

Revista Filosófica de Coimbra

vol.16 | n.º32 | 2007

Mário Santiago de Carvalho
Henrique Jales Ribeiro
Montserrat Herrero
Hugo Mendes Amaral
Nuno Ricardo Silva
Pierre Guibentif
Michel Coutu
Edmundo Balsemão Pires
Luc-Henry Choquet

TAKING INTO CONSIDERATION THE CULTURAL ASPECT OF FAMILIES IN JUDICIAL EDUCATIVE ACTIONS FOR YOUNG OFFENDERS (*)

Luc-Henry Choquet

(Search Department Manager. Head of Court's Youth Protection Services.
Ministry of Justice, France)

Abstract

The urban riots that took place in French suburbs between October 27th and November 17th 2005 highlighted the circumstances of minors and young majors in problem areas in a spectacular way. The difficulties these encounter in becoming socialised, their sense of “social desperation”, the segregation and discrimination they are victims of, are part of nowadays debate on social policy. The republican model can no longer be applied rigidly and society can no longer be represented in class struggle terms only because such approaches have broadly led to underestimate other dimensions: the significance of the question of migrations, the time lag between “cultural” integration which is quite swift and “structural” integration, far slower for immigrants and their children, the existing gaps between different generations of immigrants’ children living in housing estates. The times and current difficulties undoubtedly call for the recourse to other approaches in addition to traditional ones as the latter point out “vertical” phenomena – the role of genealogical and legal dimensions, of family or institutions handing down some legacy- while assuming that everybody lives in one and the same world. These new approaches are, on the one hand, an approach that is fuelled by observation of current events and underlines gaps between contemporaries as well as between cultures, thinking patterns, fundamental principles; on the other hand, a “horizontal” point of view that stresses peer effect and the role played by urban environment.

At his 2002 Senate Board of Enquiry hearing on delinquency in young people, Thierry Baranger, President of the French Association of Magistrates for youth and family said: “*It is no coincidence that a large pro-*

* This paper was presented at the International Conference “Law and Society in the 21st. Century”, Berlin 25-28 July, 2007.

*portion of the young people who we deal with and who end up in prison are from immigrant stock. It seems very often to be a matter of an unstable family unit, parents who cannot enter into dialogue with the school and who are unable to fit into public life.*¹

The emphasis placed on the cultural background of these young people has been provoking strong reactions in France for a long time. That is why the Juvenile Judicial Protection Service has broached the subject in a low-key manner in its publications² and, since 1993, has given it a more visible profile through staff training schemes³. Added to this have been a few instances of the use of ethnopsychiatry in judicial practice, which have highlighted cultural issues and at the same time raised the question of whether this new way of handling things is justified⁴. It is nevertheless a positive sign of progress that at the Headquarter of the Juvenile Judicial Protection Service, a debate has begun about:

- i. Taking into consideration the cultural background and where this leads;
- ii. The criteria used in introducing it within the judicial framework and its expected outcomes.

We should however remain cautious in our dealings with this very complex issue, bearing in mind the following points:

- i. The impact of public policy is often difficult to quantify;
- ii. The relationship between the causes of delinquency and different delinquent behaviour raises diverging opinions;

¹ Cf. Rapport n°340 de la commission d'enquête sur la délinquance des mineurs, créée en vertu d'une résolution adoptée par le Sénat le 12 février 2002, (M. Jean-Pierre Schosteck, Prés.).

² Cf. Cirba (L.), *La justice des mineurs et les institutions éducatives* face aux jeunes d'origine immigrée, Education surveillée, décembre 1980; Verbunt (G.), «Parents et enfants dans l'immigration», *Cahiers dynamiques* n° 13, DPJJ, décembre 1998; Circulaire d'orientation relative à la protection judiciaire de la jeunesse, DPJJ, 24 février 1999, NOR Jus F99 500 35 CO qui indiquait que «la connaissance ou la reconnaissance des contextes culturels des histoires familiales des mineurs étrangers ou d'origine étrangère est un préalable souvent indispensable à leur intégration»; Zanna (O.), «Sentiment de disqualification et entrée en délinquance: le cas des mineurs incarcérés», *Cahiers dynamiques*, n° 29, DPJJ, décembre 2003-janvier 2004.

