“The influence of the law-and-order model in Spanish juvenile criminal law-making policy”.

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Abstract:
The criminal law-and-order model, which appears to be displacing the procedural justice model in Spain, also influences the juvenile criminal system. The latest reforms in this field are a clear indicator of some of the features of the new model. The law that regulates criminal liability of minors in Spain has been modified several times (even before entering into force). The main argument for some of these reforms was the social feeling of impunity. Under the pretext of calming this social concern and even though there was not an upward trend in juvenile violent delinquency, the Spanish legislator hardened the response towards both serious and less serious crimes committed with violence or intimidation. In a clear reference to the retributive nature of the criminal sanction, the legislator mentioned the need to combine the best interests of the minor with the principle of proportionality. The main objective of this research is to undertake a critical analysis of the legislator’s discourse in this field. A confrontation with reality of data on public opinion and crime, and existing empirical investigations on the effectiveness of law has been carried out. The aim is to identify some examples of the irrationality of juvenile criminal law-making policy in Spain.

Keywords: criminal law-making policy, juvenile criminal system, empirical law evaluation, irrationality, law-and-order model

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1. Introduction[1]

This study aims to analyse the rationality of decision-making in criminal law-making processes, specifically in the juvenile crime field. In order to do this, the analysis will focus on the legislator's discourse during the parliamentary processing stage of two amendments which have modified the regulation of criminal liability of minors in Spain[2]. In particular, it will highlight the irrationality of Spanish legislator, mainly on ethical and teleological levels. First of all, it is necessary to assume that a rational criminal law[3] requires that the legislator not only shares and adopts the legitimizing principles of punitive intervention[4], but also relies on sufficient willingness and capacities to incorporate said elements into the final product of the legislative process. Thus, the adequate inclusion of these principles and purposes in the law will ensure its correct subsequent enforcement and the obtainment of predicted results from principles criteria. However, in order to achieve this, on the teleological level (without underestimating the importance of other rationalities[5]), it is necessary that the law incorporates the agreed objectives following a political democratic debate that has taken the

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[2] The Organic Law (OL) 5/2000, 12 January, regulates the criminal liability of minors between 14 and 18 years old, establishing a specific system of legal consequences, but referring to the catalogue of criminal conducts contained in the Criminal Code for adults. It has been modified on several occasions, through the Organic Laws 7/2000 (22 December); 9/2000 (22 December); 9/2002 (10 December); 15/2003 (25 November); 8/2006 (4 December) and lastly, 8/2012 (27 December). The analysis carried out in this piece of work will focus on the reforms of 2003 and 2006.

[3] ATIENZA RODRÍGUEZ, M., "Contribución a una teoría de la legislación", 1997; DIEZ RIPOLLÉS, J. L., "La racionalidad de las leyes penales. Práctica y teoría", 2003. A development of these models can be found in RANDO CASERMEIRO, P., "La distinción entre el Derecho penal y el Derecho administrativo sancionador. Un análisis de política jurídica", 2010, BECERRA MUÑOZ, J., "La toma de decisiones en política criminal," 2013; or RODRÍGUEZ FERRÁNDEZ, S., "La evaluación de las normas penales," 2016, amongst others.

[4] Within his dynamic model of criminal legislative rationality, DÍEZ RIPOLLÉS, J. L., ob. cit., 2003, pp. 136-165, groups the principles that fit into ethical rationality into three areas: principles of protection (harmfulness, fragmentarity nature, public interest, and correlation with reality), principles of liability (legal certainty, liability for the crime, personal imputation, accountability, and jurisdictionality) and principles of penalty (humanity, teleological or legitimate objectives, proportionality, and state monopoly on punishment).

[5] DÍEZ RIPOLLÉS, J. L., 2003, op.cit., pp.95 and ff. Along with ethical rationality, teleological rationality confronts the values represented in the principles that should inform the criminal system, with characteristic arguments of the political debate, that is to say, interests of lobbies and diverse sectors of society, ideologies and interests of the parties. Pragmatic rationality, for its part, occurs when objectives set out by the law are achieved, even if it is coercively (effectiveness) and the desired effects are produced (efficacy). A law fulfils legal-formal rationality when it is coherent within itself and with the rest of the legal system. Lastly, linguistic rationality aims to correctly express the content and meaning of the law and assure satisfactory communication to its recipients.

diverse amount of ethical content into consideration and confronted it with interests involved.

The ethical irrationality occurs when the principle of the best interests of the child, which should mainly inspire the juvenile justice system, is undermined, enhancing in turn the principles of general prevention (both in its negative and positive meaning), and the retributive purpose of the penalty. Similarly, the principle of correlation with reality could be infringed when the legislator justifies the need for a reform by an alleged increase in juvenile crime which would have generated a growing feeling of insecurity and distrust towards laws within society, without having confirmed if this is true. On the other hand, the teleological rationality could be missing in final decisions that ignore the interests of diverse ideological forces and the real need for protection and intervention that has been expressed. Moreover, pragmatic irrationality could also be present when the legislator expands the cases in which penalties could be imposed, or provides punitive consequences that require a rise in public expenditure, but the necessary resources to apply them are not planned.

In short, regarding these kinds of irrationality, laws implying a greater use of non-custodial measures could not be effective (as it would be impossible to appropriately apply them due to insufficient resources), nor would be those that suppose a greater use of closed detention, since they do not comply with one of its main objectives: avoiding the recidivism.

2. Objectives and methodology.

This work is based on the hypothesis that in the field of juvenile delinquency (as it happens with a highest intensity in the field of adults) the Spanish legislator is incorporating elements of a law-and-order model, that moves away from the traditional procedural justice model[6]. Therefore, along this paper, I first briefly define the features of said new model, to consequently identify some of them in the analysed reforms. Afterwards, the analysis focus on the legislator's discourse, starting with the reasons given to carry out the amendments. To finish, parliamentary debates have been thoroughly studied. A classification of the arguments has been done, to allow the identification of characteristics of the law-and-order model, both with respect to the content of the arguments and its frequency of use. To carry out such

[6] GARLAND, D., "The culture of control. Crime and social order in contemporary society", 2001; DÍEZ RIPOLLÉS, J. L., "El nuevo modelo penal de la seguridad ciudadana", in *Revista Electrónica de Ciencia Penal y Criminología*, n.º 6, 2004; and GARCÍA MAGNA, D., "La lógica de la seguridad en la gestión de la delincuencia", 2018.

analysis, the preambles of the laws and the documents including the debates at the Congress of Deputies and the Senate[7] have been taken into consideration. In particular, 16 documents have been studied in depth, including law projects, reports, special committee opinions and session's records from the law-making proceedings of Organic Law 15/2003 (4) and Organic Law 8/2006 (10).

