

Vulnerability and Youth Court

*Children in conflict with the Law arouse ambiguities.
They are children, therefore, amiable, but they confront the Law, therefore, they are fearsome.
They provoke our mercy and our fear, especially if they exhibit themselves on TV
with a gun pointing to the head of a hostage. (Domenech)*

"Poverty of Infancy is insidious and immoral". UNICEF

Introduction

The enormous social disparity existing today in Latin America tends to increase, specially in my country. The different aspects provoked by neoliberalism and wealth concentration harm the rights of infancy.

Extreme poverty generates exclusion, loss of social belonging and labour place, impairment in bonds, raising of analphabetism and social violence.

United Nations Children's Fund (UNICEF)'s report on "Infancy World Status 2000" shows that as for the life expectance, "children's possibilities of enjoying a long and healthy life are affected

Supposed legislative advances proclaiming the best interest of the child are opposed to economic exclusion policies that condemn them to the impossibility of their development.

In Argentina, the welfare state model began to erode with the implementation of neo-liberal policies and at this point we are not developing social policies.

Some considerations regarding State and globalization

"Globalization is a pluridimensional phenomenon: it compromises a multitude of economic and social dimensions.

It has been stated that the social aspect of the phenomenon of globalization is characterized by the presence of very deep disintegration processes, marginalization and social exclusion. That social disintegration is shown through cultural fragmentation, organizational segmentation, crease to the individual sphere, disorganized violence, of limited protests, individualistic adjustment and defensive anomie.

In the Latin American scope, these tendencies were developed according to the National particularities, with a common characteristic: the impact as much in the low layers as in the medium layers of society. The impoverishment of the medium sectors determined the sprouting of a new form of poverty and social exclusion whose characteristics are different from the excluded sectors from nineteenth century, since they do not project collectively against the established order, but they articulate around individual or sectorial problematic.

Regarding the State, globalization implies the change of the welfare state paradigm to the neoliberal model, and puts in crisis the very State figure. (Casanueva, Blasco, 1999)

Retirement of the State generates an orientative frustration in the citizen, a shock of his reference points, of his subjective map of the society in which he was born and lives in. If the State is lived as absentee in the middle of a large social crisis, then helplessness, the sensation of living in an unmerciful desert, erodes even more the collective identities and the very idea of being part of a nation understood as a community of persons. In Argentina, add to the effects that have produced these transformations the ones originating from the way in which the alteration of the relations between the State and the market has been made. An exhausted model was not followed by a successful one. The country was left helpless in the middle of globalization, highly indebted, with an economy monitored from international consultants and organisms. (Landi, O., 2001)

The Argentine situation

In the last quarter of century, authoritarianism, disindustrialization, foreign indebtedness, rough entrance to globalization, the sale of state patrimony, fractured the basic paradigms of Argentineans: the social mobility based on the culture of work and the backup of a State vertebrator of the nation.

The crisis has undressed a form of being of Argentina as a nation that torments her people, her identity, her development.

Political tension that shakes the country leaves it in a situation of sinking and unbearable recession and still does not glimpse the horizon behind the financial breathe that the exchange of the debt has given the economy. The gap between a minority of powerful and the majority that is not has grown. The prevailing sensation is one of a strong absence of the State like an institution capable of bringing order to the increasing conflicts of society. To the void of social security it has been added the physical and legal insecurity. Skepticism rules in front of a government that does not manage to generate the changes that society demands. What today seems not to exist is a collective political will to project the future.

Add to this the critical situation given by the Powers' lack of independence: politization of Justice and judicialization of Politics.

For the first time in the history of the country, a president is in prison, being this detention product of democratic means and not of a coup d'etat. Nevertheless, there is doubt respect if the arrest of ex-president Carlos Menem is product of a mere political maneuver or if it could be the beginning of a cycle of moral cleaning, departure point to take Justice off the Politics.

In an important insecurity and social violence climate, robberies have increased, intensifying modalities as the hostage-taking. As an example, in Buenos Aires 87 banks were assaulted, from January 1st to May 30th, 2001.

Barricades in routes, violent demonstrations and strikes shake the country. The strong scaling of violence has changed the appearance of Buenos Aires as that city of important cultural life, in which you could calmly enjoy its rich night-life up to late hours in the night. Homeless have appeared in the urban landscape. Unemployment has created subjects that, when being excluded of the labour circuit, pass to occupy a place in the extra-wall...

