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Convergences and Divergences in Matters of the Judicial Protection of Minors

Changing patterns of juvenile delinquency, specialized response agencies, and the handling of children at risk are examined for 23 European countries.

By Jean Chazal, Henri Molines, and Jacques Verin

The criminal science division of the Institut de droit comparé de Paris (Institute for Comparative Law in Paris), under Mr. Marc Ancel,* founded a commission in January 1973 to study current problems in France with respect to juvenile delinquents and juveniles at risk. The principles of the juvenile justice system instituted in 1945 emphasized the following:

- replacement of punishment (with certain exceptions) with educational measures aimed at the social reintegration of youthful offenders;
- individualization of treatment with attention to the personality and social background of juveniles;
- preventive measures for youths at risk; and
- the judicial nature of the system, considered a guarantee of the rights of the individual.

However, in France as in many other countries, serious difficulties were encountered in the practical application of juvenile justice, in establishing satisfactory methods of collaboration between judges and social science specialists, and in developing educational methods appropriate to juvenile delinquents who rebel against reeducation or authority.

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In order to gain some perspective on these issues, the Commission sent questionnaires consisting of 31 questions to juvenile justice officers, social workers, and specialized educators in 23 countries. Responses were analyzed and results were presented (by authors of this article—Ed.) to the Commission when it convened on June 29, 1977.

Questions Regarding Juvenile Delinquents and Juveniles at Risk in General, and the Role of Police in Dealing With Them—Henri Molines*

1. Is responsibility for juveniles at risk and juvenile delinquents held by the same authority?

In Belgium, Brazil, Canada, Spain, France, the Federal Republic of Germany (FRG), and Venezuela, the jurisdiction is the same for all juveniles. In most cases, the responsibility for those at risk is in the hands of administrative authorities. Complete separation between jurisdictions can be found in Austria (penal judge and protective judge), Denmark and Sweden (administrative protection), Great Britain (social service responsibility for treatment), Hungary and Switzerland (protective authorities), Italy (administrative agencies), and Yugoslavia (administrative authorities). In all cases, judiciary authorities are used in at least the initial phase of the procedures.

2. What are the criteria for intervention on behalf of juveniles, either at risk or delinquent?

Although the definition of juvenile delinquents is relatively the same in all 23 countries (except for upper and lower limits of the age range), the concept of juveniles at risk varies according to the following definitions: Austria and Spain—child abuse or neglect by

International Summaries

parents; Brazil—abandoned children; Italy—lack of familial assistance; FRG—negligence and comparable acts; Yugoslavia—all legislation regarding children's relationships with their parents or guardians; Denmark—when parents are not able to guarantee child care; France and Belgium, possibly Hungary—at risk refers to the child's health, security, and emotional well-being (and moral, intellectual, and physical development); and in Canada and Switzerland, at risk is defined more broadly—when the mother and father do not fulfill their parental duties, or when children refuse to obey their parents.

3. Are juvenile delinquents treated differently from juveniles at risk?

Only Austria and France responded negatively. Most countries indicated that juvenile delinquents are handled differently, at least in legislation if not in actual treatment methods.

4. What is the role of the police concerning juveniles, either delinquent or at risk?

In Austria, Brazil, Spain, the FRG, Great Britain, and Yugoslavia, police intervene only for delinquents. In Belgium and Switzerland, it appears that a special police unit intervenes for those at risk. In Canada, Denmark, France, Hungary, Italy, Venezuela, and Sweden, the police intervene for both. Generally, the police appear to be aware of a preventive aspect to their profession, especially in Belgium, Canada, France, Great Britain, Italy, Sweden, Switzerland, and Venezuela.