Before focusing on said analysis, the content of the reforms will be described and some brief notes will be provided regarding their political and media context. This will clarify why the two main parties involved in the successive reforms have more or less agreed on everything, even passing the buck of reforming the law to each other[8]. Moreover, reference will be made to the reality of juvenile delinquency before and after the approval of the reforms, in order to evaluate the veracity of the arguments put forward by the legislator. Additionally, some of the empirical evaluations carried out in Spain regarding the measures applied to minor offenders will be revised, particularly the existing research that focus on its link to the rate of recidivism. Now that 15 years have passed since the last reform, and having in mind the counting of data and evaluations from different researchers regarding its application, it seems appropriate to undertake this type of analysis.

3. The law-and-order model: Main features.

The new criminal policy model that would be shifting the procedural justice model, especially in the legislative phase, can be characterised as follows[9]:

1) The control of marginalised social classes through the criminal system in a discourse of exclusion that, although it has always been present in the classic Criminal law, has been intensified by the most recent reforms. Thus, striking differences can be

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[7] All the documents can be found on the following website for the Spanish Congress of Deputies (https://www.congreso.es/web/guest/busqueda-de-iniciativas)

[8] The conservative party, *Partido Popular* (PP), governed in Spain between 2000 and 2004, when the processing of the OLs 5/2000, 7/2000, 9/2000 and 15/2003 took place, while the socialist party, *Partido Socialista Obrero Español* (PSOE), governed between 2004 and 2011, initiating the OL 8/2006. As DÍEZ RIPOLLÉS, J. L., *Rigorismo y reforma penal. Cuatro legislaturas homogéneas (1996-2011),* parts I and II, in *Boletín Criminológico*, arts. 2 and 3, 2013, has highlighted both parties are usually quite punitive when they come into power.

[9] GARCÍA MAGNA, D., 2018, op.cit.

observed both in the duration and the type of penalties imposed, between the regulation of blue-collar and white-collar crimes.

2) The increasing feeling of insecurity. Even if most of it is triggered by all types of risk factors (labour instability, lack of assistance services, deficiencies in the health care system, non-compliance with food safety laws, environmental pollution, political corruption, etc.), the legislator addresses it from the perspective of a criminal legislative reform. Thus, citizens have the impression that the uneasiness they feel derives from crime and that all problems can be solved through legislative changes.
3) The significant role of the victims in pre-legislative processes. The re-balancing or zero-sum game rhetoric implies that guarantees recognised to the offender are perceived as a loss of rights for the victim.
4) The politicization of the criminal system and the punitive populism. It is assumed that the citizens are alarmed and not prepared to accept a rational approach to crime. Consequently, the reforms supposedly requested by society are placed in the political agenda through intensive media coverage of certain events.
5) The rise of the afflictive component of penalties, meaning a wider use of prison, despite the fact that Spain has not significant crime figures. On one hand, the Criminal Code establishes very high penalties for those crimes most represented in prison (crimes against property or related with drugs). On the other hand, few probations are granted, so the rates of prison population are high.
6) The crime is considered a free and rational decision, disconnected from the personal and socio-economic circumstances of the offenders. They are considered responsible for their own rehabilitation, so recidivism is not seen as a failure of the system, but of the individuals themselves. As a matter of fact, it is easier to intervene with the offenders (controlling them) than with the background from which they have left and will return to when they have completed their sentence.
7) Lack of mistrust towards the punitive power of the State. Citizens now do not criticise certain reforms or proposals that maybe in a former and more guarantee-based context, would have caused opposition. In the debate between more security or more liberty, it seems that citizens clearly are in favour of the first.

8) The privatisation of the management of delinquency, especially in the field of penitentiary enforcement, with juvenile justice being a clear example of it. The responsibility of the control of disorder and a lack of trust in the system's ability to take charge of crime is transferred to society.
9) The influence of supranational instruments on the decisions of the legislator that, occasionally, cause a democratic deficit and a loss of State sovereignty. At times, punitive reforms are a result of international guidelines, but sometimes the national legislator carry out changes of greater impact than those that were required from higher instances.
10) Lastly, some experts in criminal law and criminology adopt punitive discourses and develop theories which are highly focused on security, giving support to the practices that have been outlined.

Not all of these features arise as intensely throughout each phase of the criminal law system. They are more present in areas which are exposed to public opinion and political debate, such as the pre-legislative and legislative phases. Thereafter, in moments such as police control of the crime, judicial enforcement of the law and especially penitentiary enforcement, inertia dynamics within the scope of the procedural justice system schemes and even open resistance to the change of model can be observed, representing protecting factors against the tendency towards a law-and-order criminal policy. Moreover, these characteristics have not the same intensity in the criminal system for adults and for minors, due to deep-rooted essential principles in the latter, such as special prevention and subsidiarity, represented in the principle of the best interests of the child. However, as will be highlighted in the text to follow, in the practices of some of the criminal system actors, and particularly in legislative processes that have taken place, signs of change towards a higher incidence of punitive discourse can be found.

4. The penal reforms of 2003 and 2006 as an example of the law-and-order model in the juvenile justice system.

The change in tendency towards a law-and-order model in juvenile criminal system

began to occur in 2000, through the first reform of the law (OL 7/2000), but it was accentuated with the Organic Laws 15/2003 and 8/2006.

As will be analysed further on, the law that regulates the criminal liability of minors in Spain (OL 5/2000) was reformed even before it came into effect in 2001, to include the necessity to evaluate its application concerning the more severe treatment issued for more serious crimes. In this sense, a few years later, the OL 15/2003 added a new additional provision in which the future government was given the task of applying a more firm and effective treatment to minors committing most serious crimes, once having completed said evaluation and consulted with the actors implicated. These more severe measures involved extending the time served in juvenile detention centres, and allowing judges to pass to adult prisons those minors who become 18 years old during their internment. Consequently, the 2006 legislator took charge of the task assigned in 2003 and carried out the predicted reform, translating into the law some aspects that could easily be framed in the law-and-order model.

