

Repositório ISCTE-IUL

Deposited in *Repositório ISCTE-IUL*:

2024-03-11

Deposited version:

Accepted Version

Peer-review status of attached file:

Peer-reviewed

Citation for published item:

Zoettl, P. A. (2018). Rules, skills and autonomy: Pathological concepts of youth offending in Portuguese juvenile justice and custody. *International Journal of Law, Crime and Justice*. 52, 1-9

Further information on publisher's website:

[10.1016/j.ijlcrj.2017.08.001](https://doi.org/10.1016/j.ijlcrj.2017.08.001)

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RULES, SKILLS AND AUTONOMY: PATHOLOGICAL CONCEPTS OF YOUTH OFFENDING IN PORTUGUESE JUVENILE JUSTICE AND CUSTODY

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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.

Keywords: autonomy, criminology, Portugal, rationalities of governance, youth custody, youth offending

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” *diff from Youth Detention Centres above?*.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).

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.

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, 19, 16). While the LTE provides for different regimes of custody (“open”, “semi-open”, “closed”), all 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), as a person’s “self-directing freedom” and “moral independence” (Merriam-Webster), 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). 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 YDCs 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.

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.

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.

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. Zoetl 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 Salole 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

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.

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 sometimes called) autonomy is tied to the supposed malfunction of their family. In the following Opinion of Court (quoting an offender’s social report), for instance, lack of parental authority is cited as one of the causes for the youth’s misbehaviour:

His mother did not establish herself as a figure of authority, as she was building upon a model of education which demonstrated great lacunae in terms of imposition of rules of behaviour (deficient supervision, excessive permissiveness and inconsistency, excusatory attitude), which resulted in NN gaining a precocious autonomy and exposing himself to risk factors.

The quote—apart from exemplifying for the Portuguese case what Muncie and others have described as the increasing tendency of responsabilization and remoralization of working-class families in England and Wales (see, for instance, Muncie 2006: 780-781; Goldson and Jamieson 2002)—establishes the family environment as a major risk factor. The opinion of the judge recognizes, in the presumed failure of parental education, one of the principal causative agents for what is here termed “precocious” autonomy. “Failure” of family is conceptualized as an initial risk factor, which may entail a juvenile’s exposure to other, secondary risk factors such as, for instance, the use of drugs or the much-cited “bad company”. The “failure” of family, in turn, is linked to a seemingly inappropriate educational model which—by refraining from imposing rules upon the youth’s behaviour—failed to establish his mother as an “authority figure”. The quoted Opinion of Court thus draws up, in a couple of lines, the outlines of a comprehensive model of youth offending, including its “aetiology” and “pathogenesis”: a lack of authority (in turn caused by a lack of rules of conduct) provokes dysfunctional (premature, excessive, etc.) autonomy which, subsequently,

makes a youth more susceptible to other risk factors and, eventually, prone to commit offences.

The same idea of a causal relation between a lack of rules and “pathological” forms of autonomy is recurrent in the local criminology of youth offending experts. One of Belleterre’s inmates, for instance, according to the final social report drawn up by the centre’s Senior Experts, was said to be “living an unorganized lifestyle, with reduced demands on the level of fulfilment of rules and limits, which developed into an excessive and dysfunctional autonomy, with street life experiences and consumption of illegal substances”. While some of Belleterre’s Youth Offending Workers (YOWs) criticized what they considered an excess of rules in the centre’s daily routine, most of them agreed on the importance given to rules, both for explaining inmates’ past offences and as part of a strategy to change inmates’ future behaviour. The following quote of a YOW demonstrates how, within the staff’s personal criminology, establishing rules was considered an efficacious measure to remedy inmates’ supposed susceptibility to offending:

We are talking about adolescents that come from the street, where ... for them, rules do not exist. And our society is determined by rules. Rules and laws. So these adolescents come [here] without any culture of rules and laws, they don’t give a heck about it. And we, by [establishing] the simple rule of having to brush one’s teeth, of it being mandatory to brush one’s teeth at this or that time of the day, to go to bed at X o’clock, whatever, to have to wait till everybody is seated and preserve silence before starting to eat one’s meal ... Ok, these are things I don’t do at home, you know. [...] But they ... it’s necessary ... they have to interiorize this ... with their habits. What they did, they did because they don’t respect rules. And we here start with the most basic, the most basic rules, to give them the habit of complying.

