punish if necessary, remaining neutral and keeping his distance from both parties. One may wonder to what extent actual courts operated strictly on that basis when hearing children's cases in the nineteenth century (especially in view of the influence of the *parens patriae* doctrine in so far as the USA was concerned). In any case, the juvenile court judge would not adhere to that model. The judge's function would be to establish whether the child convicted of an offence considered symptomatic of his needs was actually in need of assistance, and how in particular the factors deemed to be at the root of his delinquent behaviour could be neutralised. This was a welfare model, where the fatherly and kindly judge was not one against whom the child had to protect himself. The normal guarantees offered by the due process of law appeared irrelevant. Since the emphasis was on the child's needs and on the benevolent attitude of those taking charge of him, there no longer seemed to be a need to safeguard all his procedural rights. The judicial role became somewhat akin to that former image of the judge which some British members of Parliament had invoked until 1836 to counter an increase in the role of the defence attorney in trials by jury. Their view of the judge's role was to see that his protective and compassionate approach to the accused would not be abdicated and entrusted to the lawyer.[44] It is this image, rejected three-quarters of a century earlier from British law, that the juvenile courts would endorse in various common law and other countries.

The juvenile court judge could not act alone. The welfare approach required that he be assisted by someone who would visit and supervise children in their own families or in foster homes, make the necessary assessments and recommendations, see that the judges' decisions be implemented and so on. The probation officer would share the judge's benevolent approach and would aim at protecting the child, so that delinquent children could be protected in the same manner as neglected children, in their families. In contrast to the nineteenth century, when

[44]For a discussion of this question, see McGowen (1983).

child saving had been done first and foremost through confinement in institutions, probation was presented as an alternative to these institutions that had lost much of their credibility.

To summarise, may we conclude that the creation of the juvenile court established a new status for children? The answer is not likely to be the same for all countries, even though the establishment of juvenile institutions seems to have been common in many nineteenth-century Western Europe and North American jurisdictions. In the USA, the *parens patriae* doctrine brought nineteenth-century courts to act in a manner that was far from foreign to the juvenile court model to come. The latter was in continuity with Anglo-US common law. Its advent was also prepared by some local laws providing for separate trials as well as by the establishment of children's aid societies and probation in some places. This was so much so that some critics of the US juvenile court movement have considerably downplayed its significance.[45] Nevertheless, one should not lose sight of the fact that, in the USA, it gave a new impetus to the *parens patriae* approach that had lost much of its lustre due to its association with institutions: with the juvenile court and probation, *parens patriae* could somehow hope for a renewed life. Furthermore, by 'expressing a preference for diagnosis and probation, the court implicitly downgraded incarceration, yet retained it as a judicial option'.[46]

Viewed from another angle, one could suggest that the very continuity observed between the situation in nineteenth-century America and the juvenile court may have contributed to the fact that the latter emerged precisely in the USA, before spreading to other countries. For some countries did endorse the model, while adapting it to their context. Such countries as Belgium or Canada stand among them.[47] Yet it would be a mistake to assume that this child welfare model was implemented to the same extent in all countries that created juvenile courts. Some legislators endorsed the idea of a separate *jurisdiction* to hear children's cases, without going as far as introducing the specialised juvenile court *judge* and his paternal approach. England and France stand as examples

[45] See for example Sutton (1988), Fox (1970, 1998).

[46] Mennel (1983: 208).

[47] See Trépanier and Tulkens (1995), Dupont-Bouchat et al. (2001, Chap. 5), Tulkens and Moreau (2000: 112–114) and Trépanier (2000: 63–71).

of such countries.[48] Furthermore, some countries preferred to maintain different procedures and policies for children in need of protection and juvenile delinquents, thus opting for a dual track regime. Establishing juvenile courts in a country did not necessarily mean borrowing the North American child welfare model. Even in North America one should not take for granted that the endorsement of a child welfare approach went along with a total rejection of classical thought. In his study of the evolution of criminal justice—including juvenile justice—in the USA and England, David Garland reminds us that:

> Like any structure that has been built and rebuilt over a long period of time, its various components dated from different periods and there was an historical eclecticism to its design rather than the purity of a single style.[49]

In so far as juvenile courts were concerned, they involved what one might call a dual continuity. On the one hand, these courts were built on the institutional foundations of the crime control field, 'with its legal procedures and liberal penal principles that governed their activities and supplied their official ideologies'.[50] On the other hand, overlaying these foundations was 'a more recent modernist superstructure' that borrowed from the child-welfare approaches initiated and developed in the nineteenth century—the result being 'a hybrid, "penal welfare" structure'[51]

[48] In France, the issue as to whether a specialised paternal judge sitting alone should be instituted was central in the debates, both in Parliament and outside. In the end the supporters of a more traditional jurisdiction won. See Dupont-Bouchat et al. (2001: 355–361, 374–380). In this sense, the French Tribunal for children and adolescents of 1912 has been called an uncompleted specialisation (Niget 2009: 46–48). In England, it is interesting to note that the 'first version of the Children Bill of 1908 was far more radical than the final outcome. […] Children under 14 should be relieved of all criminal responsibility, and so should 14–16 year olds, except [in exceptional cases. All cases other than these exceptional cases] should be dealt with under a "parental jurisdiction" [… which should] "exercise such powers as by law a parent may exercise […]". The idea was rather like that of the Child Welfare Board established in Norway in 1896. As the Bill passed through its various stages, however, it acquired a much more conservative character, resembling the legislation in parts of the United States, Canada and South Australia' (Radzinowicz and Hood 1986: 631–632).

[49] Garland (2001: 27).

[50] Ibid.

[51] Ibid.

to which Garland refers as *penal-welfarism*, an expression that highlights the two components of its hybrid nature. As reminded by Donzelot, the (partly) penal origin of educative measures must not be forgotten: the two elements must be taken into account, not only one as is often the case.[52]

Things would evolve towards a consolidation of juvenile justice and a stronger endorsement of the welfare model during the next period, which we could situate between 1930 and 1960.

4 The Consolidation of Juvenile Justice (1930–1960)

The consolidation of juvenile justice in that period occurred in four ways. First, some juvenile courts were effectively put in place in some areas where legislation passed in the previous period had given governments powers to establish such courts, but where those powers had not been exerted, leaving for later the actual implementation of the juvenile courts. In certain countries, juvenile courts were put in place in major cities first, then in cities of smaller sizes and finally in rural areas. Canada clearly illustrates this: while the federal Parliament passed the Juvenile Delinquents Act in 1908, juvenile courts were in fact established only in some cities in the early years. Thus, in Quebec, a Canadian province, the first juvenile court opened its doors in Montreal in 1912, and it was not until the 1940s that other cities were gradually serviced; the entire territory was covered only in the late 1960s.

The second phenomenon is the adoption of laws creating juvenile courts by states that had not yet done so. Such examples can be found in Czechoslovakia (1931),[53] Hong Kong (1932) and Italy (1934). One can also point out that Poland, in 1932, adopted a penal code that included a chapter devoted to minors, that established a separate system of juvenile justice with a child-welfare orientation.[54] Similarly, Greece enacted a Penal Code in 1950, a chapter of which was devoted

[52] Donzelot (2005: 102).

[53] Czechoslovakia later abolished its juvenile courts in 1950, at which time juvenile offenders appeared before ordinary criminal courts (see Herz, in Association Internationale des Magistrats de la Jeunesse et de la Famille 1994: 34).

[54] A Code of criminal procedure had been enacted in 1928 and had provided for special procedures for minors. Yet this Code came into force only in 1932. See Platek (2007: 155). See also Stando-Kawecka (2006: 351–352).

to juvenile delinquents who were to be dealt with in a manner inspired from the idea of judicial protection of youth.[55]

The third phenomenon is the transformation of existing regimes. With one exception—that of Germany—such transformations seem to have gone in the direction of strengthening the roots of the child-welfare model. Germany was an exception during the Nazi Regime. Various measures were introduced, particularly during the war. They reflected the authoritarian approach of the regime. So-called disciplinary measures (including administrative 'youth arrest' of up to three months in solitary confinement, detention as a short, sharp shock) were brought in. A new National Law on Juvenile Courts came into force in 1944, particularly to lower the age of criminal responsibility, to introduce juvenile transfers to adult criminal courts, with adult penalties, and to bring in the death penalty for juvenile offenders. These measures were reviewed after the war.[56]

Contrary to this temporary German exception to the more general trend, England and France strengthened their adhesion to a welfare orientation. In these two countries, laws had been passed in 1908 and 1912 that had instituted juvenile courts. Yet, these courts had not been shaped according to a welfare approach.

In England, juvenile courts instituted under the 1908 Children Act had 'remained criminal courts in all but name', children and young people being 'still taken before the courts with a view to punishment and correction'.[57] The adoption by the British Parliament of the 1933 Children and Young Persons Act followed the recommendations of the Home Office Departmental Committee on the Treatment of Young Offenders,[58] which had reported in 1927. The Committee had come to the conclusion that there was 'little or no difference in character and needs between the neglected and the delinquent child […] Neglect leads to delinquency'.[59] This approach was reflected in various dispositions of the act, including the requirement that 'in dealing with a child

[55] Papathéodorou (2007: 249) adds that the 1950 Code came after various projects in 1924, 1934 and 1937. Still, like other countries such as France, Greece had adopted a special regime for minors in the nineteenth century—in 1834, to be more precise.

[56] See Albrecht (2004: 446), Dünkel (2006: 227), Dickinson (1996: 208, 238–239).

[57] Godfrey and Lawrence (2005: 137).

[58] Great Britain, Home Office (1927).

[59] Quoted by Godfrey and Lawrence (2005: 139). See also Priestley et al. (1977: 6).

or young person […] either as being in need of care or protection or as an offender or otherwise [the court] shall have regard to the welfare of the child or young person' (section 44). The power of the courts to act *in loco parentis* was extended. To ensure the implementation of this approach, the act provided for specially selected panels of magistrates to hear juvenile cases.[60] Restrictions were placed on the reporting of cases in newspapers. The nineteenth-century distinction between reformatories (for delinquents) and industrial schools (for children in danger) was abolished and those institutions were grouped into a unified system of approved schools.[61]

The specialisation of judges—not just the courts—is also at the heart of the transformations that France applied to its system in 1945. Preceded by an initial reform in 1942 under the Vichy regime, the ordinance adopted after the Liberation is the crucible in which the juvenile justice system was to take shape for upcoming decades.[62] The juvenile court judge then became a reality. The judge now had broad powers enabling him to apply educational measures. The spirit of the law reform is reflected in the preamble of the text of 1945:

> The Provisional Government of the French Republic intends to protect minors effectively, especially juvenile offenders […] They can only be treated through protective, education or reform measures, under a system based on criminal irresponsibility that is not susceptible to deviation but only exceptionally by reasoned decision.[63]

The unification of the French regime continued in 1958, when the legal responsibilities for protecting children at risk were assigned to the juvenile judge. The latter then became the cornerstone of interventions aimed at both child offenders and children at risk.

[60] The impact of this measure had its limits as juvenile courts magistrates were not directly appointed as such: they were selected annually from existing local magistrates, which limited the choice. See Bottoms and Dignan (2004: 82–83).

[61] See for example Hopkins Burke (2008: 54) and Cox (2003). What is reported here is but a glance at the contents of the 1933 Act.

[62] On the Vichy reform of 1942 and that which followed in 1945, see Fishman (2002), particularly Chaps. 5 and 6.

[63] Quoted by Bailleau (2007: 102).

Western Europe countries were not the only ones to draw closer to the welfare model. One might quote the example of Japan, where the post-war system of youth justice was established by the Juvenile Law of 1948. Drafted under the influence of the US occupation forces, this act stated its purpose in Article 1, in a way that makes no explicit reference to punishment; rather it commands to carry out 'protective measures relating to the character, correction and environmental adjustment of delinquent juveniles'. Juveniles were to be protected both from the social environment that was viewed as the source of their delinquent behaviour and from the possible harmful effects of the youth justice system itself. The law was designed so as to implement these goals.[64]

Finally, the fourth element of transformation has to do with the arrival of new actors likely to contribute towards the consolidation of the welfare model. Switzerland is an example, where the composition of the Geneva Canton juvenile court was changed in 1935: a lawyer was still chairperson of the court, but that lawyer had two assessors, one of whom was a medical doctor and the other from the teaching profession. Majority decisions were possible, opening the door to the possibility that the views of the doctor and the teacher (perceived as more likely to favour educative and welfare approaches in the treatment of delinquency) might prevail over those of the lawyer in the chair. Elsewhere, it is in auxiliary services of the court that changes occurred. Belgium is an example, where the voluntary probation officers who had helped children courts since their creation were gradually replaced with full-time staff. This was an essential step towards the professionalisation of probation officers, a key element of the implementation of the welfare model: understanding a child's situation and mastering the psychosocial approaches to deal with child and family problems required a professional expertise that part-time voluntary staff did not have most of the time. Another example is that of The Netherlands, where the professionalization of child protection services gained a new momentum after the Second World War.[65] In the same perspective, one can observe the increasing position of psychologists and psychiatrists in the Canadian Montreal juvenile court, particularly from the 1940s onwards.[66]

This period was not one of upheavals, but one of consolidation of the trend initiated at the beginning of the century—a tendency that was

[64] See Fenwick (2006: 147–150).

[65] See Dekker (2016: 192 ss.).

[66] See Quevillon and Trépanier (2004).

promoted in the postwar period by such organisations as the United Nations and some associations in which some juvenile court judges played a key role.[67] The following period was to be somewhat different.

5 A Period of Transformations (1960–1990)

This book covers a period that extends to the middle of the twentieth century: the period during which juvenile courts emerged and, gradually for some of them, drew inspiration from the child-welfare model. Still, the half-century that separates us from the 1960s has seen drastic changes in the orientation of juvenile courts. These transformations have been well documented by numerous authors and one might have felt sufficient to refer to them. Yet it may be worth having a glance at the evolution that occurred during this period: it will provide a feeling of what contemporary juvenile and youth courts have retained from the original juvenile court orientations, as well as some understanding of how distant they have become from the original model. This era can be divided in two separate periods, since the last quarter of a century has been quite different from the first thirty years.

The three decades starting with the 1960s witnessed changes that went in opposing directions. A first trend can be observed in some European countries, where the welfare approach was reinforced. The second found its source primarily in the USA and called into question key elements of that model. Beyond those two trends, new phenomena appeared, such as diversion and restorative justice. Let us look at these phenomena, while recognising that others might have merited some attention, for example: de-institutionalisation. Here again, reference will be made first and foremost to national laws and policies. Yet one should take into account international instruments, the most relevant of which were adopted towards the end of the period.

5.1 Emphasising the Welfare Model

The place often occupied by the USA in literature concerning juvenile justice can obscure the fact that in the 1960s various countries strengthened the implementation of the welfare model, rather than questioning it, thus

[67] See Niget (2015: 59–62).

following an entirely different trajectory, even opposite to that of the USA. In the case of Turkey, the introduction of juvenile courts marked a certain shift towards the welfare model.[68] India passed its first central legislation—namely the Children Act 1960—that was meant to be a model to be followed by its various states in the enactment of their respective Children Acts,[69] and its Juvenile Justice Act 1986 that 'virtually brought about a uniform system of juvenile justice in the whole country'.[70] However, the strengthening of the welfare model occurred chiefly in countries that had already endorsed it. This phenomenon is observed particularly in Belgium, Portugal, England and Scotland.

In 1965, Belgium adopted a law on child protection that is one of the clearest expressions of the welfare model. This law provided legal measures for the benefit of both children at risk and juvenile offenders. The two categories of juveniles were viewed as similar to each other and were subject to the same measures, which excluded any criminal action. Only process could distinguish the two groups, by introducing an extrajudicial (social) process aimed at juveniles in danger, thus reducing the judicial treatment of their cases. After years of consensus, the endorsement of the welfare model gave rise to criticism, so that the law has recently undergone an important review (after having been amended following changes made to the Belgian Constitution).

Portugal also offers an example of accentuating the presence of the welfare model. It was already present in the 1911 legislation on child protection that had created the juvenile courts. This law, however, had lent far less endorsement of the welfare model than was the case in other countries, holding instead what Rodrigues describes as a hybrid model, where children in danger and juvenile offenders are not considered similar. Portugal proceeded in two stages: first in 1962, when it introduced a system of protection that has been described as 'maximal' and then in 1978, where it declared to further strengthen the protective regime

[68] The law allowing for the creation of juvenile courts was adopted in 1979, but the first juvenile court was actually set up in 1987. At the time of the adoption of a child protection act in 2005, only limited parts of the country were equipped with juvenile courts. According to Irti (2014), the introduction of juvenile courts did mark a significant shift, but much still has to be done before these courts can really be viewed as embodying the welfare model in their philosophy and practice.

[69] Kumari (2010: 82–85).

[70] Ibid.: 86.

of 1962.[71] This regime, which has since then been revised, was among those that emphasised the welfare model during the 1960s and 1970s.

The arrival to power of the Labour Party in England in 1965 gave rise to a first White Paper in which the new government considered replacing the juvenile court by family councils and family courts. Social services would somehow take precedence over the courts. Objections that were expressed forced the government to reverse and to propose a compromise in a new White Paper where juvenile courts would be maintained, while encouraging extrajudicial treatment of a number of young people, and ensuring that interventions took place in a manner that promoted the welfare of youth, whatever the process (judicial or extrajudicial). Legislation passed in 1969 went in that direction. Minors under 14 years could not be referred to the court on the basis of the sole offence and were subject to protection interventions. Criminal proceedings were possible against the 14–16 age bracket, but only after consultation between the police and social services: the goal was to make possible the use of voluntary help measures prior to resorting to interventions by the court. The court becoming somehow a body of last resort, the aim being to encourage the involvement of social services, and to ensure that interventions focused on the welfare of the young. Adopted in 1969 by a Labour majority in Parliament, this law saw its welfare orientation attenuated thereafter, under a Conservative government elected in 1970, which refused to implement some provisions of the act. It included an attempt to differentiate the procedures for children at risk from those of juvenile offenders, and to increase the weight of the principle of proportionality aimed at the latter.

Scotland provides another example of a change that focused on both the welfare model and diversion. The law of 1908 that led to the creation of juvenile courts in England also applied in Scotland, but in fact only four Scottish areas had been provided with such courts. The judicial treatment of minors varied among districts. Moreover, concerns that were evident in England in the debates of the 1960s were not foreign to those who were present in Scotland. Established by the Government, the Kilbrandon Committee presented its report in 1964 which led to the adoption of a law in 1968, with nearly no opposition. Kilbrandon's recommendations:

[71] Rodrigues (1999). See also Gersão (1992).

> proposed an integrative welfare-oriented approach, recommending a single system of civil jurisdiction for children brought before the courts for offending, for those beyond parental control and for those in need of care and protection. The recommendations were founded on the key principle that welfare should be the paramount concern in decision-making about children whether they are involved in offending or in need of care and protection.[72]

The 1968 Act followed these recommendations. This law superseded judicial interventions by those of children's panels formed of citizens assisted by a professional reporter. The function of these panels was to examine the situations of the juveniles concerned with an emphasis on their welfare. If judicial intervention was required—for example to establish the participation of a juvenile to an offence—the case was referred to the ordinary courts.

Adopted by the same British Parliament, but following preparatory steps entirely separate, the Scottish law of 1968 and the English law of 1969 provided very different organisational structures and procedures. Nevertheless, as pointed out by Stewart Asquith:

> Both [laws] are at the outcome of ideological debates which have occupied so much official attention since the turn of the century. Both appeal to a common sense of principles. Amongst these are greater commitment to non-punishment forms of delinquency control; the need for proceedings appropriate to the age of the children involved; the blurring of the distinction between the child who offends and the child who is in need for other reasons; the promotion of preventive measures; and the need to keep children out of court as far as possible.[73]

This is precisely the direction that was being questioned elsewhere, especially in the United States.

5.2 Questioning the Welfare Model

One cannot understand the line of questioning of the welfare model in the USA without reference to some rulings by the Supreme Court in the

[72] Burman et al. (2006: 441).

[73] Asquith (1983: 34).

1960s. Those decisions reversed the trend whereby the *parens patriae* doctrine had justified denying juvenile delinquents the due process safeguards enshrined in the US Constitution in favour of accused persons. In *Kent*,[74] the US Supreme Court decided, in 1966, that a minor was entitled to due process guarantees in a hearing on a petition to waive him to an adult criminal court. Delivering the opinion of the Court, Mr Justice Fortas expressed the view that:

> [w]hile there can be no doubt of the original laudable purpose of juvenile courts, studies and critiques in recent years raise serious questions as to whether actual performance measures well enough against theoretical purpose to make tolerable the immunity of the process from the reach of constitutional guaranties applicable to adults. […] There is evidence, in fact, that there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children. (p. 556)

The following year, in *Gault*,[75] the same court held that the Fourteenth Amendment to the Constitution required application 'of the essentials of due process and fair treatment' during the adjudicatory hearing of a delinquency case. In 1970, the Court held in *Winship*[76] that the requirement to establish the guilt of a young offender by proof beyond a reasonable doubt (as in adult criminal trials) was part of these 'essentials of due process and fair treatment'. Those decisions as well as others created a shock wave: the procedural informality that had been justified for 130 years through the *parens patriae* doctrine could not characterise the juvenile court any more. The states had to review their legislation and the courts had to change their practice to meet the due process standards set by the Supreme Court. More than a legal change, this required a change in mentalities.

As mentioned, these court decisions applied only to delinquency cases. Due process standards did not apply to dependency and neglect cases. The result was the introduction of a distinction between delinquency and dependency cases, a distinction that had remained foreign

[74] *Kent v. United States*, 383 US 541 (1966).

[75] *In re Gault*, 387 US 1 (1967).

[76] *In re Winship*, 397 US 358 (1970).

to juvenile-court philosophy until then. This distinction was made even more present in 1974 with the adoption of the federal Juvenile Justice and Delinquency Prevention Act. One of the aims of this act was to provide the states with financial incentives to remove status offenders and neglected children (not criminal offenders) from institutions and treat them in the community. By 1982, forty-six states had redefined delinquency to exclude 'non-criminal' offenders and thirty-four had established different detention standards for criminal and non-criminal juveniles. Thus, as Sutton concluded, court decisions and the 1974 Act 'had complex, but generally additive, impacts on the emergence of the status offender as a separate statutory category'.[77]

The removal of non-criminal juveniles from institutions should be seen in a context where growing disenchantment with rehabilitation undermined the belief that institutions could be successful either in treating neglected children or in preventing recidivism among young offenders. The image of Martinson's 'Nothing works' had struck the minds of many.[78] The neoclassical ideas put forward by criminologists such as James Q. Wilson and Ernest van den Haag[79] converged with those who thought that justice should punish and deter rather than rehabilitate. Young offenders ought to be treated more like adults. Some proposed to abolish the juvenile court altogether. In the political arena, these ideas found an audience among conservatives who wanted more punitive sanctions for offenders and liberals who felt that rehabilitative purposes could lead to abuses. For instance, Senator Edward Kennedy, considered a liberal, declared: 'There has been a notorious lack of rehabilitation and an equally notorious increase in arbitrariness and injustice. […] We know that the ability of such courts to rehabilitate the violent juvenile or predict future criminal behavior must be viewed with increasing suspicion'.[80] As a consequence, some people with a liberal persuasion joined with more conservative critics to move away from the *parens patriae* ideology: the former wanted the legal protections afforded by criminal law, whereas the latter wanted its punitive philosophy. This

[77] Sutton (1988: 221).

[78] Among various works, the position of Martinson and his colleagues was expressed in Martinson (1974) and in Lipton et al. (1975).

[79] See particularly Wilson (1975) and van den Haag (1975).

[80] Quoted by Schichor (1983: 64).

further contributed to the distinction between delinquent and neglected juveniles. A very good illustration of that result is the Juvenile Code of the State of Washington, adopted in 1977, which clearly introduced a criminal law approach for offenders.[81] To use Sutton's words, 'as juveniles were once distinguished from adults, so now the non criminal offender [or neglected or dependent child] is reserved for treatment, and the delinquent is consigned to punishment'.[82]

This shift in emphasis across the USA might have been less extensively examined here. It was, however, useful to examine, considering the echoes it had in other countries. Not that these countries copied in an integral fashion, but the development of policies relating to juveniles made reference to US debates, at least in part. This occurred for example in Australia, where laws passed as of 1979 placed a new emphasis on procedural safeguards.[83] This occurred in Canada as well, where the adoption of the Young Offenders Act in 1982 showed a concern for protecting the rights of young offenders while still maintaining their education and rehabilitation as a central goal. Punishment and rights were not linked any more. Like other legally incompetent persons—such as the mentally ill—young people were now viewed as having the right to oppose interventions of the state in their lives, even if this could be construed as being against their interest. Contrary to the view that had prevailed in earlier decades, these two elements were not defined as incompatible any more. Furthermore, limits were set to the power of intervention of the state through a tempered use of the principle of proportionality and restrictions of the power to increase the degree of intervention in the name of the interest of the young offender[84]; the offence was reintroduced as a significant element in the decision-making process, alongside with the offender who remained at the very heart of concerns. In various other ways that cannot be described due to lack of space, this legislation aimed at reaching a delicate equilibrium blending positive elements of the child-welfare model and legal safeguards associated with classical criminal law. In a similar way, one could also refer to the case of

[81] See for example Trépanier (1988).

[82] Sutton (1988: 230).

[83] See Atkinson, in Winterdyk (1997: 35–36).

[84] In Canada, the presence of these limits in the Young Offenders Act was clarified by the Supreme Court. See *R.* v. *M.(J.J.)*, [1993] 2 S.C.R. 421.

Spain, where changes introduced in the Constitution in 1978 extended procedural and other legal safeguards to all Spanish people, including children. The courts had to apply a welfare-oriented juvenile law while taking into account the new requirements of the Constitution. This led to the adoption of a law that formally introduced procedural safeguards in juvenile law in 1992, without rejecting other aspects of the welfare model, aiming at striking a balance between education and punishment, between welfare and responsibility (other changes would have to wait until 2000).[85]

This period is, therefore, one of various and partly opposite trends. Whereas some countries strengthened their adhesion to the welfare model, others moved some distance from it, while others stood in between. Safeguarding the rights of children became a major issue in many countries, even when important elements of the welfare model were to be maintained. The major poles of the decision-making process evolved, as the respective weights of the offence and the offender changed—with some significant differences between countries. The legitimacy of the restrictions imposed on the freedom of young offenders was questioned, especially when they involved custodial measures.

In this regard, how should we locate the positions taken by the United Nations in the instruments under its purview? The question draws its relevance from the fact that the most important of these instruments[86] were adopted in the second half of the 1980s, at the end of the period reviewed in this section, and they include dispositions according

[85] For further information on the Spanish system, see Rechea Alberola and Fernandez Molina (2006) and Tinoco Pastrana (2011: 104–108).

[86] United Nations instruments aimed at children have been in force for a long time. As early as 1924, the League of Nations adopted the Declaration of Children's Rights that can be viewed as the ancestor of the Convention on the Rights of the Child. It was followed by the UN Declaration of the Rights of the Child in 1959. Yet the period 1985–1990 was more important than any other in so far as instruments relevant to juvenile justice are concerned. Besides the Convention itself, adopted in 1989 and entered into force in 1990, we must note the Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules, 1985), the Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines, 1990) and the Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules, 1990). More recent guidelines issued by the Economic and Social Council complement these instruments, whose orientation they share: the Guidelines for Action on Children in the Criminal Justice System (1997) and the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (2005). One should also take into account the Guidelines for the Alternative Care of Children (2010) and the UN Human Rights Council Resolution 18/12 on Human Rights in the Administration of Justice, in Particular Juvenile Justice (2011).

to which states are invited—or, in the case of the Convention on the Rights of the Child, are committed—to endorse in their laws and policies. A striking example is the unequivocal emphasis being placed on protecting children's rights. Article 40 of the Convention provides a good illustration by specifying that a set of minimum guarantees must be accorded to children suspected or accused of offences: the right to presumption of innocence, the right to be informed of the charges, the right to receive legal or other appropriate assistance and so on. The commitments made by States Parties to the Convention are complemented by other measures which can be found elsewhere, particularly in the Beijing Rules. With regard to the objectives according to which judges must make their decisions, three are constantly being balanced in relation to each other: the needs of young people, those of society and the gravity of the offence.[87] These are just illustrations that reflect the fact that, overall, the United Nations instruments reflect a middle ground, giving way to the welfare model while remaining firmly committed to the protection of children's rights.[88] In this respect, they bear the mark of the time in which they were designed. A thorough assessment of the impact of these instruments on legislation and policies of various countries still has to be done. However, there are clear signs that such impact is occurring.[89]

5.3 Diversion and Restorative Justice

Whatever may be their positions concerning a welfare or a justice orientation, an important shift has occurred in many countries since the 1960s in favour of diverting young offenders from court interventions.

[87] See section 40 (4) of the Convention on the Rights of the Child, as well as Beijing Rules 2.3, 5.1 and 17.1.

[88] This quick glance at the position of the United Nations instruments and its place in the evolution of juvenile justice debates and policies is barely minimal. For further information, see Trépanier (2007, 2008).

[89] Among various examples, one could quote the impact of the ratification of the Convention on the Rights of the Child on the adoption of the Tunisian Youth Protection Code (Kotrane and Khemakhem 2004: 3); or that of the Beijing Rules, which Kumari (2010: 85) presents as one of the factors that set the stage 'for bringing about uniformity in the law relating to juvenile justice all over the country' (India).

Belgium, England and Scotland stand as examples of countries where legislation officialised diversion in the 1960s. In the USA, the Katzenback Report encouraged the institution of diversion programmes.[90] Other countries, like Germany, Austria, Australia, New Zealand and Canada, followed suit. Furthermore, diversion was clearly endorsed by the United Nations instruments, such as the Convention on the Rights of the Child (article 40.3.*b*), the Beijing Rules (article 11) and the Riyadh Guidelines (article 58).

It might hardly have occurred to juvenile court promoters of the beginning of the twentieth century to divert juvenile offenders away from a judicial process in which they had great faith. Things had changed half a century later. As the effectiveness of juvenile courts was called into question, labelling theory was gaining support. Works as widely published as that of Schur, bearing the evocative title *Radical Nonintervention*,[91] had helped to publicise the idea that the stigma that could flow from the dramatisation associated with judicial interventions could bring the young offender to internalise the role in which he felt perceived by others, which could increase the risk of recidivism. Besides, it seemed both unnecessary, inefficient and costly to refer all cases to the court. One can, therefore, understand that approaches were developed relying on contexts other than judicial interventions.

Diversion and restorative justice are often associated. Not that diversion programmes are all aimed at repairing the harm done: many tend to focus more on providing the youth with an educative experience and preventing recidivism, or merely on holding the youth accountable. Nor that reparation can occur only within the bounds of diversion programmes: it can also be ordered by the court. Still, since reparation is often privileged in non-judicial programmes, this may be the right place to evoke it. Restorative justice should attract attention for it may help juvenile justice to leave behind such debates where the poles of discussion are too often exclusively defined in terms of punishment and welfare. In the same way as adult criminal justice, juvenile justice has tended to consider that the cases that were brought to its consideration involved

[90] United States, President's Commission on Law Enforcement and Administration of Justice (1967: 81–89).

[91] Schur (1973).

essentially an individual actor—the offender—and a collective one—society. In that context victims were forgotten, except when the justice system needed them as witnesses to help in condemning the offender. Emerging from experiments in the 1980s, the restorative justice movement expanded in the 1990s, largely due to the crisis of legitimacy of the rehabilitation ideal and the incapacity of punishment to fill the resulting gap. Restorative justice proposes to re-introduce the victim as one of the principal actors in defining what the solution ought to be to the problem created by the offence. Emphasis is no more on the offence as a symptom of an underlying pathology or as the violation of a social norm that would require a punishment, but on the harm caused by the illegal act, which must be repaired. Mediation and conciliation appear the processes that ought to be privileged to reach that aim, although there may also be some room for the judicial process. Various possible forms of reparation must be considered, including the expression of excuses. The goal of restorative measures is not as such to educate the youth to his responsibilities, but it may nonetheless carry this result. In that sense, these measures can be hoped to induce greater responsibility in the youth, to educate him to become a more responsible person and thus to prevent further offending. The extent to which restorative justice has been integrated in national legislation is gradually increasing and varies from one country to another. New Zealand stands amongst pioneers with its 1989 Children, Young Persons and Their Families Act, which formally introduced family group conferences that may not have been planned as a restorative justice experiment in the first place, but that 'are now commonly presented as an example of restorative justice in practice'.[92]

Briefly, juvenile justice emerged from this period different from what it was in 1960. Opposing currents led countries in opposite directions, depending on whether they promoted the welfare model or its opposite. Young people's rights were subject to a recognition that we would not have anticipated in the previous period. And the emergence of practices and policies aiming to favour extrajudicial interventions grew to a scale that crossed many borders.

[92] Morris (2004: 259). Numerous references could be quoted to understand the restorative justice approach. See for example Walgrave (1994, 1998, 2004), Bazemore and Walgrave (1999) and Haines and O'Mahony (2006).

6 The Last Quarter of a Century (1990–2015)

In his study of British and US penal policies of the last decades of the twentieth century, David Garland suggests some indices of the major changes that occurred in that period.[93] Some of them are particularly relevant for us to understand current trends in juvenile justice debates. In brief:

- Rehabilitation that had been the overarching ideology of the system has fallen from grace. Punitive sanctions that aim at expressing public anger and resentment towards crime have reappeared both in official discourse and policies, and what purports to be the 'expression of public sentiment' has frequently taken priority over the professional judgement of penological experts.
- A change has occurred in the emotional tone of crime policy. Confidence in progressive, humane and rational policies showing compassion for the needs and rights of the less fortunate has given way to a discourse where the fear of crime has come to have a new salience. Crime has been re-dramatised and the background 'affect' of policy is now more frequently a collective anger and righteous demand for retribution.
- The victim has returned to centre stage in criminal justice policy. The interests and feelings of victims are routinely invoked in support of punitive measures. The symbolic figure of the victim has taken on a life of its own, and plays a role in political debate and policy argument that is often quite detached from the claims of the organised victims' movement, or the aggregated opinions of surveyed victims.[94]
- Protecting the public has become the dominant theme of penal policy. Among other things, this involves a relaxation of concern about the civil liberties of suspects and the rights of prisoners, as well as a new emphasis upon effective enforcement and control. The call for protection *from* the state has been increasingly displaced by the demand for protection *by* the state.

[93] Garland (2001: 6–20).

[94] Obviously Garland does not refer here to the restorative justice movement.

- The policy-making process has become profoundly politicised and populist. Crime policy has ceased to be a matter that can be devolved to professional experts and has become a prominent issue in electoral competition. Politicians claim the authority of 'the people', of common sense, of 'getting back to basics'. A narrowing of debate and a convergence of the policy proposals of major parties have resulted in a political consensus around penal measures that are perceived as tough, smart and popular with the public, which has moved the centre of political gravity in that direction.
- New management styles and working practices have emerged. For example, probation and parole agencies have de-emphasised their social work ethos and instead present themselves as providers of inexpensive, community-based punishments, oriented towards the monitoring of offenders and the management of risk. Sentencing is less a discretionary art of individualised dispositions and is moving towards a more rigid application of penalty guidelines and mandatory sentences.
- A perpetual sense of crisis has beset the field. The system's failings—such as crime and recidivism rates—are less easily attributed to implementation problems; rather they are interpreted as evidence of theory failure, as signs that crime control is based upon an institutional model that is inappropriate for its task.

Garland's examination of penal policies focuses on the UK and the USA and is by no means restricted to the field of juvenile justice. Yet, it conveys a general background that exists in other countries as well and against which juvenile justice policies are designed. Perhaps the politicisation of youth-crime issues has appeared the most visible of those elements in so far as youth-justice policies are concerned: this has been a salient trend, in France, Canada, the USA and other countries.

Not enough space is available in this chapter to do justice to Garland's complex analysis—an analysis that raises numerous questions. Among them, why should we 'see the "collapse of faith" in rehabilitation as being literally that: not a reasoned criticism, nor an adjustment to negative findings, but something akin to a stock-market crash?' Why was there 'in the turn against correctionalism, something of a hysterical disproportion between the problem and the response, an overreaction that seems almost symptomatic in its vehemence?' Why did 'the "Nothing Works!" sentiment [become] so commonplace in the late

1970s and 1980s',[95] with the consequences it was to have in the following decades? Does not the fact that 'such an emotive overreaction could so quickly become conventional wisdom [suggest] there were other interests and emotions involved in shaping this response—forces that had little time for criminological details or the careful interpretation of empirical research?' Why is it that criticisms directed against rehabilitation policies led to 'new measures [that] were precisely the opposite of those originally proposed by rehabilitation's critics?'[96] 'How is it that the reconfigured field of crime control that emerged in the 1980s and the 1990s bears so little relation to the proposals of the reform movement that initiated this reconfiguration?'[97] Garland's answer is that:

> [T]he structure and ideologies of modern crime control collapsed (where they did indeed collapse) not just because of intellectual critique, nor even because of a penological failure, but because they lost their groundings in supportive ways of life and consonant forms of beliefs. […] The original damage to the structure came about in the early 1970s as a result of radical and reactionary forces working in tandem, but with the former in the dominant position. The critique of rehabilitation was originally a progressive critique. The further assault on the system in the 1980s and 1990s occurred in the context of a more regressive public mood and temper, against the background of a changed perception of the motivating problem and as part of a new and less inclusive civic narrative. [The] new crime control programmes and strategies responded to the supposed failure of the criminal justice state in its penal-welfare mode, and moved into the institutional space created by the assault on correctionalism. But they adapted to the new social, political, and cultural conditions of late modern society, and to the new class and race relations to which they gave rise.[98]

It is in that context that, just as they had embraced the welfare model with an enthusiasm that went far beyond that of many other countries at the beginning of the twentieth century, the USA seems to have withdrawn their support for it more than several others. A review[99] of laws

[95] Garland (2001: 69).

[96] Ibid.: 71–72.

[97] Ibid.: 72.

[98] Ibid.: 72–73.

[99] Torbet et al. (1996: 59–61). For a more recent review, see Snyder and Sickmund (2006), Chap. 4. See also Bishop and Decker (2006: 16 *ss.*), Feld (2000).

adopted by various US states between 1992 and 1995 shows that more than 90% of them revised their laws concerning juvenile crime, often after a period of intense political rhetoric that compelled action in order to 'curb juvenile violence'. In many instances, individual vignettes portraying a single incident served as the focus for legislative motivation. These laws involved increased transfers to adult criminal courts and a greater use of adult sentences. The underlying intent was to punish, hold accountable and incarcerate for longer periods offenders who have gone beyond a threshold of tolerated 'juvenile' criminal behaviour, particularly those convicted of violent offences. In many instances, accountability was defined as punishment, or a period of incarceration, with less attention paid to the activities to be accomplished during that incarceration; not to speak of the regime imposed on those confined in 'boot camps'. Mandatory minimum sentences, sentencing guidelines, and extended jurisdiction were intended not only to hold an offender accountable but also to incapacitate an offender for an extended period of time. Emphasis was placed on residential (often secure) placement of offenders convicted of serious and violent offences, without comparable attention aimed at community corrections. Information concerning some juvenile offenders became less confidential than before. The use of juvenile records for criminal prosecution, information sharing with schools, and public awareness of juvenile criminal behaviour and its consequences were all intended to 'tighten the web' of information around some offenders. Judicial waivers, the primary mechanism for transferring jurisdiction of a violent or other serious juvenile case to the criminal courts in the past, was weakened and shared more broadly by the prosecutor and the direct action of the legislature. This shift in authority went with the sentiment (in particular among an ill-informed public) that juvenile court judges were too 'soft' on juvenile crime and that non-judicial decisions were more likely to achieve the goal of holding serious offenders accountable. In brief, the trend was to transfer more youths to adult courts and, for those who are not waived, to make juvenile justice more like adult criminal justice. Much of the change resulted from public perceptions of an escalation of violent juvenile crime and the accompanying political reaction to that perception. The necessity was to 'do something', and in most instances the changes were not based on evidence that clearly demonstrated the efficacy of the intervention. The assumption is that juvenile

justice is not efficient in dealing with serious juvenile crime, whereas the efficiency of adult criminal justice is taken for granted. Fortunately, a review of recent US juvenile justice legislation suggests that a gradual shift may be occurring in that country's juvenile justice policies, marking some departure from laws enacted two decades earlier.[100] Yet it remains to be seen how far this shift will go.

This trend is by no means limited to the USA. For example, the Canadian Federal Parliament changed its law relating to young offenders in 2002. This followed a few years of debates that originated in the election campaign of 1993 when the 1982 Young Offenders Act was pilloried by right-wing politicians who wanted a tougher law. Without going as far as some US laws, the 2002 Canadian Act places the offence and its seriousness at the heart of the decision-making process thus reducing the importance of the offender. Making young offenders accountable for their offences has become central. While it supports rehabilitation in principle, it sets obstacles that are likely to make it more difficult to reach that goal in some cases. The principle of proportionality centred on the seriousness of the offence has precedence over the need for rehabilitation and some other considerations. A distinction is made between violent offences (not violent offenders) and other offences so as to lead to different treatments for the two groups of offenders. Adult sentences for young offenders are facilitated, particularly through a presumption that an adult sentence should be imposed upon offenders aged 14 or over who are charged with very serious offences or were found guilty of certain offences in the past—a provision that was later judged by the Supreme Court of Canada to be unconstitutional, in violation of the Canadian Charter of rights and freedoms. In brief, this Act retains a law that is specific to minors, but it makes it more akin to adult criminal law than was the case before. The child welfare model is clearly kept at distance.[101] The very title of the Act is a good indicator: *Youth Criminal Justice Act*.

Debates and revisions of youth justice laws are by no means limited to North America. In England, for example, the dual care/

[100] Brown (2015).

[101] For more information on the Canadian 2002 Act, see for example Trépanier (2004, 2005), Doob and Sprott (2004) and Smandych (2006).

crime jurisdiction of the juvenile court came to an end in 1991 when the Children Act of 1989 came into force. A separate care jurisdiction was created in the family proceedings court, leaving the juvenile court (later renamed as Youth Court) to deal exclusively with criminal cases. Following a 'rebirth of populist punitiveness',[102] the orientation of the youth justice system was fairly changed, particularly with the Crime and Disorder Act of 1998 and the Youth Justice and Criminal Evidence Act of 1999, under the impulse of a Labour government that meant to be 'tough on crime and tough on the causes of crime'. This orientation included the following four key principles highlighted by Bottoms and Dignan.[103] The principal aim of youth justice is the prevention of offending by children and young persons, notably through effective early intervention and the intensive supervision of persistent offenders. Greater attention must be given to reparation in sentencing. Greater efficiency must be pursued in the use of the resources of the youth justice system, including by the speeding up of case processing. New emphasis on responsibilisation means that young offenders must not be excused but rather take responsibility for their actions and that parents must face up to their responsibilities for their children's offending behaviour.

Having retained its children's hearings, Scotland may give the impression that, in contrast to what occurred in England, it has not gone through any major change and has kept steadily to the welfare model. Still one should not underestimate the changes that have been introduced in recent years—changes that have been described under headings that provide a flavour of what was introduced: managerialism and accountability; public protection, risk management and effective practice; social inclusion and crime prevention; individual rights and responsibilisation; restorative justice and victims as stakeholders.[104]

[102] The expression is from Morgan and Newburn (2007: 1029), who borrowed it from Anthony Bottoms (1974).

[103] Bottoms and Dignan (2004: 41–43). For more information on the English and Scottish systems, one may consult this excellent presentation by Bottoms and Dignan. See also Muncie (2004, Chap. 7), Muncie and Goldson (2006a) and Hopkins Burke (2008).

[104] For more details, see McAra (2006: 133–138).

Other countries from outside the common law realm also carried out revisions of their legislation. This is the case for Belgium, where the long-lasting review of the Youth Protection Act of 1965 led to the adoption of a law by the Belgian Parliament in May, 2006. One may also quote the case of Portugal, where a review of the two laws dealing respectively with children in danger and young offenders were reviewed with a restraint and an equilibrium from which other countries might very well draw some inspiration; whereas the law on children in danger is oriented towards providing welfare services, the law on young offenders combines a concern for safeguarding the rights of youths and the goal of resorting to educative measures.[105] In France, the adoption of legal provisions has occurred in the context of highly politicised debates on security that are still going on, where youth—often immigrant youth—and violence are very often associated.[106] Other countries have gone through intense political debates with populist appeals.[107] Japan stands as an example, where politically driven changes were brought to juvenile law in 2000, resulting in a weakening of the previous welfare approach, the introduction of a more adversarial procedure where more room is made for the prosecution and for victims, and a renewed emphasis on the responsibility of parents to whom the courts can now issue warnings and instructions.[108] New amendments were brought in 2007 particularly to send younger offenders to reformatories when found guilty of serious offences. Poland is another example, where nonetheless demands for more stringent punishment led to only limited changes to the juvenile justice system.[109]

This raises the question as to whether trends highlighted by such countries as the USA, England or Canada have been present in most countries, with a growing emphasis on accountability and punishment and a reduced role for welfare and rehabilitation. The answer is negative.

[105] See Rodrigues (1999, 2004) and Da Agra and Castro (2002).

[106] On the politicisation of debates concerning youth justice in France, see Gendrot (2006) and Aubusson de Cavarlay (1999).

[107] On the links between public opinion and youth justice policies, see Roberts (2004).

[108] Fenwick (2006: 150–157).

[109] Stando-Kawecka (2006: 355–358).

Debates may have been present in many countries, but major legislative or policy changes have not followed everywhere. The overview provided by Muncie and Goldson demonstrates that, over time, juvenile justice has become more hybrid (borrowing from the welfare and the justice models, as well as from restorative justice), and that the extent to which it has moved in the direction of blurring the border between youth and adult criminal justice has not been the same in all countries.[110] Josine Junger-Tas has proposed classifying countries in three groups. She has observed a trend towards greater repression in countries that she called with an Anglo-Saxon orientation, such as the USA, England and Wales, Canada, Northern Ireland, the Republic of Ireland and The Netherlands. In contrast, the continental Europe countries that she studied (France, Belgium, Germany, Austria, Greece, Spain, Switzerland, Bosnia, Poland) do not seem to have followed the same path, retaining a welfare approach—albeit moderate—and introducing restorative justice policies. She presents Scotland and the Scandinavian countries as a special case, where a particular welfare system has been retained, along with the introduction of more punitive measures.[111] One might discuss as to whether this classification does justice to distinctions and nuances that might be brought, but it makes a central point that must be retained: if much attention has focused on political debates—often intense and characterised by populism—and on important policy shifts adopted by some countries, other countries have resisted that trend. In fact, the relative convergence that had marked juvenile justice in different countries until the 1960s has since then given pace to a relative heterogeneity, not to say clear divergences.

7 Conclusion

We can see that juvenile justice has gone through a journey of transformation, at the end of which it appears quite different from what it was at its inception. The nineteenth century set the foundations upon which juvenile courts would later be built. Special institutions for juveniles preceded the setting up of special courts. The stated intention was

[110] Muncie and Goldson (2006b). See also Muncie (2004: 295–301).

[111] Junger-Tas (2006: 511–521).

to provide not only places where they would be separated from adult offenders, but where one would seek to reform them. Many countries passed laws that conferred a special legal status to minors. Major court decisions opened the door to the doctrine of *parens patriae*, particularly in the USA; they legitimised that justice intervene informally on behalf of the interests of the child, and without recognising the latter rights normally accorded to accused persons. The establishment of juvenile courts in the early twentieth century emphasised a direction that had developed in the previous century. If juvenile courts represented an important change in the way of delivering justice, we must recognise that, in the words of Hogeveen, 'while there was continuous changes in the legal governance of wayward children, there was also continuity'.[112] This continuity was to last during the first 60 years of the existence of juvenile justice.

These decades leading to the end of the 1950s—and those that came before—were those that this book was intended to cover. This chapter could have ended with them. However, readers uninitiated in the field might have remained under the wrong impression that the juvenile justice frequently discussed in today's public debates is what existed in the 1950s. This is not the case, however, as the juvenile justice system has changed considerably since then. It is very important to understand that if we are to understand the real issues of today's debates. This is why it was decided to go beyond the period covered in the rest of this book and to provide an overview of what has become of juvenile justice over the last five decades.

We saw that the period of 1960–1990 was marked by contradictory trends. While some countries accentuated their adherence to the welfare model, others questioned some of its elements. Nevertheless, in general, the questioning was aimed less at the heart of the welfare model than the way to put it into operation. A new emphasis was placed on the protection of youth rights, both through procedural safeguards and substantive law. The youth's interest, education and rehabilitation remained central among the key concerns of juvenile justice. A blend of welfare and justice models made it possible for juvenile courts to emerge as judicial bodies

[112] Hogeveen (2001: 60).

were designed for children and youths, respectful of their rights. At the same time, new orientations were set in place with diversion programmes and restorative justice.

The last quarter of a century is that which has seen the strongest attacks made against juvenile justice. The debates were often fuelled by a right-wing populist rhetoric in an electioneering context and were made possible by popular ignorance of what both juvenile and adult courts are. They have resulted in changes in some countries that have made juvenile justice more similar to adult criminal justice than before. It also gave rise to more young people being treated as adults. These changes occurred mainly in common law countries or countries influenced by them. Fortunately, not everyone has succumbed to the temptation of punitive justice. Supported by major international instruments, many countries have resisted its temptation until now. One can only hope that this resistance will last and that juvenile justice will be renewed through the provision of movements like restorative justice rather than yield to the easy attraction of punishment.

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PART II

Nineteenth Century Responses to Juvenile Delinquency: Punishment, Reform and Child Protection

CHAPTER 3

The Origins of Informal Juvenile Court Practices and of the Juvenile Reformatory in England, 1815–1855

Peter King

This chapter focuses on the first half of the nineteenth century and explores two related developments—the growth of various informal court procedures in relation to juveniles and the growth of juvenile reformatories—or more accurately of a range of juvenile correctional institutions. It focuses primarily on England and seeks to demonstrate how important the period before the key parliamentary acts of the late 1840s and 1850s was in the development of juvenile-sensitive court practices and incarceration initiatives. In particular it will argue that long before these parliamentary statutes altered the legal position of juveniles in the courts and opened up new 'reformatory' options in relation to the sentencing and punishment of juveniles, the courts had already developed a range of informal customary practices that meant that their treatment of juveniles was often very different to that given to adults.

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1 The Growth of Informal Juvenile Courts Practices in England Before Their Formal Establishment by Statute

The Children Act of 1908, which established separate juvenile courts for the first time, has been rightly recognised by historians as an important milestone in the history of juvenile justice in England and Wales. An age-specific legal apparatus for dealing with all delinquent (and some destitute or 'deprived') juveniles, involving trial by magistrates without a jury, and hearings in a separate room or at a separate time from the adult courts, was now in place.[1] However, the origins of this change and the development of various forms of special treatment for juveniles in the courts during the nineteenth century have been less well researched. Standard accounts of the Victorian period tend to focus mainly on certain legislative milestones. In 1847 The Juvenile Offenders Act established that children up to 14 years of age accused of simple larceny could be tried by the summary courts, and in 1850 this was extended by statute to cover 15- and 16-year-olds. The 1879 Summary Jurisdiction Act extended the range of offences that could be tried summarily at petty sessions without a jury to all indictable offences (except murder) committed by children under 12 and to many forms of aggravated larceny, such as pick-pocketing, committed by 12- to 16-year olds. Finally, the 1899 Act extended the scope of the magistrates courts to all offences (except murder) committed by 12- to 16-year-olds.[2] These acts, along with the legislation of 1854 and 1857, which not only encouraged the rapid development of reformatories and industrial schools, but also empowered magistrates to send children to them for up to five years, gave the magistrates effective control of juvenile justice and resulted in large numbers of children being

[1] L. Radzinowicz and R. Hood, *A History of English Criminal Law. Volume 5; The Emergence of Penal Policy*. (London, Stevens & Sons, 1986), p. 632; V. Bailey, *Delinquency and Citizenship. Reclaiming the Young Offender 1914–1948* (Oxford, Oxford University Press, 1987), p. 7; J. Muncie, *Youth and Crime* (3rd edition, London, Sage, 2009), p. 74.

[2] Radzinowicz and R. Hood, *A History*, v. pp. 621–622; D. Taylor, *Crime, Policing and Punishment in England 1750–1914* (Basingstoke, Palgrave Macmillan, 1998), p. 18; C. Emsley, *Crime and Society in England 1750–1900* (3rd edition, Harlow, Longman, 2005), pp. 209–210; P. Parsloe, *Juvenile Justice in Britain and the United States. The Balance of Needs and Right* (London, Routledge and Kegan Paul, 1978), pp. 114–115.

imprisoned.[3] The intense legislative activity of the mid-Victorian years has, however, obscured the degree to which magistrates' practices on the ground had already begun to privilege juveniles and to offer them special treatment before 1847. When this earlier period is analysed in more detail it becomes clear that although Parliament steadfastly refused to offer formal legislative approval to such practices until the acts passed between 1847 and 1855, in reality the magistrates themselves had already begun to try juvenile felons summarily well before parliament gave them formal permission to do so.

This development of informal summary court practices in cases involving juveniles has largely escaped the notice of historians[4] but it was extremely important—particularly to the many juvenile offenders who received lesser punishments as a result. Historians studying the treatment of juvenile offenders in the first half of the nineteenth century have rightly noted that certain legislative changes such as the vagrancy acts of the early 1820s, the 1827 Malicious Trespass Act and the Metropolitan Police acts of 1820s and 1830s criminalised a range of minor forms of appropriation that had not previously been illegal and which were mainly perpetrated by juveniles.[5] However, in concentrating on this marginal criminalisation of the young, they failed to notice that a very different movement was also taking place in relation to the vast majority of theft accusations—those that were defined as felonious larceny and which therefore, according to the formal law, had to be sent on by the magistrates to the higher jury-based courts of quarter sessions and assizes.

[3] Radzinowicz and R. Hood, *A History …Volume 5*, pp. 176–224; Emsley, *Crime*, p. 279; Most convicted children still went to prison—J. Stack, 'Reformatory and Industrial Schools and the Decline of Child Imprisonment in Mid-Victorian England and Wales' *History of Education*, 23 (1994) pp. 59–73.

[4] It is however, briefly discussed in H. Shore, *Artful Dodgers; Youth and Crime in Early Nineteenth-Century London* (Woodbridge, The Royal Historical Society / Boydell Press 1999), pp. 30–32, 56–57; P. King, 'Shaping and Remaking Justice from the Margins. The Courts, the Law and Patterns of Law-breaking 1750–1840' in P. King, *Crime and the Law in England 1750–1840. Remaking Justice from the Margins* (Cambridge, Cambridge University Press, 2006), p. 59 and in the analysis offered by a neglected but useful Ph.D. thesis—T. Sweeney, 'The Extension and Practice of Summary Justice in England 1790–1860.' Cambridge University, 1985.

[5] S. Magarey, 'The Invention of Juvenile Delinquency in Early Nineteenth-Century England' *Labour History* (Canberra) 34 (1978), pp. 20–25.

Magistrates in many areas of England, unhappy with the fact that by committing juveniles accused of larceny to prison awaiting jury trial they were placing them in unreformed prisons where they were encouraged to further immorality by older prisoners,[6] were increasingly resorting to the summary trial of juveniles even though in strict legal terms they were not supposed to do so.

These practices had deep historical roots. Long before the nineteenth century many magistrates were dealing summarily with a very considerable proportion of the felony cases that were coming before them. Although the printed justice's handbooks gave specific instructions that 'if a felony is committed' the accused must either be bailed or committed to gaol to await trial in a jury court, magistrates frequently dealt with cases at the summary level by settling the dispute informally, by imprisoning the accused for a few days 'for further examination' and then discharging them, by informally impressing the accused, or by using the often vaguely worded vagrancy statutes to sentence them to short terms of imprisonment.[7] In the early nineteenth century, however, this practice increased in importance. A random sample of the printed 'Reports of the Proceedings of the Several Police Offices' in 1828, for example, reveals that only half of those accused of larceny at the Worship Street summary court in Middlesex were committed for trial. The rest were either discharged immediately or after a brief period in gaol 'for further examination'.[8] This informal practice also began to focus primarily on juveniles in the early nineteenth century, and by the 1820s and 1830s it was very well entrenched—especially in the larger urban areas. In 1837,

[6] Shore, *Artful Dodgers*, pp. 29–30.

[7] P. King, *Crime, Justice and Discretion in England 1740–1820* (Oxford, Oxford University Press, 2000), pp. 87–99. For an important discussion—B. Smith, 'The Presumption of Guilt and the English Law of Theft, 1750–1850'; N. Landau, 'Summary Conviction and the Development of the Penal Law' and B. Smith, 'Forum response; Did the Presumption of Innocence Exist in Summary Proceedings?', *Law and History Review*, 23 (2005). On the long-standing tradition of summarily convicting 'pilferers' which went back to the seventeenth century—J. Beattie, *Crime and the Courts in England 1660–1800* (Oxford, Oxford University Press, 1986), pp. 269–270; J. Beattie, *Policing and Punishment in London 1660–1750* (Oxford, Oxford University Press, 2001), pp. 26–31.

[8] *Reports of the Proceedings of the Several Police Offices*, February 1st 1828—cases traced through in following reports to mid February Held in The National Archives (henceforward TNA) HO 62/1; Sweeney, 'The Extension', p. 121.

for example, Sir Frederick Roe, who had been a police magistrate for the last 15 years and Chief Magistrate at Bow Street for 5 years, openly admitted that the London magistrates pursued very different policies if the accused was a juvenile. Asked if 'offenders of a very tender age' were 'treated according to the same strict form of law as those of a riper age', he replied, 'my practice, and that of many magistrates, is in many cases, to treat them summarily', using 'the Vagrant Act' or statutes for 'being found in the streets or public places with intent to commit felony or being found in enclosed places for unlawful purposes' or 'for having implements for housebreaking in possession'.[9] When he was then asked 'supposing a young offender of any kind who has actually committed a felony is brought before a magistrate; what is then done?' he replied. 'Most magistrates in such cases consider that, though a felony has actually been committed, the circumstances under which it has been committed are such as justify our acting on the Vagrant Act'. Conviction under this act would have usually resulted in either a whipping or a brief period of summary imprisonment, but not in the outcome formally required by law—an often lengthy period in gaol awaiting full jury trial. The Report of the Commissioners on the Criminal Law that was offered to Parliament in 1837 indicates that during their interviewing of Roe they were so amazed that they asked for confirmation. 'In respect of felonies … committed by children' they asked, 'you do not usually commit for trial?' to which they received the simple reply 'In a great many cases not'. Unable, it seems to fully take this in they returned 15 questions later to the same issue. 'Would it, in your opinion, be too much … to allow the magistrate a discretion as to committing in the course of prosecution, or discharging an offender of tender years?' they asked. 'That is in fact constantly exercised by all magistrates' was the reply. The Commissioners then called the Metropolitan Police Commissioner Richard Mayne, and asked him 'Do you find that, in practice, the metropolitan magistrates, upon a lad being brought before them for a trifling felony, are in the habit of committing under the vagrant act?' 'I believe in a great many cases they do' was his reply.[10] Since a West Yorkshire magistrate also admitted following similar practices to the Commissioners at an

[9] 'Third Report from the Commissioners on the Criminal Law; Juvenile Offenders', *Parliamentary Papers* (henceforth *P.P.*), xxxi (1837), p. 12–13.

[10] *P.P.*, xxxi (1837), pp. 13–14.

earlier hearing[11] they were left in no doubt that this was current practice in a number of areas and they seem to have concluded that their only option was to recommend that this unauthorised procedure be made legal. The 1837 report therefore contained the following suggestion:

> To a certain extent the discretion of absolutely discharging a prisoner is already assumed by many magistrates, though without any direct authority by the law; and it is now not an unfrequent practice to dismiss charges for trivial offences against children, not withstanding the evidence adduced may have clearly established the commission of a felony. The practice is, however, by no means uniform, many magistrates considering that where a felony is proved (however trivial it may be) they are bound by the law either to commit or hold to bail. If the exercise of such discretion is desirable, it should not be left to the varying notions of different magistrates, but should be expressly sanctioned by law, and defined and limited, as far as possible, upon some rational and consistent principle.

The 'Report of the Select Committee on Metropolis Police Offices', which came out the following year, contained a similar mixture of disapproving observations about the fact that the London magistrates were exceeding their legal powers, and recommendations that, in cases involving juveniles, they should be given the formal legal right to do what they were already doing. 'When' it reported, 'it appears expedient or impossible to send the case with advantage to trial, charges of larceny are disposed of by the magistrate, by restricting the evidence so as to make it establish a misdemeanour, whereas in fact there is sufficient evidence to prove a felony. More than one half, probably, of the charges of felony at the police offices are thus disposed of'. It then quoted a police magistrate who confirmed that 'this mode of proceeding, to which magistrates are driven, is extremely unsatisfactory; there should be nothing indirect, nothing like false pretences in the administration of the criminal law'. The Report then went on to suggest that one solution would be 'on charges of larceny of property not exceeding the value of 10 shillings, the age of the culprit not exceeding 15 years, two justices sitting together should be empowered to hear and adjudicate, if they think fit, and, on conviction, to sentence to imprisonment not exceeding six months'.[12]

[11] *P.P.*, xxxvi (1836), p. 88–90.

[12] *P.P.*, xxxi (1837), p. 8; P.P., xv (1837–1838 number 578), p. 25–26.

Neither of these sets of recommendations were immediately acted upon. They were only put into legislative form a decade or more later in the acts of 1847, 1850 and 1855. However, the practice on the ground was clear. While a considerable proportion of provincial magistrates continued to follow the letter of the law, most urban magistrates in London and elsewhere had already created a set of procedures that resulted in juveniles often being tried on different principles and in different courts to adults. These practices appear to have been much more commonly used by stipendiary magistrates in large cities such as London, Liverpool and Manchester than in rural areas[13] and, as I have analysed elsewhere, this had an important impact on juvenile indictment levels in urban areas by transferring a disproportionate number of juvenile prosecutions out of the jury courts.[14] However, the practice of dealing with a much larger proportion of juveniles than of adults through the use of these summary powers was clearly widespread and can also be traced back to the early nineteenth century. Even before the vagrancy acts of the early 1820s made it even easier for magistrates to develop these new procedures there is clear evidence these powers were being used primarily to enable the summary courts to convict juveniles. In 1817 for example only 24% of the male prisoners in the Middlesex house of correction at Cold Bath Fields were aged 9 to 19 but 73% of those imprisoned as reputed thieves were in that age group.[15] Once the London magistrates realised in the 1810s that the Refuge for the Destitute might also provide an alternative to committal they became even more willing to deal with felonies summarily. In 1821, for example, the Refuge's clerk recorded several cases in which magistrates followed this procedure including the following two:

> Richard Leworthy, 12 years of age … Since the death of his parents he has been in Bethnal Green Workhouse, until he was sent out as errand boy to Mr. Martin … Being sent out by him to get change for a pound note, he ran away and spent it. He was apprehended and taken to Worship Street (Police court) and would have been committed had not the magistrate, in consideration of his youth, persuaded the prosecutor to recommend him

[13] Sweeney, 'The Extension', pp. 167 and 400.

[14] P. King, 'The Rise of Juvenile Delinquency in England 1780–1840: Changing Patterns of Perception and Prosecution' in King, *Crime and the Law*, pp. 88–89.

[15] *P.P.*, viii (1818), p. 288.

> to the Refuge … That the boy might be saved from prison … sent to the temporary refuge'
>
> Caroline Norvel, 15 years of age. Her father at sea. Her mother is at Tipple's Poorhouse Hoxton, a paralytic. Petitioner lived as servant with Mrs Norval, her aunt, from whom she stole 2/6. She was carried before the sitting magistrate at Guildhall by whom she was sent … to the refuge.

This practice of avoiding committing young felons for trial were not confined to the metropolis, however. Another Refuge narrative records in 1820:

> William Burgwyn, 14 years of age, of the parish of Pulverbatch, in the county of Salop, whence he was put out as an apprentice. He ran away … was taken back … ran away again and when brought before a magistrate consent to go (to a blacksmith to learn him his trade). He absented himself from this service, and was again brought before the magistrates charged with acts of felony. Upon consideration it was thought better to commit him to the house of Correction … than that he should be tried … his father and mother have been dead, one six years the other ten … If he returns to the parish … he will probably return to thieving … placed in the temporary refuge.[16]

This informal movement towards the summary trial of juveniles who had previously been tried by jury at either the quarter sessions or assizes was not widely trumpeted at the time, perhaps because its legality was so debatable. It was very rarely mentioned, for example, during the lengthy pre-1847 parliamentary debates created by the unsuccessful campaign to obtain legislation formally transferring the trial of juveniles accused of larceny to the summary courts. However, although that debate was predicated almost entirely on the notion that magistrates did not currently have such powers, in reality many magistrates had already, without waiting for parliament's permission, begun to quietly remake legal procedure

[16] P. King (ed.), *Narratives of the Poor in Eighteenth-Century Britain; Volume 4 Institutional Responses: The Refuge for the Destitute* (London, Pickering and Chatto, 2006), pp. 248, 262 and 339.

on the ground[17] in ways that radically increased the number of juveniles being summarily tried for larceny.

2 A Three-Stage Model of the Development of Special Trial and Sentencing Procedures for Juvenile Offenders in England Before 1908

On closer inspection therefore it is possible to identify several fairly distinct stages in the development of special trial and sentencing procedures for juvenile property offenders in England up to 1908. In the first stage, which may have been reached long before the eighteenth century—when the collection of systematic age data for the first time allows us to identify it—no special trial procedures were involved, the focus being on sentencing and pardoning policy alone. As the extensive work done on the sentencing policies of the Old Bailey and the provincial assizes courts in the late eighteenth and early nineteenth centuries has shown, a significant proportion of juveniles received considerably less harsh punishments than their adult equivalents in these final years of the capital code. They were much more likely to gain pardons if capitally convicted, for example. Moreover, if convicted of non-capital offences, they were more likely to receive the less severe punishments of whipping and fining, although the majority of juvenile offenders shared the same fate as all convicted offenders, being either transported or imprisoned if found guilty by a jury.[18]

The second stage developed in the early nineteenth century out of deep roots going back into the eighteenth and, like the first, it owed little or nothing to formal legislative structures. In this period many magistrates, especially those in large urban areas, grew impatient with parliament's failure to give them more extensive summary powers in relation to juveniles accused of minor and non-aggravated larcenies and devised informal, and strictly speaking extra-legal, methods of summarily

[17] W. Sanders (ed.), *Juvenile Offenders for a Thousand Years* (Chapel Hill, North Carolina, University of North Carolina Press, 1970), pp. 112–119 summarises these debates. King, 'Shaping and Remaking Justice', for a more general discussion of the ways magistrates remade justice in many situations in this period.

[18] P. King, 'The Punishment of Juvenile Offenders in the English Courts 1780–1830. Changing Attitudes and Policies' in King, *Crime and the Law*, pp. 114–141; and King, *Crime, Justice and Discretion*, pp. 288–307.

trying them. This was very rarely recognised in the many parliamentary debates that focused on this subject but one advocate of legislative reform was actually brave enough in 1839 to point out that 'Honourable members were probably not aware that the jurisdiction presently exercised by the police magistrates was not only extremely extensive, but also not strictly legal'.[19] However, both this comment and the observations of the Third Report of the Commissioners on the Criminal Law in 1837 quoted above were largely ignored. As Sweeney rightly concluded: 'The passionate resistance to an open extension of summary jurisdiction in larceny cases which marked the 1830s and 1840s totally ignored the fact that magistrates had already secured many of the powers so bitterly contested'[20] and were using them primarily, although not exclusively, in cases involving juveniles.

The next stage began in 1847 when parliament finally started the process of formally giving the summary courts the power to try certain categories of juvenile felons (and beginning in 1855 of all minor larceny offenders), powers which many magistrates had long exercised without formal legal sanction. As successive acts widened the summary courts' jurisdiction so that it covered more and more categories of property offences and extended to 12- to 16-year-olds as well as to those aged 12 or below, these legislative initiatives—combined with the magistrates' growing power to send young offenders to reformatories for long periods of time—gradually turned the summary courts into places where juveniles were tried on different principles and were subjected to different sanctions. This process culminated in the fourth stage which began with the Children Act of 1908, at which point the juvenile courts also became entirely spatially separate.

3 Juvenile Prisons, Reformatories and Penitentiaries—Long-Term European Perspectives and Problems of Definition

After introducing in this section some of the historiographical, chronological and definitional problems involved, this chapter will then explore the parallel development of juvenile correction facilities in England

[19] *Parliamentary Debates,* Third series, 47 (1839), col. 1297.

[20] Sweeney, 'The Extension', p. 121.

from the late eighteenth century to the mid nineteenth centuries and will argue that the chronology of juvenile reformatory development may also need to be reconfigured. In attempting this task the historian immediately faces two contradictory problems within the existing historiography. On the one hand, a number of textbooks on criminal justice history in England effectively ignore the early history of the reformatory and begin their discussion either in 1838 with the opening of the first juvenile prison at Parkhurst, or in the 1850s when the Acts of 1854 and 1857 set up the first formal legal mechanism whereby the courts could send young offenders to a reformatory/industrial school.[21] In this tradition historical accounts of correctional facilities for juveniles only become interesting or relevant either when they involve institutions administered by central government or when they are inscribed in statute and applied to a very large number of offenders. The fact that attitudes to the punishment of juveniles were changing and new institutions were being evolved to 'punish', 'treat' or 'reform' them before the mid-nineteenth century is therefore ignored.[22]

At the other extreme a number of early modern historians have gone to great lengths to point out the long-term antecedents of nineteenth-century developments in the history of the juvenile reformatory. They have rightly pointed out, for example, that in the three centuries before the period being focused on here many institutions housed, dealt with, and sometimes attempted to 'reform' youths that were defined by various groups as deviant. From the late fifteenth century onwards a number of charitable institutions took errant juveniles into enclosed institutions at the request not only of the civil or church authorities, but also of their parents—who were usually willing to pay for the privilege. The Toribios Orphanage in Seville, for example, though founded as an asylum for orphaned, abandoned and poor boys, soon became a correctional facility used not only by the civil authorities to punish young thieves, but also by the relatively well off who mobilised it as a convenient place

[21] See for example J. Briggs, C. Harrison, A. McInnes and D. Vincent, *Crime and Punishment in England; An Introductory History* (London, St. Martin's Press, 1996) p. 180 and D. Taylor, *Crime, Policing and Punishment in England 1750–1914* (Basingstoke, Palgrave Macmillan, 1998).

[22] Honourable exceptions amongst textbook writers are C. Emsley, *Crime* and P. Rawlings, *Crime and Power. A History of Criminal Justice 1688–1998*, (Harlow, Longman, 1999), pp. 96–99.

of confinement in which to discipline their insubordinate and unruly sons.[23] Equally, in the later sixteenth and early seventeenth centuries many European, and particularly Northern European, countries established houses of correction (or as Spierenburg has helpfully termed them—thus emphasising their requirement that inmates perform labour tasks—'prison workhouses').[24] Originally designed in most cases to house beggars, vagrants and the marginal or disobedient poor, these institutions (which in England were sometimes known as bridewells) soon began to admit considerable numbers of criminals, and in performing both these functions they often became, either by design or default, places where young offenders were held and dealt with. Sometimes the authorities of a particular area deliberately used them to implement specific policies towards the young. The Amsterdam judges, for example clearly saw a spell in their prison workhouse as a suitable way of dealing with young thieves.[25] Equally the English bridewells, which had become effectively a nationwide network by the 1630s, were often used to discipline unruly youths and errant young servants and apprentices. Early modern Norwich, England's second city, certainly used its bridewell to discipline the young and even had a 'prison for servants' at one point,[26] and in late-sixteenth-century London the Bridewell also acted as a kind of industrial training school for poor boys.[27]

[23]V. Tikoff, 'Before the Reformatory: A Correctional Orphanage in Old Regime Seville' in P. Cox and H. Shore (eds.), *Becoming Delinquent: British and European Youth 1650–1950* (Aldershot, Ashgate, 2002), pp. 60–75.

[24]P. Spierenburg, *The Prison Experience. Disciplinary Institutions and their Inmates in Early Modern Europe* (New Brunswick, New Jersey, Rutgers University Press, 1991) pp. 1–11; P. Spierenburg 'The Sociogenesis of Confinement and its Development in Early Modern Europe' in P.Spierenburg (ed.), *The Emergence of Carceral Institutions: Prisons, Galleys and Lunatic Asylums 1550–1900* (Rotterdam, Erasmus Universiteit, 1984), pp. 9–77.

[25]Spierenburg, 'Sociogenesis', p. 38.

[26]P. Griffiths, *Youth and Authority; Formative Experiences in England 1560–1640* (Oxford, Clarendon Press, 1996), pp. 366–371; P. Griffiths, 'Bodies and Souls in Norwich: Punishing Petty Crime 1540–1700' in S. Devereaux and P. Griffiths (eds.), *Penal Practice and Culture, 1500–1900. Punishing the English* (Basingstoke, Palgrave Macmillan, 2004), pp. 101–105; P. Griffiths, 'Juvenile Delinquency in Time' in Shore and Cox (eds.), *Becoming Delinquent*, p. 27.

[27]J. Innes, 'Prisons for the Poor: English Bridewells 1555–1800', in F. Snyder and D. Hay (eds.), *Labour, Law and Crime. A Historical Perspective* (London, Tavistock Publications, 1987) pp. 45–47 and 56.

The use of imprisonment facilities as holding places or correctional spaces for the young therefore has a complex history. Moreover, there can be no doubt that in late-eighteenth-century England, as in Seville, in Holland and in many other parts of Europe, a wide variety of different types of institution were occasionally or fairly regularly used in this way. In England, even before the opening of the London Philanthropic Institution in 1788 and the Refuge for the Destitute in 1806, unruly servants and apprentices, and other young people deemed to be vagrants or pilferers were frequently held in county houses of correction and gaols. Nor was this policy fading away. From the early 1790s onwards, for example, large numbers of unruly servants found themselves forced to sample the facilities in Gloucestershire's newly rebuilt and reformed houses of correction.[28] Moreover, in the Metropolis at least, a rapidly expanding group of institutions for wayward young girls and those who had slipped into prostitution was also growing up.[29]

Given all these antecedents is it clear that, although the term 'juvenile reformatory' may not have been widely used until the early nineteenth century, very few elements of the institutions that came to be labelled as 'juvenile reformatories' were entirely novel or unprecedented. The notion and practice of the juvenile reformatory was not invented in this period. Rather it was gradually refined by experiment, by the perceived success of some initiatives and by the failure or very qualified success of others. Perhaps the only elements that were entirely new in England in the 1850s were first, the statutory authority given to the courts to pass sentences which would specify that the juvenile offender concerned must be placed for long periods in residential institutions that were dedicated solely to the imprisonment and reform of other juveniles. And second the statutory requirement that government departments

[28] J. Whiting, *Prison Reform in Gloucestershire 1776–1820* (Chichester, Phillimore, 1975), pp. 246–253.

[29] On the Magdalen and Lambeth Asylums, see D. Andrew, *Philanthropy and Police. London Charity in the Eighteenth Century*, (Princeton, Princeton University Press) pp. 115–127. For the Female Penitentiary opened 1807 and the Guardian Society's Institution see T. Henderson, *Disorderly Women in Eighteenth-Century London* (London, Routledge). On prostitution and the Female Refuge for the Destitute, see P. King (ed.), *Narratives of the Poor*, pp. xxv–xxvi; P. King, 'Destitution, Desperation and Delinquency in Early Nineteenth-Century London: Female Petitions to the Refuge for the Destitution' in A. Gestrich, S. King and L. Raphael (eds.) *Being Poor in Modern Europe; Historical Perspectives 1800–1940* (Bern, Peter Lang, 2006), pp. 170–172.

commit themselves long term to the financing or part-financing of these placements and to the inspection of the establishments to which that finance was being directed.[30] All the other key elements of the English reformatory system that emerged in the 1850s, such as the notion that these institutions should aim to reform and rehabilitate juveniles as well as to punish them; the idea that both juveniles who had been convicted of specific offences and those who were merely in danger of falling into crime should be put into reformatory institutions; and the principle that government should work in partnership with charitable foundations in order to achieve these aims—can all be found in place well before that date, and in many cases were at least partly present as early as the sixteenth century.

The term juvenile reformatory is also problematic for another reason. It is by no means always clear how, if at all, such an institution was or is different from a juvenile prison, or indeed (as we will investigate below) from a 'juvenile penitentiary'—the label used in 1817 when detailed plans for such an institution were presented to a parliamentary committee.[31] It is very difficult to define precisely what the difference is between a juvenile prison and a juvenile reformatory. In the English experience the similarities are often easier to spot than the differences. Both are dedicated solely to the incarceration of juveniles (although, of course, definitions of juvenile also vary across space and time). Both are intended to punish juvenile offenders. Both have regimes that contain some elements, however small, which aim to reform those incarcerated within them. The English juvenile prison opened at Parkhurst in 1838, for example, although it developed a strict and punitive regime, still very definitely had reform on the agenda—even if it became increasingly marginalised towards the end (Parkhurst was closed in 1863).[32]

The search for clear or absolute differences between juvenile prisons and reformatories is fraught with difficulties because those differences were not fundamental but only a question of degree. In England, for example, juvenile prisons were more likely to be totally state-run, but many institutions that have been called juvenile reformatories have also been state-run rather than run by philanthropic bodies or by a

[30] Radzinowicz and Hood, *A History*, v, pp. 178–183.

[31] *P.P.*, vii, (1817), pp. 524–532.

[32] Radzinowicz and Hood, *A History,* v, pp. 149–155.

partnership of voluntary and government effort.[33] Equally, although juvenile prisons tended to cut the inmates off more totally from the outside world, many reformatories also had such strict rules about visiting or home leave that from the inmates' point of view they would have seemed very similar to prison in the degree to which they isolated them from the community. Juvenile reformatories tended to take offenders for longer periods—a minimum of 2 years was laid down in the 1854 Reformatory schools act, for example.[34] However, some juvenile prisons followed the same pattern. For a while Parkhurst took only long-term convicts under sentence of transportation, although at other times it took prisoners for much shorter terms. The internal regimes of juvenile prisons and reformatories also exhibited some surprising similarities. Juvenile reformatories may have introduced more fully the softer internal regimes that are associated with the welfare model—the treatment-centred approach to the imprisonment of juveniles that became so dominant in England and elsewhere from the end of the nineteenth century to the 1970s. However, in the second half of the nineteenth century the vast majority of those who ran juvenile reformatories, for all their desire to help young offenders and their greater awareness of the environmental factors that might lead to delinquency, remained convinced that very tough internal regimes were necessary in order to reclaim 'the young outcasts of society'.[35]

This blurred boundary between the idea of a juvenile prison and that of a juvenile reformatory can be seen very clearly in the proposal for a 'juvenile penitentiary' put forward by a member of the 'society to inquire into the causes of juvenile delinquency' to a Parliamentary Committee in 1817. This scheme, described at one point very definitely as 'a prison for juvenile delinquents'[36] was, according to those who proposed it, designed for both the 'confinement *and* reformation of boys committed for offences in the City of London and the County of Middlesex'. To

[33]The so called Borstal institutions, for example, which by the 1920s had come to embody a very liberal treatment-orientated model, were entirely state run.—S. McConville, 'The Victorian Prison: England, 1865–1965' in N. Morris and D. Rothman (eds), *The Oxford History of the Prison. The Practice of Punishment in Western Society.* (Oxford, Oxford University Press, 1995), pp. 157–159.

[34]Radzinowicz and Hood, *A History,* v. p. 177.

[35]M. Wiener, *Reconstructing the Criminal. Culture, Law and Policy in England 1830–1914.* (Cambridge, Cambridge University Press, 1990), pp. 138–139.

[36]*P.P.*, vii (1817), p. 440.

this end the proposal included several aspects normally associated with 'reformatory' regimes such as provision for the boys to be trained in manufactures that would give them a means of following a trade 'when they quit the prison', and provision for them to receive such instruction 'as may be conducive to the reformation of the prisoners'.[37] The word penitentiary—popular as a description of all reformed prisons in England in the period from the 1770s to the early nineteenth century—carries within it a deep ambivalence. Penitence in the offender is usually both a product of punishment and an important part of the journey towards reform. However, the term gradually fell out of use in England during the nineteenth century,[38] although it remains an open question whether the institutions that were labelled as reformatories some four decades later were in fact that different from the juvenile penitentiary unsuccessfully proposed by the reformers in 1817.

Histories of juvenile correctional facilities in Holland and Belgium also offer interesting insights into the evolving nature of the juvenile prison/reformatory division. In Belgium, the terminology used in describing juvenile correction institutions clearly evolved along quite similar lines to that found in England. The first key prison-style institution at St. Hubert which was opened in 1844, was called a 'maison pénitentiaire pour jeunes délinquants' from 1844 to 1867. It then became a 'maison pénitentiaire et de réforme' from 1867 to 1881, when it became a 'maison spéciale de réforme'. Behind these changes in terminology, however, there may well have been considerable continuity in the nature of the regimes being experienced by the inmates, at least until the final part of the nineteenth century. Nor were the regimes introduced into the two agricultural colonies built in 1848 for boys and girls respectively (labelled first 'école de réforme' and then 'école agricole') necessarily that different at first than those found at St. Hubert.[39] Once again the

[37] *P.P.*, vii (1817), p. 526.

[38] S. McConville, *A History of English Prison Administration. Volume 1, 1750–1877* (London, Routledge and Kegan Paul, 1981), pp. 135–169.

[39] J. Christiaens, 'A History of Belgium's Child Protection Act of 1912. The Redefinition of the Juvenile Offender and his Punishment', *European Journal of Crime, Criminal Law and Criminal Justice*, *7* (1999), pp. 6–8; M.-S. Dupont-Bouchat, 'De la prison à l'école de bienfaisance: origines et transformations des institutions pénitentiaires pour enfants en Belgique au XIXe siècle (1840–1914)' *Criminologie*, *28/*1 (1995), pp. 24–53 and *28/*2, pp. 85–108.

division between what was thought of as a juvenile prison and what was labelled a reform school may have been very minor in practice—during the early years at least. Dutch historians have revealed similar overlaps. While pinpointing the opening of the first 'youth prison' in Rotterdam in 1833 and of the first government reformatory at Alkmaar in 1857 as key moments, they have also pointed out that the new boys' prison built in the countryside in 1866 (when the old Rotterdam one was closed) soon adopted the same methods at those used at Alkmaar and indeed became an annex of the latter in 1878.[40] Here then a juvenile prison became a reformatory while still for a while remaining labelled as a prison. Clearly such terms must be used with care, and it may, perhaps, be better to use the term 'juvenile correctional facilities' as an umbrella under which to describe both the reformatories and prisons (and indeed the penitentiaries) designed for juveniles in the first two-thirds of the nineteenth century. With these terminological problems in mind, this chapter will now look at the range of correctional facilities that grew up in England in this period

4 The Growth of Juvenile Correction Facilities in England Before 1855

In writing about the juvenile correction facilities that came to prominence in the late eighteenth and early to mid nineteenth centuries in England, the model usually adopted by historians has been a tripartite one. Radzinowicz and Hood, for example, discuss 'early philanthropic initiatives', and 'the Parkhurst experiment', before then moving on to give much greater coverage to the coming of the 'Reformatory system' in the 1850s.[41] Once they have described the failure of the state-run (and totally state-financed) Parkhurst experiment, and suitably dismissed it, the story these authors tell tends to end up as a fairly simple chronological one. Early philanthropic and mainly privately financed experiments gradually build a foundation of understandings that can be

[40] C. Leonards, 'Priceless Children? Penitentiary Congresses Debating Childhood: A Quest for Social Order in Europe, 1846–1895' in C. Emsley, E. Johnson and P. Spierenburg (eds), *Social Control in Europe,* Volume 2*, 1800–2000* (Columbus, Ohio, Ohio State University Press, 2004) pp. 125–148.

[41] Radzinowicz and Hood*, A History*, v, pp. 133–171.

drawn on when the key moment of change comes in the debates and legislation of the late 1840s and 1850s. Other overviews use the same three categories but posit a much clearer break. The early initiatives of the Philanthropic Society and the Marine Society, which was set up in 1756 with the intention of sending deserted and delinquent children into the Navy, are seen as floundering by the end of the eighteenth century and as remaining so until they were 'revived and augmented by the reformatory movement of the 1840s'.[42] In reality, however, the period from 1800 to the 1840s saw a number of important initiatives in this field.[43] Some of these initiatives were aimed mainly at destitute and vulnerable juveniles rather than those who had actually been convicted, but in practice the lines between these categories were often blurred, and magistrates frequently got young offenders admitted into a voluntary institution as an alternative to trying them summarily or to sending them on for jury trial.

The period from the late 1780s to the beginning of the 1840s witnessed a considerable number of individual projects designed to provide what might be broadly termed reform-based and/or correctional establishments for juveniles. Most histories of this period follow the development of the Philanthropic Institution founded in 1788 which was one of the few voluntary initiatives that survived and thrived after the reforms of the mid nineteenth century. The Philanthropic specialised for its first half century in the reform of the very young (usually under 13) and went on to be important as a model in the late 1840s when it followed the example of Mettray and became an agricultural-colony style reformatory.[44] Some accounts also mention briefly the tiny rural asylum for juvenile offenders established at Stretton in Dunsmore by the Birmingham magistrates in 1817. This family-style agricultural reformatory, established 20 years before Metrray, has not perhaps received the attention it deserves

[42] J. Muncie, *Youth and Crime. A Critical Introduction* (London, Sage Publications, 1999), pp. 58–59. The third edition of this text (3rd edition, 2009) p. 57 takes more account of recent research.

[43] Shore, *Artful Dodgers*, pp. 95–104.

