Blame and Liability as dimensions of Criminal responsibility in juvenile justice: A comparative study between Canada and Venezuela.*

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I.- Introduction

Up to the year 2000, Venezuela had dealt the matter of children and youth under "problematic situations" from an openly welfare[1] philosophy. From that year on, the replacement of the Minor's Protection Law gave way to the Organic Act for the Protection of Children and Youth (LOPNA). This legislation attempted a radical change from the perspective of the legal situation of these individuals, such changes range from the total disposal of the social welfare approach to the design of a new system of criminal responsibility for youth. It is the creation of this system of criminal responsibility in which I focus my investigation since it is an established legal disposition that the juvenile who commits a crime must respond according to his culpability and differentiated from an adult (art. 528[2] LOPNA).

I will work this aspect of culpability of youth in a comparative manner with the Canadian youth criminal system which, even though it is configured in the model of the "common law", it is directed towards similar principles to the Venezuelan legislation, moreover, when both countries subscribed, in their opportunities, to the United Nations Convention on the Rights of the Child (UNCRC).

[1] Venezuela promulgates the Children´s Code in 1938. In 1950 this Code is modified into the Statute for Children which was in force until 1980 when the Minor's Protection Law was put into practice. This law is in force until the year 2000 when the Organic Act for the Protection of Children and Youth is implemented.

[2] Art. 258 LOPNA. Responsibility of the adolescent. "The adolescent who incurs in the act of committing a punishable act responds for his acts in the measure of his culpability in a differentiated form from an adult. The difference consists of a specialized jurisdiction and in the sanction which is imposed".

II. General aspects of Venezuelan youth legislation. Special reference to criminal aspects.

Beginning April 1 2000, the Organic Act for the Protection of Children and Youth (LOPNA)[3] was in forced. From this moment on, two legal phenomena of considerable importance took place in Venezuela: in the first place, the normative situation of criminal justice for children and youth is to clear things up, since subscribing and ratifying the UNCRC, Venezuela adapts this convention into a law of the Republic[4]. However, such subscription did not lead to an automatic derogation of the law which regulated the issue for the moment (Minor's Protection Law) giving rise to a double juridical regulation in one same area. The real problem arising from this situation was that the normative regulation contained in both instruments, were antagonist and there was no conciliation possible between the proposed models. Here rested the need to clear the juridical situation. On the other hand, it permitted Venezuela to respond to international demands and to the process of coordination of laws existing in most of southern South America and Andean countries, as a direct effect of the process of economic globalization, aiding with the possibility of sharing projects, plans and practices needed to attack the appalling reality which was common to these countries in issues involving children and youth.

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[3]This new juridical model has as an international normative support: the United Nations Convention on the Rights of the Child (UNCRC), the Minimum Acts of the United Nations for the Administration of Youth Justice (Beijing´s Acts), the Minimum Acts of the United Nations for youth deprived of their Liberty, the guidelines of the United Nations for the Administration of Youth Justice (Riyadh´s Laws), Agreement No. 138 and Recommendation No. 146 from the International Work Organization and the Letter from the UNESCO on Education for All.

[4]It is important to note that Article 23 of the Venezuelan Constitution from 1999 gives expressly constitutional hierarchy to the CIDN. The subscription to the CIDN took place in the year 1999 and was ratified in the year 2000.

The problem is approached considering legal aspects and a series of events[5] are carried out as a general framework in which a greater consistency of what was alleged in the convention were arranged, beginning with the revision, analysis and assessment of the Venezuelan reality (of children and youth) at present. For a period of time, Venezuela, in different opportunities[6], showed an intention to assume the process of the required normative adjustment, finally accomplishing the approval of the text we know today.

The LOPNA offers a new philosophy through which legal issues of children and youth are approached in an integral manner. This new philosophy, named "Doctrine of Integral Protection" consists in: treating equally all persons under 18 years of age; respecting the rights to which children and youth have been agreed under this act, also taking into account their obligations; and involving the family, society and the State in this process of change assuming accurate social policies designed specially to assume this reality in consonance with criminal policies which may be required. The implementation of the model of the "Doctrine of Integral Protection" is based, from the legal point of view, on the following principles: Principle of "non-discrimination", principle of "the child as an individual with rights", principle of "the highest interests

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[5] Considering such events of interest one may point out (Serrano, 2000): The tentative plan of the Organic Act of Protection of Minors (1995); the tentative plan of the Organic Act of Protection of Children and Adolescents (Second version, 1996); Proposal made by the National Institute for Minors to the Special Commission of the National Congress which studies de partial reform of the Minor´s Protection Law (1996); the initial project of the Organic Act for the Protection of Children and Adolescents (1997-1998); Final Project of the Organic Act for the Protection of Children and Adolescents sent to the National Congress (April 1998); final approval of the project before mentioned by the National Congress (July 1998); ratification of the project (September 1998); and finally, its promulgation by the President of the Republic (October 1998).

[6] Second American Meeting, Santa Fe de Bogotá (1994). Venezuela assumes the Nariño Compromise; Technical Meetings between the UNICEF and INAM, Caracas (1994); First Workshop on Child Attention, Caracas (1990) UNICEF/CECODAP, creation of the National Coordination of NGO´s attending children (1991), etc. (See Serrano 2000, pp 29-30).

for the child", principle of "absolute priority" and principle of "participation", which become the foundations determining the rest of the normative in its existence, validity, implementation and interpretation.

The need for this law lies on the idea of developing these principles, since its establishment in the International Normative did not result in sufficient social nor legal importance in order to produce a real change or in the internal normative situation, in such a manner that having these principles as a point of reference, we may finally arrive to their explicitation and development in a legal text, creating between the International Normative and the Doctrine of Integral Protection a dialectic relationship of interdependence between the principles and the philosophy behind them. Without these principles, such philosophy cannot be conceived, and at the same time, such philosophy may only be feasible on a platform of rights, guarantees and obligations offered by the principles which originate them.

This means that Venezuela assumes this legislation from higher values incorporated in such principles, enclosing its creation in what has been named the doctrine of values, in other words, the creation, evaluation and interpretation of legal norms from personal and collective human values which determine their existence. The principles must be understood as the most important norms of the law. From this consideration we must mold in reality the implementation of the law, having them as the supreme value that transcends to the text itself of the norm and which guides in every sense its interpretation. Also setting the orientation of social policies in this matter, transcending the level of what is strictly normative from a positivist view in order to reach an axiological and teleological view which stamps a new ontological dimension to the principles.

One of the realities which was modified in a radical manner when this act was put in force was the issue pertaining to adolescent criminal responsibility, since with this act the criminal system of responsibility[7] for these individuals was created, opening a new reality to adolescents in conflict with criminal law to the benefits and privileges that adults have in the traditional system, that is, guarantees and humanism.

As already known, before the LOPNA was put in force, the ruling model in criminal justice for minors in Venezuela was the tutelary model inspired in the ideology of positivist criminal thought and in the model of social dangerousness, strengthened by the stigmatizing category of "minor". This appears as a result of putting into practice principles of Criminal Law of the author without knowing the principles of Criminal Law which responsibilizes you for your actions and at the same time implied the possibility to create situations of criminal nature through conceptual overlapping between infraction of the criminal law and an irregular situation. This let the tutelary model transform the status of the human being such as extreme poverty or abandonment, into situations of criminal nature, with the premise of not considering the individual as a delinquent under no circumstance, since far from considering them as individuals with rights, they were conceived as tutelary objects by the Government.

The tutelary model prohibited pointing out these persons as delinquents; so that neither did they had guarantees, sentences nor criminal processes from the traditional criminal system. In other words, the adolescents did not have the opportunity to be defended nor assisted legally as would be any other person in conflict with the

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[7] Art. 526 Definition. "The system of criminal responsibility of the adolescent is the set of departments and entities in charge of establishing the responsibility of adolescents for criminal acts in which they incur, as well as the application and control of the corresponding sanctions".

criminal law. However, reality showed constantly that the practices applied to minors under 18 years of age were more than sentences privative or restrictive of freedom, which from the theoretical point of view was not permissible, but was applicable from the practical point of view. In this model, the judge's "protection" role was centered in the application of "protectionist" measures, which imposed, indefinitely in time, implied the restriction of fundamental rights.

This exclusion of children and adolescents from the traditional criminal justice ended in social chaos, as the evolutive natural, physical and mental process of the person in this developmental stage of human beings was not acknowledged. This must be the reason why adolescents have to be treated differently from adults, since recognizing such difference carries intrinsically the respect to their distinct condition from that of an adult. Therefore, the Doctrine for Integral Protection proposes to create a category of criminal responsibility positioned between the social responsibility of the welfare model and criminal culpability itself, category which belongs to the traditional model of criminal law we know.

The creation of this criminal responsibility system demands a space of autonomy from which it may be qualified as its own category of Criminal Law, different and separated from adult's Criminal Law. The elements for this distinction are the acknowledgement of a special criminal jurisdiction for persons with ages between 12 and 18 yeas of age and the juridical consequence which applied.

The theoretical construction of this new category of criminal responsibility has as its purpose to avoid the non-responsability of adolescents permitting that the punishment be adjusted to the evolutive process of the individual suitable to the

governing principles which may serve as the basis for the design of the punishment as well as its application. This new category of criminal responsibility of adolescents must be characterized by the following:

1. Must be oriented by the governing principles established by the international normative in which this act originates.
2. Must be directed towards explicitly recognizing their responsibility for the committed actions.
3. Its aim must be the notion of criminal culpability understood as the capacity of being motivated by the juridical-criminal laws.
4. Must have as its result exclusively the juridical consequences present in this act. The Principle of Criminal Legality must be applied with full rigurosity in this last aspect.

