THE HISTORICAL POLITICS OF THE JUVENILE JUSTICE SYSTEM AND THE OPERATION OF LAW IN THE JUVENILE COURT IN ISTANBUL IN REGARD TO PROPERTY CRIMES

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Title: The Historical Politics of The Juvenile Justice System and the Operation of Law in the Juvenile Court in Istanbul in Regard to Property Crimes

This thesis is on the historical transformations in juvenile justice policy in relation to property crimes and the operation of law in the one of the juvenile courts in Istanbul. The politics of the Penal Code and the legal techniques to handle juvenile delinquency in different conjunctures are explored. The cooperation between the juvenile court, social work and state administered child care centers to correct the child characterizes the legal politics in the succumbed welfare era whereas the new juvenile justice policy is *double sided*. It targets both the security of the victims and the rehabilitation in an open milieu by means of the new partnership between civil society, the court and the family. The operation of law is also scrutinized. The judges' visions on the function of law and juvenile justice policies explain their visions as the major operators of the law. Both (un) successful patterns in verbal and bodily performances in the courtroom and fight by words in the court records show us the contestations in the legal arena. The scrutiny of these performances and the tactics in official documents unpack the reception of law by the offenders, the operation of law from below, to renegotiate the limits of legitimacy. Juvenile delinquents' tactics are categorized as "legitimizing theft as a channel for survival" and "blaming people who subject them to violence." Interviews with three judges, attendance at thirty-four property crime trials and twenty-five files obtained in my field research between February, 2008 and June, 2008 constitute the primary resources.

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Başlık: Çocuk Adalet Sisteminin Tarihsel Politikaları ve İstanbul'da Çocuk Mahkemelerinde Mala Karşı İşlenen Suçlara İlişkin Hukukun İşleyişi

Bu tez çocuk adalet politikasındaki mala karşı suçlara ilişkin tarihsel dönüşümler ve İstanbul'daki çocuk mahkemelerinden birinde kovuşturulan mala karşı suç işleyen çocuklar hakkındadır. Farklı konjonktürlerde, Ceza Kanunun politiği ve çocuk suçluluğuyla baş etme teknikleri araştırılmıştır. Çocuk mahkemeleri, sosyal hizmet ve devlet yönetimindeki çocuk bakım evleri arasındaki çocuğu normalleştirme amaçlı işbirliği iflas eden refah devleti dönemindeki yasal politikayı tanımlarken, yeni çocuk adalet politikası *çift yönlüdür*. Hem kurbanlarının güvenliğini sağlamayı, hem de mahkeme, sivil toplum ve aile arasındaki yeni ortaklık yoluyla çocuğun açık çevrede ıslahını hedeflemektedir. Hukukun işleyişi de incelenmiştir. Hâkimlerin kanunların fonksiyonu ve çocuk adalet politikalarına dair görüşleri, kanunların ana uygulayıcıları olarak onların bakış açılarını izah eder. Duruşma salonundaki sözlü ve bedensel performanslardaki başarılı ve başarısız örnekler ve mahkeme kayıtlarındaki sözlü savaşlar bize yasal alandaki mücadeleleri gösterir. Bu performansların ve resmi dokümanlardaki taktiklerin incelenmesi kanunun suçlularca, meşruluğun, haklılığın sınırlarını yeniden çizmek için nasıl alındığını, alttakilerce nasıl kullanıldığını ortaya çıkarır. Suçlu çocukların taktikleri "hırsızlığı hayatta kalma yolu olarak meşrulaştırmak" ve "onları şiddete maruz bırakan insanları suçlamak" olarak sınıflandırılacak. Şubat, 2008 ile Haziran, 2008 arasındaki saha araştırmamdan elde ettiğim, üç hâkimle yapılan mülakatlar, mala karşı suçlara ilişkin otuz dört duruşma ve yirmi beş dosya birincil kaynaklarımı oluşturmaktadır.

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CHAPTER ONE

INTRODUCTION

Juvenile delinquency is a socio legal phenomenon that hitherto has not received enough attention in Turkey. The juvenile delinquency literature mostly is composed of sociological studies that either stresses the reasons for it or present qualitative and descriptive information on specific group of delinquents. Similarly, few studies have emphasized property crimes, merely providing statistical information on the police and the court records without any interpretation. Few publications have been made concerning the legal and historical background of juvenile delinquency, juvenile justice policy and juvenile court. These focus on the welfare era. Academic research on legal anthropology, like the elaboration of law as a contested terrain for different actors with various ends, the tactics of subaltern groups in legal contexts, their legal cultures, their perception of justice and rights in the official records and the verbal and bodily performances in trials are terribly inadequate and explore the Ottoman period.

This thesis examines the historical transformations in the juvenile justice policy in relation to property crimes and the operation of the law concerning juvenile property offenders in the one of the juvenile courts in Istanbul. I scrutinize the changes in the juvenile justice policies in Chapters Two, Three and half of Chapter Four. The rest of the thesis, the remaining half of Chapter Four and Chapters Five and Six, explore the operation of the law in regard to juvenile property offenders.

The process of negotiating access and building a rapport with informants at the One of the juvenile courts in Istanbul began in February 2008 and field research terminated in June 2008. The primary resources used in the thesis came from these five months of field research. I interviewed three judges about juvenile delinquency, the current juvenile justice system and the function of legal rules. In addition, I attended in thirty- four court sessions of juveniles who were accused of property crimes. I randomly selected twenty-five property crime files from the archives of the court and those cases that had been prosecuted in the 2000s. Each file includes official documents from all stages of the journey of the child in the juvenile justice system, from detection to prosecution. These comprise my primary resources to explore the operation of law in the juvenile court. Secondary sources includes legislations, articles, theses and academic researches on juvenile delinquency, property crimes and juvenile court, theories on delinquency and on law and contestation in legal arena, some periodicals and newspapers. These sources serve as instruments to explore the historical changes in juvenile justice policy and to uphold my interpretations.

Alan Hunt and Gary Wickham describe Foucauldian approach to law as governance. The four principles they define are crucial to illustrate my aim and vision in the following three chapters. In these chapters, I stress the politics of criminal law and the contestation of legal techniques to handle juvenile delinquency in different contexts. The primary principle of law as governance is "'law' as a part of power/governance, refers to the technical processes which produces all operations of law."[1] Therefore, law involves the power to manage social relations and technical processes that are certain legal techniques of governance, like legislations and court

[1] Alan and Gary Wickham Hunt, *Foucault and Law: Towards a Sociology of Law as Governance* (London: Pluto Press, 1994). p. 104.

procedures in order to achieve the object of the prevention of crime. Another principle is the incompleteness of law as governance. "… the politics of law, is part of the perpetual cycle 'attempt at control- incompleteness (failure) - attempt as control' which has been identified."[2] Incompleteness is central to the process of governance that refers to the process of attempting to control a known object, juvenile delinquency in this thesis. Thus, the failure of certain techniques is incentive to replace it with other techniques. For instance, I examine a perpetual incompleteness in governing juvenile delinquency in the juvenile justice system in the next three chapters. The failure of state interventionism to rehabilitate the juvenile offender in the welfare state resulted in the new legal politics targeting the security and convenience of the victims of property crimes and the new partnership between civil society, family and the court in current Turkey.

Third principle in Foucault's definition of law as governance is that "… while knowledge is used to select objects for legal governance, the objects of legal governance are only known through governance."[3] Knowledge has a primary role in governing an object, such as juvenile delinquency. Legal knowledge defines juvenile delinquency and the appropriate techniques are selected and implemented as an attempt to handle it legally with reference to this knowledge. Juvenile delinquency is known by means of the legitimate techniques of governance in certain context. The last principle is related to the preceding ones. "Law as governance is always social and always works to bind societies together."[4] If this principle is adapted to this study, society is a field of legal regulation and juvenile delinquency is a social fact

[2] Ibid., p. 105.

[3] Ibid., p. 110.

[4] Ibid., p. 111.

that has always existed. Yet, it is handled differently in different contexts. Juvenile court was invented as a new technique of legal governance to settle disputes in the court. New techniques were invented with the purpose of sustaining social order and security after the collapse of the welfare state. Thus, "The sociology of law as governance works to compile social facts in a genealogical manner."[5] Law as governance implicates the historically contingent compilation of social fact. How juvenile delinquency as a social fact is handled, how the perception and the judgment of it have changed, how the victims, the children, state-sponsored child care institutions, civil society organizations, security firms and families become the dominant actors to implement certain government techniques in different conjunctures are the questions I answer to illustrate the historical legal politics around the issue of the juvenile property offenders.

Since "the only tools employed by the sociology of law as governance are attention to detail and careful generalization,"[6] I stress the contextualization of the juvenile justice system and the details of the techniques to uphold historical jurisprudence. All instances of imposing legal control involve political knowledge and these contextual techniques can fail as attempts of legal governance. Thus, the governing process is perpetual. The knowledge deployed in the succumbed welfare era is distinct from the new perception of juvenile delinquents and new techniques to manage them in current Turkey. The role of the court has also been transformed in the juvenile justice system. Unpacking of several rationalities and techniques behind the legislations or the dismissal of certain forms of punishments or legal procedures regarding the prosecution of children reveals the different operations of the juvenile

[5] Ibid., p. 117.

[6] Ibid., p. 120.

justice system in different social, political and economic conjunctures. An examination of historical jurisprudence reveals the different regimes of governance. I aim at connecting the role of the juvenile court to historical processes in order to bring to light distinct juvenile justice policies.

Since juvenile delinquency has always been societal problem, I explore the perception of juvenile delinquency and the role of the juvenile court in handling it in a liberal governmental regime in Chapter Two. This illustrates its philosophy and the conjuncture in which it bloomed. The upheaval caused by the World War Two, coupled with socio economic development, produced a noticeable increase in juvenile delinquency and resulted in new methods of apprehension and treatment of juvenile offenders. Juvenile courts were offered as a central institution to handle juvenile delinquency. New debates concentrated on the necessity of the expansion of law enforcement agencies, especially the particular court and so increase in state intervention into the living conditions of those children. Juvenile delinquency was considered as social maladjustment and a malintegration of society, so it required social control. What was suggested was to fit the conviction to the needs of the child instead of the rigid application of the law to all offenders in the welfare state. State intervention into the living conditions of juvenile delinquents with the purpose of rehabilitation and treatment constituted the philosophy of the juvenile court. Social work diagnosed the causes of the juveniles' criminal conduct and prescribed individual treatment programs that were executed legally to extend social control and discipline those social maladjustments that were settled in the adult courts with reduced but severe penalties and imprisonment in the early republican era.

Primarily, the common philosophy of a separate juvenile court according to which rehabilitation replaces with punishment as a new form of social control in

different countries in the welfare state are illustrated. Then, I examine the process of the establishment of the court peculiar to Turkey. Four debates on the perception of juvenile delinquents and legal proceedings targeting them are meaningful in the context of the consolidation of social work and the welfare state after the Second World War. Legislations, the periodical of Justice (*Adalet)* and prominent academic works in the welfare state period are the resources that support these debates.

First, there were heated discussions about the perception of juvenile delinquency in this period. The juvenile delinquent was a criminal child, juvenile delinquency was explained by biological and inherited individual traits and so, there was no legal child- adult distinction in the early republican period. The juvenile delinquent became the child abetted into crime; crime was a learned thing and a side effect of wrong family upbringing. The needy child was to be saved by state interventionism in the new model in the welfare period. The relevant debates and recommendations to change the severe penalties for juveniles and privilege rehabilitation over imprisonment in the Turkish Penal Code are also explored. The third debate concerning the establishment of the court was stressed on the legal distinction between criminal and needy children in Law No. 6972, the Law on Children in Need of Protection (*Korunmaya Muhtaç Çocuklar Hakkında Kanun*) enacted in 1957. In parallel to the perception of juvenile delinquents as needy children, this legal distinction was abandoned and both fell into the jurisdiction of the court. The last debates were on the lack of a centralized social welfare system to correct and protect needy children. The establishment of the court as a legitimate instrument of state intervention to take legal decisions about the treatment programs and execute those programs in cooperation with social welfare agents was suggested in the draft of the law on the establishment of the court in 1965.

Lastly, the basic principles of a separate juvenile justice system are scrutinized with reference to Law No. 2253 enacted in 1982, the Law on the Establishment, Duties and Procedures of the Juvenile Court (*Çocuk Mahkemelerinin Kuruluşu, Görev ve Yargılama Usulleri Hakkında Kanun*), and some critical articles on it. The deployment of rehabilitative measures in institutional care centers, new legal procedures about preliminary investigation, interrogation and prosecution, and the assignment of social workers to the court and the establishment of new state administered child care centers and probation to achieve personal treatment were reformatory principles that legitimized the cooperation between social work and the juvenile court. In the new juvenile justice policy, the living conditions of these children were labeled as the causes of criminal conduct and the juvenile court took appropriate legal decisions to eradicate these causes as the guardian of all children.

In Chapter Three, I scrutinize how juvenile justice policy, the perception of these children and so, the technologies to handle this societal issue have changed especially in the 2000s. The abolition of the reciprocal relations between individual, state and society and the resolution of the welfare state have invented a new individual who has to monitor all risks and shapes his conduct in accordance with the rules of market. The rhetoric of the child abetted into crime and the tutelary complex in the welfare state have partially transformed and the juvenile delinquents have perceived as dangerous children who are risks to social security and order rather than the children in danger. Juvenile delinquency is not a concern for all and not an insurable risk that is the side effect of socio-economic progress as opposed to the liberal governmental regime. Instead, crime has become a potential that can be unleashed at any time and the risks are individualized. The property crime control

industry and reorganized state institutions constitute the new juvenile justice policy around the notion of security to deter juvenile delinquents and to satisfy victims.

There are two agents in the new policy; individuals and state institutions. Juvenile delinquency is perceived as the criminal conduct of the dangerous marginal classes. Society must be purified of them to achieve security and order. Thus, new governmental strategies in the 2000s have not aimed at erasing the socio-economic marginality of these children, but it have provided marketized security services to clients living in the permanent fear of crime and has activated citizens as agents to minimize their own risks by choices as clients. Individuals as the real and potential victims of property crimes are liable for monitoring the risk of the victimization as consumers of the services provided by the crime control industry. Subcontracting risks to private insurances and private security services, taking physical security measures and being involved in community policing that enhances participation in the social control of delinquents in cooperation with the police are explored as "the technologies of agency," one type of the new governmental strategies, in the current juvenile justice policy, that address individuals as the agents to monitor the risks of property crimes.

The second agent in the new policy is state institutions, the police and the juvenile court, which were restructured in order to restore public convenience and belief in justice and to provide accountable and effective services in the prevention of property crimes and the punishment of juvenile property offenders. Therefore, the new technologies are oriented to improve the performances of these institutions in order to persuade people of the legitimacy of the juvenile justice system and consolidate state authority to prevent the violation of the property rights. The institutionalization of the Child Police (*Çocuk Polisi*) in 2001, the enactment of the

law on the specialization of juvenile court in 2005 and the codification of snatching and the augmentation of penalties in the new Turkish Penal Code in 2004 are scrutinized as some instances of "the technologies of performance," other type of the new governmental strategies. In addition, the utilization of mobesse systems and the more widespread use of technology in inter and intra official writings and the detection and the extension of professional in-job-training are other performative technologies examined in this chapter. Lastly, statistical information about increasing convictability and the impacts of the reorganization of the court on property crimes is explored with reference to the qualitative information obtained from the General Directorate of Criminal Registration and Statistics.

The current juvenile justice policy is "double sided," targeting both the victims of property crime and its offenders. In other words, the perception of children who constitute risk coexists with the rhetoric of children who are in risk and need protection. In Chapter Four, I concentrate on the other side of the current juvenile justice policy rooted in the 1990s, managing children in the need of protection. Thus, it is complementary to the preceding one in which the new juvenile justice policy targeting the victims of crime is explored. Primarily, the characteristics of the new child protection system in the 1990s are presented. Child poverty became visible especially in the urban space, gained an ethnic character and was redefined as a problem of social exclusion. The main paradox embedded in the new child protection system has been that the family has been both the institution led the child into crime and poverty and the best place for protection and correction. Thus, the child has to return to family, but to the empowered family and civil society organizations have been responsible for strengthening family.

Then, how this model penetrated the juvenile justice system and what factors necessitated the establishment of the partnership between the court, family and civil organizations are analyzed. The stipulation of the International Child Right Conventions in 1990, the establishment of the National Council under the coordination of SHÇEK (*Sosyal Hizmetler ve Çocuk Esirgeme Kurumu*) in 1995 to adapt domestic law and the standards of judgment to those conventions were the first steps in reconstructing the relations between the court, family and civil society organizations and idealizing correction in an open milieu. In addition, institutional care in the Protectories and the Child Care Centers became disenchanted because of unqualified care, the reluctance to keep criminal children with the needy ones, frequent running away and the lack of institutions to execute the programs. This disenchantment rendered returning the child to family a more widespread legal decision in the 1990s. Furthermore, the debates on the practice of Law No. 2253 led to the preparation of the draft on the changes on the law in 1992 and the Child Protection Law in 2005. These are crucial legal texts for understanding the new role ascribed to civil society organizations in partnership with the Ministry of Justice. Lastly, some examples are scrutinized to illustrate the practical problems in the new partnership. The juvenile court has dispersed the task of the provision of services and correction among civil society organizations. These organizations have been burdened with social inquiry, correction and probation in an open milieu and the empowerment of the family with short- term micro projects.

Apart from historicizing different juvenile justice policies, I also explore "the operation of law" with regard to juvenile property offenders in Chapters Four, Five and Six. I elaborate the labyrinth of legality, power, hegemony, contestation and resistance. In this thesis, as Camaroff writes, "laws… are … relations, it follows that

they, too, are perennial sites of struggle."[7]Legal processes are considered as fields of power and contestation on certain rules, so the functionalist approach to law that ponders legislations as instruments to realize the equality of opportunity for all and to restore the natural social order is negated. Similar to this stance, Clifford Geertz defines law in the following way: "Law is not a bounded set of norms, rules, principles, values, or whatever from which jural responses to distilled events can be drawn, but a distinctive manner of imagining real."[8] Criminal law takes for granted basic social agreements on property relations, the meaning of conduct and relevant punishments, but it is one connotation of real. It is a dominant legitimate form to normalize criminals and a reference system for the legal apparatuses to disseminate knowledge on conduct and the penalties. The criminal is the one who has violated the law and yet when it comes to juvenile delinquents, the age factor reduces criminal culpability and the child is treated accordingly.[9] Powerful legal knowledge regulates relations and all legal processes peculiar to the juvenile delinquents in the juridical setting.

Yet, it is necessary to present the character and the limits of legal power. The dominant legal rhetoric sets the limits of resistance and functions in micro level

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[7] John L. Camaroff, "Foreword," in *Contested States: Law, Hegemony and Resistance*, ed. Mindie Lazarus-Black and Susan F. Hırsch (Britain: Routledge, 1994). p. x.

[8] Carlos Aguirre and Ricardo D. Salvatore, "Introduction: Writing the History of Law, Crime and Punishment in Latin America " in *Crime and Punishment in Latin America: Law and Society since Late Colonial Times*, ed. Carlos Aguirre and Gilbert M. Joseph Ricardo D. Salvatore (London: Duke University Press, 2001). p. 1.

[9] Martin H. Neumeyer, *Juvenile Delinquency in Modern Society*, Third ed. (Canada: D.Van Nostrand Company Press, 1961). ; Paul W. Tappan, "Who Is Criminal?," in *The Sociology of Crime and Delinquency*, ed. Leonard Savitz and Norman Johnston Marvin E. Wolfgang (New York: Wiley Press, 1970). p. 41-48. In Chapter One "Juvenile Delinquency as a Social Problem," Neumeyer explores the legal definition of delinquency. "Two broad criteria which make up the main conception of delinquency are 1. the non-adult status of the individuals concerned and 2. that the act is regarded as delinquency according to the laws of the country." Neumeyer, p. 21. Similarly, Tappan defines delinquency with reference to the fixed legal rules and argues that criminal law ascertains what crime is and who the criminal is and binds justice on these stable codes as if the conduct is against the collective interest.

interactions between the legal apparatuses, the litigants and the children. How people ponder and use law are important means to understanding the legal pluralism. All agents in the juvenile justice system, the police, judges, the prosecutors and the lawyers, the litigants and the children operate according to this law. Since the law is not executed solidly, how all agents interpret and use it in each case is central to understand the limits of legality.

My aim is to scrutinize how hegemony and resistance operate in the legal context together. Both verbal and bodily performances in the courtroom and fight by words in court documents show us alternative forms of "imagining real", contestations in the legal arena, and so, the different perceptions of justice and legality. I seek to discover the voices and the tactics of the powerless in trials and court records. This contestation and communication is mediated by the Penal Code. In other words, law provides the battle ground on which the legal apparatuses, the litigant and the child compete against each other in the legal context. The court records on property crimes and trials are treasures to examine the forms of class conflict that render the objectivity of the dominant legal definitions of the conducts questionable. Different forms of argumentations in courtroom hearings, court records and other official documents in the court files concerning the settlement of property disputes reveal the reception and the perception of the law by marginal offenders, so the operation of law from below. It offers us to rethink the relationship between power relations and rationality conflicts about the meaning of the criminal conduct. "These struggles remake relations of power in critical ways: they expose some of the terms of hegemony and promote oppositional visions of society, and by contrast, through these struggles the contradictions in ruling ideologies might be papered

over…"[10] These children appropriate legal rhetoric in formulating how to legitimize alternative visions and so are active consumers of the law and multiple representations in legal processes infringe upon the dominant legal relations.

In the second part of Chapter Four, how three interviewed judges perceive the function of law and new double- sided juvenile justice policy are examined. I categorize the judges as "the social work-oriented judge", "the rule-oriented judge" and "the negotiation-oriented judge" according to their perceptions of juvenile delinquency and legal rules. "The social work-oriented judge" considers juvenile delinquents to be endangered ones and adopts the functionalist approach to law that associates with circumscribing individual interests, making the children believe in a conscience collective and saving them by means of the partnership between the court and civil society. As opposed to this vision, "the rule-oriented judge" defines the law as a tool to divide and punish and so, believes that deterring penalties are merely a way to correct the criminal child in parallel to the policy targeting the security and the convenience of the victims of crime. Beyond these two keen positions, "the negotiation-oriented judge" views legal rules as an instrument to convince the people and the accused children of justice and makes a call for the reestablishment of the tutelary complex of the welfare state period. This judge prefers to negotiate between the litigant and the child and drops both of them out of the juvenile justice system because the working of legal rules is not convincing. Since the judges are the central operators of the law, the nuances between the judges' perspectives delimit the agencies of the children in the legal context because they are aware of addressing

[10] Susan F. and Mindie Lazarus-Black Hırch, "Performance and Paradox: Exploring Law's Role in Hegemony and Resistance," in *Contested States: Law, Hegemony and Resistance*, ed. Mindie Lazarus-Black and Susan F. Hırsch (Britain: Routledge, 1994). p. 8.

authority in overt interactions at trials. The interactions between the legal apparatuses and juvenile delinquents in prosecution are analyzed in the next chapter.

In Chapter Five, the central concern is to examine (un)successful patterns in the verbal and bodily performances of different actors on the stage of the courtroom on the basis of the selection from my participant observation of thirty- four property crime trials in the One of the juvenile courts in Istanbul. The performances of the child, the litigant and the lawyer convey certain messages to the judges with different ends. The judges orchestrate these performances and base their legal decision on trustworthy accounts and appropriate behaviors on the stage. All actors are active agents in displaying the appropriate performances. The elaboration of verbal interactions provides insights into the role of the language in the legal process. My aim is to show that communicative genres addressing the judge as an audience illustrate the patterns of adjudication and the different representational styles as an object of exchange in the juridical setting. Thus, I explore the operation of law in the court hearings. My hypothesis is that the frequent successful style of the reconstruction of the event in formal legal format and bodily performances showing respect to the judge by the litigant, the lawyer and the child reveals the general aloneness of the child in the courtroom.

To explain what it means to be alone in the courtroom, first the effective and ineffective patterns of interactions between the judges and the children are explored. The presentation of testimony in everyday language and relaxed body postures create generally a negative impression and are incompatible with the judge's expectations of good form. Generally, only submissive performances make the child a legal subject. Otherwise, the child is alone because his testimony is legally inadmissible. Then, the patterns of defense and the accessibility of legal aid to children are

investigated with reference to the verbal and bodily performances of lawyers in dialogue with the children and the judges. The lawyers are categorized as "disfunctioning lawyers" who do not even know the type of crime and the name of the child deprive the child of defense and compose the majority; "idealist ones" who construct a defense in a technical formal legal knowledge in the name of the child that is an effective pattern; and "radical ones" who publicize the alternative defenses of the children and fragment the legal language in rare and unacceptable defenses. Again, generally the child is alone in the courtroom, either defenseless or with a defense that confirms his criminality and only requests a reduction of the punishment. Lastly, the performances of the litigants are explored to uphold another dimension of the aloneness of the child in the courtroom. Generally, the litigant performances change depending on the attitudes of the judge. The testimony of the litigant is considered as an objective and true representation of the event and this biased validation isolates the child, whose accounts do not generally affect the course of legal decision. Using everyday language, narrative style or hearsay by the litigants is not problematic in the eyes of the judges in some cases.

The main focus is on the operation of the law in the court documents in Chapter Six. How juvenile delinquents as active agents manipulate the criminal law and contest to legitimize their justifications of the meaning of criminal conduct under the conditions explored in the previous chapter and how these tactics indirectly resist and question the objectivity of litigant accounts and the definition of justice as the punishment of the violator are central questions explored in this chapter. In other words, I draw attention to contestations in the legal space. First, the concept of "tactic" as a key term for the interpretation of the children's tactics is defined theoretically at the threshold between compliance and resistance. Being aware of

addressing the legal authority and the scarcity of means to justify alternative explanations are two obstacles for open resistance. Thus, the children withdrawal the unacceptable parts of testimonies and present the in a legally acceptable format. The only way to legitimize the claim is to clothe alternative rationalities in the penal code, so the obstacles also do not imply total compliance that erases the children's agencies in the court documents.

Similar to the case specific interactions in the preceding chapter, legal professionals' rationalities shape what the juvenile delinquents say in the court records. Yet, this chapter enlarges the scope of interactions to all actors in the criminal justice system in comparison with the previous chapter. In addition, the interactions are in written format, not verbal interactions. Files enable us to trace the interactions between the police, the prosecutor, the forensic medicine, the judge, the litigant and the children. Thus, a close reading of the children's statements given to the prosecutor in interrogations, the litigant's statement, the police record of the event, the indictment, the public record of trials and the last decision together provide an opportunity to evaluate concords and discords between the approaches of these legal actors to the same children and the different tactics the children apply from the initiation to the end of the journey in the juvenile justice system. In order to construct an understanding of the totality in each file, I describe the stages of this journey. Then, the profiles of children and victims are articulated to present their characteristics at the intersection of class, gender and ethnicity. Furthermore, the features of property crimes are also examined.

The tactics of juvenile delinquents in their search for justice are categorized as verbal dueling to "legitimize theft as a channel for survival" and "blame people who subject them to open violence" in contradiction to the litigants' labeling of the

conduct as a property crime and the legitimacy of open violence in their eyes with reference to the selection from twenty- five files from the archives of the juvenile court. By exploring the legal tactics and so contestations in the legal space, my aim is to prove that there are conflicting rationalities and interests expressed by means of one legal language, criminal law, and that these maneuvers in the legal context are made for pragmatic reasons. Beyond that, these implicate that the children are active agents in changing the course of judgment and renegotiate the limits of legitimacy. There is a political struggle over the meaning of conduct. The denial or mitigation of litigant claims point out the alternatives for judgment and the different definitions of justice.

CHAPTER TWO

THE ESTABLISHMENT OF THE JUVENILE JUSTICE SYSTEM IN THE TURKEY

Introduction

After the Second World War, especially in the 1960s, there was the inauguration of a new golden age of social work in criminology. Social work gained importance and became entrusted with diagnosing the causes of criminal conduct for juvenile delinquents and deciding on the techniques for personal treatment. Those personal treatment programs were executed as a juridical decision. The cooperation between social work and the juvenile court constituted "the tutelary complex" in order to handle juvenile delinquency, as described by the social and psychological analyst Jacques Donzelot.[11] In this complex, the juvenile court has a central place for the governance of maladjusted children and families. State interventionism is substituted for family authority and social workers provide social inquiry reports concerning the family and the deviant children as the collaborators of the judge by defining the means and ends of intervention. To sum, as Donzelot states, "juvenile court: a visible form of the state-as-family, of the tutelary society" was sketched out.[12] According to this complex, the family is merely responsible for the

[11] Jacques Donzelot, *The Policing of Families,*, trans. Robert Hurley (London: The John Hopkins University Press, 1997). p. 96-97.

[12] Ibid., p. 104.

socialization of the children in accordance with the non-criminal norms. Otherwise, the deviant children are the targets for governance by means of the appropriate legal treatment programs.[13] Assistance to child and family in non-institutional milieu, social aid, probation and accommodation in state- sponsored institutional care centers, such as clinics and reformatories, were included in the spectrum of legal correction methods as alternatives to prison. In this chapter primarily, I describe this philosophy of a separate juvenile court in which rehabilitation replaced coercion and punishment as a new form of social control in the welfare era. This philosophy extended from the Chicago Juvenile Court to all over the world.

Then, I explore the process of the establishment of the juvenile court peculiar to Turkey. The debates on the perception of juvenile delinquents and the laws concerning them are scrutinized in order to explain the role of the juvenile court in Turkey. These debates are meaningful with reference to the consolidation of social work and the welfare state after the Second World War and can be categorized in four themes. Primarily, there was a change in the perception of the juvenile delinquent from "the criminal child" to "the child abetted into the crime." "The criminal child" had been the dominant model in the early republican period. In that model, juvenile delinquency was explained with reference to biological and inherited personality traits and there was no adult- child distinction in the penal code. This model was transformed into "the child abetted into crime" during the welfare state. In the new model, crime was a learned thing and the family was the central agent that led the child into crime, so the needy child who was not liable for his conduct was to be saved and normalized by state interventionism.

[13] Ibid., p. 152.

The second theme embedded in those debates was the punitive orientation toward juveniles in the Turkish Penal Code. Complementary to new perception, the law had to be changed in order to legitimize the legal procedures peculiar to children and rehabilitation instead of heavy penalties. Another theme in the debates on the establishment of the juvenile court was the legal distinction between the child in need of protection and the criminal child in Law No. 6972, the Law on the Children in the Need of Protection. Since the juvenile delinquents were considered endangered children abetted into crime, those children were also in need of protection. Thus, legal distinction between those two groups of children had to be abandoned and both then fell in the jurisdiction of the juvenile court. The last theme was the lack of an organized social welfare system to protect and correct juvenile delinquents. In order to establish a centralized system concerning the needy children, a draft of Law No. 2253, the law on the Establishment, Duties and Procedures of the Juvenile Court, prepared in 1965 and suggested that the court was the legitimate instrument of state intervention in the lives of those endangered children. The appropriate treatment would be decided by means of individual social casework method and treatment programs would be in cooperation with social welfare agents, such as Protectories (*Yetiştirme Yurdu*) and Child Care Homes (*Çocuk Bakımevi*), as obligatory legal decisions.

This draft was enacted in 1979. The first juvenile court was established in 1987. Before its establishment, juvenile delinquents were prosecuted in the adult courts. The last part of the chapter stresses the reformatory principles of Turkish juvenile law. The new principles of preliminary investigation, interrogation and prosecution peculiar to the juvenile delinquents, the new division of labor among the legal professionals in the court, the replacement of the rehabilitative measures in

institutional care centers, foster family or returning to family with imprisonment are analyzed as the basic principles of the separate juvenile justice system.

This judicial framework is congruent with the philosophy mentioned at the beginning. Those legal principles constituted the legitimate basis of the cooperation between social work and the juvenile court in Turkey. Donzelot explains the nature of this cooperation. What is peculiar to the juvenile court is "… *a dematerialization of the offense* which places the minor in a mechanism of interminable investigation, of perpetual judgment."[14] The conduct is not materialized as a fact that must be sentenced. Instead, the pathologic child and his milieu are investigated and prosecution is made on the basis of this investigation. As a part of the model of "the child abetted into the crime," criminal temperaments are considered as the symptoms of bad milieu and familial relations and so, the juvenile court extends its legitimacy to control and correct these symptoms in accordance with the judicial framework. This implicates the transmission of the right of correction from family to state for the protection of endangered children.

Social inquiry is made to ascertain the living conditions of families with the purpose of correction and corporatism in the new politics of family and state intervention. It establishes coordination between, as Donzelot calls, "the administration of assistance and the judicial apparatus."[15] The court postulates the changeability of these children and assigns them to various institutions and associations. The knowledge obtained from psychoanalysis, pedagogy and social work imbricate into the judicial power in order to realize reeducation and rehabilitation in an open environment or institutional milieu rather than

[14] Ibid., p. 110.

[15] Ibid., p. 124.

imprisonment. This judicial authority for normalization both legitimizes intervention in the lives of families and children and compels them to obey it.

The Philosophy of the Juvenile Court

The first juvenile court began its legal existence in Chicago, Illinois, in 1899 and it revolutionized the treatment of juvenile delinquents. In the new philosophy, law and social work cooperated in order to handle the problem of delinquency. Thus, the substitution of the individual treatment by the social casework method for punishment became a primary element in the philosophy of the court. The jurisdiction of the court was to save, protect and guide the deviant child, so the purpose was not to convict, but to correct the child. In accordance with this philosophy, separate juvenile courts were opened in England in 1905; in Canada and Portugal in 1911; in France in 1912; in Australia in 1919; in Holland in 1922; in Germany, Brazil and Japan in 1922; and in Italy in 1934. Yet, the first juvenile court was established in Turkey in 1987.

As a complementary to non-punitive purpose, another element in the philosophy of the court is the "individualization of justice."[16] Since each delinquent lives in distinct conditions and has a different personality, diagnosis and remedial should be case specific. Caldwell writes that "The court must adapt its actions to the circumstances of the individual case by ascertaining the needs and potentialities of the child and coordinating the knowledge and skills of law, science and social work

[16] Robert G. Caldwell, "The Juvenile Court: Its Development and Some Major Problems," in *Juvenile Delinquency: A Book of Readings*, ed. Rose Giallombardo (Chicago: University of Chicago Press, 1972). p. 406; For further information from a similar vision, see also, Robert M. Emerson, "Role Determinants in Juvenile Court," in *Hand Book of Criminology*, ed. Daniel Glasser (Chicago: Rand McNally, 1974). p. 621-622.

for the promotion of his welfare."[17] Thus, the effectiveness of the juvenile court depends on the quality of staff trained in social work and law to achieve simultaneously the rehabilitation of the child and the enforcement of the law. The judicial decision is based on the scientific knowledge of the needs and potentialities of the pathologic child in the social inquiry reports prepared by the social workers in the court. The diagnosed children can be placed in any voluntary or formal institutions or foster home or can be directed to any kind of social services. Thus, the court is a bridge institution diagnosing the needs of and channeling delinquents into the appropriate treatment programs.

In order to legitimize these programs, the juvenile court positions itself as "*parens patriae*"[18] as another aspect of its philosophy. The state as the parents of all children has the right to intervene in the lives of children to provide protection and welfare if the parents do not raise them with care and love, not satisfy basic needs and abuse them. In compliment to the rationality of parens patriae, the court jurisdiction includes not only delinquents, but also children who are in need of protection. Thus, the court has extensive jurisdiction over all children whether they are criminal or not. In the construction of the status of delinquency, it is assumed that there is a strong link between delinquency and neglect by parents. In other words, according to the model of "the child led into crime", parental rights over the child are under the surveillance of the state institution; that is, in the service of the best interests of the child. The court is the legitimate instrument for state intervention in the lives of delinquents and all endangered children.

[17] Caldwell, p. 406.

[18] Ibid.

The cognizance of the children's distinction from adults is another dimension of the philosophy of the court. Within this frame, the juvenile court law provides judgment criteria based on the age of the children. Caldwell writes that "The status of delinquency, which is something less than crime," is constructed in each state.[19] Even though the minimum and maximum age limits are different from country to country, children under a certain age do not have criminal culpability, and thus immunize from prosecution. Other age categories have a partial criminal intent; thus, the punishment is reduced for them or remedial programs are executed due to the judge's discretion. The construction of the delinquency status with respect to the age of the children not only implicates the peculiar jurisdiction for the juvenile court in comparison with adults, but also legitimizes the individual treatment of juvenile delinquents to reshape their personalities. Being children implies the possibility of change. It is thought these children can be corrected and reintegrated into society in accordance with their talents and potentialities.

Beyond the ideal of rehabilitation, the inherent tension between correction and social control is embedded in the philosophy of juvenile court. Barry Feld describes well this tension and argues that,

> …if we work out a system of making penal treatment fit the crime, we risk losing sight of individual delinquent in the pursuit of system. If we look only at the individual delinquent, we risk losing system in the pursuit of individual treatment and lose objectivity which is demanded when we are constraining the individual by the force of organized society.[20]

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[19] Ibid.

[20] Barry Feld, "The Inherent Tension of Social Welfare and Criminal Social Control: Policy Lessons from the American Juvenile Court Experience," in *Juvenile Law Violators, Human Rights and the Development of New Juvenile Justice Systems*, ed. Eric L. Jensen and Jorgen Jepsen (Oxford: Hard Publishing, 2006). p. 418.

Therefore, in order to achieve individual treatment and to sustain the legitimacy of the justice system, the delinquents' reason must be domesticated in a way to respect the social norms on the wrongness of the criminal conduct. "… law and culture view young people as innocent, vulnerable, fragile, and dependent *children* whom their parents and the state should protect and nurture."[21] Handling juvenile delinquency should not be in contradiction to the social imaginary of childhood as a period of innocence and dependence. Otherwise, the juvenile justice system loses its legitimacy and objectivity in society.

Formal recognition of being children under a certain age prevents their prosecution as adults. The juvenile justice system takes the cognizance of developmental differences for these children in terms of criminal responsibility and considers them as dependent children led into crime. Thus, personal treatment by the social casework method is prioritized in the juvenile court jurisdiction rather than penal treatment. There are no criminal children, but children who are abetted into crime. "Progressive 'child savers,"[22] the social workers in the court, attribute criminality to external and deterministic forces, the living conditions of these children, so the criminal liability of the offenders is reduced and the efforts shifted to rehabilitate by legal intervention. This is the other side of tension, social control, and what Felds calls"… a new model of social control to produce a judicial welfare alternative to criminal justice."[23]It is an alternative because treatment substitutes for punishment. If people committed crime by their own choice, their past action is

[21] Ibid., p. 408.

[22] Ibid., p. 410.

[23] Ibid.

sanctioned with proportional punishment. Yet, rehabilitation targets the improvement of future welfare by the treatment of the causes of the conduct.

In this frame, handling juvenile delinquency by correction is also a form of social control. When certain conduct is labeled a crime, it is legally confirmed that the child violated criminal law and societal values about appropriate behaviors. Therefore, the different forms of criminal conduct of the children are perceived as dangerous acts that must be controlled and changed. Modern social work targets the eradication of these different types of conduct stemmed from socially maladjusted milieus and family and the juvenile justice system diagnoses the living conditions of these poor children as the causalities of the crime and controls them instead of focusing on socio economic inequalities as the reasons for the conduct.

The Consolidation of Social Work Concerning Juvenile Delinquency

The peculiar processes of the penetration of this philosophy in the Turkish justice system in the succumbed welfare era are discussed in this chapter. The draft of the Law on the Establishment, Duties and Procedures of the Juvenile Court was prepared in 1965. Before and after the draft, there were four debates with regard to handling the problem of juvenile delinquency. First, there were debates concerning the change in the perception of juvenile delinquents from “the criminal child” to “the child abetted into the crime.” The punitive codification in the penal code, the legal distinction between the child in the need of protection and the criminal ones in Law No. 6972 and the lack of coordinated social welfare system to protect the child were the other three themes in those debates. The debates resulted in the decision so the necessity of the establishment of the court as the instrument of legitimate state

intervention into the lives of endangered children in order to treat them by means of the individual social casework method. These debates are meaningful with reference to the development of social work and the welfare state after the Second World War, thus the primary concern is to explore the consolidation of social work concerning children in Turkey.

After the Second World War, Nadir Özbek defines two axes around which social work were organized. "… on one hand, the practices with regard to work life were expanded and institutionalized. On the other hand, 'social work' acquired an academic quality and constituted the basic component of the discourse of developmentalism."[24] In order to regulate the relationships between employee, state and employer, social insurances and security, like the right to health and shelter, were expanded as a part of the activities concerning work life. Simultaneously, social work was consolidated in accordance with the paradigm of developmentalism, as will be discussed in this chapter.

Solidarism was the dominant model by which the interactions between state, society and individual were managed after the Second World War until the 1980s. Zafer Toprak articulates this model of social policy in all countries in the following passage: "… the thesis of dependency among people was on the agenda. In other words, people and so the individual were not alone as was thought. The individual belonged to a certain society and as a result of this interaction the individual went certain direction and this interaction meant solidarism."[25] The consolidation of social

[24] Nadir Özbek, *Cumhuriyet Türkiyesi'nde Sosyal Güvenlik Ve Sosyal Politikalar* (Istanbul: Tarih Vakfı Yayınları 2006). p. 189. *"…bir yandan çalışma hayatına illişkin uygulamaları genişleyerek kurumsallaşmış, diğer yandan da "sosyal hizmet" kavramı akademik bir nitelik kazanarak kalkınma söyleminin temel bir parçası haline gelmiştir."*

[25] Ibid., p. 176. The quotation was extracted from the interview with Zafer Toprak on the change in social policy after World War Two. *"…insanların bağımlılığı tezi gündemdedir; yani insanlar aslında birey öyle sanıldığı gibi tek başına değildir, bir*

work was a central tool to sustain this solidarism. The state was to control and allocate social services to handle the growing socioeconomic inequalities, family disintegration and juvenile delinquency that were by-products of urbanization, industrialization and rural-urban migration. Social work was a new technique to cope with those problems and to realize the plan of social and economic development. The 1961 constitution gave legal status to social work. Social security was accepted as a social right for all citizens. Social insurance and the establishment of social aid agencies by the state were the tools for realizing this right.[26] Improving child and family welfare was the responsibility of the state to sustain solidarity in society.

Social work was institutionalized and professionalized to treat social problems such as poverty and juvenile delinquency with the leadership of the United Nations in the late 1950s and the 1960s. Turkey signed the international technical assistance program as a channel for promoting social welfare, UNTAP, on 10 March 1954.[27] Within the framework of this program, the United Nations provided financial support and assigned Western social work experts to Turkey. Those experts provided social work training to some Turkish faculty members abroad with the aim of improving the social welfare system in Turkey.[28]

Another impact of international organizations was the legislation on the establishment of the Social Services Institute in 1959 and the Academy of Social Work in 1961 in order to educate qualified social workers to implement the paradigm

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toplumun parçasıdır ve aslında bu etkileşim sonucunda belirli bir noktaya gider ve bu etkileşimde aslında bir dayanışmadır."

[26] Ibid., p. 206.

[27] Selen Göbelez, "The History of Social Services in Republican Turkey: Social Change, Professionalism and Politics" (Master's Thesis, Bogazici University, the Atatürk Institute for Modern Turkish History, 2003). p. 73- 83.

[28] Ibid., p. 84.

of developmentalism.[29] This academy allied with the University of Hacettepe until 1982. The graduated social workers had a wide range of employment opportunities in the hospitals and the clinics giving psychological and psychiatric services, the juvenile and the adult courts, the reformatories, the prisons, the child care centers, the bureaus for fostering family and adoption, the development plans for villages and society and family planning.[30] The social services concerning family and child welfare includes "… parental education, family guidance, adoption…, crèches, house services and the services to care the ignored children and the chronically ill and needy people…"[31] In addition, the provision of financial and social aid to poor families and the organization of nutrition programs were part of social work.[32]

Selen Göbelez explains the rationality behind Law No.7355, the legal code on the Establishment of the Social Services Institute, in below passage:

> … It was necessary to identify the hygienic, economic, cultural, and for some poor psychological factors that caused poverty and to take measures accordingly. Yet, since the diagnosis of these factors required some knowledge and skills, philanthropic sentiments did not suffice. Because the issue was not merely to provide relief, but rather by turning human beings into productive individuals, to bring forth social solidarism that relies on the principle that every individual is useful to the society by having a positive function in the overall social body. And it was the task of the social workers to eliminate the causes of poverty and social maladjustment, in collaboration with the state and charity organizations.[33]

Therefore, social workers had the mission to investigate the sources of poverty, social maladjustment and juvenile delinquency. Then, they were to

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[29] Ibid., p. 87.

[30] Özbek, p. 192.

[31] Ibid.

[32] Ibid., p. 193.

[33] Göbelez, p. 90.

determine effective social services and collaborate with formal and voluntary associations to eradicate the sources. This kind of cooperation among modern social services converted the pathologic individual into a productive one. The scientific knowledge obtained by sociology, psychology, pedagogy stigmatized "… '*different forms of conduct*' namely as "social maladjustment"…"[34] Certain conduct, such as crime, implicated morality weakness, pathology and danger and these learned traits were to be corrected by means of social work. Social work was professionalized as a new governmental technique to handle endangered children by means of the scientific knowledge peculiar to each case.

The Turkish Criminal Institute published a report on 30 March 1950 in collaboration with the United Nations in order to improve the prevention of delinquency and the protection of juvenile delinquents in Turkey. The report shows the international impact of the paradigm of modernization and developmentalism in those years on crime control. The first part of the report explores the reasons for increasing juvenile delinquency rates after World War Two. It emphasizes the failure of families failed to raise the child. The child learned to be criminal and immoral in the process of socialization in family.[35] Thus, those children had to be considered as indigent. Now, this new perception of the juvenile delinquent as the child abetted into crime is scrutinized as a new model distinct from the early republican period and as the ground legitimizing cooperation between the court and social work.

The New Explanation for Delinquency: the Disfunctioning Family Led the Child into Crime

[34] Ibid., p. 94.

[35] Istanbul Kriminoloji Enstitüsü, *Çocuk Suçluluğunun Önlenmesi Ve Küçük Suçlular Hakkında Tatbiki Gereken Tedbirlere Müteallik Rapor* (Istanbul: Sulhi Garan Matbaası, 1950). p. 18-21.

The perception of juvenile delinquency was transformed in the conjuncture of the consolidation of social work described above. In the early republican era, juvenile delinquents were considered to be inborn criminals, like the mentally retarded or paranoid. Özgür Sevgi Göral who examined juvenile delinquency in early republican period argues that "The perception of the thirties was closer to the idea of 'treatment' rather than the concept of 'pervert'."[36] Thus, the biological reductionist approach was influential in the early republican era on juvenile delinquency. Those children who had lower intelligence, physiological abnormalities and other inherited defects were to be treated. It was possible to change and normalize those children by medical treatment.

After the Second World War, the inborn psychological and physiological factors started to lose its efficiency to explain juvenile delinquency. Instead, the combination of unfavorable social conditions and weak personal characteristics constituted the new rhetoric. Göral summarizes well the new rhetoric: "… all the facts that can be related with the living conditions of lower classes are cited as the causes of crime, and then it is added that these causes might only cause crime with their moral consequences. … The main cause of crime was cited as the lack of the moral upbringing or *terbiye*."[37] In those years, the interest in the social causalities of criminal conducts increased and the focus shifted to social milieu, especially upbringing in the family. The emphasis was on parental moral values, family disintegration, strict or loose family discipline and the personality traits of parents,

[36] Özgür Sevgi Göral, "The Child Question and Juvenile Delinquency During Early Republican Era" (Master's Thesis, Bogazici University, the Atatürk Institute for Modern Turkish History, 2003). p. 116.

[37] Ibid., p. 122.

like being uneducated and alcoholic, not on economic structural inequalities that could compel certain people to commit crime. However, there was no direct link between poverty and delinquency in those years. "…it is understood that poverty is not a reason for committing crime…; poverty affects negatively especially the ones with weak personalities..."[38] Socioeconomic factors and improper familial upbringing rendered children criminal, but only those who had weak personalities became criminals.

The idea of state intervention in the lives of children in danger, either potential or real juvenile delinquents, improved in the 1960s. The convergence of the pathologic children by means of the state sponsored preventive and protective programs as an ideal way of handling delinquency became a central theme that marked those years. State intervention in the lives of children and of their families was a dimension of the paradigm of social welfare and developmentalism to realize this convergence.

The living conditions of the poor families and child raising in those families were expressed more frequently as the reasons for juvenile delinquency in those years. Poor families did not provide for the basic needs of their children, which retarded the cognitive and volitional development of the children and impeded their social mobilization. Yet, this did not mean that all poor children were criminal. Children learned criminality in degenerated families. Therefore, the disfunctioning family occupied a central place in explaining juvenile delinquency. Family quarrels, neglect, conjugal dissociations, uneducated parents, lack of parental authority over

[38] Yılmaz ve Tahsin Atakan Akıncı, *Psikolojik-Pedogojik-Hukuki Yönleriyle Suç İşleyen Ve Suça Giden Çocuklar* (Istanbul: Minnetoğlu Kitapevi, 1968). p. 44. *"….fakirliğin bir suç nedeni olmadığı anlaşılmakta, … ekonomik yokluğun, özellikle zayıf karakterliler üzerine daha çok menfi yönden etki yaptığı…"*

the child and abuse rendered the child pathological.[39] These conditions created feelings of hate and injustice in the child and resulted in criminal conduct. In other words, these "social causes affect the psychology of the individual and then become crime factors."[40] Thus, not all poor people were criminal, but the poor children who internalized socially and legally sanctioned values as normal and socialized in the disfunctioning family engaged in criminal conduct.

In the following passage, Feyyaz Gölcüklü, a well-known professor in the Faculty of Political Science in Ankara, depicts the main stream perception of the link between poverty and juvenile delinquency in the years of the welfare state.

> The most important defect of the existing system concerning the children who need protection in Turkey is to take an economic aspect of poverty as the leading reason for protection. … Although poverty is a factor affecting a number of the needy children, its significance should not be exaggerated. … Material welfare is not the only need of the child. The child becomes healthy only when the child has an access to an atmosphere satisfying his spiritual needs (like care, love and affection)…. Economic welfare can raise a healthy child, yet it does not create a child who is healthy physically, raised spiritually and educated well. [41]

Again, socioeconomic inequalities and class issues were not part of the paradigm of handling juvenile delinquency. The disfunctioning family that failed to raise the healthy child was the central reason for delinquency. Instead of ameliorating

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[39] Hasan İsmet Bıyıklı, "Çocuk Suçluluğunun Nedenleri," *Adalet Dergisi* 63, no. 11 (Kasım 1972). p. 764-66.

[40] Ibid., p. 767. *"Toplumsal nedenler ancak, ferdin ruhsal yapısına bir etki yaptıktan sonra suç faktorü olmaktadırlar."*

[41] Feyyaz Gölcüklü, "Feyyaz Gölcüklü'nün Konuşması," in *Korunmaya Muhtaç Çocuklar, Panel: 22 Kasım 1969* (Istanbul: Istanbul İktisadi Araştırmalar Vakfı, 1970). p. 58. *"Bence korunmaya muhtaç çocuklar konusunda mevcut Türk sisteminin en büyük hatası koruma nedeni olarak maddi yoksulluğu ön plana almış olmasıdır. …Fakirlik, her ne kadar, korunmaya muhtaç çocuk sayısını etkileyen bir unsur ise de bunun öneminde mübalağaya kaçamamak gerekir. … maddi refah çocuğun tek ihtiyacı değildir. Çocuk ancak manevi bakımdan (şevkat, sevgi, ilgi vs.) ihtiyaçlarına uygun bir atmosfere kavuştuğu zaman sağlıklı olur…İktisadi refah belki gürbüz çocuk yetiştirebilir; fakat her bakımdan sağlıklı, ruhsal dengesi yerinde, eğitimi tamam bir gençlik yetiştiremez."*

economic inequalities, families and deviant children were to be governed. The state intervention in these ignored families was the prescription to correct these children and make them physically and spiritually healthy.

Sevda Uluğtekin who is a prominent social worker at Hacettepe University conducted a study in order to illustrate the reasons for committing crime on one hundred fifty convicted children in the Ankara, Elazığ and Izmir Correction Houses and the Child Prisons in 1983. Her findings also exemplify the centrality of wrong parental education in the explanations of juvenile delinquency. For Uluğtekin, "Societal education as the part of general education aims at teaching values, attitudes and rules that are the preconditions for social acceptance beginning from birth slowly."[42] Juvenile delinquency stems from wrong or deficient societal education, stemming from two factors. "1. The family does not have enough information or talent to use the techniques of societal education effectively. 2. Family disintegration for some reason can result in the impediment of the education or insufficient and wrong societal education."[43] What she means by these factors is explored below.

In her research, Uluğtekin found that property crimes are the most widespread type of urban crime whereas homicide was a typical crime for children in villages. The leading reason for both types was the ignorance of parents. Children committed property crimes because of the lack of parental discipline and negligence in shanty towns. One- third of all property crimes were encouraged by the parents and four-

[42] Sevda Uluğtekin, "Hükümlü Çocuğun Toplumsal Kökeni Ve Suç Türü," *Adalet dergisi* 74, no. 4 (Temmuz-Ağustos 1983). p. 641. *"Toplumsal eğitim genel eğitimin bir parçası olup, amacı bireye, toplum tarafından kabul edilebilmesi için sahip olması gereken değer, tutum ve ilkelerin doğumdan itibaren yavaş yavaş verilmesi demektir."*

[43] Ibid., p. 641. *"1. Aile toplumsal eğitim tekniklerini etkili olarak kullanabilecek bilgi ve yetenek sahibi değildir. 2. Herhangi bir nedenle ailenin bütünlüğünü kaybederek parçalanmış hale gelmesi ile toplumsal eğitim yarıda kalabilir ya da yetersiz ve hatalı olarak verilebilir."*

fifths were made cooperatively.[44] There was parental consent for these crimes and these children were led into crime by the external force of different upbringing in family. These children live in crowd houses in the shanty towns headed by uneducated working fathers and mothers or in disintegrated households. These are migrant families. Under these conditions, the child was subjected to either loose or strict parental authority. [45] Therefore, parents did not have enough capability to educate the children and the socialization process in family was associated with wrong or insufficient societal education.

Laws Concerning Juvenile Delinquents

In the conjuncture of the 1960s, not only was the disfunctioning family substituted for the biological and psychological explanations, but also the legal codes were criticized. As a complementary to the perception of juvenile delinquents as children abetted into crime, punitive orientation in the penal code and the consideration of these children as criminals, not as the endangered ones in Law No. 6972, the Law on Children in the Need of Protection, were the other central themes concerning juvenile delinquents in the 1960s. In order to comprehend those debates, I trace the evolution of legal texts concerning juvenile delinquents.

The first legislation on the protection of children in Turkey was the Civil Code enacted in 1926. This law states that "parents are responsible for raising the child with regard to their potentialities and to raise them appropriately. This upbringing becomes moral, educational and religious. Parents are obliged to spend

[44] Ibid., p. 651.

[45] Ibid., p. 651-652.

their income on basic needs and the education of the child."[46] Therefore, guardianship was a natural duty of parents. If the parents did not fulfill this duty of moral, educational and religious upbringing of the child, state intervention was legitimate. Three kinds of children could be placed in the Protectories or Foster Home with reference to the Civil Code; physically and morally endangered, neglected and disobedient children.[47] Malnutrition and working at heavy jobs impeded the physical development of the child. If the moral upbringing in family did not correspond with social values, this implicated a moral risk for the child. For instance, parental support for thievery, prostitution or begging implies a child rearing style incompatible with the social values regarding raising children.[48] These children are also the neglected ones who must be protected. Their parents ignore their moral upbringing. The juridical text, the Civil Code, did not discriminate between needy children and juvenile delinquents.

Another legislation concerning juvenile delinquents was the Turkish Penal Code. Juvenile delinquents were judged and punished with reference to this code enacted on 13 March 1926. The exploration of the Penal Code is crucial to comprehending the execution of the criminal justice system concerning children and the perception of those children until the draft of the Law on the Establishment, Duties, and Procedures of the Juvenile Courts in 1965. The labeling of the child a

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[46] İstanbul Kriminoloji Enstitüsü, p. 37. *"Veli çocuğu kudretlerine göre yetiştirmek ve münasip bir terbiye vermekle mükelleftir. Bu terbiye ahlaki, mesleki ve dini olur. Veli çocuğun gelirini evvelemirde infak terbiyesine sarf etmeye mecburdur."*

[47] T.C. Resmi Gazete, *Türk Medeni Kanunu*, No. 743, 4 April 1926. The Article 273 is that *"Çocuğun bedeni ya da fikri tekamülü tehlikede bulunur ve ya çocuk manen metruk bir halde kalırsa hakim, çocuğu ana ve babadan alarak bir aile nezdine ve ya bir müesseseye yerleştirebilir. Çocuk şirretliği hasebiyle ana ve babanın emirlerine gelmekte temerrüt ederse; müessir başka bir ıslah çaresi bulunmadığı takdirde , aynı tedbirler ana ve babanın talebi üzerine hakim tarafından ittihaz edilir."*

[48] Sevda Uluğtekin, *Çocuk Mahkemeleri Ve Sosyal İnceleme Raporları* (Ankara: Bizim Büro Yayınları, 1994). p. 48.

criminal, like an adult, and the use of the prison as the mechanism of inclusion for the delinquents in the Penal Code were severely criticized in the 1960s. These critiques constitute the nueves of the separate juvenile court in Turkey.

Altan Aysel, the assistant of the Chief Public Prosecutor in Ankara, summarized the defects of the juvenile justice system in Turkey and made a call for the immediate establishment of the juvenile court prioritizing rehabilitation as the mechanism of inclusion. The terminology in the Turkish Penal Code was the reduction of punishment for delinquents based on their age and culpability, yet the role of personal treatment by social work was minimal. According to Article 54 in the Turkish Penal Code, the children who fell into the 11-15 age group and had the intelligence to understand the meaning of their acts, were sentenced to at least fifteen years of imprisonment instead of the penalty of death. The same group was convicted to between ten and fifteen years imprisonment instead of life long imprisonment. In other cases, their penalties were reduced by half.[49] For juvenile delinquents in the 16-18 age group, the code had more severe punishment. In Article 55, they were sentenced to twenty years imprisonment at least if the adjudication was the death penalty. The prolongation of imprisonment ranged from fifteen to twenty year instead of life long sentence. One- third of the legally codified penalties were reduced for other types of crimes.[50]

These children were sent to child prisons and reformatories. Therefore, there was a distinct style of judgment for juvenile delinquents on the criteria of age, but the criminal justice system aimed at correction by the reduction of punishment in prison. When a child committed a crime between the age of eleven and eighteen, the

[49] Altan Aysel, "Suçlu Çocukların İyileştirilmesinde Bütünlüğe Doğru," *Adalet Dergisi* 63, no. 1 (Ocak 1972). p. 32.

[50] Ibid.

sentence was served in a reformatory. Since there was no reformatory in the early republican era apart from the Ankara Kalaba Reformatory, those children waited until the age of eighteen and then served out their sentences in adult prisons. [51]

Beyond this punitive orientation, there was no distinction between children and adults in terms of preliminary investigation, interrogation and prosecution with regard to criminal children in the Turkish Penal Code. The prosecutor, police and gendarme made the preliminary investigation and interrogation and kept the children in prison until the end of their trials.[52] There was no privacy at trials or legal aid available for these children.[53]

Aysel articulated the ideal juvenile justice system that he thought should be modeled in Turkey. In this system, the legal professionals must be trained in social work to correct the pathologic child with personal treatment programs rather than imprisonment and the court must have specific procedures for investigation, interrogation and prosecution. In addition, the number of reformatories must be increased and the probation service must be established to facilitate the social inclusion of the delinquent after treatment. One crucial point was that the effectiveness of this system depended on the cooperation between all agents, the police, the court, and the social workers in the court, reformatories and the probation officers in the juvenile justice system.[54]Yet, the existing justice system fell short of meeting these criteria in those years.

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[51] Göral, p. 97.

[52] Aysel, p. 33.

[53] Ibid., p. 34.

[54] Ibid., p. 36-38.

In the Turkish Penal Code, there was also no room for experts in the juvenile justice system because the court was the authority, not "*parens patriae*" educating, protecting and guiding the juvenile delinquents. Abdülkadir Özbek, the psychiatrist at Ankara University, defines psychologists, social workers, pedogogists and psychiatrists as the experts on juvenile delinquency and criticizes their absence from the criminal justice system in 1972.

The children who did younger than eleven could not be punished. However, Article 52 presupposed state intervention for correction if the penalty for the child's conduct was more than one year. The judge could decide to place the child in a reformatory or return the child to family.[55] Apart from this age group, the children who did not have criminal culpability were seen as offenders who needed to be corrected in the reformatories. In clause of Article 54, if the children were in the 11-15 age group and did not have criminal culpability, those children could not be sentenced, but corrected in a reformatory. However, there was no alternative to imprisonment for children older than 15 years and younger than 18 in the penal code.[56] Özbek criticizes this punitive orientation because criminal culpability was decided by the judges, not by the experts.[57] He wrote "…the appreciation of biological, psychological, social dynamics in one's criminal conduct is only possible by knowing well his 'whole personality.'" This knowledge is also the precondition for the prescription of best treatment that must be executed to reintegrate the child

[55] Abdülkadir Özbek, "Psiko-Biyolojik Açıdan, Ceza Sistemlerinde Suçlu Çocuk Ve Ergenlerin Durumu Ve Bilirkişilik Durumu," *Adalet Dergisi* 63, no. 6-7 (Haziran-Temmuz 1972). p. 452.

[56] Ibid., p. 455. Turkish Penal Code was called as Law No.765 and it was published in the official newspaper on 13 March 1926.

[57] Ibid. , p. 454.

into society as a person who will never commit crime again."[58] Özbek pointed out the need for a shift in the philosophy of the juvenile justice system in Turkey toward personal treatment and said that the role of the experts in separate juvenile court must be increased and state- sponsored reformatories must be replaced by prisons to achieve correction.

Similarly, Umran Sölez Tan, a judge in the High Criminal Court in the One of the juvenile courts in Istanbul, pointed out the necessity of replacing the juridical criteria of criminal culpability based on the age of delinquent with the principle of judgment in accordance with the needs and the potentialities of the delinquent. In the ideal juvenile justice system, "the object of the law is not the offender… The delinquent is the child who must be protected, supervised and educated rather than punished. The delinquent is the needy one."[59] Thus, age should not be the decisive criteria of criminal responsibility, but whether cognitive and volitional development of the delinquent in a certain milieu enabled him to understand the meaning of his conduct or not was crucial to diagnose the degree of criminal culpability.

Apart from the Civil Code and the Penal Code, another juridical text concerning children was the Law on Children Who Need Protection. The Association of Economic Research organized the conference on the problem of the needy children in Turkey on 22 November 1969. Muhsin Fer, who was a Deputy Secretary of the Prime Ministry, summarized the protection system in the legislation at this conference.

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[58] Ibid. *"…bir insanın işlediği suçtaki bio psiko sosyal dinamiği çözmek ancak onun "kişiliğinin tümü ile" iyice bilinmesi ile mümkündür. Bu bilgi aynı zamanda onun suçtan sonra topluma bir daha suç işlemeyecek tarzda kazandırılması için, uygulancak en iyi tedbiri tayin içinde gereklidir."*

[59] Umran Sölez Tan, "Çocuk Mahkemeleri," *Milliyet* 31 December 1991. *"Yasanın objesi herhangi bir suçlu değildir… O yargılanmasından çok sakınılması, gözetilmesi ve eğitilmesi gereken varlık. O, korunmaya gereksinimi olan çocuktur."*

> The Councils of Elders in villages, municipalities, the Ministry of Health and Social Assistance and the Ministry of Education have the tasks of caring for and employing the needy children until these children reach the age of eighteen in the conditions described in the law. These children are the ones whose physical, spiritual and moral developments are in peril, parents are indeterminate and for whom protection sentence is given in accordance with the clauses in the Turkish Penal Code.[60]

This legislation reconceptualized the category of needy children and expanded the role of the state for the protection and control of delinquency. It was passed as Law No. 6972, the Law on Children in Need of Protection on 27 May 1957.

