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**AT THE FRONTIERS OF JUSTICE,
ON THE EDGES OF SOCIETY
A social actors and researchers group analysis**

Federal Science Policy

SUMMARY OF THE FINAL REPORT – February 2005

This summary gives an overview of the research methods and main teachings and conclusions drawn from the inter-university project “Déplacement des frontières de la justice” (“Shifting the borders of justice”) that was conducted under the aegis of Belgium’s Federal Science Policy from 2000 to 2004. The project was based on an original method of group analysis conducted with the “actors” in eight “scenes” involving judicial and non-judicial officials and other people handling social and penal justice problems and generated eight scene-specific reports and one comprehensive final report. This summary, which had to be restricted to a review of the project’s main across-the-board teachings, gives only a partial picture of one of the specificities of the empirical research that was conducted, *i.e.*, allowing for and analysing actual situations and practices in the field and the organized comparison and contrasting of the actors’ points of view. Similarly, only some of the many references mobilized for this research are mentioned here. The reader who is keen to know more will benefit greatly from consulting the final research publications.

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I. The research's scope and implementation: an inductive study of the stakes riding on shifting the powers and borders of the justice system

1. Initial hypothesis: shifts in the borders and powers of the justice system in dealing with "deviant" and "marginalized" segments of the population

The justice system has been in the maelstrom of current events in Belgium, as elsewhere in the Western world, for a number of years. In our country, the "Dutroux case" in particular revealed not only some major (dys)functions of the criminal justice system, but also considerable uneasiness in the relations between the people and the justice system in general. The justice system is currently grappling with major changes, given the demand for growing intervention in the workings of society.

All of these aspects are connected to the issue of *shifting* and *setting the boundaries* of the judicial institution's powers. This is what we chose to investigate, since studying this issue should shed light on the conflicts and tensions that arise at the borders of institutions and material edges of the justice system's powers and the stakes riding on these jurisdictional divisions. In other words, in our research we considered the justice system to be an *area of powers* with shifting boundaries (advancing, retreating, expanding, shrinking, and so on) that appear to be indicative of today's uncertainty about and redefinitions of the legitimacy of settling social issues through the courts.

Concretely, a *certain number of questions* served as markers for our research approach, namely, What *shifts* are being made in the limits and kinds of action taken by the justice system to manage a certain number of social problems? What *dominant trends* but also *reactive trends* are highlighted by these changes, and what *tensions* exist between these trends? How do these shifts *change the balances between the various fields of social intervention*? And, finally, taking a more comprehensive perspective, how and to what extent do these shifts take part in *transforming the definition of contemporary normativity* in a world that is marked by an ideal of risk prevention and responsibility, by increased reliance on the law and the (criminal) courts as social regulators?

2. Our analysis: Eight "scenes" that are significant of shifts in the powers and borders of the justice system

Guided by a concern for diversification and comparison, we chose to carry out our field research in eight different "scenes of justice" that were selected according to criteria that were relevant to the research aims. We chose eight scenes as follows:

- The first two scenes concern *judicial intervention in and around the school* and *judicial intervention to deal with minors in jeopardy*. These two scenes are important because they show, in a hypothetical way, the opposite currents of "dejudicialising" and "judicialising" the specific problems of dealing with juveniles.

- Scenes three and four concern *social work in dispensing justice, i.e., help in making judicial decisions and following up judicial decisions' implementation*. The role played by social work in the justice system has changed through its recent reconfiguration in community legal centres (*Maisons de justice*) and the prisons' mental health and social welfare services.
- The next two scenes are *the transformation of the country's narcotics prosecution policy*, notably through the definition of the "problematic user", and *changes in the handling of sex offenders*. They are both embodiments of a process whereby the health sector becomes an auxiliary of the justice system and reflect, hypothetically, two contrary trends, namely, the relative decriminalization and criminalization, respectively, of offences.
- Finally, the last two scenes are devoted to *the justice system's handling of over-indebtedness and the labour court's action in managing unemployment- and welfare-related litigation*. These are two "non-criminal" scenes that also concern socially vulnerable populations.