Youth offenders, according to this YOW, “come from the street”, that is, from a milieu conceptualized as disorderly, lacking rules and antagonistic to the realm of the functional family household. By learning to follow rules, however insignificant they may appear, youth offenders learn to conform to society’s bigger rules (laws), changing their behaviour through a process of “interiorizing” and acquiring the “habit” of abiding by rules and laws. Within the centre’s routine, the prevalence of this “rules-as-treatment” discourse was such that inmates, at times, came to adopt and reproduce it, particularly in situations where they expected that an institutionalized stance might redound to their advantage. For example, during an evaluation for stage promotion (see next section), one of Belleterre’s youths affirmed that he “came to the Educational Centre to understand better the rules of society”.

Withdrawing and Restoring Autonomy

Confinement was consequently thought to make up for the lack of rules in the course of a youth's development, counteracting the "dysfunctional" and criminogenic autonomy a juvenile had supposedly acquired before being admitted to the YDC. However, as Belleterre's stage system exemplifies, the concept of autonomy within the centres' local criminology was employed in an ambivalent manner, autonomy being conceptualized as being deleterious under certain circumstances, but required under others. Inmates' custody at Belleterre was organized in a system of four stages, which constituted the cornerstone of the centre's everyday practice. The initial phase of this stage system was named "Integration" (into the centre's routines), the second "Acquisition" (of personal skills) and the third "Consolidation" (of the acquired skills). The fourth and final stage then was called the phase of "Autonomy" and, according to the centre's internal "Project of Educational Intervention", demanded that an inmate who advanced to this stage "learned to structure [his/her] daily routine in a way that demonstrates autonomy and responsibility" (p. 13). While phase I inmates—even those in the so-called "open regime"—were not granted weekend parole or "holiday" leave, those at more advanced stages, depending on their regime, were entitled to leave and regular weekend parole, which was considered to enable inmates' gradual transition towards a life in freedom.

However, the internal evaluation of weekend parole pointed to the double-edged nature of the centre's concept of autonomy: juveniles were expected to "develop a sense of autonomy and social responsibility", but could also be criticized, for instance, for "rejecting close and continuous supervision" during parole or "seeking a precocious autonomy, justifying [her/]himself with the approach of majority" (parole evaluation form; inmate's periodic report). Parole constituted one of the mainstays of Belleterre's system of privileges and penalties: weekend parole was either granted regularly (in consequence of an inmate having reached a certain stage within a certain regime), or else it could be granted by way of exception for commendable behaviour. It could also be withdrawn as a result of bad marks or disciplinary proceedings, and loss of weekend parole was experienced by inmates as a severe form of punishment. YOWs generally agreed with the centre's strategy of gradually "bestowing" autonomy to foster offenders' eventual reintegration into society. However, YOWs also mentioned the difficulties of carrying out this approach in practice:

[T]hey don't feel prepared [to live outside the centre]. And the truth is, they aren't. However much we work on their autonomy with them, [like] when they spend weekends at home, [where] they have other responsibilities, the centre isn't prepared to give them the autonomy that is necessary. However much we create programmes [where they learn] to keep their clothes in good condition, and they are very zealous with

the cleaning and whatever, it all falls into their hands. They sit down at the table and have their breakfast prepared, it's all ready. They don't see the doctor on their own. Our need to maintain control—which is our responsibility, we cannot leave a boy on his own—it also prevents them from being autonomous. It's absurd, but it's our reality.

This institutional dilemma of control vs. autonomization in youth custody has been observed by a number of authors. Cox, for instance, describes how the treatment programme in a secure residential facility in the United States provided inmates “with a form of self-control while also limiting their agency” (2011: 597). As with Belleterre, inmates were “said to enter the facility unaccustomed to following rules, unused to ‘structure’ in their daily lives and with little self-control” (2011: 596). By “doing the programme”, that is, by complying thoroughly with the facility's rules, inmates sought to relieve the pains of confinement but occasionally came to fear that they wouldn't be able to make it *without* the programme, once released. Interestingly, both inmates and staff were aware of the ambivalent nature of the programme and the precedence given to deference over responsibility-taking—“fake it till you make it” being a slogan utilized by both parties (2011: 598-605).