Before evaluating such aspects, and for a better understanding of the critical analysis that will be carried out, I will briefly review the most relevant points of the laws that have reform the juvenile crime system from 2000 on:

Firstly, article 4 of the OL 5/2000 initially contained the possibility to apply it to young adults between 18 and 21 years old, on an exceptional basis[10]. Regarding the possibility of imposing closed internment, article 9 limited it to incidents committed with violence or intimidation, or implying a serious risk to life or physical integrity, and increased the maximum duration to five years in the case of minors over 16 years old, provided that the technical team advised on its appropriateness. As an exception to the general rule, in the case of extreme seriousness of the conduct, it was mandatory to impose closed internment of one to five years, and probation of maximum of five years, and a one-year period of impossibility to modify, suspend or substitute the sentence. Moreover, cases of recidivism, terrorism, homicide or murder and sexual assault are always considered extremely serious.

[10] The OL 5/2000 applies to minors between 14 and 18 years old, whereas the Spanish Criminal Code is applied to adults, that is to say from 18 years of age. Minors under 14 do not have criminal liability in Spain, since they are considered immune from penal prosecution. Article 4 of the original version of the OL 5/2000, mentioned the possibility of applying the law to youngsters who had committed minor offences or less serious crimes with no violence or intimidation, nor serious danger to life or physical integrity, that had not been condemned for incidents committed once turned 18 years of age, and according to their personal circumstances and their grade of maturity.

The OL 7/2000, approved even before OL 5/2000 came into force, incorporated an additional provision to the said law, that established a special system for those who committed the following crimes: homicide, murder, sexual assault and terrorism, or those punishable by 15 or more years of prison in the adults Criminal Code. In article 9 reference was made to this additional provision regarding offenders committing extremely serious incidents. In particular, it excluded youngsters between 18 and 21 years old from the possible application of the juvenile justice system, and for those under 18 years old it established a specific regulation: in the case of terrorism the jurisdiction would come from the National High Court; for 16 and 17 years old the duration of closed internment was extended to eight years and the period in which it is not possible to modify, suspend or substitute the sentence was extended to half its whole length. For 14 and 15-year-olds, the internment measure imposed would be from one to four years with probation of up to three years; and for the aforementioned serious crimes it would be mandatory to apply the limitation periods of adults Criminal Code. Lastly, in case of committing several crimes, one of them being serious and penalised with a prison sentence of fifteen or more years in adults Criminal Code, it was established that the closed internment could lead to up to ten years for offenders of and over 16 years old, and up to five years for people under 16. Moreover, a new additional provision was incorporated, indicating that in five years (January 2006) the Government should send a report to the Congress of Deputies in which the effects and consequences of the application of the described new additional provision would be analysed and evaluated. It is important to emphasise that this evaluation was never carried out before the OL 8/2006, or it was kept secret, since it is not mentioned in the processing of the reform (when it should have been carried out already)[11], and the only known evaluation requested by the Government was carried out a long time after[12].

The OL 9/2000, also approved before the OL 5/2000 came into force, suspended the enactment of article 4 (the application of the law to young adults between 18 and 21 years

[11] Highlighted by POZUELO PÉREZ, L., in "La política criminal mediática. Génesis, desarrollo y costes" 2013, p.216.

[12] REDONDO ILLESCAS, S.; MARTÍNEZ CATENA, A.; ANDRÉS PUEYO, A., "Factores de éxito asociados a los programas de intervención con menores infractores, Informes, estudios e investigación", 2011. Ministerio de Sanidad, Política Social e Igualdad (Ministry of Health, Social Policy and Equality).

old) until the 1 January 2007.

The OL 15/2003 included a new additional provision (surprisingly incorporated during the proceedings of amendments in the Senate), following a serious crime that provoked a huge social impact (the murder of Sandra Palo)[13]. This additional provision passed on the Government the task of further toughening the measures applicable for minors who commit especially serious crimes (homicide, murder, sexual assault, terrorism, etc.), and expressly stipulated that this should be done once the law had been evaluated, and the General Council of the Judiciary, the Public Prosecutor, regional autonomous communities, and parliamentary groups had been heard. The additional provision also mentioned some measures to toughen the regulation of these serious crimes, such as the possibility of prolonging the confinement, and serving in high security detention centres, as well as in adult's prisons when minors have reach 18 years old.

The OL 8/2006 brought a definite end to the possibility of applying the law to youngsters between 18 and 21 years old, as it completely modified the content of article 4 and changed it to the recognition of the rights of victims and their participation in criminal proceedings. This implied that they could take part as a claimant, something that was expressly not allowed in the preamble of the original OL 5/2000[14], as it rejected any objectives of Criminal law that were not the best interests of the child (such as proportionality or general negative prevention).

On the other hand, the requirements to impose closed internment was once again modified. Firstly, article 9 now establishes that this measure can be imposed in the case of a serious crime, less serious crimes committed with violence, intimidation or serious risk for life or integrity, any crime committed by a group, or when the minor is part of a gang, organisation or association dedicated to committing crimes. The specific regulation formerly included in the additional provision, with respect to homicide, murder, sexual assault and terrorism, as well as those crimes punishable by 15 or more years of prison in the adults

[13] On 17 May 2003, Sandra Palo (22 years old) was violated and assassinated by four persons aged between 14 and 18, which had previously passed through the juvenile justice system on several occasions. The brutality of the incidents shocked the public. The sentence was passed on 13 October 2003, during the processing of the OL 15/2003.

[14] As item 8 of the said preamble establishes that, regarding minors, individuals cannot be recognised as having the right to act as claimants with full procedural rights and responsibilities.

Criminal Code, now it is also incorporated to article 10, applicable to crimes mentioned in article 9.2. The extension applies also to extremely serious crimes (in any case, when there is recidivism), so this originally exceptional regime is now widened to a great extent.

Another reform operated by the OL 8/2006 refers to the moment in which the minor serving an internment sentence reaches 18 years old. Until 2006, the minors continued serving their time in the youth detention centre until their sentence was completed; it was possible to pass them to prison when reaching 23 years old. The OL 8/2000 has moved this moment forward to 21 years old, in general, and to 18 years old when minor is serving closed internment or have already been in prison before.

Finally, the OL 8/2012 has incorporated crimes committed abroad into the jurisdiction of the Central Minor's Court of the National High Court.