In this manner, the Doctrine for Integral Protection only carries the challenge of making effective the before mentioned principles, constituting the true transcendental material sense of this model.

The proposed changes brought about by the enforcement of the LOPNA are the direct consequence of a new view of the human rights of adolescents in terms of a human being in an honest evolutive process. This new view of human rights require recognizing juridical rights and more particularly criminal rights of all adolescents against an eminently repressive reality which in name of “protection” has deprived them historically of their inherent rights, without permitting them to work it through a guarantees and humanist juridical model. One must point out that the juridical model of traditional criminal law sanctions primarily considering the human being as

an adult person, so that the problem of recognizing the responsibility of adolescents in the criminal area must be centered in the sentence since it is a very special punishment directed towards the superior interest of the adolescent and of the principle of absolute priority. Orthodox positions of criminal law cannot be considered due to the uniqueness of the juvenile offender as a developing human person. This particular condition must be taken into account in order to set an adequate punishment, reason why this new criminal category requires a theoretical development capable of completely understanding the issue.

Indeed, it is not the moment to criticize the experience of the tutelary doctrine during these years nor to negatively evaluate it as the new model in matters of juvenile justice enforced, but to take the knowledge which will let us clearly see that in the outline of a social, democratic state of law and justice, a punishment based on principles of respect and human dignity must be preferred over an assistance measure which in order to not call it a "punishment" ends up being more disrespectful and invasive and, therefore, goes against the human condition of the punishment itself.

III. General aspects of Canadian youth criminal legislation[*]

Similar to the Venezuelan case, the legislation that considers matters of children and youth in Canada is the result of long discussions and political debating, as well as successive processes of governmental reforms. In order to point out the most

* In order to evaluate issues regarding Canadian legislation, in its elaboration as well as application, is important to have in mind that Canada is a Federal State: the responsibility in the elaboration of criminal laws corresponds to the State in general, however, their application and administration is a matter in charge of each province (Tonry and Doob,2004:186).

significant facts from a historic point of view which gave rise to this approach in Canada, we most go back to the year 1857 when for the first time the legislation in this country separates delinquent children and adolescents from adults, placing them in training schools or reformatories. This set the beginning of community-based alternatives to juvenile incarceration (Bala 1997:5). Afterwards, in the year 1908[8] the Canadian Parliament promulgates the Juvenile Delinquent Act (JDA) that stood until 1984, year in which the Young Offenders Act (YOA) was enforced.

The enforcement of the JDA occurred in a historic moment in which progressive views on children and youth that had been developed since Ancient Greece, the Middle Age, the Renaissance and the Illustration (Burfeind and Bartusch 2006:17-21) were beginning to consolidate. In general terms, the nineteenth century was a period of great advances and significant changes in the understanding of the nature and importance of childhood, processes in which the beginnings of the modern disciplines of psychology and psychiatry as scientific disciplines (Bala 1997:4), as well as sociology, openly collaborated to show the importance of the distinctions which came with social pathologies associated to the industrialization process (2006:22).

The notion of "childhood" and the changes which this notion underwent throughout time have played an important role in this process. Historians have given details of the different explicative scenarios, such as: Ariés (1962) indicates that childhood is a concept discovered in the seventeenth century in Western Europe. In his criteria, before this period, very few distinctions existed related to age and adolescents were part of a social dynamic equal to that of adults. The high mortality rate "discouraged"

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[8] Before 1908 youth were punished under the same laws that existed for adults for that moment, which meant having to share the same prisons with adults. There were no formal legal distinctions in "how" an adolescent and an adult should be sentenced (Campbell, 2005:221).

parents to emotionally “invest” in their children, creating a sense of indifference as well as disinterest from parents, and adults in general, towards youth. This exercised a great influence in the way criminologists have perceived the creation of the legislation on juvenile delinquency as well as on special courts for this matter (Smandych, 2001: 5-7).

Opposing this position came some criticism from Pollock (1983), Shahar (1990) and Spagnoli (1981) cited by Smandych (2001:7-8) among others, however, one must point out that even though the differences in these theoretical positions, these authors agree in pointing out that compared to today, in the past, the role of children in the family, was far more different (2001:9). This resulted in a key feature for the JDA to be structured in an openly social welfare model in which in fact it did not punish actions or behaviors which violated legal dispositions but conditions of human beings (Tonry and Doob 2004:187). Therefore, situations such as poverty, abandonment, homelessness, lack of education, being descendants of immigrants, could be considered grounds for “treatments” or “sanctions” contemplated in the law.

In search for the reasons which led to the implementation of this act in Canada, Hagan and Leon (cited in Smandych 2001) comment that the importance given to the open regimes in place of prison in the JDA pretended to strengthen the family as the means of an informal social control (Smandych 2001: pp.16-17). On the other hand, Trepanier suggests that the implementation of this legislation was due to actions concerning the status of social wellbeing with respect to children in 1980 (p. 17). Peikoff and Brickey believe that the change in the ideas concerning treatment of children in western society is related to economic and social changes associated to feminism (p.17). Hogeven (cited in Smandych 2001) adopts a Foucaultnian posture in

which the identification and deconstruction of social discussions on the reform of youth justice systems resulted in the main factor in the implementation of such legislation (p. 18).

One of the philosophical assumptions which served as a support for the JDA was the "parens patrie" which literally means "father of the people" whom was in charge of the supervision and care of the physical space as well as the people who lived in it, and was the maximum authority of the town (Burfeind and Bartusch 2006:21). This information aids in understanding that one of the subjacent principles in this act was the fact that the State played the most relevant role in cases of intervention of families with children or adolescents in problems when declared "delinquents" or when they "needed protection" (Smandych 2001:16). Reid and Zucker (2005:90) believed this act, not only led to family intervention by the State in the case of juvenile delinquents, but also in cases of abandonment, abuse and poverty. This act was sustained by the doctrine of the "welfare state" and this, at the same time, followed the principle of the "best interests for the adolescent" which in practice translated into an immeasurable State interventionism that ended up imposing assistance measures for uncertain periods under which young offenders were forced to carry out practices which led to "modify" their behaviors or condition, all of this through an established decision for the "best interest of the youth".

It was obvious that the enforcement of this act worked through the lack of knowledge of legal rights as well as the "due process" (Reid and Zuker 2005:90) which must follow the criminal adjective law. For this reason, under this legislation, children could be subjected to "procedures for criminal acts" due to violation of federal, province or municipal laws, or due to the aggressor condition in situations of sexual

immorality or any other similar form of behavior sexually unadapted (Bala 1997:5). Judicial procedures were plagued with informalities and the treatment given by judges to youth offenders was far from being the treatment given to a delinquent, on the contrary, it was the treatment given to a person disoriented, needing help, support or assistance, which involved "sentence"[9] of an assistance nature or privative of freedom (p. 6).

With this legislative antecedent and with the collapse of the social wellbeing philosophy, which made it impossible to justify the exclusion of rights as well as undetermined punishments around the discussion of human rights, conditions were ideal for a change in legislation concerning adolescents (Smandych_2001:147) and, therefore, the enforcement of the Young Offenders Act (YOA) in 1984.

One of the reasons that pushed for the change in legislation was the paradoxical nature of the JDA in the sense that it was considered too complacent with youth offenders and at the same time a legislation which was not protective nor respectful of their rights in case the youth was charged with a crime (Smandych 2001:19). The YOA still maintains the doctrine of the "parens patrie" although showing more respect for juridical principles and legal rights (Reid and Zuker 2005:91) and in this sense it was far distant from the JDA, giving the adolescent in conflict with the law the right to a lawyer, the right to appeal, the right to a definitive sentence and the

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[9] In relation to this type of punishment Bala emphasizes some differences presented according to family and social characteristics of the young offender. If he had been sentenced to live in a reformatory, he could not be "freed" until the personnel of the institution judged it was for "the best interest" of the adolescent. The personnel of the institution had ample authority to make the young offender return to the institution before he turned 21 years of age. Adolescents from "good families" who had incurred in serious crimes had to stay under the care of his/her parents. In the case of youth of lesser resources, indigenous in origin or coming from immigrant families, had to serve their sentences in the reformatory since this was considered in their "best interests" (Bala, 1997:6-7).

right to a proportional sentence (Tonry and Doob 2004:193). The principle of proportionality in punishing is one of the most important established in this legislation (p.194). In the same way, a significant advance occurred when the YOA abolished the vague status offence for which an adolescent could be taken to trial and punished, and focusing on federal criminal offences (Bala 1997:9). Adolescents in conflict with the criminal law began to be treated under the "law and order" crusades (Smandych_2001:147) in this law which undoubtedly represented a change of paradigm in the general notion of Canadian juvenile justice.

In general terms, what determined the change in legislation may be summarized as follows: the informality of the mechanisms used in court, the stigmatizing effects of "deviated individual" labels, the non-regularity in the use of the enforced legislation for that moment (JDA), undefined time sentences, the negation of due process for children involved in legal processes, failure in establishing an age limit suitable for the entire national territory. Nevertheless, the JDA was perceived by social communication media, the public and all political authorities as a "soft against the delinquent" legislation (Smandych_2001:147).

Doob and Sprout (2004:196) point out as one of the most significant changes, when the YOA was enforced, the impossibility of the court to transform into a crime a welfare issue, since the enforcement of this act permitted a perfect delimitation of spaces: the provincial child welfare law and the federal (criminal) young offenders laws. These authors (p.194) summarize the principles on which the YOA rests in the following terms: youth as well as adult delinquents must assume the corresponding responsibility for their behaviors, but in a differentiated manner. Society has the obligation to take criminal political measures for the prevention of crime but at the

same time must provide forms of protection. Adolescents who commit a crime require supervision, discipline and control, as well as adequate assistance according to their state of development and maturity.

