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► **To cite this version:**

Arthur Vuattoux. Institutional production of gender in juvenile courts.: Reflections on the treatment of adolescents in the French civil and criminal justice systems. 2016. hal-01334347

HAL Id: hal-01334347

<https://hal.science/hal-01334347>

Submitted on 20 Jun 2016

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TEPSIS PAPERS

June 2016

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INSTITUTIONAL PRODUCTION OF GENDER IN JUVENILE COURTS

*REFLECTIONS ON THE TREATMENT
OF ADOLESCENTS IN THE FRENCH CIVIL AND CRIMINAL
JUSTICE SYSTEMS*

Institutions dealing with the public take part in the production of this public and of categories of this public. Juvenile courts are a case in point. In a recent ethnographic research conducted in two French juvenile courts, we have shown how gender structures the way in which teenage boys and girls are treated by the judiciary. How exactly does the judiciary produce gender and through what mechanisms ? How is one to understand that case files consistently show that girls are more willingly spared social control and benefit from specific forms of protection while the perception of boys' deviant behavior focuses on what they do and from a more strictly criminal angle ?

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Keywords: **Adolescence** **Gender** **Institutions** **Justice**



The present research forms part of a doctoral dissertation studying the treatment of teenagers by civil and criminal justice from the point of view of gender and the various power relations structuring society (1). It draws on at least three sociological fields: the sociology of deviance, which addresses the relationship between the « norm » and its « deviations »; the sociology of law and justice, which deals with a complex professional field marked by highly codified rationalities; and the sociology of gender, which has long permitted the study of gender-biased treatments and provided us with the tools to give an account of them.

Approached from these different angles, our topic can be summarized in the following questions: « How does an institution, whose first objective is to say and apply the law, deliver sentences ? Are these sentences influenced by norms existing outside the institution but predominant in society, as for example gender norms, which tend to construct differentiated models of adolescent boys and girls and of how they deviate? To what extent does justice make arbitrary judgments on the sole basis of gender ?

Production of gender norms by the judiciary: An issue of concern

In order to define the problem at hand precisely, one must look at it within the context of current controversies on gender. According to Eleni Varikas, gender can be defined as « a framework, a way of studying the world and politics through the prism of sexual difference » (2). Doing research on gender implies therefore that the research concerns divisions inherent to society, particularly the division of humanity into two genders, distinct and naturalized, i.e., constructed as if they were founded in the nature of human beings – as if, for instance, men could be reduced to their hormones or their anatomy.

As concerns justice and more precisely the judicial treatment of adolescents, the question at hand is that of gender determinants in deviance: do girls behave differently from boys ? Why do boys constitute the overwhelming majority of minors summoned to court ? Are girls « less » delinquent ? Three possible answers to these questions have been identified. The first, though it is no longer held in academia,

(1) « Genre et rapports de pouvoir dans l'institution judiciaire. Enquête sur le traitement institutionnel des déviations adolescentes par la justice civile et pénale dans la France contemporaine », doctoral dissertation, Paris 13 University, IRIS, 2016. Joint dissertation advisors were Bertrand Pulman and Marc Bessin.

(2) Eleni Varikas, *Penser le sexe et le genre*, Paris: Presses universitaires de France, 2006, p.17.

continues to shape common sense and certain forms of discourse: according to this view, observed differences in boys' and girls' deviance are founded in nature. Girls tend to question social and family order (an attitude considered typical of adolescence) through private and legal forms such as rejection of parents or adoption of specific dress codes, while boys express protest more openly and in the public space, notably through robbery or acts of violence that land them in court. These clearly differentiated forms of protest are given a biological, hormonal, explanation. This view has however been seriously challenged by more recent research. (3)

The second approach posits that these « differences » are a matter of socialization and that male and female deviances actually result from differential socialization. According to this approach, girls are more trained by parents or school to respect social rules and are generally kept away from the public space and risk behaviors – at least, those leading to criminal prosecution. Boys, on the other hand, enjoy more freedom and are consequently more likely to deviate from social rules.

Some aspects of the socialization approach seem relevant and their value has been solidly demonstrated by scholars. However, it seems interesting to explore a third, often underestimated, way of looking at the issue. According to this view, institutions themselves produce social norms, including those that construct boys' and girls' gender identities. Gender norms and the representation according to which boys and girls deviate from social norms differently are partly produced by social control institutions. This position is borne out by comparison of quantified data: girls account for 17 percent of juvenile arrests. This figure drops to 10 percent for girls actually brought to trial and to 7 percent for those reaching the final stage of the criminal process, deprivation of freedom (4). In other words, even though girls represent nearly one out of five offenders arrested each year, they disappear from the criminal process either because they are released (or not prosecuted) or referred to social services – being thus protected by justice. This shows that institutions do indeed play a role in the treatment of male and female juvenile deviance and therefore in related representations of deviance.

We have investigated this hypothesis further by engaging in an ethnological study of two French juvenile courts. Our inquiry is based on a year's observation of hearings, interviews with justice professionals (mainly magistrates and youth workers),

(3) See in particular Farzaneh Pahlavan, « Contribution des facteurs biologiques dans les manifestations des comportements d'agression chez les femmes », in: Pierrette Verlaan and Michèle Déry (eds), *Les conduites antisociales des filles. Comprendre pour mieux agir*, Québec: PUQ, 2006.