According to the law, the needy children are conceptualized as those who are orphaned, who do not have determinate parents, who were foundling, who had been neglected by their parents and lived in danger of being prostitutes, beggars, alcoholics, drug addicts or vagabonds.[61]

Those children were educated at Child Care Homes (*Çocuk Bakım Evleri*) and Protectories (*Yetiştirme Yurdu*) until the age of eighteen. The Ministry of Health and Social Justice took care of the children between the ages of 0-6 in Child Care Homes, while the ages of 7-18 were to be rehabilitated in the Protectories of the Ministry of Education. Depending on their talents, those children either continued secondary school or worked in certain occupation. The Foster Home Service (*Koruyucu Aile Hizmeti*) was another legal service to protect the children. It was put into service first

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[60] Muhsin Fer, "Muhsin Fer'in Korunmaya Muhtaç Çocuklar Başlıklı Tebliği," in *Korunmaya Muhtaç Çocuklar, Panel: 22 Kasım 1969* (Istanbul: Istanbul İktisadi Araştırmalar Vakfı, 1970). p. 27. *" Beden, ruh ve ahlak gelişmeleri tehlikede olup, ana ve babası belli olmayan ve Türk Medeni Kanunu Hükümlerine göre haklarında korunma tedbiri alınmasında zaruret görülen çocukların reşit oluncaya kadar bu kanunla belirtilen şartlar içinde bakılmaları ve meslek sahibi edilmeleri vazifesi Köy İhtiyar Heyetleriyle, mahalli belediyelere ve Sağlık ve Sosyal Yardım Bakanlığı ile Milli Eğitim Bakanlığına verilmiştir."*

[61] Enver Güreli, "Panel Başkanı Enver Güreli'nin Açılış Konuşması," in *Korunmaya Mutaç Çocuklar, Panel: 22 Kasım 1969* (Istanbul: Istanbul İktisadi Araştırmalar Vakfı, 1970). p. 4.

in July 1961 in Ankara.[62] In 1970, the number of children between the ages of 7 and 18 for whom the legal decision for protection was given had been given 23,684 and there were 83 Protectories in Turkey caring for 11,516 of those children. There were seventeen Child Care Homes for 3176 needy children 5 and 6 years of age. [63]

Even though this legislation expanded the conception of children who needed protection by the state, there was a legal distinction between the child in need of protection and the criminal child in Law No. 6972. In parallel with the conjuncture in which the welfare state and social work were developing, there were heated debates on this law. Recommendations were made to consider juvenile delinquents as individuals in needs who should be protected and corrected by state intervention with the help of social work. Moreover, it was recommended that coordination between formal and voluntary social services and state institutions be established to rehabilitate the child and to foster child welfare.

Gölcüklü criticized the existing Law No. 6972 on needy children and called for the recodification in a way to include juvenile delinquents as children who need state protection during the conference on the needy children in the Association of Economic Research in 1969.

> I would prefer the definition of needy children in Law No. 6972 as 'the children whose physical, spiritual and moral development in danger' to the description of these children with reference to the presence or absence of mother and father. Thus, the definition of needy children would be expanded in a way to correspond to different circumstances.[64]

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[62] Göbelez, p. 97.

[63] Fer, p. 31-32.

[64] Gölcüklü, p. 58. *"6972 sayılı kanunun, korunmaya muhtaç çocuğu tarif ederken … ana veya babanın varlık veya yokluğuna bağlamadan, 'beden, ruh ve ahlak gelişmeleri tehlikede olan çocuklara korunmaya muhtaç çocuklar denir" formülüyle yetinmesini şahsen tercih ederdim. Böylece korunmaya muhtaç çocuk kavramı genişletilerek pek değişik müşahhas durumlara cevap verebilecek bir durum yaratılmış olacaktı."*

One of these different circumstances was criminality. Since the children were abetted into delinquency in a certain milieu, especially in the family setting, delinquents had to be perceived as needy children whose moral and physical well being was in danger.

Ali Naim İnan who was a lecturer in the Faculty of the Law in Ankara during the same conference made a similar critique on the differentiation between criminal and needy children and pointed out that upbringing in certain milieus made these children criminals and disobedient. What was common for all children was to be dependent and needy. Thus, there was a need to put philanthropic feelings aside and organize a social service system to protect and correct these children.[65]

Birşen Gökçe also criticized the law for excluding juvenile delinquents whose families abused or neglected them from the right of protection by the state. "The juridical decisions are given on the protection of children who are orphaned, yet have relatives to care for them with reference to clause a in Article 1. However, these decisions are not executed for children who have neglectful parents. This means an inequality of opportunities among children."[66] Gökçe also argued that clause d of Article 1 could not be implemented in practical terms because the families who abused their children were criminal before the law, so these parents never applied to the court for protection of their children.[67] The children, whose physical and moral

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[65] Ali Naim İnan, "Ali Naim İnan'ın Tebliği," in *Korunmaya Mutaç Çocuklar, Panel: 22 Kasım 1969* (Istanbul: Istanbul İktisadi Araştırmalar Vakfı, 1970). p. 49.

[66] Birşen Gökçe, *Memleketimizde Cumhuriyet Devrinde Kimsesiz Çocuklar Sorunu Ile İlgili Tutumun Sosyolojik Mukayeseli Tahlil Ve İzahı* (Ankara: Sosyal Hizmetler Genel Müdürlüğü Yayını, 1971). p. 245. *"Kanunun birinci maddesinin 'a' şıkkına göre anasız babasız ve fakat akrabalarının yanında normal bakım sağlanabilecek çocuk hakkında korunma kararı alınıyor da, anası babası hayatta fakat bir evvelki çocuk kadar bakım sağlanamayan hakkında korunma kararı alınmıyorsa bu, memleket çocuklarına aynı imkanların verilmemesi demektir…."*

[67] Ibid., p. 247.

development was in danger, had to be protected as much as orphans and foundlings. Parental support for prostitution, theft or beggary implicates moral degeneration. In order to handle juvenile delinquency, the state control on family must increase.

Cooperation between Social Work and the Juvenile Court

Another theme in the debates with regard to juvenile delinquents in the 1960s was the absence of a social welfare system under state control targeting child and family welfare at the same time. The effective working of such a system depends on the establishment of a juvenile court as the legitimate instrument to process the juvenile delinquents who are needy children to the preventive and protective personal treatment programs. In the new policy of handling juvenile delinquency, the needy children go hand in hand with the needy families. In 1970, Güreli said that "… attacking the cause of illness, the proximate cause and treat it… You continue to build Protectories and execute Foster Home Service. Yet, while treating malaria, it is obligatory to remedy the microbe of malaria. The path to achieve this is to implement the policy of foster homes and the protecting family."[68]

Since these children were raised in poor and neglectful families and the key reason for delinquency, the cause of illness, was unfavorable upbringing in the family, the preventive policy should change the style of upbringing and support these families financially. Therefore, not only the child, but the family had to be governed

[68] Enver Güreli, "Özet Ve Sonuç," in *Korunmaya Mutaç Çocuklar, Panel: 22 Kasım 1969* (Istanbul: Istanbul İktisadi Araştırmalar Vakfı, 1970). p. 82. *"Hastalığın nedenine gitmek, müessire gitmek, o müessiri tedavi etmek, bir tarafta siz yine yurtlarınızı kurun, koruyucu ailenizi inkişaf ettirin. … ama sıtmayı tedavi ederken sıtma mikrobunuda imha etmemiz lazım. O nasıl olacak koruyucu aileye, aile korunmasına gideceğiz."*

and supported to be reconciled with the existing socio economic system and the juvenile delinquents' upbringing should be appropriated.

In the conjuncture of the 1960s, the state was seen as being responsible for the provision of social security to all citizens including the children. However, the upbringing and the protection of needy children were the duty of the disorganized Protectories and Child Care Homes that were under the regulation and control of local municipalities in accordance with Law No. 6972, as explained previously. In the Development Plans, the social problem of the protection of needy children, including juvenile delinquents, was considered a complementary aspect of the social security system. In other words, the state should take on the duty of the protection and the correction of juvenile delinquents and all needy children.[69]

The prevention of juvenile delinquency was one of the preconditions for child welfare. For instance, the main argument in the Second Development Plan, 1968-1972, was that the achievement of child welfare required coordination between social services and state institutions as an alternative to separate Protectories and Child Care Homes. Fer described the new policy orientation toward coping with the problem of the needy children in the Development Plan by criticizing the existing Law No. 6972. "Various formal and voluntary associates are executing social welfare services in a loose order in Turkey. These services are not effective because they impede the permanent and standardized accessibility of services to the mass of the people."[70] Furthermore, the establishment of social aid fund concerning mother-child

[69] Ibid., p. 66.

[70] Fer, p. 38. *"Türkiye'de sosyal refah hizmetleri çeşitli resmi ve özel kurumlar tarafından dağınık bir düzende yönetilmektedir.Geniş bir kitleye belirli bir hizmet seviyesini devamlı olarak ve belirli bir standartta götürmeye imkan vermeyen ve bu nedenle etkili olmayan..."*

health, education, family consultation and guidance services with regard to raising the child and family planning are other policies in the same plan.[71]

In order to handle the social problem of juvenile delinquency, state institutions and formal and voluntary associations should cooperate and administration should be centralized to provide standardized and continuous social services to a large number of people. The main principle was to enhance living standards for parents and children, to resolve financial and moral problems and the impediments for mobilization by guidance, infrastructural investment, education on family planning and mother and child care and the education and nutrition of the children by state sponsored social services.[72]

Like Fer, Inan criticized social services in terms of the lack of coordination and the division of labor among formal and voluntary institutions. The number of trained social workers in the Protectories and the Child Care Homes was low and insufficient. Also, the Ministry of Health and Social Aid and the Ministry of Education did not contribute financially to the municipalities to establish new Protectories and Child Care Houses in contradiction to Law No. 6972. As explained above, Law No. 6972 gave the duty of investigating of these children to the councils of elders and the municipalities. The Court of Peace gave the legal decision on protection. The Ministry of Health and Social Aid were responsible for caring for the 0-6 age group and the Ministry of Education took care of the 7-18 age cohorts.[73] The lack of contact and coordination between local municipalities, ministries, the

[71] Emel Danışoğlu, "Kalkınma Planlarında Ve Yıllık Planlarda Çocuk İle İlgili Devlet Politikaları," in *Türkiye'de Çocuğun Durumu*, ed. haz. T.C. Başbakanlık Devlet Planlama Teşkilatı Sosyal Planlama Başkanlığı ve UNİCEF İşbirliği (Ankara: T.C. Ziraat Bankası Yayınları, 1989). p. 41.

[72] Ibid., p. 48.

[73] Inan, p. 46- 47.

court and social services obscured the goal of the correction of juvenile delinquents in accordance with their needs and potentialities. Uluğtekin wrote "… The system privileging the provision of child and youth welfare in the family needs the juvenile court immediately. … Considering the juvenile court only as a stage of the juvenile justice system is an inaccurate view. The court has the quality of being 'a bridge institution' between the justice system and the welfare system."[74] The juvenile court was presented as an instrument to achieve state intervention to protect and correct needy children in state- sponsored Protectories and Child Care Homes rather than imprisonment.

The secondary section of the report prepared in 1950 by the Turkish Criminology Institute summarized the ideal system for the execution of the judicial sentences peculiar to juvenile offenders in Turkey. The consolidation of the social welfare system presupposed the revision of legislations toward the praxis of social inclusion for delinquents. Juvenile delinquents should be recategorized in terms of age and criminal culpability. Children younger than fifteen years old should be handled by personal treatment programs instead of waiting until they were eighteen years old for imprisonment.[75] These programs should be implemented more frequently for children between 15 and 18 years of age and the harshness of penalties for this group should be reduced.[76]The programs should be imposed legally on the child by the juvenile court and the execution of it should be observed by the court. If

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[74] Uluğtekin, *Çocuk Mahkemeleri ve Sosyal İnceleme Raporları*, p. 59. *"Çocuğun ve gencin refahını aile içinde sağlamayı hareket noktası olarak kabul eden bir sistem, çocuk mahkemelerine büyük ölçüde gereksinme duyar. …Çocuk mahkemesini sadece çocuk adalet sisteminin bir parçası olarak görmek yanlış olur; çocuk mahkemesi aslında bir ayağı adalet, bir ayağı refah sistemi içinde olan ve böylelikle işlevsellik kazanan bir "köprü kurum" niteliğindedir."*

[75] Istanbul Kriminoloji Enstitüsü, p. 58.

[76] Ibid., p. 61.

the child disobeyed or the program seemed insufficient for correction, the judge should change the type of treatment depending on social inquiry reports. Also, the probation officers should support the child for his adaptation in society after the treatment.[77] In summary, the report made a call for the reorganization of the punitive policy for delinquents and suggested the rehabilitation of these children by means of legislative treatment programs as a new policy.

Gökçe, writing in 1983, also explored the link between family and child welfare and suggested organized social work for the rehabilitation with reference to her field research in five correction houses in Ankara. She interprets her findings on the basis of a critique of Law No.6972 and criticized the application of the legislation to place poor families' children into care houses. Twenty seven percent of children had been placed in those houses due to failure of their families to meet their basic needs, like food and clothing.[78] Poverty was not a legal criteria for decision to protect a child outside of his family. There was no effective and organized social work to diagnose the needs of the children and treat them within their families or no financial and administrative coordination between state institutions and social work associations in civil society for the execution of the preventive programs in families.[79] Gökçe recommended the preparation of social inquiry reports before the legal decision on the protection. Professional social workers should write reports on the life circumstances of the children and the judges should base their decision on them.[80] The lack of coordination between formal and voluntary organizations

[77] Ibid.

[78] Birşen Gökçe, *Cumhuriyet Döneminde Çocuk Ve Gençlere Ait Yasal Düzenlemeler Ve Yayınlar* (Ankara: T.C. Gençlik ve Spor Bakanlığı, Ekim 1983). p. 14.

[79] Ibid., p. 13.

[80] Ibid., p. 16.

prevented the success of social work in the area of the child welfare. The qualified staff in formal institutions, such as the juvenile court, should play more central role on judgment for the child and cooperation between the court, state sponsored institutional care centers and social workers should be improved.[81]

The Reformatory Principles of the Turkish Juvenile Law

The Ministry of Justice prepared Law No. 2253, the Law on the Establishment, Duties and Procedures of the Juvenile Court and submitted it to the Turkish Grand National Assembly on 7 November 1978 and it was enacted on 21 November 1979. Since there was no preparation to get the courts ready for prosecution, the execution of the law was postponed one year. Some articles in the draft of legislation were changed on the basis of critiques and stipulated again on 6 November 1981 as Law No. 2552, the Law on the Change and the Abandonment of Some Articles from Law No. 2253 was passed on 1 June 1982. The first juvenile courts were established in Istanbul, Izmir, Ankara and Trabzon and began work on 5 October 1987.[82]

In accordance with this law, the protection of juvenile delinquents as needy children and the prevention of delinquency by rehabilitation gained importance in the juvenile justice system. A draft of a law on the Establishment, Duties and Procedures of the Juvenile Courts was prepared on 17 November 1965. This draft and its enacted form in 1982 constituted the basis of the principles of juvenile law. This juridical text was a reformatory step in the juvenile justice system in Turkey because the rhetoric

[81] Ibid., p. 17.

[82] Mustafa Yücel, "Çocuk Suçluluğu Ve Mahkemeler," in *Türkiye'de Çocuğun Durumu*, ed. haz. T.C. Başbakanlık Devlet Planlama Teşkilatı Sosyal Planlama Başkanlığı ve UNİCEF İşbirliği (Ankara: T.C. Ziraat Bankası Yayınları, 1989). p. 166.

of juvenile delinquency shifted from criminal children to children abetted into delinquency in the prosecution. Before exploring the reformatory principles of Turkish juvenile law, the critiques on the draft of the law will be examined.

This draft emerged in the conjuncture of the 1960s as a legal response to the conjectural demands for the establishment of the juvenile court as an instrument for state intervention in the living conditions of delinquents to rehabilitate them by means of social work. In this sense, the draft was a reformatory step toward the prioritization of child welfare over punishment. However, it was criticized for the coexistence of punishment and rehabilitative measures in the legal text. In other words, juvenile delinquents were given reduced versions adult penalties if they had criminal culpability and the court did not have the cognizance of developmental differences for those children in the draft. In 1966, Betül Taşbağ criticized the application of the same principles of prosecution for the child and the adult in this draft.

> … In today's modern legal principles with regard to juvenile delinquents… the juvenile conduct does not affect the sentence; it is only one of the criteria showing the character of the sentence. Yet, this draft makes legitimate both rehabilitative measures and the execution of reduced sentences for juvenile delinquents, so it implicates the inclination to sustain the old and new system together. [83]

It legitimized both the application of corrective measures to children who were not liable for criminal conduct and reduced punishment for other culpable

[83] Betül Taşbağ, "17 Kasım 1965 Tarihli "Çocuk Mahkemelerinin Kuruluş Ve Yargılama Usulleri Hakkındaki Kanun Teklifi" Üzerinde Mütalaalar," *Ankara Barosu Dergisi*, no. 2 (1966). p. 248. *"…Bugünkü modern çocuk suçları mevzuatında… dolayısı ile çocuğun işlediği suç cezanın tayininde rol oynamamakta, sadece onun karakterini gösteren kriterlerden biri olmaktadır. Halbuki bu kanun teklifi adeta eski ve yeni sistemleri baş başa götürmek arzusu ile, küçüklere tedbirlerin uygulanması ile beraber azami haddi indirilerek tatbik edilen cezaları da kabul etmiştir."* Taşbağ points out that Article 11 and 12 in the draft are the adaptation of Article 53 and 54 in the Turkish Penal Code. As explained previously, these articles are associated with reduced, but oustanding punitive penalties. In addition, Article 10 is the adaptation of Article 52 with the increase in the upper age limit to 12.

children. The severe penalties had been adapted from the Turkish Penal Code to the draft, so it was not sufficient to create a separate justice system for juveniles.

As a complementary to Taşbağ, Jean Graven criticized the draft in terms of the principles of prosecution. "… In the juvenile court, the criteria of judgment are the age of the child, not the importance of the crime."[84] This draft took both the age and the violation of the criminal law as the criteria of prosecution and assigned reduced punishments to the delinquents having criminal culpability. Thus, the draft was "… conservative in penalties and it comes into the forefront in practice and its punitive composition may erase the expected effects of the measures passed in this draft..."[85]

In Turkey, Law No. 2253 changed the focus from punishment to endorsing rehabilitation as a juvenile sanction. Juvenile court jurisdiction evolved not toward punishment, but toward sentencing them more leniently due to their diminished responsibility and the rehabilitative ideal. The reformatory principles of the law can be categorized under four themes: the new principles of preliminary investigation, the interrogation and prosecution peculiar to juvenile delinquents, the new division of labor among the legal professionals in the court, the replacement of the rehabilitative legal rules with punitive codes and the execution of the judicial sentence.

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[84] Jean Graven, "Çocuk Mahkemelerinin Kuruluş Ve Yargılama Usulleri Hakkındaki Kanun Teklifi Münasebetiyle," *Ankara Barosu Dergisi*, no. 2 (1966). p. 253. *"mahkemeleri yargı kriteri suç işleyen çocuğun yaşıdır, suçun ehemmiyeti değil."*

[85] Ibid., *"cezalar bakımından son derece muhafazakar ve tatbikatta tedbirlerden ön plana geçerek … bu kanunda kabul olunan tedbirlerden beklenilen faydaların tesirini adeta yok edebilecek mahiyette…"*

The juvenile court is different from the criminal court in terms of its jurisdiction. With the establishment of the court, a "private judgment organ"[86] began to be executed in Turkey. The court was not an organ judging juvenile delinquents in order to punish them for past acts, but it was a private court, functioning as an "… education organ for deciding on the appropriate treatment for social inclusion of the delinquent…"[87] The execution of the judicial sentence aimed at the rehabilitation of the juvenile delinquent as a new modern and humanitarian disciplinary system. Apart from crimes against the state, all kinds of crimes committed by children under the age of 15 fell in the jurisdiction of the court. [88] Law No. 2253 also gave the responsibility of the correction of children in need of protection and those disobeying their parents in Article 14 under the jurisdiction of the juvenile court. Thus, the juvenile court was not a penal court. The offender child and victim child were not distinguished in the juvenile justice system as a new principle in prosecution. The juvenile court, as a state instrument, was a guardian of all children abused and neglected by parents regardless of whether they were offenders or victims.

In order to legitimize its jurisdiction of protection and correction, the new principle in the juvenile law was that preliminary investigation and prosecution took the age of the child, not the conduct as the basis of legislation. "Culpability entails a

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[86] Hasan İsmet Bıyıklı, "Çocuk Mahkemelerinin Kuruluşu," *Adalet Dergisi* 64, no. 1 (Ocak 1973). p. 171.

[87] Ibid., p. 172. *"… çocuğun sosyal içerilmesini sağlama amacıyla uygun programa karar veren eğitim organı…"*

[88] T.C. Resmi Gazete, *Çocuk Mahkemelerinin Kuruluşu, Görev ve Yargılama Usulleri Hakkında Kanun*, No.2253, 7 November 1979. Article 6 defines the duty of the court. Due to the terrorized atmosphere in those years, the age of children declined from 18 to 15 and crimes against the state is excluded from the duties of the court in Law No. 2252, the law on the change of some articles in Law No.2253. This law was accepted on 6 November 1981 and put into execution after its published form in the official newspaper on 1 June 1982.

normative judgment about the degree of deserved punishment for making blameworthy choices." [89] The offenders under the jurisdiction of the juvenile court were not able to understand the meaning of conduct or to exercise complete judgment about their behaviors. The children neither were developed cognitively, nor had self-control. Cognitive and volitional immaturities were legitimate causes of the reduction of their criminal responsibility. Feld describes these factors as "Juveniles lesser competence … drive from… generic developmental limitations- immaturity, lack of knowledge, attitude toward risk,… susceptibility to peer and parental influences- which affect their ability to communicate, to reason and understand, and to exercise judgment…"[90] Therefore, it was possible to change those offenders who had temperate perspectives on blameworthiness by employing any kind of legal decisions. Their life conditions hampered the development of the ability to make reasonable choices and this ability was acquired in the execution of the social casework programs responding to the children's needs and potentialities in the juvenile court.

In terms of its structure, courts would be established in each city and those courts had status equal to that of the Criminal Court. In addition, each province where the population was more than 100,000 had a court that functioned at the level of Criminal Court of the First Instance (*Asliye Ceza Mahkemesi*).[91] The courts in cities and provinces were composed of a president judge and two associate judges. Law No. 2253 presupposes the new principles of preliminary investigation and interrogation peculiar to juvenile delinquents. According to Article 18 in Law No.

[89] Feld, p. 409.

[90] Ibid., p. 426.

[91] Law No. 2253, Article 1.

2253, the task of preliminary investigation and interrogation of the juvenile delinquent was the duty of the prosecutor and his designated assistants. Thus, the police no longer had discretion to take statements any more. Law No. 2253 was criticized in terms of the distribution of charges among the prosecutor and the judge. In 1973, Bıyıklı argued for attaching the task of preliminary investigation and interrogation to the judge.[92] The accumulation of investigation and prosecution on the one hand gave the judge an opportunity to learn the causes of the crime and social and psychological conditions in which the child lived. Therefore, the judge could function as a "social judge"[93] and decided on an appropriate treatment. Beyond the change in investigation and interrogation, "no arrests were to be made for the children if the punishable act carried a minimum penalty that did not exceed three years."[94] Thus, the police could not keep the children in the prison during preliminary investigation and trials.

The juridical text also reconstructed the imaginary of the judge who carried out the prosecution peculiar to children, so it introduced a new principle in the prosecution. In the law, the conditions for being a judge were reformulated as complementary to the new ideal of the correction of the child. Being experienced, having a child and being older than 30 years old were the preconditions in Law No. 2253 to work as the judge in the court.[95] Being a father implicated an ability to

[92] Bıyıklı, *Çocuk Mahkemelerinin Kuruluşu*, p. 174.

[93] Ibid., p. 176. "sosyal yargıç"

[94] Tan Mehmet Başkan and Neylan Ziyalar Sevil Atasoy, "Juvenile Justice in Turkey," in *Delinquency and Juvenile Justice Systems in the Non-Western World*, ed. Paul C. Friday and Xin Reen (New York: Criminal Justice Press, 2006). p. 137. This article was added to Law No.2253 on 2 March 1988.

[95] Law No.2253, Article 2.

empathize with the child and understand to his feeling.[96] The judge was the father of all children to and acted as a guardian for all needy children. Being a father facilitated the appreciation of psycho-social problems and so the judge prosecuted the child in order to solve these problems with personal treatment. Therefore, the judges not only settled legal disputes with reference to the penal code, but also had the responsibility of taking appropriate legal decision to protect and educate the child.

Another reformatory principle in terms of the prosecution was the new legal procedure concerning children in trials. Article 25 defined who had legal permission to the participation in trials. The lawyer, the parents of the child, the probation officers, the social workers and the representatives from official or voluntary social services were agents with legal permission. Those trials were characterized by closed hearing, so no one apart from them could be involved in the trials. Since the judge and the social workers were in the service of child welfare in the juvenile court, a defense lawyer was considered an unnecessary agent in the law. The lawyer could be promoted or participate in trials. Thus, legal aid was excluded from the juvenile justice system different from the prosecution of adults. Yet, Esin Onur, a lecturer in the faculty of education at Ankara University, argued that this article that rendered legal aid inaccessible to children. In the new juvenile justice system, investigation by expert social workers and prosecution by judges trained in child problems were not to impede the defense right to the child.[97] The advocacy has to be obligatory. In

[96] Akıncı and Atakan, p. 59.

[97] Esin Onur, "Çocuk Mahkemeleri Yasası," in *Çocuk Suçluluğu Ve Çocuk Mahkemeleri Sempozyumu 22-23 Haziran 1983* (Ankara: Ankara Üniversitesi Eğitim Fakültesi Yayınları No.130, 1983). p. 15.

addition, the court banned the presentation of previous records of conviction in order to prevent the stigmatization of the child.[98]

Beyond the new principles of preliminary investigation, interrogation and prosecution, Law No. 2253 represents the transformation in the philosophy of the juvenile justice system. The separate juvenile court considered the suspect as one who needed protection and correction. In order to realize "the principle of personal treatment," legislation integrated new agents in the juvenile justice system and thereby reorganized the division of labor among legal professionals.[99]

The probation officer was a new agent in the court. Yücel wrote "Probation, as a service in criminal court, refers to the preparation of a psycho-social report on the offender and the conditions of the regime of freedom of the child, who is observed in society in the case of the probation decision."[100] Social workers, pedagogists, psychologists, and people with knowledge about child education or who worked in voluntary associations could be legal probation officers.[101] Probation is a social service aiming at the supervision of the child to achieve treatment. The probation service proves the evolution of the philosophy of the juvenile court from punishment to rehabilitation in Turkey. The process of individual treatment initiates with the report before the judgment. This report includes the knowledge obtained

[98] Law No. 2253, Article 34 prohibits the circulation of previous records. These are accessible only to the courts and the judge.

[99] Akıncı and Atakan, p. 55. *"şahsileştirme prensibi"*

[100] Mustafa Yücel, "Gözetimli Erteleme Müessesi (Probation)," *Adalet Dergisi* 63, no. 6-7 (Haziran-Temmuz 1972).p. 459. *"Probation ceza mahkemelerinde görülen bir hizmet olup; suçluluğu saptanan sanık hakkında psiko-sosyal bir anket yapılmasını ve bu müesseden yararlandırıldığında hükümlünün cemiyette gözetimi ile tabi olacağı hürriyet rejiminin koşullarını içermektedir."*

[101] Akıncı and Atakan, p. 57.

from family, friends, school and the work place and then the professional social workers prescribe the personal treatment program to normalize the pathologic child.

Apart from this report on the needs and potentialities of the child, the judge chose the juvenile delinquent eligible for probation according to certain criteria. These were the child's inclination for change, feeling guilt for the act, not having a previous record of conviction and the child's attitude in the interactions in the court of appeals with the judge and the social workers.[102] Also, the proportional penalty for the conduct had to be lower than three years. "The success of probation depends on the criminal's self-control rather than the control of criminal under probation."[103] If the judge believed in the child's wish for change, the judgment became probation for a set amount of time. Probation was a more economic method in comparison to prison and more successful method to prevent juvenile delinquency.[104]

Thus, there was a call for the extension of the use of probation in the juvenile justice system in Turkey. During probation, the court could decide on learning certain skills, living in certain place or forbidding alcohol use.[105]The probation officers observed the child's obedience to the treatment program and wrote regular reports to the court every two months. The judge had the authority to change the treatment or if the criminal disobeyed. The child was convicted on the basis of these reports. Therefore, the probation service exemplified the intersection of personal

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[102] Yücel, *Gözetimli Erteleme Müessesi*, p. 463-464.

[103] Ibid., p. 465. *"Probation müessesinin başarısı, gözetim altında bulunan suçlunun kontrolünden çok suçlunun kendi hareketlerini kendisinin kontrol etmesi ile sağlanabilcektir."*

[104] Ibid., p. 467.

[105] Law No. 2253, Article 38.

treatment program and the formal social control to obey it in the philosophy of the juvenile court.

However, there was no room for "diversion" in this legislation. Yücel wrote that, "*Diversion* refers to being immune from the criminal justice system and the direction of the child social assistance services."[106] Thus, in the preliminary investigation, the police or the prosecutor could use the initiative and channel the child to social services for guidance or treatment without prosecution. Diversion policy prevents the stigmatization of the child. Yet, diversion was not a preventive policy in Law No. 2253. The child could be rehabilitated after a legal decision for probation in the court**.**

Even though the law introduced non-punitive sanctions, the age of the child restricted which decisions were applicable to the child. Children below the age of 11 years old did not have any criminal responsibility, so they were dropped out of the system without sentencing. Yet, if the penalty for crime was more than one year, all of the measures targeting individual correction were applicable to the child apart from imprisonment.[107] These were also legal decisions to rehabilitate the children in the ages of 11 and 15. However, codification allowed the judge to apply the measures to those who do not have reasons for their acts. Sentences reduced for the others.

Ümran Sölez Tan recommended that the measures and personal treatment programs had to be executed for all children independent of their criminal culpability because all of them were manipulable. Having criminal responsibility did not imply

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[106] Yücel, *Gözetimli Erteleme Müessesi,* p. 460. *"Diversion, çocuğun ceza adaleti sürecinden alınmasını (veya bu sürece intikal ettirilmemesini) ve ekseriyetle toplumsal yardım hizmetlerine yönlendirmeyi içermektedir."*

[107] Law No. 2253, Article 11 corresponds to Article 53 in the Turkish Penal Code.

full culpability. "… Legislation stresses punishment. In other words, the rationality is to judge the conduct, not the child."[108]However, the widespread use of measures implicated another new agent apart from the probation officers in the juvenile justice system in Law No. 2253. Social workers prepared social inquiry reports to diagnose the causes of the criminal conduct and determine the applicable measure. Social workers, psychologists, pedogogists and psychiatrists were "supervision and control officers" (*gözetim ve denetim görevlileri*) and those officers were assigned to each court with the duties of writing social inquiry reports and of supervising the child as the probation officers. In addition, the charitable people or the workers in formal or voluntary social service associations could also apply to the court to work as supervision and control officer.[109] The law was ambiguous in defining who decided criminal culpability. Even though the word of the expert was mentioned for this task, it was not clear whether it addressed doctors or the supervision and control officers. Yet, those officers also could decide on the criminal culpability according to the law.[110]

In accordance with the non-punitive ideal of the juvenile court, social inquiry reports were the main instrument to diagnose the child's needs and to realize correction by means of legal decision. Yet, those reports were written if the judge considered it "necessary." Sevda Uluğtekin, a professor at the Hacettepe University

[108] Ümran Sölez Tan, "Çocuk Mahkemelerinin Anlamı," *Cumhuriyet* 2 October 1991.

[109] Law No. 2253, Article 30 and 31 define who can be the supervision and control officer (*gözetim ve denetim delegeleri*) and what the duties are for these officers.

[110] T.C. Resmi Gazete, *Çocuk Mahkemelerinin Kuruluş, Görev ve Yargılama Usulleri Hakkındaki Kanunun Uygulanmasına İlişkin Yönetmelik*, 31 May 1982. f bench of Article 5 ascribes this duty to the supervision and control officer.

Social Work Institute, categorized the functions of social inquiry reports on juvenile delinquents and the children in need of protection.

> 1. Helping the court to take an appropriate legal decision about the child; 2. Classifying children who were accommodated in correction houses, education or care institutions and guiding the preparation of the treatment programs; 3. Preparing the preventive and protective programs and of reports concerning children who are on the probation or in the need of post-care after the rehabilitation and informing the related institutions; 4. Helping the probation officers in the studies with the child during the probation…[111]

Social workers had many duties. Social inquiry reports provided knowledge on the development of the delinquent behavior, and social workers formulated appropriate treatment programs as the collaborators of the judge. Social workers are also involved in the probation process to execute the programs. Basic causations of juvenile delinquency stress biological and psychological personality traits; the physical, mental, moral and emotional development of the child's personality; the economic, social and cultural conditions in the family milieu; the relations between parents and children, school, work and leisure time facilities and the appropriate treatment programs. The knowledge obtained from the child and other institutions and people with whom the child was connected constitutes the basis for delinquency prevention programs.[112]

In the regulation concerning the execution of Law No. 2253, the purpose of treatment was described as "…the creation of desire for living without the violation

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[111] Sevda Uluğtekin, "Suçlu Ve Korunmaya Muhtaç Çocuklar Için İnceleme Raporu," in *Çocuk Suçluluğu Ve Çocuk Mahkemeleri Sempozyumu 22-23 Haziran 1983* (Ankara: Ankara Üniversitesi Eğitim Fakültesi Yayınları no.130, 1983). p. 34. *"1. Çocuk hakkında uygun bir karar verebilmesi için mahkemeye yardımcı olmak; 2. Islah, eğitim ya da bakım kurumlarına alınan çocukların uygun biçimde sınıflandırılmalarında ve tedavi programlarının hazırlanmasında yol gösterici olmak; 3. Salıverme ve infaz sonrası bakım ile ilgili programların düzenlenmesinde yardımcı olmak ve ilgili kurumları çocuk hakkında bilgilendirmek; 4. Gözetim ve denetim süreci içinde çocukla ilgili veya onunla birlikte yürüteceği çalışmalarda gözetim ya da denetim delegesine yardımcı olmak."*

[112] Ibid., p. 35-36.

of laws in children and regime, measure and techniques executed to make them self-sufficient to satisfy their needs easily."[113] Therefore, treatment programs were a social control technique to create self-control in children and mold their personalities in accordance with social norms and values.

Social inquiry reports exemplified the new reformatory principle of juvenile justice: to consider juvenile delinquency in relation to factors other than the child. In the new rhetoric of the juvenile justice system, there were no criminal children, but only children abetted into the crime. Beyond the prosecution of children who had committed offenses, the juvenile court had the responsibility to identify the children led into delinquency and reintegrating them into the society by implementing measures appropriate for the needs and potentialities of the child in the light of the socio-psychological knowledge in the social inquiry reports**.**

Another reformatory aspect of Law No. 2253 was the changes in the execution of judicial sentence. For the execution of judicial sentence in the early republican era, Göral argues that "the reformatory was designed on the basis of industrial work. So, the workshops represented two things at the same time: the rehabilitation of juvenile delinquent via the ethic of work, and the contribution of the skilled worked to the juvenile delinquent that would help him after his release."[114] The rehabilitation in closed building was characterized by "… the work principle, the limited education of 'practical' primary school curriculum, the lack of the participation of delinquents in the reformatory administration, and the strict

[113] *Çocuk Mahkemelerinin Kuruluşu, Görev ve Yargılama Usulleri Hakkındaki Kanunun Uygulanmasına İlişkin Yönetmelik,* Article 3 defines the concepts in Law No. 2253 in the following passage. *"…küçüklerde kanunları ihlal etmeden yaşama arzusunu doğurmak ve onların hayatta ihtiyaçlarını kolaylıkla kazanabilecek duruma gelmelerini sağlamak için uygulanan rejim, tedbir ve teknik usullerin tümü."*

[114] Göral, p. 98.

discipline of the reformatory's administers as a whole"[115] in the 1930s-1940s. The policy of the rehabilitation of the child in a closed building was eradicated from the agenda of the state with Law No. 2253 partially. In the new preventive and protective policy, the child had to be corrected in his own open environment and social services were the instrument to foster child and family welfare. Yet, institutional care was still dominant in the welfare era.

All judicial decisions in the juvenile court were oriented "... to achieve the docility and upbringing of the child in the short amount of time, to create virtual and beneficial individual in his immediate and large environment and to make the person who is at least submissive to and respectful of the law by investigating and finding the real reasons for crime or for bad and unfavorable fact."[116] In Law No. 2253, there were six types of juridical sentence that were legally codified to normalize the deviant child by treating the causes of crime. The court could accommodate the child in the Protectories, Child care homes or official or voluntary institutions, foster home and official hospitals, schools or leave the child in the care of the relatives, release on probation or warn the negligent family to raise their children in an appropriate way.[117]

The first measure was to give the wardship of the child to another family or relative. Family abuse or inabilities to raise a child morally were legitimate causes of

[115] Ibid., p. 102.

[116] Akıncı and Atakan, p. 68. *"Suçun ve ya fiili kötü ve elverişsiz durumun gerçek nedenlerini araştırıp bularak, suç işlemiş veya suça yönelmiş küçüğün mümkün olabilen en kısa sürede uslandırılması ve terbiyesini başarmak, onu fazilet doğrultusuna oturtmak, iyi ahlaklı, dar ve geniş çevresine yararlı, hiç olmazsa zararsız hukuka saygılı bir insan olmasını sağlamaktır."*

[117] Ibid., p. 75.

state intervention for foster home.[118] The secondary jurisdiction for the juvenile delinquent was to place the child in hospital for psychiatric or medical treatment, school or in closed institutional care centers as an appropriate individual treatment program.[119] Also, the court warned families about their improper education of the child. The degree of intervention into the relationship between the child and the family depended on the judge's evaluation of the parental violation of the right of guardianship. The measures of foster home could be stipulated in cases of incorrect use of the right to raise and take care of children. Another measure to correct the child was to accommodate the child under the supervision of a probation officer for a certain period, as explained previously. All programs ended at the age of eighteen.

Conclusion

After the Second World War, the protection of all endangered children and the prevention of juvenile delinquency constituted a crucial dimension of the welfare state in the pursuit of development and modernization. In this chapter, the debates with regard to juvenile delinquents in literature and juridical texts were explored in order to illustrate the perception of juvenile delinquency and; so, the role of juvenile court to handle this problem in the conjuncture where social work and welfare state were consolidated. In the new model of juvenile delinquency, the perception of criminal children as children led into crime in certain milieus went hand in hand with the criticisms of existing laws. The heavy penalties in the Turkish Penal Code and the legal distinction between the child in need of protection and the criminal child in

[118] Ibid., p. 69.

[119] Ibid., p. 71.

Law No. 6972 were criticized and calls were made for the legislation of rehabilitation, the abandonment of severe sentences and of the distinction between criminal and endangered children in a parallel to the new model. The establishment of the juvenile court was suggested as a legitimate instrument of state intervention into the lives of those endangered children to correct them by means of the social casework method and practice obligatory treatment programs in cooperation with state- sponsored institutional care centers, civil organizations, ministries and families as the new techniques of social control.

Turkish juvenile law was enacted as the basis of a separate juvenile justice system in 1979. The first courts were established in 1987. This law was reformatory because it substituted rehabilitation in non-institutional or institutional milieus for imprisonment as a correction method for deviant children. Beyond the new principles of preliminary investigation, interrogation and prosecution peculiar to juvenile delinquents, social workers, psychologists, pedagogists and psychiatrists were assigned at the court as "probation and control officers" and those officers prepared social inquiry reports or worked as probation officers to control obedience to legal treatment programs. According to this new juvenile justice policy, the living conditions of these children were labeled as the causes of criminal conduct in the reports and the juvenile court took legal decisions to handle these causes as the guardian of all children. This judicial authority for normalization both legitimized intervention in the lives of families and children and compels them to obey personal treatment programs. However, this policy and techniques targeting children succumbed in the 1980s.

How the perception of juvenile delinquents as dangerous individuals from whom the population must be protected led to new governmental techniques to

improve security and order in the new juvenile justice policy will be main concern for me in the following chapter to visualize historical jurisprudence concerning property crimes and juvenile delinquency in current Turkey.

CHAPTER THREE

NEW JUVENILE JUSTICE POLICY TARGETTING THE SECURITY OF THE VICTIMS

Introduction

Risk is contrived to make governable the different conducts by "… the assemblage of practices, techniques and rationalities concerned with how we govern."[120] The perception of juvenile delinquents as endangered children was the hegemonic rationality in the welfare state. Diagnosing the reasons for crime and formulating personal treatment programs by the social casework method and state intervention into the lives of juvenile delinquents in order to implement those programs were the dominant techniques used to govern the risk of juvenile delinquency in a tutelary complex until the 1980s. According to Mitchell Dean, the risks "… are predictable and limited, but necessary side-effects of technical and economic progress. Risks are a matter for the experts and thus for scientific legitimation."[121]

As explained in the previous chapter, economic and social developmentalism created certain social risks, like juvenile delinquency, and the causes of those risky conducts stressed the living conditions of those children, family upbringing that did not fit the paradigm of modernity. Those explanations made state interventionism

[120] Mitchell Dean, *Governmentality: Power and Rule in Modern Society* (London: Sage Publications, 1999). p. 178.

[121] Ibid., p. 181.

legitimate in prosecuting in the juvenile court and executing legal personal treatment programs in the state-sponsored institutions as a new policy of the correction and protection of children at risk.

Since the notion of the risk of delinquency was calculable, state provided social insurance and social assistance, as a public service and citizenship right to sustain the social contract. This was a crucial dimension of the liberal social government after the Second World War. For Dean, social insurance was "deployed as a technology of solidarity that renders… ills associated with social life as insurable risks that are collectively born and individually indemnified."[122] Each insured individual is entitled to social services as a member of society. Thus, social inequalities, such as poverty, and social problems, like juvenile delinquency, were concerns for all in the social contract.

Dean explains the liberal governmental regime that fits the conjuncture of Turkey, in which the need for a juvenile court was evident in the below passage.

> A useful way of thinking about liberalism as a regime of government, however, is to consider the multiple ways it works through and attempts to construct a world of autonomous individuals, of 'free subjects'. (...) However, its subjection is also a condition of freedom: in order to act freely, the subject must be shaped, guided and molded into one capable of responsibly exercising that freedom through systems of domination.[123]

Dean establishes a link between freedom and subjectivity. In this regime, reciprocal relations existed between individual, society and state with the purpose of achieving social solidarism. The state enframed society by means of social security and insurance and had the duty of caring "for the welfare of population from cradle

[122] Ibid., p. 185.

[123] Ibid., p. 164-165.

to grave."[124] In terms of the judicial practices, the separate juvenile court was a state institution exemplifying this reciprocity; the juvenile delinquent was to be enframed by security mechanisms and protected from the ignorant family as a needy child and must reintegrate into the social contract by means of the state administered personal treatment programs that were obligatory legal decisions taken in the court. Juvenile delinquents became free subjects only if their deviant personalities were disciplined in accordance with the politics of need formation and the paternal unionized social control. Criminal children became free and productive subjects after correction.

Similar to the global scale, the 1980s were characterized by the abolition of the solidarism between state, individual and society in Turkey and a coordinated welfare state dissolved in those years. Social insurance was privatized and new individual had to monitor all risks in her own life and subcontract needs to provide security and welfare. Thus, the individual undertook the functions of government and shaped the conducts in accordance with the rules of the market. In terms of crime, the rhetoric of the endangered child in need of protection was partially transformed and juvenile delinquents were perceived as individuals who themselves constituted a risk for social security and order, so people needed to be protected from these dangerous children. Now, crime has become a potential behavior in the population. This potentiality itself urged the rapid growth of the crime control industry and the reorganization of state institutions concerning the juvenile delinquents.

The new terminology on the security of victims coexists with the perception of children in need of protection in the juvenile justice policy in contemporary Turkey. Thus, the new juvenile justice policy has two targets, the victims and the children, and so it is *the double-sided juvenile justice policy.* The enforcement of

[124] Ibid., p. 150.

policing of children who are at risk for the security of the real and potential victims of property crimes is the focus of this chapter. The changes in the juvenile justice system are explored with regard to social work and the new model of partnership between the court, civil society and family to correct children who are at risk as another side of the policy in the following chapter.

A report prepared under the management of Halil Tataş, the chief of the police in Denizli, with regard to security services in Turkey in 2001, is crucial to comprehending the new state policy concerning security.

> The word of "security" implicates two intermingled meanings. First is security, the other is order. Security refers to the establishment of the unquestionable state authority, the working of state institutions… without any obstacle and these institutions fulfill certain duties, realize the security of life, property and honor within the limits of individual rights and freedoms. Thus, the provision of security in society is the main goal… Order means the prevention of criminal conduct against security and the resignation of the suspect and the proofs to the court to punish in accordance with the legal framework.[125]

The construction of a secure society requires the establishment of environment by means of public and private security services that discourages the individual from committing crime. This secure environment consolidates state authority and strengthens a social belief in justice. Similarly, punishment is a deterrence technique and a mean to sustain order. It also serves to reduce the fear of crime and increases public trust in state institutions to protect lives and property rights. Therefore, in this report, the target is to satisfy the potential and real victims

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[125] Sekizinci Beş Yıllık Kalkınma Planı, *Güvenlik Hizmetlerinde Etkinlik: Özel İhtisas Komisyonu Raporu* (Ankara: DPT Yayınları No: 2567, 2001). p. 5. *"Güvenlik kelimesi ile genel olarak iki anlam iç içe geçmiş olarak birlikte anlatılmak istenir. Bu kavramlardan birincisi güvenlik, ikincisi de asayiştir. Güvenlikle kastedilen; Devlet otoritesinin tartışılmaz bir şekilde tesis edilmesi, Devletin kurumlarının … engelsiz bir şekilde çalışması ve kişilerin özgürlüklerinin hak ve sınırları içerisinde ve sorumluluklarının yerine getirilmesi kaydıyla yaşama, can, mal ve namus güvenliklerinin sağlanmasıdır. … insanların güvenliklerine karşı çıkıcı eylemlerde bulunan kişilerin bu eylemlerinin önlenmesi ve önlenemeyen eylemlerden dolayı sanık ve şuç delillerinin yargı organına teslim edilerek yasal çerçeve içerisinde cezalandırılmasının sağlanması ise asayişi ifade eder."*

of the crime by security services that have the power of deterrence.[126] There are two main agents of the new policy on security and order explored in this chapter. Firstly, individuals are themselves liable for monitoring their risks of being the victims of property crimes as the clients of the crime control industry constituted that refers to the private security firms and private insurance against property crimes. Secondly, state institutions, like the child police and the juvenile court, are the official agents to provide accelerate and effective services in the prevention of crime and the punishment of juvenile property offenders.

Dean categorizes governmental strategies as the technologies of agency and of performance. The changes in the juvenile justice policy with reference to these categories are evaluated. "Technologies of agency" are associated with the consumption of security services, so it addresses primary agents who are individuals themselves in the new policy on security. "New prudentialism" is related to the individualization of the risks of being a victim of property crimes and "risk minimization became a feature of choices that are made by individuals… as consumers, clients and users of services."[127] Juvenile delinquency has perceived as the criminal conduct of the dangerous marginal classes. These children have constituted a risk for the population, so society must be purified from these children. In this sense, "Technologies of agency… are technologies of government that seek to enhance or deploy our possibilities of agency."[128] Each citizen is responsible for monitoring his or her risk of victimhood. Governmental strategies do not aim at erasing the children's socio economic marginality, but at providing security services

[126] Ibid.

[127] Dean, p. 166.

[128] Ibid., p. 167.

to the clients who live in permanent fear of crime and activates citizens as the agents to manage their own risks.

The monitoring and subcontracting of risk to the private insurance or private security services, the physical security measures and community policing that enhance our participation in the social control of delinquents are analyzed as instances of the technologies of agency about the prevention of property crimes in this chapter. These technologies consider the victims of crime as clients, as active citizens managing their own risks. The criminal is no longer the child led into crime due to certain social conditions and milieu. For Dean, "Homo *criminalis* is an element within each and all, to be removed and contained, to be eliminated and neutralized, even, if possible, *before* its manifestation in crime."[129] Thus, crime is a potential incalculable conduct that can be unleashed at any time. Since the 1980s, the social has been reconfigured as "quasi-markets in the provision of services and expertise…"[130]The real and potential victims of crime consume the marketized services in order to cope with the dangerous delinquents in society.

Beyond these technologies of self-monitoring of the risk of property crimes, state institutions were also reorganized as another part of new juvenile justice policy between 2001 and 2004. The child police and the juvenile court were restructured in order to provide effective and accelerate services to the real victims of crime. Dean defines the reorganization of the state institutions as "reflexive government" that is synonymous with "technologies of performance."

> …the govermentalization of state – by which the state came to take on the function of the care of populations and individuals- is today meeting, being partially displaced by, reinscribed and recoded within another trajectory whereby the mechanism of government themselves

[129] Ibid., p. 170.

[130] Ibid., p. 173.

> are subject to problematization, scrutiny and reformation. This turning of the government of the state upon itself can be described as the governmentalization of government… reflexive government.[131]

For Dean, the government of the state in the welfare state became problematic and it has been restructured. In this frame, it can be claimed that the police and the juvenile court reflected upon themselves and were reorganized as accountable and efficient mechanisms of governance with the purpose of restoring the public convenience and the legitimacy of the juvenile justice system. For Dean, "Technologies of performance… are utilized from above as an indirect means of regulating agencies…as techniques of restoring trust (i.e. accountability, transparency and democratic control) in the activities of firms, service providers, public services and professionals."[132] Since the child police and the juvenile court are the central agents in the juvenile justice system, I explore seven "technologies of performance" in regard to the performances of these state institutions in this chapter. These technologies make the policing of the juvenile delinquents stricter.

The institutionalization of the child police in 2001, the reconceptualization of property crimes in the new penal code in 2004, the enactment of the law concerning the establishment of the new specialized juvenile courts in 2004 are three examples of reflexive governmental technologies of performance. The professional in-job training for the workers in the juvenile justice system and the utilization of technology between state institutions for detection and prosecution are other technologies that make accelerate and qualified the justice services. Other new technologies of crime prevention are the utilization of mobesse systems in 2004 and the legal prohibition of the use of stolen phones in 2005. Lastly, the statistical

[131] Ibid., p. 193.

[132] Ibid., p. 169.

information concerning increasing convictability and the impact of the reorganization of the court on property crimes are scrutinized. My aim is to uphold qualitatively the new juvenile justice policy.

Two Instruments for Monitoring Self-Risks: Private Security and Insurance

The private security has a crucial place in the crime control industry, which targets the reduction of the fear of crime, especially the fear of property crimes. The purpose is to marketize security services to a wide range of customers ranging from wealthy to ordinary people obsessed with the fear of crime. In 2006, the number of private security companies was 565 and there were 333 private institutions to educate security personnel in Turkey. An equally important indicator of the expansion of private security was that the number of private security personnel was doubled and reached 250,000 in 2006 in comparison with 180,000 police in 2005.[133]

The private security system has perceived as an alternative and efficient way of coping with everyday risks, like theft or purse snatching. Volkan Aktar explains that people prefer private security in cities instead of the police force because of the growing distrust of the working of state institutions in the criminal justice system, especially with regard to juvenile delinquents, and to the increasing fear of crime. The police fail to detect the children and the juvenile court discharges them, so the private security systems become an effective alternative system to the public one.[134]

The provision of security is not under the monopoly of state any more. Private security systems are largely substituted for the public ones. Private security

[133] Nevin Donat, "Suç Patladı, 1.5 Yılda 565 Güvenlik Şirketi Kuruldu," *Milliyet* 07 August 2006.

[134] Deniz Gökçe Tan Morgül, "Güvenlik Herkese Lazım!," *Istanbul* 59 (May 2007). p. 65.

services gained a legal status with Law No. 5188, the law on Private Security Services, in 26 June 2004. This codification created a new employment area for the foreign companies and the retired military personnel and the police officers to establish security firms.[135] According to the law, private security personnel have the following duties: "… "preventive search",…" preventive detection"… the investigation of the place where the event occurred and the evidence, the questioning of identity cards, body search, seizure, detection and the use of power (force), including the use of guns…"[136] In addition, the law described private security as a professional occupation to protect individual, property, money or building and legislated the use of the qualified technology in those protective services for investigation, protection and detection.[137] Thus, the private security worker can ask for identity card, use detectors or x-ray instrument in places, like shopping centers, gated communities, and use unquestionable force.

Since private security was professionalized legally, it became obligatory to obtain a special certificate for five years from private education institutions concerning the private security. Laws, the use of gun and world wide developments about private security constitutes the schedule in job-training. In addition, private security personnel have to have no previous record of convictions.[138] On 31 October 2005, there were 312 education institutions and the number of private security workers rose from 57,855 to 106,741, until it became approximate to half the number

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[135] Ümit Cizre, *Güvenlik Sektörü Ve Demokratik Gözetim: Almanak Türkiye 2005* (Istanbul: TESEV Yayınları, 2006). p. 125.

[136] Ibid., p. 128. *"…"önleme amaçlı arama"… "önleme amaçlı yakalama"… olay yerini ve delilleri arama, kimlik sorma, arama, elkoyma, yakalama ve silah kullanmayı da içeren, kuvvet (zor) kullanma…"*

[137] Ibid., p. 125.

[138] Ibid., p. 126- 127.

of police.[139] 444 private security firms were in the service of the public in Turkey.[140] The governorship gives a special permission for the establishment of private security firms and the Ministry of Domestic Affairs gives consent for the assignment of trained personnel. These numbers show the growing importance of the private security in crime control.

Private security services include not only private security personnel, but also physical security measures as another part of the technology of the prevention of crime. The real and potential victims of the property crimes take these security measures to make committing crime difficult and to discourage criminals by increasing the risk of detection. For Aytekin Geleri, who is a lecturer on the faculty of security at the Police Academy in Ankara, each crime has "1. A target: person, building, institution, object, etc.; 2. The offender; 3. Situation/opportunity: the conditions and the place where the target and the criminal meet each other."[141] The utilization of the physical security measures is a strategy of crime prevention to reduce both the risk of crime for the target and the profit for the criminal by controlling the situation. Thus, it is a kind of intervention into the real quality and quantity of property crimes. Moreover, these measures aim at the reduction of the fear of the victimhood. Geleri categorizes the types of the physical measures as "lightening, wire fence, architecture, private security, sensors, warning and control

[139] Ibid., p. 127.

[140] Ibid., p. 126.

[141] Aytekin Geleri, "Fiziksel Güvenlik Tedbirleri Yoluyla Suç Önleme Ve Suçun Yer Değiştirmesi," in *Türkiye'de Devlet, Toplum Ve Polis*, ed. Hasan Hüseyin Çevik ve Turgut Göksu (Ankara: Seçkin Yayınları, 2002). p. 207. *"1. Hedef: Insan, bina, kurum, nesne vs. 2. Suçlu 3. Durum/ Fırsat: Hedef ve suçlunun karşılaştığı yer ve koşullar."*

systems, security and alarm systems, lock systems for doors and windows."[142] The private and public security services and the private companies first prepare a report on the type of crime, when, where, against whom and how it was committed and then the appropriate physical measures are marketized.[143] People consume these marketized security measures as the agents monitoring their own risks.

The marketization and the use of these measures shifts the target of the property crimes from the wealthier classes who can afford to apply these security measures to the other classes who do not benefit from these measures to prevent victimhood. Geleri utilizes the concept of "crime displacement" to uphold this claim.[144] There are different types of crime displacement. The place of crime, its time or the way it is committed, its target and its type can change after the use of the physical measures. In the iconography of city, the physical security measures are used in gated communities, banks, working places, houses, cars and shopping centers. The individuals commit the same crimes in insecure houses, cars without pikestaff in other parts of the city or public spheres, like streets.[145] Similarly, the criminals strategically change the times of crimes and steal in the day-time, weekends and holidays to reduce the risk of being caught.[146] Residential security measures with steel doors, alarms and cameras compel criminals to improve their strategies beyond breaking and entering. Entering from windows or using new

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[142] Ibid., p. 207-208. *"aydınlatma, tel örgü, mimari, özel güvenlik, erken algılama, uyarı ve ayar sistemleri, güvenlik ve alarm sistemleri, kapı ve pencere kilit sistemleri"*

[143] Ibid., p. 214.

[144] Ibid., p. 215. He defines this concept as *"Suçun yer değiştirmesi, suçun potansiyel bir hedeften bir diğerine doğru olan hareketidir."*

[145] Ibid., p. 217.

[146] Ibid.

techniques to open steel doors; using private keys; entering into building without activating the alarm system, like cutting the electricity; and selling stolen automobiles with fake license plates are some instances for these strategies.[147] Complementary to these aspects of crime displacement, new types of the property crimes can also emerge. Physical security measures in buildings can make people in public spaces the target of mugging or mugging as the new property crimes and these crimes create a tremendous fear of insecurity in everyday life.

Apart from private security services, private insurance against property crimes is another example of the technologies of agency. The social insurance offered by the welfare state has been reconfigured as a market and people as consumers since the 1980s. According to Dean, "for insurance rationality, everything can be treated as a risk… to find ways of insuring …. In insurance, risk is a form of calculation based on a statistical tablet that established the regularity of events and a calculus of probabilities in order to evaluate the chances of event actually occurring."[148] Thus, the insurer assigns a price to the property, automobile or hand bag. The price is based on the calculus of the probability of theft and snatching and the insured pays the price of the private insurance. Private insurance has been expanded as a dimension of the profitable crime control industry.

Ali Haydar Elveren explains the evolution of Turkish insurance sector from state monopoly over reinsurance market to competitive private insurance companies since the 1990s. The last stage in insurance sector has characterized by "the increase in the number of insurance companies and free premium rate system… fierce

[147] Ibid., p. 218.

[148] Dean, p. 184.

competition in the market."[149] Restructuring insurance sector as market, such as the insurance against theft from house or auto theft, initiated the new phase of self-insurance in Turkey. Companies are free to decide their own premium rate for the risks as opposed to the state determined fixed premium rate. In the new system of insurance, people calculate the potential risks and pay premiums to receive indemnifications for losses. The amount of premiums should be less than indemnifications and it is paid in installments in the new structure in opposition to the public sector insurance.[150] Well-trained insurance agents should marketize the insurance and collect premiums from the insured in installments.[151]

This kind of rationality of risk makes "insurance … a form of association which combines a maximum of socialization with a maximum of individualization."[152] Socialization of the risk refers to the common rationality for the possibility of the same risk, like snatching or theft, in any time. Thus, these risks create a common denominator among the people who apply for the private insurances. In addition, each individual has a responsibility for taking his own risks as a rational subject and the private insurance restitutes the loss of the victim with reference to the insurance contract only if the insured is the victim. For instance, if the individual forgets the keys on the car or forgets the bag somewhere, he or she is responsible for snatching and theft, so insurance does not indemnify the loss. The

[149] Ali Haydar Elveren, *The Evolution of the Turkish Insurance Sector and the Reinsurance Monopoly* (Ankara: T.C. Başbakanlık Hazine Müşteşarlığı Araştırma ve İnceleme Dizisi 2, Ocak 1996). p.137. This is the booked version of the master thesis in Middle East Technical University, Ankara, on February 1994.

[150] Ibid., p. 106.

[151] Ibid., p. 113-114.

[152] Dean, p. 185.

rational individual has to calculate the best means for security and monitor the risks constantly. Thus, risk has been privatized and individualized.

The General Directorate of Police Department published a brochure that prescribes how the individual can minimize the risk of being a victim of property crimes.[153] This brochure is a good example to comprehend the individualization of the risks. It includes forty-one items of advice instrcuting people how to minimize the risk of purse snatching and theft. The advice is related to four places: public places, like street and bazaar; shopping centers; vehicles; and the home. In crowded public places, the individual should not carry large amounts of money, should carry a separate purse for credit and identity cards and not wear jewelry. The individual should hide the money in a secure part of the handbag and not put mobile phones in the pocket of the bag from where it can be stolen easily. Also, the individual should wear the bag on the shoulder farthest the flow of traffic and should remain alert while walking on the street or in crowd places, like the bazaars or shopping centers. Males should carry their wallet in the breast pocket. Walking alone in risky places, especially at night, increases the risk of victimization. If necessary, the individual should take a taxi. In the shopping malls and public places, such as cafés, restaurants, the bag should not be hanged on the chair or not left in the dressing room, the shopping car, toilets or picnic sites.[154]

In public vehicles, the individual should check on the bag at short-term intervals and mothers with their babies should not feel trust any one who offers to carry their bags until the station. In the car, the bag, mobile phone or computer

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[153] Emniyet Genel Müdürlüğü, *Apk Dairesi Başkanlığı, Kapkaç Olaylarında Kişisel Güvenlik Önlemleri Broşürü No. 37* (Ankara: Emniyet Genel Müdürlüğü, 2002).

[154] Ibid. In the first twenty-seven articles of the brochure, the measures to be taken in public places are explained.

should not be put in the front or back seat and the doors must be locked. The driver should not talk with children or street vendors while the car is stopped at traffic lights. When the driver parks the car, the individual should not forget the valuable goods or leave the car without locking the doors.[155]

The individual should monitor the risks of theft at home, too. The individual should be skeptical and cautious toward those who present themselves as repairmen, beggars, sales people or official workers. The door must be locked and the individual should not open the door without first checking to make sure it is safe. An equally important measure is to hide all money, gold and other valuable items in secure places at home to slow down the finding of the property and to secure it. [156]

In sum, many people consume private security services and private insurance in order to control the risk of property crimes as rational agents. These two "technologies of agency" presuppose an agent who constantly monitors the risks and takes the appropriate measures against them in the current Turkey.

The Expansion of Technology and Community Policing

The use of mobesse technologies is another technique to increase efficiency in the prevention of crime. Since it is oriented to improve the performance of state institutions in detecting and detering criminals, it is "a technology of performance." This technology has been used since 2005 as a mobile security system. Cilingir and Kuschu describe the function of this technology. "The mobesse project is an

[155] Ibid., The articles between twenty-seven and thirty-five describe the measures to secure the automobile and yourself in public vehicles.

[156] "Krizin Hediyesi Kapkaç," *Yeni Şafak* 17 March 2002.

infrastructure which aims to maximize the efficiency of law enforcement units."[157] It aims at "the provision of the effective, accelerate and qualified service to the public." [158] The public constitutes the clients of the service. Using m-technology (mobil electronic system integration) refers to the surveillance of city space, like crowded streets, with cameras to identify the offenders and where they live in the complex geography of the city.

This system has two targets. First, it targets the clients. For Cizre, "it creates the feeling of living in a secure city and belief in the efficiency of the security services with regard to crimes and criminals, so it reduces the fear of crime that has severe psychological impact."[159] After a crime has been committed, the system assigns the nearest mobile police unit and provides effective communication among the units. As a direct mean of surveillance, it enables the police to identify muggers and thieves and to intervene into the event rapidly. Thus, it creates the impression of police working efficiently to provide security and order. As a form of electronic government application, it increases the citizen's satisfaction with policing. " 'M-government' enhances the adoption of governmental services by citizens through the improved convenience it offered."[160] Secondly, it is also an example of the use of technology monitoring the performance of offenders permanently. It is a technique of crime prevention to make the power felt and discourage criminals. In this sense, this

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[157] Demir Cilingir and Ibrahim Kuschu. May, 2004. *E-government and M-Government: Concurrent Leaps by Turkey*, available [online]: http://www.mgovlab.org, [5 October 2009]. p. 4.

[158] Cizre, p. 94.

