1. Children At Risk: A historical perspective of the concept

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The recognition of the need for special protection for children took centuries to build in European societies. This process took place unevenly and at different rates in place and time and among social groups. A vast body of scientific literature has now been developed since Ariès (1960) launched the debate on this issue (King, 2007). The evolved perceptions of the child at risk and the responses that these made possible also changed over time (Lopes, 2002). The present chapter aims to contribute a historical perspective of this process in Portugal, focusing on the evolution of the concept of children at risk and the conceptualized objectives of the institutional responses which offered protection to these children in the period between 1867 and 1978, that is, during the evolution period of the current children and youth protection system.

1. "Exposed, helpless and abandoned minors" in the constitutional monarchy

Broadly, it can be said that in Portugal, since the end of the eighteenth century, but especially since the mid-nineteenth century, the development of a new culture valuing children has emerged. This new culture increasingly integrated more social classes in the processes of change and positively affected people’s material and non-material conditions. As a result, in this period the living conditions improved, the population increased and urbanized, and mortality rates declined, particularly infant mortality. In addition, health and the management of population behaviors gained a central place in public policy priorities, which required the state-centralization of education and the monopolization of the use of violence by the state. In this context infanticide and homicide became more intolerable and anyone committing such acts was considered sub-human, a monster, or a “hyena” (Anica, 2010). The patriarchal violence exercised within the family began to be criminalized by the judicial system. In the interest of society, more attention began to be directed to women, especially mothers; and particularly, criticisms concerning parents’ anonymity became widespread in response to an intensification of children abandonment practices (including leaving them in hospices).

Education and a concern for justice played a major role in this process: intervention was extended from the urban centers to the rural areas, effectively penalizing the mistreatment of women and children, which often resulted from a traditional “honor culture”. At the same time, efforts were made to control, support and re-socialize, within the principles of domesticity, those women considered likely to endanger the lives of their offspring (Anica, 2005).

It had long been understood that it was in the interest of the state to find a way to save the children who...
were deposited at the *Roda* (Wheel), who were often decimated by "scourges" of high infant mortality. The *Roda* was an anonymous drop-off device, a wheel-like apparatus connected to a foundling home, dating back essentially to the Old Regime. It was reformed in the late 18th century by the General Police Department and by Passos Manuel, and it was subsequently re-adapted in order to conserve resources and to prevent exposure. In the Algarve, where the system had been reformulated in the years 1841 and 1862 (Anica, 2001), anonymity was, unfortunately, still an opportunity for children to be abandoned by anyone. In Portugal, the first attempt to extinguish this system (in 1867) had the consequence to assert the primacy of parents' caregiving functions and to reinforce the mechanisms of control and public assistance to the women considered potentially "abandoning" that had been advocated since 1841.

The Regulation for Hospices of the Exposed, published on August 1, 1872, replaced the *Roda* for Hospices, a new childcare system for the «exposed, helpless and abandoned minors» which included children up to seven years old. Hospices were under the responsibility of the Municipal authorities. From seven to eighteen years old, the childcare responsibility was attributed to a Court of Law. This system was accompanied by measures to control and assist the needy mothers for the purpose of preventing exposure and abandonment. These measures began to show positive results when the budgetary restrictions were softened (Anica, 2001). Later, the Regulation for the «exposed, helpless and abandoned minors» of 1888 sought to standardize minors tutelary model based on the principle of controlled admission. This regulation applied to the following situations: a) “exposed”: children of incognito parents who did not provide a home to the children; b) "abandoned": children of known parents who disappeared without leaving their children in the care of others; (C) “helpless”: the offspring of parents who, by death, imprisonment, deportation, advanced age or illness, could not feed themselves or had relatives who could do so. The process of replacing the *Roda* system with the Hospice system in the second half of the 19th century, which was the genesis of the contemporary children tutelary system, was slow, non-linear and non-uniform, as noted by Lopes (2016).

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30 Child mortality rates varied greatly from year to year. Sometimes the number of victims (dead children) was higher than the number of children on the wheel (Anica, 2001). The greatest number of deaths occurred in the first year of life. In general about half of the children did not survive beyond seven years of age (Veiga, 2004).

31 The Circular Order of the General Police Office, dated May 24, 1783, had restructured the old wheels, assigning them the supervision of the Municipal Ombudsmen and, in the last instance, of the General Intendent of the Police. By decree of September 19, 1836, the wheels were supervised by the Administrative Districts and the central government, which had the sole authority of the decisions on the size and location of the wheel network and its budgets.