There have turned out terms that daily occupy the Argentineans: riesgo país (risk country), blindaje (economic shielding), megacanje (megaexchange). The notion of "our country" has been outshined by the "risk-country" that represents, day by day, only what we are for the external creditors and potential investors. (Landi, 2001)

MARGINALITY AND POVERTY

Poverty in Argentina

One of the difficulties for monitoring poverty is that Argentina still does not have a good system of surveys or poverty maps that can be used to do poverty analysis and program targeting. (1) I have taken as source the World Bank's 1998 report on poverty in Argentina, titled "Poor people in a rich country". It is worth to mention that from 1998 to 2001, the situation has varied remarkably, producing a significative deterioration of life conditions.

The report states that "Among developing countries, Argentina is relatively rich, with an annual per capita income officially calculated at over \$8000 per person. It is also a country that has undertaken major macro economic reforms and improved economic performance substantially in

the past decade. Yet, despite this relative wealth and an extensive network of social programs, it is a country with a high degree of poverty, and a high degree of unemployment”.

According to this report, poverty is a multi-dimensional phenomenon and is not only the absences of money or material goods. It can reflect various shortcomings or negative aspects in life including bad health, lack of education, malnutrition and other factors such as poor housing, violence and inability to participate in political processes for example.

Who are the Poor?

Who are the poor, and how do they differ from the non-poor? Overall, the poor:

- have significantly larger families (4.6 vs. 3.1) ,
- have younger families with a much higher dependency ratios (3.0 vs. 1.4)
- have much higher unemployment rates (twice the rate of the non-poor),
- have fewer years of schooling (about 25% less), and
- are more likely to work in the informal sector.

The differences are clearly even more significant in these respects for the indigents, defined as those lacking sufficient money to afford a basic food basket, represent about 7% of the population (1998) and are those at the extreme margins of poverty.

The poorest households in Argentina tend to be younger, larger and have more children. The average age of the lower income quintile household is just 25 years, while the mean age of the upper income quintile households is 41 years. The average size of the lower income quintile household is 5.1 people and only four percent are single person households. Sixty percent of these

households have children aged 0-19 years and only 1 percent of these households have no children.

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Unemployment, Vulnerability and Exclusion

In 1983 took place the return to democracy, and the beginning of reforms, particularly in terms of trade liberalization or *apertura*.

Beginning with the Menem administration in 1989, a successful stabilization effort was undertaken. Inflation was brought under control through fiscal restraint and deregulation of the economy was begun. The Convertibility Plan, an important part of the stabilization effort, was introduced in 1991, linked the peso with the U.S. dollar on a one-to-one basis. At the same time, privatization took the public sector out of production. Regrettably, in many cases this privatizations were carried out under the seal of corruption.

Recent economic “shocks” clearly demonstrate the need for a strong system of safety nets. There is a more common acceptance that the global trends to liberalized markets and rapid technological change have increased uncertainties and may make employment more volatile. In the case of Argentina, the dependence of the country on external capital makes it highly exposed to the perceptions of the markets and to external shocks. While, in the past, there was high job security

in the public sector or protected private firms that guarantee of life-long employment is not longer there. At the same, the demands of the market place for skills have increased leaving behind a part of society which cannot compete.

Last measurement of unemployment, in May of 1999, reveals an index of 14.5 %. To the present, this does not reflect the real situation. The World Bank's report signals that unemployment hits the young hardest.

Nowadays, unemployment has spreaded widely and people around 40 or 50 years old who have lost their job are in an extremely disadvantageous position to relocate themselves in the market.

Unconfirmed in the social aspect, separated from their social networks and links, unemployed find themselves in a state of vulnerability, with large vincular lability.

Childhood and Poverty

Speaking of childhood today implies conceptualizing subjectivity in our Latin-American sociohistoric context and specifically referred to my country, Argentina, to situate it in an economic policy implemented on an excluding accumulative model, simultaneously noncontradictory with the model based on the representative democracy. In this form of social organization, stands out poverty, and in a great strip of population, extreme poverty as constitutive.

The last official surveys of Social Development determined that in Argentina there are 10.5 million children under the age of 14. These represent 29% of the total population of the country. Of these children, 45% live under the poverty line.

This fact indicates that in my country, where social marginalization has grown in a sustained rate during the last decade, over 1,650,000 children under the age of 15 are below the line of

indigency (they have less than 1.4 peso a day, considered the minimum budget to guarantee a survival diet).

These statistics alert us to the fact that society does not grant children the right to equal opportunity nor equality in the option to choose.

For those whose basic needs are not satisfied there cannot be equal possibilities of affective growth. They begin to know the social world with their potentiality diminished, in a climate that increases their vulnerability and psychic helplessness. (2)

High numbers of children of between 9 and 10 years work in our country. Their parents are unemployed. Fragility of bonds, rejection, high rates of infant mortality constitute pressing social problems that are responses to the lack of childhood policies regarding health and education (Goñi 1999).