In Belleterre, the contradictions inherent in the local treatment philosophy and the role “autonomy” played within it became most apparent in the case of offenders with long sentences, who expressed what they themselves called their “saturation” in a variety of ways—stating, for instance, that “the centre is good up to a certain limit. From then on, it exceeds a person's limits, people start to become rebellious.” They also gave expression to their feeling that the probability of returning to a lifestyle that included offending had increased in the course of the latter part of a long sentence. A youth (sentenced for having committed a series of street muggings) I had interviewed one year and nine months after his admission—when he evaluated the time he had spent so far in the centre quite positively and expressed confidence in his future—a year later came to affirm that the past months had “only served to worsen” him and that he had already started to fall back into pre-detention habits on weekend parole.

The centre's administration, Senior Experts and YOWs agreed with the juveniles' vision of the problematic nature of long sentences. Inmates' files equally corroborated the youths' self-assessment, affirming, for instance, that an offender “was exhibiting a setback in his educational process, aggravated by a more unstable behaviour”. Gesturing with his hands, a staff member visualized offenders' careers in the course of their confinement in the fashion of a bacterial growth curve, in which an inmate's progress started to collapse at a certain point in

time. One of the YOWs, with nearly 20 years of work experience, explained the problem of “correct timing” of youth custody in the following way:

They don't get released at the right time, when they are really well, when they put faith in people, put faith in the institution, believe that they'll have a future out there. Afterwards they go down. They become negligent in here. [...] It's very difficult to achieve an adolescent hitting the maximum for a long period of time. He's up there, hitting [the maximum]. If you don't manage to deal with this, afterwards he goes down. [...] The thing is to manage keeping him up there, but it doesn't only depend on us. It depends on the way sanctions are imposed by the court. There is nothing we can do about it, we have to carry out the sentence.

If it were to happen in accordance with the YDCs' local criminology, inmates would have to be released once they “hit the maximum”—that is, once they successfully completed the final stage IV of “Autonomy”. In practice, this rarely happened and one of the inmates of Belleterre stayed in phase IV for nearly three years. The reasons given in the centres' evaluation reports for recommending to the court that a juvenile's confinement should continue—notwithstanding the supposedly “functional” autonomy the inmate had acquired—were often somewhat generic, stating, for instance, that “the youth should maintain the degree of autonomy he has demonstrated and which has allowed him to concretize his actions more independently”. On the other hand, when inmates had to be released due to the end of their term, the final report often cautioned against the risk a youth might still pose to society. Once again, a youth's supposed “dangerousness” would become tied to “harmful” forms of autonomy, affirming, for instance, that “the main risk factor, after the [inmate's] definite return to the original milieu, is associated with a certain permeability of the youth to the influence of peer groups, particularly those who maintain a lifestyle without organization and without temporal structure, accompanied by an excessive autonomy” (inmate's final report).

Control vs Autonomization in Praxis

Based on research in a young offender facility in Canada, Gray and Salole have emphasized the importance of paying attention to the local “culture” of punishment, that is, “how punishment is locally constructed, experienced and interpreted” (2006: 662). Considering the practice of the offender facility studied, Gray and Salole conclude that individual sanctions may reflect more than one political rationale at a time, and are not necessarily situated “on an ‘either or’ continuum” of, for instance, a neoconservative and neoliberal political rationale (2006: 677). Likewise, in Belleterre's daily practice and the criminologies manifest in the discourses of staff or that of documents like the cited “Project of Educational Intervention”, it

is possible to identify a variety of rationales which are employed in a complementary and, at times, contradictory manner. The centre's elaborate token system in conjunction with an extensive system of penalties, for instance, clearly belonged to a punitive rationality which, at the same time, complemented and contradicted the pivotal concept of the "autonomous", self-conscious and self-responsible inmate. As Franzén and Holmqvist have noted (based on their observations in a Swedish youth detention home), token systems in general "may be understood as embodying modes of both disciplinary control and of the new 'advanced' liberal rationalities" (2014: 544).