32 I. Sá placed in time the care system of abandoned children based on the anonymity of the abandoners that characterized the society of the Old Regime between the Manuelina Orders and the first attempt of extinction of the wheel in the country in 1867 by decree of November 21 of Minister Martens Ferrão (Lopes, 2016; Sá, 1992).

33 The 1st Civil Code (1867) assigns the guardianship of abandoned children and children of miserable persons to the municipal councils, who are responsible for deciding the amount of the allowance to be granted to the parents of the children in the latter case.

34 Regulation for the Hospices of the Exposed of August 1, 1872 and its amendment of August 26, 1873 (Anica 2001).

Public control and assistance to needy mothers and children, compulsory schooling and the professional training of children under the responsibility of public authorities are legacies of the Portuguese constitutional monarchy. Also, prolonged and heavy child labor, in which child's maltreatment was frequent, was regulated according to the conditions of its exercise and the workers’ age. The focus of the reformers was public health, especially the health and moral formation of the mothers, which the new science of Criminal Anthropology attributed the healthy growth of the children. In addition, new knowledge and resources were applied to this field; including childcare, pedagogy, vaccination, new hygiene habits, pasteurization (Rodrigues, 2013; Vaquinhas & Guimarães, 2011). So, at the end of the 1800s the decline of infant mortality rates reflects the improved living conditions, and also the process of focusing increased attention on the child and the vigilance and care of the needy and "unprotected" women, i.e., the women without a husband who could protect them; in this process doctors, pedagogues and administrative authorities took on prominent roles. Later in the First Republic, greater emphasis was given to the new strategies developed in the second half of the 1800s to reduce children’s exposure and abandonment.

The economic, social, and scientific transformations that characterized the second half of the nineteenth century were reflected in the decrease of mortality rates and in the increase of the life expectancy from 36 years old in 1864-1874 to 43 years old in 1890-1900 (Ramos, 2010). The infant mortality rate fell from about 250 per thousand in the early eighteenth century to about 181 per thousand at the end of the nineteenth century (Veiga, 2004).

2. 'Irregular' and 'abnormal' minors in the First Republic

In the First Republic the family was “reorganized” from the legal viewpoint and public responsibility to defend and protect minors at risk was strengthened; children at risk were children identified as being "in moral danger, helpless or delinquent". These situations were the result of the lack of (or perversion of) care that was owed to the children and that the State would have assumed. In these circumstances, the concept of risk was broadened to integrate the child’s health or moral training. The decree of May 27, 1911 established for this purpose the Childhood Tutors, and the National Federation of Friends and Defenders of Children, institutions that would initially function on an experimental basis. Based on the child’s interest, the Childhood Tutors, a special collective court, had the power to constrain parental or guardianship functions.
and to enact preventive and re-educational measures, "under the motto: education and work". The National Federation of Friends and Defenders of Children, a "moral and voluntary legal" union of institutions, aimed at "building a true system of moral and social hygiene" aimed at preventing child abandonment and neglect and at collaborating with the Childhood Tutors in the resolution of the cases judged therein.

Following the adoption of the Geneva Declaration of the Rights of the Children (1924) by the League of Nations, the Portuguese report (which supported the Decree No. 10767 of 15 May 1925) stressed the diversity of characteristics found in the group known as "abnormal minors" and noted the difficulty of distinguishing between normal and abnormal children. This report considered that "abnormal minors" was a heterogeneous group whose elements were difficult to distinguish, while sharing a common characteristic, namely, their inability to receive instruction and education through regular means. So, the Decree No. 10767 of 15 May 1925 proposed three groups of "abnormal" or "irregular" children, classified according to the nature of their deviation from the norm, as described:

1) Irregular minors due to social causes: children without physical anomaly or affected by only slight anomalies, not requiring a special regimen: e.g., abandoned, despised, mistreated, and depressed by the social, family and school environment.

2) Irregular minors due to biological or physical causes: e.g. weak, sick and crippled, but normal from the psychological and moral point of view.

3) Irregular minors due to psychological and neuropsychological causes. In this group, children can still be distinguished on the base of abnormalities of the senses, of the movements, of the intelligence and of the character

This decree was influenced by the Lómbrrose’s critical theories of criminal anthropology; it was largely based on the prevailing themes at the Second International Congress on Child Protection and on reflection of the experience that had been accumulated since 1911. This decree highlighted the role of prevention, education and training in child protection. Each of these components should apply to “abnormal minors”, considering their particular characteristics and the specific cases. Penalties foreseen in the Penal Code ceased to apply to these children and were replaced by the application of specific measures, measures which might fall somewhere between admonition to detention for educational purposes, and placement into a supervised occupational/professional work program, varying according to the diagnostic made on entry into the system. The National Federation of Friends and Defenders of Children was replaced by the National Federation of Institutions for the Protection of Children, with more autonomy and resources

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40 Preliminary report to Decree No. 10767 of May 15, 1925, Diário do Governo I Série, nº 106, p. 510. The typology of "abnormal underaged children" presented in this decree corresponded to the classification adopted at the II International Congress on Child Protection that considered three orders of factors: social, biological and psychological.