Even though changes introduced to the YOA and the advances that those changes meant, at the end of the 80`s the YOA was subjected to severe criticism. The need for changes to this act was driven by political influences rather than real needs, circumstances or factors (Tonry and Doob 2004:212) mainly because the maximum limit of three years for punishing adolescents accused of murder, as well as the difficulty of having adolescents being summoned to adult's jurisdiction where they would face much longer sentences, resulted inadequate. This resulted in a first reform process in the year 1992 (p.206). Similarly, other reforms took place in 1995.[10] One of the most significant was to make possible to summon youth in adult`s jurisdiction. Both reform processes were marked by severe confrontations in the political scene mainly disputing "the benignity" of the YOA.

The beginning of a period which favored definite changes in matters related to youth legislation was set. The evaluation of the reality of youth delinquency in the country together with the political factor which always has an incidence in key legislation issues, created an environment of tension and conflict of opinions. The initiative for the definite change came via political demands asking for a more severe treatment for juvenile offenders through juvenile legislation. This resulted in strong political pressure for the total derogation of the YOA which became conscious of the elevated

[10] Reforms of the year 1995 consisted basically in: increasing to 10 years the punishment for murder in sentences from juvenile courts, facilitating proceedings to forward adolescents accused of gravest crimes to the adults jurisdiction, emphasize what is related to rehabilitation and an increase in the use of communities was proposed in cases of adolescents who did nor represent risks to the collectivity (Bala, 1997; James and Raine, 1998; Tonry and Doob, 2004:205-206).

costs associated to the use of preventive prisons (Bala 2005:47). The limitation in the use of preventive punishment was introduced in the 1995 reform of the YOA. Prior to this, there was no set prohibition against its justification, therefore considering that the problems brought about by this absence deserved a legislative solution, this later solution being the promulgation of the YCJA.

A work commission was created at the end of the nineties in order to revise the YOA and to introduce reform propositions. Different work documents were compared and resulted in the writing of the final document (1997) in which all tensions and opinions around the topic were considered. Such a proposal rested in a document named a strategy for the renewal of youth justice, in which essentially two aspects were considered: the proposals made by the political parties and the procedures and strategies to be implemented in the area (Tonry and Doob 2004:214). The Youth Criminal Justice Act was introduced to the Parliament by the federal government in March of 1999 and was finally approved by the royalty in February of 2002. The act was enforced in April of 2003 (Bala 2005:48-49) as was pointed out by Tonry and Doob (2005:223). The Secretary's justification in relation to the enforcement of the new act in matters related to juveniles was to show all citizens that a new structure in juvenile affairs was being implemented and it pretended to distinguish between the changes done via juvenile laws from those via other policies which also considered these matters (p.223). The main emphasis of this proposal was placed in prevention, in the meaning of the consequences of juvenile crime (centering itself in proportionality), rehabilitation and reintegration. The result of all this process of parliamentary discussions and debate was the enforcing of the Youth Criminal Justice

Act (YCJA)[11] (p.224). This legislation brings substantial differences in relation to the derogated YOA as it will be shown ahead, and it is created under a very controversial political environment (p.225; Bala 2005:47; Reid and Zuker 2005:103).

In Brodeur and Doob's criteria (2002), the center of the discussion for the enforcement of this new legal document was to evaluate if cases of child protection were completely different to those in which actions were taken against young offenders. Obviously, the conclusion was that to protect a child was something completely different to the matter of punishing him. Consequently, when the State pretended to do both at the same time, it failed in the solution it adopted, even more pretending that such treatment be as similar as possible to that given by parents. For this reason all laws which combined assistance with punishment were definitely eliminated (p.3).

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[11] Youth Criminal Justice Act (2003) "Declaration of Principle. Policy for Canada with respect to young persons. 3.(1) The following principles apply in this Act: (a) The youth criminal justice system is intended to: (i) prevent crime by addressing the circumstances underlying a young person's offending behaviour. (ii) rehabilitate young persons who commit offences and reintegrate them into society, and (iii) ensure that a young person is subject to meaningful consequences for his or her offence. In order to protect the long-term protection of the public; (b) the criminal justice system for young persons must be separate from that of adults and emphasize the following: (i) rehabilitation and reintegration, (ii) fair and proportionate accountability that is consist with the greater dependency of young persons and their reduce level of maturity, (iii) enhanced procedural protection to ensure that young persons are treated fairly and that their rights, including the right to privacy, are protected, (iv) timely intervention that reinforces the link between the offending behavior and its consequences, and (v) the promptness and speed with which persons responsible for enforcing this Act must act, given young persons' perception of time; (c) within the limits of fair and proportionate accountability, the measures taken against young persons who commit offence should (i) reinforce respect for societal values, (ii) encourage their repair of harm done to victims and the community, (iii) be meaningful for the individual young person given his or her needs and level of development and, where appropriate, involve the parents, the extended family, the community and social or other agencies in the young person's rehabilitation and reintegration, and (iv) respect gender, ethnic, cultural and linguistic differences, and respond to the needs of aboriginal young persons and of a young persons with special requirements; and ...".

The legislative process in children and youth issues which took place in Canada between 1984 and 1985 was guided by juridical principles approved in the criminal area, in which one of the most important results was the selection of 18 years of age to hold adolescents criminally responsible. Such age limit was applied to the whole national territory. This translates into a system in which youth are still being treated in a system separated from adults and in which the justification given as well as the principles which direct the manner in which they are treated, are openly guided by the universal principles of criminal law (Tonry and Doob 2004:199).

General lineaments in which the YCJA rests may be summarized as follows: (Bala 2005:50-51) - The application of the most severe actions is reserved to the most serious cases. - Emphasizes on the long-term protection of the public, in the understanding of the harm caused by the offender, and reparation to victims and the acknowledgement that there is a lesser degree of responsibility for adolescents in relation to that of the adults. - Establishes the need for a just and proportionate responsibility, understanding that prison sentences may not be given with only the presumption of achieving a state of "wellbeing" for the adolescent or only with rehabilitation purposes (Brodeur and Doob 2002:3). - Supports the participation of the community in juvenile legal processes. - Gives authority to courts in the admission of statements made to the police even when there have been technical irregularities in the way in which the youth have been imposed of their rights. Admits new ways of punishment based on community participation. -Reserves the use of prison terms for specific cases. - Permits youth to serve part of their prison term under the supervision of the community in order to promote plans of reintegration of the youth into the community. - Introduces a new form of treatment to youth found guilty of the most serious crimes. - Gives the provinces greater authority to take measures in juvenile

matters. - Facilitates the imposing of adult sentences to juveniles 14 years of age or older who have committed serious crimes. - Permits the publication of names of responsible youth in more violent crimes under determined circumstances (p.3).

The in forcing of this act demanded an exhaustive revision of the proportionality principle in such a manner that when implemented, the severity of the sanction must had been determined by the severity of the injury caused, as well as by the responsibility of the adolescent in his involvement. This keeps a close relationship with the legal prohibition to deprive an adolescent of his freedom for rehabilitation purposes or for his own wellbeing (Brodeur and Doob 2002:13). Any sentence which has in its background such justification is seen as an inappropriate sentence and therefore unjust and illegal.[12]

As can be seen, the facts by which a youth may be presented before the juvenile justice system were not modified, what was changed is what happens once an adolescent is apprehended (Doob and Sprott 2004: 225). Today there are only two legally justified reasons in Canada to detain a person before his trial: if the accused does not appear in the trial or if there are probabilities that he/she may commit a crime or interfere in the administration of justice (p.227).

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[12] To treat the principle of proportionality in sanctions is of great importance due to its direct relation to the preventive function of the sanction and by its communicational nature. When the State sanctions a behavior it sends a message indicating that such a behavior is harmful. The response to this message at the same time has a relation to the sanction which comes with such prohibition and in the cases in which it is an evidently aggressive sanction and unrelated to the harm the behavior causes, the effect of the message sent produces an opposite effect, since the State is indicating that the affected goods with the application of such sanction do not have any importance to him, that is life of personal freedom. See Andrew von Hirsch, Censure and Sanctions. Ed. Trotta, Madrid. 1998.

As described previously, the substantial changes found in the Canadian juvenile legislation point directly to the fact that it is based on a declaration of principles. This legislation is structured based on the principles of criminal law with universal validity which means the legal express acceptance that legal proceedings, in which children and youth offenders of the criminal law are involved, are ruled by garantistas principles which recognize respect and dignity of the people's condition. This implies attacking the crime reality of these individuals from the singularity of their characteristics, personal as well as in terms of their situation, in such a way that they are not perceived as a universe of offender individuals of criminal law, but from the particularity of the conditions of their development. Having in mind such particularities, analyzing the individual and the event from such singularity, has allowed a conceptualization of juvenile crime as an autonomous category (Martínez, 2004). On the other hand, assuming the distinction between youth and children offenders with respect to adults permitted to delimit with great precision the use of custody sentences, which in the YCJA is restricted only to very specific cases under the expressed prohibition of being determined "by the assistance or rehabilitation purposes" (Brodeur and Doob 2002:3).

The YCJA considers an expressed prohibition may not be forbidden of freedom for "their own good prior or during sentencing" (Brodeur and Doob 2002:2). This reasoning may not still be the basis for decision taking when a measure restrictive of freedom is involved. "The separation is clear: a child welfare matter should be

referred, if necessary, to a child welfare agency. The youth criminal court should reserve itself for criminal matters involving youths (p.2)[13].

Therefore, it is not only a matter of a simple separation between youths and adults, but also to assess correctly the implications and direct consequences of such separation. Establishing in a clear manner the game rules for the intervention of the State in cases of individuals in conflict with criminal law. And limiting such intervention spaces in terms of the known legislation principles and generating a State-offender relationship based on the consideration of the latter from his human condition and not from the perception of the "problem individual" whose situation admits taking intervention measures "considered" convenient in order to "solve" the problem of "orienting", "guiding" or "protecting" the individual.