The Portuguese law on youth offending (LTE), the praxis of juvenile courts and that of YDCs reflect the prominence of certain concepts of autonomy within the varying and overlapping criminologies that define each field's respective understanding of youth offending. However, as Garland has remarked, the kind of autonomy which is sanctioned by custodial institutions is normally "that of the self-confining, prudent individual whose behaviour is aligned with the goals of the prison authorities" (1997: 192). In the Portuguese system of custody, juvenile offenders' autonomy is likewise promoted only to the extent that it is exercised *within* the system of rules fixed by the YDCs and as long as it conforms to behaviours that are not only legal but also deemed "socially acceptable". Autonomous behaviour which is not in compliance with either system of rules is considered pathogenic, thus basically reducing the meaning of "autonomy" to one of rule deference.

The dilemma of control vs freedom, within which youths are meant to enact prescribed forms of behaviour "from their own free will" (Franzén and Holmqvist 2014: 548), frequently surfaced in the daily practice of Belleterre and other Portuguese YDCs. Compliance with a centre's rules was considered crucial not only for operational reasons, but also with regard to the supposedly criminogenic lack of inmates' "discipline". While some of Belleterre's YOWs made an effort to explain the *raison d'être* of certain rules, all rules obviously had to be respected by the inmates whether they agreed with them or not. Inmates frequently complained about certain rules which, according to one of them, "nobody can't get into his head", like, for instance, the prohibition against using the Creole jargon "ya" (yes) instead of the standard Portuguese "*sim*". While the latent excesses of the centres' token system were admitted by Belleterre's staff, it was generally emphasized that this system was indispensable to maintain order within the institutional practice. The following two quotes by an inmate and a YOW—which refer to two other YDCs—exemplify how discipline and rule compliance were intertwined with the taking away or granting of autonomy within custody, to the point of inmates' operant conditioning:

[Only] youths who were robots [received weekend parole]. They were robots. Up there [another YDC], they didn't educate us. Up there, they didn't give us education, they didn't say: Look, you have to do it this way, you have to put the book away this way, you can't put it away that way. No, they just said: Books are put away like this. Whoever doesn't put a book away will get a "2" [a negative mark]. This is not to educate. This is nothing. Youths who went home [on parole] were youths ... let's say tight-lipped, they didn't even laugh or whatever. They always stayed like that, tight-lipped. Whatever the minder [YOW] said, they always agreed with the minder. That's it.

For instance, when entering a room, wheresoever, they had to ask: "May I?", they had to await our authorization to enter the room. [...] The kids grew into that to such an extent that, when their custody sentence had ended and we took them home, when stepping from one room to the other, from the living room to the bathroom, [they kept asking]: "May I? May I?" [So we told them:] "You're already at home, your term has already ended!" But it was as system which had really to be like that, so that they would be fairly restricted and would really have to understand that rules have to be observed and that there can't be shortcomings.

The same notion of becoming a "robot" was voiced by one of the US inmates interviewed by Cox (2011). By deliberately deciding to "be a Mr Robot" and "do everything perfect", this inmate, according to Cox, revealed awareness regarding the necessity of "doing the programme" in order to get through imprisonment (2011: 603-604). However, as Cox concludes, the secure facility's mode of dealing with its residents—encouraging "self-control to authority [...] rather than a form of responsibility-taking" (2011: 605)—provided offenders with few opportunities to actually *exercise* autonomous self-control. Similarly, inmates of Belleterre noted, for example, that "We have to get through. In here, their dilemma is that the youths may never be right" (one inmate), and that it was necessary to "know how to play the game", "to fake" or "to be intelligent" (three other inmates).

The double bind of having to choose "autonomously" correct (that is, prescribed) forms of behaviour was particularly evident in one of the centre's treatment programmes, named "Self-control". As part of the programme (carried out in group sessions), inmates had to resolve so-called "moral dilemmas" during joint discussions with YOWs and fellow offenders. One of the inmates retrospectively commented on the way these "dilemmas" were approached within Belleterre's institutional setting in following way:

[T]hey always defend their own position. There's no point in arguing. They always see things through rose-coloured spectacles. We were discussing a situation where it was said: What would you do if they raped your daughter. They said, they would only call the police. But who is that guy who just calls the police when his daughter is raped? They really live in a make-believe world. [...] Even if they ram all this stuff into my head and build castles in the air, nobody will ever make me change my mind. If somebody rapes my daughter, you think I would stand still?

