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**Uruguayan Public Safety Policies in
Experts' Discourse**

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Uruguayan Public Safety Policies in Experts' Discourse

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Abstract

The paper analyzes the conceptual use of the ideas of social risk and vulnerability, commonly used in childhood's field of study in Uruguay. The research is focused on the area of juvenile justice and its empirical work is based on discourse analysis.

The research focus the attention on experts' discourse (lawyers', social workers', psychologists', psychiatrics' and social educators') attached to judicial expedients in Adolescents' Court in Montevideo, Uruguay.

The investigation studies the use of both concepts in the social judicial and penal reports that suggests different institutional answers to the same situation.

Key Words: expert diagnostic, social risk, social vulnerability, juvenile justice.

Introduction

This paper is a product of a two year research in the discourses produced by experts, which are filed in Adolescents Courts in Uruguay, with the objective of understanding the meaning of certain conceptualization in adolescent infringement diagnosis. In penal law the main question is who is to focus the responsibility on. What has been reached in this investigation is that the way experts analyzes the adolescent biography in social diagnosis in socio-judicial environment has serious consequences in prosecution and punishment. Moreover, the uses of certain concepts in experts' diagnosis –like social risk and social vulnerability– have different consequences on how responsibility is treated in Court process.

In the field of study in childhood, adolescence and family, as in other areas of knowledge, it is possible to recognize certain linguistic uses within discourses which identify theoretical and methodological influences in addressing the issues that each social age and each historical period problematize.

Such shifts in the expert language to name the subject matter of analysis cannot be attributed only to the influence of fashion conceptual approaches. Shifts in the way phenomena are named evidence a modification in the way they are conceptually apprehended, interpreted and analyzed which impact on the social intervention models in the matters discussed. (González and Leopold 2011)

Far from being innocent, the language used when addressing social issues recognizes theoretical concepts in its conceptual approach, takes a stance in the discussions raised and assumes the practical consequences arising from its discourse. In this respect, it is possible to assert that discourses produce social effects. (González, 2013)

Particularly sensitive to connotations, the domain of study in childhood and adolescence in Uruguay has incorporated the language of risk in descriptions and analyses of the social situation.

Although analysts argue about the origin of the concept, risk assessment has permeated several fields of analysis, such as ecology, epidemiology or medicine. The 1990s have been witness to the systematic development of the sociology of risk as an analysis approach of contemporary societies of core countries within the civilizing change of reflexive modernity (Beck, 1996; 1997; 2001; Giddens, 1994; 1995; 1997; Lash, 1997, Luhmann, 1992; 1996a; 1996b; 1996c).

In parallel with the use of the positive individualism language in the analysis of social situations in the sphere of childhood and adolescence in Uruguay, it is possible to identify the idea of social vulnerability in the description of specific individual and family situations whose common characteristic is the lack of social protection. In other words, a description based on the negative individualism of Robert Castel. Employed as an alternate conceptual reference to the idea of risk, or as its conceptual synonym, the idea of vulnerability has pervaded the expert language on social matters.

This research proposes a journey through the construction of the sense carried by the words usually employed in the field of childhood and adolescence. Explaining the rationale behind the concepts used, evidencing the innocence that its non-critical use entails and the consequences on the persons involved, is the aim pursued in this undertaking. Putting forward a reflexive use of the expert discourse on the offences committed by young offenders is the goal of this work.

Methodological Considerations

This research focuses on the analysis of the discourse employed by the experts that participate in the judicial prosecution of adolescents between 13 and 18 years old in Montevideo, as well as of the language used in expert reports dealing with the enforcement system of socio-educational measures, as filed in the judicial records.

To this end, discourses taken from a random sample of fifty judicial records filed throughout year 2009 in two of the four Adolescents' Courts existing in Montevideo are analyzed.

The study of such documents enables us to recover the words of prosecutors, defense lawyers, judges and experts (social workers and psychologists) who perform in the judicial sphere and discourses of experts who work in the institutions where adolescents' penalties are processed: social workers, psychologists and community workers whose reports are included in the judicial proceedings of the offence.

The Approach of Individualization in a Reflexive Environment

Notwithstanding theoretical and methodological overtones, Ulrich Beck, Anthony Giddens and Scott Lash coincide in characterizing high modernity from the perspective of reflexivity. Beck defines the "elementary" thesis of reflexive modernity by stating that "the more societies are modernized, the more agents (subjects) acquire the ability to reflect on the social conditions of their existence and to change them in that way" (Beck, 1997, p. 209).