[44] Sanders (ed.), *Juvenile Offenders*, pp. 70–90; M. May, 'A Child's Punishment for a Child's Crime: The Reformatory and Industrial Schools Movement in Britain 1780–1880', Ph.D. thesis, London University 1981, pp. 212–230; Radzinowicz and Hood, *A History*, v, pp. 134–135.

from historians, partly because, having always struggled to obtain sufficient financial backing, it went under just before the reforms of the mid nineteenth century.[45] Establishments for delinquent girls have also received relatively little attention—Elizabeth Fry's small Chelsea School of Reform for wayward girls of between 8 and 13, which opened in the mid-1820s, being a case in point, although the many institutions set up to reform young women who had either 'fallen' into prostitution or were deemed to be in danger of doing so, have been studied to some extent.[46]

Another strand in the story that has been given attention by historians is that provided by institutions preparing destitute juveniles for emigration to various colonies—in particular the Children's Friend Society Asylum at Hackney Wick (boys) and the Royal Victoria Asylum in Chiswick (girls) which were formed at the beginning of the 1830s. This policy was also adopted by the prison authorities at Parkhurst whose convicts were 'apprenticed' to the colonies if they proved sufficiently pliant during their initial period of imprisonment—another example of the overlap of 'prison' and 'reformatory' policies.[47] The Philanthropic Society also developed a policy of sending some inmates abroad to the colonies, as did the London Refuge for the Destitute. The latter institution, whose internal records came to light only in the 1990s has hitherto played a relatively small part in accounts of the development of juvenile reformatories/correctional facilities in England. It gets no mention at all in Radzinowicz and Hood's account, for example.[48] However, recent work on its records suggests that it played a very important role in the development of policies towards juvenile offenders, a role that has been underplayed because it also underwent a financial crisis just before the mid nineteenth century reforms.

[45] A. Langley, *The Warwick County Asylum. The First Reformatory Outside London*, (Stretton in Dunsmore, Stretton Millennium History Group, 2006).

[46] This Chelsea institution was designed for girls between 7 and 13 'found guilty of stealing or any other offence'—*Third Annual Report of the Committee of the House of Discipline or School of Reform* (London, 1828), p. 7; Shore, *Artful Dodgers*, pp. 97–98.

[47] E. Bradlow, 'The Children's Friend Society at the Cape of Good Hope', *Victorian Studies*, 27 (1984), pp. 155–177; E. Hadley, 'Natives in a Strange Land: The Philanthropic Discourse of Juvenile Emigration in Mid-Nineteenth-Century England', *Victorian Studies*, 33 (1990), pp. 411–437; Shore, *Artful Dodgers*, pp. 110–114.

[48] Radzinowicz and Hood, *A History,* v.

The London Refuge for the Destitute, which was opened in 1806, soon began to specialise in the reform of destitute and criminal juveniles of both sexes. By the mid-1810s it was being used quite extensively by the magistrates of the metropolis as an alternative to formal prosecution and by the Old Bailey judges as an informal sentencing option after conviction, an option which usually involved a two-year stay in the institution.[49] Like the Philanthropic it rarely if ever used corporal punishment, it offered training in a trade, and it aimed very much at the reformation of the offender. However, unlike the Philanthropic which specialised almost entirely in those under 14, it took juveniles aged 13 to 19 and therefore offered a much more useful option to the courts.[50] It also provided after-prison care to some young offenders and took a few juveniles each year who had received pardons from the King on condition of their admission to the Refuge. By the later 1810s the Refuge was receiving a large annual grant from central government in recognition of its role in providing a reformatory option to the London courts in their sentencing of juveniles. It also began to take small numbers of juvenile offenders from courts in the provinces. By the early 1820s it had expanded and had attracted the backing of members of the highly influential Society for the Improvement of Prison Discipline and for the Reformation of Juvenile Offenders.[51] The Refuge for the Destitute was the main provider of juvenile reformatory facilities in London and indeed in England in the mid-1820s but it then came under sustained pressure from the Home Office to justify its grant. By this time the Society for the Improvement of Prison Discipline was under attack from a number of influential critics for what one called its 'system of indulgence and education in Jails'.[52] Peel in particular, during his extended period as Home Secretary, made considerable cuts in the Refuge's funding, and by the early 1830s it was receiving only a small number of offenders straight

[49] P. King, 'The Making of the Reformatory. The Development of Informal Reformatory Sentences for Juvenile Offenders 1780–1830' in King, *Crime and the Law*, pp. 142–164; King (ed.), *Narratives*, pp. vi–xxii; King, 'Destitution, Desperation', pp. 159–162.

[50] This is based on the ages on admission given in the sample cases described in the Philanthropic's reports for a sample of years 1804–1825.

[51] King (ed.), *Narratives*, pp. vi–xxii.

[52] R. McGowen, 'The Well-Ordered Prison: England 1780–1865' in Morris and Rothman (eds), *The Oxford History,* pp. 96–99.

from the courts. After refusing to agree to a Home Office suggestion that it amalgamate with the Philanthropic it then lost its grant completely in the late 1840s and as a result it had to close down its male refuge and concentrate on girls alone.[53]

5 A Model of the Development of Juvenile Correction Institutions Before 1855

Once the history of the Refuge for the Destitute is given its proper place, a rather more complex and interesting chronology of the development of juvenile correction institutions in the first half of the nineteenth century emerges, which can best be understood by using a four-stage model.

5.1 1750s to the 1810s

This was a period of relatively low anxiety about juvenile crime and of early, scattered philanthropic experiments aimed mainly at vulnerable rather than criminal juveniles. The main initiatives were the Marine Society, the Philanthropic, and the Refuge for the Destitute, which in its first decade was not a specialist juvenile institution and took mainly destitute ex-prisoners. It might also be helpful to include here voluntarily funded institutions designed to rescue or reform prostitutes such as the Magdalen Hospital (opened in 1758), the Lambeth Asylum (1759), the Female Penitentiary (1807) and the Guardian Society's Institution (1812) which were all very much correctional institutions/reformatories. Although they were not exclusively aimed at juveniles, the vast majority of their inmates were young enough to fit into that category.[54] At this point the initiative and all the finance came entirely from the voluntary sector and with the exception of a few very young offenders sent to the Philanthropic, the courts were not usually using these institutions directly as a sentencing option.

[53] King (ed.), *Narratives*, pp. xxi.

[54] Henderson, *Disorderly*, p. 23 on the majority of prostitutes being teenagers—although those who also resorted to theft were often later in their careers and therefore older pp. 26–27. Andrew, *Philanthropy*, pp. 115–118.

5.2 1810s to Mid-1820s

This was a period of rapidly rising levels of prosecutions against juveniles, of rising concern which led to investigations into juvenile crime and its causes, and of increasing awareness among those responsible for the sentencing of juveniles that simple imprisonment was a very negative option because young offenders were so easily corrupted by other prisoners. It was also a period when, for a short time, there was considerable optimism about the reformability of juvenile offenders and, in some quarters at least, a relatively sympathetic view of the causes of delinquency. The courts of the Metropolis therefore sought out voluntary institutions they could informally sentence juveniles to. Their extensive use of the Refuge for the Destitute led that institution to increasingly specialise in the treatment of juvenile offenders.[55] The government then bought into this by making substantial grants to what had effectively become the first part-central-state-funded reformatory in England and possibly in Europe. The dominant discourse for this brief period centred on the reformability of the young but it was a fragile and by no means an uncontested one.

5.3 The Mid-1820s to the Early 1840s

This period witnessed a reaction against the idealism and relatively positive perception of juvenile offenders that had characterised the reformers' approach in the previous decade. Prison reformers in general came under attack for being too soft on prisoners.[56] The principle of less eligibility was increasingly invoked. The Refuge for the Destitute came under increasing scrutiny and the courts began to use it less frequently as a primary sentencing option. Government gradually withdrew some of its financial support for philanthropically run experimental juvenile reformatories. The idea of assisted or compulsory emigration grew in appeal and was developed both directly by the state through the Parkhurst experiment and via a range of voluntary initiatives. Separation was a key principle. This was seen in the state's involvement in first establishing a separate hulk prison ship for juveniles in the 1820s, then in the

[55] King, 'The Making of the Reformatory'.

[56] M. Ignatieff, *A Just Measure of Pain. The Penitentiary in the Industrial Revolution 1750–1850* (London, Columbia University Press, 1978), pp. 174–200.

setting up of a separate juvenile penal colony in Australia at Point Puer in 1834[57] and finally in the 1838 opening of the first British juvenile prison at Parkhurst. As the nature of the Parkhurst regime, and indeed of the regimes in all these three places, indicates, a much more punitive flavour dominated this period. Separation, exportation and correction were the more dominant themes rather than reform, although this did not fall completely off the agenda.

5.4 The 1840s and 1850s

This period saw the continuation of heavily punitive policies in some areas. Parkhurst, for example, continued to subject its juvenile inmates to relatively harsh regimes. However, the reform-based discourse that had briefly sprung to life 30 years earlier came back to the fore. Continental experiments such as Mettray encouraged emulation.[58] A new generation of more optimistic reformers like Mary Carpenter produced a new idealised vision of the potential of the juvenile reformatory. Fresh reformatory experiments such as the Glasgow House of Refuge and the redevelopment of the Philanthropic in a new rural location at Redhill followed, and by the beginning of the 1850s the number of new juvenile reformatory experiments being initiated was rapidly increasing.[59] Government involvement began to grow again as the Home Office actively encouraged the Refuge for the Destitute to merge with the now resurgent Philanthropic. The Reform paradigm did not go unopposed, of course. The correctional lobby was still a strong force and was able to insist on all juveniles undergoing a brief period in prison before being allowed to enter a more informal and treatment-orientated reformatory context. Less eligibility still had purchase and forced legislators to ensure that the parents of juvenile delinquents paid suitable amounts towards the upkeep of inmates when they were able.[60] However, by the 1840s reform and

[57] Shore, *Artful Dodgers*.

[58] F. Driver, 'Discipline Without Frontiers? Representations of Mettray Reformatory Colony in Britain 1840–1880, *Journal of Historical Sociology*, 3 (1990), pp. 272–293; C. Emsley, *Crime, Police and Penal Policy. European Experiences 1750–1940* (Oxford, Oxford University Press, 2007), pp. 175–176.

[59] Radzinowicz and Hood, *A History*, v, pp. 154–161; May, 'A Child's Punishment', p. 398.

[60] Radzinowicz and Hood, *A History*, v, pp. 202–213.

reformability was the key emerging discourse. By the 1850s it was the dominant, if still heavily contested one.

The 1854 and 1857 legislation systematised the relationship between the voluntary sector and the state in two areas. It made official the major courts' previously informal practice of finding ways to sentence juvenile offenders to institutions with relatively reform-based regimes. It also systematised the financial relationship between voluntary institutions and the state. Conditional on successful inspection, voluntary institutions and those funded by local authorities could now depend on regular central grants and the sector blossomed rapidly as a result.

In theory at least the reformatory model was now a central part of the ways the criminal justice system reacted to juvenile offenders and could be applied across the country, rather than simply in the London area and in the few other places where early voluntary initiatives had created viable reformatory options. How long that model survived in practice as the reformers struggled to make their vision real is a subject that takes us beyond the remit of this chapter. However, Downing and Forsythe's view that the period 1860 to 1890 witnessed the marginalisation or abandonment of reform initiatives in English prisons more generally, finds important echoes in the history of the reformatory project.[61] Only in the final two decades before 1908 did reform and notions of the importance of considering the welfare of young offenders re-emerge as an important force, echoing not only the demands that led to reform in the early 1850s but also the brief moment in the 1810s and early 1820s when the reformers' optimism and the government's willingness to back it to a limited extent produced a new set of approaches to juvenile delinquency.

6 Conclusion

The chronology of change in relation both to the development of juvenile court practices and to the growth of juvenile correction facilities therefore followed parallel trajectories, to some extent at least, before 1855. Between 1810 and the mid-1820s the summary courts increasingly used extra-legal trial procedures to divert juveniles away from

[61] K. Downing and B. Forsythe, 'The Reform of Offenders in England, 1830–1995: A Circular Debate' *Criminal Justice History*, *18* (2003), pp. 149–151.

lengthy committal to gaol awaiting trial, while at the same time optimism about the reformability of juvenile offenders led to important partly government-financed reformatory experiments such as the Refuge for the Destitute. The period from the mid-1820s to the early to mid-1840s was, by contrast, a period of stagnation in the fields of both court reform and institutional provision for juveniles. Despite introducing seven separate bills to parliament, those who advocated the formal transfer of minor juvenile larceny cases to the jurisdiction of the summary courts failed to get any formal legislation through,[62] and at the same time the idealism of the penal reformers who had begun the development of juvenile reformatories was deeply questioned, while harsher regimes based on separation and exportation became more dominant. Finally, in the late 1840s and 1850s the reformers were eventually successful on both fronts. The acts of 1847 and 1850 meant that from that point onwards most juvenile offenders would be tried summarily, and the 1854 and 1857 acts initiated the systematic development of reformatory provision along lines that, initially at least, were designed with the welfare of both criminal and indigent juveniles in mind.

Much of this story is not unfamiliar, but this chapter has argued that the complex developments of the pre-Victorian period have been wrongly neglected by historians. Only when the key period of the 1810s and 1820s has been properly analysed is it possible to unravel the complex chronology of change in relation to the development of both the juvenile courts and of juvenile correctional facilities.

Radzinowicz and Hood were entirely wrong in their assertion that 'the concept of the young offender, with all that implies for penal policy, is a Victorian creation'.[63] Not only, as I have shown elsewhere, was there a massive increase in the number of juvenile offenders prosecuted in the courts in the period 1815 to 1830, and widespread concern about juvenile crime, which led to the first ever systematic investigation of its nature and causes, but the 1810s and early 1820s also witnessed the informal development of new summary trial procedures for the young, the first large scale use of reformatory-style institutions for juveniles in the metropolis, and the first major investment by the central state in

[62] May, 'A Child's Punishment', pp. 339–355.

[63] Radzinowicz and Hood, *A History*, v, p. 133.

helping to finance such an institution. The origins of these developments lay deep in the early modern period but there are strong reasons for suggesting that the 1810s and 1820s were a vital point in their journey to prominence.

CHAPTER 4

From Punishment to Reform: Boys in Gaol and Reform Institutions, Montreal, 1853–1921

François Fenchel, Jean Trépanier and Sylvie Ménard

1 Introduction

One of the most significant events in nineteenth-century penology was the advent of the prison and the penitentiary as key instruments in reacting to crime. Imprisonment became so central that its duration became the legal standard of seriousness ascribed to offences by legislators. It was by no means limited to adults. As shown by Trépanier in Chap. 2 of this book, a considerable number of minors were detained in prisons

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during the nineteenth century and, as time went by, various countries established special institutions to deal with children separately from adults, with a view to reforming them instead of merely punishing them. Breaking away from the principles of criminal law that provided for a punishment proportional to the seriousness of the offence, courts came to order the custody of youths for periods of time deemed sufficient to ensure the required preventive moral treatment. This trend was particularly present in Europe and North America.[1]

This was true for Canada, where the development of prisons and penitentiaries was also followed by the establishment of special institutions for minors. In 1843, resolutions were passed by the Legislative Assembly 'to draw the vagrant juvenile portion of the population from their bad influences, and to provide a receptacle for the punishment and reformation for those who come under the eye of the police as guilty of petty crimes'.[2] One of the resolutions criticised prisons openly for being a source of criminalisation for children:

> Resolved, That the Prisons in this Province, at present, are not suitable places for the confinement of children, but such confinement induces or leads them to crime, as they are confined with old and hardened offenders by day and night.[3]

In the words of the promoter of the resolutions, Mr. John Solomon Cartwright:

> [I]n most cases the youth convicted of some trivial offence becomes through intercourse with older and more hardened criminals, conversant with crime and looks upon its perpetration with less horror, and is prepared on his release, to go still further into depths of vice.[4]

However, debates spread over time before action was taken to actually separate minors from adults. In 1857, Parliament voted for the

[1] For a more detailed account, see the first section of Chap. 2 of this book by Trépanier.

[2] Speech by the promoter of the resolutions, Mr. John Solomon Cartwright, in *Debates of the Legislative Assembly of United Canada*, 20 October 1843, p. 381.

[3] *Debates of the Legislative Assembly of United Canada*, 20 October 1843, p. 386.

[4] Mr. Cartwright, in *Debates of the Legislative Assembly of United Canada*, 20 October 1843, p. 382.

act empowering the government to build reformatory prisons. The first institution opened in 1858, in Quebec, at the Île-aux-Noix, near Montreal, in former army fortifications. Its failure soon became obvious and it was moved to another location (St. Vincent-de-Paul) in 1862. On the whole, the reformatory prison (in either location) has been assessed rather negatively.[5] It was plagued with problems of discipline, escapes, as well as confrontations between the staff and the director. Beyond the reform rhetoric that had led to its creation, it bore greater resemblance to a penitentiary than to an institution devoted to reforming juvenile delinquents. Discipline (with its failures), corporal punishments, silence and lack of relevant vocational training for urban youths were among the characteristics of this institution where inmates up to 21 years of age could be committed, some of whom had been transferred from Kingston Penitentiary.[6] The reformatory prison may be viewed as a transition between the regime of prisons and penitentiaries where youths were detained with adults and that of the reform school that was to follow.

In 1869, shortly after the creation of the Canadian federation, the Province of Quebec passed laws to move to a dual regime of reform schools for delinquent children and industrial schools for neglected children.[7] Not that the distinction between neglected and delinquent children was clear-cut in the eyes of Canadians at the time; an example of this can be seen in the fact that the target population of industrial schools, as defined in the Quebec Act of 1869, included, for a large part, children who could be grouped under the heading of 'pre-delinquents'. Yet the distinction was made in principle. The first Quebec industrial and reform schools were located in Montreal. A Roman Catholic religious community from Angers (France), the Good Shepherd Sisters, was entrusted with establishing an industrial and a reform school for girls, which opened in 1870. For delinquent boys, a reform school was opened under the direction of the Belgian Charity Brothers in 1873. The reform

[5] See Fecteau et al. (1998: 87–91), Ménard (2003: 44–65).

[6] The penitentiary was an institution for inmates sentenced to long periods of incarceration. Thus, inmates transferred from the penitentiary often were among the most problematic young convicts.

[7] For an account of the debates in Canada and Quebec up to 1873, covering the establishment of both the reformatory prison and reform schools, see Fecteau et al. (1998), Ménard (2003: 31–100).

schools replaced the previous reformatory prisons and they were to remain in existence until their replacement by youth protection schools, in 1950.[8]

Meanwhile, another major shift took place in the promotion and implementation of rehabilitation and reform ideas: the establishment of the juvenile court at the beginning of the twentieth century. In Canada, the creation of juvenile courts was made possible by the enactment of the 1908 *Juvenile Delinquents Act*.[9] Research on the adoption of this act has focused mainly—and quite rightly—on the key-role of actors from Ontario and on the way child-protection policies in that province had prepared the ground for implementing a welfare approach in the judicial treatment of juvenile offenders.[10] Yet actors from Montreal did play an important role in the adoption of the act. One may think of the part played by Senator Béïque in the drafting and the adoption of the bill in the Senate, as well as that of the initiators of the Montreal Children's Aid Society who, in 1908, mobilised public opinion through conferences and a petition that helped overcoming the government's apparent resistance towards the bill.[11] Considerable support was expressed in Montreal in favour of this bill, that aimed at instituting the benevolent and paternal juvenile judge and his right arm the probation officer, as well as ensuring more than ever that children would not only be judged, but also be remanded and placed, separate from adults, under the responsibility of people whose motivation would be the welfare of children. In 1912, Montreal would become the first city in Quebec—and among the first in Canada—to establish a juvenile court, with the ancillary services that were prerequisite (probation, detention quarters, special institutions). This change was consistent with the official orientation of the reform school. As Judge Choquet (the first

[8]The Reform School for boys, also named Institut Saint-Antoine and, later, Mont-Saint-Antoine, took the status of a youth protection school in 1950 and that of a re-adaptation centre a few decades later. It is now part of the Centres Jeunesse de Montréal—Institut universitaire.

[9]Juvenile Delinquents Act, Statutes of Canada, 1908, Chap. 40.

[10]See for example Trépanier and Tulkens (1993: 194–200, 1995: 21–49), Trépanier (1999, 2000: 57–71, 2000: 586–605), Dupont-Bouchat et al. (2001: 327, 344–347), Leon (1977a: 81–99, 1977b: 155–166), Hagan and Leon (1977: 590–597).

[11]Dubois and Trépanier (1999), Trépanier (2002: 594–595, 599).

Montreal juvenile court judge) wrote to the director of the boys reform school in 1914: 'Our goal is the same, we fulfil the same mission: the recovery of youth, that is often jeopardized by a vicious and immoral environment'.[12] In fact, Choquet expressed the same convergence of orientation that Rothman noted between the promoters of the juvenile court and many juvenile institutions in the USA at the beginning of the twentieth century.[13]

Before the establishment of reformatory prisons and their replacement by reform schools, juvenile offenders who were sentenced to incarceration were detained in prisons (or, exceptionally, in penitentiary, depending on the length of the sentence). One would expect that the advent of special institutions for youths resulted in the elimination of juvenile offenders from prisons—or gaols, as they were then called—and that the latter became institutions for adults only. Yet this hypothesis should not be taken for granted. It is well known to criminologists that new penal measures that are intended to replace old ones may instead be superimposed on them, thus increasing the net of social control. Furthermore, one might argue that the intention behind the creation of juvenile institutions was not only to separate youths from adults, but also to reform rather than punish. Could it be, then, that the courts would still prefer to punish some minors through relatively short prison sentences rather than committing them to special institutions for periods of time intended to be long enough to reform them? Did the courts simply send to juvenile institutions the same youths—particularly of the same age—they were sending to gaol previously, and for the same reasons (offences)? Or did the introduction of reform institutions lead them to commit a new group of youths to the new institutions? To what extent did being sentenced to juvenile reform institutions mean longer periods of confinement for juvenile offenders? And finally, did the introduction of the juvenile court mean a change of practices or continuity with previous courts? In short:

[12] Our translation. Letter of Judge F.X. Choquet to the Director of the Reform School for boys, 9 February 1914, reproduced in Frères de la Charité… (c. 1914: 6–9).

[13] Rothman (2002: 219–229).

1. Did juvenile institutions (reformatory prisons followed by reform schools) replace the gaol as the place of confinement for juvenile offenders?
2. Since these juvenile institutions were meant officially to reform rather than punish juvenile offenders, can differences be found between detention in gaol and in juvenile institutions as to (a) the length of sentences; (b) the offences youths were charged with; and (c) their age?
3. Did the introduction of the juvenile court significantly alter the number and profile of youths sent to the reform school?

In order to address these issues and thus better understand the interplay between the use of the gaol and that of reform institutions, it may be useful to look at the evolution of the juvenile male population in the Montreal gaol as well as in the reformatory prison and the reform school (1) before the creation of the reform institutions, (2) after the creation of these institutions but before the advent of the juvenile court, and (3) after the creation of the juvenile court.

2 Sources

Two sets of data were used for this purpose. They were drawn from databases built by a research team under the direction of Jean-Marie Fecteau[14] and Jean Trépanier. The original goal of these databases was to provide a picture of institutional populations in nineteenthth-century Montreal, up to the adoption of the *Public Charities Act* in 1921, a traditional marker for the establishment of Welfare policies in the Province of Quebec.[15]

The first set of data is drawn from the Montreal Gaol register from 1836 to 1921 It covers the two institutions that served successively as the Montreal Gaol: the *Pied-Du-Courant* Gaol (1936–1913), and its successor, the Bordeaux Gaol (opened in 1913 and still in use today).

[14] Until his death, Jean-Marie Fecteau was head of the Centre d'histoire des régulations sociales, Université du Québec à Montréal.

[15] Although the scope of the *Public Charities Act* was limited to introducing a measure of public funding for some institutions (notably hospitals, hospices and orphanage), it was quickly followed by other pieces of welfare legislation, and marked the beginning of a new era in the institutional management of social problems in Quebec.

Only two years (1900 and 1901) are missing, the registers having been lost. The main gaol database includes a systematic sample of one-fifth of all entries in the register ($N = 62{,}624$), covering all information recorded upon admission of inmates (offence, sentence, gender, age, religion and so forth). In the case of minors aged below 16, the database includes the whole population—not only a sample—of those incarcerated in the gaol between 1853 and 1921 (since the age of inmates was not recorded in the register until 1853, it is impossible to differentiate youths from adults until then).

A second database was built from the registers of reform institutions for boys. It includes all entries in the registers of both the Reformatory Prison (1861–1872)[16] and the Montreal Reform School for boys (1873–1921). The content of these registers is similar to that of the gaol. We used the data up to 1921, covering the first ten years of the Montreal juvenile court. The fact that similar data are not available for the Good Shepherd Reform School explains why we had to exclude girls from our study.

In addition to Montreal residents, both the gaol and the reform institutions were likely to receive a limited number of inmates coming from other urban or rural areas. For the sake of comparability, we limited our analysis to boys who were residents of the Island of Montreal. This left the total number of entries at 3246 boys for the gaol, 241 for the Reformatory Prison and 7010 for the Reform School.

Finally, additional data were drawn for specific purposes from a sample constituted for a study of the Montreal Juvenile Delinquents Court (1912–1950), under the direction of Jean Trépanier. This sample was made of a systematic selection of 10% of cases heard by the court ($N = 9212$).

3 Did Reform Institutions Replace the Gaol for the Imprisonment of Juvenile Offenders?

The first question is whether or not reform institutions (the reformatory prison until 1872 and the reform school as of 1873) took over the gaol as the main place of penal confinement for boys. Figure 1 provides the answer in a timeline of various periods (A to E) whose relevance will emerge later in the chapter. As other figures and tables in this chapter, Fig. 1 provides information on five distinct periods: (A) 1853–1858, the

[16] Registers of the reformatory prison for earlier years are missing.

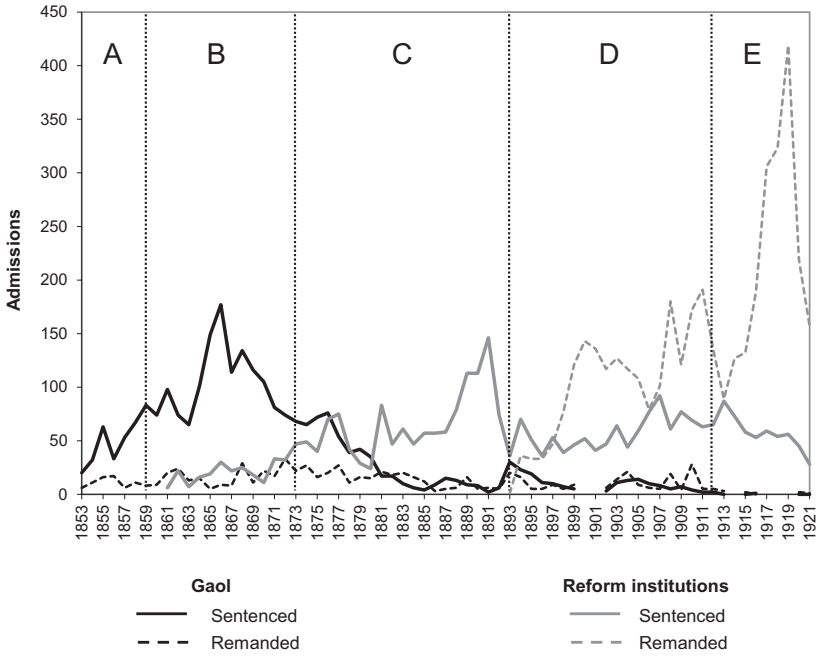

Fig. 1 Annual admissions of boys on remand and sentenced at the Montreal gaol and reform institutions, 1853–1921

gaol years, prior to the existence of reform prisons; (B) 1859–1872, the years of the reform prisons; (C) 1873–1892, the first two decades of the reform school; (D) 1893–1911, the turn of the century, prior to the establishment of the juvenile court; and (E) 1912–1921, the first decade of the juvenile court.

To begin with, an important distinction must be kept in mind between two different types of committals that existed in both the gaol and the reform institutions. From 1853 to 1911, boys could be detained either to serve a sentence or to be remanded pending their trial.[17]

[17] Registers of the reform school were designed in such a way that only those boys who were remanded in the reform school without being subsequently sentenced to that same institution can be identified as having spent some time on remand there. Consequently, the annual numbers of boys sentenced to the reform school after conviction are correct, but the figures concerning boys on remand underestimate the real numbers of these boys, since they do not include those who were subsequently sentenced to the reform school.

Throughout the whole period under study, a relatively low number of boys were remanded in gaol ($N = 777$). Annual numbers are somewhat stable, never exceeding thirty boys or so for a single year. Admissions in gaol were mainly for boys sentenced to a term of imprisonment ($N = 2469$). From 1853 onwards, their numbers rose fast, reaching a peak of 179 committals in 1866. However, this was followed by a major decline so that, by 1881, their number was similar to that of remanded boys. For the remaining years, both types of admissions would follow approximately the same pattern: gaol was little used for either group of boys.

The situation was quite different for reform institutions. The presence of boys on remand can hardly be seen in the registers ($N = 8$) before 1893.[18] Following that year, however, their number rose quickly: for the last two periods (D and E), they accounted for a significant majority of admissions in the reform school ($N = 4036$) even though they may have represented only a small minority of the boys present at any one time in the school, since their average stay was only about a week). As for boys sentenced to reform institutions ($N = 3207$), their annual number increased irregularly from 1861 to a peak in 1891 ($N = 146$), followed by a dramatic fall in 1893 ($N = 36$). The trend that followed shows a partial recovery, but admission numbers of sentenced boys would never go back to what they were in 1891 and the immediately preceding years.

Yet our main point of interest lies in the confinement of boys who were sentenced (rather than remanded) to a term in a penal institution: that is where one can really see whether reform institutions replaced the gaol as a penal measure. Our figures provide a clear answer: reform institutions did replace the gaol, as the decreasing number of boys sentenced to gaol after 1866 was met with a gradual increase in that of boys sent to reform institutions. More specifically, it is the reform school that emerges as the real substitute for the gaol after its opening in 1873. Yet, the reform school would never receive as many offenders annually as the

[18]For the period prior to 1893, it is not clear whether more than a few boys were remanded in reform institutions without any mention in the registers, or whether boys were remanded elsewhere. A federal act passed in 1869 made it possible for detention pending trial to take place in reform schools in Quebec. In 1894, further federal legislation provided with greater insistence that such detention be in a place where no adults were detained. One may wonder if the increase in the number of boys remanded in the reform school from the mid-1890s may have been caused—at least in part—by the requirements of the 1894 act.

gaol had in the 1860s. The soaring rise in the number of its inmates met with a drastic stop in 1893, before reaching the peak attained by the gaol in 1866.

At first glance, a connection seems to exist between the decrease in reform school admissions and the concurrent increase in gaol sentences in 1893. Following a major rise in the maintenance costs of the reform school associated with its booming population, the government decided in 1892 to transfer to municipalities a greater share of juvenile institutions expenditure. No similar measure was taken concerning the gaol. The result was that local judges apparently felt reluctant to impose an important financial burden on municipal authorities and reduced the number of commitments to reform school. The gaol was then used as a fallback. Two years later, in 1894, the provincial government partly relieved municipalities of the charges put upon them in 1892; then committals to the reform school gradually increased, with a corresponding decline in the number of gaol internments. This suggests that, in the eyes of the courts, imprisonment appeared a less desirable alternative than the reform school, but that it could still be used whenever obstacles made it difficult to order reform school placements—that is until the 1910s where, with the advent of the juvenile court, the number of boys sent to gaol annually became lower than ever.

Yet, one may wonder if the juvenile court under judge F.X. Choquet compensated for the rare use it made of gaol by increasing its recourse to the reform school. At first sight, the temporary major increase in the number of remands in the reform school ordered by the juvenile court in the second half of the 1910s (culminating to an unprecedented peak of 419 admissions in 1919 and then falling back to under 200 admissions per year during the rest of the period) is intriguing. Yet it does not lend itself to any easy interpretation. As they come from the registers of the reform school, these data include only those remands that were executed at the reform school. It must not be forgotten that, when it opened its doors, the juvenile court had remand quarters within its own precincts. Although we have no figures about the number of admissions in these detention quarters, we know that, as a general rule, this was the place where children were supposed to be remanded (rather than at the reform school). At the end of 1919, these remand quarters had 16 beds for boys and three for girls. Was that sufficient to meet the needs of the juvenile court? Did the latter order the remand of some boys at the reform school even when places were available in the court's own

detention quarters? In any event, in 1919 the Assistant Attorney General felt the need to intervene and direct the court to use primarily its own detention quarters rather than the reform school for remand purposes, unless the lack of room or exceptional circumstances justified remanding boys at the reform school. The government was concerned with the costs involved in this use of the reform school.[19] It seems that this directive had an impact since a major reduction followed in the number of remands at the reform school. Still this leaves us with some unanswered questions about the global remand practice of the juvenile court, including the meaning to ascribe to the peak of the end of the 1910s.

What about the boys serving a sentence at the reform school? A look at the official statistics of the Montreal Reform School for boys published by the Quebec Legislature[20] in the 1910s reveals a major increase in the number of admissions at the school in the 1910s, following the advent of the Montreal juvenile court. Indeed, the total number of boys committed to the school increased from 132 in 1912 to a high of 176 in 1917, before coming down to 81 in 1921.

One might be tempted to draw the conclusion that, in its first decade, the juvenile court made greater use of reform school commitments than the ordinary courts that had heard children's cases before 1912. Some researchers have suggested that this is what happened in Montreal.[21] After all, would this not look consistent with the view expressed by juvenile court judge F.X. Choquet that the juvenile court and the reform school shared the same mission?[22] Yet the issue as to whether the advent of juvenile courts went along with changes—either reduction or increase—in the population of juvenile institutions is a tricky one. As Rothman observed for the USA, evidence is not clear: wide variations existed among the states; rates of commitments to institutions

[19] On this issue, see the Correspondence of the Quebec Attorney General at the Quebec National Archives, E17, file 6081/1919. This file includes correspondence that was exchanged in December 1919, by the Assistant Attorney General of Quebec, the Montreal Juvenile Court Judge, the Montreal Sheriff and the director of the detention quarters of the Juvenile Court.

[20] See the annual reports in the Session Papers published by the Quebec Legislature.

[21] See for example Rains and Teram (1992: 21–22). See also Niget (2005: 571, 2009: 333).

[22] See above the quotation of a letter addressed by Choquet to the director of the school in 1914.

increased in some states and decreased in others; and differences were not necessarily related to the progress of the juvenile court movement.[23]

It would be misleading to draw a conclusion on the Montreal situation on the basis of global admission figures at the reform school, such as the official figures provided in the Quebec Legislature Session Papers. One must not forget that the reform school received boys not only from Montreal, but also from other urban and rural areas where no juvenile court existed. In order to determine if the advent of the Montreal juvenile court had any impact on reform school placements, the analysis must be restricted only to that part of the reform school population made of those boys coming from Montreal (the only city with a juvenile court in Quebec) and not the others, who had been committed by ordinary courts of other judicial districts. Contrary to the official statistics that include all admissions at the reform school (irrespective of the places of origin of the boys), our own data make it possible to isolate those boys who came from Montreal and were committed by the juvenile court. On that basis, Fig. 1 shows that the number of admissions of boys from Montreal dropped from a high of 87 in 1913 to around 50 between 1915 and 1919, and then reached a low of 28 in 1921. Unfortunately, our data do not go beyond 1921. Therefore, we cannot tell whether this trend remained stable for some years. Yet we can see that the arrival of the juvenile court went along with a reduction in the number of boys from Montreal committed to the reform school: the increase in the global number of boys placed at the school was due to boys coming from other districts, where no juvenile courts existed. In other words, the only existing juvenile court in Quebec made a lesser use of the reform school at a time when other courts went in the very opposite direction. Contrary to what happened in districts that were not provided with a juvenile court, the introduction of the juvenile court in Montreal was followed with a reduction in the use of the reform school in that city.

Although no single interpretation might pretend to offer a complete explanation, it could be suggested that the introduction of probation may have something to do with this phenomenon. Juvenile probation was introduced at the same time as the juvenile court, and only where a juvenile court had been established—that is, Montreal. It was viewed as

[23] Rothman (2002: 257–259).

an essential element of the juvenile court system. Right from the beginning of the juvenile court, probation was by far the most commonly used measure. Under Judge Choquet, who served from 1912 until 1923, probation was ordered in 72% of cases involving boys.[24] Could it be that the juvenile court was inclined to resort to probation in some cases where other courts felt necessary to commit boys to the reform school due to the absence of probation in their districts? There is no doubt that, in Montreal, probation was ordered in cases where no measure would have been imposed had probation not existed, thus contributing in a widening in the net of social control. Yet, it may be that it contributed also to a reduction in the number of placements by providing the court with an alternative to reform school for cases where placements were deemed less necessary. Such a finding would not be unique. Dickinson reports that when 'protective supervision' (*Schutzaufsicht*—the equivalent of probation) was introduced in Berlin in the early 1900s, it became an important alternative to correctional placements. For example, commitments to correctional education fell by 30% from 1909 to 1910 after the juvenile court established a stable working relationship with agencies that provided social workers to supervise youths.[25]

* * *

What has been presented so far is based on mere quantitative data on admissions of boys in both the gaol and reform institutions. However crude they may be, these data suggest the existence of the five fairly distinct periods we identified at the beginning of this section: (A) what might be called the gaol years (1853–1858), where the gaol was used to detain youths in the absence of any specialised institutions; (B) the first period of coexistence (1859–1872), during which the prison remained the primary place of confinement for sentenced boys while the reformatory prison rose and failed; (C) the first two decades of the reform school (1873–1892), during which this institution gradually asserted its leading role in the confinement of juvenile offenders, culminating in the highest rate of boys sentenced to reform; (D) the turn of the century (1893–1911), where an initial drop in the number of sentenced boys was followed by a relative recovery, thus marking the enduring dominance of the reform school over the gaol; and finally (E) the years following the

[24] Data drawn from our sample of juvenile court cases.

[25] Dickinson (1996: 107).

introduction of the juvenile court (1912–1921—the 'Choquet years'), where the gaol was hardly ever used for minors and the reform school was the primary place of confinement for boys, despite a reduction in the number of confinements (contrary to what happened in districts that had no juvenile court).

Was this transition from the gaol to reform institutions a mere change in places of confinement or did it involve deeper changes? Did the switch from one type of institution to the other produce 'more of the same'? That is the issue that will now be addressed, looking at the five periods identified above.

4 Gaol and Reform Institutions: More of the Same?

There is ample evidence that contamination of children by older criminals with whom they were detained was part of the reasons why nineteenth-century reformers wanted to have special institutions for delinquent children. As mentioned earlier, this was illustrated in the 1843 debate of the Canadian Legislative Assembly on the opportunity to establish a house of refuge for children.

Yet the reasons were by no means restricted to limiting contacts between children and adults: the intention was clearly to have institutions designed to reform children. In the words of the Solicitor General for Lower Canada:

> The proposition […] was not to inflict punishment but to reform those who from their extreme youth were presumed to have no knowledge of what constituted right or wrong, many children had no parents or guardians, or what was, perhaps, worse, had bad parents.[26]

The adoption of an Act allowing for a reform institution would have to wait until 1857. In the meantime, a Select Committee of the Legislative Assembly endorsed the principle in 1851 that 'a great proportion of the criminal children […] appear rather to require systematic education, care, and industrial occupation, than mere punishment', that they ought

[26]Mr. Thomas Cushing Aylwin, in *Debates of the Legislative Assembly of United Canada*, 20 October 1843, p. 384.

'to be treated in a manner different from the ordinary punishment of adult criminals', in special institutions, 'so long as may be necessary for their reformation'.[27]

In the end, the Assembly passed an Act in 1857 to establish what was named 'reformatory prisons'.[28] The very appellation of the institution can be viewed as an indication that it was somehow a transition between the gaol that had existed so far and the reform institution that some promoters had in mind. One such reformatory prison was set up in the Montreal area, first at l'Île-aux-Noix, in 1858, a site that was changed for that of St-Vincent-de-Paul in 1862. As mentioned earlier, this institution was regarded as a failure. Its population was made of relatively serious delinquents, aged up to 21, rather than the tender age minor offenders who would have been sufficiently malleable to lend themselves to reform. The actual institution had more in common with a penitentiary than a reform establishment.[29] A more significant change was to come with the creation of reform schools.

In 1869, subsequent to the creation of the Canadian federation that granted provinces jurisdiction over juvenile institutions, the Province of Quebec legislated to replace reformatory prisons with reform schools. By then it had become clear that institutions for delinquent children had to be more different from adult prisons than had been the case so far. Compared with the gaol regime children had been exposed to in previous decades, particularly before the advent of the reformatory prison, reform schools were clearly not meant to be 'more of the same'. As the Quebec Prisons Inspectors put it in their first report, the goal 'is not punishment, but correction, improvement and reform. They are not establishments where punishment is inflicted and they are consequently

[27] Quoted in *Fifth Annual Report of the Board of Inspectors of Asylums, Prisons &c., for the Year 1865*, Sessional Papers, 5th Session of the 8th Parliament of the Province of Canada, Session 1866, vol. 3, p. 39.

[28] An Act for establishing prisons for young offenders, for the best government of public asylums, hospitals and prisons, and for the better construction of common goals, *Statutes of the Province of Canada*, 1857, Chap. 28.

[29] This is the assessment made by Ménard (2003: 50–55). For an analysis of the failure of the reformatory prison and its replacement by reform schools, see also Fecteau et al. (1998: 87–100) and Strimelle (1998: 76–95).

not prisons'.[30] In influential Catholic circles, entrusting religious communities with the responsibility of running such institutions seemed a good way to ensure the pursuit of reform. In the words of the Prisons Inspectors, 'if it is desired to effect a through [*sic*] moral change in the character of the inmates of our Reformatories, these unfortunate children should be placed under clerical management. The prospect of success would be a thousand times greater with the clergy, than with any others'.[31] Reform schools were meant to be much more in line with the ideal of reform than the reformatory prison had been. They were designed for younger youths (below sixteen), deemed more receptive to change than some of the older inmates of the reformatory prison. Thus, a reform school for girls was opened in 1870 in Montreal by the Sisters of Good Shepherd and another one for boys was established in 1873 by the Brothers of Charity. A separate institution was intended to deal with Protestant boys. These confessional reform schools would stay in place and retain the same status until 1950, much beyond the period under study in this chapter. They often lacked the resources required to fully enforce their reform mission. Yet this task was central to their endeavour.

This was likely to have consequences on the regime imposed on juveniles—particularly the length of their placements—as well as the criteria by which they would be selected, namely their delinquent behaviour and their age.

4.1 Length of Placements and Sentences

Reform requires time. Whereas a gaol sentence of a few weeks may be enough for punishing an offender, a placement aiming at any kind of in-depth reform of the offender must allow for sufficient time to change the offender. Therefore, one must expect that the change from gaol sentences to reform placements involved a significant increase in the duration of internment.

[30] *1st Report of the Board of Inspectors of Prisons, Asylums &c. for the Years 1867 and 1868*, in Sessional Papers, vol. 1, 2nd Session of the Legislature of Quebec, Session 1869, Paper no. 23, p. 10.

[31] Ibid.

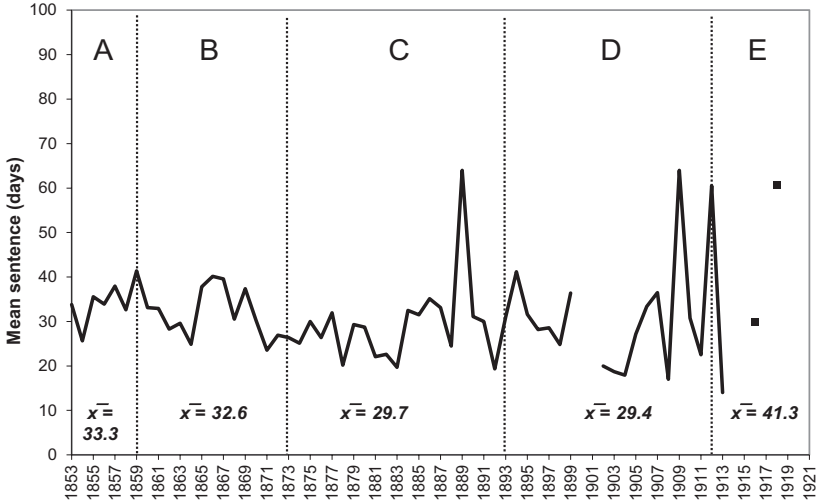

Fig. 2 Average sentence length of boys sent to the Montreal gaol, 1853–1921

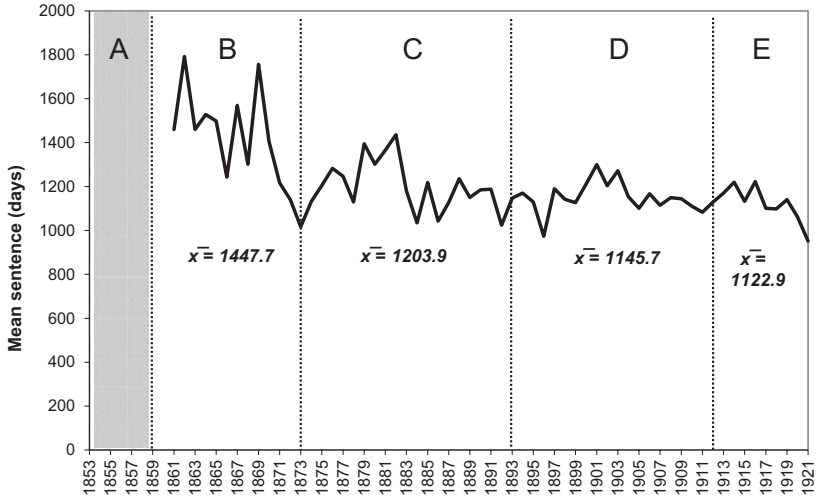

Fig. 3 Average sentence length of boys sent to reform institutions, Montreal, 1861–1921

This expectation was embedded in the law, which provided for minimum sentences. Reformatory prison sentences (as of 1858) could go from six months to five years, whereas internment in reform schools (from 1870 for girls and 1873 for boys) had to be for a minimum of two years with a maximum of five years. Reform institutions required long-term confinements, and the minimum sentence increased considerably when changing from an institution that was minimally reform oriented—the reformatory prison—to another one that placed greater stress on this goal—the reform school. This was one of the clearest signs of the legislators' intentions to move from a punitive to a reform model.

Yet it may be interesting to look beyond the law and to see how the courts implemented it. If it cannot be expected that the courts imposed sentences shorter than the minimum prescribed by the law, did judges restrain themselves to imposing only the minimum period of confinement or did they take advantage of the full spectrum of time (up to five years) they were entitled to use? As a result, how different were the actual lengths of confinement for boys committed respectively to gaol and reform institutions?

Figures 2 and 3 provide a clear answer: the very discrepancy between the scales of each curve reveals a huge gap between the average lengths of confinement in gaol and reform institutions. For the entire period, the average gaol sentence hovered around 30 days.[32] Sentences were far longer in the reform institutions, averaging to over 1000 days, that is, between 3 to 4 years. In fact, our data indicate that nearly four boys out of five (79%) were sentenced to at least three years and that the five year maximum was imposed in one case out of seven (14%). The courts did indeed avail themselves of the possibilities offered by the law. Sentences served in the reformatory prison were, on average, longer than in the reform school. This may have to do with the fact that the reformatory prison received older inmates than the reform school (up to 21 rather than 16) and that some of them were transferred from the penitentiary, an institution designed for convicts sentenced to relatively long terms of incarceration. Some fluctuations can be observed in the mean sentences served by boys at the reform school (notably a rise at the beginning of

[32] Only sentences of 91 days and less (on a maximum of 2 years less a day) were included in Fig. 2 to lessen the effect of outlying values on the mean, leaving over 98% of all gaol sentences for the period. Also, since no boys were sent to the gaol in 1914–1915 and 1919–1921, points replace the curve in 1916 and 1918.

the 1880s and a subsequent drop to an all-time low in 1893). Despite such fluctuations, the overall trend tends to be one of a small decrease in the length of confinement.

Thus a striking difference emerges between gaol sentences and placement in reform. In accordance with the ideals of reform, young offenders were to be treated in a way that was simply impossible to achieve in the framework of a short gaol sentence. Obviously, the length of internments shows that the regime of reform institutions was by no means 'more of the same'.

On the other hand, did the juvenile court have any immediate impact on the length of sentences served at the reform school? As Fig. 3 suggests, the court did not introduce any radical change of practice, as the mean length of sentences remained comparable between 1893–1911 and 1912–1921. In the pre-juvenile court years, the average sentence was 1146 days (about 38 months), whereas it was less than a month shorter (1123 days) after the advent of the juvenile court. It can be noted that the reduction in the length of confinement such as that observed at the very end of the period (the mean goes down to 952 days in 1921) is not without precedent and is well within the normal variations of the sentence distribution.

4.2 Nature of Offences

In the sentencing process, the importance of the nature and the seriousness of the offence depends on the goal that is ascribed to the sentence. If it is meant to punish, the sentence must be meted out according to the seriousness of the offence: the punishment must fit the crime. The offence is the key factor upon which the choice of punishment is based. If the sentence is meant to reform the offender, it has to be tailored to the characteristics of the offender so as to enhance personal change and reduce the likelihood of recidivism. Thus, the overall weight of the offence in the sentencing process is likely to be far greater when the court seeks punishment rather than reform. A gaol sentence is intended to punish whereas a reform school is by definition supposed to aim at reforming the offender. Therefore, can differences be observed between the offences for which offenders were either sent to gaol to be punished or committed to reform school to be reformed?

Furthermore, the idea of prevention associated with that of reform meant that placement in reform institutions ought to take place before

juveniles would become involved in serious delinquency. In the words of Prisons Inspector Terence J. O'Neill: 'It is ere the vagrant has entered upon a career of dishonesty that we should take possession of him, not after the actual commission of crime'.[33] The logic of reform would suggest that boys should be placed early, even if this involved confining them for petty offences.

Thus one might hypothesise that a judge whose decisions aim at punishing might be inclined to use short gaol sentences for petty offences (a long commitment to a reform institution appearing excessive for punishment purposes) and longer gaol sentences for more serious crimes. A reform-oriented judge might justify committing a petty offender to a long-term placement in a reform school on the ground of prevention, 'before it is too late', in the same way as he would agree to a similar placement for a more hardened youth with the hope of diverting him from the path of crime.

Yet the reality of daily court practice may not be as clear-cut as that. One cannot be sure that the courts endorsed the idea of reform altogether. Sentencing judges and magistrates may not have been single-minded; they may have taken a more punitive stand in some cases and have opted for a reform orientation in other cases. Even those who believed in reform were used to work in the environment of a criminal law that was based on punishment. Their ethos was likely to bear the mark of that context when, for example, they would feel reluctant to commit a youth to a reform institution for a long term for a petty offence such as disorderly conduct in a public place. Beyond the official support for reform expressed by various authorities, could it be that judges—or at least some of them—refrained from imposing long-term reform confinement on lads found guilty of petty offences? Is it possible that they tended to privilege short gaol terms for such cases, keeping committals to reform institutions for situations involving more serious offences? In a complex situation such as this, it was not obvious that clear trends would emerge in the analysis of links between offences and the choice of sentences. Yet, since some information was available on

[33] Separate Report of Mr. T.J. O'Neill for the Year 1865, in *Fifth Annual Report of the Board of Inspectors of Asylums, Prisons &c., for the Year 1865*, Sessional Papers, 5th Session of the 8th Parliament of the Province of Canada, Session 1866, vol. 3, p. 72.

Table 1 Offences for which boys were sentenced to gaol and reform institutions, Montreal, 1853–1921

Gaol	*A* *1853–1858*		*B* *1859–1872*		*C* *1873–1892*		*D* *1893–1911*		*E* *1912–1921*	
Offences	*N*	%	*N*	%	*N*	%	*N*	%	*N*	%
Theft	105	39.2	565	39.1	195	34.4	73	40.1	3	42.9
Disorderly conduct	124	46.3	771	53.4	253	44.6	54	29.7	2	28.6
Others	39	14.6	109	7.5	119	21.0	55	30.2	2	28.6
Total	268	100	1445	100	567	100	182	100	7	100

Reform institutions	*A* *1853–1858*		*B* *1859–1872*[a]		*C* *1873–1892*		*D* *1893–1911*		*E* *1912–1921*	
Offences	*N*	%	*N*	%	*N*	%	*N*	%	*N*	%
Theft	–	–	230	95.4	750	57.2	809	75.1	395	68.3
Disorderly conduct	–	–	0	0	355	27.1	199	18.5	67	11.6
Others	–	–	11	4.6	206	15.7	69	6.4	116	20.1
Total	–	–	241	100	1311	100	1077	100	578	100

[a] *Data available only for 1861–1872*

both the nature of offences and the choice of institutions, it was deemed worthwhile to look at those links.

For that purpose, offences were grouped in three broad categories, as shown in Table 1:

1. *Theft and larceny* (two synonymous terms used interchangeably during the three periods), hereafter referred to as *theft*;
2. *Disorderly conduct, vagrancy and drunkenness* ('disorderly conduct' being gradually replaced in the 1880s by the other two more precise designations), petty offences hereafter referred to as *disorderly conduct*; and
3. *Others*, grouping a wide diversity of offences, each being present only in relatively modest numbers. Though this group of offences is too heterogeneous to lend itself to an extensive discussion across the various periods, its salience in the later periods warrants some remarks.

Looking at the data, a contrasting picture emerges once again: reform was primarily used in dealing with boys convicted of theft, whereas it was mainly disorderly conduct that led boys to prison (at least during the years when prison received a substantial numbers of minors, including the years it operated without the presence of reform institutions).

The difference is nowhere more obvious than during the time of the reformatory prison (1859–1872): with 95.4% of boys convicted of theft, that institution somehow specialised in a single type of offenders, whereas the prison held a majority of boys convicted of disorderly conduct (53.4%), although sentences for theft were quite frequent (39.1%). Thus, the reformatory prison does not emerge as a complete alternative to the gaol, since the latter played an almost exclusive role in the incarceration of young offenders convicted of petty offences. Conversely, while theft remained the primary offence for reform-school sentences, the latter institution did receive numerous boys condemned for disorderly conduct, particularly during its first two decades (27.1%). This is a valuable indication that the new institution was no mere continuation of the reformatory prison. Courts seemed more willing to send diverse types of young offenders to the reform school than had been the case under the reformatory prison regime. Indeed, between 1873 and 1892, more boys were sent to the reform school (355) than to the gaol (253) for disorderly conduct.

Nonetheless, an overall reduction in the number of boys sentenced for disorderly behaviour, either to gaol or to reform school, can be observed over time. It is plausible that alternative resources or penal measures might have become available and preferred to institutional confinement to deal with this type of offence. It is known, for example, that police stations in Montreal were increasingly used as night shelters as of the 1860s. This had an impact on the rate of imprisonment of adult men convicted of disorderly conducts: instead of being prosecuted, vagrants, homeless people and drunkards found by police on the streets were kept in protection and released the following morning.[34]

[34]See Fenchel (2011: 21–25), and Aranguiz (2000: 14–15, 27, 33–38, 71, 78–79). For an outlook on how Montreal fits a western trend that increasingly led vagrancy to be managed by institutions outside of the penal field at the turn of the nineteenth century, see Fecteau (2004: 337–342).

So if we assume that thefts were deemed more serious transgressions than disorderly conduct, vagrancy and drunkenness, we are led to the conclusion that reform institutions were primarily used for boys convicted of more serious offences. But with the opening of the reform school in 1873, did judges—or some of them—endorse the ethos of reform to the point of using this institution for petty offenders? That is possible. However, one must not lose sight of the fact that 'disorderly conduct' is a fairly heterogeneous category, which includes behaviour or situations whose seriousness may vary considerably, ranging from the childish pranks of troublesome youths to the more serious situation of abandoned boys reduced to vagrancy. Choosing between punishment and reform for those accused of disorderly conduct probably involved an appraisal of the personal situation of the boys, following which only those who faced the most serious difficulties or displayed significant behaviour problems were sent to the reform school; other boys were only sentenced to brief gaol terms.

Moreover, during the last two periods under study, as the number of boys sentenced to gaol dwindled (with only 7 boys after 1911), 'other' infractions came to the front. An important change occurred in the very last few days of 1912. At the request of the Montreal juvenile court judge, Judge Choquet, the Quebec Legislature expanded the spectrum of situations justifying the intervention of the juvenile court. New status offences were created, such as being incorrigible or unmanageable, being habitually disobedient or idle, or being guilty of immoral conduct and similar types of behaviour.[35] Thus with this extension of the reach of the state, the court became vested with the power to take new unruly youths under its jurisdiction, even if they were not convicted of any Criminal Code offence.

Very few boys ($N = 7$) had been sentenced to reform school for similar types of offences between 1893 and 1911. Between 1912 and 1921, that number rose to 65 admissions (11.2%, nearly as much as disorderly conducts), split between 36 boys committed for being

[35] *An Act to amend the Revised Statutes, 1909, Respecting Juvenile Delinquents*, Statutes of Quebec 1912, 3 Geo. V, Chap. 39, Sect. 4.

incorrigible and 29 for habitual disobedience. We know that, in the following years, the use of these status offences would become more and more frequent in prosecutions before the Montreal Juvenile Delinquents Court, particularly in the 1930s. Overall, from 1912 to 1949 (the years of existence of this court), 18% of the charges laid against children were for incorrigibility and similar status offences. Yet, only a minority of those prosecutions led to institutional placements, probation being by far the preferred measure.[36] Thus we can see that the use of both status offences and probation changed the way many interventions were carried out towards children and their families under the regime of the juvenile court.

4.3 Reform at a Tender Age?

One of the implications of an approach based on punishment is that offenders must be convicted of offences that are serious enough if they are to be sentenced to imprisonment. This principle remained valid even in the context of the nineteenth-century gaol, despite the fact that incarceration was frequently used for relatively minor social nuisances such as vagrancy, drunkenness or other public disorder. As suggested by more recent studies, serious behaviour is more likely to occur at the end of adolescence than during childhood: juvenile offenders tend to commit petty offences in their younger years and to move to more serious antisocial behaviour as they grow older.[37] We have no reason to believe that things were different a century or so ago. Therefore, the juvenile portion of the gaol population was likely to be made first and foremost of older rather than younger juveniles.

From a reform point of view, preventing children from becoming gradually involved in criminal activities meant that early interventions were to be privileged. Children of a tender age were viewed as more pervious to influences—good or bad—and had to be set on the right path as early as possible, when they were most likely to respond favourably to corrective interventions. Therefore, it should be expected that the shift from imprisonment to reform placements went along with an increase in the internment of younger children. The change was likely to be only

[36] See Trépanier (2010: 333–340).

[37] See for example LeBlanc (2003: 384–385).

Table 2 Age of boys sentenced to gaol and reform institutions, Montreal, 1853–1921

Gaol	*A* *1853–1858*		*B* *1859–1872*		*C* *1873–1892*		*D* *1893–1911*		*E* *1912–1921*	
Age	*N*	%	*N*	%	*N*	%	*N*	%	*N*	%
11 and younger	79	29.5	391	27.1	42	7.4	19	10.4	2	28.6
12–13 years	82	30.6	387	26.8	123	21.7	40	22.0	0	0
14–15 years	107	39.9	667	46.2	402	70.9	123	67.6	5	71.4
16 and older	n/a	–	n/a	–	n/a	–	n/a	–	n/a	–
Total	268	100	1445	100	567	100	182	100	7	100
Mean	11.8 years		12.3 years		13.8 years		13.6 years		12.7 years	

Reform institutions	*A* *1853–1858*		*B* *1859–1872*[a]		*C* *1873–1892*[b]		*D* *1893–1911*[c]		*E* *1912–1921*[d]	
Age	*N*	%	N	%	*N*	%	*N*	%	*N*	%
11 and younger	–	–	15	6.2	289	22.9	144	13.9	31	5.4
12–13 years	–	–	37	15.4	361	28.7	291	28.1	146	25.3
14–15 years	–	–	108	44.8	460	36.5	539	52.1	336	58.2
16 and older	–	–	81	33.6	150	11.9	61	5.9	64	11.1
Total	–	–	241	100	1260	100	1035	100	577	100
Mean	–		14.7 years		13.1 years		13.5 years		14.0 years	

[a]Data available only for 1861–1872
[b]51 missing
[c]42 missing
[d]1 missing

partial: children had to be convicted of an offence before being sent to a reform institution, which did not happen at an early age in many cases. Still the target population was not meant to be the same as that of the gaol.

This hypothesis finds some support in the evolution of the legislation itself. From 1858, the law made it possible for youths up to 21 years of age to be admitted in reformatory prisons—institutions that were somehow a mid-step between prisons or penitentiaries and reform schools. A portion of these youths were in fact penitentiary inmates that had been transferred to the reformatory prison. Established in 1873, the reform school was designed to receive younger boys, who had to be under sixteen. Transfers of inmates from

the penitentiary were abolished. As juvenile institutions moved more clearly towards a reform model, their intended target population was to be younger, which meant that the more hardened (or persistent) delinquents were to be excluded. Yet one may wonder to what extent the change really occurred in practice: were children committed to reform institutions actually of a more tender age than those incarcerated in gaol?

As shown in Table 2, the reformatory prison did not meet such expectations: boys sentenced to this institution between 1859 and 1872 were on average distinctly older (14.7 years) than those put in gaol during the same time (12.3 years), this latter age being itself on the rise from that of the preceding decade (11.8 years). This disparity is matched by the uneven distribution of the different age groups in the two institutions: boys 11 and younger accounted for no less than 27.1% of gaol inmates, compared to a modest 6.2% in the reformatory prison. The proportion of 12 and 13 years old was also considerably higher in the gaol than in the reformatory prison, while 14 and 15 years old made up the core (and a comparable share) of all admissions. Furthermore, the important proportion of boys aged 16 and older (33.6%) at the reformatory prison contributes to the uneven distribution of ages between the two institutions: as indicated earlier, males 16 and over were defined as adults in the gaol and thereby excluded from the youth population in this institution.[38]

Thus, the sheer number of very young offenders in gaol suggests that, given the choice between a short term of gaol and a longer placement in the reformatory prison, judges still preferred to send the youngest offenders to gaol, as they did in the decade preceding the opening of the reformatory prison. As seen above with offences, this is another indication that the reformatory prison was not perceived as an encompassing reform institution: its population reveals a practical specialisation that left it with a very distinct segment amongst young offenders (i.e. older boys and young adults sentenced for theft).

That situation was to change with the advent of the reform school. During the two following periods, the age of boys sentenced to gaol rose whereas the average age those in reform school became lower, although

[38]That is, there is no clear cut-off point beyond the age of majority that would allow an equivalent comparison between young adults sent to prison and to the reform school. Besides, even if boys aged 16 and over are excluded in the calculation of the mean, it remains higher in the reformatory prison (13.7 years) than at the gaol.

the resulting difference was not as pronounced as before ($M = 13.8$ vs. 13.1 years; 13.6 vs. 13.5 years). The gaol was largely unburdened of its youngest inmates, who apparently took the direction of the new institution. It seems that the reform school was considered more suitable than the reformatory prison for the various age groups (particularly in its first two decades), and that it did receive younger offenders than the gaol.

That situation did not last long, however. The 14 and 15 years old, that remained the most important group in the first years of the reform school, saw their proportion rise continuously: whereas they accounted for 52.1% of admissions between 1893 and 1911, they represented no less than 58.2% of boys sent to reform school by the juvenile court as of 1912. While the gaol faded into irrelevance through disuse, boys sent to reform school in this last period continued to get older ($M = 14.0$ years), thus confirming the trend apparent since the opening of the reform school.

Thus, in much the same way as what could be observed for offences, we find that over time confinement in reform institutions was gradually directed at a subgroup of offenders. Older boys, who already formed a majority of inmates at the reform prison, gradually emerged as the most important group at the reform school, a situation that was reinforced after the arrival of the juvenile court. In other words, older boys became the preferred target of reform, showing that tender age was decidedly not a decisive attribute.

5 Conclusion

The creation of special institutions for young offenders in Montreal in the last part of the nineteenth century had profound effects on the use of imprisonment as a reaction to juvenile delinquency. To begin with, reform institutions gradually replaced the gaol as the main place of confinement for young offenders. More precisely, the opening of the reform school in 1873 was associated with an irremediable decline in the use of gaol to punish young offenders: in less than ten years, boys placed in the reform school greatly outnumbered those sentenced to gaol. By the beginning of the twentieth century, only a handful of juveniles were still sent to gaol, quite a contrast with the hundreds of boys imprisoned during the busy 1860s.

Discarding the gaol and replacing it with reform institutions involved far more than just a change in the place of confinement. Boys sent to gaol between 1853 and 1872 were younger, and more frequently

sentenced for less serious offences, than those sent to the reformatory prison (where theft led to all but a minority of placements). Lengths of confinement in the two institutions had nothing in common: sentences served in gaol averaged thirty days, compared to nearly four years in the reformatory prison. The first two decades of the reform school (1873–1892) brought younger boys, convicted of petty offences, while the length of confinement continued to be far longer than the average gaol sentence. The next period (1893–1911) showed that long periods of confinement were an enduring feature of the reform school, and a newer focus emerged on older, more serious offenders, a practice maintained by the first judge of the juvenile court after 1911.

This underscores how the establishment of reform institutions ultimately resulted in a more selective application of confinement for youths. The change took place gradually. The first period—that of the reformatory prison—comes out as an unsuccessful first step in that direction, until more resolute attempts came with the reform school. However, after the reform school replaced the gaol and effectively became the only confinement institution for minors, markers of seriousness (theft) and persistence or late onset (older age) of delinquent activities already present at the reformatory prison re-emerged. It is tempting to consider this as revelatory of the underlying logic behind the seclusion of minors in specialised institutions. As it moved away from the gaol and its more heterogeneous population, confinement was manifestly not seen as a panacea to youth crime: bent towards a transformation that required extensive control over long periods of time, reform was limited to a very distinctive segment of boys.

The juvenile court did not reverse this evolution, quite the contrary. The court's increasing use of probation ensured that reform school placement remained a relatively infrequent measure, used for a decreasing number of boys. Still, it is worth noting that this restriction on the use of placement by the juvenile court only reinforced the status of theft and older age as defining characteristics of the reform school population. Does that imply that the juvenile court turned a blind eye to the welfare model when it came to placing boys in the reform school? Did not the welfare model encourage early interventions, whereas the court tended to place older rather than younger boys? Indeed, the practice of confining older boys that had been developed by regular courts in preceding decades was endorsed by the juvenile court.

However, the extent of the endorsement of the welfare model by the juvenile court must not be judged only from its use of reform school placements. One should not forget that probation was a key element of that model. Parliamentary debates leading to the adoption of the 1908 Juvenile Delinquents Act show that probation was viewed as preferable to placements in institutions. As expressed by Senator Ross: 'I consider the most important feature of this Bill is that boys or girls are not necessarily sent to these reformatories or schools, but their education is supervised at their own homes'.[39] William L. Scott, a key actor in the adoption of the Act, described the three principles on which the Act was based and declared in the first place that 'probation is the only effective method of dealing with youthful offenders'.[40] In his eyes as well as those of others involved in the welfare movement of children's aid societies, probation was the channel through which approaches developed for children in danger could be applied to juvenile delinquents: 'What are the agents of the Children's Aid Societies but probation officers under another name?'.[41] Using probation as well as limiting the recourse to reform schools was presented as perfectly consistent with the welfare model by the very proponents of juvenile court legislation.

How would things turn in later years, as the juvenile court underwent its own evolution? Ongoing research by Trépanier and Fenchel on the Montreal juvenile court will show that long-term placements remained current practice for decades. Yet, challenges directed at the ability of institutions to prevent recidivism among juvenile delinquents, as well as a growing awareness of the rights of the latter to minimal interference to their freedom, brought about drastic changes in the use of placements over time. In Quebec, and more generally in Canada, youths are now committed less often to juvenile institutions, and placements are much shorter than they were[42]; so much so that their usefulness to induce changes in the behaviour of youths has been questioned.[43] A complete history of the use of juvenile institutions by the juvenile court over the last century remains to be written.

[39] Senator Ross, *Senate Debates, 1907–1908*, p. 1154 (16 June 1908).

[40] Scott (1908: 894).

[41] Scott (1938: 50).

[42] See for example Trépanier (2012: 838–839, 2004: 289–290, 2003: 75–76).

[43] See for example Trépanier (2004: 289–292, 2003: 76–81).

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CHAPTER 5

"Endangered" Children and the Montreal Ladies' Benevolent Society Industrial School, 1883–1921

Janice Harvey

Following the example of many governments in the mid-nineteenth century, Quebec passed legislation in 1869 that initiated an institutional structure to address the growing concern over what was seen as the problem of rising delinquency among poor children. One law provided for the establishment of reform schools for young offenders and another created industrial schools for 'endangered' children.[1] These laws

[1] *The Industrial Schools Act*, 1869, Statutes of Quebec, 32 Vict., c.17; *An Act Respecting Reformatory Schools*, 1869, 32 Vict., c.18. For the industrial schools act see Renée Joyal, "L'Acte concernant les écoles d'industrie (1869): une mesure de prophylaxie sociale dans un Québec en voie d'urbanisation," in Renée Joyal (ed.) *Entre surveillance et compassion: L'évolution de la protection de l'enfance au Québec des origines à nos jours*, Sainte-Foy, Québec: Presses de l'Univeristé du Québec, 2000, 35–48 and her *Les Enfants, la société et l'État au Québec, 1608–1989. Jalons*, Montreal: Éditions Hurtubise HMH, 1999, 67–81.

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effectively became the basis of Quebec's early response to juvenile delinquency and to child protection; in this latter, industrial schools, which are the subject of this chapter, were of particular importance.[2]

1 The Quebec Industrial Schools Act: A Private Confessional Model

The new institutions effectively replaced the reform prisons that the government of United Canada had created in 1857.[3] Although the latter had been government-run, Quebec chose to take the British laws[4] as their model and establish a system that was both private and confessional. Under the new law, private associations could apply for accreditation; if accepted they were contracted to 'teach, train, clothe, lodge and feed' the children they received in exchange for per diem payments from the state.[5] This combination of privately managed institutions and some public financing was characteristic of the mixed public-private charitable model developed in Quebec, but the regularity and size of per diem payments meant that industrial and reform schools received much more

[2] For the evolution of Quebec's policy in relation to juvenile offenders and child protection see Jean-Marie Fecteau, Sylvie Ménard, Véronique Strimelle and Jean Trépanier, "Une politique de l'enfance délinquante et en danger: la mise en place des écoles de réforme et d'industrie au Québec (1840–1873)," *Crime histoire et Sociétés/Crime, History & Societies*, Vol. 2, No. 1, (1998), 86–91.

[3] *Statutes of United Canada*, 1857, 20 Vict., c. 28, c.29. Reformatory schools already existed in England, France and the United States. For the 1857 law see Jean Trépanier, "Juvenile Delinquency and Youth Protection: The Historical Foundations of the Canadian Juvenile Delinquents Act of 1908," *European Journal of Crime, Criminal Law and Criminal Justice*, Vol. 7, No. 1, (1999), 41–62.

[4] For England see John Hurt, "Reformatory and Industrial Schools before 1933," *History of Education*, 1984, 13, 1, 45–58 and Margaret May, "Innocence and Experience: The Evolution of the Concept of Juvenile Delinquency in the Mid-Nineteenth Century," *Victorian Studies,* Vol. 17, No. 1, (1973), 7–28. In the end, the Quebec model was closer to that used in Ireland where private associations were responsible for providing the infrastructure and the government paid per diem amounts and where there was a predominance of schools run by religious orders. On this, see Mary Raferty and Eoin O'Sullivan, *Suffer the Little Children: The Inside Story of Ireland's Industrial Schools*, New York: Continuum Publishing, 2001, Chap. 3

[5] *The Industrial Schools Act*, (1869), s. 3, 16.

extensive funding support than institutions like charities, albeit less than actual costs, as we will see.[6]

Although industrial schools were private institutions, they were clearly part of the larger government and governance structure—requirements for state certification and annual inspections as well as institutional dependence on state subsidies enabled governments to effectively 'govern at a distance'.[7] From 1884, amendments to the legislation clarified the central role of municipalities in relation to these institutions, establishing their financial contribution at 50% or more of the total cost. The same amendments gave mayors the authorisation to place children in the institutions, a development that would slowly come to have more and more importance.[8]

Unlike the parallel legislation to create reform schools, the initial 1869 Industrial Schools Act covered children who had not actually committed an infraction but who were considered 'endangered' or at risk of becoming delinquent because of their marginal circumstances. This included orphans and children who were homeless or vagrant without any visible means of support or proper guardianship as well as children known to associate with thieves or whose parents were in prison. Amendments in later years widened the scope of the law by adding children with parents unable to care for them due to 'continual sickness or extreme poverty … habitual drunkenness or other vicious habits' (1884), children whose surviving parent 'misconducts himself' (1888), infirm children and those whose parents were not considered 'worthy' to care for them (1894), and child victims of violence or abuse (1912).[9]

[6] Insane asylums used the same mixed private-public model. A similar model developed in Ontario although differences existed among municipalities. For a discussion of this mixed model see Mariana Valverde, "The Mixed Social Economy as a Canadian Tradition," *Studies in Political Economy*, Vol. 47, (Summer 1995): 33–60.

[7] For an excellent discussion of this concept in relation to charities and other social regulation institutions see Paula Muratto, *Governing Charities. Church and Toronto's Catholic Archdiocese, 1850–1950*, Montreal & Kingston: McGill-Queen's University Press, 2003.

[8] *An Act to amend the act 32 Victoria, c. 17, concerning Industrial Schools*, Statutes of Quebec 47 Vict., 1884, c. 23, s, 15. Municipalities were required to pay 75% for children brought to the court by the city or parents after 1892 and 100% after 1894. *Act concerning Industrial Schools*, Statutes of Quebec 55–56 Vict. 1892, c. 29, s. 5; *Act to amend the Industrial Schools Act*, Statutes of Quebec, 57 Vict., 1894, c. 32, s. 7.

[9] *An Act to amend the act 32 Victoria, c. 17, concerning Industrial Schools*, 1884, s. 15; An *Act to amend the act 47 Victoria, chapter 23, respecting industrial schools*, Statutes of Quebec 51–52 Vict., 1888, s. 12; An *Act to amend the law respecting Industrial Schools*, Statutes

Parents and charitable institutions could also apply for the admission of children they found uncontrollable or recalcitrant.[10] Children could not be more than 14 years old. No lower age limit was specified in 1869 but subsequent amendments set it at 7 (1884), and finally at 6 in 1892.[11]

Industrial schools are extremely interesting institutions due to the ambiguity surrounding them between protection/assistance and repression. The fact that legislators agreed to allocate state funds to these institutions represents their acceptance to provide some support for children who had lost their natural protectors, that is orphans and children with parents in jail, and children who were destitute because their surviving parent was unable to care for them or what the 1884 amendment referred to children needing 'to be protected and cared for'.[12] This notion was particularly important in a place like Quebec, which had rejected an official poor-relief role and where no state assistance mechanism had yet been created. But the legislation also had clear repressive aspects, not the least of which was that this 'protective' state intervention took the form of institutional placement rather than help to families in their homes and was implemented by the courts. As noted by other historians who have studied similar institutions or the child-protection movement in general, nineteenth-century elites and legislators considered marginal children such as these to be potentially in danger but also, to some extent, by virtue of their membership in the 'dangerous classes', to be potentially dangerous for society.[13] As Michelle Cale

of Quebec 1894, s. 1; *An Act to amend the Revised Statutes, 1909, respecting Juvenile Delinquents*, 3 Geo. V, 1912, c. 39, s. 4031.

[10] *The Industrial Schools Act*, 1869, s. 14.

[11] *An Act to amend the act 32 Victoria, c. 17, concerning Industrial Schools*, 1884, s. 15; An act respecting industrial schools, 55–56 Vict., 1892, s. 3137.

[12] *An Act to amend the act 32 Victoria, c. 17, concerning Industrial Schools*, Statutes of Quebec 1884, s. 15.

[13] Much has been written on this. For Canada see, among others, Robert Adamoski, "The Rhetoric and Experience of Wardship in Early Twentieth–Century British Columbia," in Robert Adamoski, Dorothy Chunn and Robert Menzies (eds.), *Contesting Canadian Citizenship: Historical Readings*, Toronto: University of Toronto Press, 2002, 315–335; "'Charity is One Thing and the Administration of Justice is Another': Law and Politics of Familial Regulation in Early-Twentieth-Century British Columbia," in John McLaren, Robert Menzies and Dorothy Chunn, eds., *Regulating Lives: Historical Essays on the State, Society, the Individual and the Law*, Vancouver, UBC Press, 2002, 145–169; Xiaoben Chen, *Tending the Gardens of Citizenship: Child Saving in Toronto, 1880s–1920s*,

notes in relation to England, children were committed to an industrial school not for a criminal offence, but for 'delinquency in the form of unrestrained, unsuitable behaviour', (or what could be construed to be such).[14] Industrial schools served as intermediate, non-penal institutions for such pre-delinquent children. Not only could they provide the requisite shelter (away from unsavoury influences) but they could also provide 're-education' without being officially punitive and thus protect society from the risk the children represented.[15]

Quebec's industrial school law was a good example of this ambiguity. It must be noted first though, that the existence of reformatory schools in Quebec and the legislative distinction made between the two categories of institution (and children) at least in terms of admission via the court mechanism meant that very few children having committed infractions were sent to an industrial school. Still, the endangered and dangerous distinction was blurred. The categories of children subsumed under the law merged what were considered socio-environmental risks,

Toronto: University of Toronto Press, 2005; Bryan Hogeveen, "'The Evils with Which We are Called to Grapple': Elite Reformers, Eugenicists, Environmental Psychologists, and the Construction of Toronto's Working-Class Boy Problem, 1860–1930," *Labour/ Le Travail*, Vol. 55 (Spring 2005), 37–68; Joan Sangster, "Creating Social and Moral Citizens: Defining and Treating Delinquent Boys and Girls in English Canada, 1920–65," in Adamoski, Chunn and Menzies, (eds.), *Contesting Canadian Citizenship*, *Historical Readings*, (Toronto: University of Toronto Press, 2002), 337–358; Dorothy E. Chunn, "Boys will be Men, Girls will be Mothers: The Legal Regulation of Childhood in Toronto and Vancouver," *Sociological Studies of Child Development*, 3, (1990), 87–110; Susan Houston, "The 'Waifs and Strays' of a late Victorian City: Juvenile Delinquents in Toronto," in Joy Parr (ed.), *Childhood and Family in Canadian History*, Toronto: McClelland and Stewart, 1982, 129–142; Patricia Rooke and Rodolph Leslie Schnell, *Discarding the Asylum: From Child Rescue to the Welfare State in English Canada 1800–1950*, Lanham: University Press of America, 1983. See also John R. Sutton, *Stubborn Children: Controlling Delinquency in the United States, 1640–1981*, Berkeley: University of California Press, 1988.

[14]Michelle Cale, "Girls and the Perception of Sexual Danger in the Victorian Reformatory System," *History*, Vol. 78, No. 253, (June 1993), 201.

[15]For a discussion of poverty and poor children as a social risk, see Janice Harvey, "Le risque et la ville au XIXe siècle: discours et interventions en matière de pauvrété et de santé dans le Montréal anglo-protestant," in David Niget and Martin Petitclerc, eds. *Pour une Histoire du Risque: Québec, France, Belgique*, Quebec: Presses de l'Université du Québec / Rennes: Presses Universitaires de Rennes, 2012, 113–137; 111–133.

that is, children without support, those feared to be exposed to unfit parents with 'vicious habits' or to dangerous environments, and personal weakness, that is, children who were considered 'uncontrollable' and those in need of discipline. Both of these large categories could be socially constructed as either 'at-risk' or as a 'risk for society'. The emphasis on discipline as well as the requirement for industrial schools to provide industrial training not just education clearly differentiated between these institutions and normal child charities. Moreover, the fact that two ratepayers (or the mayor after 1884) could bring a child under this law before a magistrate for placement in an industrial school on grounds as subjective as that his or her parents were 'unworthy' opened the door to *much* potential abuse.[16] Indeed many of the categories outlined in the law were intrinsically subjective and deliberately targeted the poor, giving the law clear class connotations. The placement itself was also very formal and carried out within a legal context—in Montreal it was undertaken by the Provincial Secretary or the municipal Recorder Court—and was for a fixed term, a minimum of one year and up to three years. Release before that time required special permission.[17] Finally, the law specified that any child attempting to escape would be placed in a reformatory. Effectively the industrial school law was the flip side, the complement as it were, to the reformatory school law; this would remain true until early in the twentieth century.

The social regulation possibilities of this type of all-inclusive legislation is evident as industrial schools intervened to 'rescue', discipline or 're-educate' lower-class children. Repressive conditions and forced admissions were certainly a possibility in this type of institution as was a misuse of subjective categories to remove children from their families and effectively criminalise poverty. Preliminary findings from my research

[16]The right for any two taxpayers to bring children before a magistrate for placement in an industrial school is limited in 1884 to orphans or children with parents in prison but the larger scope is reintroduced in 1888. This was a similar type of power as that often given to legal child protection agencies. A Society for the Protection of Women and Children (SPWC) was formed in Montreal in 1882 but Quebec did not pass a child protection law. The SPWC's role in terms of admissions to the Montreal institutions needs further study.

[17]This came from the court, the Provincial Secretary or the mayor's office. In 1903 the secretary of the Montreal Ladies' Benevolent Society referred to the fact that the government had reprimanded the treasurer for allowing children to return home early. Library and Archives of Canada, Summerhill Homes Collection, MG 28 I 388, Montreal Ladies' Benevolent Society, *Minutes*, 28 April 1903, hereafter LAC, LBS.

on the first Protestant industrial school established in Montreal in 1883, however, point to the importance of case studies that investigate the internal conditions of any given industrial school, that is, whether or not it was actually repressive, as well as the larger society in which it existed and its role in that society before generalisations in this direction are made. In this instance, Montreal's private and confessional model as well as the gradual shifting of responsibility for these institutions from the Quebec government to the municipality influenced their development. The Protestant children who were placed in the Montreal Ladies' Benevolent Society's industrial school ended up in an industrial school that was inside a large child charity rather than a specialised reformatory institution. While subject to an institutional regime, the overall approach was protective rather than repressive. Further, over time the city took advantage of the large scope provided by the law not to make industrial schools (and the court structures connected to them) more repressive but to mould them into an early version of municipal assistance in response to the appeals poor families made to the city for financial help, albeit assistance within the context of a legal and institutional structure. In this way Quebec's system of industrial schools, its role in society and its direct connection to poor families and their needs developed in a very different way than elsewhere in Canada. In this chapter we will look briefly at how this happened and in some detail at the conditions in one of these special institutions.

2 The Montreal Ladies' Benevolent Society Industrial School

2.1 The Creation of the School

A specific clause in the law requiring the respect of religious affiliation ensured a parallel system of Catholic and Protestant institutions. This was a normal model for Quebec. By mid-nineteenth century, cities like Montreal already had two separate and distinct social services networks—one for Catholics controlled by the church and its religious orders and one for Protestants managed by the city's economic elite.[18]

[18]The Catholic Church, with the financial support of the Sulpicians and several private philanthropists, worked actively to create a network of charitable (and educational) institutions mainly run by religious orders. Without a unified church, this religious model was

The application of this private and confessional model to the new reformatory institutions reflected contemporary beliefs about the importance of personal philanthropy in charity work as well as the faith the elite had in the crucial role religion and morality played in character formation.[19] Indeed in relation to these 'schools' more emphasis was placed on moral/religious education and skills training than on education per se. As Renée Joyal points out in her study of Quebec's industrial school legislation, the institutions were placed directly under the Provincial Secretary, not under the department of Public Instruction and hence the academic curriculum was not officially monitored until 1945.[20]

The Catholic Church had lobbied hard in 1869 for a private and confessional structure for reform and industrial schools rather than direct state control.[21] When the legislators finally chose this model, Montreal's Bishop Bourget had specialised religious orders standing by ready to take

not possible for Protestants and most of the charitable institutions were established and managed by inter-denominational lay committees. For the Catholic model see Jean-Marie Fecteau, "La construction d'un espace social: les rapports de l'Église et de l'État et la question de l'assistance pubique au Québec dans la seconde moitié du XIXe siècle," in Yvan Lamonde and Gilles Gallichan (eds.), *L'histoire de la culture et de l'imprimé. Hommages à Claude Galarneau*, Quebec: Les presses de l'Université Laval, 1996, 61–90 and Jean-Marie Fecteau and Éric Vaillancourt, "Charity in the City," in Dominique Deslandres, John A. Dickinson and Ollivier Hubert (eds.), *The Sulpicians of Montreal. A History of Power and Discretion, 1657–2007*, translated from the French by Steven Watt, Montréal: Wilson & Lafleur Lté, 2013, 255–278. For the Protestant model and the role of the churches in this see Janice Harvey, "Les Églises protestants et l'assistance aux pauvres à Montréal au XIXe siècle," *SCHEC, Études d'histoire religieuse*, Vol. 69, (2003), 51–67. For a discussion of Montreal's overall charitable network, see Jean-Marie Fecteau and Janice Harvey, "Le réseau de régulation sociale montréalais au XIXe siècle," in Dany Fougères, ed., *Histoire de la région montréalaise, des origines à aujourd'hui*, Québec: Les Presses de l'Université Laval and IQRS, 2012, 673–715.

[19] For this see Jean-Marie Fecteau, *La liberté du pauvre: crime et pauvreté au XIXe siècle québécois*, Montreal: VLB éditeur, 2004, 179–207 and Jeroen J.H. Dekker, *The Will to Change the Child. Re-education Homes for Children at Risk in Nineteenth Century Western Europe*, New York: Peter Lang, 2001.

[20] Joyal, "L'Acte concernant les écoles d'industrie," 40. This was less an issue in terms of the Ladies' Benevolent Society Industrial School since the children attended public school from 1917 on.

[21] Catholic delegates had attended a city council meeting on the issue and convinced the city to vote for this model as well. Jean-Marie Fecteau, "Une politique de l'enfance délinquante et en danger," 93.

on the work. Between 1870 and 1883, three Catholic orders established certified reform and/or industrial schools for girls and boys in the district of Montreal.[22] However, the confessional model posed particular problems for Montreal's Protestant community that could not count on religious orders to do the work.