[159] Ibid. *"Topluma, güvenli bir kentte yaşadıklarını ve suç ve suçlularla mücadelede güvenlik görevlilerinin etkin çalıştıklarını hissettirerek, yoğun psikolojik etki yapan suç korkusunu azaltma."*

[160] Cilingir and Kuschu, p. 7.

system bears a resemblance to the Foucauldian "panopticism." As an invisible disciplinary technology, it is a good illustration of the working of government in the landscape of the city.

Community policing is another technology of performance in crime control because it qualifies the policing. Its practice started as a part of the European Union Project to improve the efficiency of the Turkish Police Department in 2005.[161] The modernization of policing aims at gaining the public's trust by means of the coordination with people in the prevention of crime. This technology is an example of restoring the relationship between the security organ and the people as an alternative to the authoritarian one-sided policing. Halil İbrahim Bahar, a lecturer in the faculty of security at the Police Academy, stresses that the Turkish police are responsible to the state, so there is always a disconnection between the police and the public. This is the main obstacle to the applicability of community policing in Turkey.[162] However, Bahar also points out the change in the notion of policing toward cooperation with the public. This crime control technology is the solution for the legitimacy crisis of the police in 2005. "The basic rationality of it is to realize mutual trust between the police and the public and both sides share the duty of sustaining public order in the understanding of the partnership."[163] Therefore, the police must consult, cooperate and be accountable to the public to prevent and control the crime as a complementary to the role of law enforcement.

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[161] Cizre, p. 93.

[162] Halil Ibrahim Bahar, "Toplum Destekli Polislik (Community Policing) Ve Türkiye'de Uygulanabilirliği," in *Türkiye'de Devlet, Toplum, Polis*, ed. Hasan Hüseyin Çevik ve Turgut Göksu (Ankara: Seçkin Yayınları, Nisan 2002). p. 308.

[163] Ibid., p. 293. "Temel mantığı, polis ile halk arasında karşılıklı güveninin sağlanması ve her iki tarafın ortaklık anlayışı içinde kamu düzeninin sağlanmasında sorumluluğu paylaşmasıdır."

This preventive technology is practiced in two forms of cooperation between the different agents in crime control: neighborhood watch and multi agency approach. Neighborhood watch is a form of community policing. It both extends the scope of social control for the police and fosters relations between the police and the public. It involves informal social control of the neighbors and people convey the information on potential or real juvenile delinquents and their living conditions to the police in lower class areas as the "eyes and ears of the police."[164] The proactive police cooperate with the people to identify potential criminals and to solve the problems of security. At regular meetings, the people report the knowledge on conduct causing disorder and insecurity to the police and the possible solutions are debated with the citizens. This proactive policing is substituted for the centralized and bureaucratic organization of reactive policing.

Apart from the public, the police can cooperate with formal and voluntary associations and private firms in crime prevention programs. This cooperation involves a multi agency approach in the field of crime control as another form of community policing.[165]The General Directorate of Strategic Development (*Strateji Geliştirme Daire Başkanlığı*) published a book with regard to the international partnership attempts between the various agents, especially partnerships against property crimes, in 2006. These inspired practices for the prevention of property crimes are the models for the Turkish police who are trained in these practices.[166] Several examples from these partnerships illustrate the meaning of the multi-agency

[164] Ibid., p. 299.

[165] Ibid., p. 297.

[166] Frantz Denat David Hicks, Bernard Arsenault, *İlham Verici Polisiye Uygulamalar: Suçun Önlenmesinde Partnerlik Çalışmaları*, trans. Ali Gökçe (Ankara: Strateji Geliştirme Daire Başkanlığı, 2006).

approach. For example, the Bristol vehicle crime initiative cooperated with a private firm, the producers of automobiles, to strengthen the components of cars and write the identification number of cars on unchangeable windows in order to discourage criminals and increase the possibility of finding stolen automobile.[167] Similarly, the psychologists, the private security firms providing residential security measures and state lottery became the partners of the police headquarters to handle theft from houses. The experts provide psychological support for the victims of crime to cope with the fear of crime and the state lottery financed residential security measures in the project of secure housing.[168]

For Biriz Berksoy, the new policing sees the subjects as

> "prudent", "previsioned", and "the participant in public services (like reporting a suspect in the neighborhood) and it presents the subjects as the clients declaring the needs. And policing organizations are restructured to increase efficiency and accountability and to maximize their capacity "in the direction of the needs of clients.[169]

Analogous to Berksoy's conceptualization, both forms of community policing consider the subjects as "the participant in public services." The other technologies of agency explored above consider people as the clients of the marketized security services. Community policing, private insurance, private security and physical security measures are customer-focused policing services to handle the fear of crime and to achieve the security of property. As a complementary to those technologies,

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[167] Ibid., p. 38-40.

[168] Ibid., p. 40-43.

[169] Biriz Berksoy, "Neo-Liberalizm Ve Toplumsalın Yeniden Kurgulanması: 1980 Sonrası Batı'da Ve Türkiye'de Polis Teşkilatları Ve Geçirdikleri Yapısal Dönüşüm," *Toplum Bilim Dergisi* 109 (2007). p. 45. *"… "ihtiyatlı" (prudent), "öngörülü", ve kamu hizmetlerine katılımcı (örneğin mahallesindeki şüpheli kişiyi haber veren) şeklinde ihtiyaçları deklare eden müşteri olarak kurgulanırken, teşkilatı da verimlilik ve etkinliği hedefleyen bir hesaplanabilirlik ve "müşterinin ihtiyaçları doğrultusunda" kapasitelerden en iyi şekilde istifade etme üzerinden yeniden yapılandırılmıştır."*

the police and the juvenile court were also reorganized to provide more efficient services to the victims of crime and maximize their capacities.

The Reorganization of State Institutions in the Juvenile Justice System: Effective and Accountable Police and the Juvenile Court

The Restructuring of the Police

The establishment of the Department of Child Police (*Çocuk Polisi*) is an example for the technology of performance in the reflexive government concerning the juvenile delinquents. The police was reorganized as a state institution to highlight the efficiency and accountability of policing over juvenile delinquents. Thus, it was established as a part of the new policy targeting the demand for security. The child police present itself not as a rigid agent in the prevention of crime, but as a social service cooperating with society in the prevention of crime. The transition into the service helping the children increases the legitimacy of the police in the eyes of public and improves the community policing.

The establishment of the Child Police is related to the International Agreements on the Children in the 1990s. Turkey signed the Contract on Child Rights on 14 September 1990, which enacted on 27 January 1995 as Law No.4058. This law defined children as individuals under eighteen years old and was enacted to reorganize the state institutions peculiar to children.[170] Then, the police instituted the

[170] Mustafa Akdam, "Emniyet Genel Müdürlüğü'nün Çocuk Polisi Uygulamaları Üzerine Bir Değerlendirme" (Master's Thesis, Ankara Üniversitesi Eğitim Bilimleri Enstitüsü Eğitim Bilimleri Anabilim Dalı, Eğitim Programları ve Öğretim Bilimdalı Eğitimin Sosyal ve Tarihi Temelleri Programı, Eylül 2006). p. 37. Mustafa Akdam conducted his research in Istanbul, Ankara, Izmir, Gaziantep and Adana Child Police Departments in 2006 and 253 child police constituted his sample.

Directorate of Branch Protecting Children (*Küçükleri Koruma Şube Müdürlüğü*) in 1995.[171] This branch was converted into a separate Child Police Department on 13 April 2001 with the regulation on the Establishment, Duties and Work of the General Directorate of Child Branch (*Emniyet Genel Müdürlüğü Çocuk Şube Müdürlüğü Büro Amirliği Kuruluş, Görev ve Çalışma Yönetmeliği*).[172]

According to this regulation, the Child Police are responsible for conducting all services explored below for children who are abused, lost, neglected, refugees, victims or criminals or for whom rehabilitation or protection decisions have been taken legally in the juvenile court.[173] There were 2,930 child police in 81 provinces in 2006.[174] 109,121 street, orphaned, lost, victim and criminal children between the ages of 0 and 18 came in contact with the Directorate of the Child Police Office in 2005. 2,627 children under the age of ten and 60,973 children between the ages of eleven and eighteen out of 109,121 were juvenile delinquents, who had committed property crimes.[175]This qualitative information proves the reinforcement of policing juvenile property offenders.

In order to remedy the negative impression of the police with regard to children, the child police are presented as an effective, professional and accountable institution in the juvenile justice system. In this frame, the institution was restructured and "we have entered into a process in which the police understands the

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[171] Ibid., p. 5.

[172] T.C. Resmi Gazete, *Emniyet Genel Müdürlüğü Çocuk Şube Müdürlüğü Büro Amirliği Kuruluş, Görev ve Çalışma Yönetmeliği*, No. 24372, 13 April 2001.

[173] Akdam, p. 41.

[174] Ibid., p. 2.

[175] Ibid, p. 5.

child rather than vice versa."[176] Thus, the purpose is to change the perception of the police as a state authority that has the discretion to punish conduct before prosecution. Instead, the Child Police are the institution protecting and correcting the child.

The Child Protection Law, enacted on 15 July 2005, and took the discretion of interrogation and preliminary investigation from the Child Police and gave those duties to the prosecutor in the juvenile court. In Law No. 2253, the Law on the Procedures, Duties and Establishment of the Juvenile Court, this right belongs to the prosecutor and the assistants of prosecutor. Atasoy says that the police considered themselves as the assistants of the prosecutor and undertook the interrogation of the children until the Child Protection Law.[177]Now, the Child Police are an agent in the juvenile justice system only to make a report concerning the identity of the suspect and to remove the child to the prosecutor without keeping the child in custody and conducting an interrogation.

The service concerning children in this department is Child Care Unit (*Çocuk Bakım Ünitesi*). The unit satisfies temporary basic needs of the children about whom legal procedure had been initiated in the Department of the Child Police. These basic needs are sheltering, nutrition, playing, cleaning and health.[178] This unit is a part of the separate juvenile justice system. There were 47 Child Care Units with television rooms, dining halls and playing spaces in 2006.[179] The same regulation also rendered obligatory the assignment of social workers in each department. These workers

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[176] Ibid., p. 89. *"Çocuğun polisi değil, polisin çocuğu anlayacağı bir oluşum içine girilmiştir."*

[177] Atasoy, Başkan and Ziyalar, p. 140.

[178] Akdam, p. 44.

[179] Ibid., p. 45.

conduct the first interviews to reduce the fear in the child and prepare the report on the causes of crime as a first stage in the juvenile justice system.[180] Yet, Akdam found that 46. 6% of the police complained of the lack of coordination between the police and the social worker and 49. 4% considered social inquiry reports an insignificant bureaucratic procedure.[181]

In order to increase the efficiency of the police in dealing with juvenile delinquents, the child police pass through formal in-job training to learn how to empathize with the juvenile delinquents. Since 2001, there have been special training programs to increase the qualifications of the Child Police. The juridical texts concerning the juvenile delinquents, the divisions of labor between formal institutions, like the juvenile court, the child police, forensic medicine, the ministries and voluntary social work associations, the role of police in collaboration with these agents are some topics covered during on the job training. The cognizance of the volitional and cognitive capacity of child, the techniques for improving child and police relations constitute the other subjects in special job training for the Child Police.[182] Between 2001 and 2005, there were 42 on the job training courses for the Child Police and 1,710 Child Police participated in those courses in order to earn the certificate.[183] In Akdam's study of the Child Police, he found that 39. 5% out of 253 Child Police had earned this certificate and 68. 4% said these courses were more important than occupational experience.[184]

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[180] Ibid., p. 43-44.

[181] Ibid., p. 83.

[182] Ibid., p. 50.

[183] Ibid., p. 51.

[184] Ibid., p. 85.

As a complementary to the reform in the mentality of state institutions and internal security services in order to be more efficient and professional, since 2003 internal security services, including the Ministry of Justice and the Police Department have publicized annual information on the numbers and the types of crimes, their distribution in terms of age and gender and the results of court cases. Thus, these published statistics contribute to the perception of state institutions in the juvenile justice system as being transparent and accountable.

The Restructuring of the Juvenile Court and Increasing Convictability

Juvenile court also reorganized in order to improve the quality and effectiveness of the prosecution; that is, in the service of the victims as much as the juvenile offenders. In the first years of the 2000s, the focus was on the malfunctioning justice system with its long trials and dissatisfactory sentences. Those criticisms made the reorganization of the court necessary in an efficient way. For İhsan Ünal, a Chief of the Police in Balıkesir, there were three common issues with regard to the malfunctioning of the justice system: "1. Long lasting trials, 2. Disequilibrium between the crimes and the penalties and the smallness of the penalties for some conduct, 3. Abusing the articles concerning the conversion of the punishments into money or the postponement of the conviction."[185] Those were the outstanding issues especially for the juvenile delinquents who had committed property crimes. Juvenile delinquents were not found by the police and the trials

[185] İhsan Ünal, "Yargılama Süreci Ve Sorunları," in *Ceza Adalet Sistemi Ve Polis Sempozyomu* (Ankara: Polis Akademisi Seminer, Konferans, Sempozyum Bildirileri Dizisi, 6-7-8 Mayıs 1998). p. 339-340. *"1.Davaların uzun sürmesi, 2. Suç ve cezalar arasındaki dengesizlik ile bazı suçlara öngörülen cezaların yok denecek kadar az olması, 3. İnfaz kanunundaki cezaların paraya çevrilmesi ve ya tecil edilmesine ilişkin hükümlerin istismar edilmesi."*

were long lasting. Even though snatching was the leading crime in those years, the punishment was not enough to deter the offenders. The sentences were postponed or converted into money in order to avoid the imprisonment of the children. Ünal gives the example of the snatching of a bag from an automobile and the release of the juvenile offender after thirty-three days imprisonment and his new property crimes to point out the inconsistency between the conduct and the appropriate punishment.[186]

In the eighth report of the development plan in 2000, a commission managed by Prof. Dr. Şanal Görgün working at Çankaya University, prepared a separate report evaluating the working of the justice services in Turkey. According to this report, the new state policy is to reform the courts under the guidance of certain principles. "The court is the central organ to realize legal peace that constitutes the ground for civilization and social order. Physical means, trained personnel and the qualified judges and the public prosecutors and modern equipment must be provided and it is obligatory to prevent the workload on the court."[187] The court must be restructured to sustain order. Physical restructuring, on the job training and the technologic innovations are the means to render the justice services more effective accelerate and qualified with the aim of restoring the belief in justice.

"Rapidity" has been accepted as one of the basic principles of the prosecution.[188] As the time between the conduct and the penalty shortens, the

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[186] Ibid., p. 341.

[187] Sekizinci Beş Yıllık Kalkınma Planı, *Adalet Hizmetlerinde Etkinlik: Özel İhtisas Komisyonu Raporu* (Ankara: DPT Yayın No: 2506, 2000). p. 4. *"Uygarlığın ve toplum düzeninin üzerinde durduğu hukuk barışını sağlayan temel organ olan mahkemelerin; hızlı, adil ve etkili bir biçimde iş görebilmeleri için gereken fiziki imkan, yetişmiş personel, hakim, cumhuriyet savcısı ve çağdaş donanım sağlanmalı ve iş yükü altında ezilmeleri mutlaka önlenmelidir."*

[188] TÜSİAD Raporu, *Yargılama Düzeninde Kalite* (Istanbul: TÜSİAD, Kasım 1998). p. 37.

conviction deters the criminal from the repetition of the same conduct; meanwhile it restores the feeling of justice and trust in state institutions. Within this framework, preliminary investigation must be completed rapidly and the number of trials must be less. Prosecution is also a public service and its effectiveness and quality must be improved. Apart from the accelerate prosecution and the settlement of the cases in the court, "rapidity", another principle is to "diminish the workload."[189] In order to realize the principle of efficiency in the juvenile justice system, "…workload must be defined with reference to certain criteria, the personnel must be allocated according to the work and the redundant mass of personnel and the waste of the staff must be avoided."[190]The unbearable workload on the juvenile court has deteriorated the quality of the prosecution and so, the public belief in justice also has weakened especially after 2001 economic crisis. In the development plan, physical restructuring refers to establishing courts by taking into account workload in certain geography. Since Istanbul courts have carried out the prosecution of one sixth of all legal cases in Turkey, there was need for restructuring immediately.[191]

The new judicial text was enacted to restructure the juvenile courts in 2005. With reference to Law No. 5395, the Law on the Protection of the Child, the juvenile courts were reorganized and specialized as "Juvenile Court" and "Juvenile High Criminal Court" under the roof of the Juvenile Court. The law defines children as individuals under eighteen years old while its jurisdiction had limited with the age of

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[189] Ibid., p. 54.

[190] Ali Ceylan, "Ceza Adalet Sisteminde Toplam Kalite Yönetimi Ve İnsan Kaynaklarının Rasyonel Kullanımı," in *Ceza Adalet Sistemi Ve Polis Sempozyomu* (Ankara: Polis Akademisi Seminer, Konferans, Sempozyum Bildirileri Dizisi, 6-7-8 Mayıs 1998). p. 63. *"…iş miktarı belirli ölçülere göre tespit edilmeli, kadro işe gore dağıtılmalı, yersiz yığılmalar ve kadro israfından kaçınılmalıdır.*

[191] Sekizinci Beş Yıllık Kalkınma Planı, *Adalet Hizmetlerinde Etkinlik*, p. 19.

fifteen in the previous Law No. 2253.[192] The Juvenile Court prosecutes the criminal acts associated with the Criminal Court of First Instance and the Criminal Court of Peace while the Juvenile High Criminal Court has the duty of judging juveniles' conduct corresponding to crimes prosecuted in the High Criminal Court for adults.[193]

The Juvenile Court is no longer composed of the associates of the judges. One judge prosecutes the child in the Juvenile Court (*Çocuk Mahkemesi*) whereas two judges and one associate of the judge conduct trials in the Juvenile High Criminal Court (*Çocuk Ağır Ceza Mahkemesi*).[194] These specialized courts differentiate from each other in terms of the type of crimes prosecuted. The Juvenile Court prosecutes petty theft, purse snatching and pick pocketing cases whereas the judgment of the property crimes in which the violation of life and property right intersects, such as mugging, plunder and mugging, is the duty of the Juvenile High Criminal Court. Therefore, the juvenile court was restructured as another form of reflection of state institutions over themselves. It specialized in types of property crimes in order to accelerate the prosecution, to decrease the workload and to provide the efficient service to the victims of crime. There have been three Juvenile High Criminal Courts and six Juvenile Courts in the one of the juvenile courts in Istanbul, where this research conducted, since 2005 whereas three Juvenile Courts constituted by the associates of judges had prosecuted juvenile property offenders regardless of the type of the crime before that date.

Beyond the restructuring of the court, there are other technologies of performance to accelerate the prosecution: the use of technology and on the job

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[192] T.C. Resmi Gazete, *Çocuk Koruma Kanunu*, No.5395, 15 July 2005.Article 3.

[193] Ibid., Article 26.

[194] Ibid., Article 25.

training. The use of computers in any kind of official writing between the agents in the justice system and in the courtroom is a rapid way of communication. The success of the overall justice system depends on "…the appropriate solution in the short-term at minimum cost and without the repetition of the services in the institution and between institutions in a transparent working environment."[195]Specialization in terms of the division of labor among the legal professionals and the fast communication between the state institutions prevent the waste of the time in the prosecution.

The standardization of crime control technologies in the preliminary investigation also contributes to the effectiveness and speed of judgment in the juvenile court. The use of criminal technology has expanded into a wide range of activities, such as the investigation of evidence and analysis in criminal laboratories to identify the criminals. The investigation of fingerprints, blood, hair, criminal tools or other physical evidence provide legal proof to identify the criminal by means of technological mobile investigation cars. There were 90 cars and 14 fingerprint laboratories in Turkey in 1998.[196] As the time between the act and detection shortens by the working of the professional child police and the use of technology, "…the value power and of the evidences will be higher and In addition the interrogation will be completed in short-run." [197] The collection of the evidence in an efficient and

[195] Sekizinci Beş Yıllık Kalkınma Planı, *Güvenlik Hizmetlerinde Etkinlik*, p. 10. *"…kısa zamanda, doğru sonuca şeffaflık ortamında en az maliyetle ve hizmetlerde gerek kuruluş bünyesinde gerekse kuruluşlar arası olarak tekerrüre meydan vermeyen bir çalışma ortamında sonuca ulaşmaktır."*

[196] Taner Arda, "Suçların Aydınlatılmasında Kriminal Teknoloji Kullanımı," in *Ceza Adalet Sistemi Ve Polis Sempozyomu* (Ankara: Polis Akademisi Seminer, Konferans, Sempozyum Bildirileri Dizisi, 6-7-8 Mayıs 1998). p. 320.

[197] İsmail İlhan, "Yargılama Süreci İçinde İki Aşama," in *Ceza Adalet Sistemi Ve Polis Sempozyumu* (Ankara: Polis Akademisi Seminer, Konferans, Sempozyum Bildirileri

rapid way by the police accelerates the prosecution of the cases in the juvenile court in the short-term.

In addition, the prevocational training and on the job training for the legal professionals has gained importance to create more qualified human resources and to achieve an objective prosecution as another performative technology in the juvenile justice system.[198] Legal professionals must read scientific and judicial texts, especially publications comparing the justice system in Turkey with those of other countries, learn foreign languages and sociology, politics, psychology, economy and culture in the prevocational training. Also, legal apparatuses must participate in regular seminars to dialogue with other agents in the criminal justice system and to provide more qualified service to the people. [199]

Beyond the reorganization of the juvenile court, a TÜSİAD report concerning the justice system in Turkey focuses on the quality of prisons to achieve permanent normalization, especially for juvenile delinquents.[200] In 2000, there were 2,276 sentenced juvenile delinquents out of 69,507 convicted people and they suffered the punishment in one child prison, one child-women prison, and three child reformatories out of 520 prisons.[201] In order to restore the legitimacy of the execution of the sentence in the prisons in the eyes of the public and mold the personality of the criminal in an efficient way, the conditions in the prisons and the

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Dizisi, 6-7-8 Mayıs 1998). p. 203. *"…delillerin değeri, kuvveti, çokluğu fazlalaşacak, ayrıca soruşturma işlemleri de kısa sürede tamamlanacaktır."*

[198] TÜSİAD Raporu, p. 91-92.

[199] Ibid., p. 92-93.

[200] Ibid., p. 21.

[201] Ibid., p. 35.

reformatories as the places for the execution of the judicial sentences concerning juvenile delinquents must be improved as another performative technology.

Since the number of convicted children has increased, the child prisons and the reformatories have also been restructured. Two prisons peculiar to juvenile offenders were opened, Bakırköy prison in Istanbul in 1997 and Elmadağ prison in Ankara in 1998.[202] In addition to the increase in the number of the child prisons, the schedule of reformatories was reorganized in accordance with the work ethic. For instance, convicted children older than fifteen have participated in apprenticeship courses under the control of the Ministry of Education at the Ankara reformatory since 1995. A small proportion of their wage is given per month and the rest is collected in a bank account to give to the child after discharge. The same model has been adopted at the Izmir and Elazıg reformatories, too.[203] In addition, in order to improve the physical conditions, the architecture of Bakırköy prison and Ankara and Elazıg reformatories were restored in 2000 and 2001.[204] The new project initiated in Ankara in 2000 to establish the Child Observation House (*Çocuk Gözetimevi*), the new name of the Child Prisons. The new building includes separate units for health and education, rooms for the visitors and the lawyers, rooms for cultural facilities and a sport complex. There is no face-to-face contact between the child and the officers because the convicted children are monitored by a technological system.[205] Courses on literacy, university exam, computer and work education, psycho-social

[202] Soysal Aktürk, "Avrupa Birliği Sürecinde Türkiye'de Çocuk Hakları Ve Güvenliği" (Master's Thesis, Mustafa Kemal Üniversitesi Sosyal Bilimler Enstitüsü Kamu Yönetimi Ana Bilim Dalı, Mayıs, 2006). p. 74.

[203] Ibid., p. 75-76.

[204] Ibid., p. 76.

[205] Ibid., p. 76-78.

services, library are other services in the new prison. This new structure and its presentation increase the public trust in the working of state institutions for the correction of children.

Another technology concerning juvenile delinquency was the codification of snatching as a qualified theft with harsh punishment in the new Turkish Penal Code in 2004. The Administrator of the Grand National Assembly of Turkey, Bülent Arınc, defined purse snatching as a new crime and a by- product of the 2001 economic crisis. This property crime deploys a tremendous fear in people in the urban space. People demand security for their life and property. Therefore, he declared his support for the codification of snatching in Turkish Penal Code as a legislative technique in order to deter criminals from snatching and to achieve security.[206] The 2001 economic crisis led to an increase in snatching cases.[207] According to the statistics of the Istanbul Police Department, while 5,267 snatchings were committed in 2000, there were 4,089 reported cases in the first five months of 2001. The majority of the crimes occurred in Istanbul and 20% of those juvenile property offenders were sentenced. The offenders were not detected in 2,765 cases.[208]

In order to handle purse snatching, it was defined as a type of qualified theft in 2004[209] and the sentence in proportion to the conduct rose from one and two years

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[206] Bülent Arınç, "Yeni Kapkaç Yasası Geliyor!," *Radikal* 12 July 2003.

[207] "Krizin Hediyesi Kapkaç," Yeni Şafak 17 March 2002

[208] Ibid.

[209] Before the enactment of this article, snatching cases were prosecuted with reference to Article 491 and 492 that give sentence between six months and three years. Yet, the reduction in penalties for juveniles resulted in small convicts with low deterrence force. The general punishment for snatching was fifteen days or one months prison.

to three and five years. If the offender used violence, mugging is judged as a heavy crime with a penalty of eighteen years.[210] The secondary bent of Article 142 defines the factors that make theft qualified in the new Penal Code. “Taking an object on body or hand with special skill”[211] is the legal definition of snatching and pick pocketing and the concept of “special skill” implies the learnt, intentional and professional nature of the conduct.

Before the enactment of this law, there was also a growing tendency toward more severe penalties for juvenile property offenders at the beginning of the 2000s. A child of seventeen years who committed purse snatching was condemned with the penalty appropriate for mugging in the Istanbul Fourth High Criminal Court and a girl of thirteen was sentenced to eight year because of the stealing of a hand bag in June 2001.[212] Other striking example is concerned with children who stole theft and rationalized it with poverty and hunger. Three children stole four small packages of chocolate and biscuits from a market. Two of them were sixteen years old while the other one was seventeen. Even though they explained their conduct by the lack of money, they were sentenced to six years prison in Istanbul in December 2001.[213] These examples prove that the juvenile court has become a state institution working in the service of public convenience. The court implements the theory of broken windows. “If a window in a building is broken and *is left unrepaired,* all the rest of windows will soon be broken… some areas are inhabited by determined window

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[210] "Kapkaçın Adı Konacak," *Yeni Asır* 18 January 2004.

[211] T.C. Resmi Gazete, *Türk Ceza Kanunu*, No. 5237, 12 October 2004, the original format of Article142-2-b is that *“Elde veya üstte taşınan eşyayı çekip almak suretiyle ya da özel beceriyle..”*

[212] "Kapkaçı Kaçıran Ceza," *Akşam* 23 March 2004.

[213] Semra Pelek, "Baklavadan Sonra Çokokrem Çetesi," *Milliyet* 20 January 2002.

breakers… one unpaired broken window is a signal that none cares and so breaking more windows cost nothing."[214] In other words, the court convicts children with severe punishment in order to deter them from committing further crime and to satisfy the people's demands for deterrent penalties.

Another relevant development in the direction of deterring property crimes is a law that aims at the prevention of the use of stolen mobile phones that was passed on 11 May 2005. Unregistered stolen phones create a profitable market for the criminals, the sellers and the people who purchase them. This legislation put these phones out of use to decrease their theft. According to this legislation, the electronic identification number of each phone and the users' personal information must be registered with the Turkish Telecommunication System.[215]If the user reports the theft of a mobile phone and initiates legal procedure in the court, the system works as a part of legal proceedings and first sends a message to the user of the stolen phone about the immediate delivery of the phone to the court. Then, the phone is dropped out of the electronic communication system. Thus, this code makes zero the economic value of the exchange of stolen phones. It also gives severe punishments to the seller, the copier of electronic identification number and mobile phone firms. The sentence ranges between one and three years or 3,000 YTL per phone for the sellers and 20,000 YTL monetary punishments to the firms confirmed the selling of the stolen phones. Imprisonment between two and five years or monetary penalty between 3,000 YTL and 5,000 YTL for copiers has also passed with the law.[216]

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[214] George L. and James Q. Wilson Kelling, "Broken Windows," in *The Police and Society: Touch Stone Readings* ed. E. Victor Kappeler (Illionis: Waveland Press, 1999). p. 156.

[215] Murat Büke. 11 Mayıs 2005. *Cep Telefonlarında Kapkaça Son*, available [online]: http://www.turk.internet.com/haber/yazigöster.php3?yaziid=12735, [24 Feburary 2009]

[216] Ibid.

Therefore, new legislation has targeted both the reduction of mobile phones theft and their exchange and use.

The discretion of the police concerning property crimes has also been redefined to reinforce policing. Representative from the police headquarters from all cities evaluated the performative technologies in seminars concerning law and order in Antalya in 2007. The police apply certain technologies in order to accelerate detection and to construct a secure environment.[217] "The Security Teams" (*Güven Timleri*) and "Thunderbolt Teams" (*Yıldırım Ekipleri*) started to work as two effective police forces to cope with property crimes after the seminar. The police can simulate themselves in the public sphere as street vendors, use fictive names and work in different occupations in order to detect criminals, especially juvenile delinquents. While Security Teams are civil police, Thunderbolt Teams are professionally trained mobile police with uniforms and motorcycles. In addition, 10,480 university graduates took six months courses to become police in the big cities to work as police in the field of property crimes in 2005.[218]

This harshness of policing and punishment with regard to property offenders has caused an outstanding increase in property crimes committed by children and the abuse of children by organized crime groups. Esin Küntay explains the peak of the juvenile delinquents committing property crimes by the abuse of these children in criminal organizations in Istanbul in the 2000s, especially after the new Penal Code. Vagabonds and unemployed adults make a contract with the poor families in East or South East Anatolia, hire the children and bring them to Istanbul. In addition, these people provide shelter and food for children who have run away from home. In

[217] "Kapkaç Terörü Azaldı," *Polis Haber* 24 November 2007

[218] "Kapkaça Karşı Hızlı Polis," *Sabah* 15 February 2005.

return, they coerce these children into commiting property crime.[219] These professional and organized groups consider theft as a way of life and occupation, and teach children how to commit muggings, theft and snatching. The children model criminal behaviors and normalize deviant values concerning criminality.[220]

Celaleddin Cerrah, the chief of metropolitan police in Istanbul, explained the abuse of the children in purse snatching and theft as the new tactic of the criminals.[221] Since there is no legal punishment for children below twelve years old and reduced penalties for the others in the new penal code, the criminal organizations use children as thieves. This makes the juvenile delinquents central agents disturbing security and order in Istanbul. Cerrah also complains about the working of the juvenile court. The majorities of decisions are the verdict of not guilty or release with the promise of returning to family. He also gives the statistical proof for the strengthening of policing over these children, yet the malfunctioning of the juvenile court. In 2004, 14,874 juvenile delinquents were detected, but the number of prosecuted children was 1,224 in Istanbul. Even though the juvenile court has been criticized for the long lasting prosecutions and the dissatisfactory legal decisions, the court has been restructured in order to increase its efficiency and quality as a part of the new policy targeting the victims of crime, and the convictability of juvenile property offenders has increased especially since the enactment of the new penal code. Now, the qualitative information regarding the convictability of the juveniles is explored to uphold the enforcement of policing over juvenile delinquents.

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[219] Esin Küntay, "Mala Karşı İşlenen Organize Suçlarda Patlama Ve Çocuk İstismarı," *Terör, Şiddet ve Toplum Dergisi* (2006). p. 123.

[220] Ibid., p. 125-126.

[221] Balçiçek Pamir, "Kapkaç Zor Biter," *Sabah* 28 March 2005.

The Exploration of Statistical Information about the Juvenile Courts

The purpose of this section is to present the available court statistics to show increasing rates of imprisonment and the impact of the restructuring of the court qualitatively. Before analyzing the statistics, it is worthwhile to explain its inadequacies in measuring the extent of juvenile delinquency.

Official court records do not reveal the actual extent and the types of crimes. There is no national source providing complete data on the extent of juvenile law violations. The General Directorate of Police Department, the Ministry of Justice and the Body of Lawyers publish annual qualitative information. The lack of a central register is the primary difficulty in measuring delinquency in Turkey. The number of juvenile property offenders under the age of twelve is unknown in the juvenile court statistics because there is no prosecution of them whereas these numbers and other cases handled by the child police without resorting to the courts make up the majority of cases in the police records. Moreover, the court records exclude the undetected cases.

Some petty theft cases can be handled differently rather than law enforcement agencies. For instance, Maynard L. Erickson and Lamar T. Empey conducted a study on the reliability of court records concerning juvenile delinquency in America and found that both the boys who had never been to the court, who had been prosecuted once and the repeat offenders commited undetected petty theft. Especially there is little difference between the proportion of the nonofficial and one time offenders in commiting undetected petty theft.[222] People may not apply to the police or the court

[222] Maynard L. Erickson and LaMar T. Empey, "Court Records, Undetected Delinquency and Decision Making," in *Juvenile Delinquency: A Book of Readings*, ed. Rose Giallombardo (New York: John Wiley and Sons Inc., 1972). p. 59. The sample of research was constituted by 180 randomly selected boys between the ages of 15 and 17 in 1963. Fifty

to initiate legal procedures due to the distrust in state institutions. The perception of juvenile delinquents as dependent and endangered children and the difficulty of finding the child in the anonymous urban space are two basic factors obscuring people from making legal application.[223] Lastly, long trials, the acknowledgment of the undetected purse snatchers in the media and the cost of lawyers can deter people from being litigants in juvenile court. The enumeration of undetected property offenses can increase the volume of delinquent activities.

Since there are only twenty-three juvenile courts in Turkey, the large proportion of juvenile property offenders is judged in other adult courts. In this chapter, I present the numbers of the juvenile delinquents prosecuted in the juvenile courts, so taking into account other courts increases the rate of juvenile offenses tremendously. Lastly, even though the juvenile court statistics show us the age, sex ratio, the type of crime, the type and length of sentence, the number of cases reported by different courts in different cities and districts, it does not give a complete index of the cases. For instance, the statistics do not give the information concerning the categories of crimes.[224] Property crimes were categorized only as theft and mugging until 2005 and as property crimes since that date in the statistics. The statistical information particular to purse snatching, auto theft, theft from house and pick pocketing are not available and this creates a major obstacle to comprehending the

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high school boys who never attended to the court, thirty boys who has prosecuted one time, fifty boys who are the persistent offenders on the probation and fifty incarcerated offenders.

[223] Yücel, *Çocuk Suçluluğu ve Mahkemeler*, p. 164.

[224] Sellin Thorsten and Marvin E. Wolfgang, "The Legal Basis of Delinquency," in *The Sociology of Crime and Delinquency*, ed. Leonard Savitz Marvin E. Wolfgang, Norman Johnston (New York: John Wiley and Sons Publishing, 1970), Empey, "Court Records, Undetected Delinquency and Decision Making." p. 30. The writer points out the same problem.“the use of broad titles of offenses … for a description of delinquency chargeable to juveniles would be an unsatisfactory procedure that cannot provide sensitive measures of delinquency.”

accurate scope of property crimes and the allocation of convicts with regard to types of crimes.

It seems that persistent juvenile offenders commit more serious property crimes, like auto theft or the theft of expensive objects and as such they appear in the court records more frequently. A correlation exists between the seriousness of the property crimes and the court appearance.[225]Thus, the court records reflect the detected offense that becomes the most serious officially recorded crime. Criminal statistics in Turkey do not incorporate the previous record of convicts or the criminal patterns for persistent offenders and others. Yet, they enable us to explore the qualitative information concerning crime patterns and the legal decisions in the juvenile court.

However, the qualitative information regarding juvenile offenders describes the scope of the problem. The General Directorate of Criminal Registration and Statistics publishes annual quantitative information for all kinds of the courts in the name of the Ministry of Justice. For the juvenile courts, the available information includes the number of offenders in proportion to their age and sex and types of crimes, workload particular to each juvenile court, the types of juridical decisions and the allocation of these decisions between the juvenile courts.

There are five types of sentences given to juvenile delinquents: imprisonment, fines, imprisonment and fines together, the conversion of the prison time into measures, and the postponement of last decision. In the postponement of last decision, the judge makes it obligatory for the prisoner to obey certain rehabilitative measures and postpones the declaration of the sentence. Then, the probation officers write reports on the child's obedience to the measures. If the child

[225] Erickson and Empey, p. 67.

obeys the legal decision, the crime is erased from the record of convictions. In the statistical distribution of these sentences between 2000 and 2007 in all juvenile courts in Turkey, the postponement of last decision and measures constituted the most widespread decision. The total percentage of the postponement of last decision and measures increased linearly: 71.6 % in 2000, 73.4% in 2001, 76.3% in 2002 and 2003. Then, it decreased slightly to 69.9% in 2004 and these two kinds of sentences that are compatible with the rehabilitative philosophy of the court made a peak in 2005 with 91.5%. Especially the convict of the conversion of imprisonment into measures rose from 20.2% to 86.3% in 2005. However, the proportion of the measures and the postponement of last decision declined sharply to 10.4% in 2006.[226]

In accordance with my hypothesis on the increasing substitution of imprisonment for measures in juvenile courts, the rate of imprisonment fluctuated from 1.3% in 2005 to 31.3% in 2006.[227] The enactment of the new penal code was explained above as a technique to satisfy the demand for security by means of deterring punishments. The juvenile court policy targeting the juvenile delinquent's correction in the welfare state has been replaced by a policy targeting the convenience of the victims of the crime. Similarly, the percentage of those sentenced to pay money rose from 6.4% to 56.3% in 2006. The double sentence of imprisonment and monetary penalty was 0.8% in 2005, whereas it increased 4.5% in

[226] The Ministry of Justice, General Directorate of Criminal Registration and Statistics, available [online]: http://www.adli-sicil.gov.tr/istatiste.htm. [20 March 2009]

[227] The Ministry of Justice, General Directorate of Criminal Registration and Statistics, *Çocuk ve Çocuk Ağır Ceza Mahkemelerince Verilen Mahkumiyet Kararlarının Niteliği ve Sanık Sayısının Yıllara Göre Dağılımı 1994-2006*, available [online]: http://www.adli-sicil.gov.tr/ istatiste.htm. [20 March 2009]

2006.[228] This descriptive information also proves that the judicial system works on behalf of the victims of the crimes regardless of the children's economic ability to fulfill the sentence.

Since the workload on the juvenile courts has reached uncontrollable rates in the 2000s, new juvenile courts have been established, especially in Istanbul, in order to provide a fast and effective justice service to the victims of crime. Criminal registration with regard to the overburdened juvenile courts provides statistical evidence of the workload, which means an increasing number of juvenile delinquents in the last stage of the juvenile justice system, prosecution. Increasing the number of court appeals by juvenile delinquents and the establishment of the new juvenile courts can be interpreted as another dimension of the reinforcement of policing over juvenile delinquents. Istanbul was the leading city in terms of workload among juvenile courts between 1998 and 2007. Others range in an order: Izmir, Ankara and Trabzon.[229] 8865 criminal cases came to the One of the juvenile courts in Istanbul in 2000 and only 12.8% was ended, so 7,729 case transmitted to 2001. The number of cases that fell within the jurisdiction of the Istanbul Juvenile Court was 10,394 in 2001, 6,950 in 2002, 14,294 in 2003. 23,319 cases came before the Istanbul Juvenile Court for prosecution in 2004. Within this, there were 3,105 cases in the Beyoglu Juvenile Court, 2,413 files in the court in Kartal, 2,554 files in the Usküdar Juvenile Court in the same year. Therefore, the number of crimes committed by juvenile delinquents and prosecuted in the juvenile courts rose sharply to 31,391 in 2004 in Istanbul.[230]

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[228] Ibid.

[229] Ibid.

[230] The Ministry of Justice, General Directorate of Criminal Registration and Statistics, *Çocuk ve Çocuk Ağır Ceza Mahkemeleri İş yükünün Mahkemelerine ve Yıllara*

There were four juvenile courts until 2002 in Turkey located in Istanbul, Izmir, Ankara and Trabzon. The total number of the delinquents prosecuted in these courts increased from 12,747 in 2000 to 59,862 in 2004.[231] Additional courts were established in Diyarbakır in 2002, Kocaeli in 2003 and three new courts were constructed in Usküdar, Beyoglu and Kartal in 2004 as a judicial reaction to increasing rates of juvenile delinquency. With the establishment of these three additional courts, the number of the juvenile courts in Istanbul became four in 2004.

In 2005, two additional juvenile courts were established in Istanbul to increase the efficiency, in Eyüp and Kadıköy, and juvenile courts also were founded to prosecute juvenile offenders in Denizli and Bursa. Thus, the number of the courts became five for Istanbul and thirteen in Turkey. In terms of workload, 23,176 cases fell into the jurisdiction of the Istanbul Juvenile Court and 41,543 juvenile delinquency files were prosecuted in all juvenile courts in Istanbul in 2005. Outstanding increase in workload continued in the juvenile courts in Turkey with 88,821 files in 2005 and 104,400 cases in 2006.[232] The number of juvenile courts reached twenty-three in 2006. They expanded into new cities and provinces. To cope with increasing juvenile delinquency and the fear of crime in Istanbul, a court was established in Gaziosmanpasa and courts peculiar to children were established in Adana, Batman, Edirne, Mersin, Osmaniye, Sakarya, Samsun, Sincan, Söke, Sanlıurfa in 2006. Today, there are eight juvenile court in Istanbul and twenty five in Turkey. The Istanbul Juvenile Court was still the leader in terms of workload with 25,547 cases, with 57,655 files in the Istanbul Juvenile Court in 2006.

Göre Dağılımı 1998- 2006, available [online]: http://www.adli-sicil.gov.tr/istatiste.htm. [20 March 2009]

[231] Ibid.

[232] Ibid.

In 2007, the number of the cases in all juvenile courts declined slightly to 91,719. Another significant change was that the new files decreased by half from 60,125 to 33,263. This reduction implicates the success of stricting policing measures. In addition, the quantity of the files transmitted from one year to another declined as a result of the increase in the number of the new courts and specialization. Relevantly, the average number days of prosecution has shortened. The juvenile offenders were prosecuted on average in 755 days in 2000 whereas this became an average of 232 days in 2006. As the days in trials declines, the files passed to the next year decrease too. The percentage of files transferred to the following year was 51.8% in 2005, 45% in 2006 and 43.8% in 2007. This qualitative information can be interpreted as the effect of efficiency and rapidity in the prosecution.[233] Similarly, the workload declined to 42,330 for all juvenile courts in Istanbul and the number of new files was one-fourth that of the previous year, 2,876 in the Istanbul Juvenile Court.[234]

Even though juvenile delinquents are prosecuted in separate juvenile courts, other adult courts prosecute these children in places where juvenile courts have not been established. In 2004, the number of files transmitted from the previous year was 136,358 and 45,773 new cases were opened in all juvenile courts. That number corresponds to 33.6% of all juvenile crimes prosecuted in the juvenile courts in that

[233] The Ministry of Justice, General Directorate of Criminal Registration and Statistics, *İşyükünün Yıllara Göre Dağılımı 1994-2007*, available [online]: http://www.adli-sicil.gov.tr/istatiste.htm. [20 March 2009]

[234] The Ministry of Justice, General Directorate of Criminal Registration and Statistics, *Çocuk ve Çocuk Ağır Ceza Mahkemeleri İşyükünün Mahkemelerine ve Yıllara Göre Dağılımı*, available [online]: http://www.adli-sicil.gov.tr/istatiste.htm. [20 March 2009]

year.[235] Other cases were allocated between the Criminal Court, the Court of Peace, the High Criminal Court, the Criminal Court of First Instance, the Traffic Court and the State Security Court.

Juvenile courts were specialized in 2005 in order to provide more efficient service and to cope with workload with regard to the type of crime, as explained previously. As a consequence of this specialization, 32,182 files concerning juvenile delinquents in the Juvenile Courts and 37,902 cases in the Juvenile High Criminal Court were prosecuted in 2005. Thus, the percentage of the prosecution of delinquency cases in the juvenile courts reached 44.2%. Specialization and new juvenile courts increased the role of the juvenile courts in the prosecution. The percentage of the new files opened in the juvenile courts rose to 56.1% in 2006. There were 78,205 new files; 67,445 new cases in the Juvenile Courts, 11,760 in the Juvenile High Criminal Courts.

Table 1. The Distribution of New Cases in Juvenile and Juvenile High Criminal Courts In Terms of the Type of Crime, Sex and Age in 2005

	Number of New Cases	%	Number of Offenders						
			12-15 Age		16-18 Age		12-18 Age		Total
			M	F	M	F	M	F	
Theft	29,608	55.3	11,000	2201	24,445	2364	35,445	4565	40,010
Mugging	1830	3.4	292	4	1935	20	2227	4	2251
Homicide	377	0.7	48	4	405	20	453	24	477
Total All Crimes	53,538	100	16,045	2701	47,692	3646	63,737	6347	70,084

[235] The Ministry of Justice, General Directorate of Criminal Registration and Statistics, *Ceza Mahkemelerinde Açılan Davalardaki Çocuk Sanıkların, Mahkeme Türüne, Yaş Gruplarına ve Yıllara Göre Dağılımı 1994-2006*, available [online]: http://www.adli-sicil.gov.tr/istatiste.htm. [20 March 2009]

Source: The Ministry of Justice, General Directorate of Criminal Registration and Statistics, *Çocuk ve Çocuk Ağır Ceza Mahkemelerinde Sonuçlanan Davalarda Verilen Kararların Suç Türü ve Sanıkların Yaş Gruplarına Göre Dağılımı 1 0cak 2005-31 Aralık 2005*, available [online]: http://www.adli-sicil.gov.tr/istatiste.htm.

Table 2. The Distribution of the Legal Decisions in Juvenile and Juvenile High Criminal Courts in Terms of the Type of Crime and the Ages of the Offenders in 2005

The Ended Cases	12-15 Age			16-18 Age			Total		
	Type of the Verdict			Type of the Verdict					
	Convict	N.Q.*	Other	Convict	N.Q.	Other	Convict	N.Q.	Other
Theft	24,893	3508	190	3265	9212	637	13,366	12,720	827	16,631
Mugging	1184	37	17	187	349	129	723	386	146	910
Homicide	357	10	0	32	115	50	215	125	50	247
All Crimes	46,047	4651	424	6248	14,208	2014	28,119	18,859	2438	34,367

Source: The Ministry of Justice, General Directorate of Criminal Registration and Statistics, *Cocuk ve Cocuk Ağır Ceza Mahkemelerinde Sonuçlanan Davalarda Verilen Kararların Suç Türü ve Sanıkların Yaş Gruplarına Göre Dağılımı 1 0cak 2005-31 Aralık 2005*, available [online]: http://www.adli-sicil.gov.tr/istatiste.htm.
* refers the legal decision of the verdict of not guilty.

In 2005, theft composed 55.3% of all crimes among juvenile delinquents. This leading crime was generally committed by males between the ages of sixteen and eighteen. 70,084 juvenile delinquents were judged and sentenced. Of them, 40,010 had committed theft and 35,445 in that number were male.[236] The most frequent decision fell in the category of "other decisions" for property crimes in the statistics. "Other decisions" are verdicts of not guilty, postponement of the case, abatement of the accusation due to reconciliation and time-limit, postponement of

[236] In order to scrutinize the distribution of juvenile offenders in terms of the type of crime, age and sex in all Juvenile Courts and High Criminal Juvenile Courts, see Table 1.

last decision, denial of the case, denial of punishment, lack of jurisdiction and unification of cases. However, the majority of the children who had committed theft were sentenced.[237] Out of 12,720 sentenced children 9,212 were in the age group sixteen to eighteen.[238] The reason for convictability could be criminal culpability for those children. This age group is culpable, so the rehabilitative measures are not applicable to them. Since they have criminal liability, the only sentence is the reduction of their punishment.

While homicide was the dominant crime pattern in the early republican era, the leading crime is property crimes today. If juvenile delinquency is categorized in terms of offense types, since the 1980s property crimes have replaced for homicide as the new pattern of crime. As opposed to the increase in property crimes, homicide has declined linearly for all age groups.[239] Göral defines crime against person as having been the major characteristics of Turkey's juvenile delinquency in the early republican era.[240] Those children had committed their crimes in the context of the blood feuds in rural areas as opposed to today's pattern of juvenile delinquency, property crimes in cities. In 2005, the rate of homicide was 0.7% whereas the theft constituted 55.3% and mugging was 3.4%, according to the statistics of the Ministry of Justice concerning the juvenile courts.[241]

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[237] See Table 2, that is a comprehensive table regarding the allocation of the legal decisions depending on the type of crime and age.

[238] Ibid.

[239] Atasoy, Başkan and Ziyalar, p. 132. She prepared a table on juvenile delinquency about the last decade by organizing the statistical information from the Ministry of Justice and I followed the fluctuations on the types of crimes with reference to this table.

[240] Göral, p. 106.

[241] See Table 1.

In the statistics, homicide, theft and sex crimes were the leading crimes between 1979 and 1987. The percentage of theft among other crimes increased 14.12% while other crimes committed by juvenile delinquents decreased -17.76% for homicide and -25.47% for sex crimes.[242] The General Directorate of Criminal Registration and Statistics published statistical information on the types of the offenses in 2003. Between 1994 and 2003, there was an increase in theft for certain age groups, 12-15 and 16-18. For the 12 to 15 age group, the rate of theft crimes per 100,000 people was 76.32 in 1994 while it became 108.04 in 2003. Similarly, this rate increased from 243.53 to 559.91 for the 16-18 age groups. As a complementary to the increase in theft, robbery rose threefold between 1994 and 2003. The rate was 11.05 in 1994, 5.84 in 1997 and 21.40 in 2003 for the 12-15 age groups, and it was 36.15 in 1994, 26.21 in 1997, and 102.10 in 2003 for the 16-18 age groups.[243]

Table 3. The Distribution of the New Cases in Juvenile and Juvenile High Criminal Courts In Terms of the Type of Crime, Sex and Age in 2006

New Cases		%	Number of Offenders						
			12-15 Age		16-18 Age		12-18 Age		Total
			M	F	M	F	M	F	
Property Crimes	38,432	62.4	12,298	2892	31,640	3785	43,938	6677	50,615
(TCK 141-169)									
Crimes against Life	618	1.0	176	4	575	12	751	16	767
(TCK 81-86)									
Crimes against Body	9209	14.9	2122	235	8716	517	10,838	757	11,590
(TCK 93-96)									
Total All Crimes	61,626	100	17,471	3506	52,864	5364	70,335	8870	79,205

[242] Yücel, *Çocuk Suçluluğu ve Mahkemeler*, p. 156.

[243] Atasoy, Başkan and Ziyalar, p. 132.

Source: Ministry of Justice, General Directorate of Criminal Registration and Statistics, *Çocuk ve Çocuk Ağır Ceza Mahkemelerinde Açılan Davaların Suç Türüne Göre Dağılımı, 1 Ocak 2006-31 Aralık 2006*, available [online]: http://www.adli-sicil.gov.tr/istatiste.htm.

Table 4. The Distribution of Legal Decisions in Juvenile and Juvenile High Criminal Courts In Terms of the Type of Crime, and the Ages of the Offenders in 2006

The Ended Cases		12-15 Age			16-18 Age				
		Type of Verdict			Type of Verdict				
	Convict	N.Q	Oth.	Convict	N.Q	Oth.	Convict	N. Q	Oth.
Property Crimes	29,222	527	864	11,150	2703	2528	22,289	3209	3392	33,439
(TCK 141-169)										
Crimes against Life	296	24	2	43	121	29	204	145	31	247
(TCK 81-86)										
Crimes against Body	6767	88	171	1714	450	515	5698	538	686	7412
(TCK 93-96)										
Total All Crimes	46,999	817	1356	15,559	43,338	4351	35,740	5155	5707	51,299

Source: Ministry of Justice, General Directorate of Criminal Registration and Statistics, *Çocuk ve Çocuk Ağır Ceza Mahkemelerinde Açılan Davaların Karar Türüne, Suç Türüne ve Sanıkların Yaşlarına Göre Dağılımı, 1 Ocak 2006-31 Aralık 2006*, available [online]: http://www.adli-sicil.gov.tr/istatiste.htm.

In all juvenile courts in Turkey, 29,222 out of 38,432 property crime cases were ended and 3, 209 files resulted in the legal decision of imprisonment in 2006. The number of convicted children in sixteen to eighteen age groups outnumbered that of other age groups. 2,703 sentenced children out of 3,209 were between the ages of sixteen and eighteen.[244] Similar to the previous years, the preponderance of

[244] See Table 3 and 4.

juvenile property offenders was males between the ages of sixteen and eighteen in 2006.[245]

The sharp decline in the numbers of the imprisoned juvenile property offenders from twelve thousand in 2005 to three thousand in 2006 can be misleading. First, these imprisoned children stayed in prison for longer amounts of time in comparison with the previously convicted children because the penalties had increased especially for purse snatching cases in the new penal code. Since purse snatching was judged as a qualified kind of theft in 2006, it is most likely that the large proportion of the convicted children were petty thieves. In addition, property crimes are particular to urban areas and the juvenile courts in Istanbul were restructured and specialized after the Child Protection Law in 2005 in order to provide more effective justice service to the victims. All technologies of performance and agency were executed in Istanbul to reinforce policing, so the majority of the convicted children could be the ones who were prosecuted in the juvenile courts in Istanbul.

The correlation between the legal decisions and the type of crimes in the juvenile courts in Istanbul is not available. Tables 3 and 4 present statistical information on the types of the crimes and the decisions. Yet, these numbers are the reflection of the decisions in all of Juvenile and High Criminal Juvenile Courts in Turkey in 2006. It also homogenizes property crimes. Thus, the distribution of adjudications regarding the types of the property crimes in the juvenile courts in Istanbul is not available. The number of property crimes in the total number of new cases increased and reached 38,432 out of 61,626 in 2006. Different from the previous years, the crimes against the privacy of body peaked up in 2006 among the

[245] See Table 3, that presents qualitative information regarding the type of crime and its distribution in terms of age and sex.

juvenile offenders as a new type of crime. These crimes refer to torture and cruelty in the penal code. The percentage of property crimes was 62.4 whereas the crimes against body were in second place with 14.9%.[246] Even though the number of the property crimes increased, its rise was slow in comparison with the previous years. This fact is interpreted as the impact of the technologies of agency and of performance on the deterrence of property crimes. Private and physical security measures, community policing, the use of mobesse systems, the strict policing of the child police and the civil police have constructed a social environment that makes commiting property crimes difficult.

In 2006, 25,547 cases fell within the jurisdiction of the Istanbul Juvenile Court for prosecution and 68.9% of the cases resulted in an average 318 days of prosecution per case.[247] For all crimes, the large proportion of the juvenile offenders was sentenced in the Istanbul Juvenile Court. 35.4% was imprisoned and 1.6% were given the sentence of money and prison together. The last decision was to pay money for 46.9% and the sentence was converted into monetary punishment for 5.3%.[248] However, only 1.6% of the decisions involved the conversion of imprisonment into alternative measures and 9.1% was involved the postponement of last decision.[249]

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[246] See Table 3 to explore the qualitative importance of the crime against the body among juvenile offenders.

[247] The Ministry of Justice, General Directorate of Criminal Registration and Statistics, *Çocuk ve Çocuk Ağır Ceza Mahkemeleri İş Yükünün Dava Sayısına ve Mahkemelerine Göre Dağılımı, 1 Ocak 2006-31 Aralık 2006*, available [online]: http://www.adli-sicil.gov.tr/istatiste.htm. [20 March 2009]

[248] The Ministry of Justice, General Directorate of Criminal Registration and Statistics, *Çocuk ve Çocuk Ağır Ceza Mahkemelerince Verilen Mahkumiyet Kararlarının Niteliği ve Sanık Sayısının Mahkemelerine Göre Dağılımı 1 Ocak 2006-31 Aralık 2006*, available [online]: http://www.adli-sicil.gov.tr/istatiste.htm. [20 March 2009]

[249] The Ministry of Justice, General Directorate of Criminal Registration and Statistics, *Çocuk ve Çocuk Ağır Ceza Mahkemelerinde Haklarında Güvenlik Tedbiri Uygulanmasına Hükmedilen Sanıkların Mahkemelerine Göre Dağılımı1 Ocak 2006-31 Aralık 2006*, available [online]: http://www.adli-sicil.gov.tr/istatiste.htm. [20 March 2009]

The transfer of cases to other courts and the postponement of cases were the most widespread legal decisions. Yet, there was a sharp increase in the sentence of imprisonment and monetary punishment for all juvenile offenders independent from the type of crime in the Istanbul Juvenile Court in 2006. The outstanding decline in the measures and the postponement of last decision implicates a growing convictability of children in the court.

Table 5. The Distribution of New Cases in Juvenile and Juvenile High Criminal Courts in Terms of the Type of Crime, Sex and Age in 2007

New Cases		%	Number of Offenders						
			12-15 Age		16-18 Age		12-18 Age		Total
			M	F	M	F	M	F	
Property Crimes	18,506	53.9	7765	1179	16,587	1430	24,352	2609	26,961
(TCK 141-169)									
Crimes against Life	283	0.1	45	1	285	4	330	5	335
(TCK 81-86)									
Crimes against Body	5942	17.3	1892	165	5702	422	7594	587	8181
(TCK 93-96)									
Total All Crimes	34,318	100	12,327	1661	31,358	2536	43,685	4197	47,882

Source: The Ministry of Justice, General Directorate of Criminal Registration and Statistics, *Çocuk ve Çocuk Ağır Ceza Mahkemelerinde Açılan Davaların Suç Türüne Göre Dağılımı, 1 Ocak 2007-31 Aralık 2007*, available [online]: http://www.adli-sicil.gov.tr/istatiste.htm.

Table 6. The Distribution of Legal Decisions in Juvenile and Juvenile High Criminal Courts in Terms of the Type of Crime and the Ages of the Offenders in 2007

The Ended Cases		12-15 Age			16-18 Age				
		The Type of Verdict			The Type of Verdict			Total	
		Convict	N.Q	Oth.	Convict	N.Q	Oth.	Convict	N. Q Oth.
Property Crimes	24,823	1858	1634	5897	5526	3462	13,583	7384	5096 19,480

(TCK 141-169)										
Crimes against Life	308	19	9	48	156	36	127	175	45	175
(TCK 81-86)										
Crimes against Body	5894	377	259	1303	1235	641	3626	1612	900	4929
(TCK 93-96)										
Total All Crimes	40,148	2835	2438	8888	9542	5699	21,803	12,377	8137	30,691

Source: The Ministry of Justice, General Directorate of Criminal Registration and Statistics, *Çocuk ve Çocuk Ağır Ceza Mahkemelerinde Sonuçlanan Davalarda Verilen Kararların Suç Türüne ve Sanıkların Yaş Gruplarına Göre Dağılımı, 1 Ocak 2007-31 Aralık 2007*, available [online]: http://www.adli-sicil.gov.tr/istatiste.htm.

In 2007, the number of the law suits involving juvenile property offenders fell sharply. There were 18,506 new files and 26,961 suspects in those files in comparison with thirty thousand new files and fifty thousand juveniles who had committed property crime in those files before one year.[250] This decline can be interpreted as the success of more strict security measures to deter the juveniles from committing property crimes. Similar to the previous years, the majority of offenders were between sixteen and eighteen years of age. In terms of the type of crimes, crimes against the body continued to increase as the most important crime pattern among juveniles after property crimes and crimes against life declined in all juvenile courts.[251]

The linear increase in the convict of imprisonment and money has continued since 2002. While the number of juvenile property offenders sentenced to prison was 3209 in 2006, 7383 property offenders were sentenced in 2007. In addition, monetary punishment rose from 53.8% to 60.6%, and the double sentence of prison and money increased from 4.5% to 5.3%. The sentence of postponement declined from 8.8% to

[250] See Table 5.

[251] Ibid.

5.3% in all juvenile courts in 2007.[252] When the distributions of the legal decisions for all crimes in the Istanbul Juvenile Court are explored, the lack of jurisdiction, abatement due to time limit, prison and innocence are the leading verdicts in order.[253] 39.6% were sentenced and 29.8% were sentenced to both money and prison in 2007.[254]

Conclusion

There has been a world wide trend of imprisonment and severe penalties for all offenders since the 1990s. Yasemin Özdek scrutinizes the expansion of this trend in the world and evaluates it as a projection of the new policy of social control of the lower classes on the legal arena. "New policies of punishment target the repression of the consequences of the issues that are by-products of the dissolution of the welfare state and the control of potential social opposition with severe penal codes rather than preventing the sources of social issues."[255]

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[252] The Ministry of Justice, General Directorate of Criminal Registration and Statistics, *Çocuk ve Çocuk Ağır Ceza Mahkemelerinde Verilen Mahkumiyet Kararlarının Niteliği ve Sanık Sayısının Yıllara Göre Dağılımı 1994-2007*, available [online]: http://www.adli-sicil.gov.tr/istatiste.htm. [20 March 2009]

[253] The Ministry of Justice, General Directorate of Criminal Registration and Statistics, *Çocuk ve Çocuk Ağır Ceza Mahkemelerinde Sonuçlanan Davalarda Verilen Kararların Karar Türüne ve Mahkemelerine Göre Dağılımı*, available [online]: http://www.adli-sicil.gov.tr/istatiste.htm. [20 March 2009]

[254] The Ministry of Justice, General Directorate of Criminal Registration and Statistics, *Çocuk ve Çocuk Ağır Ceza Mahkemelerinde Verilen Mahkumiyet Kararlarının Niteliği ve Sanık Sayısının Mahkemelerine Göre Dağılımı*, available [online]: http://www.adli-sicil.gov.tr/istatiste.htm. [20 March 2009]

[255] Yasemin Özdek, "Küreselleşme Sürecinde Ceza Politikalarındaki Dönüşümler," *Amme İdaresi Dergisi* 33, no. 4 (Aralık 2000). p. 36. *"… yeni ceza politikaları sosyal sorunların kaynağını önlemekten çok, sosyal devletin tasfiyesi ile birlikte ortaya çıkan sorunların sonuçlarını bastırmaya ve potansiyel sosyal muhalefeti sert ceza yasaları ile kontrol etmeye yöneldiğini ortaya koymaktadır."* ; Tülay Tekin Yılmaz, "Neo-Liberal İktidar Ve Cezalandırma Politikaları," *Toplumbilim Dergisi: Kent ve Suç Özel Sayısı* 23 (Aralık

Thus, it aims at the social control of the offenders to achieve public convenience instead of improving policies to eradicate class polarizations and poverty. "Get tough on crime", "fight with crime", "the prevention of crime", "truth in sentencing" and "the protection of society from offenders" constitute the new rhetoric to enact laws that have made more severe penalties and imprisonment effective strategies in managing offenders and reducing the fear of crime in the US since the 1980s.[256] The legal process of the dispersion of this policy in the juvenile justice system in current Turkey was examined in this chapter.

The abolition of the reciprocal relations between state, society and individual in the post-fordist era has led to new juvenile justice policy targeting the victims of crime. State enframed the needy child and rehabilitated and the child abetted into crime was the dominant rhetoric in a tutelary complex in the welfare state period, as explored in the preceding chapter. This rhetoric has been partially transformed and juvenile delinquents have been perceived as risk for security and property crimes have become a potential behavior in the population. This fact has resulted in the rapid growth of the crime control industry and the reorganization of state institutions in the juvenile justice system.

In this chapter, two types of governmental strategies were explored to explain the new juvenile justice policy in the 2000s. First was "the technologies of agency." The new individual has to monitor all risks in life and subcontracts these needs to provide security. The individualization of risk renders people the clients of the crime

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2008). p. 107.Tülay Tekin Yılmaz explores the legal process of the diffusion of this policy in Turkish prisons. Since it is beyond the scope of this chapter, I did not discuss it in detail. However, her vision concords with the Özdek's approach to the new policies of punishment. Yılmaz argues that it aims at the reduction of the feeling of insecurity and disorder and the control of the criminal lower classes in neo-liberal period.