3. A specific methodology: Analysis via groups of social actors and researchers followed by horizontal integration of the theories

3.1. Group analysis: A resolutely inductive and participatory experimental approach (Phase 1 of the research)

We opted centrally for an original methodology, that of sociological intervention conducted with the professionals working in each of the scenes considered by implementing a group analysis method. The idea behind bringing together the judicial and non-judicial professionals who are directly involved in managing each scene considered was to bring to the fore and formulate the changes, tensions, convergences, and divergences in the relations amongst the various fields and professional cultures as they interacted as problems for investigation. We thus conducted this exploration of the shifts in the borders and powers of the justice system using a resolutely inductive, interactive, and iterative approach as close as possible to the experience of the people working within it.

1) A "bottom-up" approach

Grasping the shifts in the justice system's powers calls first of all for consideration of the actual experience of the professionals in the field (agents of the justice system) but also necessarily professionals from neighbouring fields that are in direct touch with the justice system. Scrutiny of the formal transformations in the powers' boundaries (legislative changes, institutional revamping, and organizational changes) is not enough. This is not a *top-down* approach consisting of starting with general hypotheses and examining *next* to what extent the hypotheses are borne out in the field, but a *bottom-up* approach that tries to *account for* the diversity, complexity, and dynamics of experience on the ground.

At the starting point of the group analysis that was conducted for each of the scenes that we chose, each participant proposed a *detailed account of a real-life professional experience* that seemed to her/him to reveal the stakes riding on and transformations taking place in her/his

(inter-)field of activity. Whether this was, for example, the tale of the institutional wanderings of a teenage girl whose management mobilized simultaneously and successively a host of judicial and extra-judicial agents (youth assistance scene) or that of the dilemma of a therapist torn between upholding the rule of practitioner/patient confidentiality and reporting the possibility of a risk for a third party (management of sex offenders scene), each of the 100 or so experiences that were proposed in this way for collective analysis was a real problematic situation that rooted the participants' remarks in actual practice on the ground. *A subgroup of narrations selected by the group* were then analysed with the participants to see how the actors involved in the scene interacted and if they noticed changes in their ways of working. The collective construction of the corpus for analysis that was collected in the form of *converging and diverging interpretations* then gave rise to sets of problems that were fleshed out and backed up by the earlier work's findings. So, the problems were gradually analysed inductively, starting with each real-life situation first, and then going on to each of the scenes considered.

2) *A research protocol that involves the subjects under study*

The usual research methods create a divide between the subjects of the research (the "players", "actors", or "agents") and those who study them (the researchers). The former are relegated to the role of information sources (usually about themselves) that the latter analyse. Yet, the knowledge of those who actually work in the field is far from solely practical or technical. It is increasingly reflexive, constructed, and critical. So, rather than trying to neutralize such competence and scrutinize the actors' remarks for impossible "raw data", the analytical method using mixed groups of actors and researchers aims to include this competence in the scientific process that the researchers have launched. The actors' involvement in the analysis and their interactions with each other and with the researchers is constant, from start to finish of the work.

This involvement and this direct confrontation of the actors in the analysis itself is not just of scientific value. More and more actors are in favour of such an approach for practical reasons. Given the difficulties that they have communicating with professionals from different fields in the workplace, they want to meet their professional interlocutors and discuss things with them through channels other than the established channels, which rely predominantly on the written word. One of the merits of this method is to provide an unusual opportunity to meet informally and to exchange views orally, outside the professional setting. The participants in the various steps of the research found it to be in their own interest to be heavily involved in designing the research in view of the secondary benefits that they stood to gain, *i.e.*, reflexivity, mutual (re-)cognition, and the prospects of action. Contributing selflessly to the advance of scientific knowledge was not the only motivation for participation.

3) *Table recapping the scenes, actors, and main transformations*

The following table gives an overview of the eight scenes that were analysed, the main actors that they involved, and the institutional or legal changes that influence the interactions that occur within them.

