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# Youth and Justice in Western States, 1815–1950

From Punishment to Welfare

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

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### 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.<sup>1</sup> This innovation was partially meant to address the crisis affecting the various institutions for delinquents set up after the 1860s, mainly

<sup>1</sup>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.<sup>2</sup> 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.<sup>3</sup> 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

<sup>2</sup>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.

<sup>3</sup>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.<sup>4</sup>

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.<sup>5</sup> Quite the contrary. According to the project's supporters, the number

<sup>4</sup>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.

<sup>5</sup>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).<sup>6</sup>

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.<sup>7</sup> No doubt the eugenics context prevailing in most Western nations<sup>8</sup> 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.<sup>9</sup>

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

<sup>6</sup> *Mémorial du Grand Conseil* (hereafter *MGC*), 1908.

<sup>7</sup> 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. Zoé, 1993.

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

<sup>9</sup> 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'.<sup>10</sup>

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,<sup>11</sup> 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.<sup>12</sup> In this context of national and international debates where philanthropic emulation nourished penal and penitentiary reforms,<sup>13</sup> 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'.<sup>14</sup> 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.

<sup>10</sup> *MGC*, 1912 (Annexes), p. 9.

<sup>11</sup> 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.

<sup>12</sup> 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).

<sup>13</sup> 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.

<sup>14</sup> 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'.<sup>15</sup> Whereas an opponent to the bill protested vigorously that 'the Act presented today, albeit in an absolutely harmless form, is an Act of repression'.<sup>16</sup> 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.<sup>17</sup> 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

<sup>15</sup>Vuagnat (*MGC*, 1910, p. 1337).

<sup>16</sup>MGP Nicolet, moderate socialist (*MGC*, 1912, p. 120).

<sup>17</sup>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<sup>e</sup> siècle", in Janet Friedrich, Rita Hofstetter and Bernard Schneuwly, *Une science du développement humain est-elle possible? Controverses au début du 20<sup>e</sup> 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'.<sup>18</sup> 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'.<sup>19</sup> 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.<sup>20</sup> 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'.<sup>21</sup> 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.<sup>22</sup>

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'.<sup>23</sup> Due to their recurrent overcrowding, these institutions were indeed incapable of giving attention to the child's personality. As for

<sup>18</sup>Maunoir (*MGC*, 1912, p. 170).

<sup>19</sup>De Meuron (*MGC*, 1910, p. 141).

<sup>20</sup>Intervention by MP Dufresne, member of a private child-welfare charity (*MGC*, 1909, p. 2032).

<sup>21</sup>Vuagnat (*MGC*, 1910, p. 1467).

<sup>22</sup>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.

<sup>23</sup>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.<sup>24</sup> 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'.<sup>25</sup>

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,

<sup>24</sup> *Rapports du Conseil d'Etat sur sa gestion*, 1890, 1910.

<sup>25</sup> 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.<sup>26</sup> 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

<sup>26</sup> 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'.<sup>27</sup> 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.<sup>28</sup>

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.

<sup>27</sup> Rutty (*MGC*, 1912, p. 88).

<sup>28</sup> 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'.<sup>29</sup>

<sup>29</sup> 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'.<sup>30</sup> 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.

<sup>30</sup> *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',<sup>31</sup> 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.<sup>32</sup> 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),<sup>33</sup> 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.<sup>34</sup> 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'.<sup>35</sup> Yet, his conservative view of youth seems in accordance with that of contemporary interwar *moral entrepreneurs*.<sup>36</sup> 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

<sup>31</sup> Maunoir, 14 June 1913 (*MGC*, 1913, p. 1071).

<sup>32</sup> *Rapports du Conseil d'État sur sa gestion*, Geneva, 1915.

<sup>33</sup> *Rapports du Conseil d'État sur sa gestion*, Geneva, 1926.

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

<sup>35</sup> Dupont (*MGC*, 1931, p. 831).

<sup>36</sup> 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?'.<sup>37</sup>

Thus, Fernex seemed to interpret the 'paternal and friendly'<sup>38</sup> 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'.<sup>39</sup> 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,<sup>40</sup> philanthropic activists and youth movement leaders during the interwar years.<sup>41</sup>

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.

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

<sup>38</sup> Alfred Gautier, *op. cit.*, p. 221.