In 1882 when no specialised reformatory institutions had yet been opened government representatives met with Protestant leaders to discuss the situation and to request that the existing charities consider extending their work into this area.[23] Although no organisation was willing to undertake the responsibilities of a reform school and Protestant reformatories were not finally opened until the twentieth century,[24]

[22]In Montreal the Soeurs du Bon Pasteur opened a reform school and industrial school for Catholic girls in 1870; the Frères de la Charité opened a reform school for Catholic boys in 1872; and the Companie des pères de Marie (Montfortains), formed an industrial school for boys at Montfort in 1883. For these institutions see Véronique Strimelle, "Le soin des âmes: discours et programmes d'intervention des Sœurs du Bon-Pasteur d'Angers auprès des filles délinquantes et en danger à Montréal au XIXe siècle, 1869–1912," in Marie-Claude Thifault, (ed.), *L'incontournable caste des femmes: histoire des services de santé au Québec et au Canada*, Ottawa: Les Presses de l'Université d'Ottawa, 2012, 17–33; Sylvie Ménard, *Des enfants sous surveillance, la rééducation des jeunes délinquants au Québec (1840–1950)*, Montreal: VLB éditeur, 2003 and Christelle Burban, "Les origines institutionnelles de la protection de l'enfance au Québec: l'école d'industrie de Notre-Dame de Montfort (1883–1913)," M.A. Thesis, Université de Rennes, 1997 and "L'engagement décisif et inégal de l'État québecois en faveur de la protection de l'enfance. L'école d'industrie de Notre-Dame de Montfort (1883–1913)," *Bulletin d'histoire politique*, Vol. 6, No. 2, (Winter 1998), 40–47.

[23]An account of this meeting is found in the Minutes of the Protestant Orphan Asylum. Library and Archives of Canada (LAC), Summerhill Homes Collection, MG 28 I 388, Montreal Protestant Orphan Asylum, *Minutes*, Vol. 10, December 1882, 260–262.

[24]The Boys' Home of Montreal opened a reform school-farm for Protestant boys in Shawbridge in 1908 and The Girls' Cottage Industrial School was opened for girls in 1911 in St. Lambert. For these latter institutions see Prue Rains and Eli Teram, *Normal Bad Boys: Public Policies, Institutions, and the Politics of Client Recruitment*, Montreal and Kingston: McGill-Queen's University Press, 1992 and Tamara Myers, *Caught. Montreal's Modern Girls and the Law, 1869–1945*, Toronto: University of Toronto Press, 2006, Chapter 7. Before these institutions existed Protestant boys were sent to a makeshift reform school established by the Quebec government inside a wing of the Sherbrooke prison, 100 kilometers away while girls went to the Catholic institution for girls. Véronique Strimelle, "La gestion de la déviance des filles et les institutions du Bon Pasteur à Montréal, 1869–1912," Ph.D. Thesis, Université de Montréal, 1999, 193–195. For the opening of the Sherbrooke reformatory and its problems see "Report by H.H. Miles, Inspector of prisons and of Protestant schools of industry, 1873," Sessional Papers, No. 5, 1873–1874.

it was as a result of this meeting that a Protestant industrial school was finally established. In effect, the Montreal Ladies' Benevolent Society, which ran the largest existing child charity, agreed to serve as an industrial school and was certified as such in 1883.[25] The decision to have the industrial school children enter an existing child charity rather than create a new specialised institution had a major impact on the evolution of this first Protestant industrial school and on the treatment the children who were admitted to it received.

2.2 The Children

The Montreal Ladies' Benevolent Society (LBS) was an incorporated charity that had been run by a committee of upper-middle-class women since 1832.[26] The institution was basically designed for the children of poor single-parent families who were temporarily unable to care for them as a result of poverty, illness, death or family problems. By 1883 it was a large facility on Berthelet Street (now Ontario Street) that usually housed more than 100 children at any one time. The home was multifunctional. Alongside children, it housed a number of elderly women and had a special ward for female convalescents.

Approximately 461 children entered the Montreal Ladies' Benevolent Society Industrial School from 1883 to 1921.[27] Despite their official

[25]The Protestant Orphan Asylum and the Boys' Home also considered applying for industrial school status but rejected the idea. LAC, Protestant Orphan Asylum, *Minutes*, Vol. 10, December 1982, 260–262; January 1883, 264–266; February 1883, 273; Library and Archives of Canada, Weredale House Collection, MG 28 I 405, The Boys' Home, *Minutes*, Vol. 2, July 7 1896, 31; September 3, 1896, 34.

[26]For a detailed study of this charity (and child charity in Montreal) see Janice Harvey, "The Protestant Orphan Asylum and the Montreal Ladies' Benevolent Society: A Case Study in Protestant Child Charity in Montreal, 1822–1900," Ph.D. Thesis, McGill University, 2001. The following analysis is based on the charity's annual reports, minutes of monthly or bi-monthly committee meetings, the admissions registers for the period 1883–1921 and the matron's journal for the years 1883–1900 (private collection in the LAC) as well as on the court files of applications to the industrial school (in the Montreal Municipal Archives (AVM).

[27]LAC, Ladies' Benevolent Society (hereafter LBS), *Admissions Book*, Vol. 1 and 2, 1832–1921. The cases of the children who were brought to the Recorder Court for placement in the LBS are still in the city archives for the period 1892–1915. These have been used to cross-check the LBS admissions register and helped to identify a number of children admitted through the court process but not clearly identified in the Register, and vice versa. Archives de la Ville de Montreal (hereafter AVM), 15, Bien-Être Social, Série 3,

placement by the court and thus their special status, these children lived in the institution with all the other children and received no special accommodations, discipline, or training. This was possible since the Industrial Schools Act did not outline any specifications in terms of internal management, this being left to the discretion of the private organisations. Certainly the management committee never discussed designating a wing of the building to isolate the court children from the other children as had been done for example with convalescents when the charity began admitting them in 1856. Rather it appears that they were mixed with the other children in dormitories organised by age and gender, not status. Overall, the affluent women who ran the charity do not seem to have considered the industrial school children as being any different from others in their care. From their perspective, all of the children in the institution needed training and protection. The only difference between the children sent to the industrial school by the court and those entered into the charity by their families was that the government was willing to pay board for the former children. Indeed, the promise of this board as a stable source of income had been a major factor in the charity's decision to seek industrial school accreditation in the first place since their budgets were always extremely tight. This meant that the directors were happy to receive these children.

Thus, the Protestant industrial school children lived in a large secular child charity run by a voluntary female committee. In the nineteenth century they made up only a small proportion of the children admitted to the institution—70 of the 848 children admitted from 1883 to 1899, or 8%. There were very few cases in the first few years and none at all in several years but the number grew slowly and fairly steadily after 1891 as can be seen from Fig. 1. From 1900 to 1915, numbers increased substantially. Fluctuations occurred in a few years but in the period 1907–1913 admissions ranged from 20 to 30 children per year. A major decrease occurred in 1916–1917 when the city insisted the committee resubmit their certification papers that needed to be secured from Quebec and the court only sent 5 or 6 children in each of these years. This was aggravated by the opening in 1916 of another industrial school

Enfants sans tutelle, 1892–1915. There is more ambiguity for the earlier period and only those children for whom clear references exist have been kept in the data.

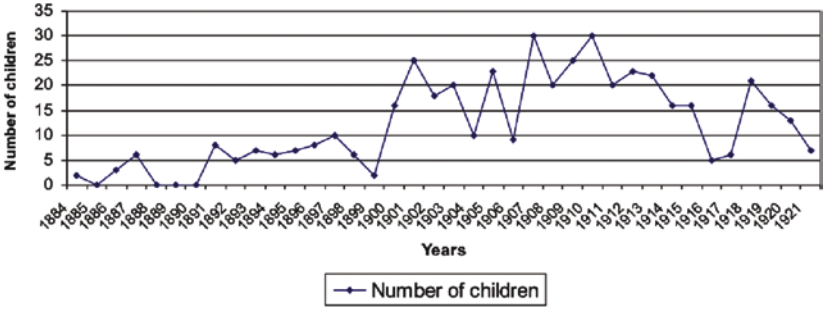

Fig. 1 Number of children admitted to the Montreal Ladies' Benevolent Society Industrial School, 1884–1921. *Source* LAC, Montreal Ladies' Benevolent Society, *Admission Book*, 1883–1921

for boys which resulted in the number of boys sent to the LBS decreasing substantially. Overall numbers increased again between 1918 and 1920 (mostly girls) but in 1921 were back down to a level comparable to the pre-1900 period. Nonetheless, the total number and the proportion of industrial school children over the period 1900–1921 amounted to 391 of the 1113 children admitted in those years, or 35%.[28]

The number of court children present in the home at any one time, however, was often much larger than these figures suggest since they tended to remain in the home longer than most of the other children. As we can see in Table 1 about one-quarter of the court children remained for the minimum one-year placement and only 12% left before one year.[29] More than half remained in the institution for two years or more, with many upwards of four to five years, and remarkably almost 13% for 6 years or more. We can also see that the differences between the two periods were minimal other than a decrease in the percentage of children remaining more than 5 years in the later period when this involved

[28] LAC, LBS, *Admissions Book*, Vol. 1 and 2, 1832–1921.

[29] The application to remove a child inside a term was usually made by parents or by the organisation that had presented the application such as the SPWC. Several cases in the city files, for example, include letters sent to the mayor from mothers requesting such early release. It appears that they were all granted but more research on this is needed.

Table 1 Length of stay for the children in the Montreal Ladies' Benevolent Society Industrial School, 1883–1921. *Source* LAC, Montreal Ladies' Benevolent Society, *Admission Book*, 1883–1921

	1883–1899		*1900–1921*		*Total*	
Number of years*	Number	%	Number	%	Number	%
>1	10	14.3	45	11.5	55	12.0
1	19	27.1	99	25.3	118	25.6
2	8	11.4	53	13.6	61	13.2
3	7	10.0	54	13.8	61	13.2
4	6	8.6	43	11.0	49	10.6
5	3	4.3	27	6.9	30	6.5
6–11	15	21.4	44	11.3	59	12.8
unknown	2	2.9	26	6.6	28	6.0
Total	70	100	391	100	461	100

*Parts of years have been rounded to the closest year

multiple court appearances for recommitments.[30] Importantly, the overall pattern for the court children stands in sharp contrast with that of the other children in the institution. Although a number of the 'charity' children remained for several years, on the whole there was a very large turnover and the majority of the children placed in the institution by their parents remained for less than one year, with more than one-third remaining for less than three months.[31]

Hence as the century progressed normally somewhere between one-third and one-half of the children in the institution at any point had been sent by the court and were officially in the industrial school. In years where data are provided in sources such as the committee's minutes we find that approximately 55 court children were in the LBS in 1912, 44 of 81 children were court cases in March 1910 and 48 of 87 in

[30]In the early years children were often placed for a two or three year term. After 1894 all those placed by the city were put under a one-year term. This was renewable but from 1903 this involved a new court application. See discussion later in the paper.

[31]Thirty-five percent remained less than 3 months and a further 18% less than one year. However 36% remained between 1–5 years and 7% more than 6 years. Janice Harvey, "The Protestant Orphan Asylum and the Montreal Ladies' Benevolent Society, 191.

January 1916.[32] In recognition of this potential need for beds, the contracts the city made with the LBS after 1916 stipulated that the charity must keep 55 of a possible 100 beds for court children.[33] Although it was rare for all the places to be filled, it is clear that these children made up an important part of the institutional population as did the industrial school itself within the larger institution.

2.3 Life in the School

The women who directed the Society were influenced by their bourgeois culture and, although not always progressive, their basic approach was one that can be described as child-centred rather than repressive. Like most Protestant philanthropists, they modelled their institution on a home and designed the institutional routine on what they took to be a balance between nurture and an appropriate amount of discipline. In creating this 'Protestant' home they emphasised the middle-class values they considered central to child-rearing such as obedience, order, discipline, cleanliness, respect for authority, frugality and patience; values that they believed were often lacking in the former upbringing of the poor children admitted to the institution. Religious education, school and work were considered important to this approach and made up a large part of the children's day.

As a result, institutional life was highly regimented and routine: up at six, morning prayers followed by breakfast, school from nine to noon, dinner at one, play, school from two to four/four thirty, play, supper at six, evening prayers, and bed at eight. Bells rang out the time and the teacher

[32]These figures date from different times in the year as they are simply mentioned in the minutes. The society did not indicate the number of court children present in their Annual Reports. LAC, LBS, *Minutes*, 1 March 1910; 2 January 1912; 19 January 1916; 9 February 1916.

[33]In 1912 the city agreed to limit the number of children it would send to 55. This became a requirement rather than a limit in 1916. LAC, LBS, *Minutes*, 2 January 1912; 2 January 1916; 9 February 1916. For a discussion of the interaction between the voluntary association and the city administration in relation to contracts and contract negotiation see Janice Harvey, "The Montreal Ladies' Benevolent Society Industrial School: An Interface of Public and Private," in Fernando Lopez Mora, ed., *Modernidad, ciudadanía, desviaciones y desigualdades: por un análisis comparativo de las dificultades del paso a la modernidad ciudadana*, (Modernité, Citoyenneté, Déviances et Inégalité. Pour une analyse comparative des difficultés du passage à la modernité citoyenne), Cordoba, Spain: Servicio de Publicaciones, Universidad de Cordoba, 210, 309–327.

marched the children from one activity to the next. School took up five hours a day. The curriculum focused on a basic education—reading, writing, arithmetic, geography—as well as on religious and moral education and character building. Three teachers worked in the school from 1894; at least two of them were trained and certified. Although the school was not officially under the school board, the Protestant school commissioner who inspected it in 1903 was said to be 'very much pleased' with what he found.[34] In 1917 the children began to attend a nearby public school. One teacher was kept on staff to supervise the younger children in the day and help with homework after school.

As an industrial school, the institution was supposed to provide technical or industrial training. Before the late 1890s, the children helped with household tasks and learned skills like sewing, knitting, gardening, and chopping wood, but little actual structured training occurred. There was a concerted effort to increase this by 1899. At that point boys were taught carpentry and cobbling; training in chair caning, basket making and weaving were subsequently added. Girls had classes in sewing and cooking as well as training in aspects of domestic service.[35] Annual Reports from the 1890s include a list of all the products made in the institution and references to sewing rooms and workshops begin to appear occasionally. It is important to note, though, that these training classes involved all the children in the institution not just the industrial school children and that craftsmen were hired on an hourly basis rather than any being added to the regular staff.

Technical training of this sort was, of course, also a form of work and reduced costs in the institution. The children helped with most of the household chores connected to cleaning, food preparation, caring for the grounds, and so on. They also made much of the clothing, helped by the Matron and the committee members who cut out the fabric for them. In many years sewing women were hired only when entire outfits were needed or to make outdoor clothing. The new skills like cobbling and carpentry helped to further reduce costs. The 1899 Annual Report indicates that the boys did all the carpentry in and around the house and repaired all the boots while the girls grew vegetables in their gardens.[36]

[34] LAC, LBS, *Annual Reports*, 1903.

[35] LAC, LBS, *Annual Reports*, 1883–1921.

[36] LAC, LBS, *Annual Reports*, 1899.

In that year we also find that a knitting machine had been purchased as a time saver.[37] Despite the fact that the children made a major contribution to the daily maintenance of the house, however, the committee had full-time workers to do the major house cleaning, the cooking, and the laundry. Furthermore, budget constraints never resulted in a situation whereby the industrial school children were required to work to earn income to contribute financially to the institution since the organisation received income from board and private donations and was not expected to be self-sufficient.

This stands in sharp contrast to the norm in many such institutions elsewhere. The Soeurs du Bon Pasteur, for example, had the older girls in their Montreal institution work in their laundry service and later at sewing, a practice that was also common in institutions run by Catholic nuns in Ireland.[38] Meanwhile, the older boys in the Montfort school a few miles from Montreal worked in the bakery, the workshops and on the farm.[39] At the Victoria Industrial School for Boys in Mimico near Toronto (Ontario), boys spent three hours a day in school but four and one-half hours in manual training, including 'tailoring, farming, carpentry, painting, printing, shoe repairing and grounds maintenance', as well as doing the basic housekeeping including cooking.[40] The emphasis on the financial advantage of manual work was even clearer at the Provincial Industrial School for Boys in Vancouver (British Columbia) that was designed to be self-supporting. Here, boys spent half of their time clearing land, farming, gardening, doing carpentry, shoemaking and making their own uniforms.[41] In England, many schools kept costs down by

[37] The children had produced fifty pairs of socks in one month. LAC, LBS, *Annual Reports*, 1899.

[38] See Strimelle, "Le soin des âmes," 29–30.

[39] Burban, "Les origines institutionnelles de la protection de l'enfance au Québec," 146.

[40] The school was opened in 1887. See Paul W. Bennett, "Turning 'Bad Boys' into 'Good Citizens'": The Reforming Impulse of Toronto's Industrial Schools Movement, 1883 to the 1920s," *Ontario History*, Vol. 78, No. 3, September 1986, 218 and "Taming "Bad Boys" of the "Dangerous Class": Child Rescue and Restraint at the Victoria Industrial School 1887–1935," *Histoire Sociale / Social History*, Vol. 21, No. 41 (May 1988), 86.

[41] The institution was opened in 1905 when the Juvenile Reformatory was disbanded. See Diane Matters, "The Boys' Industrial School: Education for Juvenile Offenders," in J. Donald Wilson and David C. Jones, (eds.) *Schooling and Society in Twentieth Century British Columbia*, Calgary, Alberta: Detselig Enterprises Ltd., 1980, 57.

minimising diet and conditions but also had the children work or even hired them out. In the most exploitative cases, schools were connected to farms or to merchant ships thus providing a free source of contract labour and profit for the managers.[42] Boys in Irish schools did agricultural work while girls did the cleaning and cooking often of entire institutions some of which included fee-paying students in the same buildings.[43]

Two factors contribute to explaining this different emphasis on work. Age is one. Quebec's industrial school legislation placed the upper age limit for placement at 14. In many of the Catholic institutions children were considered too young to leave when their placement was complete and remained in the school working until they were young adults, especially if their parents were unable to support them.[44] The LBS, however, never kept boys older than 13 or 14 (even those in the industrial school) and only kept girls if they were apprenticed to the society. Thus, the children were younger than many in industrial schools elsewhere where they often remained until their late teens.[45] Nonetheless, even young children in other institutions did the requisite manual labour. Of even more importance is the fact that industrial schools as they had evolved elsewhere in Canada blurred any distinction between dependent children and young offenders by placing them in the same institution.[46] In Quebec,

[42] Hurt, "Reformatory and industrial schools."

[43] Raferty and O'Sullivan, *Suffer the Little Children*, Chapter 7 and individual cases in passing.

[44] Strimelle, "La gestion de la déviance des filles," 167, 245; Burban, "Les origines institutionnelles de la protection de l'enfance au Québec," 146; Dale Gilbert, "Assister les familles de Québec. L'école de réforme et l'école d'industrie de l'Hospice Saint-Charles, 1870–1950," *Revue d'histoire de l'Amérique française*, Vol. 61, No. 3–4, (Winter-Spring 2008), 493. This was also the norm in Ireland where children remained for many years. See Raftery and O'Sullivan, *Suffer the Little Children*.

[45] Originally boys in Mimico were mainly from 7 to 14; by 1920 most were between 9 and 16. In the Vancouver school the average age was 14 to 17 although boys could be between 9 and 19. Bennett, "Taming "Bad Boys" of the "Dangerous Class," 79; Matters, "The Boys' Industrial School," 60.

[46] For this development in terms of the Ontario law see Charlotte Neff, "The Ontario Industrial Schools Act of 1874," *Canadian Journal of Family Law*, 12, No. 1 (March 1994), 171–208 and her "Government Approaches to Child Neglect and Mistreatment in 19th Century Ontario," *Histoire sociale/Social History*, Vol. 41, No. 81, (May 2008): 183. For British Columbia see Matters, "The Boys' Industrial School." For Nova Scotia, see Renée N. Lafferty, *The Guardianship of Best Interests. Institutional Care for Children of the Poor in Halifax, 1850–1969*, Montreal & Kingston: McGill-Queen's University Press, 2013.

legislation made a clearer distinction between these categories by establishing both reform schools and industrial schools and this distinction was maintained over time. This distinction also existed in England but historians have found that it was largely artificial and the two types of institution were, as Cale notes, 'virtually indistinguishable'.[47] In Quebec some nuance existed in the case of Catholic orders that managed dual-purpose institutions, that is, both a reform and an industrial school within the same physical structure. In these, the sisters often allocated children according to age and corrigibility rather than initial admission status.[48] However, since the LBS was uniquely an industrial school, no child was ever placed there as a result of an infraction. This explains why the institution's directors viewed these children as basically the same as their 'charity' cases.

Another difference that follows from this is the use of extreme discipline. On a few occasions the LBS committee investigated allegations of excessive discipline and a father brought a lawsuit against one of the institution's nurses in 1907 for the ill-treatment of his son. The matter was dealt with by the lawyers and the committee and their advisors expressed confidence that the nurses had 'only done what was necessary to maintain discipline in the Institution'.[49] In 1910 the question of discipline was again brought up when a sewing woman complained to the Society for the Protection of Women and Children that children were being whipped in the institution. The staff had indeed been using a piece of rubber strap to discipline children. The sewing woman subsequently retracted her accusation under questioning but the committee decided to get a regulation school strap and told staff that no child was to receive 'more than a few palmies'.[50] It is clear by these examples that physical punishment was used, even if it was probably not excessive by institutional standards, and that the committee had a tendency to defend its use as it attempted to protect its Directors from criticism.

[47] Cale, "Girls and the Perception of Sexual Danger," 205.

[48] See Strimelle, "Le soin des âmes," 24–25 and Gilbert, "Assister les familles de Québec," 494.

[49] LAC, LBS, *Minutes*, 25 November 1907.

[50] LAC, LBS, *Minutes*, 1 February, 1910; 1 March 1910.

Still, this stands in sharp contrast to conditions in industrial schools elsewhere where corporal punishment, solitary confinement and bread and water diets were common.[51] The exposé of the *Halifax Citizen* reporter in 1924 who described the 'Fiendish Cruelty' practiced at the Halifax Industrial School (in Nova Scotia) as 'treatment savouring of the dark ages' and revealed acts of deliberate physical abuse, for example, led to a public inquiry.[52] The description of Mimico when it was closed in 1934 as operating under 'a barbarous and antiquated system' is much closer to that of Halifax than the LBS.[53] This appears to be the case as well with many of the industrial schools in England and Ireland where conditions were pitiful and children were systematically abused.[54]

These differences in terms of work and punishment affected the condition of life in the LBS industrial school and made it different than what historians have found to be the norm in many such institutions elsewhere. One technique that the lady directors did use, however, and that must have impacted on the children's quality of life was silence. The rule of silence was imposed during meals and while children were marched from one activity to the other. During school and activities like singing children 'spoke' with a collective voice, not as individuals. This reign of silence was thought to be a form of character building and commonly used in child institutions but not allowing the children to express themselves freely was a form of control and discipline even if the managers did not consciously recognise it as such.[55]

[51] For a particularly interesting discussion on punishment methods, their connection to training and the debates surrounding them, see Matters, "The Boys' Industrial School," 55–59.

[52] Lafferty, *The Guardianship of Best Interests*, 3–5, 8–10.

[53] This was the comment made by E. C. Reed, a director of Toronto's Big Brother Movement as quoted in Bennett, "Taming "Bad Boys" of the "Dangerous Class," 74, 95. See also Bryan Hogeveen "Accounting for Violence at the Victoria Industrial School," *Histoire social/Social History*, Vol. 42, No. 83, (May 2009), 147–174.

[54] On this see Hurt, "Reformatory and Industrial Schools before 1933," 45–58; Raferty and O'Sullivan, *Suffer the Little Children* (although this latter book puts most of the emphasis on twentieth-century examples).

[55] For an excellent study of the use of techniques like silence and the control of the body in reform institutions and an example of a Quebec institution (Boscoville) that attempted to build re-education on the opposite approach, see Louise Bienvenue, "Sortir de la délinquance par l'expérience institutionnelle. Une histoire racontré par les voix et les par les corps (1873–1977), *Revue d'histoire de l'Amérique française*, Vol. 65, No. 2–3, (Autumn 2011–Winter 2012), 307–330.

Despite the fact that their institution was in the middle of the city, the committee was influenced by the nineteenth-century discourse on the health and character advantages of the countryside. Hence it is not surprising that they considered physical exercise important to the children's health and attempted to encourage this. However, budget problems and logistics constrained many of their efforts. For example, they did not feel that toys or sporting equipment warranted the use of limited institution funds and very few of these were mentioned before 1899.[56] Moreover there was no space in the overcrowded building for an indoor playroom. Even walks and outdoor activities posed problems, especially in the winter, as there was often an insufficient quantity of warm clothing for all of the children to leave the institution at the same time. The committee passed a motion in 1894 requiring daily walks or fresh air exercise and even added this into the institution bylaws in 1897, but the institution's Matron's Journal shows that this was not done.[57]

In the early twentieth century things improved. The outdoor playground was equipped with swings and slides in the summer and a skating rink in the winter, and an indoor playroom was added in 1903 enabling the institution to have weekly gymnastics classes. In the summer the children spent several days a week in the park on the mountain[58] and from 1917 on they spent most of the summer at a lodge rented in St. Lambert on the south shore of the St. Lawrence River across from Montreal.[59] Finally, events like Christmas and Easter had always been marked by special 'family' activities and committee members organised different forms of entertainment for the children.

Generally, health in the institution was good. Doctors visited regularly and dentists, oculists and dermatologists treated the children but there was no designated infirmary until after 1900. The diet was described as 'plain but good', which basically meant an emphasis on cheap carbohydrates. Not having access to a farm, the institution had to purchase all of

[56]In that year the children themselves used the profits from a sale of their fancywork to buy skipping ropes and footballs. LBS, *Minutes*, March 1899.

[57]LAC, LBS, *Minutes*, January 1894.

[58]They had been doing this from the 1870s but it progressively became more and more common.

[59]LAC, LBS, *Annual Reports*, 1917–1921.

its food although it received considerable private donations of milk and vegetables, albeit often of somewhat dubious quality. The diet was investigated at several points including in 1908 when some of the women on the committee thought the children needed more substantial food. The final decision was to add some variety, the doctor having indicated that the diet was nourishing enough.[60] Still the fact that 12 children were treated for malnutrition in 1920 raises some questions, although it is impossible to tell from the references if these were newly admitted children or not.[61] Overcrowding was also a problem especially in the school and playrooms, but even in the dormitories children slept three in a bed into the late 1890s.[62]

Although very few deaths occurred, infectious diseases and serial contamination were often a serious problem. The institution was closed to the public during epidemic outbreaks in the city but as with all child institutions, regular bouts of diphtheria, measles, scarlet fever, chicken pox, and whooping cough still occurred as well as ear, eye and skin infections and respiratory diseases. Some of the health problems were connected to the fact that the main building dated from 1856 and thus dampness and heating problems were rampant.[63] Heating was a major expense in light of their tight budgets and, given the paucity of warm clothes and problems with drafts, the children must have been cold on a regular basis.[64] Problems with faulty drains were persistent into the twentieth century and were linked to many cases of infectious diseases and even deaths.

Living in a large congregate institution such as this one with its lack of freedom or room for any individuality, its discipline, routine and regimen, isolated from their families and friends must have been hard for many of the children, especially the industrial school children who were incarcerated for a specific period of time and tended to stay longer than the other children. Despite this the managers prided themselves on the

[60] LAC, LBS, *Minutes*, 28 January 1908; 25 February 1908.

[61] LAC, LBS, *Annual Reports*, 1920, 13.

[62] The shift to single iron beds was not complete until 1898.

[63] The children's new beds had one blanket, a comforter and a quilt for warmth. LAC, LBS, *Minutes*, January 1898.

[64] In 1907 for example one of the committee members on visitor duty called attention to the fact that the children had bare feet and requested that the committee purchase felt slippers for them. LBS, *Minutes*, 26 November 1907.

fact that most visitors commented on the children's smiling faces and how they did not have an 'institutional look'. They credited this to 'good fare and clothing, with as much fresh air and exercise as can be provided' but they recognised the human factor as well indicating that the 'kindness of the superintendent, the teachers and the nurses is perhaps even more effective in bringing about this happy state of affairs'.[65] As a norm they did not attempt to sever the children's ties with their families; most of the children returned to their parents once their term was completed and parents were allowed to visit once a week although after 1900 these visits were limited to once a month during the winter. The judge who placed the industrial school children also considered family contacts important. In 1902, for example, when the managing committee wanted to close the institution during an epidemic he insisted that the mothers of industrial school children be allowed to visit despite the evident threat of infection.[66]

Overall the women running the charity saw themselves as rescuing children from squalid surroundings and providing them with protection—a safer place to be, superior health care and an education. Occasional comments revealed that they had a real suspicion of working-class lifestyles and believed that the children admitted needed to be re-educated and trained in order to 'grow up into good and useful men and women'.[67] Budget restrictions and class-biased notions of 'appropriate' conditions inside charitable institutions limited conditions somewhat as we have seen, but as early as 1888 the committee told supporters that 'The funds of the Society are as carefully and economically administered as possible, the first consideration being the health and comfort of the inmates'.[68] By 1920 they spoke of their attempt to use 'the best modern methods available' to train the children and of the fact that 'the health, education and morals of the children are not the only things constantly in the minds of your committee; their happiness is of a great consideration'.[69] Therefore, despite minimalist conditions in some areas and

[65] LAC, LBS, *Annual Reports*, 1906, 4.
[66] LAC, LBS, *Minutes*, 30 December 1902.
[67] LAC, LBS, *Annual Reports*, 1911, 10.
[68] LAC, LBS, *Annual Reports*, 1888, 9.
[69] LAC, LBS, *Annual Reports*, 1919, 10.

some examples of parsimonious expenses, the institution and the industrial school inside it had few of the characteristics one associates with repressive or reformatory institutions and certainly stands in sharp contrast to descriptions of industrial schools in many other places. Rather it was a good example of a protective institution as described by Timothy Hacsi in his work on orphanages.[70] In this way it reflected the distinction Quebec legislators had made in 1869, at least theoretically, between industrial schools and reform schools—a distinction they reinforced in the Revised Statutes of 1888 and 1909 by listing the industrial school legislation under the section on charitable institutions while that covering reform schools was put under the section on police and public order.[71] But we have also seen that the industrial schools' legislation included many potentially repressive stipulations and placed marginal but non-delinquent children in institutions for predetermined periods of time.

Despite the proportional importance of the industrial school within the larger institution the elite women who ran the Montreal Ladies' Benevolent Society rarely mention it in their Annual Reports. Except for one occasion in 1909 when the secretary referred to the industrial school children as being 'so ill-treated by their parents that the court has had to interfere', they tended to consider the children as the same as those who had always entered the institution.[72] They referred to the government board payments as 'board for destitute children', for example, and in the early years when this was possible regularly applied to the city to officially shift children already in the institution to the industrial school list once they reached the requisite age of six.

An analysis of the children sent to the industrial school by the court can help to clarify these aspects. Under what circumstances were children sent by the court and was this mainly a question of regulation or destitution? Furthermore, what role did these institutions serve in the city?

[70] Timothy Hacsi, *Second Home: Orphan Asylums and Poor Families in America*, Cambridge: Harvard University Press, 1997, 55–59.

[71] Joyal, "L'Acte concernant les écoles d'industrie," 48.

[72] LAC, LBS, *Annual Report*, 1909.

3 The Montreal Ladies' Benevolent Society Industrial School: Assistance or Regulation?

The city was involved in industrial schools as a result of the 1884 amendment mentioned previously that provided for mayors to have children admitted but also gave municipalities a financial obligation to pay half of the board cost for certain children. This was the beginning of a series of amendments to the law that shifted much of the responsibility (and the cost) for these institutions away from the Quebec government to the municipal level.[73] Furthermore early in the twentieth century the city began to sign contracts directly with the industrial schools to place children for whom they would pay the entire board.

To establish some control over costs and admissions the city implemented a one-year admission rule, renewable, in 1894 whereas in the past children had often been admitted for two or three years. These 'recommitments' made up a substantial proportion of the court cases in many years after that.[74] Parallel to assuming more financial responsibility, the city developed a much more sophisticated structure in relation to admission to industrial schools. By 1900 a city employee investigated each case and over time the application form became longer, forcing families to provide more information.[75] In 1907 the Bureau of Municipal Assistance took over responsibility for the admission process.[76]

The files for these applications to admit a child into an industrial school are still extant in the city archives for the period from 1892 to 1915.[77] They include the investigator's report when one existed but even more important the papers pertaining to the actual application before the court. These archives have applications for admission to the Montreal Ladies' Benevolent Society industrial school covering 821

[73] See note 9. Jean-Marie Fecteau, "Un cas de force majeure: Le développement des mesures d'assistance publique à Montréal au tournant du siècle," *Lien Social et Politiques – RIAC*, Généalogies de l'État-providence, Vol. 33, (Spring 1995), 112.

[74] Archives de la ville de Montréal (AVM), 15, Bien-Être Social, Série 3, Enfants sans tutelle, 1892–1915.

[75] AVM, 15, Bien-Être Social, Série 3, Enfants sans tutelle, 1892–1915.

[76] Fecteau, "Un cas de force majeure," 110.

[77] AVM, 15, Bien-Être Social, Série 3, Enfants sans tutelle, 1892–1915.

children in this period. These include successful admission requests (352 children), readmission requests (274 children), as well as requests that were refused (89 children). Not all the children accepted actually entered the industrial school since some of the cases were discontinued (106 children) and others were refused admission due to overcrowding or health considerations or simply never appeared.[78]

Merging the information included in these court files with that in the LBS admission register provides a good idea of the circumstances under which children entered the industrial school and who they were. We find that the court children were quite young. The average age was 7.8; the most common ages being 6, 7, 8, and 9. As well there were roughly an equal number of boys and girls over the period. This latter is somewhat misrepresentative since very few boys were sent to the LBS from 1916–1917 to 1920–1921 when the city sent most of the court boys to the Belmont Home that had been opened in Cowansville by the Society for the Protection of Women and Children. In the years 1883 to 1916 more boys than girls had been admitted to the LBS industrial school.

Although four of the children entered from the Recorder Court into the industrial school were actual orphans and 38 had been abandoned, most had some reference to a parent. About a quarter of the children had both parents, but the largest group (69%) came from single-parent families. Most of these parents were widows or women deserted by their husbands, left alone with several young children to support and only limited means. Many suffered from health problems or were unable to supervise children while they worked or quite simply were too poor to support children. Two-parent families often suffered from a combination of circumstances. Typical cases included one parent ill and other unemployed, for example, or one in jail, the other unable to work and supervise children at the same time or perhaps about to have a child and unable to work to support her other children. Some of the families were homeless; some of the children were homeless having been abandoned by parents or left by their parents with people who had then abandoned them. Thus most of the children were sent to the industrial school as a direct result of their parents' inability to provide support

[78]The committee refused children during epidemics and children with ringworm or tubercular problems. There are also several cases of children placed by the court but whose names were not in the LBS admission register.

because of illness or poverty. We find very little evidence of cases one might associate with children placed in an industrial school because they represented a risk of delinquency such as uncontrollable children or because they were being ill-treated or lived in potentially dangerous environments.[79] Only 48 children or 10% had parents in jail and only 35 children had a parent whose morality was questioned usually in relation to alcohol.

Overall the characteristics demonstrated by the group of children admitted to the industrial school, including age, gender, family make-up and the circumstances explaining their admission, mirrored those of the other children in the institution. The only difference was the group of children with parents in jail and possibly those who had been abandoned although the committee had always admitted a few children in these two categories before.[80] That the city itself recognised poverty as the predominant cause behind admission requests is proven by the fact that as the application form to request placing a child became longer and longer, the new questions were all designed to ascertain more complete information on the family's financial and employment situation (and that of their relatives) and their ability or inability to provide support. Furthermore, the evaluation that family members were able to support the children was the most common reason for which applications were refused.

In former years many of these children would have been admitted to the LBS as normal cases. As family historians like Bettina Bradbury have showed, placing children in a child charity like this on a temporary or longer-term basis was a common working-class survival strategy.[81]

[79] Cale, for example, finds that the fear of parental contamination (especially immorality) was a major cause of the admission of girls into industrial schools through the Church of England Waifs and Strays Society. Cale, "Girls and the Perception of Sexual Danger," 204–205.

[80] This was unusual for a private child charity and was probably the result of the fact that Montreal did not have a poor house where such children could go instead.

[81] Bettina Bradbury, "The Fragmented Family: Family Strategies in the Face of Death, Illness and Poverty, Montreal. 1850–1885," in Joy Parr (ed.), *Childhood and Family in Canadian History*, Toronto: McClelland and Stewart, 1982, 109–128. For another example, see Diane Purvey, "Alexandra Orphanage and Families in Crisis in Vancouver, 1892 to 1938," in Russell Smandych, Gordon Dodds and Alvin Esau (eds.), *Dimensions of Childhood: Essays on the History of Children and Youth in Canada*, Winnipeg: University of Manitoba Legal Research Institute, 1992, 107–134.

The children found themselves in the industrial school component, or 'on the city list' as the committee called it, instead because they met the criteria as stipulated under the law (usually poverty or illness) and the city (or the Provincial Secretary) had accepted to pay their board so that they would be ensured a place in the charity. This situation created a circular effect. As more and more children entered the industrial school component, less room was left for charity children and families were often forced to apply through the court to be sure to be able to have their children admitted to the institution when they needed help. Financial considerations also came into play. As costs rose and government/city board failed to keep up,[82] the institution's managers tried to generate income by charging parents board if possible. Therefore, destitute parents who could not pay board were forced to apply to the court rather than the charity as they might have done before.

Many of the nineteenth-century cases were brought to the court by the Society for the Protection of Women and Children. In the twentieth century they were joined in this by the Charity Organisation Society (COS). From 1892 to 1915 these organisations presented approximately one-third of the cases and wrote supporting letters for many more. However, it became much more common for families, usually mothers, to bring their cases themselves after 1905 and in many years from 1905 to 1915 they brought one-half or more of the industrial school admission applications. In all, mothers or other family members filed applications for 352 children covering 43% of cases brought to court between 1892 and 1915. Many of these were mothers asking the court to allow their children to remain in the industrial school after their term was completed, that is to be recommitted.

Thus, many mothers appeared before the court to request that one or more of their children be placed or be kept in the industrial school. In 1911, for example, 9 mothers brought new cases and 16 mothers asked the court to recommit their children already in the institution. None of these mothers spoke of problems controlling their children.

[82]The board paid was $5.50 per child from 1884 to 1910 when it was raised to $7 for girls and $8 for boys. In 1916 the payment went to $9 but the committee estimated costs as $13.75. Costs had risen to $20.20 by 1919 and to $22.41 in 1920, when the city agreed to raise the payment to $12.00. LAC, LBS, *Annual Reports*.

Rather, mothers spoke of their poverty, of the other children they had under their care, of their delicate health, or their need to work, and, most of all, of the men who had died or had deserted them and their children. The most standard reason cited on the application form to justify the application was that the father was no longer providing support. In an economy that undervalued the work of women it was always difficult to support a family without a male wage. The chronic poverty presented in these cases testified to this and to the terrible circumstances under which so many Montreal families were forced to live.

In fact, although terms such as internment, commitment, order of release, and so on were used, the real process was one in which people struggling with poverty or other related problems applied to the city to help them by having their children admitted to an industrial school and paid for. And, in accordance with this approach, the city accepted to pay to place more and more children in these institutions as a way to respond to the rising levels of poverty inside its community. Once it became clear the city would do this, the number of applications increased. Thus, we see the number of Protestant applications before the court which had ranged from an annual low of 0 to a high of 16 in the 1890s, increase to an average of 68.5 a year from 1907 to 1915. And although the number of cases that were rejected increased after 1903, the total number accepted also increased.

As the city revenue inspector A. Bienvenue admitted in 1905, 'Unless the most extreme cases only are accepted, you will see that the City is compelled to intervene for humanity's sake just as often as through absolute necessity'.[83] Following the same logic the mayor recommended that the Recorder Court judge recommit children when parents were not yet able to care for them. He also wrote to the judge to request that children be released early when parents informed his office that they were able to resume the care of their children.[84] Clearly, the ability of parents to support their children was much more important than the legality or

[83]AVM, Série 2, no. 114, "December 5, 1905, Report by A. Bienvenue to the Chairman and Members of the Sub-Committee on questions of Industrial Schools and Insanity," 2.

[84]More research is needed on these various types of flexibility within the Recorder Court's approach to industrial school placements and the role parents played in this.

the social regulation represented by placement in an industrial school. Clearly as well, industrial schools had assumed a major role in the city's response to poverty and had become an important part of the institutional network in the city.

4 Conclusion

In conclusion, although a number of the cases brought before the Recorder Court for admission to the Montreal Ladies' Benevolent Society industrial school before 1921 were abandoned children or children with parents in jail, a majority of cases were children whose parents were having trouble due to extreme poverty or health problems. The city was able to take advantage of the budgets at its disposal and the wide scope of the Industrial Schools Act (that included illness and the inability to provide support as grounds for placement) to use the industrial schools as a form of municipal assistance to poor families who were requesting aid (themselves or via an organisation like the SPWC, the COS or the LBS itself) from a government that did not as yet have an official welfare structure. In this way the city placement of these children in the Montreal Ladies' Benevolent Society's industrial school gradually became more akin to an early version of municipal assistance than to a direct and regulatory state intervention in unwilling poor families.

It is also clear that the decision to have the Protestant industrial school children enter an existing child charity rather than open a specialised institution had an impact on the treatment they received. The female committee in charge of the charity and by default the industrial school inside it used a protective approach rather than a repressive one to manage their institution. They made no distinction between the court children and those placed by their parents and, although some problems existed related to minimalist conditions, overall conditions inside the institution were much better than those found in many industrial schools elsewhere. Nonetheless, it is also clear that institutions like these (even charities) were part of the wider social regulation structure set up to police families in the larger sense of the term. The power relations surrounding the interaction between directors and applicants and the fact that securing aid involved placing children in an institution rather than providing direct aid to needy families in their homes was further exaggerated in the case of industrial schools as it involved a court process. This added an additional level of stigma for the families concerned and

the scrutiny of an official investigation. Still, the process included some flexibility and parents who were able to request the early release or the recommitment of their children were not completely powerless. Thus, gradually over the early twentieth century the industrial-school legislation provided the municipality with a way to extend some aid to the city poor and these institutions, especially that run by the Montreal Ladies' Benevolent Society, evolved within a logic that was one that mixed both regulation and assistance.

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PART III

A New Institution in the Welfare Era: Juvenile Court Policies and Practices

CHAPTER 6

Between Great Expectations and Hard Times: The First Decade of the Geneva Children's Penal Court, 1914–1925

Joëlle Droux and Mariama Kaba

1 Introduction

The first jurisdictions specialised in the treatment of juvenile delinquency took form at the end of the nineteenth century, particularly in the USA.[1] This innovation was partially meant to address the crisis affecting the various institutions for delinquents set up after the 1860s, mainly

[1] Jean Trépanier, "Les démarches législatives menant à la création des tribunaux pour mineurs en Belgique, en France, aux Pays-Bas et au Canada au début du XXe siècle", *Le Temps de l'histoire: Pratiques éducatives et systèmes judiciaires*, September 2003, no. 5, pp. 109–132.

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penitentiary camps and correctional homes: aimed at detaining guilty children to sanction, but also to re-educate them, these structures seemed out of breath by the turn of the century. Their efficiency, both as to the regeneration of young offenders and the deterring power exerted on potential criminals, was strongly being questioned.[2] Various experts, such as philanthropists or jurists, were searching for alternatives in the management of juvenile delinquency that would change its treatment both upstream (at the level of the body in charge of judgement) and downstream (at the level of the system of sentences and measures put in place). The model that emerged out of this period of intense reflection and debate was that of the juvenile court, articulated around the concept of a single judge, armed with a new array of measures (mostly probation for minors).

This model was imported at the turn of the century by many countries—mostly Europeans—and among them, by Switzerland.[3] In this federal State, each of the 26 cantons that formed the Confederation organised its own penal system, until the adoption of the Federal Penal Code in 1942, which partially unified the judicial system for the whole country. Under this new Code, specific measures and dispositions for the treatment of juveniles were thus established on a codified basis. But before that date, several cantons had already legislated in order to create special juvenile courts. Among them, Geneva appears as a particularly interesting case-study, since it was the first canton to consider and promote the establishment of such a tribunal in 1908, in the form of a *Chambre pénale de l'enfance* (Children's Penal Court, hereafter the Court). By focusing on the import of that jurisdiction in a specific legal

[2] See *Le Temps de l'histoire: Pratiques éducatives et systèmes judiciaires*, September 2003. More generally on the institutions dealing with juvenile delinquency, see Marie-Sylvie Dupont-Bouchat and Eric Pierre (Eds.), *Enfance et justice au XIXe siècle*, Paris, Presses Universitaires de France, 2001; Jeroen J.H. Dekker, *The Will to Change the Child: Re-education Homes for Children at Risk in Nineteenth Century Western Europe*, Frankfurt a.M./Bern, Lang, 2001.

[3] Joëlle Droux, "Une contagion programmée: La circulation internationale du modèle des tribunaux pour mineurs dans l'espace transatlantique (1900–1940)", in Martine Kaluszynski (et al.) (Eds.), *Les sciences du gouvernement: circulation(s), traduction(s), réception(s)*, Paris, Economica, 2013, pp. 102–117.

context, it is possible to show the logic of selective appropriation prevailing in the international circulatory movements dedicated to social policies, thus adding to the growing field of historical investigation dealing with the dynamics of internationalisation over the past decade.[4]

This analysis of a local form of foreign-induced social reform will be dealt with, trying to assess to what extent the court fulfilled the legislator's initial motive. First, we shall study the context of the parliamentary debates that led to the creation of this new jurisdiction. We will also draw a portrait of the first president of the juvenile court appointed in 1914, since his personality was deemed essential to the court's success, according to its early founders. In the last two sections, we will concentrate on the actual functioning of this court (nature and evolution of offenders indicted and/or convicted, sentences and measures pronounced), during its first decade. Based on original archive material, we will see how the court progressively established itself, at least partially, as a platform of collaboration and negotiation between magistrates and families in order to enforce common educational and behavioural values on rebel or undisciplined youth.

2 The Children's Penal Court: The Legislators' Intention

2.1 An Ambitious Child Welfare Context

The first question raised by the Geneva juvenile court concerns its very creation. One can legitimately wonder what made a handful of Members from the Geneva Parliament (hereafter MP) propose such a major modification to the Geneva judicial system. To be sure, the drafting of the bill was not linked to any dramatic increase in the number of juvenile offenders. This argument was indeed never raised in Parliament.[5] Quite the contrary. According to the project's supporters, the number

[4] Sandrine Kott (Ed.), *Une autre approche de la globalisation: Socio-histoire des organisations internationales (1900–1940)*, Special Issue, *Critique internationale*, 2011, no. 52; Pierre-Yves Saunier, "Les régimes circulatoires du domaine social 1800–1940: projets et ingénierie de la convergence et de la différence", *Genèses*, 2008, no. 71, pp. 4–25.

[5] Contrary to the British case, according to Victor Bailey, *Delinquency and citizenship: reclaiming the young offender, 1914–1948*, Oxford, Clarendon Press, 1987.

of delinquents was low compared to the population of 10–19 year olds (around 26,000 individuals in Geneva in 1910): from 1887 to 1907, out of the 3014 hearings at the local correctional and criminal courts, only 141 concerned youths (56 of whom were acquitted).[6]

If the project to establish a special court for youths was not directly linked to any increase of juvenile criminality, its creation was undoubtedly related to the wide interest that the issue of child welfare and protection had already gained throughout the Western world from the late nineteenth century. In Switzerland as elsewhere, during the 1880s–1890s, a growing panel of laws and institutions were dedicated to the child, its well-being and education: child labour laws, compulsory education laws, orphanages, day-care centres, paediatric hospitals, correctional homes, school-based and extracurricular institutions, and so on.[7] No doubt the eugenics context prevailing in most Western nations[8] was not foreign to the building of this consensus, which brought together social partners, political movements, philanthropic networks, scientific and pedagogic circles. All these activists were convinced that national vigour would be strengthened by backing youths to guarantee their social usefulness, as well as their integration: in the particular case of Geneva, where citizens of foreign origin totalled about 40% of the whole population in 1914, the state's social policy was supposed to achieve a better integration of these recent immigrants.[9]

In this respect, the issue of juvenile delinquency was regarded as a major risk weighing on the whole of public and private investments consented in the name of the safeguarding of the 'race'. In the eyes of legislators, the danger represented by this population of young delinquents

[6] *Mémorial du Grand Conseil* (hereafter *MGC*), 1908.

[7] On childhood protection movements, see Roger Cooter (Ed.), *In the name of the child: health and welfare, 1880–1940*, London-New York, Routledge, 1992; Marijke Gijswijt-Hofstra (Eds.), *Cultures of child health in Britain and the Netherlands in the twentieth century*, Amsterdam-New York, Rodopi, 2003 (Clio Medica, 71); Martine Ruchat, *L'oiseau et le cachot: naissance de l'éducation correctionnelle en Suisse romande (1800–1913)*, Geneva, Ed. Zoe, 1993.

[8] Alison Bashford and Philippa Levine (Eds.), *The Oxford Handbook of the History of Eugenics*, New York, Oxford University Press, 2010; Stefan Kühl, *For the betterment of the race. The rise and fall of the international movement for eugenics and racial hygiene*, New York, Palgrave Macmillan, 2013.

[9] Rita Hofstetter, *Les Lumières de la démocratie: histoire de l'école primaire publique à Genève au XIXe siècle*, Bern, Lang, 1998, p. 336 sqq.

was twofold. Not only were they threatening the community, they were furthermore seen as corrupting elements for the youths one had been trying to protect against a number of risks for the past few decades: 'Let one corrupted child, in other words let a black sheep, slip in with these children, and these very children will be contaminated, and who knows, rapidly dragged down a fatal slope'.[10]

As to the form taken by the reaction to this risk, it owes much to the circulation of social intervention models among internationally minded reformist networks. The juvenile court model, as a US progressive innovation, thus clearly inspired the Geneva legislators, eager by tradition to stand at the forefront of international social reform. Set up in 1899 in Illinois and quickly adopted by US member states,[11] the model of a single and specialised judge was widely circulated in European reformist milieus, through the mediation of various expert networks. Thus, the Head of the Geneva Department of Justice and Police first proposed founding its own juvenile court after hearing it highly praised during a Swiss congress of legal reform.[12] In this context of national and international debates where philanthropic emulation nourished penal and penitentiary reforms,[13] the supporters of the project in Geneva called on their colleagues to take the lead in innovation on the federal level: 'Geneva will be the first in Switzerland to have attempted such a reform of juvenile courts. It will have shown once again that no new idea, no matter how small, leaves it indifferent'.[14] A combination of national ambitions and security-related restraint, of eugenist fears and child protection fever, the Geneva draft bill for the Children's Penal Court can be sketched as a compromise between reformist action and social defence.

[10] *MGC*, 1912 (Annexes), p. 9.

[11] On the US juvenile court model at its beginning, see Thomas J. Bernard and Megan C. Kurlychek, *The Cycle of Juvenile Justice*, 2nd edition, New York, Oxford University Press, 2010; David S. Tanenhaus, *Juvenile Justice in the Making*, New York, Oxford University Press, 2004.

[12] See Joëlle Droux (draft version), "Un nouvel âge pour la justice des mineurs en Suisse et à Genève: la difficile transition entre dispositions répressives et juridictions éducatives (1890–1950)", in Jean Trépanier (et al.) (Eds.), *Juger les jeunes: une problématique internationale, 1900–1960* (to be published).

[13] On international congresses as platforms of exchanges between reformers networks, see Chris Leonards, "Border Crossings: Care and the 'Criminal Child' in 19th Century European Penal Congresses", in Pamela Cox and Heather Shore, *Becoming Delinquent: British and European Youth, 1650–1950*, Ashgate, Dartmouth, 2002, pp. 105–121.

[14] Vuagnat (*MGC*, 1908, p. 1173).

2.2 *The Ambiguity of the 1913 Act, Between Re-Educative Ambition and Repressive Surge*

The Act, dated 4 October 1913, that set up the Geneva juvenile Court was approved after more than five years of democratic debate, as the first draft bill had been presented before the Geneva Parliament in 1908. In the course of these long debates, two priorities emerged that founded this new system's legitimacy: the rehabilitation of delinquents, on the one hand, and the repression of delinquency on the other. Member of Parliament Vuagnat, the author of the first bill, thus explained: 'for the children, the point is not merely to punish the offences committed, but what is needed first and foremost is for us to be able to follow these guilty children in life and to achieve their healing through educational means'.[15] Whereas an opponent to the bill protested vigorously that 'the Act presented today, albeit in an absolutely harmless form, is an Act of repression'.[16] These contradictory representations of the Act illustrate the blurry interpretation of the educative notion that was circulated among actors at the time. As we shall see, this notion implies new practices that paradoxically, under cover of education, sometimes led to an intensification of repressive measures against certain acts committed by youths and considered unlawful.

In the eyes of its proponents, the first priority of the draft bill was the desire to replace a system that had up to then been purely repressive with a body in charge of childhood rehabilitation: indeed, the draft bill stated that delinquents should, all along their legal journey, be able to benefit from an individualised treatment, adapted to their age and personality, so as to give them better chances of returning to the path of legality. This conviction came partly from the perception of children as being eminently easy to influence: a specificity that a variety of scientific experts of *pédologie* were working on at the time, especially in the local context.[17] In their eyes, children were more permeable to attempts at re-education than adults: 'what must prevail in penal issues for children, is the feeling

[15] Vuagnat (*MGC*, 1910, p. 1337).

[16] MGP Nicolet, moderate socialist (*MGC*, 1912, p. 120).

[17] Rita Hofstetter and Bernard Schneuwly, "Ascension, embrasement et disparition d'une science. Le point de vue d'un observateur privilégié: Claparède et la pédologie au début du 20^{e} siècle", in Janet Friedrich, Rita Hofstetter and Bernard Schneuwly, *Une science du développement humain est-elle possible? Controverses du début du 20^{e} siècle*, Rennes, Presses universitaires de Rennes, 2013, pp. 45–64.

that the mentality is extremely variable according to each individual, and that to this mentality, a total elasticity in the means of rehabilitating this child should correspond'.[18] Consequently, the justice system had to alter its very essence and, when dealing with children, to abandon its repressive nature in order 'to lean towards something more educational'.[19] To do so, it first had to take them out of ordinary jurisdictions, which were deemed demoralising. The fact of awarding the inquiry solely to the president of the Court, of forbidding the publicizing of debates, and of guaranteeing a trial behind closed doors pursued the same goal: to ensure chances of re-education by protecting the child from the moral contaminations prevailing in ordinary criminal courts.

On the level of sentences and measures, new solutions were advocated to curtail corrupting influences. First, children had to be removed from their family of origin when the parental environment was suspected of having directly or indirectly contributed to the ripening of delinquent behaviour: 'More and more often, unfortunately, we have to deal with tutors or parents who absolutely do not understand their duties,' an MP confided.[20] Incapable of watching over their children, these depraved parents left them 'in contact with more or less degenerate characters, and that can entail, for certain young children who are not being followed, as far as their education goes, very ill-fated consequences'.[21] In this regard, the juvenile offender was to be treated as a victim, and as such was considered as a 'child at risk', a legal category that had already been erected as a target for legal protection by previous civil laws since the 1890s.[22]

Second, the panel of sentences and measures inherited from the previous decades was being strongly criticised: thus it was that delinquents under 16 years of age or deemed irresponsible (*non discernants*) were usually sent to correctional homes 'where they end up being corrupted'.[23] Due to their recurrent overcrowding, these institutions were indeed incapable of giving attention to the child's personality. As for

[18] Maunoir (*MGC*, 1912, p. 170).

[19] De Meuron (*MGC*, 1910, p. 141).

[20] Intervention by MP Dufresne, member of a private child-welfare charity (*MGC*, 1909, p. 2032).

[21] Vuagnat (*MGC*, 1910, p. 1467).

[22] On the civil law reforms in the Swiss context, see Joëlle Droux, *Enfances en difficultés: De l'enfance abandonnée à l'action éducative (Genève, 1892–2012)*, Genève, FOJ, 2012.

[23] Bron (*MGC*, 1910, p. 147).

delinquents over 16 years of age indicted with serious charges such as various forms of theft, the penal code entailed that they could be sentenced to short-term imprisonment. Young delinquents were thus regularly imprisoned with adult detainees, either during the inquiry, or to serve their sentence: 22% of the inmates at the Geneva prison were under 20 years old in 1890, 24% in 1910.[24] Whatever the institution of confinement (penitentiary or correctional), the proximity between young adolescents and hardened inmates was a reality largely denounced by reformist-minded activists: 'the child runs the risk of coming out worse than when he went in'.[25]

As an alternative to confinement, the supporters of the draft bill promoted the main innovation in the US model, by setting up the solution of probation. The measure made it possible to get around the inconveniences of imprisonment, as the delinquent youth was then able to pursue professional training in view of reinsertion while remaining under close supervision. Thanks to probation officers, the harmful influence of the family or social environment could be counterbalanced. The latter put not only the child, but also the whole family under educative tutelage, if it could be suspected that the parental influence was at the root of the youths' behaviour. The court was also given full privilege to change its former rulings, so as to individualise the re-educative measure in accordance with the child's behaviour. Encouraging good behaviour, sanctioning relapse: the array of sentences and measures deployed by the 1913 Act did indeed install a new-found flexibility in the judicial arsenal against juvenile delinquency.

The second priority which seems to have motivated the creation of this Act was, however, the desire to apply a more efficient system of sanction. The parliamentary debates gave full force to the opinion that if the ordinary penal system was not adapted to young delinquents, it was not so much because it was too repressive, than because it wasn't effective enough. Indeed, several supporters of the draft bill underlined the fact that the 1874 Geneva Penal Code called for sentences that were much too harsh for a child or an adolescent: according to this Code,

[24] *Rapports du Conseil d'Etat sur sa gestion*, 1890, 1910.

[25] De Meuron (*MGC*, 1910, p. 1459). On this crisis of confidence related to institutions of confinement, see Martin J. Wiener, *Reconstructing the criminal: culture, law and policy in England, 1830–1914*, Cambridge University Press, 1990, pp. 285–294.

a minor over 10 years of age and under 16 could be acquitted if he was declared irresponsible; for the others, sentences went from 1 to 20 years in accordance with the seriousness of their criminal acts, or in case of misdemeanour, half of what they would have faced had they been 16. Those over 16 years of age underwent the same sentences as adults. Therefore, the examining magistrates often preferred not to prosecute delinquents, knowing that if they did, the sentence they would face would be disproportionately severe. In 1913, out of nearly a hundred cases, the Attorney-general only convicted three juvenile delinquents, generously implementing the 'irresponsibility' clause.[26] It was precisely to put an end to such excessive 'generosity' on the magistrates' part that the draft bill on the Court was proposed: such permissiveness was viewed as nourishing feelings of impunity in juvenile delinquents. Accordingly, the name given to the new juvenile Court during parliamentary debates (*Chambre pénale*) was speaking volumes, obviously placing it under the symbol of the penalty.

By creating a unique jurisdiction for delinquent minors regardless of the gravity of their offence, and by doing away with the judge's arbitrariness in the decision regarding responsibility, the project's ambition was in fact to intensify reaction against all unlawful acts committed by youths: according to the 1913 Act, the president of the court led the inquiry and carried out judgement not only on misdemeanours committed by youths 10–18 of age (*10 à 18 ans révolus*) (without having to hand down a ruling on the issue of responsibility), but also on any offence against police regulations. No delinquent could thus escape the realm of justice, either juvenile or ordinary justice. Indeed, the Act stated that delinquents who had committed serious offences, or who acted with adults, could be referred to an ordinary jurisdiction. Actually, delinquents over 10 years of age were from then on presumed responsible for any unlawful act, regardless of their psychological or intellectual maturity. Repression in the guise of education was also strengthened as far as the age groups targeted by the Act were concerned: whereas the first draft in 1908 intended to raise the age of responsibility to 12 years, the ensuing amendments kept this age at 10, as was the case in the former Geneva Penal Code. The legislators considered that as of 10 years of age, children guilty of offences were mature enough to face their

[26] Maunoir (*MGC*, 1913, p. 950).

responsibilities and therefore to be considered accountable for their acts before a court: 'The age of reason nowadays comes to young people sooner than before, and their responsibility has increased in proportion to the rights and independence they have often granted themselves'.[27] The repressive intention directed at juvenile delinquents is clear, notwithstanding the fact that it comes with a re-educative appeal: precocious children should not be allowed to escape sanction in virtue of their capacity for discernment. What is more, offenders aged 18–20 years of age were not brought before the juvenile court but were to be called before ordinary courts, although they were still minors according to the civil code (the age of civil majority in Switzerland being 20 years of age): a point that proves, if need be, the limits of the protective ambition intrinsic to the new system. In this regard, Geneva was not a unique case: the canton was following a trend towards toughening legislation sanctioning acts of juvenile indiscipline, which could be observed in other western countries.[28]

Moreover, the categories of unlawful behaviour justifying the Court's intervention were progressively widened during the course of the legislative debates: as a result, behaviour likened to vagrancy (defined as a child who 'is usually homeless, without provisions, occupation and supervision, who does not attend the school his age compels him to') was included in the offences to be dealt with by the Court, as well as cases of 'persistent misconduct' (Section 28 of the 1913 Act). Behind this rather blurred category hides a multitude of activities, not unlawful in the true sense of the word, but which seemed to indicate an undisciplined temperament, incapable of self-control, refusing parental or school authority, most likely to degenerate towards crime. Hence in principle, no delinquent could hope to escape being sanctioned any longer. Besides, by catching the child as early as his first step astray, the legislators also hoped to prevent recidivism which usually meant a worsening offence, and thus put an end to the recruitment of hardened delinquents. The threat of a sentence which could at all times be revised (Section 15 of the 1913 Act) shows a similar objective.

[27] Rutty (*MGC*, 1912, p. 88).

[28] See Judith Sealander, *The failed century of the child: governing America's young in the twentieth century*, Cambridge, Cambridge University Press, 2003, p. 22 sqq.; Ruth M. Alexander, *The "girl problem": female sexual delinquency in New York, 1900–1930*, New York, Cornell University, 1995, pp. 33–59.

The ambiguity of the draft bill thus lay in two apparently contradictory aspirations: on the one hand, a humanitarian desire to remove minors from a penal law considered inappropriate for their age, so as to give them the opportunity to re-educate. On the other, a repressive ambition underlying this re-educative will, which sought to leave no delinquent unsanctioned. Ultimately, it was truly in the hope of making justice more efficient in prevention as well as in sanction that the Act was approved by the Geneva MPs in 1913. The enforcement of this Act remains to be examined: this is what we will try to grasp, by focusing initially on the personality of the magistrate who became the first president of the brand new Children's Penal Court in 1914.

2.3 A Shadowy Figure: The First Magistrate of the Geneva Juvenile Court

During the legislative debates, a leitmotiv was constantly being put forward by the supporters of the project: the whole functioning of the Court project rested on the choice of the person who would be called upon to preside over the court itself. The figure of the 'paternal' judge, directly imported from the US model, had thus been presented as the keystone of the Act: it was the judge alone, who was to lead the inquiry, get to know the delinquent's family circle and personal evolution so as to understand the roots of his/her unlawful behaviour. Thanks to this extensive knowledge, he was to carry out a judgement in accordance with the child's personality, selecting the most appropriate measure to apply. Finally, the judge was in charge of supervising the child's evolution all along his/her re-education, first to bring him/her to understand his/her mistake and, above all, to strive to make amends. Not only did the 'paternal' judge replace all other ordinary institutions in the mechanisms of justice (examining magistrates and courts, attorney-general, popular jury), but within the very sphere of the perpetrator's private life, he would back up parental authority for all that concerned the child's life and future. Expected to become the examining magistrate, jury, judge, father, tutor, educator and moral conscience all at once, the juvenile judge could only face such a multifaceted role by being truly exceptional. Like the famous Judge Lindsey of Denver, he was expected to be 'a man who possesses a complete judicial as well as psychological culture'.[29]

[29] Alfred Gautier, "Chambre pénale de l'enfance", *Bulletin de la société genevoise d'utilité publique*, 1910, pp. 210–233 (citation p. 221).

As the debates dragged on, the Geneva legislators rejected the original US formula of a single and specialised judge, in favour of a collegial court composed of a president and two judges. None of them would have to be licensed jurists, since they were to be chosen among the ranks of the Justices of the Peace (*juges de paix*). A mandate they would have to keep in addition to their positions at the juvenile court. Why such a drastic deviation from the initial model? In the eyes of the MPs, this solution had the advantage of drawing on a pool of existing magistrates to constitute this new jurisdiction, and thus avoiding to have to appoint and remunerate a new judge. The two key-concepts (a specialised and professional judge) of the initial model were thus apparently sacrificed in the name of budgetary constraints. A formal conclusion that has yet to be tempered in view of the real facts surrounding its implementation. As the archives amply show, the role of the president of the court would finally evolve so as to appear quite similar to that of a single judge: actually, the other two judges would only sit for the final hearings, and never seemed to get involved during the investigation (which could extend over several weeks). Both judges thus had a purely formal role, strictly limited to the terminal step of the process (even if no evidence is left allowing us to weigh their influence during the debates leading to the sentencing). All in all, this adaptation results in a collegial form of juvenile court in theory, with an implementation approximating the formula of the single judge.

The first president of the juvenile Court, Jean Fernex, is a character we know little of for lack of archives, except that he had been a court clerk beforehand, and then the director of one of the Geneva prisons. He was not nominated but elected to his post, in accordance with the Constitution. Among his rival candidates seeking for elections, one found a licensed jurist and local professional magistrate. Yet it was Fernex who won the election, attracting precious few compliments from the press: 'The elected judge is a quite pleasant civil servant, hopefully he can supplement his deficient legal culture with other human qualities'.[30] A far cry from the idealised expert and paternal judge advocated for during the parliamentary debates, but a sound choice if one considers his experiences as a former director of a prison where delinquents under 20 years old amounted to a virtual 25% of the inmates.

[30] *Journal de Genève*, 7 avril 1914.

As for his actual duties, they had been defined on an ambitious scale: 'We want to grant custody of the child to a determined person who could entirely dedicate himself to the task, who would have time to do so, to follow this child',[31] had asserted the Head of the Justice department in 1913. In reality, Judge Fernex never got the real means to develop his mandate, assuming without any secretary assistance a diversity of tasks, including inquiries and hearings at the juvenile Court as well as his duties as a judge at the civil court. As an indication, in 1915, he investigated 401 cases, involving 492 defendants and 2950 persons summoned, gave out 157 rulings concerning 178 minors, and had to hold court for 386 simple police infractions involving minors.[32] Even though the volume of activities at the juvenile Court decreased significantly during the 1920s (223 cases investigated in 1926, involving 251 defendants, 136 rulings concerning 137 minors),[33] Judge Fernex never got to deploy his jurisdiction in all its facets. From the start, considerable delays in the treatment of cases submitted to the Court were recorded, a fact he himself repeatedly deplored.[34] In particular, he was unable to regularly visit the delinquents interned under his guardianship to control their educational progress, even though it was a duty that the parliamentary debates had deemed critical to the success of the whole rehabilitation system. Especially for young people interned outside the canton, he had to rely on a network of local correspondents and charities in order to supervise his pupils.

A few years later, when a revision of the 1913 Act was discussed in Parliament, Judge Fernex's activity came under extensive criticism. It was then stated that he 'did not have the aptitudes one had a right to demand of a children's judge'.[35] Yet, his conservative view of youth seems in accordance with that of contemporary interwar *moral entrepreneurs*.[36] The scarce archives available on his activity speak of a man anxious to limit the influence of 'immoral' leisure such as attending dancing halls and cafés, which he considered as places where youths could but be

[31] Maunoir, 14 June 1913 (*MGC*, 1913, p. 1071).

[32] *Rapports du Conseil d'État sur sa gestion*, Geneva, 1915.

[33] *Rapports du Conseil d'État sur sa gestion*, Geneva, 1926.

[34] Archives d'État de Genève, Département de Justice et Police (hereafter AEG, DJP), 1986 va 23/22.1.

[35] Dupont (*MGC*, 1931, p. 831).

[36] Brad Beaven, *Leisure, citizenship and working class men in Britain 1850–1945*, Manchester, Manchester University Press, 2005; Jon Savage, *Teenage: the prehistory of Youth Culture, 1875–1945*, London, Penguin, 2007.

corrupted. Judge Fernex thus did not hesitate to wander the streets of the city and to denounce both owners and clients to the police, in the name of morality and common decency: 'Girls entering these "clubs" are forever lost: because of dancing and drinking, one can guess what comes next. Is that what one calls progress?'.[37]

Thus, Fernex seemed to interpret the 'paternal and friendly'[38] nature of his mandate as a calling to supplement permissive families who allowed such misconduct. In this regard, he claimed to be right on the same wavelength as his fellow citizens, who 'have not feared to signal to me certain boys misbehaving, who constitute a real danger for their relatives'.[39] Judge Fernex obviously saw his tenure as a constant struggle against youth's modern ways of life, their consuming and socialising activities often implying the mixing of genders. He thus mirrored a similar preoccupation stemming from many school authorities,[40] philanthropic activists and youth movement leaders during the interwar years.[41]

Judge Fernex's perspective on juvenile misconduct hardly stands apart from that of his fellow 'child savers', with their desire to ensure both the moral and physical health of young generations, as well as their social integration, in the context of a growing number of educational, social and sanitary institutions, of which the juvenile court formed an essential part.

[37] Letter dated December 1914 to the police director (AEG, DJP, 1986 va 23/22.1).

[38] Alfred Gautier, *op. cit.*, p. 221.

[39] Letter dated 26 January 1915 to the police director (AEG, DJP, 1986 va 23/22.1).

[40] Christian Alain Muller, "Forme scolaire et règlement de la 'jeunesse': précarité sociale, scolarisation et délinquance juvénile à Genève à la fin du XIXe siècle (1872–1914)", in Franz Schultheis and Michel Vuille (Eds.), *Entre flexibilité et précarité. Regards croisés sur la jeunesse*, Paris, L'Harmattan, 2007, pp. 29–90.

[41] On the international networks dealing with youth management issues, see Damiano Matasci and Joëlle Droux, "Les jeunes en jeu. Circulations internationales de dispositifs et de politiques d'encadrement de la jeunesse (1929–1939)", *Traverse*, no. 2, 2013, pp. 75–91. For national or regional cases, see Susan B. Whitney, *Mobilizing youth: communists and Catholics in interwar France*, Durham, Duke University Press, 2009; Julien Fuchs, "Les organisations de jeunesse en Alsace concordataire, 1918–1939. Pour une histoire des sociabilités", *Staps*, 2003/1, no. 60, pp. 27–42.

3 From the Intentions to the Realities of Enforcement: Offences and Delinquents in Front of the Children's Penal Court (1914–1925)

3.1 Delinquency Registered and Sentenced: A Broad Overview

Grasping the Children's Penal Court's activity during its first decade remains a tricky business, since its archives and files have been almost entirely destroyed for an unknown reason sometime after World War II: the proceedings for the years 1914–1943 have been destroyed; only two individual files remain from these first decades. Yet, the Court's practice can still be studied thanks to a series of official statistics published for the years 1914–1926 in the reports of the Geneva State Council (*Rapports du Conseil d'État sur sa gestion*), providing information on the offenders' profiles such as numbers of charges and nature of offences. More targeted qualitative elements can also be gathered from a series of partial records summarising the judgments of the court between 1914 and 1924, offering somewhat more precise glimpses on the delinquents' social origins, family circumstances, age or sex. A sample of 142 of these judgments, registered between 1914 and 1924, has been selected to enrich our understanding: they consist of files relative to the letter B (that is, files concerning delinquents whose family names started with the letter B), amounting to about 10% of all cases. Even if hardly representative, data issued from this sample offer precious insights on the juvenile Court's actual activities and on Judge Fernex's relationships with the defendants and their family. Figure 1, built from the existing official statistics, offers a general perspective on the Court's activity.

The Court first passed through a short but very active period (1915–1918), when up to three or four hundred cases were investigated each year (the 'instruction' phase of the procedure, where the instructing magistrate gathers evidence on the facts of the case and decides whether the case should proceed further), as Fig. 1 illustrates. This outburst may be partly explained by an increase in complaints filed by the local population, who by then would have become aware that a specialised magistrate was in charge of repressing delinquency.[42] Yet the prevailing social context due to World War I may also explain the growing number of

[42] On the influence of victims' demand on the volume of repression, see Peter King, "The rise of juvenile delinquency in England 1780–1840: changing patterns of perception and prosecution", *Past and present*, no. 160, 1998, pp. 116–166.

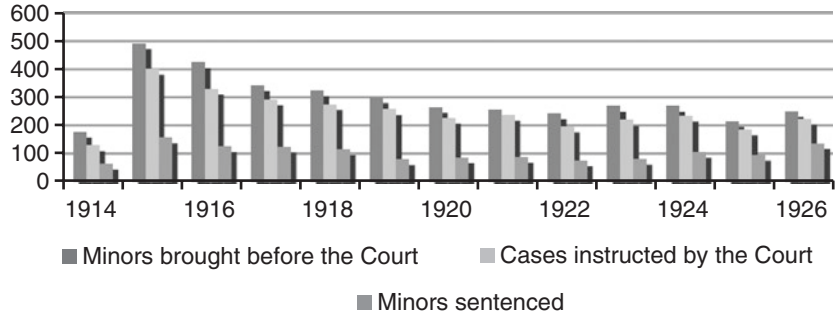

Fig. 1 The Geneva Children's Penal Court (1914–1926): Number of minors brought before the Court, cases instructed, minors sentenced. Source: *Rapport du Conseil d'État sur sa gestion* (1914–1926)

youths brought before the Court: not only were youths more prone to any form of pilfering or theft linked to the general impoverishment and raising prices, but they were also more likely to take advantage of the lack of parental supervision (fathers mobilised[43] and mothers at work, unable to stop youths from being involved in vagrancy or truancy). In any case, a form of stabilisation emerged after the war, when the number of investigated cases would amount to less than 250 per year during its first decade. Compared to the number of minors aged 10–19 years in the canton (about 26,600 out a population of 171,000 inhabitants), this figure remains relatively modest.

In Fig. 1, we can also see that the number of minors brought before the Court is systematically higher than that of cases that were actually investigated: this is probably due to the fact that several minors could be affected by a single procedure (cases of youth gangs for example). Finally, if one focuses on the number of youths actually sentenced after several weeks of instruction (which represents the officially sanctioned juvenile criminality), the Court's activity takes on an even more benign turn: only half of the defendants were ultimately sentenced for a misdemeanour after the instruction, amounting to no more than a hundred youths per year: the others were in all likelihood discharged or acquitted, or still waiting for their final hearing.

[43]Fathers of foreign origin could get enrolled into their own country, while Swiss soldiers from the militia army could get stationed on the frontiers.

During the 1920s, the juvenile Court did in fact meet the initial goal it had been assigned during parliamentary debates: that of catching the delinquent as of his first step astray, no matter how modest (for example use of fireworks, riding a bicycle without a lantern, trampling the grass in a field), and to intervene early on by inflicting fines and warnings so as to obtain a deterrent effect. Official statistics show that two broad categories of unlawful behaviour were mainly brought before the court in its first decade. Theft on the one hand (and similar misdemeanours such as marauding, fraudulent appropriation, etc.) and 'persistent misconduct' on the other, easily made for the best part of investigations led by the president of the Court (respectively 54% and 34% of the offences over the period considered). As stated above, 'persistent misconduct' had been established by the 1913 Act: it was in the course of the parliamentary debates that the idea of creating this specific offence had been introduced by MPs anxious to fight against the 'demoralisation and perversion of the youth'.[44] This deliberately vague charge covered all sorts of behaviour considered abnormal, such as not attending school or roaming through the streets without supervision, which were seen as the first symptoms announcing a delinquent tendency, prompting vigorous preventive action by the Court.

The pattern emerges even more distinctly when looking at judged criminality, that is, sentences handed out by the Court. Let us recall that Judge Fernex both carried out the inquiry (instruction) and decided whether or not to pursue the case. The profile of sentences reveals the direction and intensity of the preventive action he intended to carry out. During the first decade of the Court's activity, while theft and persistent misconduct represented 54% and 34% of the cases investigated by the president, these two offences accounted for respectively 48% and 45% of the sentences passed by the Court. The trend is clear: cases of misconduct, although fewer of them were investigated, were in the end more systematically sanctioned than those of theft, embodying the preventive mission of the Court. Furthermore, it must be noted that the Court did not hesitate to re-indict acts of theft by adding to them a charge of persistent misconduct (which probably contributed to the weight of this category in official statistics). This was the case of Albert B., a 16-year-old who was charged with both burglary and persistent misconduct (hanging out with a gang of bad boys, coming home late, if at all) (hearing on 5 December 1916). The Court thus clearly followed the lead of the members of parliament,

[44] *MGC*, 1910, p. 1465.

whose intention was to sanction formal delinquency as much as the behaviour likely to lead to it. What remains to be examined is whether the delinquents dealt with in this way actually did correspond to the typical image of the young thugs targeted by the promoters of the Act.

3.2 Delinquents, Families and the Judge: Repression or Educational Assistance?

As far as age is concerned, the Court mainly caught adolescents in its net: indeed in the sample drawn from sentencing procedures, youngsters aged 16–19 make up 52% of the youths sentenced. The reason why 19-year-olds were at all concerned by the Court's activity remains unclear, since according to the 1913 Act they were supposed to be referred to the ordinary courts. Whatever the cause for this anomaly, the status of adolescence (for both boys and girls) as the most danger-prone age group, requiring a firm reaction, is confirmed.

In this regard, male misconduct represented undoubtedly the bulk of the Court's activity: over the 1914–1925 period, males represented 65–80% of the number of delinquents who had dealings with the Court, most of them for theft. On the girls' side, the sentences passed by the Court had to do chiefly with persistent misconduct, essentially linked to cases of indecency. Such was the case of Jeanne B., sentenced by the Court because she was showing

> a deplorable conduct, she has never worked, having always taken advantage of the fact that she was without supervision, her mother being constantly busy outside of home, to wander around with misbehaving girls, which gave her a detestable reputation in the neighbourhood she lives in. Since last September she has been a frequent caller at dancing cafés, where she was noticed for her bad conduct, this in spite of the formal promise she had made to the President of this Court to behave more properly. Last January, she entered the service of a well-known prostitute, letting her parents believe that the latter was a brave laundress who was teaching her the trade, and who above all was taking thorough care of her education, and by doing so she proved to be extraordinarily hypocritical. What is more, for the past month she has been living with a person named Cécile C., like her a regular customer at depraved places, thus eluding all forms of parental control. (Hearing on 24 March 1915)

Similarly, out of 30 young girls sentenced in the sample cited above, there were 26 cases of persistent misconduct. Such a gendered

distribution does not necessarily reflect the youths' actual delinquent activities; it may also mirror the lack of tolerance of the court, and more globally the reaction of the plaintiffs and of society in general, and their demand for an appropriate reaction against male teenage thieves and girls deemed unruly.[45]

Demands were more often than not voiced by the parents of the delinquents, either spontaneously or induced by police inquiries. Such was the case of Jeanne B. cited above: it was her father who, 'tired of his daughter's shameful behaviour, asked for her internment in a correctional home'. A recidivist, convicted of misconduct three months prior, Jeanne B. was actually interned in a correctional home for two years. In this case as in many others, and contrary to what had been said in the course of the legislative debates, parents seemed very much aware of their educational responsibilities towards their adolescent offspring: the Court's intervention, solicited or approved by them, may have looked like an appropriate solution to bring their child back on the right track. Such distraught families do not either correspond to the caricatured figures that supporters of the bill had previously portrayed during the parliamentary debates, when moral entrepreneurs had been prone to pin youth delinquency on the family's environment and poverty ('true cause of their child's ill-fate'[46]). Yet the parents' occupation, when available through patchy existing sources, tells of working-class circles, but not necessarily of destitution (employees, craftsmen, tradesmen): the delinquents were from a lower-middle-class background, where one struggled to make ends meet during the difficult interwar years, for lack of adapted structures of assistance. Indeed, family allowances in Geneva only appeared in the 1930s, and social insurances in the 1920s were still restricted to a minority of the working classes. Thus, the family situation would have been particularly difficult when one of the parents was away or missing (divorce, separation, widowhood): a fact which occurred in 25% of our sample. The family's economic survival implied that both parents, when they were still around, held a salaried position, often outside of the home, which made supervising the children difficult, especially outside school time. Left to themselves, the

[45] On similar cases of the gendering of juvenile justice, see Astri Andresen, "Gender, After-Care and Reform in interwar Norway", in Pamela Cox and Heather Shore, *op. cit.*, pp. 123–140.

[46] Guinand, 4 October 1913 (*MGC*, 1913, p. 1404).

latter were consequently exposed to the enticements of the streets, or to the temptations of the urban world in which they lived and sometimes even worked. In Geneva, just as elsewhere during the 1920s, many children, especially boys, ran small errands for local businesses after school, thereby getting their hands on quite enticing goods and currencies.[47] Immigrant children may have been even more likely to succumb to these temptations: in our sample, there are more families of foreign origin than those of local origin (Geneva or other Swiss cantons). Foreigners thus made up 44% of the delinquents sentenced in our sample, whereas citizens from foreign origin represented only 30% of the resident population in 1920.

Two hypotheses may explain such an over-representation of foreign populations among delinquents punished by the Court: either populations of foreign origin were more prone to juvenile delinquency than those of local origin, which could be explained by their less favourable social condition, leading to difficulties of integration. Or the police and judicial authorities in charge of treating delinquency showed greater severity towards persons of foreign origin. Be that as it may, the fragile economic situation of these children of foreign origin is reflected in the Court's proceedings. This is the case with family B., for example, of Italian origin, whose 11-year-old son Jean was indicted before the Court for a currency theft (hearing on 2 November 1915), and for whom 'it is established that young Jean B., because his mother is more frequently in the houses she cleans than at home, is too often left on his own, that is to say on the streets, where he became corrupted'. He relapsed the following year, and his parents came on their own to ask Judge Fernex to intern him for three years, partly at their cost (hearing on 27 March 1916). For these families whose day-to-day life was already difficult, not only did a child's delinquency constituted an added threat to their capacity for social integration, it also brought about the fear of having to face the consequences and financial responsibilities linked to their children's misbehaviour. They may well have preferred to call upon an authority that would be able, by using the legal measures at its disposal, to protect their interests by neutralising an unstable or rebellious child. Such was the case of Mrs. B., a widow of French origin, whose 15-year-old

[47] Hugh D. Hindman (Ed.), *The World of Child Labor. An Historical and Regional Survey*, New-York-London, M.E. Sharpe, 2009; Marjatta Rahikainen, *Centuries of Child Labour: European Experiences from the 17th to the 20th Century*, London, Ashgate, 2004.

son Ernest was found guilty of persistent misconduct in February 1915, due to an accumulation of various offences such as: hanging around in front of a brothel in a woman's company; being involved in scandals and fights; damaging property; being arrested in possession of a bottle of liquor stolen from his mother; and finally being known as a slacker and a poor student by his school teachers. He was first sentenced to be interned, but his mother managed to have that commuted to probation a few weeks later, arguing that she needed him in her shop, seeing as she had lost one son in the war and that her daughter was seriously ill (hearing on 27 May 1915).

Economic precariousness and difficulties in social integration were part of the context surrounding several of these unlawful acts, which brought the Court to a decision that included, when setting the charges, the necessity of social defence as much as the preservation of the interests of the families. In that sense, the Court's paternal judge, because he came from the ranks of the Justices of the Peace, closer to those he was dealing with than a professional magistrate,[48] possibly brought some form of educational assistance to certain parents: as a result, they were able to resort more readily to the judge's authority to come out of an unsolvable conflict with an unruly child, bringing the judge to use his leverage, even if that meant re-negotiating the terms of the imposed sanction later on.

Be that as it may, one can conclude that the Court obviously translated into acts the legislators' intentions, which was to strongly react against delinquency from its very first signs; but it also answered to the expectations of many families, in search of an external support in order to discipline unruly adolescents, at a time when they were tempted to shed away parental authority. Unlawful conduct (theft and similar behaviour) and unruly behaviour or gendered misconduct ('persistent misconduct'), interpreted as threats against social and familial order, did mirror the priorities as they had emerged from the debates between 1908 and 1913. But they also encountered families' needs and norms, when dealing with a rebellious youth. The Court heard the message loud and clear, and in all likelihood enforced it. However, was it as faithful to the intentions of the legislators in the use it made of the new arsenal of sentences and measures provided by the 1913 Act?

[48] On Justice of the Peace and "judges of proximity" (*juges de proximité*), see for the French case Jacques-Guy Petit (Ed.), *Une justice de proximité: la justice de paix (1790–1958)*, Paris, PUF, 2003.

4 Sentences and Measures Under the Rule of the New 1913 Act

The second innovation intended by the legislators, after that of a special jurisdiction, was a new system of sentences and measures to be imposed on delinquents. It rested upon the acknowledgement that the sentences inflicted on young delinquents up to then had proved incapable of leading to their rehabilitation. Loyal to the American model, the draft bill on the Court proposed an array of measures and sentences aimed at the child's re-education through individualised means, adapted to his particular personality. The measure that both encapsulated and symbolised this change was probation (provided in Sections 15 and 16 of the 1913 Act creating the Court). That was probably one of the only parts of the original draft bill accepted by the Geneva MPs without discussion, unanimously convinced as they were of the necessity to spare the juvenile delinquent time in a correctional home, penitentiary camp, or prison.