THE SCENE	THE ACTORS	THE TRANSFORMATIONS
Social work in the justice system: Assistance and follow-up of judicial decisions	Justice officers Community legal centres (maisons de justice) Magistrates Mental health sector Person under the court's/office's jurisdiction Probation and parole boards	The creation of community legal centres (maisons de justice) The first compulsory, then optional social investigation; the succinct information report in view of alternative sentencing 1998 Parole Act Multiplication of compulsory psychiatric/psychological monitoring schemes
Testing the (de)judicialization of youth assistance	Youth Aid Office (SAJ) Youth Protection Office (SPJ) Juvenile court Person under the court's/office's jurisdiction	1991 decree guided by a will to dejudicialize intervention
Judicial intervention in and around schools	"Traditional" academic players School mediators Youth Assistance officers Police and courts Pupils, the young person and her/his family	Measures to combat dropping out of school and truancy Greater permeability to social problems
Transformations in handling sex offenders	Magistrates Therapists Justice officers Person under the court's/office's jurisdiction	1998 co-operation agreement between the federal government, Regions, and Communities organising the terms of the partnership between the Justice Ministry and health sector regarding guidance for and treatment of sex offenders
Transformations in narcotics prosecution policies	Judges from prosecutor's office Justice officers Person under the court's/office's jurisdiction and her/his family Mental health and welfare services	Directives of 1993 and 1998
The Labour Court as an appeals court for unemployment and welfare litigation	Labour Court Job placement and welfare administrations (ORBEM and CPAS) Trade unions Collectives Person under the court's/office's jurisdiction	Transformations of policies to award benefits and punish abuses Reinforcement of beneficiaries' entitlements and administrations' obligations
Justice and over-indebtedness	Debt mediation offices Judge in charge of attachment/garnishment Creditors Debtor	Regulation on out-of-court debt mediation and 1998 act on collective debt settlement

3.2. Comparison of the scenes of critical confrontation and integration of theory (2nd phase)

The inductive work that we did on the scenes in the course of the first two years of this study continued in the form of comparisons and transverse analyses of the eight different scenes over the next two years of research. The idea was not to perform eight specific studies, but to envision a single, integrated research project from the eight specific strands¹. This second phase was conducted in several steps, all of which privileged an interactive, inductive approach in order to obtain general findings from the analyses.

1) A mid-term report (Step 2)

The teachings from the eight specific scene reports were first compared and incorporated into a general report. This was the *first transverse mid-term report on the research*. This transverse mid-term report formulated the first findings and put forward hypotheses to test, compare and confront, and validate or invalidate. This transverse mid-term report was a platform halfway up the research process scaffolding.

2) Reactions of the Dutch-speaking experts to the eight scene reports and round table of judges on the mid-term report (Step 3)

To validate or invalidate, or in any event refine, the scope of the first findings drawn from the group analyses of the eight scenes mentioned above, we subjected the material that had been gathered and compiled in the course of the preceding steps to scrutiny from two angles, to wit:

a) *A critical reading of the eight scene reports was done by eight Dutch-speaking experts (one person per scene) who had been chosen on the basis of their knowledge of the field. As the scenes brought together for the most part actors from the French-speaking part of the country, it was interesting to submit the reports to experts from Dutch-speaking circles, given that justice remains a federal power in Belgium. Each expert handed in a written report that was in turn presented and discussed at a meeting of the project's scientific support committee.*

b) *A summary of the mid-term research report was submitted to a panel of Dutch- and French-speaking magistrates for discussion. This panel of roughly a dozen magistrates (deputy prosecutors, Royal Prosecutors, and trial judges) from the various jurisdictions concerned (labour court, judge in charge of attachments/garnishment, court of first instance, member of the prosecutor's office, etc.) met for a whole day to discuss the document and what it encompassed.*

3°) Integration of the theories (Step 3)

¹ The eight scene reports are nevertheless available on the following site: <http://www.fusl.ac.be/projects/frontieresjustice/>; one of them was the subject of a publication (see FRANSSEN A. with contributions from CARTUYVELS Y. and CONINCK F., 2003, *Dix ans de décret de l'aide à la jeunesse : des principes aux pratiques. L'aide à la jeunesse à l'épreuve de la (dé)judiciarisation*, Liège, Éditions Jeunesse et droit, CAAJ de Namur, Facultés universitaires Saint-Louis).

The inductive work was backed up by a major effort to find, discuss, and include in the research theoretical references linked to the main themes that came out of the empirical work. Indeed, as the integration of the eight themes' horizontal analyses progressed, farther-reaching general hypotheses gradually emerged as well. These hypotheses shaped the analyses' axes and lines of the force. Far from being prior assumptions that set the work on a track from which it could no longer stray, they (re-)emerged according to their empirical relevancy, being put to the test at the same time.

Three axes had come prominently to the fore in the crux of the empirical exploration, namely, (1) networking, (2) risk management and taking responsibility, and (3) juridification and judicialization. These axes were reworked with the help of the existing scientific literature.