At first glance, it is evident that some of these modifications fit in with the characteristics of the law-and-order model that has been described above. For example, a relevant toughening of the measures applied to the most serious crimes has taken place (feature 5)[15] ; the possibility to apply the law to youngsters between 18 and 21 years old no longer exists, and it is now possible to serve the sentence in an adults detention centre, making the minors completely responsible for their actions, whatever the circumstances are (feature 6)[16]; the victim has been introduced in the criminal proceeding (feature 3)[17];

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[15] These reforms prioritise the retributive component of punishment over the special educational preventive objective of Criminal law, mentioned specifically by the OL 5/2000 in its preamble. As the Spanish Constitutional Court (*Tribunal Constitucional*) has indicated in its sentences 36/1991 and 60/1995, the measures adopted cannot be repressive, but rather orientated towards the effective reinsertion and best interests of the child. This particularly educative character, which gives way to considerable differences between the systems for adults and minors, is being overlooked in those reforms aimed at achieving the punishment of the minor. This happens, for example, when long sentences with a period of security are imposed, the possibility to serve sentences in adult centres is allowed, or the option to apply minors' system to youngsters under the age of 21 is discarded. Consequently, there is an excessive use of custodial measures, as noted by GARCÍA PÉREZ, O., in "La práctica de los juzgados de menores en la aplicación de las sanciones, su evolución y eficacia", 2010, p8 and ff., and GARCÍA MAGNA, D., 2016, ob. cit.

[16] The widespread expression "do the crime do the time" hides the idea that minors are responsible enough to know and decide what they do and that they should pay the consequences of their actions, whatever they are, therefore questioning their condition of being not totally liable for their actions. This idea can be found in the proposals to lower the age or criminal liability to 12 years old, the regulation of some crimes or forms of commission that entail the mandatory imposition of internment in closed detention centres (which only leaves the judge with the possibility to decide the duration of the measure), the deactivation of the possibility to apply the law to individuals between 18 and 21 years old, or the reform that brings forward the transfer of an individual, who is serving a custodial measure, to an adult prison.

reference is made to social alarm in the preambles of laws, using incorrect data and presenting it in an inadequate manner (features 2 and 4), etc. In the parliamentary debates that will be analysed further on in this paper, some proposals indicating a political sector's tendency towards a much more severe system can be found (feature 7)[18]. Moreover, in a careful analysis of the legislator's arguments, one can observe a change of objectives and principles that should inspire intervention in the juvenile justice area[19].

4.1. Background. Political and media context.

As indicated at the start, to carry out a rationality analysis in this area, at least on the first three levels, it is essential to check if the legislator was really starting from a different hierarchy of principles from the declared; if the political actors considered the available data regarding juvenile crime and imposed measures, and the interests and ideologies represented in the parliamentary context; and, finally, if sufficient resources were provided so that the laws could be effective (ethical, teleological and pragmatic levels).

Analysis regarding which principles the legislator bases the criminal intervention on will be carried out by closely studying arguments taken from parliamentary debates. Advances have already been made to some extent in the previous section (specific content of the reforms carried out). However, on this first level of ethical rationality it is particularly significant that the principle of correlation with reality is disregarded. For this reason, it is

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[17] As will be seen in the coming pages, the reforms carried out between 2003 and 2006 came mainly from the mobilisation of Sandra Palo's parents following her murder. POZUELO PÉREZ, L., 2013, ob. cit. p117 and ff., discusses this process in detail and describes how the high media coverage of the criminal proceeding transferred a great interest on this issue to public opinion and, then, along with the pressure exerted by the relatives of Sandra Palo, joined the public agenda, giving way to the two previously mentioned reforms, which included three of their four petitions.

[18] Indeed, mainly coinciding with serious crimes in which children below the age of 14 are involved, certain sectors consider the convenience of lowering the age of criminal liability to 12 or 13 years old. Similarly, the idea of minors that have committed serious crimes in the company of adults being judged in the same proceeding, before an adult court, has been considered. It is necessary to bear in mind that the age in which most criminal behaviour takes place is between 15 and 19 years old, with crimes committed at younger ages being less frequent and much less serious, as seen in LOEBER, R.; FARRINGTON, D.; REDONDO, S., "La transición desde la delincuencia juvenil a la delincuencia adulta", 2011, p4.

[19] Similarly, with respect to the thesis about the law-and-order model regarding minors, PANTOJA, Félix, (dir.), "La Ley de Responsibilidad Penal del Menor: situación actual", in *Cuadernos de Derecho Judicial*, 2006; RÍOS MARTÍN, J., "La protección de la víctima como coartada legal para el incremento punitivo en la legislación de menores infractores", in *Cuadernos de Derecho Judicial*, 2005; GARCÍA PÉREZ, O., "La introducción del modelo de la seguridad ciudadana en la justicia de menores", in *Cuadernos de Derecho Judicial*, 2005. For a more detailed analysis of the impact of the law-and-order model with regards to minors, see GARCÍA MAGNA, D., 2018, op.cit.

interesting to check whether the legislator's arguments respond to the reality of the crimes that aimed to modify, and whether the mandatory evaluations prescribed by law had been carried out.

With respect to the latter, it does not seem that specific research had been conducted on an institutional level. Although in the parliamentary debates one can find that Government representatives mentioned the existence of these evaluations and their conclusions, their content does not appear in the session's records. Only after the legislative proceedings studied in this piece of work had ended (2003 and 2006), the Spanish Ministry of Health, Social Policy and Equality asked professor Redondo's team to evaluate the efficacy of the measures and treatments applied to juvenile offenders in Spain (2011)[20]. However, the results, of course, were not available and could not be considered at that moment.

Thus, it seems that the legislator did not fulfil the mandate of evaluating the effects of the law. The majority of the reports and empirical research that have evaluated the measures applicable for crimes that are subject to the 2003 reform (serious, or less serious with violence or intimidation), have been carried out after the analysed reforms. For this reason, it is hard to believe that the legislator had been able to consider this information on the occasion of a reform. Nonetheless, in general the existing evaluations positively link the alternative to custodial measures with lower rates of recidivism. On the other hand, custodial measures give negative results for this indicator, although, in these cases, social and family are also significant factors[21]. This seems to indicate that, as well as the desirability to implement less punitive measures, it is very important to provide minors a specific treatment according with their needs. Similarly, under the principle of diversion, empirical research on extrajudicial conflict resolution (such as mediation) show very positive

[20] REDONDO ILLESCAS, S.; MARTÍNEZ CATENA, A.; ANDRÉS PUEYO, A., 2011, ob. cit., carry out an extensive revision of existing empirical studies on the subject. The balance is in general positive, although they note some shortcomings in the coordination between autonomous communities with regard to the registered protocols, that could be improved.

