(Re)Thinking Juvenile Justice: «In other people’s eyes, we’re always the problem!»*

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* Girl, 16 years old, 12 months in custody in the semi-open regime + six months in the open regime (Carvalho & Serrão, 2012)
Portugal

  - 52,6% are female;
  - almost two-thirds of the population live in the Atlantic coast;
  - 2 million people live in the Lisbon Metropolitan Area.

* In 2015, **8,1% of the population were immigrants**, most of them female (53,7%) (ONU, 2016):
  - the number of immigrants has increase from **435.782** (4,37%), in 1990, to **837.257**, in 2015;
  - mainly from the former Portuguese colonies: Angola (18,1%), Brasil (15,6%), Mozambique (8,1%), Cabo Verde (6,8%), and Guiné-Bissau (3,2%);
  - the “new” immigrants from Europe: France (10,5%), Ukraine (5,3%), Germany (3,1%).

* In 2015, there were **2.306.321 Portuguese emigrants** (representing 22,3% of the population in the country) (ONU, 2017).
  - 50,1% are male;
  - most living in France (31,1%), United States of America (17,1%), Switzerland (9,0%), Brazil (7,1%), and Canada (6,6%);
  - the number of Portuguese emigrants has increase from **1.936.066** (18,4%), in 2005, to **2.306.321**, in 2015.
The demographic problem

* Compared to other European countries, Portugal entered late into modernity. The establishment of democracy with the Revolution, in 1974, was the turning point. Ever since, intense and fast changes have occurred, namely in its demographic and structural composition and in population life styles, both having impacts on children’s experiences (Almeida & Vieira, 2009).

* Age structure /population pyramid (2014):
  
  0-14 years: 15.9% ; 15-24 years: 11.4%
  25-54 years: 42.2% ; 55-64 years: 11.9%
  65 years and over: 18.4%

* The Portuguese low birth weight rate is the highest in the OECD. In 2016, 87,126 children were born.

* Between 2001 and 2014, demographic scenario marked by the decrease of the 12-21 years age group (-26.7%, -5% 12-15 years) and in the total of the population (11.6% to 8.7%) (INE , 2015).
The demographic problem

População residente em Portugal em 2016: total e por grandes grupos etários > 0-14

Fontes de Dados: INE - Estimativas Anuais da População Residente
INE - Estimativas Anuais da População Residente
Fonte: PORDATA
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Maria João Leote de Carvalho, YO&JUST (FCT/SFRH/BPD/116119/2016), Portugal, 2018
The social problem

lack of positive expectations
less interest in politics

more educated and qualified
more vulnerable to the risk of poverty
more connected by the digital world
more emigrate
entering later in the labour market
better health

marry and decide to have children later
new forms of civic participation (networks)

"growing up earlier, but increasingly being emancipated later"
The social problem

“Portugal maintains one of the highest prevalence rates of mental illness in Europe, with psychiatric disorders and mental health problems being one of the main causes of disability.”  

(i) “adolescents showed signs of mental distress with an increase in psychological symptoms, an increase in self-harm, and an increase in feelings of hopelessness and despair that include less positive expectations towards the future, less intention to go to college, and less attraction to school”  

(2014 HBSC study, the first post crisis in Portugal, Matos et al., 2016)

(ii) the prevalence of adolescents taking psychoactive substances, medications and other products increases with age: 8.8% at 13 years, 15.9% at 15; 22% at 17 and 23.2% at 18 years  

(DGS, 2017)

(iii) “boys, younger adolescents and adolescents with a higher Social Economic Status (SES) more frequently report good perceptions of life satisfaction, while girls, older adolescents, and adolescents with a low SES more frequently reported psychological symptoms (feeling depressed or low, feeling irritability, bad temper, feeling nervous)”  

(2014 HBSC study, Matos et al., 2016)
The social ‘problem’

“I don’t know if you realize... When I see the news on TV and on newspapers it seems that all the youth are young offenders, all youth are less serious people...”