It's been noticed in the younger populations the appearance of serious pathologies that come from outburst situations and express the other face of grown-ups' world's outburst and social violence.

Problems of behavior of more and more early beginning are noticed (6, 7 years), that imply diverse degrees of aggressiveness that in some cases get to conform a frank dissocial upheaval (robberies, lies, aggressions to parents, pairs and teachers).

Nevertheless, in the social imaginary, kids and youngs appear like a risk for themselves and for third persons: for example, in assaults, minors request the presence of a judge and take hostages.

In the current year, a 12-year-old robbed 20,000 dollars from a well-known bank.

Thus, childhood poverty will be reflected in the perverse repetition of situations of social inequality. One of the effects of this cycle of poverty is found in the increase of child abuse and child and youth criminality. These are the clients of the juvenile court system.

Poverty and family destructure

Lack of work also signifies a shift in gender relations with poor women able to earn more than their partners in domestic service. This is also seen to be the source of tensions within family and domestic violence appears to be increasing. Youth also stand out as a particularly vulnerable population. Poor youth report high incidences of drug and alcohol abuse and a general feeling of despair as they are faced with a future of insecurity marked by unemployment and violence. The police are identified in rural and urban areas as playing a prominent role in promoting violence and corruption rather than offering public security. While the poor are generally wary of the agendas of any external organizations, they point to their own informal networks and contacts as mechanisms that promote cohesiveness and unity and, perhaps, provide a haven in an increasingly vulnerable context.

Families, by suffering themselves the bombing of macro context's violence (rise of unemployment, sub employment, increment in corruption and impunity), have ceased to constitute the affective nest that was raised by the ideal of the modern nuclear family which, built upon the basis of couple, would protect their privacy against all intrusion from society.

This forces them to carry out rearrangements, often insolvent, that give rise to critical consequences in terms of separations, abandonment, increase of interfamilial violence, promiscuity, overcrowding, negligence of children and old people, infantile work, etc.

Some of these families are organized according to the traditional model (nuclear family). Other destructure caused by repeated violence situations from the man against the woman and even against the children, in this family it's the woman who has taken the place of family head (

1999). The cases that make it to minority courts are the effects and sequels of family destructuration.

THE PROBLEM OF SOCIAL INEQUALITY

The stigma of being young

In Argentina, with an alerted sensitivity defined by a lack of security, the media insists on the increase of juvenile delinquency, while the statistics of the juvenile court shows higher percentage of cases demanding welfare assistance over those requiring criminal prosecution.

As an example, in 1998, in the 34 Juvenile Courts of the Province of Buenos Aires, 67101 cases were initiated, of which 47906 were civil and assistance cases, and 19195 were criminal cases. In 1999, of a total of 70076 cases, 49871 were civil and 20205 were criminal.

Specifically in the Court where I work, in the period of 1991-1997, there was an increase of cases: 166% (criminal) and 220% of assistance cases. The estimations show that in these two years, the number of cases increased 30%.

Reliable statistics indicating an increase in the participation of youths in delinquent situation cannot be found; yet there is a significant increase in violent episodes where the main protagonists are younger.

It is notable that faced with the circumstance of minors as victims and victimizers, the perception of the impending danger created by children and youth becomes stressed in society; thus ignoring the causes of the origin of the violence and issues of child victimization. Certain discourses concerning the reasons for insecurity in my country are centralized on the presumed danger of youth and they state that more control and enforcement are needed.

Enrique Mari says "When insecurity takes over a society in crisis, when fear overflows the boundaries of reflection, the link between social inequality and insecurity does not become explicit, does not even enter in our thought process and all connections of causation between inequality

and security are denied." Dominant beliefs and ideas, usually derived from the dominant sectors, manage to guard the nexus between social inequality and insecurity and deny all bond of causality between inequality and security. Contact is broken between social insecurity and its genesis, inequality.

He considers that this "devilization" repeats forms of antidemocratic social control, already applied in Argentina through the generation of a stereotype: the juvenile delinquent personality. In the times of the military government, being young (contestatory) implied a potential risk: being subversive. This generated a de-politization of youth, being created a stereotype of "being young", based on success and individual beauty, to the detriment of social ideals. At the same time, a marginal sub-culture that expressed its reclamations and hopelessnesses in a criminal negative form was spawned.