Other measures could be ordered by the Court, after Judge Fernex had led the inquiry and gathered information on the delinquent's personality, life course and original background. The Court could thus set the defendant free (liberation), if it thought the latter not guilty or if the grounds to hand out a sentence were insufficient. In some cases, when a sanction did not yet seem necessary, but when the child had to be supervised, the Court could decide to hand the case over to the cantonal Child protection services, which constituted a measure of intimidation for the families (the service's agents having warrants to inquire with the neighbours, gather testimonies from landlords, superiors and school authorities). Internment, a more severe measure, could also be pronounced (variable in length, in correctional education, disciplinary homes, or in penitentiary institutions). Finally, if the child was abnormal or ill, he could be handed over to the administrative authority in order to organise his placement in an appropriate institution. One of the keys of this regime resided in the possibility for the Court, at any time, to change or replace the measures already decided, for example on request by the parents, the curator or the child himself. The logic behind this system implied a threat on the delinquents as much as on their families, whose choices and attitudes were placed under the Court's guardianship. The threat was all the more severe since the Court's sentences could not be appealed (only annulment and revision were possible, according to Section 23 of the 1913 Act).

4.1 A Polarised Enforcement

What do the official statistics tell us about the Court's handling of this arsenal of sentences and measures? (Fig. 2).

On first analysis, a clear polarisation in the sentences and measures ordered by the Court is noticeable: on one side an array of rarely used measures; on the other, an over-representation of two key measures (internment and probation). The court only made little use of some of the measures at its disposal with the new Act. Granting early freedom, aimed at shortening sentences imposed on first trial for good behaviour, was not ordered frequently (on average, six cases per year). Referral to the Official Commission for the Protection of Childhood was also rarely used. A few rare cases of abnormal children led to them being placed in specialised institutions. The more extreme measures (plain and simple acquittal, or placing the minor in a penitentiary camp), were equally rarely resorted to. The scarcity of acquittals can easily be explained: if the facts seemed insufficiently established, Judge Fernex preferred to suspend the charges in the course of the inquiry. As for the rarity of internments in penitentiary institutions, it can be accounted for by the lack of credit attached to this type of internment, as discussed earlier. In 1918,

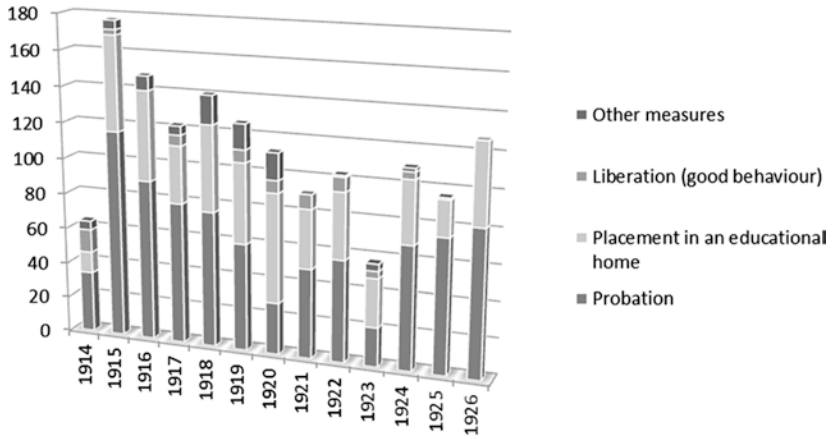

Fig. 2 Sentences and measures ordered by the Geneva Children's Penal Court, 1914–1926 (according to official reports). Source: *Rapports du Conseil d'État sur sa gestion* (1914–1926)

Judge Fernex explained that the Court had chosen to suspend the sentence of internment at the penitentiary camp in Orbe (canton of Vaud) imposed on a youngster and to transform it into a placement in a family on probation because, he said, 'there, he would only have met wrecks or hardened offenders who would have given him nothing but bad advice'.[49] In our sample, out of 45 verdicts of internment pronounced by the Court, only one called for an internment in a penitentiary institution: the case was that of a 16 year-old boy arrested for theft and swindling, interned for six months (hearing on 7 July 1916). Contrary to these rarely used measures, two other types of measures were, however, widely ordered during this first decade of the Court's activity: probation and internment in educational homes.

4.2 Two Key Measures: Probation and Internment in Educational Homes

Probation, which was emblematic of the educational ambition of the 1913 Act, was widely used by the Court. According to official numbers, as early as the first years of activity, probation was a favoured measure of the Court. Then followed a period of slight decline up to 1920, during which the Court chose to resort to internment rather than to probation to sanction the behaviour of deviant youths. Thereafter, up to 1926, a movement towards the resumption of probation seems to surface.

The interpretation of these irregular patterns is delicate. Along which criteria did the Court choose one measure or the other? The destruction of the proceedings does not allow us to settle this matter, although we do know that at the beginning of his mandate, Judge Fernex claimed that 'internments are only imposed in cases of grave recidivism'.[50] Indeed, as our sample shows, for 30 cases of recidivism, 11 sentences of probation and 19 internments were imposed. This clearly demonstrates that the court had a tendency to proportion the harshness of the sentence to the seriousness of the offender's behaviour, even though the recidivism/internment correlation is not systematic. That being said, the choice of the measure did not

[49] Letter dated 2 October 1918 (AEG, DJP, 1986 va 23/22.1).

[50] Letter from Fernex to the Département de l'Instruction Publique (Department of Public Education, hereafter DIP), 15 March 1918 (AEG, DIP, 1985 va 5.3.90).

only depend on the offence or on the delinquent's personality. In our sample, an offence of the same nature can lead to different measures depending on the case: for a bicycle theft, for example, different individuals were sentenced to probation for three years or to an internment in a disciplinary home for three years or even to probation for four years until the youth reached majority. These various measures may have been an echo of the parents' choices or demands, but also of the interment homes' possibilities. Indeed, the canton of Geneva lacked such correctional facilities, so that the Court was strongly dependant on institutions located in other cantons. For example in 1917, the Drognens internment home in the canton of Fribourg wished to intern only catholic detainees, preferably from Fribourg origin[51]; while a few years later, in 1921, the Croisettes reform school in the canton of Vaud informed Judge Fernex that given the lack of space, they could no longer accept any inmates except those coming from the canton.[52]

The choice of the institution could also be based on a negotiation between the parents and Fernex, as indicated by a 1923 proceeding: the father of a 16-year-old boy, charged with burglary, asked the judge to be able to have a say in the place of internment, 'knowing that the acts of my son certainly involve his confinement I inquired about the homes in which he could be placed. I have a great aversion against the Croisettes. The Reverend G. advised me to put my son to the Protestant colony of Ste Foix-the-large (Gironde). I have written and I await the response'.[53] Once again, it appears that the Court acted as an open space for collaboration and negotiations between the family and Judge Fernex, even regarding the choice of the measure. Hence, the internments decided by the Court may well have echoed the internment institutions' own constraints, or the parents' preferences, rather than the legislators' re-educative ambitions. In the event of overcrowding in these establishments, or parental opposition, Judge Fernex probably proposed to the Court *in pleno* a sentence of probation as a lesser evil.

[51] Letter dated 16 April 1917 (AEG, DJP, 1986 va 23/22.1).

[52] Letter dated 20 August 1921 (AEG, DJP, 1986 va 23/22.1).

[53] Letter to Fernex, 12 September 1923 (AEG, DJP, 1985 va 003).

4.3 Use of Sentences and Measures: From Repressive Intimidation to Pragmatic Flexibility

Official data reflecting the measures pronounced by the Court show a system struggling to be put into practice. When the Court started in 1914, 'intimidating' measures proliferated: long-term probation and internments until majority were plentiful at that time. It looks as if the first defendants of 1914–1918 had acted as guinea-pigs for an as yet novel system that had no real model beside the far away US system. A system, furthermore that had to be implemented by a collegial court that was not composed of specialised magistrates, and all this during difficult times (European war, working-class misery, men mobilised for the defence of the homeland). Was the Court looking for its mark, was it seeking to establish its authority, or to exert a deterrent action at a time when the values of society seemed threatened by mobilisation? It is difficult to settle the matter in the absence of the proceedings. The fact remains that the following years appeared to have significantly dampened the Court's ardour, as it thereafter enforced shorter-term measures (2–3 years of probation or internment became the norm as of 1918–1919). This evolution may be explained by the structure by age group of offenders: as a good part of the sentenced offenders in the years 1918–1926 were adolescents aged 16–18, the Court may have then chosen a measure allowing for these adolescents to be put under surveillance until their majority.

Moreover, the Court made use of the flexibility offered by the law, as it allowed for measures to be combined: offenders were thus often sentenced to an internment followed by probation for a variable length of time. By blending sentences this way, the deterring effect and the re-educative intention were proficiently combined, giving the Court the opportunity to extend the length of time during which the minor remained under the watchful eye of the justice system. Such was the case of a girl barely 11½ years old, originally from the canton of Bern, but living with her parents in Geneva, who was charged with theft from different people, amounting to a total of about 1000 Swiss francs: she was interned in an educational home until the age of 16, and then put on probation up to her majority (hearing on 7 December 1917). In another case, a boy originally from the canton of Vaud, a 17½-year-old butcher, was charged with stealing objects from 4 different persons; he was sentenced to a 1 year internment in an educational home, in order for him to 'get

used to the work ethic and discipline which he seems to be lacking', and then 'if he proves worthy', he was to be put on probation for 18 months (hearing on 21 December 1918). These mixed measures became more systematic as of 1925, reflecting the evolution of a structure that in ten years evolved towards a more pragmatic management of available sanctions.

This pragmatic strategy was made possible by the fact that the 1913 Act stated that the Court could at all times alter the sentence or replace one measure by another if it was considered more efficient. Indeed, the Court used this prerogative many times: in 11.2% of cases from our sample, the Court received requests to alter the first measure. The pleas came mostly from parents, asking for early liberation from an internment or probation. The request was granted in 14 instances, and all the more easily when it was combined with a possibility for re-insertion by an apprenticeship or salaried occupation, as was the case for young Louis B.: he was sentenced a first time to internment until his majority on 13 April 1919; the measure was commuted to probation until his majority on 18 July 1919, upon a request from his father and 'favourable information given on young L.B. by the Director of the Trachselwald Institute; given that Mr. B. has found an apprenticeship for his son with Mr. G, gardener in Chavannes-près-Renens'. The re-educative preoccupations thus came into place slowly but surely with the Court's pragmatic use of the arsenal of sentences and measures at its disposal, even if the underlying view of education through work was not innovative in itself, being a part of the Western philanthropic legacy.

In other instances, however, the Court left the beaten path and 'invented' new measures that had not explicitly been provided in the 1913 Act: indeed, in 23 of the 85 probation cases in our sample (27%), the president of the Court added to a sentence of probation an obligation of residence outside Geneva. In the eyes of the magistrates composing the Court, sending a child away was always seen as a prophylactic measure, shielding the child from bad family influences or untrustworthy company by entrusting him to family members or entrepreneurs in charge of supervising his behaviour. That was the case for Maurice B., a 17½-year-old from Geneva convicted of embezzlement, sentenced to two years' probation with an obligation to reside in German-speaking Switzerland, because 'his conduct is usually bad, and he has already twice left jobs in conditions hardly honourable for him; his parents complain of his usual disobedience and of his arrogance. One must hence prescribe

his internment in a German-speaking Swiss peasant family, so as to keep him away from bad company and the temptations of the city' (hearing on 3 February 1919). In this case, the boy's interest was akin to that of the community: the measure contributed to the re-education of the delinquent while simultaneously ridding the canton of a disrupting element. This particular measure, often imposed with consent from parents anxious to keep their children out of the reach of local gangs of thugs, had an added 'preventive' benefit: 'the child having been placed outside Geneva, he is no longer a danger to the pupils in our schools'.[54] Whatever the judges' motives, it is interesting to note that in this case, the Court created a sort of intermediate measure between probation and interment: in spite of avoiding internment, one made sure to limit freedom of movement as well as the capacity to cause trouble, while ensuring re-education through hard labour. Moreover, the measure offered the benefits of internment (the boy's exile) without its inconvenience (high costs for the parents or the community, and the difficulty of finding available places). The measures taken by the Court can also be placed in relation with a series of factors (gender, national origin and age of delinquents) so as to evaluate more precisely the weight of re-educative ambitions in the court's use of its new arsenal of sentences and measures.

4.4 Nature of Sentences and Measures: Gender, National Origin and Age

A gendered analysis offers an interesting perspective: indeed, theft—an offence essentially committed by boys, as noted earlier—was more often sanctioned by probation, whereas girls, mainly appearing before the Court for persistent misconduct, were more frequently sentenced to an internment. If one considers that internment, a freedom-restraining measure, was a more drastic sanction than probation, it may be concluded that girls were treated more harshly than boys: the measures taken for the 30 girls in our sample consisted of 13 internments (43.3%) and 17 probation orders (56.6%), whereas the 90 boys in our sample were sentenced to internments in 29 cases (32.2%), probation in 58 cases (64.4%), while 3 of them were freed of the charges against them (0.3%).

[54] Letter from Fernex to the DIP, 11 February 1926 (AEG, DIP, 1985 va 5.3.177).

Our sample may not be representative of the whole population of youth that received a sentence by the Court. Yet, it indicates that proportionally, more boys may have been put on probation, whereas girls were more frequently interned.[55] For such adolescent girls, the offences linked to sexual behaviour designated as 'persistent misconduct' seemed to call for a harsher sanction both on the Court's and the families' part. These were offences deemed incompatible with their female nature such as it was defined at the time (indiscipline, sexual promiscuity, or precocious desire for autonomy). Such was the case of a 15-year-old girl, who was charged with persistent misconduct because 'she does not work, is a regular customer at dancing bars, despite her mother's absolute prohibition […] Her rehabilitation seems impossible to attempt by any other means than that of internment in an educational home'. She was sentenced to 2 years of internment, and then 2 years' probation (hearing on 5 September 1924), a double measure aimed at keeping her de facto under the guardianship of the Court until the eve of her majority.

For boys however, probation may be an indication either of a greater tolerance for offences considered minor (petty theft), or of a desire to facilitate their reinsertion through an apprenticeship or salaried labour. The chosen measure was thus likely related to gendered roles and identities: for boys, the necessity of being trained for their future role as breadwinners[56] under the supervision of curators appointed by the Court. For girls, the necessity of living within a confined horizon (internment in an institution was usually combined with forced training to their future motherhood[57]). Here too, in several of the cases, this gendered distribution of sentences undoubtedly answered the wishes of parents confronted with unruly children, who by resorting if need be to the coercive intervention of the Court, sought to force them to regain a place in the family realm that was more adapted to their social and sexual identity.

[55] Same observation in Anne M. Knupfer, *Reform and resistance: gender, delinquency and America's first juvenile court*, New York-London, Routledge, 2001, among others p. 88 sqq., as well as Sealander, *op. cit.*, p. 28 sq.

[56] On labour as a founding mode of socialising for male identity, see Abigail Wills, "Delinquency, masculinity and citizenship in England, 1950–1970", *Past and present*, no. 187, 2005, pp. 157–185.

[57] Véronique Strimelle, "La gestion de la déviance des filles à Montréal au XIXe siècle: les institutions du Bon Pasteur d'Angers (1869–1912)", *Le Temps de l'histoire: Pratiques éducatives et systèmes judiciaires*, no. 5, September 2003, pp. 61–83.

As far as nationalities were concerned, offenders from other Swiss cantons were on average more often put on probation (69%) than those from Geneva (59%) or than foreigners (51%), which may be explained by the possibility of finding a family member willing to take them in or a firm to give them an apprenticeship in their canton of origin, hence sending them away from Geneva at little cost. As for youths from Geneva, they were proportionally slightly more frequently interned (33%) than those of confederate (27%) or foreign origin (29%), which could be accounted for by the fact that their families, better socially and economically integrated, were more able to finance this measure (the 1913 Act explicitly states that parents could be required to contribute to the costs of their child's internment). Conversely, the relatively smaller ratio of internments for foreign delinquents may have been due to the difficulties in securing the funds for their internment: if the family had been proved indigent and the canton was unable to find sources of funds in the State of origin, the canton of Geneva had to cover the costs of internment for foreign offenders. Did the court not prefer, in those cases, to free them on probation—a wholly less costly measure? Financial constraints may thus have carried some weight in the choice of measures, in addition to factors linked to the adaptation to the child's personality so dear to the hearts of the project's supporters.

The data of our sample also suggest that there are differences in the age distribution of sentences of internment and probation. Contrary to what had been affirmed in the course of the legislative debates, offenders under 18 years of age were in fact widely sentenced to internment, but with important nuances. The youngest (under 14), were proportionally more frequently put on probation (18% of those put on probation) than interned (13% of those interned), whereas the 14–16 age group accounted for 58% of those interned and 49% of those put on probation. According to our hypothesis, while it tended to hand school-aged children back to their families, most likely in the hope that under Fernex's tutelage the delinquent would be set back on the right path, the Court was more inclined to entrust correctional institutions with the 14–16 year-olds going through a vulnerable time at the end of compulsory school. These institutions doubtless appeared more capable of ensuring the adolescent's rehabilitation, while also compelling him to an apprenticeship in a secluded environment which had the double advantage of training him in a trade and protecting him from the contaminations of the streets. Young François B., aged 14, arrested for theft in a

gang which he led, was thus interned in a correctional home until his majority; the Court then stated 'that it is not the court's job (…) to condemn him, but on the contrary to make a decision that allows for the hope of [the convict's] rehabilitation or moral advancement' (hearing on 9 December 1914). Moreover, one can note that probation was the preferred measure taken against adolescents aged 17 to 18 (33%, compared to 22% of internments): at an age where they could join the workforce as adults, they were only interned if the seriousness of their offence made such a rigorous measure necessary. As for the older ones (19 years and over), their age already linked them to the fate of delinquent adults: all of them were interned, and none put on probation.[58] The severity of the sentence could also be explained by the fact that the oldest delinquents have more past offences.

It seems that the Court did make a balanced use of the scale of sentences and measures, by adapting it to the specific expectations weighing on each of the age groups: for the younger ones, keeping them in an open school environment and placing their families under educational tutelage; for age groups reaching the end of compulsory school, internment as a measure to enforce education or training; for adolescents old enough to work, reinsertion through labour. This analysis cannot, for the time being, be pushed any further, because of the absence of data concerning probation and its actual functioning: further research will mainly have to address the issue of the probation system's daily implementation, the curators' identity and tenure, and the complex relationship between the Court as a whole, Judge Fernex himself, the youths and their parents. The fact remains that available data make it possible to give a mitigated appraisal of this new jurisdiction's activity through the examination of sentences and measures imposed on delinquents: founded in the hopes of 'seeking to find the best way of developing the child's conscience, that is the comparison of good and evil in his mind',[59] the new arsenal was indeed used to achieve the re-education of the child. But the choice of the re-education and reinsertion process undoubtedly was not only made on the basis of the young delinquent's character and

[58] Our sample contained 12 cases of delinquents over 18 years of age, but this can explained by the fact that the cases were essentially called before this Court for requests of modification of their initial sentence, which had indeed been proclaimed before they had reached the age of 19. Beyond that age, youths were submitted to the same laws as adults, as the 1913 Act only applied to youths aged 10–18.

[59] Maunoir (*MGC*, 1908, p. 1179).

individuality, as the promoters of the project had repeatedly stated: considerations linked to the interests of the families and of the community, as well as to the sexual identity, age and national origin of the delinquent most certainly also played a fundamental role in the decision taken by the Court. A complex personality who ultimately proved to be more pragmatic in his sentences than in his declarations of intent.

5 Conclusion

Without a doubt, the creation of the Children's Penal Court echoed a general evolution of judicial thinking, which tended to the individualisation of the procedure (e.g. by introducing parole for adults, a reform introduced in Geneva in 1911). As for the procedure applicable to young delinquents, this desire for individualisation was coupled with a re-educational intention that primarily sought to bring the delinquent back on the right path by adapting his sentence as much as possible to his personality and character. Our investigations show that the path thus taken towards individualised measures could have less to do with a psychological than a much more pragmatic approach; measures were often adapted to external material constraints rather than to the child's psychological profile. These findings are linked in particular to the choices made by the legislators: the president of the Court, Judge Fernex, who was required to be a fine pedagogue, a learned philanthropist and a counsellor to the parents, often found himself quite isolated and ill-prepared to face the multiple mandates and expectations weighing on him. Accordingly, he tended to enforce with youths the classical solutions for managing delinquency—returning the cases regarded as less serious to the labour market and committing to internment those considered most dangerous. It was only with the various reforms implemented during the 1930s and 1940s (most notably the first Swiss Penal Code of 1942) that the specific needs of young offenders were better taken into account in the court process.

This relative evolution towards the individualised treatment of delinquents should not, however, conceal the dissuasive character of the 1913 Act: in the words of a jurist in favour of the new judicial arsenal, 'what matters first and foremost, is to avoid the recruitment of the army of criminals (…) [and to limit] the growing danger threatening society by the constant materialization of a myriad of young criminals'.[60] By

[60] Alfred Gautier, *op. cit.*, p. 212.

including in the offences the blurry category of 'persistent misconduct', the new Act allowed for the sanctioning of 'abnormal' behaviour, which one feared would someday drift towards 'real' delinquency. The study of the sentences imposed by the Court shows that this potentiality was widely used and such misconduct duly sanctioned by long-term internments, which more often affected unruly girls than rebellious boys, but also more broadly adolescents than older youths. For those targeted by these internments, one can wonder what were the changes brought by the 1913 Act to the regime they were submitted to, compared with the former situation: did Swiss internment homes change their organisation and their educational and/or punitive system in accordance with the new criteria laid out by the juvenile courts, or did they continue imposing on delinquents the traditional methods set up in the nineteenth century? Archives of placement institutions will have to be explored in order to answer these questions: they are fundamental to evaluate the impact and depth of the reformative momentum set into motion by these first juvenile courts, and more generally by turn-of-the century 'progressive' child-protection laws. Recent studies tend to show that correctional homes continued in the 1930s and beyond to enforce disciplinary treatments instead of individualised educational measures.[61]

The fact remains that the 1913 Act is also a reflection of the concerns and growing obsessions of this era: 'degeneration of the race', modification in the profile of the workforce and progressive eviction of young people from the sphere of socialisation through work, ebb and flow of migration, future of children, emancipation of women, new ways of life, of socialising and consumption specific to youth. True, a great majority of these fears were those of affluent or middle classes, but not exclusively. It would thus be wrong to see the Children's Penal Court merely as an instrument for social control exerted on the working classes: the propensity of many families to collaborate with the Court, particularly through the denunciation of juvenile behaviour considered unbearable by the parents themselves, undeniably indicates that the consensus around a repressive surge against delinquency went well beyond the divide between classes.

[61] *Les "bagnes d'enfants" en question: Campagnes médiatiques et institutions éducatives*, Special Issue, *Revue d'Histoire de l'enfance irrégulière*, 2011, no. 13; Pascale Quincy-Lefebvre, *Combats pour l'enfance. Itinéraire d'un faiseur d'opinion, Alexis Danan (1890–1979)*, Paris, Beauchesne, 2014.

CHAPTER 7

The Practice of the Juvenile Judge in the Netherlands: The Family Supervision Order as a Response to the Sexual Misbehaviour of Minors, 1922–1940

Ingrid van der Bij and Jeroen J.H. Dekker

1 Introduction

The proud achievement of having established juvenile courts in the Netherlands suffered a setback when it became apparent that practices varied in different juvenile courts. This was especially clear with regard to the family supervision order. Some prominent juvenile judges aimed at making the most of the legal rules, such as Judge G.T.J. de Jong in Amsterdam and Judge H. de Bie in Rotterdam. Other juvenile judges did

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not go beyond the legal boundaries. In some cases, juvenile judges could not create the conditions required for instigating a supervision order.

Diversity was a concern in the first decades of the juvenile courts. Looking back on the development of juvenile courts in Chicago and Denver, Colomy and Kretzmann show that diversity marks the initial stage of juvenile court practice. In the next stage, they developed a more standardised form.[1]

A study of local diversity can help to identify the elements and mechanisms that have shaped juvenile courts. For this purpose, I selected the juvenile court of Groningen. Central to the practice of each juvenile court was the juvenile judge. He was confronted with the particular problems in the society of that time. Supervision orders were part of his job. One specific problem dealt with through supervision orders was the sexual misbehaviour of minors. This chapter addresses the following question: how did the juvenile judge in the Groningen court handle family supervision cases pertaining to the sexual misbehaviour of minors?

Section 2 identifies the laws and players in the field of child protection and describes how the sexuality of minors came to be brought before the juvenile judge. The second part of the chapter comprises an analysis of supervision dossiers from the court of Groningen to show how the juvenile judge fulfilled his role in cases involving sexual misbehaviour of minors.

2 Laws, Institutions and Actors

Before we can look at supervision in practice in a local court, it is essential to describe the legal and institutional framework in which the actors had to operate.

2.1 Laws and Institutions for the Protection of Children

Around the turn of the nineteenth century, considerable attention was devoted to neglected and delinquent children. This was seen as an urgent and important social problem and it inspired studies on the deficiencies of children and, to some extent, their parents. Doctors, members of the legal profession, psychiatrists, psychologists, teachers and behavioural scientists strived to find the causes of neglect and delinquency. Pedagogical pathology was put on the map[2] and child protection became an issue.

[1] Colomy and Kretzmann (1995: 193).

[2] Dekker (2001: 125).

Social groups as well as the government took part in the development of a child protection system. A network of special interest groups formed around this theme. The government took responsibility for establishing State Educational Homes and disciplinary homes for children and provided subsidies for and inspections of private homes for children.

As in other European countries that had established civil and penal laws for children around 1900, the Netherlands Children's Act of 1901 came into force in 1905. It brought about changes to parental authority and further specified the relationship between parents and child. It consisted of civil legislation, criminal legislation and the legislation to implement both. The civil law relating to parental authority was accepted without being put to the vote[3] and provided for the highest number of intervening measures ever enacted.[4] Parents could lose their parental rights through suspension or dismissal. If parents did not fulfil the obligation to look after their child properly or were unable to do so, their parental rights could be suspended. However, this measure required the parent's consent. Criminal negligence or bad behaviour by a parent could lead to loss of parental rights. Parental authority and the duties that came with it were the foundation of the measures undertaken for child protection.

During parliamentary discussions on the amendments brought to the Dutch Civil Code concerning 'paternal authority, guardianship and allied articles', the Minister of Justice created a new institution, a Guardianship Board,[5] which would play an important role in child protection. The

[3] Dekker (2001: 110).

[4] The Dutch Civil Code of 1838 prescribes that parents should maintain and educate their children. However, breaking this rule had no consequences. Only penal violations against a child were legally pursued. Dismissal of parental authority was possible as a punishment for the parent, not as a protection of the child.

[5] There was at least one Guardianship Board in each of the 21 court districts (four large cities had two). Each board consisted of a minimum of five and a maximum of 11 lay members of different political and religious persuasions, including a chairman and a secretary. The Crown was to recommend half of its members and the President of the District Court would recommend the other half. The chairman was chosen by the board itself. Only the secretary would receive a yearly income and was a civil servant in the service of the Ministry of Justice. Other members received compensation for travel and accommodation expenses. With the consent of the Ministry of Justice the Guardianship Board could appoint agents for the more remote regions of the district court area. The board organised consulting hours for the public. The board was to see to assignments the Minister of Justice wanted to entrust them with and he was to receive a yearly report from the board. Though the board answered to the Minister of Justice, in itself the organisation was made up of private persons reflecting the upper echelons of society.

Guardianship Board had to be heard before the magistrates could make decisions. The board could petition for particular child protection measures.

The Penal Children's Act listed new measures, such as incarceration in a State Educational Home instead of a prison. Short terms could be served at a reform school. It became possible to release children before the end of their term and also to grant conditional release. Prison sentences for children under 16 disappeared. Advising the judge in penal cases was not a government organisation, but one founded by private initiative.

Pro Juventute ('for the benefit of youth') was an association founded in 1896 by an eminent professor of law, G.A. van Hamel,[6] who played an important role in the implementation of the penal law for children. The association was devoted to fighting youth crime and dealt with related questions. Pro Juventute had a department that specialised in voluntary supervision, called patronage. The association investigated the background of the child to inform the judge and provided a lawyer for the child in court. The work was done by volunteers.

The Minister of Justice at the time, Cort van der Linden, felt that the Children's Act would not lead to any great change in the workload of Pro Juventute volunteers. And in the first few years he was right. However, the work increased soon enough and volunteers could not keep up with the workload. In 1908 the first Officer of the Children's Act[7] was installed by Pro Juventute in Amsterdam. The Hague, Rotterdam and Utrecht soon also employed such an officer and in due course all the districts courts strove to have their own Officer of the Children's Act. This officer carried out supervision as well as investigations at the request of the Public Prosecutor, the Guardianship Board or Pro Juventute. The appointment was a first step in the professionalisation[8] of child protection.

[6] Gerardus Antonius van Hamel (1842–1917) was at the time professor of law at the University of Amsterdam. His son J.A. van Hamel succeeded him in 1910 (Verkaik 1996: 15).

[7] The Officer of the Children's Act was a professional supervisor paid for by the Ministry of Justice, the Guardianship Board and Pro Juventute. He was asked to make reports on children and their parents and was monitored by a committee whose members included the Public Prosecutor, the secretary of the Guardianship Board and a representative of Pro Juventute.

[8] Montfoort (1994: 118).

2.2 *The Juvenile Judge and the Family Supervision Order*

The first pleas for a special judge for children were made during the debates on the Children's Act. This was inspired by new views on how to deal with criminal children. Advocates argued that the special pedagogical character of penal law for minors should be embedded in the courts themselves. However, several ideas to that effect were rejected during the political debates.[9] In the following years, the idea of a juvenile court was discussed regularly in various publications; it was the subject of a thesis[10] and was supported by the Dutch Lawyers Association.[11] Thus the stage was set for creating this office.

Important ideas about the position of juvenile judge were that the appointment should be for one judge at a time, the juvenile hearings should include both penal and civil cases, the judge would be involved in both the investigation and execution phases[12] and he would need to meet high personal standards in terms of knowledge and personality. The presiding judge should do justice to the primarily pedagogical character of child law. He should exert a paternal influence on the child through the force of his personality. The single judge should be flexible, quick to act and easily accessible.

In describing the history of the family supervision order, Doek[13] observed that a new measure was needed in both civil and penal law for children. As it turned out, the Children's Act presented an all-or-nothing choice—remove the child from his/her home or do not—and this resulted in a need for fewer intervening measures. Patronage, the supervision carried out on a voluntary basis by Pro Juventute, particularly inspired the inclusion of the family supervision order in the law. This law on family supervision for minors came into force on 1 November 1922. It would be an important tool in the hands of the juvenile judge.

[9] Bac (1998: 62–64).

[10] Verschuer (1912).

[11] *Jaarlijkse bijeenkomst Nederlandse Juristen Vereniging in 1917*; Doek (1972: 29).

[12] In child penal cases the juvenile judge was the investigating judge during the preliminary inquiry and presiding judge of the criminal hearing. Bac (1998: 90, 91).

[13] Doek (1972: 27).

The law stated that if a minor were raised in such a way that he or she was threatened with physical or psychological injury the juvenile judge could issue a supervision order. This gave great discretionary power to the juvenile judge, which was necessary if he were to handle all types of problems associated with upbringing.

The law issued two versions of the supervision order: civil and penal family supervision. The differentiation was necessary to keep civil law separate from penal law. The civil family supervision order could be petitioned for by the Guardianship Board or the Public Prosecutor and a civil juvenile judge would decide if the order needed to be issued. If the order was issued, it was executable at once. The penal family supervision order was restricted to certain conditions. When judgement was passed in a penal law case by a penal juvenile judge, usually the same judge who sat in juvenile civil matters, it was executed after the judgement was issued which took a fortnight. At this time, the clerk or the Public Prosecutor would give the judge notice so he could start the supervision. Both types of supervision orders were executed in the same way. Each order was issued for a year and a supervisor was appointed. At the end of the term a hearing was held to decide on ending or extending the order. During the supervision order the child could be removed from the home and placed in an institution for observation or detention. For such an order, the juvenile judge needed permission from the Ministry of Justice. In penal cases, Pro Juventute would sometimes recommend no punishment, just petition for a civil supervision order instead of a penal one. Some penal dossiers would therefore turn up among the civil supervision dossiers. In civil cases a temporary family supervision order could be issued in the case of serious and/or immediate threat to the child. The temporary order was issued for three months, did not require a hearing and immediate outplacement of the child was possible. Before the end of the term, a regular supervision order had to be issued if it was necessary to prolong the supervision order.

The juvenile judge not only decided on supervision, he was also in charge of its execution. This brought an exception to the rule that a judge could only be responsible for the ruling. Although this was noted in discussions about the juvenile judge, other arguments outweighed the objection. The judge would become better acquainted with the case and would be confronted by the consequences of his decisions.

2.3 Society and Child Protection

The ideological diversity of Dutch society at this time worked to the advantage of the development of child protection homes and laws. Pillarisation[14] of Dutch society was in full swing and applied to such issues as the school question,[15] general suffrage and the social question.[16] A pillar provided a comprehensive institutional framework within which the socialisation and activities of their members took place, such as schools, the media, political parties, sports clubs, youth organisations, trade unions, institutional homes, re-educational homes, and so on. These organisations were not connected to social status; all walks of life were represented in each pillar. The four main pillars were Roman Catholics, Social Democrats, orthodox Calvinists and Liberals.[17] Child protection organisations benefited from pillarisation. It could form bridges between adversaries and regulate competition between different ideological groups. It could also expand the influence of the group. The Children's Act was an important achievement in the development of child protection. Its successful introduction and implementation was partly due to the dedication and involvement of private initiatives.

Guardianship associations were organised along ideological or religious lines. The purpose of guardianship associations was to take over the custody of the child after both parents were removed from parental authority or if a parent-guardian lost his or her parental authority. The Guardianship Board appointed a guardianship association on the basis of the ideological or religious persuasion of the parents.

[14] Pillarisation is the process of forming pillars. It is a sociological term for the notion that a nation is not made up of individuals who are to be educated into members of the moral community of the nation, but of different groups characterised by their peculiar convictions. Pillars fostered a culture of pluralism and a tendency towards deliberation and negotiation instead of confrontation.

[15] The school question concerned the question of whether religiously founded schools were also entitled to a grant from the state. The liberals said no, the confessionals (Catholics and Protestants) said yes (Lijphart 1992: 100).

[16] The social question was about the need for a system of social security to meet the negative effects of industrialisation.

[17] Blom (2000), Lijphart (1975).

2.4 Sexual Misbehaviour of Minors

Before presenting the particular tasks of the juvenile judge concerning the family supervision order with a focus on the sexuality of minors, a few words on the views held about the sexuality of minors may be appropriate.

There was a broad social consensus for what was regarded as morally sensible sexual behaviour. Sex before and outside marriage was rejected, marital sex was considered for procreation only, masturbation was viewed as a wrong or immoral and all sexual relations should be monogamous and heterosexual. However, new ideas about sexuality began to emerge around the turn of the century. Procreation did not have to be the only purpose of marital sex. The new Malthusian League,[18] a society that promoted the use of contraceptives, grew in numbers.[19]

Prostitution was regarded as an abomination, a danger for women, but also as an outlet for men. In 1889 there were 181 brothels in 28 cities in the Netherlands. The 1911 law 'to counteract moral corruption' changed the face of prostitution, but it did not diminish it. As brothels were closed and henceforth forbidden, prostitution moved to private clubs, hotels, cafes, cinemas and fairs. A new form of prostitute emerged, the streetwalker.[20]

At the end of the nineteenth century private societies against prostitution were set up by Protestants and Catholics. The Midnight Mission,[21] an orthodox Protestant society, was renowned. Members would go into the slums to stop men from entering brothels. This organisation also helped unmarried pregnant women. Other similar organisations were the Society for Mutual Women's Protection,[22] the Roman Catholic Society for the Protection of Girls[23] and the Protestant Dutch Women's League for Raising Moral Awareness.[24]

[18] De Nieuw-Malthusiaansche Bond (Hueting and Neij 1990: 17).

[19] Schuursma (2000: 89–97).

[20] Hueting en Neij (1990, pp. 15, 27).

[21] De Nederlandsche Middernachtzending Vereeniging (Hueting and Neij 1990: 15).

[22] Vereeniging Onderlinge Vrouwenbescherming (Hueting and Neij 1990: 20).

[23] Rooms Katholieke Vereeniging ter Bescherming van Meisjes (Hueting and Neij 1990: 20).

[24] Nederlandsche Vrouwenbond tot Verhooging van het Zedelijk Bewustzijn (Hueting and Neij 1990: 14).

The image of 'woman' as a beautiful but voluptuous temptress was upheld not only by the members of these societies but also in the arts and literature. Females were frightening, mysterious and inscrutable. Besides this image, however, females were seen as potential or real mothers and housekeepers, needed by home and family.[25] Girls were raised as potential mothers and coming to terms with sexuality was a difficult part of that process.

The public debate on sex education in the Netherlands shows how moral opinion struggled with the sexual practices of both adults and minors. Sexuality was at the centre of private life and not to be interfered with. On the other hand, some information about sex should be given to prevent premarital pregnancies and venereal diseases, but this was considered the parents' task. Children and adolescents should be given a minimum of information. Sex education in school was prevented by pressure from the confessional (Catholics and Protestants) political parties.[26]

Protestant and Catholic writers on upbringing accepted the reasoning of the German pedagogue Friedrich Foerster who advocated training children's willpower and developing their moral sense in preference to trusting their parents to provide instruction. However, the pressure for parental instruction grew.

The 'Roaring Twenties' brought an open culture on sexuality that made the gap between whether or not to give information on sex more urgent. Should children be exposed to the facts of life or be protected from them? Public housing projects were aimed at preventing families from having only one bedroom and children sharing beds. The strong debate on the dilemma of giving or withholding information made no progress since sexuality remained restricted to married adults. A discussion on premarital sex was triggered by a publication by Ben Lindsey translated into Dutch in 1927.[27] He described juvenile delinquents positively, as exceptionally nice and attractive young people. In his view, people should not be concerned by their acts but by the unwanted consequences of their acts. Some writers on upbringing then acknowledged that more young people were having sexual intercourse before marriage and at a younger age.[28]

[25] Schuursma (2000: 92), Bruyn-Hundt and Tijdens (1998: 132).

[26] Röling (2003: 243–263).

[27] Ben Lindsey (1928). *The Revolt of the Modern Youth* in Lindsey et al. (1927). Lindsey was a US juvenile judge.

[28] Röling (2003: 250).

The moral atmosphere changed during the economic crisis of the 1930s, which saw the firm repression of any sexual conduct deviating from public morality. This seems to be in line with Fritz Künkel's concept of children, which found a warm reception in the Netherlands. He saw growth as moral improvement and growing up as submission to parental authority.[29] The juvenile judge worked in this context of sexuality in the upbringing of children.

The Children's Act was an important legal development in Dutch child protection efforts, instigating intervention measures and establishing new organisations, but practical problems soon arose. If one parent's parental rights were dismissed and the other parent did not consent to the suspension, then the child could not be taken from the home and would stay under the influence of the dismissed parent. It was hard to find custodians for mentally or physically handicapped children and for minors over 16 years old; especially problem girls over 16 who had already committed sexual offences or who had lived a loose life.[30] The biggest problem, however, rose from the all-or-nothing choice between dismissal and suspension of parental rights. Sometimes removal from the home was too much and doing nothing was not enough. In these cases the family supervision order could be the solution.

3 Supervision in Action

To answer the question of how the juvenile judge handled supervision cases pertaining to the sexual misbehaviour of minors, this section presents an account of an analysis of information gathered in court dossiers. The period selected spans from 1922, when the family supervision order was implemented, up to and including 1940 when the conditions of World War II led to a complete disruption of moral and supervision orders in the Netherlands. The dossiers were collected from the district court of Groningen.

3.1 Dossiers in Groningen

This district was chosen as it is far away from such well-known districts as Amsterdam, Rotterdam and Dordrecht, which have already been well

[29] Fritz Künkel was a psychiatrist from Berlin who based his ideas on the work of Alfred Adler's individual psychology (Bakker 2003: 136).

[30] Hermans (1984: 93).

documented in the literature.[31] The district of Groningen was faced with both urban and rural problems, much like the other districts in the west of the country. Up until 1934, the district was divided in two with courts in Groningen and Winschoten. The very small court in Winschoten was closed at the end of 1933. During the study period, three juvenile judges succeeded one another in Groningen and two in Winschoten.[32] When the court in Winschoten closed, its open supervision cases were transferred to Groningen. This explains why a few cases from the Winschoten court are included in the analysis. In Groningen, two judges were in office prior to Judge W.W. Feith, who was appointed in 1925 and stayed in office until 1942.[33]

The archives of both the Winschoten and Groningen Courts from 1922 to 1940 contain 558 civil supervision dossiers. I read a random sample of 143 cases to get an impression of their contents. I narrowed the collection by purposive sampling,[34] selecting the families, upbringing conditions and individuals most likely to show the interesting features or processes under study. This fine-tuned the choice to cases in which the sexuality of the minor was a factor. This resulted in 44 dossiers involving 57 minors: 12 males (21%) and 45 females (79%). In the entire sample the gender division was about 48% male and 52% female[35] showing an over-representation of girls.

What goes into a court dossier? All the court orders, including the initial supervision order and each yearly renewal, each order for outplacement and orders that indicate a change of supervisor. The petition for the order would often be presented with accompanying reports by the police[36] or the Officer of the Children's Act. Attached to the petition

[31] For instance by Komen (1999), a study on the nature and approach of child neglect based on analysis of two hundred court files from the Court in Dordrecht in the period 1960–1995.

[32] In Groningen Judge B. Lohmann, Judge. K.G. Cleveringa and Judge. W.W. Feith. In Winschoten Judge. H. Kuipers and Judge. H. Ferguson.

[33] Judge W.W. Feith (1889–1973) was a board member of Pro Juventute and a member of the Association for Police and Juvenile Judges.

[34] Silverman (2000: 104).

[35] 284 minors, 135 male, 149 female.

[36] Groningen had a juvenile police department, founded in 1929. The first policewoman, who held the rank of inspector, joined this department in 1930.

would be certified copies from the register concerning the birth of the minor as well as the marriage, divorce or death of the parents. In addition, a court dossier would contain reports and letters by the supervisors, correspondence with the Guardianship Board, reports from and correspondence with various assistance and charitable institutions, letters from parents, minors and other family members, correspondence with the Ministry of Justice for the authorisation of outplacement or expenses, and notes made by the judge. The petitions and the reports are the richest sources for descriptions of the sexual behaviour of minors and its consequences.

3.2 On Track for a Supervision Order

A supervision case began with a petition. This petition was made by the Guardianship Board or the Public Prosecutor and gave a summary of the reasons why the order should be issued. For example, a report by the Guardianship Board would state: 'Because the girl stays out late, in the company of men with whom she has intimate relations. Because she powders and paints herself, wears earrings and dresses herself up. Because the parents have no influence on the girl, and after short periods of improvement she returns to her bad way of life'.[37] In the late 1920s it became customary for the Guardianship Board to also include police reports containing details of the alleged facts. If the minor lived in Groningen this report was drawn up by the police's juvenile department. For example, the report might state: 'She was a faithful visitor of the dancehall "Mille Colonnes". She also stayed several nights in the house of Mrs. A and the house of Mrs. B. Both premises of the aforementioned ladies have a bad reputation and it may be assumed that they offer the opportunity for fornication'.[38]

The judge would go through the written material and then hold a hearing to which he would summon the author of the petition, the potential supervisor and the parents, children, family and other witnesses mentioned in the report. Hearing the family was compulsory. Each petition had to name two family members on both the mother's and the father's sides. These four people were asked for information about the

[37] Groningen Court, 1927, roll no. 367.

[38] Groningen Court, 1928, roll no. 684.

allegations in the petition as well as whether they consented to a supervision order. For example, statements were made by two uncles in the case of 'Grietje', who was alleged to have had sex with two strangers in her lodgings. The first uncle said that 'he knows little about the girl', but he had no objection to her being put under supervision. The second uncle stated that 'Grietje is somewhat different from other children and not quite normal', although he could not say exactly what was wrong with her. He, too, had no objection to the supervision order.[39] Many juvenile judges considered the hearing of a mandatory four family members superfluous. Often these family members knew nothing of the problems in question until they were exposed by the court case. Even so, four members of the family were summoned to the Groningen court for each hearing.

After listening to all the statements, the judge would decide whether to issue an order, put an order on hold for more information, await new developments, or turn down the petition. There were cases where doubts might exist as to the seriousness of the allegations. Such was the case for 'Hilke', who in December 1933 spent a night on board a German ship and had intercourse with a sailor. She was also accused of coming home late often; she could do so because her father worked nightshifts and her mother was deaf and not very vigilant. Her sister stated at the hearing that 'their father was very strict. They both had to be in by ten o'clock at night. Hilke came in late once and their father was furious with her'. He stood by the allegations in the petition, but also said that he now had no complaints about his daughter's behaviour. Hilke had a regular job sewing caps. After these statements, the Guardianship Board asked for a postponement of the hearing, which was granted by the judge until further notice by the Guardianship Board.[40]

It is not always clear what triggered an investigation into the circumstances of the upbringing of a minor. The police or the Guardianship Board may have received complaints from parents or neighbours, the minor might have misbehaved in a serious manner, a parent might have asked the police to trace the minor, and a parent could have been advised by the Guardianship Board or the police to request a supervisor. The reasons for an investigation were seldom explicitly stated in the dossiers.

[39] Groningen Court, 1931, roll no. 167.

[40] Groningen Court, 1934, roll no. 280. (No date of withdrawal in the dossier.)

After the initial investigation, the Guardianship Board would review the results and decide on a course of action: await new developments or make a petition for a measure and, if so, what measure. Petitions were seldom turned down. Two main reasons for the juvenile judge not to issue the order would be if the situation changed in such a way that the severity of the problems had diminished or if the girl was about to marry. Cases were occasionally withdrawn by the petitioner or turned down.[41]

3.3 Problematic Sexual Behaviour of Minors

Within the judicial framework different pedagogical issues were considered to see if the family supervision order should be applied or not. Problems related to the sexuality of the minor were almost always mentioned in reports on girls. Very few were reported for boys. The kinds of problems reported ranged from merely suspicious circumstances to having a child out of wedlock. If the report on a girl was not about neglect it would certainly mention suspicious circumstances, such as staying out late, going out with boys, going to a fair or a dancehall or a cinema or a pub, taking rides in a car, dressing up and using make-up. These circumstances were deemed suspicious because they could lead to intimate relations with boys or men. This petition by the Public Prosecutor provides an example:

> Considering the way Stijntje, born in Groningen on (date), is growing up, she is threatened with moral and physical ruin [this is the literal text from the law]. This girl comes home at night around one or two o'clock and, amongst other things, goes out in cars, visits 'Mille Colonnes', is too nicely dressed for her status in life, and does not work regularly. She was found staying in an Amsterdam hotel allegedly at the expense of a stranger and she left Groningen without her mother's consent as stated in the enclosed police report.[42]

The police report actually set the petition in motion. Instead of bringing this matter to the attention of the Guardianship Board, the police commissioner went straight to the Public Prosecutor. He made the petition on a Saturday, the day after the police report. The hearing was held that same afternoon and a temporary family supervision order was

[41] In 41 out of 529 cases the petition did not result in an order because it was withdrawn by the petitioner or turned down by the juvenile judge.

[42] Groningen Court, 1930, roll no. 0.

issued. Fetched from the hotel in Amsterdam, the girl was driven back to Groningen and put in an institution called Passantenhuis,[43] a temporary shelter for girls. The judge also ordered a three-month outplacement for observation.

Sometimes the allegations in the petition would mention vaguely that the girl was 'straying from the straight and narrow', or she was 'on the rocky road to prostitution' without going into further detail. Being seen mixing with others of bad reputation was cause for concern. These bad influences could be men or women of 'houses', bad boys or even girlfriends who were already under supervision. With increasing frequency, police reports included statements of girls confessing to having had intercourse with strangers, sailors, soldiers, cabdrivers or boyfriends. A few of these cases resulted in pregnancy and children born out of wedlock.

In three cases, the sexual behaviour of the female minor was not regarded as the problem, but that of the adult was. Minors were not always the cause of problems related to sexuality. Sometimes it was the adult's fault. In one case two sisters witnessed their father's sexual acts on more than one occasion.[44] Similarly severe cases involved incest, where a parent abused the child. This is noted in two dossiers in the sample.

Five dossiers concerned boys without their siblings being involved. In the category of problems related to sexual behaviour, male minors were an exception. Three dossiers mention swearing and acting immorally, such as grabbing at the crotch of other children at play or leading immoral lives, without further details. One report on a boy states that he committed masturbation because he had seen his father do it. The judge wrote in the margin, 'At seven years old?'[45] All of these incidents had little bearing on other more serious problems mentioned in the report. However, in two cases the sexual behaviour of the minor gave immediate cause for intervention. One boy was convicted for immoral acts with a minor below the age of 16 and was said to need supervision when he came home after having served his time. Another boy had homosexual contacts with an adult who paid him for this. This was forbidden by the Moral Act of 1911.[46] The penal case against the adult resulted in further investigation of the boy involved.

[43]The Passantenhuis was a special department of a Protestant home.

[44]Groningen Court, 1940, roll no. 270.

[45]Groningen Court, 1930, roll no. 259.

[46]The Moral Act of 1911 prohibited homosexual contact between adults and minors under 21 years of age.

3.4 Execution of the Supervision Order

The petition and related reports stated the problem behaviour of the minor as incidental or frequent and also described suspicious behaviour or serious events. After a hearing the juvenile judge would make a ruling. The hearing was behind closed doors, but the decision was announced publicly. After issuing a supervision order, the juvenile judge became responsible for its execution. In this section I will first explain some particulars of the Dutch family supervision order and then look at the task of the supervisor, responses from parents and minors and the way the juvenile judge in Groningen handled these cases.

At this stage it became important for the judge to learn the religion of the minor. Even if minors and their parents did not actively practise their faith, the judge still needed to know. At the time, Dutch society was divided into 'pillars'. Though in itself neutral, the implementation of the Children's Act took pluralism into account. The law on family supervision stated that the supervisor needed to be chosen in accordance with the religious persuasion of the family. The Guardianship Board or Pro Juventute would routinely look for a volunteer who could meet this requirement. However, they found it hard to find suitable candidates so Judge Feith took on an active role in finding new supervisors. If the minor's religious denomination was clear, a supervisor was chosen with the same background. The choice of supervisor was more flexible when there was no clear denomination.

Once the order was issued, the family supervisor was officially appointed and had received instructions,[47] the actual work started. The supervisor reported on progress in writing to the juvenile judge who held office hours for supervisors or any family members who wanted to see him.[48] As stated by law:

> the family supervisor must seek as much personal contact as possible with the child and the family to which he or she belongs. He promotes everything that will serve the spiritual, physical and future material well-being of the child. He gives the necessary instructions to the incumbent of parental authority in order to orient the child's upbringing in the right direction and tries to persuade him to voluntarily do what is needed.[49]

[47] The juvenile judge would give instructions in a meeting with the supervisor or would send off part of the file with a request to return it as soon as possible. Each family supervisor received a booklet explaining his tasks.

[48] Use of the telephone as well began by the end of the 1920s.

[49] Section 373k, old Civil Code.

The supervisor could give instructions for the child's upbringing which the parents had to obey. The juvenile judge could also give binding directives to both the supervisor and the parents. One of those directives might be to place the child in an institution for observation or detention. The juvenile judge would issue a court order to do so. The child would then be sent to an institution, at the expense of the State if needed. The religious issue was particularly important. When asking permission from the Minister of Justice to place the child,[50] the judge had to explicitly state the religion of the minor so he or she could be placed in an institution of their own denomination, be it Catholic, Protestant or Jewish. Some institutions would take on children without any specific denomination, while others would only take minors of their own persuasion. The Guardianship Board of Groningen did not mention the religious persuasion in their reports unless it had a bearing on the case. The police reports, however, stated religious persuasion more often, in about half of the cases: Catholic, orthodox Calvinist, liberal Calvinist or Jewish.

The case law soon gave a supervisor the option to direct a child to stay outside the home without a court order. The juvenile judge could intervene if he didn't agree. If staying at home was considered hazardous, the minor was placed in residential employment. This could be done at no cost to the State and still had an educational purpose. If the supervisor gave such a directive, parents and child were bound by law to abide by it.

3.5 The Role of the Supervisor

Visiting the family and reporting to the judge were obvious tasks of the supervisor. The supervisor would see that the child went to school and would meet with teachers or headmasters. For most children school ended at the age of 14 when education was no longer compulsory. The supervisor would then help to find them a suitable job. The most suitable position for girls was working as a maid. This job also had an extra pedagogical advantage.

One consequence of unlawful sexual behaviour by minors could be the minor's removal from home. If the parents were unhelpful, or if the minor found temptation in her living environment or needed protection

[50]For every outplacement, the juvenile judge asked permission from the Minister of Justice. This Department paid for the outplacement if the minor and parents could not; this was usually the case.

from her family, it was thought better for her to leave home. But from 1931 onward, as the Depression set in and government spending was cut, institutional placements decreased. If the minor was otherwise well-behaved and only needed protection from people outside the family, there were no grounds for placement in an institution. The solution lay in jobs that were typical for girls, such as residential employment as a maid in a respectable family. Other types of employment were excluded, such as being a daily maid or working in a factory. The job of daily maid did not provide enough opportunity to supervise the girls' activities. A factory was considered a poor moral environment.

The working relationship of the girl with her employers was first and foremost an economic one. In return for her work she would receive board, lodging and pay. The arguments used by the matron of an institution and by the juvenile judge would extend the basically economic relationship to include pedagogical advantages. This job would offer the girl a 'suitable environment', usually meaning that she would be serving a family in a higher social class than her own. It was expected that these people would be of good moral standing and thus able to guide the girl morally.

Some of these placements were unsuccessful. During the depression, from 1930 to 1936, it was hard to find any job at all. If a girl had problems with the employers, her impudence was usually mentioned as a cause. The girl might also have stayed out later than was allowed or had not returned home for the night. Or she might have been accused of being dishonest. If she was fired, the supervisor would have a problem. Losing a job meant losing a place for the girl to stay in away from her bad home environment. The supervisor would try to patch things up or to find the girl a new job as quickly as possible, a hard task if the previous employer had not given a good reference letter. The next employer would not want to hire a girl without one, unless he could get reliable oral testimony. If the girl had caused problems at the last job, it would be harder for the supervisor to recommend a girl with no references, knowing how difficult the girl could be. In this type of situation, the supervisor would quickly seek a consultation with the judge in order to consider the available options and choose the most desirable line of action. Sometimes there was no other option but to let the girl go home. At other times behavioural problems would put extra pressure on these considerations. Outplacement in an institution would be considered the best option.

Finding work for the child (or the father) was an issue in every dossier. Sometimes the supervisor would not approve of a job. Working in a pub was out of the question. Working in a factory or a sewing atelier

was allowed but not rated highly. Working as a servant in a residential job was the most preferable. Spare time had to be used properly. Going to the cinema or reading certain literature was bad. Sewing, helping around the house or going on family visits was good. Another pedagogical ideal was putting money away in a savings account, which was usually necessary for buying clothes. The supervisor was in control of the savings account. However, most of the time young people had no spare cash because they had to contribute to the family income, or they barley earned enough for food and lodging.

The supervisor's assistance also included such things as enrolling his young charges in courses or letting them participate in church associations for adolescents. Taking part in church meetings and following the catechism or other forms of church education was viewed as a pedagogical ideal. A minor made progress if she were obedient, honest and adapted herself to a respectable lifestyle.

The assistance a supervisor could provide also depended on the circumstances at home. The supervising order could be meant to keep things the way they were and prevent parents from making changes. For example, 'Joanna' had previously filed a complaint for incest against her father and had left home to avoid him. Now she had stolen something from her employer and when asked why she had done it, 'Johanna made known she was frightened her father would come and get her. She actually wanted to be sent to an educational institution'. Joanna found a new employer and the supervising order prevented the father from making her come home.[51] Another example is the case of 'Catherina', whose parents were divorced. Her mother was a prostitute and her father lived with another prostitute. Catherina had sex with one man on several occasions. Her father insisted that she should marry her lover, but her mother refused to give her permission. As neither parent could offer Catherina suitable living conditions, she was placed in an institution. At the end of the term the supervisor had to find her residential employment or another lodging. The supervisor found relatives willing to let the minor stay with them.[52] Looking for suitable care and financial assistance were parts of the supervisor's job. The juvenile judge offered his advice, suggesting which organisations the supervisor should turn to and perhaps even contact them himself if the supervisor had been turned down.

[51] Groningen Court, 1930, roll no. 28.

[52] Groningen Court, 1938, roll no. 756.

Helping a pregnant minor meant finding a specialised institution where she could deliver the baby and stay a while. A place had to be found where mother and child could live and the mother work. In the petition for 'Geertje', the Public Prosecutor asked for the pregnant girl to be removed from her home town immediately 'considering it has been established that Geertje has often had intercourse with her 14-year-old brother by whom she is now pregnant.' The supervision order made this possible since the State paid the costs.[53]

Supervisors had their own ways of dealing with their tasks. Some would restrict themselves to visits and reports. Some would carry out thorough checks of the minor, others would only look at the state of the house and the income. Some would visit every week whereas others only visited once or twice a year. Some supervisors expected the child or parent to come to them. In several cases the supervisor had no contact with the parents, for example, if the minor did not live at home even though in such circumstances the supervisor was expected to stay in touch with both child and parents. Yet not all supervisors did so. If the minor was placed in a local institution in Groningen, keeping in touch was not a problem. However, most institutions were in other parts of the country, too far away to travel to for most supervisors. If the supervisor was consulted on the extension of the supervision order, the reports made reference to the situation before the outplacement or to the supervisor's sparse contact with the child or the institution. Reports from the institution were more valuable in terms of this decision than the report from the supervisor. One supervisor paid part of the institutional expenses of a minor. Another supervisor took a minor into her home after an operation at the hospital. The juvenile judge tried to ensure that the supervisor maintained a balance between giving aid and becoming too closely involved.

Supervisors would sometimes exaggerate their assessment of the problems. For example, one supervisor reported that 'the boy would come to his downfall because of lack of food and inadequate education'. In fact, the boy had merely skipped school on several occasions and the hospital had not reported that he was undernourished but was growing fast. The supervisor asked for dismissal of parental rights because 'it wouldn't be surprising if the mother had male visitors in her house'.[54] The judge did not prolong the order, thus suggesting that he did not

[53]Groningen Court, 1937, roll no. 200.

[54]Groningen Court, 1930, roll no. 259.

share the supervisor's assessment of the situation. This raises the issue of the competence of supervisors. The juvenile judge in Groningen seldom relieved supervisors of their duties because they were deemed unfit for the job. They were volunteers and not easy to come by. He would replace a supervisor only at the supervisor's own request.

3.6 The Role of Parents and Minors

Parents and minors were not always happy with the supervision. In several cases parents would be angry with the supervisor because they expected some form of help (financial support or clothes) that they did not get.

Disputes are documented in three cases. For example, 'Cornelia' lived in lodgings while her mother lived at home. Her mother kept asking Cornelia to come home. But the judge and supervisor both thought she would run away and go out with men again if she went back to living with her mother. The supervisor stated that Cornelia had told her, 'I *am* going back to Mum. Neither you nor the juvenile judge can stop me because Mum has all her rights; she has not been deprived of parental authority'. The supervisor warned Cornelia that the police would take her away from her mother and place Cornelia in an institution. The judge told her that she must stay in her lodgings as the supervisor had instructed. Later Cornelia misbehaved in her lodgings and the juvenile judge began preparing an outplacement. The mother wrote to the judge that the supervision order was no longer needed and that she was now able to cope with the situation, but this did not convince the judge. Since most institutions asked for a medical statement to prove that the minor was free of venereal disease, the juvenile judge ordered Cornelia to see a doctor. This resulted in an angry letter from the mother:

> Cornelia came home all upset by the awful words you—a high-standing person—threw at her. Know this, she is not going [to the doctor] and she's not going to you either any more, because you only break down what you should be building up. … She is and stays my child. …I waive all further help and mediation.

Yet evidently the mother gave in, because three days later Cornelia did see a doctor who diagnosed a venereal disease. She was treated for this and committed to an institution in town so the treatment could be continued.[55]

[55] Groningen Court, 1927, roll no. 539.

In two cases the mothers refused to say where the minor worked. They did not want their child's employer to know that their child was under supervision. In one case the minor told her supervisor that something had come up between her and the family she served, and her employer pointed out to her she was under supervision. She was not allowed to make objections of any kind. The employer used the supervision as an excuse to prevent the girl from making objections.

3.7 The Role of the Juvenile Judge

The final decision on prolonging a supervision order or placing the child in an institution was in the hands of the juvenile judge. This required that the judge be adequately informed. If the supervisor did not report often enough, or if the judge felt he needed better information, he asked the supervisor to provide the necessary information. If the case showed sufficient progress, the judge would agree with the supervisor to reduce the frequency of reports. Institutions reported on the minors placed in their care. Sometimes experts such as physicians or psychiatrists would be consulted. The police or the Officer of the Children's Act could be asked to investigate the circumstances during the supervision. The judge also consulted with the mayors of other towns for information on the people in their communities, for help in finding suitable supervisors and for their contributions to the costs of institutional placements. In small towns information did not take long to reach the mayor, who sometimes reported on new developments, knowing the child was under supervision.

On one occasion, the sexual misbehaviour of minors led to an unusual response from the judge. Judge Feith was confronted with the cases of two girls made pregnant by a sailor from Delfzijl, the only port in the province of Groningen. After the second case the judge wrote to the mayor of Delfzijl suggesting he establish a vice squad. The mayor was upset and tried to prove to the judge that his town did not have an unusually high rate of illegitimate children.[56]

Another exceptional case was that of a girl mentioned earlier, Catherina, who had sex with her adult boyfriend and was still under family supervision. A minister wrote to the judge on behalf of the lover, who

[56]Groningen Court, 1938, roll no. 755. The letter of the judge to the mayor mentioned the first case, but this case was not drawn in the sample.

intended to marry her. However, Catherina was only 16 at the time and the mother opposed the marriage. Catherina was placed in an institution for a while, because there were doubts about her mental capacity and the intentions of the lover. The juvenile judge, the matron of the institution, the lover and the girl came to an agreement as to when the lover would be allowed to visit her. All went well and when Catherina went home the lover was allowed to see her more often. A few months later, however, Catherina announced she was pregnant. The lover said he had impregnated her on purpose because neither of them wanted to wait until Catherina was 18 to marry, by which time the judge had said marriage could be considered if they continued to behave well. They married a few months before the girl turned 18. The law set the age of majority at 21, but marital status gave the girl lawful adulthood. As a consequence, the criminal sexual behaviour of the minor led paradoxically to the termination of her supervision order.[57]

Another consequence of misbehaviour was to be reprimanded by the juvenile judge. Sometimes the minor was summoned and told to mend his or her ways. Or the parents were warned to listen to the supervisor under the threat of losing their child. The execution of the reprimand was carried out by the juvenile judge who exerted his authority in face-to-face encounters. Although parents and minors tended to hold the function and person of the judge in high esteem, there was no guarantee that they would adhere to the directives given by either the supervisor or the judge.

The judge received information by way of reports and asked for more information if required. He sometimes invited supervisors, parents and directors of institutions to official consultations which were held to help find the right course of action and coordinate the aid. Informally, he also heard parents, minors, friends and family and received letters from parents and minors fairly frequently. One unusual letter from a club of 12 neighbours stated that a certain girl never came home before 10:30 p.m.[58] Letters from minors usually came from those placed in institutions asking permission to start a job as a maid or begging to be released before the end of the term.

[57] Groningen Court, 1938, roll no. 756.

[58] Groningen Court, 1939, roll no. 686.

Despite the wide means of gathering information and the possible action that could be taken within the limits of a supervision order, it could still be difficult to provide the help that would improve a given situation. An example can be seen in the case of 'Pieter', who kept getting into trouble and who was being treated at a psychiatric clinic. The judge asked the director of the clinic if Pieter could be declared insane. The response was 'no'. Thereupon the judge asked the Guardianship Board if parental authority could be dismissed. This was considered impossible because no association would take custody of a boy with reduced mental capabilities. This meant that help to improve the situation had to be found within the boundaries of the supervision order. The judge decided to place the minor in an institution under observation. The report from the institution confirmed the behavioural problems, but went on to say that Pieter could safely be left in the community if supervised. Nonetheless, several months after his release the supervisor declared his case 'hopeless'. Not long after, the boy was convicted of theft and as a result the supervision ended. The process of penal conviction gave the judge a new opportunity to deal with the minor when he had run out of options in the civil process.[59]

The judge clarified his authority in a case illustrated by 'Maria', who had been placed in an institution for the mentally ill on the directive of a professor from a psychiatric clinic. The juvenile judge warned the professor that Maria was not allowed to leave the institution without judicial permission. The institution had to send the judge reports on her. Because the judge had not appointed the institution or given an outplacement order, this was a voluntary placement. However, even though other professionals were caring for Maria, the judge claimed his responsibility for the upbringing of the child.[60]

The ultimate aim of a supervision order was to ensure its end. The goal was to make such improvements that supervision would no longer be necessary. The main effort was concentrated on keeping the minor in a job, not causing too many complaints and having some kind of a future ahead. In the majority of cases, problems related to sexuality did not turn up again in the supervisors' reports. However, not all cases ended because things were at last going well.

[59]Groningen Court, 1935, roll no. 1323.

[60]Groningen Court, 1938, roll no. 1288.

In two of the 44 sample cases, the minors, both male, moved to Germany, thus placing themselves outside the jurisdiction of the judge. In 13 cases the supervision lasted until the minors came of age. Since supervision was for minors only, in five cases it ended automatically with marriage, which made an underage person legally an adult. Four cases closed when minors were convicted and committed to a youth custody centre for indefinite periods. In one case parents lost parental authority upon the request of the Guardianship Board. In another case, supervision was discontinued early because the supervisor was about to re-locate and would be unable to continue the work. Conferring on the options with the supervisor concerned, Judge Feith decided to end the order. None of the other cases were renewed at the close of their term. The end of the supervision order also meant the end of assistance.

4 Conclusion

How the juvenile judge handled family supervision cases depended on social factors, legal factors, institutional resources and personal factors. A typical social factor of the time was the pillarisation of Dutch society. The law took this into account, which meant the juvenile judge had to choose a supervisor and custodial institution based on the religious convictions of the family. Sometimes the juvenile judge benefited from another social factor, as he had a certain authority and respect.

The law gave the juvenile judge a fair degree of discretion, since there were no particular criteria for imposing an order. Family supervision was encouraged if the child was threatened by moral or physical destruction; a great variety of circumstances fit this description. The moral and sexual dignity of girls was a specific group of problems addressed by the family supervision order.

One institutional resources factor involved finding and providing guidance to volunteers. Every supervisor had his own method of dealing with the task at hand. Judge Feith appreciated this and on occasion gave advice. He clarified why he would give or withhold his permission regarding decisions about upbringing; he seldom gave directives to the supervisor. Other means-related factors included cooperation with educational institutions, collaboration with mayors and the police, and providing various forms of possible assistance.

A juvenile judge's personal input had the most important influence on the way he handled family supervision in cases of sexual misbehaviour

involving minors. Sometimes he advised the supervisor on a course of action and/or talked to, reprimanded or made specific arrangements with parents and minors. Once he even pointed out to the mayor of a port town that something had to change. This was what the lawmakers and advocates of juvenile courts had hoped the juvenile judge would be—an approachable, paternal figure who stood by the norms and values of the time and was prepared to go the extra mile. This special judge would make rights for minors superfluous since he acted in the best interest of the child.

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CHAPTER 8

A 'Wayward' or 'Incorrigible' Youth? Juvenile Crime and Correctional Education in Post-war Germany, 1945–1953

David Meeres

1 Introduction

Let us take a young person, who finds himself alone on the way home from an evacuation camp in 1945—equipped without money, without provisions, without precautions for a long journey, for the most part on foot. What influences was he exposed to on the way? Such a trek must be an experience that puts years on the youth, depriving him of all the illusions of good and evil he was capable of. Of course such a creature is unhesitating and ends under certain circumstances in complete waywardness, if—and it depends on this—one day a person does not come upon a plan which sees the situation and works with love and patience to educate, and to whom the youth can put his complete trust in… It can however also be the sentencing to juvenile prison that brings change in the life of a wayward youth.[1]

[1] Martha Engel, 'Jugendkriminalität', Bundesarchiv Berlin, DR /2, 4744, Sheet 1.

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The question posed here, as happened with alarming frequency in the immediate post-war period was: how could youths reeling from the effects of war, often separated from their families and homes, often struggling to survive among the rubble-strewn streets, be prevented from becoming criminal? The task faced by the welfare authorities immediately after Germany's capitulation in World War II was daunting. How were they, along with the police and the courts, to control such 'wayward' youth when chaotic conditions—prevalent throughout Germany—meant that frequently not even a name or address could be put to them? How was the prevention of 'waywardness' and criminality among youth to be achieved without some recourse to the judicial and welfare system used by the National Socialist government during the war years, and what was the significance of this to the reconstruction of German society after the war?

The phrase *Verwahrloste Jugend* (wayward youth) appears frequently in post-war legal, social, political and military reports. *Verwahrlosung* is a term that possesses both positive and negative connotations. It can mean an individual or group 'suffering from neglect', or refer to the process through which a child or juvenile is perceived to 'turn bad'. Josef Zehetner's *Handbuch der Fürsorge und Jugendwohlfahrtspflege*, a well-regarded textbook published in 1954, described waywardness as 'unsuitable living conditions, in subjective ways of behaving and acting; a consequence of a bad disposition or hereditary influence, bad living and environmental conditions, poor education, encouragement or compulsion to evil'. He continued to explain how waywardness manifested itself in various forms such as an 'addiction to enjoyment and pleasure' and in 'adventurousness', as well as in a 'tendency to lie […] slovenliness, beggary, theft, forgery, violence, sexual compulsiveness […] truancy, wreaking havoc […] a lack of emotional warmth, […] arguing, brawling, acts of brutishness; visiting awful bars and societies, cheekiness, spite, revolting against parents, teachers and bosses'.[2] This pessimistic portrayal of the young was echoed in many other contemporary reports that contributed to a discourse on dangerous, out-of-control youth. The issue of how to treat 'problem', or indeed 'criminal' youth was of particular importance in the Allied efforts to re-educate Germany after the war.

[2] Josef Zehetner, *Handbuch der Fürsorge und Jugendwohlfahrtspflege* (Linz, Amt der Oberösterreichisches Landesregierung, 1954), p. 385.

Indeed, the subject was raised during the war itself. Clement Attlee, Head of the British Labour party and future Prime Minister, spoke in 1944 of the 'clear perversion' of German youth through the Nazi education system. They would, in his opinion, 'take a very long time to civilize'.[3]

The focus of the chapter will be primarily on the practice of welfare education (*Fürsorgeerziehung*) during the immediate post-war years, giving an overview of the nationwide problem of 'wayward' youth before providing a more specific investigation of the situation in Berlin through an examination of juvenile court case files (*Strafakten*) from various Berlin district courts (*Amtsgerichte*). Through these cases, understood within contemporary legal/societal debates on youth crime, an examination of the significance of such individual criminal acts will be placed in historical context.[4] The chapter will thus make a contribution to the ongoing historical debate concerning continuities and discontinuities in mid-twentieth-century Germany. The so-called 'Zero Hour' (*Stunde Null*) relates to the moment of Germany's capitulation on 8 May 1945. It expresses the idea that from this moment, a new era in German history began. While it certainly marks a momentous and significant political shift, it obscures lines of continuity in mid-twentieth-century German history. Though this chapter appreciates that the Allied occupiers departed from certain key tenets of Nazi juvenile criminal politics (most notably the racist elements involved), it argues that there were nevertheless clear continuities present that have been obfuscated by the 'Zero Hour' thesis. In terms of legal continuity, the 1944 Youth Court Law (*Reichsjugendgerichtsgesetz*), itself a modification of the 1923 Youth Court Law, remained on the statute books for eight years after the war. Even after the capitulation of Hitler's Third Reich, leading criminologists such as Rudolf Sieverts described it as a well thought-out and purposeful

[3] Cited in James P May & William E. Paterson, 'Die Deutschlandkonzeption der Britischen Labour Party 1945–1949', in: Claus Scharf & Hans-Jürgen Schröder (eds.), *Politische und ökonomische Stabilisierung Westdeutschlands 1945–1949. Fünf Beiträge zur Deutschlandpolitik der westlichen Allierten* (Wiesbaden, Franz Steiner, 1977), p. 77.

[4] A somewhat problematic term to translate: literally, *Fürsorgeerziehung* means welfare education, though Ross Dickinson translates it as 'Correctional Education'. Essentially it entailed the juvenile's upbringing in (local authority) care. For a thorough discussion of the terminology of welfare see Young-sun Hong, 'Neither singular nor alternative: narratives of modernity and welfare in Germany, 1870–1945', in *Social History*, Vol. 30 No. 2 (May 2005), pp. 133–153.

law. Sieverts was also a criminologist in the Nazi government, and was indeed heavily involved in its drafting. The chapter will also argue that a significant shift in the politics of youth welfare did not occur either. This was due, among other factors, to the uniquely unstable conditions in which Germany found itself, to time and personnel constraints, and to notable continuities in the juvenile justice system inherited from the Third Reich. From 1949, with the division of both Berlin and Germany into East and West, there were additional points of difference in juvenile welfare policy, though here the emphasis will be mainly on West Germany.[5]

In order to gain a better understanding of these continuities in the juvenile welfare system, it will first be necessary to outline its beginnings. Following this, the difficulties faced by welfare and judicial authorities—and the effect of this on juvenile criminal discourse—will be examined. In order to investigate further these trends on a more detailed micro-level, individual case studies of juvenile crime processed by Berlin district courts in the immediate post-war period will be utilised. Finally, the last section will broaden the focus again to discuss popular notions and preconceptions of the causes of post-war juvenile crime, both within and outside those institutions charged with its policing, contextualising the micro-data examined in the previous section.

2 The Beginnings of Juvenile Welfare and the Youth Welfare Law of 1922

The origins of modern juvenile welfare (*Jugendfürsorge*) in Germany can be traced back to the last quarter of the nineteenth century. As a consequence of Germany's rapid industrialisation, bringing with it a period of significant societal change, fears among the population grew that Germany's youth enjoyed too much freedom too quickly. The discovery of a 'gap between school and barracks' (a result of pupils leaving age—sixteen—being able to find employment earlier, often entailing

[5]Within the Federal Republic of Germany, there were 2,649,897 persons (or 56.4 per 1000 of the population) receiving welfare support in the first quarter of 1949. This figure dropped to 1,051,525 (21.8 per 1000) in the second quarter of 1951. See the table 'Öffentliche Fürsorge 1949–1951 nach Rechnungsvierteljahren' in *Statistisches Jahrbuch für die Bundesrepublik Deutschland* (ed. Statistisches Bundesamt Deutschland; Stuttgart, Metzler-Poeschel, 1952), p. 267.

a disruptive and potentially dangerous move away from the traditional educative environment of the family) acted as a catalyst for the introduction of a more comprehensive system of state help for youth.[6] The rapid growth of industry and cities with their dangerous side-effects: economic need, compromised workers, the ever-increasing inclusion of women and youths in working life, unemployment and unsuitable or totally lacking home environments were all viewed as undermining the basis of family life.[7] This was thrown into further chaos as a result of wartime exigencies between the years 1914–1918, when such fears were even more in evidence.[8] Responses to juvenile crime were frequently characterised as falling under two distinct models: the justice model, according to which juveniles are dealt with within the criminal justice framework containing the possibility of punishment, and the welfare model whereby juvenile offenders are (in theory) removed from the criminal justice system and are 'treated' or 're-educated' through welfare measures.[9] In practice, however, responses to juvenile crime tended to involve a mixture of these two elements, as we shall see later in the chapter.

In terms of historical analyses concerning juvenile welfare, up until Detlev Peukert's 1986 publication *Grenzen der Sozialdisziplinierung* ('The limits of social discipline'), research was implemented almost exclusively within legal and social-pedagogical (*sozialpädagogischer*) studies.[10] Peukert's thesis threw the door open to social-historical research.

[6] Detlev Peukert, *Grenzen der Sozialdisziplinierung*: Aufstieg und Krise der deutschen Jugendfürsorge von 1878 bis 1932 (Cologne: Bund-Verl. 1986), p. 310.

[7] See Stephan Mikinovic, 'Zum Diskurs über abweichendes Verhalten von Jugendlichen und das Auftreten des Schuldvorwurfs an die Familie zur Jahrhundertwende', in Ludwig Boltzmann Institut für Kriminalsoziologie (ed.), *Kriminalsoziologische Bibliographie: Vom Umgang mit dem Strafrecht. 10 Jahre Kriminalsoziologie in Österreich, Vol. 9*, No. 36/37 (Spezial) (Vienna: Verlag für Gesellschaftskritik, 1982) pp. 25–37.

[8] *Entwurf eines Jugendgerichtsgesetzes nebst Begründung* (Outline of a Juvenile Court Law according to the Proclamation of 24 October 1922, Cf. Jörg Wolff, *Jugendliche vor Gericht im Dritten Reich*, *Nationalsozialistische Jugendstrafrechtspolitik und Justizallag* (Munich, C.H. Beck, 1992), p. 32.)

[9] Thomas Crofts, 'The rise of the principle of education in the German juvenile justice system', *The International Journal of Children's Rights*, Vol. 12 (2004), pp. 401–441, here p. 401.

[10] Two notable exceptions being Christa Hasenclever, *Jugendhilfe und Jugendgesetzgebung seit 1900* (Göttingen, Vandenhoeck und Ruprecht, 1978) and Hans Scherpner, *Geschichte der Jugendfürsorge* (Göttingen, Vandenhoeck und Ruprecht, 1966).

He argued that far from juvenile welfare being a benevolent institution safeguarding the right of every German child to a 'decent' education, its integrative strategies actually provided an increasingly interventionist, controlling state with a means of legitimising its actions.[11] One institution examined by Peukert was the youth office (*Jugendamt*), established in Germany in 1925. This was integral in the authorities' quest to control youth crime, through its day-to-day experience of providing legal assistance to wayward, endangered or criminal youths. Essentially, it was charged with helping to ensure German children grew up to become able and willing participants in adult society. Through its various supervisory functions—being legally obliged to work together with guardianship and youth courts, the police, employment offices and (during the Third Reich) the Hitler Youth and National Socialist Welfare authorities (NSV)—it attempted to ensure 'wayward' youths were 'educated' into becoming healthy, productive members of society, an aim that had been legally guaranteed by article 1 of the 1922 Youth Welfare Law. This article guaranteed 'the right of every German child to physical, mental and social competence (*Tüchtigkeit*)… in as far as this cannot be fulfilled by the family, public youth welfare will be implemented regardless of any voluntary activity'.[12] According to Paragraphs 56 and 57 of this law, a juvenile should be placed in probationary care (*Schutzaufsicht*) or correctional education (*Fürsorgeerziehung*) when their family is adjudged to be unable to provide the requisite education, or where their educative influence is seen as 'ineffective'. In such cases the youth office intervenes, instigating an alternative form of education in order to protect the youth from further 'neglect'. This was a law that was never abrogated by the Nazi regime. Indeed, it remained on the statute books until 1991, a year after German reunification. In addition, a 1923 Youth Court Law that for the first time separated adult from juvenile offenders, was also deployed during the Third Reich. It was modified in 1943 to enable persons as young as twelve years old to be tried as adults when the 'protection of the *Volk* or the particularly criminal disposition of the offender demands it'.[13] This was only abrogated with the introduction of another Youth Court Law in 1953, an alteration that set the age of criminal

[11] Detlev Peukert, *Grenzen der Sozialdisziplinierung*, p. 292.

[12] Article 1 of the Youth Welfare Law (*Reichsjugendwohlfahrtsgesetz*) of 9 July 1922.

[13] *Reichsjugendgerichtsgesetz* of 6 November 1943, RGBl. I, pp. 365–367.

responsibility (as per the 1923 law) back at fourteen. This, then, provides the framework for this chapter and explains the choice of the period under study: from the end of the war to 1953. It aims to demonstrate that there were notable continuities in the policing of youth crime from the Third Reich into the post-war period of Reconstruction, both on the legal-theoretical and individual level.

In every criminal case that reached the juvenile criminal court (*Jugendgericht*), a welfare officer with previous knowledge of the accused was required to submit a report to the court in which he or she was to be tried. The district-based system of the juvenile justice system meant youths would normally be tried in the same district in which they resided. Consequently, the youth office of that particular district would be called on to provide information gathered on the individual to be tried. The court files therefore include in the vast majority of cases a character report, usually dated around five to seven days before the trial, intended to assist the presiding judge in reaching the most 'educationally appropriate' sentence through an appraisal of particular character traits of the accused youth. A wealth of information is provided within the one- to two-page reports from the youth office, always including information pertaining to their family, work, school, friends and previous convictions. In order to gauge the importance and accuracy of such welfare reports, it will be necessary to first outline the difficulties faced by the welfare and judicial authorities in compiling the information necessary to convict an act of juvenile criminality. We will deal first with the post-war period, but will discuss National Socialist policies regarding the juvenile justice and welfare systems—and their effects on post-war society—as the chapter progresses.

3 The Difficulties Faced by Welfare and Judicial Authorities

A census carried out on 29 October 1946 registered just under 3.2 million persons living in Berlin. Of these, just over 120,000 (or 3.8% of the total population) were aged between fourteen and eighteen years of age, and were therefore eligible to be tried under juvenile criminal law.[14]

[14] *Berlin in Zahlen* (Berlin (Ost), Das Neue Berlin, 1949), p. 56.

In the first two post-war years, a comparison between the amount of crimes committed by adults and juveniles demonstrated some particularly worrying trends. In 1946, 2439 youths were sentenced before the Berlin courts, corresponding to just over 2% of the city's juvenile population. In 1947, the number of youths sentenced reached almost 4000 (or 3.3% of the juvenile population). In terms of adult criminality (those aged eighteen and above), around 20,000 (0.8%) of a total adult population of just over 2.5 million were convicted in 1946, increasing to just under 30,000 (1.2%) in 1947.[15] Juveniles were, then, statistically seen to be committing a disproportionate amount of crimes. The official criminal statistics for 1946 and 1947 demonstrate that a large number of offenders were successfully tried, this still only represented a fraction of total juvenile crime.[16] Cases abounded of youths who had slipped through or evaded entirely the institutional controls for preventing criminal acts, even despite the large numbers of those arrested, as a British Zone Review article relayed in late 1946:

> Each month in [Berlin]…more than 2000 juveniles are arrested for crimes that, in the main, arise from the existing economic deprivations and concern thefts of food, clothing and urgently required consumer goods. (Compare the 1935 figure of approximately 3000 cases for the year.) A proportion of this criminal activity may be traced to the misdirected application of the youthful desire for adventure. There has been, however, a large increase in the number of psychopathic offenders whose actions reveal sadly distorted moral values and emotional instability. Among the

[15]The 1947 percentage figures for juvenile and adult crime are based on the Berlin population figure for 1946, given no census was carried out in 1947.

[16]Regarding those who evaded the law, in 1946 a total of 185,257 crimes were reported to the *Kriminalpolizei*, of which only 22,852 resulted in sentences. This corresponds to a 'success' rate of only 12.3%, a very low figure even taking into account such factors as false charges, acquittals, lack of evidence, and the inability to locate suspects. 1947 saw 191,611 reports filed with the police, of which 33,324 led to sentences, or a 'success' rate of 17.4%. Though this represents an improvement over 1946, still less than one in five crimes reported led to a criminal sentence. However, this does not tell us what proportion of crimes reported to the police can be attributed to juveniles: the age of offenders can be known only in those cases where the police have been successful in identifying the offender. Yet we can safely assume that the high rate of unsuccessful investigations was applicable to juveniles as well as to adult cases and that the number of juveniles sentenced represent only a small proportion of those juveniles who were authors of crimes actually reported to the police.

> 1000-odd juveniles awaiting trial in August this year were fifteen accused of murder, among them a girl of fifteen and another of sixteen years.[17]

Statistics also demonstrated a drastic increase in numbers of youths sentenced in comparison to the pre-war period. Total crime figures increased dramatically from 6583 simple and 5544 serious thefts in 1937 to 74,597 simple and 32,771 serious thefts in 1946.[18] The usual explanations proffered by social commentators and legal experts almost always involved a discussion of the precarious nature of post-war family relations. This is unsurprising when one considers the statistics: at the end of World War II, Germany had some 1.25 million children and youths who had lost their father during the war. Around one-fifth of these were orphans (*Vollwaisen*).[19] Many fathers who survived found themselves in Prisoner of War camps—one figure put the number at over four million men—and many mothers worked tirelessly just to keep their families' heads above water.[20] There were countless children and young persons without a fixed place of residence, sometimes out of choice but more often arising out of the destruction of their previous accommodation, the break-up of their family, the loss of a father or mother, their immigration into Germany from abroad or emigration from the country. Even by the summer of 1951, the number of unregistered or 'wandering' children and youths was estimated at 40,000.[21] Curt Bondy, a prominent psychologist and juvenile penologist in the Weimar Republic, Third Reich, and post-war periods stated in 1953 that:

> Our great worry is that from the unemployed and homeless youth, completely unrestrained (*Hemmungslos*) people develop. That would mean that they lead a thoughtless, impulsive, unaccomplished life, that they become

[17] 'Berlin's Youthful Criminals', in *British Zone Review*, 23 November 1946, Vol. 1 No. 31, p. 1.

[18] Ralph Angermund, *Deutsche Richterschaft 1933–1945. Krisenerfahrung, Illusion, politische Rechtsprechung* (Frankfurt / Main, Fischer-Taschenbuch-Verl., 1990), p. 219f.

[19] Hermann Glaser, *Kleine Kulturgeschichte der Bundesrepublik Deutschland* (Bonn, Bundeszentrale für politische Bildung, 1991), p. 72.

[20] Richard J. Evans, *The Third Reich at War* (London, Allen Lane, 2008), p. 683.

[21] Curt Bondy, 'Bindungslose Jugend: eine sozialpädagogische Studie über Arbeits- und Heimatlosigkeit', in *Unsre Jugend 4* (1953), p. 9.