Boy, 17 years old, 12 months in custody in the open regime (Carvalho & Serrão, 2014)

13-15 years: 20.3% self-harm
32% smoke tabaco on a regular basis
68% drink alcohol on a regular basis
tranquilizers / anxiolytics
19% (girls) 10% (boys)

13-19 years: 19% experienced drugs

since 2012, child exposition to violence is the main reason for the referral of new cases
high prevalence of protection measures (+90%) supporting families

much more residential care (8%) instead of foster care (1%)

increasing the number of the “crossover youth”

Source: SICAD, 2017
Source: CNPDRJ, 2017

around 70,000 children with intervention of the protection system every year

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The social ‘problem’

* “Despite the lack of evidence from the official numbers, which revealed variations in juvenile delinquency until 2008 and a decrease since then, according to the European Social Survey 2008-2009, in a representative sample, 50% of the respondents in Portugal reported to be afraid of the crimes committed by young people.” (National PROMISE Report, Matos et al, 2018)

* “In the trajectories of young people with State measures, especially those under the Youth Justice Act, the conflicts they faced were closely related to structural contingencies and inequalities, such as socioeconomic, territorial or gender disadvantage, stigmatization based on behaviour or place of origin, and social and educational marginalization.” (National PROMISE Report, Matos et al, 2018)

PROMISE-Promoting Youth Involvement and Social Engagement – Opportunities and challenges for conflicted young people across Europe (funded under the European Commission’s Horizon 2020 Research and Innovation Programme, Grant Agreement no. 693221) investigates how young people’s, often negative, responses to these problems create conflict, and how, instead, their responses can provide opportunities for positive social engagement. It is running from May 2016 to April 2019, involving 12 collaborating centres in 10 different European countries. It is coordinated by a research team of the University of Manchester led by Dr. Jo Deakin (Centre for Criminology and Criminal Justice, School of Law). In Portugal PROMISE is being developed by a research team of Universidade Católica Portuguesa - Porto led by Dr. Raquel Matos.
The social problem

* In Western societies

from the "weakening“ and dilution of informal social control ...

... to the increase expectations about the justice system
(greater demand for control and regulation of children and youth)

new culture of control & the focus on security

the role of delinquency mediatization on the decision-making in security policies

‘zero tolerance’ vs priority to prevention

international principles vs national practices

tendency towards 'criminalization' in child protection / welfare systems: “crossover youth”
In context of counterrorism

the models of violence and its dissemination

youth radicalization

unaccompanied minors entering Europe

human trafficking networks

return of children from war zones and the case of the 'foreign fighters'


**victim approach vs offender approach vs hybrid approach**
**Contexts**

**social change and delinquency**

- territory’s stigmatization vs. selectivity of justice
- of social risks in public space ...
- different ways of visibility / mobility in the public space ... from the 'traditional' delinquent practices in public space ...
- from the 'physical' territories ...
- ... to the 'virtual' territories ...
- ... to practices, organization and dissemination in digital environments
- ‘closure’ of young people in their territories of residence / ...
- ... to the (new) online risks and victim-aggressor relations ...
- digital competencies and digital literacy of children/youth vs. adults
Contexts

scientific knowledge and criminal responsibility: in search for an age?

Controversy on the models of youth justice policies

"...significant dissonance between policy and the actual realities of youth's lives." Tsekeris, 2017

"It is always the same thing, people label us... Well, you know how it is! Society cannot stand to see us and then instead of helping us, no, just label and regards us in a different way!"

Boy, 15 years old, in custody: six months in custody in the closed regime + 12 months in the semi-open regime (Carvalho, 2009)
Contexts

scientific knowledge and criminal responsibility: in search for an age?