[256] Ibid., *"suçun üzerine sert git", "suçla mücadele", "suçun önlenmesi", "cezalandırmada kesinlik", "toplumun suçlulardan korunması,"* p. 25-26.

control industry to minimize the risk of being victims of property crimes. These technologies target the potential victims living in the fear of crime and activate people as agents to manage their own risks. Private insurance, private security services, physical security measures and community policing are explored as examples of the technologies that render people liable for subcontracting risks to these marketized security and crime control services. In addition, these technologies construct a deterring and secure environment.

Second governmental strategies are "technologies of performance." State institutions, the juvenile court and the police, have been restructured as accountable and efficient services to restore the public's convenience and the legitimacy of the system by means of accelerate and effective legal proceedings and of deterring penalties. The establishment of the child police, the reconceptualization of property crimes with more severe punishments in the new penal code, the legal prohibition of the use of stolen phones and mobesse systems are some technologies that improve the performance of state institutions as security services. The utilization of technology in crime control and judgment, the specialization of the juvenile courts and the qualification of the agents in the juvenile justice system were elaborated as other technologies related with the reflection of state institutions upon themselves. All of these have consolidated state authority in crime control and strengthened the public belief in justice. Thus, state institutions and the private crime control industry have composed the new juvenile justice policy around the notion of security. Both are security services in order to deter juvenile delinquents and to satisfy the real and potential victims of property crimes.

Lastly, statistical information on the juvenile courts was analyzed to uphold the replacement of imprisonment with corrective measures in contradiction to the

establishment philosophy of the juvenile courts and the effects of the reorganization of the juvenile courts in the 2000s. The linear increase in the number of delinquents appeared in the court and the consequent increasing workload on the juvenile courts has resulted in the establishment of new courts especially in Istanbul. While there were four juvenile courts in Turkey and only one in Istanbul in 2002, the number of the courts reached twenty-five in Turkey and eight in Istanbul in 2006.

Apart from the establishment of the new courts, specialization in the courts in 2005 also augmented the efficiency of the prosecution. Thus, the number of juvenile delinquents who appeared in the court increased until 2007. Especially after the stipulation of the code, the percentage of the children who were sentenced to prison peaked in 2006.

The leading crime pattern is property crimes as opposed to the homicide of the early republican era. Yet, interestingly, crimes against the body have become the second most common crime after property crimes among the juvenile delinquents since 2006. New law suits, the proportion of the files transmitted from one year to next year and the average days of prosecution declined in 2007. This reduction can be interpreted as the impact of stricter policing and increasing convictability by means of the technologies explored in this chapter.

However, the new juvenile justice policy not only targets the victims of crime. The new perception of juvenile delinquents as dangerous children coexists with the image of these children as being endangered. Therefore, the new juvenile justice policy is *double-sided* and has two targets: the victim and the juvenile delinquent. Another side of the policy concerning the children is explored in the next chapter as complementary to the juvenile justice policy.

CHAPTER FOUR

PARTNERSHIP BETWEEN THE COURT, FAMILY AND CIVIL SOCIETY AND THE JUDGES' PERCEPTIONS OF NEW POLICY

Introduction

Apart from the reflexive restructuring of state institutions and the privatization of security services, the partnership between the juvenile court, family and civil society organizations constitutes another side of the new juvenile justice policy. Structural transformations in the economy and the resulting withdrawal of the state from being formal distributive mechanism have made child poverty a more visible societal issue since the 1980s and it also gained an ethnic character with the population movements to Istanbul in the 1990s. Child poverty has been defined as a problem of social exclusion and new child protection system rooted in those years idealized the role of the family and civil organizations in protecting the child and dealing with child poverty. This policy has eradicated the paternal institutional care that was peculiar to the welfare state. In this chapter, primarily the crucial paradox in the new child protection system with regard to juvenile delinquents is explored. The paradox is that the family is both the institution that leads the child into crime and confines the child in poverty and is the best place for the protection and the correction of the child. Thus, the child must return to the family, but to an empowered family. Civil organizations are responsible for the provision of services

to strengthen the family as a legal decision in the new partnership with the juvenile court.

How this new model penetrated in the juvenile justice system is examined in this chapter. The stipulation of international conventions regarding children in 1990 and the establishment of the National Council under the coordination of SHÇEK in 1995 to appropriate the domestic law and the standards of judgment of children to the conventions that idealized correction in an open milieu were the first steps in restructuring the relationship between family, the juvenile court and civil society organizations.

Beyond the adaptation to international conventions, the disenchantment of institutional care was another reason for the establishment of the new model of partnership. Reformatories, Protectories and Child Care Homes were the paternal institutional care centers to rehabilitate and protect the juvenile delinquents prosecuted in the court and used extensively in the welfare state period. Yet, the juvenile court dispersed the task of the provision of services and correction among civil organizations because of the disenchantment with institutional care and the idealization of correction in an open milieu as a new effective and cost-saving method. Being under-staffed, incapacity, disqualified care, reluctance to keep criminal children together with needy ones and the difficulty of controlling the frequent running away of the delinquents from institutional care centers were causes of the disillusionment of institutional care. These reasons are examined to uphold why returning the child to the family became the most widespread legal decision in the juvenile courts in the 1990s.

As a complementary to these factors underlying the eradication of institutional care, the debates on the practice of Law No. 2253 were centralized on

the necessity of channeling the duty of the correction to the family and civil organizations. The unbearable workload on the juvenile courts, the inadequate number of social workers in the courts, the insufficiency of institutional care centers and the dependence of social inquiry reports on the judge's initiative were declared as the obstacles to execute personal treatment programs and given as the reasons for returning the child to family without doing any thing.

In the draft on the changes in the law in 1992 and the enactment of Child Protection Law in 2005, modifications were made to overcome those obstacles. The age limit of childhood was re-conceptualized as eighteen and the threshold for culpability became twelve. The preparation of social inquiry reports and legal aid became obligatory. In addition, the new sentence of the postponement of last decision was legalized to strengthen the probation and the diversion of the child outside of institutional care. Those juridical texts ascribed a new role to civil society organizations in the juvenile justice system. The juvenile delinquent should be corrected and protected within the family, but in a strengthened family, so these organizations conduct micro and temporal projects to empower the family in partnership with the Ministry of Justice and SHÇEK.

Lastly, examples of the new partnership model are presented to illustrate the practical problems. The court is a catalyst in the sense that the state institution channels the juvenile delinquents to the civil organizations and does not finance the projects or pursue the impact of the projects on the offender. The child comes to civil organizations without social inquiry reports and there is no effective legal mechanism to survey the obedience to the measures in an open milieu. The participation into the projects depends on child and family initiatives and civil

organizations are burdened with social inquiry, correction and probation in the current juvenile justice policy.

In the last part of the chapter, how the judges perceive the function of law and juvenile delinquency and how they consider the "new double-sided juvenile justice policy", the new partnership model explored in this chapter and the reinforcement of policing and deterring security mechanisms in the previous chapter are scrutinized. My aim is to present the heterogeneity of the judges' rationalities concerning legal rules and juvenile delinquency with reference to the interviews conducted with three judges in the One of the juvenile courts in Istanbul.

The functionalist approach to law and the prioritization of new partnership model to correct and protect "the child led into crime" is in contradiction with the consideration of incarceration as a mere solution to handle "the criminal child." The preceding perception fits the new partnership model whereas the latter judge is on the behalf of increasing convictability and new policy targeting the victims of crime to handle juvenile delinquency. Beyond these two keen positions, the other judge perceives the legal rules as an instrument to convince people of justice and prefers negotiation between the litigant and the child. This judge makes a call for the reestablishment of the tutelary complex and state administered institutional care in accordance with the juvenile justice policy in the welfare state era explored in the second chapter. This perception is incompatible with the consideration of the new partnership model as an effective prevention technique and it is also apposed to the punitive orientation. However, what is common to the three judges' accounts is the perception of the law as a set of objective rules and as a precondition to legitimizing the juvenile justice system and to sustain order.

A New Partnership between State and Civil Society

The structural transformations in the political economy of Turkey in the 1980s went hand in hand with the shrinking of the welfare state and this has weakened the ability of the family to protect the child and rendered certain categories of childhood and child poverty more visible. Child labor was mobilized in various forms, such as informal worker, street seller and domestic worker, and juvenile delinquency became a more outstanding societal issue. The transition into post-fordism created spontaneous, transient, non-durable market relations in the informal economy. The lack of formal corporatist labor contracts confined the workers in insecure, low-waged jobs in an informal economy and it implied a significant aspect of disconnection between state and society. Turkey "in 1989… deregulated its financial markets and integrating with global capital markets, financial liberalization was expected to achieve fiscal and monetary stability, stimulate business confidence to invest in productive sectors, produce stable growth, encourage privatization and declines inflation."[257] Turkey's integration into the world economy, an export led growth policy, characterized by financial liberalization, speculative foreign capital flows, the liberalization of foreign direct investment and trade regime, the privatization and the retreat of the state from the provision of social welfare.[258] This policy resulted in increasing socio economic inequalities and class polarizations.

Poverty was also integrated into the market economy in post–1980. The changes in social policy exemplify the withdrawal of the state from being formal distributive mechanism, the privatization of these mechanisms and the channelization

[257] Ümit Cizre and Esra Yeldan Sakallıoğlu, "Politics, Society and Financial Liberalization: Turkey in the 1990s," *Development and Change* 31 (2000). p. 481.

[258] Ibid., p. 484–488.

of this distributive responsibility to voluntary civil organizations. In this period, even though the demand for state intervention in the economy to solve the polarizations increased, the self-regulating market rendered the state incapable of providing welfare for all citizens. Ayşe Buğra argues that "…the legislation enacted in 1986… to regard poverty as a problem that could be best dealt with through countries traditional ethos of charity involving specific form of state-society cooperation…", the imbrications of Islam and neo-liberalism dropped the responsibility of the state to combat poverty from the political agenda; instead non-governmental organizations and municipalities mobilized charity and voluntarism to combat poverty.[259]

In this conjuncture of the 1990s, child poverty was defined as the problem of social exclusion with reference to international conventions about child rights. In an index of child well-being in the European Union, there are certain principles to conceptualize child well-being and deprivation:

> …*non-discrimination* points to need to capture the life situations and well being of excluded groups of children… *the best interest of the child* implies a child focus in all that is done with and for children and thus strengthens the children's role as citizen in their own right…. *Survival and development* weight to children's civic, political, social, economic and cultural right, highlighting that they are interrelated, universal and indivisible…..[260]

Thus, the well-being of the child depended on the realization of child rights and any form of deprivation of the fulfillment of self-potential implied a violation of child rights. Since children's capabilities are meaningful in relation to the context of development and well-being, family life and living conditions are central domains to

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[259] Ayşe Buğra, "Poverty and Citizenship: An Overview of the Social Policy Environment in Republican Turkey," *International Journal of Middle East Studies* 39 (2007). p. 46-47.

[260] Petra Hoelscher and Dominic Richardson Jonathan Bradshaw, "An Index of Child Well-Being in the European Union," *Social Indicators Research* 80, no. 1 (January 2007). p. 134.

measure their deprivation and these children become socially included if there is fit between their abilities and the living conditions responding to their needs.

Child poverty should be conceptualized in terms of child rights because "any income or expenditure consumption, poverty threshold for children would have to be set at an essentially arbitrary level given the current lack of knowledge about children needs."[261] Thus, the definition of poverty in terms of economic growth and income distribution discards the variation in child needs and the accessibility of services with regard to age, gender and living conditions. The deprivation results in the social exclusion of children, distorts their development and blocks the opportunities of self-realization; in sum, it violates their rights. Within this frame, both the material and the social conditions in which families and children live and, as a complementary to this, their participation in social life, define a standard of living for children. Therefore, "… poverty is a denial of choices and opportunities, a violation of human dignity. It means the lack of basic capacity to participate effectively in society."[262] Undesirable shelter conditions, like overcrowded households or small house size, and the dissatisfaction of basic needs discriminate these poor children, retard their development and obscure the opportunities of mobility.

Apart from the definition of child poverty as a form of social exclusion, child poverty has gained an ethnic character in Istanbul due to forced or voluntary migrations from East and Southeast Anatolia in the last two decades. Bilgin Ayata and Deniz Yükseker pointed out that in the 1990s many villages and hamlets were

[261]Shailen Nandy David Gordon, Christina Pantazis, Simon Pemberton and Peter Townsend, *Studies in Poverty, Inequality and Social Exclusion: Child Poverty in the Developing World* (Unicef: The Policy Press, 2003). p. 4.

[262] Ibid., p. 5.

evacuated and nearly three million people were compelled to leave their homes by the security forces and state-appointed village guards because of PKK terror and insecurity or the accusation of giving logistic support to the PKK.[263] Those internally displaced people were directed to the big cities and left alone without any state help to ease their integration into city life. Thus, state "… displaced the Kurdish issue from its territorial base in the south east onto the plane of urban poverty and destitution in metropolises in western Turkey."[264]

First, the policy of the denial of state responsibility for its occurrence and urban consequences confined those people in poverty. The "sudden", "mass" and "forced" migration deprived families of bifocal links with the village and from solidarity among fellow citizens in the urban context.[265] Permanent unemployment, inaccessible health and education services and poor housing compelled those families to make their children work to contribute to the household income, so the number of children working in the streets also increased, especially in Istanbul.[266] Apart from the forced migrants, the people have displaced due to economic reasons or the feeling of insecurity from the same regions.[267] Even though these different types of migrations and the quantity of the second generation make it difficult to

[263] Bilgin and Deniz Yükseker Ayata, "Belated Awakening: National and International Responses to the Internal Displacement of Kurds in Turkey," *New Perspectives on Turkey* 32 (Spring 2005). p. 15. The concentration of evacuations in 1992 and 1994 coincides with the intensified clashes between the state and PKK.

[264] Ibid., p. 19.

[265] Sema Erder, "Köysüz "Köylü" Göçü," *Görüş Dergisi: Yakın Plan Diyarbakır* 34 (Mart 1998). p. 25.

[266] Ibid., p. 26.

[267] Yükseker and Ayata, p. 21.

ascertain the exact impact of forced migration on urban poverty, it is a crucial population movement to understanding child poverty in today's Turkey.

Secondly, the consideration of internal displacement as a problem of development and the shift in the policy from "denial" to "regulation" instead of formulating projects on its urban consequences have sustained and deteriorated the socio economic inequalities in the urban space. The "Return to Villages and Rehabilitation Project" in 1998, the "Action Plan for the Eastern and South Eastern Regions" in 2000 and the "Sub-Regional Development Plan" in 2001 are the state projects that have been European Union accession criteria since 2003 to resettle these people as a solution to visible urban consequences.[268] The convergent positions among the national and the international agents attribute the problem to regional disparities between the eastern and western parts of Turkey and the state regulates these projects to remedy the damages from terror without accepting self-responsibility. The existing policies on resettlement neglect the demand to enjoying life in the cities especially for children and women and the reluctance to return because of the Kurdish conflict.[269] The profile of the children is given in Chapter Six with reference to the court files. In the files, juvenile delinquents are generally poor working Kurdish boys and so, juvenile delinquency exemplifies the intersection of gender, class and ethnicity. It seems that there is a strong relationship between the persistent poverty in the urban space and the committing of property crimes.

In terms of juvenile delinquency, the family is still considered as a central agent that has led the child into poverty and crime. Thus, it is the institution that is responsible for the social exclusion and the deprivation of these children. For Hans

[268] Ibid., p. 22-23.

[269] Ibid., p. 35-36.

Zulliger, who argued for the extension of psychological analysis to handle property crime cases in the court in 1991 in Germany, the criminal child was the needy one and giving him back to the family reproduced the existing socio economic disadvantages and familial abuse, so state intervention into the lives of juvenile property offenders, instead of returning them to their bad family, was an accurate policy to correct these pathologic children. This call for strengthening state intervention coincided with the perception of the juvenile court as *parens patriae* in the 1960s. It showed that family was still the central agent responsible for the child's violation of property rights in the 1990s. Failure to upbringing the child in a way respectful of property rights made a child who did not know any alternative relationships with others' possessions. Zulliger argued for the use of psychoanalysis and institutional care or foster family practices to correct children who committed property crimes and the juvenile court was the state institution to compel children to obey the decisions.

For Zulliger, family, especially the mother, had the duty to socialize the child to be respectful of the law, property rights and money, "the reified property"[270], at an early age. While children had the tendency to take whatever they liked at early ages, then in the familial socialization process and everyday experiences, they realized the fact that every one possessed something and taking it without the consent of the owner resulted in quarrels and punishment and when his things were stolen, it caused frustration because it was against his self interest.[271] Parental love, care and punishment could teach the child to associate with others and to approach the other's

[270] Hans Zulliger, *Suçlu Çocuklar Ve Çocuk Mahkemeleri*, trans. Kamuran Şipal (Istanbul: Cem Yayınevi, 1991). p. 13. *"kutsanmış mülkiyet"*

[271] Ibid., p. 14-15.

possessions with respect.[272] Yet, the child raised in a bad family milieu could not be "conscientious and honest" and considered property crimes as normal conduct.[273] In addition, these children had strong feelings of hostility toward rich and propertied people.

The child internalized the mainstream norms concerning property relations and associated himself with different role models only if he was removed from the unfavorable family milieu.[274] The basic premise was that each child was changeable and psychoanalysis was the tool to formulate how to change. Juvenile court was a state hand to execute the programs of treatment in accordance with the psycho analytic diagnosis. Psychoanalysis enabled the court to understand why the child committed property crimes. For instance, the psychoanalysis of the dreams of the juvenile property offender showed that the reason for the theft of the box was the unwanted pregnancy of the mother because of the fear from the further deterioration of his poor life conditions.[275]

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[272] Ibid., p. 17. Zulliger defines two factors that make the child honest and conscientius, *"… çalma eylemine karışan çocuğun **cezaya çarptırılması**, ötekisi ise çocuğun **sevme ve özdeşleşme yeteneği** kazanması…"*

[273] Ibid., p. 31-32.

[274] Ibid., p. 22-28. The writer gives the example of a child who is the son of an alcoholic, criminal, poor father and the mother works in the farmhouse of rich family. He lives in an overcrowded house as an unloved and neglected boy. This child stole money to give his family and the juvenile court accomodated him in the farmhouse, prohibited contact with the family and assigned probation officer. The care, affection and education in this family molded his subjectivity and made him an honest and conscious man.

[275] Ibid., p.120-138. See Chapter Four: "Çocuk Hırsızlıklarının Bilinçaltı Kökenleri." In this chapter, Zulliger gives court cases in which pyschoanalysis is used to recognize personal reasons for theft. Otto was an eight years old boy and was enjoying his life in an overcrowded, rent house with seven siblings and an alcoholic, unemployed father. Social inquiry acknowledged that this boy was an unsuccessful student and a jealous boy at home. He stole a box and detected while dumping the box in the toilet. The box symbolically represented the stomach of the mother. In his dreams, he killed bugs in the hole on tree and the bugs were his unborn siblings. He wondered inside of the box, whether the mother was pregnant or not. This curiosity and the fear of the future loss of mother love was the reason

In the mainstream interpretation of child poverty and juvenile delinquency, families were blamed for abusing and neglecting their children in the context of Turkey in the 1990s too. Çiğdem Kağıtçıbaşı conducted a study on the different values attached to the child in Turkish families in forty- one cities and summarized her findings in 1993.[276] In "the utilitarian familial model," the economic value of the child is prioritized over its psychological value and the child is considered as an object that is abused and compelled to contribute to the household income.[277] Economic value is given to boys and this value includes both the working of the child and the duty of elder care, especially among poor families in rural areas.

As the familial income, education and rural-urban movement of the population increases, the number of children decreases in the urban space and a psychological value is substituted for the economic one.[278] The child is considered a dependent member of family and family members solidify and devote socio economic resources to his/her upbringing and education. Contrary to this interpretation, it seems that the influx of the population in Istanbul has confined the immigrant families in poverty and the rural-urban movement has forced these families to prioritize the economic value of their children. However, this may not mean to erase the psychological values of these children in poor families. The explanation of juvenile delinquency or the issue of working children only as two forms of child abuse implicates the attachment of responsibility only to the family.

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for theft. And court sponsored personal treatment of mother and the child was the solution rather than imprisonment.

[276] Çiğdem Kağıtçıbaşı, "Türkiye'de Değişen Aile Ve Çocuğun Değeri," in *Toplumsal Tarihte Çocuk*, ed. Bekir Onur (Istanbul: Tarih Vakfı Yurt Yayınları, 23-24 Nisan 1993). p. 31.

[277] Ibid., p. 32.

[278] Ibid., p. 34.

Halime Ünal, who is a sociologist in Mugla University, reads the existing literature for the link between poverty and criminality in Turkey.[279] She argues that not all poor people from the lower class commit crime, but poor people engaged in criminal activities only in certain social conditions according to the existing studies. There are rare studies on the relationship between poverty and juvenile delinquency that focus on the impact of living conditions in shanty towns and the degenerated parental relations.[280] Thus, Ünal's article is another example of tracing juvenile delinquency to the poor living conditions and family life. For Ünal, "high crime rates are the result of the conflict between the definitions of norms, behavior patterns and internalized behaviors in modern society."[281]

Poverty is concentrated on the certain quarters in the landscape of the city. Families that are deprived of economic and social capital teach their children to commit crime as a mere instrument to acquire wealth and to cope with socio economic inequalities. Disintegrated or ignorant families and frequently changing neighbors, so residential mobility, are obstacles to controlling and socializing children in accordance with mainstream norms and values.[282] In addition, social and economic disadvantages, like inaccessible education and poor living conditions at home, prevent the chance of mobility and confine the juveniles in perpetual unemployment and poverty. These poor living conditions motivate children to

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[279] Halime Ünal, "Yoksul Olmak Suç İşlemek İçin Yeterli Mi?," in *Türkiye'de Yoksulluk Çalışmaları*, ed. Nurgün Oktik (Izmir: Yakın Kitapevi, 2008).

[280] Ibid., p. 349-353.

[281] Halime Ünal, "Neden Çocuklar Ve Gençler Suç İşler? Ayırıcı Birleşimler Ve Sosyal Kontrol Teorileri," *Toplumbilim Dergisi Kent ve Suç Özel Sayısı* 23 (Aralık 2008). p. 51. *"Modern toplumlardaki yüksek suç oranları norm, davranış örüntüleri ve kabul edilen davranışlarla ilgili tanımların çatışmasının bir sonucudur."*

[282] Ünal, *Yoksul Olmak Suç İşlemek İçin Yeterli mi?*, p. 346.

commit crime and to think of it as merely a way to change the living conditions in their subculture.[283] Thus, their internalized patterns of behavior are in contradiction with the legal and common norms of the upper classes.

As seen in these examples, the family living in poverty is considered the central agent liable for juvenile delinquency. However, it is also the ideal place to normalize the deviant child. Thus, the main paradox in the child protection system is that the family is the best place for the protection and correction of the child while it is also the agent that led the child into crime. The new child protection policy is to return the needy child to the family, but to a family that has been empowered by the micro projects of civil organizations. Berna Yazıcı explores the new child protection system, writing that "… the current restructuring of institutional care for children, showing its link with the neoliberal agenda of reducing state social spending and shifting social care from state to familial resources."[284] That transformation of institutional care concerning endangered children is important in comprehending the evolution of the juridical texts and the juvenile justice policy later in this chapter. Family is idealized and substituted for the state as a central agent to correct the juvenile delinquents.

Law No. 2828, the law on the Social Services and Child Protection Institutions was passed on 24 May 1983 under the governance of the Prime Ministry. It replaced Law No. 6972, the law on the Children in the Need of Protection, explored in the second chapter. The Social Service and Child Protection Agency (SHÇEK) was established with the purpose of centralizing all social work services about children. It became "… the only institution in Turkey having legal authority to

[283] Ibid., p. 348-349.

[284] Berna Yazıcı, "Social Work and Social Exclusion in Turkey: An Overview," *New Perspectives on Turkey* 38 (2008). p. 107.

provide institutional care for children, as well as to deliver services related to adoption and foster families."[285]This codification unified the Child Protection Associations, Social Services Directorate, Social Services Institute and Child Protection Society in a new institution.

In current Turkey, as Yazıcı notes, the practice of the state-sponsored social services, SHÇEK, are restrained by being under-funded, under-staffed, with a low number of professionals among the personnel, so the workload on the workers.[286] Equally important constraint on the social work is that "… the 'family' became an important trope in state discourse and a major site for state institutional practices… this familial ideology is manifested in the concept of "protecting and strengthening the integrity of the family."[287] The eradication of institutional care, which has been especially in the agenda of the Justice and Development Party, perpetuates the new child protection system and disperses the provision of child welfare to the families and civil organizations. Since societal problems stem from problems within the family, social services aim at strengthening the family by means of guidance, parental education and financial and social assistance to correct the pathologic child in family. The protection of the family is a way to protect and educate the child instead of institutional care.

Along with this policy of the idealization of family, the government cut off the expenditures on the institutions and SHÇEK introduced the project called "Return to Family" and provided "child rearing assistance" only to families involved

[285] Ibid., p. 116.

[286] Ibid., p. 117-118.

[287] Ibid., p. 120.

in the project in 2005.[288] According to Yazıcı, the policy of leaving the neglected and abused children or women alone in their own milieu without state intervention does not change their lives.[289] The central idea in the new vision is that the family is the best place for protection while simultaneously it is also the main institution responsible for the social exclusion of the child, so the child must return to family, but to an empowered family.

From a similar stance, Ayşecan Kartal explores the change in the role of the state from the provider of welfare to the catalyst in Society Centers since the 1990s. "The new governance is defined as 'Bringing the State Closer to the People.' Becoming close to the people would be achieved through the partnerships with civil organizations and allowing competition for the provision of public services."[290]As explored in this chapter, the state-administered institutional child care in collaboration with the ministries has disenchanted and the networks between civil organizations and the court have been reinforced in parallel with the new strategy of "becoming close to the people …through partnerships with civil organizations." The court has dispersed the duty of the rehabilitation and the provision of social services and correction among the NGOs. Short-term micro projects concerning the juvenile delinquents are perceived as a new effective and cost-saving method. These projects financed and organized by the volunteers and charities exemplify the new partnership

[288] Ibid., p. 123.

[289] Ibid., p. 124. Yazıcı also points out the role of society centers in coping with the process of social exclusion by means of certain programmes targetting children and women even if the number of the clients is limited.

[290]Ayşecan Kartal, "The Turkish Social Work Sector after 1990s through the Accounts of Social Workers" (Master's Thesis, Bogazici University, The Atatürk Institute of Modern Turkish History, 2008). p. 22. She analyzes how social workers perceive the partnership between civil society and the state in the Istanbul Society Centers established in poor neighborhoods to ease the immigrants' integration into city life since 1993 in her thesis.

model between the state and civil society. The state is not present for financing and controlling the projects.

This trend of attaching the protection of the child to the family and society has sustained itself in the liberal conservative position of the Justice and Development Party with regard to poverty. Ayşe Buğra scrutinizes the factors that reveal the immediate problem of social exclusion and the conservative response of government to it. World Bank Reports to improve the social security system, the increasing persistent unemployment after 2001 crisis and the European Union's demand for the preparation of a National Plan about Social Inclusion since 2004 have been the factors that bring to light the problem of poverty and the failure of state institutions to handle it.[291] The Party has preferred to give the responsibility of the provision of services to the family and Islamic mechanisms of solidarity in civil society in order to cope with poverty. This conservative policy has resulted in shrinking social expenditures for the poor, the family and the disabled people in comparison with OECD countries.[292] However, society itself has been given responsibility of coping with the poverty and; so, charity and volunteering in civil society organizations and family have become the central agents in the state policy to manage it.[293]

The aim in this chapter is to trace the penetration of this child protection model rooted in the 1990s into the juvenile justice system. The court prioritizes the legal decision of channeling the child to civil society organizations that have to

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[291] Ayşe Buğra, *Kapitalizm, Yoksulluk Ve Türkiye'de Sosyal Politika* (Istanbul: İletişim Yayınları, 2008). p. 219-221.

[292] Ibid., p. 227. The average social expenditure was 7.6 % in OECD countries while it was 1.6 % for Turkey in 2003.

[293] Ibid., p. 233.

provide social services empowering family and correcting the child in an open milieu. Therefore, this partnership has taken the place accommodating the child in state-sponsored reformatories, protectories and child care homes.

International Conventions and the Appropriation of Judicial Texts

The Declaration of Child Rights was accepted in the United Nations on 20 November 1989 and Turkey signed the international convention on 14 September 1990. The fundamental idea in the convention is that each child is a dependent and vulnerable human being and needs protection. The family has the duty of protection and the physical, cognitive and moral education of the child, and the state is responsible for supporting the family in fulfilling these duties.[294] In the new policy of the prevention of the juvenile delinquency, personal treatment in an open milieu and the re-socialization of criminal children within the family is a cost-saving and effective method in comparison with the institutional care. The measures that require the child to be taken away from the family, institutional care or imprisonment must be considered as the last resort if there is no other means to protect and correct the child within the family according to international conventions.[295] Since the family is both the best place for protection and the central agent in pushing the child into crime, the main principle is to return the child to the family, but to a strengthened

[294] Aktürk, p. 18.

[295] Emrah Kırımsoy Betül Onursal, Sonja Minter, "Panel:Stk'lar Ve Alternatif Tedbirler," in *2. Ulusal Çocuk Ve Suç Sempozyumu: Yargı Öncesi Ve Yargılama Süreci Bildiriler 10-13 Nisan 2002, Avrupa Komisyonu Türkiye Temsilciliği, Adalet Bakanlığı, Unicef, Ankara Üniversitesi, Türkiye Çocukları Yeniden Özgürleştirme Vakfı Ortak Çalışması*, ed. Sevda Uluğtekin Emine Akyüz, Yüksel Baykara Acar, Özlem Cankurtaran Öntaş (Ankara: Kuban Matbaası, 2003). p. 346.

family. State-regulated civil society organizations should implement micro projects to strengthen family cohesion in order to handle juvenile delinquency.

In addition to the idealization of the family as a central institution for the correction and the education of the child, the convention prioritized certain legal principles regarding the prosecution of juvenile delinquents and the practice of probation in an open milieu. These principles guarantee the child's best interest in the judgment and the rights of self-expression and legal aid.[296] Preventive and protective measures serve the best interests of the child and aim at the reintegration of the child into society through the partnership between family, the state, the municipalities and civil society organizations.[297] Also, the child is perceived as an adult in the court in the sense that the child is capable of expressing and defending himself and can benefit from advocacy. Moreover, the child is re-conceptualized as an individual less than eighteen years of age, so the convention presupposes an increase in the legal age for criminal culpability and prosecution in juvenile courts in the member states.[298]

This international convention required the modification of juridical texts and the minimum standards of judgment in the juvenile courts in Turkey. After the stipulation of the international convention as domestic legislation on 27 February

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[296] Aktürk, p. 24-25.

[297] Emine Akyüz, "Uluslararası Standartlara Göre Çocuk Yargılanması," in *2. Ulusal Çocuk Ve Suç Sempozyumu: Yargı Öncesi Ve Yargılama Süreci Bildiriler 10-13 Nisan 2002, Avrupa Komisyonu Türkiye Temsilciliği, Adalet Bakanlığı, Unicef, Ankara Üniversitesi, Türkiye Çocukları Yeniden Özgürleştirme Vakfı Ortak Çalışması*, ed. Sevda Uluğtekin Emine Akyüz, Yüksel Baykara Acar, Özlem Cankurtaran Öntaş (Ankara: Kuban Matbaası, 2003). p. 127. In the United Nations Minimum Standarts of the Administration of Juvenile Justice System (BEIJING Rules) stipulated in 1985, the collaboration between these agents in terms of the provision of the social services are the rules to improve the justice system. BEIJING rules and United Nations Regulatory Rules on the Prevention of Juvenile Delinquency (RİYAD) are not stipulated rules in Turkey, but these are international conventions that are advices to practice in Turkey.

[298] Aktürk, p. 23.

1995, the Prime Ministry assigned SHÇEK as the coordinator to realize the introduction of child rights, the adaptation of the convention to the justice system and the civil society organizations, and the practice of these rights. The UNICEF, the Ministry of Justice, the Hacettepe University Social Work Department and the Ankara University Pedagogy Faculty established the National Council of Child Rights under the directorate of SHÇEK in order to reformulate legislations in 1995.[299]

Protectories and Child Care Homes under the regulation of SHÇEK were the legal state-administered institutional care centers for the rehabilitation of the children in the Law No. 2253, the law on the Establishment, Duties and Procedures of the Juvenile Court. Yet, those institutional care centers were few and understaffed. The workload in those institutions and the reluctance to keep juvenile delinquents and the needy children together in the same environment made returning the child to the family the most widespread protective measure in the juvenile courts.[300] Betül Onursal, who is the administer of the commission of the child rights in the Istanbul Body of Lawyers, and Emrah Kırımsoy and Sonja Minter who are social workers in the Youth Re-Autonomy Foundation of Turkey (*Türkiye Çocuklara Yeniden Özgürlük Vakfı*), criticize the inadequacy of returning the child to the family and underline the necessity of coordination between civil society organizations and the juvenile court to achieve the correction of the child in the empowered family in the below passage.

> … the families' unfavorable social, cultural and economic conditions and the parental relations are the leading factors abetting the child into crime... Thus, returning the child to the family that caused the appearance of the child in the court without any project to strengthen

[299] Ibid., p. 87.

[300] Onursal, Kırımsoy and Minter, p. 350, 351.

> the family cannot be evaluated as a measure. In order to be a measure, social services supporting family, guardian or relative under the regulation of SHÇEK are very significant.[301]

In the new policy, the child should be corrected in his own family, but the success of this measure requires that the family should be protected and strengthened by civil society organizations. In other words, civil society is burdened with the duty of protecting the family and the child with micro and short-term projects in partnership with the Ministry of Justice and SHÇEK. In the new model, civil society organizations substitute for the state in the provision of services.

As a complementary to the critique of returning the child to family, Law No. 2253 was criticized and the draft on the changes in the law in accordance with the international conventions was prepared in 1992. When the practice of Law No. 2253 had been explored for ten year period, certain deficiencies in the working of the juvenile courts were found and the appropriation of the domestic law to the international conventions was necessary to cope with those deficiencies that prevented the realization of the philosophy of the court: diagnose the reason for criminality, remedy it and reintegrate the child into society. Yaşar Çavdar, a member of the Ankara Friends Solidarity Foundation, presents the deficiencies and discusses reasons for the necessity of the consolidation of new partnership model. These are the age limit of childhood, the workload on the court, the slowness of the process of prosecution, the inability of the courts to prepare social inquiry reports and the

[301] Ibid., p. 350-351. *" …çocuğu suça yönelten faktörlerin başında ailenin olumsuz sosyal, kültürel, ekonomik durumu ve aile içi ilişkiler gelmektedir. Bu nedenle, çocuğun mahkemeye gelmesine neden olan aileye iyileştirici hiçbir çalışma yapılmadan teslimi bir tedbir olarak değerlendirilemez. Dolayısı ile, fıkradaki ifadenin tedbir olabilmesi için, SHÇEK tarafından veli, vasi veya akraba ile yapılacak sosyal hizmet çalışmaları büyük önem taşımaktadır."*

absence of institutions and organizations to execute personal treatment in an open milieu, as detailed below. [302]

Primarily, the age limit for prosecution in the domestic law was fifteen and this was incompatible with the legal age of childhood, eighteen. Secondly, the state-sponsored centers for the execution of legal sentences regarding juvenile delinquents, like child prisons, reformatories, protectories, child care homes and special treatment houses were not established in an enough number.[303] This fact obscured the implementation of the paternal institutional care in contradiction with the philosophy of *parens patriae*. The unbearable work load on a few juvenile courts retarded the legal proceedings. The lack of social professionals in the courts and the dependency of the preparation of social inquiry reports on the judges' initiative were other obstacles to diagnose the cause of the conduct and execute personal treatment programs in the best interest of the child as opposed to the leading principle in the international conventions.[304] For instance, only 2, 2 % of the children in the One of the juvenile courts in Istanbul had social inquiry reports between 1987 and 1993.[305]

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[302] Yaşar Çavdar, "Yasalarla Sorunu Olan Çocuklarla Gönüllü Çalışmalar," *Kebikeç: İnsan Bilimleri için Kaynak Araştırma Dergisi* 19 (2005). p. 305-307.

[303] Esin Konanç, "Çocuk Mahkemeleri Yasa Tasarısının Değerlendirilmesi," in *Facultatis Decima Anniversaria: M.Ü. 10. Yılı Adliye Ve Çocuk Suçluluğu Sempozyumu, 26-28 Ekim 1992* (Istanbul: Marmara Üniversitesi Hukuk Fakültesi Yayınları, 1993). p. 300.

[304] Umran Sölez Tan, "2253 Sayılı Çocuk Mahkemeleri Kuruluşu, Görev Ve Yargılama Usulleri Hakkındaki Kanunun Bazı Maddelerinin Değiştirilmesine Dair Kanun Tasarısı Ve Uygulama," in *Facultatis Decima Anniversaria: M.Ü. 10. Yılı Adliye Ve Çocuk Suçluluğu Sempozyumu, 26-28 Ekim 1992* (Istanbul: Marmara Üniversitesi Hukuk Fakültesi Yayınları, 1993). p. 305-306. Umran Sölez Tan who worked in the One of the juvenile courts in Istanbul as the associate of a judge for two years complained about the judgment of the child for criminal conduct without giving enough importance to social inquiry reports. In other words, the child was still considered a criminal, not a child led into crime as opposed to international conventions.

[305] Verda İrtiş, "Birincil Ve İkincil Suçlandırmalar Üzerinden Türkiye'de Çocuk Ve Genç Ceza Adalet Sistemine Bir Bakış," *Toplumbilim Dergisi Kent ve Suç Özel Sayısı* 23 (Aralık 2008). p. 67.

Those reports were considered to be luxury and even if they were prepared, the judges did not read them because of the limits on time.

The draft adapted the domestic law to international conventions in 1992. The criminal culpability age was increased to twelve in parallel the with Beijing rules. The upper age limit for prosecution in the court was raised from fifteen to eighteen, so childhood was re-conceptualized with reference to the United Nations Child Rights Convention.[306] The preparation of social inquiry reports was made obligatory in accordance with the same rules. The juvenile delinquent also was given the right of defense by an advocate without the consent of the court or the family. This right was also in keeping with the convention.[307] Even though the child could not afford to pay for a lawyer, the Body of Lawyers assigned a lawyer to the child obligatorily.

Gülay Öter and Nejat Akalın's research on convicted children in 1992 found that defense and self-expression rights were violated during interrogations and court hearings. Twenty-four children out of thirty described police torture in detention and thirteen mentioned the police threats to confirm the same statement in the court.[308] In addition, twenty-eight children had not been given legal aid and two children had been defended by an advocate only in their first appearance in the juvenile court.[309]

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[306] Konanç, p. 301.

[307] Betül Onursal, "Çocuk Suçluluğu Konusunda Baroların Ve Gönüllü Kuruluşların Rolü," in *Facultatis Decima Anniversaria: M.Ü. 10. Yılı Adliye Ve Çocuk Suçluluğu Sempozyumu, 26-28 Ekim 1992* (Istanbul: Marmara Üniversitesi Hukuk Fakültesi Yayınları, 1993). p. 107.

[308] Gülay and Nejat Akalın Öter, "Paşakapısı Cezaevindeki Tutuklu Çocukların Psiko-Sosyal, Sosyo-Kültürel, Ekonomik Ve Kriminolojik Özellikleri," in *Facultatis Decima Anniversaria: M.Ü. 10. Yılı Adliye Ve Çocuk Suçluluğu Sempozyumu, 26-28 Ekim 1992* (Istanbul: Marmara Üniversitesi Hukuk Fakültesi Yayınları, 1993). p. 122.

[309] Ibid.; See also Özlem Cankurtaran Öntaş, "Çocuk Manzaraları," *Kebikeç: İnsan Bilimleri için Kaynak Araştırma Dergisi* 19 (2005). p. 297-301. Öntaş who is an academic in the Social Work Department in Hacettepe University, points out how the police violate child rights while taking their statements. The police do not explain their rights and do not inform the advocates in 2004.

Yet, the draft rendered legal aid obligatory to cope with the violation of the right to self-defense and legal aid.

This new draft also restructured the relationship between social work and the juvenile court in the sense that civil society organizations became the new partner of the juvenile court in executing the measures in an open environment to strengthen the family and the child in contradiction with the previous state administered institutional care services. This partnership was in keeping with Beijing rules that presupposed the cooperation between family and civil society organizations to handle juvenile delinquency.[310]

Beyond these adaptations, preventive and protective social services were reorganized to empower the family and the child in the domestic law in accordance with the basic premise in the international conventions. In the domestic legislation, SHÇEK protected needy children under thirteen years old in its Child Care Homes and others stayed in the Protectories. However, the capacity and the quality of the care in those institutions were problematical in the 1990s. Being understaffed, with unfavorable physical conditions the strict rules led to the perception of these places as "barrack-like institutions."[311] Uluğtekin wrote that "…the child is accommodated in the Child Care Homes or the Protectories after losing familial ties without

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[310] Onursal, *Çocuk Suçluluğu Konusunda Baroların ve Gönüllü Kuruluşların Rolü*, p. 107.; See also Deniz Kucur, "Gözetim Örneğinde Çocuk Adaletinde Toplumsallık İlkesi Ve Türkiye'de Durumu," *Kebikeç: İnsan Bilimleri için Kaynak Araştırma Dergisi* 19 (2005). p. 287. Deniz Kucur, the deputy chief of the Ankara Friends Solidarity Foundation, points out the reorganization of the juvenile justice system on the principle of "sociality." The stipulation of International Child Rights Convention prioritized probation and dispersed the responsibility of normalizing juvenile delinquents into society and civil society organizations.

[311] Sevda Uluğtekin, "Çocuk Mahkemeleri Ve Sosyal Hizmet Kuruluşları," in *Facultatis Decima Anniversaria: M.Ü. 10. Yılı Adliye Ve Çocuk Suçluluğu Sempozyumu, 26-28 Ekim 1992* (Istanbul: Marmara Üniversitesi Hukuk Fakültesi Yayınları, 1993). p. 319. "kışla tipi kurum"

strengthening family. This is considered as enough for "'the protection' of the child."[312] The protection of the child within the family was recommended as a new method for the correction of the child. In the new draft, the state conveyed the role of correction to voluntary and formal associations. Civil organizations under the coordination of SHÇEK became responsible for developing certain projects to empower the child and the family and to execute the probation with the purpose of reintegrating the child into society. [313]

The Child Protection Law stipulated in 2005 was another juridical text to comprehend the new juvenile justice policy. In the Child Protection Law, even though the lower age limit for legal culpability was increased to twelve, the culpable between the ages of twelve and fifteen and all children between sixteen and eighteen were considered to be liable for their conduct, and so alternative legal decisions targeting their correction in an open milieu could not be applied for them. This differentiates these culpable children licensed to punishment from the needy ones. "If the child commits crime, understands the meaning and the results of the conduct, has the ability to control him, you should punish the child, the measures are for the endangered children."[314] In this sense, the new legislation is a continuation of the previous ones because only the children who do not have criminal culpability are

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[312] Ibid., p. 320. *" … çocuk ailesiyle bağları kopma noktasına geldikten sonra ele alınmakta ve ailesinin desteklenmesine çalışılmaksızın, çocuğun bir yuva ve ya yetiştirme yurdunda "korunması" yeterli görülmektedir."*

[313] Ibid., p. 321.

[314] Aşkın Topuzoğlu, "Türkiye Sistemi," in *Çocuk Ve Genç Adalet Sistemi: Türk Mevzuatının Ve Özellikle Çocukları Koruma Kanunun Değerlendirilmesi Sempozyumu, 4-5 Haziran 2005*, ed. Av. Betül Onursal ve Av. Selma Özsoy (Istanbul: Istanbul Barosu Yayınları, 2006). p. 147. " *eğer çocuk suç işlemişse, anlam ve sonuçlarını kavrayabiliyorsa, yönlendirme yeteneği de varsa ceza vereceksin, o tedbirler korunmaya muhtaç çocuklarla ilgilidir.";* See also, İrtiş, p.66. Verda İrtiş also evaluates the new legislation as the perception of juveniles, especially the ages of fifteen and eighteen, as culpable miniature adults and in this sense it proves the failure of the child-adult distinction in the justice system.

considered capable of being corrected or rehabilitated by means of the legal rehabilitative measures.

This legislation defines juvenile delinquents as children abetted into the crime. Both needy children and these children led into the crime fall in the jurisdiction of the juvenile court.[315] The measures are preferable to imprisonment, institutional care and the measures targeting the protection and the correction of the child in family is defined as a new legal strategy in the best interest of the child. The responsibility of state-sponsored institutions in the realm of the provision of child welfare is attached to society, family and civil society organizations.[316] In addition, the postponement of the last decision is the new sentence in this law to deploy the partnership rooted in the 1990s in accordance with the international conventions.[317] This legal decision is parallel to the policy of the correction of the deviant child in his own milieu, as will be explained later. However, it is also necessary to explore the practical problems to execute this new partnership.

Examples of the New Partnership between the Juvenile Courts and Civil Society Organizations

The Prevention of Child Abuse and Neglect Foundation (*Çocuk İstismarı ve İhmalini Önleme Derneği*) established a child center and conducted the temporal micro-projects between 1998 and 2000 in collaboration with two juvenile courts in

[315] Niyazi Öktem, "Çocuk Ve Genç Adalet Sistemine Genel Bakış," in *Çocuk Ve Genç Adalet Sistemi: Türk Mevzuatının Ve Özellikle Çocukları Koruma Kanunun Değerlendirilmesi Sempozyumu, 4-5 Haziran 2005*, ed. Av. Betül Onursal and Av.Selma Özsoy (Istanbul: Istanbul Barosu Yayınları, 2006). p. 32.

[316] Ibid., p. 22.

[317] Ibid., p. 33-34.

Ankara. The court made the voluntary workers in this association probation officers concerned with the correction of thirty juvenile property offenders.[318] The state institution functioned as a regulator. The court only channeled the children to the civil society association and did not follow the effects of the measures on the offenders. Both the court and the Ministry of Justice refrained from financing the projects or pursuing the sustainability of the projects. The civil society association developed certain projects at the child center such as mother-child education, free sport activities and summer school, financial assistance, alcohol treatment for fathers, parental psycho-social guidance, and functional family therapy. However, the lack of money and the limited number of the volunteers obscured the sustainability of the project.[319]

A similar civil association in Istanbul is the Youth Re-Autonomy Foundation of Turkey (*Türkiye Çocuklara Yeniden Özgürlük Vakfı*). The association established a Youth Education Center in Kadıköy in 1997 and has worked for the rehabilitation of the juvenile delinquents channeled from the One of the juvenile courts in Istanbul. Beyond the facilities mentioned above, vocational training, Sunday leisure time facilities and playing are the other micro-projects in this association.[320] Since the One of the juvenile courts in Istanbul was responsible for the prosecution of all children in Istanbul until 2005, few social workers prepared social inquiry reports for each child due to the workload and it made difficult to make household visits or to observe the other places to which the child was connected, such as school or work place. However, the establishment of the new courts has deteriorated the problem of under-

[318] Onursal, Kırımsoy and Minter, p. 358-359.

[319] Ibid., p. 360.

[320] Ibid., p. 362-363.

staffing and the number of juvenile delinquents has been increasing, so the reports are prepared in one-time meeting with each child in the court.[321] Thus, the measure may not be a true treatment program for the child and the civil society organization has the duty of inquiry into the living conditions of the criminal children.

The voluntary workers in the association come across the same problems as the official social workers in the juvenile court. Even though the court decides on the correction of the child in an open milieu, the One of the juvenile courts in Istanbul does not know the projects and does not pursue the child's obedience to it. Thus, the participation in the projects depends on the initiative of the child and the family and the lack of power to compel the involvement in the projects in the civil associations is presented as the major obstacle to the working of civil associations in collaboration with the juvenile courts.[322]

In addition, the workload on child care homes and protectories to manage the juvenile delinquents has resulted in SHÇEK's legal application for not giving measures in the One of the juvenile courts in Istanbul.[323] The state-sponsored child care institutions were reluctant to accept the juvenile offenders because of the fear they would teach criminality to other children, the difficulty of controlling and their frequent running away from institutional care; thus, it was asked that those unwanted children was to be removed to civil society organizations for correction.[324] In sum, residual and preventive social work in civil organizations must be substituted for the

[321] Topuzoğlu, p. 151.

[322] Onursal, Kırımsoy and Minter, p. 364-365.

[323] Topuzoğlu, p. 148.

[324] Ibid., p. 152.

protective institutional social work in the arena of the rehabilitation and the correction of juvenile delinquents.

In accordance with the increasing role of civil society organizations, the special education program concerning the legal surveillance of the child in his own milieu, GÖZDE *(Gözetimli Denetim Eğitim Programı)*, was organized by the Ankara University Continuous Education Center and the Ministry of Justice in 2005. The program was financed by the Delegation of the European Commission and targeted the education of the workers in the Youth Re-Autonomy Foundation of Turkey and the Ankara Friends Solidarity Association *(Ankara Dostlar Dayanışma Derneği)* on probation.[325]

In this education program, the workers were inoculated with "empowerment approach" that explains juvenile delinquency by the links between micro and mezzo factors. The most crucial micro system is the living conditions of the family because family cohesion and warm-hearted familial interactions decrease criminal intent in the child. When the child is protected in the family with care and love, the child does not perceive himself as unwanted or alienated and does not participate into the criminal peer groups to get away from the uneasy home life. In addition, familial failures in the provision of the basic needs for the child obscure the personal development and mobility chance for the child and direct the child to alternative coping mechanisms, like committing property crime.[326]

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[325] Sevda Uluğtekin, *Gözetim Mekanizması Destek Hizmetleri: Ankara İli Pilot Projesi, Gözetim Görevlileri Eğitim Programı*, ed. Deniz Kucur Sevda Uluğtekin, Emrah Kırımsoy, Yaşar Çavdar and Necmettin Yemiş (Ankara: Dostlar Dayanışma Derneği Ankara Şubesi Yayınları, 2005). p. 8.

[326] Özlem Cankurtaran and Yüksel Baykara Acar Öntaş, "Türkiye'de Çocuk Suçluluğu Olgusu," in *Gözetim Mekanizması Destek Hizmetleri: Ankara İli Pilot Projesi, Gözetim Görevlileri Eğitim Programı*, ed. Deniz Kucur Sevda Uluğtekin, Emrah Kırımsoy, Yaşar Çavdar and Necmettin Yemiş (Ankara: Dostlar Dayanışma Derneği Ankara Şubesi Yayınları, 2005). p. 94-96. ; Özlem Cankurtaran and Yüksel Baykara Acar Öntaş,

Mezzo factors are leisure time activities, school, work life and peer relations. These factors are strongly related to unfavorable familial relations in an empowerment approach. As already explained, lack of care and love in the family push the child to peer groups in the street in leisure time and the child associates himself with the criminal groups. Familial problems also lead the child into failure at school and the child is compelled to quit school and work to contribute to the household income. Working on the street beyond parental control facilitates involvement in criminal gangs.[327]

The solution in the empowerment approach is to strengthen the family and protect the child within the family because institutional care stigmatizes the child and the family is the best place for protection. However, the family remains the leading institution abetted the child into crime.[328] İl writes that "The aim is to strengthen and support family members about unbalances in family life, provide necessary professional assistance and aid in order to put the resources in circulation and use it."[329] More frequently, the probation officers should plan personal treatment programs with the purpose of empowering the child and the family. Micro projects like family consultation and mother-child education are professional social services

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"Yoksulluk Ve Yoksunluğun Bir Ürünü: Çocuk Suçluluğu," in *Yoksulluk Sempozyumu: 31 Mayıs-1 Haziran 2003* (Istanbul: Deniz Feneri Yayınları, 2003). p. 300-301.

[327] Cankurtaran Öntaş and Acar, *Türkiye'de Çocuk Suçluluğu Olgusu*, p. 97-101. ; Cankurtaran Öntaş and Acar, *Yoksulluk ve Yoksunluğun Bir Ürünü: Çocuk Suçluluğu*, p. 306-307.

[328] Sunay İl, "Sorunun Analizi Ve Müdahale Süreci: Aileyle Sosyal Çalışma," in *Gözetim Mekanizması Destek Hizmetleri: Ankara İli Pilot Projesi, Gözetim Görevlileri Eğitim Programı*, ed. Deniz Kucur Sevda Uluğtekin, Emrah Kırımsoy, Yaşar Çavdar and Necmettin Yemiş (Ankara: Dostlar Dayanışma Derneği Ankara Şubesi Yayınları, 2005). p. 184.

[329] Ibid., p. 189. *" Amaç, aile yaşamında bozulan dengelerin yeniden oluşturulması konusunda üyelerin güçlendirilmesi ve desteklenmesi, bu doğrultuda gereksinim duyulan kaynakların harekete geçirilmesi ve kullanılması için gerekli profesyonel destek ve yardımın verilmesidir."*

oriented to remedy unbalances in the family life, such as too loose or strict discipline of the child, parental neglect and violence.

In this sense, the new partnership between the juvenile court and civil society organizations gains a central place in the juvenile justice system to correct the child in the family milieu.[330] Especially micro projects like group works, education seminars, the scrutiny of inter-familial interactions, role models, familial norms and living conditions, self-help groups with the children and the families are some services to empower the family and to cope with the juvenile delinquency. These create dialogue between the criminal children and their families, to describe the factors that led the child into crime and to formulate the empowerment programs in order to eradicate these factors.[331] However, the efficiency of these services depends on the desire for change in the family and the child and trust in the probation officer.[332]

The Judges' Perceptions of the Legal Rules and Juvenile Delinquency

[330] Ibid, p. 104.

[331] Ibid., p. 189-191.

[332] Ibid., p. 194. ; See also Emrah Kırımsoy, "Suç, Çocuk Ve Damgalanma Kısa Bir Vaka Sunumu," *Kebikeç: İnsan Bilimleri için Kaynak Araştırma Dergisi* 19 (2005). p. 292-295. Emrah Kırımsoy who is a social worker in the Youth Re-Autonomy Foundation of Turkey stresses the same problem. The juvenile property offender was channeled to this association and personal and familial empowerment programs were prepared after social inquiry. The child participated in micro projects, like leisure time activities, an occupational course of tiling, psychological counseling and the treatment of drug addiction in a one-year period. Yet, his ignorant family was reluctant to put into practice what the social workers adviced. After the micro projects, the stigmatized child did not find a job or family support to reintegrate into society and returned to street life. The inability to pursue and supervise the child after micro projects and familial and societal reluctance to help the child predisposes civil society organizations into failure.

So far, the evolution of the new juvenile justice policy has been discussed with reference to legal texts and the debates in the literature. On the one hand, as explained in Chapter Three, the juvenile court and all other agents in the juvenile justice system were restructured on the basis of the principle of efficiency as services targeting the security of the victims. Security services concerned with the property crimes have privatized and the state has state shifted the duty of the provision of security to private firms. The convictability of the juvenile offenders has increased as a result of those changes. On the other hand, the adjustment of the domestic law to the international conventions has strengthened a new model of partnership between the court, family and civil society organizations to achieve personal treatment. The rest of the chapter presents the perceptions of the law and juvenile delinquency by the judges. Now, how the judges, who are the most significant actors among the legal professionals in the juvenile court, evaluate "this new doubled-sided juvenile justice policy" is examined. Then, the administration of the legal rules in the court room and heterogeneous interactions between the judge, the child and the litigant will be explored in the following chapter.

These authoritarian figures apply the Penal Code at trial. However, this does not mean that judges' perspectives on the functions of the law are homogeneous. The different meanings they attributed to juvenile delinquency and legal rules reflect their rationalities concerning juvenile delinquents and give clues to understand their orchestration of the cases. Interviews with three judges are referents to interpret their visions on law and justice.

A Social-Work Oriented Judge and Functionalist Approach to the Law

As a judge, I prefer rehabilitation to punishment because I believe that imprisonment is not a solution to put an end to juvenile delinquency. Why was a separate court established for juvenile delinquents? Because there are certain socio- economic reasons underlying it, like malfunctioning family, poverty and quitting school. And if these causes are eradicated, there will be a just society without crimes. The court is an institution working for the treatment of these causes and the reintegration of the child into society. By means of the social inquiry reports, I understand the life conditions of the children and give the appropriate measure. However, the state cannot do everything and society must share the burden. Civil society organizations and volunteers have taken responsibility for the correction of the child in partnership with the court in recent years.

The probation of the child in his own environment has become preferable to protectories and child care homes because family is the best place for the protection of the child. Civil organizations strengthen the family by certain the projects. Otherwise, the measure does not have any impact on the life of the child. And I support this policy. There are various reasons for my preference. First, social exclusion intensifies for the convicted children. Nobody will employ them. The record of previous convictions negatively affects not only the employers, but all people and institutions. Since they are stigmatized, even though they want to change their lives, they are perceived as an evil and are subjected to discrimination at school, in the army and marriage. However, the postponement of the last sentence that implies the disrecord of the crime in the convictions in the case of obedience to the measure and it gives the child an opportunity to normalize and save his life, like the treatment of an illness.

Secondly, in prison, living together with dangerous and experienced criminals results in learning new techniques of theft or the child becomes a member of certain criminal groups. Thus, punishment does not decrease property crimes, but makes the child more professional. Detention also increases the child's hate of society and life. And in the last resort, the juvenile delinquent rationalizes the theft by the fact that society excludes him and does not help him, so there is no alternative for him apart from stealing or mugging.[333]

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[333] The judge working in the one of the juvenile courts in Istanbul, interview by the author, note taking, Istanbul, Turkey, 15 May 2008. "*Bir hâkim olarak ben ıslahı cezaya tercih ederim çünkü hapsin çocuk suçluluğuna son vermek için care olduğuna inanmıyorum. Neden suçlu çocuklar için ayrı bir mahkeme kuruldu? Çünkü çocuk suçluluğunun altında yatan, görevini yerine getirmeyen aile, fakirlik, okul bırakma gibi sosyo-ekonomik nedenler var. Eğer bu sebepler ortadan kaldırılırsa, suçun olmadığı adil bir toplum olur. Mahkeme bu sebeplerin telafisi ve çocuğun yeniden topluma kazandırılması için çalışan bir kurumdur. Sosyal inceleme raporlarıyla çocukların yaşam koşullarını anlayıp, ona uygun tedbiri veriyorum. Ama devlet herşeyi yapamaz, toplumda yükü paylaşmalı. Sivil toplum örgütleri ve gönüllü insanlar mahkemeyle işbirliği içinde çocuğun düzeltilmesi için son yıllarda sorumluluk alıyorlar. Çocuğun kendi çevresi içinde gözetilmesi Islahevleri ve Çocuk Bakım Evlerine tercih edilir oldu. Çünkü aile çocuğun korunması için en iyi yer. Ama bu örgütler aileyi belirli projelerle güçlendiriyorlar, yoksa tedbirin çocuğun hayatı üstünde hiçbir etkisi*

The judge criticizes the negative impact of imprisonment on the juvenile delinquent and argues for the replacement of rehabilitation with punishment in practice. How "the social-work oriented judge" rationalizes this vision is analogous to Foucault's critique of the prison at the beginning of nineteenth century in his article on illegalities and delinquency. Those critiques led to the reorganization of prison as a place of discipline and were confirmed in the judge's accounts too. First, recidivism implies lifelong continuation of surveillance. According to Foucault, "They leave prison with a passport that they must show everywhere they go and which mentions the sentence that they may serve."[334] The juvenile delinquent is stigmatized because of the record of the previous convictions and social exclusion is felt more severely in all spheres of life. As an ex-convict, the offender generally cannot find employment or get married.

In addition, Foucault continues," the prison makes possible, even encourages, the organization of a milieu of delinquents, loyal to one another, hierarchized, ready to aid and abet any future criminal act."[335] Prisons as "barracks of crime" provide an

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omaz. Ben de bunu destekliyorum. Bu tercihimin birçok sebebi var. Öncelikle, hapsedilen çocuk için sosyal dışlanmışlık artar. Kimse onlara iş vermez. Adli sicil kaydı sadece işverenleri değil, tüm insanları ve kurumları olumsuz yönde etkiler. Bunlar damgalandıkları için, hayatlarını değiştirmek isteseler bile okulda, orduda, evlilikte kötü olarak algılanırlar ve ayrımcılığa maruz kalırlar. Fakat tedbire uyulması koşuluyla suçun adli sicile kayıt edilmemesi anlamına gelen hükmün açıklanmasının ertelenmesi kararı, çocuğa normalleşmesi ve hayatını kurtarması için bir şans verir. Tıpkı, bir hastalığın iyileşmesi gibi. İkincisi, hapishanede tehlikeli ve deneyimli suçlularla birarada yaşamak yeni hırsızlık teknikleri öğrenmekle sonuçlanır veya çocuk belirli suç gruplarına üye olur. Bu yüzden ceza mala karşı işlenen suçları azaltmaz, ama çocuğu daha profesyonel yapar. Ceza çocuğun topluma ve hayata karşı nefretini arttırır. Ve son kertede, çocuk hırsızlığı toplumun onu dışlaması, ona yardım etmemesi ile gerekçelendirir. Bu durumda çocuğun hırsızlık ve ya kapkaç yapmaktan başka alternatifi yoktur."

[334] Michel Foucault, "Illegalities and Delinquency," in *The Foucault Reader: An Introduction to Foucault Thought*, ed. Paul Rabinow (London: Penguin Books, 1991). p. 229.

[335] Ibid., p. 228.

appropriate social milieu for the socialization of the delinquent by learning, as Foucault writes, "… from his cleverer seniors how to escape the rigors of law; the first lesson will be derived from the strict logic of thieves who regard society as an enemy… Henceforth he has broken with everything that has bound him to society."[336] Similarly, the judge complained about the risk of differential association with more professional criminals and of learning new techniques to steal in this socialization process in the prison. Foucault also argues that "The feeling of injustice that a prisoner has is one of the causes make his character untamable. When he sees himself exposed in this way to suffering, which the law has neither ordered nor envisaged, he sees every agent of authority as an executioner; he no longer thinks that he was quilt: he accuses justice itself."[337]

"The social-work oriented judge" confirms this evaluation of Foucault and points out the intensification of the feeling of injustice, desperation and disgust from everyone, everything that ignores the existence and needs of the juvenile delinquent. In sum, prison is not a corrective institution and it is not an efficient method to handle juvenile delinquency according to the judge's accounts.

The judge bases the legal decisions on the knowledge obtained from the social inquiry reports regarding the living conditions of juvenile delinquents. Crime is pathological and temporal conduct, so it is possible to mold the subjectivity of the child before eighteen years old. Thus, the judge supports the legal cooperation between the legal apparatus and the social work with the purpose of diagnosing the causes and formulating the measures to cope with these causes in the juvenile court.

[336] Ibid.

[337] Ibid.

Although Foucault explains "the carceral system"[338] with reference to the prison, a similar corrective mentality was expressed by the judge on the function of law. Foucault makes a distinction between "the legal punishment bears on act" and "the punitive techniques on a life."[339] The collection of knowledge on the delinquent life to identify certain techniques to achieve personal treatment, instead of giving a sentence only on the offense, is the duty of the corrective apparatus in the prison.[340] In terms of the division of labor between the social work department and the judge, social inquiry reports provide the knowledge of the circumstances in the delinquent's life similar to the corrective apparatus in prison. Foucault argues that "The introduction of "biographical" is important in the history of penalty. It establishes the "criminal" before the conduct and even outside of it. And for this reason, a psychological causality, duplicating the juridical attribution of responsibility, confuses its effects."[341] On one hand, deciding on the causes of the conduct in the report reduces the child's responsibility for the event. The child is led into crime. On

[338] Ibid., p. 230. The solution for the error of imprisonment in the nineteenth century was the establishment of "the carceral system" that prioritized "the penitentiary techniques" and that combined "the disciplinary element of prison, …the production of an objectivity, a technique, a penitentiary "rationality", … the element of inverted efficiency … the repetition of reform." And the prisons were reorganized as the places of correction, where the criminals were the objects of discipline in the carceral system. In this system, "The prison is the place where the power to punish, which no longer dares to manifest itself openly, silently organizes a field of objectivity in which punishment will be able to function openly as treatment and the sentence be inscribed among the discourses of knowledge." Ibid., p. 224.