In Argentine society, insecurity has expanded to the whole social body, generating proposals of solutions as raising the imputability age of minors; claims for harder punishments (including death penalty); granting more power to the Police, rather than solving the conflict, they aggravate it.

And that is so because the speeches about the tremendous inequality that globalized society generates with its structural misery regimes, the real conditions of the prison system or the youth reform institutes will remain veiled.

Faced with the lack of social programs and, even more so, the lack of policies to estimate economic steps that would end the cause of poverty, social problems are converted into judicial issues.

Judicialization of social situations.

We live in a society which not only permits, but also supports, violence by the powerful against the powerless, and also induces to violence among poor themselves.

We assist to an increasing judicialization as a response to the social conflicting. This juridical treatment is correlative to the lack of political solutions on a legislative level and social justice. In our society, it would seem that prevails the concept of social control of violence as an answer to the violent existence conditions that the society itself generates.

Instead of propitiating the democratic participation of citizens in those policies and State decisions that affect their own reality, State and civil society institutions have deserted from their protection roles, roles of contention and mutual contributions.

In a process signed by disqualification, rivalry and defensive attitudes, prevails the idea of “everybody against everybody”.

In the field of youth, conflict with the Law points out coalitions: youngsters versus judges and police, social workers versus regulations and their application, police versus Justice’s precarious mechanisms. (Domenech, E., 2000)

Children in conflict with the Criminal Law

The 20th century was characterized by large improvements regarding human rights declarations, parallel to the development of economical policies that spawned social exclusion phenomenons.

This is reflected in the paradigm of the so called minority. This responds to an ideary that Anthony Plat denominated “the saviors of the child”, and it is instituted in diverse applicable legal norms.

In the interior of the “infancy” universe there can be established differences between two sectors:

1) the ones included in the cover of social policies (education and health) and 2) the excluded sectors. The differences between both sectors are such that a unique concept of infancy will not

be able to include them: the included ones will be transformed into children and adolescents, the excluded ones will transform into minors, and for them it will be necessary the construction of a specific instance of control and socialization.

Of the word “child” we know conventionally that it is every person under the age of 18.

However, about those in conflict with the law we know less, not only because we lack credible numbers about who they are, what age are they, what did they do and with what reasons, or how were their families, but because the expression is deceitful.

What child has entered in “conflict with the Law”? The one who ran away from his home because of an adolescent quarrel? The one who did it victimized by family violence, the one who committed an insignificant crime? Or the one who, having grown in violence, takes part in criminal associations with older people, and is capable of carrying other people’s faults? If the definition is ambiguous, no less ambiguous and contradictory usually are the social answers in front of the child in “conflict with the Law”. (Domenech, 2000)

Minors are the main affected by the increase of poverty in the country and the advance of social exclusion. Excluded, an immense quantity of children only receives from the authorities treatments that, generally, are of little utility. Although the necessity of modifying the treatment they receive has been repeatedly formulated, the truth is that the most vulnerable strip of population is under helplessness and maltreatment, without the State getting to articulate an active help strategy.

A paradigm of helplessness is the growing number of street kids. Interned in Institutes until the 80s, they represent a potential danger in front of the current insecurity conditions.

In front of the helpless infancy, the State maintains a tutelary conception –opposite to the Children’s Rights Convention-, that rather than protecting the children, it protects itself from them.

little modifications, states that Judges are to preventively dispose of the minor accused of crime or victim of crime, if he were abandoned, in lack of attendance, in deadly danger or material danger or if he presents behavior problems. That is to say that, even if he is a victim of crime or if he is violator of the Law, he is punished with internation. This tutelary conception of infancy erases the difference between the abandoned child and the violator child, and difficults the assumption of the subjective responsibility that fits to each one.

Our laws claim for a decent treatment to children that have committed crimes and demand that these are not allocated in Police stations. However, an important part of children remains there for variable periods of time. Also, there have been reported tortures to minors in police stations in the province of Buenos Aires.

That constitutes an irregularity, and the assembly of known episodes of abuse and torture give an idea of the gravity of that practice.

Neither the legal norms, nor the institutional practices offer the minors “in risk” or “in conflict with the criminal law” a rational and appropriate answer. Opposing to what the public opinion maintains, adolescents who enter to a police station or an Institue receive real “condemns” without having the possibility of suitable defense.

Since the 80s, macro institutes start to disappear, and from the 90s there is a proliferation of different alternative programs from internment. The system of Institutes of Internment for high-risk adolescents is totally collapsed. Many of the institutes resemble jails rather than rehabilitation and containment spaces. There still subsist inadmissible repressive practices in some of them, and the young people receive a kind of delictive socialization.