NEUROSCIENCES

i) extension of the brain development period

ii) adolescent brain is highly subject to reward and peer influence

ii) how adverse experiences in childhood affect brain development

“a sophisticated understanding of child development does not, in itself, answer any legal questions. The law must determine not only what information it relies upon, but also to what use that information should be put.” Buss, 2009

“adolescent brain science never should be the primary argument for juvenile justice reform.” Maroney, 2011

“[w]hether the revelation that the adolescent brain may be less mature than scientists had previously thought is ultimately a good thing, a bad thing, or a mixed blessing for young people remains to be seen.” 2012 “Although there are studies that have compared juvenile offenders’ brain structure or function with that of non-offenders, using neuroscience to predict individuals’ future behavior is a different (and more difficult) matter. 2013

“We have still not figured out what to do with people this age.” Steinberg, 2016

“What am I inside? What I feel is anger and hatred; otherwise, I have a good heart, and I'm a cool person both inside and out”. Boy, 16 years-old, 9 months in custody in the semi-open regime (Carvalho, 2010: 94)
In search for an age in Portugal

* autonomization process vs the legal construction of autonomy

### 12 years
- Consent for adoption (art. 1981, no. 1 a) Civil Code);
- Non-opposition to intervention of the Commission for the Protection of Children and Young People (LPCJP);
- Educational responsibility for the practice of facts qualified by criminal law as a crime (LTE).
- It is possible to travel as an "unaccompanied minor" at the parents' request;
- Can travel in the front seat of the car.

### 16 years
- Minimum age of criminal responsibility (MACR) and majority (Article 19 Penal Code, Special Criminal Regime for Young Adults - 16-21 years);
- Minimum age established for marriage through parental authorization (art. 1601 a) and 1603 Civil Code);
- Can recognize the paternity of his/her children;
- The pregnant girl does not need parental consent for abortion;
- Age limit for the granting of family allowances for those who do not study (extending up to the age of 24 if they study or have a disability);
- Access to the labor market, under certain conditions, and to administer goods acquired through labor;
- Obtaining a license to drive motorcycles up to 125cm³ (A1), with written permission of those who have the parental power;
- Can initiate a consensual sex life at the age of 14, with restrictions up to the age of 16 if the partner is adult. If the partner is adult, the sex is only considered legal from the age of 16.

### 18 years
- Civil majority (full capacity to exercise rights, art. 130º Civil Code)
- Electoral capacity (compulsory voter registration); to vote, to be elected to a deputy or to autarchic bodies;
- End of compulsory schooling
- National Defense Day
- Driving license for motorcycles, light vehicles (heavy vehicles only at 21 years of age);
- Acquisition and consumption of tobacco and alcoholic beverages (since July 2015).
In search for an age in Portugal

With the 1st Child Protection Law, of May 27, 1911, the age of the criminal majority in Portugal increased from 14 to 16 years.
Since then, there has never been a juvenile criminal law in the country. Portugal has a strict model, which does not allow for exceptions in the enforcement of criminal laws and does not foresee the prosecution of juveniles for certain offences only.

* Portugal is one of the European countries where there is no coincidence between the civil majority, fixed at the age of 18, since 1977, and the criminal majority the age of 16.

In what concerns Article 37º CRC, the Portuguese State has been regularly notified by (inter)national entities about the dangers of accommodating 16- and 17-year-old youth in cells with adults

Excerpt from 1st Child Protection Law

Para efectuar a parte do projecto meramente curativa, a que se destina aos delinquentes, foi preciso ferir a legislação penal, interdizendo-a do julgamento de menores até aos dezasseis anos — e até aos dezasseis, enquanto não for possível, economicamente, interdizê-la mesmo aos de dezoito. Os menores de dezasseis anos não devem, legitimamente, ser considerados criminosos vulgares, para quem a lei designe correctivos segundo as circunstâncias.

Producidos inconscientes do meio, da hereditariedade — aquele e esta actuando livres dos ditames disciplinadores da razão amadurecida — o seu julgamento deve ser mais ditado pelo espírito ponderado do julgador do que pela letra inflexível dos códigos. E nesses julgamentos, sobre o critério do castigo, tem de prevalecer o critério da necessidade de despertar a criança para o cumprimento do bem, lavando-lhe a alma das sujidades, dos detritos em que nasceu e se desenvolveu, e mostrando-lhe a luz clara da verdade, os ensinamentos reabilitadores da justiça.

