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Rules, skills and autonomy: Pathological concepts of youth offending in Portuguese juvenile justice and custody

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ABSTRACT

Based on research in a Youth Detention Centre, this article discusses the concept of autonomy within the treatment model of Portuguese juvenile justice. On the one hand, “dysfunctional” forms of autonomy are held responsible for a youth’s offending tendencies, while, on the other hand, acquiring “proper” autonomy constitutes one of the principal objectives of a juvenile’s confinement. Both, supposedly different, forms of autonomy are tied, respectively, to the absence or presence of discipline, rules and certain values in a youth’s upbringing and socialization process. While this concept of autonomy could be linked to a number of scholarly theories on modern rationalities of crime governance, the article emphasizes the importance of paying attention to the “local criminologies” of the Portuguese law, judiciary and custody institutions, pointing to the persistence of a pathological model of youth offending within otherwise changing rationales.

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When Portugal’s new law on youth offending (LTE, literally Law for Tutelage and Education) came into effect in January 2001, the day-to-day practice of the institutions entrusted with young offenders, as well as children and adolescents considered at risk by the Family Court, changed distinctly. Juvenile offenders aged 12 to 15 (at the time of the crime) came to receive different treatment from children and adolescents at risk, and were placed in what were named “Educational Centres”.¹ These centres (administratively created by law, but physically identical to the former “Institutions for Re-education” or “Centres for Observation and Social Action”) implemented a new governmental strategy of dealing with youth offending, banking on a policy of greater containment and managerialism (see [Neves, 2012](#)).

The changes in Portuguese juvenile justice policy were mainly related to the conviction that the former, “protectionist” model was not able to deal adequately with the challenges the country was facing in the course of its return to democracy in 1976 and accession to the European Community in 1986. While there are no statistics available that would sustain such claims, a generalized perception that the “the problem of juvenile offending acquired [...] alarming dimensions” compelled the legislature to “attack, in good time, the development of criminal careers” (“explanation of motives” of the draft LTE bill, [PL-266](#): paras 3; 9; 16). Although the LTE provides for different regimes of custody (“open”, “semi-open”, “closed”), all

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¹ All terms and quotes originally in Portuguese have been translated by the author. In the case of interviews, the translation sought to keep as close to the Portuguese original as possible, even where this resulted in rather awkward English versions.

Educational Centres share a prison-style architecture (exterior walls, cell-like accommodation, security guards) and make use of a number of disciplinary measures which resemble those of adult penal institutions, including solitary confinement. I will thus refer to them henceforth as Youth Detention Centres (YDCs).²

In what follows, I will anatomize the notion of “autonomy” as one of the key concepts of Portugal’s juvenile justice policy and practice. I understand autonomy as a person’s ability to self-govern his/her life and to make “decisions without being controlled by anyone else” (*Collins English Dictionary*), as a person’s “self-directing freedom” and “moral independence” (*Merriam-Webster Dictionary*), or the “ability to make [one’s own] decisions about what to do rather than being influenced by someone else or told what to do” (*Cambridge Dictionary*). Applied to the realm of juvenile offending, this means that a youth’s choice regarding his/her offending behaviour can be considered “autonomous” only if the decision to refrain from committing crimes is not simply based on temporary external constraints or relations of domination (a YDC’s disciplinary regime, for instance), but on an act of free will, following conscious reasoning or, at least, a personal “logic of practice” (*Bourdieu, 1998: 82*). However, as I will demonstrate, the way “autonomy” is conceived in Portuguese juvenile justice and custody, is highly ambivalent. For one thing, a youth’s “excessive” autonomy is held to account for the offences committed before their being taken into custody in a YDC. For another, in the course of his/her term, an offender is considered to demonstrate “functional” autonomy—and, as a consequence thereof, gain the chance to be released early—if and to the extent that s/he “voluntarily” submits to a YDC’s mode of operation. Finally, once released, a youth’s eventual recidivism is once more understood in terms of supposedly “harmful” forms of autonomy still persistent in the former inmate’s lifestyle.

While occasionally referring to the discourses of the LTE and other laws, most of my observations go back to a long-term study carried out in a YDC in the city of Lisbon, which I will call “Belleterre”.³ The ethnographic evidence collected includes, apart from in-depth interviews with the centre’s inmates and staff, institutional documents (such as the centre’s house rules) and the inmates’ extensive case files. These comprised inmates’ complete case histories, made up of innumerable social reports, sentences, Opinions of Courts, and internal evaluation and assessment files from all the YDCs offenders had passed through in the course of their “career”. The discussion in this article is thus based not only on evidence from Belleterre, but also on the practice of other Portuguese YDCs, where some of the inmates served part of their sentence before being admitted to Belleterre.

1. Family, rules and autonomy: a pathological model of youth offending

A judge’s decision to sentence a youth offender to confinement in a YDC is mandatorily based, depending on the proposed regime of custody, on a “social report with psychological assessment” or the “examination of the [offender’s] personality” (LTE: Art. 69; 71). These reports—which are either elaborated by a centre’s Senior Experts or by the staff of the National Reintegration and Prison Services—are treated as legal evidence and are extensively cited in the courts’ Opinions. They include an ample section of psychological assessments of the offender, who is subjected to a variety of psychological personality tests.

While one could read these tests as paraphrasing a penology of “actuarial justice” or criminologies of risk-based reasoning (*Muncie, 2006: 776; Farrington, 2000; Garland, 1997: 185*), in Portuguese judicial praxis judges’ decisions to sentence a youth offender to confinement in a YDC are generally scarcely influenced by the result of psychological tests, but rather depend on the type of the crime committed, the offender’s “performance” in court (cf. *Zoettl, 2016*) and, pre-eminently, their family background and school attainment. However, the battery of psychological assessments a juvenile is subjected to points to one of the central concepts which governs the Portuguese “culture of punishment” (*Gray and Sale, 2006*): a model of youth offending based on the juvenile’s supposed individual pathology.

Within this model, it is possible to discern three principal forms of “malfunction” offenders are considered to be suffering from, and which are tied, within the institutional discourse of courts and experts, to offenders’ “dysfunctional” autonomy: their lack of “discipline” (in various respects), their lack of “values”, and their lack of “skills”. The criminological supposition that the majority (if not all) offenders exhibit signs of one or more of these “disturbances” is of far-reaching importance for the daily practice of courts and YDCs, and it is possible to trace the presence of all of these notions (autonomy, discipline, skills and values) from the discourse of the law and the judiciary down to that of a YDC’s administration, Senior Experts and Youth Offending Workers.

Apart from being central to the way juvenile justice experts conceptualize the causes of youth offending, the same notions are given prominence when discussing if and how it would be possible to “cure” a juvenile’s proneness to offend—and thus avoid recidivism. Inmates’ social reports often affirm, for instance, that an offender “came to enjoy a precocious autonomy” or that s/he was “managing [her/]his daily routine with a dysfunctional autonomy”. Frequently, an offender’s “excessive” (as it is

² Youths aged 12–15 are tried, under the LTE, by family courts, while offenders aged 16 years or older are tried by criminal courts according to the penal code and, if sentenced, generally have to serve their prison terms in adult penal institutions. The Portuguese Prison Act of 1995 requires specific institutions for youths aged less than 21 years (Lei no. 115/2009: Art. 9). However, there is only one juvenile prison operating in the country, and most prisons provide no more than a separate wing for juvenile prisoners.

³ Fieldwork at Belleterre was carried out over the course of one and a half years, for three periods of five weeks each, with daily attendance and participation in the routine of the centre. Formal, semi-structured interviews were conducted with 35 inmates and 15 Youth Offending Workers.

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