³ Voir par exemple les sessions suivantes: *Les familles d'immigrés africains en France*, Pradelles de Latour (C-H), ethnologue, membre du laboratoire d'anthropologie sociale du Collège de France, *L'islam en France*, Bargach (S.), sociologue au GAPRETS, Faculté des sciences Luminy-Marseille, *L'exil, une approche clinique*, Benslama (F.), psychanalyste, maître de conférences Université Paris 7, *Figures de l'exil, filiation, transmission*, Rude-Antoine (E.), juriste, sociologue, CURAPP, Amiens.

iii. Work done on this issue by demographers and sociologists raises several unanswered questions, such as what exactly is meant by the word 'ethnic'.

My presentation then will address in a practical manner the following three points:

- i. The problem of building a young person's sense of identity;
- ii. The relationship between the causes of delinquency and delinquent behaviours;
- iii. Account taken, within the actions of the Juvenile Judicial Protection Service, of the cultural context of the family history of the young people involved.

The building blocks of a person's identity

In certain places, the young people involved are frequently of foreign origin, first or second generation. A culture-based literature tends to describe social links (i.e. family or school life, gender relations, peer links) from a traditional point of view, as if they were the product of a cultural heritage handed down from parents or grandparents. It should, however, equally be viewed as the result of the overall evolution of society and the effects of living in that society (places of residence, relations between peers). During a survey carried out in prison, an ethnologist found that "the identity asserted by young people in prison will be their identity from their life outside prison that they bring in with them based on (...) their territorial area (...), each county having its own type of crimes⁵". Briefly then we can say that the standard viewpoint is mostly a *vertical* one. It emphasises the part played by family and the transmission of values by public bodies (in particular school). A more complete picture can only be gained by using another, *horizontal* point of view, which emphasises the role of the milieu in which the young people live and peer effect. Hence the need to broaden the approach with regard to young people of immigrant stock to include other characteristics apart from their nationality or

⁴ Cf. le débat entre Moro (R-M), professeur de psychiatrie, dirige le service de psychopathologie de l'enfant et de l'adolescent de l'hôpital Avicenne à Bobigny (93), et Benslama (F.), psychanalyste, maître de conférence à l'université Paris VII, in «Psychiatrie: Que peut apporter l'ethnopsychiatrie au travail social?», *Lien social*, n° 696 du 12 février 2004.

⁵ Cf. Le Caisne (L), *Jeunes en prison – Ethnographie d'un «quartier mineurs»*, Centre d'Etude des mouvements sociaux (CNRS – EHESS), Novembre 2005.

their parents' birthplace. The forming of a persons' identity is in fact a subtle process which cannot be summed up by simple formulas. Young people of "immigrant stock" simply cannot be described or perceived only as that. Their identity is multi-faceted and the fashion in which it is built up relies on many different things, which we need to find not only in tradition and the transmission of values, but also in the here and now of their everyday lives⁶.

The relationship between causes and types of delinquent behaviour

The issue of delinquency is perceived by the courts and by educational professionals via the individuals they deal with. They note that in such and such a family, one sibling will commit crimes and the other will not. This is why they generally conclude that there are no common denominators in the propensity to commit crime and it is on this premise that we examine the role played by family background in criminality. Some studies have found that "home life appears to play an important role, not from the point of view of the family make-up (number of siblings, cultural origins, material wealth...), but as the best possible place for a child to learn how to socialise."⁷ Other recent studies using statistical methods, which establish the relationship between delinquency and qualitative causal variables, have given quite different results: "the size of the family unit (i.e. number of children) and the rank by age of each child in the sibship (first-born, second etc.) are closely linked to instances of delinquency. (...) The number of children can triple the chances of a child being involved in acts of delinquency (...)."⁸

When a youngster brought up in a polygamous family offends, it is because of his large number of siblings and not because of the presence of several wives. Once the rank of a child in the sibship and the number of children are taken into account, it is shown that adolescents from a polygamous family are not more likely to be delinquent. For this model, the sociologist is looking in particular at young people from sub-Saharan

⁶ Cf. Clair (I.), «La mauvaise réputation. Etiquetage sexué dans les cités», 2005, in Callu (E.), Jurmand (J-P), Vulbeau (A.) (dir.), *La Place des jeunes dans la Cité: espace de rue, espace de parole, Les Cahiers du Griot*, tome 2, CNAM/PJJ, Paris, L'Harmattan, pp. 47-60; *idem*, «Des 'jeunes de banlieue' absolument traditionnels?», 2005, *Lien social et politiques*, n. 53, pp. 29-36.

⁷ Cf. Zanna (O.), «Sentiment de disqualification et entrée en délinquance: le cas des mineurs incarcérés», *Cahiers dynamiques*, n° 29, DPJJ, décembre 2003-janvier 2004.