> wayward and criminal only too easily and that later their children grow up just like the parents.[22]

A questionnaire of 1947 also depicted a miserable situation. For example, of the 11,000 schoolchildren living in Fürth (Bavaria), 60% had no proper shoes, 35% had to share a bed with two or three others, and 40% owned no winter clothes. In Kassel, 7.5% had no footwear whatsoever. In Berlin 125,000 children were counted who had not one pair of 'decent' shoes. In Munich 20,000 lived separately from their parents, 17,000 had no bed of their own, and 14,000 had no toothbrush. In Mannheim 70% admitted that their parents had nothing to heat their homes; and 12% suffered from oedema due to malnourishment. Additionally, up to 100 youths could be found every night in the Frankfurt Main Railway Station bunker. On average, 60% of those sleeping there could only offer the certificate of release from a prison as a form of identification.[23] In Munich, one-third of the city was completely destroyed, as well as flats being taken up for other purposes (altogether representing a reduction of living space by one-third). The three million German evacuees added to the other eight million inhabitants exacerbated this already dire situation. In a paper given at a Berlin Conference of youth experts, Elisabeth Bamberger, a prominent pedagogue in Munich, stated, 'in the Bavarian countryside, 10,000 children are living in barracks, far removed from any opportunity to learn anything respectable'. A 1947 survey carried out in Munich Schools showed that almost half of the pupils were living in broken homes, while a statistic for the first quarter of 1949 gave the figure for youths from 'incomplete' families appearing before the Juvenile Court as 62%.[24]

[22] Curt Bondy, 'Bindungslose Jugend: eine sozialpädagogische Studie über Arbeits- und Heimatlosigkeit', in *Unsre Jugend 48* (1953), p. 53. This scepticism was however not merely confined to Germany. An article in the American *Time Magazine* entitled 'The Younger Generation' was similarly downbeat about the moral state of youth in the country. See the edition from 5 November 1951, p. 26f.

[23] See Hermann Glaser, *Kulturgeschichte*, pp. 72–73. The statistics are taken from an article in the 8 February 1948 edition of *Die Neue Zeitung* entitled 'Jugend zwischen gestern und morgen. Verwahrlosung und Kriminalität der Jugendlichen – Gefahr oder Zeiterscheinung?'.

[24] See Elisabeth Bamberger, 'Jugendnot und Jugendhilfe', in Hermine Albers, Elisabeth Bamberger et al. (eds.), *Unsere Jugend. Zeitschrift für Jugendhilfe in Wissenschaft und Praxis*, Vol. 1 No. 1 (Munich, January 1949), pp. 3–12. Also see Nicholas Stargardt, *Witnesses of War. Children's Lives under the Nazis* (London, Jonathan Cape, 2005) in particular Part four (pp. 319–383).

By the end of 1949 there were some 1.5 million refugees (*Heimatvertriebene*) between the ages of fourteen and twenty-four in West Germany, with some 730,000 in provisional camps or emergency shelters. In Hessen alone, the numbers of refugees and expellees up to 1948 numbered more than one million, out of a former population of four million. Estimations of expellees under the age of 18 ranged from 10,000 to 80,000 for the American Zone of Occupation alone. In 1947, the Youth Office in Bremen picked up 1238 expellees and placed them in rough-and-ready accommodation (mostly air-raid shelters): for the Frankfurt Youth Office this figure was 10,932.[25] In the western zones, there were 14 million households but only 8 million habitable dwellings in 1946.[26] As a result of the war, Berlin lost over 39% of its housing, five of the twenty city districts were missing over half of their habitable rooms, with only eight percent of all flats remaining completely intact. The large majority of families in Berlin lived in at least partially damaged accommodation, with 80% having to share their place with others. Statistically, there was only 11.8 square meters of living space available to every person in the city.[27]

There was therefore considerable anxiety within the welfare system, given the size of the problem facing them. As the Berlin Main Youth Office (*Hauptjugendamt Berlin*) termed it 'the consideration of police as well as court measures on one side and the creation of a good educational situation on the other represent the particular difficulties of the Youth Assistance Bureau'.[28] The Youth Assistance Bureau was essentially a product of the so-called 'Nenndorf by-law' (*Nenndorfer Richtlinien*) of 5 November 1945 which was followed by all youth offices within the British Zone, enabling them to arrest all 'migrant' (*wandernde*) youths—implementable without legal order or form of cross-check—and

[25] Karl-Heinz Füssl, *Die Umerziehung der Deutschen. Jugend und Schule unter den Siegermächten des Zweiten Weltkriegs 1945–1955* (Paderborn, Schöningh, 1994), p. 104.

[26] Edward Ross Dickinson, *The Politics of Child Welfare from the Empire to the Federal Republic* (Cambridge, Massachusetts, Harvard University Press, 1996), p. 249.

[27] Roland Gröschel & Michael Schmidt, *Trümmerkids und Gruppenstunde. Zwischen Romantik und Politik: Jugend und Jugendverbandsarbeit in Berlin im ersten Nachkriegsjahrzehnt* (Berlin, Elefanten Press, 1990), p. 11.

[28] "Entstehung und Charakter der Jugendhilfsstelle", Berlin Hauptjugendamt, Abteilung Sozialwesen, 1. November 1949, Landesarchiv Berlin, C Rep. 118, Nr. 116, Sheet 63.

place them in police custody.[29] The Bureau was one of many institutions charged with the implementation of this by-law, which operated through informal arrangements of the regional youth offices within the British Zone—a procedure, according to one historian, not dissimilar to the unbounded inter-institutional agreements of the National Socialist state.[30]

Post-war German juvenile welfare often operated on the boundaries of legality in terms of the ability of the authorities to detain juveniles (legally, those between fourteen and eighteen years of age) who, while not by definition criminals, were viewed as endangering themselves, their environment or both. The reasons for their detainment could be as necessary as providing emergency shelter and food for someone absolutely unable to provide for themselves, or as petty as their failure to display adequate on-the-spot identification. The first three months of 1949 saw 1375 youths brought to Berlin Youth Assistance Bureaus, 693 of these by the police. Around half of these police cases involved the sentencing or investigation of criminal activity. That of course leaves another half where the authorities were unable to ascertain a concrete legal precedent by which to hold them. Severe constraints of space did not however check the zeal in which the authorities transferred youths into supervisory care. Where the Youth Assistance Bureaus in Berlin were concerned, total capacity amounted to only 157 youths at any one time.[31] Though the idea was to get them in and out as quickly as possible, the difficulties in their relocation meant a longer stay was in many cases inevitable. In and around Berlin, remand homes could be found (for male youths) at Struveshof, Ribbeckshorst, 'Grünes Haus', in Tegel, Waldhof (Templin), and 'Hoffnungthaler Anstalten' (Lobetal, near Bernau); for female youths at the Main Care Office (*Hauptpflegeamt*) on the Stargarderstrasse, 'Tannenhof' in Lichtenrade, 'Haus Gottesschutz' in Erkner, and 'Kloster zum guten Hirten', Marienfelde; and lastly for children at 'Haus Tornow' in

[29] Frank Kebbedies, *Außer Kontrolle. Jugendkriminalpolitik in der NS-Zeit und der frühen Nachkriegszeit* (Essen, Klartext, 2000), pp. 218–219.

[30] Kebbedies, *Außer Kontrolle*, p. 218.

[31] 'Entstehung und Charakter der Jugendhilfsstelle', *Berlin Hauptjugendamt, Abteilung Sozialwesen, 1 November 1949*, in Landesarchiv Berlin, C Rep. 118 Nr. 116, Sheet 63.

Buckow or the 'Kinderhof Wannsee'. However, their often being full to capacity meant they could refuse to take on more youths, whereas the Youth Assistance Bureau was in the first instance duty-bound to take on every youth in need of help, regardless of restrictions on capital, teachers or space. Erich Schneider ran one of the larger centres in Berlin. As a social worker who had already been active for 23 years in 1952, Erich Schneider described how his initial traineeship began in answer to a 1929 advert in the daily paper reading: 'Educator wanted, who is in the position to carry out education with strict male discipline (*Manneszucht*). Former sergeant or butcher preferred, who must also assist in the Institution's Butchers Shop'.[32]

Erich Schneider's Remand Home at the Main Youth Office in Berlin (*Jugendhofes des Hauptjugendamtes Berlin*) had a maximum capacity of 420 Youths, standing in 1952 at 320 inhabitants:

> whose designation (*Bezeichnung*) as wayward or criminal or hard to educate is always insufficient […] Fifty percent of the current cases are voluntary admissions (*freiwillige Unterbringungen*), forty percent [are] transferred by a judge after the conclusion of a criminal case (*Abschluß eines Strafverfahrens*), and ten percent [are] in correctional education (*Fürsorgezöglinge*) […] We can only stress again that these groupings are only significant in a juridical-formal sense and says nothing of a particular case's level of difficulty. In no way is the youth who has become criminal (*straffällig gewordene Jugendliche*) always a 'difficult' case, in no way is the voluntarily admitted youth always an 'easy' case.[33]

Schneider here provides a more nuanced portrayal of endangered youth, stressing that the formal definition of a youth as 'criminal' or 'educable' does not correspond to the work he carries out at the *Jugendhof*. In order to investigate the process by which a youth became admitted to such an institution, the chapter will utilise a case study of individual criminal acts committed by juveniles in post-war Berlin.

[32] Erich Schneider, 'Moderne Heimerziehung für seelisch auffällige Jugendliche' Kinder' in Hauptjugendamt von Berlin & Institut für Psychotherapie Berlin (ed.) *Analytische Psychotherapie und Erziehungshilfe* (Berlin, Daehler, 1952), p. 163.

[33] Ibid.

4 Case Studies of Juvenile Crime Processed by Local Courts in Berlin

A report by the Berlin-Reinickendorf youth office concerning Günter L., a seventeen year-old unemployed workman accused of several group robberies in February and March 1947, stated him to be 'elusive' (*fluchtig*), and consequently unavailable for questioning. In mid-April he was sentenced *in absentia* by the youth court in Berlin-Schöneberg to a term of three months imprisonment.[34] Of the five youths mentioned in connection with the crimes, only Günter was (eventually) brought before the same court, in person, in early June 1947.[35] His accomplice Harry J., a sixteen-year-old apprentice mechanic from Klein-Schönebeck in the neighbouring region of Brandenburg, was arrested and then released. The remaining three suspects could not be found.

In the immediate post-war period, the authorities involved in dealing with 'problem' youth faced considerable problems. As we have seen, many youngsters had lost their homes, not to mention some or all of their family through circumstances of war. In the youth office report contained in Günter L.'s criminal court case file, the living conditions of Günter were described as 'primitive', living with his parents and five siblings in a two-room apartment in Wilhelmsruh, a northwest part of Soviet-controlled Berlin-Pankow on the border to the French occupied district of Reinickendorf. A sociological study surveying the living conditions of 200 families in late 1946 found more than half lived in flats with 1.5–3 rooms.[36] The parents—his father a builder who had returned from a Russian Prisoner of War (POW) camp in January 1947 'incapable of work' and mother—were described in the youth office report as 'lacking in social standards' (*Empfinden*). Günter's parents explained that since becoming unemployed [on 22 January 1947], he merely 'loitered' around, involving himself in the black market or on 'foraging trips' (*Hamsterfahrten*).[37]

[34] Landesarchiv Berlin, B Rep. 051, Nr. 10505.

[35] Usual court practice saw youths accused of committing property crime sentenced within the space of one to three months after the alleged criminal act.

[36] See Hilde Thurnwald, *Gegenwartsprobleme Berliner Familien. Eine soziologische Untersuchung an 498 Familien* (Berlin, Weidmann, 1948) pp. 40–41.

[37] Reinickendorf youth office to the Schöneberg district court, 14 April 1947. Landesarchiv Berlin, B Rep. 051, Nr. 10505, Sheet 24.

After Günter's arrest on 3 March 1947, he admitted to an officer during an interrogation in the Neukölln district police station that he had carried out eighteen to twenty separate robberies, breaking into various cellars around the city. According to his statement, the haul included a bicycle, sixty pounds of potatoes and fifty-five pounds of coal.[38] According to the other suspect arrested in connection with the crime, Harry J., Günter and his 'band' had performed a total of ninety-six break-ins—though it appears this figure owed more to youthful bravado and exaggeration than a reflection of the actual number of burglaries committed by the youths. On 3 February 1947 Harry's stepfather, Karl R., came to the police and explained that he was 'eighty percent seriously disabled and [Harry] steals our last [possessions]'. According to his testimony, his stepson had taken a bicycle, 200 Reichsmarks, potatoes and a rucksack. Along with Harry's mother, Marie R., he filed a criminal complaint with the Neukölln public prosecutor's office (*Staatsanwaltschaft*), sending a copy to the Neukölln youth office—as his mother put it:

> in an attempt to apply correctional education on the juvenile, as imminent danger is apparent, that can only be averted through [its] ultimate application. How right we were was shown in the deplorable *fact* [my italics] that Harry also broke into the summer house of his stepfather, stealing a pair of top boots (*Langschäfter*), two large rolls of roofing paper and his complete tool set. Furthermore, [Harry] along with another youth, committed a robbery on an old woman in her home, where only their being disturbed prevented a holdup murder (*Raubmord*), instead of merely blows.

As a consequence of this, Marie R. went on to explain, the Neukölln criminal investigation department were deployed. In mid-February 1947, after a raid on Harry's flat, he was arrested and sent to the youth prison in Plötzensee.

[38] On the black market, during the extremely cold winter of 1946/47 (with temperatures as low as—15°C), the price per hundredweight briquettes was 50 to 80 RM, with hundredweights of coal fetching from 60 to 80 RM. See Thurnwald, *Gegenwartsprobleme*, p. 46. Additionally: for details on the worsening sustenance situation during this winter, *Ibid*, pp. 53–55. According to one report: "The unusually hard winter of 1946/47 has demonstrated in all areas the fragile health of Germany. In Berlin, for example, 285 people froze [to death], 67 people died after amputation of frozen limbs, 1376 people were taken to hospital suffering from frostbite, [and] 53,300 people were treated for frost damage." For further information, see Siegfried Heimann, 'Das Überleben organisieren. Berliner Jugend und Berliner Jugendbanden in den vierziger Jahren', in Berliner Geschichtswerkstatt e.V. (ed.) Vom Lagerfeuer zur Musikbox. Jugendkulturen 1900–1960 (Berlin (West), Elefanten Press, 1985), p. 118.

It may be interesting to note that, according to a survey conducted in March 1950, 117 out of 225 surveyed youths (52%) in the Plötzensee Remand Home had no occupation at the time of their offence, 136 (60.6%) had not finished their training (*Lehre*), 42 (18.5%) had completed it, while a further 47 (20.9%) were described as 'unskilled' (*ungelernt*). The figures for the Youth Section of Moabit's Remand Home are similar: out of those 109 interned, 70 (64.2%) were unemployed, 60 (55.4%) had failed to complete their training, 18 (16.4%) had done so, and 31 (28.2%) were listed by the authorities as unskilled. For the 38 surveyed in the Charlottenburg Remand Home for Female Youths, the figures were 29 (76.3%), 13 (34.2%), 3 (7.9%) and 22 (57.9%) respectively.[39] Where girls were concerned, a commentary to the survey noted that here one could not speak of 'real unemployment', as they were at the time of their arrest 'hanging around without seriously intending to concern themselves with work'. It must also be borne in mind that the figure for those unemployed would have also included those youths still at school. An additional survey undertaken in April 1952 for Berlin's 'Jugendhof' found that at the time of confinement, 256 of 361 (70.9%) were without occupation, with 66 (18.3%) still at school and only 39 (10.8%) employed full time. Perhaps even more worrying were the 85 (23.5%) internees (not including pupils) without any kind of qualification.[40] This says much about the vulnerability and lack of employability of youths who were in a situation similar to that of Günter L. and Harry J.

To return to the case, on 14 April 1947, the same day the youth office report was filed on Günter L., Harry was released from Plötzensee. His stepmother complained to the Schöneberg youth court that:

> we were neither informed of [Harry's] arrest or his release. In view of the circumstances (*Sachlage*), the release and behaviour of the authorities are a scandal. It appears to be good times for scamps and criminals in Berlin. Why does one not build nursing and recreation homes for them? Who is

[39] See here *Magistrat der Stadt Berlin, Abteilung für Volksbildung, Jugendausschuss to Abteilung für Sozialwesen, 2 October 1945*, Landesarchiv Berlin, C Rep. 118, Nr. 116, Sheets 57–59.

[40] Landesarchiv Berlin, B Rep. 013 Nr. 18: Statistische Erhebung über die Insassen des "Jugendhofes" (Stichtag 1 April 1952).

> responsible? The offences, that the criminal youngster with his criminal accomplices will carry out in future—and it could be a murder—are on the heads of those who have set the criminals free on Berlin's population. We will report this to the press, in order that the guilty cannot shift the blame onto someone else. So, who is responsible for their release?[41]

Unfortunately, the information contained in the criminal case file does not permit us to know if the court answered her claim.

The former Hitler Youth member Harry J. received a sentence of four weeks youth arrest. He had previously been deployed as an anti-aircraft gun assistant (*Flakhelfer*) in 1945. His father was imprisoned for formerly being a member of the National Socialist Party; Harry J.'s mother, in addition, was deemed 'incapable of work'. Günter L., meanwhile, was handed a three-month prison term. Despite the protests of the senior public prosecutor Dr. Preuß, the court did not impose a tougher sentence in a second trial which took place on 9 June 1947; rather the court decided that given the accused needed to earn money to help his father recover, that he acted out of necessity, that he was not previously convicted, and did not sell any of the stolen goods, he was handed merely a 'means of cultivation' (*Zuchtmittel*). Dr. Preuß stated 'J. has only been given a means of correction, not a punishment'. In fact, Günter had a previous conviction of serious property theft, for which he had received a four-and-a-half-month internment in a youth arrest facility, in conjunction with supervision by a social worker (*Schutzaufsicht*) on his release.[42] This case demonstrates the organisational disarray often involved in processing complaints of property theft. The criminal file of Günter L. contains correspondence back and forth from three main regional districts: Schöneberg (where the trial took place), Reinickendorf (the responsible youth office), and Neukölln (the responsible police authority). Given Günter L. resided in the Pankow district of Berlin, his case should have been under the jurisdiction of the youth office based there. From the information afforded by the criminal file, we can only speculate as to why this was not the case, but the general melee surrounding juvenile criminal and youth welfare politics and—in part due to over-worked, under-staffed

[41] Marie R. to the Schöneberg district court, 25 April 1947, Landesarchiv Berlin, B Rep. 051, Nr. 10505, Sheet 33.

[42] Sentence of the Pankow district court, 4 July 1946.

welfare and court offices—was considerable.[43] Juveniles were often transferred from one district authority to another due to a lack of time, space and money with which to adequately deal with a certain offender. Files were misplaced, lost, or in the worst-case non-existent which meant a long-winded, painstaking process for the responsible authorities. That the Schöneberg court could claim—wrongly—that Günter had no previous convictions and as such sentenced more leniently is further evidence of a juvenile justice system that was struggling to fulfil its duties.

Of critical importance was the ability to locate the responsible parties involved, partially successful here in that two of the alleged culprits were apprehended, unsuccessful in their ability to evade questioning and/or trial. This was what so enraged Harry J.'s mother, and brought her to threaten to go to the press with her complaint. Yet the harshness in her portrayal of the youngster's criminal acts is tempered by the leniency afforded by second trial of Günter L. on 9 June 1947 in which the judge stated his acting out of 'need' and his wanting to help his (biological) father who was suffering from the effects of the war. Despite the claim of Günter's mother and stepfather that he was 'active' on the black market, the Schöneberg district court satisfied itself that none of the goods stolen were actually sold. The number of youth crimes connected with the black market was viewed as troubling. At the same time as the juvenile justice system increased its efforts to clamp down on such transgressions, studies surveying the financial and social problems of Germany's population lent further empirical weight to those who argued for an increase in the size and scale of city's supervisory networks to combat crime, but also to those who utilised the catch-all term 'criminality of need' (*Notkriminalität*) in explanations of criminal behaviour.

Klaus G, a seventeen-year-old unemployed labourer from the Charlottenburg district of Berlin who came before the Charlottenburg Youth Court on 6 February 1946 accused of stealing sugar, condensed milk, seven apples, a quarter-pound of clarified butter along with two candles and a box of matches from his widowed landlady Erna B,

[43] According to figures by Ernst Reuß, who studied everyday justice in Berlin through the District Courts from 1945 to 1953, Berlin District Courts in the second half of 1945 could employ only 48 assistants, as compared to 2700 before the war. In March 1946, 25 judges could be called upon, as compared with 279 in 1941. In the 7 months after the war, 35,000 criminal cases were processed by only 13 public prosecutors and 13 assistants. See Ernst Reuß, *Vier Sektoren – Eine Justiz. Berliner Justiz in der Nachkriegzeit* (Berlin, BWV Berliner-Wissenschaft, 2003), pp. 29–31.

proffered the excuse that he 'was hungry'.[44] This appeared to the presiding judge Dr. Blume to be scant grounds for a milder sentence, presumably also with Klaus's previous conviction in 1943 for truancy at work (*Arbeitsuntreue*)—for which he received a three-week detention—in mind:

> the accused's crime testifies to [his] despicable nature (*Verwerflichkeit*). He has seriously damaged the widow [Erna] B., as foodstuffs are rationed in the present time, and it is not possible for the widow B. to get substitutes. The accused also has a bad reputation. In the current case, 'means of cultivation' (*Zuchtmittel*) cannot be seen as an adequate atonement for the crime … [He] must suffer a punishment, in order that the reprehensibility of his actions be made clear to him and that he will be prevented from committing further crimes.

Consequently, Klaus was handed a three-month prison sentence. This was despite the Charlottenburg youth office's lengthy description of the unfavourable conditions Klaus had to endure: registered as unemployed since April 1945 due to injuries sustained during the war and the bombing of his workplace, he was looked after by his 'incapable' grandmother who was unable to 'effectively fight [Klaus's] loafing about'.[45] Ten days after the trial had taken place, the youth office reported that the legal process had made a significant impression on Klaus, and that it was to be hoped that this, along with their intensive supervision of his working habits, would ensure his improvement—and as such recommended a period of probation, which was subsequently granted. Unfortunately, according to the court case file, Klaus soon relapsed into 'bumming' off work, including further thefts of food. As a result of his 'inability to be taught' (*Unbelehrbarkeit*) and newly demonstrated work-shyness and dishonesty, 'the early execution of the three-month prison sentence is recommended'.[46] However, in attempting to locate Klaus, the police could only state 'residence undetermined' in their report. The court case file on Klaus G includes, however, correspondence from the Stuttgart police

[44] Sentence of the Charlottenburg district court (Section 11), 6 February 1946. Landesarchiv Berlin, B Rep. 051, Nr. 2713.

[45] Charlottenburg youth office (Department for Social Affairs) to the Charlottenburg District Court, 4 February 1946. Landesarchiv Berlin, B Rep. 051 Nr. 2713.

[46] Charlottenburg youth office (Department for Social Affairs) to the Charlottenburg District Court, 4 February 1946. Landesarchiv Berlin, B Rep. 051 Nr. 2713.

to their counterparts in Berlin on 18 January 1947 informing them that Klaus had been arrested during an overnight stay and taken to the Ludwigsburg Regional Prison, where he was in detention awaiting trial.

Such cases demonstrate, on the individual (micro) level, the tensions that were apparent between the justice and welfare models within the juvenile criminal system. These were tensions that were intensified by the organisational chaos of the immediate post-war years. There was a lack of any unified Allied policy towards the 'education' of delinquent youth even before the division of Germany in 1949. The case files also illuminate the extraordinary vulnerability (on an everyday level) of youths in the post-war period, being particularly vulnerable to the alarming level of poverty and unemployment present in German cities.

5 Popular Notions of the Causes of Juvenile Crime

To place these micro-level cases in broader context, Hilde Thurnwald's 1948 sociological study investigating the social and economic problems faced by Berlin families found only 38% of youths belonged to so-called 'complete' families (or 103 of the 278 juveniles studied), with only a few more (126, or 45%) in circumstances 'that at least economically point to certain prerequisites for an ordered work training'.[47] Even in the more ordered familial situations, Thurnwald found that the lack of food, clothes and shelter had a definite negative impact on the child's ability to learn in school. Of the rest, seven percent (20 youths) had a father who was unemployed in late 1946; thirteen percent (37 youths) possessed a father who had to make do with a disordered or badly paid job (in some cases due to being a former member of the National Socialist Party). In only ten percent (28 youths) of the cases examined were the father and mother both in employment; twenty-four percent (67 youths) came from families where the mother was the sole breadwinner. A youth office report cited in the same study noted that:

> in the investigatory reports, time and again one finds: father not yet returned from the war, mother careless (*leichtsinnig*), a weak character (*haltlos*), or rather: juvenile orphaned, grandmother cannot stand up to

[47] Hilde Thurnwald, *Gegenwartsprobleme Berliner Familien. Eine soziologische Untersuchung an 498 Familien* (Berlin, Weidmann, 1948) p. 135.

> them; or a step-brother returning from the war finds the younger left to his own devices. Very seldom does one encounter a stable background.—The juveniles often gave hunger as their reason for committing a crime. In some cases the needs of the family are also cited.[48]

In 1947, the welfare authorities heightened their efforts to stem the tide of juvenile unemployment, viewing the lack of work as a causal factor in the committing of criminal acts, particularly those connected with the black market. A 1950 report from the main youth office in Berlin indicated their connection of unemployment to youth criminality: 'The lack of apprenticeship and job positions inhibits the development of qualified workers, which will become very strongly apparent in the near future. As a consequence of boys and girls leaving school without an occupation comes the danger of waywardness, a warning sign of which is the increase in juvenile crime'.[49]

Unemployment, or being 'averse' to working, remained a causal factor in explanations of juvenile criminality, as had been the case since the late nineteenth century. The tendency of young persons lacking a stable family background and regular (legal) employment was often cited in post-war sociological reports as environmental factors that frequently led to criminal activity. In certain cases, the parents of a particular 'wayward' youth were not only aware of their child's criminal activity, but actively promoted it. That the supervisory function performed by parents to prevent children's wayward behaviour was now employed to further it was a serious concern for empirical sociologists such as Hilde Thurnwald:

> Many of these [black-marketeering] youths carry out such business in agreement with their families or in team with fathers, mothers or siblings. For example, a father—who had registered his sixteen-year old son as a trainee watchmaker—brought him along to 'Auerbachs Keller' every night. There the father, together with his friends, slipped into black marketeering, drinking and sexual excesses, and introduced his son to this life (taken from a family report). At the same time are cases in which […] parents are completely unaware of current environmental influences and think it impossible that they could lose grip on their children. It is often single and over-burdened mothers, or fathers, who have never devoted their full attention to their growing children. However, the large majority of youths

[48] Ibid., p. 142.

[49] Heimann, 'Das Überleben organisieren', p. 121.

> who have become completely enslaved in the black market come from families where the ordered structure and moral orientation are destroyed. It is partly leftover refugee families, thrown this way and that, who have started their lives again in Berlin under miserable conditions. Such cases concern those youths who are *in the narrowest sense* wayward [my italics], who frequently slip down into the criminal districts.[50]

Thurnwald's brief overview of the situation regarding youths engaged in the black market signposts various important trends apparent in sociological attempts to locate juvenile criminality.[51] Here, *in the narrowest sense*, those juveniles enduring miserable conditions—particularly in the case of their being displaced persons—were observed as those most likely to 'slip down' into the criminal districts. This implies a geographical/spatial model of criminality, where the *locality* influences the behaviour of an individual, as well as a social—being dependent on the (poor) economic situation of the family. In terms of the geographical/spatial model, Thurnwald cited the phenomenon of juvenile black marketeering as being confined to 'particular areas and places in Berlin'; here, according to information gained from a family case file (*Familienbericht*), 'Auerbachs Keller' is the location at which criminality converges. It is interesting to note the kinship that one can observe between the positions of Thurnwald and those of the Chicago School—particularly the work of Clifford Shaw and Henry McKay on delinquency areas and that of Frederic Thrasher on gangs and urban areas.[52] Further research into this area may find an exploration into the exchanges and links that existed between German post-war sociologists and their American counterparts to be fruitful.

The concept (as it existed in both theoretical and practical terms) of the criminal location can be found in another Berlin post-war criminal court case file. The youth office in Neukölln, reporting on a case involving the theft of a total of thirteen guinea pigs from the haulage contractor Franz B. in late 1945 and early 1946, mentioned that the accused juvenile Erwin E.—a seventeen-year-old apprentice Chemist—lived

[50] Thurnwald, *Gegenwartsprobleme*, pp. 140–141.

[51] The German slang expression being *Schieber*, also translatable as *pusher* or *dealer*.

[52] See in particular Clifford R. Shaw and Henry D. McKay, *Juvenile Delinquency and Urban Areas* (University of Chicago Press, Chicago, 1942). Frederick M. Thrasher, *The Gang* (Chicago, University of Chicago Press, 1936).

in a emergency shelter (*Notquartier*), sharing a room with four others, after his earlier residence was destroyed during the bombing raids. Erwin's mother took care of the family; including one sister (married to a man still interned in a Prisoner of War camp and with a daughter rendered deaf and blind during a bombing raid) and a father rendered seventy percent war-disabled from injuries sustained during World War I. As with the cases of Klaus G. and Harry J. examined previously in this chapter, the defendant cited hunger as the reason he carried out the two break-ins that yielded his haul of thirteen guinea pigs. Unlike the case of Günter L., whose stepparents were keen to stress the criminal nature of their boy after he relieved various Berliners of their potatoes and coal rations, Erwin's parents insisted he led—the burglaries aside—an orderly life. The youth office in this case suggested Erwin's accomplice, the sixteen year-old baker's apprentice Heinz M, had been the leading protagonist (citing his 'educational difficulties' and previous convictions for petty theft) and recommended the court order a warning and protective custody in order that he complete his apprenticeship.[53] The youth court in Neukölln handed out a more punitive sentence, ordering one months' internment in Plötzensee prison. Richard F, Erwin E's legal advisor, then subsequently wrote to the Neukölln district court in order to plead his client's innocence:

> The wartime occurrences hardly let youths grow into orderly people; they do not allow them—lacking an educated conscience (*Gewissenbildung*)—the capacity to know if what they do is good or bad. In view of the monstrous need for food (*Hungernot*)—a problem to solve for all the world's statesmen—such children will never come to terms with themselves […] We all know, and do not need to keep secret, that families in Berlin hardly have any more potatoes in their cellars. Naturally the hunger of such young people, as with the accused, is not be halted, as such they try—as in this particular case—to obtain additional nourishment. Resistance is lacking, because […] of a lacking educated conscience, and thus such punishable actions come into being. One will not ascribe the young people great guilt under such circumstances—this rests on other shoulders … The state, the court, does not only have the duty to punish, but also to protect…[54]

[53]Neukölln youth office to the Neukölln district court, 16 March 1946. LAB B Rep. 051, Nr. 2248.

[54]Legal advisor Richard F to the Neukölln district court, 11 March 1946. LAB B Rep. 051, Nr. 2248, Sheet 19.

Delinquency takes root in society. In those post-war years, German society was grappling with huge social and economic problems: poverty, lack of shelter and food (with such activities as theft and black market often ensuing to ensure the survival of an individual or group), mass unemployment, 'criminal areas' and disrupted families. Interestingly, these were problems frequently referred to in explanations of the delinquent behaviour of youths. Not much room seemed to be left for psychological or psychoanalytical explanations more focused on the individual and his or her personal characteristics. That is not to say that individual responsibility was forgotten: the welfare model had only partly replaced the justice model and its punishments such as imprisonment. Yet, social and economic problems were viewed as key issues in understanding juvenile delinquency.

6 Conclusion

Up until now, most studies of juvenile crime have tended to begin or end their investigations at the point of Germany's capitulation on 8 May 1945. However, this obscures one's ability to thoroughly examine the continuities and discontinuities present in mid-twentieth-century Germany. Studying 'wayward' youth, and the structures involved in their policing, this chapter argues that the 'Zero Hour' was not a fresh start where delinquent youth were concerned. There was an attempt by all of the Allied authorities to impose order and structure upon young persons whose lives had been devastated by the exigencies of war. The chapter has shown that this involved deploying the repressive elements present within the Youth Welfare Law of 1922 and the Youth Court Law of 1923, both modified during the Third Reich, but never abrogated. Indeed, the Nazi law of 1943 contained the term 'harmful tendencies' (*schädliche Neigungen*) as a legitimating reason for applying more punitive sentences to youths defined as 'criminal types'. In fact, this rather arbitrary term remains in the Youth Court Law today.

The chapter has focused mainly on the practice of welfare education in the first eight post-war years. We have seen in Sect. 2 that the origins of this system can be traced back to the late nineteenth century, and that the Weimar Republic codified this with the Youth Welfare and Court laws of 1922 and 1923. Yet there were repressive elements inherent in legislation that—in theory—aimed at the education, rather than

punishment, of wayward youth. These were elements exacerbated by a Nazi regime bent on rooting out all forms of 'early criminality'. They shifted the juvenile justice system away from a focus on the crime to a focus on the criminal. The problems encountered by the post-war welfare authorities (dealt with in Sect. 3) frequently resulted in absolute definitions of youth as either corrigible or incorrigible—an issue we dealt with in greater depth in Sect. 4, utilising individual juvenile court cases. In placing these micro-level cases in context, Sect. 5 showed that the immediate needs of youth (such as food and shelter) influenced explanations of the causes of crime, often leading to more lenient treatment by the police and the courts. However, the negative typology of youth that was implicit in juvenile welfare and penal policy before 1933—made considerably more explicit by the alterations enacted by the Nazi regime—remained after the capitulation of the Third Reich, though the state-sanctioned violence directed towards criminal 'types' was certainly dissipated through many legal and sociological studies that focused in on the environmental causes of crime.

And yet: the symbolic figure of the 'incorrigible' youth survived the war intact, and with it those exogenous traits he or she was labelled as possessing. There was no wholesale attempt to divorce post-1945 German society from the application of such popular National Socialist terminology as career criminal (*Berufsverbrecher*), asociality (*Asozialität*), waywardness (*Verwahrlosung*), People's Community (*Volksgemeinschaft*) or even Community Aliens (*Gemeinschaftsfremden*) in the characterisation of 'criminals' or 'delinquents', many of which were evident in the post-war court case files examined in Sect. 4. This was not just a result of the chaotic, rubble-strewn, disordered landscape of Germany after the so-called 'Zero Hour', divided as it was into four often-competing zones of military occupation. It was also down to the particular stand taken by the Allied authorities regarding National Socialism. Denazification was not—indeed, could not—be implemented fully; not just because many of the (still-active) laws and decrees passed during the Third Reich themselves had roots in Weimar or even Imperial Germany, but also due to considerable continuity in the scientific terminology utilised by welfare, police and court authorities, not least down to the significant continuity in personnel within these institutions. For example, the jurist Götz Leonhard was able to entitle a 1952 dissertation 'Crime prevention in the National Socialist State and its lessons for the future'. In it, he contended that:

> In the Third Reich, a clear belief in the 'eradicability of crime' was decisively prevalent, the attaining of which was thought to be best achieved through both an ever more stringent exertion of punishments and a ruthless penal and custodial system […] Within those institutions charged with fighting criminality, above all the judicial system, a just as dangerous tendency to fall into the opposite extreme still exists today, particularly recognisable in sentencing practice within the criminal justice system, in which human mildness often prevails that hinders as much as it helps.[55]

Though Leonhard recognised a belief in the 'eradicability of crime' was false, he utilised relativist arguments to stress the usefulness of certain areas of National Socialist policing policy to post-war Germany—though as we have seen from the micro-level study of court files, leniency was not always a prevalent factor in the courtroom. In terms of welfare policy, despite attempts being made to restrict the court practice of applying correctional education measures to juveniles, the actual number of those interned increased. In 1939, Germany had 73,000 children in correctional education, compared to 75,000 in 1949.[56] Only in the fiscal year 1954–1955 did the number of children committed by Voluntary Educational Assistance Organisations (*Freiwillige Erziehungshilfe*) outstrip those committed by court order.[57]

According to Professor Karl Peters, efforts to restrict correctional educational measures were to be commended—seeing the West German courts as needing to follow through successfully on the idea that correctional education should not be 'tainted' by criminal proceedings.

[55] Götz Leonhard, Die Vorbeugende Verbrechensbekämpfung im nationalsozialistischen Staat und ihre Lehren für die Zukunft (Dissertation, Mainz, 1952), pp. 87–88. Leonhard cites his mentor Karl Bader twice here, first for the phrase "eradication of crime" and secondly after the last sentence. See Karl Bader, *Soziologie der Nachkriegskriminalität* (Tübingen, Mohr, 1949), pp. 186 and 196.

[56] Edward Ross Dickinson, *The Politics of German Child Welfare from the Empire to the Federal Republic* (Cambridge, Mass. & London, Harvard University Press, 1996), p. 256. Cf. *Statistisches Handbuch für das Deutsche Reich* (Berlin, Schmidt, 1940) and *Statistisches Handbuch für die Bundesrepublik Deutschland* (ed. Statistisches Bundesamt Deutschland; Stuttgart: Metzler-Poeschel, 1954). Ross Dickinson also quotes the figures of children in correctional education in 1959 as 53,000 and 48,000 in 1969, showing a significant long-term decrease in the practice.

[57] Ross Dickinson, *The Politics of German Child Welfare*, p. 254.

He gives statistics of those assigned correctional education by the Regional Juvenile Office to demonstrate his point: in the six months from April to October 1948, correctional education was employed in 530 cases within their province, with only 12 of these coming through the Juvenile Court.[58] Peters notes that in 'earlier times' (presumably a somewhat euphemistic reference to the National Socialist period), welfare education was used by the Juvenile Courts 'relatively frequently'. Here, no statistics are given to back his statement up: presumably the records of the Regional Juvenile Office in Wiesbaden were unobtainable, inexistent, missing, destroyed, or rather too sensitive to mention. Increasingly, the consensus was that children should be committed voluntarily, by their parents, rather than by court order. Indeed, this was a key demand of the General Conference of Correctional Education (*Allgemeiner Fürsorgeerziehungstag*) at their 1950 meeting.[59] However, as the chapter has shown, there was a long way to go before courts could abandon the practice completely. The 'limits to educability' remained after Germany's capitulation.

[58] Karl Peters, 'Gegenwärtiger Stand der Jugendgerichtsbarkeit in Westdeutschland', in Hauptjugendamt von Groß-Berlin (ed.) *Stand und Neuordnung der Jugendgerichtsbarkeit. Bericht über die Berliner Tagung vom 22 Bis 26 Mai 1949* (Berlin, Verwaltungsdr., 1949), pp. 90–106; 98. Peters mentions in passing that other localities demonstrated similar tendencies in terms of how welfare education measures were assigned.

[59] Ross Dickinson, *The Politics of German Child Welfare*, p. 254, Cf. 'Der Allgemeine Fürsorge-Erziehungs-Tag 1950', *Unsere Jugend 2* (1950), pp. 161–166.

CHAPTER 9

Youth Delinquency Redefined: The Practice of Scientific Observation and Diagnosis Within the Framework of Belgian Child Protection, 1913–1960

Jenneke Christiaens

« L'examen (…) (e)n lui viennent se rejoindre la cérémonie du pouvoir et la forme de l'expérience, le déploiement de la force et l'établissement de la vérité.»[1]
(M. Foucault, 1975, 187).

1 Introduction

At the beginning of the twentieth century the problematisation of youth crime underwent an important transformation, most European countries moving towards a system of child protection. The first Belgian Child

[1] FOUCAULT, M., *Surveiller et punir*, Paris, Gallimard, 1975, 187. Translated: "(T)he examination (…) in it are combined the ceremony of power and the form of the experiment, the deployment of force and the establishment of truth. The superimposition of the power relations and the knowledge relations assumes in the examination all its visible brilliance".

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Protection Act, passed in 1912, introduced the instrument of social and medical inquiry in the sentencing process of juvenile delinquents. As a consequence of this 'space for experts' within the 1912 Act, a central observation centre was established in the small Flemish town of Mol in 1913.

This chapter will take a closer look at this early practice of observation and diagnosis in respect to juvenile delinquency, and its significance for juvenile justice in Belgium.

First, I will describe scientific developments regarding juvenile delinquency and their relation to the new juvenile justice system in Belgium. Then, I will take a closer look at both the observation centre and the scientific practice itself, together with its instruments of observation and diagnosis. Our aim is to provide an analysis of the scientific observation and diagnosis *as such*. For this particular analysis, I focus on the period starting in 1930, when the earliest decades of the application of the 1912 Act had passed and the observation practice had become fully institutionalised, up until 1960, five years before the Mol centre closed its doors. Finally, there remains the question of the way in which this observation and diagnosis practice redefined juvenile delinquency in court and, as a result, influenced the reaction of those working in the juvenile justice system.

2 The Belgian Child Protection Act (1912) and Scientific Experts

Since its introduction at the beginning of the twentieth century, European juvenile justice has been based on the idea that juvenile delinquency (or the delinquent behaviour of juveniles) is a symptom of behavioural and/or educational problems (cf. 'Social Defence' thesis[2]). Interventions (social reaction) based on this 'social defence' perspective have a primarily preventive and curative aim. Within this perspective

[2]Although the late nineteenth century European movement of "Social Defence" was genuinely a broad social project, designed to prevent antisocial conduct or behaviour of political significance, and thus defend the social order, its doctrine was mainly designed and implemented in the fields of law and (juvenile) crime control. The Social Defence thesis rejected the Classicist penal view of crime as an issue of free will and responsibility. It argued, instead, that crime is a symptom of a "degenerated criminal personality", shaped both by hereditary antecedents and by environmental upbringing and associations. With Social Defence, therefore, the emphasis in criminology and penal policy turned to concerns about the personal characteristics and needs of the individual criminal, as well as to preventive (hence, a focus on children) and reformative measures. See Tulkens, F. (ed.), *Généalogie de la défense sociale en Belgique (1880–1914)*, Brussels, Ed. Story-Scientia, 1988.

minors are (formally) not punished for what they have done. Therefore, the process of 'sentencing' is rather focused on the youngster's personality and his milieu (living conditions), rather than on the crime committed, in order to determine an individualised measure. The juvenile justice magistrate is not a 'classical' penal judge, in that he has to take other extra-penal or extra-juridical elements into account. Since its introduction in 1912, Belgian juvenile justice has been based on this child protection model.[3] This perspective on social reaction with individualised measures instead of punishment, can also be described as the welfare model.[4]

I will not discuss here the Belgian implementation of this welfare model.[5] This chapter's focus will be on one specific characteristic of this new jurisdiction, namely the introduction of social scientific diagnostic practices.

Parliamentary debates on the Child Protection Bill revolved around the figure of the specialised judge[6]: should this be a magistrate, a social scientist (psychologist), or someone with knowledge of children and educational matters? The discussion at the turn of the century about the professional profile of the new juvenile justice magistrate revealed a tension between (social) science and law. The 1912 Child Protection Act created far more than a jurisdiction specialised in juvenile cases. The introduction of the specialised children's judge was more than the introduction of a new magistrate and court. Indeed, the specialised jurisdiction was supposedly based at the same time on the 'input' of and collaboration with new experts specialised in children and their education: social workers to assist the judge in his investigation of the personality and living conditions of the minor, as well as other experts who could help enlighten the judge in his decision making. The introduction

[3] Cartuyvels, Y., Christiaens, J., De Fraene, D., Dumortier, E., Juvenile Justice in Belgium seen through the sanctions looking-glass, In: *The criminalisation of youth. Juvenile justice in Europe, Turkey and Canada*, Bailleau, F. & Cartuyvels, Y. (eds.), Brussels, VUB Press, 2010, 29–31.

[4] Garland, D., 'The birth of the welfare sanction', *British Journal of Law and Society*, 1981, 8 (1), 29–45.

[5] Christiaens, J., *De geboorte van de jeugddelinquent (België, 1830–1930)*, Brussel, VUB Press, 1999, 430.

[6] Christiaens, J., *De geboorte van de jeugddelinquent (België, 1830–1930)*, Brussel, VUB Press, 1999, 430 pp.; Dumortier, E., De jeugdrechter in twijfel. Onderzoek naar het ontstaan en de praktijk van de kinderrechter. België, 1912–1965, Brussel, unpublished Ph.D. thesis, 2006; Dumortier, E., "De missie van de kinderrechter. Een onderzoek naar het ontstaan en de praktijk van de (Antwerpse) kinderrechter (België, 1912–1965)", *Panopticon*, 2012, 33 (5), 391–414.

of scientific expertise was legitimated by the fact that it delivered the seemingly objective information required to guarantee individualised (and thus appropriate) protectional measures.

In particular, sections 21 and 39 of the Act provided for a formal space within which 'the science of juvenile delinquency' had to take up its role in the understanding of and social reaction to juvenile delinquency: '*pénétrer l'âme des enfants pour en dégager les voies d'accès*' (to penetrate the child's soul in order to discover its entry routes).[7]

The judge might, for instance, require information from social workers (ladies of the patronage committee), or from any other relevant source (school, police, working place and so on), concerning the prosecuted child and his or her family (section 27). Besides this social inquiry, the Act also made it possible to place a prosecuted youngster under observation.

Section 21 provided that, in case of *doubts* about the physical or psychological situation of a youngster, the judge could order that the youngster be placed under observation to enable a medical examination to be carried out. If this examination revealed feeble-mindedness or any physical or psychological 'inferiority', the judge could detain the minor at His Majesty's pleasure (placement in a State reformatory). Section 39 prescribed that whenever deemed necessary by the judge, children so detained could be sent for observation to allow the measure and its execution (i.e. conditional freedom or placement in a specialised institution) to be re-evaluated.

Before we take a closer look at this observation practice, it is important to stress that these developments within the juvenile justice system were not typical of the social reaction towards juveniles. An important parallel with adult sentencing and punishment must be mentioned. In the same period, anthropological laboratories were being installed (1921) in various Belgian prisons, where in fact they played the same role, namely to diagnose through scientific observation and to advise judicial or penitentiary authorities on the adequacy of the sentence and/or penitentiary regime. But from the beginning of the twentieth century onwards, the child protection system pioneered the formal introduction of the social sciences into the practice of sentencing.[8]

[7] *Moniteur belge*, Government circular 23 September 1916. See Christiaens, J., *op. cit.*, 1999, 321–322.

[8] About such practice, see Dumortier, E., *De jeugdrechter in twijfel* …, 242 (for the beginning years) and 309–316. On contemporary practice in transfer cases, see Van Dijk, C., *Deskundigen geven advies aan jeugdrechters` Een onderzoek naar de expertisepraktijk in het kader van de uithandengeving*, Brussel, VUB Press, 2010, 361.

3 A Science of Juvenile Delinquency?

A public observation centre for boys was established in Mol[9] by the end of 1913, followed in 1919 by a similar institution for girls in Saint-Servais.[10] Together, both centres formed the pivot around which the state juvenile observation and re-education system revolved, centralising the demands for observation of juveniles of all Belgian juvenile courts. The Mol Central Observation Centre existed as such until after the review of the Child Protection Act in 1965. This public institutional development was embedded in a much broader Belgian expansion of private scientific and pedagogical initiatives. Other private clinics and institutions devoted themselves to the medical-pedagogical study and observation of all kinds of 'problematic' children. As far back as 1914, for example, Doctors Decroly and Boulenger planned to set up a medical-pedagogical clinic in Brabant, which did not open until 1920.[11] In Antwerp-Kiel the Sainte-Marguerite-de-Cortone Institute was renowned for its observation section.

The opening of the Central Observation Centre in Mol can be seen as a landmark in the history of 'pedo-criminology'. Social-political attention to children and juveniles was growing steadily by the end of the nineteenth century. At the same time, changing social policy and practices concerning children and young people were characterised by various initiatives. Child-oriented welfare practices were an expanding field of work: from the care of babies and small children, through the problems of schooling, the care and foster of the victim-abandoned-mistreated child, and the abnormal, sick or poor child, to—last but not least—the re-education of the delinquent youngster.[12]

[9]Delacollette, E., *Contribution à l'histoire de la protection de l'enfance en Belgique*, Merksplas, Imp. Administrative, 1947, vol. 2, 11.

[10]Wets, P., *L'enfant de justice. Quinze années d'application de la Loi sur la protection de l'enfance*, Bruxelles, 1928, 166; "Aperçu sur les établissements d'éducation d'état pour filles: St-Servais-lez-Namur", *Revue de l'éducation surveillée*, 1947 (6), 61–72.

[11]Wets, P., *L'enfant de justice*, *op. cit.*, 198–200.

[12]For Belgium see: Levoz, A., *La protection de l'enfance en Belgique*, Brussel, Goemaere, 1902, 193–364. For the history of practices in France see: Quincy-Lefebvre, P., *Familles, institutions et déviances. Une histoire de l'enfance difficile. 1880-fin des années trente*, Paris, Economica, 1997, 437 pp. and Pelicier, Y. & Thuillier, G., "Pour une histoire de l'éducation des enfants idiots en France (1830–1914)", *Revue Historique*, January–March 1979, 99–130. For England see: Hendrick, H., *Child Welfare. England 1872–1989*, London, Routledge, 1994, 354.

Around the turn of the century growing scientific production (publications, national and international conferences) illustrated the 'scientification' of the discourse on childhood and youth, as well as the growing institutionalisation of this field of knowledge.[13] Scientific interest in children and juveniles was, at that time, rooted in various scientific disciplines, each with its own methodology: medicine, psychiatry, psychology and the educational sciences. The development of experimental studies on children acquired scientific importance by the end of the nineteenth and the beginning of the twentieth century. Relevant in this respect were the American Child-study movement, West-European experimental test psychology and French and Belgian pedology[14] and pedagogy.[15] Despite differences among schools, paradigms, tendencies and disciplines, all these developments had one common ground: a scientific approach to the child as an object, based on a

[13]Wallerstein, I., *De sociale wetenschappen openen*, Brussel, VUB Press, 1996, 37. See more specifically: Dekker, J.J.H., *Straffen, redden en opvoeden: het ontstaan en de ontwikkeling van de residentiële heropvoeding in West-Europa, 1814–1914, met bijzondere aandacht voor "Nederlandsch Mettray"*, Assen, Van Gorcum, 1985, 148–173.

[14]The term "pedology" was suggested in 1893 by an American researcher, Oscar Chrisman. At the end of the nineteenth century, pedology as a comprehensive "science of the child" became active in Europe as an attempt to create a study of children's behaviour and development in the manner of natural sciences, based on a positivist methodology aimed at discovering "precious facts and empirical laws". This new science of pedology should be the basis of pedagogy. From its very beginnings, the psychology and the pedagogy of the "abnormal child" was a main area of pedological research interest; the approaches of anthropometrics, psycho-physiology and pedo-physiology were privileged. In Belgium, Doctors Schuyten, Ioteyko and Decroly were the main developers of the field; they were internationally regarded as pioneers. In 1911 the first World Congress in Pedology was held in Brussels, with attendants from 22 countries. World War I effectively put an end to the development of this study in Western Europe, although it remained influential in Belgium and France. See: Depaepe, M., "Experimental Research in Education 1890–1940: historical processes behind the development of a discipline in Western Europe and the United States", *Aspects of Education, Journal of the Institute of Education*, University of Hull, 1992 (42), 67–93; Depaepe, M., "Science, Technology and Paedology. The concept of science at the 'Faculté Internationale de Pédologie' in Brussels (1912–1914)", *Scientia Paedagogica Experimentalis. International Journal of Experimental Research in Education*, 1985 XXII (1), 14–29.

[15]For an overview of different schools see: Depaepe, M., *Meten om beter te weten? Geschiedenis van de experimenteel-wetenschappelijke richting in de westerse pedagogiek vanaf het einde van de 19de eeuw tot aan de Tweede Wereldoorlog*, Leuven, KUL, 1989, 639.

positivist methodology to measure 'facts' that were believed to reflect an objective truth.

Forging a link between science and social practice marked an important step in the breakthrough of social science in general, and of pedocriminology and the educational sciences in particular. Apart from taking care of children, child-oriented welfare practices (such as nurseries, education or schooling) played an important observational and diagnostic role at the end of the nineteenth century. Doctors, especially psychiatrists, were active in this dimension of child-oriented social practices, leading to a rapid medicalisation of childcare.[16] The introduction of medical checks in schools, with a broad programme of observation, measurement and registration is illustrative of this movement.[17] Detecting abnormal children became an activity in its own right, with the establishment of private observation schools for special education. In Brussels and Antwerp, private laboratory schools were set up under the direction of reputable doctors such as Demoor and Ley. The pedological laboratory of Dr. Schuyten (c. 1900) was a scientific practice officially connected with the Antwerp public schools. As early as 1904 the well-known Dr. Ovide Decroly worked in his psychological clinic. Moreover, these childcare practices constituted at the same time experimental settings (such as Binet's laboratory school in Paris), where scientific instruments and techniques (a whole battery of tests) were developed, tried out and applied. The intelligence test of Binet and Simon is probably the best known of these very diverse techniques.

Within this broader context, the Central Observation Centre for boys in Mol can be seen to represent the scientific conquest of delinquent youth. A central concept in this process was that of the abnormal child,[18] which covered a variety of categories of children going from

[16] La Berge, A.F., "Mothers and infants, nurses and nursing: Alfred Donné and the medicalization of child care in nineteenth century France", *Journal of the History of Medicine and Allied Sciences*, 1991 (46), 20–43; La Berge, A.F., "Medicalization and moralization: the creches of nineteenth century Paris", *Journal of Social History*, 1993 (25), 65–87.

[17] Daglish, N.D., "Robert Morant's hidden agenda? The origins of medical treatment of schoolchildren", *History of Education*, 1990, 19 (2), 139–148.

[18] "Par un savoir en construction, dès le XIXe siècle, des médecins spécialistes étendent leur autorité scientifique sur les déviances de l'enfant" [through a body of developing knowledge, medical specialists extended their scientific authority over children's deviance as of the nineteenth century]. Quincy-Lefebvre, P., *op. cit.*, 291.

the abused-mistreated child of patronage to the delinquent child of the judge. In other words, the concept of the abnormal child was related to a broad range of pedagogical or orthopedagogical practices dealing with deviant children.

Practice at the Mol Observation Centre can therefore be considered as one of the cornerstones of the new (twentieth century) practice and discourse on juvenile delinquency. Its scientific procedures of observation, diagnosis and treatment were based entirely on the medical model.[19] Accordingly, 'objective' scientific facts and knowledge concerning juvenile delinquency could be accumulated. More important still is that these facts were utilised to inform and advise the judge in order to establish the most appropriate measure (treatment); effective scientific knowledge stood, then, at the service of judicial decision-making. The fact that scientific knowledge and facts seem objective and thus true, turned scientific experts into important actors within a social-control complex.

The Belgian example of the observation school does not stand-alone. Rouvroy, first director of the Mol Centre, made reference to the US example of Dr. Healy. Healy was director of the 'Juvenile Psychopathic Institute' between 1909 and 1914, an institute associated with the first juvenile court in Chicago (1899), and specialised in the individual-oriented study of children referred to her by the court. Healy's book *The Individual Delinquent*, published in 1915, gives a clear insight into this upcoming practice resulting in a complex nosography and aetiology of juvenile delinquent behaviour.[20]

[19] "Lorsque le médecin étudie un malade, il procède suivant un ordre déterminé, consacré par la logique et l'expérience. Il cherche d'abord les symptômes de la maladie, puis ces causes et il pose son diagnostic. Du diagnostic découlent le traitement et le pronostic. J'ai pensé que cette méthode était applicable à l'étude des anormaux, qui ne sont, en somme, que des malades ou infirmes" [When a doctor examines a patient, he follows a fixed set of steps based on logics and experience. First, he searches for the symptoms of the disease, then for its causes, and finally, he builds his diagnosis. The diagnosis determines the treatment options and indicates prognosis. It seemed to me that this method is applicable to the study of abnormal individuals, who are, after all, sick or disabled persons]. Dr. Guillaume, "Deuxième section: enfance anormale - première question – Rapport", in: *Deuxième congrès international de la protection de l'enfance (Rapports)*, Bruxelles, 1921, vol. I, 283.

[20] Healy, W., *The Individual Delinquent*, Boston, Little Brown and Company, 1915, 788.

Other important examples are French developments in the same period.[21] In 1901 the old Le Peletier de Saint-Fargeau penitentiary colony was transformed into the 'École de Préservation Théophile-Roussel'. This private school was conceived as an observation centre where children transferred by the court were diagnosed in order to allow treatment classifications to be drawn up.[22] In 1925, on the initiative of Henri Rollet, an observation clinic was established as an annexe to the child-neuropsychiatry department at the Sorbonne faculty of medicine 'pour dépister les anomalies mentales des adolescents délinquants' (to detect mental abnormalities of delinquent youths).[23] Heuyer, the father of French child–neuropsychiatry, and Paul-Boucourt (École Th. Roussel) are obvious emblematic figures in France's 'recomposition du champ de gestion de la déviance juvenile' (reshaping of the field of social reaction to juvenile delinquency).[24] The specificity of pedo-criminological developments in France can be synthesised in the concept of the maladjusted child ('l'enfant inadapté'), which emphasises character disorders.[25] Only after World War II was an official Observation centre set up as part of the reform of the French juvenile justice system.[26]

During the same period comparable observation institutes were established in the Netherlands, in most cases as a result of private initiative.

[21] Renouard, J.M., *De l'enfant coupable à l'enfant inadapté. Le traitement* social *et politique de la déviance*, Paris, Centurion, 1990, 107–109.

[22] Quincy-Lefebvre, P., *op. cit.*, 189–190.

[23] Renouard, J.M., *op. cit.*, 110.

[24] Heuyer, G., *Enfants anormaux et délinquants juvéniles*, Paris, 1914, 336; Heuyer, G., *La délinquance juvénile. Etude psychiatrique*, Paris, PUF, 1969, 303. See: Renouard, J.M., *op. cit.*, 11.

[25] "Ces approches tendent à placer sous le regard médical à la fois l'indiscipliné et rebelle qui ne veut pas obéir et l'indiscipliné instable qui ne peut pas obéir" [These approaches tend to bring within the scope of the medical profession both the unruly, rebellious one who refuses to obey and the unstable undisciplined one who cannot obey], Heuyer, G., *Enfants anormaux…*, 285; Renouard, J.M., *op. cit.*, 107.

[26] Sanchez, C., *Sous le regards de Caïn. L'impossible observation des mineurs délinquants (1945–1972)*, Ramonville Saint-Agne, Erès, 1995, 75–77.

In 1914 an observation centre was set up in Amsterdam by the 'Vereniging voor onbehuisden'.[27] From the 1920s scientific observation of juvenile justice children became increasingly important, thanks to the impetus given by the Dutch psychiatrist Grewel.[28]

All these practices can be viewed as standing at interdisciplinary crossroads where modern youth criminology had its beginnings. The criminological problem of juvenile delinquency was translated into a scientific discourse combining diagnosis with solution. In this perspective, publications such as Cyril Burt's *The Young Delinquent* in 1925 are more than just an illustration of a changing view. Burt's work can be seen as the synthesis of this monumental criminological programme that unfolded at the beginning of the twentieth century:

> (I)t is as though each little criminal were to be made the central subject of protracted and methodical research. … If the individual children are made the subject of a keen and continued scrutiny, it will be possible in the end to examine, not only the prevalence, but also the general mode of operation, of each contributory condition, and so to decide, not merely how powerful it is, but also in what manner it works.[29]

This scientific aetiology grid redefined the perception and problematisation of juvenile delinquency. But above all it was to become an overpowering instrument by means of which every single characteristic could be located as a symptom taking part in the diagnosis of an individual child. The aetiological grid became the dominant model to understand the causes of juvenile delinquency.

[27] See Van Der Linde, I., *Stoute jongens: van boefjes tot pupillen. Een geschiedenis van het observatiehuis van de vereniging "hulp voor onbehuisden", 1914–1970*, Amsterdam, Stadsdrukkerij, 1993, 139; *Wezen en boefjes. Zes eeuwen zorg in wees- en kindertehuizen*, Groenveld, S.; Dekker, J.J.H.; Willemse, T.H. & Dane, J. (Red.), Hilversum, Verloren, 1997, 351–352.

[28] Van Der Linde, I., *op. cit*., 30–31. Grewel, F., "Doel en methode der observatie van moeilijke kinderen", *Maandblad voor berechting en reclassering*, 1933, 353–362.

[29] Burt, C., *The Young Delinquent*, Kent, University of London Press, 1945 (1925), 11–12. Bierens De Haan, P. 1932. *Misdadige kinderen. Een psychologische paedagogische studie*. Arnhem: Van Loghum Slaterus. Carp, E. 1932. *Het misdadige kind in psychologisch opzicht*. Amsterdam: Scheltema and Holkema.

4 Scientific Ambition, Techniques and Practice

In 1912 the teacher Maurice Rouvroy, working in the boys' reformatory of St. Hubert, was given the task of setting up a scientific observation unit.[30] This first laboratory was the result of Rouvroy's own interests and study trips. As part of the implementation of the new Child Protection Act (1912), a central observation centre was officially established in Mol on 30 December 1913.[31] Rouvroy was transferred from St. Hubert to Mol and became the first director of the centre (until 1945). His work was of major importance in the scientific development of observation practice until the post-war period. The early years of the centre were difficult. At the beginning of World War I the still-unfinished buildings of the new institute were occupied by a flood of pupils who had to be evacuated from the reformatory in St. Hubert.[32]

The mission of the Mol centre was threefold: first, to carry out observations as part of a psycho-pedagogical examination of individual juvenile delinquents; second, as a result of this observation, to prescribe the most appropriate treatment or re-education regime for each individual case; and third, to develop a classification of juvenile delinquents based on scientific criteria.

The observation centre soon became a real juvenile delinquency study centre; the steadily growing number of boys being scrutinised produced a vast pool of scientific data, making it possible to present annual reports on the causes of juvenile delinquency.[33]

In addition, the Mol institution became a training centre for Belgian and visiting foreign re-educational staff. The development of a scientific discourse on juvenile delinquency went hand-in-hand with the simultaneous professionalisation of re-educational staff.

[30] Delacollette, E., *op. cit.*, vol. 2, 11; D'hoker, M., "Contribution de Maurice Rouvroy (1879–1945) aux soins en résidence de la jeunesse à problèmes psycho-sociaux pendant l'entre-deux-guerres", *Paedagogica Historica*, 1990, 26 (2), 211–222. De Brandt, M. 1985. Leven en werk van Maurice Rouvroy (1879–1954). Unpublished Master thesis, Katholieke Universiteit Leuven.

[31] Delacollette, E., *op. cit.*, vol. 2, 11.

[32] Rouvroy, M., "L'établissement central d'observation à Moll-Huttes", *La protection de l'enfance*, 1922, VI (35), 284–285.

[33] State Archives Beveren, Centraal Observatiegesticht Mol (1913–1970), *Jaarverslagen*, no. 35–60.

4.1 Observation of Facts

The systematic and daily observation of all pupils sent to Mol must be understood as the basis of the institution's scientific activity. The institute was also regarded as a real pedological research laboratory[34]; in Rouvroy's words 'a psycho-pedagogical clinic', because observation results were directly applicable to the (re-)education of the pupils concerned.[35]

The observation of pupils in Mol was organised in two phases: pedological investigation[36] and pedagogical observation, a very innovative approach at that time. The first days after a pupil arrived he was kept in isolation, and initial (medico-pedagogical) observations were carried out. An outline record of medico-pedagogical observation was drawn up, bringing together basic information about the child. After the quarantine period, a more detailed observation took place. The child was transferred to the life-group (pavilion system), and within this small group of pupils living together the newly arrived was observed and evaluated as to the possibility of his being re-educated.

Diagnostic observation in Mol included three perspectives: medical, pedagogical and pedological (testing). A complete medical record of the youngster was set up, using an extended medical checklist to establish a complete case history.

During the second phase in the family system (self-government, school-city system) constant observation by all the members of the

[34]Wets, P., L'enfant de justice, *op. cit.*, 166. See also Fry, M.S., "A Belgian psychological laboratory", *The Howard Journal*, 1924, 121–129.

[35]"Le service central de cette institution pour l'examen médico-pédagogique et la sériation des mineurs de justice est non une station de psychotechnique constructive avec des conclusions statistiques à portée générale, spéculative et lointaine, mais une clinique de psychologie appliquée à l'éducation et à la rééducation immédiates des sujets, une clinique de psycho-pédagogie. L'E.C.O. de Moll-Huttes est depuis des ans classé dans les residential Centres par Cyril Burt, (qui) considère que la station de séjour prolongé est la plus fructueuse" [The Institute's central unit for the medico-pedagogical observation and serialisation of juvenile delinquents is not a psychotechnics laboratory producing general, speculative and abstract conclusions, but rather a clinic where psychology is applied directly to the education and re-education of the subjects: a psycho-pedagogical clinic. For years now, the Mol central observation centre has been classified among the residential centres by Cyril Burt, (who) regards the phase of prolonged stay as the most advantageous and valuable of all]. Rouvroy, M., "La clinique psychologique belge de la protection de l'enfance", *Revue belge de pédagogie*, 1933–1934, XV, 143.

[36]See note 10.

educational staff was the rule: 'Un bon éducateur doit tout observer, tout voir sans trop le laisser paraître: l'enfant qui se sent serré de trop près et brutalement épié, dissimule, devient faux, sournois, hypocrite; il trompe celui qui l'observe' (A good tutor observes and sees everything, but without showing it too openly: a child feeling clamped down on and spied upon will conceal things and become untrue, malicious, hypocritical; it will fool the one observing him).[37] The pedagogical observation was, in Rouvroy's words, completely free and unstructured. Rouvroy explicitly mentions that the child had to be observed without knowing that he was being observed, in order to get to know him as he really was. Observation focused on language, concentration, memory, general intelligence, knowledge, as well as sensitivity, interests, motivation, behaviour and so on. The pedagogical observation phase also had a more didactic purpose: lively and experienced education would reveal the true nature of the child (this idea was central to the pedagogy of Decroly (1871–1932) and his 'School for life through life').

A whole range of diagnostic tests completed the medical and pedagogical observation. Besides the classical Binet–Simon intelligence scale used to measure children's mental age, use was also made of tests developed by Decroly, Buyse and Vermeylen, together with techniques such as esthesiometry (the measurement of the degree of tactile or other sensibility) and algesimetry (the measurement of sensitiveness to pain).[38] In reports of the late 1950s mention is made of other, more modern, testing techniques such as the Wechsler-Bellevue scale in 1955.

In Mol's psycho-pedagogical laboratory a seemingly objective scientific picture of a juvenile justice child was built up by bringing together all available information in a single report.[39] Each file consisted of the same information grid: the judicial antecedents, and a detailed pedagogical and medical report.

The pedagogical report was based on the daily records of educators and the results of pedagogical and pedological tests. Four areas of examination were standard in this part of the report: psychosomatic characteristics, intelligence, character, professional aptitudes and educability.

[37] Rouvroy, M., L'observation pédagogique des enfants de justice, Bruxelles, 1921, 119.

[38] D'hoker, M., *l.c.*, 220–221. Rouvroy, M., 1921 *op. cit.*, 198–203.

[39] Rouvroy, M., 1921 *op. cit.*, 186–194.

The medical report consisted especially of information concerning family antecedents and heredity, personal medical antecedents, and the overall physical condition of the youngster. The general conclusion took the form of advice on the elements of treatment and/or re-education considered to be necessary. Before arriving at this final stage of the process of continuous observation and testing, the pupils spent on average four months in the Mol centre, and a substantial number of placements even lasted for more than a year.

The final observation report was sent to the juvenile magistrate and became part of the judicial file of the youngster during his passage through the juvenile justice system. The report can be seen, then, as providing the functional double link between scientific observation practice and the social practice of Belgian juvenile justice in the first half of the twentieth century. On the one hand, the judge could rely on a scientific report to support and legitimate his decision in an individual case; on the other, the advisory role of the Central Observation Centre legitimated institutionalising the scientific study of young delinquents.[40]

4.2 A Nomenclature of Juvenile Delinquency

An important task of the Observation Centre went beyond individual observation; indeed, one of the goals of this systematic observation was to establish a rational, scientific classification of juvenile delinquency and the solutions best suited to each case. The idea of a *nomenclature* had already resulted in the nineteenth century in a wide range of possible classifications within different scientific disciplines.

Rouvroy tried to integrate his educational experience (he was a teacher) into a new nomenclature. He was a strong believer in a teleological classification, oriented towards the goal of re-education and therefore towards each child's capacity for being re-educated.[41] His nomenclature consisted of four main categories of child disorders: medical, mental (psychic), moral or affective, and social.[42]

[40] On the link with the changing practices of juvenile courts up until 1965, see the study of Dumortier, E., *De jeugdrechter in twijfel* …., 2006.

[41] Rouvroy, M. 1921. *L'observation pédagogique des enfants de justice*. Brusells: Office de Publicité. 27–29.

[42] Ibid., 36–52. For an overview of the categories and subcategories, see 53–55.

The category of medically disordered children consisted of those who were ill and could be treated in hospitals and sanatoria; however, Rouvroy also included in this category children with sensory and motor (physical) disabilities, who had to be transferred to special education institutions.

Mentally disordered children were described as abnormal, a difference being maintained between deeply educationally neglected (though otherwise mentally sound) children (*inéduqué profond sans tares*); abnormal children with a capacity for re-education (*aux tares mentales apparentes*); and profoundly mentally disturbed children (*aliénés et y assimilables*).

The third category of the so-called morally disordered children, included those described as first requiring moral reform (*amendement*). Rouvroy differentiated between perverted, corrigible and amended (*préservés*) children. Such morally disordered children were, in general, destined for reformatory schools; it was advised, however, that perverted children be kept apart from others and sent straight to the disciplinary unit of these schools.[43]

Lastly, the fourth category was defined as that of socially disordered problematic children. Among these children, Rouvroy distinguished those lacking a normal family structure (without family or from broken, bad families) and those with no possibility of working, who, as a result, were socio-economically marginalised.

Rouvroy's nomenclature illustrates the medicalisation, 'psychologisation' and 'pedagogisation' of the causes of, and solutions to, juvenile delinquency at the beginning of the twentieth century.

Two remarks are called for, however. First, it must be pointed out that, no matter how scientific and new this nomenclature appeared to be, it included the classical category of morally disordered children. This category was to stay at the centre of the problematisation of juvenile delinquent behaviour,[44] which reveals the continuity with mainstream nineteenth century discourse on the problem of crime. It confirms that delinquency was mainly seen as resulting from a lack of moral standards.

[43] "(D)'un côté l'enfant décidément mauvais et ne présentant aucun signe d'amendabilité proche ou d'amendement réalisé; à l'opposite, l'enfant resté bon ou amendé au point de pouvoir être assimilé pour le régime aux enfants conservés. […]. Les conservés et les amendés ne peuvent être mêlés aux pervers". Ibid., 54.

[44] Ibid., 54.

Second, Rouvroy's classification also illustrates how the movement towards integrating a broader spectrum of juvenile behaviour laid the foundation for twentieth century child-protection work, and how the range of possible solutions could be broadened (beyond prison and welfare institutions). In the mid-1950s interest in this broad nomenclature of juvenile delinquency clearly diminished. In the annual reports, there was no further reference to this former classification; from then on a stricter one, based entirely on intelligence test results, was used.

5 Juvenile Delinquency Observed and Diagnosed: Mol Observation Centre, 1930–1960

The number of boys send to Mol's observation centre over the years illustrates it's importance within the developing juvenile justice system (Fig. 1).

An average of 150–200 boys were sent to the centre for observation in its early years. However, as can be seen from Fig. 1, the yearly average

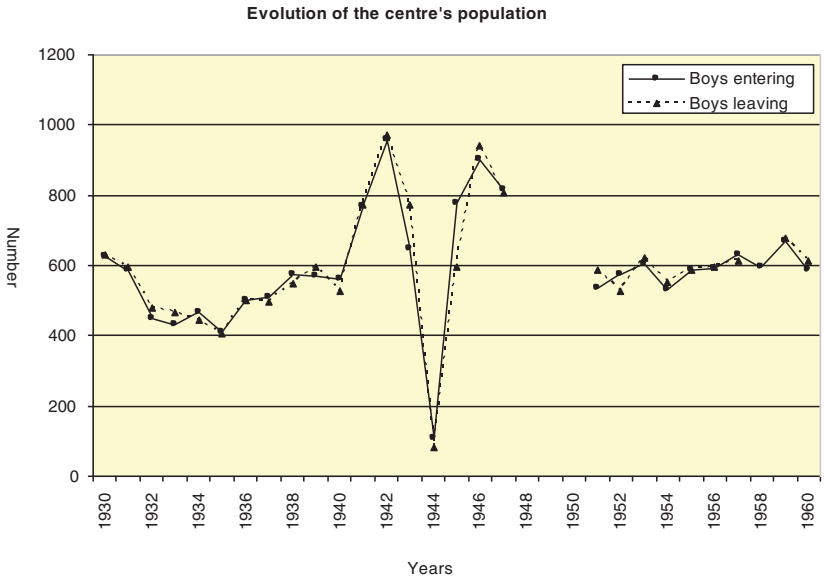

Fig. 1 Evolution of the population at the Mol Observation Centre, 1930–1960

figure rose to about 500 by the 1930s. Between 1930 and 1960 over 16,500 boys in all passed through the institution, with an average of 550 every year. The years of World War II were quite atypical, with a high peak followed with a sudden reduction, down to some 100 new boys in 1944. In the post-war period, however, the incoming population stabilised around 600 cases annually. These are considerable numbers, especially when one compares them to the overall number of boys being tried by the Belgian juvenile courts: annually, on average 1800 boys were subjected to a re-educational measure, some 220 of whom were placed in a State reformatory.[45]

The high number of boys admitted to the Mol Centre between 1930 and 1960 reflects the importance of the use that was made of this new observation practice by the juvenile justice system. It seems that juvenile magistrates could be increasingly relied upon to follow the formal directive, issued quickly after the implementation of the Child Protection Act, that all boys being sentenced to a State reformatory (for 'detention at His Majesty's pleasure') should first be sent to Mol for observation, to determine which state institution was best equipped to provide the proper treatment. Further, the number of admissions was inflated by (re-)entries of boys who had already been subjected to a re-educational measure earlier and whose placement was to be re-evaluated. This occurred, for example, when the judge considered granting them conditional freedom or after an expulsion from the institution because of 'rebelliousness'. In fact, most boys entering the Mol observation centre were no newcomers to the juvenile justice system; about a quarter returned several times for observation throughout their career, some within the same year. Finally, it can be said that, in practice, judges made an increasing use of the centre as a temporary 'shelter' (before a proper judgment was handed down or a measure was executed).[46]

[45] Statistique judiciaire de la Belgique (1916–1960), Table *Mineurs jugés. Résultat des poursuites par arrondissement*, Brussels.

[46] More details on the use of placements under observation in Mol by the Belgian juvenile judges, as well as on the profile of the pupils for the period 1916–1941 can be found in: De Koster, M., "Tot maat van het recht. De vroege ontwikkeling van de wetenschap van het ontspoorde en criminele kind in het Centrale Observatiegesticht in Mol (1913–1941)", in N. Bakker, S. Braster, M. Rietveld-Van Wingerden, A. Van Gorp (eds.), *Kinderen in gevaar. De geschiedenis van pedagogische zorg voor risicojeugd: Jaarboek voor de Geschiedenis van Opvoeding en Onderwijs 2007*, Assen, Van Gorcum, 2007, 94–119.

5.1 A Nomenclature of Juvenile Delinquency

As discussed earlier, observation was bound to result in a classification of juvenile delinquents. In this way the institutional observation practice contributed to a sort of more general scientific perspective on the 'problem' of youth delinquency. This perspective consisted of a categorisation of youth delinquents mixing so called causes with solutions. Therefore, this *nomenclature* was based on the possible solutions considered necessary for different types of juvenile justice children: cure, re-education, treatment, and so on. An analysis of the annual reports[47] prepared by the institution for the government gives an insight into how this categorisation fitted the population placed in the observation centre.

Table 1 clearly illustrates the presence of medical and psychiatric categories of youngsters in the juvenile justice system. In particular, children diagnosed as abnormal that could be re-educated represented a substantial group within the juvenile justice population sent to the observation centre. This reflects again clearly the medicalisation and psychologisation of the youth crime problem.

However, despite this important scientific development and the consequently changing definition of the juvenile delinquency problem, children viewed as morally disordered were still at the core of the juvenile justice population. A lack of moral standards remained the basic category in the perception—now scientific observation—of the juvenile delinquent. Even so, a large proportion of these morally disordered boys were considered to be amenable to re-education and improvement.

5.2 Causes of Juvenile Delinquency

Every year the observation centre reported to the government on the causes of juvenile delinquency. As stated earlier, the early developing aetiology of juvenile delinquency became increasingly complex, including more medical and/or psychological causes. But a closer look at the observation practice reveals a rather astonishing continuity with (pre-scientific) nineteenth century discourse on juvenile crime. Despite the

[47]The annual reports of the Mol Observation Centre have been preserved from 1930 onwards. Most follow more or less the same structure, but they have not all been preserved complete. Furthermore, tables and data do not always follow the same information structure; tables providing an overview of the classification of all observed cases are only available from 1940 onwards, and only for certain years.

Table 1 Outcome of observation: nomenclature of juvenile delinquency (Mol Observation Centre, 1940–1954)

	Category	*1940*	*%*	*1954*	*%*
0 1	Seriously ill/disabled	123		201	
0 2	Curable	332		560	
0 3	Incurable	36		39	
0	Medically disordered	491	4.39	800	4.05
1 1	Recognized retarded	117		160	
1 2	Abnormal educable	3163		4602	
1 3	Abnormal internable	259		378	
1	Psychologically disordered	3539	31.66	5140	26.04
2 1	Amended	131		173	
2 2	Partially improved	236		551	
2 3	Confirmed treatable	1702		2775	
2 4	Simple treatable	3649		8406	
2 5	Perverts or perverted	467		702	
2 6	Social perverts	55		89	
2	Morally disordered	6240	55.83	12,696	64.32
3 1	Without family	897		1088	
3 2	Without profession	10		14	
3	Socially disordered	907	8.11	1102	5.58
	Total	11,177	100	19,738	100

The years 1940 and 1954 have been selected because complete data on the outcome of observation are available for these years in the annual reports. Cumulative totals include cases of all juveniles observed at the end of the year since the beginning of observation practice in the Mol Centre (not from the beginning of the individual year)

Source State Archives Beveren, Centraal Observatiegesticht Mol (1913–1970), *Jaarverslagen*, 1940, no. 44; 1954, no. 53

addition of more scientific, especially psychological, determinants of juvenile delinquency, the more classical—one might say 'clichéd'—causes of juvenile crime, such as poverty, poor parenting and bad influences from the social environment, remained ever-present in the explanation of juvenile delinquent behaviour.

Table 2 reveals a gradually changing sensitivity towards possible risk factors contributing to child delinquency. The increase in detected psychological disorders among children, for example, is clearly a result of greater scientific attention being paid to this aspect. A further example is to be found in the bad influence attributed to the cinema, immoral literature and dance-halls. A clear drop in this bad influence as a factor

Table 2 Factors in child delinquency noted at the end of the stay in the Mol Central Observation Institution

	Socio-etiological cases	*1930* *%*	*1946* *N*	*1946* *%*	*1954* *N*	*1954* *%*
1	Parental drug abuse (alcohol and drugs)	*22.2*	61	*7.9*	60	*13.6*
2	Parental psychic disorders (consanguinity)	*16.3*	31	*4.0*	63	*14.3*
3	Parental misbehaviour or conviction	*23.8*	208	*26.8*	133	*30.1*
4	Broken or disabled families	*65.6*	366	*47.1*	315	*71.3*
5	Psychological disorders of children	*31.3*	330	*42.5*	276	*62.4*
6	Bad influence of the street	*63.7*	508	*65.4*	305	*69.0*
7	Influence of immoral literature	*25.1*	58	*7.5*	21	*4.8*
8	Influence of the cinema	*53.9*	159	*20.5*	51	*11.5*
9	Influence of dance-halls	*17.9*	17	*2.2*	33	*7.5*
10	Systematic corruption by family or social milieu	*2.2*	189	*24.3*	31	*7.0*
11	Brutality or terrorisation	*0.9*	18	*2.3*	25	*5.7*

The years 1930, 1946 and 1954 have been selected because complete data was available only for those years. The figures present the numbers of cases in which each factor was reported to have been observed yearly in the Mol centre among the juveniles leaving the observation centre (count per factor)
Source State Archives Beveren, Centraal Observatiegesticht Mol (1913–1970), *Jaarverslagen*, 1946 and 1954, no. 49 and 54. For the year 1930 data are based on Delannoy, A. (1931) L'application de la loi du 15 mai 1912 sur la protection de l'enfance de 1920–1930, *Revue de droit pénal et de criminologie*, Leuven, 896–913

in juvenile delinquency is reported, which could be explained as a result of policy initiatives such as prohibiting young people from attending cinemas or dance-halls. At the same time, these social activities became increasingly acceptable, an integrated part of daily life in the post-war years. As already mentioned, certain classical (clichéd) causes of youth crime apparently withstood scientific and sociological change: the bad influence of the street—youngsters hanging around in public places—and disordered families still being considered *the* important causes of child delinquency.

6 Conclusion

In this chapter I have ventured to present an exploration of the newly introduced practice of scientific observation and diagnosis of juvenile delinquents at the beginning of the twentieth century in Belgium. This brings us to some concluding remarks.

First and foremost, it is important to stress that the Belgian Child Protection Act (1912) explicitly opened the door to sciences that developed at the time about children, especially children regarded as problematic, delinquent or abnormal. This connection between justice (law) and science can be seen as a double-bond relationship: it promoted the institutionalisation of a new field of inquiry that could be described as pedocriminology, nowadays recognised as youth criminology; it also endowed the juvenile justice system with scientific expertise, legitimating judicial interventions. What real effect these observation reports had on the courts' final judgments, however, is still largely unknown, but the first results of research on individual case files of boys admitted to the Mol observation centre between 1916 and 1941 suggests that, overall, juvenile judges mostly followed the diagnosis and advice for re-education/placement provided. The results of Mol's 'scientific' observation and categorisation appear to have determined its pupils' future pathways through juvenile justice to a considerable extent.[48] Moreover, the importance of this early connection between judicial decisions and 'expert' diagnosis is still deeply rooted in today's juvenile justice practices.[49] However, both historical and criminological research points out that this relationship was and is far more complex, and goes beyond 'science illuminating sentencing practices'.[50]

Second, it is clear that early social sciences were rather optimistic as to their ability to understand problematic children and the causes of juvenile crime. The development of an extensive aetiology seemed to point to the possibility of explaining the causes of juvenile crime and suggesting the most adequate solutions to these problems. However, this scientific promise did result in a daily practice of systematic observation of over 16,000 boys, the outcome of which sheds a different light on this scientific promise. Besides brand-new scientific knowledge regarding the delinquent child and the causes of crime, the observation yielded results

[48] De Koster, M., "Tot maat van het recht. De vroege ontwikkeling van de wetenschap van het ontspoorde en criminele kind in het Centrale Observatiegesticht in Mol (1913–1941)", *op.cit.*, 100–114.

[49] Van Dijk, C., Deskundigen geven advies aan jeugdrechters: Een onderzoek naar de expertisepraktijk in het kader van de uithandengeving, Brussel, VUB Press, 2010, 361.

[50] Van Dijk, C., Ibid.; Dumortier, E., 2006. *op.cit.*

more in keeping with nineteenth century perceptions of youth crime and its causes. In this sense, scientific observation practice uncovered its common-sense roots. Besides the complicated scientific descriptive terminology used in individual observation reports, a more down-to-earth as well as moralising description of the boys could not be avoided. An endless list of expressions such as '*he's a typical street urchin*' (no. 1386); '*a precocious city kid, the typical bumptious Brussels type*' (no. 1450); '*a real rat straight out of the docks*' (no. 1421); '*your uncouth country bumpkin type*' (no. 1383); '*a real lower-class type from the backstreets of Brussels*' (no. 1242) can be found,[51] uncovering and illustrating not the promise but the poverty of this scientific enterprise.

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[51] State Archives Beveren, Centraal Observatiegesticht Mol (1913–1970), *Persoonsdossiers van de minderjarigen*, no. 1242; 1383; 1386; 1421; 1450.

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PART IV

Children and Families Before the Juvenile Court

CHAPTER 10

Girls' Journeys to the Juvenile Court, Antwerp, 1912–1933

Margo De Koster

1 Introduction

Most histories of juvenile justice—the system of separate laws and judicial, social welfare, and correctional institutions for children and youth—focus on how laws and institutions have developed and reflected changing conceptions of childhood and attitudes towards young offenders. Other historians, in Belgium as well as abroad, have recently begun to concentrate on issues of implementation, on how the ideals of child welfare advocates were put into practice. Yet, as David Wolcott has rightly pointed out, in spite of the increasing attention paid to conflicts within and surrounding the juvenile justice system (among elite reformers, court and law enforcement officials, and the children's families), the focus is still overwhelmingly on juvenile courts per se. The courts remain historians' standard unit of analysis and are treated as the starting point from which all other decisions derive. This perspective, however, often disregards

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other key elements of the juvenile justice system.[1] How, for example, did young offenders reach juvenile courts in the first place? What happened to them prior to their court appearances? Who were these 'juvenile delinquents' in reality?

This chapter presents the findings of a qualitative study of girl criminality in Antwerp, 1912–1933, and seeks to shed light on the journeys of girls to the Antwerp Juvenile Court through an analysis that does not take the court, but rather the young female offenders themselves as the starting point.[2] This perspective allows us to gain a better insight into the experiences, problems and opportunities that shaped the various contexts in which the girls' conflicts with the law took place, as well as to identify the various agents and problem-definitions that were responsible for channelling them to justice. More generally, it offers possibilities to combine both the study of illegal behaviours (offences and perpetrators) and the study of processes of criminalisation (the social reaction to crime).[3] At the same time this perspective allows us, as has been demonstrated by recent feminist criminological studies that map the stages and histories of women's criminal careers,[4] to learn more about two wider questions that remain less-researched for the period covered here:

[1]Wolcott D., *Cops and Kids: Policing Juvenile Delinquency in Urban America, 1890–1940*, Columbus, Ohio State University Press, 2005, pp. 1–8.

