

# The Social-legal Construction of the Poor Childhood: Social-historical Analysis in the Discourse of Córdoba

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## Abstract

This paper intends to perform an analysis of the academic production of the National University of Córdoba from the late 19th century to the middle of the 20th century that deals with the problem of the illegitimate, abandoned, delinquent childhood, from a critical approach of the racism theory. One of the displacements this category underwent during the passed century is that it went beyond the field of race and it included women and young people. This aspect involves the discrimination of poor children that have been confined to the place of the "other". Racist characters can be traced in the discursive political practices that have created the category of childhood, being plausible to successfully perform this task by considering as the object of analysis of the theses and dissertations that discuss this subject matter in Córdoba. The paper will try to reconstruct the voices that, due to the sense of social belonging of the actors, refer to a certain class ideology. This provides a study of the constitution of the Argentine ruling elite, when the problem of social control, or the "social matter", was placed in the middle of all speculations. Analyzing both the characteristics of the discursive racism of the Argentine elite and the complex process of inferiorization of childhood that the discursive racism entails will allow to establish categories for an analysis of modern racism. In this way, elements to counteract the practices of domination will be presented. In order to do this, it is necessary to historicize them, reconstructing the discourses that support them and allow their continuity, since they persist in their functionality.

## Keywords

Social-legal construction, childhood, Córdoba, Argentina

In a historical outlook of social discursivity from the time of the Argentine national consolidation to the middle of the 20th century, certain voices are considered dominant, they direct and delimit what can be voiced. Some authors invest themselves with a discursive power that is inseparable from their political power.

These positions are considered unique, and they speak from legitimized institutional and disciplinary areas, such as the legal and medical academic fields. In the intersection among these fields of knowledge,

the doctoral theses comprising the corpus of the research on which this presentation is based are submitted<sup>1</sup>.

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In the theses, different positions concerning the most evident social issues at that time were analyzed, such as illegitimate children, anarchism, delinquency, infant mortality, epidemics, the family. The discourse of a learned elite is organized around these topics. Furthermore, said elite presents itself as a subject of doing, responsible for the changes and for the future of a nation under construction.

In these areas of discursive visibility, subjects are constructed. The main object of the elite is the working class, analyzed from a vertical point of view of society, that represents itself as a passive observer, a social analyst.

When this elite provides solutions that can be applied to the masses, it assumes an active role of control and discipline. The aim is a future nation dwelt by a national race in which the good elements of the migration must be included, and the bad inheritance of the Creole and the people of mixed race must be annulled. In order to do this, the prevailing disciplines in the public planning will be hygienism, eugenics, criminology and psychiatry.

Childhood is a concept that implies different meanings and it experiences the latent problems. First, it suffers from the historic exclusion of adultcentrism. The child, regarded as a weak creature, a passive, irrational and innocent being, became the laboratory object for the eugenics theories that aimed at purifying the national race. The child is the future: This fiction makes him the body where the utopia of the nation will become real, through an educational and hygienic project.

The perspective of the child as an inferior and vulnerable being, plausible of being shaped, is the same that characterizes the attitude towards the working class or towards women. It is a discursive configuration of the weak individuals, the alterity of a male and patriarchal power. Due to his own weakness, the child is a probable victim of the crime and the immorality that sicken the society. He is in need of protection, and he represents the traditional object of

the Christian charity. This aspect shall be the concern of welfarism. Furthermore, puericulture provides assistance for the biological vulnerability of children, according to the logic of the biopolitical power (many medical theses refer to the high infant mortality rates, as well as to the high vulnerability of children to epidemics).

On the other hand, from the late 19th century and all along the 20th century, it gains strength an opposite conception of the child as a dangerous subject. It was the time of the so-called “social matter”, which includes the delinquency in the growing cities and the presence of the immigrant that settle there. The child, with working-class or immigrant parents, influenced by an immoral and irrational environment, represented, then, the quintessential delinquent.