41 This would only be extinguished by Decree-Law 95/2002 of 12 April "because its attributions were gradually absorbed by other public entities, namely by the Institute for Social Reintegration".
In addition, this decree (Decree no. 10767, of May 15, 1925) extended the application of the rights of the minors to all the municipalities and it diversified guardianship institutions as follows: a) refuges for temporary detention for observation and diagnosis; b) reformatories for disciplinary detention, where the principles of educational pedagogy (based on the methods of Pestalozzi) were applied; c) more specifically, corrective institutions of detention for the cases considered more serious. Nevertheless, this decree still allowed the inclusion of "morally endangered" children (as declared by youth courts) in educational establishments and child treatment and hospital care centers which were under the supervision of other ministries.

The amendments introduced by the legislation on “abnormal minors” during the First Republic resulted in a two thirds reduction of the number of children under 18 years of age who were sentenced by a lower court to adult prisons and close to a twofold increase of detentions in correctional institutions (Marques, Miranda, Rolo & Rodrigues, 1991).42

3. Victims of "ill-treatment" and "maladjusted" in the Estado Novo (New State)

It was not until the second half of the twentieth century that a new view of the child started to emerge, a view that recognized the child in its specific and complex attributes rather than as merely a human being in preparation for adulthood. The Declaration of the Rights of the Child (1959) recognizes the right to equality, the right to special protection for ensuring child’s full development, the right to a caring, affectionate and protective environment, as well as the right to freedom and dignity and the right to play43.

No explicit reference to the principles stated in the Declaration of the Rights of the Child (1959) is found in Decree-Law No. 44288 of April 20, 1962, which reformed the children protection system during the Estado Novo (a period of the Portuguese history from 1933 to 1974). Nevertheless, aligned with the new decree the Tutelary Courts44 were endowed with both criminal and civil powers for the «protection, assistance and education» in the field of «criminal prevention» for children under the age of 16 (or children less than 18 years old, who presented a "severe maladjustment to the discipline of the family, of the workplace or of the rehabilitation/assistance program to which they had been assigned"). Children in the following situations fell under the jurisdiction of the Tutelary Courts: a) minors’ maltreatment, neglect and abandonment which

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42 In 1909, 1405 children less than 18 years old of age were sentenced to prison by the lower court; in 1926 these children totalized 441 of such cases. In 1909, there were 435 reported cases of children at correctional institutions and in 1926, there were 728 such cases.

43 Three decades later, the perspective of the child, that is, "every human being under the age of eighteen years", would be deepened as an active subject of his development, capable of influencing the environment in which he/she intervenes. In the Convention on the Rights of the Child (1989), approved for ratification in Portugal in 1990 (Resolution 20/90, of the Assembly of the Republic, published in DR no. 211, I series, 12/09/90), the rights previously recognized continued to exist and the right to respect children’s views and respect for the principle of ‘the best interests of the child’.

44 The Judicial Statute approved by Decree-Law No. 33547, of February 24, 1944, had changed the designation of childhood tutoring to Tutelary Courts.
could endanger their health, safety or moral formation; b) minors having serious difficulty adapting to a normal social life; c) begging, vagrancy, prostitution or debauchery; d) minors who have committed any crime under criminal law.

In an effort to adapt to the objectives which had been redefined under this law, the guardianship institutions were further diversified along the following lines: a) observation centers for diagnosis; b) medical-psychological institutes for observation and internment of the mentally handicapped or irregular; c) re-education in institutes of internment for the purpose of appropriate education and apprenticeship; d) semi-boarding homes that allowed a special regimen of freedom associated with residence in the community and education or occupation; e) semi-free homes, open houses designed to ensure the transition between boarding and freedom; f) patronage homes for former internees who temporarily lacked protection.

4. Rights of abused and neglected children at the dawn of democracy

Although the country's demographic, social, economic and cultural changes accelerated in the 1960s, it was only with the Constitution of the Portuguese Republic (1976) that the democratic regime has established the principles of universality and equality of citizens, including within the family context (Article 36). These constitutional principles implied the equality of rights and duties of the spouses and the equality between children born both within and outside of marriage, corresponding to profound changes of the Civil Code (Decree-Law no. 496/77 of 25 November).