The youth's refusal to subscribe to the centre's notions of "correct"—that is, self-restraining and non-violent—conflict resolution demonstrates the intricacies of Belleterre's treatment philosophy and training programme. As all institutional intervention was (naturally) geared towards producing socially acceptable, rule-complying behaviour, inmates' "disorderly", "undisciplined" and "dysfunctional" behaviour, values or concepts could hardly be faced in their own terms. Within the closed, secure environment of Belleterre, the only possible reaction to an infringement of house rules was to penalize an inmate's deviant behaviour so as to avoid discrediting the disciplinary system as a whole.

The same applied to any signs of "excessive" autonomy arrogated by an inmate during weekend parole, which would usually result in an inmate being downgraded in the stage system. The inmate would thus lose a large part of the institutional autonomy s/he had previously been granted for having supposedly demonstrated—by means of continuous compliance to the centre's rules—his/her transformation into an "autonomous" citizen. And even during the, in principle, open-ended "Self-control" training sessions, YOWs at times seemed to feel obliged to defend what Neves, based on his observations in another Portuguese YDC, termed "morally and socially simplistic distinction[s]" from a standpoint of "institutional defence" (2007: 1032), which would seek "to promote the external, behavioural observance of legal interdicts" to the detriment of "internalisation of ethical principles" (2012: 112).

Inmates' reactions to the centres' demand for self-restraining autonomy hovered between open resistance and more or less concealed secondary adjustments. Where inmates opted to challenge the centres' discipline and thus to deliberately forgo the privileges granted for rule compliance, this usually happened in the initial phase of their confinement. Most inmates, however, quickly submitted to Belleterre's mode of operation, posing few problems to YOWs and advancing within the stage system within the intended timeframe. While not becoming "robots", it was generally clear that most inmates consciously played "the game" of the centre and that YOWs and the centre's administration were both well aware of this fact. As Goffman has noted, secondary adjustments "provide the inmate with important evidence that he is still his own man, with some control of his environment" (1961: 55). Correspondingly, a number of Belleterre's inmates commented that by restricting their personal autonomy within the centre (e.g. by "blindly" following its rules without opposition), they were striving to *preserve* their agency within custody and, above all, to regain "real" autonomy as soon as possible—for instance, by being granted more frequent weekend parole, being transferred to a more open regime or by being recommended for early release.

Though aware of inmates' strategies of "playing it cool", both resistance and subordination were generally explicated by Belleterre's staff in terms of the centre's treatment philosophy, corroborating Goffman's observation that from "the point of view of psychiatric doctrine [...] everything a patient is caused to do can be described as a part of his treatment or of custodial management; everything a patient does on his own can be defined as symptomatic of his disorder or of his convalescence" (1961: 206). Rule deference was construed as a sign of an inmate's "functional" autonomy—thus allowing the youth to be promoted to the final stage of "Autonomy"—and resistance to the acceptance of rules as an unmistakable sign that an inmate was not yet ready to be released. When, however, inmates who had successfully completed all of the centre's treatment stages were known to have failed to exercise their autonomy in the envisaged manner in real life after the end of their term, the failures of youth custody were mostly interpreted in terms of the youths' personal and autonomous choice:

As you know, we have a great number of programmes where we talk about a lot of things that expand their horizons. We point out different paths through life which the youths haven't thought of yet. Anyway, the choice is always that of the youth. We can give 100 programmes, but it is his choice. We've already pointed out all paths, it's him who will choose if he'll want to continue to steal or hurt somebody. We can't get there, we can't foresee it. There are adolescents who ... as we call it, they soak up the whole programme. And we say: Ok, perfect, fortunately. We hope you're going to make use of it. And they make use of it. There are others who participate in the programmes but it doesn't mean anything to them. And later they will do what they used to do before they came to the centre. But this is their option.