### **THE ILLEGITIMATE—CHILDREN OF NO ONE**

The first institution created around childhood in Argentina, that institutes children as subjects, was the Christian charity, which was founded during the colonial period. Such institution defines the child as a weak and innocent subject, capable of inspiring strong feelings of love and mercy. At the same time, the child is passive and irrational. He is the object of the actions of others that speak and do on his behalf. This is shown in some of the ways these children are called. For instance, in the memoirs of the Ladies of Charity, they are called “little orphans”, “little asylee angels”, “children abandoned to their fate”, etc..

Since 1870, many female religious congregations flourished in Córdoba. Besides providing assistance to those who were sick or defenseless in orphanages, nursery schools and children hospitals, their main objectives were the education of girls and their training as domestic service personnel.

Some sectors connected to the Catholic Church developed some ways of providing private institutional support as well in charge of some

confraternities of mainly social and religious nature, such as the Beneficent Society, the Ladies of Mercy Society, the Ladies of Providence Society, the Immaculate Conception Society, and the League of Argentine Catholic Ladies. There was also a wide variety of initiatives aimed at the distribution of food and clothing. Some of them were combined with catechization, popular instruction and the teaching of several jobs. Along with the attempts to mitigate the lack of material elements, those initiatives aim at educating and moralizing the weakest individuals, including abandoned children, single women and widows.

The Córdoba Foundling Home was founded in 1884 as an initiative of the Ladies of the Divine Providence Society, and it was ruled by the congregation of nuns of the Immaculate Conception from Spain. The “torno” was used in here. This device was created in orphanages and foundling homes of Europe in the middle of the 18th century, and it was imported to America, as it was the entire organization of charity. Such an invention provided a solution for the problem of the exposition of children in public places, where they could die before someone took care of them. It offered the advantage of preserving the honor of the family as well, since the secret was kept.<sup>2</sup> The same children that had been morally relegated from the well-constituted family—by God and by the Law—were now in the care of the Church and the social class that deprived them of their identity and inheritance.

Illegitimate children represented a high percentage of the orphans and the children abandoned in foundling houses. From the moment of their admission, they were named and given a number; they were identified with the receiving institution, and a new status was assigned to them: the “foundlings”. Thus, their identity and filiation was denied, breaking any link and legal relation with their families.

Among the thematic cores dealt with in the legal doctoral theses, the one of filiation represents a

conflict between the conservative ideas, with a markedly religious nature, and the liberal proposals of the incipient Enlightenment. This ideas correspond to social positions of the actors in the political and even in the economic fields. The charity have influenced their judgments and their ways of calling children.

The filiation as a legal problem implied a classification of different categories of children according to not only legal parameters, but also moral-religious ones, typical of the codification of the time. The legitimate filiation is contrasted with the natural one. Natural children could inquire about their paternity, and legitimate their position through the subsequent marriage of their parents, but with some restrictions. However, the classification provided by the Argentine Civil Code, in its articles 338, 339 and 340, established three other categories of children born out of the wedlock that were deprived from their rights:

The child born from adultery: the result of the union between two persons that, at the moment of the conception, could not get married because one or both of them were married. The good will of the mother or the father that may have lived in adultery without knowing it, or any type of violence that the mother could have suffered from, do not change the nature of the filiation. In both instances, the child is considered as being born from adultery.

The child born from incest: a child whose parents could not get married because they were related in a way that was inexcusable for the canons of the Catholic Church.

The sacrilegious child: a child whose father is a clergyman of a superior order, or a child whose mother or father has sworn a solemn vote of chastity in a religious order approved by the Catholic Church.

While the Civil Code recognized certain rights of the natural children, the article 341 stated that “any investigation of the adulterine, incestuous or sacrilegious paternity or maternity of a child is forbidden”; and the article 342 established that “a child born from adultery or incest, or a sacrilegious child does not have, according to the Law, neither a mother, a father, nor any maternal or paternal relatives.