[21] BRAVO ARTEAGA, A.; SIERRA, M.J.; FERNÁNDEZ DEL VALLE, J., "Evaluación de resultados de la ley de la responsabilidad penal de menores. Reincidencia y factores asociados", in *Psicothema*, vol. 21, 2009; ANDRÉS PUEYO, A., "Violencia juvenil: realidad actual y factores psicológicos implicados", in *Revista de Enfermería ROL*, 2006, January, vol. 29 (01); MARTÍN, E.; GARCÍA, M.D.; TORBAY, Á., "Evaluación de la efectividad de las medidas educativas en la ley de la responsabilidad penal de menores desde la perspectiva de los infractores", in *Cultura y Educación*, vol. 25, nº3, 2013, where the authors suggest that the minor's own appreciation of the process should be taken into account.

results regarding recidivism[22].

With regard to the political context in which the legislative initiative of the 2003 reform was driven, in the months preceding the promulgation of these laws various critical situations with huge media impact arose and the Government's response was called into question by numerous sectors of society. Some examples of these critical situations are: the local police protest in February 2002, which was forcefully put to an end by the National Police; the dispute with the Moroccan Government over the Islet of Perejil in July 2002; the intense debate on the state of the nation regarding citizen's security, also in July 2002; the sinking of the Prestige oil tanker on the Galician coast in November 2002; the start of the Iraq war in March 2003; the military plane Yak-42 accident in Turkey in May 2003; the murder of young Sonia Carabantes in August 2003, allowing the clarification of the Wanninkhof case and highlighting a serious judicial mistake; various attacks by ETA[23] over both years; etc. Moreover, political parties in opposition led a strong attack towards the Government's public order and safety policies and the police unions harshly criticised its plan to deal with street crime (*2000 Police Programme*). All of this forced the Government to announce in 2002 a new plan to fight crime. However, it was not only political opposition that led this dynamic of criticism. In fact, it is striking that during parliamentary debates for the OL 11/2003 it was the Government itself who fostered the alarming discourse regarding street crime and citizen insecurity[24].

Concerning the reality of juvenile crime and the media context in which the reforms analysed took place, it is essential to highlight that neither the official data from Spain's Home Office, with respect to proven facts and detentions[25], nor those from the national

[22] FERNÁNDEZ MOLINA, E.; BERNUZ BENEÍTEZ, M.J.; and BARTOLOMÉ GUTIERREZ, R., *Juvenile offenders, laws and rights*, 2017, p.267; CAPDEVILA, M., FERRER, M., BLANCH, M., "La reincidencia en el programa de mediación y reparación", 2011; and CAPDEVILA, M., FERRER, M., LUQUE, E., 2005, "La reincidencia en el delito en la justicia de menores"; BASANTA, J., "La mediación en el ámbito penal juvenil", 2009; GARCÍA, J., ZALDÍVAR, F., ORTEGA, E., DE LA FUENTE, L., SAINZ-CANTERO, B., "Diez años de funcionamiento de la Ley Orgánica de responsabilidad del menor", 2012.

[23] ETA (an abbreviation of Euskadi Ta Askatasuna) is a formerly armed nationalist and separatist organisation in the Basque Country.

[24] While opposition deputies of PSOE focused on the government's failure in this area (Barrero López, Session's Records, Plenary session 17 June 2003, p.24,676) and on the increase in crime rates (López Aguilar, Session's Records, Plenary session 10 April 2003, p.12,553), the Minister of Justice, Michavila (PP), instead of calming the debate, said that the penal system had more holes than a sieve, and "criminals enter through one door and leave through another" (Session's Records, Plenary session 10 April 2003, pp.12,540 and ff.)

statistical institute with respect to convicted minors[26] indicated a rising tendency. However, in parliamentary debates an increase in juvenile crime is mentioned (particularly, regarding crimes against property), and the preamble of the OL 8/2006 itself refers to a supposed public feeling of impunity. On the one hand, studies carried out on juvenile crime noted a decrease in crimes against property[27]. On the other hand, with respect to the feeling of insecurity or concern about the possible impunity for the crimes committed by minors, there are not specific studies on this topic carried out in the months before the reforms, but the results of the opinion polls from the sociological research centre (*Barómetros de Opinión del Centro de Investigaciones Sociológicas, CIS*) found that citizen's insecurity was considered the third problem in Spain by respondents. Studies regarding public opinion at this time do not reflect special attention on these topics[28].

Although it is difficult to obtain data (disaggregated or not) on some of the crimes subject to the analysed reforms, especially with respect to those committed in groups, for minors who are members of a gang, or those where recidivism has occurred, given that this information can only be obtained by studying sentences or the personal records of accused minors, the available data shows that the evolution of the majority of robberies committed with violence or intimidation has followed the general downward trend and started to

[25] The official report on delinquency (*Balance de Criminalidad*, *Ministerio del Interior*), 2005, p.5, shows the lowering tendency in the number of known offences from 2000 to 2003. (available at http://www.interior.gob.es/documents/10180/1209813/Criminalidad+y+delincuencia.pdf/fe7be633-edf8-446f-bdeb-b1369ddc25d8)

[26] The data from the Spanish national statistical institute (*Instituto Nacional de Estadística*, *INE*) of registered criminal files between 2000 and 2003 indicate a lowering tendency (available at http://www.ine.es/jaxi/Datos.htm?path=/t18/p467/a2003/l0/&file=05001.px)

[27] For example, the study by SERRANO TÁRRAGA, M.D., "Evolución de la delincuencia juvenil en España (2000-2007)", 2009, in *Revista de Derecho Penal y Criminología*, 2, analyses the evolution of detentions in Spain between 2000 (1.32%) and 2007 (1.08%), highlighting an increase in crimes against persons between 2003 (5.05%) and 2007 (9.57%). The study by MONTERO HERNANZ, T., "La evolución de la delincuencia juvenil en España, Partes 1ª y 2ª", 2001, in *La Ley penal: Revista de Derecho penal, procesal y penitenciario,* vol. 78, observes a decrease in these crimes between 2004 and 2006. The victimisation surveys by the *Observatorio de la Delincuencia*, 2009, highlight a decreasing tendency between 1989 and 2008. A more detailed analysis is carried out in GARCÍA MAGNA, D., and GONZÁLEZ CRUZ, E., "10 años después de la LO 8/2006: el cambio hacia el modelo de la seguridad ciudadana en el ámbito de la justicia juvenil", 2017.

[28] The June 2003 opinion polls from the *CIS* (Spanish sociological research centre: *Centro de Investigaciones Sociológicas)* (study no.2528) devotes questions 3 to 12 to citizen insecurity and the public perception of crime and the police. One of the results (question 4) is that respondents do not consider probable to become a victim of a crime (available at http://www.cis.es/cis/export/sites/default/-Archivos/Marginales/2520_2539/2528/e252800.html). According to MONTERO HERNANZ (2009), who has gathered data from opinion polls since 2001, respondents do not express a high level of concern about these issues. Similarly, TOHARÍA CORTÉS, J.J., "La imagen ciudadana de la Justicia", 2003.

decrease even before the reform of 2006.