The changes presented in this legislation consolidate Canada as a subscriber country (Tonry and Doob 2004) to the UNCRC (p.226). One must point out that it is up to the operators of the justice system to carry on actions and to take measures and make decisions necessary in order that the legal text becomes a reality to Canadian children and adolescents. Acknowledging and respecting these rights is an important step in the fight for the consideration of the human condition, however, it is clear that it is not the only or the last step that must be taken in the conquest of such space.

[13] For an exhaustive evaluation of the issue of the state intervention in family matters to remove youth from the family womb or in an abandoned condition to be put under custody for their own benefit. See Brodeur and Doob (2002).

IV.- Culpability and criminal liability. General Aspects.

4.1.- The Venezuelan criminal system.

In agreement with the Venezuelan juridical criminal model, a behavior against the law generates, among others, a responsibility in a criminal order. However, not all behavior against the law transcends to criminal law. Only those which occur in a free and conscious behavior, in other words, lacking of any type of coactions and which considers the present and future understanding by the individual of his doings at that moment.

The notions of freedom and consciousness serve as the support to the concept of culpability which is used today in the Venezuelan juridical-criminal doctrine, as it is stated in article 61 of the present criminal code. This norm points out that "nobody may be punished as a delinquent if they have not had the intention to carry out the action which constitutes it, except when the law imputes it as a consequence of their action or omission… The action or omission is presumed voluntary unless it is stated otherwise".

From this we may deduce that there are basically two manners to express criminal behavior, from the point of view of culpability, in the Venezuelan legislation. Such manners are determined by the degree of entail which the individual has with his actions and the results he/she wants to obtain. This falls directly on the idea of committing a crime, which he will take it or leave it. A first manner of expression of this level of compromise by the individual constitutes intentional or deceitful behaviors, when the norm is established that for a criminal offender he must have the

intention of committing the act which constitutes the criminal behavior. In the second manner of expression we may place non intentional behaviors which exceptionally are attributed to the individual by disposition of the law, negligent behavior and unpremeditated behavior (Chiossone 1986:93).

In the case of the second manner of expression of culpability the presumption of voluntarity of actions and omissions which constitute a criminal act is established. Therefore, the relation of subjectivity in such behaviors, called negligent, will be determined from the voluntary nature of the individual's action. In such cases there is a very specific characterization in Venezuelan criminal law, since it considers behaviors which originally do not lead to criminal intention. However, due to the characteristics of the behavior in itself, typical and antijuridical results are produced which the law punishes. Such are the cases of imprudent, negligent, unskilled behaviors or non observant of orders, rules or security instructions.

In general, one may point out that criminal law in Venezuela punishes both the direct or indirect intentional behavior (intentional behavior) and the behavior which due to carelessness has given rise to harmful results (negligent behavior). In both cases, the psychic bond between the individual with his action and the produced result and finally, unpremeditated behaviors are obvious and this legitimates the individual's action, from the point of view of culpability, in our criminal system.
From the psychological conception which dominates the culpability model in Venezuelan criminal law, the structure of the judgment of culpability is constituted by the imputability, intention and blame and the normality of the voluntary action. In order to consider an action as punishable, the imputability or criminal capacity of the individual is required. It is of great importance in this work to center our attention on

imputability, since for the case of criminal responsibility of adolescents, it will be determinant in the global understanding of the phenomenon, as well as the legal determinations which establish such responsibility.

In our system, imputability is a presupposition of culpability in such a way that to speak about culpability, the imputability of the individual must be verified before hand that is his "capacity to evaluate his behavior and to direct this behavior according to the requirements of the law" (Agudelo 1994:17). Imputability implies it may be determined with understanding and freedom, it implies autonomy, the capacity to decide according to ones own criteria, this demands determined matureness and consciousness conditions from the individual. It is the capacity of being guilty. Being imputable means "to be capable of determined psychic conditions which make possible that an action may be attributed to an individual as his free and conscious cause" (Bettiol 1973:374).

The principle of imputability, as it follows from the general principle enclosed in arts. 61 and 62 of the in forced Venezuelan criminal code, corresponds to freedom. As suggested by Arteaga (1992) when we refer to free willingness, to the election capability of man, we do not refer to an unconditioned willingness, aside from the consideration of motives, but the problem lies exactly on the antagonic motives from which a decision must be taken (p.102). Personal freedom is not absolute, instead it is a freedom of election, for this reason as pointed out by Cury (1997) "if human acts were the product of arbitrary decisions floating in empty space, without content, it is not possible to attribute any of his acts to an individual, since these would be isolated from his personality. In the criminal juridical field, willingness must not be

understood as the ability to act arbitrarily, but as the capacity to put a sense of behavior and not to simply succumb to the disorderly game of passionate impulses" (p.33).

The great majority of experts worldwide express themselves in this same order of ideas, Bettiol (1982), Carrara (1953), Antolisei (1988), Fernández (2004), Ferreira (1988), Jescheck (1981) and Jiménez (1964) among others. Therefore, aside from the real impossibility to demonstrate or prove freedom, which has always been the cause of discussion in this aspect within Criminal Law, one must presume a principle of freedom in the actions of a human being, which constitutes a human reality that the law may not fail to recognize" (Arteaga, 1992, p. 106).

The doctrine considers, within imputability, a volitional element, which refers to willingness of the individual and an intellective element, which refers to the intellect or own conscious which are worth distinguishing. The intellective aspect refers to the capacity to understand the extent and transcendence of the behavior and expresses concretely on the evaluation or judgment of the behavior by the individual. In our case, the evaluation or judgment have as a reference the illicit condition of the action which is determined by the criminal law, in other words, it is not evaluated in thin air or without a sense, but in relation to what is established in the law. According to Maggiore (1939) it deals with "understanding, which is nothing more than the ability to apprehend things with their universal and essential links and, therefore, to measure and foresee the consequences of ones own behavior" (p. 328). This element focuses itself on what the social and juridical meaning of the behavior transmits the individual. On the other hand, the volitional element refers to the willingness from

which the individual carries out his action and for which it is demanded that he acts in a free manner and lacking of all kinds of coactions. It considers the auto determination, in other words, the capacity of the individual to place himself above his reasons or motives and decide according to his own election. The volitional element has as its principle the human freedom mentioned before.

In this sense, it affirms that the Venezuelan criminal system rests the principle of culpability on the freedom of action as well as on consciousness itself. If one of the two elements is missing, the individual may not be appointed as imputable and, therefore, neither as guilty. This is inferred from the text of article 62 which mentions that “is not punishable he who executes the action when asleep or in a state of mental illness sufficient to deprive him of his conscious or freedom of his acts”. In an interpretation in the opposite sense, one may deduce that for an individual to be punishable and, therefore, criminally responsable, he needs to conduct his conscious on what he is doing, as well as act in a free manner.

Now, having defined according to the Venezuelan Criminal Law that imputability is the previous requisite of culpability, one must consider culpability as the substrate in which the criminal notion of responsibility is supported for both adults and for adolescents.

As mentioned previously, there are three basic forms of expression of culpability in Venezuela, the intentional form which constitutes the general rule in this topic, and the negligent and unpremeditated forms which are considered from an exceptional point of view. However, aside from all this, the conceptual content of culpability has

been modified throughout the doctrinal development of this notion determined according to the scheme of the crimes considered.

In this sense, in accordance with the classic scheme, the concept of culpability refers to the subjective element of the crime, that is, the aspect of the criminal act which considers what is relative to the individual and his action in order to determine to what extent the crime, as a modification of the outside world, belongs to the subject in his psychic aspect. Under this perspective, Culpability considers the psychological link which ties the actor and his action, in such a manner that "culpability consists in a relation (causal) between the author and the act, between the individual's will and the action (or the result) as the objective reality" (Maggiore 1954:453). For the followers of this trend, culpability rests in the conscious and the will to do the action, establishing itself as its own moral aspect. "…the judgment it implies corresponds to a simple verification by the judge of a psychological act. This verification is neutral and does not imply an evaluative judgment" (Frías 1996:271).

The normative concept of Culpability has been proposed in the neo-classic scheme of crime. In this concept Culpability conserves its psychological essence, but it is not reduced exclusively to configurate itself only from the psychic relationship which was proclaimed in the classic system, additionally, it was also determined by the external circumstances that influence the individual´s action and that intervene transforming the psychological concept of culpability into a judgment of value which comes from the judge, once the pertinence of the individual's act as its voluntary and conscious author, and the level of participation from external factors and away from the individual's psychic aspect when executing the criminal act.

From this concept, reproachability became in the essence of culpability and its elements are the intention, blame, liability of the individual and exigibility. From this proposition and according to Jiménez (1964: 92), culpability is: …the reproach towards the author of a specific criminal act, to whom there is a motivated psychological link, achieving a goal with his behavior, or that which its extent was known or might have been known provided that he be asked to behave according to the law.

Culpability may only be asserted in the cases in which the individual, from the consideration of such external factors as well as the motivation which arises from them, did not behave according to the established juridical laws and who has freely and consciously has made a decision, in other words, when the individual was demanded to behave according to the law.

Culpability will be treated from the notion of demandability, that is, the possibility that an individual has to behave according to what has been established under the juridical ordinance. From this new idea the concept of Culpability will be transformed into a judgment of reproachability, in other words, a judgment of value. It will only be reproachable, and consequently will give rise to a judgment of culpability, that which may be demanded to the individual. A judgment of culpability may not take place when things in which the individual, through external factors, was not motivated in a normal manner. It is, therefore, the influence of these factors what finally determines if the individual acted contradicting the established juridical ordinance and not his voluntary decision, free and conscious.