[2]This article is based on my Ph.D. research: De Koster M., *Weerbaar, weerspannig of crimineel? Meisjes en jonge vrouwen tussen emancipatie en delinquentie tijdens de eerste helft van de twintigste eeuw*, unpub. Ph.D. thesis, Vrije Universiteit Brussel, 2003. See also De Koster M., Massin V., 'Delinquente en problematische meisjes in de molen van de jeugdbescherming, 1912–1965', *Panopticon: Tijdschrift voor strafrecht, criminologie en forensisch welzijnswerk*, 33, 2012, 5, pp. 437–453.

[3]Although there are several studies that constitute an exception to this, it can generally be noted that a certain divide persists between these two main approaches within much criminological and historical research on crime and punishment. For observations in this matter, see, for example Pires A.P., 'La criminologie et ses objets paradoxaux: réflections épistémologiques sur un nouveau paradigme', *Déviance et Société*, 17, 1993, 2, pp. 129–161; Innes J., Styles J., 'The crime wave: recent writing on crime and criminal justice in eighteenth-century England', in Wilson A. (ed.), *Rethinking Social History. English Society, 1570–1920, and its Interpretation*, Manchester, Manchester University Press, 1993, pp. 201–265; Schwerhoff G., *Aktenkundig und gerichtsnotorisch. Einführung in die Historische Kriminalitätsforschung*, Tübingen, Edition Diskord, 1999, pp. 69–83.

[4]The most sophisticated and path-breaking work is that of sociologist and criminologist Pat Carlen. See, for example Carlen P. (ed.), *Criminal Women. Autobiographical Accounts*, Cambridge, Polity Press, 1985.

(i) interactions between informal and formal control systems and (ii) the field of tension between discourses on crime and punishment and practices of lawbreaking and prosecution.

Finally, the 'criminal career'-approach has a specific value for the study of female delinquency, because it takes into consideration the *filières pénales*: the funnelling process of the criminal justice system. If we compare the criminal justice system to a 'wedding cake', we could say that only a relatively small proportion of all offences punishable by law enter the system at the bottom layer of the cake, and successively fewer proceed to each of the higher layers. Criminologists and crime historians have suggested that women, and young girls in particular, are the most likely to 'drop out' on the way from lawbreaking to detection by the law enforcement agencies (bottom layer), from detection to prosecution and from prosecution to trial and conviction (higher layers), since their chances were higher to end up in alternative correctional circuits.[5] This observation suggests that taking the informal and infra-judicial level into account is essential as one deals with girls' delinquency and at the same time underscores the importance of asking the questions which girls actually did reach the courts and how. This chapter attempts to trace some of several possible pathways that young women might take leading them to juvenile court, and to draw a distinct profile of the girls involved.

The study is primarily based on a quantitative analysis and a qualitative in-depth investigation of individual case records (*dossiers van rechtspleging*) of the Antwerp Juvenile Court. These are extraordinarily rich sources that contain extensive background information on the juveniles prosecuted and allow us, in most cases, to trace their trajectories prior to and after their court appearances. This is the fortunate result of the juvenile judges' task to thoroughly investigate the family circumstances and the social and moral 'environment' of the minor—viewed as the most important criterion in determining the need for and scope of reform—before passing the verdict, and to follow up these youths until

[5] For references to criminological research on this topic see, for example Hoyt S., Scherer D.G., 'Female Juvenile Delinquency: Misunderstood by the Juvenile Justice System, Neglected by Social Science', *Law and Human Behavior*, 22, 1998, 1, pp. 81–105. For historical evidence see, for example, Kermode J., Walker G. (eds.), *Women, Crime and the Courts in Early Modern England*, London, UCL Press, 1994; Cox P., *Gender, Justice and Welfare: Bad Girls in Britain, 1900–1950*, Basingstoke, Palgrave, 2003.

they reached their majority.[6] Given the rather labour-intensive character of qualitative analysis, we took a sample from the case files, that includes all cases heard by the Antwerp Juvenile Court between October 1912 and October 1913, between June 1924 and June 1925 and between May 1932 and May 1933, a total of 508.[7] Of these cases, 150 relate to girls and young women and make up the core material of our study. The boys' files were only quantitatively processed, in order to get an idea of the prevailing gender-proportions. Our main focus was on the girls, and on the girls only, partly because we wanted to avoid the eternal counting and comparing of girls' and boys' crimes, as well as the associated risk of a 'slide' into analyses in which gender difference becomes the central explanatory axis from which all other interpretations are derived.[8] We relied on the published judicial statistics of Belgium (*Statistiques judiciaires de la Belgique*) with respect to the prosecution of juveniles under the Child Protection Act of 1912[9] in order to check and supplement our material drawn from case files of the Antwerp Juvenile Court, to situate our sample within the overall volume of cases handled at a national level and to get an idea of the activity of 'lower' layers of juvenile justice. Data for the different judicial *arrondissements* and corresponding juvenile courts in Belgium are available for the years 1913–1916 and 1919–1930.

[6]Articles 27 and 31 of the Belgium Child Protection Act of 1912: *Pasinomie: collection complète des lois, arrêtés et règlements généraux qui peuvent être invoqués en Belgique*, Brussels, 1912, nr. 252, p. 249.

[7]Individual court files, Juvenile Court of Antwerp, State Archives Beveren (Belgium), *Archiefblok EA Antwerpen D*, *Dossiers van rechtspleging*. Our sample includes the following files (female and male juveniles): October 1912–October 1913: nrs. 1–575, folders 1–73 (390 of these files relate to revisions of 'old' cases of juveniles convicted before the establishment of the juvenile courts by the Child Protection Act of 1912 and were not analysed); June 1924–June 1925: nrs. 2876–3104, folders 410–436; May 1932–May 1933: nrs. 4357–4476, folders 599–614.

[8]In this respect, see the critical remarks of feminist historian Joan Scott: Scott J., 'Gender: A Useful Category of Historical Analysis', in Scott J. (ed), *Feminism and History. Oxford Readings in Feminism*. Oxford, Oxford University Press, 1996, pp. 156; 165–167.

[9]We sincerely thank Xavier Rousseaux for providing us with an electronic version of these Judicial Statistics for the period 1912–1940; this has considerably facilitated the processing of the data.

2 Last Stage First: Girls Before the Juvenile Court of Antwerp

My exploration of the roads that led young women to the Antwerp Juvenile Court starts at the end: the stage in which girls have officially become 'juvenile delinquents' and are confronted with the juvenile judge. At this point, the judicial profile of the delinquent or 'unmanageable' young women that ended up in court has acquired its definitive shape.

In terms of the number of cases handled yearly, the Antwerp Juvenile Court, which covered the judicial *arrondissement* of Antwerp, was the fifth most important or 'active' juvenile court in Belgium. Together with (in order of importance) the juvenile courts of Charleroi, Brussels, Liège and Ghent, the court of Antwerp accounted for about 50% of the overall prosecution of juveniles in Belgium between 1913 and 1930.

What were the respective proportions of boys and girls in the Antwerp court's activity? Official judicial statistics provide that information only for the years up to 1920: unfortunately, after 1920 the official statistical data on juvenile charges in the different judicial *arrondissements* / juvenile courts do no longer distinguish between the sexes. They show that globally, for the years 1913–1916 and 1919–1920, girls accounted for 22% of the juveniles appearing before the court (232 cases out of 1067—see Table 1). A glance at later years for which our sample drawn from the court files provide some data suggest relatively higher percentages: 30% for the year 1924–1925 and 28% for the year 1932–1933. In any case, whatever the source, it is clear that the court population was made up of a vast majority of boys.

The nature and distribution of girls' and boys' offences tried by the Antwerp juvenile court are shown in Table 1. Data drawn from the Judicial Statistics for the years 1913 up to an including 1916 and 1919–1920 are supplemented with figures from our sample of court case files. As noted earlier, after 1920 the official statistical data no longer distinguish between the sexes at the judicial district level. As a result of this, we can only get a partial view of the pattern of prosecution of female and male juveniles in the Antwerp Juvenile Court during the period from 1912 to 1933.

As Table 1 indicates, female juvenile delinquents appearing before the Antwerp juvenile judge between 1912 and 1933 were most likely to be girls charged with '*misbehaviour*' by their parents. This category

Table 1 Girls and boys before the Antwerp Juvenile Court: distribution of offences, selected years

	Vagrancy/ Mendicity (1)		*Misbehaviour and disobedience: parental correction (2)*		*Prostitution, debauche, gambling, dangerous, occupations (3)*		*Criminal offences (4)*		*School absenteeism (5)*		*Total*	
	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male
Judicial Statistics[a] 1913–1920 (excluding 1917–1918)	28	60	134	81	20	1	50	693	N/A	N/A	232	835
Court files[b] June1924–June1925	15	48	16	12	1	0	17	74	14	10	63	144
May1932–May1933	5	20	14	9	0	0	13	54	1	0	33	83

[a] *Source Statistiques judiciaires de la Belgique*, Statistiques de la protection de l'enfance, heading: 'Mineurs jugés. Nature des faits commis', 1913–1916, 1919–1920

[b] *Source* Sample of court files, Juvenile Court of Antwerp, State Archives Beveren (Belgium), *Archiefblok EA Antwerpen D*, *Dossiers van rechtspleging*: Jun. 1924–Jun. 1925: nrs. 2876–3104, folders 410–436; May 1932–May 1933: nrs. 4357–4476, folders 599–614

(1) Article 13 of the Belgium Child Protection Act of 1912. Prosecution for this offence in juvenile court was possible until the age of 18

(2) Article 14. Juveniles could be charged with 'misbehaviour', after a parental complaint, until the age of 18

(3) Article 15. Juveniles could be charged with these prostitution-related offences until the age of 16

(4) Article 16. All acts defined as criminal offences (*fait qualifié infraction / als misdrijf omschreven feit*) by the Penal Code. Prosecution for these offences in juvenile court was possible until the age of 16

(5) Breaches of the Belgium law on compulsory schooling of 1914. In October 1921, this 'offence' was added to the jurisdiction of the juvenile judge, who could try children until the age of 14, the end of compulsory schooling (N/A: "not applicable")

is that which includes the highest number of girls for those years; it is also one where girls outnumber boys. In terms of frequency, it is by far the most important for girls. Parental correction, which fell under

article 14 of the Belgium Child Protection Act of 1912 and implied a request from parents to discipline an 'unmanageable' daughter or son, was the primary reason for prosecuting female minors in the years selected: 'misbehaviour' made up 40% up to 75% of girls' charges, except in the period June 1924–June 1925. The percentage of girls charged with *criminal offences*, of which three quarters or more usually consisted of theft, was on average 25% in the years selected. This category was primarily a male category: it accounted for an average of three charges out of four laid against boys, and it is the category where girls were the most systematically outnumbered by boys. In most of the selected years, at least eight out of ten such offences involved theft. The number of *vagrancy/begging* charges and of *prostitution*-related charges varied much more throughout the period 1912–1933: the share of the former fluctuated between 5% and 24%; the share of the latter between 1.5% and 18% (unsurprisingly, prosecution rates were the highest during World War I[10]). Finally, only a few girls were prosecuted for '*school absenteeism*', all except one between June 1924 and June 1925. Here we must point out that referral to juvenile court on such charges by the Public Prosecutor, which was legally possible since 1921, was limited to cases of recidivism; 'new' cases had to be brought before the *juges de paix.*[11] Moreover, from the late 1920s

[10]For the prosecution of prostitution during the war in Brussels, see Majerus B., 'La prostitution à Bruxelles pendant la Grande Guerre: contrôle et pratique', *Crime, Histoire & Sociétés / Crime, History and Societies*, 7, 2003, 1, pp. 5–42.

[11]The *juges de paix*, who formed the lowest level of the court system and whose task was to mete out a justice of conciliation and arbitration, were established in 1790 in France (Laws of 16 and 24 August), and subsequently introduced in Belgium under the French rule on 2 Frimaire, Year IV (23 November 1795). Within their cantons, they were empowered chiefly to administer justice in minor cases, and hear minor civil matters and petty criminal cases; they dealt with family quarrels, minor litigation between local inhabitants, and small felonies. In the latter case, they operated as *juges de paix de police* and presided over a police court. From October 1921 on, the *juges de paix de police* gained first degree authority over cases of school absenteeism. Between 1931 and 1940, a yearly average of 4605 parents were brought before the police courts for breaches of the Belgium law on compulsory schooling (1914). An average of 904 were acquitted. The others were fined or underwent short-term imprisonment: Velle K., *Het vredegerecht en de politierechtbank (1795–1995). Organisatie, bevoegdheden en archiefvorming*, Algemeen Rijksarchief (General State Archives), Brussels, 1995, pp. 74–75; 141–143; 254–259; Wets P. 'Rapport de M. le juge Wets à l'assemblée des juges des enfants du 21 janvier 1922', *Bulletin de l'Office pour la protection de l'enfance*, 1922, p. 340.

onwards matters of school absenteeism were increasingly kept away from juvenile court, to be dealt with solely by the *parquets* and 'judges of peace': after 1926 the number of school absenteeism-cases reaching the juvenile courts dropped quickly on a national level, making them rather exceptional.[12]

The judicial profiles of the female and the male juveniles tried by the Antwerp Juvenile Court between 1912 and 1933, as described earlier, did not differ substantially from those of the girls and the boys appearing before the Juvenile Court of Brussels. We must note, however, that this conclusion can only be drawn with certainty for the years 1913–1916 and 1919–1920, since data about the other years are lacking in the Judicial Statistics. Yet, there is one point of difference to be mentioned: whereas 'misbehaviour' was also the most important reason for court intervention against girls in Brussels, its share as percentage of total girls' offences was, on average, lower than in Antwerp, while the share of vagrancy charges was considerably higher (about 29%). Finally, overall statistical data on Belgium regarding the period from 1913 to 1933 show a judicial profile of boys that is almost the same as in the Antwerp and Brussels *arrondissements*, but reveal a different picture with respect to the girls: on the national level, the 'misbehaviour' charges lose their first position to the criminal offences, the average shares of both being 30% and 35%. This suggests that in comparison to those of Antwerp and Brussels, other juvenile courts prosecuted proportionally more girls for criminal offences.[13]

3 What Preceded: Filtering by the *Parquet*

Coming from the juvenile court, the next 'lower' layer of the juvenile justice system is the Public Prosecutor's office, called the *parquet* in Belgium. The *parquet* is a crucial agent in 'the making' of juvenile delinquents, or in the process through which young people with transgressive

[12] *Statistiques judiciaires de la Belgique*, Statistiques de la protection de l'enfance, heading: 'Mineurs jugés. Résultats des poursuites en rapport avec les faits commis', 1922–1940 (overall figures for Belgium).

[13] *Statistiques judiciaires de la Belgique*, Statistiques de la protection de l'enfance, heading: 'Mineurs jugés. Nature des faits commis', 1913–1916 and 1919–1920 (Brussels); 1913–1933 (Belgium).

behaviours become *enfants de justice* who committed a legal offence. The *parquet* performs an important filtering function, determining which juveniles to refer (or 'petition') to juvenile court and on what charges. In contrast to the English system, the Belgian prosecutor's office 'à la française' acquired almost a monopoly in prosecution since the latter half of the nineteenth century.[14] Following the establishment of the Belgian juvenile justice system in 1912, all decisions with respect to cases of juveniles were entrusted to one or more specialised magistrates of the *parquet*, appointed by the Public Prosecutor.[15] These magistrates were able to exercise a large degree of discretion in dealing with the cases that reached them, bringing some juveniles before juvenile court, resolving other cases themselves, in which case the matter was usually closed with an unofficial reprimand, and keeping still other cases under consideration or 'pending' until they found the time right to decide which course the matter should take.[16] Most cases (vagrancy/begging, prostitution-related offences, criminal offences and school absenteeism) obligatory followed the channel police-*parquet*, but cases of parental correction ('misbehaviour' charges—article 14) did not necessarily have to pass through the *parquet* in order to be brought into juvenile court.[17]

Within the scope of this research, it is not possible to shed much light onto the activity of the 'juvenile' *parquet* and its effects on girls' criminal careers, since the latter only occasionally appears in the court case records used. Discharge practices remain completely invisible. It requires a systematic analysis of *parquet* dossiers of discharged cases to determine

[14]The history of the state prosecutor's office in Belgium (*Ministère public / Openbaar Ministerie*) remains to be written. There is, however, the extremely valuable criminological research on its discharge practices since 1836, that shows how the Public Prosecutor's office acquired a key-role in judicial practice: Janssen C., Vervaele J., *Le ministère public et la politique de classement sans suite*, Brussels, Bruylant, 1990.

[15]This specialisation of the *parquet* was laid down in article 12 of the Child Protection Act: *Pasinomie*, 1912, nr. 252, p. 251.

[16]This has been observed with respect to the 'juvenile' *parquet* of Brussels by Racine A., *Les enfants traduits en justice. Étude d'après trois cents dossiers du tribunal pour enfants de l'arrondissement de Bruxelles*, Liège, Thône, 1935, pp. 15–16.

[17]Ibid.: 15.

why and in which cases female juvenile offenders 'dropped out' of the juvenile justice system due to *parquet* intervention. Unfortunately, these dossiers have never been fully preserved in the archives of the *parquets*; in the Antwerp *arrondissement* they have not been preserved at all.[18]

We have to rely on official statistical data to learn something about discharge by the *parquet*, but these are rather limited. They do not contain information about the nature of offences with which discharged juveniles had initially been charged. As a result, it is not even possible to estimate to what extent the *parquet* had shaped or 'carved out' the judicial profile of the girls prosecuted in the juvenile court of Antwerp. The available data do tell us that the discharge rate, that is, the portion of cases that were not taken into court ('*affaires classées sans suite*') and resolved by the *parquet* without involvement of the judge, was constantly high from 1913 to 1930, both in the judicial *arrondissement* of Antwerp and elsewhere in Belgium. In Antwerp, on average, between 61% and 80% of juvenile offenders were discharged yearly. The discharge rate in Brussels was even higher: it fluctuated between 63% and 83% from 1913 to 1930. The rates for Antwerp and Brussels lay systematically above the national discharge rate.[19]

A look at the discharge rate by gender leads to a striking conclusion: overall, proportionally more male than female juvenile offenders were discharged by the *parquet*. When we compare the gender ratio—the number of boys for one girl—among incoming juveniles (all cases handled yearly by the *parquet*) to the gender ratio among discharged juveniles, it appears that, except for the years 1915–1920, the latter was higher between 1913 and 1930 in the Antwerp *arrondissement*. This indicates that under the juveniles discharged, boys were more strongly represented than they were within the total group of incoming juveniles, to the detriment of the girls. The same pattern can be observed in Brussels and on a national level between 1913 and 1916; from 1919 on, however, the difference between both gender ratios practically disappeared, as shown in Table 2.

[18] Velle K., 'Instellingen, normen en procedures met betrekking tot crimineel wangedrag van jongeren in België, in de periode 1795–1950: bronnen en mogelijkheden voor verder onderzoek', in Lis C. & Soly H. (eds.), *Tussen dader en slachtoffer. Jongeren en criminaliteit in historisch perspectief*, Brussels, VUB Press, 2001, p. 257.

[19] *Statistiques judiciaires de la Belgique*, Statistiques de la protection de l'enfance, heading: 'Mineurs dont les parquets ont eu à s'occuper; suites données aux affaires par le parquet', 1913–1930.

Table 2 Gender ratio among incoming juveniles and among discharged juveniles, Parquet (Antwerp, Brussels and Belgium)

	Gender ratio = number of boys for 1 girl					
	Antwerp		*Brussels*		*Belgium*	
	incoming	*discharged*	*incoming*	*discharged*	*incoming*	*discharged*
1913	7.2*	7.8**	5.2	5.4	4.0	4.2
1914	4.9	5.2	5.6	7.4	3.9	4.5
1915	3.1	2.9	4.8	6.5	3.8	4.0
1916	4.6	4.6	3.3	4.1	3.3	3.6
1919	4.9	4.9	1.9	1.9	3.6	3.7
1920	3.8	3.8	1.5	1.7	3.0	3.0
1921	4.1	5.9	1.5	1.5	2.5	2.5
1922	4.0	5.5	1.4	1.4	2.1	2.0
1923	4.3	6.7	1.2	1.2	1.9	1.9
1924	5.7	7.8	1.1	1.1	1.9	1.9
1925	4.5	5.9	1.1	1.1	2.0	2.1
1926	4.2	5.5	1.1	1.0	1.9	1.9
1927	5.1	5.8	1.1	1.0	2.0	1.9
1928	2.9	3.6	1.1	1.1	2.0	1.9
1929	3.0	3.4	1.1	1.1	1.9	1.9
1930	5.0	5.8	1.2	1.1	2.1	2.0
1935					3.3	3.5
1940					3.0	3.3

*Gender ratio among incoming juveniles = number of incoming boys for 1 incoming girl
**Gender ratio among discharged juveniles = number of discharged boys for 1 discharged girl
Source Statistiques judiciaires de la Belgique, Statistiques de la protection de l'enfance, heading: 'Mineurs dont les parquets ont eu à s'occuper; suites données aux affaires par le parquet', 1913–1916, 1919–1930 (Antwerp, Brussels); 1913–1916, 1919–1930, 1935, 1940 (Belgium)

Our findings seem to contrast those of scholars suggesting that girls were more likely than boys to 'drop out' of formal proceedings, on their way to court (as in the prior phase, leading to prosecution). Official statistical data suggest the opposite, at least, with respect to the 'drop out' that resulted from the action of the *parquet*. Finding an explanation for this is difficult. Again, only an in-depth investigation of dossiers of discharged cases could provide clear answers. The published judicial statistics provide some extra information about the motives for discharge from 1913 to 1916 and in 1919–1920. These were divided into four categories: 'facts not covered by the law', 'facts without gravity', 'unproven facts' and 'discharged as a result of death, conscription (army service) or other motives'. Between 1913 and 1916 and in 1919 and 1920, the single

largest category of motives for discharge, in Antwerp as well as in most of the other judicial *arrondissements*, were 'facts without gravity': it usually included more than 50% (and as high as 90%) of the juveniles discharged. In this category, boys were relatively over-represented. Female juveniles were, in return, best represented in the second most important category of 'discharge as a result of death, conscription or other motives'.[20] One could assume that this category includes, among others, the cases resolved through some kind of infra-judicial arrangement. Does this indicate that some juvenile offences were more quickly considered as being 'without gravity' when the offender was a boy, while girls were indeed more likely to become the subject of infra-judicial correctional mechanisms, and to be discharged as a result of that? Unfortunately, there is insufficient evidence to establish with any certainty whether this was the case or not.

Next to discharge, committal for trial by the *parquet* also entailed 'filtering', that is, a decision as to what charges the juvenile offender should face. The girls' court files give some information about this kind of filtering by the tandem police-*parquet*: they reveal a specific semi-official practice whereby criminal or prostitution-related offences of 16- to 18-year old juveniles were 'translated' into prosecutions for 'vagrancy' or for 'misbehaviour' (in which case the parents where advised by the police to request confinement). This practice has also been observed in Brussels. It enabled the *parquets* to refer these juveniles to juvenile court, since vagrancy and 'misbehaviour' could be prosecuted here until the age of 18, and avoid them being tried by 'adult' Correctional Courts for a criminal offence (from the age of 16) or not being prosecuted at all, in the case of prostitution (not punishable from the age of 16). Further, the authorities generally tended to avoid charges with the 'shameful' offence of prostitution for juveniles younger than 16. This semi-official practice first emerged in the judicial *arrondissement* of Brussels quickly after the enactment of the Child Protection Act of 1912 and spread rapidly throughout the country.[21] The result of this was that a number of criminal offences and prostitution cases got 'hidden' under vagrancy and

[20] *Statistiques judiciaires de la Belgique*, Statistiques de la protection de l'enfance, heading: 'Mineurs dont les parquets ont eu à s'occuper; suites données aux affaires par le parquet', 1913–1916; 1919–1920.

[21] Racine A., *op.cit.*, pp. 43; 79.

'misbehaviour' charges on their way to juvenile court. Of all the girls prosecuted for 'vagrancy' in the Juvenile Court of Antwerp (23), four had initially been arrested for prostitution-related offences.[22] Within the category of 'misbehaviour' or parental correction, we find three cases of prostitution and two criminal offences (domestic theft; fraud and embezzlement).[23] In other words, of a total of 150 girls committed for trial in the Antwerp juvenile court in the periods studied, at least 6% were 'transformed' into another type of juvenile delinquent by the *parquet*.

The overwhelming majority of female and of male juveniles who came under the hands of the *parquet* were, however, 'kicked out' of the juvenile justice system. The young women appearing in the case records of the Antwerp Juvenile Court had not been so lucky; their cases had seeped through the *parquet*'s filtering and proceeded to the higher tier of the juvenile justice 'wedding cake'. Hence, it is time to take a look at their backgrounds and the nature of their run-ins with the law: how did the girls initially get involved in the transgressive or illegal practices they were prosecuted for and who channelled them into the judicial system?

4 Where It All Started: The Intake Process

When studying the ways in which 'unruly' young women came into contact with juvenile justice, in other words: the 'intake process', one should not only concentrate on the actions and decisions of law-enforcement officials, of which the police have been the principal agents responsible for managing juvenile misbehaviour on a day-to-day basis since the latter half of the nineteenth century. One should also consider the major role of citizens, private individuals (parents, relatives, victims, third parties) in policing and prosecution. In short, it is important to acknowledge that a broad range of agents could be responsible for channelling minors to juvenile court, making the first and most important decisions in the process of regulating juvenile delinquency. The process whereby behaviours are labelled as 'unacceptable' or deviant usually begins in the immediate environment of the offender, either at home, at work or within the

[22] Individual court files, Juvenile Court of Antwerp, State Archives Beveren (Belgium), *Archiefblok EA Antwerpen D*, *Dossiers van rechtspleging*, June 1924–June 1925: nrs. 3014, 3033, 3036; May 1932–May 1933: nr. 4382.

[23] Oct. 1912–Oct.1913: nrs. 44, 51, 315; June 1924–June 1925: nr. 2996; May 1932–May 1933: nr. 4400.

neighbourhood community. Hence, the following questions arise: exactly who was behind this regulation 'from the bottom up'? What tolerance thresholds and definitions of 'unacceptable' behaviour played a role in this? With what intentions and expectations did private individuals resort to justice, an external authority, instead of solving the problems themselves? Were there no alternative correctional strategies?

Before moving on to these questions, let us first have a look at the offenders involved: the girls and young women who appeared before the Antwerp Juvenile Court between October 1912 and October 1913, between June 1924 and June 1925 and between May 1932 and May 1933.[24] Until now, I have considered only the girls' judicial profile; in the next section I shed light on their social and family backgrounds.

5 Social and Family Profile of the 'Troublesome' Girls Before the Antwerp Juvenile Court

The overwhelming number of the girls that appeared in the Antwerp Juvenile Court in the periods studied came from working-class families, and the majority of these had fallen on hard times: the parents were underemployed, unemployed, on relief or welfare, or had simply deserted. A much smaller group grew up in the class of slightly better-off, 'respectable' wage-earners (the so-called 'working-class aristocracy'), small shop-keepers and small traders. The girls coming from these families were the most numerous in the period from May 1932 to May 1933, making up a third of the girls prosecuted in this period. It should be noted, however, that most of these 'respectable' families suffered considerably from the severe consequences of the economic crisis of 1929–1930: they were confronted with unemployment of the father-breadwinner or had accumulated debts and faced the threat of impoverishment. Only 3 out of the 150 girls who ended up in court in the periods studied came from middle-class families, with a clerk, a lawyer and a salesman as head of the household. Almost all the young women aged between 14 and 18, who made up 70–75% of the girls prosecuted, were working as wage-earners in factories, as maid-servants, dressmakers, washer women, charwomen or as waitresses.

[24]See note 8 for the identification of this series of individual case files of the Antwerp juvenile court.

Regarding the family situation of delinquent or 'unmanageable' girls, our evidence suggests that in each of the periods studied, about half of them grew up in families lacking one or both biological parents: they were brought up either by their mother, who was either a widow or a divorced/abandoned wife, or by their father, who tended mainly to be a widower, or they were orphans living with their guardian. Unsurprisingly, about one-third of the widows, widowers and divorced/abandoned parents had in the meantime remarried or found a new partner and simply 'lived in sin'. For pragmatic reasons, it was desirable for a single parent from the lower classes to get married again or find a new partner as soon as possible. The loss of the main breadwinner almost automatically plunged proletarian families into penury, while the death or disappearance of the mother meant among other things that the father had to step in and raise the children, which was very difficult for someone working away from home.[25] A last remark about the family structure: four out of ten families were large, meaning that they had four children or more to support.

In some cases, the life experiences of the female juveniles ending up in court were not only dominated by poverty and the daily struggle for family survival, but also ridden with domestic conflicts and violence. In each of the researched periods, one in six court case records reveals that the father or/and mother drank excessively on a daily basis, reducing the family to penury and causing endless marital disputes. Additionally, domestic violence would result from the alcohol abuse. Eight of the 150 prosecuted girls declared they had suffered sexual aggression or abuse from their (step)fathers.[26] The girls' stories of abuse generally contained very specific details and appear more than convincing. However, the case records do not always allow us to establish with certainty whether their allegations were true. In most cases, we can only rely on the girls' statements. The reports of court officials and medical experts who investigated all juvenile offenders' family backgrounds and physical and mental condition, were either remarkably silent about the sexual abuse or suggested that the girls could not be trusted to tell the truth. Only two girls

[25] Sohn A.-M., *Chrysalides. Femmes dans la vie privée (XIXe-XXe siècles)*, Paris, Publications de la Sorbonne, 1996, volume I, pp. 232–244.

[26] State Archives Beveren, *Archiefblok EA Antwerpen D*, *Dossiers van rechtspleging*, Oct. 1912–Oct.1913: nrs. 315, 412; June 1924–June 1925: nrs. 2903, 2939, 3033; May 1932–May 1933: nrs. 4367, 4414, 4467.

where considered reliable, because their words where backed up by that of other key witnesses—relatives and neighbours—and, more importantly, because they had not had any other sexual experience. In the eyes of court officials, girls who where sexually active or where suspected of this (having a boyfriend, for example) could not really have been innocent and might be lying; they fit the image of the young seductress. This is what transpired in the other cases, which all involved girls who had been charged with 'misbehaviour' by their parents because of their 'unacceptable' sexual behaviour (see later). Here, it was either suggested that the girls invented stories of abuse for the purpose of revenge or to minimise their transgressions, or that they had been taught their stories of abuse, by their boyfriend or their (step)mother, who intended—for several reasons—to discredit the girls' (step)fathers. These attacks on the integrity of the girls' words and the pressures of extended cross-examination prompted two of the young women to withdraw their allegations.[27] Whatever it may have been, the court files clearly indicate that a rather large share of the girls' parents could hardly be regarded as models of outstanding behaviour themselves; an average of 55% had already been convicted: mostly for smaller offences that were dealt with by the police courts, such as drunkenness and 'disorderly conduct', but in half of the cases the parents' criminal records also contained at least one crime heard by the Correctional Court, such as theft.

Briefly, the majority of the delinquent or 'unmanageable' girls who ended up before the Antwerp Juvenile Court in the periods studied, grew up in families where material conditions constituted a permanent source of worry, which had often disintegrated (one-parent families), and which belonged to the most vulnerable, unorganised and marginalised layers of the working-class, amidst them a considerable number of parents being on the margins of the law or criminals themselves.

[27] In this respect, see also the fascinating essay by Jackson L., 'The child's word in court: cases of sexual abuse in London, 1870–1914', in Arnot M.L., Usborne C. (eds.), *Gender and crime in modern Europe*, London, UCL Press, pp. 222–237.

Table 3 Distribution of female juveniles prosecuted in Antwerp, according to the initiation of the proceedings, selected years

Initiation of proceedings	*Female juveniles prosecuted*			
	1912–1913	*1924–1925*	*1932–1933*	*Total*
Police: arrest	10	12	4	26
%	*19*	*19*	*12*	*17*
Parents: request for confinement	33	16	14	63
%	*61*	*25*	*42*	*42*
Victims: complaint lodged with police	11	21	14	46
%	*20*	*33*	*42*	*31*
Parquet & school (school absenteeism)		14	1	15
Total	54	63	33	150

Source Sample of court files, Juvenile Court of Antwerp, State Archives Beveren (Belgium), *Archiefblok EA Antwerpen D*, *Dossiers van rechtspleging*: Oct. 1912–Oct. 1913: nrs. 1–575, folders 1–73 (390 'old' files, relating to convictions prior to the establishment of the juvenile courts have been left out); Jun. 1924–Jun. 1925: nrs. 2876–3104, folders 410–436; May 1932–May 1933: nrs. 4357–4476, folders 599–614

6 Coming into Conflict with the Law

The evidence suggests that these girls and young women initially came into contact with the judicial authorities in Antwerp through three major channels: after being apprehended by the police, or following a parental request for confinement (charges of 'misbehaviour'), or because the victim had lodged a complaint with the police. A very small number of girls were referred to court by the *parquet* after the girl's school had reported absenteeism. These cases, 15 in total, are left out of consideration, since they had a rather exceptional character, as explained earlier.

Table 3 shows the distribution of the female juveniles appearing before the juvenile court of Antwerp, according to the channel through which they entered the juvenile justice system, as well as the proportional share of the three major channels, which are discussed here.

6.1 Getting Caught by the Police: 'Vagrants' and Prostitutes

The relatively small number of 'police-discovered' cases—involving proactive police arrests—is striking, yet not surprising. Numerous criminological studies have shown that the criminal justice system relies mainly on an extra-legal supply (reactive interventions largely dominate police

activity) rather than on a police supply.[28] Recently, this phenomenon has also been noted by historians of the late nineteenth and early twentieth centuries.[29] Of course, this small number (26 cases of female juveniles in total) only reflects that part of proactive police activity that was followed by a decision of the Public Prosecutor to bring the girls' case into the Antwerp Juvenile Court. The observed police proactivity clearly had a distinct focus. Of those arrested, eight out of ten female juveniles were charged either with vagrancy or with prostitution or other 'immoral' behaviour (*débauche*). It is noteworthy that different police forces were involved in this. Most of the arrests of young female 'vagrants' were carried out within the city of Antwerp by the municipal police covering this area; a quarter took place outside the city borders and were the work of the Gendarmerie, the main source of police surveillance in the smaller rural municipalities. All the girls charged with prostitution-related offences were arrested in the city, either by 'regular' police officers on daily patrol or, in a few instances, during more large-scale raids in bars and hotels by officers of the special 'vice squad' (*zedenbureel*) of the local police force.[30]

[28]Classical works are, for example Black D.J. & Reiss A.J., Jr., 'Police Control of Juveniles', *American Sociological Review*, 35, 1970, 1, pp. 63–77; Bottomley K. & Coleman C., *Understanding Crime Rates. Police and Public Roles in the Production of Official Statistics*, Farnborough, Gower, 1981. For Belgium, see Enhus E., & Eliaerts C., *Politie en bevolking. Vragen staat vrij… De politionele afhandeling van vragen uit de bevolking*, Bruges, Vanden Broele, 1992.

[29]Although the dependence of criminal justice on extra-legal supply—or: the considerable role played by private individuals, both victims and third parties, in policing, prosecution and adjudication - has been noted by historians, it has scarcely been seriously analysed for the 19th and early 20th centuries. The following studies make an exception to this: Davis J., *Law-Breaking and Law Enforcement: The Creation of a Criminal Class in Mid-Victorian London*, unpublished doctoral thesis, Boston College, 1985, Chap. 5; Mellaerts W., 'Criminal justice in Provincial England, France and Netherlands, c. 1880–1905: some Comparative Perspectives', *Crime, Histoire & Sociétés / Crime, History & Societies*, 4, 2000, 2, pp. 19–52; and for Belgium, Le Clercq G. 'La perception des violences sexuelles en Belgique (1830–1867): construction juridique, pratique répressive et réactions sociales', in Kurgan-van Hentenryk G. (ed.), *Un pays si tranquille. La violence en Belgique au XIXe siècle*, Brussels, Editions de l'Université de Bruxelles, 1999, pp. 107–129.

[30]This special vice squad was established within the Antwerp local police force in 1913. In 1910, the whole local police force counted 835 members, which made Antwerp one of the most densely-policed large towns in the country: De Koster M., 'Routines et contraintes de la police urbaine à Anvers, 1890–1914', in J.-M. Berlière, C. Denys, D. Kalifa & V. Milliot (eds.), *Etre policier: Les métiers de police en Europe, XVIIIe - XXe siècle*, Rennes, Presses Universitaires de Rennes, 2008, pp. 345–362.

'Vagrancy' and 'immoral behaviour' of juveniles caused elites and middle-class reformers growing concern during the first half of the twentieth century, especially when girls were involved. This concern was a reaction to important changes in the social positions and lives of working-class youths. Urbanisation, a heightened rate of migration, and a steadily growing wage-labour economy expanded work, leisure and spending opportunities for young, working-class people and offered them unprecedented freedom from family restrictions. Girls as well as boys were eager to participate in the new urban amusements after work and challenged prevailing codes of conduct through their dress, talk and courtship activities.[31] Loud complaints about the 'unruly' habits of youths, refusing to accept authority and displaying 'immoral' behaviour in dance-halls and movie theatres, circulated widely. The public concern and anxiety centred especially on working-class girls, and on their sexuality in particular: being increasingly more active as wage-earners, more mobile, and more difficult to supervise, they were perceived as both a possible threat to themselves (seduction, 'white slavery') and a danger to society (sexual diseases, illegitimate pregnancies). It was argued that they had to be 'protected' in their own interest, which came down to calls for sexual regulation. These calls were sustained by upcoming psycho-medical discourses of deviance that coupled sexual transgressions with the propagation of 'unfit' and 'criminal' offspring, as well as by new visions of adolescence as a dangerous phase requiring strict surveillance.[32] Moreover, they matched with the ongoing attempts of elites to control

[31] The Belgian historiography lacks a social and cultural history of working-class youth in the first half of the 20th century. I have attempted to gather some information about the life, work and leisure of young women drawing on information and testimonies from the court files of 'delinquent' girls: De Koster M., 'Los van God, gezin en natie. Problematisering en criminalisering van ongeoorloofde seks van jonge vrouwen in de vroege 20ste eeuw', in J. Kok & J. Van Bavel (eds.), *De levenskracht der bevolking: Sociale en demografische kwesties in de Lage Landen tijdens het interbellum*, Leuven, Universitaire Pers Leuven, 2010, pp. 355–384. See also Fowler D., *The First Teenagers. The Lifestyle of Young Wage-earners in interwar Britain*, London / Portland (Oregon), Woburn Press, 1995; Comacchio C., 'Dancing to Perdition: Adolescence and Leisure in Interwar English Canada', *Journal of Canadian Studies*, 32, 1997, 3, pp. 5–35.

[32] De Koster M., 'Los van God, gezin en natie'. *Op.cit.*, pp. 355–362. For the specific debates on juvenile prostitution, see Collard C., 'La prostitution des mineures et l'application de la loi sur la protection de l'enfance', *Bulletin de l'Office de la Protection de l'Enfance*, 13, 1920, pp. 22–64; Nokerman V., *La prostitution enfantine en Belgique (1880–1914)*, unpublished master thesis, Université Catholique de Louvain, 1994.

and reform working-class families through interventions in their lives. All this helps to explain why the Belgium Child Protection Act of 1912 gave public officials extensive legal powers to act against a broad range of 'loose' or immoral' behaviour: not only 'classical' vagrancy, but also staying out of the parental home at night could be a reason for prosecution for vagrancy; not only 'classical' prostitution but also promiscuity and other kinds of sexual misconduct as well as 'occupations that put the minor at risk for vagrancy, prostitution or criminality' (see 'dangerous occupations' in Table 1) were integrated in the scope of the law.[33]

Our evidence on police arrests and prosecutions of female juvenile vagrants, prostitutes and 'debauched' girls in the Antwerp *arrondissement* suggests that this mighty legal arsenal was hardly used in the periods studied. The level of judicial (police-*parquet*) intervention against female juvenile vagrancy, prostitution or other 'immoral behaviour' was rather low. It stands in sharp contrast to the intensity of elite reformers' fears and calls for a special repression. Studying the early twentieth-century legal and expert discourses and policy measures alone is apt to cause a misleading picture of an active, highly repressive state. In practice, the projects and ideals of elites were not translated into high prosecution rates. Moreover, they did not result in new prosecution practices either, in this sense that the profile of the girls arrested did not correspond with the target group defined by elites—the sexually active, fun- and fashion-crazy factory girl. The girls' case records indicate that it was not primarily their being young, female and working-class that made them vulnerable to arrest, but rather their mobility, public visibility and their lacking of social bonds (or: 'social capital'). This suggests that proactive police practices had not substantially changed since the Ancien Régime, with arrests remaining to be carried out in function of public visibility (the scandal), reflecting police's pre-occupation with preserving public order.[34]

[33]Articles 13 and 15 of the 1912 Child Protection Act. On the interpretation of these articles in judicial practice, see De Koster M., 'Los van God, gezin en natie'. *Op.cit.*, pp. 363–382.

[34]De Koster M., 'Routines et contraintes de la police urbaine à Anvers', pp. 350–353. This has also been noted by other historians, for example Boritch H., *The Making of Toronto the Good: The Organization of Policing and Production of Arrests, 1859 to 1955*, unpub. Ph.D. thesis, University of Toronto, 1985, pp. 135; 266–267; 331–350; Williams C.A., 'Counting crimes or counting people: some implications of mid-nineteenth century British police returns', *Crime, Histoire & Sociétés / Crime, History & Society*, 4, 2000, 2, pp. 77–93; Vogel M., 'Police et espace urbain: Grenoble 1880–1930', *Revue d'histoire moderne et contemporaine*, 50–1, Jan–March 2003, pp. 126–144.

The majority of girls arrested and prosecuted for vagrancy and for prostitution or 'immorality' were in their late teens and had left home to look for a job, meaning in most instances that they sought to enter domestic service. For poor, unskilled and single female migrants the Ancien Régime the 'servant life cycle' remained predominant, with several years of service in (an)other household(s) being the traditional transition to marriage and independence.[35] Most of the young migrants had travelled considerable distances, which had become easier due to the rapid expansion of public means of transport. Some were born in the rural municipalities surrounding the city of Antwerp, but more than half came from elsewhere in Belgium and one in three came from neighbouring countries. Having no pre-arranged 'place' to move into on arrival or having lost their place, and lacking any support networks, the young women had failed to obtain a (new) position fairly quickly and were thus out on the street and particularly vulnerable to destitution. Some of them had exchanged sexual favours with men for some money or a place to spend the night. In this respect, it is noteworthy that the backgrounds of young men arrested for vagrancy appear to have been quite similar. Our other research on boy delinquents confined in the correctional state-institution for male juveniles in Mol—near Antwerp—in 1916, 1921, 1931 and 1941 shows that most of the 'vagrants' were migrants too, and had also been arrested while being stuck 'in transit' between leaving their homes and integrating into new households and authority structures.[36]

Only a few young women had made prostitution their profession, and these girls were on their own too: their families had fallen apart and could not provide any help or support, causing the girls to turn to street-walking in order to survive. The extremely low number of prostitution arrests probably resulted partially from the fact that police approaches to deal with this 'social problem' tended to differ considerably from the approach elites and policy makers had in mind. One could assume that

[35] Perrot M., 'La jeunesse ouvrière: de l'atelier à l'usine', in Levi G. & Schmitt J.-C. (eds.), *Histoire des jeunes en Occident. L'époque contemporaine*, Paris, Seuil, 1996, vol. 2, pp. 124–125.

[36] De Koster M., 'Tot maat van het recht. De vroege ontwikkeling van de wetenschap van het ontspoorde en criminele kind in het Centrale Observatiegesticht in Mol (1913–1941)', in N. Bakker, S. Braster, M. Rietveld-van Wingerden, A. Van Gorp (eds.), *Kinderen in gevaar. De geschiedenis van pedagogische zorg voor risicojeugd*, Assen, Van Gorcum, 2007, pp. 94–119.

the Antwerp local police, as well as its vice squad (*zedenpolitie*), followed the same line of conduct in matters of prostitution as the one scholars found prevailing in other Belgian and foreign police forces: usually, the police excluded the possibility of a complete 'eradication' of prostitution, did not even see the point in this, and therefore opted for geographical segregation, selective toleration and enforcement of the law through fines rather than through arrests.[37] Another, certain reason for the very low prosecution rate with regard to prostitution in Antwerp, has to be sought in the semi-official practice of the *parquet* described earlier, whereby prostitution charges were avoided and translated into prosecutions for vagrancy or for 'misbehaviour'.

6.2 Parents Request Correction and Confinement: Girls 'Misbehaving'

In the periods studied, private individuals instead of the public authorities were responsible for detecting and reporting the great majority of girls' offences. The single largest group of citizens initiating and supporting juvenile court actions against young women were parents, who accused their daughters of 'misbehaviour'. Mainly two sorts of conflicts were lying at the heart of the parental requests for correction and confinement: either a 'licentious' life-style or unorthodox sexual behaviour, or the daughter's unwillingness to make a contribution to the family income.[38]

[37] On such practices of selective enforcement and geographical 'containment' in Belgium, see De Koster M., 'Routines et contraintes de la police urbaine à Anvers', pp. 358–361. For the specific policing of 'vice', see Slater S.A., 'Containment: Managing Street Prostitution in London, 1918–1959', *Journal of British Studies*, 49, 2010, pp. 332–357; Bretas M.L., 'The sovereign's vigilant eye? Daily policing and women in Rio de Janeiro, 1907–1930', *Crime, Histoire & Sociétés / Crime, History & Societies*, 2, 1998, 2, pp. 58; 68–70. On the daily functioning of vice squads (*zedenpolitie*), see Keunings L., 'Du garde ville à l'agent de police. Les débuts de la professionnalisation en Belgique (1880–1914)', *L'officier de police*, 1988, pp. 1–96 for Belgium, and Berlière J.-M., *La police des moeurs sous la IIIe République*, Paris, Seuil, 1992 for France.

[38] De Koster M., 'Over ongeregelde dochters en klagende ouders. De kinderrechtbank van Antwerpen, 1912–1913', in Lis C. & Soly H. (eds.), *Tussen dader en slachtoffer. Jongeren en criminaliteit in historisch perspectief*, Brussels, VUB Press, 2001, pp. 337–369. Similar parent-daughter conflicts have been observed for the United States by Odem M.E., *Delinquent Daughters. Protecting and Policing Adolescent Female Sexuality in the United States, 1885–1920*, Chapel Hill, The University of North Carolina Press, 1995, Chap. 6; Sangster J., *Regulating Girls and Women. Sexuality, Family, and the Law in Ontario, 1920–1960*, Oxford, Oxford University Press, 2001, Chap. 5.

The primary trigger for legal action was the daughter's sexual non-conformity. In part, this was because parents feared for the physical safety of daughters who disappeared dancing or spending extended periods of time with men. For parents who described themselves as honest and respectable, their daughters' sexual misbehaviour was also a disgrace, an indication of their failure. The statements of the parents indicate that many working-class parents accepted sexual mores censuring extramarital and premarital sex and endorsed the idea that women needed to assume more sexual self-control than men. But equally important was that the public nature of the girl's behaviour was very often a central feature of parent-daughter conflicts. She walked abroad with a married man, spent the entire evening in bars and dance-halls, had been spotted in the arms of a boy, had to go to hospital because she had contracted a sexual disease or, even worse, had become pregnant. The scandal lay in the fact that the whole neighbourhood knew about it; gossip spread very rapidly. Some parents sought to use the court as a weapon to separate daughters from unacceptable male partners: among these boys was a young man with a criminal record, a black boy and a communist. Other petitioners, who made up about one-third of all parents in the periods studied, did not take offence to their daughter's sexual behaviour, but protested her failure or unwillingness to contribute economically to the household or to do their share of domestic labour. Some adolescent girls used a portion of their wages to buy clothes or to attend movies and other entertainments; others refused to work; still others had simply decided to leave home without permission.

Were there no alternatives then? Yes and no. Most parents described themselves as nearing a nervous breakdown, desperate and having no other option. From about a third of the case files on 'misbehaving' girls, it appears that the parental request for confinement was indeed the last stage in a long series of attempts to discipline the 'uncontrollable' daughter and restore peace to the family. The parents had sought out the help of relatives, friends, police, mayor, parish priest … all their efforts had been in vain. Parents who were confronted with the sexual non-conformity of their daughters experienced considerable pressure from the neighbourhood community to intervene and put an end to the problematic behaviour. Girls causing a scandal, or on the verge of doing so, were primarily locked away to avoid further damage to the family reputation and to secure the family's position within the community. Families from the less-well-off sections of society had to conform to the norms and values currently in force in the neighbourhood community.

They simply could not permit themselves to ignore the views of others, since they were strongly dependent on the help of neighbours and other members of the community when faced with material problems, the birth of a new child, unemployment, illness or death of the husband-breadwinner or other difficult situations.[39]

Daughters who were unwilling to work or to turn their wages over to their parents confronted proletarian families, and one-parent families in particular, with material problems that put the reproduction of the family into jeopardy. Parents expected their teenage daughters and sons to provide as big a contribution to the family income as possible. Everyone had to make an effort to keep the family from dropping down the social ladder or actually sliding into the dreadful depths of destitution. Parents requesting the juvenile judge to put their 'work-shy' daughter under lock and key did not primarily intend to punish the girls, but rather to force them to contribute to the family income. A short period of detention would bring their 'unmanageable' daughter to better ideas. In these cases, confinement on request was purely and simply a survival strategy. Our evidence further suggests that most of the petitioners considered this also as a means of avoiding more serious transgressions, as a preventive measure.

These conflicts between parents and daughters were no novelty in the period studied, but they acquired a whole new dimension because of their growing number, which reflects a heightening of intolerance thresholds. Working-class parents altered their tolerance thresholds because they had to adapt to the altered social reality. As they became wage-earners, young women and girls gained more social autonomy and economic power and began to challenge both familial control over their labour and free time and family moral codes by forming casual relations with young men. At the same time, parents became even more dependent on the wage-labour contributions of their children and found it increasingly difficult to control the comings and goings of their teenage daughters.[40] In short, the massive social and economic changes taking place in the early twentieth-century Belgian cities brought about shifts in

[39] Sohn A.-M, *op.cit.*, pp. 395–401. See also Davies A., Fielding S. (eds), *Workers' worlds. Cultures and communities in Manchester and Salford, 1880–1939*, Manchester / New York, Manchester University Press, 1992.

[40] De Regt A., *Geld en gezin. Financiële en emotionele relaties tussen gezinsleden*, Amsterdam, Boom, 1993, pp. 53; 56–62.

the composition of the family income and in the balance of power within the family, and thus heightened generational tensions between working-class parents and their adolescent children.

It is important to note that parents used the legal system for their own interests, employing criteria of respectability and tolerance thresholds that concurred with their own standards and expectations—which were not necessarily contrary nor congruent with those propounded by the elites.[41] If parents most of all wanted to lock away a 'debauched' daughter causing scandal, their expectations were met by court officials, who were primarily concerned with protecting girls from the risks of premarital sexuality. But in other cases, this central concern of the court conflicted with the interests and goals of the petitioners. Most parents simply wanted juvenile court to reinforce their authority over the social and sexual activities of their teenage daughters. They were only interested in intimidating the 'unruly' girl with a court appearance or having her cautioned by the judge, or they considered that a short period of detention would be more than sufficient to teach her a lesson and they would be the ones to decide when their daughter was to be released. For these parents, it often came as a very unpleasant surprise when they saw their daughter being locked away for several years, while they needed her domestic help and her economic contribution so badly.[42]

Whereas parents undoubtedly were the main agents behind the requests for confinement and corresponding charges for 'misbehaviour', they were not necessarily the primary initiators of the legal action. Our evidence suggests that in some instances, parents were encouraged to start proceedings by local police officers, who warned them that their daughter would inevitably get into trouble if they did not intervene. Some parents openly referred to such pressures in their requests. Of the parental requests for confinement, 2% were, in fact, the sole work of the official authorities: this applies for the cases that did not result from a parent-daughter conflict, but from a crime or a prostitution-related

[41] See the remarks made with respect to confinement of 'disorderly' youngsters on request of their families in 18th-century Belgium by Lis C. & Soly H., *Disordered Lives: Eighteenth-Century Families and their Unruly Relatives*, London, Polity Press, 1996, concluding chapter.

[42] The same kinds of conflicts between the interests and goals of parents requesting incarceration of 'unruly' daughters and decisions of juvenile judges have been observed for the United States by Odem M.E., *op.cit.*, Chap. 6.

offence committed by a girl aged 16 or more. As has been explained earlier, the authorities tended to charge 16-year-old criminals or prostitutes with vagrancy or 'misbehaviour', rather than referring them to the Correctional Courts. In such cases, of course, the police needed the parents' approval and a written request. Since we find some cases in which the parental request for confinement came to confirm proceedings already started, it seems that the police applied considerable pressure on the parents concerned.

6.3 Victims Lodging a Complaint: Girl Thieves

Next to parents, victims also shaped the regulation of female juvenile delinquency 'from the bottom up'. On average, 30% of girls' cases processed by the Antwerp Juvenile Court were reported either by the victim—true of most cases—or by someone who clearly acted on the victim's behalf. In line with scholars' work on later nineteenth- and early twentieth-century London, Caen, Ipswich and Maastricht, our evidence highlights the key role of private individuals in detecting and prosecuting thieves and embezzlers: more than 80% of girls' 'victim-reported' offences involved property crime (larceny, embezzlement and receiving stolen goods).[43] Furthermore, it is important to observe that the 'typical' girl theft or embezzlement that reached the authorities in Antwerp was not only victim-reported, but moreover committed by someone who was either known to or suspected by the victim from the outset. The precise nature of the relationship between this person and the girl offender, the social positions of both parties, as well as the specific spatial context in which the thefts took place, are crucial elements to understand and explain the motives and 'targets' of the thieving girls, the ways in which the victims reacted to this and what they hoped to achieve in lodging a complaint with the police.[44]

[43]See Davis J., *op.cit.*, Chap. 5; Mellaerts W., 'Criminal justice in Provincial England, France and Netherlands, c. 1880–1905: some Comparative Perspectives', *Crime, Histoire & Sociétés / Crime, History & Societies*, 4, 2000, pp. 21–29; 46.

[44]The necessity and usefulness of an adequate contextualisation of thieving has been demonstrated by Mac Kay L., 'Why they stole: women in the Old Bailey, 1779–1789, *Journal of Social History*, 32, 1999, pp. 623–639.

The case records of the girls charged with theft by a victim or a third party reveal three distinct forms of illegal appropriation, occurring in three distinct settings, to the detriment of three different categories of victims, who brought on proceedings for different reasons, in function of their specific immediate needs: we see domestic servants stealing from their employers, shop-lifters and girls operating within the neighbourhood community, stealing from other members of the working-class. The occurrence of theft by maid-servants is not particularly surprising for among women in their late teens and early twenties domestic service remained one of the most important forms of employment in the early twenteith century.[45] Once employed, servants were surrounded by an abundance of temptations great and small. Live-in servants had a huge variety of opportunities for illegal appropriation. Although most of the servants appearing in the case files had committed thefts while still in residence, others took goods away with them after being dismissed or ran away without warning taking a selection of their employer's valuables with them. The appropriated goods were mostly jewellery, money or luxury clothing. The case records of the juvenile court suggest that while many of the young servants were tempted into theft mainly by abundant opportunities, by the ever-growing attractions of the world of goods, most shop-lifters were driven into crime by family destitution and poverty. Next to a few adolescent girls stealing small objects of luxury (a handbag, an umbrella, handkerchiefs) from shopping malls, the shoplifters were young children, often the oldest ones at home, who targeted small corner-shops. These children committed crimes because they were involved in complex strategies of family survival; the goods they stole were part of an 'economy of makeshifts', which was characteristic for social groups lacking steady sources of income.[46] The young girls'

[45] Piette V., *Domestiques et servantes. Des vies sous condition. Essai sur le travail domestique en Belgique au 19e siècle*, Brussels, Académie royale de Belgique, 2000; Perrot M., 'La jeunesse ouvrière: de l'atelier à l'usine', in Levi G. & Schmitt J.-C. (eds.), *Histoire des jeunes en Occident. L'époque contemporaine*, Paris, Seuil, 1996, vol. 2, pp. 87–142.

[46] Juvenile petty theft as a part of family survival strategies has been illustrated by Christiaens J., 'Jeugdcriminaliteit: een apart probleem? Negentiende-eeuwse jonge daders en hun misdrijven', in Lis C. & Soly H. (eds.), *Tussen dader en slachtoffer. Jongeren en criminaliteit in historisch perspectief*, Brussels, VUB Press, 2001, pp. 277–298; and Humphries S., 'Steal to Survive: the Social Crime of Working class Children, 1890–1940', *Oral History Journal*, 9, 1981, 1, pp. 24–33.

thefts, in others words, were emergency solutions. Finally, young women also stole from individuals living in the same neighbourhood community and belonging to the same social class as they did. In one case, a girl had been pocket-picking on a large scale to the detriment of people who were strangers to her, but all the others had taken away some of the belongings of people they knew very well: relatives, friends or neighbours. The nature and the value of the appropriated goods varied considerably, ranging from a less-expensive jewellery box to large sums of money, and so did the motives of the thieves. While some of them acted clearly out of destitution and need, others simply seemed unable to resist a sudden and great opportunity to steal.

Any suggestion that victims were by definition bent on outright prosecution, let alone conviction, has been dispelled by research that has emphasised the diversity of public attitudes towards crime and justice. Our evidence is in accordance with this; the only plaintiffs requesting the police to prosecute and punish a thieving girl without hesitation were managers of shopping malls. When confronted with a shoplifter, they immediately took legal action, refusing any negotiation and rejecting offers for financial restitution. In doing so, they hoped to uphold the good reputation of their store and, most of all, to scare away other possible thieves, as a means of prevention. Other victims did not specifically want to punish the girl, but were out of patience and alternatives: their decision to initiate and sustain proceedings constituted the end of a very long period of toleration and informal warnings. In some cases, neighbours, friends of the girls' parents or relatives decided to lodge a complaint against a young girl who kept on stealing from them, even after repeated final warnings. The most numerous under these victims were the employers. Employers were usually unwilling to bring a stealing maid-servant to trial, but the young women concerned had simply gone too far in their eyes, or had the bad luck of being preceded by a long row of pilfering and stealing servants.[47] Several prosecuting employers asserted that it was long-term pilfering that forced them to abandon informal sanctions, such as instant dismissal, and indict the offender. Others claimed they were pressing charges because they had already suffered so many times from thefts of a maid-servant, that the time had come to make an example out of the girl.

[47] In this respect, see the observations made by King P., 'Female offenders, work and life-cycle change in late-eighteenth-century London', *Continuity and Change*, 11, 1996, 1, pp. 61–90.

Still other victims of theft were not interested in prosecution at all. Some of them, often people living in the same neighbourhood community as the thieving girl, simply had the intention of frightening the offender and thus sought the help of the police only to have her arrested and cautioned. Other wage-earners who had been stolen from and nearly all petty shop-keepers tended to rely on the police lending a hand in catching the thief and solving the problem. In their opinion, the best solution was simply getting the stolen goods back. Not only owners of small shops, but also working-class people attached great importance to their belongings, even if they were of small value. If it proved impossible to get the stolen goods back, because the girl had sold them, these victims started proceedings to put pressure on the girl's family to offer some kind of restitution, in the hope to withdraw from prosecution as soon as possible. In these cases, which were the most numerous, formal procedures and public officials were 'incorporated' in informal strategies of conflict resolution. Once financial restitution or compensation had been offered, the complaint was withdrawn.

Despite the fact that the majority of victims of theft either refused to lodge an official complaint or withdrew from prosecution soon after they initiated it (sometimes only a few hours later), the thieving girls did end up in court. This raises the important question to what degree victims were effectively in charge of initiating prosecution given the involvement of the police. Our evidence suggests that even if the conflict between victim and offender was solved informally through some kind of arrangement, the police often encouraged the victim to pursue prosecution, or used their discretionary powers to refer the case to juvenile court themselves. This last course of action was always possible when the girl was said to have a 'bad environment' or 'unworthy' parents; if this was the case, the Belgian Law on Child Protection allowed intervention, whatever the nature or seriousness of the 'facts'.[48] To answer the question raised earlier: our impression is that more of the thieving girls would have stayed out of court if it had not been for the involvement of the police.

[48] Several historians have made the observation that in spite of the stipulations of criminal procedure, Police Commissioners and Inspectors exercised a measure of discretion in referring reported offences to the parquet. One could state that the Belgium Child Protection Act of 1912 extended this discretion even further. After its enactment, the police did not even have to establish whether an act was criminal or not when dealing with juvenile offenders; their decision to forward a case to the parquet could be based solely on their own perception and evaluation of the family circumstances of the juvenile offender and his or her need for 'protection'.

7 Conclusion

When we shift our viewpoint and reconstruct girls' journeys to the Antwerp juvenile court from their starting point onward, a first important conclusion is that the young female delinquents tried in this court in 1912–1913, 1924–1925 and 1932–1933 had a clear and distinct profile, their social and family backgrounds being remarkably similar. The overwhelming majority came from the most poverty-stricken, vulnerable and marginalised layers of the working-class; one in two grew up in broken families; and most of them were quite familiar with the realities of daily survival, family conflicts, violence and crime. Additionally, these working-class youths were girls of their times: they were working in factories or had left home to enter domestic service in the city, they went out with friends or on 'dates' to movies and dance halls, they approved of fashionable clothing and experimented with new social customs. They enjoyed greater economic and social independence from their families than their nineteenth-century predecessors, but were at the same time more vulnerable to problems and trouble, conflicts with their parents, and prosecution.

Three main groups of 'delinquents' emerge from this population of young women: transient and debauched youths, disobedient daughters and girl thieves. The first group's charges for vagrancy and prostitution-related offences arose directly from, or were clearly related to, the high vulnerability of young female migrants and other single women who lacked support networks and failed to integrate into (new) households and authority structures. The young women involved had responded to this difficult position either by turning to—occasional or 'professional'—prostitution in order to survive, or by pursuing their search for a job in the city streets, both strategies causing them to get caught and be prosecuted. Another important category of transgressions by young women was behaviours that conflicted with family needs and expectations. A considerable number of girls got into trouble and were charged with 'misbehaviour' because they resisted their parents' attempts to control their labour, free time, social interactions and sexuality by breaking curfews, refusing to work and support the family, and suspected sexual activity. The last main group of female juveniles ending up in court was formed by girls who had turned to theft. These were maid-servants who had been 'tempted' into theft by abundant opportunities for stealing, younger children engaged in petty thieving because their families needed sources of additional income, and girls stealing from members of their own community, for a variety of reasons.

These three groups of delinquent or troublesome young women entered the juvenile justice system through three main channels—arrest, parental correction or a complaint lodged with the police—which were thrown open by three sorts of agents—the police, parents or victims. The regulation of female juvenile delinquency was primarily initiated by the actions, interests and norms of the last two categories of private individuals. Parents channelled the highest number of girls to juvenile justice. For them, using the legal system was a means to secure aid and professional allies to broker generational conflicts and restrain their daughters, who asserted increasing autonomy over their lives. In most instances, however, parents only turned to legal action when they believed they had run out of alternatives. The rather large number of parental requests for confinement reflects both a heightening of parents' intolerance thresholds and a growing powerlessness to solve by themselves generational conflicts resulting from the massive social changes taking place in the early twentieth century. The parents' reactions reveal their struggle to reconcile conflicting family needs: they needed the additional economic contributions of their daughters, but were very apprehensive of the independence encouraged by wage-earning, fearing their daughters would abuse their newly gained economic power and, in the worst case, dishonour the family name by promiscuous behaviour. Other private citizens who frequently initiated criminal proceedings against female juveniles were victims, and they almost invariably did so because they had been stolen from. Depending on whether the person behind the prosecution was an employer, a petty shop-keeper, a shopping mall manager or a working person and member of the neighbourhood community, motives for informing the authorities were different, however. Each of these groups acted in function of their own immediate needs. What most victims of theft did have in common was that their recourse to justice supplemented, or was part of, informal strategies of conflict resolution, as was the case for parents.

The number of female juveniles prosecuted on the sole initiative of the public authorities was considerably smaller. It mainly comprised charges of vagrancy or prostitution-related charges, resulting from police arrests. With respect to this phenomenon, we have pointed out a large gap separating the goals of elite reformers and legal measures on the one hand, and the level and nature of prosecution on the other. The young female 'vagrants' and prostitutes making up the bulk of the police arrests did not resemble the target group elites and policy makers had in mind:

unsupervised, sexually active and so-called 'fun-crazy' working-class girls. Police proactivity remained focused on acts that disrupted social decorum and public order, with arrests being carried out predominantly in a function of public visibility. The fact that the authorities initiated relatively few proceedings against female juvenile delinquents on their own, without a prior complaint, does, however, not mean that they exercised little influence on girls' criminal careers. Our analysis of cases involving girl thieves demonstrates that the police was able to pursue prosecution despite withdrawal of the complaint by the victim (because the girl's parents had offered some kind of restitution), and frequently did so. A major precondition was the police's perception of the girl's environment; if this was judged to be 'bad', they pressed charges. The police clearly exercised a large degree of discretion in determining whether or not juveniles were to be disciplined. Furthermore, in some instances police officers appear to have applied considerable pressure on parents to take legal action against their deviant daughters. Finally, considering the fact that the overwhelming number of female juvenile delinquency cases in early twentieth-century Antwerp never reached a courtroom because the girls were discharged by the *parquet*, it becomes clear that this penal agency was a major agent in the shaping of the young women's journeys to court. Yet it is also the most neglected in Belgian historiography. This chapter may perhaps stimulate further detailed research on the everyday practices of the 'lower' echelons of juvenile justice, the police and the *parquet*, as well as on the role of extra-penal agents, private individuals, in the complex process of regulating female (and male) adolescent crime and delinquency.

CHAPTER 11

Juvenile Delinquency in Wartime and Peacetime: The Activity of the Belgian Juvenile Courts, 1912–1950

Aurore François

In most industrialised countries, the end of the nineteenth century witnessed the emergence of hitherto unknown concepts: morally abandoned children, endangered children and abused children. In a context of economic, social and moral tensions, jurists, doctors and politicians focused on a new challenge: protecting and educating morally abandoned children.

Between 1889 and 1912, France, Belgium, Canada and the Netherlands—among others—adopted laws in this area, bearing witness to the birth of a major movement of child protection. The legislative culmination of the paternalistic and charitable ideology of the nineteenth century, the Belgian child protection act, known as the Carton de Wiart law, was passed on 15 May 1912.[1] It comprised three chapters, the first and third of which dealt respectively with forfeiture of parental authority

[1] As to legislative convergences in the area child protection, see Dupont-Bouchat, M.-S. and Pierre, E. (eds.), *Enfance et justice au XIXe siècle*, Paris, Presses Universitaires de France, 2001, pp. 323–420.

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and offences and misdemeanours against morality or the vulnerability of children. The second chapter set up juvenile courts, installing a single, specialised judge in each court. This same chapter also set deletion measures to be taken with respect to minors brought before courts: measures of custody, education, as well as protective measures ranging from a simple reprimand to placing the child in a public or private institution, or at the government's disposition until majority. The field of application of these measures covered not only minors under the age of sixteen who had committed an offence within the meaning laid out by the Penal Code (for example robbery, handling stolen goods, assault and battery, etc.), but also minors under sixteen who were engaged in debauchery or prostitution, as well as minors under eighteen found begging or in vagrancy, or whose misconduct had led to a complaint lodged by their parents.

1 Overview of Child Protection Activities in Belgium Between 1912 and 1950

When World War I broke out in 1914, the 1912 law was at the dawn of its implementation. Therefore, its implementation was severely tested from the outset. The war brought a multitude of children before judges, whereas the system itself was in the throes of serious organisational problems. Private institutions, individuals and, to a lesser extent, *Écoles de Bienfaisance*,[2] with whom the judges had placed—and continued to place—many children, were encountering serious financial problems. A number of these institutions were moreover to suffer requisition by the Belgian and, later, German armies, with some being destroyed during battles. For example, in the first few days of the war, the École de Bienfaisance of Namur was transferred to Beernem on the orders of the Belgian military authorities, later returning to Namur. In 1917, it

[2] "*By 1890 a reorganization of the Belgian institutional network dealing with juvenile delinquents was introduced by Minister of Justice Lejeune. In short, this reorganization unified reformatories for vagrants and beggars and prisons for juvenile delinquents under the same label and 'régime' of the newly introduced bienfaisance or welfare schools.*" Christiaens, J., "A history of Belgium's child protection Act of 1912. The redefinition of the juvenile offender and his punishment" in *European Journal of Crime, Criminal Law and Criminal Justice*, No. 1, 1991, p. 9.

was the turn of this same establishment in Beernem to be evacuated to Namur, this time on the orders of the German authorities. The Ypres school, destroyed in 1914, was transferred to Fontevraud in France, while in 1917, the Ruysselede school was moved to the Merxplas depot. Lastly, towards the end of 1918, the routed German army occupied the premises of Saint-Hubert, compelling the children to transfer to Mol. The Spanish flu epidemic killed practically half of the 233 boarders transferred, who were already weakened by arduous living conditions.[3]

The destruction or requisitioning of buildings was not the only type of intervention by the occupier in the activity of child protection bodies. The deportation of several dozen inmates from Saint-Hubert and Merxplas, who were sent to Germany in 1916 as forced labour,[4] was the first type of direct intervention by the occupier in the fate of minors placed in institutions by courts. Another source of discontent for judges was the ambiguous attitude of the German authorities—particularly the vice squad—to the question of juvenile prostitutes.[5] Brussels was a rest and recuperation post for German soldiers and the German authorities, who were concerned about the spread of venereal diseases among the troops, organised a strict system of police and medical checks on the Belgian prostitutes.[6] According to the Brussels Prosecutor Charles Collard, some female minors, at times very young, were in fact officially registered ('*cartées*') by the police. Others who were arrested were detained in German hospitals despite insistent demands by the prosecuting authorities that these young girls be handed over to

[3] Delacollette, E., *Contribution à l'histoire de la protection de l'enfance en Belgique,* Merxplas, Imprimerie administrative, 1949, p. 15.

[4] Terlinden, G., "La magistrature belge sous l'occupation allemande. Souvenirs de guerre août 1914 – octobre 1918" in *La Belgique judiciaire*, no 36, 1919, col. 1213; Dupont-Bouchat, M.-S., "De l'école de bienfaisance à l'école des caïds. Les dernières années du pénitencier de Saint-Hubert (1913–1956)" in *Saint-Hubert d'Ardenne. Cahiers d'histoire*, Vol. X, 2004, pp. 143–200.

[5] François, A., "From street walking to the convent: young prostitutes judged by the Juvenile Court of Brussels during World War One" in Jones, H., Schmidt-Supprian, C., O'Brien, J. (eds), *Untold War. New perspectives in First World War Studies*, Dublin: Brill, 2008, pp. 151–178.

[6] Majerus, B., "La prostitution à Bruxelles pendant la Grande Guerre: contrôle et pratique", in *Crime, Histoire & Sociétés / Crime, History & Societies*, Vol. 7, No.1, 2003, pp. 5–42.

them upon being arrested.[7] Thus, as deplored by General Prosecutor Georges Terlinden at the opening solemn hearing of the *Cour de cassation* (Supreme Court) in 1919, the occupier intervened directly in the enforcement of certain judgments: several young girls interned in Bruges (probably because of debauchery and/or prostitution) were released at the initiative of German officers. Finally, the enforcement of several judgments prescribing provisional custody measures for children whose mothers, separated from their military husbands, had engaged in misconduct, was prevented.[8] At the beginning of 1918, German authorities had the three Presidents of the Brussels Court of appeals arrested and suspended the powers of Supreme Court judges. Consequently, members of the judiciary felt that they were no longer free to act in Belgium and the Supreme Court decided to suspend its hearings, resulting in the suspension of activities in all courts, including juvenile courts.[9]

During the interwar period, the number of juvenile jurisdictions gradually fell despite the emergence of new categories of children within the scope of the law, such as war orphans and 'children of the enemy'.[10] Analysts of the period highlighted a series of factors, among which a positive evaluation of measures put in place by the 15 May 1912 law enjoyed a privileged position. Between 1929 and 1934, Alphonse Delannoy, head of the Child Protection Office, regularly concluded his

[7] Collard, C., "La prostitution des mineures et l'application de la loi sur la protection de l'enfance" in *Bulletin de l'office de la protection de l'enfance*, No. 13, 1920, pp. 39–51.

[8] These mothers, from the Termonde district, were subject to proceedings to deprive them of parental rights. Enforcement of the judgments was halted by Major von Iena, Orts-Kommandant in Beveren-Waes. Terlinden, G., *Op. cit.*, col. 1211.

[9] Velge, H., *La protection de l'enfance en Belgique. Son passé – son avenir*, Brussels, Goemaere, 1919, 2nd part, p. 30. However, it must be mentioned that four juvenile judges sat in a different capacity (in Anvers, Louvain, Bruxelles and Charleroi). Wets, P., *La guerre et l'enfant*, Moll, 1919, p. 8. For an historical analysis of the strike of the judiciary and its repercussions on juvenile courts, see Bost, M. and François, A. "La grève de la magistrature belge (février – novembre 1918). Un haut fait de la résistance nationale à l'épreuve des archives judiciaries", in Heirbaut, D., Rousseaux, X. and Wijffels, A., *Histoire du droit et de la justice: une nouvelle génération de recherches: actes des dix-neuvièmes journées belgo-néerlandaises d'histoire du droit et de la justice (10-11-12 décembre 2008, UCL, Louvain-la-Neuve)*, pp. 19–43. Louvain-la-Neuve: PUL, 2009.

[10] Massart, B., *Le mouvement de la protection de l'enfance en Belgique dans l'entre-deux-guerres. L'action de l'Oeuvre Nationale de l'Enfance*, degree dissertation, ULB, 1993 (unpublished).

annual report on the causes of the reduction, since 1920, in the number of minors referred to prosecuting authorities and appearing before juvenile judges as follows:

> The reduction is due first to general causes, and second to an improvement in the state of the working classes: the fall in birthrates during the war has also played its part. A considerable influence has also been exerted by the child protection law, the education measures it has enabled authorities to take, the probation which has enabled children to be monitored until they come of age and the considerable improvements made to institutions.[11]

This view was not unanimously shared, however. At the same time, P. Wets, juvenile judge in Brussels and President of the Union of Juvenile Judges, adopted a less optimistic tone:

> The work of juvenile courts in Belgium has not, alas, slowed down. We are witnessing, in good part in our courts, the inevitable price children are paying for today's dissolute morals. Statistics are often a faithful reflection of the states and situations they depict in figures. I do not know what is happening in the rest of the country, but in the judicial district of Brussels, the figures for child delinquency have risen significantly in recent years.[12]

The situation regarding placement institutions occupies a much less important share of practitioners' literature than the interest aroused by sociological studies on prosecuted juveniles and the aetiology of juvenile delinquency.[13] Less crowded than during the war, these institutions were

[11]The same excerpt appears in: Delannoy, A., "L'application de la loi du 15 mai 1912 sur la protection de l'Enfance de 1913 à 1928" in *Revue de droit pénal et de criminologie*, 1929, pp. 1086–1087; Delannoy, A., "L'application de la loi du 15 mai 1912 sur la protection de l'Enfance de 1920 à 1931" in *Revue de droit pénal et de criminologie*, 1932, p. 801; Delannoy, A., "L'application de la loi du 15 mai 1912 sur la protection de l'Enfance de 1920 à 1933" in *Revue de droit pénal et de criminologie*, 1934, p. 1139. Our translation.

[12]AE Beveren, Archives of the Union of Juvenile Judges (previously the Union of Children Judges) (1913–1980), digital copies of minutes and related documents. 10: 8 February 1930–10 December 1938: *Minutes de l'assemblée générale de l'Union des juges pour enfants, le 15 juin 1930. Discours du président Wets à l'occasion de la remise du prix Carton de Wiart*. Our translation.

[13]The work of Aimée Racine is a good example of this: Racine, A., "Quelques observations sur le milieu familial des enfants de justice" in *Revue de l'Institut de sociologie*, 1934, No. 1, pp. 101–102; Racine, A., *Les enfants traduits en justice. Etude d'après trois cents dossiers du tribunal pour enfants de l'arrondissement de Bruxelles*, Liège, Thone, 1935; etc.

showered with praise, including by foreign observers, drawing idyllic pictures with a view to encouraging reform in their own countries.[14] Yet the situation of children living therein was often dismal, whether in public or private institutions. Private institutions were usually favoured by judges, in the light of the scale of gravity governing the placement of minors in one system rather than the other:

> a regime of probation, placement under the auspices of an individual, placement in a private institution and internment in a State institution form a scale of increasingly severe sentences. The result is that children entrusted to State institutions are the worst in the judge's eye, and the ones the other establishments could not control.[15]

The reform undertaken in 1921 by Minister of Justice Vandervelde aimed at widening the use of public institutions by transforming them into 'State Educational Establishments' did not manage to change their reputation as 'last resorts', the ultimate solution for children nobody knew what to do with.[16] Thus, private institutions remained the preferred option of judges. Yet these institutions appear to have been improperly supervised, and children were not monitored as well there as in their public counterparts.[17] In 1931, the Minister of Justice voiced his concern to

[14] "*I am, and I do not apologize for it, an unrepentant admirer, and also a regular visitor, of Belgian institutions for the rehabilitation of delinquent children*". Comments by Alexis Danant during a tour of Belgian institutions for his book on the "houses of torture" in 1936, quoted by Dupont-Bouchat, M.-S., *De la prison à l'école. Les pénitenciers pour enfants en Belgique au XIXe siècle (1840–1914)*, Louvain-la-Neuve, 1996, UGA (Anciens pays et assemblées d'États, XCIX), p. 320. Our translation.

[15] Delannoy, A., "L'application de la loi du 15 mai 1912 sur la protection de l'Enfance de 1913 à 1925" in *Revue de droit pénal et de criminologie*, 1927, p. 234. Our translation.

[16] Dupont-Bouchat, M.S., *De la prison à l'école*…, p. 319.

[17] "*The law provides for a visit by judges to see the children. Gentlemen, these visits are not frequent. I can understand why perfectly well. Many of you are not simply juvenile judges. (…) When children are in State establishments, an individual record sheet is kept, at least I believe so because I have seen it, which records the child's development. (…) But in the case of private establishments, I doubt very much if this is so. Can we have absolute confidence in these institutions? There are some which are well kept, and then there are others.…!*". AE Beveren, Archives of the Union of Youth Judges (previously the Union of Juvenile Judges) (1913–1980), digital copies of minutes and related documents. 10: 8 February 1930–10 December 1938: *Minutes of the General Assembly of the Union of Juvenile Judges of 30 January 1931. Speech by the Minister of Justice*. Our translation.

the judges, particularly since he had just visited a private establishment near Brussels that was especially badly run: 'I get the impression that all is not perfect. That is probably your view too. What can be done to remedy the situation? What measures can be taken to prevent public opinion from perhaps being stirred up in an excessive and inopportune way?'[18] However, the scandal was not about to break out just yet. It was not until the closure of the Saint-Hubert State Education Institution following dual proceedings initiated in 1954 that the issue of the fate of children placed in both public and private institutions was raised.[19]

The occupation of 1940 marked a return in force of juvenile delinquency: fraud, thefts, prostitution, and so on. The work of the courts and auxiliary services was at the same time made more difficult by events 'such as the occupation of premises, the absence of part of the staff, the difficulty of communication and the dispersion of certain archives'.[20] Downstream in the system, rehabilitation institutions were faced with dire overcrowding and food supply problems.[21] Lastly, in the immediate post-war period, juvenile judges had to tackle the thorny question of the fate of minors who had collaborated with German enemies while Belgium was occupied, as well as that of the children of interned collaborators. This group was the subject of special treatment in Mol and Ruysselede.[22]

2 The Work of Juvenile Courts Between 1912 and 1950: Statistical Analysis

Each year, the *Judicial Statistics of Belgium (Statistique judiciaire de la Belgique)* contains a chapter on 'Child Protection' dedicated to the application of the law of 15 May 1912. Various aspects of the law are considered, enabling lengthy and homogenous series of figures to be established concerning forfeiture of parental rights, minors prosecuted by the authorities and minors sentenced in court, as well as those placed under observation or institutionalised.

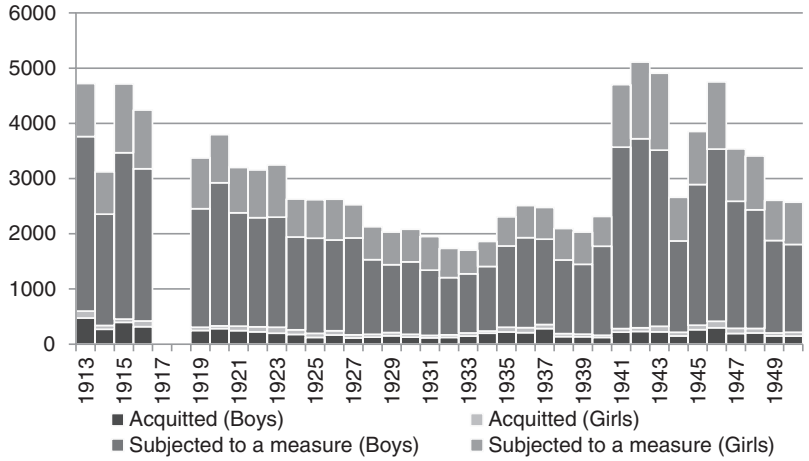
[18] Ibid. Our translation.

[19] Dupont-Bouchat, M.S., «De l'école de bienfaisance à l'école de caïds. Les dernières années du pénitencier de Saint-Hubert (1913–1956)», in *Saint-Hubert d'Ardenne. Cahiers d'histoire*, 2004, pp. 143–200.

[20] Racine, A., *La délinquance juvénile en Belgique de 1939 à 1957*, Brussels, Centre d'études de la délinquance juvénile, 1959, p. 54. Our translation.

[21] Ibid. p. 62.

[22] Wauters, E., *Le droit pénal des jeunes délinquants*, Bruxelles, 1950, p. 186.



Source : *Judicial Statistics of Belgium, Child protection, 1913-1950. Heading : « Minors judged – Nature of the acts committed – Art. 13 to 16 ».*

Fig. 1 Minors brought before courts, Belgium, 1913–1950

2.1 Number of Minors Brought Before Courts

Figure 1 presents the series relative to the total number of minors brought before all the juvenile courts of Belgium each year. Distinguishing in terms of gender, these figures comprise all minors, be they acquitted or subjected to a measure.[23] Looking at the number of minors brought before the courts, it is clear that the figures for the periods of the two world wars are particularly high (close to or exceeding 5000 children), whereas the interwar period is marked by a considerable drop in the number of children appearing in court. The comments by Judge Wets on the rise in the number of juveniles in 1930 are not therefore corroborated by the judicial statistics for Belgian courts overall. At most, we may observe a rise in figures for the Brussels judicial district (215 children brought before the courts in 1928, 315 in 1929 and 357 in 1930).

[23]These minors may have been reprimanded, entrusted to a person, entrusted to a charitable organisation or institution or to a public or private educational institution, entrusted to a State establishment or placed in an asylum.

2.2 Nature of the Acts Committed

Thus, both World War I and World War II constituted quite characteristic periods from the point of view of the number of minors referred to juvenile courts. What about the nature of the acts that brought these children before judges? Are certain categories of factors able to explain this rise in figures during the two wars? Commentaries on the statistics relating to the implementation of the 1912 Act, published regularly in the *Revue de droit pénal et de criminologie*, systematically exclude the years preceding 1920, arguing that the war years 'cannot be used as a point of comparison, no more than can 1919, during which all public services were completely reorganised: at the same time, a number of situations caused by the war had to be arranged'.[24] Juvenile delinquency during the war should therefore be an object of study in its own right. Analyses of the period underline certain aspects and define a set of causes. At the end of World War I, vagrancy, begging, theft and above all the misconduct of girls were deplored. This upsurge was blamed mainly on 'the absence of the gendarmerie, the reduction or inactivity of local police, and lastly and above all, the great misery caused by the lack of work'.[25] The presence and attitude of the occupying army was also assigned a considerable share of the blame, as well as family dislocation, which is quite surprising given the small rate of conscription in Belgium during World War I.[26]

Commentaries do not change very much after World War II. Vagrancy and begging, theft, misconduct and truancy are the main acts identified as problematic by commentators of the time.[27] Disrupted family life, misery and hunger once again came to the fore as factors, in addition to more imaginative explanations such that a 'veritable frenzy of sensual pleasure [had taken hold] of some young people, inducing the girls to

[24] Delannoy, A., "L'application de la loi du 15 mai 1912 sur la protection de l'Enfance de 1920 à 1933" in *Revue de droit pénal et de criminologie*, 1934, pp. 1123–1141. Our translation.

[25] Velge, H., *Op. cit.*, p. 28. Our translation.

[26] In Belgium, the conscription rate (estimated at 20.4%) was lower than in other countries (France: 89%), because of the rapid occupation of the country. Olbrechts, R., "La population" in Mahaim, E. (ed.), *La Belgique restaurée: étude sociologique*, Bruxelles, 1926, pp. 14–15. Quoted by De Schaepdrijver, S., *La Belgique et la première guerre mondiale*, Bruxelles, 2004, p. 293.

[27] Racine, A., *La délinquance juvénile…* pp. 50–54.

engage in sexual misconduct and the boys in gaming, betting and all kinds of illegal means of obtaining money'.[28] Juvenile delinquency and suppression of it additionally appeared to be clearly delineated along gender lines, as noted in 1947 by the President of the Union of Juvenile Judges of Belgium, X. Byvoet: 'Theft, particularly by boys, immoral behaviour by a good number of young girls—those are the two plagues foreign occupation has left us with'.[29] At the end of the war, the presence of allied troops was just barely better considered than the German occupation in terms of the imprint left on the behaviour of young people already made more fragile by the arduous conditions of the preceding few years. The easy morals of young girls regarding the liberating soldiers has been widely commented on, as has their parents' assent.[30]

Are judicial statistics in accord with such discourse? Figures 2 and 3 show that offences against property—in essence, thefts—are by far the most numerous throughout the whole period. They are distantly followed by misconduct and various categories of smaller importance—such as vagrancy.