5. What special methods for intervention are used by the police for juveniles?

In most countries there are no special police intervention practices regarding minors. However, in Austria, inquiries are made by female police officers; investigations of juveniles' personalities and family settings are made by the police in Belgium, Brazil, Canada, Spain, and France; in Italy, sometimes the presence of the parents is required during the hearing; in the FRG, the interrogation is adapted to juvenile psychology; and in Sweden and Switzerland, recourse can be made to police who are themselves parents. The Swiss police take courses on how to handle youth. In Venezuela and Yugoslavia, the police play a traditional role in dealing with juvenile delinquents; however, Venezuelan police use a special center for scientific and psychological evaluation of juveniles, delinquent or at risk.

6. To what extent and in what way do the police enter into the prevention of juvenile delinquency, or play a part in the preparation and implementation of educative measures?

Austria, Brazil, Italy, and Yugoslavia do not encourage the police in juvenile delinquency prevention.

*Words and technical terms do not have exactly the same meaning from country to country, and judiciary organizations, procedural codes, and even juvenile protection principles differ so much from one country to another that it is difficult and somewhat presumptuous to attempt to compare juvenile justice systems.

However, in Canada, Denmark, Hungary, Sweden, Switzerland, and Venezuela, the police play an important role. In Spain and France, the police have only a very limited role, although France does seem to be undergoing change in this area. From the response it can be deduced that in no country do the police play a part, at least officially, in the preparation of educational measures, and if they do, it is only under the instruction of a magistrate.

7. Do the police have initiating or decisionmaking powers regarding juveniles?

The police have, above all, initiating powers regarding juvenile delinquents, at least until they are in the hands of juvenile authorities, and in Austria, Belgium, Brazil, Denmark, Spain, Hungary, Italy, the FRG, Switzerland, Sweden, Venezuela, and Yugoslavia often provide information to judges about juveniles at risk. However, in Canada, the police have much more powerful preventive powers, even in decisionmaking, to the extent that they may or may not turn a minor over to a magistrate. The French response was much more complicated—police can "shelve" juvenile delinquent procedures, decide not to turn minors over to the authorities, and handle a certain number of cases for preventive purposes.

8. How is police intervention viewed by the parties concerned, judges, educators, social workers, and public opinion?

Generally, in Brazil, Canada, Denmark, Spain, Great Britain, Hungary, Italy, and Switzerland, police intervention is appreciated by authorities and parents, but not by the minors themselves. In France, Sweden, and Yugoslavia, some reserve is noted by all parties regarding police intervention. In Belgium and Venezuela, no serious evaluation could be made, as such police services have been only recently instituted.

Questions Regarding Treatment Methods—Jacques Verin

1. Questions addressing the attitudes of juveniles (either delinquent or at risk) to juvenile justice revealed that only Brazil showed an increase in cooperation by minors with treatment agencies (particularly in the FLINABEM program in Rio de Janeiro). Austria and Belgium have seen no real change in youths' attitudes. Others' responses showed a trend toward less cooperation and a more critical, resentful attitude toward judges, authority, and society (Canada, Great Britain, Denmark, Sweden, FRG, Switzerland, Yugoslavia, Italy, France, Venezuela). In France, there is more opposition to repressive and intimidating forms of criminal justice, and corresponding demands for assistance; however, some juvenile judges are noticing a growing indifference to juvenile justice. While youths in Venezuela are defying treatment more than ever, they are showing respect for judges and social workers who are thorough, humane, and patient.

2. Do magistrates and educators try to make juveniles comply with judicial decisions?

Surprisingly, many responses were fairly laconic. Belgium reflected the general sentiment by stating that "reeducation cannot be really effective without the compliance and confidence of its students." Only Hungary responded that "law is an obligatory force," and disciplinary measures should be accepted unquestioningly.

3. Can constraint measures be built into the educative process?

Belgium, Switzerland, and Great Britain enumerated constraining measures at the judge's disposal such as surveillance, therapeutic institutionalization, or halfway houses. In Denmark, placement in a juvenile detention home is often considered a sentence that encourages runaways and new outbreaks of crime. Canada indicated that a judge can always intervene in the educational process and impose more severe restraints. Only Brazil thought that constraint, especially in a home, is rarely necessary, as youth have a great respect for judicial authority.