Deficitary and obsolete, it presents important indicators of break-outs: we have had cases in Buenos Aires of escapes only hours after entering the institution.

It would seem that decent treatment of children and limits that help building them as real subjects of right were inexorably fighting with the operations.

Therefore, when intervening on children in conflict with the law, it corresponds to concretely study the practices that are carried out with them and to listen all those who take part in these matters:

Judges, policemen, educators, social workers, psychologists, members of NGOs and simple citizens, including of course the victims, to find ways of debating and facing conflictive childhood.

Delinquent Minor, Abandoned Minor, Irregular Situation.

The tribunals for minors in Latin - America were created in 1921 in Argentina, 1923 in Brazil, 1927 in Mexico and 1928 in Chile.

In the beginning of the youth movement, the conceptual thought utilized in its creation, allowed the assimilation of the above mentioned categories that of the delinquent and that of the abandoned minor. More so, it was considered that this one could be more dangerous than the first one, and consequently there should not be any difference in their treatment. The decisions regarding guardianship should therefore be based more on the minor's personality than on the crime he committed.

This is where the underlying idea of danger without crime comes about.

Farther on, the minors considered being in an "irregular situation" were those that had behaved antisocially, those that found themselves in a moral or material danger and minors with mental or physical deficiencies.

Abandonment was legally defined as a situation of real or potential danger of physical or moral character that a minor finds himself due to abusive or deficient exercise of parental authority (*patria potestas*). This is to say that the focus was on the lack of parental control.

On the other hand, that “abandonment or danger” usually sends to situations linked with the lack of a family, or the lack of economical resources of the family, configurating a penalization of poverty, a process of segregation and social exclusion. (Nicoletti, E., 2000)

Since the underlying philosophy determined that guardianship was a benefit for the minor, it did not matter how long this lasted nor whether the parents or the youth objected to this status.

These ideas outline the lack of protection of the minor in the presence of state protection.

This also demonstrates that since its creation, the Juvenile Court System in my country has not functioned as a legal instrument that can be applied to all children and adolescents. These courts also constitute an instrument of social control for "minors" who have basic needs either totally or partially unsatisfied.

The judge for juveniles intervenes in cases whereby the youths are found as victims, or a minor is the author of a crime, as well as those where the child is in moral or material danger and are considered non-delinquent behaviors but denote the possibility of a future delinquency.

In practice we find encompassed:

1) Children and youths with learning disabilities or illiterate, 2) Those belonging to disintegrated homes, 3) Those belonging to extremely poor sectors, 4) Those with drug or alcohol addictions, 5) Violent families.

There is an evident correlation between the categories of low and marginal class and the delinquencies or behaviors that can be classified as pre-delinquent.

JUVENILE COURT SYSTEM IN THE PROVINCE OF BUENOS AIRES

In the province of Buenos Aires in 1938 the Law #4664 established the creation of the Juvenile Court. In 1983 the Law #10067 was sanctioned and is currently valid and in force. It is important to point out that our juvenile legislation is one of the most underdeveloped in Latin America and presently is undergoing revision. The new Law project among other things establishes a new system of responsibility for the juvenile delinquent; it creates the position of the juvenile prosecutor and analyzes the relationship between the right to intimacy and the probability of producing proof. It changes the concept of "irregular situation" for that of "vulnerability". In short, the new law #12067 of child and young's rights' integral protection will enter in force in the province of Buenos Aires. This law changes the axis of the irregular situation doctrine to the integral protection doctrine. The child is no longer considered in a risk situation, moral or material abandonment but rather as a subject of rights.

The protection system consecrated by law #12607 is crossed by the principles of the CDN, fundamentally the one of the superior interest of the child, the inclusion of the child's opinion, the fortification of the family's role, to guarantee the child and his family's privacy, to try to maintain the child or young person within his family nucleus, to guarantee his juridical assistance, that deprivation of liberty in penal matters be the last option, etc.

It raises a system of protection of the child's rights through social policies and the rights-exigibility mechanisms, it defines the role of the State as a promoter of welfare policies and the role of local organisms (municipalities) and community organizations as executors of these, privileging therefore the decentralization towards the origin of people's problems.

Conflicts of pure social nature are taken care of by the local protection services. This implies an important conquest in the nonjudicialization of social problems. The key question is how will this system be implemented in the middle of a profound State crisis, and the serious economic resources difficulties of the municipalities. The great dilemma is that before the lack of resources, an institutional emptiness is generated, leaving the hopeless in an even deeper hopelessness.