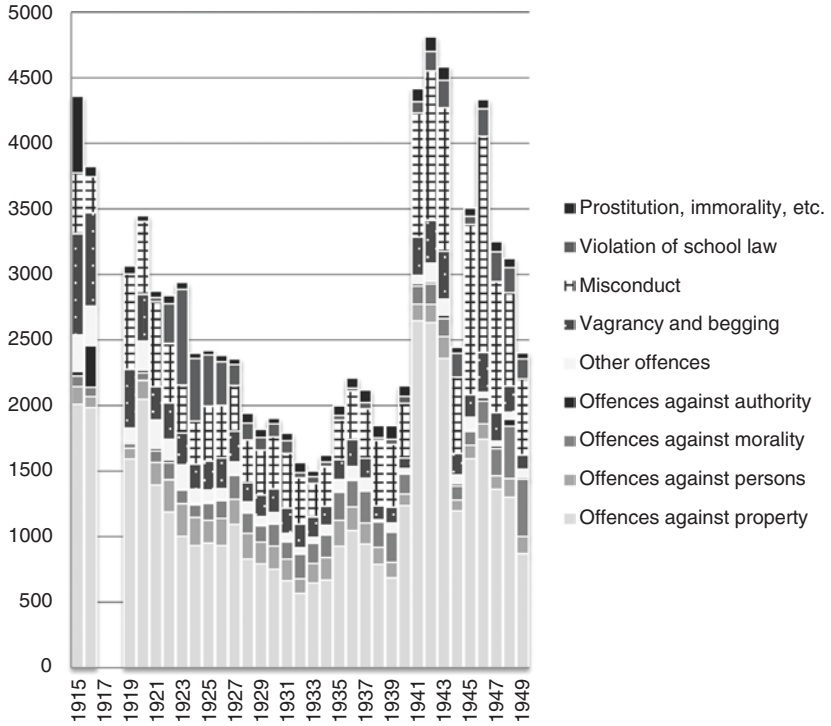
The same figures show that the discourse typically linking the war periods with the quantitative upsurge in vagrancy, theft and sexual misconduct is only partially reflected in available statistics. This is typically the case for sexual misconduct by girls. Some commentators strongly insisted on its prevalence during World War I. Hence one would have thought it possible to see an increase in acts described as offences against morality, prostitution and in some cases of misconduct. This is not the case, however, as indicated by Figs. 2 and 3. Quite the contrary—with the exception of 1915 during which there was an increase in prostitution. Yet this is only the case for a single court: Arlon.[31] While the literature of the time suggests that girls' sexual misconduct was the subject of

[28] Ibid., p. 59. Our translation.

[29] "La guerre et la délinquance juvénile. Conférence d'experts réunie à Genève du 29 avril au 2 mai 1947 au secrétariat de l'union internationale de protection de l'enfance" in *Revue internationale de l'enfant*, No. 2–3, p. 79. Our translation.

[30] Ibid., p. 80.

[31] *Statistique judiciaire de la Belgique, Protection de l'enfance*, Brussels, 1916, pp. 332–333. Heading: "Mineurs jugés en 1915 – Nature des faits commis – Art. 13 à 16". The interpretation of this significant increase in the number of prostitution cases remains difficult, as no file could be found in the archives.

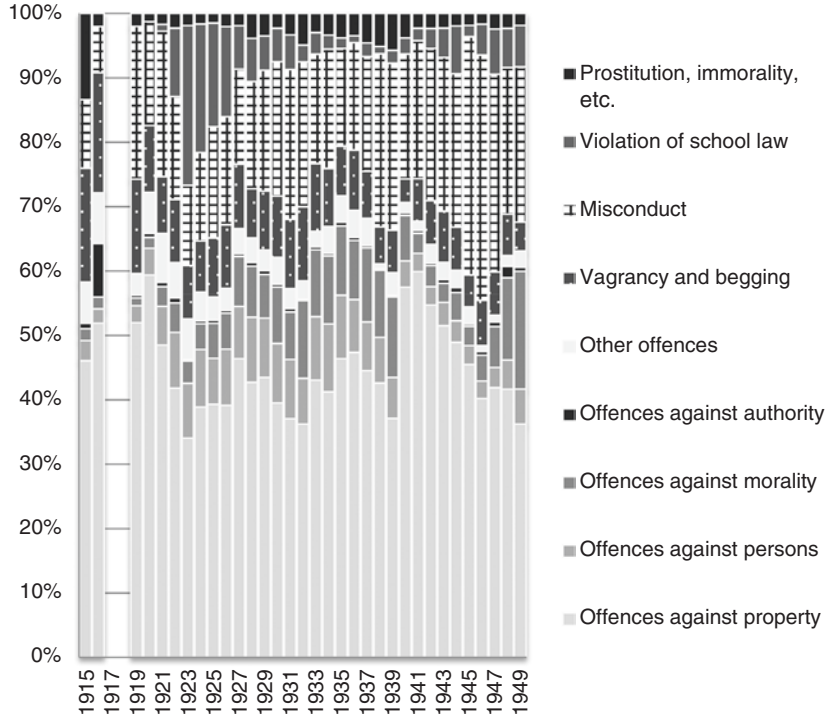


Source : *Judicial Statistics of Belgium, Child protection, 1915-1949. Heading : « Minors judged – Nature of the acts committed – Art. 13 to 16 ».*

Fig. 2 Minors subjected to measures between 1915 and 1949 according to acts committed (numbers), Belgium

special attention by judges, such attention is not reflected in any major increase in the proportion of such acts in sentences, as would have been expected. The alleged debauchery of girls during the conflict can thus be partly understood as an instance of 'moral panic', even if, of course, the war context obviously played a role in a series of cases involving young girls and German troops, and the severe food shortage also contributed, as was regularly argued by the social workers who investigated the child prostitution cases.

Finally, we note that the role played by vagrancy, misconduct and above all violations against property is undeniable during World War I



Source : Judicial Statistics of Belgium, Child protection, 1915-1949. Heading : « Minors judged – Nature of the acts committed – Art. 13 to 16 »

Fig. 3 Minors subjected to measures between 1915 and 1949, according to acts committed (proportions), Belgium

and the first few years afterwards, with a few differences, however: the proportion of misconduct cases rises slightly, apparently to the detriment of vagrancy.

The interwar period also shows a certain amount of homogeneity. One can observe the emergence of truancy law violations, above all during the first few years (education being compulsory up to 14 years of age).[32] However, the impact of this new definition of the law was

[32]The first Compulsory Education Act was voted May 19, 1914, but it did not have influence on juvenile courts, as the description of the penalties was unclear. A second Act, more complete and pragmatic than the first one, passed on October 18, 1921.

only visible for a few years, from 1922 to 1926. Proportionally, it was succeeded by a rise in the respective shares of misconduct cases and acts described as morality violations (*Faits qualifiés infractions contre les moeurs*).

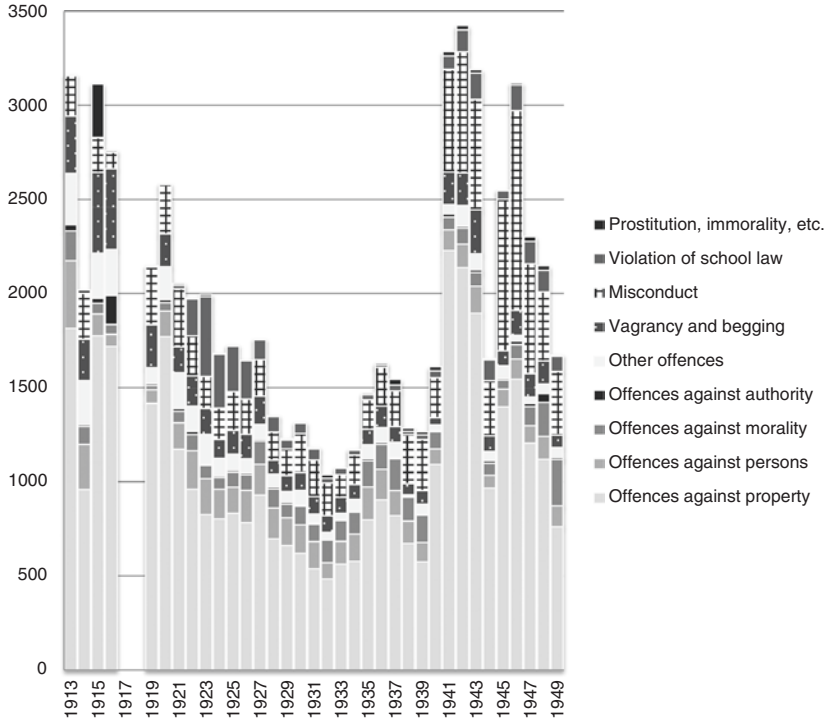
The period corresponding to World War II and the years that followed immediately marked a certain return to the configuration observed for World War I: acts described as violations of property made a marked comeback particularly during the first few years of conflict, which may be attributed to incidents that occurred during the debacle characterising the first few days of the war. The share of acts of misconduct rose, while that corresponding to acts described as offences against morality and against persons fell, a phenomenon already observed for the period 1915–1921.

Lastly, taking into account the various descriptions employed between 1915 and 1950, it is clear that, with some variations, the proportions remained relatively stable throughout the period (Figs. 2 and 3). The two conflicts and the years immediately following them present certain characteristic details, such as a reduction in the proportion of acts described as violations against persons or morals, accompanied by a rise in acts described as offences against property, misconduct and, at least during World War I, vagrancy. Finally, if the two war periods displayed a certain transformation in the choice of behaviours for which minors were prosecuted, the change mostly occurred in categories already constituting the largest number of cases dealt with in peacetime. In this respect, the peculiarities of war have more to do with an accentuation of pre-existing trends than with a real mutation.

2.3 Gender-based Percentage Distribution of Types of Acts Committed

Figure 1 shows the predominance of male defendants in juvenile courts. Gender-based percentage distribution significantly impacts the nature of the acts committed (Figs. 4 and 5).

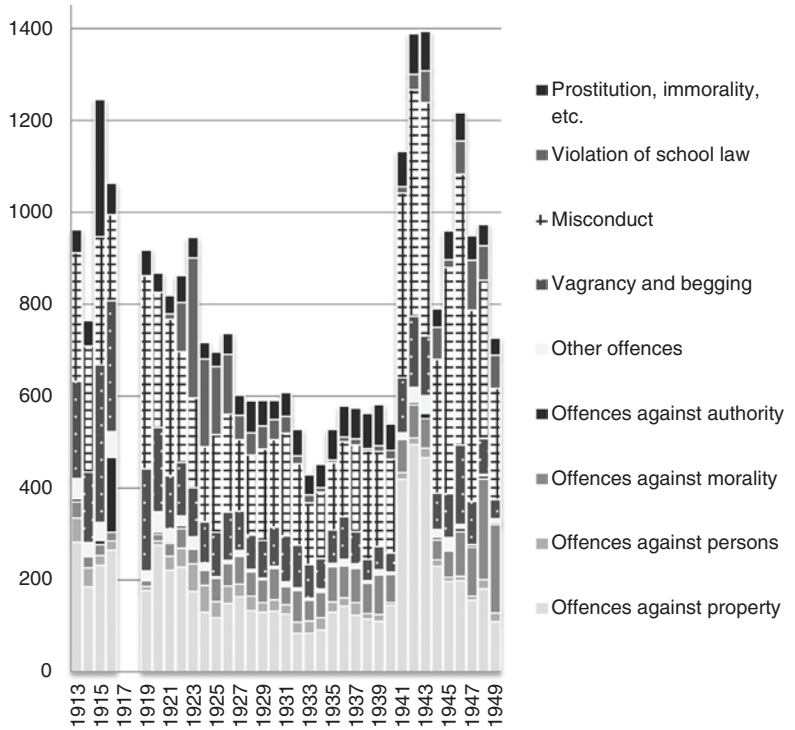
While it is true that certain acts, such as truancy violations, followed a very similar trend for both sexes, some types of behaviour appeared exclusively for one sex or the other, for instance prostitution and debauchery, which were non-existent among boys, and acts described as violations against persons, essentially concerning boys. Generally speaking, boys who were subjected to measures mostly appeared before a



Source : Judicial Statistics of Belgium, Child protection, 1915-1949. Heading : « Minors judged – Nature of the acts committed – Art. 13 to 16 ».

Fig. 4 Nature of acts committed by boys, Belgium, 1913–1949

judge for acts described as violations against property or, to a lesser extent, violations against persons, vagrancy or misconduct. The types of acts committed by girls are much more disparate. Misconduct stands out as the most important. Acts described as violations against property also play a part, but a considerably lesser one than for boys. Vagrancy is also fairly frequent, as are acts described as violations of morality and prostitution. We note, finally, that this distribution remains quite stable over time.



Source : Judicial Statistics of Belgium, Child protection, 1915-1949. Heading : « Minors judged – Nature of the acts commited – Art. 13 to 16 ».

Fig. 5 Nature of acts committed by girls, Belgium, 1913–1949

3 Focus on the Cases and Judgments in the Namur Juvenile Court: A Qualitative Study

The relative stability in the statistical landscape must not, however, make us forget the latitude enjoyed by judges in describing acts committed by children brought before them. An analysis of the judgments and cases of children appearing in juvenile court—in this case the Namur court—gives us a clearer idea of the way that institution functioned, particularly from 1920 on (only a few files and registers of judgments still exist for the period prior to that).

3.1 Thefts for Boys, Debauchery for Girls

Already partly visible in the official language statistics comprise, the differentiation by sex for the acts mentioned by the judge remains stable throughout the period. While boys are most often charged with theft, it is clearly misconduct, debauchery and prostitution that bring girls before the judges, even if the latter only rarely initiate proceedings under section 15 of the Act (prostitution, immorality, gaming, trafficking or occupations which expose people to prostitution, and vagrancy, begging and crime). But examination of the dossiers reveals that whether in peace or in war, sexual misconduct appears to be the real reason for interning a number of minors with regard to whom the judge invoked section 13 of the Act (vagrancy and begging) or section 14 (misconduct and lack of discipline based on a complaint by parents). Several reasons can be proposed to explain this practice. In addition to their less defamatory nature, these two sections offer judges the opportunity to deal with cases of minors under the age of eighteen, whereas section 15 is limited to minors under the age of sixteen. Minor J., in 1931, is one such case. Aged a little over 16 during her first court appearance, she was charged with lack of discipline based on a complaint by her godmother (section 14). The provisional custody order justifies its decision 'Whereas the minor spends nights away from home and is a vagrant'.[33] The main points in the police reports drawn up for the hearing describes the flighty character of the young girl, 'who constantly roams the streets with the first man she meets' and who in fact was dismissed from her place of work 'because she recounted to the other women workers her escapades in full detail, her sexual relations with men, etc. which would have contaminated the other workers'.[34] Thus, in a number of vagrancy cases in which the various absences of minors are described, the focus of all attention is the amorous adventure. As can be seen from the case of young V.:

> Her conduct for the past three or four months has been reprehensible. She has been out all night several times, returning at five or six o'clock in the morning, sleeping in my car in the garage, climbing in the window and spending the rest of the night in the kitchen. She has on some occasions

[33] Juvenile Court of Namur, Case No. 555 of J., provisional custody order of 24 November 1931. Our translation.

[34] Juvenile Court of Namur, Case No. 555 of J., Police report, 23 November 1931. Our translation.

> entertained a lover in my house in my absence and in the absence of my wife (…). A certain Mr H. (…) caught her in the woods with the Italian mentioned above (…).[35]

3.2 Discrepancies Between the Sections of the Act Mentioned and the Reasons Given in the Cases

The petty larceny or the few hours of flight or wandering mentioned in the judgments sometimes appear highly derisory compared with the years of institutionalisation they bring on. Generally speaking, an examination of the cases shows above all that, in addition to minors who had actually committed a violation of the law, there were many children who were regarded as being completely out of step with the moral prescriptions of the time (particularly girls) or who were growing up in an environment unfavourable to their development. Hence, the delinquent acts do not seem to carry as much weight in the decisions as factors related to a precarious environment, both socially and morally.

There is no lack of examples of cases only partly corresponding to the descriptions mentioned in the judgment. M., for instance, was tried for misconduct in 1943 following complaints by his father. The father initiated proceedings against his son 'for lack of discipline, theft, laziness, lying, etc.'[36] While the judge's note about the young boy, asking for him to be placed under observation at the Mol central institution, states: 'As you can see from the file, this is an unfortunate case. The minor has not really done anything wrong; he is unwanted in his environment. (…) Separated for the past seven years, the parents are each in cohabitation'.[37] In the same vein, the file of J. charged with vagrancy and interned in a private institution in Spa in 1943 shows what really motivated the judge in taking his decision:

> [the father] complains about his son (…). He claims that he has no authority over his child, who manifests a lack of discipline and an ever increasing independence. According to the father, this young boy will go on

[35] Juvenile Court of Namur, Case No. 765 of V., Police report, 23 July 1938. Our translation.

[36] Juvenile Court of Namur, Case No. 1132 of M., Police report, 3 March 1943. Our translation.

[37] Juvenile Court of Namur, Case No. 1132 of M., Mol Observation Report No 9907. Our translation.

> committing petty larceny, and mainly from him (…). However, it must be stated that [the father] behaves quite strangely with his family. He is a man with a very bad reputation in the town. He is known to have a violent temper and easily gets carried away. Each time the son commits an offence, he beats him and does not hide it. (…) The father widely publicises his son's behaviour, to such an extent that one can only suppose that that's his way of getting rid of him. It is also implied [that he] showers his daughter, M, with an affection that is not purely paternal.[38]

Another example among so many is the case of G., who was charged under prevention of vagrancy, which essentially contains a number of depositions by witnesses who had caught her in a field having sexual relations with an US soldier.[39]

3.3 The Impact of War

The burden of war on these cases is not simply quantitative. War changed the offences and the acts recorded, brought forth new ones—like the black market—and transformed the discourse. We have, of course, nuanced the analyses of the time, which tended to describe wartime juvenile delinquency essentially in terms of theft, debauchery and misconduct. In fact, a statistical study has shown the extent to which the 1912 law's sections mentioned in judgments during the two world wars are similarly proportioned during the two conflicts and in the interwar period. However, war seems to modify the purpose and conditions of many acts leading to children being brought before judges, as well as the reasons mentioned in their files. For instance, thefts during the interwar period typically targeted bicycles, cash and other small items, but were often of a quite different nature during the wars. In addition to cash, a number of items of prime necessity make their appearance: vegetables, eggs, chickens, foodstuffs of all kinds, coal and ration stamps. At the heart of these cases the arduous war conditions are sometimes explicitly mentioned. W., aged 12½, worked on a farm. She was apparently not being paid, but she was provided with food and laundry. In November 1943, she stole cash and wheat from her boss, which she gave to her

[38] Juvenile Court of Namur, Case No. 1133 of J., Police report, 2 February 1941. Our translation.

[39] Juvenile Court of Namur, Case No. 1398 of G., Police report 8 August 1945.

family. She explained to the policeman: 'I'm really sorry for what I did. This is the first time I stole from my boss, and I only did it because I could see he had a lot of money at the farm and at home my family had none'.[40] While admitting the acts at the hearing, she said: 'I didn't realise what I was doing. Times were so hard'.[41]

Evidence given of the arduous living conditions is also recorded in some cases relating to debauchery and prostitution, including those of young girls who had sexual relations with the occupying soldiers. The case of Y., arrested for vagrancy and begging in 1942, is typical:

> During the day, I went to the barracks at Charleroi to beg for bread from the German soldiers who were quartered there. I met a soldier called W. (…) He told me that I would be paid and so we had sexual intercourse on a bench. (…) [Afterwards] I always went back to the barracks to get food (…).[42]

At the end of the war, many young girls were still subjected to measures because of their sexual misconduct—although, we must point out, the description during the judgment hearing did not necessarily correspond to the acts they were accused of. The US 'battle dress' replaced the German 'Feldgrau' of the occupying army, but as stated by the President of the Juvenile Judges' Union: judges were not very sympathetic to deviations in young girls' moral conduct, even if the eye of their entourage was less reproving when it came to allied soldiers.[43]

The end of World War II was also marked by the settling of collaboration affairs involving minors. Minors or their parents frequenting 'unpatriotic' milieus or German soldiers had already found mention in cases during the war. For instance, it is stated that the young Y., charged with aggravated theft, 'had become friendly with a member of

[40] Juvenile Court of Namur, Case No. 1397 of W., Police report, 27 December 1943. Our translation.

[41] Juvenile Court of Namur, Case No. 1397 of W., report of the hearing of 28 August 1945. Our translation.

[42] Juvenile Court of Namur, Case No. 975 of Y., Police report. Evidence quoted by Peltier, M., *La justice des mineurs en temps de guerre. La pratique du Tribunal pour enfants de Namur durant les années 1940*, degree dissertaton UCL, 2003 (unpublished), p. 124. Our translation.

[43] *La guerre et la délinquance juvénile. Conférence d'experts…*, p. 80.

the Hitler Youth which led him to skip classes at the Athénée (secondary school)'[44] or that the mother of C. 'received a German soldier in her home'.[45] Studying Namur cases shows that, between 1944 and 1948, fourteen judgments related to unpatriotic acts. The reasons put forward concerned either belonging to a collaboration movement, like the young legionnaires, or informing the enemy. An in-depth examination of six of these fourteen cases in the context of a recent study highlighted the families' role in these minors' acts and, to a lesser extent, their difficult financial conditions.[46] However, leniency in disposing of most of these minors' cases indicates that the judge gave precedence to the protective aspect, regardless of the acts committed. The milieu these minors were raised in was not regarded as too harmful. Hence, very few of them were imposed severe measures; most were released or simply reprimanded, even if they had confessed.

4 Conclusion

As many commentators have noted, the jurisprudence of the 1912 Act granted considerably less importance to the act committed by the minor than to the situation he lived in and which he may perhaps have had to be protected from. In this respect, the law is regarded

> as a child protection law and not as a criminal law. Therefore the advisability of its application is assessed essentially on the basis of the interest of the minor. The flimsiest of acts may be a pretext for prosecution. Thus a broad concept of a state of danger is developed, covering not only the active status (the subject represents a risk to others), but also the passive status (the subject is himself at risk) (…).[47]

[44] Juvenile Court of Namur, File No 1123, Yvon T., Additional observation report No. 7655 by the Observation Section of the State Educational Establishment of Saint-Hubert. Our translation.

[45] Juvenile Court of Namur, "not followed up", Police report concerning Céline H. Our translation.

[46] Peltier, M., *Op. cit.*, pp. 167–178. With regard to acts of collaboration, Marie Peltier analyzed in detail cases Nos. 1273, 1303, 1308, 1310 and 1348 of the Namur Juvenile Court.

[47] Racine, A., "Maintien ou abandon de la règle "nulla poena, nullum crimen sine lege" dans les juridictions pour enfants" in *Revue de droit pénal et de criminologie*, 1937, p. 153. Our translation.

This gap between the official labelling of the cases and the true motivations of the judges for placing children makes the interpretation of the official statistics an extremely delicate matter.

Comparing the statistics and judgments with the juvenile case files, in wartime as in peacetime, shows the extent to which correspondence between the acts alleged in judgments and the reasons set down in the case files is not all that obvious. That is the ambiguity of a protective law whose implementation includes elements that appear to be borrowed from the penal system.

The wars did not derogate from this rule. The statistical analysis of judgments 'according to the nature of the acts committed' led to the disconcerting discovery of juvenile delinquency patterns that looked very similar in times of war and peace—essentially thefts for boys and sexual misconduct for girls. However, when one delves into the file details, one discovers that the arduous, if not dire, circumstances in which people lived during the wars bore their mark on the youths brought before the courts.

According to the experts of the time, the dislocation of families, misery and hunger gripping the country, as well as a series of other temporary factors, brought before the judge a much vaster group of children in need of protection during the war. Yet beside all those factors, the rise in the number of juvenile prosecutions can also be regarded, as David Smith showed for World War I in Britain, as consequences of certain moral anxieties in large sections of the respectable classes 'who felt moral standards were under a severe threat by poorly regulated working class youths at a time of national crisis'.[48]

[48] Smith, D., "Juvenile delinquency in Britain in First World War" in *Criminal Justice History*, vol. 11, 1990, p. 137.

CHAPTER 12

The Price of Virtue: Socio-Judicial Regulation of Juvenile Sexuality in France During the First Half of the Twentieth Century

David Niget

1 Introduction

During the twentieth century, child protection became an increasingly important part of judicial practice in most Western countries. In the process, children and youth were removed from the criminal courts to a separate juvenile justice system.[1] For young people, this meant a much closer scrutiny of their intimate lives. The new system widened the range

[1] Dupont-Bouchat (Marie-Sylvie), Pierre (Éric) (ed.), *Enfance et justice au XIXe siècle. Essais d'histoire comparée de la protection de l'enfance, 1820–1914*. France, Belgique, Pays-Bas, Canada, Paris: PUF, 2001, 443 p; Rosenheim (Margaret K.), Zimring (Franklin E.), Tanenhaus (David S.) (eds.), *A Century of Juvenile Justice*, Chicago: University of Chicago Press, 2002, 456 p; Cox (Pamela), Shore (Heather) (eds.), *Becoming Delinquent: British and European Youth, 1650–1950*, Aldershot: Ashgate Pub Co, 2002, 184 p.

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J. Trépanier and X. Rousseaux (eds.), *Youth and Justice in Western States, 1815–1950*, World Histories of Crime, Culture and Violence,
https://doi.org/10.1007/978-3-319-66245-9_12

of reprehensible behaviour that could justify the state's intervention, by emphasising the 'interest of the child' within legal procedure. As scholars have observed, this new child welfare system, while advocating the preservation of the youth, increased the surveillance of popular-class families and opened the way to a more intrusive state regulation of private matters.[2]

Reinforced since the eighteenth century, sexual discipline had been applied first to the children of the bourgeoisie. But it now seemed to encompass the younger members of the popular classes. For their part, young people met these developments with a desire for emancipation, foreshadowing the loosening of emotional and sexual norms after World War II.[3]

In spite of this new child welfare judicial approach, the modes of conflict resolution were still linked to a 'transactional' system of social conflict resolution, notably in the case of sexual violence committed by youth on children. In such cases, the justice system was more interested in balancing the interests of families and communities than in truly recognising the victim's rights.[4]

This study focuses on the judicial treatment of juvenile sexual activities, based on the archives of the Juvenile court of Angers.[5] The latter is a medium-sized city in the Loire valley whose working-class population was still relatively large during the first part of the twentieth century. However, the jurisdiction of the Juvenile Court of Angers also included

[2] Cox (Pamela), *Gender, Justice and Welfare: Bad Girls in Britain, 1900–1950*, London: Palgrave Macmillan, 2003, 272 p; Meis Knupfer (Anne), *Reform and Resistance. Gender, Delinquency, and America's First Juvenile Court*, New York-London: Routledge, 2001, 290 p; Myers (Tamara), *Caught: Montreal's Modern Girls and the Law, 1869–1945*, Toronto: University of Toronto Press, 2006, 345 p.

[3] Sohn (Anne-Marie), *Âge tendre et tête de bois: histoire des jeunes des années 1960*, Paris: Hachette littératures, 2001, 430 p; Rebreyend (Anne-Claire), «Les« filles amoureuses » : une nouvelle catégorie des années 1950 », in Blanchard Véronique, Revenin Régis et Yvorel Jean-Jacques éd(s), *Les jeunes et la sexualité: initiations, interdits, identités (XIXe-XXIe siècle)*, Paris, Autrement, 2010, pp. 299–309.

[4] Jackson (Louise), *Child Sexual Abuse in Victorian England*, Londres, Routledge, 2000, 209 p; Smart (Carol), "A History of Ambivalence and Conflict in the Discursive Construction of the 'Child Victim of Sexual Abuse'", *Social and Legal Studies*, 8, 3, Sept. 1999, pp. 391–409.

[5] Niget (David), *La naissance du tribunal pour enfants. Une comparaison France-Québec*, Rennes, Presses universitaires de Rennes, 2009, 417 p.

a rather large rural area.[6] It will be argued that the justice system was marked by its reserve in the face of juvenile mores. Two different ways in which sexuality can be understood will be explored. Suffered by its young victims, it was nevertheless practised by youth as a part of their social experience. Finally, considerable disparity in the treatment of juvenile sexual behaviour by the justice system can be observed when gender is taken into account: while boys were viewed as predators, girls were suspected of sexual corruption. These representations, which underlay normative practices, framed the social experience of sexuality for children and adolescents.

2 Unveiling the Intimacy: The Judicial Attitude Toward Juvenile Sexuality

Sexuality is interlaced with mundane social practice, to which historians, for want of written sources, remain relatively blind. Uncovering the history of sexuality requires a certain rolling of the dice, especially in the case of the popular classes, whose experiences are for the most part poorly represented in written documents until the turn of the twentieth century. It is likely that, much like social customs, sexuality was expressed verbally much more freely than the archives might suggest. But sexuality was not recorded except under exceptional circumstances and, as a result, it was only uncovered in cases of confession. In terms of morality, religion presented society with a contradictory injunction. On the one hand, there was the weight of silence imposed by modesty, which associated sexuality with feelings of shame. On the other hand, there was confession, the invitation to unveiling, to expression. The importance of the latter act was amplified during the twentieth century within the Christian family movement, which at the time seemed to respond to a vast demand for sexual education.[7] Thus, caught between secrecy and exhibition, Western civilisation was marked by an ambiguous approach to sexuality.[8]

[6] In 1911, 40% of the population lived in rural areas. In 1936, this rate was still 18%.

[7] Sevegrand (Martine), *L'amour en toutes lettres: questions à l'abbé Viollet sur la sexualité, 1924–1943*, Paris: Albin Michel, 1996, 334 p.

[8] Foucault (Michel), *Histoire de la sexualité*. Tome 1: *La volonté de savoir*, Paris: Gallimard, 1976, 211 p.

Secular justice, whose methods of verification were inherited from religious practice, also became an important source of information related to sexuality. As with religion, the justice system kept a safe distance from sexual matters, evoking 'public peace' to justify a ban on any visible expression of sexual practice through the crime of 'public indecency' ('outrage public à la pudeur'). But at the start of the twentieth century, it also largely ignored the victims of sexual abuse committed behind the doors of private dwellings.

Meanwhile, historians must also treat the justice system as a filter, paying particular attention to how it 'records' information and how the corresponding incidents were selected. These incidents were drawn from the social realm where they took place. Cases passed through family networks and the local community, to the police or *gendarmerie*, before taking shape within the structures of the judicial system, which itself exercised a significant degree of discretion regarding which issues would ultimately be dealt with. At each step along the way, various criteria determined how the facts were recorded and retained. The logic behind selection and prosecution, or the reasoning behind dismissals and informal regulation, came into contradiction. The demands of family honour were not necessarily in harmony with the need for maintaining public peace. The rectitude of judicial truth could enter into conflict with the rumour mill and the complexity of social conflict. Moreover, the different actors involved internalised the perceived demands of their interlocutors, participating in a complex process of overlapping subjectivities. The population delivered to the magistrate that information which made sense in its eyes. When he was not absent, the lawyer was there to remind them of this strategy. As always in such cases, the discourse presented to the courts was highly determined by the specific context from which it was drawn. Moreover, the transcription of this discourse was conditioned by the contingencies of judicial procedure, in particular by the requirements regarding the 'qualification' of facts (that is, the choice of offences youths would be charged with).[9]

How was the justice system used to arbitrate conflicts of a sexual nature? During the first half of the twentieth century, police records reflected a concern for the maintenance of public order. Public manifestations of the sexual act, more than cases of sexual violence, were thus the

[9] Chauvaud (Frédéric), "La parole captive. L'interrogatoire judiciaire au XIX*e* siècle", *Histoire et archives*, 1, January–June 1997, pp. 33–60.

primary object of attention for the authorities responsible for social control. Indeed, if the nineteenth century saw the emergence of a discourse on the victims of sexual abuse, as well as judicial tools for their protection,[10] police practices remained marked by a reluctance to penetrate the private sphere, the site of much sexual violence. However, this prudent approach on the part of the police was modified by changes in the procedures for judicial investigations involving minors. The new judicial system dedicated to minors, established in France beginning in 1914,[11] called on magistrates to take a broader view of the accused minor and of his or her family situation. This new justice system was more empathetic, but also more inquisitive, since it increasingly aimed at protecting children, including protecting them from their own environment. Thus, in 1898, a law was enacted explicitly to protect children who were victims of violence, even if this law had difficulty in imposing itself in judicial practice.[12] The juvenile justice system that emerged in France in 1912 offered a means of bridging this gap. Each minor appearing before the court was to be subjected to an examination. The law forbids holding 'immediate hearings' (Sect. 15), in order to allow for some time to gather information on the child and convey it to the court. Jurisdiction over this detailed procedure was given to an investigating magistrate, the *juge d'instruction* (Sect. 17), who was thus able to investigate problematic situations that previously might not have been subject to official and public scrutiny. Thus, 'the investigating magistrate under[took] his enquiry on the incriminating facts as well as on the material and moral situation of the minor within his or her family'. If necessary, he could also request a medical examination (Art. 17). And if the accused was less than 13 years old, he could name a court reporter ('rapporteur') drawn from the judicial professions or from within the local 'committees for the defence of children brought before the courts' ('comités de défense des enfants traduits en justice') (Art. 4). This last measure opened the door to interventions by private benevolent associations interested in how child abuse was dealt with by the justice system.

[10]Vigarello (George), *Histoire du viol, XVIe-XXe siècle*, Paris: Seuil, 1998, 357 p. Yvorel (Jean-Jacques), "De l'enfance coupable à l'enfance victime: les limites de la générosité philanthropique au XIXe siècle", Benoît Garnot (ed.), *Les victimes, des oubliées de l'histoire?* Rennes: Presses universitaires de Rennes, 2000, pp. 87–94.

[11]The Children and Youth Courts Act (*Loi sur les tribunaux pour enfants et adolescents*) of 22 July 1912, came into force in 1914.

[12]Dessertine (Dominique), "Les tribunaux face aux violences sur les enfants sous la Troisième République", *Le Temps de l'Histoire*, 2, May 1999, pp. 129–141.

As will be shown, these social investigations revealed often precarious family situations, especially with regard to 'good morals'. In Angers, as there was no 'Committee for the defence of children', investigations began under a rogatory mandate from the investigating magistrate, and from either the city's police commissioners or the surrounding regions' justices of the peace ('juges de paix).[13] The latter two groups were largely foreign to the specific issues related to child protection, but they were nevertheless very close to the population. This proximity encouraged the discovery of irregular sexual practices, while largely incorporating the common sense that continued to determine what was possible in terms of the intrusion of public powers into the family sphere. From the 1930s onward, a few social workers slowly appeared on the scene, with the goal of intervening in family governance.[14] These new policing and judicial practices resulted in a greater visibility of issues related to juvenile sexuality.

Alongside police intervention, a second source of information consisted of the families of those minors who found themselves before the courts. If these families did not spontaneously address the courts to answer their educational difficulties, in a French context where the justice system remained relatively distant, they nevertheless made a number of demands insofar as their children's situations were beyond their control.[15] In this respect, significant moral taboos were associated with sexuality, which resulted in censorship and, once certain limits were passed, revelation. Modesty, that great virtue taught during the nineteenth century, and shame, a label attached to all forms of non-reproductive sexuality, exerted their full weight on the resulting discourse. If, within certain age groups, forms of discourse existed on sex (among children and among adults),

[13]Niget (David), "Le juge de paix peut-il devenir le juge de l'enfance? Débats et réformes législatives au début du XXe siècle", Jacques-Guy Petit (ed.), *Une justice de proximité: la justice de paix (1790–1958)*, Paris: PUF, 2003, pp. 181–194.

[14]Diebolt (Évelyne), *À l'origine de l'association Olga Spitzer. La protection de l'enfance hier et aujourd'hui. 1929–1939*, Paris, Ministère de la justice, 1993, 143 p.

[15]Niget (David), Trépanier (Jean), « Parents et mineurs face à l'institution judiciaire pour mineurs: les cas d'Angers et de Montréal, 1912–1940 » , in Jean-Marie Fecteau, Janice Harvey (eds)., *La régulation sociale entre l'acteur et l'institution. Pour une problématique historique de l'interaction. Agency and Institutions in Social Regulation. Toward an historical understanding of their interaction*, Sainte Foy, Presses de l'Université du Québec, 2005, pp. 400–420.

there was no real communication between adults and children on these issues. For the youngest, it was necessary to tear away a veil of ignorance. And, as Anne-Marie Sohn points out, 'encouraged ignorance leads to effects opposite of those sought by educators. It makes young people even more vulnerable to seduction and assault'.[16] Furthermore, sexuality had not acquired, among the popular classes of the early twentieth century, that autonomy that Western culture would ascribe to it after World War II, when Freudian theories became widely influential among therapists and progressively infiltrated different social strata and common sense. Finally, during the first half of the century, sexuality was linked to larger social institutions: family, community and nation.

Meanwhile, the political sphere still excluded any discussion of sexuality. Under the influence of populationism, sexual education was consistently excluded from the public sphere and especially the education system, in favour of a discourse invoking blind mass reproduction. This repression of the discourse on sexuality would increase following World War I, with the laws of 1920 banning any support for Malthusianism, and therefore any control of sexual behaviour.[17] Finally, more than in any other domain, sexuality played on the symbolic capital of the family, and perhaps more so in the families of the popular classes for whom the body and its integrity exclusively determined social resources. Under these conditions, families did not resort to the justice system except under very exceptional circumstances, when no other path was available to them. Families therefore developed specific kinds of strategies for the defence or prosecution of their child. Above all, they sought to avoid the snubs that would be directed towards the reputation of the family. 'Tongues wag quite a bit on that subject', noted one neighbour to the father of a young rape suspect in a letter describing the rumours in circulation.[18]

Thus, to study sexual behaviour by way of the justice system is, naturally, to study only a small fraction of sexual practices. As a result, any analysis must at the outset identify those biases affecting the selection of cases.

[16]Sohn (Anne-Marie), *Du premier baiser à l'alcôve. La sexualité des Français au quotidien (1850–1950)*, Paris: Aubier, 1996, p. 150. (Our translation.)

[17]MacLaren (Angus), *Sexuality and Social Order. The Debate over the Fertility of Women and Workers in France, 1770–1920*, New York-London: Holmes and Meier, 1983, pp. 169–171.

[18]Archives Départementales de Maine-et-Loire (ADML), 3U1 / 1240: Criminal court of Angers. Case files: dismissals («non-lieux»). Henri F. Dossier, trial order of dismissal, 1/06/1921. (Our translation.)

To begin with, as might be expected, the justice system's understanding of sexuality focused on the latter's paroxysmal dimension: especially non-consensual sexuality, accompanied by violence, but also seduction and prostitution. However, a focus on judicial institutions, and especially the juvenile courts, also sometimes allows for an understanding of sexual practices in their more mundane and everyday forms. The heterogeneity of normative scales within a society which was still very segmented and hierarchical explains why the attention of the justice system was sometimes drawn to sexual practices generally accepted by young defendants but condemned by judicial elites. Parental strategies for protecting respectability also unveiled mundane acts on the judicial stage. The act of adolescent seduction, when it was ostentatious, or when it seemed to imperil the family honour, would be brought before the magistrates.

What was the nature of this gaze placed by judicial actors on juvenile sexuality? How did the justice system conduct its regulation of deviant sexuality? Historiography underscores how numerous sexual behaviours were condemned by society. Since the eighteenth century, sexual discipline had been tightened for young people, with the writings of numerous pedagogues, physicians and the first psychiatrists, as Michel Foucault and Thomas Laqueur have underscored.[19] But it is important to interpret this phenomenon carefully, and an examination of judicial practices suggests the interpretation should be nuanced. Indeed, the justice system, which incorporated itself into a pragmatic and liberal economy, did little to sanction sexual practices, and only did so indirectly. The French Revolution had brought a desire among legislators to dissociate morality and law. The great republican jurists Adolphe Chauveau and Faustin Hélie made a clear distinction between moral justice, which was of divine inspiration, and social justice, which was secular and therefore variable according to the contingencies of its exercise.[20] With the eviction of moral law, private matters were removed from the judicial field. To compensate for its absence, the private sphere, and especially the family, were portrayed as a 'sanctuary', a guardian of virtue. It would be a mistake, following the movement for the secularisation of society, to portray the bench as the new clergy—'the interpreter of the soul'.

[19]Foucault (Michel), *Op. Cit*, Chap. 1; Laqueur (Thomas W.), *Solitary Sex. A Cultural History of Masturbation*, New York: Zone Books, 2003, Chap. 5.

[20]Chauveau (Adolphe), Hélie (Faustin), *Théorie du code pénal*. Vol. 1, Paris: Cosse, Marchal et Billard, 1872, p. 16.

However, the end of the nineteenth century was marked by a return of morality within the law. Private life once again fell under the purview of judicial authorities, in the name of protecting the victims of 'domestic torturers' ('bourreaux domestiques'). The 3rd Republic thus established a set of laws 'to protect the weak', whereby the latter were provided with specific legal protections, which in turn led to a greater supervision of their activities.[21] A real tension developed between these contradictory goals. On one hand, there was the protection of individual liberty, especially that of citizens' private lives. On the other, there was the protective imperative toward 'child martyrs', hostages to dysfunctional families of which fears were rekindled by the emergence of treatises on criminal entropy.[22]

3 Between Violence and Desire: Youth's Sexuality on Trial

Juvenile courts had jurisdiction over several types of sexual crimes committed by minors. First, most rape cases were prosecuted under charges of indecent assaults in order to protect juveniles (perpetrators as well as victims) from appearing before the Cour d'Assises, that was not specialised in minors' cases.[23] Rather, the charges were systematically chosen or amended so as to fall under the jurisdiction of the juvenile court. Moreover, the assault could eventually be redefined as a simple charge of 'public indecency'. Furthermore, the prosecutor could also, by way of a more complex procedure, charge the young victim of a sexual crime with public indecency when unable—or unwilling—to charge the adult attacker in the case. Finally, the offence of vagrancy whose definition was adjusted to include minors in 1921,[24] covered numerous kinds of irregular behaviour. These

[21] Stora-Lamarre (Annie), *La République des faibles. Les origines intellectuelles du droit républicain (1870–1914)*, Paris: Armand Colin, 2005, pp. 179–186.

[22] Renneville (Marc), *Crime et folie: deux siècles d'enquêtes médicales et judiciaires*, Paris: Fayard, 2003, pp. 154–162.

[23] Between 1914 and 1944, no minor was prosecuted in Maine-et-Loire for "rape", a criminal offence that gives rise to very few prosecutions (17 cases per year on average at a national level in the same period). ADML, 2 U 3098: Chronological repertory of the cases tried at the Cour d'Assises of Maine-et-Loire (1883–1990); and *Compte général de l'administration de la justice criminelle*.

[24] Act regarding vagrancy of minors under 18 years of age, March 24, 1921, Sect. 1.

ranged from prostitution to juvenile seduction, including any number of practices in between and confusing, from the perspective of young people, real threats with outdated standards of material and emotional autonomy. Sexual activity and sexual assault were thus the two faces of those deviant behaviours that drew the attention of the justice system, even if it was not always possible to draw a clear line separating the two categories.

The legal definitions ('qualifications') of those crimes related to sexual regulation were as follows:

- *Public indecency* (Sect. 330 of the Penal Code);
- *Indecent assault*, with or without violence (Sects. 331 and 332 of the Penal Code); and
- *Vagrancy* involving minors under the age of 18 (Sect. 271 of the Penal Code).

The first two categories were considered attacks on persons, and classified under the same category as offences against morality ('atteintes aux mœurs') in the Penal Code. The first item was crystallised in relation to public space, and more specifically within the public gaze. The naked body, and even more so the sexual act, was thus closeted in the privacy of dwellings and private properties.[25] The second item, a more grievous one, dealt directly with the physical integrity of persons. Hence, there is a shift from lack of modesty to indecent assault, from exhibitionism to touching, the latter being accompanied by physical or moral violence.[26] In the laws of 1832 and 1863, an exception was made for cases where the victim was less than 13 years old. In such cases, violence was not necessary for an infraction to take place, since 'it is assumed that, up to that age, the offender has taken advantage of the child's ignorance in order to sully or corrupt the child'.[27]

[25] "The distinctive nature of such an act is to affect decency, to hurt the probity of the witnesses, to cause a scandal. Unlike an assault, it does not involve any violence; it affects public decency without offending a particular person." («Le caractère distinctif d'un tel acte est de faire rougir la pudeur, de blesser l'honnêteté de ceux qui en sont les témoins, de causer un scandale. Il n'est point, comme l'attentat, accompagné de violence; il offense la pudeur publique et n'attente pas à celle de personne en particulier.») Hélie (Faustin), Depeiges (Joseph), *Pratiques criminelles des cours et tribunaux. Résumé de la jurisprudence sur les codes d'instruction criminelle et pénales et sur les principales lois qui s'y rapportent*, Paris: Librairie des Juris-classeurs - Éditions Godde, 1928, t. II, pp. 656–659. (Our translation.)

[26] *Ibid.*, 664–665.

[27] *Ibid.*, 661–662. (Our translation.)

Thus, the law covered everything from the most benign acts, such as harmless cases of immodesty, to the most dramatic, such as sexual assault; it must be remembered that the distinctions between these categories sometimes remained unclear. By leaving aside the *Assises* dealing with young rapists, it is possible to dispense with concerns regarding the supposed excesses of popular juries, feared as much for their indulgence as their cruelty.[28] What was at play in the judicial process was not merely establishing the facts. Courts tended to choose among possible offences according to the severity of the punishment they were contemplating. Thus, indecent behaviour referred to cases considered relatively benign, while indecent assault was reserved for cases considered particularly serious.

Vagrancy was considered an offence against public order. It encompassed everything from incorrigibility to prostitution. The issue of juvenile prostitution and its prohibition was complicated in France by the ideological battles between those who sought regulation and those who demanded total prohibition. It was the proponents of regulation who carried the day in France, despite loud international criticism within the League of Nations. Thereafter, it was difficult to prohibit juvenile prostitution directly, without setting a precedent that would bolster the abolitionist cause. As a result, in practice, the judicial instrument for controlling clandestine juvenile prostitution was the regulation of vagrancy. A young girl without a fixed address and without a legitimate source of income was suspected of relying on prostitution to support herself. Vagrancy was somehow an ambiguous field that related more to the issue of guardianship than to the repression of a specific behaviour. It was decriminalised in 1935, pushing the issue into civil courts (parental correction), and temporarily removing it from the jurisdiction of juvenile justice.[29]

Juvenile sexuality was thus regulated by the justice system from two different perspectives:

[28] Claverie (Élisabeth), "De la difficulté de faire un citoyen: les "acquittements scandaleux" du jury dans la France provinciale du début du XIXe siècle", *Études rurales*, no. 95–96, July–December1984, pp. 143–166.

[29] Croizé (Adolphe), *Le vagabondage des mineurs et le décret-loi du 30 octobre 1935 relatif à la protection de l'enfance*. Doctoral thesis (Law), Lille: Impr. Douriez-Bataille, 1938, 283 p.

- 'good morals', which included protection from different forms of sexual, moral and physical violence, from the most benign (indecency) to the most serious (sexual assault).
- sexual venality, all forms of informal, 'clandestine' prostitution.

In terms of quantity as well as quality, this judicial regulation of sexual behaviour was not pursued in the same way with young girls as it was with boys. Girls, most often charged with sexual behaviour viewed as erratic, were considered venal. Boys, in whom indecency and even aggressiveness was more tolerated, were nevertheless stigmatised when they acted as predators. The use of force in the course of seduction was recognised as a masculine attribute, but any violation of social rules, as manifested by kidnapping, closely associated with rape, was prohibited.

4 Boys as Sexual Predators?

In sexual matters, were boys perceived, according to the common stereotype, as predators, grabbing by deception or, if necessary, by force that which they could not otherwise have?[30] Indeed, a close association between theft and abduction was commonplace in scientific literature. This picture of the young attacker on the prowl drew its relevance from discourses on adolescence, which at the beginning of the twentieth century were updating Rousseau in light of the rapid development of the behavioural sciences. This stage in development was associated with a last gasp of savagery, guided by instinct.[31] Alongside a growing fear of out-of-control sexuality, this portrayal of the young male as a savage beast also responded to a desire, in this case positive, to assign young boys a veritable sexual identity.[32] Hence, their sexual identity oscillated between disapproval and approval. Which of these two visions had the greatest impact on judicial practice?

[30] Shore (Heather), "The Trouble with Boys: Gender and the "Invention" of the Juvenile Offender in Early Nineteenth-century Britain", Arnot (Margaret L.), Usborne (Cornelie) (eds.), *Gender and Crime in Modern Europe*, London: UCL Press, 1999, pp. 77–78.

[31] Stanley Hall (Granville), *Adolescence, its Psychology and its Relation to Physiology, Anthropology, Sociology, Sex, Crime, Religion and Education*, New York: D. Appleton, 1904, chapter 5: "Juveniles Faults, Immoralities and Crimes", pp. 325–410.

[32] Grant (Julia), "A 'Real Boy' and not a Sissy: Gender, Childhood, and Masculinity, 1890–1940", *Journal of Social History*, 37, 4, Summer 2004, pp. 829–851.

With regard to boys, it was through indecent behaviour that this issue entered the judicial field. Indeed, in contrast to young girls, male vagrancy was never examined in the records associated with the exercise of a sexual behaviour deemed irregular.

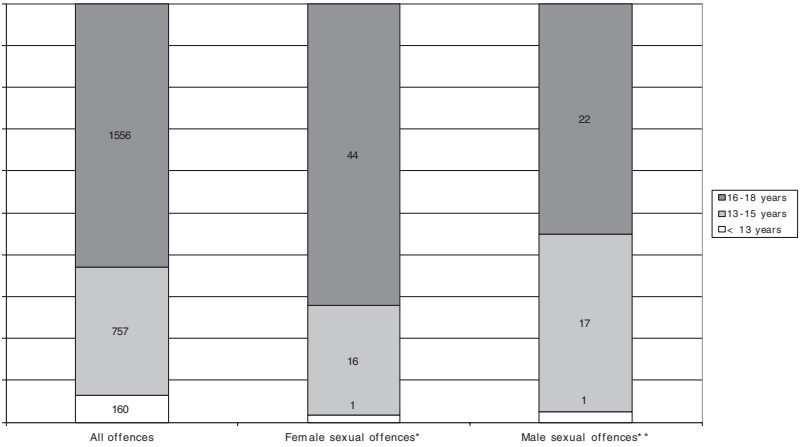
The records of the Juvenile court of Angers reveal that, from 1914 to 1945, as France was encountering its first experiences with a special justice system for minors, only 4% of the offences corresponded to the categories of sexual regulation (public indecency, indecent assault and vagrancy), and of these only 1.8% involved boys.[33] Why was the proportion so small?

To begin with, as we can see in Fig. 1, there was a certain social tolerance for indecent behaviour, especially among younger boys, who were rarely prosecuted for sexual offences, despite the fact that some dossiers reveal the existence of such behaviour as collective masturbation and games with sexual connotations. A 13-year-old boy questioned on his morals explained: 'With the other boys I never did a thing… A few times I did see the lads from the public school playing together… we saw them in the corners… they took their trousers off on the way home from school'.[34] In the same way, the 'romantic' behaviours of older boys (over 15 years old) were viewed with indulgence. The recognition of the social aspects of seduction, called 'maraichinage' (market gardening) in the countryside of western France, could even lead to a certain tolerance for prenuptial sexual relations.[35] Certain cases reflect such judicial indulgence. In one case, an acrimonious neighbour, riding his bicycle on a road in the outlying districts of the city, where agricultural lands were still abundant, surprised a couple standing 'against a hedge' and 'completely entwined'. The girl's skirt was lifted and the boy's trousers were down. 'They were behaving like animals in full view of the children', he complained in his letter of denunciation addressed to the prosecutor.

[33] Overall, 101 cases out of 2473 involving girls and boys tried at the Juvenile court of Angers between 1 January 1914, and 31 December 1944, included at least one charge of sexual offence (section 271 and 330 to 332 of the Penal code). Out of the 2172 cases involving only boys, 40 included at least one charge of sexual offence. It is impossible to compare those rates with national data of the *Compte général de l'administration de la justice criminelle*, because the latter does not discriminate between male and female vagrancy.

[34] ADML, 3U1: Juvenile court of Angers. File no. 220, 1939. (Our translation.)

[35] Baudouin (Marcel, Dr.), *Le maraichinage: coutume du Pays de Monts (Vendée)*, Paris: P. Bossuet, 1932, XII-319 p (1st ed: 1906).



Source: Records and case files of the Juvenile Court of Angers, 1914-1944.

* Female sexual offences include charges of public indecency and vagrancy.

** Male sexual offences include the charges of public indecency and indecent assault; no cases of vagrancy were found.

Fig. 1 Age distribution of minors charged with sexual offences, Juvenile Court of Angers, 1914–1944

Before the investigating magistrate, when faced with the accused, the witness became confused. The magistrate, pretending to be unaware of the scandalous nature of the episode, asked for specific details: did the witnesses see the accused person's 'private parts'? The witness admitted that he hadn't seen very much at all. The young defendants were acquitted.[36] However, the data might leave the impression that such benevolence had its limits: Fig. 1 suggests that cases of boys aged 13 to 15 charged with sexual offences may have been slightly over-represented in the files under study, when compared either with cases of girls charged with similar offences or with both boys and girls charged with any type of offence. Yet, frequencies are far too low to warrant that this might represent any real trend. For boys, this age was a turning point where pre-nubile immodesty was no longer tolerated, and flirting was yet to be appreciated.

[36]ADML, 3U1: Juvenile court of Angers. File no. 527, 1939. (Our translation.)

To further explain this reluctance on the part of judicial authorities to intervene in moral issues, it is necessary to underscore the weakness of public prosecution in cases of indecent assaults. The role of the Public Prosecutor was decisive. Attacks, especially when they were committed by minors on minors, were only rarely brought before the courts. Cases where charges were dismissed—a process which occurs after a judicial inquiry but before the case is brought before the court, which is called 'non-lieu'—strongly supports such a conclusion. Certain attacks, considered particularly serious by the parents or the local authorities (the mayor or the rural police ['garde-champêtre']) were treated with caution by the investigators. When dealing with two minors, where did childhood sexual games end and the actual assault begin? The tolerance shown to pre-marital sexual relations could also suggest the turning of a blind eye to rape involving young people who were courting. Moreover, immodesty among younger children, which was tolerated, was difficult to reconcile with their protection. Although the Penal Code had introduced the notion of assault *without* violence when the victim is under 13 years of age, since 'the purity of the child is equally attacked by these acts',[37] one psychiatric expert was still justifying the actions of the accused, in a file dating from 1921, by the fact that his young victim 'allowed herself to be violated without being aware of it'.[38]

Nevertheless, national statistics show that public indecency, a legal definition that includes, in some cases, sexual aggressions perpetrated by boys, was more and more repressed between World War I and World War II, as the number of cases brought to judicial attention grew from less than 200 cases per year to more than 500 cases, while the proportion of tried cases remains around 75% (Fig. 2). This shift underscores a growing awareness toward public behaviour and the civilising process that affects the public sphere.

Furthermore, the complexity of the legal definitions used in establishing the facts sometimes obscures morality issues within the statistics. Notably, theft, for which the procedure was relatively objective and predictable, could be used for charging youths whose 'perversity'

[37] Penal Code, Sect. 331, as amended by Acts of April 28, 1832 and May 13, 1863. Hélie (Faustin), Depeiges (Joseph), *Op. cit.*, vol. II, pp. 660–662. (Our translation.)

[38] ADML, 3U1 / 1240: Criminal court of Angers. Case files: dismissals (« non-lieux »). Henri F. Dossier, trial order of dismissal, June 1st, 1921. (Our translation.)

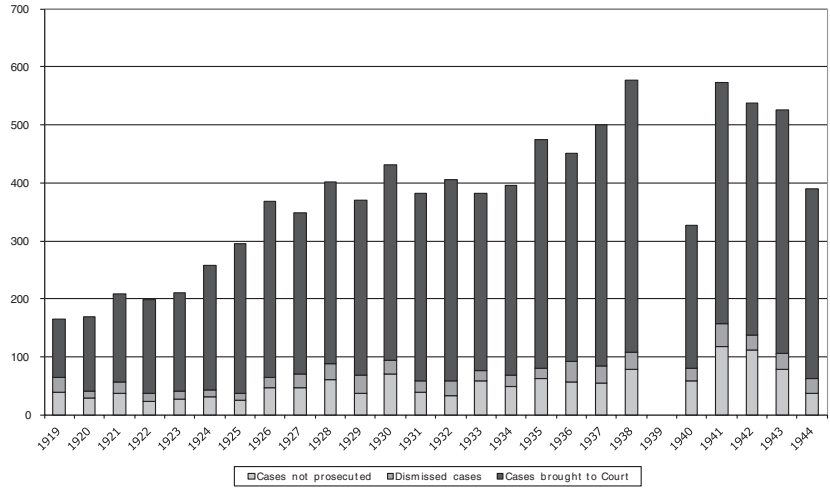


Fig. 2 Cases of public indecency committed by minors in France from 1919 to 1944. *Source* Compte général de l'administration de la justice criminelle

was viewed as the real issue. Paradoxically, complainants—who could be the parents—and judicial actors conspired to avoid establishing the truly criminal facts and mainly focused on the 'perversity' of the accused, which seemed to be their main preoccupation. Such was the case with a young orphan who, following World War I, had been taken in as a domestic farm worker by his uncle, a farmer at Juvardeil (Maine-et-Loire). Accused of stealing 500 F, the young man was described as 'lazy' and 'devious'. He was depraved. To prove this fact, he often 'found pleasure in beating animals'. A fan of those 'cheap books that could be found in train stations', he read at night, drawing the suspicion of his masters. Naturally, his deviance spilled over into sexual matters: he tried to 'touch' his six-year-old male cousin, in a field behind a hay bale. Suspicion toward his perversity was then amplified by this act viewed as homosexual nature. Worse still, he attacked his 31-year-old aunt, who testified that:

> while behind me, he put his hand beneath my skirts, and then all of a sudden, he grabbed me by the waist, and then by the arms, and caused me to

> fall backwards. After several minutes of struggle, I was able to fight him off. His goal was to have intimate relations with me, since while trying to hold me down on my back he said: 'aunt, I want to take your virginity'.[39]

It is clear throughout the case that theft and sexual violence were considered merely two facets of the young man's incapacity to submit himself to the social discipline imposed by work and respectability.

Theft and venality were similarly associated in other cases. In a classic example of popular imagery, a prostitute's scam consisted of robbing a 'pigeon', in what was called 'vol à l'entôlage'. This included various forms of thefts committed against potential or actual clients of a prostitute, with or without the help of an accomplice.[40] Common in the Paris 'milieu,' these stratagems were also part of the working-class culture of Angers, with no perceived barrier between the world of the factory and that of crime. A fifteen-year-old boy left school and took a job at the glass-works in Angers, where he met two young women who introduced him to theft. They admitted to 'getting an old one' ('se faire un vieux') at the station from time to time. The young Henri and his friends profited from the scheme, perhaps by uttering threats when the client became too suspicious. They also partook of the charms of their accomplices: 'I have to confess', he explained to a policeman, 'that the girl "B" took me with her. I "fucked" her in a field near the tolls for the road to Paris and in another field near the same road. I know that my fiends L, 17-year-old P., and 13-year-old P have "been" with Marie B'.[41] Delinquent behaviour also intersected with certain forms of sexual experimentation. The loosening of social norms, like a halo floating around prohibited behaviours, authorised these ephemeral and collective adventures.

Finally, in explaining the weakness of the repression of sexual offences, a great importance must be given to the arrangements made between

[39] ADML, 3U1: Juvenile court of Angers. File no. 584, 1921. (Our translation.)

[40] Colombier (Georges), *Notes cliniques sur 192 jeunes criminelles. Contribution à l'étude de la criminalité juvénile*. Medicine thesis, Bordeaux: A. Destout & Cie, 1912, p. 170; Lacaze (Henri, Dr.), *De la criminalité féminine en France: étude statistique et médico-légale*, Lyon: Imprimerie de la "Revue judiciaire", 1910, p. 67.

[41] ADML, 3U1: Juvenile court of Angers. File no. 549, 1921. (Our translation.)

attackers and victims, by way of their families.[42] Only when families failed to reach an agreement would cases be brought to court, which in essence was the catch-all for so many failed attempts at conciliation. 'The parents of C. came this morning and this afternoon, to ask for a settlement', explained the outraged mother of an eight-year-old victim, 'but in a situation like this, I have to make a complaint'.[43] She seemed to feel compelled to evoke the severity of the crime in order to justify her recourse to the justice system. These attempts at accommodation involved boys more often than girls, since they took place most often following a sexual assault of which the families sought to keep the details to themselves.

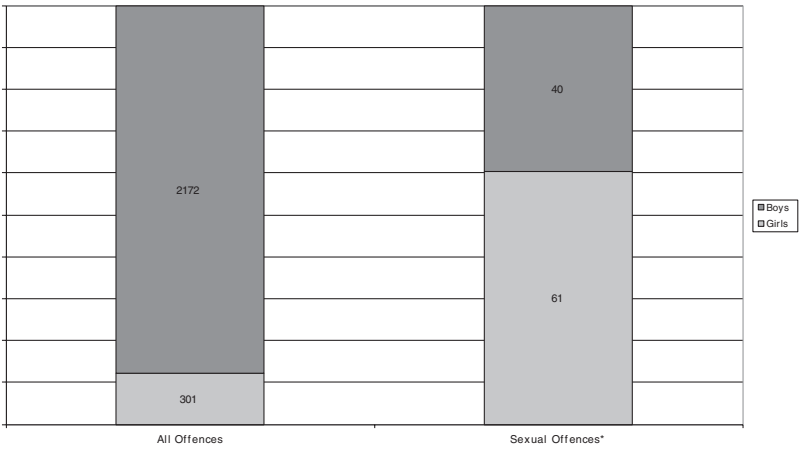
Despite the importance of these alternatives to the justice system and the skimming of cases by the judiciary, what happened to the young boys who were charged with moral offences? What do the case files have to say regarding their sexuality?

It appears that indecent assault and public indecency are the only ways through which the sexual behaviour of boys was dealt with as criminal. Vagrancy case files do not contain evidence on sexual activities, which was not, as we will see, the case for girls. When compared with their overall representation in cases involving all offences, boys tended to be under-represented in cases of sexual offences (Fig. 3).

Sexual assaults were presented in the files as substitute forms of sexual activities for young boys living with isolation, frustration and sexual misery. Time after time, cases involved youths who were socially and geographically isolated, often domestic farm workers or day-labourers. They were mainly adolescents who socialised little with groups their own age. This was a point of concern raised in their files. For example, Paul C., a fifteen-year-old woodcutter, was charged with indecent assault without violence on a young girl, it was noted that he did not socialise with young people of his own age, but instead preferred the company of younger children—whom he corrupted—but also adults, as 'he listens to

[42] Le Clercq (Geoffroy), "Sexual Violence and Social Reactions: The Survival of the Practices or Arrangement in Nineteenth Century Rural Society", Agren (Maria), Karlsson (Asa), Rousseaux (Xavier) (eds.), *Guises of Power. Integration of society end legitimisation of power in Sweden and the Southern Low Countries ca 1500–1900*, Uppsala: Opuscula Historica Upsaliensia (26), 2000, pp. 177–194.

[43] ADML, 3U1. Case tried on October 12th, 1929. Minutes of the *gendarmerie* brigade of Montrevault, July 15th, 1929. (Our translation.)



*Sexual offences include public indecency and indecent assaults in cases of boys and girls. They also include vagrancy in girls cases; vagrancy cases were not included for boys since they did not involve any evidence of sexual activities (see *infra*).

Fig. 3 Gender distribution of minors charged with sexual offences, Juvenile Court of Angers, 1914–1944. *Source* Records and case files of the Juvenile Court of Angers, 1914–1944

the loose talk at tavern doors.[44] On top of depriving young people of a sociability suitable for seduction, interaction with other age groups was an indicator of derangement, and a threat for younger children. Sexual precociousness and delayed maturity were the two faces of a suspicious dissociation between biological and social age.[45]

But such argument of 'sexual misery' must also be understood as a defence strategy on the part of the young defendants. Young attackers could present themselves in the most negative light possible when they met with the examining psychiatrist. Such was the case of Philippe B., a 17-year-old farm labourer. He was a victim of social failure: he would claim that his father was dead, that his mother remarried, and that he

[44]ADML, 3U1. Case tried on October 12th, 1929. Letter of request (« commission rogatoire »), Mayor of Chaudron en Mauges July 23rd, 1929. (Our translation.)

[45]Schlossman (Steven L.), Wallach (Stephanie), "The Crime of Precocious Sexuality: Female Juvenile Delinquency in the Progressive Era", *Harvard Educational Review*, 48, 1, Feb. 1978, pp. 65–95.

was left to wander from place to place, unable to settle down, because 'we didn't earn enough'. While his teacher gave a favourable opinion of him, he pretended to be a 'big idiot', according to the expert. Accused by a young farm maid of having exposed himself to her, 'holding his instrument in his hand' while masturbating and making obscene comments and then going after her skirts, he summarised for the doctor: 'I pissed in front of a young girl', all the while admitting that he wanted 'to have sexual relations with her'. The incident was also brought on by alcohol consumption: almost three litres of wine, he claimed, from morning to early afternoon. This 'explained, without justifying, by the aphrodisiatic effect of the alcohol, the sexual urges of B.', according to the psychiatrist.[46] A victim of society, of limited intelligence, blinded by alcohol, the guilty party thus sought to explain his actions, most likely on his lawyer's advice.

Certain defendants sought to present themselves less as predators and more as seducers. Through crafty manoeuvres, and aided by the gullibility of young victims who were without the help of a lawyer, the accused insinuated that they had received the consent of the girl through the offer of a gift: 'a bell for calling my dog', explained one girl, 'a piece of blue chalk', admitted another.[47] Drawn into this incriminating pact, the girls were kept silent through emotional blackmail. But magistrates were not fooled by these sometimes crude stratagems. Others accused sought to discredit the victim by claiming that she was the one who initiated the encounter. One female adolescent was judged to have consented because she had played with her attacker: 'The girl B. teased me by taking my cap', evoking a common technique associated with prostitutes.[48] Some of these attempts at shifting the blame were successful, resulting in the incrimination of the victim and also her conviction for indecent assault. Even if the corpus of cases remains too low to come to any definitive conclusion, one may think that the possible over-representation of girls among those accused of sexual crimes (see Fig. 3), especially in cases of public indecency, was the result of this incrimination of those 'consenting' victims.

[46]ADML, 3U1: Juvenile court of Angers. File no. 459, 1940. Psychiatric expert report of Dr. Toye, "Médecin chef des hôpitaux psychiatriques", September 14th, 1940. (Our translation.)

[47]ADML, 3U1: Juvenile court of Angers. File no. 220, 1940. (Our translation).

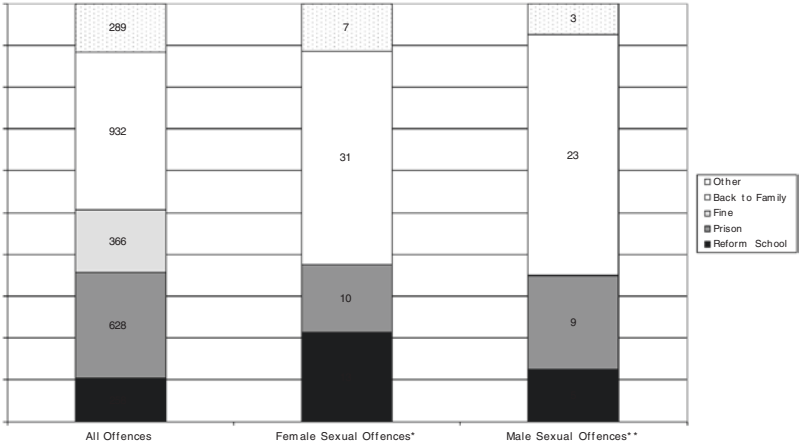
[48]ADML, 3U1: Juvenile court of Angers. File no. 1079, 1931. (Our translation.)

As mentioned above, prosecutions for indecent behaviour also resulted from the failure of negotiations between families. Such negotiations dealt with the price to be paid for the offence, evoking the image of the theft of virtue, which had a price. In a rape case dating from 1936, the families of two young accused agreed with the family of the victim that they would pay, according to their respective social positions, 200 F and 40 F.[49] But financial indemnification was not the only form of compensation. The arrangement also involved a symbolic aspect: during the meeting between the parties, the fathers of the young rapists publicly scolded their sons or demanded specific and full apologies. One of the two 'arrived in an automobile' at the house of the parents of the victim and explained 'that he had made his son confess'. The parents of the second 'made their son get down on his knees and confess to everything'. Thus, honour was restored. But when the young victim became pregnant, her mother explained to the police that the families of the rapists had forgotten their promise to provide additional help 'with that which might happen later'. As a result, she made a complaint, reactivating the whole collection of conflicts that had previously been settled.[50] The sad image of the young girl in distress marked these affairs during which the cynicism of the parents often held sway, and where the social game of clan respectability, supported by the local municipal notables, trumped judicial fairness.

Interestingly, the justice system refused to put a price on sexual offences committed by boys. As Fig. 4 shows, no fine was imposed for sexual offences. Financial compensation had to remain a private matter. The justice system preferred to dole out carceral punishments when the crime was deemed 'unforgivable': prison, often with aggravating conditions; or, in a majority of cases, committing the youth who was acquitted for lack of criminal responsibility to his parents. This last choice might appear to have been made more often in cases of sexual offences than

[49]The first father was a *hongreur*, someone who castrated animals and sometimes held the role of veterinary surgeon. Significantly, he owned a car. The second one was only a tinsmith, a modest artisan crafting small tools who was often a travelling merchant. Moreover, he had ten children. To compare incomes, it can be noticed that a skilled worker earned, in the slate mining industry near Angers, from 24 to 28 Francs per day in 1933. Marais (Jean-Luc), "Salaires des ardoisiers des villes et des campagnes (1862–1933)", *Annales de Bretagne et des Pays de l'Ouest*, 104, 2, 1997, p. 130.

[50]ADML, 3U1. Case tried on June 19th, 1937. (Our translation.)



Source: Records and case files of the Juvenile Court of Angers, 1914–1944.

* "Female sexual offences" include charges of public indecency and vagrancy.

** "Male sexual offences" include charges of public indecency and indecent assault, but do not include vagrancy.

Fig. 4 Sentences pronounced by the Juvenile Court of Angers against young sexual offenders, 1914–1944

in other cases according to Fig. 4; however frequencies are far too low to allow for any conclusion in this respect. Thus, for a minority of cases deemed serious by the community, the punishment was radically more severe in moral matters than in other types of offences, especially for girls—who were most often sent for years in a reform school, as Fig. 4 tends to demonstrate (even if the corpus of cases remains too low to come to a definitive conclusion). However, an important number of accused benefited from a great degree of judicial clemency.

Alongside more vicious cases of rape, judicial inquiries also developed the image of the young rapist as mentally deficient. In such cases, the issue was no longer about a rational predator, behaving like a calculating thief, but a predator returning to the savagery of his senses due to a mental deficiency. Since the end of the nineteenth century, Dr. Legludic, a nationally known forensic doctor, had already documented this link between immaturity and sexual violence. Notably, he based his findings on his frequent professional encounters with minors appearing before the

courts at Angers.[51] It is also important to note that this particular image was already present in popular opinion, which bore witness to a rudimentary psychiatric knowledge. Witnesses often stressed the fact that young people responsible for moral crimes were 'not very intelligent' or 'nervous'. Mothers sometimes evoked infantile illness, or even a bad fall during childhood, to explain their sons' bad behaviour. Youngsters who committed sexual offences were also described as 'easily influenced', under the sway of the adults they consorted with, especially in cases involving excessive drinking. They were also said to have learned from their adult companions other behaviours that 'were not appropriate for their age'. Certain popular observations were taken up by psychiatric experts, the latter being increasingly asked for by investigating magistrates during the 1930s and especially the 1940s. For example, one report noted: 'If… he allowed himself to commit [an attack], it was… to satisfy a reproductive desire related to the precocious onset of puberty and a sexual curiosity that his somewhat timid and devious child mentality led him to satisfy under abnormal conditions.'[52] This analysis largely borrows from the idea of a gap between the rapist's physical age and his psychological age, as a result of which reason he could not control his physical desires. Furthermore, the development of sexual organs, seen from a so-called 'histological' perspective that bases its interpretation on the functioning of the organs, involves an irrepressible assuaging of bodily needs.

Psychiatry, always very syncretic, integrated these social prejudices and ordered them scientifically, as if to ensure its legitimacy. Founded on the practice of interview, whose analogy with judicial interrogation can be troubling, psychiatry also responded to the demands of the justice system by playing on the subtle manoeuvres that allowed for easier confessions. Finally, like the justice system, the report of the psychiatric expert took into account the power relationships between the different protagonists involved in the case. Thus, even if it partially renewed the aetiology of sexual delinquency by raising the issue of perversion, psychiatry was based in its own social and judicial environment, responding to the expectations of different actors, whose needs it could readily consider, since the experts had access to the entire investigative file.

[51] Legludic (Henri, Dr.), *Notes et observations de médecine légale*. Volume 1: *Attentats aux moeurs*, Paris: G. Masson, 1895, 357 p. See also Ferron (Laurent), *La répression pénale des violences sexuelles au XIXe siècle: l'exemple du ressort de la cour d'appel d'Angers*, Doctoral thesis (History), Angers, 2000, 708 p.

[52] ADML, 3U1: Juvenile court of Angers. File no. 220, 1940. (Our translation.)

5 Venal Girls?

In the same way that boys were thieves, 'girls of ill repute' were assumed to be fallen women, runaways who had been left to their own devices. They were required, it was thought, to 'sell their charms' in order to survive. A social fact, this imagery also reflected a cultural object. From the realist paintings of Restif de la Bretonne and Louis-Sébastien Mercier, which dealt with the popular districts of Paris at the end of the eighteenth century to the great novelistic portraits of Hugo, Balzac and Maupassant, from the fin-de-siècle naturalism of Zola to the stark detail of Mirbeau, female venality was a cliché where representations and realities fed off each other. This melting pot of imagery influenced even the most 'scientific' writings, from criminology to medico-legal studies.[53] Indeed, many contemporary criminological studies relied in part on field work observation and case studies. When the data resisted interpretation, they might rely in part on the image of repulsion and compassion associated with prostitutes, such as Hugo's Fantine or Zola's Nana—two young famous novel characters. A cleavage seems to have developed within this medical-psychiatric imagination so deeply infused with literary figures: female juvenile venality sometimes took the form of the seduced girl, and sometimes that of the perverse nymphomaniac. The first category referred to a girl who was a victim of her 'milieu', highly suggestible because of a limited intelligence, but nevertheless reformable, through isolation and the therapeutic reversal of suggestibility. As for the erotomaniac, she was seen as social waste. While intelligent, she was dangerous and incorrigible.[54]

Of vagrancy cases appearing before the Angers Juvenile court, 40% involved girls (which represents 14% of all girls prosecuted), while girls represented only 12% of defendants of both sexes. These files all refer to sexual behaviour deemed to be erratic, in stark contrast to cases involving boys accused of vagrancy. Indeed, masculine prostitution remains invisible in the juvenile court files of Angers. Its repression must have been more discreet than in Paris, where the problem was frequently dealt with

[53] Foucault (Michel), *Les anormaux. Cours au collège de France. 1974–1975*, Paris: Gallimard-Le Seuil, 1999, 351 p.

[54] Martin (Pierre), *Contribution psychiatrique à l'étude de l'enfance coupable. Les mineures vagabondes et prostituées*, Lyon: Noirclerc & Frénetier, 1939, p. 202.

by the police.[55] Finally, all 'venal' girls were accused of vagrancy; charges of public indecency were reserved, as noted above, for victims of sexual abuse judged to be 'consensual'. The 1921 law on vagrancy involving minors was specifically aimed at young girls 'having, without just cause… left the home of their parents or guardians… having been found wandering, either living in rented quarters and regularly practising no profession, or else earning a living through debauchery or illegal means'.[56] Such positivist judicial rationality, marked by a deductive reasoning which saw in vagrancy not a criminal act per se but a social situation that unavoidably led to crime, was behind the preventative approach that had characterised penal reform since the end of the nineteenth century.[57] The itinerant girl was a potential prostitute, even if the crime of the flesh had not yet been consummated.

Meanwhile, World War I reactivated the repression of juvenile venality, due to increased opportunities for the 'clandestines' to practice their trade and increased fears concerning 'degeneration of the race' manifested by venereal and moral anguish.[58] For contemporaries, the new wave of professional prostitution characterised a generation 'demoralised' by the war, the omnipresence of death having instilled in their spirits a desire for luxury and immediate gratification.[59] However, an examination of the files points to a more mundane reality. Virtually none of the young girls in question practiced prostitution regularly. Rather, they used it as an occasional tool for fending off misery.

[55] Revenin (Régis), *Homosexualité et prostitution masculine à Paris (1870–1918)*, Paris: L'Harmattan, 2005, 226 p.

[56] "Loi concernant le vagabondage des mineurs de 18 ans", *Bulletin des lois*, 1921, p. 1113. (Our translation.)

[57] Kalifa (Dominique), ""Dangerosité" et "défense sociale" au début du XXe siècle", *Crime et culture au XIXe siècle*, Paris: Perrin, 2005, pp. 257–270; Garland (David), *Punishment and Welfare: a History of Penal Strategies*, Aldershot: Gower, 1985, 297 p.

[58] Termeau (Jacques), *Maisons closes de province. L'amour vénal au temps du réglementarisme à partir d'une étude du Maine-Anjou*, Mayenne: Cénomane, 1985, p. 144; Le Naour (Jean-Yves), *Misére et tourments de la chair durant la Grande Guerre. Les moeurs sexuelles des français, 1914–1918*, Paris: Aubier, 2002, pp. 167, 169. Majerus (Benoît), "La prostitution à Bruxelles pendant la Grande Guerre, contrôle et pratique", *Crime, Histoire et Sociétés / Crime, History and Societies*, 7, 1, 2003, pp. 5–42.

[59] Yocas (Panagiote), *L'influence de la guerre européenne sur la criminalité*, Paris: Jouve, 1926, pp. 46–47.

For many adolescents, it was a matter of survival or at least a way of improving everyday life. The same scenario regularly played itself out. It began with a young girl running away from the family home where, she often claimed, she was exploited. The story continued with the '*temps de la noce*', a time of freedom in the city where the girls went dancing and to the cinema. But it ultimately ended with prostitution, informal but necessary for survival. Even if they were not abducted, returned to the family home, or taken in by their boss, some young female workers found the additional income from occasional prostitution to be indispensable. Solange, 16 years old at the time of her arrest, had not lived with her parents since age eleven. Her family had placed her as a maid, factory worker and store worker, a common example of the irregular professional paths followed by many young people of the popular classes. Although it should have met all her needs, her irregular employment was not enough. Having left a residence in Tours run by a religious order, she paid 300 F for her room while she only earned 365 F. She was also 'approached by young men', according to her father. But she drew a distinction: 'However, you cannot say that I live only from prostitution, since the latter only helps to supplement my income'. Obviously known to the police of Tours, she moved to Angers where she lived with a friend. Such cases of young friends forming alliances in the face of life's demands were common. During the week, the young girls worked at a factory that produced cigarette papers, an unskilled labour rendered even more difficult by the cramped quarters of the workplace. But the police found her in a rented room at a moment when she had no identity papers and almost no money, which meant she could be charged with the crime of vagrancy.[60]

Thus, for these isolated young girls, prostitution provided a means of survival when between jobs or when their salaries were not sufficient to pay the rent. A precarious labour market was often at fault. Many who had professional training that qualified them for skilled labour (such as seamstresses or stenographers), also had difficulty in finding a well-paid job and thereby justified the occasional resort to venality. Furthermore, family conflict often lay behind such situations, meaning girls could not call on the saving grace of community solidarity. Many female adolescents refused to submit to parental authority or to accept the remarriage

[60]ADML. Case tried on September 21st, 1929. (Our translation.)

of a parent, a frequent situation in the post-war period. For their part, some parents complained of their daughters' laziness, saying 'she does not want to work', and, as a result, that she lived a life of debauchery. Girls were also accused of keeping a portion of their earnings, as they were considered secondary breadwinners for the family. The precariousness of single life, at a time when salaries were not supported by legal guarantees and when assorted forms of social assistance were not yet the norm,[61] was clearly evident in these hazardous juvenile trajectories.

Girls were not only accused of laziness, but also of betraying working class or peasant values. Some of them were too eager to try to have access to higher social groups through sexual strategies. This was apparently the case of a young resident of Angers who liked to go dancing and attend 'places of pleasure'. Her father, a quarryman, was unemployed one or two days per week in the midst of the economic Depression of the 1930s. His daughter had worked as a maid, but received no salary, only room and board. Frustrated, she ventured into prostitution. She tried to leave for Paris with a jockey and consorted with burglars—people who enjoyed a fair amount of money and a relatively lavish lifestyle. She enjoyed taking 'rides in cars', which were not common at the time in Angers. 'She has illusions of grandeur', explained a former employer with sarcasm. After being charged and incarcerated, she explained to her mother that she 'preferred walking the streets' to returning home with her miserable parents.[62] Thus, case files may express the fear of transgressing class identity involved in venality.[63]

But if some girls could, for a time, earn more selling their charms than working as servants, the clandestine nature of their situation soon brought them back down to earth. However, amidst grand declarations of love and freedom, cynically described by investigators, a veritable longing for emotional autonomy can sometimes be found, suggesting that venality was sometimes sought after and was not just a trial to be endured.

[61] The first collective agreements on labour were enacted in 1936, under the *Front Populaire*, a left-wing government, as a response to a large workers strike movement.

[62] ADML, 3U1: Juvenile court of Angers. File no. 550, 1933. (Our translation.)

[63] Corbin (Alain), *Les filles de noce. Misère sexuelle et prostitution aux XIXe et XXe siècles*, Paris: Aubier, 1978, p. 303.

Professional psychiatric expertise did not change perceptions of female venality. Such expertise was rarely called upon before 1935, the date when juvenile vagrancy was removed from the criminal law and henceforth regulated by civil law, thereby moving it beyond the scope of this study. Nevertheless, for psychiatrists, an abundant body of literature largely supported the prevailing stereotype of the venal girl. Thus, Lombroso's views on the 'moral insanity' of the prostitute were reinforced at the beginning of the twentieth century by studies linking female puberty with psychosis manifested by onanism and erotomania called: 'fureur utérine'.[64] More than ever, the medical-psychiatric culture stigmatised the behaviour of young female adolescents, at a moment when the latter experienced their greatest desire for social autonomy. For young girls finding themselves before the police, the magistrate or the psychiatric expert, strategies of self-presentation were essential. It was essential they not be considered prostitutes according to the legal definition, 'earning a living *habitually* from prostitution'. Hence the primordial importance of the vocabulary they used: girls spoke of their 'lovers', like the young girl who explained that she lived with a journalist from the *Corriere della Sera*, who had returned to Italy for a time.[65] On this point, she was careful to explain to the curious psychiatrist that they were capable of love, insisting that they had a moral sense in contrast to the Lombrosian aetiology which depicted prostitutes as being emotionally paralysed and unfeeling. Finally, presenting oneself as part of a couple, even if it was just a 'passing fancy', helped to normalise the financial link that united the girls with their men, according to the model of the male breadwinner. These were veritable tactics used by some young girls who seemed to have accepted their status but who, inevitably, also sought to avoid the house of correction or a humiliating return to the family home.

Indeed, it seems that confinement was more often the fate of juvenile sexual delinquents, as shown in Fig. 4. Notably, Angers was home to the mother house of the *Good Shepherd*, a Roman Catholic religious institution which was present around the world.[66] Moreover, the institution

[64] Francillon (Marthe), *Essai sur la puberté chez la femme: psychologie, physiologie, pathologie*, Paris: Félix Alcan, 1906, pp. 195–196, 199, 215.

[65] ADML, 3U1. Case tried on September 21st, 1929. (Our translation.)

[66] Strimelle (Véronique), *La gestion de la déviance des filles et les institutions du Bon Pasteur à Montréal, 1869–1912*, Ph.D. Thesis (criminology), Université de Montréal, 1999, p. 99; Meis Knupfer (Anne), *Op. cit.*, pp. 159–177.

recruited directly among families, who voluntarily placed their children upon paying a small fee.[67] Contributing to this phenomenon was a tendency within the judicial field to conceal the social repression of irregular sexual behaviour. However, the sisters of the Good Shepherd refused to admit young girls deemed to be too 'depraved,' or those who were syphilitic. And they sometimes negotiated the admission of individual pupils with the State prosecutor, even before a judgement was handed down. The young girls who were ill or considered incorrigible were thus sent to a specialised public institution, of which there were three in France. The limited capacity of these institutions also helps explain the lack of will on the part of judges to deal more actively with juvenile prostitution. Public officials and observers worried about this dangerous population that resisted institutionalisation and reform, as attested to by the revolts that marked the institutions throughout the century.[68] Thus, a psychiatrist described the young lost girls of Doullens, Clermont and Cadillac in these terms in 1937:

> These girls were suddenly thrust from a life of freedom, debauchery and simple pleasures, often accompanied by alcoholic excess, to a sedentary life of confinement, work and obedience. The transition is not an easy one. Cases of mental contagion are of particular concern among such mental defectives who are always prepared to copy an hysterical crisis, to fake a suicide attempt, to follow an agitator in an attempted revolt or escape.[69]

6 Conclusion

The judicial construction of sexual deviance among children and adolescents was a complex process. It revealed tensions between the goals of an emerging child-protection system and the traditional reluctance of

[67] Joly (Henri), *Les maisons du Bon Pasteur*, Paris: Levé, Secrétariat de la société d'économie sociale, 1901, pp. 7–8.