From the standpoint of the reflexive modernity, the individual turns out to be a work of self-construction leading a particular "lifestyle", selected from a plurality of options, weighing consequences and risks that his/her actions entail. In this regard, as Giddens puts it, "self-identity becomes a reflexive project. The reflexive project of the self, which consists in the sustaining of coherent, yet continuously revised, biographical narratives, takes place in the context of multiple choices as filtered through abstract systems" (Giddens, 1995, p. 13-14).

In Giddens' approach, biographical self-construction is a task of modern individuals, irrespective of the social class they belong to (Giddens, 1995, p. 14-15). Therefore, the choices and decisions made by each individual

throughout his/her life, carry the consequences of his/her actions or omissions, either desired and foreseen or undesired or unforeseen.

However, in spite of celebrating the possibility of constructing self-identity, Giddens formulates two warnings. Firstly, by resorting to psychoanalysis, he argues that “choices are blocked, or programmed, by unconscious emotions” in spite of the multiplicity of options offered to the individual, which, in this regard, are not free from constraints. Along these lines, he warns against “seeing day-to-day life as an amalgam of free choices” (1997, p. 98).

Secondly, he raises a second objection that has to do with power, that is, he takes into consideration “factors which escape” individual control (1997, p. 99).

Aware of these constraints, Beck, Giddens, Lash and Luhmann adopt what could be called a positive attitude towards individual self-construction as a task to be performed by reflexive modernity, placing the self-conscious individual at the center who assumes consequences and prevents the risks entailed in his/her own decisions. “Even traditions of marriage and the family are becoming dependent on decision-making and with all their contradictions must be experimented as personal risks”, says Beck (1997, p. 30). In this respect, we are following the conceptual path towards understanding social world from a progressive independence of the individual over the structure, celebrating the autonomy which comes hand in hand with modernity in its reflexive stage.

With regard to the process of liberating individuals from structure, characteristic of this phase of modernity according to its authors, Beck argues that the “iron cage” of the structure in industrial modernity crumbles “in the decision of individuals” who are the “winners and losers of reflexive modernity” (Beck, 1996, p. 229).

This “modernization of modernization” privileges “the art of self-constitution” of the individual, transforming “organized sclerosis” of industrial society into a society of individuals. Beck argues that this “liberation” of the individual is contextualized in the welfare states of Western highly developed industrial societies with processes of “ongoing education, strong demands of labor market mobility and intensified juridification of labor relations” (1997, p. 21). Thus, the individual becomes a holder of legal rights or obligations, and the structure of community organization that used to protect him in traditional societies or social groups that represented him/her are of secondary importance. Nevertheless, in a context of increasing complexity and uncertainty, individuals, Beck warns, are no longer capable of making responsible and duly grounded decisions, pondering the possible consequences (1997, p. 21).

In this way, Beck considers the so-called “side effects” of the development of industrial society, noting that they cannot be attributed to conscious responsible decisions made within a calculability framework, as its consequences become visible only from the risk society perspective. This idea developed by Beck in his most famous works increases reflexivity of society

stricto sensu, i.e. “it is becoming an issue and a problem to itself” (1997, p. 22).

Therefore, Beck argues that, “not only decisions have to be taken here; instead it is vital to re-establish the rules and bases for decisions,” reason why risk society is considered to be “by tendency a self-critical” society (1997, p.25). He then revisits the idea of reflexivity of society in the strict sense of the democratic “reflection” upon social issues, as a consequence of the unpredictability and ambivalence which are characteristic of the high modernity society.

In Giddens’ view “modernity has become experimental. We are all, willy-nilly, caught up in a grand experiment, which is at the one time our doing-as human agents-yet to an imponderable degree outside of our control” (1997, p. 79).

Individuals by Default

The discourse of positive individualism and the celebration of unlimited possibilities offered by biographical self-construction through an informed autonomy process are challenged by the counter point of negative individualism through a critical interpretation of this process of self-liberation from structure.

Recognized spokesperson of this stance, Robert Castel holds that at the peak of industrial capitalism, the fact that the worker becomes a wage-earner entails his/her affiliation to collectives.

But in the new “big transformation” of post-industrial capitalism, new processes of “*disaffiliation or re-individualization*” develop, which emerge as the counter image of the booming industrial society. Castel analyzes these processes within the “profound reconfigurations” that take place in the organization of work and professional careers according to the “biographical model” put forward by Beck.