In this manner, it is appropriate to point out that culpability is a concept that is closely related to the idea of freedom, it transcends the moment in which it is determined that the individual acted in a voluntary manner. If the individual is not free there is no possibility that he may choose between committing and not committing a crime; and if the circumstances determine it, he will have to irremediably lean to carrying out the act, since his possibility of decision is not present.

Acting voluntarily and freely, under conditions of absolute normality, in which anybody may respond according to law, and provided that no exculpatory circumstance occurs, are the fundamental factors for the declaration of an individual's culpability, from the criminal-juridical perspective in Venezuela.

Finally, we must affirm that culpability is the element of crime which connects the individual's criminal responsibility with the crime itself. To declare culpability of a person means to affirm that he must respond to criminal law for the commitment of a criminal act. At the same time the psychological bond is established between the individual and his act.

In the finalist scheme of crime, culpability continues to be one of the elements of the crime, however, in this scheme its content varies, converting itself in a normative concept which consists in a "Judgment of reproach to the individual which is based on the non omission of the antijuridical action when he could omit it… in this "non omission instead of omission" of the individual with respect to his antijuridical will, lies the essence of culpability… All culpability is according to this "culpability of will,

only that with respect to which man may do something voluntarily, may be reproached as culpability" (Welzel 1997:166-67).

According to this concept, the structure of culpability is constituted by imputability, not as its element, but as its presupposition; by the possibility to understand the illegality of the act carried out and by the demandability of a behavior according to law.

This brief review of the different schemes of crime is important since it is illustrative when analyzing the concept of culpability which is similar under the special legislation of children and adolescents and to compare it with the notion which is handled in criminal law for adults.

4.2.- The Canadian Criminal System.

Different from the Venezuelan criminal system, the Canadian system is not structured on the basis of general juridical principles which rest in a general part of the Canadian Criminal Code, applicable without any distinction to all crime figure enclosed in it, with the exceptions mentioned in the law itself. In this criminal system, as it is understood from the interpretation of any of the criminal figures in it, each crime requires its own criminal action, which configures it and is characterized by a specific form of culpability which is expressed in its law and is specific of that action.

In general terms, the necessary elements that may be pointed out in the configuration of a crime have been named the physical element or actus rea and the mental element or fault element also known as mens rea. The firs of these elements refers to the physical characteristics which should cover the criminal behavior or action in order to

conform the crime in reference and the second one attends the mental attitude of the individual in relation to his act and is known in criminal doctrine as the ´subjective principle´. "Its essence is that a person should only be held responsible for an offence if and to the extent that he chose to commit it, believed he was committing it or knowingly risked committing it "(Ashworth 2005:173). In relation to mens rea and as mentioned by Roach (1961) to refer to this element implies confusion since each crime separately has its own expression of culpability different from any other crime figure, therefore, mens rea exists only in relation to particular definitions of crime (p.88). The two mental attitudes of greatest significance in the law are intention and recklessness, and either one of them amounts to what lawyers term 'mens rea', loosely translated as 'the guilty mind' (Ashworth 2005:150). Behind the legal concept of mens rea lays a whole range of mental attitudes which, although irrelevant to the legal categorization of the offence, are central to its evaluation for the purposes of sentence (p.153).

In this essay we define mens rea as the mental process that refers to subjective intent or knowledge as to consequences or condition ... and consists of two parts: the awareness or consciousness of the act and the intent or knowledge" (Mewett and Manning 1985:103). Even though we may support ourselves on this general concept, one must warn that the Canadian criminal system still lacks of general definitions which may be applied to all criminal figures, so that every culpability element must be inferred from each legal definition separately, and it is logical to suppose that each crime holds its own legal definition with its distinctive characteristics facing the rest of the crimes. "The full definition of every crime contains expressly or by implication a proposition as to a state of mind" (p.104).

Such inference, as shown by McLachlin (cited in Smandych 2001) must be related to the consequences and circumstances of the crime itself, and it extends to all its elements, for example in the case of homicide "we speak of the consequences of the voluntary act –intention to cause death, or reckless and willfully blind persistence in conduct which one knows is likely to cause death" (p.89). The required mental state, in most crime, was found to consist of either an intention to cause the actus rea of the crime or foresight on the part of the actor that his conduct might cause the actus reus or the knowledge of the factual circumstances rendering the act unlawful (Mewett and Manning 1985: 104).

In Mewett and Manning´s (1985) criteria, crimes are sometimes defined as requiring only one or the other of the states of mind referred to above, and they have labeled by the courts as crimes of general intent or specific intent which call for the proof of a more complex state of mind" (p.107).

The Canadian criminal legislation recognizes different degrees in the subjective mens rea. Similar to the Venezuelan criminal system, the strongest degree which this element of crime shows corresponds to the "intention or purpose to achieve the prohibited result or to willfully pursue such as result" (Roach 1961:94) ...Willfully stresses intention in relation to the achievement of a purpose. It can be contrasted lesser forms of guilty knowledge such as negligently or even recklessly, it denotes a legislative concern for a relatively high level of mens rea" (p.96). It corresponds to those cases in which the person knows the consequences which his act will cause and being sure that they will happen, he acts.

Another degree of the culpability element is the knowledge which consists in a less accentuated form than intention, the purpose or acting deliberately. The criminal code (S. 229(c)) expressly establishes, for example in the case of homicide, that a person is guilty of murder if he "knows or ought to knows likely to cause death to a human being notwithstanding that the desires to effect is object without cause death or bodily harm to any human being". Knowledge is a common form of mens rea for possession-based offences. In the case of the Venezuelan criminal system the knowledge is required in the case of intent behavior, in which it is demanded to know the antijuridical character of the act, the characteristics of the criminal act and the certain or probable consequences which result from the criminal action. "A person may do an act knowing that, if he does, certain consequences must occur, and yet at the same time not subjectively desire those consequences. He may, indeed, hope they do not occur, but nevertheless acts knowing that they will" (Mewett and Manning 1985:107).

Another degree which presents the mens rea is Recklessness, which constitutes a lesser degree compared to the two previous ones and consists in "acting having been warned or being conscious of the risk of the prohibited behavior" (Roach 1961:98). According to the criterion of the Supreme Court of Sansregret "it is found in the attitude of one who, aware that there is a danger that his conduct could bring about the result prohibited by the criminal law, nevertheless persists despite the risk. It is, in other words, the conduct of one who sees the risk and who takes the chance" (p.98).

It corresponds to the case of a person "that act knowing that, if he does, certain consequences will probably occur, are more likely to occur than not, but are not

practically certain to occur and he says to himself, “I’ll go ahead and do it anyway” (Mewett and Manning 1985:108). Where a statutory offence is defined so as to include recklessness, the definition is satisfied if the defendant would have realized the risk of causing the proscribed consequences if he had thought about it. This concept moves away from the idea of mens rea as the actual mental attitude of the defendant at the time of his conduct, towards a more objective conception of guilt. (Ashworth 2005:151) The person knows the risk, he handles it within his probabilities, knows the consequences which could bring and still acts placing the accent of his wanting in the risk action and neglect what could happen. For the Venezuelan case, this criminal action corresponds to the intentional form and is known as acting with eventual intent. It is intimately linked with risky actions in themselves and with deaths or injuries produced in traffic accidents.

Another form which culpability adopts in the Canadian Criminal Law is negligence which consists in acting without having the prevision that determined consequences may occur with a high probability and in which the person does not deposit his attention (Mewett and Manning 1985: 109). For any person with normal common sense it is logical to think that such consequences may occur. The disapproval in such cases consists of the person having the capability of thinking about these consequences, he doesn’t do it. This form of culpability exists in the Venezuelan Criminal Law in the same terms as the Canadian, besides in the Venezuelan case, it is separated as a different form compared to intentional and preterintentional culpability.

Another form of expression of the mens rea is willful blindness for which there is no consensus in relation to its content; however Canada’s Supreme Court has indicated

"willful arises when a person who has become aware of the need for some inquiry declines to make the inquiry because he does not wish to know the truth. He would prefer to remain ignorant. The culpability is justified in these cases by the accuser's fault in deliberately failing to enquire when he knows there is reason for inquiry" (Roach 1961:99).

This concept has suffered changes in the Canadian criminal doctrine, originally "it was common to regard the mental element required to found criminal liability as "intention", that is, as intending what one is doing. Until the twentieth century, little attention was paid to an analysis of what this meant... when one says a person "intends" something one may mean a number of different things", such as: desire or intention, knowledge, recklessness, negligence (Mewett and Manning 1985:107-108).

As shown by Mewett y Manning (1985), there are many expressions with which to assign to the different degrees of mental connection of the individual with his act. This leads in certain occasions to really difficult exact and precise appointments (p.109). Surely each situation must be evaluated independently revising in depth its distinctive elements and the circumstances in which the individual acts and that at the end the action is produced. In the same manner, Ashworth (2005) recognizes that at the moment of quantifying culpability certain forms of recklessness are treated as more severe that certain forms of intentional acts (p.152).

In any case, the statement of culpability previously requires of the liability and must be taken into account that for this it is enough to have the probability that the consequences of the action may occur and that the individual may have had the

knowledge of such probability. In the Canadian legislation, "criminal liability requires the existence of a culpable state of mind and even though there are crimes which do require them (crimes of strict liability)[14], a mental process is required for the criminal imputability" (Mewett and Manning 1985:103).

A brief comparative revision between the Venezuelan and the Canadian criminal system in terms of the element of culpability lets us confirm that even though in both, similar concepts or notions are handled; their contents may vary considerably. In the case of the Venezuelan system the interpretations given to the concepts are oriented by the general principle that in culpability affairs are established by the Code in its general part. In a more specific sense, there are fundamentally three concepts that are associated to culpability and its content is justly delimited. Even when in each of these concepts there are subdivisions or degrees, their contents are still perfectly separated ones from the others.