São formas novas de direito, sem dúvida, mas formas...
The two new laws approved in 1999, separating victims from aggressors, came into force in 1st January 2001. Since then, the Portuguese justice system combines different kinds of intervention regarding children and youth offending, taking into account 3 age ranges:

- **Children below the age of 12 years**: Protective Measures
- **Youth from 12 to 16 years**: Juvenile Justice Measures
- **Youth 16 and 21 years of age**: Penal Measures (Young Adult’s Special Regime)

«'In other people’s eyes, we’re always the problem!’»

Universidade Católica do Porto, 11 de maio de 2018

Photo: The Stoneleigh Foundation

Maria João Leote de Carvalho, YO&JUST (FCT/SFRH/BPD/116119/2016), Portugal, 2018
The Portuguese justice system

Children under 12 years of age who commit an offence qualified by the penal law as crime are considered to be in danger. The Promotion and Protection Law for Children and Youth in Danger (LPCJP, Law N.º. Lei n.º 23/2017, of 23rd of May, which constitutes the third amendment to Law No. 147/99, 1st of September) is applied and can only be implemented in terms of protective measures:

- this means that they receive the same treatment as child victims (PROTECTIVE MEASURES);
- the State can only intervene in indispensable cases, either by discovering circumstances that can cause serious damage to their normal development and the carrying out of other important rights recognised to children.

"Ah! If you're child, that's better; the small ones are the best at robbery! (...) I go begging for clothes, for coins, and when people don't give me money, I steal their handbags. When I see a 'cota' (old-people), I look. I look at the person and around, I see the handbag, and I just steal the handbag... and then I walk away. (...) I don't go after the men. There are a few capable of running after me, and one caught me and took me to the police station... I want no more of this. It is easier with ‘cotas’. Men run a lot... Then, it all ends in the
The Portuguese justice system

Youth from 12 to 16 years of age who commits an offence qualified by the penal law as crime can be subject to educational measures, as defined by *Juvenile Justice Act* (LTE) (Law n.º 4/2015, of 15th January, First amendment to the Law nº 166/99, 14th September). The Portuguese youth justice system differs from most other EU countries, giving less importance to the offence than to the need for the offender to be educated on the fundamental community values that have been violated by the illicit act. The State can only intervene in indispensable cases, and status offences are no longer sufficient to initiate a juvenile proceeding.

- the educational measures can be enforced until the age of 21 and are graded according to their intensity and divided into community measures and liberty depriving measures (Art. 4 LTE);
- depending on the nature of the offences committed in relation to his/her social and educational needs, and on other specific criteria, the LPCJP can be also applied, in some cases both differentiated interventions could be applied to the same individual.

“(…) In Portugal, a tendency towards bifurcation – a soft approach in most cases and tougher actions against a limited number of adolescent undergoing a custodianship order”
Young adults from 16 to 21 years who have committed an offence fall under the adult criminal law, and can be sentenced to imprisonment in the same detention facilities as adults.

As a result of the Penal Code Reform of 1982, a Young Adult’s Special Penal Regime (Decree-Law n.º 401/82, of 23rd of September) makes possible some specific mitigating regulations and alternatives to this age group. The application of the so-called corrective measures as alternative to a prison sentence for certain cases is foreseen by the law. These measures are: admonition, imposition of obligations, fine and detention in a detention centre, though these facilities have never been built, which means there has not been the possibility of imposing this last measure.

The law promotes reduced sentences and, in 2007, house arrest (including electronic monitoring) was added as a measure eligible for application to young offenders.

“(…) In Portugal, a tendency towards bifurcation – a soft approach in most cases and tougher actions against a limited number of adolescent undergoing a custodianship order”
Working with troubled minors

What do we expected from the children we work with? What about their families?
What are the fundamental principles and values we put in force in juvenile justice?
What are the biggest challenges/dilemmas in this process aiming the fullfiment of the Rights of the Child?