[339] Michel Foucault, "Complete and Austere Institutions," in *The Foucault Reader: An Introduction to Foucault Thought*, ed. Paul Rabinow (London: Penguin Books, 1991). p. 219.

[340] Ibid., p. 220. Instead of practicing a rigid legalism that defines fixed punishments, the objective knowledge constitutes the delinquent and "that bears not on relation between author and delinquent, but on the criminal's affinity with his crime." Thus, the deviant child is not responsible for the practice; his character shaped in a poor family is problematic and needs to be corrected. This means the objectification of the child by both scientific knowledge and the law.

[341] Ibid.

the other hand, these circumstances, before committing property crime, made the child a criminal beyond his own control. Thus, the children are criminal not only for one act, but for living in life circumstances that make the child an offender.

The postponement of the last sentence is the new sentence stipulated in the Child Protection Law to force the child to change behaviors and life conditions that are prescribed in the social inquiry reports as the causes of the property crimes. The preconditions for the postponement of the clause are the opinion of the judge on the child and the litigant's consent and not to have a previous record of convictions. In this system, the sentence should be less than two years. [342] If the prosecution results in the postponement of the last decision, the child is supervised for at most five years and has to obey the measure. This means the controlled freedom for the child. The child can work as an apprentice under the surveillance in return for wage and going to certain places and meeting with family can be prohibited. In other words, the child has to follow the rules.[343] If the child disobeys the measures during the period of supervision, the last decision does not become the abatement. Instead, the sentence is given.[344]

The judge's response to the question of the function of law is that it is complementary with the social work orientation.

> The function of legal rules is not to punish, but to achieve the social inclusion of the offender. The rules are independent from private interests and reflect the conscience collective. It guarantees the

[342] T.C. Resmi Gazete, *Türk Ceza Kanunu*, Law No.5237. It was accepted on 26 September 2004 and published in 12 October 2004. Article 231-5 and 6 define the meaning and the preconditions for the postponement of the last decision. The fifth clause of Article 231 was enacted on 12 June 2006 and conceptualizes this legal term.

[343] Ibid., Article 231-6 that was enacted on 12 June 2006.

[344] Ibid., Article 231-12. However, the court can evaluate the reasons for the violation of the measure and may decide on the non- execution of the sentence. Depending on judges' initiative, the penalty can be converted into optional sanctions as a new sentence.

> continuation of social order. If the property crimes endanger the public interest, it is necessary to curb the private interests. For instance, the child can rationalize theft by self-interest. If society excludes me, I act egotistically. I believe that it is possible to normalize the child's deviant actions by the measures.[345]

For the judge, property crime is a social fact disturbing the public interest and must be treated in order to sustain the public order similar to the Durkhemian approach to social fact. Durkheim defines social fact in the below passage.

> A social fact is any way of acting, whether fixed or not, capable of exerting over the individual an external constraint or which is general over the whole of a society whilst having an existence of its own, independent of its individual manifestations.[346]

The Penal Code is the external legal regulation on crimes and defines the relevant punishments. When children act against the obligatory rules defined in the law, the practices became pathologic. The spread of the social fact, crime, in everyday life threatens the public interest, so it is necessary to curb the juvenile

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[345] The judge working in the one of the juvenile courts in Istanbul, interview by the author, note taking, Istanbul, Turkey, May 2008. "*Kanunların fonksiyonu cezalandırmak değil, çocuğu topluma kazandırmak. Kurallar kişisel menfaatlerden bağımsızdır and kamu vicdanını yansıtır. Ve düzenin süreceğini garanti eder. Eğer mala karşı suçlar kamusal düzeninin güvenliğini tehlikeye düşürürse, kişisel çıkarların önünü kesmek gerekir. Örneğin, çocuk hırsızlığı kendi çıkarım için yapmak zorundaydım diye açıklayabilir. Toplum beni dışlarsa bencil olarak hareket ederim. Tedbirlerle çocuğun sapkın davranışlarının düzeltilebileceğini düşünüyorum.*"

[346] Emile Durkheim, *The Rules of Sociological Method* (New York: Free Press, 1982). p. 39. His method on a social fact is exemplified in his writings on the scientific explanation for suicide. It is beneficial to comprehend his approach to crime. The question is what happens if the individual lives in constant chaos and why there is need to curb individual egoism by linking regulation to the internal functioning of society. He considers suicide as an index of the health of society and treats it as real, objective thing. He defines the conditions of existence at the *societal level,* instead of explaining its reasons by insanity or mental disorder. But the generality of suicide in one society in certain phase is an indicator of the divergence from normal. Steven Lukes, "Suicide," in *Emile Durkheim: His Life and Work: A Historical and Critical Study* (London: Allen Lane, 1973). p. 200-203. For instance, at times of sudden economic crisis, rich people commit more anomic suicides than poor ones because the governmentality oriented to make people content with their lot is distorted at these times. Anomie distorts the evolution of society temporally. When the normative regulation again became apriori, external to individual, suicide as a pathologic social fact will be treated. Emile Durkheim, *Suicide* (Glencoe: The Free Press, 1951). p. 246-254.

delinquents' private interests. As a complementary to this, as Durkheim explains, "the determining cause of social fact should be sought among the social facts preceding it and not among the states of the individual consciousness."[347] Similar to the Durkheimian approach, the judge draws the road for circumscribing private interests and reintegrating the child into the social order. Thus, social exclusion and social facts leading to it, like malfunctioning the family and poverty, are the causes of the social fact, property crimes. An individual consciousness is out of the question. The measures are the tools to eradicate these social facts that abet the child into crime.

Secondly, the judge establishes the link between the law, the individual and society. There are different interests in society, but the legal rules are independent from the free will of the individual and mirror the collective interest in the judge's account. The Durkheimian definition of crime and "mechanic solidarity" is beneficial to interpreting the triangle between the individual, society and the rules in the judge's accounts. Durkheim defines "… crime as an act which 'offends strong and definite states of the *conscience collective'* and if crime becomes abnormal social fact, it becomes "essentially parasitic and 'the very negation of solidarity.'[348]

He establishes the relationship between the punishment and the continuation of the conscience collective. *"The 'true function' of* the punishment is 'to maintain social cohesion intact by maintaining the *conscience commune* in all its vitality."[349] From a similar stance, according to the judge, offenders violate the rules reflecting

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[347] Durkheim, *The Rules of Sociological Method*, p. 55. For further information see the following chapter, "The Rules for the Explanation of Social Facts."

[348] Steven Lukes, "Social Solidarity and Division of Labor," in *Emile Durkheim: His Life and Work: A Historical and Critical Study* (Harmondsworth: Penguin Books, 1975). p. 161.

[349] Ibid.

common values and so disturbed social solidarity. In return, punishment restores these values. There is a need for legal rules that regulate relations and that reflect the social consensus. The law keeps social relations under control and it puts into practice at the court. The penal code is only a mean mirroring the collective reaction to the crime.

For the judge, the correction replaces with the punishment in the Durkhemian model. It is a way to normalize juvenile delinquents. It is a mechanism maintaining "the mechanic solidarity." Mechanical solidarity is defined as 'a solidarity *sui generis* which… directly link individual with society'; it arises from the fact that a number of states of consciousness *(conscience)* are common to all members of the same society."[350] The legal rules are derived from common consciousness in order to normalize the deviant by imposing common norms. "'*Conscience collective or commune'"* describes "the set of beliefs and sentiments common to the average members of single society which forms a determinate system that has its own life."[351]

There is gap between private and collective interests and the laws reflecting the conscience commune is a prior entity independent from individual interests. He explains this in the following passage. "Not only are these types of behavior and thinking external to the individual, but they are endued with a compelling and coercive power by virtue of which … they impose themselves upon him." [352] The role of the individual is to adapt the rules with regard to property relations and these are imposed on him regardless of his will. Thus, the individual becomes self-governing and experiences the illusion of being the creator of social values

[350] Ibid., p. 149.

[351] Ibid., p. 151.

[352] Durkheim, *The Rules of Sociological Method,* p. 51.

sanctioning property crimes.[353] This proves the fact that as society evolves; external rules merge with internal ones. The legal measures target the normalization of the pathologic child and make him a self-governing individual respecting the property rights.

"The social-work oriented judge" channels the child to the civil society organizations to normalize and probe him in an open environment. The family is the best place to protect the child and these organizations develop certain projects to empower the family. In other words, these associations are liable for the conversion of the child into a self-governing individual who interiorize and is respectful to the external social norms and legal rules. In this sense, the judge's vision is fit to the new partnership model explored in this chapter.

A Negotiation-Oriented Judge and Law as an Instrument to Convince People of Justice

> Since children below eighteen years old have not developed mentally and physically, there is a need for a separate court. The juvenile court has a particular mission. The juvenile delinquents should be protected and rehabilitated to prevent their conversion into crime machines. The juvenile court also aims at the protection of the child from the experience of trauma in the juridical process. This philosophy of establishment is good. Yet, in practice, there are no agents to realize the Child Protection Law and the Law on the Establishment, Duties and Procedures of the Juvenile court. These agents are the police, the social workers, the institutions exercising judicial sentence and the probation officers. None of them have enough qualifications for the juvenile delinquency. They are educated in short- term inefficient seminars.
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> …Law is an instrument to access justice. What is important is to convince people of a justice system. Yet, there is no longer any belief because state institutions have not fulfilled the tasks. The state is an octopus-like thing that foresees troubles and threats. Then, the octopus takes the child out of the troubled environment with its hands

[353] Ibid., p. 53.

and remedies the factor threatening the child's moral and physical development. Malfunctioning institutions cannot consolidate the belief for justice. The working of the court is not sufficient. There is one proverb I like: the turtle thinks the world is just its shell and; so, it is always happy. When people believe in justice and the perfection of the justice system, they do not see a problem. Nationalist judges and the judges who give the measures to correct the child are also happy and believe in the perfection of the law. Yet, I see the child with three hundred cases of mugging and I believe that a good law does not implicate a good result without endeavoring to practice it. Thus, law fails to make people believe in the justice system. The reason for the property crime is necessity and subsistence for nine children out of ten. Nobody steals aluminum windows and sells it unless he is hungry. We cannot resolve the problem without understanding this reason.

Channeling the child to civil society organizations or giving back to family is not an accurate policy. These children must be protected in paternal institutions. Secondly, I think that there is a double standard in the penal code about children, so I generally prefer to negotiate the litigant and the child in cases of property crimes. The child is considered an adult when the crime is against the state. Yet, mugging and theft, which are crimes against citizens, are less important and the child is treated as a child. The law tells me to persuade the litigant and negotiate with the child. Thus, there is justice for neither the litigant and nor the child.[354]

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[354] The judge working in the one of the juvenile courts in Istanbul, interview by the author, note taking, Istanbul, Turkey, 23 May 2008. *"On sekiz yaş altındaki çocuklar zihinsel ve fiziksel olarak gelişmedikleri için, ayrı bir mahkemeye ihtiyaç var. Çocuk mahkemeleri belli bir amaça sahiptir. Çocukların suç makinalarına dönüşmesini engellemek için, suçlu çocuklar korunmalı ve ıslah edilmelidirler. Çocuk mahkemeleri yargısal süreçte çocuğun tranva yaşamasını da engellemeyi amaçlar. Bu kuruluş felsefesi iyi. Ama pratikte Çocuk Koruma Kanunu'nu ve Çocuk Mahkemelerinin Kuruluş, Görev ve Yargılama Usulleri Hakkındaki Kanunu uygulayan kurumlar yok. Bunlar polis, sosyal hizmet uzmanları, hükmü uygulayan kurumlar ve gözetim delegeleri. Hiçbiri çocuk suçluluğu hakkında yeterince niteliğe sahip değil. Kısa dönem verimsiz seminerlerde eğitiliyorlar… Kanun adalete ulaşmanın aracı. Önemli olan insanları adalet sistemine inandırmak. Devlet kurumları görevlerini yerine getirmediği için artık sisteme inanç yok. Devlet ahtapot gibi birşey. Tehlikeleri ve tehditleri önceden sezer. Daha sonra ahtapot çocuğu kötü çevreden elleriyle alır ve onun ahlaki ve fiziki gelişimini tehdit eden faktörü tedavi eder. Kötü çalışan kurumlar adalete olan inancı pekiştiremez. Mahkemenin çalışması yeterli değil. Sevdiğim bir söz var: kaplumbağa dünyayı kabuğu kadar sanır, bu yüzden mutludur. İnsanlar adalate ve adalet sisteminin mükemmelliğine inandıklarında, bir problem görmezler. Milliyetçi hâkimler ve çocuğu düzeltmek için tedbir veren hâkimler de mutlular ve hukuğun mükemmelliğine inanırlar. Ama ben üçyüz kapkaç dosyası olan çocuk gördüm ve ben inanıyorum ki iyi kanun onu uygulamaya çaba sarf etmedikçe iyi sonuç vermez. Bu yüzden kanun insanları adalet sitemine inandırmakta başarısız olur. Mala karşı suç işlemekte ki sebep on çocuktan dokuzu için ihtiyaç ve geçim. Kimse aleminyum pencereleri aç kalmadıkça çalıp satmaz. Bu sebebi anlamadıkça problemi çözemeyiz. Çocuğu sivil toplum kuruluşlarına yönlendirmek ve ya aileye geri vermek doğru bir politika değil. Çocuğun devlete ait kurumlarda korunması gerek. İkinci olarak ben çocuğu ilgilendiren kanunda çifte standart olduğunu düşünüyorum. Bu yüzden mala karşı işlenen suçlarda şikâyetçi ile çocuğu uzlaştırmayı tercih ediyorum. Suç devlete karşı olduğunda, çocuğa yetişkin muamelesi yapılyor. Ama kapkaç, hırsızlık vatandaşa karşı olan suçlar daha az önemli ve çocuğa çocuk olarak muamele ediliyor.*

Janet Ainsworth describes the basic mission of the juvenile court in the following passage:

> Born of the redemption ideology of Progressivism, the juvenile justice system promised to divert youthful offenders from the rigors of the criminal justice system, both at adjudication and for disposition, and… in doing so, the juvenile justice system would be able to rehabilitate young lawbreakers and derail their incipient criminal careers.[355]

"The negotiation-oriented judge" confirms this philosophy of establishment too. The juvenile court has the premise of tailoring the measures in order to prevent future crimes and to correct the offender. A separate court also protects the child from the trauma of prosecution and imprisonment in an adult criminal justice system. Yet, the juvenile justice system actors have failed to rehabilitate the child, so state intervention into the life of the child fails to achieve the mission.

Ainsworth draws attention to the essentialism embedded in the establishment philosophy of the juvenile court: "the central role in progressive ideology of the essential otherness of the young."[356] "Juveniles were thought to be so intrinsically different from adults as to inescapably compel the creation for them of an entirely separate and independent system."[357] Consideration of eighteen years old as the threshold for "moral and cognitive capacity for criminal liability"[358] distinguishes the juvenile court in terms of its mission: not to punish, but to rehabilitate the juvenile

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Kanun bana şikâyetçiyi ikna et ve çocukla uzlaştır diyor. Bu yüzden ne şikâyetçi, ne de çocuk için adalet var."

[355] Janet Ainsworth, "Achieving the Promise of Justice for Juveniles: A Call for the Abolition of Juvenile Court," in *Governing Childhood*, ed. Anne McGillivray (England: Dartmounth Publishing, 1997). p. 82.

[356] Ibid., p. 87.

[357] Ibid., p. 86.

[358] Ibid., p. 87.

delinquent. The transgression of the penal code and being under eighteen years old are sufficient for taking legal decisions to normalize the deviant child by means of the measures or reduced penalties.

In the judge's account, the state is "an octopus-like" entity that takes the endangered child out of an unfavorable milieu to protect and normalize him. The juvenile court and other agents in the criminal justice system are the hands of the octopus, and the law is an instrument to regulate the working of these institutions and convince people of justice. However, the malfunctioning of these institutions has led to the disbelief in justice. Channeling the child to civil society organizations or returning the child to the family is not a solution. Therefore, this judge is on the side of the juvenile justice system during the welfare state period, as explained in Chapter Two. Different from "the social-work oriented judge", "the negotiation-oriented judge" makes a call for strengthening the state-administered institutional care and the effective collaboration between the hands of the octopus that refers all agents in the system to rehabilitate the child. The state, the octopus, as the parents of all children must anticipate the socio-economic troubles and intervene into the life of the child in an ideal system.

Belief in criminal justice creates happiness both for the people and the judges, especially nationalist and social work oriented judges. Unquestioning the system also legitimizes and sustains itself. "Turtle thinks the world is just its shell and became happy" in the judge's account. In order to illustrate the meaning of this proverb, Pottage's theorization of "…rethinking the composition of persons and things, the modes in which they are distinguished and recombined by legal institutions" is

beneficial.[359]Essentialist legal discourse, the penal code, justifying the juvenile court jurisdiction is a legal text making turtles believe in justice. This belief disguises the malfunctioning aspects of the law, such as the failure to execute legal decisions to correct the child or the conditions of ambiguity, like the "double standard" for the child's prosecution for the different types of crimes. For Pottage,

> But the important point is that whether they are seen as probabilistic devices or as normative trumps, their role are understood in terms of the ideal of a proper relation of correspondence between norm and nature. Fictions and presumptions work within the *division* between… legal propositions and the 'thing' they refer.[360]

When the Pottage's theorization on the persons and the things is adapted to the judge's account, the law is an "instrument" to persuade the people to believe in justice and the children are the things these propositions address. The turtles believe in full compatibility between the legal definitions of the property crimes and the appropriate measures and penalties. This is an ideal and perfect justice system independent from the real complexity and malfunctioning aspects in the practice of the law. "… the fiction negated pre-existing law *by way of* a declaration as to the facts."[361] In autonomous legal rules, the children's mental potentials are fixed and the same rules are applicable to each case. The law and institutions in the criminal justice system are the agents of the social construction of justice.

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[359] Allain Pottage, "The Fabrication of Persons and Things," in *Law, Anthropology, and the Constitution of the Social: Making Persons and Things*, ed. Allain Pottage and Martha Mundy (Cambridge, New York: Cambridge University Press, 2004). p. 6. Pottage explains this recombination with reference to Roman law. "The anthropology of Roman law reveals a mode of institutional action- or more precisely a technique of personification and reification- which suggests that what are taken as overarching *social* categories (the sex, gender,…capacity and creativity of persons…) are specialized artifacts which are not predicted on some general social ontology" Ibid., p. 12.

[360] Ibid., p. 13.

[361] Ibid., p. 14.

The judge does differentiate him from the turtle for two reasons. First, the constant appearance of the same child as an accused for three hundred mugging cases in the court proves that the child does not consider the legal rules as just and untouchable. The criminal justice system has failed to correct him. The child does not internalize the laws, so he continuously violates it and the hands of octopus fail to rehabilitate him. The system is confined in the failure of the reconstruction of the child's subjectivity. Nine property crimes out of ten are committed for necessity and subsistence according to the judge. There are no attempts in the criminal justice system agents to handle this socio-economic cause of property crimes permanently. That proves the failure of the philosophy with which the juvenile court was.

The second reason for the disillusionment with justice for the judge is "the double standard" in the prosecution of juvenile delinquents. When the crime is against the state, the child is judged like an adult. However, the child is treated as a child in cases of property crimes against citizens. The problem is that neither the litigant citizen, nor the child believes in justice. The child does not believe because nothing changes in his life by being returned to his family or being channeled to civil society organizations. The litigant is dissatisfied and unhappy because he is not compensated for the value of stolen property. The vicious circle of poverty for the child and of the non-recovery of the property loss for the litigant results in the perception of the juvenile court and the criminal justice system as malfunctioning and unjust. In this inefficient justice system, the law commands the judge to negotiate between the litigant and the child on property crimes.

A Rule-Oriented Judge and the Law as an Instrument for Punishment

> Since the children are not mature morally or mentally, the court is established to judge these children who are just beginners in comparison with adults, who are unchangeable and at the end of the road. Yet, only the legal rules bind the decision. I do not confirm the common approach on juvenile delinquency: there are no criminal children, but the children abetted into crime. This approach is a fiction that decriminalizes children and it attributes the reason and responsibility for the criminal conduct to the environment, society and peer groups. It means to perceive the child as the white spoon out of the milk. Yet, the crime committed by the child is the same as the adult, and so the child is a criminal. And the appropriate punishment for each crime is already coded in law. The child engages in the criminal acts, but the punishment is reduced because of the age.
>
> I think that the juvenile offender cannot be corrected by the measures and becomes an adult with many records of the preceding crimes in the future. Punishment is a mere solution for putting fear in their hearts and for making them conscientious and moral individuals. The law is the authority to circumscribe their freedom. If everyone follows his own interest, it becomes impossible to sustain order in chaos … I like to be clear. This practice is a crime and its punishment is that. I am not interested in explanations like there are different children and they can commit crime and justify their conduct by this reason or another one.[362]

As opposed to "the social-work oriented judge", "the rule-oriented judge" rejects the argument of the child led into crime that enables the juvenile court to correct and discipline the child by the measures. According to "the rule-oriented judge," this argument dissociates the child's liability for the criminal conduct and blames society, peers and immediate environment. In sum, it makes the child

[362] The judge working in the one of the juvenile courts in Istanbul, interview by the author, note taking, Istanbul, Turkey, 7 May 2008. "*Çocuklar ahlaksal ve zihinsel olarak olgun olmadıkları için, mahkeme değiştirilemez ve yolun sonunda olan büyüklere kıyasla henüz yolunda başında olan küçüklerin yargılanması için kuruldu. Fakat benim için sadece kanunlar bağlayıcıdır. Ben suçlu çocuk yoktur, suça itilmiş çocuk vardır şeklindeki çocuk suçluluğuna genel bakış açısını onaylamıyorum. Bu yaklaşım çocuğu suçsuzlaştıran, suç eyleminin sebebi ve sorumluğunu çevreye, topluma ve arkadaş grubuna atan sahte bir yaklaşımdır. Bu çocuğu sütten çıkmış ak kaşık olarak algılamak demektir. Ama çocuğun işlediği suç büyük ile aynı, bu yüzden çocuk suçlu. Ve her suç için uygun ceza, ceza kanununda kodlanmıştır. Çocuk suçlu hareketlerde bulunur, yaşı yüzünden ceza düşer. Düşünüyorum ki, çocuk tedbirlerle düzeltilemez ve gelecekte bir sürü adli sicil kaydı olan yetişkine dönüşür. Cezalandırma bu çocukların kalplerine korku salıp, ileride onları ahlaklı ve vicdanlı bireyler haline getirmenin tek yolu. Kanun özgürlüklerini sınırlandıran bir otoritedir. Herkes kendi çıkarının peşinden giderse, orada düzen olmaz, kargaşa olur… Ben net olmayı severim. Bu eylem suç ve cezası da şu. Farklı çocuklar var, bu veya şu sebeple suç işleyebilirler ve kendi eylemlerini haklı gösterebilirler gibi açıklamalarla ilgilenmiyorum."*

innocent. There is no distinction between adults and children in the justice system since both commit a crime and its punishment is written in the penal code.

At the beginning, "the rule-oriented judge" confirmed the establishment ideology of the juvenile court that is to treat children differently. They do not improve enough to control their behaviors or understand its consequences, so it is possible to change them. Then, the judge equated the juvenile offenders with criminal adults and suggested an equal punishment. The judge made a call for the abandonment of the juvenile court.

Thus, the judge expressed a demand for the replacement of punishment with measures. This is related to the judge's rule orientation. The judge likes clarity and is not interested in alternative explanations. The objective rules define the crimes and the appropriate deterring punishments.

First, what the judge means by governing morality through law needs to be interpreted. I adapted Alan Hunt's conceptualization on moral governmentality and its deployment in state-institutions, the juvenile court in this case, as an example of moral regulation from the top in order to justify the judge's accounts. For Alan Hunt, "Moral regulation projects are … politics in which some people act to problematise the conduct, values or culture of others and seek to impose regulation upon them."[363] Thus, moral regulation by the penal code is a jurisdiction of the juvenile court. It specifies the rules that enable the police to detect the child, the court to prosecute children and punish crimes. Then, "… mix of "governing others" and "governing the self" ….takes the form of moral regulation."[364]

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[363] Alan Hunt, *Governing Morals: A Social History of Moral Regulation* (Cambridge, New York: Cambridge University Press, 1999). p. 1. Hunt argues that " the external imposition of moral codes is mirrored in internal processes of self-formation", "governmental self-formation." Ibid., p. 17.

[364] Ibid., p. 6.

For the judge, the punishment is simply a way of achieving self-governance. The offender must take into account the outcome of the action and internalize the fear from that result. Therefore, not only is the deviant child who is the object of moralization corrected morally, but also the system legitimizes itself.

"Asymmetric surveillance" refers to the role of "external experts" who construct, reinforce or interpret the dividing practice."[365] The construction of the immoral criminal practices and the penalties relevant to them in the penal code and the judgment of the juvenile delinquents with reference to these rules is not the problematic for the judge. Legal and moral rules divide practices and stigmatize other forms of life as immoral, pathologic and exclude other reasons for the practices, like decriminalizing the conduct.

The definition of law as "the authority to circumscribe their freedom" and punishment as "a mere solution for putting fear in their hearts and for making them conscientious and moral individuals" are statements that make explicit the judge's vision on the function of the law. It echoes me the Hobbessian definition of civil liberty. For Hobbes, the pluralism of the different conceptions of good must be controlled by an authority to sustain peace and order in society. To secure order, Hobbes "…finds a political concept of justice that all can accept" and this concept is to give authority to "a rational political entity that will interpret the rules of justice found in the laws of nature."[366] Natural law defines the rational system of cooperation and common good among the members of society.

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[365] Ibid., p. 8.

[366] David Van Mill, "Civil Liberty in Hobbes's Commonwealth," *Australian Journal of Political Science* 37, no. 1 (2002). p. 37.

Another question Hobbes answers is "how people are to be motivated to act according to this concept."[367] "By instilling fear into hearts and minds of those who populate his ideal commonwealth,"[368] people will obey the rules. In other words, an authoritarian education of morality prevents people from the transgression of legal rules because they are aware of the consequences. This "systematic fear is the condition that makes freedom impossible."[369] For the judge, following one's self-interest, the pluralism of the views on criminality is the reason for chaos. The law defines the rational rules to curb their freedom and irrational alternative explanations for the criminal conduct. Punishment is the means to put the fear into juvenile delinquents.

Hobbes makes a distinction between natural freedom and civil freedom. Natural freedom "… signifieth, properly the absence of opposition… by opposition he means external physical impediments to motion."[370] For example, keeping the juvenile delinquents in prison, in the judge's view, prevents them from engaging in criminal acts physically and so, it blocks their freedom. Yet, it is impossible to constantly impede one physically. Thus, there is need for a different definition of freedom. "Laws limit our freedom, not because they physically impede our motion, but because we fear the consequences of disobeying law."[371] Again the judge's account confirms Hobbes. Unless the children transgress the laws, they have limited civil freedom. The juvenile court has the authority to settle the violation of rules by

[367] Ibid.

[368] Ibid.

[369] Ibid., p. 38.

[370] Ibid., p. 22.

[371] Ibid.

giving an appropriate punishment as a sovereign state power. This vision is compatible with the increasing convictability on one side of the new juvenile justice policy explored in the preceding chapter and it is in contradiction with the perception of the law as an instrument for legal state intervention into the lives of children to normalize them in state administered centers or for channeling them civil society organizations to rehabilitate in an open milieu.

Conclusion

In the first part of this chapter, the new partnership model between the court, family and civil society organizations was scrutinized. It enabled an understanding another side of the new juvenile justice policy as a complementary to the preceding chapter. In the conjuncture of the formation of the new model of partnership, child poverty has become a more visible societal problem, has gained an ethnic character and had been redefined as a problem of social exclusion. In the new child protection system, rooted in the 1990s, protection within the family has substituted the paternal institutional care. However, the central paradox is that the family is the agent that leads the child into crime and poverty and so, it is responsible for the child's deprivations while it is considered the best place for protection. The solution is to return the endangered child to the family, but to an empowered family, by means of short-term micro projects of civil organizations.

This model has been adapted to the juvenile justice system. The international child right conventions prioritized this partnership and idealized the treatment of the juvenile delinquent in an open milieu. The stipulation of those conventions, the establishment of the National Council to adapt the domestic law to it in 1995, the

draft on the changes in Law No. 2253 in 1992 and lastly the Child Protection Law in 2005 disenchanted the state sponsored institutional care in the SHÇEK protectories and child care homes because of incapacity, the quality of care, being under-staffed and the reluctance to keep juvenile delinquents with other needy children. In addition, the workload on the juvenile courts and insufficient number of social workers in the courts were some obstacles to making social inquiry concerning the needs of the child. Those factors rendered the measure of returning the child to the family the most widespread legal decision. As stated above, the paradox of the idealization of family was that it was the best place for protection and the central agent abetted the child into crime. This paradox resulted in the reorganization of the relationship between family, the court and civil organizations. The court dispersed the duty of the provision of services among civil organizations. As the model is seen in the examples, civil society organizations have been burdened with making social inquiry, developing micro projects to strengthen the family and the child and supervising the child. The court has been a catalyst in the sense that it has channeled the child to civil organizations and has not been interested in the sustainability of the projects and the child's obedience to legal measures.

In the second part of the chapter, how the judges explain the function of the law and juvenile delinquency and how "the new double-sided juvenile justice policy" is considered by them is explored with reference to my interviews with three judges in the one of the juvenile courts in Istanbul. "The social-work oriented judge" absorbs the functionalist approach to law and considers juvenile delinquents as the children led into crime. Parallel to the new partnership model, this judge channels the children to civil society organizations with the purpose of correction in an open milieu. How "the rule-oriented judge" perceives the law and delinquency is in full

contradiction with this vision. This judge considers the deterring penalties in the penal code as a mere solution to handle the criminal child, who is not different from the adult offender. This judge supports increasing convictability to manage juvenile delinquency in accordance with the new juvenile justice policy that stresses the victims of crime. Beyond these two clear cut positions, "the negotiation-oriented judge" rationalizes the legal rules as an instrument to convince people of justice and complains about the malfunctioning state institutions in the juvenile justice system. This judge makes a call for the reestablishment of tutelary complex and state administered institutional care in accordance with the juvenile justice policy in the welfare state. This perception is incompatible with both the new partnership model and the punitive orientation.

All three judges consider legal rules as a precondition to sustain the order and the legitimacy of the criminal justice system. The objective rules function to reintegrate the child into society as the instrument to persuade people of the legitimacy of the system or as a legitimate tool to divide practices and punish them. These nuances illustrate the judges' mentalities as the central performers of legal rules. The settlement of the objectivity criteria excludes alternative voices. Yet, the nuances between the judges' perspectives are crucial factors delimiting and shaping the agency of the children in the legal context because juvenile delinquents are aware of addressing the authority at court through their statements. The interactions between the legal apparatuses and the juvenile delinquents are elaborated in the following section.

CHAPTER FIVE

INTERACTIONS IN THE COURTROOM: VERBAL AND BODILY PERFORMANCES AS OBJECTS OF EXCHANGE WITH THE JUDGE

The courtroom is a political space for expressing and judging conflicting interests. In this space, the judge exercises power and all other actors reciprocally interact with the judge and each other. The judge interprets the event and applies the penal code, yet this application is a case specific and depends on the other actors' performances in the courtroom. Thus, the judges differ in their modes of interpretation and case handling. In this chapter, the main concern is to analyze the (un) successful patterns in the verbal and bodily performances of the different actors on the stage of the courtroom. Since there is a link between the demarcation of space and the ascribed roles in the courtroom, I primarily articulate the juridical setting in the juvenile court.

Linda Mulchay explores how the architectural design of the courtroom implicates politics and it affects the reliability of the accounts in the eyes of the judge in trials in a following way.

> The subject is a particularly interesting one for legal systems which rely on oral testimony and adversarial procedure. In these jurisdictions, performance is all. The courtroom is converted into a stage in which space, sightlines… are critical in assessments about the credibility of speaker and the statement they are making.[372]

[372] Linda Mulchay, "Architects of Justice: The Politics of Courtroom Design," *Social and Legal Studies* 16 (2007). p. 385.

From a similar vision, the politics of courtroom design in the juvenile court are examined. There are two kinds of courtrooms in the juvenile court as discussed. The High Criminal Court conducts legal proceedings against the juveniles who are charged with indictable offenses, mugging and pillage, and the courtroom is spatially divided like an adult courtroom. In the spatial organization of the room, "height… signifies the power of judge to survey all that goes on in the court."[373] "Sightlines" implicate the surveillance of all actors in the courtroom. The judge's raised bench with two auxiliary judges and one prosecutor face the other actors, who are the advocates, the litigant and the child. The clerk's table stands before it. Thus, the judge consolidates his authority over all actors during the trial. For other types of property crimes, trials are conducted in the judge's private room without the auxiliary judges and the prosecutor. Even though the judge's table is not raised and the clerk works at a table near to the judge, again the judge keeps under surveillance all actors in the room. Similar to other courtroom, the judge is the intended audience for all performances and controls all interactions.

In the courtroom, the judge hears the format in which the litigant, the child and the lawyer present their testimonies, and bases the last decision on the trustworthy account among these different versions of what happened. Thus, the elaboration of verbal interactions provides insights into the role of language in legal process. For William M.O'Barr, a prominent academician working on the socio-linguistic analysis of speeches in the legal context, there are two kinds of rules that regulate the use of language in communication in the courtroom. "Rules of procedure are in effect normative rules. They outlined the agreed upon, approved means for

[373] Ibid., p. 396.

introducing evidence, ruling on admissibility, examining witnesses and so on."[374] Beyond these formal rules of conducting trial, "…there are also rules about successful courtroom tactics and what works."[375] These language strategies communicate different messages to an intended audience, the judge, consciously, for pragmatic reasons. In this chapter, which strategies are (un) successful in the courtroom are investigated to uphold the general objectification of the accounts as invalid exchanges if there is a clash of accounts between the judge and the child, the judge and the lawyer and the judge and the litigant. These performances are invalidated in the language of the courtroom and do not moderate the sentence.

Communicative genres addressing the judge as an audience in the performances with different intentions in the courtroom illustrate the patterns of adjudication. In verbal courtroom interactions, certain patterns refer to the content of the accounts and representational styles and these patterns affect the last decision. Before the analysis of these patterns, it should be mentioned that, as Brenneis writes, "the effectiveness of these narratives depends in large part upon the degree to which they meet audience expectations of sensibleness, appropriateness, and good form…"[376]All verbal and bodily performances in legal context are case-specific and depend on the attitude of the judge toward the lawyer, the litigant and the child. Thus, instead of homogenizing all interactions in one stereotype, the heterogeneity of performances as an overt communication with the authority is emphasized here. The analysis of verbal and bodily performances in the courtroom make known different patterns in the search for justice in the juridical setting with reference to my

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[374] William M. O'barr, *Linguistic Evidence: Language, Power and Strategy in Courtroom* (United Kingdom: Academic Press, 1982). p. 5.

[375] Ibid., p. 6.

[376] D. Brenneis, "Language and Disputing," *Annual Review Anthropology* 17 (October 1988). p. 227.

participant observations in thirty-four property crime trials in the one of the juvenile courts in Istanbul. In addition, the frequency of the successful style of the reconstruction of the event in a formal legal format by the litigant, the lawyer and the child reveals the general aloneness of the child in the courtroom if the justification for the criminal act is in contradiction to the formal legal language. The presentation of oneself in everyday language and relaxed body posture create generally negative impressions and are incompatible with the judge's expectations of good form. Yet, all actors are active agents in the courtroom to decide on the appropriate verbal and bodily performances depending on the judges' attitudes.

The child, labeled the suspect, communicates with the judge to convince him or her of the truthfulness of the statements as the central actor on stage. The child stands in the middle of the courtroom in the direct surveillance of the judge. Mulchay notes that "Sterile theatricality of courtroom in which temporal and spatial conventions were successfully manipulated to produce a disciplined display of justice in which 'alternative performances are evocative of unpermitted social worlds' were suppressed."[377] Like all other actors, the child addresses the judge as an audience and develops tactics depending on the judge's attitude. The child utilizes certain presentation styles, but the ascribed role is being a suspect. Thus, in "a disciplined display of justice", the child generally became a legal subject in the case of submission to the law, so alternative justifications legally are inadmissible and isolate the child in the courtroom. The (un) successful performances of children in the courtroom are analyzed later.

The second actor in the courtroom is the lawyer, both that of the child and of the litigant. The courtroom is a platform to defend the client testimonies for the

[377] Mulchay, p. 387.

lawyer. Lawyers' benches for the litigant and the child face each other in an assize courtroom at the same height as the litigant and the child. In another court room, the lawyers sit near their clients for defense as two adversaries. What is expected from the lawyers' spatial convention in the courtroom is the performance of the "art of persuasion" and "stage management"[378] for the audience.

Beyond the interactions between the children and the judges, the lawyers' verbal and bodily performances are other treasures to investigate for the successful patterns of defense and the accessibility of legal aid to children. In the juvenile court, even though advocacy is obligatory for each child, the quality and efficiency of the service is debatable.

Below, the lawyers are categorized as "disfunctioning ones", "idealists" and "radicals." "The disfunctioning lawyers" who do not know even the type of the crime at the trials compose the majority. How these lawyers deprive the child of defense is examined with reference to certain trials. Then, the verbal and bodily performances of "the idealist lawyers" are presented as most effective pattern of defense in the juvenile court. These lawyers present the defense in legal language and in a self-esteemed manner and make calls for reduction in punishments. This speech style in a technical legal knowledge is an efficient lawyer tactic but these lawyers exclude in what ways the suspect defends the conduct that might be different from the legal language. Thus, they only construct the defense, not reflect the child's defense. Lastly, how the small numbers of "the radical advocates" rupture the legal language and fight to put into circulation the alternative self-defenses of the children is traced in the courtroom hearings. These undesirable and inadmissible defenses are expressed in an everyday language and in an aggressive tone of voice that attacks the

[378] Mark I. and Laurence R.Millstein Benstein, "Trial as Theather," *Trial* 33, no. 10 (October 1997). p. 64.

authority of the judge. The importance of these evaluations for me is that the majority of the children are alone to make maneuvers in the legal context without legal aid. Acceptable and successful legal aid is found in the defenses that confirm their criminality and make a call for the reduction in their sentences.

Another actor who communicates with the judge in the courtroom is the litigant who initiates the legal procedure because of a violation of property rights, sustains it and then terminates it. By definition, the juvenile court gives the tithe of victim to the litigant. If the litigant has a lawyer, the litigant stands near to the lawyer. Otherwise, the litigant sits alone on the right or left frontal side of the judge's bench in both courtrooms while the child stands alone in the middle of room.

The last section of the chapter stresses the interactions between the litigants and the judges in the legal proceedings. In the trials, the presentation of the event in a formal narrative style provides cooperative information for "the rule-oriented judge" by the litigant. It is an effective pattern. Another form of alliance between the judge and the litigant interest is a relational one that refers to taking into account the time spent in the lawsuits. The use of everyday language and narrative style in relaxed postures by the litigants who get tired from time consuming trials are elaborated as another successful strategy that is less frequently observed. What happened if there was a discord between the judge and the litigant visions was also observed. Since the judges generally base the last decision on the speeches of the litigants, incompatibility between the judge's and the litigant's visions can result in the judge's intervention and the construction of the event in legal language. The judges generally consider the testimony of the litigant as the objective and true representations of the event and base their decision on it, so this biased interaction invalidates the children's testimonies and leave the children alone in the courtroom.

It is risky for the interpretation of verbal and bodily performances to assume that all performances result in compliance with the criminal justice system. These kinds of interpretation secondarize the agencies of the performers. This vision neglects the actors' intentions and contesting rationalities among them over the meaning of the act and the tactics they use to affect the course of jurisdiction. These fights by words in the court documents are the central theme in the following chapter. If it is assumed that the judge, the child, the litigant and the lawyer internalize the language that labels the certain acts as property crimes and the judge gives convictions regardless of the adversarial reconstructions of the event, all actors should perform the recited roles in the courtroom. The child submits the punishment, the litigant initiates and sustains the legal procedure for the punishment of the offender, the lawyer defends the child and the judge administers the penal code impartially. Yet, the relationships on the stage are not so simplistic and mechanic.

Even though examples of the interactions on the concord of interests between the judge and the submissive child, the judge and the advocate or the judge and the litigant are given, I participated into the trials at which there was discord between the judge and the other actors. Therefore, my focus is "… nature and relative effectiveness of various stylistic strategies …"[379] in the legal context. Not only successful patterns, but also the unsuccessful ones are analyzed to ascertain when the child became a legal subject. The efficient court performances illustrate the dominant legal patterns. The judges interpret the verbal and bodily performances of all actors, rephrase the event and impose the law in certain modes. In this sense, "court

[379] Brenneis, p. 227.

performances are one way of expanding the hegemony of law."[380] Yet, (un) successful performances also reveal the actors' agencies in the courtroom to persuade the judge about the validity of the accounts. The judge's evaluation of the conduct and the attitudes toward the actors shape the bodily and verbal performances on the stage.[381]

Interactions between Judges and Children

The judge is the central performer in "dispute management processes."[382] The elaboration of the judge's communication with the child proves that different speech styles evoke different responses. Certain patterns are successful in the reception of testimony by the decision maker. The child becomes a legal subject only in the case of submitting to the judge by means of bodily performances and accepting crime in verbal interactions with the judge. Moreover, presenting one self as the victim of socially undesirable relatives who are in conflict with the police and each other and as the docile one in a narrative account is another successful pattern of speech in the trials. Yet, the judge neglects the suspect speech that does not have criminal

[380] Sally Engle Marry, "Courts as Performances: Domestic Violence Hearings in Hawaii Family Court," in *Contested States: Law, Hegemony and Resistance*, ed. Mindie Lazarus-Black and Susan F. Hırsch (Britain: Routledge, 1994). p. 40.

[381] Ibid., p. 53-54. ; Yvonne Seng, "Standing at the Gates of Justice: Women in the Law Courts of Early Sixteenth-Century Üsküdar, Istanbul " in *Contested States: Law, Hegemony and Resistance*, ed. Mindie Lazarus-Black and Susan F. Hırsch (Britain: Routledge, 1994). Selly Engle Marry explores how women resist domestic violence by means of court performances in the Hawaian family court. The judges' interpretation of the law enables them to seize the law in verbal performances in the courtroom. This stance is compatible with my approach to courtroom performances. Yvonne Seng also explains how Muslim women displayed successful court performances about inheritance and property rights in the sixteen century. In both articles, marginal women are aware of their legal rights and seize the law to fight for these rights. Similarly, I approach all actors in the courtroom as conscious agents who manipulate the law for the sake of their own interests.

[382] Brenneis, p. 225.

culpability. Beyond that, the denial of the conduct and the display of informal and relaxed bodily performances are not effective and valid representational styles in the courtroom.

Judges' Control over Children's Accounts

There are two barriers to accessing the direct voices of the children in the courtroom. First, being aware of addressing to the authority structures what the child says. Second is the translation of the speeches in written accounts. In order to illustrate these problems regarding the indirect accessibility of child's voices in statements, verbal interactions between judges and children and bodily performances are evaluated with reference to the selected trials.

The following quotation from my interview with "the rule-oriented judge" who explained the theatricality of the courtroom and the centrality of his role in the orchestration of the stage in the below passage:

> The court room resembles a theatre where everyone is in different roles. The child says something, the advocate says something else and the litigant is in the pursuit of something else. And I play a different and central role. How the child denies the conduct or resists the charges is not important for me. If the child accepts the charges and his attitudes at court are proper, it means good conduct in my eyes. What the litigant says in a coherent manner is the basis for a decision. The litigant's statements given to the police, the prosecutor and before the judge at the court should be coherent. I am the one who hears all charges and gives the last sentence.[383]

[383] The judge, interview by the author, note taking, the one of the juvenile courts in Istanbul, Istanbul, Turkey, 23 June 2008. "*Mahkeme salonunu herkesin farklı rolde olduğu bir tiyatroya benzetiyorum. Çocuk bir şey söylüyor, avukat başka bir şey ve şikayetçi başka bir şeyin peşinde. Ve ben farklı ve merkezi bir rol oynuyorum. Çocuğun kendini nasıl suçsuzlaştırdığı ve ya iddiaya karşı geldiği beni ilgilendirmiyor. Eğer çocuk iddiayı kabul ederse ve duruşmadaki davranışları da uygunsa, bu benim gözümde iyi hal anlamına gelir. Kararım için asıl önemli olan şikayetçinin tutarlı ifadesidir. Polise, savcıya, mahkeme önünde hakime verilen şikayetçi ifadeleri tutarlı olmalıdır. Her şeyi duyan ve son kararı veren benim.*"

The judge depicts the courtroom as a theatre. On the stage, he considers all players (judges, advocates, litigants and children) as subjects who are after some end. Primarily, the litigants' reconstruction of the event is the basis for the decision. The judge is the authority taking the litigant's expression as a true and objective representation of what happened. The child has performed an act that is coded as a crime in the penal code. When the litigant's property right is violated, the legal procedure is initiated. Yet, the litigant's articulation of the event in questioning and trial accounts must not be contradictory.

Secondly, the judge hears the voice of the child only if the child accepts the claim and attitudes in the court are proper. Therefore, the rule-oriented judge delimits the child's agency. Acceptance and submissive behaviors in the courtroom are valid performances and most probably the reason for reductions in sentencing. Statements in which the child makes alternate explanations about the criminal conduct are disregarded. The child became a subject only in the condition of subordination to the accusation. Labeling the practice as a crime and giving consent for the punishment is the only way to be intelligible to the judge and to become a subject whose voice is considered as important in the criminal justice system. Thus, to be aware of addressing the authority affects what the children say, so it is an obstacle for direct access to the children's voices. The child can apply the tactic of saying things that confirm the claim in the court in order to influence the course of jurisdiction.

Dicle Koğacıoğlu scrutinizes the reproduction of inequalities in the workings of the law in the Istanbul Civil Courthouse in 1999 and 2001.[384] She defined formal conduct as "… a seamless order composed of legal forms. Every case is seen merely

[384] Dicle Koğacıoğlu, "Conduct, Meaning and Inequality in an Istanbul Court House," *New Perspectives on Turkey* 39 (Fall 2008). p. 100.

as the application of these norms through procedural forms."[385] Similar to this denotion of formal conduct, the judge values routine legal procedures, like the documents of evidences, the litigant's statement, the documents on culpability or the documents prepared by the police. These formal, bureaucratic and impersonal legal proceedings constitute the ground of adjudication.

Now, two trials orchestrated by "the rule-oriented judge" are presented to uphold what the judge said and the problem of addressing the judge. The first case is on the crime of mugging. After the confirmation of the suspects' identity and personal information (birth place and date, mother-father name, education degree, the address, marital and occupational status), the judge summarized the event by reading the court record of the proceeding:

> After wondering and enjoying Taksim square on the night when the event occurred, they got into the litigant's taxi, went to Eyup and stopped the car. Other suspects, Ahmet and Mehmet, left the car without paying any money. The accused leveled a gun at the litigant and demanded his money and mobile phone. The accused took 8 YTL and a mobile phone. Then, he also took 50 YTL from the wallet. And he fired the gun to the air one time while escaping from the place of event.[386]

During the court appeal, the child's expressions and attitude fulfilled the judge's expectations. His performances created the impression of a docile child in front of law. There were two factors that affected his speech and body language and prevented open confrontation with a powerful judge who was the audience for his performance. Since mugging is a crime associated with heavy punishment, the child

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[385] Ibid., p. 102.

[386] The trial, participant observation by the author, participant observation and note taking, the one of the juvenile courts in Istanbul, Istanbul, Turkey, 14 May 2008. I changed the real names in transcription. "*Olay gecesi Taksim meydanında gezip eğlendikten sonra, müşteri olarak şikayetçinin taksisine Eyüp'e gitmek için bindiler ve arabayı durdurdular. Diğer şikayetciler Ahmet ve Mehmet para ödemeden aracı terk ettiler. Suçlu silahını şikayetçiye doğrultur ve cep telefonu ile cüzdanını istedi. Sanık 8 YTL ve telefonu aldı. Sonradan cüzdandan 50 YTL daha aldı. Olay yerinden kaçarken bir kez havaya ateş etti*."

was kept in prison until the trial and gendarmes brought him to the courts. While the child gave his performance, two gendarmes stood at the child's side, looking at his face. This meant a constant surveillance of the child and I interpreted it as the first factor affecting what the child said.

In addition to constant surveillance by the gendarmes, the child was aware of addressing authority. His attitude and the representational style during the trial conveyed the message of subordination in front of the law to the judge. During the trial, he appeared before the judge in his suit, shaved face and hanged his head in shame. When the judge asked for his statement before reading the summary of the event written above, the response was, "I beg your pardon, and my previous statement is valid."[387] While reading the summary of the event, the judge again asked whether the child wanted to say anything or not, the child's response was "I swear it is true, I am regretful."[388] The judge translated his saying as "I do not say anything, I am regretful."[389] At the end of the reading of the summary, the judge asked whether the child had any last words before the decision and the child said "I swear it is true, I beg your pardon, I am regretful and have seen every evil thing and I have learnt."[390]

The child's subordinate accounts and attitude during the trial as a conscious agent resulted in a decrease of the sentence from twelve years to five years due to the child's good conduct. Because he had been less than fifteen years old when he had committed the crime, the penalty for the mugging which was twelve years imprisonment for adult offenders, was decreased to six years in accordance with the

[387] Ibid., *"Efendim, önceki ifadem doğrudur."*

[388] Ibid., *"Yemin ederim ki ifadem doğru, pişmanım."*

[389] Ibid., *"Bir diyeceğim yoktur, pişmanım dedi."*

[390] Ibid., *"Yemin ederim ki ifadem doğru, efendim, pişmanım ve kötü olan her şeyi gördüm ve öğrendim."*

second clause of Article 31 in the penal code.[391] Article 62[392] is another reference point for the decision. Being regretful and proper attitude during the trial were the mitigating circumstances for the reduction in penalty to five years. The days he had spent in prison would account within five year adjudication.

Now, I evaluate this effective pattern of speech and bodily performance with reference to Augusto Boal, who worked on the politics of theatre. Boal explains how the theater is a political tool with which to sustain oppression and social control. This vision is beneficial to interpreting the meaning of the child's expressions and attitudes before the judge in the legal context. First, Boal defines justice as "justice is not equal, justice is proportionality."[393] In the case I selected too, the litigant and the child are not equal in the sense that the litigant initiated the whole process and the litigant's statements are perceived as the accurate representation of the event. In the court, there is already inequality between the child and the taxi driver, who have been labeled the suspect and the litigant from the beginning of the legal procedure. Justice is accessible in proportion to the legal positions of the litigant and the child.

Boal defines the conditions of virtuous behavior in these unequal relations. "… if any given behavior is to be either as vicious or virtuous, it must fulfill four indispensible conditions: willfulness, freedom, knowledge and constancy."[394] "Willfulness excludes the accidental. That is, man acts because he decides to act

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[391] *Türk Ceza Kanunu,* Article 31. The second clause of Article 31 in the Turkish Penal Code is that penalties are reduced by half for a culpable child who is between thirteen and fifteen.

[392] Ibid., Article 62. Article 62 defines the reasons for the reduction in punishment depending on the judge's initiative. Its secondary clause was applied by the judge in the sentence discussed.

[393] Augusto Boal, *Theatre of Oppressed* (London: Pluto Press, 1993). p. 23.

[394] Ibid., p. 16.

voluntarily, by his will…"[395] The second condition, freedom, means that "virtue is free behavior, without any short of exterior pressure."[396] Knowledge "is the opposite of ignorance."[397] Thus, the agent knows the meaning of the conduct and other options. Lastly, all of these conditions of the virtue should be produced constantly in the agent's practices and attitudes.[398]

The child fulfilled all of these conditions during the trial. The child situated himself as one who had voluntarily and freely selected the option of committing the crime, mugging, and he labeled the practice a crime. He was regretful for his conduct and subordinated himself to the judge. His posture, suit and the addresses of "I beg your pardon", "I swear it is true, I am regretful", "I swear it is true, I beg your pardon, I am regretful and have seen every evil thing and I have learnt" not only reify the judge's figure as authority, but also are tragic performances indicating the child's return to the "catharsis" that means "correction of men's actions"[399] as a virtuous agent. How the child explains his conduct is not accessible to us. Yet, he presented himself as one who "has seen every evil thing" and learnt the necessity of being a virtuous man at prison. Therefore, he is promoted from being the object of the knowledge defining what is virtuous to the subject of it. " 'The powerful speech' associates with the use of begging pardon, polite addresses, and not use of hesitations and intensifiers in the publicized testimony"[400] and " … subjects prefer and evaluate

[395] Ibid., p. 17.

[396] Ibid., p. 18.

[397] Ibid.

[398] Ibid., p. 20.

[399] Ibid., p. 27.

[400] O'Barr, p. 67.

most positively the situation in which hostile verbal exchanges are absent."[401] Thus, the child utilized the powerful formal speech and the judge who heard the powerful style believed the child's speech was more convincing and trustworthy. These implicate good conduct to the judge. The child was aware of addressing the authority and this structured the child's speech. Because he did not describe the event in his own words, I did not hear his direct construction of the event at trial.

Victor Turner makes a "distinction between mere "experience" and "an experience": the former is received by consciousness, it is individual experience, the temporal flow, the latter is the intersubjective articulation of experience, which has a beginning and an ending and thus becomes transformed into an expression."[402] Thus, in an expression the child censors what he has experienced subjectively. The gap between experience and its expressions makes it impossible to grasp the meaning of his expression. Yet, for the judge, if the child accepts the accusation, there is no "critical distinction… between reality (what is really out there, whatever that may be), experience (how that reality presents itself to consciousness), and expressions (how individual experience is framed and articulated)."[403] For the judge, the child's testimony reflects the objective real meaning of the experience. Thus, the child is a legal subject only if he externalizes the internalized discourse of being other, the offender in the verbal and bodily interactions in the courtroom.

At this point, the risk is worthy to mention: the confinement of the interpretations of the expressions into self/other dialect implies the delimitation of

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[401] Ibid., p. 91.

[402] Edward M. Bruner, "Experience and Its Expressions," in *The Anthropology of Experience*, ed. Victor M. Turner and Edward M. Bruner and epilogue by Clifford Geertz (Chicago: University of Illionis Press, 1986). p. 6.

[403] Ibid.

agency. My critical approach to the texts in the next chapter and expressions in the trials differ from those of the judge in the sense that I do not claim to make full interpretation of the expressions as if there were a neutral meaning pool. The role of the child in the theatre is not merely to reproduce his otherness. Instead, I approach the children as authors of the verbal performances at the courtroom and in the written texts. For instance, at the break of trials, when I was standing in the corridor, I witnessed conversations between an approximately ten year old child and his mother. The child had worn a black suit, polished shoes and combed his hair. His mother said him

> Look at me and listen carefully. You will stand in front of the judge by holding your hands in front of you and hanging your head in shame. You will not give any negative answer to the judge. Only express your regret.[404]

Since he entered into another trial, I did not pursue his expressions. Yet, this conversation between mother and child showed me the possibility of another interpretation of the expressions in the juridical setting.

The court corridor has no direct interaction with the judge in the legal context. In other words, it is off-stage. The mother warned the child not to express the real subjective experience and consciously instructs him how to behave and what to say during the trial. As an active agent, the child should structure experience in accordance with the expectations of the powerful judge. This dialogue prescribing the dress, the stance, the answer in open interaction with the judge between mother and child can be interpreted in the following way: the suspect performs the role of the regretful child at trial.

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[404] My participant observation without overting my identity at the break of the trial in court corridor, 14 May 2008. *"Bana bak ve dikkalice dinle. Hakimin önünde ellerin önüne bağlı ve başın eğik duracaksın. Hakime ters cevap vermeyeceksin. Sadece pişmanlığını anlat."*

However, this kind of interpretation is also risky because it excludes the impact of structure, being in the legal context on the performance even though it makes the child active. The subaltern child has to make his experience intelligible to the judge because the offender is deprived of the means to judge his own conduct, so the offender has to make maneuvers within the legal space. Thus, the practice should be interpreted neither as total subordination, nor as total resistance. The child's fulfillment of the mother's instructions or the speech of the child in the case of mugging should not be considered the reproduction of the subordination before the court, unlike the judge's interpretation. Attitudes and expressions are compliance tactics to decrease the penalty. Simultaneously, the performances are not totally independent from the legal context and language. All performances should be situated at liminality and the meaning of this conceptual approach to interpret the written accounts in files is elaborated in the following chapter in detail.

Beyond being aware of addressing authority, the second problem for the accessibility of the child's voice is the transcription of the speeches into written accounts in the courtroom. That shows us another limit for verbal interactions. Koğacıoğlu also pointed out this problem in trials at the Istanbul Court House. "… the texts that the courts produce attempt to be internally consistent in terms of the normative framework to which they refer, but they do not necessarily contain a full picture of all relevant events."[405] The formal court records unregister the exact words, manners and interactions in the lawsuit.

[405] Koğacıoğlu, p. 107. ; Malcolm Coulthard, "Whose Voice Is It? Invented and Concealed Dialogue in Written Records of Verbal Evidence Produced by the Police," in *Language in the Legal Process*, ed. Janet Cotterill (New York: Palgrave Macmillan Press, 2004). Coulthard examines the impact of the the fabrication of verbal evidence by the police in the statement on the court decisions in late 1990s England court cases, "the *illocutionary* force of the words…" Ibid., p. 19. The controled and translated records are used as evidence, the police unfairly concealed their own voice and/or represented what they said as having

One trial controlled by "the rule-oriented judge" exemplifies the problem of translation. There were two accused children: Deniz and Ozan. Deniz was in the courtroom. It was written that the personal knowledge, the defenses, the social observation report and the statements taken by the police and the prosecutor had been read to the child before his entrance into the courtroom. Yet, none of them had been read. The type of the crime or its occurrence was not mentioned during the trial. When the child stood at attention, the judge read aloud "according to the criminal culpability report, the child is not capable of understanding the legal meaning and results of the crime, and he failed to improve his ability to control his behavior."[406] Then, the judge asked for the defense of the child. The response was, "I do not have anything to say, but in reality I want to say…"[407] At this point, the judge intervened with an authoritarian voice and said "Write, my daughter, the suspect said there is nothing I want to add."[408] Then, the trial was postponed without the sentence in five minute.

For Archer, "Disclaims are thus similar to evades in the sense that they can be seen as less 'cooperative' than those answer-types that explicitly provide some requested information and/or confirmation."[409] Similarly, the suspect attempted to

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been said by the accused. By the control of the written form, the police create misrepresentation and secure the sentence. Similar vision is applicable to the court records.

[406] The trial, participant observation by the author, participant observation and note taking, the one of the juvenile courts in Istanbul, Istanbul, Turkey, 14 May 2008. *"Farik ve mümeyyizlik raporuna gore çocuk suçun yasal anlam ve sonuçlarını kavrayacak kabiliyette değildir ve davranışlarını kontrol edebilecek yetisi yoktur."*

[407] Ibid., *"Bir diyeceğim yoktur, ama aslında bir şey söylemek istiyordum…"*

[408] Ibid., *"Yaz kızım, sanık bir diyeceğim yoktur dedi."*

[409] Archer, p. 249.

supply new information instead of confirming the previous one. Yet, his attempt was perceived as denial that was an invalid representational style on stage.

Before the further exploration of this example, another outstanding instance is worth to comprehend the problem of translation. It was the case of mugging that refers to stealing by using physical violence. The child came from the Bayrampasa prison and entered into the room with the accompanying gendarmes. The judge started to read aloud the summary of the event from the record of proceedings: "On May, around seven o'clock at night, the accused set the knife against the litigant's throat, who was coming back home with her son."[410] The accused intervened and said "I beg your pardon…"[411] The judge ignored the child's interruption, looked angrily the child and continued to read the court record in an authoritarian tone. Most probably, the child dressed in casual clothes, jeans and white sweatshirt and speaking in a relaxed manner gave the impression of a vagabond to the judge. "By holding a knife against her, he forced her, made a grab and took 9 YTL and an expensive mobile phone. He slapped the boy and threatened him not to tell anyone."[412] The judge added "Write, my daughter, the suspect said 'there is nothing I want to add.'" Then, the judge asked the child whether he wanted to say something or not. The child started to tell about his experience fluently with a self-assured posture and the judge translated the child's account.

> The child: This woman is my aunt. Her husband slapped their son, but not very hard. This became a family quarrel. And my aunt cut her own

[410] The trial, participant observation by the author, participant observation and note taking, the one of the juvenile courts in Istanbul, Istanbul, Turkey, 14 May 2008. *"Mayıs ayında akşam yedi civarında suçlu oğlu ile birlikte eve dönmekte olan şikayetcinin boğazına bıçak dayadı."*

[411] Ibid., *"Efendim…"*

[412] Ibid., *"Bıçak dayayarak zorla 9 YTLsini ve pahalı cep telefonunu gasp etti. Ve erkek çocuğunu tokatlayıp tanıklık yapmaması için tehdit etti."*

throat with a knife. Because of the false statement of my aunt's husband, I have been imprisoned for one month. I am carrying Koran in my pocket. Then, he picked it up and took an oath by holding it up: "I swore what I have said is the truth."[413]
The judge: My aunt's husband slapped my nephew. And my aunt became the plaintiff in the family quarrel. She involved me in the event. She will come before the court and testify. She should come and say my face that I mugged her.[414]
The child: She is a sewage woman. As a family they were imprisoned for attacking the police.[415]
The judge: They carried on the lawsuit with the police for this reason.[416]
The child: Her husband was imprisoned for twelve months for this reason.[417]
The judge: Her husband was imprisoned and I have been punished unnecessarily for this reason.[418]

The decision was that on the basis of the child's defense, the litigant and the witness would be heard again and the birth certificate would be demanded in order to prove the degree of relationship between the accused and the litigant. Finally, until the next session in November, the child would remain in prison.

In both cases, the children's actual words were transformed into stories. These stories put the lived experience aside and the transcript become similar to the millions of other case reports in the court archives. What are written are not the child's original words, but a biased interpretation of them. In the first case, the child was not allowed to continue the sentence: "I do not have anything to say, but in

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[413] Ibid., *"Bu kadın benim halamdır. Kocası oğluna çok şiddetli olmayan bir tokat atmış. Bu aile kavgasına dönüşmüş. Ve halam kendi boğazını bıçakla kesmiş. Kocasının yalan beyanı yüzünden bir aydır boş yere hapis yatıyorum. Cebimde Kuran taşıyorum." "Yemin ederim ki gerçeği söyledim."*

[414] Ibid., *"Halamın kocası yeğenimi dövdü. Ve halam aile kavgasından şikâyetçi oldu. Beni de olaya kattı. Buraya gelsin ve ifade versin. Onu gasp ettiğimi yüzüme söylesin."*

[415] Ibid., *"Halam çirkeftir. Polisi darp etmekten bir yıl ailecek hapis yattılar."*

[416] Ibid., *"Polisle bu yüzden bir davaları oldu."*

[417] Ibid., *"Kocası bu yüzden on iki ay hapis yattı."*

[418] Ibid., *"Kocası hapis yattı ve ben bu yüzden boş yere hapis yattım."*

reality I want to say…" His sentence was transformed into formal records without allowing his defense as the child had nothing to tell. Maybe the reason for the judge's attitude was the criminal culpability report according to which the child was not capable of understanding the meaning and the result of his conduct. Thus, most probably the child would attribute alternative meaning to the criminal conduct and that would fragment the legal definitions. It fades out a conversation.