As Castel explains, it is an “*exhortation to be an individual*” freed from the weight of structures and “bureaucratic, juridical and state controls”, to the winners of such transformations. However, the “swirl of change” excludes other “categories of individuals” that do not possess “capitals”, in the words of Bourdieu, or lack the minimal support or resources, whatever those conditions needed to positively face novelty are called”. (Castel, 2010, p. 25)

Castel dares to speak about *individuals by excess* and *individuals by default* in this new “society of individuals” –as Norbert Elías describes it– in order to differentiate individuals committed to their own subjectivity from those who lack the minimum support to acquire social independence and subjective autonomy.

The question posed by Castel which is also relevant to the subject matter of this paper is: “are long-term unemployed, beneficiaries of social assistance and socially unprotected youth subjects of law?” The answer is no. (Castel, 2010, p. 27)

Juvenile Infraction and the Judicial Process in Montevideo

In Montevideo there are four courts which specifically deal with criminal offences committed by young offenders (persons between 13 and 18 years of age). Such courts are called Juvenile Courts.

The analysis of judicial records reveals that the juridical debate is focused on whether to adopt an imprisonment measure as punishment or not.

The enforcement of the sanction set forth within the purview of the judicial process is monitored by the judicial system through expert technical reports, which supervise the compliance with control measures.

The documents included in the sample studied show the normative nature of the judicial system in the analysis of the conduct of young offenders and its direct influence on the institutions responsible for the enforcement of the penalty imposed. Nevertheless, the records studied exhibit some sort of influence exerted by criminal institutions over the judicial system in the opposite direction.

Against the backdrop of this juridical debate, it is acknowledged the influence that the socio-economic status of the adolescents' family and family ties exert over the law experts' opinions at the time of assessing the judicial measure for each particular case.

In this regard, the analysis of the records indicate that assessing these contextual factors has a higher relative importance than the legal term that defines the offence at the time of establishing the nature of the imprisonment measure to be adopted. This empirical verification triggers the juridical debate, recurrent at a national level, as to the law that places the emphasis on the author of the offence rather than on the juridical assessment of the breaching conduct. (González, 2013)

The Expert Discourse in the Juvenile Justice System and in the System of Enforcement of Socio –Educational Measures

Formulated from disciplines other than the strictly juridical field, this type of expert discourses focus on the minor, describing meaningful stages of their socialization process, their bonds with the educational system, social and recreational spaces, having a look at their closest social bonds. Social and psychological expert appraisals put forward possible explanatory hypotheses linking offense to the adolescents' life and family.

In the reports produced within the criminal sphere the formulation of social risk appears to be synthesizing a family situation characterized by a material and symbolic lack of assets which are socially regarded as a sign of social welfare. Consequently, social risk diagnoses provide a list of difficulties encountered by the adolescents to find socially recognized, protected and qualified employment, in his/her path through the education system, in the access to cultural assets and in the development of stable, plural and diverse relationship networks.

Upon the declaration of social risk, expert appraisals proceed to enumerate the social indicators that reveal the non-satisfaction of the basic social needs

which are indispensable to the well-being, based on the existence of limitations, both at personal and family level, for the generation of satisfactory life conditions.

The diagnosis of social risk for a family refers, in the first place, to the (in) ability of adequately performing the parental roles, which is assessed by experts through an interview with the adolescent. In a situation of social risk, albeit with subtle differences, are those teenagers whose families are “disintegrated” and have intra-family troublesome relations, families that were incapable of providing the support needed by their children to finish primary school, to prevent them from living in the street, to protect them from the troublesome consumption of psychoactive substances, from street selling, begging, prostitution, adolescent pregnancy, or families that have a history of mental health, alcoholism, imprisonment, or violence in their relationships.

Secondly, experts link social risk with the socio-environmental, economic and cultural conditions of the immediate social context. In this regard, references are made to the social and sanitary condition of the housing, to the socio-economic conditions of the immediate and extended family, to the labor difficulties faced by significant adults, to the health controls, to the teenagers’ education, his/her siblings and other children under the custody of parents, illiteracy, and the educational and cultural level of adults, to the social and cultural capital of the family environment; summarizing, to the situation of poverty of the family.

Adolescents in a situation of social risk are, in short, the poor ones. The risk diagnosis unfolds the situation of poverty regarding the symbolic, social, cultural and economic capital of the family of origin which constitutes a frame of reference for the teenager.

This type of micro-social interpretation focused on the individual, pointing out both his/her weaknesses and strengths in mobilizing resources, both of his/her own and social, to fulfill socially accepted welfare goals, draws on individual factors to explain the poverty phenomenon. If the micro-social analysis of poverty situations is conceived in terms of individual factors, the consequence of such reasoning is that individuals are to be held accountable for the situation in which they are immersed. (González, 2013)

Expert discourses describe families who face serious problems to care and provide for their members, left to their own devices to develop informal survival strategies, lacking the social protections that working in stable and formal conditions offer. Along these lines, reports that assess social risk of the social and family situations under observation, appear to be standing in the guardianship conception scheme which started by looking at the “irregular situation” or the “abandoned minors” for whom the natural course of events would be to turn to delinquency (Erosa and Iglesias, 2000; García Méndez, 1994; 2004; Uriarte, 1999; 2006).