At the present, the Juvenile Court handles all the cases of young offenders under 18 (non-responsible until 16) and those under 21 who have been victims of various crimes. The range of the intervention proposal is vast: crimes committed by minors (criminal area), irregular situations of minors, guardianship, adoption, child abuse, family violence (assistance area), etc. .

As we have a broad concept of what constitutes moral and material danger, such is the involvement of the Juvenile Judge, which also encompasses broad concepts of interventions with regards to family and children. The discretionary faculty of the judge is practically unlimited; the law doesn't establish any parameter to the entity of the measures, intensity or duration.

The judge can apply the same measure of protection to a minor that has committed an offense as to the minor who has arrived at the court for reasons of poverty: placement in group or foster homes, changes in guardianship, planning of therapeutic treatment, recommendations for continuity of school attendance etc.

In practice there are no differences in the decisions covering guardianship in the case of the delinquent or victimized youth.

The law does not define the guardianship treatment and only establishes minimum temporary limits (1 year) with the possibility of extension until the age of adulthood.

As one can appreciate, the Juvenile Courts created under the concept of public aid, were headed by an assistance philosophy, observed in their intention to protect, shelter and save minors, as well as to punish and rehabilitate them. Therefore, it is difficult to ignore the contradiction between protecting the assisted and protecting a society against the danger that these minors represent. In this legal context, the functions of rehabilitation and punishment are not clearly differentiated. Assessment and treatment are likewise confused. We jump from over- intervention to a lack of intervention.

The rights of the child and law # 10067

The Convention of the Rights of the Child (United Nations, November 20, 1989) was ratified in our country through the National Law 23.849 on November 27, 1990.

The Law 23.849 changes the crux of the irregular situation of the minor into a position of integral protection of the child. The minor is transformed from an object of compassion to a subject full of rights. Unfortunately, it cannot be verified that the appropriate changes have occurred that would imply the acceptance of these guidelines.

The law #23849 will not only give a very important turn to the axis that articulates the protection of the child. It introduces new elements product of the problematic that childhood has faced in the last years: right to identity including the right to preserve nationality, name and family relationships; right to express opinions; to the freedom of thought, to associate and celebrate peaceful meetings; right to juridical assistance; to be protected against intrudings in his private life, his family, etc.

The function of the psychologist in juvenile court

Forensic psychologists, together with physicians and social workers, are part of an interdisciplinary team that assists every juvenile judge.

The practice of the psychologist should be analyzed in relation to five variables

- 1) With the minor
- 2) With the families or guardians and significant others
- 3) With the judge
- 4) With other professionals from the interdisciplinary team
- 5) With the institutions that minors and families are referred to.

This inclusion presents the professional with diverse theoretical, technical and ethical problems.

Who is the client? Where does the issue of profession secrecy stand? Generally the children and adults that are interviewed do not solicit our intervention. We write up an opinion or judgment from which generally a person's destiny is determined. Our task is not only expert opinion but includes follow-up and case orientation, bordering on clinical psychological practice.

The law only mentions that the psychologist must carry out diagnosis, orientation and prognosis, for each child or adolescent that is found in "moral or material danger" or that has committed an offense.

From this, growing demands of intervention arose... Hence, our intervention in welfare cases faced with a multiplicity of complex situations warrant emergency tactics.

We are also requested to conduct qualifying interviews to couples seeking adoption, give orientation and advice to parents, intervene in family conflicts and provide psychological evaluation to children that have been abused or mistreated or that have run away from home, etc.

In the criminal cases, psychological evaluations are carried out on children and youths that have committed an offense and their families. This procedure attempts to appreciate the subjective position of the child and the family context in the presence of the crime committed.

The psychologists' main duties consist of assessment and follow-up of cases in the Criminal and Welfare areas, recommendations dealing with treatment measures and decision making, counseling for affected minors and their families. We also make contact with the referral agencies that the minor is sent to for specific treatment.

Thus, the psychologists must intervene in a multitude of situations that require a special approach and imply a profound affective involvement.

The quality and quantity of the tasks, together with the lack of human and material resources, produce institutional problems of varying degrees. Practically most juvenile courts have only one psychologist, having to deal with too many minor cases. As an example, at the Court where I work I must tackle 10,000 cases, being more than two thirds of these assistance cases. This causes a secondary trauma effect in interviewees and stress and vicarious trauma in practitioners.

The phenomenon of psychologists' over involvement and under-involvement can be observed.

Extremes occur whereby they pass from an omnipotent role and as heroic saviors of abandoned children to feeling as devalued and unprotected as these are. They may fluctuate between the omnipotent reparation and the loss of hope. The professionals often need to apply survival strategies. In the face of so much pain, they anesthetize their own feelings or they involve emotionally into the role of the judge.