The child applied social typifications in the second case in his performance in the courtroom. Bruce Kapferer explains how the performances and the experiences are structured in the legal context and this theorization fits my approach. Giving meaning to experience as "the generalized other" facilitated the interaction between the judge and the child.[419] Yet, again there is the problem of translation. If a mere structuralist analysis is made of the basis of text, what kind of tactics the children use at trials remains unknown. The scrutiny of the child's verbal and bodily performances do not implicate an obsession with subjectivism and consider the child's performance independent from the "… interconnectedness of the directionality of performance, the media through which the performance is realized, and an attention to the way it orders context."[420] The media was a social drama and the performance directed at the judge as an audience. "Trial narrative" refers "oral narratives of personal experience as a linguistic method of replicating the temporal

[419] Bruce Kapferer, "Performance and the Structuring of Meaning and Experience," in *The Anthropology of Experience*, ed. Victor M. Turner and Edward M. Bruner with an epilogue by Clifford Geertz (Chicago: University of Illionis Press, 1986). p. 190. Kapferer defines the universalizing aspect of the culture that makes an approximation of the particular experience with the concept of "the Generalized Other." It means that "I become aware of myself, of my experience, and of the possibilities of my self-hood, through the act of standing outside myself and reflecting my action through the perspective of another person- by taking the attitude of the other and organizing this, processually, in accordance with rules of interrelation."

[420] Ibid., p. 192.

unfolding of events in the sequence in which they occurred."[421] The child's speech style includes "orientation-… who, what, when, where...core narrative-… what happened… (elaboration)- (provides further details of core narrative)… point-significance of the narrative account for the larger trial narrative… addressed explicitly to the jury."[422] That in return structured the tactics child used and allowed for the communication of meaning. He constructed meaning for his experience by the medium of social drama.

The child was accused of mugging unnecessarily. He was the victim of a family quarrel that sprang from the slapping of his nephew by the litigant's husband. The litigant, the aunt, knifed her own throat and created a fictive narrative in which the child had mugged her. He was victimized by improper familial relations between the sewage aunt and her husband who had been imprisoned for striking the police. Another element of this social drama was that the boy had been imprisoned for one month because of the false statement of his aunt's husband. In the presentation of his dramatic experience, he used social stereotypes, "sewage aunt", her "husband imprisoned for striking the police", beating the child in a family quarrel and he picked the Koran up and made an oath for the expression of truth. Neither the words he expressed to articulate the stereotypically improper family, nor his making an oath on the Koran to prove his narrative were recorded in the translated version of his statement in the official document. All was translated as "She should come and say my face that I mugged her." The counter accusation of his problematic family and the use of the Koran are tactics that provide evidence for innocence on the stage in the legal context.

[421] Archer, p. 261.

[422] Ibid.

Kapferer also explains how "two aspects of the performance: as the structuring of standpoint and as the structuring of the context through the medium of presentation" in ritual exorcisms[423] intermingled, when the subjective is objectified in ritual action. Representation by means of social drama and stereotypes convert the subjective account of the accused into an objective presentation and constitute the context of interaction. And "the culturally understood subjective world … finds external form" in the official records for this case. "This subjective world, in turn, … order the context of experience, is rendered capable of entering directly into the experience of the spectators…"[424] The spectators who were the juridical apparatus in this case understood the child's subjective experience that constituted the legal context with the medium of social drama. His performance became successful and the decision was, on the basis of the child's defense, the birth certificate request in order to prove the relation between the accused and the litigant.

Conflicting Verbal Interactions over the Definition of Crime

What the judges and the advocates laugh while the child remains silent during the trials is an instance of the association between morality and judgment and conflict over the definitions of the crime. It illustrates the contestation over the meaning and the constructed nature of crime. In my informal interviews, a social worker told me an anecdote. They had come across many examples of the child's seriousness and the others' laughing during the trials. Once, the judge asked the child whether he stole a car, which was the crime for which he was in the court. The child

[423] Kapferer, p. 194.

[424] Ibid., p. 199.

gave the response: “Yes, I had made theft, but the judge is incorrect because I have stolen five times to sell their parts. These are not in the court records.” The judge, the social worker and the lawyer laughed loud while the child remained calm.[425]

During our conversation, the judge entered into room to ask for social observation reports from another social worker. The judge expressed his giving ears for our conversation and gave me another example from the trials. Once, he had judged a girl who has accused of having stolen a t-shirt. The judge told her that she had rejected the accusation and she had argued that she had bought them. The judge asked her where her bill was. She did not have the bill because she had not given any money. She liked it and she was poor. While she was taking it out of the shop, she was caught. Then, the clerk and the judge laughed.[426]

The response given to why the juridical apparatuses laughed at the testimonies or why these speeches were perceived as jokes is an example of the social and the legal control of perception. Marry Douglas defines a joke as “… a play upon form. The joke is an image of the relaxation of conscious control in favor of the subconscious.”[427] Thus, each joke subverts the social control of values. In the first case, according to the official values, each theft should be on the legal record and each criminal conduct should be penalized. Yet, in the unofficial values of the child, he had stolen the cars to sell its parts. His four practices out of five remained out of legal and social control. He played upon the form of his practice and decriminalized

[425] The social worker, interview by an author, note taking, the one of the juvenile courts in Istanbul, Istanbul, Turkey, 24 May 2008. *“Evet, hırsızlık yaptım. Ama hakimin yanlışı var, çünkü ben parçalarını satmak için beş kez hırsızlık yapmıştım ama mahkeme kayıtlarında yok.”*

[427] Mary Douglas, "Jokes," in *Rethinking Popular Culture: Contemporary Perspectives in Cultural Studies*, ed. Chanda Mukerji and Schudson Michael (California: University of California Press, 1991). p. 296.

it. That caused a reversal of the rational legal scheme and unleashed the laugh, the loss of control for the juridical workers.

Similarly, the secondary example proves that "a joke cannot be perceived unless it corresponds to the form of the social experience."[428] The girls' statement is the reversal of the normalized moral rules of shopping. In the normal exchange relation, the value in money form is given in return for the commodity that is bought. The bill is the formal evidence of this exchange, a contract between the seller and the buyer in the market. However, the girl's experience did not correspond to the prescribed form of the social experience of shopping. Again, she liked and bought a t-shirt without paying money, so she transgressed the ordinary relationship between the buyer and the seller and this normative transgression constitutes crime in court. This incompatibility between the devaluation of the normalized exchange relation by the girl and the criminalization of it led again to the laugh.

Even though it was not general, one trial orchestrated by "the social-work oriented judge" is worthwhile to me in terms of proving the contested and constructed nature of the crime, and so the fallacy of objective knowledge. In one trial, the legal dispute was a quarrel between two families.[429] Both the litigants who were a couple and the accused child were in the courtroom. The couple was both the suspects and the litigants because the child's family also opened the case for the same quarrel. First, the litigants started to talk and accused the child and his family of the violation of the privacy of home. After their statements separately, the judges asked for negotiation, but the litigants refused. The case for other members of the

[428] Ibid., p. 299.

[429] The trial, participant observation by the author, participant observation and note taking, the one of the juvenile courts in Istanbul, Istanbul, Turkey, 24 June 2008.

family has been conducted in another court. Since only the child was under eighteen years old, his trial was conducted in the juvenile court.

Then, the litigants reconstructed the event by means of their statements. The woman described the event: that day, her husband was making an alteration with a drill and the child's father came to the door to complain about the noise. She had told him it was about to finish. Then, the judge interrupted and asked for negotiation to the child. The child rejected and said that his family and he had not done any harm to the other family. On the contrary, the couple had done harm to his family. In their living place, the family and neighborhood quarrel was more important than purse-snatching in their everyday life, so he would give his statement. Then, the child started to articulate the event in microscopic details. In sum, the noise prevented them from chatting with the guests and when his father knocked the door to stop drill two times, the male litigant walked with working drill towards his father and scarred him in the secondary warning. Then, the child went the upstairs to rescue his father and picked up the drill. His sister and mother also came. Then, in the child's account, the litigants attacked him and beat him on their sofa with planks and his sister with kicks. His father kicked the male litigant to save his pregnant daughter. His mother saved the child by threatening the female litigant with a knife and left the flat with the child. As soon as they left the flat, the litigant locked his sister and father. Another neighbor kicked the door down.

The female litigant made counter accusations: his father's provocative words had angered her husband. The drill was not turned on, but her husband turned it on unconsciously in the quarrel. The child's mother came with the plank and attacked them; they shut the door when they realized the coming quarrel. The male litigant confirmed his wife's statements. He added the attack of whole family on him. The

reason for keeping sister and father in their home by locking the door was to prove it to the police. As a result, the coming trial will be hold at the October.

First of all, this trial was the most detailed one. Both sides' statements depicted all scenes in minute detail in a serious manner. What is most impressive is the child's calling of snatching as unimportant crime and the family and neighborhood quarrels as the most significant problem in everyday life. These quarrels are the main issues to seek justice in the court. Both the litigants and the child strongly rejected the judge's offering for negotiation. As opposed to the overall significance of the event for both the litigants and the child, it seemed that the judge considered the case unimportant and unnecessary because the judge asked for negotiation for both parties two times. This quarrel was naïve to be added into the juridical record of the child in the judge's eye. This attitude toward the case is illustrative of the impossibility of making fixed and permanent definitions of the criminal conducts.

Interactions between Judges, Advocates and the Inaccessibility of Legal Aid for Children

In this subsection, the "accessibility" and "quality" of legal aid from the eyes of the judges and the advocates will be examined.[430] The role of the advocates in the

[430] Galma Jahic and Seda Kalem Idil Elveriş, *Alone in the Courtroom: Accessibility and Impact of Criminal Legal Aid before Istanbul Court* (Istanbul: Istanbul Bilgi Universitesi Yayınları, 2007). p. 219. Elveriş, Jahic and Kalem summarize the findings on the field research at the Istanbul Criminal Courts. Two main issue around which the findings are organized: *"1. Accessibility:* How the criminal justice system actors assess the role of the criminal legal aid service with regards to the rights of the defendants; 2. *Quality and Impact:* How the criminal justice system actors evaluate the quality of the work done by the unit…, how the criminal justice system actors evaluate the general and particular contributions of a lawyer during the legal process."

trials and their relationships with the judges are crucial to criticizing the accessibility of legal aid to the child in the juvenile court. I observed three different styles of advocacy in the trials. The lawyers generally perform the role of "the disfunctioning lawyer" on the stage. These lawyers do not defend the child and are ignorant of the lawsuit, even the type of crime and the name of child. Secondly, "the idealist lawyers" mediate between the judge and the children and reconstruct the event in formal legal language. While these advocates are on stage, the children do not make any defense of themselves. The lawyers only express the relevant articles in the penal code to reduce the punishment for the suspect. A small number of lawyers are "the radical ones" who defend the child's reconstruction of the event in everyday language. Yet, the judges are deaf to their voices, which are in contradiction to the legal definitions of criminal conducts.

Similar to the findings of Galma Jahic, Seda Kalem and Idil Elveriş in regard to the judges' and the prosecutors' evaluations of the advocates at the Istanbul Criminal Courts, I also observed "… malfunctioning in relation to lawyers themselves: that lawyers do not take their task seriously, that they engage in show like activities rather than proper defense, that they repeat useless statements instead of developing proper defense, that they do not dedicate themselves to the service they are providing."[431] In the thirty-four trials I participated, each child had an advocate provided by the Body of Lawyers and in nineteen trials I observed "the disfunctioning lawyers." These made up the majority and are either ineffective or neutral elements. The clichés they express are "I took part in the defense, nothing to be added", "I want a discharge", "Is it possible to arrange the coming trial to x date that is proper for me", "The age is low, so I suggest a verdict of not guilty", "The

[431] Ibid., p. 230.

defendant is of fixed abode and does not have a previous record of convictions" or remaining in silence and quitting the room without saying anything. The communication between these kinds of unmotivated advocates and the children is weak and unqualified.

Money is a crucial factor affecting the quality of advocacy, especially the legal aid provided by "the disfunctioning lawyers." Private defense lawyers take money from the accused or whoever is defended whereas the lawyers appointed by the Body of Lawyers receive wages from the state, so even if the majority does not make a proper defense, they take the money. Similarly, the six advocates working at the Criminal Courts at Istanbul mentioned that "as a private lawyer, your responsibilities are much heavier because the defendant has higher expectations, whereas as a CCPP you just get paid by the state."[432] In the trials I attended, there was only one private lawyer who defended the child accused of the neighborhood quarrel in the thirty-four trials. In comparison with the advocates promoted by the Body of Lawyers who are generally dysfunctional and inefficient, he was well prepared and persuaded the litigants to negotiate with the child by utilizing a technical formal knowledge.[433] This observation resembles the finding in the field research conducted at the Istanbul Criminal Courts.

For the judges, the private defense lawyers work better because "… private lawyers have a better dialogue with the defendant; they communicate better, understand the defendant's unique circumstances, and prepare the defense accordingly."[434] Yet, juvenile delinquents cannot afford to hire a private defense

[432] Ibid., p. 237.

[433] The trial, participant observation by the author, participant observation and note taking, the one of the juvenile courts in Istanbul, Istanbul, Turkey, 25 June 2008.

[434] Elveriş, Jahic and Kalem, p. 237.

lawyers. It seems that the more money the suspect or the litigant pays the advocate, the more qualified the legal aid becomes. This monetary dimension is crucial in terms of showing the low quality of legal aid for poor juvenile delinquents.

There were five examples of "the idealist ones" who defended the children by using the formal legal language. For these lawyers, "the technical expertise of the lawyer and her/his knowledge of the language of law put her/him in a crucial position between the judge and the defendant … as a translator between the judge and the defendant."[435] In one trial orchestrated by "the negotiation-oriented judge," "an idealist advocate" presented the defense for a theft with formal legal language. The advocate expressed the reasons for the discharge of the child by using a variety of gestures. She stood in front of the child and the child became invisible to the judge. "The idealist lawyer" postured herself as self-confident and arrogant and chose a formal serious tone of speech. She stared at the judge and behaved as if the child was not present in the room. She defended the child in the following way:

> The evidence was not collected completely; the litigants promulgated the discontinuation of the lawsuit because there was no loss. When the suspect was caught for another crime, he made known the attributed crime, the theft, on his own initiative. The older suspect gave him drugs and so, someone took his self-control. In sum, I want the conversion of imprisonment into money.[436]

In this case, the advocate translated the child's experience into the legal language that made his experience intelligible to the judge. The lack of evidence, the infliction of drugs by someone else that in return reduced his culpability for the theft,

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[435] Ibid., p. 227-228.

[436] The trial, participant observation by the author, participant observation and note taking, the one of the juvenile courts in Istanbul, Istanbul, Turkey, 25 June 2008. *"Kanıtlar tam olarak toplanmamıştır. Şikayetçi kaybının olmadığını, bu yüzden duruşmadan vazgeçme kararının olduğunu bildirmiştir. Şüpheli başka bir suçtan yakalandığında, kendi insiyatifi ile atılı hırsızlık suçunu söylemiştir. Büyük olan şüpheli ona uyuşturucu vermiştir ve bu yüzden başkası otokontrolünü elinden almıştır. Sonuç olarak, hapis cezasının para cezasına dönüştürülmesisni talep ediyorum."*

the plaintiff's request to terminate the file and the offender's acception of the theft by initiative composed of the technical knowledge led to the discharge of the child. This successful speech style for the lawyers includes "… making motions and requests etc.; linguistically characterized by lengthy sentences containing much professional jargon and employing a complex syntax."[437] This lawyer became a mediator who ensured the flow of procedural information to the judge in a completely formalized idiom. Since the lawyer had a sense for which pieces of information were relevant to the judge and formal records, the child was not required to make a statement in his own defense.

In comparison with this kind of legal aid, where the child makes a self-defense in everyday language without the mediation of the advocate, the inconvergent views between the judge and the child come to surface and may result in punishment. For instance, in one trial of "the negotiation-oriented judge," the child was accused of car theft. The child was caught by craftsmen at Eminönü while unlocking a car door. In his self-defense, he said that the car belonged to his friend's uncle, yet his friend did not have a license, so his friend had asked him to turn on the car. Without having turned on the car, the craftsmen had caught them. The child performed the narrative in informal speech and spoke in a smooth tone. His body language did not convey the message of submission. The child held himself erect, but did not stand at attention. Thus, informal behavior decreased his ability to be heard and caused the judge to think his accounts were deceitful. The judge told him that "you are not stupid enough to use the stolen car, are not you?"[438] Then, he sentenced

[437] O'barr, p. 25.

[438] The trial, participant observation by the author, participant observation and note taking, the one of the juvenile courts in Istanbul, Istanbul, Turkey, 25 June 2008. *"Çalınan bir arabayı kullanacak kadar saf değilsin di mi?"*

him to one year two months imprisonment "because of his vague defense" and the judge translated the convict into 3600 YTL monetary punishment.

The accused child negated his conduct by using everyday language without the legal aid and this did not have a counterpart in legal language. The end result might be different if the lawyer used technical language and modified the telling of the event in the legal context. For instance, someone else forced him to start the car that in return decreased his responsibility for the theft and the act remained an attempt because they failed to remove the car. This kind of construction of the event is a successful pattern of advocacy in the juridical setting.

"Lawyers were seen as 'mediators' between the judge and the defendant, or a 'double check' for the judge, making sure that s/he does not miss anything."[439] This is another role attached to "the idealist lawyers" in the juridical processes. In one trial of "the rule-oriented judge," the complainant's phone was stolen by his elder friends on the street. He was drunk when his friends took his phone and they quarreled. His friends threatened him with a knife. Yet, he did not recognize the offender, who was present at the court and was convicted for six and a half months. The litigant's attitudes and the representational style during trial conveyed the message of subordination in front of the law to the judge. Even though he did not appear in his trial with a suit and shaved face, he hanged his head in shame and stammered while explaining the event. He wore dirty trousers and a shirt and came to the court with slipper. This created an unregistered negative impression outside the legal formalism and his poor appearance was the dynamic pertaining to the court operation. The judge got angry due to the inconsistent expression of the litigant. The judge did not believe the account of the complainant child.

[439] Elveriş, Jahic and Kalem, p. 235.

"The idealist lawyer" of the offender intervened and a constructed defense by utilizing the inconsistent accounts of the plaintiff as formal evidence. The advocate said fluently that

> The file does not include the other litigants' statements. If they give statements on the non-recognition of the suspect, this can resolve the problem of inconsistent litigant statement and can lead to dismissal. In addition, the phone was found on the elder friend, not on the accused, so I make a call for dismissal.[440]

The judge congratulated the advocate on her complementary, "double check role." The judge was not aware of the lack of the other litigants' statements. "The idealist lawyers" exercise their power in court by manipulating the thoughts and opinion of others. The idealist lawyers' speeches in a legal format are merely an effective strategy to provide legal aid to the child. Again the idealist lawyer utilizes technical knowledge and draws the legal road for dismissal. The lawyer smiled like a student praised by the teacher and sat down the desk. The lawyer provided the formal link that facilitated the coordination between the judge and the child. The idealist lawyer, similar to O'Barr's evaluation, "… is perceived as having far less control over the presentation of testimony."[441] That idealist prototype of the advocate controls the interaction between the judge and the offender and prevents the clash of interests whereas there is not this kind of control between "the radical lawyers" and the child as explored later.

Lastly, in order to emphasize the heterogeneity of the lawyers' interactions with the judges and the offender children in the theatricality of courtroom, the radical

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[440] The trial, participant observation by the author, participant observation and note taking, the one of the juvenile courts in Istanbul, Istanbul, Turkey, 14 May 2008. *"Dosya, diğer şikayetçilerin ifadelerini içermiyor. Eğer onlarda sanığı tanımadıklarına dair ifade verirlerse, çelişkili şikayetçi ifadesi sorunu çözülebilir ve bu da beraate gidebilir. Ayrıca, telefon yaşça büyük sanığın üzerinde bulundu, şüphelinin üzerinde değil. Bu yüzden beraatini talep ediyorum."*

[441] O'Barr, p. 90.

prototype of advocates is elaborated. These lawyers take not only the judge, but also the child as the audience of their performances. Since these defenses fragment the objectivity of the legal language, they are undesirable and disliked in the court. "The radical lawyers" struggle to give agency and to publicize the child's voice in the legal context without constructing a defense for them, unlike "the idealist lawyers."

In one trial of "the negotiation-oriented judge," the child was accused of theft. According to the official record of the event read by the judge, he and his friends had stolen a television and refrigerator and put them into a car. Yet, the car had clashed into a wall and his friends had run away. Craftsmen had caught him. In comparison with the idealist ones, first, the child gave his testimony, then, the advocate made the defense. "The negotiation-oriented judge" had come across the same lawyer many times and even he had written a request to the Body of Lawyers not to assign the lawyer to his trials again. In his self-defense, the suspect denied the accusation. He said he was merely returning home from the market, carrying bread in his hand when he was detected. If he had committed crime, there would have been no reason to wait; he could have escaped like the others. He did not recognize the escaped ones. In the court, he dressed in casual clothing and had not shaved. He spoke falteringly and behaved in a docile manner. He refrained from looking at the judge while speaking. After his defense, the lawyer said that

> His has stuttered from birth. It does not stem from expressing false statement as opposed to your expectation. He himself has expressed his disconnection with the event. You accuse him unnecessarily on the basis of the litigant's statement.[442]

The lawyer addressed the judge in an insulting manner and did not stand up while making defense. Instead, she sat down and stared at the judge. Thus, the

[442] The trial, participant observation by the author, participant observation and note taking, the one of the juvenile courts in Istanbul, Istanbul, Turkey, 26 June 2008. *"Onun kekeme konuşması doğuştan. Sandığınız gibi yalan beyan vermesinden kaynaklanmıyor. Olayla ilgisi olmadığını açıkladı. Şikayetçinin ifadesi üstüne boş yere suçluyorsunuz."*

lawyer insulted the status of the judge who invoked the law as the superior representative of the state in the court and questioned the objectivity of the prosecution.

After the lawyer's verbal and bodily performance, the judge became angry and told the advocate to leave the room, saying that "I already wrote the Body of Lawyers not to appoint her to trials, but I will write again."[443] The case was not concluded and was postponed to November. "The radical lawyer" applied the tactic of "injecting the inadmissible"[444] and "intimidation"[445] to attack the litigant accounts. Yet, her style of speech was perceived as rudeness by the judge. A defense in a fragmented and formal style is perceived as better than a narrative defense in everyday language. The reason for being angry might be the advocate's alternate defense in which she breached the legitimacy of taking the litigant's accounts as the true representation of the event. Thus, her attempt to privilege the child's voice as the criteria of judgment angered the judge and made the lawyer undesirable.

Lastly, I explore how the judges evaluate these different types of the lawyers. The judges consider "the disfunctioning lawyers" as unnecessary legal professionals in the court room. "The negotiation-oriented judge" became angry during trials because the majority of the advocates said nothing and only bargained for the scheduled date of the next trial. Or they sent "excuse letters" to the judge to explain why they did not participate in the trials. The judge explains the fact in the below passage.

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[443] Ibid., *"Baroya duruşmalarıma onu atamamaları için yazmıştım ama tekrar yazacağım."*

[444] Henry G. Miller, *On Trial: Lessons from a Life Time in the Courtroom* (New York, US: American Lawyer Media Press, 2001). p. 138.

[445] Ibid., p. 144.

> Lawyers continue to work by bargaining for the postponement of the next session or writing excuse letters. Even if the lawyers do not come, the trials continue and I am responsible for collecting of the evidences and for judging the child. There is no need for these kinds of lawyers.[446]

This is crucial in terms of showing the judge's approach to the lawyers. This perspective is compatible with the perception of them by "the rule-oriented judge." This judge evaluates them in the following way.

> Generally, the lawyers are ineffective actors in the court and all burdens are on the judge. They come to the trials without any preparation, but the judge has to read and know the case, the evidence in the file and contradictory statements.[447]

Both of the judges evaluate the lawyers as an inefficient legal apparatuses who abuse their occupation by fabricating excuse letters, bargaining for the dates of the coming trials and participating in trials without any preparation. In two trials, the judge wrote in the court records to send a letter to the Body of Lawyers to remove two lawyers because they were constantly writing excuse letters and not pursuing their files. For both of the judges, the roles of the judges and the prosecutors are privileged on the advocates. The judges are the central actors who have to know the files and orchestrate the lawsuits.

However, the interaction between legal professionals, the judge and the lawyer, should not be homogenized. In comparison with the two judges who considered the role of "the disfunctioning lawyers" unnecessary and disliked "the

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[446] The judge, an informal interview with the judge at the break of trial, note taking, the one of the juvenile courts in Istanbul, Istanbul, Turkey, 24 June 2008. *"Avukatlar işlerini duruşma tarihinin ertelenmesi için pazarlık yaparak ve ya özür mektubu yazarak sürdürüyorlar. Onlar gelmese de duruşmalar devam ediyor. Ve ben tüm kanıtları toplayıp, çocuğu yargılamakla sorumluyum. Bu çeşit avukatlara ihtiyaç yok."*

[447] The judge, an informal interview with the judge at the break of trial, note taking, the one of the juvenile courts in Istanbul, Istanbul, Turkey, 14 May 2008. *"Avukatlar mahkemede genellikle etkisiz aktörler ve bütün yük hakimin omzunda. Duruşmaya hazırlanmadan geliyorlar. Ama hakim davayı, dosyadaki kanıtları, çelişen ifadeleri okumak ve bilmek zorunda*."

radical ones, "the social-work oriented judge" considers significant the presence of "the idealist lawyers" in the courtroom.[448] It appears that the judge believes that "the idealist lawyers" on the other side of the bench have the same perspective on things as the judges do. These lawyers are collaborators who seek the legal advantage and disadvantage of the defendants. The lawsuits result in negotiation as a result of the relinquishment of the compliant by the litigant three files out of fifteen. The result is the abatement of the accused. Yet, the last sentence was not given in the absence of the child and the child's lawyer. For instance, the judge postponed the trial to October due to the absence of the child's advocate. Even if the litigant had made a legal call for negotiation, the judge would not have given last sentence.[449] One child had to wait one and half hours because his advocate did not arrive punctually at the trial orchestrated by the same judge. Or one deaf and mute child waited two hours because the Body of Lawyers forgot to appoint a lawyer. The judge made three phone calls and worked to arrange a day when a translator and a lawyer could be at the trial. After two hours waiting, both the lawyer and the translator were ready and the trial started.[450] This judge values the legal aid and the presence of the lawyers in the lawsuits.

Interactions between Litigants and Judges

[448] The judge, an informal interview with the judge at the break of trial, note taking, the one of the juvenile courts in Istanbul, Istanbul, Turkey, 24 June 2008.

[449] The trial, participant observation by the author, participant observation and note taking, the one of the juvenile courts in Istanbul, Istanbul, Turkey, 24 June 2008.

[450] The trial, participant observation by the author, participant observation and note taking, the one of the juvenile courts in Istanbul, Istanbul, Turkey, 24 June 2008.

The litigants, who are both the producers of the legal case and the consumers of the law, also express their testimonies in the courtroom. O'Barr writes that "… the style in which testimony is delivered strongly affects how favorably the witness is perceived, and by implication suggests that these sorts of differences may play a consequential role in the legal process itself."[451] Their statements should not be homogenized as if there were one prototype compliant with legal language. There are distinct speech styles and whether these are meaningful, evidentiary or not depend on the attitude of the judge. And the (in) compatibility between the judge and the litigant orientations affect the (dis) satisfaction of the litigant.

Conley and O'Barr define two possibilities of "concord between the orientations of the judge and the litigants": "1. Both the judge and the litigant are rule oriented; 2. Both the judge and the litigant are relational" in "small claims courts" in American legal system…."[452] The rule-oriented ones "… evaluate their problems in terms of neutral principles whose application transcends differences in personal and social status."[453] Focus is on the legal principles that make these complaints understandable to the judge. On the other hand, in relational orientation, "… they predicate on right and responsibilities on a broad notion of social interdependence rather than on the application of the rules."[454] In relational orientation, both the litigant and the judge are sensitive to mutual social liabilities between the plaintiff and the suspect. Both sides should communicate with each other in the courtroom to understand the causes of crime and complaint reciprocally.

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[451] O'Barr, p. 75.

[452] John M. and William M. O'Barr Conley, *Rules Versus Relationships: Ethnography of Legal Discourse* (Chicago: University of Chicago Press, 1990). p. 113.

[453] Ibid., p. ix.

[454] Ibid.

I also observed the same kinds of interactions. In both cases, the litigants received what they expected from the legal system: promises for the recovery of the material loss in the rule oriented interaction and negotiation in the relational one.

I elaborate the trial that is an instance for the compatibility between the litigant's and the judge's interests in law. It shows the rule oriented relationship. As Conley and O'Barr writes "unwritten custom" is that "although the witness attempts to tell the story on his or her own terms, the court will hear the evidence only when it is structured in ways alien to the day-to-day lives of most of those who testify."[455] For "the rule-oriented judge," this custom is valid. In the exemplary trial, the witness who is also the litigant came into the courtroom without the advocate and the child was present. "The rule oriented litigant" took out a piece of paper from his pocket and displayed his performance. It was the written organized account of his story addressing the judge. After confirmation of personal information, the litigant started to read from the paper.

> The event occurred on x date around 03:00 o'clock in the afternoon. The accused put a knife to the throat of Ibrahim and demanded money to pay his water bill. (He continued his speech by staring at the judge in a decisive manner and pointing at the child with his forefinger.)When he rejected, like an animal got mad, the offender attacked on him and received money. Then, I caught one of them and the police caught others. (He flapped the paper and kept into the pocket. Then, he stood at attention and looked at the judge.) This is a legal state and I am requesting the appropriate punishment. The loss is not important, but the child's attack on life is what is important.[456]

[455] Ibid., p. 14, 15.

[456] The trial, participant observation by the author, participant observation and note taking, the one of the juvenile courts in Istanbul, Istanbul, Turkey, 14 May 2008. *"Olay x tarihinde saat 15: 00 sıralarında meydana geldi. Suçlu bıçağı Ibrahim'in boğazına dayadı ve su faturasını ödemek için para istedi. İbrahim'de reddedince, suçlu kudurmuş bir hayvan gibi onun üstüne atladı ve parayı aldı. Sonra ben onlardan birtanesini yakaladım, poliste diğerlerini yakaladı. Bu bir hukuk devleti ve uygun cezayı talep ediyorum. Maddi kayıp önemli değil, önemli olan çocuğun yaşam üzerine saldırısıdır."*

In this representation, the microscopic details of the event, the dialogues between the litigant and the child during the chase were eliminated. In concrete terms, the litigant disseminated knowledge on the event in formal jargon by giving the exact date and time. In addition, both verbally and bodily, the plaintiff stigmatized the child. He described the child as "a mad animal" who had attacked on the victim and pointed out the child as the offender while giving his testimony. The cause of property crimes was to get money to pay a water bill, but the attack on life was concern for the plaintiff. The litigant mentioned his trust in the legal state to provide justice by virtue of the appropriate penalty for the attack on the life. Simultaneously, he displayed respect for state authority, the judge, and his feeling of having undergone a fair justice procedure in his bodily performance.

After the litigant stopped reading, the judge intervened and asked skeptically "Since you are not the victim, from where do you recognized the children?"[457] The response was based on complete hearsay. First, the litigant was also the witness. He was a friend of the so-called victim's father. In the litigant's account, the child had come to the market and said that his money had been stolen. The child's father and the litigant had left the market and started to run. The litigant had caught the child by guess. Fourth Levent was a small place and everybody knew each other. Craftsmen had shown him the child. He knew they had committed the crime and his guess was accurate. His friend and he had chased the children and caught this one. The litigant caught the child "by guess" and with the help of the craftsmen. The hearsay refers to "… repeat what other persons have said about the events being reported"[458] and it invalidates the testimony in the juridical setting. Beyond formal narrative speech, this

[457] Ibid., *"Eğer kurban değilseniz, bu çocuğu nasıl tanıdınız?"*

[458] Conley and O'Barr, p. 13.

is another example of powerful speech that is a legally admissible style in the courtroom. This effective style makes the litigant's statement reasonable and trustworthy. Therefore, the witness should make concrete evidentiary description without using everyday language and second hand knowledge is an acceptable speech style in the courtroom.

In this case, there was a fit between the litigant's presentation of the case in an organized format and the judge's agenda. The litigant excluded his experiences, the sayings in everyday language, but expressed his preoccupation with the child as an animal. His presentation was packaged in formal language that enables "the rule-oriented judge" to comprehend the claim. Both shared the common view on the purpose of the legal system, which is to punish violations of property and life in the framework of a cause-effect relationship. Even though the judge did not give the last decision and postponed it, the judge did not interrupt or get angry when the litigant gave his performances.

As opposed to this kind of "concord," I observed another kind of interaction between the litigant and the judge interaction in the legal context. Verbal interactions and body performances in two theatrical trials were the referents to uphold that "time" spent in court is a crucial reason to give up the claim for the litigant and that the use of everyday language is another effective style. Instead of interrupting the plaintiff's "relational" account in everyday language and sentencing the suspect in accordance with the legal rule, "the negotiation-oriented judge" allowed the litigants to express themselves in everyday language in the legal context. The litigant was "relational" in the sense that he gave long and sincere subjective accounts on the case, the child and the legal system in ordinary language.

In one trial of purse snatching orchestrated by "the negotiation-oriented judge," the litigant was not in a submissive posture, stood at rest and expressed herself in an easy and cheerful manner while communicating with the judge. The litigant's speech was informal as opposed to "the rule-oriented litigant." The litigant's account was that

> In 2001, we were on a picnic as a family in Balat. When I stood up to give milk to my little girl, someone stole my hand bag. 28 YTL was in my purse. I got bored from coming to trials. The court and the police have not worked. My daughter was baby of six months at that time. She is in school now. At that time, I believed in justice and applied the court as the litigant. Now, I think that the money is no longer important any more. I want to terminate this file today.[459]

"The negotiation-oriented judge" responded in a way to satisfy the litigant and spoke in a cheerful and humorous manner.

> When your daughter gets married, the child will still not have been arrested. The state gives me the right to reconcile the citizen whose bag has been stolen with the purse snatcher. There is no response from the police for the court letter to arrest the child and the elder offender. We will wait for a response to the letter written to the Chief Prosecutor and will end the case with negotiation in October.[460]

"The negotiation-oriented judge" became "relational" with the litigant by listening and actively using the power of judgment to mediate between the litigant and the child in his verbal performance. The legal procedure had tired both of them, so the litigant had asked for a default judgment. That means to levy the sentence in the absence of the child and the lawyer as a consensual resolution. The pronounced

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[459] The trial, participant observation by the author, participant observation and note taking, the one of the juvenile courts in Istanbul, Istanbul, Turkey, 25 June 2008. *"2001 yılında ailemle birlikte Balat'ta piknikteydik. Kızıma süt vermek için ayağa kalktığımda, biri çantamı kapıp kaçtı. Cüzdanımda 28 YTL vardı. Duruşmalara gelmekten bıktım. Mahkeme de, polis de çalışmıyor. O zaman kızım altı aylıktı. Şimdi okula başladı. O zaman adalete inanıp şikayetci olmuştum. Şimdi artık o paranın önemli olmadığını düşünüyorum. Bu gün bu davayı bitirmek istiyorum."*

[460] Ibid., *"Kızın evlendiğinde, çocuk hala yakalanmamış olacak. Devlet bana çantası çalınan vatandaşla, çalanı uzlaştırma yetkisi veriyor. Polisten çocuğu ve büyük suçluyu yakalama yazısına cevap yok. Savcılığa yazılan yazıya cevabı bekleyeceğiz ve davayı ekimde uzlaşmayla sonuçlandıracağız."*

judgment satisfies both of the parties. The child was not punished, yet the crime was added to his record of previous crimes. The litigant was also satisfied because the tiring legal processes had come to an end. Instead of receiving her stolen money back and punishing the offender, she was interested in the termination of a futile legal process. Both the judge and the litigant were aware of the inefficiency of the criminal justice system with non- responded letters and tiring legal procedures and sessions. The judge mediated between the litigant and the child to reconcile them by applying the appropriate legal rule, negotiation, instead of posing himself as an authority to sentence the child. The judge made his decision in accordance with the requirements of legal procedure.

Another example for "relational concord" was observed in the litigant's and the judge's performances in a trial for theft. This case shows that the litigant is not always in pursuit of the lost. Other agents can initiate legal procedure in the name of the litigant. Thus, a man who considered an attempted theft from his buffet not a crime finds himself as a litigant in court. In trial, the litigant articulates the case in a following way.

> This is my twentieth time coming to trial. The child entered my buffet around 03:00 o'clock at night. Yet, he did not take anything. The police officer who is my friend arrested him and initiated the legal process. Yet, I am not a complainant. There was no any material loss for me. My respect to you is infinite. Please close this file! I have grown tired.[461]

Similar to the previous case, he also had grown tired of legal procedures and even though he did not make any legal application, because there was no material loss, the police had ascribed him the role of litigant. Even though the litigant did not

[461] Ibid., *"Bu benim duruşmalara yirminci gelişim.Çocuk, benim büfeme gece 3:00 civarında girdi. Ama hiç birşey almadı. Benim arkadaşım olan polis onları tutuklayıp, yasal süreci başlattı. Ama ben şikayetçi değilim, çünkü maddi bir kaybım yok. Size saygım sonsuz, lütfen bu davayı bitirelim! Yoruldum artık."*

use a formalistic narrative in his reconstruction of the event, he utilized the tithes reifying the authority of the addressee of his message for negotiation. "The negotiation-oriented judge" took his message in communication and decided on negotiation in the absence of child and advocate. The case was terminated because of a time limit and resulted in negotiation. Again, the judge utilized the legal means and evidentiary language to negotiate between the parties. However, it should be noted that in both cases the litigants justified the reason for ending the file as the lack of material loss, so both of the litigants had disseminated the deserved legal knowledge to the judge and it had to become legal evidence for negotiation. Their accounts were confident and admissible evidence to terminate the lawsuits. For the first case, the material loss was no longer important and for the latter, the child did not take any thing from the buffet.

The alliances between the litigant and the judge perspectives are not mere forms of verbal interactions in the courtroom. Conley and O'Barr describe three sources of "discord." The secondary form of it "… is the insistence of some litigants on pursuing a noneconomic agenda that the court may fail to discover and to which they are rarely able to respond."[462] This type is relevant to my field research finding to illustrate the gap between the official language and the ordinary speech of the litigant. At first, it seems that the litigant has the objective of getting back his property, a mobile phone, and the court carried out the prosecution to fulfill his legal request. Yet, there was the possibility of "the elusiveness of litigant objective."[463] The litigant's expression indicated that he considered "… courtroom testimony not as a discrete episode with a clear beginning and end, but as a part of ongoing, although

[462] Conley and O'Barr, p. 126.

[463] Ibid., p. 131.

discontinuous conversation."[464] For the litigant, the specific legal problem at the court was the reflection of ordinary continuous peer relations in an immediate milieu in the legal context, as explored below.

In his courtroom account, the poorly dressed litigant said, "Mahmut is my friend and I have known him for a long time. He was not there that night. There were Tarık, Zafer and Bora in the street, but not Mahmut."[465] Then, the judge who expected a concrete description of the case briefly interrupted the child. By looking over his glasses in an arrogant manner and using a slow and authoritarian tone of voice, he said "You are complicating the case. Why did you come to the courtroom? To confuse the situation or express the reality?"[466] The litigant did not give any response, hanged his head in shame and after a few second silence, he made evaluations on the child's and his character.

> Mahmut is a good boy. At that night around 01:00, we were sitting on the street corner. Ahmet, who is the brother of my friend, came. He asked me what I was doing there and ordered me to stand up and return home! When I stood up, my phone fell down. Then, Ahmet took it and he did not give it back to me. We quarreled. The neighbors called the police. Then, the police took all of us.[467]
> The rule-oriented judge interrupted to restore his control over the statement and asked "Ok, where was this child in your story?"[468] The response was "I was drunk, I did not know. But I do not want my

[464] Ibid., p. 133.

[465] The trial, participant observation by the author, participant observation and note taking, the one of the juvenile courts in Istanbul, Istanbul, Turkey, 14 May 2008. *"Mahmut benim arkadaşımdır. Onu uzun zamandır tanıyorum. O gece orada yoktu. Tarık, Zafer ve Bora orada sokaktaydı, ama Mahmut orada değildi."*

[466] Ibid., *"İşi zorlaştırıyorsun. Neden mahkemeye geldin? İşi karıştırmaya mı, gerçeği söylemeye mi?"*

[467] Ibid., *"Mahmut iyi çocuktur. O gece 01:00 sıralarında, sokakta oturuyorduk. Arkadaşımın abisi Ahmet geldi ve orada naptığımı sordu, kalkıp eve dönmemi söyledi. Kalktığımda telefonum düştü. Ahmet aldı ve bana geri vermedi. Kavga ettik. Komşular polisi aramış. Polis bizi aldı."*

[468] Ibid., *"Peki, hikayende nerede bu çocuk?"*

> friend to stay in the prison. I am not a complainant. The police gave me back my phone.[469]

Mahmut, who had been imprisoned six and a half months, was a good boy, his friend in a peer group so the litigant did not want him to be imprisoned. Even though we cannot know whether Mahmut was there or not, the litigant presented himself as having been drunk, so he did not recognize Mahmut in the quarrel. In addition, Mahmut was not among the ones who had been with the litigant on the street corner in the story.

The litigant struggled to change the outcome of the case. He did not explain why Mahmut was at the court, or why he had initiated the legal procedure as a litigant. The police had already given him back his phone. He was fighting to rescue his friend from prison, so he requested the termination of the case. Yet, the litigant's expression in everyday language as a part of continuous peer relations was inconvergent with the legal language.

Those claims made "the rule-oriented judge" angry because the litigant was talking about everyday relations irrelevant to the case and the legal process was irreversible for the judge. He gave contradictory expressions in comparison with the previous statements in which he had expressed that Mahmut had held his waist while Ahmet had threatened him with a knife to take his wallet and phone.

If the style of testimony is in discord with the judge's expectations, both actors, O' Barr says, "… vie for control over the presentation of testimony."[470] The litigant did not use a cooperative style and "…language in such a way that their

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[469] Ibid., *"İçkiliydim, bilmiyorum. Ama arkadaşımın hapis yatmasını istemiyorum. Şikâyetçi değilim. Polis telefonumu geri verdi."*

[470] O'Barr, p. 88.

interlocutors could understand what they were saying and implying…"[471] Since the litigant did not use an informative style, the account was deemed unreliable. The judge controlled the interaction in this case. Archer writes that "… judges were asking witness questions that were less about procuring information and more about clarifying information previously given…"[472] The judge's interventions to orient the litigant to give a brief and true account in accordance with the previous statements failed, but "Why did you come to courtroom, to confuse the situation or express the reality?", "Ok, where this child was in your story?" showed the judge's expectation of a testimony that accused the child of theft in order to legitimize having kept the child for six and a half months at prison. At the end of the trial, the frustrated judge dismissed the litigant from the courtroom, saying "Go away! You did not tell the truth. Get the hell out of my sight!"[473] This is another signal that can be interpreted as a discord between the judge and the litigant.

As opposed to the examples of the trials in which the interests of the litigant, the child and the judge are concord, all of these actors become dissatisfied in this case because, similar to Conley and O' Barr evaluation, "the judge, influenced by his own rule orientation, fails to penetrate the externalities, and predictably disposes of the matter on the basis of the applicable legal rules."[474] Thus, "a relational problem thinly disguised as a legal dispute"[475] between the parties was not allied with the

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[471] Ibid.

[472] Dawn Archer, *Questions and Answers in the English Courtroom (1640-1760),* (Amsterdam, Philadelphia: John Benjamins Publishing Company, 2005). p. 248.

[473] The trial, participant observation by the author, participant observation and note taking, the one of the juvenile courts in Istanbul, Istanbul, Turkey, 14 May 2008. *"Defol, gerçeği anlatmadın!"*

[474] Conley and O'Barr, p. 141.

[475] Ibid.

judge's rule orientation and the legal procedure of dispute settlement. The decision of postponement was not a legal victory for the litigant, the child and the judge. The child continued to stay in prison and his other accuser's statements would be taken before the last decision. The litigant was also dissatisfied because he had failed to secure the discharge of the friend. Ending the case was not in his control. "The rule-oriented judge" will continue to seek for evidentiary witness speeches to base his last sentence as a state authority, which will most probably confirm the legitimacy of keeping the child in prison as the offender.

Conclusion

"By dealing with the way order is achieved in court hearings and the ways accusations, excuses and justifications are produced in the course of a trial…"[476], I aimed at exploring the operation of law in the court hearings about property crimes. I tried to present the heterogeneity of verbal and bodily performances as forms of communication with the authority. Since the judges differ in their modes of interpretation and rephrasing the case, all actors are active agents who mitigate performances depending on the judge's attitudes.

The analysis of (un) successful patterns in the verbal and bodily performances of different actors in the courtroom reveals that generally the child is a legal subject only in the case of compliance with the legal language. Dressing suit, holding hands in front of the body and hanging the head in shame, standing at attention and expressing regret and acceptance are effective patterns to create a positive impression and reduce the punishment. If the child expresses the statement in a powerless

[476] O'barr, p. 29.

everyday language, in fragmented and short sentences or is not culpable and behaves in a disrespectful and challenging manner in the course of trials, these testimonies are invalidated. When the child acts in opposition to the expectations of the judge and denies the conduct, the child is alone in the courtroom because his testimony is unintelligible. The judge does not credit the alternative justifications of the child, who is not able to appreciate the meaning of the conduct according to the forensic medicine report. However, submissive performances or presentation as a victim of socially undesirable relatives are legally confident displays in interactions.

In addition, the verbal and bodily performances of the lawyers enable the exploration of successful patterns of defense and the quality of legal aid to children. The majority of the lawyers belong to the category of "disfunctioning ones" who deprive the children of the right of defense. "The idealist lawyers" construct a defense for the child in the legal language as a self-confident experts and the transformation of the testimony in formal legal language with the purpose of securing a reduction in the penalty is the effective pattern of legal aid in the juvenile court. Another category of lawyers is "the radical ones" who fragment the legal language and publicize the alternative defenses of the children in an everyday language and in a tone that is aggressive and insulting to the judges. This is an unsuccessful pattern of defense. In sum, legal aid is not accessible to the majority of the children. Even if the lawyers defend the children, the successful pattern is to assess their criminality and bargain for the reduction in the punishment in a formal language without allowing the children to make statements in their self-defense. When the child makes alternative justifications for their conduct or the radical lawyers struggle to publicize it, again the child is alone in the courtroom, either defenseless or the defense assessing his criminality.

And lastly, the most favored courtroom speaking style for litigants is the presentation of the case in formalistic legal language. Similar to the interactions between the child and the judge, the judge controls the speech of the litigant if there is a clash of visions, and prioritizes his own vision for the deliberation of justice. Giving contradictory statements in comparison with the previous accounts in everyday language without pursuing an economic agenda, but pursuing relational one to restore friendship with the suspect is an inadmissible verbal performance. However, the use of a formal or informal, narrative or evidentiary style depending on the attitude of the judge is perceived as the credible accounts affecting the course of the case.

All in all, even though verbal interactions are heterogeneous, the general result is the isolation of the child in the courtroom, deprived of legal aid and subjectified only in the case of compliance with the legal language. The judges generally consider the litigant accounts as valid and truthful representation of what happened and base their last decision on it, so this biased invalidation of the child's testimonies also leaves the child alone in the courtroom. Under these conditions, the kinds of tactics the children utilize in the legal context are elaborated in the following chapter.

CHAPTER SIX

CHILDREN'S STRUGGLES TO RENEGOTIATE THE LIMITS OF LEGITIMACY THROUGH CERTAIN TACTICS

Introduction

Criminal law defines dualities like legal-illegal, normal-criminal conducts. The violator is prosecuted with reference to the law regardless of the possible conflict between the objective rules and subjective experiences. It misrecognizes alternative subjective justifications about the conduct. For Pierre Bourdieu, objective knowledge "… constructs the objective relations (e.g., economic or linguistic) which structure practice and representation of practice…" and it "… excludes by definition –the questions of the (particular) conditions making that particular experience possible."[477] Thus, criminal law defines objective impersonal rules that are mechanically applied to certain crimes in strict legalism. When theft is represented according to this language, the criminal law, variations in terms of the commitment of crime by day or night or the amount of property became irrelevant.[478] In addition, how the offenders rationalize their acts do not affect the course of the legal proceedings when their justifications are in contradiction with the criminal law.

When this mechanistic approach for the description and the evaluation of criminal practices as uncontested social facts is adapted to juvenile property

[477] Pierre Bourdieu, *Outline of a Theory of Practice* (Cambridge: Cambridge University Press, 1977). p. 3.

[478] Ibid., p. 16.

offenders, these children become legal subjects, offenders, only when they position themselves as the subordinate objects of the law. Thus, the elaboration of criminal practices with reference to objectivism refers to considering them "execution", "... a negative by product or, one might say, waste product… of the construction of systems of objective relations."[479] Yet, I do not interpret the statements and other official records in the court files as if these documents reflect the objective and unquestionable institutional procedures because there is no room to seek the voices of the children and contestations in the official records from this perspective.

Bourdieu's perspective on law negates this objectivist and structuralist approach in which the law is an instrument with which the hegemony of one group over another is established. Legal rules are not transcendental, not internalized unconsciously and not practiced mechanically. Bourdieu conceptualizes "doxa" and "habitus" in order to explain what happens if there is compact between the objective rules and subjective experiences. Doxa refers to "… quasi perfect correspondences between the objective order and the subjective principles of organization… the natural and social order as self-evident."[480] The hegemonic socio-political order associates with docile bodies that have internalized the objective relations and rules. The relations of domination and all actors act in accordance with these rules in the doxic mode. Bourdieu writes, "Habitus … the system of durable transposable *dispositions* structured structures and structuring structures," and it "…is the principle of continuity and regularity which objectivism discerns in the social world without being able to give them a rational basis."[481] Being possessed by habitus

[479] Ibid., p. 24.

[480] Ibid., p. 164.

[481] Ibid., p.72, 82. Bourdieu uses modus operandi as coterminous with habitus and opus operatum with regularities. In order to uphold the concept of habitius, it is beneficial to

means that certain dispositions about the wrongness and immorality of certain crimes are internalized and the practices are the derivative of these rules. In other words, the tendencies to commit a crime are censored in their habitus and contrary thought is unacceptable. It draws the picture of just social relations, excluding the attack on property rights. There is no gap between the objective language defining crimes and the subjective meaning attached to the conduct.

When a child has a punishment license, the conduct is considered as the mechanic product of the disobedience to rules. The child gives consent for the punishment, so he admits to the execution of the behavior sanctioned in the legal language as if there is a simple cause-effect relationship. The child becomes a criminal because of the actualization of the legal rules in practice, so the effect is an appropriate punishment. Having a punishment license means both the internalization and the normalization of the legal definitions of crimes and thus, it refers to giving consent for punishment in the case of the violation of the rules. The objective gaze treats society as if the objective structures are independent from the individual

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examine how he defines these terms. Modus operandi "… informing all thought and action (including thought of action) reveals itself only in opus operatum" Ibid., p. 18. Opus operatum is "the supposed principles of its production sets them up as norms explicitly governing practices … takes away understanding of the logic of practice in which it tries to offer." Ibid., p. 19. In everyday life, conflictual thoughts are resolved with reference to "a discourse of familiarity", regularities. Ibid., p. 18. "One of the fundamental effects of the orchestration of habitus is the production of commonsense world endowed with the objectively secured by consensus on meaning (s) of practices and the world, in other worlds the harmonization of agents' experiences and the continuous reinforcement that each of them receives from the expression …of similar or identical experiences" Ibid., p. 80. The internalization of hegemonic norms prevents completely autonomous practices. Habitus became the ground to evaluate the experiences. Licensed agent became the (re) producer of these objective dispositions. And "because his actions and work are the products of *modus operandi* of which he is not producer …. They contain "objective intention" … which always outruns his conscious intentions. The schemes of thought and expression he has acquired are the basis for the intentionless invention of regulated improvisation" Ibid., p. 79. Licensed agent is the child who internalized legal schemes on property crimes and so the child gives consent for the punishment are taken for granted in a perfect doxic mode. It refers the perfect correspondence between modus operandi and opus operatum.

practices and method is the decoding of criminal conduct by the legal apparatuses which detaches agency from the representation in juridical setting.

Bourdieu, as the significant scholar on the theory of praxis, is against subjectivism as well as objectivism. His specific contribution has been to demonstrate how symbolic systems and material inequalities are linked with each other. His theoretical approach violates the division between objectivism and subjectivism, structure and agency as he expresses in the below passage.

> …escaping both the objectivism of action understood as a mechanical reaction "without an agent" and the subjectivism which portrays action as the deliberate pursuit of conscious intention… maximizing it utility through rational computation.[482]

Bourdieu stresses slippages from the doxic mode and how the hegemonic order restores itself. The asymmetry of the objectivist approach to law is subjectivism. If the court documents are interpreted from the subjectivist perspective, official documents are examples of complete resistance to the judicial authority, as if the criminal act were legitimate in their subculture of delinquency. From this subjectivist perspective, since juvenile delinquents belong to an autonomous subculture where they consider their illegal actions to be correct and legitimate, there is no problem of guilt or of compliance with the criminal justice system.[483] In this vision, the juvenile delinquents' accounts should be evaluated as autonomous statements that make the crimes legitimate in their subculture, but illegitimate in

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[482] Loic J.D. Wacquant and Pierre Bourdieu, *An Invention to Reflexive Sociology* (Chicago: Polity Press, 1992). p. 121.

[483] Albert K. Cohen, "The Delinquency Subculture," in *Juvenile Delinquency: A Book of Readings*, ed. Rose Giallombardo (New York: The University of Chicago, 1972). p. 103-119. ; Marvin E. Wolfgang and Franco Ferracuti, "The Subculture of Violence," in *The Sociology of Crime and Delinquency*, ed. Leonard Savitz and Norman Johnston Marvin E. Wolfgang (New York, London: John Wiley and Sons Inc., 1970). p. 380-392. These are two examples from the literature that describe the autonomy and legitimacy of juvenile delinquent conducts among themselves. Thus, the impacts of legal rules on these children's conducts are out of consideration.

legal context. Since they are in full contradiction with the dominant legal definitions of crimes, their accounts are inadmissible in the legal arena. Since individualism is reified and there is no common legal battle ground to make debate on the different ends, it is impossible to make meaningful how the offenders or the litigants rupture the hegemonic definitions of the conduct by means of manipulating the law from this perspective.

Beyond two clear-cut positions of objectivism and subjectivism, I explore the confrontation strategies through which the juvenile delinquents reduce their punishments and legitimize alternative justifications. Instead of interpreting all tactics as the mechanical reproductions of legal knowledge in order to comply with the juvenile justice system or resist it, my focus is on how these children and the litigants from two classes fight with words in statements and compete to persuade the legal professionals of the truthfulness of their own accounts. There is so little literature that analyzes official accounts from this point of view in which the law is the means for contestation over the meaning of conduct and court in the juridical setting.[484]

Within this framework, primarily, in this chapter I explain how the concept of tactic is worked out as a key term for the interpretation of the children's agencies in the court documents. James C. Scott, a prominent academician, has worked on the

[484] Gresham and David Matza Skyes, "Techniques of Neutralization: A Theory of Delinquency," in *Juvenile Delinquency a Book of Readings* (New York: The University of Chicago, 1972), David Matza Gresham M. Skyes, "Techniques of Neutralization: A Theory of Delinquency," in *Juvenile Delinquency a Book of Readings* (New York: The University of Chicago, 1972). ; Morton Hunt, *Mugging* (New York: Atheneum, 1972). ; Milan V. Petrov, "Everyday Forms of Compliance: Subaltern Commentaries on Ottoman Reform, 1864-1868," *Comparative Study of Society and History* 46, no. 4 (2004). ; Leslie Pierce, *Morality Tales: Law and Gender in Ottoman Court of Aintab* (Berkeley, Los Angeles, London: University of California Press, 2003).

agencies of marginal peasants to convert the system to their advantage conceptualizes and defines "the public transcript"

> …as a shorthand way of describing the open interaction between subordinates and those who dominate. Public here refers to action that is openly avowed to the other party in the power relationship, and transcript is used almost in its juridical sense of a complete record of what was said. [485]

The statements, the official records of the court hearings and other documents in the court files are instances of "the public transcript" because these documents are the product of the overt interaction between the juvenile delinquents, the litigants and the powerful legal professionals in the legal context. Since the judge and the prosecutor have the institutionalized power to settle the disputes and the children's accounts are addressed them, the children withhold the legally inadmissible parts of testimonies and struggle to publicize them in a legally acceptable format. There are two obstacles to open confrontation with the legal professionals: awareness of addressing the authoritarian legal professionals, so the fear of punishment, and the scarcity of means for juvenile delinquents to justify their alternative explanations about the crimes. Thus, their different forms of resistance must be framed in the criminal law. Tactics are applied in a legal space.

These children have to calculate their accounts both to avoid punishment and to make sure their explanations are admissible. The criminal law that is the reference for an indictment and judgment delimits the means in their hands to present their testimonies. Thus, every tactic "… covers its own tracks."[486] Awareness of addressing the juridical apparatuses and the translation of the child's accounts make

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[485] James C. Scott, *Domination and the Arts of Resistance: Hidden Transcripts* (New Haven: Yale University Press, 1990). p. 2.

[486] James Scott, *Weapons of the Weak: Everyday Forms of Peasant Resistance* (New Haven: Yale University Press, 1985). p. 281.

inaccessible the child's direct voices, their "hidden transcripts."[487] Clothing alternative rationalities in criminal law implicate what I mean by a liminal approach to the agencies in the legal context. Tactics are interpreted as neither total resistance nor compliance.

Even though the individual conceals legally unacceptable justifications for criminal conducts in the official records, Scott argues that "a partially sanitized, ambiguous, and coded version of hidden transcript is always present in the public discourse of the subordinate group."[488] Thus, similar to Scott's position, I argue that the obstacles to resistance do not imply complete compliance and the achievement of full hegemony, erasing the children's agencies in the court documents. In this chapter, the focus is on the appropriation of the hegemonic legal language. The tactics in the public transcripts of the dominant, the court records, include disguised forms of hidden transcripts. Children contest over the meaning of crime and property relations by means of legal tactics that in return make power relations more flexible.

Similar to Scott, Leslie Peirce, working on Ottoman socio-legal history, warns us not to homogenize the voices in court records. [489] The relations between the

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[487] Scott, *Domination and the Arts of Resistance: Hidden Transcripts,* p. 4. Scott defines hidden transcript as the discource that reveals itself at the absence of the powerful."If subordinate discourse in the presence of the dominant is a public transcript, I shall use the term hidden transcript to characterize discourse that takes place "offstage, beyond direct observation by power holders."

[488] Scott, *Weapons of the Weak: Everyday Forms of Peasant Resistance*, p. 19 Scott argues that what is appropriate to reveal in public transcripts is shaped in encounters with the powerful.

[489] Pierce, p. 5-6. Peirce investigates local communities strategies to cope with increasing emprialization of Ottoman empire and the power of courts to control local disputes in 1540-41 court records. People applied certain strategies to aid them in their encounters with the court. And the uses of these strategies to legitimize their testimonies in the defense of their justifications by women and ethnic groups has two implications. First, "these groups were not powerless: they readily made proactive use of the venue of the court." Secondly, "... the court was a public forum that gave voice to those of marginal status in the community, enabling them to speak in defense of their conduct..."

court and its users should be analyzed by taking into account the factors explained below.

> Concentration on individual voices inevitably raises the question of translation. We cannot read these records without accounting for the processes of representation whereby the tangle of testimony at court, at times disconcordant and confused, was rendered smooth and concise by judge and scribe in written account.[490]

Testimonies are not recorded directly and the defense is translated in a legal format. In other words, the judge reinterprets the representation of what happened, so there is no room for narration in the records. Peirce writes, "Yet if we read the records carefully- in combination with and against one another- they can tell us a great deal about the texture of social relations, the nature of… conflicts, and the motivations of individual actors."[491] In this chapter, the court is considered as an arena of contestation that is receptive to the voices of the child and the litigant and inscribes these voices in the official records to settle disputes over property.

And in this chapter, in accordance with Scott's definition of the hidden transcript imbrications in the public one, I explore how juvenile delinquents as conscious, active agents manipulate criminal law in their statements, the public transcripts, and by means of these tactics, they contest to legitimize their justifications of the meaning of the conduct and property relations that are in contradiction with the litigant claims belonging to a different class. All appropriations indirectly resist and openly question the truthfulness of the litigant accounts and the definition of justice as the punishment of the violator of property rights. These appropriations draw attention to the contestation in the legal space and to the alternatives for judging acts.

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[490] Ibid., p. 8.

[491] Ibid., p. 308.

How these conflicting justifications are perceived by all actors in the criminal justice system and at what point the children's or the litigants' claims become decisive are other questions I examined in the interpretations. These interactions between all of the actors constitute another aspect of my hypothesis: the legal apparatuses are not always deaf to the voices of the suspects. If the testimony is represented in a covert admissible format to them, the course of the lawsuit can change. This chapter is strongly related to the previous chapter and theatrical performances at trials. The contesting performances in the courtroom show that interactions between the suspect, the litigant, the lawyer and the judge are case-specific and have an impact on the judgment, so I avoid homogenizing these interactions while interpreting the files too and illustrate case specific interactions in the court records. Similar to the performances in the courtroom, the legal professionals shape what the juvenile delinquents say in their public transcripts, whether their testimonies are heard by these actors in criminal justice system and whether their accounts affect the last decision.

This chapter enlarges the scope of interactions to all actors in the criminal justice system in comparison with the previous chapter. In addition, the interactions are in written format, not verbal interactions. The same problems of addressing the authority and the translation of the accounts are present in the written documents. Again, the communication between the judge, the lawyer, the litigant and the child is the central theme. In the previous chapter, I explained the general isolation of the child in the courtroom as an offender deprived of legal aid, whose claims are elaborated as false statements in comparison with litigant accounts that are accepted true and who is a legal subject only in the case of submission to the judge. As complementary to the previous chapter, I interpret the tactics the child applies under

these conditions. In addition, the court files enable us to trace the interaction between the police, the prosecutor, the forensic medicine specialist, the judge, the litigant and the children. Thus, close reading of the statements given to the prosecutor in interrogations, the litigant's statement, the police record of event, the indictment, the public record of trials and the last decision provides opportunity to evaluate concord and discord between the approaches of these legal actors toward the same children and different tactics the children apply from the initiation to the end of the journey in the juvenile justice system. In order to facilitate understanding the totality of each file, I describe the stages of this journey. Putting the focus on the children's words of struggle illustrate more clearly the place of the juvenile delinquents who are from the lower classes in the juvenile court.

Another concept relevant to my hypothesis is taking these transcripts as official documents to extract the contestation over the meaning of the act between classes. As Scott writes, "… class resistance includes *any* act(s) by member(s) of a subordinate class that is or are *intended* either to mitigate or deny claims… made on that class by super ordinate classes… or to advance its own claims … vis-à-vis those super ordinate classes."[492] I extract the poor accused children's intentions from the explanations they made for their behavior. These poor children, who were employed or unemployed, developed their own claims against the victims, who were from wealthier classes. I articulate the profile of the children and of victims and examine the characteristics of the property crimes.

I categorize the juvenile delinquents' justifications for the behavior in the search for justice into two themes in this chapter. They fight with words to "legitimize theft as a channel for survival" and for "blaming people who subject

[492] Scott, *Wepons of the Weak*, p. 290.

them to open violence" in legal arena. All of these accounts are in contradiction to the litigants' statements. They label these acts as property crimes and consider the use of open violence a legitimate form of violence. In this chapter, I analyze selected files among twenty-five files from the archive of the one of the juvenile courts in Istanbul.