II. The research findings : networking, risk management, juridification of social ties and judicialization of conflicts

1. Intervening as a network

1.1. The network: “a bag of metaphors”

The concept of a *network* is one of the first grids used to formulate the research problem of the current forms of legal/social/judicial intervention in the sphere of justice in the eight scenes that we studied. There are two reasons for this choice, as follows:

- On the descriptive level, all of the judicial scenes concerned involve several judicial and parajudicial actors, even people who sometimes have no direct ties with the judicial system. These actors regularly find themselves working together in configurations that regularly rely on a “network of actors”. One of the nodes revealed by this research is the interlacing of agents from different spheres at the heart of a type of intervention that is more circular and recursive than vertical and linear, more fragmented and intertwined than sectoral and compartmentalized. This phenomenon cuts across all categories and reflects a tightening of the judicial and parajudicial net around the population segments said to be weakened, in precarious situations, deviant, or at risk. This multiplication of agents from different fields also reflects the emergence and institutionalization of (new) agents who are often tasked with bridging the gaps between the various classical agents or fields of intervention.
- On the discursive level, the notions of “network” and concerted intervention (or a web of intervention) were mobilized by a considerable number of the agents themselves to account for the new configurations in which their work is currently carried out. The notion of a network – a veritable “bag of metaphors”[®], is the discursive category used most often here in the field to decipher the complex web of interactions between

[®] MUSSO P., *Télécommunications et philosophie des réseaux. La postérité paradoxale de Saint-Simon*, Paris, PUF, 1997, p.6, quoted by OST F. & van de KERCHOVE M. *De la pyramide au réseau ?*, Brussels, FUSL, 2002., p.23.

professionals from different spheres working upstream from, downstream from, even at the very heart of the judicial scene.

1.2. Networking “glitches”

- Far from fostering consultation and co-ordination of the agents and their work, the social regulation “chain” that the network idealizes seems to be fraught with ups and downs, glitches, and dead-ends. Despite the diversity and singularities of the situations under study, there is a common denominator in the discourse characterising each scene: The network idea above all enabled the overwhelming majority of the agents whom we met to interpret the recurrent tensions, difficulties, and impasses that they encountered in their work. How does one strike a balance amongst the criss-crossing gazes, different – even contradictory – rationales for intervention, and often different priorities at the heart of what appear to be multiple, transverse, splintered maelstrom of movements? As the agents’ remarks revealed, the « glitches” in the social regulation chain that was set up through the network was the main issue at stake (in terms of *juxtaposition* and *superimposition*, *isolation* and *compartmentalization* of the agents working within the intervention web, *confusion as to the tasks of the intervention and changes in its scope*).

1.3. Harping about (poor) communication

A major symptom of these difficulties is without a doubt the recurrence of and importance taken on by the matter of information and its circulation. The “communication ritornello” (or harping about communication) fuelled widely repetitive complaints in all the scenes without exception concerning the difficulty of circulating information amongst the agents: Information is filtered, selected, and lost as it travels from person to person and system to system. Four major problems were mentioned in this regard, to wit : *problems of translation* between workers from different professional field; *information transmission problems*, especially from extra-judicial agents to the judicial institution; *professional ethics problems connected to professional confidentiality* and problems related to the power that is wielded, more generally, by those who *hold and retain information* when one is working within a network. These problems were cited as obstacles to ideal communication by some sources and professional ethics or ideological stakes by other sources. From this it appears that the glitches in working in a network and communication problems cannot be interpreted as simple breaches, gaps, or dysfunctions with regard to an idea of absolute transparency and total communication. In an intervention context marked by a certain flattening of relations of authority, possessing and withholding information are sources of power. Such “flaws” in communication can than have certain virtues in the agents’ eyes. For example, compartmentalization is a way to safeguard professional confidentiality, to work according to one’s own methods, or to protect one’s own priorities from the threats carried by the prospect of overly general joint intervention.