4. and 5. If a juvenile, either at risk or delinquent, refuses to comply with educative measures, can judicial authorities impose the measures, and how?

For delinquents, all responses were affirmative. For juveniles at risk--theoretically, yes (Austria); in principle, no (Yugoslavia); there is no really effective method (France); where parents are not guilty of abandoning the child, no (Venezuela); and in Canada, the judge can declare a juvenile at risk a juvenile delinquent if the juvenile at risk refuses to comply with imposed measures. In Hungary, compliance is enforced by the police and the judge either through a short stay in an adult prison or by the adoption of a more coercive measure, if necessary. Parental rights can be assigned to the Social Service in Great Britain.

6. Does your country have closed institutions or closed sections of institutions with measures that are strict and disciplinary, but with educative intent?

Austria, Hungary, and France responded negatively. Belgium has two such institutions, Moll and Bruges; Great Britain has "Community Homes" (established by a 1969 law), but not closed institutions for young girls, who are detained in penitentiary establishments. Canada has closed institutions, Switzerland has "therapeutic homes," and Brazil, despite the high respect youths have for judges' decisions, has two restricted institutions in Rio de Janeiro and São Paulo that provide rigorous educative disciplinary measures.

7. Have studies been made of the effectiveness of such closed institutions?

For six countries, no studies have been made. Studies in Great Britain were contradictory. Two other countries (Italy, Sweden) reported studies which demon-

strated an almost total ineffectiveness of such institutions with respect to their educative function. Canada did not mention any studies, but noted the failure and the very bad reputation of closed institutions. Denmark emphasized the high rate of recidivism for minors sent to prisons: 73.7 percent in 1964, 76.1 percent in 1965.

8. What place is given to psychotherapy, group therapy, or day treatment centers?

Denmark has many day care centers, primarily for young drug addicts, Great Britain has a few, and Brazil has had a center for 2 years with excellent results. Psychotherapy and group therapy are generally practiced, but their relative importance was difficult to determine from the responses.

9. Would educational measures be used for a first-offense minor approaching the age of majority in the penal system?

Austria, Canada, and France tend not to take the educational course of action when it might be quickly terminated. Belgium indicated that such measures can be dispensed with as inadequate if a minor between 16 and 18 years of age is not receptive to them, but this is the exception. Eight countries responded that educational measures are used regardless of age, and in Italy and Yugoslavia it was felt that such measures should be continued into adulthood.

Questions Regarding Collaboration Between Judges and Social Science Experts, and the Judicial Protection of Minors—Jean Chazal

1. Do the juvenile magistrates intervene during the implementation of the educative measures they have ordered?

In most countries, judges intervene during the implementation stage, concerned that their "educational mandate" be carried out by the team of educational experts. Nevertheless, in Scandinavian countries judicial authorities pass juvenile delinquents on to protective authorities for care. Those countries in which the judge intervenes only to alter a decision that is no longer appropriate are Austria, Brazil, Canada, Great Britain, the FRG, Venezuela, and Germanic Switzerland. In Switzerland, the intervening authority is sometimes the juvenile authority, who has a double role: to enforce the court decision and, if possible, to decide on new ways to implement it.

Countries where the juvenile authority has broader powers of intervention and may control the enforcement of the judicial measure include Belgium, Yugoslavia, Spain, France, Italy, and Romanic Switzerland. However, all these countries agree that, although judges may control educational decisions, they do not have the power to organize or implement these measures.

All countries stated that judges should consult education specialists before making any decisions, and that the specialist should let the judge know when

International Summaries

changes are made in the course of educational treatment.

2. What is the judge's relationship to the specialized educators, social workers, psychologists, and doctors who inform judges about the personality and social setting of juveniles?