In the case of the Canadian criminal system the lack of a general principle which may serve as an orientation in the delimitation of the conceptual content of each one of the elements of crime places its interpretation in the concretion of each of the criminal figures. In this manner, it individualizes, at its maximum, the elements of crime according to each case of the criminal figure being considered. When one speaks in this system of the mens rea, one is referring to the mental state of the individual the moment he is committing the criminal act. This is, in part, related to the purpose

[14] Offences of strict liability are offences whose requirements are fulfilled by a particular course of conduct without the need for proof of any mental attitude on the part of the perpetrator; if it is shown that the offender was inadvertent to the significance of his conduct, and not even negligent about it, then very little moral guilt attaches to the offence. (Ashworth, 2005:150).

which the individual has planned and to the knowledge of the present and future in relation to the action carried out.

This mental state required to show the culpability of the individual is indistinctly referred to as intention, negligence or unpremeditated in the Venezuelan criminal system. In the case of the Venezuelan Criminal Law, these three concepts constitute conceptual spaces appropriately separated within the general notion of culpability. In contrast, the Canadian criminal system matches within the notion of culpability all forms in which this concept is presented, but not as manifestations of different forms of culpability, as is the case of the Venezuelan criminal law, but as degrees of the same and unique concept.

For the development of the present essay, similarly to the case of the Venezuelan Criminal Law, we are interested in pointing out what concerns criminal imputability. This concept is required in both criminal systems as a previous evaluation of the declaration of culpability. In other words, in order to state that an individual is guilty, one must evaluate first his capacity to confront the criminal law, that is, evaluate if it corresponds to an imputable person. This is the case for those who are not in the same position as an adult or lack of such criminal capacity or also to those cases in which the capacity may be incomplete. The Canadian legislation states as the main exceptions to this principle children[15], spouses[16] and corporations[17].

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[15] "No child under 12 years of age may be held criminally accountable. The age of 12 represents a relatively recent increase from the common law rule which established age seven as the start of accountability. Below this age, provincial child welfare legislation may apply to children who are involved in criminal activity." Criminal Code, S (13)1985.

[16] Art 621 Lopna "the measures indicated in the previous article have a primarily educative objective and will be complemented according to the case with the participation of the family and the support of

Similar to the Venezuelan criminal legislation, the imputability refers to the capacity of a human being to confront the application of the criminal law after determining his competence to know the characteristics of his action, the conditions in which they are carried out and the capacity to foresee what will result in relation to what he has done. The subjective principle to which the mens rea alludes "serves as principle of criminal liability, prescribing what ought (in general) to be a minimum condition of liability for any offence, and, as a principle of sentencing, prescribing the degree of an offender's responsability for what did or did not follow from his action" (Ashworth 2005**:** 173). This capacity is presumed total and well developed in the case of normal adults with capacity to discern and decide from a free and conscious acting, but not in the case of ´subnormal´ people (due to mental illness) or children and adolescents in which is presumed that their uncompleted mental and physical development will not give them these capacities in fullness. In fact, "the subjective principle prescribes that his responsibility should extend only so far as he knew that he was creating a certain risk" (p.173). In the case of adolescents this criminal subjective principle which translates into the principle of criminal liability, establishes that adolescents will be responsible only to the extent to which their capacity to know and understand the level of the damages they are causing with their action.

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specialists. The guiding principles of such measures are the respect to human rights, the integral formation of adolescents and the search of their adequate family and social living together".

[17] Art 622 Lopna "Guidelines for its determination and application. To determine the applicable measure one must consider: a) the verification of the crime and the existence of the harm, b) the verification that the adolescent has participated in the crime, c) the nature and seriousness of the actions, d) the degree and responsibility of the adolescent, e) the proportionality and fitness of the measure, f) the age of the adolescent and his capacity to carry out the measure, g) the efforts by the adolescent to repair the harm, h) the results of the clinical and psycho-social reports…".

In Duff´s words (2002) "it pretends to bring offenders to realize the significance of what they have done" (p.115). It not only deals with choosing in doing what he is doing but to not have chosen it knowing its transcendence and all that will arise from this behavior. In other words, it relates to choosing totally knowing the meaning of the action taken, which implies a certain degree of prevision which is not always present in adolescents. "To hold a person responsible for an action which he could not avoid or could not help clearly runs counter to the spirit of the subjective principle, even if the situation was such that the individual could foresee what was going to happen and thus literally satisfied that principle. Where an action lies beyond the individual's control, he should not be held responsible for it" (Ashworth 2005:174).

V. Comparative analysis between the Venezuelan and Canadian systems in relation to juvenile culpability.

5.1 The age issue.

The criminal treatment of adolescents in Venezuela is determined by the normative stated in Title V of the LOPNA named "Criminal System of Responsibility of the Adolescent". However, before considering such norms it is necessary to define the legal concept of child and adolescent in order to facilitate its understanding: Art. 2 "a child is every person with less than twelve years of age. An adolescent is every person with twelve or more years and less than eighteen years of age. If there were any doubts on whether a person is a child or adolescent, he is presumed a child until proven the contrary. If there were any doubts if a person is an adolescent or older than eighteen years of age, he will be presumed an adolescent until proven the

contrary". The legislator has been clear in this norm when he establishes the separation of children and adolescent by age groups, designing for each group a distinct treatment in what concerns the criminal issue. In general terms, the Venezuelan legislation establishes in its Art. 528 that "the adolescent who incurs in the commitment of criminal acts will respond for his acts to the extent of his culpability, differently from the adult. The difference consists in the specialized jurisdiction and in the imposed sanction". From this text we may infer that the treatment for young offenders is based fundamentally in the following: the establishment of a responsibility which adjusts to the right extent to the capacity of the individual and in a generic differentiation and a separation with respect to the traditional adult system.

In the case of children who have incurred in criminal acts the law establishes in Art. 532 that "when a child incurs in a criminal act protection measures will only apply according to what has been anticipated in this law". In relation with the different age groups created by the law there is a general rule from which we define what is understood in this legislation by adolescent, to whom corresponds the application of laws stated in this Title, in case of incurring in a crime. Art. 531 specifies that "the dispositions in this title will be applied to all persons between twelve and eighteen years of age at the moment they committed a criminal act, even tough they have reached, during the process, eighteen years of age and are over aged when being accused". The age groups created by the law are classified, as stated in Art. 533 which establishes that "to the effect of applying and executing sanctions, adolescents are distinguished into two groups, those who are from twelve to less than fourteen years of age and those who have fourteen and less than eighteen years of age".

These age groups created by the law, as regulated by the exposition of causes itself, make easier the work for the judge in understanding and interpreting the law according to the case being treated, comprehension which goes through the evaluation in the criminal individual his capacity to " …understand and act according this comprehension…". This means that by an expressed disposition of the legislator it tries to evaluate in each individual his capacity to comprehend the reach and sense of his behavior, which, as will be discussed later, shows a direct relation with the evolutive psychology. This legal classification of youth in conflict with the criminal law facilitates the concretion of the legal principle of making them respond for their criminal act to the extent of their culpability, since the first element of guidance to reach that fair measure of culpability is the age of the offender. One may point out then that the legal classification before mentioned constitutes a measure which permits materialize the principle of adjusting culpability of the individual according to his capacities.

In the case of the Canadian Criminal Law, the Declaration of Principle from this special legislation is clear when it states that 3.1(b): "the criminal justice system for young person must be separate from that of adults…". This separation is only possible by recognizing the special condition of adolescents as individuals in ongoing formation process. "The common law presumption of incapacity was incorporated into Canada's Criminal Code in 1892…" (Bala 1997:81). Therefore, similar to the Venezuelan legislation, the Canadian has legal definitions as well as a general principle enclosed in the preface of the Youth Criminal Justice Act, which relates to this particular aspect and from it this special legislation must be understood, interpreted and enforced.

The preface establishes that "….Canadian society should have a youth criminal justice system that commands respect, takes into account the interest of victims, fosters responsibility and ensures accountability through meaningful consequences and effective rehabilitation and reintegration, and that reserves its most serious intervention for the most serious crimes and reduces the over-reliance on incarceration for non-violent young persons…". In the case of the legal definitions, it is established that an adult is "a person who is neither a young person nor a child", a child is "a person who is or in the absence of evidence to the contrary, appears to be twelve years old or older, but less than eighteen years old and, if the context requires includes any person who is charged under this act with having committed an offence while he or she was a young person or who is guilty of an offence under this act". From these definitions, as well as from the complete text of the YCJA, one may conclude that there is only one general classification for persons in Canadian Criminal Law to be treated under the conditions pointed out by this law: persons older than twelve and younger than eighteen. The complete text of the YCJA refers to the term "youth", which should be understood as a direct reference to persons older than twelve and younger than eighteen years of age, without the need of any other distinction. The legislation is clear when it points out that in the case of children involved in criminal acts, assistance measures will be assumed.[18]

This statement is confirmed when the special legislation establishes in its 2nd part S.14 (1) that "Despite any other Act of Parliament but subject to the Contraventions Act and the National Defence Act, a youth justice court has exclusive jurisdiction in

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[18] "No child under 12 years of age may be held criminally accountable. The age of 12 represents a relatively recent increase from the common law rule which established age seven as the start of accountability. Below this age, provincial child welfare legislation may apply to children who are involved in criminal activity." Criminal Code, S (13)1985.

respect of any offence alleged to have been committed by a person while he or she was a young person, and that person shall be dealt with as provided in this Act".