(4) These data originate from national criminal statistics gathered by the Ministry of Justice and the French National Observatory on Delinquency, from penal responses (Ministry of the Interior), and from the national criminal record register. The figures quoted date from 2011.

and qualitative and quantitative analysis of over 200 civil and criminal case files. Our conclusions are described in what follows.

Gender scripts of deviance: Some elements of gender ethnography in a juvenile court

The case files that we have analyzed show recurring statements and interpretations that distinguish girls' files from boys' rather sharply. In female juvenile offenders' files, legal proceedings seem to focus on family relations and privacy. If a girl is arrested after spending two days away from home, police officers and youth workers question her about whether she had sexual relations, whether or not the relations were unprotected, or whether she has relationship problems with her parents. By contrast, analysis of boys' situations shows that attention is focused on acts they may have committed and, as the case may be, on their peers. An adolescent boy is more likely to be asked whether he committed such acts in the past, whether he was incited to by other boys, and his entry into delinquency is duly noted. Thus, while girls are perceived as individuals to be protected, even if it means assigning secondary importance to offenses they may have committed, boys are perceived as offenders or potential offenders. The logic at work here is a sharp differentiation in treatments based on gender norms – whereby girls, and more generally women, are vulnerable and boys are legitimate figures of deviance. Tied in with this is the idea that crime control and the most symbolic place where sentences are served – prison, are considered little appropriate for women but totally acceptable for men.

However, this phenomenon is neither new nor specific to the judiciary: it only comes as confirmation of previous observations of the gendered treatment that is common in society. A long time ago, the sociology of sexuality brought to light the sexual double standard, i.e., the gender-based differentiation of teenage sexuality pervading US and European societies. Social sciences have shed light on the tendency of youth control institutions, including the immediate family circle (parents or close relatives), to tacitly consider girls as being at risk sexually and control them accordingly, but to leave boys free to experiment with sex – which is even viewed as a way for teenage boys to cope with difficulties they may face. The scope of the double standard extends beyond the control of sexual activities via differential socialization norms: girls are less allowed to go out and are less encouraged to choose their own activities (5).

(5) Meda Chesney-Lind and Randall G. Shelden, *Girls, Delinquency and Juvenile Justice*, Hoboken: John Wiley & Sons, 4th ed., 2014.

The double standard observed within the family is echoed in social control institutions by a differential use of sanctions and protection. In order to understand this phenomenon and its mechanisms better, we suggested the use of yet another concept borrowed from the sociology of gender. John Gagnon has introduced the notion of « sexual scripts » to describe the fact that an individual's sexual conduct is determined by conventional, agreed-upon models – for example, sexual scripts determine the choice of a specific order in the different moments of the sexual act over another (6). As Gagnon's theory leaves room for an enlargement of the concept, we suggest that « gender scripts » be used to refer to the general models guiding the actions of justice professionals. Considering female juvenile delinquency as a psychological problem or as originating in the family and seeing boys as potential delinquents are as many responses to widely shared gender scripts. Behind the notion of « script », therefore, is the idea of a commonly shared and institutionalized subtext underlying human behavior.

Gender, individuals, and institutions

Are we to conclude that judges and youth workers are guided by gender « stereotypes » and influenced by their representations of girls' and boys' deviances when they respectively pronounce judgments and assess the cases of minor offenders ?

It is necessary to understand that these justice professionals operate within institutions and that they formulate their pronouncements of judgments and assessments through these very institutions. Gender is a system organizing representations and shaping institutions. Anthropologist Gayle Rubin has spoken of a « sex/gender system », a « set of arrangements by which the biological raw material of human sex and procreation is shaped by human, social intervention » (7). In the same vein, Mary Douglas has put forward the need to perceive institutions as being founded in nature and legitimated by actors « steered by institutions » (8).

The production of gender within the judiciary thus obeys to a mechanism revealed by gender studies and anthropology – that of an « institutional thought structure » (9) shared and transmitted more or less consciously by most of the institution's

(6) John Gagnon, *Sexual Conduct: The Social Sources of Human Sexuality*, Chicago: Aldine Transaction, 2nd ed., 2005.

(7) Gayle Rubin, «The Traffic in Women: Notes on the 'Political Economy' of Sex », *Toward an Anthropology of Women*, in: Rayna R. Reiter (ed.), New York: Monthly Review Press, 1975.

(8) Mary Douglas, *Comment pensent les institutions ?* [1999], Paris: La Découverte, 2013.

(9) *Ibid.*

agents in their daily activities. The gender system is a set of practices, discourses, and institutionalized activities: this notably explains its great sociological consistency.

Last, let us note that what is relevant for gender is also relevant for the other power relationships prevalent in society and traceable in case files. Ethno-racial origins, social class, or age also constitute a basis for differentiation within the judiciary institution (10).

(9) This question, which occupies a major part of our dissertation, has been discussed in an article: Arthur Vuattoux, « Les jeunes Roumaines sont des hommes comme les autres », *Plein droit*, 104, 2015.