The child has no right to undertake any legal investigation about his paternity or maternity".<sup>3</sup>

Therefore, legitimate children represent the moral and legal legitimacy within the family institution. They enjoy full civil rights which should be defended by everyone. The other children are defined negatively in relation to these, as illegitimate.

In 1884, Ramón J. Cárcano presented his thesis to get a doctorate degree in Law called "De los hijos adulterinos incestuosos y sacrílegos (The children born from adultery, from incest and the sacrilegious children)", where he proposed the legal equalization of children. His is a paradigmatic case of the confrontation between the liberal posture and those individuals who, inside the academy and the Church, opposed the reading of his thesis, which is the founding act of the new doctors.

This thesis generated reject and scandal, since it attempted not only against the family patrimony, but also against the economy of the symbolic goods, and the reproduction and accumulation of equity. In an ideological context in which the "family relations" are conceived as a "great principle" that "supports the social and political order of the nations", it is understood that "nature has covered the secret of paternity with a mysterious and impenetrable veil" (López 1908: 1). Thus, we can see how, even in the 19th century, a period of laicization of the state system, it is permeated with the discourse of the charity.

Children are the "result" of the union between the sexes, whether they are born in or out of the wedlock. The legitimacy is given by the origin of the family, which is legally unquestionable. On the other hand, "the concubine" and her "offspring", semantically charged with all the characteristics of the antagonist, attempt against the family patrimony. Almost half a century after Cárcano, Orgaz (1927: 80) stated that "the 'children of no one' are social pariahs". The child is son of—a parent—or nothing, he has no legal identity. These previous subjectivities are simply considered the "children of the people" (López,

1908:28), supported by the state, and the subject of the charity.

## **THE POOR—JUVENILE DELINQUENTS**

At beginning of the 20th century, due to the social changes and the institutional reforms, in the university and in the legal field, the doctoral theses had a more scientificist style. The discourse was influenced by the positivism that, in relation to childhood, presents a racist slant and it perpetuates the colonial values.

The thesis of Ruggero Mazzi, "Los menores delincuentes ante la ley. Ensayo de ortopedia moral (The juvenile delinquent before the Law. Essay on Moral Orthopedics)", from 1914, deals with the problem of "the guilty childhood". In this thesis, the construction of childhood is based on a discourse that considers children as "germs of the future society". Childhood is seen as "an immense breeding ground for... the men that are trusted with the destiny of the people" (Mazzi 1914: 18). Thus, the metaphors used are related to culturing. Children are compared with something that "sprouts" and "grows". They are "monads" that have to be separated from "all bad contact, fixing... the imperfections due to the congenital inclination of the inferior part of nature" (Mazzi 1914: 19).

The specific object of Mazzi are the children subject to the penal law, the child who is guilty of a crime, for whom he proposes a juvenile delinquency law. He situates them in a junction in which the developing subject is defined as a future "honest man", or as a "delinquent". For this author, the latter is a child who has grown in a environment of vice that, according to the most widespread theories of delinquency causes at that time, is an environmental and hereditary crime factor (Carreras 1908: 47). This viced environment corresponds to the absence of a family, whether because it does not exist, or because the parents do not fulfill successfully their role, they are "unworthy or inept" (Carreras 1908: 47)—the

so-called moral abandonment. Mazzi provides as a worrying example the environment of the tenements of the City of Buenos Aires. Here, the “guilty childhood” and the group of “children with immigrant parents” are almost the same.

In that special junction where children are placed, the influence of the environment is considered reversible. It is a “superficially corrupted innocence” (Mazzi 1914: 20). The plan he proposes is: “to transform them into useful citizens, removing them from that atmosphere of perversion and misery in which they are being raised” (Mazzi 1914: 108).

The solution proposed is a non-repressive reformatory system, that establishes the constitution of a new organization that is considered as an educational and medical system, since it would provide treatment for the “physically and morally sick”. At that time, the medical discourse considered the moral defects as indistinguishable from the hereditary and racial charge of the physical constitution of people. This is summarized in the syntagma “moral orthopedics” in the title of the thesis.