[68] Corbin (Alain), *Op. cit.*, pp. 478–480; Thomazeau (Anne) « Violence et internat: les centres de rééducation pour filles, en France, de la libération au début des années 1960 » , *Revue d'histoire de l'enfance irrégulière*, no. 9, 2007, pp. 107–125.

[69] Serin (S., Dr.), "La prostitution des mineures", *Pour l'enfance* "*coupable*", 3, 18, May–June 1937, p. 8. (Our translation.)

magistrates to pass judgment on what they considered to be private matters. Nevertheless, as a sexual matter, the body and morality of young girls made for much more political 'terrain'.[70] More often than with boys, girls were the object of an intervention seeking to regulate a sexual behaviour deemed to be dangerous to both themselves and the community. The representational dichotomy that portrayed boys' sexuality as 'predatory' and girls' as 'venal' was very perceptible in the interactions between different actors participating in the judicial theatre. This dichotomy was present as much in popular representations as in the legal reasoning that facilitated judicial intervention. Nevertheless, before 1945 in France, there was no firm political will to see the judicial system extend its prerogatives into sexual regulation, whether in terms of the repression of juvenile sexual violence, or even with regard to prostitution among minors.

While officially a confidential matter, judicial regulation of sexual behaviour only really begins to make sense in cases where it was accompanied by a 'social' component of conflict resolution. This is even more evident in the case of sexual offences, where judicial actors clearly sought the agreement and cooperation of the accused and their relatives. Furthermore, the justice system left room for alternative means of conflict resolution: mediation, symbolic retribution (corporal punishment, public atonement), material compensation and sometimes even banishment from the community.

From a present-day perspective, the approach taken by the justice system might appear cynical and pusillanimous. Nevertheless, the number of sexual offences dealt with was increasingly significant, while the analysis of individual cases was undertaken with the greatest care. Following a pragmatic approach, mobilising all available methods for achieving social peace, the rapist and the abuser were not treated as monsters and the act of rape was not considered unthinkable. Furthermore, the victim herself could be treated as guilty, as the demands of honour and the subjective judgement of the rumour mill held sway. This 'transactional' pragmatism, this act of reconciliation, emerged as a way for different actors to

[70] Butler (Judith), *Bodies that Matter: On the Discursive Limits of* '*Sex*', London-New York, Routledge, 1993, 288 p; Gatens (Moira), *Imaginary Bodies: Ethics, Power and Corporeality*, London: Routledge, 1996, 184 p; D'Cruze (Shani), Rao (Anupama) (eds.), *Violence, Vulnerability and Embodiment. Gender and History*, Oxford: Blackwell, 2005, 343 p.

restore or to preserve the social link which had been weakened by the incident.

The enduring challenge for both the justice system and the community was being able to view the youth as a full and total being, capable of free consent. This ambiguity was evident in the practice of juvenile justice, which mainly sought to protect the youth, both from others and from themselves. Treating the minor as a feeble and incomplete being, the system failed to construct the child in terms of rights: the right to the full status of victim without being subject to transactional manoeuvres; the right to use his or her body freely, notably in those clearly important practices of seduction, without being accused of attacking the integrity of the family, the community or the nation.

CHAPTER 13

Children and Their Families in the Montreal Juvenile Delinquents Court, 1912–1950: Actors or Spectators of Their Own Fate?

Jean Trépanier

1 Introduction

Social control is enmeshed in relationships between a wide diversity of actors, some of these relationships take place in the context of formal institutions such as courts of justice.[1] Social relationships vary considerably in the degree of authority they involve. Courts stand among those institutions whose image is associated with authority and constraint. Seemingly powerful, the judges decide after hearing parties to a case, without giving the impression that negotiation is an option. This impression is even stronger in the case of criminal courts, where one of

[1]Thanks are due to David Niget for his contribution to the ideas developed in this chapter and to François Fenchel for his part in the analysis of the data. Thanks are also due to the Social Science Research Council of Canada and to the Fonds québécois FCAR pour la recherche for their financial support.

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the parties is brought before the court, most of the time unwillingly, following an intervention from other institutions whose image is also associated with authority—the police and the public prosecutor. These various institutions seem to leave no room for any active role by those actors who fall under their jurisdiction. Additionally, these actors are mostly perceived as passive subjects—if not objects—of penal interventions that are imposed on them and that, at best, they can attempt to elude. Influencing these interventions seems out of their reach and they are viewed as having no control over their fate, of which they can only be powerless spectators.

One might wonder if this image is valid for juvenile courts as much as for adult criminal courts, particularly during times when juvenile courts were inspired by a welfare model where the benevolent and fatherly judge was expected to help and protect the child rather than punish him. If the delinquent child was portrayed somehow as a victim of life instead of a criminal, was it not relevant for the paternal judge to listen to him and his parents, to interact with them and to take their views into account before making decisions? Were not children and their parents more likely to make their positions known and to express the requests they might have in mind in a juvenile court than would have been the case in a criminal jurisdiction? Furthermore, if parents of troublesome children felt overwhelmed and needed some support to deal with their difficult offspring, could they not appeal to the helping hand of the judge to sustain their failing authority? Was not the particular context of the juvenile court conducive to their taking a more active stance as actors in the judicial process? Instead of being mere spectators of their own fate, could they not bear upon the course of judicial interventions?

This question is not equally relevant for all countries as juvenile courts that were created in most Western countries at the beginning of the twentieth Century were not all similar. The fact that they were established more or less at the same time, following numerous cross-national exchanges and debates, did not mean that all countries endorsed identical policies.[2] For its part, Canada opted in 1908 for a legislation[3] that retained the model of the US juvenile court judge—the one referred to earlier—the paternal benevolent judge, who sits alone (as opposed to a bench

[2] See for example Chap. 2 by Trépanier; also Dupont-Bouchat et al. (2001), Trépanier (2003).

[3] *The Juvenile Delinquents Act*, Statutes of Canada, 1908, Chap. 40.

of several magistrates) and who aims to prevent future illegal behaviour by protecting the child against the baneful influences that have led him on the path to delinquency. This is clearly evident in the parliamentary debates leading to the adoption of the 1908 Act.[4] It is also clear in the Act itself, particularly in the provision that defines its object, requiring:

> That the care and custody and discipline of a juvenile delinquent shall approximate as nearly as may be that which should be given by its parents, and that as far as practicable every juvenile delinquent shall be treated, not as a criminal, but as a misdirected and misguided child, and one needing aid, encouragement, help and assistance. (Section 31)

Actors whose role it was to implement the Act—including first and foremost the judge—were to endorse a model of intervention designed for protecting children in danger. It involved indeterminate measures that were chosen in reference to the needs of the child rather than the seriousness of the offence, and could be adapted and terminated according to the evolution of the child and his situation. The judge could reopen the case until the youngster reached the age of 21, despite the absence of new formal charges, which opened the door for parents to bring their child before the judge when they felt unable to control his behaviour. These are but a few indications of the intent of the Act to establish a juvenile court where the judge would be sensitive to the child and his family, and where the latter could express themselves actively, be heard and influence the course of justice.

Models that are embedded in the law are not necessarily implemented in daily court practice as intended by legislators. To understand the role that parents and children actually played, one has to scrutinise court practice. What does the latter reveal about steps taken by some parents to have their children brought before a judge? Did parents and children actively request specific courses of action from the court? How did the latter respond?

These are the issues addressed in this chapter that is based on a study of the first juvenile court established in Quebec, the Montreal Juvenile Delinquents Court, from its beginning in 1912 until its replacement by the Social Welfare Court in 1950. Quantitative data were drawn from a systematic sample of one-tenth of all entries in the court docket for the

[4] See Trépanier and Tulkens (1995: 45–46) and Trépanier (1999: 48–53).

years 1912–1949 ($N = 9212$). Further information—both quantitative and qualitative—was obtained from the files of the court on a sub-sample consisting of one-tenth of the cases of the main sample. Most prosecutions were aimed at children. Yet adults could be prosecuted before the juvenile court for contributing to the delinquency of a child. Such prosecutions accounted for 11% of our sample; for the purpose of the present research, these cases were excluded and only juvenile cases were retained. Of course, files contain formal documents that cannot reflect all the interactions that occurred during the court hearings. Still, they do provide information that can contribute to our understanding of the role played by parents and children.

First, let us look at the extent to which parents themselves initiated court cases, which can be a most forthright expression of an active role. Then we shall have a glance look at some requests that both parents and children placed before the court and the way the latter responded.

2 Procedures Initiated by Family Members

In criminal law matters, judicial procedures begin with written information—often called a 'charge' or a 'denunciation'—that is laid by someone who declares having reasonable grounds to believe that the child has committed a given offence. The child then appears before a judge and is invited to plead guilty or not guilty to the charge. In the case of a plea of guilt, the judge may proceed to choose the measure to be imposed. If the child pleads not guilty, a trial must be held first so that the judge can decide whether the child must be found guilty or acquitted. The judge can dispose of the case by imposing a measure only in those cases where the child is adjudicated guilty, following either a plea of guilt or a trial.

In practice, charges are usually laid by the police.[5] This is understandable in view of the fact that accused persons are usually charged with criminal offences. Yet this is not required by law: the Criminal Code provides that any person may lay an information, a power that is sometimes exercised by crime victims among others. At the time of the Montreal Juvenile Delinquents Court, the law permitted children to be prosecuted

[5] In Canadian criminal law, charges can be laid directly by the police rather than the '*Parquet*' or public prosecutor. Recent legislation has increased the role of the public prosecutor in that respect, but these new rules were not in force at the time of the Juvenile Delinquents Court.

for behaviour problems that were grouped under the designation of 'incorrigibility' and that frequently involved situations where parents were viewed as unable to control their child's conduct.[6] From a child protection standpoint, such prosecutions were viewed as being in the best interest of the children concerned since they were meant to help with their upbringing. One may then understand that some parents did lay charges for incorrigibility against their children whose behaviour problems they felt unable to manage. Furthermore, contrary to the law of some countries, Canadian criminal law makes it possible to charge someone with a theft committed against one's parents or grandparents, thus opening the door for victimised parents to complain about their children's larcenies. In practice however, thefts against parents often led to prosecutions for incorrigibility, especially if they were repetitive. Therefore, one can see that the Canadian legal context allowed for people other than the police—and particularly parents—to initiate legal proceedings in the juvenile court.

2.1 Who Were the Complainants?

In our Juvenile Delinquents Court sample, we have an indication of the complainant's relationship to the offence or the offender in 54% of juvenile cases.[7] The police generated 47% of these complaints, family members 25% (parents in most cases), victims or their representatives 15% and various social services and juvenile institutions 12%. In cases where complaints were introduced by family members, the parents acted as plaintiffs in most cases: the mother in 55% and the father in 34% of cases.

[6]The legal category referred to as 'incorrigibility' was created in 1912, in a provincial law passed at the request of Judge Choquet of the Montreal Juvenile Delinquents Court. It included such behaviour as deserting or abandoning the parental home, habitually disobeying the parents' lawful and reasonable orders, being habitually idle, being unmanageable or incorrigible, or habitually making use of obscene or indecent language or being guilty of immoral conduct (sections 4 and 5 of the *Act to amend the Revised Statutes, 1909, respecting Juvenile Delinquents*, Statutes of Quebec, 1912, chapter 39, amending section 4036 and adding sections 4036a and 4036b to the Revised Statutes of Quebec, 1909).

[7]This proportion varied through time. It was as low as 9% in the years 1912–1914 and then increased steadily, to reach a high of 86% in 1945–1949. Over time the court staff became increasingly careful at recording this information in the court's register. Thus, the early years of the court are under-represented in our results, whereas more recent years tend to be over-represented. This should be borne in mind when looking at the results.

These data confirm that parents frequently initiated court cases by acting formally as complainants. One should add that there were also situations where they prompted court interventions in pre-existing cases. When a child had been found guilty of an offence, the law provided that he would remain under the jurisdiction of the court until the age of 21. The judge could order further measures at any time, even in the absence of any new offence formally ascertained by a new charge and a new record.[8] We have found frequent instances where parents who were having a hard time with a child previously convicted of some offence came back to the court and asked for the judge's intervention to help them cope with a difficult situation. Such parental requests were noted in court records. Yet, since they did not involve any new formal charges and were not considered as new cases, they are not included in the above data and we cannot obtain an accurate count of them.

Another more informal procedure leads one to believe that further actions by parents did exist, but are not reflected in our data. The first annual reports of the court refer to a high number of cases that were dealt with informally, without any record being opened for them. There appeared to be an informal selection procedure that took place as a very first step and that resulted in elimination of numerous cases from the formal judicial process, some of which being possibly triggered by parents.[9] In later years, there are clear indications that probation officers often met with parents and discussed their child's situation before a decision would be made to introduce a formal complaint. One may assume that parents frequently played a key role—as initiators or otherwise—in many of these instances of which we know relatively little since no precise records were kept about them due to their informal character. Had these practices been sufficiently formal to be reflected in the figures, the number of cases where parents took action to seize the court would have been even higher than what the above numbers suggest. Therefore, one should keep in mind that the quantitative data that we can provide displays only part of what parents actually did to prompt court interventions.

[8] Despite the fact that the law empowered the judge to intervene until the youth was 21, in practice such interventions hardly occurred once the latter had reached the age of penal majority, that is the age from which a person was considered an adult for criminal law matters. In Quebec, the age of penal majority was established at 16 until November 1942, at which time it was raised at 18.

[9] See Trépanier (2000: 75–76).

2.2 Who Were the Children?

What indications do we have about the children with regards to the new cases initiated by their families? And how do they compare with those whose proceedings were introduced by other people?

In those cases where the status of the plaintiff is known, that plaintiff was a family member in 45% of girls' cases and in 20% of boys' cases. Boys made up 65% of cases initiated by their families and 85% of other cases—which is largely explained by the fact that boys made up for 82% of the total sample, contrary to 18% for girls. In contrast, girls were involved in 35% of cases introduced by family members and only 15% of other cases. What these figures indicate is that (1) boys were prosecuted more often than girls, either at the initiative of their families or others; but that (2) girls tended to be proportionally more involved than boys in cases initiated by their families and less in cases introduced by others. Boys tended to engage in activities that were more likely to be denounced to the court by people outside of their families, such as victims or the police, whereas girls tended to be brought before the judge more than boys as a result of family concerns.

The age distribution is relatively similar among both groups brought to court by their families or by other people. The larger groups consist of the 14- and 15-year-olds, with fairly significant numbers in the adjoining groups aged 12 and 13, as well as 16. A slight difference can be observed for the 14–16 age group, which accounted for 55% of denunciations made by families and 48% of those made by other people. Yet, by and large, one can say that the 14- and 15-year-olds were those most frequently brought to court in both groups.

2.3 What Behaviour was Alleged Against the Children?

Table 1 indicates the nature of the charges laid against the children, both in cases initiated by families and in other cases. Differences between cases initiated by family members (essentially the parents) and others are striking.

Four complaints out of five (80%) laid by family members were based on the incorrigibility of the child, whereas the proportion was only 6% when plaintiffs where not family members. Even though their number was much lower, complaints related to desertion from home or from some other place where the child was supposed to stay were made more

Table 1 Behaviour alleged against children and relationship of complainants with children (family or others) (Montreal Juvenile Delinquents Court, 1912–1949)

Nature of complaint	*Complaint by family (N)*	*Complaint by family (%)*	*Complaint by others (N)*	*Complaint by others (%)*
Incorrigibility	894	80.1	199	6.0
Desertion	95	8.5	71	2.2
Thefts	48	4.3	1283	38.9
Others	79	7.1	1749	53.0
Total	1116	100	3302	100

often by the family than by other people. The pattern is entirely reversed in cases of theft, which accounted for only 4% of charges laid by family members but for 39% of those laid by other people, as well as in the category of 'other complaints', which made up only 7% of charges by family members but 53% of those laid by other people.

Since the category 'other complaints' concerned mostly various types of behaviour prohibited by criminal or other penal law, the trend that emerges from these findings is that charges related to (mostly petty) criminal behaviour were laid most of the time by persons outside the family, whereas those that had to do more with problems associated with raising difficult children (incorrigibility and desertion) were brought to the attention of the court primarily by the family. Contrary to an adult criminal court, the juvenile court's role was not limited to sanctioning criminal behaviour. It was also used as a support for the education of some children identified as problematic, whom the family felt unable to control. It comes as no surprise that those cases where the intervention of the court was requested by families were precisely those where parents felt a need for some outside support to ensure the education of their children. They were at the origin of court cases primarily in situations where the alleged behaviour of children was part of the family life sphere.

That is not to say that such behaviour was totally foreign to criminal law. A look at the facts alleged in complaints for incorrigibility reveals that theft was frequently among them, particularly—but not necessarily—when committed in the home (from parents or siblings). A fairly typical example of a complaint for incorrigibility can be found in the file of Ernest, a 16-year-old boy brought to court for having 'been habitually disobedient to his mother, addicted to stealing, lying,

associating with bad companions, keeping improper hours, failing to keep steady employment'.[10] Legally, the facts related to stealing could have led to theft charges. However, complaints by parents tended to be dealt with under the label of incorrigibility and theft could be just one among several behavioural problems invoked about the youth. Petty criminal behaviour and incorrigibility were not mutually exclusive legal categories. Incorrigibility seems to have been used especially—yet not solely—when such behaviour occurred in the private sphere of home.

Were there any gender differences? An examination of selected legal categories reveals that boys were charged with theft and incorrigibility more often than girls. They accounted for 90% of theft and 68% of incorrigibility charges. Since two thirds (65%) of the cases initiated by family members concerned boys, the latter were over-represented in the (infrequent) theft charges laid by families, but not in the (frequent) family complaints for incorrigibility.[11] Girls accounted for a majority of charges laid by families in two (not frequently used) categories: desertion (58%) and child protection (68%).

One is struck by these patterns that seem to be consistent with attitudes frequently observed in the upbringing of boys and girls. Girls were often viewed as being in greater need of protection than boys. Their families reacted perhaps more strongly to their desertion from home than in the case of boys, especially from fear of sexual activities that could occur on such occasions. While away from home, some girls did have such activities that were impossible at their parents home, either with boys to whom they felt attracted to or through prostitution that was used as a means of survival in the absence of resources usually provided by the family. As for boys, family reactions seemed to focus less on those issues and perhaps more on other types of behavioural problems such as thefts. Yet one must be cautious about drawing firm conclusions from these data. Frequencies were relatively low for some of the categories. Furthermore, these categories were not all mutually exclusive: such behaviour as theft at home or desertion were frequently dealt with under the label of incorrigibility, a fairly inclusive category whose elements would deserve further analysis.

[10]Court file no. 7450/1944.

[11]The high number of incorrigibility cases among children brought to court by their families is likely to be responsible for the similarity in patterns observed in the two groups.

The conclusion that emerges from this quantitative analysis is that families—usually parents—acted officially as plaintiffs in one case out of four, in addition to the role they are likely to have played in cases either dealt with informally or brought back before the court without any laying of new charges. They often had an active stance and were not always mere objects of interventions. The proceedings they initiated were aimed predominantly toward mainly male adolescents (14–15 year olds). Incorrigibility was the behaviour most frequently alleged by parents, contrary to other complainants. There are indications that conducts for which families requested court action were not gender neutral.

Beyond what is revealed by these trends, is there more to be learned from the court files about the expectations expressed by the families and the ways the court responded?

3 Requests and Responses: Families' Expectations and Court Reactions

Interactions between family members and court officials were sometimes reflected in reports by probation officers or various specialists, in minutes of hearings, in letters or in other court file components. Of course, these documents may be suspected of sometimes containing information that was selected and reported so as to highlight a point of view, or support a decision, recommendation or request. One would have wished to have more frequent access to letters or testimony transcripts that would have provided first-hand materials. Nonetheless, those sources that were available do offer interesting insights into some of the interactions that took place in court.

The court's disposition concerning measures to be imposed on youths was a key issue over which exchanges were most likely to occur between the judge, parents and children. Requests, recommendations, wishes or expectations could be expressed by parents and children. The judge could agree or disagree with them, and arbitrate between them. Placements were ordered only in a minority of cases—far less often than probation or suspended sentences, for example. Yet they remained important, both symbolically and in reality. They were somehow the 'end of the line', the solution that the court could use—and threaten to use—when nothing else seemed to work. For the children, they involved being away from home for long periods of time: two or three years and

sometimes more. Reform through placements was viewed as requiring time. Consequently, they were not ordered lightly and could be the subject of discussions between the actors involved. How did interactions unfold, depending on whether placements or other measures were considered?

3.1 Placement Requests, Acceptance and Refusals

Parents' requests for placing their child were most likely to occur in those cases where parents were the plaintiffs. There were also instances where children themselves asked to be placed, although a more common reaction among those children was not favourable to the prospect of placement. And desires expressed by families and children could be either agreed upon or rejected by the court. In turn, these various situations can be considered.

3.1.1 Placements Made at the Request of Parents

The family role in placements was particularly obvious in so-called 'voluntary placements', where parents asked for the placement of their children in a reform school and agreed to pay for their upkeep in the school. This was sanctioned by a committal order issued by the judge, who was in no way bound by the parents' request. These were by no means rare events. An examination of the court's annual reports for the years 1915–1919 reveals that nearly one-quarter of placements were made this way,[12] which shows how important the family role was in the committal of numerous children.

Parental requests were not limited to 'voluntary placements'. Some were expressed in cases not officially labelled as voluntary in spite of parental consent, where the judge ordered placements whose costs did not have to be borne by the families. The motives alleged by parents involved thefts, desertion from home, immoral behaviour (especially for girls), refusal to attend school, work or contribute to home care or costs. Other cases involved family circumstances over which the child had no control, such as the death or 'disappearance' of one of his parents.

[12] During those years, 36 of the 159 reform school placements appear to have been such 'voluntary placements'. See Trépanier (2000: 82–83).

An example is that of John, a sixteen-year-old boy whom his mother brought to court with his brother because, according to the probation officer, 'they were disobedient, would not work, stayed out late at night, and were unmanageable in the home', in addition to refusing to attend school. The mother had tried to place her sons herself but her attempt had failed since the boys would not stay at the institution. She asked the judge to hold them in detention for a while 'to give them a good lesson', but the judge refused and said he would make them wards of the court and send them back home. The mother then 'begged that efforts be made to place them again' at the institution where a placement had been tried previously, which was granted by the judge. The director of the institution 'finally agreed to take them and give them another chance although he had not [had] very much success previously'.[13] This case illustrates that parents could show determination in their efforts to obtain a placement, and that the intervention of the court could be used as a key factor in convincing an institution to take youths it was reluctant to admit, with the hope perhaps that the authority of the court would bring the boys to abide by the rules of the institution.

Another example is that of Dennis, a fourteen year-old boy whose mother was dead and who lived with his father. He had already been placed in the past. His father brought him to court for incorrigibility and theft. According to the probation officer, 'he [had] bad companions and his major failings [were] smoking, going to the cinema and theft'. His thefts had caused his father to loose his job, apparently because he had stolen money from his father's pockets that belonged to the latter's employer. The judge had written to the employer to explain the son's responsibility and repentance, pleading that it would be 'unfortunate that the father should suffer further more than he should for his son's behaviour'. The probation officer suggested that a placement in reform school might be appropriate, adding that 'this would please the father very much'. The judge agreed and committed the boy for two years.[14]

As a measure, placements remained a last resort. In many cases the court ordered them only after trying alternative solutions, despite sometimes repeated requests from parents. A good illustration is provided by the case of Georgette, a fifteen-year-old girl brought to court several times following successive complaints by her parents and the probation

[13]File no. 12/1940. The quotations are from the probation officer's report.

[14]File no. 478/1936.

officer. Daily interaction with her family was difficult. The family was in a state of poverty, the father being out of work and the mother working as a charwoman. Georgette pretended falsely that she had a job and invoked various reasons for not giving her mother the wages that she did not earn. Instead she obtained some money from a man she followed to various places. She asked the judge not to tell her parents that she had been 'debauched' since this would cause them great sorrow. She begged for a last chance, promising that she would behave. Despite previous unsuccessful attempts, the judge sent her back home. Two further complaints by the father alleging Georgette's immoral conduct were necessary before the court finally did order a placement.

3.1.2 Placements Made at the Request of Youths

Parents were not the only family members who could have some influence over a placement decision. So could the child or youth, who could be heard in court. This occurred especially in cases where the boy or girl felt that his family was problematic to the extent that he or she did not want to live with them any more. Henry, a thirteen year-old boy, can be viewed as an example. He exhibited various kinds of behavioural problems: truancy and troublesome behaviour at school, thefts of money at home—particularly to pay for cinema admission where he went frequently, desertion from home for periods of up to five consecutive days, attraction to adult criminals who used him as an instrument. His father brought him to court with a charge of incorrigibility and theft. A psychological assessment revealed that he suffered from fairly serious mental retardation, a situation that seemed to have never been really understood by his parents nor the school. According to the psychologist,

> the boy's difficult behaviour is essentially an expression of marked feelings of insecurity which he has had for many years. He has been very unhappy both at home and at school and the family group has not realised his limitation and has unwittingly helped to accentuate these feelings of insecurity to a point where he had made a suicidal attempt several months ago.

The probation officer echoed the psychologist's mention regarding the suicide and reported that, on many occasions when his mother gave him something to drink, he told her: 'Why don't you put poison in it, it would be the best thing'. Following these assessments, several attempts were made by the court to leave Henry at his parents' home while

imposing conditions upon him. Repeatedly he violated the conditions and was brought back before the judge, who sent him back home, maintained the conditions and added a suspended sentence to reform school. After a while, Henry came back to the court on his own volition, told the probation officer he refused to return home and asked to be sent to the reform school for life. At his request, a court hearing was arranged and he was committed to the reform school for three and a half years.[15]

3.1.3 Placements Refused by the Court

Parents and youths could express requests or wishes, but the judge could decide otherwise: he was not a mere puppet that they could manipulate. The judge—as well as his 'right arm', the probation officer—could appreciate the situation very differently from those actors such as parents and children who were deeply involved and perceived solutions in a way that was anything but neutral. Court officials could view the circumstances of the case in such terms that parents and/or children would bear some responsibility for what happened and be blamed for it—a view that was not necessarily shared by interested parties. So there were obviously cases where the court felt it inappropriate to endorse these actors' recommendations to place some children.

The judge's opposition to some placements may flow from a reluctance to order a committal unless other solutions have been tried and proved unsuccessful, even if the child finally ends up in an institution after several attempts to leave him with his family. This can be seen in the above-mentioned cases of Georgette and Henry, whom the judge resisted in placing until he felt he had no other choice.

In other cases, the rejection of a request to place the youth was definitive. Robert's case provides an example. His mother brought him to court under a charge of incorrigibility. She alleged that he stole, insulted her, used blasphemous language in front of his brothers and sisters, ran about the streets day and night and frequented 'undesirable places'. She said that a year in reform school would be good for him in that he would learn a trade rather than run about the streets. However, the analysis of the situation revealed that Robert's unemployment was a core element in the conflict that opposed him to his parents. His father reacted strongly to the fact that he was out of work, calling him names such as 'big bitch',

[15] File no. 7/1938.

with the result that Robert did not want to see him any more. Robert blamed him for the fact that he had been brought to court and reckoned that his father wanted to get rid of him. His parents left him alone as long as he worked and brought home some money. The probation officer found that the father himself had been unemployed for 8 years and spent his days playing cards at a local club. He viewed the father's demands as unjust, and indicated that the father ought to set an example by finding a job for himself. He opposed the idea of placing Robert at the reform school, suggesting instead that the boy ought to go and work on a farm. His analysis had brought him not only to differ from the parents in his perception of the problem, but also to blame them for it. The court rejected the parental request.[16]

One might also quote the case of Alain, a fourteen-year-old boy, victim of a father who was violent towards all family members, particularly when under the influence of alcohol. According to his father who laid a charge of incorrigibility and theft against him, Alain was truant from school and ran about the streets. The boy complained about his father's drinking and violent behaviour. He reported telling his father he wanted to go to a boarding school or to work on a farm, but his father responded by saying that he would have him (Alain) contented by having him placed at the reform school. The probation officer concluded that Alain's behaviour would be quite different were it not for the father's drinking problem. He acknowledged the existence of problems in the boy's conduct but attributed the responsibility to his father's behaviour. The court refused to place him.[17]

3.1.4 Placements Refused by Youths

The prospect of a placement easily came to the minds of youths who had been found guilty of an offence. This was an option most youths wished to avoid for obvious reasons. A common way to try and convince the court was probably to express remorse and offer guarantees of improvements in behaviour in order to prevent relapses. This is illustrated by the case of Michel, a sixteen-year-old boy whom his father brought to court under a charge of incorrigibility for stealing, constant disobedience, refusal to work, lying, running about the streets and coming home

[16]File no. 178/1939.

[17]File no. 1444/1937.

late at night. The probation officer reported that Michel would like to work with a jeweller (which he had done in the past) in order to learn a good trade:

> If left free, he promises to behave so as not to come back to the court, to reimburse the money stolen from his father and to obey his parents. This boy has will and I believe he is good hearted enough to keep his promise. The ten days he spent in detention have certainly given him a lesson and I believe he is sincere when he tells me that, if returned home, it will be long before he might come back.

This pledge seemed to satisfy the judge, who agreed to take no further action.[18]

This attitude of submission to a perceived court's expectations emerges as a common—and common sense—strategy to avoid being sent to an institution. That is not to say that all youths endorsed it all the time, even among those who wanted to avoid placement. Some even used words that confined to bragging and bravado, such as those of Roger, a fourteen-year-old boy expelled from school for his difficult behaviour and described in a school report as 'a young bandit, a gang leader, one who terrorises the neighbourhood'. Another report portrayed him as saying that he did not fear the judge, the reform school nor anyone else and that he would rather be at the reform school than at home. These words of defiance contrast with the image he gave to the probation officer, who depicted him as someone who needed to be approached with kindness, thus showing that Roger could appear different—under different lights. It seems that the perception of the probation officer carried greater weight than that conveyed in the school reports—including the youth's boasting—since the court decided to leave Roger at home with a suspended sentence, thus giving way to what was probably the real desire of the boy.[19]

Thus, placements in institutions emerge as an issue over which family actors did take positions, either in their favour or against them, and the judge could agree or disagree with these positions, depending on cases.

[18] File no. 9277/1945.

[19] File no. 84/1934.

3.2 Requests for Measures Other Than Placements

Family members who initiated procedures concerning a child did not necessarily wish to obtain a placement. Their goals and motivations could be quite diverse, although a fairly common concern was to have the court help them and support their authority over a child whom they had some difficulty to control.

Some parents did not have a precise idea at first as to what measure they wished the court to impose. Such was the case of Paula's mother, who lived with her fifteen-year-old daughter and three other children, the father being dead for two years. After an unsuccessful intervention by the Big Sisters Association, the mother went to court and, according to the probation officer, 'asked what could be done'. Once a complaint was registered on the grounds of incorrigibility, the mother 'asked that [Paula] be placed under the supervision of the Juvenile Court and taught to be more respectful to her and behave in the home'. One may assume that the meeting with the probation officer contributed to the formulation of a more precise request, which the judge endorsed by leaving Paula at home while imposing some conditions upon her.[20]

Arthur's situation is similar. He was a twelve-year-old boy brought to court by his mother for incorrigibility. As some concerns were expressed concerning his intellectual abilities, he was referred for a clinical examination. The probation officer described the parents' expectations in the following terms: 'The parents rely on the Court and the doctor's examination for guidance to save their son, Arthur, from his blunder and correct his bad character'. Following the probation officer's recommendation, Arthur was left with his parents under the obligation to abide by some conditions.[21]

Other parents could have an idea of what they wanted, yet remained ambivalent and changed their minds. This occurred in the case of Teresa, a fourteen-year-old girl charged with incorrigibility at the initiative of her mother. In her initial report, the probation officer wrote: 'The mother wishes her daughter to be placed in a protection institution [… but she] will make as if she opposed the placement so that Teresa will bear her no resentment'. A few days later, an addendum by the probation officer specified that the parents had changed their minds and wished to send

[20] File no. 2/1934.

[21] File no. 7253/1944.

Teresa with her sister for the summer, and then to a boarding school during the school year. The judge agreed and left her under her parents' responsibility, with some conditions attached.[22]

There were cases where arrangements were worked out while the case was before the court. One may think that the dramatisation resulting from the intervention of the court—and perhaps some help provided by court actors—may have prompted family members to find some satisfactory solution to their problems. This is the case for Elsie, a seventeen-year-old whom her father brought back to court for desertion from home, contrary to the conditions imposed by the court thirteen months earlier. While away from home, she and a girlfriend had taken rooms with two Air Force members they had met at a restaurant. Elsie explained she was not prepared to come back home just to do the housework for the family. Her sisters offered to try to find her a job at the firm where they were employed. An agreement was reached to that effect, at everyone's satisfaction, and the judge sent her back home under the conditions that she does not cause any more grievances and that she behaves morally.[23] The role of the court was more or less to act as a pacifying agent for the family and to sanction the solution reached by family members themselves.

In other cases, parents did not wish their child to be placed but hoped that a brief remand in custody would serve as a lesson. André was a nine-year-old boy, who had already been before the court. His older brother had just been sent to reform school. According to the father, André tended to follow his brother's example, so he brought him back before the court 'to give him a good lesson by way of a week of remand in custody'. The judge did not impose any further measure.[24]

There were cases where the intervention of the court was set into motion in the context of parental conflicts over the custody of their children and where court officials acted somehow as conciliators. Jane was a seventeen-year-old girl charged with desertion from home at her mother's initiative. Her parents had separated and Jane lived with her mother, along with four brothers and sisters. The father had not paid the alimony assiduously, so that the mother required Jane's full pay to help sustain

[22] File no. 8526/1945.

[23] File no. 85/1942.

[24] File no. 1401/1933.

the family, to Jane's great resentment. Jane decided to go and live with her father who did not put the same obligation on her. Hence the mother's complaint for desertion, which she claimed aimed at locating where Jane was and have her return home. The probation officer brought the parents to agree on a number of things, including that the father should pay his financial contribution to the mother regularly and that it would be preferable for Jane to live with her mother, being understood that she should have to pay only 'regular board' and not to contribute to maintain her (unemployed) adult brothers and sisters who lived with their mother, and that her mother should be more considerate of Jane's needs and leave her the normal freedom for a girl her age. The probation officer's report does not tell of Jane's final reaction, but the judge put her on probation at her mother's home, thus validating the agreement.[25]

Parents' motivations in hoping for a sanction other than a placement could be personal and have nothing to do with their offending children. An example is that of James, a fifteen-year-old boy who, two years after a first court appearance, was charged with stealing a number of items (tyres, batteries, oil) at the garage where he was employed. According to the probation officer, the parents were very upset by their son's remand in custody. The 'father works in business [… and he] fears that some publicity might ensue. He will take any possible steps with the Court to solicit his son's release and he is prepared to pay for the damages'. Thus the father's anxiety for his professional reputation seems to have been part of the concerns that led him to request that his son be let free. Whatever reaction the judge had to that specific concern is unknown, but he returned James home with a suspended sentence matched with conditions likely to increase the parents' control over him (such as obeying his parents, being back home no later than 9:30 p.m. and handing his pay over to his parents who could thus better oversee his activities).[26]

One might also refer to those numerous cases where a youth had already been committed to an institution by the court and where the parents asked the judge to release their child before the date set in the initial decision. Unlike the situations described above, these interventions by the parents did not take place at the time of the court's decision concerning the measure to be imposed on the youth. Rather it consisted

[25] File no. 38/1948.

[26] File no. 954/1942.

of a request to review that initial decision in order to bring a placement to an early end. Such cases were frequent. Normal practice seemed to be for the judge to consult with the institution before making a decision. Such requests were not always successful, but many were.

Thus it seems clear that parents' interventions before the court did not aim only at having their children placed, far from it. In many instances parents pleaded for other types of measures, or reached the conclusion that other measures were preferable. Court officials—particularly probation officers—seemed to play a sometimes important conciliatory role between family members. Probation officers were the social workers of the court; through their interventions—and not only those of judges—the juvenile court sometimes played the role of a social service. Parents and children could have some influence over court decisions by expressing their views to them. If they succeeded in convincing the probation officer of the merits of their perceptions, they could have an impact on the officer's recommendation which carried considerable credibility in the eyes of the judge. Either way, through initiating cases and expressing their views and requests to the judge or to the probation officer, parents and children could impinge upon the course of juvenile court actions and decisions and not be mere spectators of their own fate.

4 Conclusion

Earlier historiography on juvenile courts has been split between various trends. Among them, some authors have presented the emergence of juvenile courts as a progressive humanitarian reform, often promoted by philanthropists whose concern was to treat children in a compassionate way and prevent them from becoming involved in a life of crime, both in their interest and that of society. Others have depicted juvenile courts as a strategy designed by dominating groups in society to exert stronger and more extensive control over lower-class children and their families to maintain a social order that was auspicious to elite circles.[27] Either way, emphasis was put on the role of those who planned, built and operated the system: legislators, lobbyists, judges, prosecutors, social workers and

[27]For an interesting account of this earlier literature—at least in the USA—see Mennel (1983). Some of the works that take place in this earlier literature have become classical pieces. One may think for example of Anthony Platt's (2009) *The Child Savers*. For a relatively recent reappraisal of social control perspectives, see Fecteau (2004: 21–46).

so on. Implicitly or explicitly, children and their families were viewed as subjects of court interventions defined as benevolent or oppressive, depending on theoretical assumptions, and where no room was allowed for significant personal initiative by family members.

More recent research has challenged such perspectives. This is particularly true of studies focusing on girls' cases, where parents' concerns with their daughters' conduct—particularly but not exclusively moral conduct—were found to use the court as an instrument to control their behaviour. An example is Mary E. Odem's study of girls brought before the Los Angeles County Juvenile Court, where family members emerged frequently as actors who initiated court procedures and influenced their course.[28] Similarly, on the other side of the Atlantic, Margo De Koster found that two girls out of five among those who had been referred to the Antwerp Juvenile Court were prosecuted at the initiative of their parents.[29] Canadian studies by Tamara Myers in Montreal and Franca Iacovetta in Toronto reached similar conclusions.[30] In a comparative study of a French and a Canadian court (Angers and Montreal), Niget and Trépanier found that the phenomenon of family initiatives in court proceedings was present in boys' as well as girls' cases.[31]

Our research points in the same direction. Family members were responsible for initiating an important number of prosecutions, particularly in cases where children or youths were charged with 'incorrigibility', a legal category that encompassed conducts that often took place in the home or in relation to it. Both children and family members made requests and expressed views. They interacted with each other as well as with court officials—who could agree or disagree with them—in a way that gave them a say in a decision-making process that was to affect them. As summarised by Mary Odem:

> Middle-class reformers and professionals created and administered the juvenile justice system to promote their own agenda: to control and reform the socially unacceptable habits of working-class youths and their

[28] Odem (1995) found that families had initiated 47% of juvenile court cases against girls (pp. 135, 158). She quotes many examples that illustrate how family actors operated in that judicial environment (see Chaps. 2 and 6).

[29] De Koster (2004).

[30] Myers (1999), Iacovetta (1998).

[31] Niget and Trépanier (2005).

> parents. But once this system was in place, working-class parents attempted to use it for their own purposes, namely to restrain children whose behaviour conflicted with family needs and expectations.[32]

This could occur in a context where families and the court shared similar views as to the behaviour expected from youths. Our research confirms that conclusion; it further indicates that children could also be heard, not only their parents. There is no doubt that a somewhat different picture would emerge from the significant body of cases where complainants were either victims or the police. These cases involved primarily charges of theft or other criminal offences. Neither children nor their families had taken any steps—nor had wished to take any—to bring these events to the attention of the court. Yet one would be ill-advised to assume that they always refrained from expressing their views and interests to court officials. This would have been inconsistent with the workings of the court in family-initiated proceedings, as well as with the child-welfare orientation of a court whose mandate it was, in Getis's words, to implement 'the law's uneasy combination of sympathy and coercion'.[33]

Humanitarian as well as class interests of philanthropists did play a central role in the advent of the juvenile court. But those who were its target population did not remain merely passive spectators of a fate elected exclusively by court officials. We have clear evidence that they acted often—though not always—so as to impinge on that fate.

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CHAPTER 14

Conclusion: Towards a Transnational History of Youth in Justice Systems

Jean Trépanier and Xavier Rousseaux

Looking back at the various chapters of this book, some thoughts emerge—afterthoughts, might we say? Nearly every one of these chapters is devoted to a subject that takes root in a specific national or local environment. Would a transversal approach not help link these different contexts? This conclusion will suggest a few pointers in view of building a transnational history of youth in the justice system.

1 From Punishment to Welfare?

The title of the book suggests that, during the period of 1815–1950, interventions on children by systems of justice transitioned from an orientation based on punishment to one based on welfare. At the beginning of the nineteenth century, the criminal law usually applied both to adults and children, with only rare adjustments. Its inspiration came from the

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Classical School of criminology and the way to deal with offenders was to punish them. By the mid-twentieth century, policies of justice that were oriented towards the welfare of children had achieved dominance. One may therefore conclude that the title reflects the reality it refers to. However, like most titles, it is bound to be too brief to convey the nuances that can be found in the book itself. The following ones are worth recalling.

First, the idea of child welfare or child protection mainly grew from the 1890s onwards. Industrialisation and urbanisation had transformed childhood in respect of (among other things) labour and family life. There was a growing acceptance of state intervention when parents did not live up to basic expectations. The state could then step in and provide the child with the protection and welfare that was needed. This approach was quickly extended to delinquent children, whose behaviour was perceived to be the result of social and familial conditions, including inadequate parenting: the aim was not to punish the children, but to protect them from those factors that had led them into delinquency and for which they were not viewed as responsible. This late nineteenth-century perspective would become the basis for the child welfare orientation of the juvenile courts in the twentieth century.[1] In the earlier part of the nineteenth century, the main concept that inspired the development of institutions of confinement for delinquent children and youth was not that of welfare, but that of reform. Reform schools, reform prisons and reformatories (or similar institutions with different names) were created with the aim to reform delinquents, that is to bring them to change their behaviour. This involved drastic changes with respect to penalties, the most obvious being their length: bringing a youth to change his/her behaviour takes time, so that youths previously sentenced to a few weeks in prison were sent to reform institutions for a few years. In Chap. 3, Peter King shows that, in England, considerable optimism was expressed about the reformability of juvenile offenders during the first quarter of the nineteenth century, but this was followed by a reaction against prison reformers who came under attack for being too soft on prisoners. However, with a new swing of the pendulum, by the 1840s

[1]For a comparative survey see Dupont-Bouchat et al. (2001). See Peukert (1986) and Malmede (2002) for Germany; Gibson (2003) for Italy; Schmidt (2005) for France; Dupont-Bouchat (1996) for Belgium; Livie (2010) for Great Britain; and Mill (2010) for Russia.

the language of reform and reformability was the key emerging discourse and, by the 1850s, was the dominant—if still heavily contested—one.[2] Thus, one might say that the path leading from punishment to welfare was not direct: it had to go through an intermediary formulation, that of reform. As seen in Chaps. 3 (for England) and 4 (for Montreal, Canada), reform schools gradually replaced prisons as places of confinement for juvenile delinquents.

Second, the welfare model that was embodied in the legislation of most countries was not 'pure'. Elements inherited from classical criminal law and criminal procedure—such as some procedural safeguards—were kept in juvenile court laws, so that the new laws were in fact hybrid, borrowing as they did from both classical criminal law and the welfare model. It is in that sense that Garland refers to *penal-welfarism*,[3] which is indeed a more accurate way to qualify the result of the insertion of the welfare model into various countries' legislation.

Third, considerable variations emerge if we look at the degree of endorsement of the welfare model from country to country (or even within a country), or over time. For example, the laws of 1908 and 1912 in Belgium, Canada, England and France all created juvenile courts, but the welfare model was far more present in the laws of Belgium and Canada than it was in those of England and France. However, in later years, England and France joined in the movement. And if there is a country to be mentioned as an example of successive important changes, it is the USA. Yet, throughout time, those countries referred to their courts as juvenile courts (or the equivalent), even though they were using the same term to describe very different realities. The extent to which their respective juvenile courts endorsed the welfare model varied considerably between countries and over time. In that sense, one could say that there is no such a thing as '*the* juvenile court', but that there are many different juvenile courts.

Fourth, laws and official discourses may express an endorsement of the welfare model which is not necessarily followed in the actual daily

[2] In Chap. 3, Peter King adds nuances that bring to light the complexities of the situation. On the one hand, institutions that displayed many of the characteristics of reform institutions existed before the expression *juvenile reformatory* came into use. On the other, it is not always clear how juvenile reformatories were different from juvenile prisons or juvenile penitentiaries.

[3] Garland (2001: 3).

practices of the justice system. Lack of resources is constantly referred to as the main cause for the lack of performance of the system. Be it for that or for other reasons, one must not take for granted that practice does indeed follow official discourses. As Garland writes: 'Do not mistake talk for action. The rapid and sometimes radical changes that occur in official policy statements must not be mistaken for alterations in actual working practices and professional ideology'.[4] The US Supreme Court was on point when it declared in a famous 1966 case that '[w]hile there can be no doubt of the original laudable purpose of juvenile courts, studies and critiques in recent years raise serious questions as to whether actual performance measures well enough against theoretical purpose'.[5] To determine the extent of adhesion to the welfare model—or to any model for that matter—one must look at practices, not only at laws and discourses.

It may be worth adding that a good look at actual practices may also help to discover changes that are introduced in the operation of the justice system before any legislation is passed to provide them the required legal legitimacy. Peter King's Chap. 3 provides an interesting example in which English magistrates found ways to try summarily juvenile offenders charged with felony long before Parliament gave them formal permission to do so (in 1847 and later), thus exceeding their legal powers. Their concern was to reduce remands of children to prison while awaiting jury trial—where they were encouraged to further immorality by older prisoners—and to impose lesser punishment on them when they were found guilty. Radzinowicz and Hood also show that the first children's court in England was established in Birmingham in 1905 (three years before the relevant legislation came into effect), and was soon followed by 10 other county boroughs.[6]

The conclusion is therefore that the expression 'from punishment to welfare' in the title is indeed justified. However it should be read in light of the following: that titles have to be short; that a longer title referring to the successive stages of punishment, reform and welfare would have better reflected the evolution of actors' views; that the introduction of welfare orientations in legislation and policies resulted in hybrid perspectives borrowing both from classical criminal law and child welfare;

[4] Garland (2001: 22).

[5] *Kent v. United States*, 383 U.S. 541 (1966).

[6] Radzinowicz and Hood (1986: 630–631).

that the degree of endorsement of the welfare model varied considerably between countries and over time; and that the reality of daily practice in the justice system may differ from intentions expressed in legislation and official discourses.[7]

2 Meaning of Words and Comparative History

This brings us to one of the numerous pitfalls of comparative history: words do not necessarily carry the same meaning in various places and over time. For example, what is a juvenile court? Is hearing children's cases separately from those of adults sufficient to justify the title? Is a commitment to a child welfare approach required—and if so, to what degree? Do judges have to embody the paternal/maternal approach that is often associated with the welfare orientation? Do they have to be supported by probation officers? Should administrative (rather than judicial) bodies such as the Norwegian child welfare boards be considered the equivalent of juvenile courts? The answers to these—and other—questions may show that a juvenile court in a given state may be quite different from that in a neighbouring country. Yet, people are likely to use the same expression (*juvenile court*) to refer to most of these different realities. And they may not be fully aware of the extent to which they are (wrongly) ascribing a similar content to the expression.

Other words and expressions can also be misleading. *Attorney General* is an example. In some countries (particularly in Continental Europe), the Attorney General is the member of the judiciary who is responsible for prosecutions. Elsewhere, the Attorney General may be the Minister of Justice, who is often an elected member of Parliament, and who may also be the Government's legal officer.

Misunderstandings may also be generated by the specific use that can be made of an institution. Janice Harvey's Chap. 5 provides an example. Following the English model, the Province of Quebec (in Canada) passed laws in 1869 to create reform and industrial schools. Reform schools were for young offenders sentenced to confinement, whereas industrial schools were meant to house abandoned and neglected children. The Montreal Ladies' Benevolent Society had been running an incorporated charity since 1832 to help children of poor single-parent

[7] Oberwittler (2000).

families who were temporarily unable to care for them because of poverty, illness, death or family problems. In 1883, it obtained from the government the status of industrial school, with the funding that accompanied such recognition. The institution remained basically a charitable organisation, in which some of the children were placed under the Industrial Schools Act but were treated exactly like the other children. In sum, it was a charitable organisation dedicated to helping poor families, which remained what it had been for years, but which financed part of its activities using its industrial school status. This status was thus used as a form of assistance to families who were requesting aid, which was not the intended practice for industrial schools.

The way some words are used (juvenile court, Attorney General and industrial school are only examples) can thus create pitfalls in comparative history. Vigilance is essential. At the same time, the growing international circulation of concepts, words and ideas justify the project of developing a transnational genealogy of reform ideologies.[8]

3 The Actors

New policies often require new actors. Those who have been in place for a long time are more likely to stand in the way of change than newcomers, because they have a vested interest in continuing to act in a way that is familiar to them. The implementation of new goals and visions requires people who share the new orientations.

3.1 New Actors in Institutions of Confinement

Nineteenth-century transformations included formal as well as informal changes to the ways children and youth were dealt with by courts. Yet the most important transformation occurred inside the institutions in which those minors were confined, either on remand or when sentenced to prison. Even some of the major changes brought to judicial procedures, such as trying summarily children charged with serious crimes, were aimed at reducing children's detention with adults who were likely to corrupt them. Pieter Spierenburg and other specialists of early modern confinement have pointed out that, having emerged under various forms

[8] See Leonards (2002, 2004), Niget (in press), Pérrissol (2014).

(hospitals, workhouses, asylums) from the sixteenth century on, confinement under constraint had been largely used by local authorities for 'disorderly' juveniles.[9]

Over time, special places were established for the confinement of minors that were separate from those of adults, and the idea that such institutions should aim to reform children gained acceptance. How different were those reformatories or reform schools from the institutions that had preceded them? We know that, in some places, the management of reform schools was entrusted to new actors. An example is that of Montreal, in Canada, where the new reform schools for boys and girls created at the beginning of the 1870s were run by religious communities—contrary to the institutions they had replaced, where the staff was made up of civil servants. It was expected that brothers and nuns would better promote the reform of children than would the guards. Yet we have only limited indications of the extent to which reform institutions in various countries were really different from the juvenile prisons or penitentiaries that they replaced—a hypothesis about which Peter King expresses some doubts (in Chap. 3).

3.2 New Actors in the Court System

The beginning of the twentieth century was marked by the advent of juvenile courts that endorsed and promoted—to varying degrees—the child welfare model. As explained in Chap. 2, both the views of the Classical School of criminology and the liberal ideology of the nineteenth century were being challenged. Children's behaviour was no longer perceived as the result of free and rational decisions. Rather, it was associated with factors external to the offender over which the child had no control, such as genetics, family environment and social surroundings. Punishment thus became irrelevant. As the Positivist School argued, the offender should not be punished for what his environment had made him do; instead, he should be protected from those factors that contributed to his becoming a delinquent. Meeting children's welfare and protection needs was perceived as the best means to protect society, thus blurring the distinction between delinquent children, on the one

[9] Spierenburg (1984, 2007). See also Chap. 3 by King; Lis and Soly (1996) and Bretschneider (2008).

hand, and neglected or dependent children, on the other. A child-welfare approach was thenceforth deemed to be appropriate for both delinquent and neglected children. This would have a drastic impact on the way children were to be dealt with by the courts: both the principle of proportionality and the notion that dispositions would be in force for a determinate period chosen at the time of sentencing were rejected; the choice of measures and their duration were tailored to address the individual needs of the child, and could be changed over time depending on the evolution of such needs; judicial actors were to be vested with vast discretionary powers to adapt decisions to each child; and procedural safeguards were to be kept to a minimum, since they were viewed as enabling children to protect themselves against interventions that were in their own interest—after all, it would be part of the judge's responsibility to ensure that everything was done according to the child's best interests. As for the number of judges or magistrates, it was felt that a single judge was preferable to the tradition of a number of countries to have benches of several judges or magistrates. While acknowledging that a plurality of judges was likely to better protect accused persons against ill-advised decisions, the presence of only one judge was viewed as facilitating the kind of informal atmosphere that could lead to better personal exchanges between the judge, the child and the parents.

3.2.1 The Judge

This new setup drastically changed judicial functions. The judge was no longer a mere arbiter deciding cases after hearing opposing parties. He/she was there to make all the inquiries and decisions that were necessary to meet the child's needs, just as a father or a mother would do. The new judge had to embody this benevolent and paternal (or maternal) role, and be able to communicate and establish a relationship with the child according to this model. The images projected by some US juvenile court judges were often given as examples—such as those of Judge Richard Tuthill, from the first US juvenile court, in Chicago, and of Judge Ben Lindsey of Denver, Colorado. In practice, how did judges who were appointed actually fit that model?

One has only limited data to address that question. We know that some judges stand out. Such is the case for Belgian Judge Paul Wets, who is mentioned by Aurore François in Chap. 11. He was already a children's judge during World War I and remained so, as President of the Brussels Children's Court, until his death in 1942. A pioneer, he

has been described as a legendary figure in the field of child protection in Belgium and as a strong supporter of the moralising that the Child Protection Act of 1912 had made possible.[10] The author of several books relevant to his work as a judge, he was elected President of the International Association of Children's Courts Judges at its first congress in Brussels, in 1930.

Similarly—though on a smaller scale—one might think of Judge François-Xavier Choquet, who became the first judge at the Montreal Juvenile Delinquents Court (Canada) in 1912. He had previously worked as a lawyer, after which he had been a police magistrate and a judge at the Court of Sessions of the Peace for 13 years. A supporter of the Juvenile Delinquents Act of 1908, which allowed for the establishment of juvenile courts in Canada, he had been chosen to be the President of the Montreal Children's Aid Society upon its creation in 1908—his wife being one of the Vice-presidents. He had been a key actor in the establishment of a juvenile court in Montreal in 1912. His commitment and his moral authority were such that he was the obvious candidate for the function (in addition to the fact that he had the political contacts that were necessary at the time to be appointed as a judge). He was the pioneer who presided over the establishment and the consolidation of the court for a decade.

His successor did not have the same credibility. After considering, for a while, appointing someone other than a lawyer to reflect the specificity of the juvenile court, the government changed its mind and appointed Joseph-O. Lacroix, an attorney whose previous practice had nothing to do with children, and whose only merit, according to the Leader of the Opposition at the Legislative Assembly, had been to help the government's Liberal Party in an election campaign.

Another example is that of Judge Jean Fernex, the first judge or the Geneva Juvenile Court who, according to Joëlle Droux and Mariama Kaba (in Chap. 6), was 'a shadowy figure', a 'far cry from the idealised expert and paternal judge advocated for during the parliamentary debates, but a sound choice if one considers his experiences as a former director of a prison where delinquents under 20 years old amounted to a virtual 25% of the inmates'. The little information available on him presents him as a rather conservative person who claimed to be on the same

[10] Bost and François (2009: 34).

wavelength as his fellow citizens. He 'obviously saw his tenure as a constant struggle against youth's modern ways of life, their consuming and socialising activities often implying the mixing of genders. He thus mirrored a similar preoccupation stemming from many school authorities, philanthropic activists and youth movements' leaders during the interwar years' (Chap. 6). Some years after its adoption, a revision of the 1913 Act was debated in Parliament and 'Judge Fernex's activity came under extensive criticism. It was then stated that he "did not have the aptitudes one had a right to demand of a children's judge". Yet, his conservative view of youth seems in accordance with that of contemporary interwar *moral entrepreneurs*' (Chap. 6). To be fair to him, it should be added that he faced a considerable workload without any secretarial assistance, with the result that he himself deplored the considerable delays in the processing of cases: he simply did not have the time to carry out some aspects of his work that were deemed necessary for the rehabilitation of children.

These are only examples that can be mentioned, but much more would have to be known to provide what could be viewed as a fair representation of a global image. Yet they show that the quality of judicial appointments and the correspondence between the profiles of the appointees and the model of the benevolent and paternal judge are quite variable.

As for the issue of a single judge versus a bench of judges, it was resolved in various ways. Some countries, such as Belgium, Canada or the USA, opted for a single judge, whereas others, such as England, kept to their collegiate tradition. The Swiss Geneva court retained a hybrid solution, with a bench of three decision-makers. The president would take part in all the proceedings and would be joined by the other two colleagues for the final hearings only—a solution that 'results in a collegial form of juvenile court in theory, with an implementation approximating the formula of the single judge' (Chap. 6).

3.2.2 The Probation Officer

The figure of the judge is so omnipresent in the context of the juvenile court that one may lose sight of another actor who, while more modest than the judge, was no less important: the probation officer (also known under other names, such as *délégué à la liberté surveillée* in France or *délégué à la protection de l'enfance* in Belgium). As mentioned

in Chap. 2, the welfare approach required that the judge be assisted by someone who would visit and supervise children in their own families or in foster homes, make the necessary assessments and recommendations, see that the judges' decisions were implemented, and so on. Being the essential right hand of the judge in the community and in the child's family, the probation officer would share the judge's benevolent approach and would aim to protect the child, so that delinquent children could be protected in the same manner as neglected children, in their families. In contrast to the nineteenth century, when child saving had been done first and foremost through confinement in institutions, probation was now presented as a desirable alternative to such placements.

The importance of probation is expressed in various ways. The French Act of 1912 shows it in its very title: 'loi sur les tribunaux pour enfants et adolescents et sur la liberté surveillée'. The Dutch Act of 1922 focuses largely on the supervision (both civil and penal) of children and their families; the juvenile judge has full authority to issue supervision orders and bears the responsibility for its execution, whereas other measures have to be ordered by the full court (of which the juvenile judge is a member). The Belgian Act of 1912 makes it a general rule that a child who falls under that law will be on probation (*liberté surveillée*) until his/her majority, except during a placement in a state institution (s. 25). Starting immediately after its establishment in 1912, the Montreal Juvenile Delinquents Court ordered probation in a vast majority of cases. In his annual reports, the court clerk praises the merits of probation, writing that only one child out of four comes back to the court as a recidivist, which 'proves beyond a doubt the success of the probation system'.[11] In Chap. 4, Fenchel et al. show that, in the years that followed the establishment of both the Montreal juvenile court and probation, there was a reduction in reform school placements; they conclude that 'it could be suggested that the introduction of probation may have something to do with this phenomenon'. These are just a few examples, but they show how central probation was in the creation and establishment of juvenile courts.

[11] Report for the year 1916, page 5. National Archives of Quebec, Correspondance du procureur général, E17, file 871/1917. The method used to reach this conclusion obviously lacks rigour. Yet the quotation is interesting in that it shows the enthusiasm with which probation was welcomed.

Very little data exist on the actual practice of probation in those years. Whatever is available raises some questions. The first is that of the status of the probation officers: were they employed on a full-time basis for this activity or were they volunteers? We know for example that the Montreal juvenile probation officers had the status of full-time civil servants, but that they had a low status: in the 1925 classification of the Quebec civil service, they were in the same category (and had the same low salary) as judge's messengers, courthouse guards and junior clerks. Needless to say, professional training was not part of the requirements of the position, which could not easily attract candidates with good training and experience. Professionalisation and the requirement of a university degree came only in the 1970s. Elsewhere, like in Belgium, for several decades probation officers were part-time volunteers, with the absence of professional training which such status implies. Their gradual transfer to full-time paid employment started in the 1940s, thus opening the door to possible professionalisation.

The second problem is that of the caseload for which each officer was responsible. An attempt to make a rough estimate of the workload of Montreal probation officers during the first decade of the court's existence led to the hypothesis that each officer would have had on average around 100 assessments and reports to prepare for the judge each year, with over 200 children to supervise. The conclusion is obvious: such caseloads can by no means be conducive to serious work.

There is no doubt that probation was an essential part of juvenile courts and that judges would never have been able to do their work without the contribution of probation officers. However, more information would be needed to gain a better understanding of what they were actually able to accomplish in the context within which they worked.

3.2.3 Prosecution, Families and Children

Who decides whether to prosecute or not? The simple answer would be: the prosecutor, meaning the law officer who is responsible for prosecutions. However, this simple answer would hide a far more complex situation.

There are countries where the public prosecutor (*parquet* in French) is the officer who decides whether or not the case of a youth will go before the judge. But then who decides to refer a case to the public prosecutor? The police and victims stand out as likely sources, but the parents of the

child should not be forgotten. Such is the case in countries like Belgium and France. There are other countries where no public prosecutor plays this role: the police themselves decide whether or not to lay charges. However, that role is not restricted to the police and can be played by victims and parents as well. Such was the case in Canada in the nineteenth century and part of the twentieth. The question then becomes: in practice, who takes responsibility for initiating proceedings?

In her study of girls' cases processed in the Antwerp (Belgium) juvenile court, Margo De Koster (Chap. 10) finds that the reasons for intervention were associated with the groups of actors who initiated proceedings. The most frequent channel to the juvenile court went through the parents, who were looking for help to solve generational conflicts resulting from the massive social changes taking place in the early twentieth century. They were requesting the correction and the confinement of their daughters, whom they accused of 'misbehaviour' for two main motives: a 'licentious' lifestyle or unorthodox sexual behaviour, and the daughter's unwillingness to contribute to the family income. The second most important channel went through the victims—essentially victims of theft occurring in three distinct settings: domestic servants stealing from their employers, shoplifters, and girls operating within the neighbourhood community, stealing from other members of the working class. Finally, the third and least important channel went through the police, for a small number of 'police-discovered' cases involving vagrancy, prostitution or other 'immoral' behaviour.

Margo De Koster's sample was made up of girls only. Would the results have been similar had boys been taken into account? Jean Trépanier's study (Chap. 13) on boys and girls having appeared before the Montreal juvenile court suggests not. He found that girls tended to be proportionally more involved than boys in cases initiated by their families and less in those instituted by others. Boys tended to engage in petty criminal offences such as thefts, which were more likely to be denounced to the court by people outside of their families, such as victims or the police, whereas girls tended to be brought before the judge more than boys because of family concerns (i.e., problems associated with raising difficult children, such as incorrigibility and desertion). Overall, one complaint out of four was signed by a family member. Incorrigibility charges tended to be laid by family members, whereas proceedings for thefts and other petty offences were initiated by the police or other complainants.

This leads to two observations. First, parents are frequently involved in the proceedings, even to the extent of initiating them. As indicated in the conclusion of Chap. 13, earlier historiography on juvenile courts was split between various trends. Some authors presented their emergence as a progressive humanitarian reform. Others depicted them as a strategy designed by dominant groups in society to exert stronger and more extensive control over lower-class children and their families in order to maintain a social order that was auspicious to elite circles. Either way, emphasis was put on the role of those who planned, built and operated the system: legislators, lobbyists, judges, prosecutors, social workers and so on. Implicitly or explicitly, children and their families were viewed as subjects of court interventions defined as benevolent or oppressive, depending on theoretical assumptions, and no room was allowed for significant personal initiative by family members.

More recent research has challenged such perspectives. Briefly, children and parents are no longer viewed as mere spectators of their own fate: they can play an active part in what happens to them. This is true about their involvement in decisions to prosecute, as well as in other elements of the proceedings, as is seen in Chaps. 10 and 13. They make requests, express views, and interact with each other and with court officials in a way that gives them a say in a decision-making process that affects them. As summarised by Mary Odem:

> Middle-class reformers and professionals created and administered the juvenile justice system to promote their own agenda: to control and reform the socially unacceptable habits of working-class youths and their parents. But once this system was in place, working-class parents attempted to use it for their own purposes, namely to restrain children whose behaviour conflicted with family needs and expectations.[12]

Second, the gendered character of the justice system once again emerges clearly. Boys and girls are not prosecuted for the same motives. We referred above to Chaps. 10 and 13, where gender was examined in relation to which actors initiated the procedures. We could also mention Chap. 6, where Joëlle Droux and Mariama Kaba state that boys in the Geneva juvenile court were prosecuted mostly for theft, whereas for girls it was for indecency. As for sentences, proportionally speaking,

[12] Odem (1995: 158).

boys were more frequently put on probation than girls, whereas girls were more likely to be interned. In Chap. 11, Aurore François shows that, according to Belgium's judicial statistics, boys were charged chiefly with offences against property, whereas misconduct stood out as the most important offence for girls. Looking more specifically at data from the Namur court, she concludes that boys were most often charged with theft, but that it was misconduct, debauchery and prostitution that brought girls before the court. Looking at the socio-judicial regulation of juvenile sexuality in Angers (France), David Niget explores in Chap. 12 how boys and girls are dealt with for sexual offences. According to his findings, 'considerable disparity in the treatment of juvenile sexual behaviour by the justice system can be observed when gender is taken into account: while boys were viewed as predators, girls were suspected of sexual corruption'. In sum, gender is pervasive in the justice system, in which it must constantly be taken into account.

3.2.4 Psychological, Medical and Social Experts

One of the most striking evolutions of justice in the period 1815–1950 is the growing place of experts in the justice system. The increasing use of expert opinion in the pre-trial, trial and post-trial phases over the past two centuries is part of a larger phenomenon 'intrinsically linked to the liberal regulation of the societies which emerged in the eighteenth century and was borne to fruition in the nineteenth century'.[13] As pointed out by François and Niget, 'the family is its favoured territory, the object of increasing and various interventions under the leadership of experts'.[14] Young people became a major challenge for these reformers whose aim was to improve society.

Their interventions focused on the body (medical and anthropological experts), on the mind (psychiatrists, then psychologists, and pedagogues), and on the social environment (social workers and field educators) of the children under investigation. The varied systems of social regulation of 'unruly' juveniles were a perfect laboratory for the development of expert practices, the legitimisation of expert knowledge, and the professionalisation of experts.[15]

[13] François and Niget (2011: 12).

[14] Ibid.

[15] De Koster and Niget (2015).

Except perhaps for Mol, the place of those experts is not clearly visible in this book. In nineteenth-century courts, their role was to enlighten judges or juries about the technical causes of the victim's death or wounding, and on the accused's criminal madness. Officially, decisions regarding criminal responsibility remained the magistrate's task. Nevertheless, the experts' discourse became increasingly part of a more complex definition of the criminal, far from the classical legal definitions.

At the same time, the place of medical doctors in juvenile reformatories was limited to ensuring the inmates' vital functions.

As summarised by François and Niget, following the liberal crisis at the end of the nineteenth century and the interventions of the state in response to the social question,

> [a]t the beginning of the twentieth century, juvenile justice became a focal point of coordination for a myriad of interventions, with specific rationalities, incarnated by a multitude of experts targeting the child at risk, all the while making the family a strategic site of acculturation to the dominant cultural values of the liberal society: competency, autonomy and responsibility.

The transition from punishment to welfare crystallised in the model of the 'juvenile court' also changed the role of sentencing authorities. As noted earlier, the judge became a pedagogical actor and the probation officer a social worker, and the family was to be involved in the case. In this renewed model of judicial hearings, psychiatric, educational and social workers were granted an official role—no more as punctual or volunteer actors, but as permanent professionals. Expert practices with respect to young people took place during the preliminary investigation, alongside the development of clinics of 'observation'. The observatory in Mol (Belgium) is an example of this systematic pre-decisional screening of 'difficult' boys. The presence of social workers or probation officers during the hearing is another sign of this expert function. At the end of the process, after the court's decision, probation and confinement were also conditioned by medical, disciplinary or social investigation reports written by experts.

However, ambiguity characterised the role of these experts. Their legitimacy came from their ability to bring external knowledge in the field of justice. At the micro-level of individual cases, 'tensions exist[ed] between competency and externality' and, at a macro-level, between

scientific rationalities and 'judicial truth'. Experts became intellectual or social entrepreneurs, thereby developing the 'social sciences', but also contributing to foster increased 'moral regulation'.[16]

Finally, the extension of expertise—in this case on 'juvenile delinquency'—created a galaxy of professional bodies, scientific institutions, intellectual hubs and media debate which contributed to define the 'social problem' and helped public powers to manage it through public policies. Experts became important professionals in the twentieth and twenty-first centuries, and their social and political involvement lead to widespread questioning of the effectiveness of their practices. The link with theory will be further examined in Sect. 6.

4 The State

The involvement of states in the justice system varies. Differences can be found depending on the types of services (e.g. court services, prisons, institutions for children and youth, and so on). Variations also occur over time and between countries. Our intention is obviously not to review the various modes of state governance that can be found in justice systems. Nor shall we go into fundamental issues such as the right of the state to intrude on the private lives of children and their families—an issue that would be well worth discussing. We simply wish to draw the reader's attention to certain aspects of the relationships between juvenile confinement institutions and the state.

Many institutions of confinement are created and managed directly by governments. In the period covered by this book, this was the case for most prisons and penitentiaries. It also was the case for some institutions for youth. For example, the first Canadian reformatories (the reform prisons of L'Île-aux-Noix and Saint-Vincent-de-Paul in Quebec) were run by the state. A government may find some advantage in this type of governance in that it has a direct control over the institution. Yet it was not long before Quebec decided to opt for a dual system inspired by the English experience: it instituted industrial schools for neglected and abandoned children, and reform schools for juvenile offenders.[17]

[16] François and Niget (2011: 15).

[17] About the process that led to the adoption of this dual system, see Fecteau et al. (1998).

The schools were to be established by private organisations accredited by the provincial government, with whom they would enter into a contract that provided for various aspects of the agreement, including the amount of subsidies to be paid. Once in operation, the schools would be under the surveillance of the Prisons Inspectors, who would carry out periodic inspections and submit annual reports to the government. In practice, the intention was to have religious communities run a majority of such schools, since it was assumed that their spiritual motives would make them better educators than laypeople. The schools were divided along confessional lines: Catholic schools were managed by religious communities (brothers and nuns), whereas Protestant schools were run by charitable lay organisations.

This type of governance left the state with basic yet important powers. It accredited the organisations that ran the schools, it imposed conditions in the contracts, it used the Prisons Inspectors to exert some surveillance, and it controlled the level of financing it was prepared to provide. The confidence that the government had in religious organisations provided a sense of security and it did not have to bother with the daily management of the institutions.

In Chap. 5, Janice Harvey shows that this system could be managed with some flexibility. A Protestant charitable organisation, the Montreal Ladies' Benevolent Society, had for many years been involved in providing help to children of poor single-parent families who were temporarily unable to care for them as a result of poverty, illness, death or family problems. Such an organisation did not have regular state financing, unlike industrial schools. It did apply for (and obtain) the status and financing of an industrial school for some of the children, but that made no difference in the treatment of the two groups: they remained a charity that received partial industrial-school subsidies.

In Chap. 4, Fenchel et al. show another aspect of what could be called 'flexibility', together with control through financial rules. After the opening of the Montreal Reform School for boys in 1873, the number of boys committed to that institution increased gradually (with ups and downs), peaking in 1891. As early as 1879, Prisons Inspectors had warned the government that poor parents were asking the courts to commit their sons to the reform school to provide them with free education—placements in the reform school being at the time completely financed by the provincial government. After the 1891 peak in admissions, the government changed the rules: the municipality where the

child lived would have to pay three-quarters of the costs, while the provincial government would only pay the remaining quarter. The impact was immediate: as they probably were sensitive to the financial limits that municipalities faced, those who made decisions about placements drastically reduced commitments to the reform school. Two years later, the government increased its share to one half of the costs, but the influx did not increase to the level of 1891.[18] Thus the 'flexible' use that parents and judges had made of the reform school was countered by the government's power to determine how placements would be financed. The overall strategic control was in the hands of the government, despite the fact that the daily running of the school was left to the brothers.

The above observations draw on the situation in Montreal: the two chapters that dealt with these issues were Montreal-based. Yet, they invite a comparison with the various roles and modes of legitimacy of the state in other contexts. The interventions of the French, Belgian or Dutch authorities regarding youth reveal an interesting phenomenon. In these three countries, political initiatives at the national level focused on the establishment of juvenile courts, while the confinement institution system—largely issued from the nineteenth century penal and educative system—remained divided into private and public institutions.[19] Many private institutions resulted from denominational relief endeavours for the poor, by Catholic, Protestant or Jewish churches or communities, and later by freethinkers, socialists, or nationalists. The pre-existence of this institutional network and its expertise helped public authorities to limit their financial investments in the new welfare system. One consequence was a limited public control over the actual practices in private institutions. Their hybrid character (where a limited state control coexisted with the institutions' autonomy) was probably a factor for the attested collusion between the states and private institutions. Numerous scandals have revealed abuses in the treatment on young boys and girls in private as well as public institutions in various countries—either in institutions for neglected or delinquent children or for children confined for other reasons. The Magdalene laundries in Ireland,[20] administrative

[18] See Ménard (2003: 106–110).

[19] See Dupont-Bouchat et al. (2001) and Dekker (2001).

[20] On the Magdalene laundries, see Finnegan (2004) and Smith (2007).

internment practices in Switzerland,[21] the treatment of minorities children in 'colonial' situations in Australia (*The Stolen Generation*), the boarding schools for Native children in Canada as well as orphanages in Belgian Congo (Save orphanage) put the spotlight on this hybridity, the lack of control, and the complacency of public authorities regarding the confinement institutions.[22] This dual composition of the system up to the 1960s, calls for an examination of the juvenile system within the larger context of internment of 'deviant' people—a dark side of the Welfare State from 1860 to 1980—and for placing other national states under the same scrutiny.[23]

5 Youths, Justice and Wartime

Wars are periods of extreme insecurity, during which people may lack such basic resources as food, lodging, heating and so on. Occupation by enemy armies generates conflicts as well as collaboration, both of which have consequences. With two world wars in three decades, Europe suffered all the evils of war in the first half of the twentieth century. The effects on children and youth were vastly commented on. Considering their responsibility in child protection, justice officials were frequently called upon to express their views. In Chap. 11, Aurore François gives an idea of the opinions that were expressed in the Belgian context. Thus, at the end of World War I, vagrancy, begging, theft and above all the misconduct of girls were widely deplored. This upsurge was blamed mainly on the paucity of police services and the great misery caused by the lack of work. The presence and attitude of the occupying army was also assigned a considerable share of the blame, as was family dislocation, which is quite surprising given the small rate of conscription in Belgium during World War I. Commentaries were much the same after World War II. Vagrancy and begging, theft, misconduct and truancy were the main acts identified as problematic. Disrupted family life, misery and hunger once again came to the fore as sources of the problems.

[21] See the Independent Experts Commission on Internments http://www.uek-administrative-versorgungen.ch [accessed 8 July 2017].

[22] Heynssens (2012).

[23] See remarks by Ellis (2014) on the state as playing a central role in the construction of ideas on juvenile delinquency.

Were discourses consistent with the facts? Based on Belgium's national judicial statistics, Aurore François shows that the numbers of boys and girls brought before the courts were much higher in wartime than in peacetime, but that the nature of the offences they were charged with did not really differ. The most striking increases were for offences against property (mainly theft) for boys and, to a lesser extent, for girls, as well as misconduct for girls. In addition to the increased frequency of offences, what seems to have changed were the reasons for the offences and the nature of the stolen goods: items of primary necessity, such as vegetables, eggs, chicken and other food, coal and ration stamps, were the more frequent targets of thefts. Similarly, arduous living conditions explained why some girls had sexual intercourse with occupying soldiers, in order to be paid and to get some food.

In Chap. 8, David Meeres looks at the situation in Germany in the immediate post-World War II years—not during the war itself. Yet the description he provides of the situation prevailing in Germany at the time shows that the socio-economic and familial problems faced by 'wayward youths' as a consequence of the war were huge and were likely to lead them into crime.

Such factors as the dislocation of families, misery and hunger may help to understand the increase in the number of children brought before the courts during wars. Yet Aurore François concludes that this increase might also be regarded as a consequence of the moral anxieties of upper classes who felt that moral standards were under severe threat by poorly regulated working-class youth at a time of national crisis. One might suggest that this could apply to post-war Germany as well. Studies on Germany during World War I or France during World War II confirm these consequences of war or occupation on juvenile behaviour and on the moral anxiety about their place in society.[24]

6 What About Theories?

This book is about the ways in which youths were treated by the justice system between 1815 and 1950. This was a period of major developments in criminology. Theories of juvenile delinquency were part of that advance, based on the contributions of several disciplines—chiefly

[24] Fishman (2002), Bornhorst (2010, 2014), and François (2011).

sociology, psychology, anthropology and law. In the long run, many actors progressively constructed juvenile delinquency as a 'scientific' concept, which alternated between the biological conception of the criminal as a vector of degeneration and social and economic explanations based on the role of environmental factors. However, such concern with youth delinquency also reveals an ambiguity in the justifications for 'capturing' young delinquents before they become a threat to society. Scientists used the intrusion into family life to test human development theories and develop new methods of analysis, while at the same time creating 'big data' on (un)-protected children. Social reformers (judges, educators and others) tried to apply the theories to transform the behaviour, and thereby the future, of young 'delinquents'. To what extent did these perspectives help or contribute to the orientation of those who worked with children and youth in the justice system?

Perhaps this question can be addressed with a reminder of the distinctions that are frequently made between the three levels of prevention in delinquency and crime policies. *Primary* prevention aims to avoid the initial occurrence of a problem through strategies that apply to the population at large. *Secondary* prevention aims to avoid the occurrence of the problem through more targeted interventions, and is directed at people who are identified as being at risk. Finally, *tertiary* prevention aims to reduce recurrence among people who are facing the same problem as before, through interventions targeted at those who are impacted by the problem. In such spheres as delinquency prevention and child protection, the justice system's interventions aim to prevent the recurrence of the problem and are therefore viewed as tertiary prevention. It deals with individual cases, one by one. It reacts to individual situations and tries to find solutions within the context of individual interventions, in order to prevent recidivism. In more popular terms, its interventions are based on the assumption that there is 'something wrong' with the delinquents it receives, and that it must find a way to 'fix' them. Such a perspective is conducive to the adoption of a psychological or psycho-social approach. In contrast, sociological theories point to problems that are associated with society rather than with individuals. They may lead to primary or secondary prevention programmes. An example is the well-known ecological perspective of sociologists Clifford Shaw and Henry McKay, which led to the famous Chicago Area Project—a prevention programme that focused on the improvement of community life in a selected area of Chicago. Irrespective of its merits, such a prevention programme would

never have been initiated and implemented by the justice system: it is just not part of its mandate. Sociological perspectives can of course be taken into account by justice system actors, if only to better understand children's and families' situations. But one must realise that justice system interventions are only tertiary prevention—that is, they are part of more global strategies—and that one must rely on primary or secondary prevention programmes to have any kind of influence on the sociological aspects of the problems.

The desire to introduce scientific perspectives into the sphere of juvenile courts was partly fulfilled through the institution of court-affiliated guidance clinics focused on individual delinquents. In the USA, the first clinic was established in 1909 in Chicago by Dr William Healy, a leading proponent of the juvenile court. Named at first the 'Chicago Juvenile Psychopathic Institute' (renamed in 1920 the 'Institute for Juvenile Research'), it served as a diagnostic and limited treatment centre and as an institute for research on the causes of delinquency. Healy's best-known publication is probably *The Individual Delinquent* (1915), in which he searched for the causes of delinquency. He 'used a disease model of causation and adopted an array of medical terminology' which was criticised, especially for underestimating the relevance of social problems such as poverty.[25] The Juvenile Psychopathic Institute served as a model for child guidance centres that were established in large US cities and elsewhere in the 1920s and 1930s. Medical and educational theories rapidly dominated the juvenile justice system in Europe as in France, Belgium, Netherlands, Switzerland, Italy and Germany. Their major impact was less the validation of medical, psychological or sociological theories of juvenile delinquency than the legitimation of new fields of expertise and their representatives in the traditional legal-administrative arenas of justice.[26]

Jenneke Christiaens' Chap. 9 presents a Belgian institution that had a similar mandate: the Mol Observation Centre for boys. Its mission was to carry out observations of individual juvenile delinquents, to recommend the most appropriate treatment or re-education regime for them,

[25] Snodgrass (1984: 337). See also Healy (1915). The article by Snodgrass provides interesting information about Healy, his life and work. On the judicial change in Progressive America, see Willrich (2003).

[26] François and Niget (2011), De Koster and Niget (2015), Golliard (2014), Périssol (2014).

and to develop a classification of juvenile delinquents based on scientific criteria. The first two elements of this mission were aimed at individual boys, whereas the third one went beyond individual observation: scientific activity was an essential part of the centre's work. The classification included four main categories of child disorders: medical, psychological, moral and social (each category having sub-categories). Children with moral disorders were by far the most numerous group, followed by those with psychological disorders. Social and medical disorders came at the very end of the list. This leads Jenneke Christiaens to conclude that the strong presence of the moral category reveals a continuity with mainstream nineteenth-century discourse on the problem of delinquency, which was mainly seen as resulting from a lack of moral standards. In this sense, the practice of scientific observation uncovered its common-sense roots. Besides the complicated scientific descriptive terminology used in individual observation reports, a more down-to-earth as well as moralising description of the boys could not be avoided—which, she concludes, uncovers and illustrates 'not the promise but the poverty of this scientific enterprise'.[27] As for the factors identified as responsible for juvenile delinquency, three emerge as being quoted the most frequently: the bad influence of the street, broken or disabled families and psychological disorders. Interestingly, the mention of psychological disorders increases over the years (as the influence of psychology is more and more felt), whereas that of moral influences (immoral literature, cinema and dance halls) decreases in a way that shows that the definition of delinquent behaviour has some links with the moral tolerance of society. In any case, the factors that are viewed as being associated with delinquency are limited to aspects that can be addressed by the justice system, either through treatment or education (i.e., tertiary prevention).

In contrast, in Chap. 8, David Meeres insists on the importance of appreciating what the socio-economic situation was in Berlin in the years following World War II to understand juvenile delinquency at the time. He refers to a study by Hilde Thurnwald to conclude that

> German society was grappling with huge social and economic problems: poverty, lack of shelter and food (with such activities as theft and black market often ensuing to ensure the survival of an individual or group), mass unemployment, 'criminal areas', and disrupted families. Interestingly,

[27] Jenneke Christiaens, Chap. 9.

> these were problems frequently referred to in explanations of the delinquent behaviour of youths. Not much room seemed to be left for psychological or psychoanalytical explanations more focused on the individual and his or her personal characteristics.[28]

Of course, Germany's post-war socio-economic problems were huge, and it would have been impossible to ignore them. Yet, whatever regulatory role the justice system had to play, the solutions to such problems have to come primarily from other segments of society.

Another point must be made. When Jenneke Christiaens exposes the limits that she discovered in the Mol scientific enterprise, she writes about an institution that nonetheless had better-trained staff than other services such as probation offices, the police or institutions of confinement. If Mol could be criticised for theoretical weaknesses, what could be said of organisations with hardly trained and sometimes part-time volunteer staff? In his book on the social organisation of justice, Aaron Cicourel directs his readers' attention 'to the theories of delinquency employed by laymen and particularly to theories employed by police, probation, and court officials when deciding the existence of delinquency'.[29] Each of these actors has to make decisions. For example, the police must decide whether to close a file or to send it to the prosecutor, or even to deal with it informally themselves. The prosecutor may decide not to proceed, to deal with the case informally or to transfer it to the judge for further proceedings. The judge must decide if the youth is guilty and, if so, which measures should be taken. A probation officer who makes a social inquiry report must assess the risk that the youth represents. Each of these actors has to determine whether or not the case falls into categories in which interventions are necessary and justified. They must typify the offender and his or her behaviour as normal or abnormal, dangerous or harmless, acceptable or unacceptable, right or wrong, strange or usual, sick or sane and so on. To use Cicourel's words, the actor has to 'map the event and social objects into socially and legally relevant categories as a condition for inference and action'.[30] He or she must 'make sense' of 'what happened', to decide whether the youth is a 'real delinquent' and which action, if any, is needed. This cannot be done

[28] David Meeres, Chap. 8.

[29] Cicourel (1976: 24).

[30] Cicourel (1976: 113).

without reference to theories about delinquency and how it develops. In times when most actors did not have any kind of in-depth training, they had to rely on 'common sense or folk typifications'.[31] Guided by their 'lay theories', actors could filter the information and organise it into an account which would justify particular inferences and actions.

To summarise, how much room was there for theory in the practice of the justice system in the period of 1815 to 1950, when criminology underwent major developments? First, the justice system is tertiary prevention: it is inherent in its mandate to focus on the individuals who come to its attention. As a consequence, people who operate within it tend to think in terms of theories centred on the individual and his or her immediate environment (such as the family) rather than theoretical frameworks that include society more globally. Be it only to open their views to a wider understanding, actors of the justice system should be well aware of these more comprehensive perspectives. That being as it may, their own field of action will not be that of people involved in primary or secondary prevention.

Second, the implementation of juvenile courts went along with a desire to develop and use scientific knowledge in the daily decisions of the courts. By the 1950s, in many countries, the juvenile justice system had evolved, from a traditional retributive legal and coercive institution driven by discipline and religious ideology, to a 'welfare' state reform administration driven by educational and medical paradigms and staffed by educated actors. Much progress was still needed, to say the least, as lay theories largely continued to inspire practices.

Nearly seven decades have elapsed since then and things have evolved more and more favourably over time. Actors are much better trained than they were, and this involves a better understanding of theoretical issues and orientations. Endeavours to bring research and practice closer together and to facilitate the transfer of knowledge that emerges from research have produced encouraging results. At the same time, theories have over time faced waves of solid criticism nurtured by the practical failures of the modern social institution that is juvenile justice. On the one hand, the effectiveness of treatment and rehabilitation methods to prevent recidivism by offenders was challenged: one may recall Martinson's 'Nothing works' for example.[32] On the other hand, the

[31] Ibid.

[32] On this point, see Chap. 2 by Jean Trépanier.

abuses of medical and educational authorities on young inmates, the ideological uses of eugenic theories by dictatorial regimes like Fascist Italy, Nazi Germany or the Soviet Union—but also by conservative or social-democratic regimes—as well as the (hidden) auto-promotion agenda of some actors acknowledged as progressive experts, undermined public trust in criminological theories as powerful instruments for understanding and treating delinquent children and for reforming their families and improving society.

Looking at the past may create conflicting expectations for the future. After evolving from punishment to welfare, one may justifiably wonder what it holds in store for us and our children.

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