From this we may deduce that the age factor is also, in this criminal system, the determinant issue for the separation of juvenile criminal system from adults and to recognize that adolescents, due to the stage in human development, must be looked at from the particularity of their condition as individuals in ongoing development of their potentialities, capacities and abilities, in such manner as to offer, even within the boundaries of a criminal experience, the best treatment consonant to the development they have achieved, therefore, the first guiding element is age.

5.2 The issue of juvenile criminal capacity.

Along this essay we have handled some aspects which approaches the manner in which adolescence has been perceived in the course of the history of humanity and in the manner in which this phenomenon in the development of human beings, has been perceived. We have seen the criminal answer we have given adolescents when they confront conflicts with criminal law. In relation to this aspect in particular- the criminal answer- we agree with Duff (2002) when he points out that this recent form of understanding the developmental process of adolescents in order to identify them as responsible from the criminal point of view for their criminal acts, to the extent they may be, corresponds to a social construction (pp.116-117). It is the response we have given as a function of the understanding we have had of adolescence and its implications. In such sense "we should aim to develop practices within which we can recognize the nuanced character of the juvenile's stages of development/within which we can do justice both to the extent to which they are mature enough to be held

responsible for their wrongdoing, and also to the extent to which they are not yet fully mature" (p.117). In his opinion it deals with recognizing that "given their lack of maturity it would not be absurd to treat them as not being (yet) criminally responsible, in the way that it would be absurd to treat to fully mature adult as not being criminally responsible… and given the maturity they have achieved, it would not be absurd to treat them as criminally responsible, in the way that it would be absurd to treat a younger child as criminally responsible; but to treat them as unqualifiedly responsible would seem to ignore or deny to the extent to which they have not yet achieved full maturity" (p.116).

The existing conception of the sanction in the whole legislation is related with this perception of the phenomenon of adolescence and the conceptual forms from which we may construct the possibility to make adolescents criminally responsible. If one starts, as I think it should certainly be, from the idea that the crime, constituting itself in wrongdoing, an injury to the quality of life of persons, should not only be explained in its nature but justified in its application, then it is coherent to start from the notion of the maturity of the individual to whom will be given such punishment, in the understanding that giving a sanction to an individual who will not get a benefit from the experience and where the sanction will not report any profit, it is an unjust punishment in itself and would fail to recognize a respectful conception of the human being. Therefore, the notion of maturity serves as the base for the application of the punishments to which the juvenile criminal legislation refers to in both Venezuela and Canada.

For authors such as Duff, maturity constitutes the central notion (2002) when conceptualizing juvenile offenders and indicates that "to be those who are neither so

immature that they can certainly not be held criminally responsible, nor so mature that they are certainly as fit as any other adult to be held criminally responsible" (p.116). This author defines maturity as the matter of one's capacities for rational thought and action… the capacity to grasp and be moved by the values and reasons by which one's action should be guided, and to guide one's own actions accordingly; and the capacity to understand what one has done, and others responses to it, in the appropriate normative terms" (p.116).

In the case of the Venezuelan legislation, the statement of cause of the law is clear when it establishes that in the adolescent there is a process of maturing that even though it is not complete in his capacity to understand and act according to that comprehension, there is a process of maturing which permits reproach the social injury caused (LOPNA preamble to law p 24). In other words, it is the maturity of the human being that establishes the possibility of reproaching his behavior and being able to receive a sanction of criminal character.

In Venezuela, criminal responsibility of adolescents is possible within the notion of development which evolutive psychology contributes, which indicates that it deals not with a fixed model already established, but that it can be modified from the experts' reports from which the evaluations will produce the information which will be the case for the establishment of the sanction in any of its forms. The statement of cause from this special law (LOPNA 2000) textually establishes that one "disposes of a progressive regime of demands of responsibility according to the teachings of evolutive psychology only starting at twelve years of age, it becomes more emphasized at fourteen, and acquire fullness at eighteen years old" (p.24).

This notion of maturity is coherent, according to what was stated, with the notion of punishment handled by the law. In terms of objective and principles of the punishment in this law it establishes the following: an educational objective and as its guiding principles: the respect of human rights, the integral formation of the adolescent and the search for his adequate family and social living together.[19] On the other hand, in terms of the guidelines for the determination and application of the punishment the law establishes that it must be taken into account "…the age of the adolescent and his capacity to obey the measure…"[20]. If the punishment has as its purpose to educate, undoubtedly it must consider the individual to whom it must be applied; there lies the importance of having in mind the maturity as well as the separation of the individuals in terms of their ages.

Also in the case of the Canadian juvenile criminal system the legislator has made emphasis in the purposes to be obtained from the application of the punishment and indicates that, in general, the juvenile justice system must "emphasize the following: (ii) fair and proportionate accountability that is consistent with the greater dependency of young persons and their reduced level of maturity…" (YCJA, declaration of principle). When it establishes in the law "fair and proportionate accountability that is consistent with the greater dependency of young persons and their reduced level of maturity" it recognizes that what concerns the juvenile criminal

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[19] Art 621 Lopna "the measures indicated in the previous article have a primarily educative objective and will be complemented according to the case with the participation of the family and the support of specialists. The guiding principles of such measures are the respect to human rights, the integral formation of adolescents and the search of their adequate family and social living together".

[20] Art 622 Lopna "Guidelines for its determination and application. To determine the applicable measure one must consider: a) the verification of the crime and the existence of the harm, b) the verification that the adolescent has participated in the crime, c) the nature and seriousness of the actions, d) the degree and responsibility of the adolescent, e) the proportionality and fitness of the measure, f) the age of the adolescent and his capacity to carry out the measure, g) the efforts by the adolescent to repair the harm, h) the results of the clinical and psycho-social reports…".

justice system are that the actions adopted must attend the own capacities of the individual with reduced level of maturity, since the individual does not have full capacity of comprehension of his acts in the same terms as an adult.

This scheme of distinction between ages in which maturity is involved supports the presumption that the action taken should be meaningful for the individual young person given his or her needs and level of development. In this same order of ideas part 4 of the Youth Criminal Justice Act in its purposes and principles establishes in its Section 38 (1) "the purpose of sentencing under Section 42 (youth sentences) is to hold a young person accountable for an offence through the imposition of just sanction that have meaningful consequences for the young person…" which emphasizes the need to adjust the extent of culpability and according to it determine the action which results adequate in relation to the development of the adolescent. As can be observed the extent of culpability referred to in this system, similar to the Venezuelan system, starts from the notion of the capacity of the individual's comprehension of his acts and their meaning, which in criminal matters is worked from the notion of liability which at the same time has a direct relation with the level of maturity of the individual which is also associated to his age. AS observed from the Canadian criminal system, the issue of age is also of vital importance in the establishment of the responsibility of the adolescent as well as for the determination of the punishment.

The notion of maturity at the same time is connected to the principle of proportionality present also in both criminal systems. In the Venezuelan case Art. 539 of the LOPNA establishes that "the punishment must be rational in proportion to the criminal act attributed and its consequences". In the case of the YCJA S. 38 (2) "…the

sentence must be proportionate to the seriousness of the offence and the degree of responsibility of the young person for that offence…”. As mentioned before, the principle of proportionality is one of the accomplishments of greater relevance in the implementation of the juvenile justice system of both legislations. Their establishment shows the attention given to the individual to be sentenced and not the act of the punishment looked at in an isolated manner. In this sense, the YCJA S. 38 establishes (1) that “the purpose of sentencing… is to hold a young person accountable for an offence through the imposition of just sanctions that have meaningful consequences for the young person and that promote his or her rehabilitation and reintegration into the society…”

Certainly, the fact that the application of a sentence considers the comprehension of the consequences of its application and brings to the individual a possibility of rehabilitation and reintegration into society, implies that it is starting from the possibilities an individual has to understand and comprehend such meaning and this may only be achieved choosing a sentence that according to the level of development of the individual, results in the most adequate, in other words it results in the most proportionate. “Perfect proportionality, therefore, could be achieved by giving all young persons custodial sentences as long as their length was proportional to the seriousness of the offence” (Tonry and Doob 2004:228) “…seriousness depends both on the harm done (or risk) by the act and on the degree of the actor’s culpability…” (Hisrh cited by Ashworth 2005:143).

In relation to this, the YCJA that S. 38 (2) (e-ii/iii) “…be the one that is most likely to rehabilitate the young person and reintegrate him or her into society… promote a sense of responsibility in the young person…” “If juvenile offenders are capable of

taking responsibility for their actions, we should treat them as responsible agents: as agents who can and should be called to account for the wrongs that they do… we must try to bring them to face up and recognize the wrongs they have done, as wrongs; to see the need for apologetic reparation to those whom they have wronged- the need to restore the relations that their crime damaged; and to embark on the necessary task of self-reform… we should punish juvenile offenders because this is what is due to them as responsible agents, and because this should help them develop into more fully responsible agents" (Duff 2002:131-132).

In the case of the Venezuelan legislation, the objective of the application of any of the sanctions which the law contains, has an educative character and the objective it seeks with its application is to reach the full development of the capacities of the adolescent and the adequate life together with his family and with the social environment.[21] In the same order of ideas the execution of the actions which imply deprivation of liberty will be carried out through a specific plan for each individual, such plan will attend the real necessities of each individual.[22]

As has been mentioned previously, both criminal systems, the Venezuelan and the Canadian, demand the adjustment of culpability of the individual to the extent of his capacity of comprehension and understanding the transcendence of his behaviors. Such understanding and comprehension varies according to the degree of development reached by the individual, and at the same time depends on the age as

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[21] Art 629 Lopna "The execution of the measures has the purpose to attain the full development of the capacities of the adolescent and an adequate living with his family and his social surroundings".
[22] Art 633 Lopna "The execution of the prison sanctions will be carried out through an individual plan for each adolescent. The plan, formulated with the participation of the adolescent, will be based on the study of the factors and deficiencies which influenced on his behavior and will establish concrete objectives, fit strategies and time lapses to be carried out…".

conditional factor in choosing and designing the sanction. It is not simply that the individual handles the incipient and precarious distinctions characteristic of all human beings, between right and wrong. A notion present in all stages of development of human beings but in different degrees of intensity. It deals with the capacity to take further the simple distinctive notion between right and wrong and to be able to evaluate the ultimate reach and sense of the individual's action. This implies the ability to handle both the notion of what is done and the capacity to anticipate what will come as a direct or indirect consequence of this behavior.