Despite the fact that there exists a general agreement that defines the practice of psychology, in these conditions, in Juvenile Court as unhealthy, as of yet there are no care mechanisms in place for those that intervene in the cases, supervision, reflection groups that could review the tasks, etc.

The forensic psychologist's practice and the best interest of the child

I will only cover one of the main points of practice, acting as advisors to the judge and the effects of our intervention.

How is the judge best advised with respect to the guardianship measures to be taken from a psychological viewpoint that is based on the best interest of the child?

The notion of the best interest of the child is based on a situation of major vulnerability children and adolescents incur in their relationship with the adult world. This vulnerability derives from the differences that become warning signs in their bio-psycho-social development.

The intervention should contemplate factors of familiar and social context as well as evolving and psychopathological ones. It should reach an adequate comprehension of the subjective dimension of the problem that the minor and his/her family raises.

The Convention operates as an organizer of the relationship among the child, the state and the family from the point of recognizing the reciprocal rights and responsibilities of each.

A "good enough" forensic psychological practice - to use a Winnicotean analogy - implies considering the place of the family, the balance between the family power and the child.

We should put to one side any paternalistic and authoritarian interpretation for the highest interest of the child and avoid compulsive protection. Parents should be included whenever possible in the process of making decisions and they should be made responsible through written agreements that contain the execution of a plan. We should also evaluate and reflect on the effectiveness of the judicial measures taken.

We should analyze our own biases and feelings with respect to what it means to be a father or mother. We should reflect on our own ideas about love and violence.

That is why it is imperative to reflect on the legal system's biases with regard to all these issues.

Violence, vulnerability and helplessness

We work on a wide range of cases of profound psycho-social complexity. Children and adults with high grades of social vulnerability and a helpless psyche, with limited inter and intra-subjective resources and precarious defenses to enable them to process the present stimuli of the external world, their internal needs and frustration.

We work with "victims" and "victimizers" of violent situations. In a society, when the families are abandoned or helpless due to their socioeconomic situation, children and adolescents become the first victims. In Juvenile Courts the child is not "his majesty the baby" but an abused child, abandoned and delinquent. The social and personal myths surrounding the "moving and touching" idea of parental love is fractured.

In situations of social and family helplessness, the different forms of violence tend to correspond to strategies of survival. The violence surges as a form of recuperating the sentiment of oneself, that as a victim of violence and having experienced trauma, did not have a chance to be symbolized.

The histories that we hear about the youths are inundated with traumatic scenes, insecurity, violence and frustration. Generally, they are children that have suffered the effects of violent paternal and maternal care: those that occurred as a result of traumatic irruption of stimuli that broke the barriers of protection of their own psyche, as well as those who have suffered abandonment.

What are then the effects of violence in childhood?

1) Loss of the possibility to differentiate diverse emotional states. Such is the case with abused children that have constructed their identity through beatings and silences, leaving a part of them as

though they were “ dead – living”. They expect that the world will provide these sensations that they cannot find in their internal world. They only feel when they are inundated by stimulus.

They seek feeling through beatings, accidents and search for danger.

Sometimes they appear as though they were in a continuous state of shock, or anesthetized.

2) Severe disturbance of thought

3) Confused identity

4) Narcissistic withdrawal

5) A state of anguished alert. They live in a world as though the unforeseen is foreseen.

6) Active transformation of the trauma passively suffered (identification with the aggressor)

7) Antisocial behavior when faced with the media when a vindictive attitude is predominant or when a feeling of terror is expelled.

8) The make-up of the signal of anguish fails to functions which would allow them to anticipate a risky situation.

9) The possibility of foreseeing the consequences of punishment for wrongdoing fails.

10) Difficulty in processing mourning. This makes for states of emptiness which they emerge from through intense stimulus, drugs abuse or violent acts.

11) They have no words for emotions. They lack the possibility of describing their affective states, in the presence of others or for themselves. They cannot discriminate among different emotional states and possess a profound incapacity to experience well - being and pleasure.

Intervention proposals

As I have attempted to describe, in forensic practice in Juvenile Court we meet with obstacles of different degrees: the range and vagueness of the role, that goes from giving expert opinion to that

of "counseling", the lack of an efficient support system and the setup of social networks. Many times, the data is not shared by the different intervening systems and diagnoses are overlapped. Thus, the necessary treatment is not carried out. Many times, in the absence of adequate institutions for referral, the only psychological intervention possible with a minor and his parents is that which can be realized in the courts.