The public pre-school system and the normal schools for the training of early childhood educators were created in 1977. Shortly afterwards, freedom of education was recognized and the public special education system was created for children and young people who, because of their special needs required a “specific service”. Special education was directed towards “disabled persons, including those presenting organic, sensory, intellectual and/ or motor disorders”. It was also required that these services should be carried out “wherever possible in regular educational establishments”. Thus, in these concrete directives the nature and the scope of the special education programs and distinct tutelary organization for children at risk was made clear.

To draw a picture of the transformations of Portuguese society in the 3rd quarter of the 20th century, let’s review some indicators. The gross birth rate fell from 24 per cent in 1960 to 16.2 per cent in 1980, and the...
overall fertility rate fell from 95.7 per cent to 66.9 per cent over the same period. The means of birth control and family planning spread and became more effective. As the family’s size became more subject to planning, the child became more socially visible and attracted more attention and more material and affective investment from the family. The infant mortality rate fell from 77.5 per cent in 1960 to 24.3 per cent in 1980. As a result, life expectancy at birth rose from 60.7 years to 66.4 years for men and from 67.8 years to 74.8 years for women. Compulsory education increased from four to six years and the principle of co-education was adopted in all public schools. In the same period, the illiteracy rate was reduced from 26.6% to 13.7% among men and from 39% to 23% among women (PORDATA, 2017). Following the revolution of 25 April 1974, the subsystem of secondary education was unified and pupils became part of the governing bodies in institutions of secondary and higher education. The school began gaining a growing space in the lives of children and families, as Vieira (2011) observed.

In this context, the children protection system was developed to adapt to the social and cultural changes and to practical needs. In 1978, the purpose of the Child and Youth Courts was defined in accordance with the Declaration of the Rights of the Child as, "the protection of minor under the law and the defense of their rights and interests". The civil jurisdiction of these Child and Youth Courts, provided for in earlier legislation previously in force, soon passed on to the Family Courts. The role of social support services, technical assistance, minors’ curatorship and the function of the judge in the implementation phase of the measures was strengthened. In addition to the above responsibilities, the Child and Youth Courts were made responsible for issues involving the abuse of alcoholic beverages and the illicit use of narcotic drugs. Adding to the existing guardianships institutions, specialized reception centers were set up to receive children who were found to abuse alcoholic beverages or illicit narcotic drugs, with the possibility of creating multipurpose centers (Epifânio & Farinha, 1987).

In summary, the long course of constructing institutional responses to children at risk began during the constitutional monarchy from the perception the "exposed, abandoned and helpless" children faced great life threatening situations. This threat started to be understood as a waste of human resources that undermined the physical and moral regeneration of the population and the survival of the Nation. This perception provided the basis of a system of management and public assistance that helped neglected (and potentially abandoning) mothers, whose roots go back to the 60’s of the XIX century. This system produced positive results.

It was a slow, non-linear process, which showed great variation in time as well by region. Once the exposure and abandonment of newborns was brought under control and the very high mortality rate of abandoned

53 Such as, for example, the regulation of the exercise of parental authority, adoption, inhibition and limitations to the exercise of parental authority. Decree-Law no. 314/78 of 27 October, Art. 146.
54 Decree-Law no. 314/78 of 27 October, Art
children was reduced, attention then shifted to considering the risk of "abnormality and dysfunc-
tionality" in childhood as these were seen as threats to the consolidation of the secular republican culture of the First Republic. Having put the problem in these (national policy) terms, it was necessary to give it a systemic, flexible and appropriate response, one adapted to the diversity of situations that characterized it.

In the 1960s, the concept of a child at risk shifted towards the notion of children as a victim of "maltreatment" or the "maladjusted" child, a reality that would deprive the Motherland of energy and would challenge the authority of the Estado Novo. As a result, the Tutelary Courts focused on criminal and civil responsibilities, and guardianship institutions were again diversified to include criminal prevention and re-education.

Finally, at the outbreak of the Third Republic, the mistreatment of children and certain deviant behaviors started to be perceived as a challenge to the very foundations of the democratic rule of law and a violation of the rights of the child. In this new context, the Child and Youth Courts began to have as their purpose "the protection of minors and the defense of their rights and interests". This marks the beginning of a new period centered on the Rights of the Child, which was characterized by the formal recognition that the rights of the child are to be specifically protected by the adults and that children have to be given the opportunity to benefit from environments conducive to their full development with respect for their individuality.

References


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