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

<sup>40</sup> 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.

<sup>41</sup> 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.<sup>42</sup> Yet the prevailing social context due to World War I may also explain the growing number of

<sup>42</sup> 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.

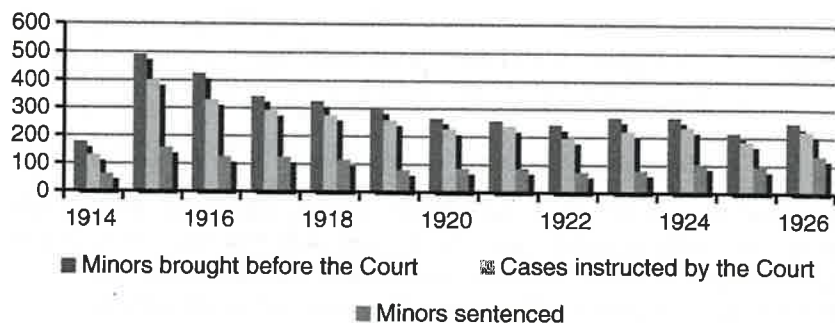


Fig. 1 The Geneva Children's Penal Court (1914–1926): Number of minors brought before the Court, cases instructed, minors sentenced. Source: *Rapport du Conseil d'État sur sa gestion (1914–1926)*

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<sup>43</sup> 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.

<sup>43</sup>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'.<sup>44</sup> 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,

<sup>44</sup>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.<sup>45</sup>

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'<sup>46</sup>). 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

<sup>45</sup>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.

<sup>46</sup>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.<sup>47</sup> 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 constitute 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

<sup>47</sup>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,<sup>48</sup> 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?

<sup>48</sup>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,

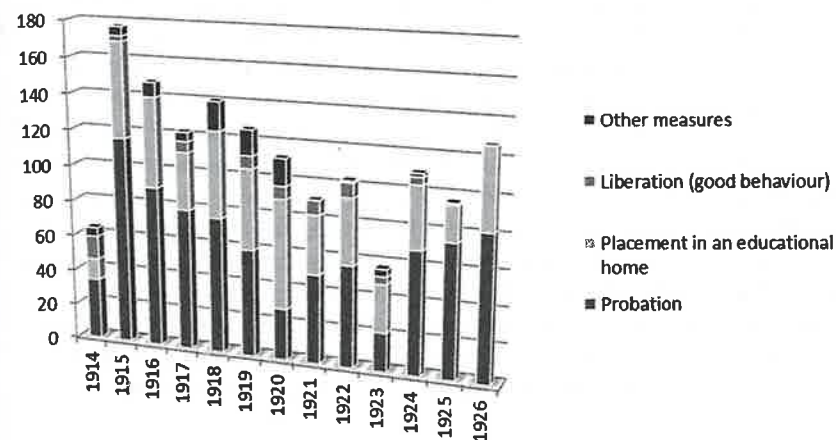


Fig. 2 Sentences and measures ordered by the Geneva Children's Penal Court, 1914–1926 (according to official reports). Source: *Rapports du Conseil d'État sur sa gestion* (1914–1926)

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'.<sup>49</sup> 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'.<sup>50</sup> 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

<sup>49</sup>Letter dated 2 October 1918 (AEG, DJP, 1986 va 23/22.1).

<sup>50</sup>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<sup>51</sup>; 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.<sup>52</sup>

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'.<sup>53</sup> 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.

<sup>51</sup>Letter dated 16 April 1917 (AEG, DJP, 1986 va 23/22.1).

<sup>52</sup>Letter dated 20 August 1921 (AEG, DJP, 1986 va 23/22.1).

<sup>53</sup>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'.<sup>54</sup> 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%).

<sup>54</sup>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.<sup>55</sup> 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<sup>56</sup> 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<sup>57</sup>). 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.

<sup>55</sup>Same observation in Anne M. Knapfer, *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.

<sup>56</sup>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.

<sup>57</sup>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.<sup>58</sup> 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',<sup>59</sup> 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

<sup>58</sup> Our sample contained 12 cases of delinquents over 18 years of age, but this can be 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.

<sup>59</sup> 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'.<sup>60</sup> By

<sup>60</sup> 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 reformatory 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.<sup>61</sup>

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.

<sup>61</sup> *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.