1.4. The network and the pyramid

Two central observations drawn from the empirical research effectively alter the overly naive image of egalitarian collaboration in networks and, in so doing, the degree of concordance between the normative ideal of working in a network and what careful scrutiny of reality reveals. The first observation concerns the recurrence of statements underlining the many difficulties of communication and collaboration, as well as the fragmentation of intervention, that we collected. Analysis shows that this phenomenon can be understood only if one takes account of the real power balances that exist amongst professionals who are involved in the joint handling of various problems. The second observation concerns the fact that encouraging and multiplying the number of “flat” collaborative undertakings do not eliminate the places for or existence of vertical power balances from the entire process. For the judges concerned, for example, the network refers not so much to a new way of intervention into which they have suddenly been dropped as to the possibility to mobilize a specific set of extra-judicial resources to carry out their tasks. Given the distinctive power and responsibility that they have, judges occupy and demand a position of oversight over the entire set of actors involved in an intervention network that is mentioned especially by the parajudicial and non-judicial actors. While the judges recognise the principle of collaboration and reality of opening up their action somewhat to others, they see working in a network as remaining highly conditioned by an unavoidable central fact, namely, the central role of the judicial apparatus and the powers vested in its agents to impose its own intervention, collaboration, and decision-making options on the other parties. In the field of justice, the pyramid continues to stand behind the network pattern.

2. *Towards a risk management paradigm?*

2.1. The pervasiveness of the imagined

The categories of *risk management* and *risk reduction*, which are greatly intertwined with the difficulties that attend the emergence of working in a network, were dwelt upon at length by the subjects whom we met. The pervasiveness of what one imagines concerning *risks*, their *management*, and their *control* could be seen in the discursive categories through which the actors recreated their practices in all eight scenes under study.

Deviations from procedural, identity, and behavioural norms are effectively measured by the yardstick of this category, risk, whether the risk is run by third parties, the individuals themselves, or the community as a whole. The actions taken to deal with the various categories of people under the courts’ or offices’ jurisdictions are also justified by this notion of risk. Each time one speaks of recidivism, risks for others, a state of danger, etc., the principle of risk prevention or reduction – subject to specific criteria – lies at the bottom of things and is the target of (extra-)judicial intervention. Following the example of conducting an intervention within a network, risk management appears first of all to be a *practical* category that structures the discourse of a great many actors symbolically. It works like a diffuse ideology into which they are sucked up, often “against their wills”.

This pervasiveness or predominance of risk seems all the stronger in that it is tied to the *reference to working in a network*. The hypothesis here is that the logic behind working in a network proves to function particularly well in a risk management or reduction context in which the risks that society runs are ascribed to individuals who are felt to be or labelled *deviant* or *lacking* with regard to procedural, behavioural, or identity norms. A series of elements puts some flesh on the bones of this hypothesis, which combines the rise of the risk management paradigm with that of the network. One such element is the offloading of conflicts and problematic situations that the network rationale promotes, the “passing the buck” down the line that their management organizes, and the correlated tightening of surveillance and control measures that numerous agents from different fields of activity bring to bear on such individuals. These processes, which we spotted in the analysis, lead us to believe that henceforward a whole group of *people to be tried*, *patients*, or *clients* will circulate ceaseless from one management option to the next, along pathways managed in the corridors of an interconnected network of services and institutions on the fringes of welfare services. This risk reduction and management logic would thus appear to be aimed primarily at identifying, managing, and controlling these streams of socially undesirable individuals or population segments and in so doing will keep them confined in the corridors of deviance, on the edges of society.

Can we say, for all that, that through the hodgepodge of laws, measures, discursive constructions, institutional reforms, and practical innovations we are witnessing *the establishment of a comprehensive scheme for managing flawed and deviant individuals*, one that is *dominated by the risk management paradigm* and taking place in the contemporary context of a society of individuals subject to the demands of taking responsibility for one’s actions and self-control that are carried by the market’s spread? The idea is all the more tempting in that it echoes the debates and trends in vogue in science. The theme of the “risk society” that has been put forward by many authors has become “obvious” over the past fifteen years, to the point where it has been identified as a core characteristic of second modernity, in which today’s societies are allegedly resolutely engaged. More specifically, several dimensions have been advanced as characteristics of this new paradigm, to wit: 1) the implementation of *forward management of human profiles* or population programming that relies on a combinatorial of abstract standardized concepts of risky behaviour and programming tools provided by the social sector; 2) *the subordination of the points of view of people actually working on the ground to the managers and directors’ points of view*; 3) *the dissemination of actuarial models making it possible to operationalize a target in terms of risk management*³; 4) *the introduction of managerial engineering* leading to the purely technical definition and resolution of problems, with the risk that the criteria of efficiency that are inspired by the “total quality” paradigm (“zero tolerance”) will override the criteria of justice. Ultimately, the dominance of a purely technical managerial way of thinking would

³MARY Ph. “Pénalité et gestion des risques : vers une justice “actuarielle” en Europe ?”, *Déviante et société*, vol. 25, n°1, 2001, pp.33-51.

elude the questions of the sense, purpose, and even relevancy of the specific intervention⁴; 5) *the spread of new ID, risk classification, surveillance, and control technologies*. Seen from this standpoint, the *correctional continuum* that is specific to disciplinary societies ((Foucault) would gradually be replaced by a *control continuum* culminating in a managerial ideal of risky individual traceability⁵.