Autonomy, Rationalities and Criminologies

Again, the above quotation could be taken as exemplifying one of the facets of what scholars have termed, for instance, a "new penology" which would give primacy "to the efficient control of internal system processes in place of the traditional objectives of rehabilitation" (Feeley and Simon 1992: 449; 450). Garland concurs that "new modes of governing crime"—adopted after the breakdown of the "myth that the sovereign state is capable of providing security"—have made today's penal institutions shift "the responsibility for outcomes on to the 'customers' with whom they deal, so that the inmate is now said to be responsible for making use of any reformatory opportunities that the prison might offer" (Garland 1996: 450; 448, 458). Likewise, O'Malley (while partially disagreeing with Garland) recognizes the "enterprising prisoner model" as part of novel governmental strategies, attributing it to neoliberal (as opposed to neoconservative) political rationalities (1999: 189).

I want to argue, however, that the example of Portuguese juvenile justice epitomizes rather the *continuities* in the criminologies which underlie—otherwise changing—rationales of crime governance. While novel governmental rationalities or “technologies” of governance may explain, to a certain degree, many of the shifts that have occurred in the history of penal custody, one should be careful not to essentialize them to the detriment of an empirical bottom-up perspective. As Foucault has advised, the state should not be conceived as “a transcendent reality whose history could be undertaken on the basis of itself” (Foucault et al. 2007: 455). Technologies of power, Foucault reminds us, are “invented and organised from the starting points of local conditions and particular needs” (2007: 159). Along these lines, the Portuguese practice of youth custody not only demonstrates the importance of paying attention to the “micro-politics of social control” and the “local shared culture” of custody staff (Kivett and Warren 2002: 31), but also to the *persistence* of certain criminological models which often elude the seemingly “bigger” changes of governmental rationalities.

In the course of the last century, Portugal has seen three major turning points in its legislation concerning children in general and juvenile offenders in particular—all of them linked to, but also criss-crossing, the profound political and social changes the country experienced in its modern (post-monarchical) history. During the First Republic (1910–26), Portugal was one of the first European countries to adopt, in 1911, a Law of Protection of Childhood which established a differentiated judicial treatment for juvenile offenders, who previously had been tried (and eventually imprisoned) in the same way as adults. The Law of Protection of Childhood limited criminal responsibility to youths aged 16 and over, creating dedicated juvenile courts (*Tutorias da Infância*) for children and adolescents, meant to “guard, defend and protect minors in moral danger, in need of protection or delinquents” (LPI: Art. 2).

While the passing of the Law of Protection of Childhood constituted an important step towards a more subtly differentiated view on marginalized youth, it “didn’t manage to emancipate itself completely from the repressive spirit which inhabited the former institutions”—as the preamble of the 1962 law, which profoundly reformulated the “Organization of Tutelage of Minors” (DL-44.287: §1.3.I), put it. Notably, this law was passed during Salazar’s “New State” para-fascist dictatorship, which would last until 1974. It was based on a decidedly protectionist view of youth offending, affirming, for instance, that the objective of juvenile jurisdiction was “not to punish or intimidate the child, [and] not even to convey the reproaches of society regarding the minor’s conduct [...]. It is fundamentally about protecting the minor from their environment and from their bad tendencies or

inclinations” (DL-44.287: §2.13). The law’s protectionist perspective was maintained by its post-dictatorship revision of 1978 (DL-314/78), which upheld most of its basic principles (see Martins 2012: 149). Only the adoption of the LTE in 1999—passed by the then ruling socialist government—finally came to implement a managerialist strategy in Portuguese juvenile justice, which, as mentioned, would reintroduce the concept of “responsibility” of the juvenile offender and inmate.

Although these three major turning points in the history of Portuguese juvenile justice legislation have led to far-reaching changes in the country’s practice of youth custody, it is not difficult to make out striking similarities in the criminological rationales that underlie them, principally in what refers to their “pathological” view of youth offending. In consonance with the then dominant “medico-scientific theorization” of social reform movements (Tomé 2013: 22), one of the regulatory statutes of the Law of Protection of Childhood, for instance, provided that “in each *refúgio* [pre-trial YDC] will function an office of observation and of anthropological, medical and pedagogical examination” (D-10.767: Art. 102). The same statute reckoned that “the minor delinquent is the product of a vicious and perverted environment or morbid heritability, or both factors together, and therefore has to be observed, not on the grounds of his/her offences but of his/her physio-psychological and mesological conditions” (preamble). Consequently, a decree enacted shortly after the fall of the Republic to “clarify doubts” in relation to the law’s application commended delinquents to be “subjected to a simple therapeutic action, in conformity with the manifest criminal aetiology [...] in order to treat the endogenous and exogenous psycho-pathological conditions observed in the medical examination” (P-4.882: Art. a).