⁸ Cf. Lagrange (H.), «Déviance et réussite scolaire à l'adolescence», *Recherches et Prévisions* n° 88 – juin 2007.

Africa and pointing out the background of large numbers of children per family in which the likelihood of delinquency increases. Although no conclusion can be drawn on the issue of causality, case by case, the remarks do bear weight in terms of public policy.

Why is there such a strong reaction to the idea of people's cultural background being taken into account when dealing with offenders?

Negative reactions towards people's backgrounds being taken into account stem from the idea that public policy contributes to the public's perception of social reality by underlining certain aspects of it. That is why an approach centred round the ethnic idea might actually reinforce the problem. On top of this, highlighting and denouncing inequalities between social sub-groups based on ethnic differences could paradoxically result in a strengthening barriers between the sub-groups and vindicating their existence⁹.

It would appear now however that the public policies, which did not take into account the cultural dimension were, in the words of Dominique Schnapper, a true reflection of the "creative utopia which is human society"¹⁰. In this model, the people on the receiving end of the judicial actions would not be singled out according to their origins. On another level, representing society in terms of class struggle has also meant refusing to take into account these differences in ethnic origin and in so doing, has undervalued their significance.

Hence the negative reactions, which have surfaced again recently surrounding the statistical survey data on the urban unrest which occurred in France in Oct-Nov 2005¹¹. These studies of young people being charged with offences in two different judicial areas (Bobigny and Paris) showed their origins (based on first and surnames) as being frequently

⁹ Jenson (J.) et de Singly (F.), *Identités: attractions et pièges* (Présentation), *Lien social et Politiques*, numéro 53 (Printemps 2005).

¹⁰ Cf. Schnapper (D.), «État des lieux, état des problèmes», Allocution d'ouverture, Colloque sur les statistiques "ethniques", Centre d'analyse stratégique, 19 octobre 2006.

¹¹ Voir notamment: Mucchielli (L.), Le Goaziou (V.) (dir.), *Quand les banlieues brûlent... retour sur les émeutes de novembre 2005*, Editions La Découverte, Paris, 2006; Lagrange (H.), Oberti (M.), *Emeutes urbaines et protestations: Une singularité française*, Presses de Sciences Sc. Po., 2006; Mauger (G.), *L'émeute de novembre 2005. Une révolte protopolitique*, Éditions du Croquant, 2006; Roché (S.), *Le frisson de l'émeute – Violences urbaines et banlieues*, Seuil, 2006; Draï (R.) et Mattéi (J.-F.) (dir.), *La République brûle-t-elle? Essai sur les violences urbaines françaises*, Ed. Michalon, 2006; Dossier «Emeutes, et après ?», *Mouvements*, n°44 ; Dossier «Penser la crise des banlieues», *Annales – Histoire, Sciences sociales*, n°4, juillet-août 2006.

Moroccan, Tunisian, Algerian or from sub-Saharan Africa. The studies also showed that the increase in arson attacks on vehicles has spread through the places with the highest numbers of young people from sub-Saharan African stock. Some sociologists have however refuted these findings or have lessened their importance within the analysis. These people cite the work of Pierre Bourdieu as a case in point: “Political leaders and drawing room sociologists, writes Loic Wacquant, talk with passion about culture-based ideas of ethnicity and about the ‘ghetto’, which is a perfect way of pushing under the carpet the new and widespread sense of insecurity in society set against a background of astonishing increase in inequalities.¹²” To back up their comments, these people, who object to the analyses including the ethnic issue, say that they are inaccurate since they exclude other social factors. “The identity thesis makes no mention of the fact that social segregation has its source in the inequalities of economic and scholastic wealth and that the least privileged in this domain are often recent immigrants destined for the most menial jobs.¹³” The author of this remark would have it that such a specific approach with regards to ethnicity is an abjuration of Marxism in the political arena, a dishonest disguising of the essential and unchangeable issue, which is the class struggle. These objections also put forward the link between ‘ethnicity’ and ‘religious reasons’ and declare that an ethnic approach is pointless in the circumstances since the religious aspect was barely visible during these events¹⁴.