Interpreted against the backdrop of the implementation of judicial measures to respond to the law infringement, the diagnosis of risk in minors assessed within the criminal sphere, can take on a specific contextual meaning. Within this purview, the expert interpretation of the risk triggers a social alarm and in

response to that the judicial system, taking into consideration the expert analysis, adopts specific measures to strengthen the social defense mechanisms.

Within the domain of juvenile delinquency, the expert assessment of social risks suggests the enforcement of stricter social control measures to counteract the threat. Bearing in mind the national regulatory framework from which it emerges, in the field of juvenile justice, the diagnosis of risks suggests, as the guardianship doctrine does in the case of child poverty, the response of institutionalization (Platt, 1982; Morás, 2012; García Méndez and Carranza 1992; García Méndez, 1994; 2004; Costa and Gagliano, 2000; Guemureman, 2011; González and Leopold, 2011; 2013).

Adopted in a new discourse, the paradigmatic image of the “abandoned delinquent juvenile” appears to quasi perfectly match the sense of social alarm attributed to the risk diagnosis of the currently so-called “young offenders”. The social response (after the resemantization process suffered within the purview of the contemporary discourse of comprehensive child protection, is now termed a socio-educational measure) to that portrayal, is yet again, imprisonment. (González, 2013; González and Leopold, 2013; Morás, 2009; Paternain, 2013).

Even though they seem to describe personal and family situations with a specialized scientific language, the words utilized by the expert discourse refer to some moral contents which penalize some attitudes and conducts that appear to be tinged with characteristics of “perversion” or “abnormality” to use the conceptual categories employed by Foucault (2000).

Expert’s Discourse in Crisis and Vulnerability Circumstances

In infringement context, the expert observation implies an expert evaluation in an especially conflictive moment of individual biography. Such evaluation constitutes an arbitrary trim of individual life, which is constructed by the process of putting together significant moments of him/her biography. In these “decisive moments” of individual life “the happenings are presented together in a way that could be thought as an ambush of its existence” (Giddens, 1995, p. 146), nevertheless, as being impress in experts’ diagnosis they turned up as moments that last forever.

The practice of selection of critical episodes in an individual life for evaluation of future risks can be seen as partial in the vital trajectory because “decisive moments affect the protection shell which defends the ontological security of the individual itself” as “world of life” that the individual reach as an evidence. (Giddens, 1995, p. 147) In this sense it can be said that expert’s evaluation in crisis situations exposes the individual in his/her moments of more fragility.

As teenagers that reach judicial instances come –in their great majority– from social vulnerable sectors, the individuals’ fragilities that poverty imprinted in the person which are exposed in expert’s diagnosis. This is why marking or signaling at the most fragile stages of the poorest adolescences, imprints a characterization

that these social sectors associate with normative contravention. (González, 2011).

It called the attention that this diagnosis disposes functions in social control systems towards especially vulnerable social sectors in Uruguayan society. Regardless of the social class people belong, every person goes through periods of personal crisis where people appear fragile and vulnerable through specialists' diagnosis. Nonetheless, these moments do not stay recorded to be consulted by any person who is interested in the expedients originated in the justice system. People who belong to medium and high social classes are protected by the privacy of the medical records or the private space of the therapist counselor.

The poorest sectors, excluded from social protection systems, do not have those protectors' mechanisms of their privacy. Social experts' evaluations bring up personal stories that transit between institutional disaffiliation and talk about their parent's responsibility that had not been able to bring sustainable and contention to their adolescents' sons and daughters.

In situations where poverty strives, the material conditions of life are severe limitations to the development of other symbolic resources as education, recreation, sports, richness and diversity of social ties, that are the key of access of other social and cultural appreciated goods and that constitutes the tools towards the persecution, access and processes of quality and diverse information. Moreover, situation of poverty are limits of stable and socially recognized opportunities of labor in which the individual could develop its creative potential. Such structural limitations, persons in poverty do not appear to be adequate to the normal criteria with which specialists evaluated the psychological and social development of a free, autonomous and responsible person.

In the frame of the lack of social, cultural and material goods, social risks of inadequate social behavior seemed to appear obvious to experts. Without privacy protection of their stories narrated to the specialists, the intrinsic vulnerability of situation of poverty appears to be exposed to the social sight.