4.2. Irrationality in the law-making process. Analysis of the legislator's discourse in 2003 and 2006.

Before thoroughly studying the legislator's discourse by looking at speeches of deputies and senators gathered from the session's records in the Spanish parliament, the preamble of the OL 8/2006 deserves to be analysed. The following extract is particularly striking, to the extent that it refers to a supposed social demand for more severity for certain crimes, as well as a rising tendency in crimes committed by minors, which would justify the adoption of more severe measures:

> "The statistics reveal a significant rise in crimes committed by minors which has caused a great deal of social worry and has contributed to lowering the credibility of the Law due to the feeling of impunity for the most common violations that are frequently committed by these minors, like crimes and offences against property. Along with this, it should be recognised that, fortunately, violent crimes have not increased significantly, although recent events have had a strong social impact."

The following fragment is also important because it refers to a change in the principles that should inspire the juvenile criminal system, with regard to what the law initially stated following the supranational guidelines emitted by the United Nations and the European Council[29]:

> "The best interests of the child, that will continue to be a

[29] The supranational recommendations to State members are varied but, since they are not mandatory, their compliance is left to each State. For example, regarding the United Nations, stand out the Convention on the Rights of the Child, the Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), the Rules for the Protection of Juveniles Deprived of their Liberty, and the Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines). In the context of European Council, the following must be highlighted: the Recommendation (87)20 on social reactions to juvenile delinquency, the Recommendation (2003)20 concerning new ways to deal with juvenile delinquency and the role of juvenile justice, and the Recommendation (2008)11 on the European Rules for juvenile offenders subject to penalties or measures.

> priority within the law, is perfectly compatible with the objective to expect more proportionality between the sanction and the gravity of the conduct committed. The system continues to leave in the hands of the judge the evaluation and assessment of both principles in a flexible manner and favouring an optimal individualisation of the response. Otherwise, this would lead us to understand, in a trivial way, that the best interests of the child are not only superior, but unique and exclusive compared to other constitutional assets, which should be ensured by punitive or correctional laws."

Apart from the important declaration of intent of the legislator on these lines, which will be analysed in detail along with the content of parliamentary debates, it is important to focus on the legal meaning that the preamble of laws generally has. This involves clarifying whether these arguments have to be taken as mere reasoning that have led the legislator to consider the reform, without having normative value in this case or, on the contrary, whether they have to be interpreted as explanatory and determining provisions of the content of the law. In the latter case, it would be possible to ask the legislator to adjust the arguments to reality, and to incorporate to the law what it is stated at the preamble. In this case, if the law deviates from what the preamble outlines or does not address reality, it should be possible to demand that the legislator rethink or reform it. However, in the first case, nothing more could be done than to highlight the inconsistencies from a critical scholar point of view, rather than from a juridical level. To resolve this problem, it is interesting to consult the constitutional jurisprudence on that subject[30] which, in summary, considers that the preambles are not strictly legal norms and that, therefore, they only have interpretive, not normative, value. This means that its content is not binding. Thus, at the explanatory memorandum of the law, legislator only reflects the reasoning made until reaching a decision on a legal norm. In the case of a contradiction between the preamble and the text of the law, the latter will always prevail, and the preamble would not even have integration effects which could fulfil the legal gaps of the law[31]. Although article 88 of the Spanish Constitution establishes that the

[30] See the following sentences from the Spanish Constitutional Court: 36/1981, 12 November; 212/1996, 19 December; 173/1998, 23 July; 116/1999, 17 June; and 31/2010, 28 June.

legislator is obliged to motivate the bills submitted to the Congress, it is not compulsory that said motivation eventually appears as the preamble of the law which is finally passed[32]. Nevertheless, it is evident that the arguments that the legislator incorporates in the preamble enable the interpretation of the normative text in a more reliable way than if they were taken from other sources[33] and, in this sense, there could be every reason to expect that at least these arguments were adjusted to reality.

Apart from the question of whether preambles can be awarded legal value, it cannot be denied that this part of the law is requested to reflect the intentions of the legislator and the reasons that have led to drive the legislative proposal, no matter how questionable they may be. For the purposes of the analysis to take place over the next few pages, relating to the principles that should inform the law and the objectives that it aims to achieve, the discourse reflected in the explanatory memorandum and the parliamentary debates are very important. Thus, in the words of CERDEIRA, the preambles would have the function of both report on the *occasio legis* (description of reality) and expose the *ratio legis* (motivation related to principles)[34].

Having described the contents, context and details of the successive reforms that have modified the law that regulates the criminal liability of minors, a critical study of the legislator's discourse will be now carried out. The focus will be on the laws 15/2003 and 8/2006, although the two previous laws (7/2000 and 9/2000) certainly also mark a tendency of higher punitive severity.

Regarding the legislator's discourse reflected in the preamble of the OL 8/2006, when compared to the arguments included in OL 5/2000, it is noteworthy that new value criteria

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[31] CERDEIRA BRAVO DE MANSILLA, G., "Principio, realidad y norma: El valor de las exposiciones de motivos (y de los preámbulos)", 2015, pp.129 and ff.

[32] Article 114.2 of the Regulations of the Congress of Deputies mentions that the Commission can agree or disagree with the incorporation of the explanatory memorandum as a preamble of the law. Similarly, the Constitutional Court ruling 49/2008 (9 April), which, in its legal basis no.5, expresses that: "the legislator is not constitutionally obliged to justify their legislative options in the explanatory memorandum or preambles of the law." It recognizes, however, "their possible role in the interpretation of the provisions that they present."

[33] RODRÍGUEZ-TOUBES MUÑIZ, J., "El criterio histórico en la interpretación jurídica" in *Dereito*, vol.22, November 2013, p.616.

[34] CERDEIRA BRAVO DE MANSILLA, G., ob. cit., 2015, p.63.

directly related to the principle of legitimate objectives of the penalty have entered the discourse. The original text of the law made an express reference to the "formally punitive but materially corrective-educational nature" of the intervention, as well as to the best interests of the child, and the prohibition of a private prosecution in the process. However, as it has been highlighted previously, the OL 8/2006 incorporated the objectives of general prevention and retribution, and recognises the victim as a part of the process.