2.2. From paradigm to patchwork

While the trends described or decried in this way lack neither supporting elements nor illustrations, the empirical findings drawn from the scenes that we studied force us to blur some of the lines in the picture. The notions of risk management and reduction basically elicit the same reservations as the notion of network. In the field, the logics of the different types of work overlies and intertwine with each other much more than simply replacing each other:

1) The transverse reading of our empirical data leads us first to refine the concept: When the actors speak of the need to “manage risks”, for them this means above all being inventive and tinkering on a daily basis to dispel, even ever so slightly, the many uncertainties with which they must grapple in their daily work. Consequently, if a “comprehensive risk or ‘risk population’ management scheme” is instituted, the play of management practices and ways of handling social problems upsets the image of a well greased, efficient machine, of a rationally organized scheme that would have the people actually working in the field apply solutions worked out in advance by policy-makers with nary a quiver.

2) The word “risk” as used by the actors we met had a host of different meanings: The risks to manage and measure, to prevent and to reduce differ greatly with the area of intervention, behaviours involved, and actors’ roles and responsibilities. In the analysis, for example, we cannot consider the risks run by the school actors as a group in their daily confrontations with reputedly difficult pupils to be the same as the risks to which the family and friends of a violent alcoholic or suspected or proven sex offender are exposed. The comparison is even more truncated if we place on the same level of analysis the risk of repeat offences as associated with punishable behaviour under the criminal code, the risks run by credit institutions if their customers are deep in debt, and the risks that are linked to the ups and downs of the job market such as have been collectivized in the unemployment system. Yet this notion of risk was used without distinction by most of the actors we studied in the various fields concerned by judicial intervention. The confusion is even heightened by the fact that when they use this generic term, the actors refer sometimes to *risks run by third parties*, paying particular attention, through what they do not say, to the subject of the *victim*, and at other times to the *risks that they themselves run*, as professionals, *e.g.*, the personal liability that they bear if “their” clients « commit harmful acts ».

3) Finally, the discourse and debates about risk management opened wide the subject of *responsibility*, whether that of the actors themselves or of their clients. Its recurrence in the

⁴CRAWFORD A. “ Partenariat et responsabilité à l’ère managériale ”, *Les Cahiers de la sécurité intérieure*, 33, 1998, pp.51-87.

⁵TORNY D. “ La traçabilité comme technique de gouvernement des hommes et des choses ”, *Les Cahiers de la sécurité intérieure*, 38, 4th quarter, 1999, pp.157-186.

remarks that we collected reflected two trends. On the one hand, the delimitation of each actor's *individual responsibility* in her/his own field of intervention was the subject of much uncertainty and, consequently, adjustments to its definition. Here we can speak of the *subjective broadening* of this singular responsibility, which often takes the form of an appeal for *civic responsibility* or acting like responsible citizens. On the other hand – and this was linked more specifically to the matter of risk *per se* – the denunciation of the constant shifting of responsibility to others revealed another “ritornello” of intervention in a network: that of the *new sharing of responsibility*. In the current configuration of practices, which is characterized by the actors' interdependence, risk management seems to be the subject of the shared responsibility of all of the actors involved in a partnership, whether the latter is entered into willingly or forced upon them. A new grammar of responsibility in dealing with risks is emerging, one that goes from risk forecasting to management, from risk reduction to avoidance, and that constantly shifts its anchor point, from society to the institution, from the institution to the agent, and from the agent to the client (of the courts or social services), as it is deployed and conjugated in speech. While responsibility is henceforward shared, so is uncertainty. Managing to reduce one's own uncertainty by shifting it onto others is the main stake riding on the balances of power between professionals. That, very precisely, is where we find the best key to understanding a set of observations, starting with the so-called communication problems or barriers. Our analysis revealed a variety of techniques for reducing uncertainty: stressing shared responsibility in risk management; transferring the problem to other professionals (“passing the hot potato”), formalizing exchanges in an extremely legalistic procedural way in order to cast guarantees in concrete, adopting various measures of caution such as placement and expertises, and, *in fine*, shifting responsibility to the client her/himself, or at least adding one's contribution to this collective and ideological transfer process. In other words, for each agent, risk management tends to blend with the management of her/his own risks.