The question is: What will happen after the assessment? How to carry out the task of orientation so that the courts experience will not re-victimize the child and open the way for the possibility of reflection. How can we get the youths to think about the consequences of the act they have committed?

In these cases whereby they are presented as apathetic, and indifferent, these children have had to be their own parents.

It is understood that in these youths, their conduct is a result of a reversed role from the absent protective parent. The pain created without a soothing living situation has swept away their psychic structure, or the abandonment made them remain at the mercy of their internal demands and indifferent to sensations. They have nothing, they feel they are nothing nor nobody, and also that they have nothing to lose.

I just point out the devastating effects of violence on the psyche, which make the youth more vulnerable to the criminological influence.

My perspective takes into account the concept of helplessness to define the intervention. Taking into account the act committed in the penal area or that which motivates the "assistance" intervention, the measures of guardianship treatment, and the plans set up to be accomplished should be determined according to the above mentioned concept of helplessness. This does not

imply that the abandoned minors will be considered as "dangerous" or will the social categories be pathologized.

Certain behaviors as the antisocial act are produced as an attempt of escaping the lack of self-sentiment as if through the act of violence they could "feel". In these cases, if their affective emptiness and lack of adequate self-resources are not taken into consideration, the guardianship measures fail.

The dangerous aspect of the present guardianship treatment is the penalization and judicialism of social problems and the criminalization of an abandoned childhood.

The judicial measure can work as an exercise in power from the strongest place. Thus psychic vulnerability gets chronic. An arbitrary behavior can not be rehabilitated through the arbitrariness of the system.

An adequate functioning of the child system demands that poverty not be judicialised and that the child protection services be incremented. Risk assessment programs and safety plans should be developed. Likewise, in the criminal area we could take forward assessments and pass on to specific treatment programs.

But as this is at present just a dream to become true, psychologists must take advantage of the minor and family's passing through the courts to generate a space for reflection that clears the way towards the inhibition of violent behavior. I do believe this is a hard task to perform.

Vulnerability and judicial intervention

Regarding the legal part, it is thought that if a judicial intervention is to be effective, it must be fast, balanced and efficient, and above all, guaranteeing to the subject, even more when the subject is a child.

Our whole system judicialises victims as well as perpetrators. Therefore, judicial intervention seems necessary, but problematic, due to its insufficiency or to its harmful effects. The therapeutic programs are also insufficient and dis-coordinate with the legal system.

In my daily work with abused children and their parents, at the Youth Court, I can perceive the oppressing effects both for users and workers due to the lack of institutional coordination of resources.

I believe that these institutions (principally judicial and police system) revictimize the victim and reproduce, in their practices and their own environment, violent climates. Assistance and preventive programs develop intrusive practices that provoke violence in victims. I also sustain that the intrusiveness of the intervention and the violent institutional environment are due to the irrationality of the policies.

I contend that there is no congruence between the general goals which have been stated in official declarations and the operational goals of the activities.

We have no experience as regards to violence prediction, risk assessment, nor protocols of procedure.

The effort to work in an interdisciplinary way is lost due to:

1. lack of agreement on conceptual and operational definitions of the problem.
2. lack of resource coordination.

As a result of a clear lack of institutional functioning analysis, procedures of different areas overlap, giving rise to a pendulum swing from a lack, to an excess of intervention.

In order for children's rights to be a reality in our country it is necessary to coordinate governmental and private efforts together.

It is necessary to analyze historical and cultural variables, the myths, beliefs and prejudices that tint political, judicial, and social assistance concepts. It is important to analyze the myths and prejudices of the participants about the concepts of: family, children, fatherhood, motherhood, risk, poverty, social control.

It is necessary to analyze the power of intervention in a conceptual way and install models of accountability. Accounting for one's practices avoids authoritarianism and perpetuates democratic systems.

Notes

(1) Social information has to be obtained from special surveys, such as the 1997 Survey of Social Development (EDS).

Most surveys do not cover the rural areas, which have the highest rates of poverty, and particularly exclude the indigenous, about which little is known.

Existing information is scattered among three different sources: INDEC's Permanent Household Survey (EPH) provides income data and labour force information, but no information on consumption, social indicators or the use of public services. Consumption data are available only in the National Survey of Expenditures (ENGHO), carried out every ten years, and social information has to be obtained from special surveys, such as the 1997 Survey of Social Development (EDS).

(2) According to INDEC's definition, a home is considered NBI (Unsatisfied Basic Needs) when it lacks a toilette, it has children in school age that do not attend school, the quotient between

rooms and persons is equal or higher than three, does not have flowing water or has a chief with incomplete elementary schooling in charge of four or more persons.

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