Rationalizing theft by virtue of the violation of a work contract and rationalizing window theft by virtue of hunger are tactics explored to uphold the category of "legitimizing theft as a channel for survival." The condemnation of condemner police officers in car theft case, blaming people for hitting in the case of theft by pick-pocketing, the appropriation of the suspectology that refers to blaming one unreasonably as a form of symbolic violence in the lawsuit of mugging and reversing victim-criminal positionality in the case of striking for theft by the market owner are tactics relevant to the category of "blaming people who subject them to open violence." However, it should be reminded that all of the files include other tactics children utilize. Yet, these tactics are fitted into two categories that are the best illustration of rationality conflicts between the children, the litigants and the legal professionals. I use pseudo names and have changed the number of the files to secure the privacy of the offenders, the litigants and the judge who permitted me to use the court files in this thesis.

These contestations in the legal space prove that there are conflicting rationalities and interests expressed by means of one language. These tactics show that the juvenile delinquents make maneuvers in the legal context for a pragmatic reason, the reduction of their sentences. Yet, these publicized tactics should not be interpreted only as statements for working the system to their own advantage for short-term individual gain; they also implicate political struggles over crime by

resisting a litigant claim. This denial or mitigation of the litigant claim points out alternatives for judgment and the different definitions of justice, instead of considering children as actors who have false consciousness and unquestioningly comply with the criminal justice system. They are active agents in the legal context to change the course of judgment and to renegotiate its limits.

The Conceptualization of Tactic at the Threshold of Compliance and Open Resistance

Michel De Certau argues for the evaluation of tactics as neither full compliance nor total resistance in any socio economic context or institution. The distinction he makes between "uses" and "tactics" is a central one that I put at the center while evaluating childrens' agencies with reference to their statements in the court documents. "An art of being in-between" refers to the link between the dominant language and speech acts in the sense that the individual, as de Certau writes, "…creates for himself a space in which he can find *ways of using* the constraining order of the place or of language. Without leaving the place … he establishes within it a degree of *plurality* and *creativity.*"[493] Thus, I explain how poor juvenile delinquents manipulate the criminal law in the legal context in order to make their reasons for engaging in a criminal activity seem reasonable and fight the words of the litigants from a different class. By means of creative tactics, they put into circulation rationalities that are in contradiction with the litigants' claims of being the

[493] Michel De Certeau, *The Practice of Everyday Life*, trans. Steven Rendall (Berkeley: University of California Press, 1984), Michel DeCerteau, *The Practice of Everyday Life*, trans. Steven Rendall (Berkeley: University of California Press, 1984). p. 30.

victims of the property crimes. Tactics become a channel for the contestation over the meaning of conducts and property relations.

Even though all tactics are meaningful to a certain context, what is common to all "enunciations", maneuvers in the legal space, is to fulfill the preconditions:

> 1. A *realization* of the linguistic system through a speech act that actualizes some of its potential…2. An *appropriation* of language by the speaker who uses it… 3. The postulation of interlocutor … thus the constitution of relational contract… 4. …the organization of temporality.[494]

Each statement, speech, is a temporal dialogue with the powerful legal apparatuses at the court and each speech is the performance to appropriate the criminal law. Thus, the child establishes a case specific, temporal contract between the authority addressed and himself on the meaning of the practice in legal processes by playing with the vocabularies of the legal language. Juvenile delinquents are active consumers of the legal language that objectifies and aims to assimilate them.

There are two major obstacles for open resistance in these dialogues. Primarily, tactics occur in the space of the juvenile court. I adapt de Certau's conceptualization of the tactic. De Certau defines it as follows

> … a tactic is a calculated action determined by the absence of proper locus. …The space of a tactic is the space of other… It must vigilantly make use of the cracks that particular conjunctions open in the surveillance of the proprietary powers.[495]

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[494] Ibid., p. 33.

[495] Ibid, p. 37. ; See also Necmi Erdoğan, "'Devleti İdare Etmek': Maduniyet Ve Düzenbazlık," *Toplum ve Bilim* 83 (Kış 1999/2000). Necmi Erdoğan also defines the meaning of liminality, "art of inbetweenness" over the tactics of subaltern groups to cope with state in Ottoman society at nineteenth century. She uses the term "metis" instead of tactic and the subjects "are neither submit nor reject state power. They obey the rules meanwhile transgress it. In this sense, popular metis implies *liminality* and *undecideability;* objects/ subalterns take "position-non-position" against power." Erdoğan, p. 10. Thus, "metis" is "indirect negative practice." Ibid., p. 27. It is impossible to model all tactics. These micro tactics occur at the space its borders are drawn by the power. Locating tactics to threshold reveal the complexity of agency to fragment the dominant discourse.

With reference to this definition, all uses expressed in a space that incriminates the childrens' conduct and the children do not have their own means independent from legal codes to express their testimonies. Rather, the children improve tactics at certain times to persuade the judge or the prosecutor to take their statements as the basis for jurisdiction. The execution of legal means in the criminal law enables them to regulate the convict and put into circulation their alternative justifications. Therefore, the criminal law is both the obstacle to open resistance by delimiting what is legally acceptable and its rules are manipulated to contest the meaning of the conduct and the property relations in a dialogue between authoritarian, powerful juridical apparatuses and juvenile delinquents. The appropriation of these means is a tool to mediate between subjective experiences and the objective representation of the conduct at the court. As Lüdtke writes, "… the double function of the law: legal rules and regulations do not only mark out the limits of action – they also represent the possibilities of action open to individual."[496] In other words, the legal definitions of the crimes prescribe what property crimes are and under what conditions punishment is reduced and these are also merely the available means for the offenders to make their testimonies intelligible in the legal context.

Beyond the scarcity of the means to make justifications legally admissible in the juridical setting, the second obstacle for direct resistance is the open confrontation with the powerful judges and the prosecutors. In the juvenile court, the legal apparatuses have a powerful disciplinary strategy to judge and punish with reference to the legal rules. The compatibility between the criminal law and the

[496] Alf Lüdtke, *The History of Everyday Life: Reconstructing Historical Experiences and Ways of Life*, trans. William Templer (Princeton: Princeton University Press, 1995). p. 20.

prosecution with reference to these transcendental rules is a strategy peculiar to the criminal justice system. This concord has already been explained in the views of the judges on criminal law previously. Juvenile delinquents are aware of appealing in the court as suspects and this awareness creates a fear of punishment and pushes them to give calculated statements. De Certeau defines a strategy in the following way:

> A strategy the calculation (or manipulation) of power relationships that becomes possible as soon as a subject with will and power (…a scientific institution) can be isolated. It postulates a *place* that can be delimited as its own and serves as the base from which relations with an *exteriority* composed of targets and threats (… enemies… objectives) can be managed.[497]

Juvenile court constitutes itself as an institution with the power of knowledge to control and punish certain practices that threaten order in society in its own autonomous legal space. The legal professionals take the claim of the litigant whose property rights have been violated as a legitimate reason for initiating the child's journey through the legal system. Awareness of being judged by the legal professionals who are responsible for the security of property relations is a crucial factor to give counted statement in the legal context because either the interrogation room or the courtroom are the places where law works as an ideology to provide justice to the victim and its effect in the form of fear of punishment strongly shapes how the children present their testimonies.

Lütdke draws attention to the relationship between the available means, the discourses and the utilization and the recreation of these in certain situations.

> Acts in which people distance themselves from social rules utilize (or refer) to socially understood languages, discourses and codes: the matrix of resistance also marks a social relation. Of course, that relation is created anew by the subjects in concrete situations, and in a manner specific for *them.*[498]

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[497] De Certau, p. 36.

[498] Lütdke, p. 7.

For Lütdke, acts are not independent from the hegemonic discourses and the rules. Each individual utilizes concrete situations to challenge these rules. From a similar view, the statements are not the products of the autonomous free-will of the children independent from the legal context. I do not interpret the statements without taking into account the obstacles to open resistance that delimit the agencies. Depending on the type of the crime, the judge or the prosecutor's attitude, each child applies particular tactics in order to reduce his or her sentence instead of complete negation or submission. These tactics, which are peculiar to each case, may fail or become successful, but these are crucial in terms of showing that legal knowledge is not objective and has alternatives. In other words, "'objective' constraints are not anterior to practice, but integral to it."[499] Tactics prove the synchronism of alternative meanings in the official records of the state institution. The coexistence of the contradictory claims in statements deconstructs the objectivity of the litigant's statement and reveals the possibilities for judgment. This approach to individual and formal maneuvers in certain constraints makes it possible to reconstruct how appropriation without situating them as hierarchically inferior is done.

As a result, speeches should be evaluated with reference to the obstacles to direct resistance. The criminal law defines both the principles of the prosecution and the means available to the children. The children use these means to convert the justice system to their advantage. Scott defines this approach to speeches as follows.

> Being a subject means being "subject to definite conditions of existence, conditions of endowment of agents and conditions of exercise." These conditions enable choices, although they are not unlimited. Subjects are constituted discursively and experience is a

[499] Ibid., p. 16.

> linguistic event (it does not happen outside established meanings), but neither is it confined to a fixed order of meaning.[500]

For Scott, the individual becomes a criminal in the definite conditions of the violation of the law. Yet, this identity is not fixed and it enables the individuals to make certain choices to turn the fact to his or her advantage and to renegotiate the meaning of the identity. Analogous to this approach, within the legal limitations that define choices for the children, they struggle to make alternative explanations for their experiences legally intelligible. In the operations of law in the juvenile court, there is contestation over the definition of criminal identity. Thus, the children are active agents, not mere objects of the essential criminal identity that refers to being an offender. They have an impact on the conceptualizations of their selves in the legal context.

Complementary to the obstacles to open resistance, there is also the risk of homogenizing the children's testimonies as the speeches complied with the system. Wittgenstein's critique of philosophical language explains the implications and the lack of taking certain scientific language as the criteria for defining agencies. In other words, he illustrates the distinction between evaluating agency as a mere other, the passive consumer of imposed rules with false consciousness and as active manipulators of it. First, Wittgenstein's theory contradicts the statement of '"a thing is identical with itself."[501] This assumption means to consider self-identity as "property" that "… is associated with metaphysical properties."[502] Analogous to this stance, legal knowledge objectifies the children and assigns a name to the conducts

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[500] Scott, *Weapons of the Weak*, p. 396.

[501] Barry Stocker, "Wittgenstein Paradox of Ordinary Language," *Essays in Philosophy* 1, no. 2 (June 2000). p. 1.

[502] Ibid.

as crime. This consideration of "property," essential criminal identity, in return legitimizes the juvenile justice system. A full submission from the criminals in the legal context is expected.

Relevant to this, Wittgenstein defines the meaning.

> …the rule connects concept and action, as what is necessary for the concept to be applied in practice i.e. ordinary language" and "the meaning of a word is its use in the language. And the *meaning* of a name is sometimes explained by pointing to its *bearer*.[503]

Meaning is the product of the usages. This means a shift from "property" to "fitting."[504] The rules are not transcendental and they realize themselves in the actor's usages. The pivotal point should be the fight over words, usage, and the definitions of crimes between the two classes. Instead of considering the children as the property of language, how they "fit" those concepts, the tools in practice are the main concern for me in this chapter.

The Processes of Juvenile Control in the Files

Adam writes that "the administration of justice involves an entire system of interrelated agencies with different yet related set of responsibilities."[505]Thus, each agent has a specific authority and responsibility in the criminal justice system. The official correspondences in each file enable us to trace the journey of the juvenile delinquents in the criminal justice system. In order to facilitate the imagination of this journey, the documents are described briefly.

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[503] Ibid., p. 7.

[504] Ibid., p. 6.

[505] Thomas F. Adams, *Law Enforcement: An Introduction to the Police Role in the Criminal Justice System* (Englewood Cliffs, New Jersey: Prentice Hall Press, 1973). p. 96.

The litigants are significant agents in the criminal justice system because they initiate the child's legal journey in the juvenile justice system for the sake of their material loss. Thus, the litigant statements in the court files are a treasure for me to interpret the concordance between the legal language and their interests in conflict with the children's interests.

The police are the primary law enforcement agents the delinquents encounter. After the arrest of the criminal either by citizen's reports or by the police, the police prepare the official record of the event, the record of the arrest, body search for the suspect, the record of identity information for the child with the accompaniment of lawyer and take the utterance of the victim. The police have the suspect rights signed to the child in order to approve the rights have been read and understood. All files include the record of the police calling the office of the prosecutor to inform them of detection. The prosecutor gives a directive to the police depending on the child's age either to return the child to family or to keep the child and prepare him at the appointed time at the prosecutor's office to give a statement. In sum, the police undertake "initial investigation" and "record all available information concerning the matter"[506] apart from the child's statement and remove the records to the second agent, the prosecutor.

The prosecutor is the crucial agent in the juvenile court to prepare an indictment and to take the child's statement at the interrogation stage. The prosecutor decides whether to charge the child with a crime by evaluating the evidence and this decision moves the child into the trial stage. All files include the child's utterance and the suspect's right form that have been signed by the lawyer, the prosecutor and the child. In addition, an official record on the transportation of the child from the

[506] Ibid., p. 187.

child police to the prosecutor to make a statement is included. The prosecutor records his interpretation of the event in an indictment.

Other official documents in the files belong to the stage of prosecution. These are the public records of trials that include the litigants' and the suspects' statements, defenses, the record of the dialogues between the children, the litigant, the lawyer and the judge, the confirmation of the parties' identity information and the list of decisions taken at the end of each trial. The written notice to the suspect and the litigant about the day of trial, the birth certificate and the record of previous convictions of the suspect, the official correspondence about the appointment of the lawyer, the official letter to the police about researching the suspect's open address or compelling the suspect or the litigant if they do not participate the trials voluntarily. The file includes information on older suspects, too, if the crime was committed as a group. Each file ends with a well-reasoned last statement on the case.

Other documents in the files are on the collaboration between the juvenile court and other institutions in the criminal justice system. Four files include social inquiry reports prepared by the social work department in the court. These reports of the juvenile specialists in the juvenile court present the knowledge on the background of the child, the causes of the crime and the appropriate treatment program to correct the deviant child. In the words of Adams, these are "comprehensive reports to the trial judges so that they may be better prepared to mete out the appropriate punishment."[507] All of the files include a forensic medicine report on the health of the child after arrest. Even if the child complains about having been subjected to police or litigant violence, the reports say the same thing: "there is

[507] Ibid., p. 105.

no indicator of striking and force."[508]Lastly, five files include forensic medicine report on the criminal culpability of the suspects.

The Characteristics of Property Crimes and the Profiles of Juvenile Delinquents And the Victims in the Court Records

I examined the profile of the juvenile offenders, the victims and the characteristics of property crimes with regard to the twenty-five property crime files in the archive of the one of the juvenile courts in Istanbul. The composition of the offender population was analyzed in terms of gender, age, education, birth and place of residence, occupation, previous record of convictions and the ecological distribution of cases in the urban space. In addition to the profiles of the children, the composition of the victim was also explored. Gender, education, occupation, marital status and nationality are some personal characteristics of the victims and differentiate them from the offenders. In addition, when, where and how the property crime was committed and what was stolen were analyzed as the characteristics of the property crimes extracted from the preliminary investigations and the court records of interrogations to present a complete picture of the cases.

The Profile of Juvenile Property Offenders

The composition of the delinquent population shows considerable variations as to age and sex. One of the perennial features of juvenile delinquency is its masculine character. The prosecution of boys outnumbers that of girls in the juvenile

[508] *"Darp ve cebir izine rastlanmamıştır."*

court. There were thirty-four male and only four females that appeared in the court in the files. An analysis by age revealed that the preponderance of those who committed property crime were 15. The peak ages of juvenile property offenders were 15, 16 and 13. The median age was 17 and the average age for juvenile property offenders was 13.89. The median age for boys was not higher that of the girls. Two girls were the youngest, at age 7 and 8, and other two are the oldest ones at 17 years old.

The level of education among the juvenile property offenders was low. Even though there was no information about the education degree of eleven delinquents, the majority had graduated from primary school or had dropped out of primary or secondary school. Eleven of the children had graduated from primary school, two from secondary and only one from high school among the thirty-eight children. Four offenders had given up primary school and three children had not completed secondary school. Two offenders were literate any education. Lastly, four children were illiterate.

The analysis of qualitative information with regard to the occupation of children revealed that majority of these children was employed or unemployed as opposed to the mainstream association of purse-snatchers and thieves with street children. There has no information on the occupational status of eight offenders. Six of them were unemployed, two children were vagabonds and one was a student. The rest of the twenty-one juvenile property offenders were employees with low wages. The criminalized children worked as car washer, textile worker, car and electric employee, polisher, ceramic employee, employee in a dried fruit producer, night guard, seller of statuettes, telephone operator, seller in bazaar, seller of tube, and seller of bagel, employee at a carpenter's shop, body shop and at dry cleaning center.

Another part of the profile for juvenile property offenders is related with their previous records of convictions. Thirty juveniles out of thirty eight offenders did not have previous record of conviction. Thus, it seems that majority of the children were not persistent offenders, but ones who were attending court the first time. Only eight children had previous records and these were for property crimes. The persistent offenders had committed more serious property crimes, like car theft or robbery from houses in comparison with the children who had committed petty theft for the first time in their lives. Three children were prosecuted in the juvenile court for car theft and one has the previous records of ten car thefts, the other judged three times for the same crime and the last one also had a record for car theft. Another outstanding type of property crime committed by the persistent offenders was theft. In one file, two girls had committed theft and one of these girls had officially recorded thirteen theft convictions and the other girl had a previous record too, but its number and the type of crime was not stated in the file.

In terms of the ethnic composition of the children, the birth place was East and Southeast Anatolia for half of the offenders. Seventeen children out of thirty-eight were born in these regions. Six property offenders were born in Diyarbakır, one in Hakkari, one in Bingöl, two in Malatya and three in Bitlis. The birth place was Elazığ for one child, Mardin for another and Siirt for two other prosecuted children. In comparison with these regions, there were six children from Central Anatolia and one from the Black Sea region. The proportion of the children born in the slums of Istanbul was approximate to the ones from East and Southeast Anatolia. Fourteen children were born in different shanty towns in Beyoğlu, Eminönü, Okmeydanı, and Aksaray. Some of them were also slum residents in Şişli and Fatih.

In the literature, the city is depicted as the space to suck these children into the vortex of crime. Neumeyer writes that "the usual procedure in ecological studies is to plot the distribution of the cases on the map (covering a specified period of time) and thus discover the areas in which there is the concentration of cases and areas in which few cases have occurred."[509] The ecological view is a cartographic method exaggerating the impact of spatial factors on the juvenile offenders. Shaw and McKay conducted a study in twenty-one American cities in 1942 and found that there were "radial lines... drawn straight from the heart of the city to periphery … and highest rates are usually found in the zone adjacent to the heart of city…"[510] In those zones, juvenile offenders both enjoyed their lives and committed crimes.

Yet, the correlation between living places and the places of the crime in the ecological approach is misleading because the places where property crimes are committed are generally different from the living places of the offenders. In the physical structure of the city, these children lived in the shanty town areas in Istanbul. Kumkapı, Kasımpasa, Kağıthane, Kurtuluş, Tarlabaşı, Kuştepe, Gültepe, Aksaray, Okmeydanı, Esenler and the poor districts in Şişli, Fatih and Beşiktaş were the living spaces for the juvenile delinquents in the files. However, the crimes were committed at the city center, as I explore later. The delinquency rate tended to decrease with distance from the city center. Thus, the zones where these children lived should not be defined as criminal or dangerous places.

In order to formulate more efficient preventive policies regarding the terror of purse-snatching in big cities, the police conducted a study on the profile of thieves

[509] Neumeyer, p. 43. For further information, see the Chapter 2: "Scope and Distribution of Juvenile Delinquency."

[510] Ibid., p. 270. For further information see the Chapter 11: "Economic, Ecologic and Physical Enviromental Factors."

and of the so-called victims and on the characteristics of the property crime in 2004. The source of the research was 1, 026 preliminary investigation forms in the archives of the Police Headquarters in each province.[511] Purse-snatchers are generally unmarried males with low levels of education and ranging in age between 16 and 30.[512] And two hundred twenty-two individuals out of 1,026 were under the age of eighteen. One hundred seventy three children were between 16 and 18, forty-one were older than eleven and younger than sixteen, and eight were under the age of eleven.[513] Istanbul, Erzurum, Diyarbakır, Siirt and Sivas were the leading birth places for purse-snatchers whereas Istanbul was the leading place of residence.[514]

70.7 percent of these thieves had committed the crime as a group and had a record of previous convictions regarding property crimes .[515] They were generally unemployed or employed in temporary jobs, so the main motive was to make money in the short term in the interpretation of the police.[516] Interestingly, the suspects explained the lack of money as the main reason for committing mugging in the preliminary investigation, it was secondarized and making money in the short term was interpreted as the leading reason by the police.[517] Even though the composition of the juvenile delinquents in the court records fit to this profile in terms of

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[511] Emniyet Genel Müdürlüğü, *Kapkaç Olaylarına Analitik Bakış* (Ankara: APK Daire Başkanlığı Yayın No. 232, Araştırma No. 25, 2004). p. Vii.

[512] Ibid., p. 14-16.

[513] Ibid., p. 14.

[514] Ibid., p. 17-18.

[515] Ibid., p. 13, 22-23.

[516] Ibid., p. 21. According to the research findings, 67.2% were unemployed, 13.9% was working in their own works and 5.4% was unemployed.

[517] Ibid., p. 24. 46.9% rationalized theft by means of the lack of money, yet making money in the short run is presented as a leading motive in the conclusion.

employment, it was distinctive in two ways. The majority of those children in the files had committed crimes for the first time in their lives, so they were not persistent offenders and nor did they rationalized property crimes as a short cut to making money. As I explained in this chapter, these children commit property crimes in order to satisfy their needs or claim their rights.

Another study concerning the profile of juvenile delinquents is Onur Çoğan's thesis that explores 1,191 cases concerning juvenile delinquency in the Criminal Court in Edirne between 2000 and 2004.[518] Since there was no juvenile court in those years, it was the leading court to prosecute the juvenile's criminal conducts. The total number of children in Edirne court for four years was 1,579.[519] The majority of children was male, seventeen years old and did not have previous records of conviction.[520] 34.1% were student, 20.1% were employed and 17.5% were unemployed.[521] In comparison to the analysis of the composition of juvenile property offenders at the One of the juvenile courts in Istanbul, a large proportion were either employed or unemployed and it was a crucial indicator for the link between the working class and juvenile delinquency. Çoğan also qualitatively proves that the property crimes are committed by employed and unemployed children whereas students commit homicide.[522]In terms of the type of crime, property crimes, theft and mugging, are the leading crime pattern for all ages in Edirne. [523]

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[518] Onur Çoğan, "Çocuk Suçluluğunun Nedenleri Ve Edirne Ceza Mahkemelerinde Açılan Davaların Bu Yönden İncelenmesi" (Master's Thesis, Ankara Üniversitesi Sağlık Bilimleri Enstitüsü Disiplinlerarası Adli Tıp Anabilim Dalı 2006).

[519] Ibid. , p. 74.

[520] Ibid., p. 75-81.

[521] Ibid., p. 82.

[522] Ibid., p. 84-85.

[523] Ibid., p. 88.

In sum, the juvenile property offenders in the juvenile court exemplified the intersection of gender, class and ethnicity. The majority of them were males over fourteen years old without previous record of conviction. These low educated males were generally employees working for low wages. In addition, the large proportion of juvenile delinquents who had committed the property crimes had been born in Eastern and Southeastern Anatolia or in the poor quarters in Istanbul and lived in the shanty towns close to the city center.

The Profile of Victims

Beyond the profile of juvenile offenders, the composition of the victims is also important for understanding property crimes. The police research on the purse-snatchers also articulates the profile of the victims. The majority of the victims were married Turkish females graduated from high school.[524] As opposed to the composition of purse-snatchers, a small proportion of the victims were employed or unemployed. The majority had jobs other than being student, employee or house wife.[525]

In contradiction with the findings in the police research, the majority of the victims were Turkish married males in the court files concerning juveniles. There were only three female victims in twenty-six files and one victim from Ukraine. In terms of marital status, four victims were bachelors and one was divorced whereas the rest were married. There is considerable distinction between the juvenile offenders and the so-called victims of property crimes in terms of education level.

[524] Ibid., p. 29-34.

[525] Ibid., p. 35.

While only one offender graduated from high school and no one from university, five victims had graduated from high school and three from university. In addition, there was not anyone who dropped out of the school or was illiterate. The rest had graduated from either primary or secondary school at least.

Lastly, the number of victims who were self-employed exceeded the victims who were employed or retired. Fourteen victims were shop keepers. Particularly, they were the owners of markets and clothing shops and the crimes had been committed in their shops, such as greengrocer, market and textile shops. This increased the probability of committing property crimes for the satisfaction of needs. Other shop keepers were a photographer, the owner of a repair shop, of an electric shop, of a writing material shop and of an automobile shop. Apart from these jobs, there were also two retired men, one driver, one waiter and two civil servants in the Body of Lawyers and the Ministry of Education among the victims. This qualitative information can be interpreted as statistical proof of the attachment of victimality to a different class in comparison to the children. Even though each individual was a potential victim, the juvenile property offenders generally targeted people in better economic positions.

Some Characteristics of Property Crimes

In the research on pick-pockets, the places the thefts had been committed were listed in terms of frequency in the following way: the street, near the banks, shopping halls, parks, bazaars and on public transportation.[526] Most thefts were

[526] Emniyet Genel Müdürlüğü, p. 39. The percentage of mugging cases occured in the crowd streets was 67.8.

committed between 03:00 p.m. in the afternoon and 09: 00 p.m. at night.[527] The majority of the pick-pockets committed their crimes as pedestrians and the stolen objects were money, identity and credit cards, hand bag, mobile phone and jewelry.[528]

In the court records, the places where property crimes were committed frequently were public spaces and shops. Seven property crimes, especially pick-pocketing, had been committed in the crowded streets. Other public spaces were bazaar, shopping hall, mosque and cafe. Shops also were places for theft. Two markets, one greengrocer, one petrol station, one perfume shop, two clothing shops and one repair shop were labeled as places where crimes had been committed in the files. In addition, four cars were stolen in the auto parks and there were two house robberies. The time interval in which most of the property crimes had been committed was between 04:00 and 06:00 p.m. in the afternoon and after midnight. Lastly, the leading stolen object was the mobile phone in ten files. Money was second in four files and the theft of a hand bag including credit cards, identity card, mobile phone and money followed. Cars were the stolen objects in three files. A diamond tie pin and two bracelets were other stolen things. There were also some items, like toilet doors, aluminum windows, paid in minutes and the bottled beverages, which could be sold in order to satisfy financial need or could be used to satisfy needs directly.

A close scrutiny of the files also revealed that juvenile delinquents generally committed their property crimes as a group. Only nine children had acted alone out of thirty-eight in twenty-six files. Especially pick-pocketing and auto theft cases

[527] Ibid., p. 38. 47.2% of the criminal conducts occured in that time interval.

[528] Ibid., p. 40, 42.

were crimes exemplifying organization and cooperation among a peer group or between the child and adult criminals.

There are different scenarios of the property crimes: Purse-snatching as a pedestrian, with a motorcycle, car or bicycle and purse-snatching by means of impersonation.[529] Similarly, to impersonate a client, to quarrel around pedestrians and to push someone leading to losing one's balance with the purpose of picking pockets were central scenarios regarding the way purse-snatching and pick-pocketing were committed.

The allocation of purse-snatching and pick-pocketing cases between the provinces proves that there is an outstanding rural- urban distinction in the same research. According to the qualitative information declared by the General Directorate of Order regarding the fluctuation of purse-snatching and pick-pocketing cases in each city between 2000 and 2004, those property crimes were committed especially in the big cities in the Western part of Turkey. Istanbul and Izmir were the leading cities and Antalya, Bursa, Ankara and Diyarbakır followed. While those crimes were concentrated in urban spaces, they were not officially recorded social problems in Ağrı, Bingöl, Artvin, Elazığ, Erzincan, Bitlis, Kilis, Bayburt, Bartın, Şırnak and Tunceli, the cities in the East and South Eastern regions of Turkey.[530]

Blaming People Who Subject Children to Violence

The Condemnation of the Condemners

[529] Ibid., p. 4-12.

[530] Ibid., p. 50-52.

> That day around 4:30 in the morning, my friends, Mustafa, Veli, Veli's girl friend and I were coming back from a folk music bar to our residential place, Okmeydanı. Veli drove the car with the x plate. We dropped off the girl and continued to Taksim, Gümüssuyu Street. Before arriving at the hospital, close to the university, the police stopped the car. They were suspicious of us. They beat us. I had undergone an operation from lungs. I told them, warned them not to beat me, but they continued to beat me in spite of my warnings. As a consequence, one of my stitches opened. This was reported. I was not involved in the theft. I did not know whether my friends committed a crime or not. I did deny the official record of the police on the event. A black beret and screwdriver were not found during my body search. I did not know who the owner of these objects was. Veli's brother is the owner of car as far as I know. It was claimed that the screwdriver and knife were found during a body search by the police on Veli were found at the baggage.[531]

When Salih's conduct is decoded by means of the criminal law, it is labeled as the destruction of property and an attempt of auto theft in the court file.[532] According to the police record of the event, the witness called the police and gave the license plate of the stolen car and told of an organized car theft by three delinquents. One broke a vent window, another was the look out and one drove the car. The police started the search for the car, located it in Taksim and gave a formal warning to stop the car. When they disobeyed the order, the car was stopped

[531] The file number is D- 1. The original version of the utterance of the criminal child is given below, but I use pseudonyms and skip the private adresses to secure the privacy of juvenile delinquents in an interrogation. *"Bu gün saat 4:30 sıralarında, Türkü bardan arabayla yanımda arkadaşlarım, Mustafa, Veli, Veli'nin kız arkadaşı ile Veli'nin kullandığı x plakalı araç ile Okmeydanı'ndaki evimize dönüyorduk. Kız arkadaşımızı bıraktık, dönüşte Taksim'e Gümüşsuyu caddesine doğru çıkıyorduk. Hastaneye gelmeden, teknik üniversite aşağısında polisler durdurdu. Durumumuzdan şüphelenmişler. Bizi dövdüler. Akciğerden ameliyat olmuştum onu söyledim. Vurmayın dedim, buna rağmen vurdular. Bu darp neticesinde dikişlerimin bir tanesi atmış. Bu durumda rapor vardır. Diğer arkadaşlarımın da karıştığını bilmem. O konudaki tutanağı da kabul etmem. Üzerimden berede çıkmadı, kime ait olduğunu bilmem. Oto Veli'nin kardeşine aittir öyle biliyorum. Veli'nin üzerinden çıktığı bahsedilen tornavida ve bıçak arabanın bagajından çıkmıştır."*

[532] Türk Ceza Kanunu, Article 151- 1. According to Article 151-1, when the person destroys one's moveable or immoveable property, the convict ranges between four months to three years imprisonment or monetary penalty. In this case, the child broke vent glass and auto type was also destroyed. In addition, the car was stopped by the police and the suspects were caught in act, so it was identified as an attempt for the theft. Article 35 says that the criminal is prosecuted because of the attempted conduct and the sentence is to be reduced from one fourth to third fourth because of the incompleteness of the conduct.

involuntarily and the suspects attempted to run away. With the reinforcement of the police, the suspects were paralyzed with "the use of partial force" and were removed to the police station.[533] A forensic medicine report was prepared due to the child's application for striking and it confirmed the opening of the child's stitches that had been sutured during his lung surgery. However, the result of the report was that "there is no indication of striking and force." [534]

Salih was sixteen years old, a high school drop out and had a previous record of ten property crimes. He was working as a telephone operator for 500 YTL. After the preparation of an identity record for Salih by the child police, the Chief Public Prosecutor was called because Salih was sixteen and this was an obstacle to the police taking his statement, unlike the other two suspects. His prosecution fell in the jurisdiction of the juvenile court. Salih's age was the first thing that limited his criminal responsibility. He may not have understood the meaning and the result of the act. The prosecutor gave the directive to remove the child to his office on the same day of the arrest.

The police informed the victim about the attempted theft of his car and that of three juvenile delinquents had been arrested on the same day. The victim was a middle aged, self-employed man and listed the destruction on his property in his statement: the right rear quarter window had been broken and the auto tape had been wholly destroyed. Interestingly, he expressed that he was not a litigant and his only demand was the payment of the destruction by the private automobile insurance

[533] I summarized the event with reference to the official record of event in the file. The summary of the event was officially recorded in the same day by the police officers. *"kısmi zor kullanımı"*

[534] The original format of the forensic medicine report prepared in the same day of detection was that *"Darp ve cebir izine rastlanmamıştır."*

company.[535] The litigant's interest was not to punish the juveniles, so the litigant was not "rule-oriented." Yet, his statement was not a sufficient reason for dropping the suspects out of the juvenile justice system.[536]

The police play a crucial role in the control of juvenile delinquency. In eleven files, the police had arrested the child and used open force in two files. In addition, citizens had given the suspects to the police office in fourteen files. In addition, the children had committed crimes in groups in nineteen files out of twenty-five. In fifteen cases out of nineteen, the children accused others who had used violence against them. Thus, I selected the auto theft file in which both the police violence and delinquency as a group intersected to exemplify the genre of the condemnation of condemners.

Police violence is one mechanism for maintaining the power relationship between the criminal and the police in the encounters. Alpert and Dunham's "authority maintenance theory"[537] is useful to analyze this social interaction and to explain the use of police force in this case: "The centrality of authority in the interactions, the extreme asymmetry of authority in the relationship, and the breakdown of reciprocity are all key elements in such encounters."[538]

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[535] The official record of the plaintiff utterance given to the police in the same day of detection.

[536] Türk Ceza Kanunu, Article 142-4. This article enacted in 06 December 2006 makes obligatory to initiate the legal procedure if the theft is committed against the property or the privacy of home regardless of the complaint initiative.

[537] Geoffrey P. and Roger G. Dunham Alpert, *Understanding Police Use of Force: Officers, Suspects and Reciprocity* (Cambridge: Cambridge University Press, 2004). p. 171.

[538] Ibid., p. 178.

The police officer has an asymmetrical legal authority to enforce legal rules and expects obedience. Thus, the violation of these rules infringes the authority of the police officer and legitimizes the use of force to restore at authority.

When this theory is adapted to the court case, the first step of social interaction between the police and the child was that the police officer gave an order to stop the suspicious looking car. And what is expected in this social interaction is reciprocal obedience to the order by the object of power, the suspects. "Once the police force or suspect resistance is introduced into the interaction process, the principle of reciprocity is violated because the actor using force has attempted to take control of the situation."[539] Thus, the suspect's deference or disobedience shapes the police behavior. When the suspicious act functions as "goal blockage",[540] it refers to an obstacle to the reproduction of legal authority, the police apply different regulations to control the event. Commanding the suspect to stop the car or chasing and the use of direct force are two examples of these regulatory techniques in this case. Using violence is one way to restore the legitimate authority and to integrate the juveniles into the juvenile justice system involuntarily. Thus, the reciprocity between the passive juvenile delinquent and the powerful police officer is reconstructed by violence.

The child described what happened after the arrest instead of his own conduct of car theft in his interrogation. This is one of "the techniques of neutralization."[541]By overemphasizing his exposure to the police violence, as Skyes and Matza note, "the delinquent shifts the focus of attention from its own deviant

[539] Ibid., p. 180.

[540] Ibid., p. 182.

[541] Skyes and Matza, p. 133.

acts to the motives and behaviors of those who disapprove of his violations."[542] The police were brutal and the child initiated legal proceeding about those police officers. This tactic of "the condemnation of condemners"[543] functions to divert the attention from the criminal conduct to the criminality of the excessive use of force in reaction to his behavior. With this tactic, the child contests the meaning of the act with the witness, the litigant and the police officers and the blaming of the police questions the use of uncontrolled open violence toward the suspect. The child did not reject his own conduct, but he accused of the police officers and presented the forensic medicine report as legal evidence thereby justifying alternate explanation of what had happened. These police officers had as much criminal responsibility as the child. The rationality of the lower-class child fought through the words of the police, the witness and the litigant accounts in the legal context and persuaded the prosecutor of his legitimacy. The prosecutor considered the affirmation of physical violence in the forensic medicine report, even if it was not written in the conclusion of report, and the child's claim as valid legal proofs and decided on the preparation of an indictment of the police officers. Since the judgment of the police officers was out of the jurisdiction of the juvenile court, the lawsuit was carried out in another court.

Beyond the prosecutor, in the juvenile court sessions, "the radical lawyer" defended the child and made a call for the prosecution of the police officers. The lawyer said that, "There is nothing I want to add. His age is low and there is no possibility of the alteration of evidence" at the end of Salih's interrogation.[544] Therefore, the lawyer made a call for the acceptance of the child's statement as the

[542] Ibid., p. 134-135.

[543] Ibid., p. 134.

[544] The reference is the indictment. "*Ekleyeceğim bir şey yoktur. Yaşı küçüktür ve delilleri karartma şüphesi yoktur."*

basis for the judgment instead of the official record of the police and the accounts of the litigant and the witness. Thus, the lawyer made a claim to prosecute the police officers who had used the direct force; the report taken from the hospital was presented as proof of striking. The claim was found worthy by the prosecutor and the child initiated legal procedure about three police officers with the claim of "the excess of the discretion on the use of force." Even though the file has not resulted yet, the judge pursues the prosecution of the police officers. Thus, it seems that the child's voice is intelligible in the legal context, the legal aid becomes successful and most likely the sentence about the police officers will affect the last decision.

Another auto theft file shows us that the car could have been borrowed temporarily.[545] This justification reveals that the child perceived his act as illegal, but not wrong. "Auto theft may be viewed as borrowing…The delinquent feels that his behavior does not really cause any great harm despite the fact that it runs counter to law."[546] Beyond the condemnation of condemners in the preceding case, this is the tactic of "the denial of injury" to property.[547] They borrowed some one's car illegally with the aim of driving around. Yet, they planned to return it to the owner. This tactic was in keeping with the criminal law and it was one of the adjustments reducing the punishment. If the theft had been committed with the intention of the temporary use of the property and of giving it back to the owner, the penalty is reduced by half.[548]

[545] The file number is coded as D-2.

[546] Skyes and Matza, p. 134.

[547] Ibid., p. 133.

[548] Türk Ceza Kanunu, Article 146.

Instead of directly negating his conduct, he appropriated criminal law to his statement in order to make it legally admissible. Again, there is a rationality conflict with the litigant, the witness and the police approach to the property crimes. For the child, one's automobile can be borrowed temporally. This account for the act is in contradiction with the legal rules on the non-violation of property rights and the jurisdiction of the juvenile court that is to prosecute the violator to secure these rights. By his interrogation, he put into circulation this conflicting claim in an official document.

Although Salih acted in solidarity with his friends who were from the same class position and pointed out sharing similar rationality on their act, when he used the word "we", as a group, to justify the act of auto theft, he also dissociated himself from his friends. Bernard Cohen differentiates "gang" from "delinquent group" and this distinction is applicable to interpreting the child's betrayal of group solidarity.[549] Rigid group solidarity and attachment to particular territory are part of gang behavior.[550] On the one hand, the case is a "multiple-purposive gang event."[551] The witness's statement points out the organized aspect of the auto theft. One child was the controller, another broke the vent window and the other drove the car. There was solidarity among them. Three children planned the theft with the utilitarian motive of

[549] Bernard Cohen, "Gang and Group Delinquency," in *Delinquency Selected Studies*, ed. Thorsten Sellin and Marvin E. Wolfgang (New York: Wiley Press, 1969). p. 62. Bernard Cohen identifies "the essential patterns of delinquency exhibited by organized gangs and spontaneously formed groups in the city of Philadelphia" with reference to offense reports from "the Gang Control Unit of the Police Department" in one year range between 1965 and 1966.

[550] Ibid., p. 66.

[551] Ibid., p. 68. It refers to coming together of delinquents with the certain plan of committing crime.

illegal acquisition and made the division of labor among themselves. The event came to the attention the police from a citizen's report.

Yet, the juvenile delinquents did not exhibit violent or aggressive behavior and so, this event was different from a gang event. For Cohen, property crimes cannot be gang events[552] because of the distinct "content of the delinquent event, the aggregative characteristics of offenders and aggregative characteristics of victims"[553] peculiar to the gang event: more violent, assaultive, aggressive, solidified and characterized by attacking "... youth who share similar characteristics with respect to age, race, sex and prior criminal record."[554] In our case, the juvenile delinquents did not use direct violence either toward the police officers or the victim. The event did not occur in their residential place and not attack the youth belonging to the same age and sex. The target of the delinquent act was from another class.

Within this framework, the second tactic Salih utilized was the dissolution of him from the group. The child utilized the tactic of "the denial of responsibility" that refers the negation of personal intention and responsibility for committing auto theft. "Delinquent acts are due to the forces outside of the individual and beyond his control such as… bad companions…"[555] He was one actor of the planned auto theft in the witness's account. He did not participate in the crime as opposed to the claim that a screwdriver and black beret had not been found during his body search. He did not know whether his friends committed it or not in his own accounts. In his statement, he "portrayed himself as gullible rather than malevolent and their actions

[552] Ibid., p. 78.

[553] Ibid., p. 102.

[554] Ibid., p. 97.

[555] Skyes and Matza, p. 133.

as misguided rather than outright criminal."[556] As a part of the defensive strategy, he expressed his "ignorance of law" by referring that he was "incapable of foreseeing the consequences of his actions."[557] Negligence is one of the objective measures for the degree of punishment license in criminal law.[558] If the suspect does not anticipate the results of act, he becomes deficient and culpability decreases. He did not know the car had been stolen, so he was not aware of committing a crime by getting into the car as an associate in crime. He did not anticipate the legal results of his act.

The condemnations of condemners, the denial of self-responsibility in Salih's case and the denial of injury to property in another auto theft file are three tactics interpreted. The child's accounts were in contradiction with the police record of the event, the witness and the litigant accounts. These tactics shows the contestation over the meaning of the crime between two classes and the rationality conflicts between the police, the witness and the child. The child manipulated the criminal law to convert the course of judgment to his advantage. These appropriations also point out alternatives for judgment. For instance, blaming police officers for the excess use of violence is considered a worthy claim by the prosecutor, the judge and the advocate and as a result legal process to prosecute that which the police officers had initiated. This cracks the legitimacy of police discretion toward juvenile offenders. Yet, the child never said he did not consider his conduct as a crime, but he accused the police officers of the use of violence as much as himself. In addition, the tactic of the dissociation of oneself from organized auto theft as opposed to the witness account is another mitigation of law to regulate punishment license and to reduce penalty.

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[556] Petrov, p. 747.

[557] Ibid., p. 748-49.

[558] Türk Ceza Kanunu, Article 22-2.

Again, he did not resist the legal definition of the conduct. The tactic of borrowing the car temporally instead of direct negation of the conduct in another case also implicates alternative rationality regarding property rights. The criminal child neither accepted the conduct and gave consent for punishment, nor totally negated his responsibility in his statement. They had borrowed the car. In all three tactics, the child struggled for making his alternative accounts legally admissible by means of the criminal law makes the crime excusable if the property is borrowed and if the child is gullible.

Blaming People for Striking

> The police caught Sedat while he was running away and the money was found during the body search in his left pocket. The police officers took money. I do not know whether they gave it back to the litigant. Later, while I was running away, one of the craftsmen kept me and beat me. I did not run away. The craftsmen kept me. I negate the litigant accounts. Thus, I did not take the litigant's money from his pocket and did not give it to Sedat. He refused the conduct. He said that this was my defense and I did not have the witness or evidence. I was not with Sedat.[559]
>
> I did not make theft. I found cash on the road during the event and I gave it to the police officers. I did not pilfer money from the citizen. The two individuals who stole the money run away. As opposed to the litigant claim, I did not push him off. Vedat did not take money from the litigant's pocket and did not give it to me. When the police caught

[559] The file is coded as D-3. The case was resulted in four months prosecution. Both children gave utterance to the Chief Prosecutor in the Juvenile Court in the same day of the detection. Vedat's utterance was that *"Olay sırasında polis Sedat'ı kaçarken yakaladı ve üst aramasında para sol cebinden çıktı ve parayı memurlar aldı. Sonra müştekiye verip vermediğini bilmiyorum. Daha sonra ben kaçarken esnaflardan birisi beni tuttu, oradakiler de bana vurdular. Ben kaçmıyordum, esnaflar beni tuttu. Müştekinin benim hakkımdaki ifadesini kabul etmiyorum. Yani ben müştekinin cebinden parayı alıp Sedat'a vermedim dedi. Suçunu inkar etti. Benim bu konu ile ilgili savunmam bundan ibarettir. Başka delilim ve şahidim yoktur dedi. Ben Sedat ile birlikte değildim dedi."*

me, they did not find money on me. Money was in my hand and I gave it to them. I do not recognize Vedat.[560]

The official report of the event summarized theft as pick-pocketing on the basis of the police and the litigant's descriptions of what happened. While the police were mobile in a busy street on that morning in August 2007, the police announced the need for an auxiliary police force to cope with a mob beating two children for having pick-pocketing. Then, the police intervened and took the children to the child police office for identification and carried the litigant to the police station.[561]

"The rule oriented litigant" presented his testimony in formal language in front of the police and the judge. According to his statement, he had come Istanbul in order to buy cloth for his textile shop. Sedat unbalanced him by pushing him back timely while Vedat took a large amount of money from his pocket, gave it to Sedat and then both fled. The litigant started to chase after them shouting aloud as "thief, thief!" and several craftsmen accompanied him to catch the children. Both the victim and the craftsmen caught them and beat them until the arrival of the police.[562] In the forensic medicine report prepared just after the event, there was no indication of the two children having been beaten. The money was found on Sedat and given back to the litigant according to the official record about the payment of money to the litigant. Even though the litigant confirmed the fact that "citizens" had beaten the

[560] Sedat also gave utterance to the same prosecutor in the same day before Vedat. His utterance was following passage: *"Ben söz konusu hırsızlığı yapmadım. Olay sırasında yerde para buldum gelen polis abilere verdim. Ben vatandaşın üzerinden parayı çalmadım. Parayı çalan iki şahıs kaçtı. Ben müştekinin iddia ettiği gibi itip dengesini bozmadım. Vedat'ta müştekinin cebinden parayı alıp bana vermedi. Polis beni yakaladığında üzerimde parayı bulmadı. Para elimdeydi ben kendilerine verdim dedi. Ben Vedat'ı tanımam dedi."*

[561] The reference is the official record of the event prepared by the police in the file.

[562] The police record of the litigant utterance in the court file is the reference to reveal how the litigant articulates the conduct.

children until the police came in his statement given to the police, he described what happened differently at the trial three months later in the Sanlıurfa Juvenile Court.[563] The suspects were kept in order to prevent them from running away without beating them in his new narrative. This was the only trial in which the litigant participated; he posed himself as the victim and rationalized his legal complaint in a following way. Even if he had received his money back, he would be the victim if the craftsmen had not caught the children. These children were potential criminals who had stolen someone's money; so they should be punished to learn the wrongness of their conduct.

Morton Hunt describes the characteristics of the potential mugging victim:

> … those who are on the sidewalks late at night,,… the elderly being too slow moving to escape,… clothing indicates …at least a modest income, …and is therefore likely to be carrying a fair amount of cash, …race,… walking alone,…[564]

These factors increase ""victimal" culpability"[565]in the sense that man advertises himself as a moneyed target. In this case, too, walking alone and most likely dressing and behaviors signaled the carrying of large amount of money to the children and increased the victim's responsibility. As opposed to the victim, both children belonged to the lower class. Vedat had been born in Diyarbakır in 1990 and was still living there without the record of previous convictions. He was illiterate and was working as a plumber at 300 YTL wage per month. Sedat was also born in Diyarbakır, in 1990. He was living in the Child Care Center in Istanbul as a literate, unemployed man without income.

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[563] In the trial at juvenile court in September, the letter was sent to the juvenile court to take the litigant's utterance in his dwelling place and these are the summarized form of the litigant expressions in the court record.

[564] Hunt, p. 6-7.

[565] Ibid., p. 8.

An indictment was prepared the day the juveniles came to the juvenile court from the child police. The litigant's statement, the official record of the event and finding money on Sedat were the legal proofs. Finding money by body search made the children's statements unreliable for the prosecutor. In addition, the prosecutor labeled the child's account a false statement because the suspect had negated his involvement in the event in his interrogation, so his accounts were not credible to create a doubt in the prosecutor's mind and to put in an indictment as a valid counter proof. The practice was decoded as an attempt at a qualified theft.[566] Both children were more than fifteen years old; thus, they had partial criminal culpability in comparison to adults.[567]At the end of seven trials and four months prosecution, the adjudication was two years and six months prison for each child. There was compatibility between the judge's and the prosecutor's views. Both legal professionals prioritized the litigant's statement and finding money on the children over the children's narrative. Finding money on the children was proof that caused the children's testimonies to be evaluated as false.

The lawyer in trials differentiated from legal professionals in the sense that the lawyer privileged the children's testimony and converted it into legal language, so the advocacy was fit to the legal defense of the prototype of "the idealist lawyer." In the secondary trial, the advocate valued children's "sincere" defenses and negated the litigant's statements and other evidence against the two suspects. He demanded

[566] In an indictment, the prosecutor decoded the claim with reference to the criminal law. Article 142-2-b is reference to define both mugging and theft from pocket picking. Quarelling around the victim with the certain intention gualifies the theft. However, the practice remained as an attempt because they were caught; and so, it is legitimate to reduce the punishment one fourth according to Article 35.

[567] Türk Ceza Kanunu, Article 31-3. It defines the limitedness of license for this age group. Since this age group does not have full culpability, one third reduction in penalty is legitimate. The legal penalty of the conduct for a licensed adult ranges between three to seven years.

their discharge due to their age and fixed residence that corresponded to legal language. The judge gave the verdict of discharge for those children who had been arrested.[568] In the previous trial, where the conviction had been given, the lawyer argued for the verdict of acquittal since there was insufficient proof. Yet, the judge declared this claim as unworthy and convicted the suspects of property crime.

It was certain that both children had committed the theft as pick-pocketing. Instead of negating the legal definition of the conduct, both had attempted to manipulate what happened to reduce their punishment. Analogous to all files, they were neither submissive objects of law nor totally resisting subjects. Even though their tactics were unsuccessful, these tactics show their agencies in the legal context.

Hunt defines the clichés used by the criminals that are generally evaluated as false statement in the criminal justice system.

> …they never even heard of the victim, the same tales about having been given the wallet by a stranger or having found the jewelry in the gutter… they were with strangers… at the time of crime…[569]

In this file, Sedat applied similar tactics both in the statement he gave to the prosecutor and to the judge at the trial. In contestation with the litigant's statement and the police report, the juvenile delinquent presented a different narrative. Instead of refusing the legal definition of the crime, he denied that he had committed the crime. He had picked up some cash on the road and gave it to the police and had never seen the other suspect before. Thus, the money had not been found on him. He had given it to the police on his own initiative. The real criminals had run away and he had not unbalanced the victim to pilfer his money. Those tactics were oriented to reduce his culpability and were in contradiction with the statement of the victim from

[568] The reference is the public record of the second trial.

[569] Hunt, p. 233.

a different class. If the prosecution had been based on his claim, he would not have had any responsibility and the act would not have been a planned qualified theft.

In comparison with Sedat, Vedat betrayed the solidarity between his friend and him and had confirmed his friends' criminal conduct. He reminded the prosecutor that Sedat had fled away and when the police had caught him and the money had been found on him. Criminal responsibility is peculiar to each suspect and helping to commit a crime makes the suspect legally responsible for the criminal act.[570] In this representation of what happened, his friend, who had been responsible for the act, and was found guilty by the evidence and he himself was not liable for the act. Both children dissociated themselves from each other to cope with the charges of qualified and counted pilfering under the pressure of fear of punishment in legal space.

Similar to Sedat, Vedat described the event in contradiction with the litigant's claim and denied having taken money from the victim's pocket and so committed the crime as part of a group. Apart from blaming the crime on his friend, another tactic embedded in his statements was the condemnation of the men who had beat him. He emphasized having been beaten by the craftsmen while fleeing the scene. One sentence later in his statement given to the prosecutor, he denied having fled and accused the craftsmen of beating him even though he had not been fleeing. He described it in more detail at the trial in which Sedat also participated and gave his statement in front of the judge. He was just standing there, the litigant indicated him and all the craftsmen began to beat him. In this version of the event, he had not been a criminal and he was subjected to unreasonable violence. In this way, he dissociated himself from the criminal conduct and attributed it to the men in order to reduce his

[570] Türk Ceza Kanunu, Article 20-1. This article says that criminal responsibility is personal. Relevantly, the helper has partial liability and so the punishment reduces by an half according to Article 39-2-c.

responsibility. However, the beating of a criminal is a legitimate form of violence in the criminal justice system and thus, the child's claim was inadmissible in court.

For Allen Feldman, the law and the actors in the criminal justice system who execute the law, through "… the mass production of facts, and facticity itself… materially mold a subject and a culture of perception,"[571] constructs "external perceptual colonization that disseminates and legitimizes particular sensorial dispositions over others within and beyond our public culture."[572] In this court file, the violence was accepted as reasonable and, in the litigant statements, the legitimacy of the violence toward the criminal had been reproduced. This scientific objectification of perception creates "cultural anesthesia"[573] and makes routine violence against juvenile delinquents normal. Even though there are no statements of the craftsmen in the file, it is clear that they had the same rationality as the litigant or others who had used open violence against the offender in other files.

The litigant narratives associate with realism and the violence is rationalized by the state. This anesthesia makes the body of the juvenile delinquent the object of violence. The child exists only as a criminal and his reason for why he has committed the act is out of consideration. Thus, in a climate of anxiety and insecurity, open violence against these dangerous children is normal in mundane life.

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[571] Allen Feldman, "On Cultural Anesthesia: From Desert Storm to Rodney King," *American Ethnologist* 21, no. 2 (May 1994). p. 406.

[572] Ibid.

[573] Ibid.

Nancy Scheper Hughes distinguishes "the 'softer 'forms of social control"[574] in legal, medical, educational institutions from these kinds of open violence. There is an obsession with property crimes; therefore, open violence is another acceptable form of social control to capture the child and give him to the police for appropriate punishment. The recognition of the juvenile delinquent as a danger and the practice of arbitrary violence towards them are embodied in the politics of everyday life. This is what Michael Taussig means by "terror as usual."[575] "Cultures of terror are based on and nourished by silence and myth in which the fanatical stress on the mysterious side of mysterious flourishes by means of rumor and fantasy woven in a dense web of magical realism."[576] Open violence toward children by either the police or people implicates the culture of terror linked to property crimes. The evil and dangerous bodies of children are culturally constructed objects of fear and hate. This myth becomes mundane realism, nurtures mass hysteria toward these children and rationalizes the use of violence.

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[574] Nancy Scheper Huges, *Death without Weeping: Everyday Life in Brazil* (Berkeley: University of California Press, 1992). p. 221. The writer is concerned with everyday forms of violence in Brazilian shantytown towards the poors in post-1980s context. In the section titled Everyday Violence: Bodies, Death and Silence, she analyzes the open violence of the police, rich people and indifference of ordinary people to this. Similar to my approach, this form of violence coexists with symbolic violence, "softer forms of violence" that normalize the use of violence by the litigant. It is another impact of hegemony in everday life. Thus, the actors of violence is not state institutions, but ordinary people.

[575] Michael Taussig, "Terror as Usual: Walter Benjamin's Theory of History as State of Siege," in *Violence in War and Peace: An Anthology*, ed. Nancy Scheper Hughes and Phillipe Bourgois (Malden, MA.: Blackwell Publishing, 2004). p. 269.

[576] Michael Tausig, "Culture of Terror- Space of Death: Roger Casement's Putumayo Report and the Explanation of Torture," in *Violence in War and Peace: An Anthology*, ed. Nancy Scheper Hughes and Phillipe Bourgois (Malden, MA.: Blackwell Publishing, 2004). p. 40.

In the file, the litigant's statements reproduce the culture of terror. Therefore, the culture of terror against juvenile delinquents realizes itself.[577]In other words, there is an institutionalized indifference to these forms of violence and the culture of terror is made intelligible through the litigant narrations.

In this file, finding money on the child and the litigant's account of what happened provided the basis for the last decision for the prosecutor and the judge. Even though the lawyer defended the children's accounts and the judge decided on discharge primarily, his legal aid failed in the end. However, this fact does not make invalid the interpretation of different tactics. Again, all tactics are the appropriations of criminal law for self-interest and are in contradiction with the higher class litigant accounts. Negation of litigant accounts and the official record of the event, never having heard or seen the victim or each other before, picking up cash on the road, hitting just standing there are both agencies and contestations in legal context for self-interest and indirectly resist the system. For instance, the tactic of shifting blame on the hitters is the child's description that de-normalizes the culture of terror and puts in circulation the need to deconstruct everyday interactions through the official records. Other tactics also point out struggling over the truthfulness of the police, the prosecutor and the litigant accounts, the possible falsity of these accounts and alternative definitions of justice.

The Appropriation of Suspectology

[577] Ibid., p. 49. Michael Taussig argues that "what distinguishes cultures of terror is that … problem of reality-and-illusion, certainty and doubt, becomes infinitely more than a "merely" philosophical problem. It becomes a high powered tool for domination and a principal medium of political practice." Thus, when people apply violence and their practices and accounts are considered as unproblematic in statements, the culture of terror becomes a political tool legitimizing violence.

If the stolen money or commodity is not found on the accused, expressing a discrepant account of the event is another pattern widespread in the files. The children utilized this tactic in fifteen out of twenty-five files and generally the result is a verdict of not guilty.

In the penal code, mugging is a professionally counted property crime.[578] Hunt defines it.

> … it came to refer to almost any form of strong-arm robbery and, more than that, to robberies in which the victim is threatened with-and even wounded by- a knife, club or other simple weapon… it is sometimes applied to robberies which result in injuries serious enough to victim's death.[579]

Hunt defines mugging as different forms of robbery in which the offender uses different degrees of violence toward the victim. As opposed to this definition, in none of the files about snatching I scanned, there is no excess use of violence, but there are different types of pick-pocketing and purse-snatching: physical contact between the victim and the child in the pick-pocketing or the child acts as a "… faceless, nameless, fleet-footed figure…"[580] and vanishes with money or purse. In three files of purse-snatching, children were identified with reference to the photos in the archives of the police.

In the previous type, the pick-pocketing, a group of children quarrel with each other around the targeted victim and push one another toward the victim, which is called *tantanacılık*. In this chaos, one child takes wallet from the victims' purse and all of the children run away. In four files of theft as pick-pocketing, the children as a

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[578] Türk Ceza Kanunu, Article 142-2-b. This article defines mugging as a qualified theft because the property is stolen with a professional talent. Thus, muggers, by definitions, committed theft with certain intention and this counted nature of snatching makes criminal responsibility unquestionable.

[579] Hunt, p. 16-17.

[580] Ibid., p. vii.

group applied this strategy. In two of the four cases, the litigants identified the children from the police photo archives and the children were caught in one file and released after interrogation. Yet, the police did not find the suspects to prepare for prosecution in the court, so the file resulted in abatement. The suspected children were never found in another file and the result was a verdict of not guilty due to lack of proof.

In the third exemplary file, the suspects were not found and the litigant preferred negotiation with the child's lawyer. Apart from loose criminals in three files, the arrested children had cleared themselves of a crime in a previous lawsuit of pick-pocketing. The judge gave the adjudication of the postponement of the last decision only in one file for theft as pick-pocketing because the stolen object had not been found on the child. In nine files of purse-snatching out of ten, the children were acquitted because of the absence of legal proof. In two files of purse-snatching, the children had committed pick-pocketing alone instead of group. One was resulted in the abatement due to the death of the child.

Beyond quarrelling around the victim, another method children utilized in pick-pocketing is impersonating a client and then they are snatching the shopper's mobile phone or bag. In two files, this method was used and even though the craftsmen had chased after them, caught and handed them over to the police, the children did not obey the decision on the compellable participation in trials. As a consequence, the litigants negotiated with the appointed lawyer and rationalized their decision as being tired from coming to the juvenile court.

There are three biases I identified in the files toward the pick-pocketer. First the prejudice to arrest a child for a property crime is the record of previous convictions. "The police view is quite simple: anyone who has ever been convicted

or even arrested, or about whom the police have ever heard any derogatory gossip, is very likely to be guilty of some present criminal activity."[581] Despite the lack of evidence, in some cases, the police compelled the children to come in for questioning and the children were taken into the court with indictments in which the statements of people who had caught the suspect without probable proof were accepted as proof. His juvenile delinquent past is enough to convict him anew. For instance, the child was accused of stealing the mobile phone of a worker of the Body of Lawyers in one file. Two months later, the litigant identified one child from the photos of previously convicted children in the archives of the police and the police arrested the child as the offender even though the child entered a plea of non-guilty in his statement. He had been staying with his sister and his clothes were in discord with the litigant's description of his alleged clothes the day of the event occurred. More importantly, the child complained about the police who had stigmatized him as a potential perpetual offender, distributed his photos to the craftsmen and has ready to attribute any theft to him if the real criminals were not found. The judge brought in a verdict of not guilty at the end of two years of prosecution due to lack of proof.[582]

In the court files, there are other examples of the accusation of children since they fit the stereotype of pickpockets. A new employee at a café was blamed for stealing the mobile phone of a long service employee on the first day of work. Again the child was stigmatized as an offender in an indictment based on the suspicions of being a new employee. Being an employee is another bias to hunt the child for stealing. The child again became the victim of suspectology and defended himself as

[581] Ibid., p. 63.

[582] The file number is coded as D–4. The date for the initiation of joruney in legal system for the child took two years.

a slandered worker. Similar to the proceeding case, the judge was on the behalf of the child and the last decision was a verdict of not guilty due to lack of evidence.[583]

Suspicions based on the children's physical appearance or behaviors are also sufficient reason for the initiation of legal procedures about them. In one store, addressing people of the upper classes as a client, two dark-skinned children with old, worn clothes were incompatible with the profile of a client. They tried on clothes in the dressing room. This was enough to trigger suspicion in the shopkeeper's mind about the theft of her bag and she called a private security agent and had the children taken to the police station. Yet, the bag was not found on the children and the result was the abatement of the charges because there was no legal proof and the police and the court failed to access to the compellable suspects at the end of six years.[584]

Agamben's theorization of camp and Benjamin's approach to violence are beneficial to understanding the application of these three kinds of symbolic violence toward juvenile delinquents. The mainstream rhetoric of social realism creates the perception of insecurity and a threat that can unleash itself at anytime and causes indifference in the lives of criminal children in everyday interactions. For Walter Benjamin, "the tradition of the oppressed teaches us that the "state of emergency" in which we live is not the exception but the rule. We must attain to a conception of history in this sight."[585] A state of emergency occurs when violence explodes in the different classes of society and it enables the state to legitimize violence against the perpetrators of property crimes. The people give consent for the state violence and use violence in either physical or symbolic terms. As a complementary to this vision,

[583] The file is coded as D–5.

[584] The file is coded as D–6.

[585] Walter Benjamin, "Thesis on the Philosophy of Right," in *Illuminations*, ed. Hannah Arendt (New York: Schocken Books, 1969). p. 257.

Giorgio Agamben conceptualizes the camp as the place where "the state of exception" becomes a normalized rule.

> *The camp that is the space is that is opened when the state of exception begins to become the rule."*[586] "…In sofaras the state of exception is "willed", it inaugurates a new juridico-political paradigm in which the norm becomes in distinguishable from the exception. The camp is thus the structure in which the state of exception- the possibility of deciding on which founds sovereign power- is realized *normally*. … In this sense, every question concerning the legality or illegality of what happened there simply makes no sense. *The camp is a hybrid of law and fact in which the two terms have become indistinguishable*….Only because the camps constitute a space of exception in the sense we have examined- in which not only is law completely suspended but fact and law are completely confused- is everything in the camps truly possible.[587]

The legal order constructs property crimes that make property relations insecure and it makes everything possible for the criminal in the camp. The camp in the files is the public sphere and every corner of the city. Living in "a state of exception", "a state of emergency" becomes the rule for propertied individuals in everyday life. This rule makes juvenile property offenders the legitimate objects of bio-political rule and legitimizes "the suspension of the operation of law" toward them by initiating the legal process against the suspect. The bodies of the children are associated with the real factual problem: the insecurity of property. Their bodies constitute a danger for security and order and their conduct is a legal problem, crime. It is assumed that there is no gap between reality and legality. The suspectology is real and legal. Their basic lives are the object of governing. The conduct becomes a part of the legal order as property crimes that constitute "exceptions" and "emergency" in society. Therefore, legal definitions become rules and the juvenile

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[586] Giorgio Agamben, *Homo Sacer: Soverign Power and Bare Life*, trans. Daniel Heller Roazen (Standford, California: Stanford University Press, 1998). p. 168-169.