Challenging the traditional viewpoint

Rather different points of view about the 2005 episodes of urban unrest have been adopted by other sociologists such as those writing for the well-known ‘*Annales-Histoire, Sciences Sociales*’ (Chronicles – History, Social Sciences) journal, who recognise the role played by migration¹⁵. They point out the gulf between the quite rapid cultural integration and the much slower structural integration for immigrants and their children

¹² Wacquant (L.), « L’Etat incendiaire face aux banlieues en feu », *Combat face au sida*, n°42, décembre 2005 – janvier 2006.

¹³ Cf. Mauger (G.), *L’émeute de novembre 2005. Une révolte protopolitique*, Éditions du Croquant, 2006.

¹⁴ Ce point est encore relevé dans une parution récente: Cicchelli (V.), Galland (O.), de Maillard (J.), Misset (S.), « Les jeunes émeutiers de novembre 2005 », *Le débat*, n°145, 2007.

¹⁵ Cf. *Annales – Histoire, Sciences sociales*, 2006, *op. cit.* Voir aussi Fassin (D.), Fassin (E.), (dir.), *De la question sociale à la question raciale? Représenter la société française*, ed. La découverte – Cahiers libres, 2006.

and between the different generations of children of immigrants, which make up the population of the council estates. In doing so, they point out the pitfalls of ‘too rigid an application of the republican model’. More generally speaking, the traditional stance of opposing any consideration of the cultural aspect of family background is now under fire and the same criticisms are levelled at those who oppose the ‘formal’ aspects of law to its material and ‘real’ achievements. The refusal to take into account differences linked to origins would lead to a disadvantageous levelling in the field of inequalities and discrimination. These days the general feeling at a public body level (e.g. HALDE: Haute Autorité pour la Lutte contre la Discrimination à l’Emploi – Chief Authority Against Discrimination in Employment¹⁶) is towards more equality, not only at an official level, but also thanks to an increasing number of specific intervention policies. It is accepted more often that refusing to take account of different ethnic categories can lead to:

- i. Underestimating the scale of some existing problems;
- ii. Hindering reforms of public policy;
- iii. Hindering the chances of efficient action towards compensation.

At the same time, a debate emerged in 1999 about the introduction of ‘ethnic’ variables in statistical studies¹⁷.

¹⁶ Autorité administrative indépendante, créée par la loi du 30 décembre 2004, chargée «de mener un combat efficace contre les discriminations et pour l’égalité de tous.»

¹⁷ Outre le Rapport présenté en séance plénière de la CNIL, le 15 mai 2007 (Debet (A.) (Rap.), Mesure de la diversité et protection des données personnelles) qui est la référence récente la plus importante, la bibliographie sur le débat concernant l’introduction des variables ethniques dans la statistique est vaste: Blum (A.), «*Resistance to identity categorization in France*», in Kertzer (D.) et Arel (D.) (eds), *Census and Identity. The Politics of Race, Ethnicity, and Language in National Censuses*, Cambridge University Press, New Perspectives on anthropological and social demography, Cambridge, 2002, pp. 121-147; Blum (A.), «Comment décrire les immigrés – A propos de quelques recherches sur l’immigration», *Population*, 3, 1998; Blum (A.) et Guérin-Pace (F.), «A propos du débat sur les statistiques ethniques», *idées* 147/3.2007; Choquet (L.-H.), «Situation de l’immigration et débats méthodologiques», chap. 14 de *Usages sociaux du temps et migrations – “Les familles à la croisée de l’espace et du temps”*, COFACE — DG Emploi et Affaires sociales de la Commission Européenne/Programme VP/2002/011, Ligne budgétaire B3-4102, 2004;

Felouzis (G.), «La ségrégation ethnique au collège et ses conséquences», *Revue française de sociologie*, 44-3, pp. 413-447, 2003; Héran (F.), 12 novembre 1998, La fausse querelle des catégories «ethniques» dans la statistique publique, INED; Héran (F.), Aoudai

The necessity of taking into account the cultural context of family history

The contemporary concept of 'living together' encompasses an expectation of a theoretical equality of rights, but also a real equality in everyday life. Yet we cannot help but see the yawning chasm between the longed for equality and the actual reality, which is inequalities of jobs and prospects. Taking into account the cultural context of family history seems therefore to be the best way forward and finds an echo in the work of the public body of the Juvenile Judicial Protection Service on three levels: the young people concerned, their families and professional involved with them. This is why the way of thinking about the context of educational intervention has a tendency to change. In the past the issues of delinquency and child welfare have been looked at in a very general way based on generalised assumptions. Then more recently we have emphasised the risks inherent in situations faced by the young people in question and ways to combat these risks, which were at that time seen as separate from any educational measures taken by professionals. Today perceptions have changed and risks are now seen as intrinsic to the educational measures. These risks are dependent on the limitations and capacities of the players themselves individually and collectively. The young people and their families are no longer stuck in the passive role of mere recipients of a public authority assistance response. Their cultural background, their resources and their limitations are taken into consideration. It is in this way that judicial action for young offenders aims to be both moderate and appropriate to the young persons' situation and also adapted to their capacity