2.3. Between risk management and the sway of the intimate

Twenty-five years ago the French sociologist Robert Castel was already emphasizing the hold that managerial and technocratic thinking had on society. As he saw it, this movement subordinated the “technician” (the field agents) to the administrative authorities and threatened the “intersubjective” therapeutic or assistance relationship by evacuating the actual subject behind the sum of risk factors that s/he might represent⁶. Today, while management schemes are well presented in terms of flows and risk factors, they do not however seem to result for all that in removing the relational nature and aim of overall subjectivation of intervention from the judicial field. The intervention remains at the heart of the work being done from the overall standpoint of continuous, multidimensional, individual management. In addition, even when it brandishes specific objectives of getting “stamps of approval”, psycho-socio-judicial intervention generally is not limited to a normalizing or behaviourist perspective of risk reduction. While the ideology of the people carrying out this work makes them prefer more holistic aims of “rehabilitating” or “responsibilizing” the person, even such

⁶ CASTEL R., *La gestion des risques*, Paris, Minuit, 1981.

a perspective is at odds with the more instrumental demands of management and control or selfcontrol. The post-disciplinary paradigm of risk management thus enters into a disciplinary tension with that of a “sway of the intimate” for the good of the other party. Whereas the risk management paradigm does not require that one should “get to the heart of the matter”, but contents itself with reducing the latter to one or the other predictive indicator, the professionals working in the field uphold the ideal of total management of the subject, with a will to have a hold on her/his deepest resources and to get the clinical truth, judicial truth, and truth about the subject her/himself to match. In addition, the thesis of the quasi-total sway of a reticular control scheme comes up against the “thickness of the social sphere” and “subject’s tricks”, regardless of the banner under which it parades: the risk management paradigm, the disciplinary paradigm of the sway of the intimate, or under the strengthened effect of their combination. In the field, deploying measures in a network does not have the efficacy and managerial efficiency that managerial forecasts assign to them. Nor does it have the total hold over things and instrumental efficacy that its critics level. There is often a wide gap between the map of measures as drawn by the organizational charts showing panoptic control and the territory of their implementation. This gap is not due only to deficiencies in managerial reasoning, the “lack of professionalism” of those doing the work, “scattered resources”, “communication gaps”, or the patched-together complexity of the decision-making and institutional packages by means of which they are implemented. It is linked above all to the actions of the actors who adopt schemes according to their interests and values. The schemes are thus crossed through and through by the social interplay that they claim to smooth out and fix, as reality always gets revenge on the dreams of bureaucratic planning.

3. *Juridification of social ties and judicialization of conflicts*

A third discursive register can also serve as a key for reading many of the thoughts that were proposed about the various scenes, especially as it was used a great deal: the one that evokes the *juridification* and *judicialization* of the social tie, the management or regulation by the law and courts of problematic situations and conflicts. These two strong trends refer concretely to different processes that the discourse of the actors in the various scenes enables us to distinguish, as follows:

Juridification refers to the growing use of the law by a large number of actors and citizens in daily life. The process incontestably attests to the growing hold that the imaginary world of law has over individuals’ ways of thinking and acting. Here, the emphasis is placed on the *symbolic* function that a growing number of people attribute to law in the overall regulation of life in society, on the one hand, and on the *practical* function that various social and mental health services and educational and administrative bodies and services assign to law for the daily management of numerous problematic situations, even outside all judicial intervention, on the other hand. The juridification of social ties understood in this way thus covers three movements: the use of the law as an interpretative model that dominates social interactions; the actual inflation in the number of laws, decrees, and regulations governing such matters;

and its mobilization as a body of rules in the most extensive areas of human activity. The *judicialization* of social interactions and problems, for its part, refers overall to the considerable spread of the judicial apparatus's role in handling problems that previously escaped control by the justice system as an institution. Here we find the key question of the shifts in the justice system's powers or the borders of its jurisdiction. And indeed, in a great many of the scenes that we studied, especially those that reflected the development of a socio-penal approach, emphasis was placed above all on the remarkable acceleration of this reliance on the police and the courts – the strong arms of the law – by a growing number of citizens and social actors.