In most countries, the multidisciplinary team submits a written report to the judiciary. In Belgium, there are additional recommendations from juvenile protection agencies. In Brazil, Canada, Switzerland, Spain, Italy, and France, a juvenile authority may attend meetings with the multidisciplinary team. In most countries, especially Belgium, Brazil, Canada, Denmark, Great Britain, Hungary, Venezuela, and Yugoslavia, a greater dependence by juvenile authorities on social science experts is desired. The head of the Paris juvenile court stated that such dependence is diminishing "because medical-social mechanisms are more developed than formerly and the recourse to social sciences does not always lead to reeducation." While all respondents felt that the educational process and all its technical aspects should be in the hands of educational specialists, they felt that communication between judges and experts is necessary.

Will there be antagonism between juvenile authorities and education specialists? It was felt that judges reproach education specialists for their ignorance of the law, general permissiveness, and delays in enforcing orders. Education specialists feel inclined to rebuke judges for their lack of social science knowledge and their eagerness to interfere in the implementation of education sentences. Educators sometimes see judges as representatives of a society that is responsible for juvenile delinquency. Judges sometimes feel that educators, in order to better obtain the confidence of minors, become "their accomplices."

3. Questions concerning the training of juvenile magistrates and education experts revealed that many countries deplore the insufficient training received by juvenile magistrates. Austria emphasized the need for pedagogical, psychological, and psychiatric education. Belgium preferred that judges practice general law in the judiciary for 3 years before becoming juvenile magistrates. Great Britain pointed out the need for juvenile magistrates (who are "magistrates" after all, not "judges") to serve an internship in juvenile courts. Brazil would like to see juvenile magistrates receive appropriate university training. In Spain, Hungary, the FRG, and France, the need for organizing basic training was emphasized. France also felt that the training given at the National School for the Magistrature is inadequate; it is trying to compensate by offering continuing professional education. In Austria, Belgium, Brazil, Den-

mark, Spain, France, Hungary, Sweden, and Switzerland, it is hoped that, in training for specialized educators, more emphasis will be placed on juvenile protective legislation and on courses in judiciary procedures.

4. Responses to questions regarding the importance for judiciary protection of juveniles showed a tendency to limit the domain of judiciary protection, particularly in Canada (especially Quebec). A more radical tendency can be noted in Italy, Switzerland, and France that favors substituting judicial authority with educative authority. Preference for judiciary protection appears to have decreased in France because of the lowering of the age of majority, whether penal (from 16 to 15 years of age) or civil. The civil age of majority was lowered to 18, removing those at risk aged 18 to 21 from educational assistance. Legislators attempted to modify this situation by assuring some protection to that age group. However, the tendency to expand judicial powers can be recognized in Belgium and also in Spain, where current opinion favors judges from the professional magistrature over protective court magistrates. In Switzerland, Venezuela, and the FRG, there is a movement to extend the juvenile sociopenal system to young adults (ages 18 to 25).

Finally, in many countries a desire can be seen to extend judicial juvenile protection procedures to any situation in which a minor is implicated: in Belgium, Spain, Italy, the Federal Republic of Germany, and France, family courts are called for that would be modeled on juvenile courts.

Conclusions

Similarities can be seen among the various responding countries in several important areas: the protective and educational importance of juvenile magistrates' intervention with regard to juveniles—delinquent or at risk—is no longer questioned; the need for juvenile authorities to probe into the personality and social and familial milieu of juveniles on trial is recognized; preventive issues are being considered by all countries, although police play differing roles in prevention; and juvenile magistrates are increasingly expected to intervene in some way during treatment of juveniles, either by pronouncing a change in treatment to adapt it better to the individual's needs, or by actually assisting in the enforcement of educative measures.

This comparative study has allowed us to grasp, in countries representing relatively the same level of cultural and moral development, converging tendencies in legislation and judicial practice. At the same time, characteristics unique to the different nations remain evident.