With regard to parliamentary debates, the interventions of deputies and senators will be classified according to diverse categories that directly relate to the characteristics of the law-and-order model. Moreover, the aim is to test if the punitive discourse is similar whether it comes from the socialist party (PSOE) or the conservative party (PP). The analysis of the reforms carried out within the ruling period of each of these two mainstream parties will give an idea of how they act depending on whether they are in the Government or in the opposition. However, it must be noted that the reform of 2003 was carried out during the process of amendments in the Senate (and in a cursory manner), so the references to the reform of 2006 will be much more abundant, with the PSOE in government and the PP in opposition[35].

The categories of classification of the legislator's discourse, in accordance with the features of the model described for the legislative phase, are the following:

i. Generalised feeling of insecurity. This category covers references to social alarm and the feeling of impunity.
ii. Victims. This category includes any reference made to victims and people damaged by crimes with a great deal of media impact.
iii. Indicators of punitive populism. This category includes propaganda messages, reference to the media, the mention of electoral programmes, and immediate reactions to high-profile events.
iv. Severity of the criminal penalty. This category includes references to the need to increase punitive severity, in any of its manifestations

[35] Regarding the dates of the legal reforms and the governments of PP and PSOE, see note 8.

(extension of the possibility of imposing custodial measures, tougher ways of serving the sanctions, reduction of the possibilities of decreasing the sentence, etc.)

v. Disregard of the social-economic causes of crime. This category includes references to the need to incorporate the proportionality component and/or retribution, independently from the education or other needs of the minor.

Once all the parliamentary interventions have been analysed, table 1 has included the number of direct references to some of the characteristics of the law-and-order model. In particular, the arguments put forward by deputies and senators can be organised as it follows:

1) Juvenile delinquency is emerging with great force and provokes a great deal of social alarm; not all minors are well-behaved and angelic, since some of them are dangerous; a breakdown of confidence of the citizens in the law is taking place; the phenomenon of organised crime which worries citizens has emerged; it is hard to understand why some people question the existence of social alarm.
2) The inclusion of the victim in the process does not seek revenge; the Public Prosecutor will ensure that vindictive interests do not enter the criminal proceedings; the incorporation of the victim in the process is required by supranational organisations such as the European Council.
3) It is hard to understand why the legislative proposal has been called populist; this is about adapting the answer to the social reality without making demagogy; this has always been in the electoral programme; there is media pressure.
4) For general prevention reasons, a greater criminal reproach is necessary; the increase in the severity of sanctions for some serious conducts is justified.
5) They are not children, they are youngsters; the law should also be applied to minors under 14 years old; the dividing line between individuals under and over 18 years old must be made very clear (in order to avoid applying the law to

adults, even though they are young); for those between 18 and 21 years old an adult's response must be given.

Table no.1. References to the law-and-order model during both 2003 and 2006 law-making processes.

Arguments	OL 15/2003	OL 8/2006
i) Insecurity	1#	8# - 4*
ii) Victims	1#	6# - 2*
iii) Punitive populism	1# - 3*	10# - 5*
iv) More severity	1#	3# - 4*
v) Accountability	1#	7# - 6*

Depending on the sense of the argument, different signs are used to identify those references that criticise the law-and-order model (*) and those that justify it (#). It can be observed that, generally, there is a greater number of references that support the punitive discourse than those that criticise it.

Moreover, some specific expressions and considerations stand out that deserve to be quoted (see footnotes for original in Spanish), in order to give examples of what has been highlighted in this paper:

"The dignity of the victim requires the introduction of the private prosecution in the law" (deputy of a right-wing independence party).[36]

"Nowadays society and young people are convinced that committing crimes comes for free" (deputy of the major conservative party).[37]

"Minors, victims and security: we are all represented in this parliamentary meeting" (deputy

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[36] "La dignidad de la víctima requiere la introducción de la acusación particular en la ley" (Silva Sánchez, CIU, Congress' Session's Records, 6 November 2003, p.15,423).

[37] "Ahora mismo en la sociedad y en la gente joven existe esa conciencia, que delinquir les sale gratis" (Matador de Matas, PP, Session's Record, Congress, group vote, 23 November 2003, p. 10,962).

of the socialist party).[38]

"The PP included this commitment in its electoral programme…" (deputy of the major conservative party).[39]

"…without giving way to demagoguery" (senator of the socialist party).[40]

"This morning in news headlines you could read some absolutely unbelievable things (…)" (senator of the socialist party).[41]

"A feeling of victimisation of society has arisen" (deputy of the socialist party).[42]

5. Conclusions and proposals

This paper is limited to the analysis of the legislator's discourse and, thus, leaves out subsequent phases of the juvenile penal system. Another study has been done regarding the possible influence that the reforms could be having on a tougher application of the law[43]. Although the data is not conclusive, a slight tendency towards the excessive use of custodial measures can be noted. It is evident that the correct evaluation of the law will contribute to the improvement of criminal law-making policy processes and will have repercussions on its posterior application.

Revision of the empirical research on the efficacy of the measures and treatments imposed in the juvenile justice system highlights that there are certain protective factors with

[38] "Menor, víctima y seguridad, en este encuentro parlamentario estamos todos" (Barrero López, PSOE, Congress Plenary session, 23 March 2006, Session's Records, p.8,161)

[39] "El Partido Popular incluyó en su programa electoral este compromiso de ese acuerdo…" (Matador de Matas, PP, Congress Plenary session, 23 March 2006, p.8,158)

[40] "…sin ceder a ninguna demagogia" (López Aguilar, PSOE, Senate Plenary session, 18 October 2006, p.5,849)

[41] "Esta mañana en titulares de prensa se podían leer cosas absolutamente increíbles (…)" (Martínez García, PSOE, Justice Committee Session's Records, Senate, 10 October 2006, p. 8)

[42] "Se ha dado un sentimiento de victimización de la sociedad" (López Aguilar, PSOE, Congress Plenary session, 23 November 2006, p.8,145)

[43] GARCÍA MAGNA, Deborah, 2018, op.cit.

respect to the law-and-order model. The legal practitioners of the system show an undeniable tendency towards models focused on the education and social insertion of the minor, which suggests a resistance towards the change of model promoted from the legislative level. It would be interesting to carry out a thorough study that includes disaggregated data regarding specific crimes affected by the reforms, in order to test the scope of the slight and possibly insignificant tendency towards an excessive use of custodial measures. To do this, it would be necessary to carry out studies of jurisprudence and minors' records, for example. This would allow the analysis of the true effects of recidivism on the judges' decisions in those cases where there is still a margin of discretion. Similarly, it is essential to study the data of implementation of the strictest measures in the case of crimes committed by a group or being a member of a gang or criminal organisation. Only on the basis of the evaluation of the application of the law will it be possible to address new reforms that improve the scope of the juvenile justice system to resist against the punitive drift that appears to be present at least on a legislative level.