Similar ideas (if in more modern terms) can be traced in the Organization of Tutelage of Minors, the first great reform of Portuguese juvenile justice, which occurred roughly half a century later. It equally emphasizes “observation as a primordial condition of efficacious treatment”, which should be based on the “methodical and continuous study” of, among others, the juvenile’s “character, level of intelligence, habitual behaviour [and] degree of social adaptability”—elements considered necessary to “classify the case and establish the [...] therapy that can annul or, at least, oppose the factors of non-adaption” (DL-44.287: §1.26). Another 40 years later, the LTE returned to the idea of a juvenile’s “temporary removal from their habitual environment” as a means of making the offender “interiorize values that conform with the law” (Art. 17.1)—dovetailing, as mentioned, the notion of the “responsible” inmate within its pathological criminology. It maintained, at the same time, the preceding legal regimes’ predominantly psychological or psychiatric gaze on the offender

and, consequently, their belief in therapeutic programmes to “cure” a juvenile’s supposed propensity to delinquency.

However, as I have commented elsewhere (see Zoetl 2017), within the Portuguese field of juvenile justice, the legal framework established by the LTE constitutes only one discourse among others, competing with the discourses and practices of the judiciary and YDCs. Although the LTE introduced many important changes in the daily routine of Portugal’s YDCs, the personal criminologies of judges, YDC administrators, youth offending experts and YOWs all manifest—as does the law itself—a considerable amount of continuity which traverses the changing overarching juridico-political rationalities. Accordingly, one of the judges charged with the case of one of Belleterre’s inmates, in his Opinion of the Court, commented that the judiciary’s practice would often be “the result of prejudiced frameworks which were set up by former juridical regimes”.

Local criminologies have a considerable influence on how governmental rationalities are interpreted and become implemented in practice. And even within a single law like the LTE it is possible to identify a variety of micro-rationalities which it would be difficult to subsume, as a whole, to generalizing notions like the “New Right”, “advanced liberalism” or others. In itself, the pathological model of youth offending, as discussed here, is neither, by way of example, “neoconservative” nor “neoliberal”, and may equally serve as the basis for a genuinely protectionist approach to youth offending as drawn up by the abrogated Organization of Tutelage of Minors. While the LTE shares, to quote two examples, with Feeley’s “New Penology” the shift from a transformative rationale to a managerial perspective, it would not be correct to assert that it replaced “earlier discourses of clinical diagnosis” with the “language of probability and risk” (Feeley and Simon 1992: 450). And though encouraging the same afore-mentioned strategies of responsabilization which Garland discerned in the “New Penology” of Great Britain, the LTE’s criminology is by no means based on a rationale which would conceive of crime as a “normal, commonplace, aspect of modern society” (1996: 450).

This said, there are, nonetheless, a number of elements present in Portugal’s contemporary approach to juvenile justice which do match well with what Rose has called the “strategic coherence” of contemporary control strategies (2000: 337). Particularly the notion of “autonomy”, as conceptualized by the law and implemented in the YDCs’ stage system, fits neatly with the “ethos of individual autonomy characteristic of advanced forms of liberalism: choice, personal responsibility, control over one’s own fate, self-promotion and self-

government” (2000: 329). As Rose observes, the “beauty of empowerment” lies in its rejection of the alleged paternalism of past models of welfare society. Autonomy, Rose maintains, “is now represented in terms of personal power and the capacity to accept responsibility” (2000: 334).

A youth’s refusal or incapacity to exercise his/her autonomy in the legally and socially prescribed manner—thus either exhibiting symptoms of “dysfunctional” or else a lack of “functional” autonomy—within this context, rapidly becomes conceived as a moral failure in the exercise of juvenile citizenship or, as Rose terms it, “an infraction of freedom” (2000: 337). The difficulties of “functionally” exercising one’s autonomy within a culture of precariousness and marginalization—which constitutes the socioeconomic background of the overwhelming majority of convicted youth offenders in Portugal and elsewhere—is, however, often left out of consideration by those criminologies and rationalities which focus exclusively on an offender’s individual pathologies, while remaining blind to those of society itself.