The ambivalent construction of the figure of the delinquent child—victim and victimizer, an amalgam of innocence and guilt, abandoned, in danger and dangerous at the time—translates into a search to “familiarize” the legal framework in charge of him, adapting that cold area of the Law so as to correct the minors.

A central figure in this sense is the Juvenile Court Judge proposed by Mazzi, borrowed from the Anglo-American model. A paternal judge with unlimited faculties, that is compared to the “Divine Master” (Mazzi 1914: 135), that loves children, that trusts the advice of “family men” (Mazzi 1914: 125) to decide the fate of the juvenile delinquents. Due to a “we” that shows a construed consensus in the discourse, this hybrid figure of judge and parent is established as a gear between the criminal justice system and the charity: “to judge children, we want a family man that is very strict and patient at the same

time. Someone who understands them and loves them...” (Mazzi 1914: 132). In the struggle for the custody of children, the role of the paternalistic State is represented in this figure. This thesis endorses the separation of the children from their parents and their confinement during a “necessary” period of time. In economic terms, a correctional system is defined as a productive system. A factory that would create useful and productive subjects from juvenile delinquents.

In order to justify this deprivation of freedom, the discourse contrasts the abandonment of the family with the State protection. The society is the new family. Such protection implies segregation and subjection policies. “By doing that, the State fulfills its primordial and sacred duty, the one of taking care of the future generations, even against the will of their relatives, and of the minors themselves” (Mazzi 1914: 134).

The protection of “delinquent children or those in danger” (Mazzi 1914: 47) is considered a duty of the State. The limits of the subject of the discourse, as well as the limits of the established organization of the penal correction, become subtly wider: from the guilty child to the one in danger, the Law will include the “street urchins”, as well as the newspapers streets sellers (“canillitas”) (Ingenieros 1908), when the boundaries between the concepts of prevention and correction are blurred.

In this way, the “protection” implies the control over the life, and it excludes the freedom. As the author stated: “... not even children have the right to suppress or take the virtue out of a life that they owe to the community” (Mazzi 1914: 134-135).

## **THE ASYLEES—ABNORMALS— PATHOLOGICAL DELINQUENTS**

The growing connection between the medical and legal fields was evident in a change in the medical doctoral theses from the beginnings of the 20th

century. From the point where these disciplines traditionally intersect, such as Legal Medicine, to the theses that deal with medical problems on the basis of their social consequences (epidemics) or social problems as real diseases (prostitution, alcoholism).

Eugenics is an adopted science that developed in a peculiar way in our country.<sup>4</sup> This discipline explains how this authors focus their concern on the crucial moment of conception. This resulted in the banning of the marriage of people with tuberculosis or syphilis, which is advocated in 1920 by Angel Garcilaso in his thesis "Incompatibilidad del Matrimonio con la tuberculosis y la sífilis (Incompatibility of Marriage with tuberculosis and syphilis)". In the same way, Enrique Albarracín, in his thesis about alcoholism in the same year, shows disgust towards the union between two alcoholics. Also with eugenics aims, there is a pursuit for the regulation of prostitution.

When the racist point of view prevails, the one that favors the community over the individual. Medicine will be the foundation so the legislation adjusts itself to that supreme objective: the improvement of the race, equivalent to the "future of the nation" (Casas 1942: 3).

It is necessary to take into account the "morbid inheritance", a fundamental part of the medical histories, as well as a recurrent index for the classification of the individuals in relation to their usefulness or dangerousness to the species. The child represents a symbol of the future nation, whose inheritance must not be dishonored:

The terrible inheritance, an impenetrable mystery that we can see, feel and whose consequences we can experience, but whose essence we cannot explain. The inheritance that, as a supreme curse since the sin of Adam and Eve, punishes the innocent that comes to this world with a virgin soul and with his little body full of moral blots, the ignorance or the crime of his parents (Vélez 1920: 92).