This capacity is oriented en function de being able to distinguish when it is a simple 'joke' or 'prank' and when it is something more serious which we here name crimes. In Duff's[*] (2002) words culpability requires an understanding of the nature of the wrong for which one is culpable, criminal responsibility requires an understanding of the nature of the relevant crime as wrong (p. 118) which is related to the act to the point where the crimes are understood as aggressions that invade public spaces and are not only moral reproaches.

With relation to culpability as a criminal category and starting from the fact that both Canadian and Venezuelan criminal systems demand the adjustment of the individual's culpability to the extent of his capacity of comprehension and understanding, that mental attitude on which culpability rests is adjusted in the case of adolescents from objective elements which turn out to be determinant in the evaluation of the degree of comprehension of the individual and the transcendence of

* One has to warn that the author defends, as sanctions for the adolescent, the restoration and reconciliation instead of criminal sanctions themselves (2002: 131-132).

his behavior, namely age, the evaluation made by experts on the individual and his behavior and the seriousness of the committed crime.

These factors must be combined in order to contribute taking into account the scientific nature in which to support the choosing and application of the punishment according to the individual considered. The principle of culpability in general points out that both adults and adolescents will respond to their acts only to the extent they know of the harm they are causing and to the extent of the certainty of the risks that they generate. In the case of adults this test rests more in the evaluation of external factors associated with the criminal act than in internal factors of the individual and his capacity to understand, since it is presumed that due to his condition of an adult his capacity to understand and comprehend are full. This is not the case for adolescents for which the test of the individual and the conditions of his internal development raise different perspectives according to the degree of the evolution of his capacities. The evaluation of these three aspects will permit an approximation to the measure of culpability which results most adequate in the case of criminal responsibility of adolescents.

As can be seen, both systems are structured over the following twosome: measure of culpability adjusted to the capacities of the individual and the choosing of the punishment that according to the evaluation results most adequate. And in relation to this, factors such as age of the individual and the seriousness of the crime committed collaborate in the final decision making which at the same time is connected to the possibility which gives the chosen punishment to carry out the objective pretended with its application. As can be observed, the measure of culpability is not only an issue that separates adolescents from adults from a criminal point of view and

treating them according to this differentiation. But it also transcends to the possibility of being able to obey with the principle which considers that the punishment is in accordance with its purpose, on the contrary, both systems of responsibility would be situated in a plane of pure and simple criminal retribution which as a philosophy of thought is excluded from the spaces characteristic of the guarantees of the criminal systems, respectful of the human being and his fundamental rights.

VI.- CONCLUSION.

Canada and Venezuela, subscribed countries to the United Nations Convention on the Rights of the Child, have updated their legislations in matters related to children and adolescents and in this way have shown interest, not only in fulfilling the assumed commitment at the international level in this subject, but within their own legislations have considered qualitatively the phenomenon of youth criminality. In each country's reality some or other aspects of the phenomenon arise. As known, the criminal issue shows the social and historic characteristics of a determined space and time. However, as observed from the analysis done in this research, there is a common substrate to both countries which is clearly shown. Not only in the fact that both share an issue of universal nature or in the need to find adequate solutions and alternatives, but in the progressive evolution of the problem, an evolution which has been determined by the philosophy which has characterized the notion of the problem and the adopted measures involved.

One can see in both countries an initial notion of the problem characterized by a philosophy of a welfare nature from the State, which gave rise to invasive, personally oriented measures and to a great extent unacquainted of the human condition of the

offenders. Progressively, the idea of overcoming this notion which gave rise to extreme measures that ignored the human condition took place, as an evidence the evolution and diffusion of the human rights doctrine of the twentieth century, as well as the respect which all different political systems of the world must follow in an open search of a substantial and not simply formal legitimacy.

Considering this notion of human rights, both countries adopt a respectful system of fundamental rights in which the notion of the offender is not disentailed from his human condition. The question of considering the reality of youth delinquency, from a normative point of view, does not simply translate into a purely formal issue of obeying the international commitments acquired by both countries with the subscription to the International Convention of Children's Rights and the legislative modifications which due to this took place. It considers, on the other hand that the International Convention on Children's rights become the limit and imposed condition of the guidelines from which such legislations must be modified. These guidelines are of substantial or material nature and translate into the acknowledgment of rights and obligations of both involved parties; on one hand the State and on the other the beneficiary of the norms for which the modification is demanded. Only the participation of both parts in the process legitimates the final result enclosing it within the limits of the systems where the law provides guarantees for basic rights and principles.

Further from the idea that these legislations are enclosed within models which respect the basic rights, there is a topic within youth criminal law that always raises interest and concern from scholars and legislators; such is the topic of the age at

which an individual may be held criminally responsible when he has not yet reached full age.

If a more general search involving other world legislations were done, we would find that this issue has generated controversy and discussions of points of view.In relation to this aspect it is important to remember that, historically, criminal dynamics in countries has been susceptible to being perceived from the falsehood of the reality of the facts, pretending to be supported by sensations, beliefs and opinions which alter the truth of the phenomenon. Facing this susceptibility, if a country did not have a well defined criminal policy, it could suffer the consequences of confronting serious criminal problems from the falsehood of the reality. In youth criminal matters this transcends in the fact that to ease sensations in the population or to pretend that something is being done in a specific problem, governments of these countries may legislate or modify their legislations from non-scientific perspectives of the topic, searching for, and in the worst cases finding, prompt and populist reactions. This has occurred in some occasions with respect to the topic of age limit to criminally punish individuals who have not reached the age of eighteen.

They have tried to convince on the benefits which represent lowering more and more this age limit, when actually behind choosing one age or the other as suitable to criminally punish under 18 years of age, there is only a simple criterion of arbitrariness. Those who have studied criminal liability and culpability as elements which make up the crime know that in both elements there is a space of objective indetermination which is and has been impossible to define, since it does not correspond to the nature of that which can be determined from objective criteria. This makes it difficult- not to say impossible- to determine that a 14 year old person may

have the same level of maturity compared to a 15 or 16 year old, or for that some special reason the 14 year old shows or owns much more stronger criteria which give him a more adequate handling of his personality. Reason why, within criminal theory, this aspect is considered from very general criteria from which one can reach consolidations and specificities for each particular case, without violating the basic principles.

In this regard, we have to consider that in the bottom of this issue there are factors for which total objectivity may not be reached, and therefore must be worked with factors which have some objective reference in order to eliminate as much as possible the subjectivity of whom is evaluating the situation. This lets us conclude that it is a strict issue of criminal policy. The fact that a country establishes an age limit for the application of these punishments and another country establishes a different limit, is far from signifying that the human nature of children and youth is different in both countries, is far from indicating that in a country the level of maturity of youth and children populations is different from another country. Instead it depends on how the problem is dealt with and the legal and social measures adopted in one or the other country in relation to this matter, at the same time this encloses a direct relationship with the rights and wrongs confronted with in the different postures assumed in the treatment of the topic. For this reason the subscription to the International Convention of Children's Rights constitutes a very important step in the consideration of this issue worldwide since it is taken not only from a respectful notion of the human beings rights even under a condition of a legal offender, but it also cooperates with the fact of generating a universal conscience of the issue oriented in an adequate direction, politically and socially speaking.

One must not forget that criminal policies are part of the social policies of a country, and trying to take on a social problem from a criminal perspective or adopting more severe or restrictive measures of the rights each time, surely will give unreliable results. In my criteria it is a mistake to undertake or resolve the problem of youth criminality lowering each time the age limit at which an underage must respond to criminal law and to make of it a positive experience. On the contrary, this constitutes a manner in which to ignore the true essence of the problem assuming a measure which easily attracts public attention and in this way show there is interest in the problem and even more that something definite is being done to handle it.

Surely at present, the large majority of worldwide legislations have subscribed to the International Convention of Children's Rights, and this has brought, as a consequence, the modifications of their legislations in this area. However, one must not forget that it is possible to talk about respect to the fundamental rights of children and adolescents and the acknowledgment of rights within the adult criminal system, and the respect of universally recognized guarantees, because they are participating in the adult's model making them criminally responsible for their acts. In other words, we would not have to respect the especially recognized rights of law offenders if we were not to consider them delinquents, which means that the true transcending measure in this matter is that it has been decided to lower every time the age for criminal liability and to that extent as long as the age limit keeps decreasing, one must try to preserve with greater care the respect for the rights of the offenders. In other words, rights and guarantees must have been respected as a function of the adopted measure if youth were to be criminally responsible. This is the measure which truly has importance and that maybe always will be subjected to revision, asides it were to generate more or less debate.

It is not a matter of failing to recognize in adolescents their evolutive nature and consequently their capacity to distinguish between right and wrong, their capacity to know the transcendence of the harm caused to others due to their deliberate actions, but that maybe the measure to make them responsible in criminal matters each time at an earlier age does not constitute the more adequate measure even though it is the one with more followers. On the other hand, when finding a "justification" to establish a further reduction in the age limit for criminal liability, it may serve as the basis or to justify a reduction to an endless unknown limit, which may represent a risky measure of auto destructive nature of the essence of societies themselves which ingenuously pleaded for it.

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