For those who live their daily lives—often in social housing districts in the urban periphery—amidst an economy of social abandonment (Povinelli 2011), choices are rather limited and not always geared towards personal fulfilment. Youths growing up in such a context may easily decide to “opt out” of what seems to be a pre-established and unappealing way of life, resorting to forms of non-legal entrepreneurship which promise to allow them to escape, if only temporarily, the precariousness of living of their peers and families. As Merton remarked long ago, the “extreme emphasis upon the accumulation of wealth as a symbol of success in our own society” and the “effective opportunities” to achieve this very success are often incompatible (1938: 675; 679). “[A]ntisocial behaviour”, Merton goes on, “is in a sense ‘called forth’ by certain conventional values of the culture and by the class structure involving differential access to the approved opportunities for legitimate, prestige-bearing pursuit of the culture goals” (1938: 679).

Merton’s thoughts seem to resonate with the words of one of the Belleterre’s inmates, who stated that “I robbed out of necessity. [...] The necessity to have luxury goods.” It is clear that the strategy adopted by this youth to make his ends meet better (the luxury goods he referred to was a pair of sneakers) was not “functional” in the sense of being auspicious in the long run. It was, however, an autonomous decision, demonstrating the offender’s “self-directing freedom” and “moral independence” (Merriam-Webster). Inmates’ files bore ample testimony of offenders’ quality as dedicated consumers, spending, for instance, “the totality of the

money [realized by selling a stolen golden bracelet, earring and necklace] in shopping malls, where they had meals and bought clothes and shoes” (Opinion of Court). At the same time, inmates’ narratives bespeak their capacity for self-restraint and organization within the *modus vivendi* they had come to adopt at a particular moment of their juvenile biographies:

For instance, [we decided:] this night we gonna rob. In the morning, we went to Lisbon and bought [cocaine]. We went home. Some we put aside for the night, to smoke again, so that we’d get spunky. For instance, one part, one gram, we smoked right away. [...] The rest, we kept. Then, in the course of the afternoon, or just before the evening, we smoked again. And then, we went out robbing. It was always like this.

To label offenders’ autonomy as pathogenic—withdrawing it in an institutional setting of confinement and seeking to substitute it with “functional” forms of autonomy supposedly different in nature—means to misprize juveniles’ agency and their capacity to tell right from wrong. During one of the “moral dilemma” sessions intended to foster inmates’ self-control, Belleterre’s monitors had a hard time answering when one of the juveniles—incidentally one of those who interfered most with the centre’s routines, having been the object of numerous disciplinary proceedings—questioned how one could ask the people not to rob, if politicians do so regularly.

If a delinquent’s lifestyle isn’t necessarily more or less “autonomous” or enterprising than a righteous person’s one, what could be done to make juvenile offenders become interested in socially more compatible activities—apart from providing them with vocational training, so as to augment their professional opportunities? As one of Belleterre’s YOWs, with more than 20 years of working experience, put it, when “everything else already went wrong, there comes the YDC [*centro educativo*]”. The “family went wrong,” she enumerated, “the school went wrong, the social assistants’ support went wrong, the intervention of the school psychologist went wrong, a lot of things went wrong. And so we arrive at the terminus: the YDC.” Though realistic in her evaluation of the limitations of youth confinement, she was not without hope: “The hope I put in the YDCs ... [is that] they provide a space of time—which may not be one of reintegration into society, but can possibly be one of reflection.” While difficult to achieve in a setting within which the operational demand of keeping discipline leaves little room for youths to act in a self-reflective and self-responsible way, it is only by keeping institutional confinement as open (and open-minded) as possible—encouraging inmates to reflect on their own and other people’s lifeworlds, rather than reproducing preconceived moral values and behaviours—that one can expect them to “opt-in” again, once released from custody.

Acknowledgements

The research for this article was funded by a postdoctoral scholarship (SFRH/BPD/99782/2014) from the Portuguese Foundation for Science and Technology. The author would like to thank the Portuguese Directorate General of Reintegration and Prison Services (DGRSP) and the administration, staff and inmates of the YDC where the fieldwork for this study took place for their interest in and continuous support of my research. I equally wish to express my appreciation for the anonymous reviewers' helpful suggestions and critical comments on earlier drafts of this article.

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