The danger, for childhood and for the race, comes from those children that are sick or carry some

biological defect, many times confused with the moral and psychic ones. These children share and continue the stigma of the illegitimate.

The aim is to find the idiot, the hidden imbecile, the concealed abnormal, a potential and unnoticed delinquent. Once again, there is ambiguity in the discourse about childhood. In the attempt to "save them", children are put under the control of a power that segregates them.

In this matter, the author took as an example the medical report of the doctor Gregorio Bermann, "Los menores desamparados y delincuentes en Córdoba. Estudio psico-patológico, médico-social, criminológico y médico-legal (The defenseless and delinquent minors in Córdoba. Psycho-pathological, social-medical, criminological and legal-medical study)", requested by the Governor Cárcano in 1927 in order to address the problem of juvenile delinquency. One of the main postulates of this author is: "The juvenile delinquents are included among the mentally weak and those with sub-normal intelligence" (Bermann 1933: 118). One of the main obligations of the "prophylaxis of the precocious delinquency" would be to diagnose and treat those children and young people. The proposals of Bermann for psycho-pathological examinations project in the current behavior of a child, the future crimes he will commit as an adult. This predictability is improved with the search for acts, patterns, ways of behavior, and the thorough classification of the different types of abnormality.

In a kind of obsessive search for mental abnormality, the author ends up discovering mentally weak individuals in every delinquent or asocial subject:

But I have proved that besides the "dummies" hidden by their families at home due to the embarrassment, there are many more mentally handicapped persons that do not deserve any attention, especially in the interior of the country and particularly among women. A considerable part of the homeless, prostitutes and recidivist delinquents are

abnormal, even though sometimes in a low degree (Bermann 1933: 119-120).

The child that is considered mean and worthless could be an imbecile or mentally weak, and, if detected on time, be corrected. The population that Bermann uses as the object of his report is composed of boys and girls put in orphanages<sup>5</sup>, whether because they were delinquent or they were abandoned. Therefore, this doctor tries to find mentally deficient individuals among these children and to infer from that the relation between mental deficiency and crime. So, he not only tags the mentally weak children as delinquents, but he also criminalizes the abandonment as a potential one.

## CONCLUSION

The inheritance and the family constitute a sense line that covers these subject matters, a common thread underlying the discourse all along the analyzed period. In this respect, the author would like to make some remarks about its continuity in the legal and legislative system in Argentina, especially in Córdoba.

Related to the problem of illegitimate children, the first differentiation between the good and bad procreation arose during the Colonial period. Being born from adultery or incest, or being a natural, or a sacrilegious child was a mark of origin that projected the “sin” of the parents (specifically of the mother, whether she was an adulterous wife or a calculating concubine) on the child. The Civil Code agreed with the canonical law when it denied the identity and the rights of these children. In Córdoba, the conservative and clerical lines, in defense of the constitution of the marriage as the legal and legitimate framework for procreation, blocked the actions towards the recognition of the rights of the illegitimate children (Zavala 1901: 48). These were the heinous offspring, if they dared to claim paternity just as children of the people they became a part of the discourse of charity

and of the condition of unprotected. They existed on condition of not being. They were always at the margin of the “healthy” social core, the legitimate family (Bisig 2009:156).

These ideas were so strong that, even in 1927, in the First National Congress of Civil Law, Arturo Orgaz advocated, without succeeding, for the “suppression of the cruel individual privilege of conceiving children of crime, to whom the law punishes for no reason, in order to guarantee the impunity of illicit relationships” (Orgaz 1927: 80). However, the legal equalization of children took place in 1985 through the Act 23,264 Filiation and *Parens Patriae*.

In the case of the juvenile delinquent, correlative and, many times, corresponding figure to the abandoned child, his existence outside the family determined his tendency towards crime. In the framework of the “social matter”, the abandonment, in the same way that it had been the driving force of the charity, made the state action “necessary”. In the sense that children were guilty due to their environment and they run the risk of becoming criminals. The State had to secure their custody during the necessary period of time in order to transform them into useful citizen for the society. That period, eventually, was equivalent to the length of the childhood.