Conclusions

Expert appraisals in the socio-juridical sphere of juvenile delinquency in Uruguay appear to be founded in a conceptualization of social risk that refers to the analysis of the reflexive modernity in a description of the positive individualization process, which celebrates the "liberation" of individuals from social structures which would constrain their decisions in the simple modernity. However, the paradigmatic image of the individual freed from social constraints that this conceptual framework entails has strong theoretical, methodological and political implications that have to be specified.

At a first level of analysis, it seems too obvious to point out that societies taken as reference in the reflexive modernity analyses do not include poverty situations. In increasingly reflexive societies as the ones described by risk analysts, the individual gains ever increasing levels of independence and autonomy over structural constraints which characterize other social models. In

poverty conditions, on the contrary, the material conditions of life pose strong challenges to the autonomous development of individuals. In line with the paradigm of risk, if the individual is not free from constraints posed by social conditions, then, he/she will not be the ultimate responsible for the decisions made in situations of restricted liberties.

Second, the consequences of the application of the paradigm of the reflexive modernity to the micro-social analyses, entails the individual accountability for the situation of poverty. Without the social assumptions pertaining to the risk theory –developed with a view to interpreting the contemporary phenomena of central societies in reflexive contexts– the diagnosis of social risk in the depiction of individual and family situations, carries the idea of prevention and social alarm. By declaring social risk, the expert seems to be sensing some peril that society must be aware of. By diagnosing a social risk the expert generates a situation of alert, giving a warning to which the institutionally organized society must respond.

Third, it can be pointed out that, in its social implications, the application of the positive individualism paradigm to situations of poverty, analyzed within the purview of all material and symbolic indicators, appears to have similar consequences to the paradigmatic application of the guardianship doctrine to the abnormal situation. A situation of alert is generated in the face of family “neglect” in the assumption that this “abandoned minor” will socially transmute into a “juvenile delinquent”. Alarm works, social response appears to come up, yet again, from institutionalization.

From another reflexive approach, some of the technical reports elaborated within the institutional framework of the criminal system that arise from the sample documents analyzed, suggest a different interpretation of the constraints imposed by poverty on individual decisions. Such interpretation, which underscores social restrictions present in the offenses committed by young offenders, may be linked to the construal of Robert Castel of social protection mechanisms in contemporary social states.

Those reports utilize the concept of social vulnerability as an alternative to the idea of risk. In line with this, some operators in the sphere of childhood in Uruguay seem to refer to the idea of frailty in connection with social protections granted to some social sectors.

The description of the sense of frailty experienced by socially unprotected subjects provides a different approach for describing poverty situations. Within this domain, subjects’ vulnerabilities are shown in relation to work, health, housing, education, access to consumption, but also in connection with the diversity, quality and strength of the intra-family relationships and social bonds that the group forges with the outside world.

Nevertheless, the description of the socially unprotected context where such sectors find themselves tends to attribute the cause of the problem to the difficulties encountered by society to ensure access to social rights for all members, shifting away the idea of social accountability of individuals for poverty.

In this regard, the interpretation of social vulnerability constitutes an interpretation of the social lack of protection experienced by sectors that are excluded from the social mechanisms of production and distribution of social wealth and centers its reasoning in the context of social responsibility.

So, if the frailty of subjects is connected with the expert verification of failures in the social protection system, the responsibility for the individual decisions made within this limited framework of choice, should be socially shared.

Thus, the adoption of a framework that ensures the total protection of rights implies the acknowledgment of failures in the social welfare system, placing the debate about juvenile delinquency within the purview of social responsibility.

In this scenario, the social response in the face of violation of norms committed in social vulnerability contexts should be to enhance the social welfare mechanisms for these young offenders and their families, within a framework of social repair.

As laid out at the outset, the choice of words to describe the social situations has social consequences. Established within the institutional frame of criminal justice system, social diagnoses that acknowledge the social vulnerability of adolescents should require the enforceability of a protective response which grants guarantees in relation to the effective enforcement of their social rights.

Suggested as exceptional measures in the Childhood and Adolescence Code, imprisonment during adolescence is utilized by the judicial system as a social protection measure in critical family situations, relatively irrespective of the seriousness of the conduct that gives rise to the punishment. Within the Uruguayan judicial system, imprisonment appears to be utilized as an available social policy device that replaces the lack of this resource in the sphere of childhood and adolescence as a social protection measure.

This recruit of socially unprotected minors by the judicial systems entails the adoption of social control measures in the absence of social welfare policies. In this way, in Uruguay public safety policies are to replace social welfare policies.

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