* The expectations and representations of the professionals about the ‘troubled’ children/youth influence the efficacy of the measure.

* Professionals are not totally neutral: any action anchors in an existential framework of values and must be ethically and socially committed to the impact and results produced.

"Nobody expects that I say something!"

(Quino, 1990)
Working with troubled minors

* The effects of social and individual vulnerabilities are cumulative in the trajectories of troubled minors, which means:

  * the intervention should be clear in relation to the specific objectives that can be achieved in a short time (specialized evaluation / planning);

  * time is a complex variable to manage in a juvenile proceeding: it is essential to be aware of the different levels of change that can be achieved, in the short or medium term, in the lives of children and young people (Raymond, 1998).

  * Three levels: formal procedures and proceeding duration; organization of time and routines organized during the enforcement of the justice measure; and the individual experience of time.

“It is always the same thing, people label us... Well, you know how it is! Society cannot stand to see us and then instead of helping us, no, just label and regards us in a different way!”

Boy, 15 years old, in custody: six months in custody in the closed regime + 12 months in the semi-open regime (Carvalho, 2009)
The value of time

* As a social convention, time fulfils orientation and integrative functions in the life of individuals and regulates human coexistence (Elias, 1989).

* the meaning and value of time for a young person are not the same as those perceived by an adult. (Trépanier, 2008). The efficacy of the measure decreases with the delay time of the evaluation and consequently of the intervention (Tecedeiro, 2008)

* time is a complex variable to manage in a juvenile proceeding: it is essential to be aware of the different levels of change that can be achieved, in the short or medium term, in the lives of children and young people (Raymond, 1998).

* be enforced in the perspective of an opportunity that will provide effective gains for the child / youth

“Journalists say there are many youth crimes, so many that young people are losing their lives in crime...but I’ve gotten stuck here because of older processes. I was already out of that life; I was working. When I committed the crimes, I was fourteen. Now, I’ll be eighteen soon, almost four years later!”

Boy, 17 years old, 18 months in custody in the closed regime (Carvalho & Serrão, 2014)
The value of time

* Time is one of the most important variables in juvenile justice proceedings, particularly in liberty-depriving measures.

* how young people review and (re)build on their past / present experiences;

* implies the (re)construction of the notion of family (complex process involving the real family, the imaginary one and the one projected in the future);

* time regulation of time and predictability are key factors in the implementation of juvenile justice measures within a framework of values and ethics;

* a constraint that persists over time: the stigmatization that children / youth and justice institutions/professionals still face in society

“When I was outside, I had little time for myself because I always left my house to be with my friends. I felt the time outside [the Centre] very slowly, but the truth is that I had no time for anything else… I did not have time to be with my family; I had no time for anything…”
The value of time

Photo album of minors and families, at the entrance in custody and years later when leaving custody, Central School of Reform / Central Reformatory of Lisbon, Caxias (1913-1930).

“I think these people [social workers and other practitioners] do not think well. They have the idea that children are in need of a psychologist, but I think it is the opposite! My foster mom wanted to get me a psychologist and I told her ‘you’re the one who hit me and it’s me who needs to go to the psychologist?!...’ And then she beat me again!”

* children and young people can not be seen in the reducing perspective of mere users of any justice service; they grow and develop in the system.
Conclusion

We conclude by reaffirming the importance of the discussion of these matters to societies’ well-being, making ours the words of Nóvoa (2010: 111):

“...nothing better defines a society than the way we take care of these children and youth we label as “problematic”, “different”, “at risk”, and so on. (...) The educational relation is often difficult, but we must all assume responsibility. (...) Our path is not the institutionalization of violence, but the construction of dialogue, of respect, of the word. And nothing helps more than lucid informed knowledge and a critical understanding of the past and present realities.”
THANK YOU

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