(M.), Richard (J.-L.), Immigration, marché du travail, intégration, Commissariat Général du Plan, La documentation française, Paris, FRA, 2002/10; Le Bras (H.), Le démon des origines, Ed. de l'Aube, 1998; *Pénombre*, «La statistique criminelle et la question de l'origine: quelques repères pratiques.» in Enquêtes et origine, Lettre d'information – n° spécial, Pénombre, janvier 2002, disponible sur : http://www.penombre.org/hors_serie/enq_et_orig.htm; Richard (J.-L.), Partir ou rester – Les destinées des jeunes issus de l'immigration étrangère en France, PUF, 2004; Simon (P.), «Nationalité et origine dans la statistique française: les catégories ambiguës», *Population*, 3/1998; Simon (P.), «La catégorisation statistique des 'immigrés': analyse des inégalités et lutte contre les discriminations» in Sida, immigration et inégalités, Éd. ANRS, 2002; Simon (P.) et Clement (M.), «Comment décrire la diversité des origines en France? Une enquête exploratoire sur les perceptions des salariés et des étudiants», *Populations et sociétés*, n° 425, juillet-août 2006; Tribalat (M.), Faire France, La Découverte, 1995.

to benefit from the action¹⁸. Another aim of this action however is that any progress made regarding equality should not be detracted from by a type of labelling arising from differentiation.

The repercussions of this spread out in two directions. Firstly towards the young people under court supervision. It is now widely held that the lack of economic, social and cultural integration of families of immigrant stock may cause a young person to withdraw into the identity of their cultural background, which the authorities have to deal with when the cultural issue comes to a head, sometimes very violently and this in a highly rationalized and secular public arena. Families do not see their children's problems or the appropriate response to these problems in the same way as do professionals. They frequently voice their opposition to the educational solutions adopted, saying that they will not help. A mother for example will say that a series of enemas have cured her son for ever of the compulsion to rape and she therefore refuses the judicial process and educational support. Another example is the youngster who requests a very strict diet on religious grounds either as a form of repentance or through loyalty to his parents from whom he is far away whilst in the community home. It is in cases such as these that the presence of a cultural mediator can help smooth the way for educational actions lead by professionals to be put in place without contradicting each other.

Secondly the repercussions affect the professionals who deal with the young offenders. An unbiased public service, the very nature of which implies a duty of discretion crucial to people dealing in public policy, is like a legal requirement and thus indispensable. This neutrality not only comprises a condition upon which rests the service users freedom of conscience, but also the freedom of conscience of the professional person dealing with him or her: this person's convictions should not make him an object of discrimination. Certain types of behaviour must therefore be deemed unacceptable. We must respect this neutrality when faced with behaviour which amounts to a form of proselytizing, not only with regard to the young people but also amongst colleagues. One example is the emergence over the last ten years in public debate of Islam with regard to the above-mentioned issues, as well as through the most recently recrui-

¹⁸ Ces considérations utilisent implicitement le concept de “*capabilities*”, concept central dans les travaux d'Amartya Sen, Prix Nobel d'Économie en 1998, qui note ainsi les capacités et les possibilités effectives d'agir de façon efficace pour trouver sa place dans le monde, se protéger des risques, faire face à l'incertitude, et dont les acteurs de l'action publique doivent promouvoir le développement et le renforcement. Cf. *L'économie est une science morale*, La découverte, 1999; *Ethique et économie*, PUF, 2000; *Développement et liberté: un nouveau modèle économique*, Odile Jacob, 2000.

ted ranks of professionals in social welfare. This has produced some hard discussions about how to maintain the neutrality of public service. So it is also in this respect that we should envisage taking into consideration the cultural dimension.

Lastly, the enforcement of criminal law and the educational action for young offenders begins gradually, as we have seen, to take into consideration the cultural aspect of families and this can sometimes be translated into practice and regulation. But civil law has been providing explicitly for this aspect in art. 1200 (since 1981) “In enforcement of educational action [for young person in physical or moral danger], the religious and philosophical convictions of young minors and their families must be taken into account.