[587] Ibid., p. 170.

delinquents are marginalized as the perpetrators of exceptions. They are also included in society and in the criminal justice system as the deviants whom the juvenile justice system legitimizes itself.

From a similar stance, Ebru Aykut draws attention to the normality of "the state of exception" to achieve public order and security. "The rationality of "public order" and "security" opens an infinite ambiguous zone to security state to decide on where the borders of right and violence start and finish as a symmetry of sovereign power."[588] In this ambiguous zone, the distinction between "law-making" and "law-preserving" is suspended, [589] and the people have the power of law making over the suspect. The state of exception becomes the rule in the whole landscape of the city for the juvenile delinquents in two ways.

First, as already explained, the initiation of legal procedure against a suspect is not a temporal exception, but it is a permanent right. Every place in the city has the permanent potential of being the site of a theft at any time. Property crimes can occur at any time and the use of the arbitrary claim against the child, everyday symbolic violence, is ordinary in shopping centers, work places and bazaars.

Second, the police and the prosecutors create a "real state of emergency"[590] and reinforce the illusion of imbrications between the law and reality in the public consciousness. By accepting the litigant's suspicion as the evidence of a child's guilt without proof in the official records, like the examples I gave, the police construct

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[588] Ebru Aykut, "Adalet Terazisini Dengelemek: Şiddet Ve Politika," *Terör, Şiddet ve Toplum Dergisi* (2006). p. 61. *""Kamu düzeni" ve "güvenlik mantığı", egemenlik anlayışına tamamen simetrik olan hak ve şiddetin sınırlarının nerede başlayıp nerede bittiği konusunda güvenlik devletine sınırsız bir belirsizlik alanı açmaktadır."*

[589] Walter Benjamin, "Critique of Violence," in *Selected Writings Vol. 1/ 1913-1926*, ed. Marcus Bullock and Michael W. Jennings (Cambridge: Belknap Press of Harvard University, 1999). p. 243.

[590] Ibid.

juvenile offenders. Similarly, by preparing an indictment on the basis of the police reports and the litigant statement, the prosecutor made real the illusions of thefts and the children became real criminals. In other words, the state of exception is normalized in everyday life and the use of arbitrary power becomes the legitimate rule. For any reason, the child can be taken into custody on the suspicion of the litigant and can be prosecuted. The selected court file explored below is an example of how the child utilizes the mentality of suspectology to convert successfully the weapons of the legal language toward him. The following passage is made up of the statements of two children who appeared in the court because of pick pocketing.

> My mother and father sent me to Istanbul to stay with my uncle's son living in x address in Tarlabaşı and I am living there. My uncle works at his own job and I am working as a seller of simit for pocket money. My friend, Deniz, and I were looking around the bazaar that day. Several women caught me up and said that I had stolen one of their wallets. Then, the police caught Deniz too and we went to the police station together. Deniz and I did not steal the purse.[591]

> I deny the crime. I was caught at the scene, but I did not take the litigant's purse, money or other objects from her bag. I do not have any relation with the crime. Murat, whose name was written in an indictment as a suspect is my friend. He was with me, yet he did not still anything either.[592]

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[591] The file is coded D-7. The prosecution terminated at the end of three and a half years of prosecution. Murat's statement was taken by the Chief Public Prosecutor of Juvenile Court two days after the event. Since he was eleven years old, the decision of the prosecutor was to return the child to his uncle. In his statement, I skipped the first sentences on his identity and real names and the rest of the official record is following: *"… annem ve babam beni babamın amcasının oğlu olan x'in yanına gönderdi. Ben babamın amcasının oğlu olan X'in … adresteki evinde ikamet ediyorum. X amcam Beyoğlu'nda kendi işine gidiyor, ben de Beyoğlu'nda simit satarım harçlığımı çıkarırım. Arkadaşım olan Deniz ile … pazarında geziyorduk. Birkaç bayan beni yakaladı, birisinin cebinden cüzdanını aldığımı söyledi. Deniz'i de polisler yakaladı, biz karakola götürüldük. Ben ve Deniz cüzdan çalmadık."*

[592] The prosecutor gave an order to hold a separate trial for Deniz after interrogation. And one day later, the prosecutor wrote a letter to the police to arrest Deniz and prepare him for court. He was not found till November 2007 either by the juvenile court or the police and his mere account in the courtroom was the one he gave in that trial. *"Atılı suçu kabul etmiyorum. Olay yerinde ben yakalandım; ancak, yakınıcının çantasından cüzdanını, parasını veya diğer eşyalarını ben almadım. Benim suçla bir ilgim yoktur. İddianamede adı geçen Murat benim arkadaşımdır. O da yanımdaydı, ancak o da hırsızlık yapmadı."*

Even though the largest discrepancy exists between the litigant's and the children's accounts in this court file, there are several irregulaties between the police record of the event and the litigant's statements, too. While the so-called victim was shopping at a bazaar with her sister, she realized her wallet was missing and saw two children running away with her purse. After her shouting loudly that her purse was stolen, the sellers in a bazaar started to chase after children and caught them. Yet, she did not find her purse in their hands. Somehow the children had succeeded at hiding it in her account.[593] The victim was working as an administrator and was a married woman in her mid-thirties. Like all files, two children were from the working class unlike the victim. Murat was born in Hakkari in 1993, was working as a simit seller and was living in Tarlabaşı, a poor quarter of Istanbul, with his uncle. Deniz was born in Diyarbakır in 1991 and his dwelling place was Tarlabaşı, too. He was unemployed.

The police record of the event was both distinct and similar to the litigant's interrogation. It was similar in the sense that the police were certain that the children were the true offenders because they had been caught on the strength of their physical description and the sellers at the bazaar and the litigant were the witnesses. As opposed to the litigant's expression, the police recorded that the police had arrested two children who had threatened the sellers with a drawn knife and fled to the end of the bazaar.[594] More importantly, in the record of the proceedings written by the child police to the prosecutor, it was written that the litigant had found her purse in the children's hands and received her money and credit cards back. Even

[593] The reference is the litigant utterance taken by the police on the day event occurred.

[594] The police summarized what happened in the official record of event in the file.

though it was clear that the children had committed a theft, who had caught them and whether the victim had gotten her bag back was not clear.

After the identification of the two children by the child working in concert with lawyers on the day event occurred, both of the juvenile delinquents were prepared at the office of the prosecutor for interrogation two days later. In an indictment, the prosecutor based the crime on the litigant's statement and transferred Deniz to another stage of the criminal justice system, prosecution.[595]

The major tactic Deniz employed was "the privilege against self-incrimination."[596] In an interrogation, the litigant and the child were adversaries from two classes trying to persuade the prosecutor of the truth. As Hunt writes, "the key rule for fair play was that the defendant could not be forced to convict himself; the privilege against self-incrimination was thus a crucial limitation upon the power the state could exert over the individual."[597] The judge and the prosecutor based the legal decision on what the litigants, the child and the witness told them and the evidence. Instead of direct resistance, the children preferred the utilization of the lack of proof and blamed the common mentality of suspectology. Both children stated that they had not committed a theft. This implicates that they accepted the labeling of pick pocketing as a crime, and so its legal definition in the criminal law. They posited themselves as the victims of the people's bias toward them. Since the stolen objects had not been found on them, it cast doubt on the veracity of the litigant's claim and

[595] An indictment was prepared seven months later. Like all files, the litigant's expressions, the police record of event were sufficient to accept the claim and initiate prosecution.

[596] Hunt, p. 118.

[597] Ibid.

the police record of event. Instead of considering the testimony an incredible statement, the judge and the advocate valued the defense of the juvenile delinquents.

If the stolen objects are found on the child, the judge evaluates these narratives as false statements in the files. However, if there is no legal proof, the judge stands on the behalf of the child. Deniz was accused by the litigant and the sellers on unreasonable suspicion about his friend and him. By their account, they had been walking around the bazaar and shopping without the intention of committing theft. It is a different reconstruction of the event that reduces their criminal culpability.

The total number of the trials for this file was eight. The litigant participated into only the second one and repeated her statement and she was certain on that she had seen the children after the theft and had chased them. Yet, somehow her purse had not been found on the children. The discrepant testimony of Deniz created a doubt in the judge's mind. There was no proof apart from the plaintiff's statement and the police record of the event.[598] The benefit of the doubt for the suspect was that the case resulted in a verdict of not guilty at the end of three and a half years of prosecution. Hunt defines "reasonable doubt" as "if you then feel uncertain and not fully convinced that the defendant is guilty, and if you believe that a reasonable person would hesitate to act because of such doubt that you are conscious of having, then that is reasonable doubt."[599]

The child's statement was enough to create a reasonable doubt in this file. It seemed unnecessary to apply the criminal law to the case. There was no clear guilt

[598] The public record of the trial on March 2005 includes the litigant's utterance in a written form.

[599] Hunt, p. 322. That is the one of the instructions the judge used before the trial of two boys who killed one elder man for mugging in 1964 at Bronx, American city.

and the eyewitness accounts of the litigant and the police were insufficient to sentence the child. The judge privileged the rule of "presumption of innocence."[600] The judge did not evaluate the child's account as an opportunistic claim to manipulate his punishment license. The litigant did not have any event-driven proof to convict the child and her eyewitness claim was found incredible by the judge.

"The radical advocate" also believed in the truthfulness of the Deniz's narrative. The advocate's response is that

> I confirm my client's defense completely. The stolen objects were not found on him. The legal execution is based on suspicion. Thus, I make a call to bringing in a verdict of not guilty.[601]

This legal aid was a crucial support in making his defense legally intelligible. His defense lawyer was an idealist one and mediated between the judge and the suspect as opposed to the lawyers who left children defenseless in the court. The lawyer argued for the limitedness of evidence, pointed out the legal procedure based on suspicion and developed a defense out of the child's own words to illustrate confessions. The child's account was completely discrepant with that of the litigant for the same event and the lawyer spoke on the behalf of the child.

Utilizing the lack of legal proof and representing oneself as the victim of people's bias and suspicion was the appropriation tactic in countering with the litigant, the police and the prosecutor claims. Yet, the different reconstruction of the event in the defense was valued by the judge and the advocate and the call for conviction became invalid. The appropriation of the criminal law worked the system

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[600] Ibid., p. 306. This rule implies that the suspect is not guilty until proven and the judges should not have a disposition to suppose the suspect as criminal on the basis of the indictment, the litigant and the official police records. In other words, there should not be biases toward the suspect's testimony. The judge applied this principle and presumed innocence in the child in this case too.

[601] In the last trial, the lawyer expressed those sentences. *"Müvekkilimin savunmasına aynen katılıyorum. Müvekkilimin üzerinden suç eşyası çıkmamıştır. Şüphe üzerine hakkında işlem yapılmıştır. Beraatını talep ediyorum."*

to their advantage and implicated a political struggle over the legal representation of crime. Similar to all files, there were conflicting rationalities and speeches expressed by means of the criminal law. The child fought with words against the common rationality of labeling one as the offender because of suspicion instead of denying the conduct. Appropriation of the lack of proof was a successful tool to make the claim of being a victim of the people's suspicion legally acceptable.

Reversing the Victim-Criminal Duality

> I went to x market on the day of event. And I wanted to buy a 250 unit call phone card from the market owner and he gave them to me. Its price was 96 YTL. In addition, I asked them to make me salami sandwich and to sprinkle salt on it. While he was preparing the sandwich, I received the prepaid minutes and ran away. The market owner started to chase after me. He shot at me, so I got scared. I stopped and he caught me. Then, I gave the phone card in my purse back to him. He himself did not take it back. He hit me with his fists and hit me with his hand gun on my face. I was injured. I wish to complain about the market owner because of his hitting. He said that I had given the phone card back to him and the market owner did not have any material loss, so he did not want to negotiate with the market owner. He told that the event occurred at night and that I did not have anything to add to his statement.[602]

[602] The file number is D-8. Ahmet's utterance taken in the Chief Public Prosecutor's Office as "the suspect" for theft was that *"Ben olay günü x markete gittim. Orada işyeri sahibinden 250'lik cep telefonu kontörü istedim. Şahısta bana kontörleri verdi. Bu kontörlerin tutarı 96 YTL idi. Ayrıyeten market sahibinden ekmek arası salam ve tuz istedim. O salamı hazırlarken ben kontörleri alıp kaçmaya başladım. Bu sırada şahıs arkamdan kovaladı. Şahıs bana yaklaşırken ateş ediyordu, ateş ettiği için korktum, durdum. Şahıs beni yakalayınca bende cüzdanımın içindeki kontörleri verdim. Yoksa kendisi almış değildir. Kendisi bana yumrukla vurarak, tabancanın kabzası ile yüzüme vurdu ve yaralandım. Kendisinden beni dövmesinden dolayı şikayetçiyim. Kendisine kontörleri verdiğim için şahsın herhangi bir zararı olmadığı için, kendisi ile uzlaşmak istemiyorum dedi. Olay geceleyin olmuştur dedi. Başka bir diyeceği olmadığını söyledi."*

The conduct is labeled "the abuse of trust for mutual exchange" and "the theft of protected property within a building"[603] in the criminal charge written by the Chief Public Prosecutor on the same day of the occurrence of the event. In addition, since the execution of legal procedure about the market owner's having beaten the child was the duty of Istanbul Chief Prosecutor, the decision was to pursue the result of prosecution for the assault in another court, yet it was not followed, so it did not have any impact on the child's convictability in the case. The police record described the event: the mobile police team realized the one was running and the other was shooting at the Yenikapı IDO terminal around 1:45 p.m. at night. The police intervened and took Ahmet to the hospital and then to the child police headquarter at 5:15 a.m. The market owner dispatched to the police station to give his statement and to begin legal procedures for carrying a gun.[604]

The forensic medicine report had been prepared in the afternoon of the same day. The offender had come with the complaint of physical violence and of assault by the market owner. The findings in the examination had been a two centimeter serious abrasion at the border between hair and skin, a seven centimeter bruise and echinoids in the same part, a bruise on left eyelid, a three centimeter laceration on the left eyebrow and a half centimeter serious abrasion on the nose. He had been conscious, so there was no emergency apart from the lacerations. The conclusion was that injury did not constitute a life risk and but that it could not be treated by a simple medical intervention.[605] Then, the child had been dispatched to the child police and

[603] Türk Ceza Kanunu, Article 142-1-b. This article is the official reference to label the conduct. The theft of the property that is locked or under protection from the place open to everyone makes the practise qualified and associates with two-five years convict.

[604] The event is summarized according to the official record of the event was prepared by the police.

[605] The reference is the forensic medicine report in the file.

taken into custody by 19:00 p.m. with the directive of the prosecutor because of the risk of flight. The forensic medicine report was discarded in the prosecution.

Five days after the occurrence of the event, the file was transmitted to the Juvenile Court Chief Public Prosecutor from the Istanbul Chief Public Prosecutor. In the indictment, the claim, the litigant's claim, the official records on detection and the decision on custody were the legal proofs to initiate prosecution in the juvenile court.[606]

After the criminal charge, first trial was appointed one year later. In this trial, the complainant expressed the continuity of his complaints, but said he did not want to participate in trials any more. Before chasing the child, the litigant had taken the gun from the market drawer and shot it four times in the air. When the child had heard the shots, he had slowed down and the market owner had caught him. Then, he had taken the phone card from the child's purse. Since he had been frustrated, he had beaten him. And one time he had hit him in the face with the gun. Even though there had been no material loss for him, he was a complainant.[607]

The so called victim was market owner and a middle aged married man whereas Ahmet had been born in 1988 in Malatya and lived in Kumkapı and was unmarried. He worked as a slop worker at 600 YTL wage per month and did not have a previous record of conviction.[608] Thus, again the child and the litigant belonged to different classes and there were nonnegotiable rationalities between two parties. The victim was rule oriented and demanded the child be sentenced to the appropriate punishment whereas the child accused the victim as much as himself.

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[606] An indictment was prepared three weeks later.

[607] The litigant claims are presented according to the public record in the trial.

[608] The identity informations are extracted from the official records of identification prepared by the police.

Ahmet was not involved in the trials and it was assumed that he was living in Malatya. His statement was taken in Malatya and he positioned once again himself as a victim and refused negotiation with the litigant.[609] The appointed lawyer fit to the stereotype of "the disfunctioning lawyer." Instead of defending the child, the lawyer repeated the cliché: no comment on what the child had said in trials and interrogation. In the last trial, the lawyer confirmed the criminality of the child and rendered a call for his punishment without making comment on the ignorance of the impact of the physical violence on the child in adjudication. The prosecution resulted in the postponement of the last decision and receiving 16,80 YTL costs of the legal processes from Ahmet in the seventh trial.[610]

E.P. Thompson defines what he means by the rule of law that is distinct from arbitrary punishment as **"**a cultural achievement of universal significance."[611] "'The law' as an ideology, which pretends to reconcile the interests of all degrees of men, must always come into conflict with the ideological partisanship of the class."[612] The rule of law moves the offenders and the complaints as equal agents in the court and restrains the practice of uncontrolled power. Yet, the case mentioned above proves the ignorance of the child's positioning himself as a victim who is subjected to the arbitrary violence as opposed to Thompson's definition of the rule of law as a power neutral realm considering the voices of the criminal and the victim equally.

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[609] His statement was taken in the Criminal Court of First Instance in Malatya on April 2006 because there was no Juvenile Court.

[610] The last decision was taken at the end of two and a half years of prosecution.

[611] E.P. Thompson, "The Rule of Law," in *The Essential E.P. Thompson*, ed. Dorothy Thompson (New York: New Press, 2001). p. 439.

[612] Ibid., p.442; Petrov, p. 744-746. Similarly, Milan Petrov analyzed a case in which the police killed the man and whose mother correctly assessed the law in Nizami Court to punish the police and the juridical process resulted in the victory of the woman.

Even though the case resulted in the dismissal of the child's complaint from the legal process and with the triumph of the market owner, it is worth elaborating on the child's alternate speech reversing the criminal/victim duality.

The voice heard at the court was the victim's voice. Yet, beyond this hegemonic rhetoric, Randall Shelden draws our attention to "think negatively through oppositions" and "critical thinking involves exercising "careful judgment and judicious evaluation" and with respect to the critical study of crime, that such a perspective "demands that we examine not only what the law says is the crime, but also *why* the law says it is so."[613] Even if the child positioned himself as the victim contrary to the so-called legal truth, his accounts or the psychical violence to which he has subjected did not have any effect on the last decision. It shows us that there is compatibility between legality and the litigant's class biased vision to identify which practices are crimes, who is the offender and how far the child is an agent in the legal processes. In this case too, the market owner initiated the legal procedure with the claim of theft of his phone card, in accordance with his claim; the child was stigmatized as the offender in all stages of the legal procedure. The criminal justice system ignored the child's counter crimination of the market owner, so his accounts did remain in the statement.

However, the child's attempt maybe to convert the case to his own advantage, proves that law "as a process ... is a dynamic force that is continually being created and interpreted."[614] His struggle proves that the juvenile court is not a power neutral space to resolve the dispute between the child and the market owner. It does not

[613] Randall G. Shelden, *Controlling the Dangerous Classes: A Critical Introduction to the History of Criminal Justice* (The United States of America: Allyn and Bacon Publishing, 2001). p. 2.

[614] Ibid., p. 7.

provide justice to the marginalized classes. It is a system of class justice policing violations. His statement should not be interpreted as a total rejection of legal definitions of property crimes because he did express openly his victimhood but he did not reject the legal definition of his practice. He was conscious of addressing the authority. He did appropriate the criminal law when he blamed the market owner as much as himself. Moreover, he refused legal negotiation with the victim as another tactic. Therefore, he indirectly resisted the legal language by regulating its means instead of expressing a totally independent alternative speech.

The suspect rejected negotiation with the market owner in his statement because the market owner did not suffer any material loss and had got back the phone card. The child had the legal conscious of the court offered negotiation between the suspect and the victim. In accordance with the child's account, the market owner was the criminal who should comply with himself. The refusal to negotiate became an "'exculpatory strategy' that has the potential for dissociate oneself from the full extent of the blame."[615] The negation of negotiation is the tactic to persuade the judge of the criminality of the victim. The victim had no material loss and used open violence. The child positioned himself as the victim and rejected compliance with the market owner. Beyond criminalizing the market owner, the appropriation of the negotiation rule in the criminal law was another tactic for legitimizing the reversal of the criminal-victim polarity, yet the tactic was inadmissible.

The strategy of offering negotiation in the juvenile justice system is a crucial indicator of the compact between the system and the litigant. For Petrov, negotiation is another form of compliance as he explains:

[615] Petrov, p. 750.

> Symbolic compliance- the willingness to modify discourse and behavior in accordance with what political power expected (or assumed an individual to say or do in order to demonstrate his or her bona fide status as trustworthy suspect, witness and subject in general.)[616]

Similar to Petrov's explanation, in the criminal law, the offer of negotiation by the victim and its acceptance by the juvenile delinquent is a form of merciful language. The victim is the one who initiated the journey of the child into the juvenile justice system and he is also the one entitled to put an end to the lawsuit and negotiation is one way to restore the power of victim and to reconcile the child with the system. Legally, the court can order negotiation between the litigant and the offender for all crimes that are prosecuted due to complaint.[617]

Like punishment, negotiation affirms obedience and submission to the law. Again, negotiation "… makes the courts a selective instrument of class justice, yet simultaneously to proclaim the law's incorruptible impartiality and absolute determinacy."[618] Negotiation reinforces the victimal political power "…by bond of obligation on one side and condescension on the other, as prosecutors… decided to invoke the law or agreed to show mercy."[619] Negotiation reestablishes the hierarchy between the legal victim and the offender. However, in this case, the child struggled to position himself as a legal victim and the market owner as a suspect. This attempt

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[616] Ibid., p. 758.

[617] T.C. Resmi Gazetesi, *Ceza Muhakemesi Kanunu*, No. 5271, 4 December 2004. Article 253. It was enacted on 6 December 2006 and its first bent does not give the names of the crimes that can be negotiated, but it generalizes the applicability of all crimes initiated by the litigant.

[618] Douglas Hay, "Property, Authorithy and the Criminal Law," in *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England*, ed. Peter Linebaugh Douglas Hay, John G. Rule, E. P. Thompson and Cal Winslow (London: Penguin Books, 1975). p. 48.

[619] Ibid.

to reverse the victim and the criminal duality and negating negotiation is unacceptable in the legal context.

Apart from this kind of use of negotiation, there are other mitigations of this legal rule in the court files, like negotiation as a mercy. In the file of theft of a mobile phone, the child offered to negotiate and yet it was presented as if the litigant had wanted to negotiate in the last trial. Since the child did not have a legal right to offer negotiation, the litigant had offered it formally and had pity on the offender. In the last trial, the so-called victim said that "We negotiated with the offender… He stole my mobile phone, but there is no material loss, so I have terminated my claim"[620] and the child said "I have accepted the complainant's demand for negotiation."[621] We cannot know why the litigant accepted negotiation. It might have stemmed from getting tired of five years of prosecution or his "benevolence" toward the child. Similarly, we cannot know why child offered the negotiation even though he had claimed he was innocent and even though the victim confirmed his non-criminality. Yet, it seems that his strategic maneuver of offering negotiation worked and resulted in his discharge. Negotiation due to the demand for the complainant is a legal factor causing the dismissal of a case.

There are two other files in which the litigants got bored with participation in trials for long years and from the failure of the juvenile court and of the police to arrest the children, so they offered negotiation and negotiated with the child's

[620] The file number is D-9. The last decision was taken the abatement of accuse due to the negotiation between parties. The reference is the public record of the last trial. *"Biz sanıkla uzlaştık…. Sanık benim cep telefounumu alıp kaçmıştı. Ancak herhangi bir zarar ziyan durumu yoktur. Sanıkla uzlaştık. Şikayetçi değilim dedi."*

[621] The suspect expressed those words in the same trial. *"Ben yakınıcıların uzlaşma isteğini kabul ediyorum."*

advocate. One file is the open theft of a woman's bag from a shop[622] and the other is an attempted theft from the trunk of the truck.[623] Equally important point is that the litigant's disinterest in the conduct is a crucial factor affecting the child's acceptance of negotiation. In one car theft file, the litigant offered negotiation, yet the child had to pay his material loss. The child rejected it by stating that his family and he could not afford to pay in the amount full, so he was willing to suffer the appropriate punishment. This file has not resulted yet, but if the child negotiates with the litigant, the child has to accept to recover the loss by payment in installments. And the legal decision will be the postponement of last decision till the child pays all legal debts.[624]

Law and order are treated as synonymous and crime has become the symbol of the lawless condition and so disorder. According to Marry Douglas,

> Order implies restriction; from all possible materials, a limited selection has been made and from all possible relations a limited set has been used. So disorder by implication is unlimited, no pattern has been realized in it, but its potential for patterning is indefinite.[625]

It can be claimed that the law defines the possible relations between the litigant and the offender and gives form and meaning to their interactions. In the court file about the theft of the phone card from the market elaborated above, the child interacted with the litigant and committed a crime. Negotiation is a legal

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[622] The file is coded as D-10. Three girls simulated themselves as client and mugged the owner's hand bag. Even though woman caught the children by the help of craftsmen and gave the children to the police, yet they were discharged due to their small ages and the court did not find them in three years period in the D-10 and the litigant prefered negotiation.

[623] The file number is D-11. The last decision was the abatement of accuse due to negotiation between parties at the end of two years. The driver of truck caught one child while he was playing with the baggage lock and again the child was not found and the bored litigant preferred negotiatiation.

[624] Ceza Muhakemesi Kanunu, Article 254-2. It was stipulated on 06 December 2006.

[625] Marry Douglas, *Purity and Danger: An Analysis of Concepts of Pollution and Taboo* (Australia: Penguin Books, 1966). p. 114.

possibility only for the litigant. It is not legitimate to blame the market owner and to reject negotiation. The judge decoded the conduct by means of the relevant articles. Apart from the labeling of the theft, committing the crime at night was another factor that renders the theft qualified and increased the penalty by one-third.[626] However, the conduct remained at the stage of attempt[627] and his age reduced his criminal culpability.[628] These factors de-qualified the conduct. The incompleteness of the conduct associated with a three-fourth reduction in the sentence and biological age legalized a further one-third reduction. Thus, his punishment was reduced from two years to five months and ten days imprisonment. Then, the declaration of the convict was also postponed and the conduct was not added to his record of convictions if he did not commit a crime for a specified amount of time.

Disorder, like the child's alternative speech in which he posed himself as a victim and the market owner as evil has the potential to destroy the hegemonic coding of property crimes. In the legal context, the child manipulated the legal means of negotiation and reversed the legal definition of the victim and criminal duality in the criminal law and struggled to represent his resistance to the authorities in an intelligible form by his statements, but failed to affect the last decision.

Legitimizing Theft as a Channel for Survival

Rationalizing Theft by Virtue of the Violation the Work Contract

[626] Türk Ceza Kanunu, Article 143.

[627] Ibid., Article 35.

[628] Ibid., Article 31-3. This bent defines that if the child is older than fifteen, younger than eighteen, whether the child is prosecuted as an adult or not depends on his culpability. Yet, even if the delinquent is liable for conduct, the penalty declines one third. The child in this file was seventeen years old and; so, he cannot be fully responsible for his actions due to biological age.

> I worked at X market approximately five or six months and left the job on my own initiative one week or ten days earlier because its wage was low and it was heavy work. While I was working there, I put some days one bottle of drink, some day two under my jacket or in pocket without my employer's awareness. There were days I did not take any bottles. I saved them in the part of a coal cellar belonging to us in our apartment. My roommates, Ali and my brother, Kazım, did not know it. On the day we were caught, I told Ali that I was getting them to sell. He came with me to help, but he assumed that the bottles had been given to me as a wage by the employer. We took a taxi and we saw my brother on the road and took him into the taxi, too. I told my brother not to be angry with me because they did not pay my wages or when they paid, it was insufficient to live, so I had stolen the bottles and was going to sell them in return for money. … Then, the police stopped the taxi and found the bottles. He said that his brother and Ali did not have any guilt.[629]

In the official report on the pursuit, body search and arrest, the police summarized the event.[630] The police stopped the taxi and asked three youth where they had obtained the bottles. Kazım had said that his brother had stolen the bottles from his workplace and was going to sell them to Ali in return for 3 YTL per bottle. Interestingly, the file does not contain the statement of Kazım and both the suspect and Ali expressed in their interrogations that Ali and Kazım had had knowledge of the theft and the suspect's plan to sell them. They sided with the child and had

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[629] The number of file is D-12. His utterance that was given to the Prosecutor with the accompaniment of the lawyer is given below, but the real names are changed. *"5-6 ay kadar x markette çalıştım. Bir hafta ve ya on gün önce kendi isteğim ile ayrıldım. Parası azdı, işi ağırdı. Orada çalıştığım 5-6 ay içerisinde kimi gün bir tane, kimi günde iki tane içki şişesini ceketimin altına saklayarak ve ya poşet içerisine koyarak patronum görmeden alıp götürdüm. Bazen hiç almadığım günlerde oluyordu. Bunları kaldığımız apartmanın kömürlüğüne sakladım, kömürlüğün bize ait olan bölümüne sakladım. Oda arkadaşım Ali ve ağabeyim Kazım'ın bundan haberi yoktu. Yakalandığımız gün önce olayı Ali'ye anlattım ben onları satmaya götürüyorum dedim. O da bana yardım etmeye geldi. Zanetti ki dükkândan para yerine, ücretim yerine bunları verdiklerini sandı. Ticari taksiye bindik, giderken ağabeyime rastladık, ağabeyimi de arabaya aldık. Abi kızma, ben böyle böyle bir iş yaptım. Paramı vermiyorlardı, verdiklerinde de az veriyorlardı. Bu yüzden içki çaldım satmaya gidiyorum dedim. … Az sonra polisler çevirdi, aradılar, rakıları buldular. Ağabeyimin hiçbir suçu yok, Ali'nin de suçu yoktur dedi."*

[630] The official record was prepared in the same day of the detection. This record in the file is reference for the summary of the event.

approved of the child's plan but without any material interest. Then, the police took the bottles as evidence and all of them were taken to the police car. The market owner was unaware of theft until he was informed by the police, who calculated the cost of the stolen one hundred twenty five bottles as 298, 470 YTL on the same day.

In his statement given to the police on the same day, the market owner lodged a complaint about Ali, who was still his employee, and Mehmet, who was accused of the theft. As "a rule-oriented litigant", he became the litigant and made a call to give the appropriate punishment to those employees who misused their employers' trust.[631] The victim was a market owner, married, twenty-seven years old whereas Mehmet was born in 1986, unemployed and primary school graduate when his practice was labeled as "theft by misuse of trust."[632] Since Ali and Kazım were older than eighteen years old, they were judged in the Criminal Court of Peace and the conviction was a verdict of not guilty for them nine months later.[633] The child was sent to the juvenile court.

In an indictment on the suspect, Mehmet, his narrative was evaluated as proof by the prosecutor even though he openly attributed a distinct meaning to the conduct. The juvenile justice system translated subjective meaning into an objective one as proof of criminality. That is an indicator of concord between the litigant's interest and the prosecutor in the juvenile court. Beyond that, the claim, the police report on the pursuit and the arrest were the evidence to initiate the process in juvenile court in

[631] The litigant account about what happened was recorded officially the same day of the deterence of the child.

[632] Türk Ceza Kanunu, Article 161. When the individual transgresses the contract on the use of property in a certain way and abuses the trust bestowed upon him, the sentence ranges between six months to two years or monetary penalty.

[633] The official document in file on a last decision about others was sent to the juvenile court. It is the reference to trace the juridical processes concerning other two suspects.

an indictment.[634] The child was found a culpable in the forensic medicine report. "… in his treatment, he mentioned his regret and reasoned theft with his necessity for money and expressed his plan for selling them to the restaurant…"[635] Therefore, he had an officially approved report on having been conscious enough to comprehend the meaning and the consequences of his act and gave consent for an appropriate legal punishment. The case ended with the abatement of accused because of overtime[636] because Mehmet did not come to the trials either spontaneously or by force. The police failed to find him.

There were thirteen trials and the accused participated in only the trial on September 2003 while the crime had been committed in November 2000. His statement was in concordance with his first statement.[637] In his defense, he both complied with and resisted the legal definition of theft. He managed to decriminalize his act partially. He had stolen but for subsistence. He had stolen out of necessity meanwhile he regretted his action in order to make an apologic crime for subsistence acceptable.

I interpret Mehmet's statement as an epitome for James Scott's "everyday forms of resistance." Scott argues that beyond the open, declared and mostly exceptional kinds of collective action (strikes, boycotts, rebellions, occupations, sit-

[634] The prosecutor prepared an indictment one year after the occurance of the event.

[635] Forensic medicine examined the child and prepared the report on his culpability in the same day of detection. *" … Muayenesinde pişman olduğunu söylediği, paraya ihtiyacı olduğunu, çalmış olduğunu, çalmış olduğu rakıları bir restorana satacağını söylediği…"*

[636] Türk Ceza Kanunu, Article 66. Article 66 defines the conditions of existence for the abatement of accuse. If the convict is less than five years, eight year prosecution in the court results in the abatement of accuses. Yet, for the children below fifteen years old, a four year prosecution is enough. In this case too, the punishment of theft by misuse of trust ranges between six months and two years. The child was fifteen years old and seven years prosecution was sufficient for the abatement.

[637] The delinquents' utterance in the public record of this trial is the ground for interpretting the child's account.

ins), there is a "hidden realm of political conflict", in which lower classes use the daily forms of resistance much more widely than the declared ones.[638] Scott claims that this hidden arena has been ignored widely because they are not open and they are seen as purely individual events. However, he argues, these resistances, like our example of petty theft, show us the daily forms of class struggle, especially "when they are practiced widely by the members of an entire class against elites or the state."[639] The problem Scott points out is that the agents of such practices do everything they can do to escape the attention of the authorities or other citizens because of the illegality or illegitimacy of their actions in their eyes. Therefore, as in accordance with the aim in this chapter, their written records can only be found in the archives of the state institutions of the society through which these agents are pushed to the margins. What is left to the researcher is to extract these resistances from these records.

As is in Mehmet's case, these resistances may be labeled purely individual and impulsive. Although to a certain extent it may be true, it does not mean that they are totally isolated cases. As Scott shows, many of these resistances have "a fairly high level of tacit cooperation among the class of resisters."[640] This coordination may not be as open and organized as we see in strikes, rebellions, boycotts and petitioning campaigns. However, most of these resistances are based on the same grounds, especially in terms of the justification of their actions. This can also be seen in Mehmet's case. Mehmet stole the bottles to make money by selling them because his

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[638] James C. Scott, "Everyday Forms of Resistance," in *Everyday Forms of Peasant Resistance*, ed. Forrest D. Colburn (Armonk, New York: M.E. Sharpe Publishing, 1989). p. 4.

[639] Ibid., p. 5.

[640] Ibid., p. 7.

employer had not paid his wages and deprived him of his living. The employer violated his right to eat and that justified his practice. He rationalized stealing by means of being in need. Looking at how Mehmet justified his crime to his brother, it can be suggested that to steal or harm the property of an employer who had not paid his workers was sub-consciously accepted, if not completely approved of, by his environment. Thus, Mehmet was not an isolated resister who abruptly went against his community. Acting in such a way, he relied on the "climate of opinion" in which he lived.[641] In other words, he was conscious of the fact that he was backed by the others, that his resistance required at least the "silence" of his friends and family and that he "…depends for his success on a minimal level of group cohesion."[642]

The class dimension of the daily forms of resistances was made apparent in Mehmet's case in an obvious manner. "Breach, crisis, redress and *either* reintegration *or* recognition of schism" are the four stages of Victor Turner's "social drama" embedded in this case.[643] The child was aware of the fact that theft was socially and legally sanctioned. As a worker, he violated the working contract according to which he was obliged to work at the market in return for wages. He abused his employer's trust in him and stole from the market, so his conduct was labeled "theft by the misuse of trust."

Yet, the underlying reason was that his employer had not fulfilled his responsibility for paying wage, and thereby breaking the just payment contract. This was the first stage at which "a social drama first manifest[ed] itself as the breach of a

[641] Ibid., p. 12.

[642] Ibid., p. 8.

[643] Victor Turner, *From Ritual to Theatre: The Human Seriousness of Play* (New York: PAJ Publication, 1982). p. 69.

norm, the infraction of … law, custom…"[644] His feeling of injustice in the form of unpaid wages made it seems moral and legitimate to steal. Thus, the norm between the employer and the employee had been breached. The motor force making him steal had been being in need. As a rational agent, he developed a strategy to obtain money, so he handled the situation of unpaid wages in a way that structured his practice. This crisis stage implicates, as Turner writes, "… a momentous of juncture or turning point in the relations between components of a social field."[645] There was discord between employee and employer interests. The employee considered theft as a right whereas the employer said it was a crime and in the later stage the employer became a litigant in the juvenile court. The social drama was a political process and the employer had the legitimate power to impose criminality on the child as the perpetrator of the crisis.

The court is an institution to "redress" worker-employer relations in the third stage. Thus, as Turner says, "the liminal reflexivity of the redressive phase is necessary if crisis is to be rendered meaningful."[646] Juvenile court gave a determinate meaning to the child's subjective performance and the labeling of it as a property crime put an end to the indeterminacy of meaning and the conflict of the interests between the two parties. The constructed meaning was reflexive in the sense that it reflected the so-called objective consensual meaning between the employer and legal professionals. However, the last decision in the juridical procedures was the discharge.

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[644] Ibid., p. 70.

[645] Ibid.

[646] Ibid., p. 76.

Mehmet's account of his act reconstructed the relationship between the employee and the employer in the last stage, "the social recognition of irreparable breach between the contesting parties."[647] By means of his tactic, he revealed a synchronization of the multiple narratives in an official document. His narrative reversed the hierarchical social relations in the legal context. He broke the reductionist employee-employer relationship in which the worker is a submissive object for exploitation and does not have the right to steal or sell the property of the market owner if the employer does not pay the wage. The lawyer who participated in his interrogation was "a radical one", so the lawyer was on the side of the child. The lawyer said the suspect was not the offender and was below fifteen years old. He had stolen out of necessity and in reaction to the non-payment of his wages.

His conflict with his boss is a typical form of class struggle, which, in essence, "is a struggle over the appropriation of work property, production…" [648] In other words, Mehmet's petty theft was a response to the theft of his necessary labor to survive. Therefore, though it may seem individual, the kernel of his struggle is identical to other forms of class struggle: "how the harvest is actually divided." [649] His expression was considered as acceptation of the crime in an indictment, so it was not intelligible to the prosecutor. The reason for theft was the violation of the legal work contract between two sides and that was the legal factor that reduced culpability depending on the judge's initiative.[650] It seems that the child's accounts created a doubt in the mind of the judge because he demanded the forensic medicine

[647] Ibid., p. 71.

[648] Ibid.

[649] Ibid.

[650] Türk Ceza Kanunu, Article 144.

report on his criminal culpability in the only trial in which the child participated. Since the end result was the abatement of the accused, it was impossible to know what would have been the decision if the child had participated in the trials. However, the child's expression can be interpreted as fighting for clothing his alternative explanation in legal format and renegotiating the limits of legitimacy.

Rationalizing Theft by Virtue of Hunger

> That day, I did not return to home due to a misunderstanding with my family members. I was sleeping in the street. Towards morning, I wanted to enter into the mosque to sleep. I attempted to enter through the windows directly without using the door. That day, I was hungry and so I took apart four aluminum window frames to satisfy my hunger before sleeping. I carried the frames to the junk collector and sold them in return for 8 YTL. I filled my stomach, but I did not return to the mosque. After three or four months, I was caught from my fingerprints by the police. He said that he had accepted the crime. … In his previous statement, I was ashamed to express this. Thus, I said that I had entered into the mosque and had slept there until the morning. Yet, I entered the mosque through the window and took apart the frames. I did not sleep in the mosque until morning. … I had not wanted to express my theft of window frames from a mosque, I was ashamed…I do not have a previous record of conviction and my father has opened a shop and I am working there.[651]

[651] The file number is changed as D-13. The following is the child's utterance at trial in the Criminal Court of First Instance six months later from the occurrence of the event. *"Olay tarihinde ailemiz fertleri ile aramda bulunan kırgınlık nedeni ile eve gidememiştim. Dışarda yatıyordum. Olay gecesi, sabaha yakın saatlerde yatmak için x camisine girmek istedim. Doğrudan doğruya pencereden girmeye çalıştım, kapıların kilitli olup olmadığına bakmadım. Olay gecesi aç kalmıştım, bundan dolayı caminin pencerelerinin aleminyumdan yapılmış 4 adet pervazını sökerek alıp götürdüm, içeri gidip yatacaktım fakat evvela açlığımı gidermek istedim. Pervazları söküp hurdacıya götürdüm ve onları hurdacıya sattım, 8 milyon lira para aldım. Karnımı doyurdum, daha sonra camiye dönmedim. 3-4 ay geçtikten sonra parmak izimden tehsiş yapılması üzerine polis tarafından yakalandım. Hırsızlık olayını kabul ediyorum dedi… önceki ifademde bu hususu söylemekten utandım, bu nedenle camiye girip sabaha kadar orada yattığımı söyledim. Esasında ben caminin içerisine pencereden girdim ve pencere pervazlarını sökerek götürdüm. Camide sabaha kadar yatmadım. … ben ifade verirken cami pervazını çaldığımı söylemek istememiştim utanmıştım… benim sabıkam yoktur, babam dükkan açmıştı ben şimdi onun yanında çalışıyorum."*

When the imam entered the mosque for morning namaz, he realized that the door had been destroyed, but it was still locked and four aluminum window frames were stolen. Then, the child was officially identified as the suspect of the theft with the application of the imam to the police. Becker writes, "Crime, delinquency… has no meaning apart from the social processes by which they are defined as having that particular meaning."[652] The imam, as the litigant, made a claim for justice about the stolen aluminum window frames from the mosque. In his statement, "the rule oriented litigant" underlined that the complaint was not a personal choice, but that the theft was against common property, so the act was a crime and the initiation of a legal process was necessary. The imam was responsible for the security of the properties in the mosque. Stealing common property was the factor making the theft qualified in the criminal law, too.[653] The accused was caught by the police by means of his finger prints on the broken windows eight months later and was dispatched to the child police.

Like all of the files discussed here, the litigant and the juvenile delinquent belonged to different social classes. The accused was fourteen years old, born in Hakkari, and living in Gultepe in Istanbul without record of previous convictions. He was working as an employee at a dried fruit maker and had left school in secondary school.

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[652] Howard S. Becker, "Accusation and the Accused," *Science New Series* 160 (May 1968). p. 645.

[653] Türk Ceza Kanunu, Article 142-a. This article labels taking common properties from the public institutions and mosques as a qualified theft. The appropriate punishment is imprisonment for three to six years. Since the litigant initiated a legal procedure by initiative, there was no police record of event in the file. And the litigant summarized what happened in his utterance.

Houston writes, "Inclusive property rights were rights of necessity to be invoked only in exceptional circumstances."[654] Therefore, the rationalization of theft by virtue of necessity is acceptable only if the accused is one of the "deserving poor," who are "the victims of misfortune and accident," contrary to the "undeserving poor" refers to "…idle, corrupt, and unwilling to undertake an honest day's labor."[655] In the first statement given to the prosecutor with the accompaniment of the lawyer on the same day, the child denied the crime. The child represented himself as a member of the undeserving poor. His two friends and he were returning from a night club and they needed a place to sleep on a rainy night. They broke the window, but did not steal the frames. The imam also had given permission for them to sleep there until the morning namaz. In this narration, he managed his image as a vagabond who was deviant, morally corrupt, irresponsible to the family, sleeping on the streets, breaking the window while he was drunk to sleep as opposed to the socially desirable expectations for a child of his age.

The Criminal Court of First Instance convicted him on the same day he gave his statement and his claim for entrance into the mosque with the aim of sleeping without the intention of theft was evaluated as "indirect acceptance of the crime." Thus, his statement was more evidence of the theft, like the litigant's statement and his finger prints was also legal proof in an indictment.[656] He was also accused of making a false statement about his age. According to the birth record, his birth date was 1985 as opposed to his version, 1989. Since he had fulfilled eighteen years old

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[654] Alan Craig Houston, "Review: (Untitled) Reviewed Propert Rights and Poverty: Political Argument in Britain, 1605-1834," *Political Theory* 21, no. 2 (May 1993). p. 333.

[655] Ibid., p. 333-334.

[656] An indictment was prepared in the Criminal Court of First Instance by the prosecutor three weeks later from an interrogation.*"suçun dolaylı kabulu"*

according to his officially recorded birth date, his trials continued in the Criminal Court of First Instance until February 2005 as an imprisoned suspect.[657]

His narrated testimony, written at the beginning, made out to be one of the deserving poor in his secondary statement in contrast to the preceding one in the previous trial at the Criminal Court of First Instance. In this trial, it was realized that the child's birth record had been confused with that of his brother, so he had been born at 1989. Thus, there was no convictability for a false statement. Since the child had not completed age eighteen when he had committed crime, the file was under the responsibility of the juvenile court and the child was discharged.

Intention is the objective criteria of having the license for the punishment.[658] In his statement, he complied with the system. He intentionally committed a crime and knew the legal results and the meaning of the practice. The crime had been personal and the product of his hungry stomach. He was ashamed for having stolen to satisfy his hunger. Even though he was conscious of the wrongness of having committed a crime, temporary living conditions had forced him to steal the window frames. This also implicated a kind of struggle over the property. Rationalizing theft by poverty and hunger challenged the class-biased meaning of the conduct as a crime. Aluminum windows can be stolen in the emergent need. This claim provided an alternative justification about the violation of common property in contradiction to the litigant. Justifying theft by hunger and feeling regret for it resulted in the postponement of the last decision.

"Effective regret" is a major tool the accused utilized to turn the system to his advantage and renegotiate the limits of legitimacy. It is a legally valid private reason

[657] The reference is the last decision of the the Criminal Court of First Instance.

[658] Türk Ceza Kanunu, Article 21.

for a reduction in punishment. The acceptation of wrongness of the practice and the expression of regret in prosecution led to a half reduction of punishment.[659] Yet, the execution of the article required the consent of the litigant[660] and the imam did not want to negotiate in the last trial before the decision and the litigant repeated that the stolen window frames were common property.[661] This fact proved the irreconcilable breach between the two classes. The child's excuse for the theft because of hunger was inadmissible to the litigant. This article was not mentioned in the last decision. Instead, his effective regret rationalized the theft in the judge's eyes and the judge considered his regret as an effective reason for a discretionary reduction. "The offender behaviors after the conduct and at trials"[662] was the cause of the decision and it was written officially in the last decision.

This reconciliation tactic can be interpreted as the intelligibility of the personification of poverty and crime in the legal space. "Being in the condition of necessity", making theft to satisfy a "troublesome" and "emergent" necessity is a valid excuse in the criminal law. Depending on the characteristics of the event, the judge can decide on a reduction of punishment or can forgive it.[663] The suspect lacks the qualities to integrate himself into the social system. This deficit gives regret and it is repairable. The theft of the aluminum window frames from the mosque was not

[659] Ibid., Article 168-2.

[660] Ibid., Article 168-4.

[661] The reference is the public record of the trial in the file.

[662] Ibid., Article 62-2. The original format is that *"… failin fiilden sonraki ve yargılama sürecindeki davranışları."*

[663] Ibid., Article 147.

considered as a product of "structural disinvestment"[664] of the child. To cope with this disinvestment, the children "… reinvested their identities in… day-to-day business realities of stealing cars…"[665] or other property crimes, like this case. He had dropped out of secondary school, he was working for a dried fruit maker that was an insecure and low-wage job and he lived in the suburbs. Both the structural and cultural disinvestment of the life of the accused show that poverty is not an individual shameful deficit and does not depend on the child's demand for mobility. Yet, the child presented himself as a desirable poor person who was struggling for self-mobilization and working with his father and this was legally admirable. Thus, his personal struggles to cope with poverty rendered his conduct legally excusable.

An involvement in a delinquent act, like theft, can be a strategy to adapt to poverty with short term economic gains. However, by regret and compliance, the child ascribed the blame to himself as the perpetrator of legally sanctioned action and legitimized the theft by virtue of hunger. Therefore, the accused became an intelligible subject in the legal context. He gave consent for the penalty by accepting the responsibility for the conduct. This compliance tactic was successful. As a licensed individual in the juvenile court, the crime was not written in his record of previous convictions.

Conclusion

All of the tactics show that delinquents know how to manipulate legal means in order to deny their criminal culpability without frontal assault. Therefore, all

[664] John Hagan, "Structural and Cultural Disinvestment and the New Ethnographies of Poverty and Crime," *Contemporary Sociology* 22, no. 3 (May 1993). p. 328.

[665] Ibid., p. 329.

tactics in relation to property crimes are accounts of struggles between different rationalities on property crimes in the legal context and the law is an arena for performing contested claims. In this sense, all tactics implicate a political struggle over the meaning of the conduct and property relations.

Furthermore, these partially disguised alternative justifications communicate with legal apparatuses and affect the course of jurisdiction. This effect depends on (in) compatibility between the attitudes of the legal actors and the suspect in each case. The child always gives a statement in interrogation and at trials by being aware of addressing the authority and by experiencing the fear of punishment. Thus, the child clothes alternative justifications in the criminal law to make them acceptable and valid accounts. If there is direct legal proof of the event or the child detaches his speech completely from the legal knowledge, the suspects remain unsuccessful in affecting the course of jurisdiction and his statements are evaluated as false. Finding money on the child's body in the file analyzed in regards to blaming people for striking is an example of the previous, and reversing the criminal victim duality is of the latter. If the child expresses his testimony from a liminal stance, his account is admissible and legally credible. Liminality refers neither to full compliance, nor to the rejection of self-crimination if there is no direct proof, as analyzed in the case of the appropriation of suspectology. If the child points out the criminality of the police officers without negating his criminal conduct, their tactics became successful. In addition, if the child feels regret for the theft while rationalizing it by hunger and by the violation of working contract, the juvenile justice system is not deaf to his voice.

Regardless of the consequences of jurisdiction, all tactics are examples of a political fight with words to neutralize self-blame and reduce criminal culpability by the different reconstructions of their acts. The children struggled to make intelligible

those justifications that were unrecognizable in the legal context by appropriating the dominant legal knowledge, the criminal law. These "techniques of neutralizations" represent violations as "acceptable, if not right… apologetic failures" and criticize common values legitimizing the use of open violence and the meaning of the conducts in conflict with the litigant claims that belong to different class.[666] Thus, all appropriations in the legal context put into circulation conflicting justifications by means of official accounts and draw attention to the different definitions of justice, resulting in legal pluralism.

[666] Ibid., p. 133.

CHAPTER SEVEN

CONCLUSION

In this thesis, I scrutinized the historical transformations in the juvenile justice policy in relation to property crimes and the operation of the law concerning the juvenile property offenders in the judge's visions, the court documents and court hearings in the one of the juvenile courts in Istanbul. Interviews with three judges, my participant observations in thirty-four trials and twenty-five property crime files obtained from my field research between February 2008 and June 2008 in the court composed my primary resources for analyzing the operation of the law in the juridical setting.

In Chapter Two, Three and half of Chapter Four, I scrutinized the historical changes in the juvenile justice policy. There were different politics of criminal law and the legal techniques to handle juvenile delinquency in particular conjunctures. Exploring the historical legal politics concerning juvenile property offenders revealed how the perception of juvenile delinquents has transformed the role of the juvenile court and the relevant techniques to govern delinquency and has invented new actors in the juvenile justice system, such as paternal institutional care centers in the welfare state and civil society organizations, family and victims as consumers of marketized security services in current Turkey.

In order to articulate the socio-political context in which the juvenile court was established, I explored the perception of juvenile delinquents and the role of the court to handle it in a liberal regime in Chapter Two. The debates stressed the necessity of the establishment of a court to legitimize and coordinate state interventionism into the living conditions of socially maladjusted children to treat and reintegrate them into society. The cooperation between the social work and the juvenile court was composed of the new juvenile justice policy because social work diagnosed the causes of the criminal conducts and prescribed the appropriate personal treatment programs in accordance with the needs of the child and then, those programs were executed legally while there was no separate juvenile court, punishment had been prioritized over rehabilitation and those children had been convicted of reduced but severe imprisonment in the early republican period.

Four debates marked the process of the establishment of the court peculiar to Turkey in the conjuncture of the consolidation of social work. The first debate was on the perception of juvenile delinquency. While the juvenile delinquent was a criminal child and biological and inherited traits had been the causes of conduct in the early republican era, the juvenile delinquent became a child led into crime due to wrong family upbringing and the court was recommended to save those needy children. Relevant to the new perception of juvenile delinquents, the severe penalties and imprisonment in the penal code and the distinction between criminal and endangered children in Law No. 6972 stipulated in 1957, the law on the Children in the Need of Protection, were criticized. The last debate was on the lack of a centralized social welfare system and the court to take legal decisions that prioritized the rehabilitation of the deviant child by means of personal treatment programs and to implement those programs as the guardian of all needy children. Then, the

reformatory legal principles of separate juvenile justice system in Law No. 2253 enacted in 1982 were explored. New legal procedures of investigation and prosecution, the legal rehabilitative decisions in institutional care centers, the assignment of social workers and the establishment of new institutional care centers to realize personal treatment constituted the legal basis of a separate juvenile justice system in Turkey.

In Chapter Three, the main concern was to reveal the changes in the perception of juvenile delinquents, the techniques to handle this issue and so, the new juvenile justice policy in current Turkey. Since the decline of the welfare state, the new individual who has to monitor all risks and acts in the rules of market replaced the solidaristic relations between state, society and individual. Crime becomes a potential that could unleash itself any time. Thus, the juvenile delinquent was perceived as one who constituted a risk and danger to the social order and security rather than the needy child in danger. The crime control industry and restructured state institutions emphasize the security of the real and potential victims of the property crimes.

Individuals and state institutions are two agents in this policy. Private insurance, private security services and physical security measures are composed of the crime control industry and individuals consume these security services to minimize their permanent fear of crime. It is also possible to participate in community policing to control the juveniles in cooperation with the police. State institutions, another agent in the current policy, have been reorganized to restore the public convenience and belief in the juvenile justice system and to provide effective services in the prevention of crime and the deterrence of juvenile property offenders. The institutionalization of the child police in 2001, the enactment of the law on the

specialization of the juvenile courts in 2005, the codification of snatching and the augmentation of penalties in the new Turkish penal code in 2004, the extensive use of technology and mobesse systems in the detection and the increasing importance of on the-job-training of legal apparatuses were examined as new techniques to augment the quality of justice services. All of these techniques implicate increasing convictability and strict policing over juvenile property offenders.

The exploration of statistical information also reveals the impacts of restructuring of the juvenile courts and increasing convictability. A linear increase in the number of the juveniles appeared in the court and so the workload on the court resulted in the establishment of new courts to provide effective service peculiar to the type of crime. While there was one juvenile court in Istanbul and four in Turkey in 2002, the number of courts reached eight in Istanbul and twenty-three in 2005. In addition, each court was specialized in 2005 to increase the efficiency of the prosecution. The number of new lawsuits, new files transmitted from one year to another and average days of prosecution declined after that date. Equally important statistical information is that the percentage of convicted children peaked in 2006 and increased thirty-fold after one year of practice of the new penal code characterized by more severe penalties for property crimes.

New juvenile justice policy is *double sided*. On the one hand, juvenile delinquents are perceived as a risk and dangerous and the new policy targets the victims of crime as explored above. On the other hand, these children are considered to be endangered in need of protection and the new policy associates a new partnership between the court, family and civil society organizations as a new technique to handle juvenile delinquency. Chapter Four examined the new child protection system and its penetration of the juvenile justice system in the 1990s. The

main paradox in the child protection system is that the family is both the best place of protection and correction of the child and the agent that leads the child into crime and poverty. Thus, the child must return to the family, but to a strengthened family and the responsibility of empowering the family is dispersed among civil society organizations.

When the penetration of this into juvenile justice system was explored, the stipulation of the International Child Right Conventions in 1990 and the working of the National Council under the administration of SHÇEK in 1995 to adapt those conventions constituted the base of the new partnership model and idealized probation in an open milieu. Lack of institutions to implement the personal treatment programs, disqualified care and unwillingness to keep the criminal children with others in the few institutional care centers made returning the child to the family the most prevalent legal decision in the juvenile courts in the 1990s. Lastly, the drafts on the changes on Law No. 2253, the Law on the Establishment, Duties and Procedures of the Juvenile Court, in 1992, and the enactment of the Child Protection Law in 2005 legitimized the new partnership between the court, family and civil society. Some instances of the new partnership showed that civil society organizations are burdened with the social inquiry, correction and probation of the juvenile delinquents channeled by the court and the empowerment of the family with temporal micro projects.

In the second half of Chapter Four, Chapter Five and Chapter Six, the main concern was to scrutinize contestations in the legal arena and the different perceptions of justice and legality. My aim was to illustrate how legal apparatuses, the litigant and especially the child, receive and consume the law in verbal contests in the court files and verbal and bodily performances in courtroom hearings. Yet,

these contestations and interactions are not autonomous. The law provides means for contestation and makes voices and tactics legally admissible in the legal context. Different forms of argumentations in the courtroom, court records and other official documents in court files concerning the settlement of property disputes shows the operation of the law from below and allows the rethinking of the relationship between power relations and rationality conflicts about the meaning of the conduct. In other words, the multiple representations in the legal processes rupture the objective dominant legal relations.

In the second part of Chapter Four, how the three judges perceive the functions of law, juvenile delinquency and juvenile justice policy was explored. These different perceptions are crucial because how the judges operate the law from above in interactions in lawsuits is strongly related to these perceptions. I categorized the judges as "the social-work oriented judge", "the rule-oriented judge" and "the negotiation-oriented judge." For "the social-work oriented judge", the juvenile delinquent is a child abetted into crime and the new partnership model between the court and civil society is the way to save them. Legal rules function to curb individual interests, reintegrate these children in society and make them believe in the conscience collective. As opposed to this vision, "the rule-oriented judge" considers juvenile delinquents as criminal children and offers imprisonment as the only way to correct these children. Thus, this judge is on the side of the new juvenile justice policy targeting the security and the convenience of the victims of crime. Lastly, "the negotiation-oriented judge" made a call for the reestablishment of the tutelary complex, the policy in the welfare state period, and the function of legal rules is to convince people and offenders of justice. Since the current system fails to

convince, this judge prefers to negotiate between the plaintiff and the child and drops them out of the disfunctioning juvenile justice system.

In Chapter Five, the focus was on the operation of the law in courtroom hearings. I analyzed (un) successful patterns in the verbal and bodily performances of the different actors on the stage of the courtroom. The child, the lawyer and the litigant as active agents display their performances with different ends and the judges interact with these agents, evaluate these performances and base their legal decisions on the appropriate performance. My aim was to examine the role of language in the legal process and to articulate the general aloneness of the child in the courtroom with reference to my observations of the different representational styles and performances addressing the judge as an audience.

In order to uphold the meaning of being alone in the courtroom, primarily patterns of interaction between the judges and the children in courtroom were scrutinized. Submissive formal verbal accounts and respectful bodily performances render the child's voice legally valid and admissible. If the child constructs the event in informal everyday language, denies the crime, does not have culpability and displays ease body postures, he is isolated in the courtroom because his accounts are not intelligible. Apart from submitting to the judge and accepting the crime, presenting oneself as a victim of socially undesirable relatives in a narrative account is another successful pattern to affect the course of adjudication.

I also evaluated the patterns of defense with reference to the interactions between the children, the judges and the lawyers. The majority of the lawyers are the "disfunctioning ones" who do not even know the type of crime or the name of the child they defend. Thus, these lawyers make justice inaccessible. "The idealist lawyers" practice successful pattern of defense, that is, to construct defense in a

technical legal language in the name of the child to reduce the punishment. Lastly, "the radical lawyers" infringe on the legal language and allow the child to put forward an alternate defense, being the few-numbered and undesirable ones in the court. Legal aid is generally not accessible to the child and the child is alone in the courtroom either defenseless or the defense confirming criminality and making a call for the reduction in the penalties. Lastly, the evaluation of the litigant verbal and bodily performances revealed that the litigants display certain performances due to the judges' attitudes too. If the judge is rule oriented or relational and there is concord between the perspective of the litigant and the judge. The litigants use everyday language, a narrative style and complain about the time spent in the court or use formal language in communication. In addition, the judges prioritize their visions if there is clash of accounts. However, the litigant accounts are generally validated as true representation of what happened. Again, this fact isolates the child in the courtroom as the one whose performances not admissible.

In Chapter Six, I examined the operation of the law in the court documents. In order to legitimize alternative justifications of the meaning the crime under the conditions explored in the preceding chapter, how the juvenile delinquents as active agents manipulate the criminal law and how these tactics indirectly resist and question the objectivity of the litigant accounts and the definition of justice as the punishment of the violator, were some of the questions I tried to respond to in this chapter. Beyond pragmatic reasons, legal tactics point out that the juvenile property offenders are active agents in renegotiating the limits of legitimacy. By denying or appropriating the litigant claims, these children contest the meaning of the crimes and draw attention to the alternative definitions of justice.

In order to reveal these legal contestations, the juvenile delinquents' tactics in the search for justice are categorized as verbal dueling for "legitimizing theft as a channel for survival" and "blaming people who subject them to open violence" in contradiction with the litigants' labeling of this behavior as property crimes and the legitimacy of open violence in their eyes with reference to the selected court files. The condemnation of condemner police officers in car theft case, blaming people for striking in the case of theft by pick-pocketing, the appropriation of the suspectology that refers to blaming one unreasonably as a form of symbolic violence in the file of mugging and reversing victim-criminal positionality in the case of striking for theft by market owner are tactics relevant to the category of "blaming people who subject them to open violence." In addition, rationalizing the theft of the drinks by virtue of the violation of the work contract and rationalizing the window theft out of hunger are tactics explored to uphold the category of "legitimizing theft as a channel for survival." All these tactics point to the struggles to renegotiate the limits of legitimacy in the juridical setting. The operation of the law from below reveals alternative meanings of conducts and distinct definitions of justice.

APPENDIX

INTERVIEWEES

The judge working in the one of the juvenile courts in Istanbul, interview by the author, note taking, Istanbul, Turkey, 7 May 2008.

The judge working in the one of the juvenile courts in Istanbul, interview by the author, note taking, Istanbul, Turkey, 15 May 2008.

The judge working in the one of the juvenile courts in Istanbul, interview by the author, note taking, Istanbul, Turkey, 23 May 2008.

The judge, interview by the author, note taking, the one of the juvenile courts in Istanbul, Istanbul, Turkey, 23 June 2008.

The social worker, interview by an author, note taking, the one of the juvenile courts in Istanbul, Istanbul, Turkey, 24 May 2008.

The judge, an informal interview with the judge at the break of trial, note taking, the one of the juvenile courts in Istanbul, Istanbul, Turkey, 24 June 2008.

TRIALS

Six trials, participant observation by the author, participant observation and note taking, the one of the juvenile courts in Istanbul, Istanbul, Turkey, 14 May 2008.

The trial, participant observation by the author, participant observation and note taking, the one of the juvenile courts in Istanbul, Istanbul, Turkey, 24 June 2008.

Three trials, participant observation by the author, participant observation and note taking, the one of the juvenile courts in Istanbul, Istanbul, Turkey, 25 June 2008.

The trial, participant observation by the author, participant observation and note taking, the one of the juvenile courts in Istanbul, Istanbul, Turkey, 26 June 2008.

FILES

Thirteen Court Files, the one of the juvenile courts in Istanbul, the crime was committed between 1999 and 2007. All files were prosecuted in 2000s.

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