6. References.

ANDRÉS PUEYO, Antonio, "Violencia juvenil: realidad actual y factores psicológicos implicados", in *Revista de Enfermería ROL*, 2006, January, 29 (01)

ATIENZA RODRÍGUEZ, Manuel, *Contribución a una teoría de la legislación*, Cuadernos Cívitas, 1997

BASANTA DOPICO, J.L., *La mediación en el ámbito penal juvenil*, 2009

BECERRA MUÑOZ, José, *La toma de decisiones en política criminal*, Tirant lo Blanch, 2013

BRAVO ARTEAGA, Amaia; SIERRA, María Jesús; FERNÁNDEZ DEL VALLE, Jorge, "Evaluación de resultados de la ley de responsabilidad penal de menores. Reincidencia y factores asociados", in *Psicothema*, vol. 21, nº4, 2009

CAPDEVILA, Manuel, FERRER, Marta, BLANCH, M., *La reincidencia en el programa de mediación y reparación*, Generalidad de Cataluña. Departamento de Justicia. Centro de Estudios Jurídicos y Formación Especializada, 2011

CAPDEVILA, Manuel, FERRER, Marta; LUQUE, Eulàlia, *La reincidencia en el delito en la justicia de menores*, Generalidad de Cataluña. Departamento de Justicia. Centro de Estudios Jurídicos y Formación Especializada, 2005

CERDEIRA BRAVO DE MANSILLA, Guillermo, *Principio, realidad y norma: El valor de*

las exposiciones de motivos (y de los preámbulos), Editorial Reus, 2015

DÍEZ RIPOLLÉS, José Luis, *La racionalidad de las leyes penales. Práctica y teoría*, Editorial Trotta, 2003

DÍEZ RIPOLLÉS, José Luis, "El nuevo modelo penal de la seguridad ciudadana", in *Revista Electrónica de Ciencia Penal y Criminología*, nº 6, 2004

DÍEZ RIPOLLÉS, José Luis, "Rigorismo y reforma penal. Cuatro legislaturas homogéneas (1996-2011), partes I y II", in *Boletín Criminológico*, articles 2 and 3, 2013

FERNÁNDEZ MOLINA, E.; BERNUZ BENEÍTEZ, M.J.; y BARTOLOMÉ GUTIÉRREZ, R., "Juvenile offenders, laws, and rights", in DECKER, S.H., y MARTEACHE, N. (eds.), *International Handbook of Juvenile Justice*, 2017

GARCÍA, J., ZALDÍVAR, F., ORTEGA, E., DE LA FUENTE, L., SAINZ-CANTERO, B., *Diez años de funcionamiento de la Ley Orgánica de responsabilidad penal del menor*, Consejería de Justicia e Interior, Junta de Andalucía, 2012

GARCÍA MAGNA, Deborah, *La lógica de la seguridad en la gestión de la delincuencia*, Marcial Pons, 2018a

GARCÍA MAGNA, Deborah, "Un ejemplo más de política legislativa securitaria: análisis del discurso del legislador español en el ámbito del derecho penal juvenil", in Revista Brasileira de Ciências Criminais, vol. 147, 2018b.

GARCÍA MAGNA, Deborah, y GONZÁLEZ CRUZ, Elena, "10 años después de la LO 8/2006: el cambio hacia el modelo de la seguridad ciudadana en el ámbito de la justicia juvenil", III Criminology Symposium SEIC, 2017

GARCÍA PÉREZ, Octavio, "La práctica de los juzgados de menores en la aplicación de las sanciones, su evolución y eficacia", in *Revista Electrónica de Ciencia Penal y Criminología*, nº 12, 2010.

GARCÍA PÉREZ, Octavio, "La introducción del modelo de la seguridad ciudadana en la justicia de menores", in *Cuadernos de Derecho Judicial*, nº 25, 2005

GARLAND, David, *The culture of control. Crime and social order in contemporary society*, University of Chicago Pr., 2001

LOEBER, R.; FARRINGTON, D.; REDONDO, S., La transición desde la delincuencia juvenil a la delincuencia adulta, in *Revista Española de Investigación Criminológica*, vol. 9, 2011

MARTÍN, Eduardo; GARCÍA, María Dolores; TORBAY, Ángela, "Evaluación de la efectividad de las medidas educativas en la ley de responsabilidad penal de menores desde la perspectiva de los infractores", in *Cultura y Educación*, vol. 25, 2013, nº 3

MONTERO HERNANZ, Tomás, La evolución de la delincuencia juvenil en España, Partes 1ª y 2ª, in *La Ley penal, Revista de Derecho penal, procesal y penitenciario*', nº 78, 2011

PANTOJA, Félix, (dir.), “La Ley de Responsabilidad Penal del Menor: situación actual”, in *Cuadernos de Derecho Judicial,* 2006

POZUELO PÉREZ, Laura, *La política criminal mediática. Génesis, desarrollo y costes*, Marcial Pons, 2013

RANDO CASERMEIRO, Pablo, *La distinción entre el Derecho penal y el Derecho administrativo sancionador. Un análisis de política jurídica*, Tirant Lo Blanch, 2010

REDONDO ILLESCAS, Santiago; MARTÍNEZ CATENA, Ana; ANDRÉS PUEYO, Antonio, *Factores de éxito asociados a los programas de intervención con menores infractores, Informes, estudios e investigación*, Observatorio de la Infancia, Ministerio de Sanidad, Política Social e Igualdad, 2011

RÍOS MARTÍN, Julián, “La protección de la víctima como coartada legal para el incremento punitivo en la legislación de menores infractores”, in *Cuadernos de Derecho Judicial*, nº 25, 2005

RODRÍGUEZ FERRÁNDEZ, Samuel, *La evaluación de las normas penales*, Dykinson, 2016

RODRÍGUEZ-TOUBES MUÑIZ, Joaquín, “El criterio histórico en la interpretación jurídica”, in *Dereito*, vol. 22, November, 2013

SERRANO TÁRRAGA, María Dolores, “Evolución de la delincuencia juvenil en España (2000-2007)”, in *Revista de Derecho penal y Criminología*, nº 2, 2009

TOHARÍA CORTÉS, José Juan, *La imagen ciudadana de la Justicia*, Fundación BBVA, 2003