The legal institution proposed back then had a juvenile court judge that acted as a parent for these children. Representative of an act that was divested, in the discourse, of its usual coldness and hardness; but also, in practice, of the guarantees for the individual liberties that had to defend. Such figure was founded in the Juvenile Court of the Province of Córdoba in 1957,<sup>6</sup> and it is still in force, with the same discretionariness and arbitrariness.

In conclusion, the “abnormality” of a person has historically been established according to his origin. This implied the birth (inheritance of the sin of the parents, of amoral proclivities, or of morbid tendencies: disease, insanity, alcoholism) as well as

the environment in which the child was raised (environment of vice); both combined in the so-called “inheritance of the acquired characters”. Nowadays, this condition has extended to the family of the children, according to a new punishable figure, “family violence”. The deteriorated environment of the working-class, immigrant or simply poor family, according to the reproduction of the hegemonic discourse, is the violent environment from which the victim child must be urgently removed, in order to prevent the future victim. Separated from their family, the children end up in protective institutions similar to those of charity<sup>7</sup>. Under the legal imperative<sup>8</sup> of protecting children, a new institution of family intervention is legitimized, allowing the continuity of the stagnant practices of segregation and subjection, permeated with identical ideological postulates than those of the 19th century.

## Notes

1. It refers to the Research Project: Racismo de elite en el discurso académico sobre la infancia (Elite racism in the academic discourse about childhood)—Córdoba CONICET-CIJS-UNC, 2009/2010.
2. The “torno” was used in the “Casa de Expósitos” until 1926, when the “Comisión de Recepción de Niños” (Children Receiving Committee) was created. It was composed of the Chairwoman and the General Inspector, and it “... guaranteed the reception (of a child) as a closely guarded secret”, according to the internal regulation of the Ladies of the Divine Providence Society.
3. The Civil Code, written by Dalmacio Vélez Sársfield, graduated from the National University of Córdoba, was sanctioned in 1871.
4. Susana V. García (2005: 536) in “Herencia biológica en el discurso de naturalistas argentinos de principios de siglo XX” (Biological inheritance in the discourse of Argentine naturalist from the beginning of the 20th century) stated that “Different interpretations, mechanical, physiological, chemicals and metaphysical models were combined with embryological and cytological studies, in order to give account of the complex phenomenology of the hereditary transmission and to discover the material basis of the inheritance”.
5. Bermann classifies the minors population of his report (the

boys from the Asilo de Menores and the girls from the Sección de Menores de la Casa del Buen Pastor) according to the following scale of “intellectual level”: idiocy, imbecility, mentally weakness, subnormal intelligence, normal, false abnormal and superior mental level. In a total of 61 boys, 35 were abnormal, most of them were “imbeciles and mentally weak children”. Among the girls, 29 out of 50 are qualified under the “normal” level.

6. They were created, by Decree/Act 6873 of the “imposition of the penal and correctional system for those under the age of 18”; in 1965 the Consejo de Protección al Menor (Children Support Committee) was created by the Provincial Act No. 4873 “Statute of the Minority”. Its functions were to collaborate, to provide technical assistance and the execution of the Juvenile Courts.
7. This can be seen in the continuity of the denominations of the receiving institutions. In Córdoba, those associated to the Subsecretaría de Niñez y Adolescencia (Head Office of Childhood and Adolescence)—that assists the children at the disposal of the Juvenile Courts—have similar names to those of the old Beneficence: “Portal de Belén”, “Equipo Cristiano de Guarda y Adopción”, “Hogar de Niños San José”, etc.
8. It refers to the following: the Act 9053 Legal Protection of the Child and the Adolescent, and the Act 9283 Act of Family Violence, published in the Official Gazette of Córdoba on November, 2002 and on March, 2006, respectively.

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