

Anthropology of Violence

The case of the Algarve, Portugal, 19th century

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Abstract

In this paper² I intend to give an answer to the questions: How did justice, violent crimes and their representations change in the 19th century, Algarve? How did justice contribute to produce new gender relations or, on the contrary, to reproduce the ancient patriarchal dominance?

1. The Courts as intercultural places

The primary reflections on how the imbalances and structural inequalities in society promoted violence, particularly in gender relations, have been developed since the Enlightenment. But it was with the feminist criminology in the last quarter of the twentieth century that we began to see the results of empirical research guided by this theory. Furthermore, Historical Anthropology showed a 19th century as a time of "civilization of traditions", including the traditions which required the blood in private revenge in name of the honour, traditions which required the use of violence in family relationships, traditions that defined the

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² More exactly, this paper is the text of the lecture given in the University of Vienna, 29th October 2009.

ways to punish, even the practices of the jurors and judges in judgments, when they pronounced about guilt and shame, often in conflict with the law.

Many social scientists think that a global, integrator, historical and cultural perspective lead to crime and penalties. This perspective must be sensitive to the emotions and to the individual experiences and of local groups. It must also consider the inter-relations of crime and penalties with the economy, society, politics and mentalities. This perspective must also question the permanencies and rhythms of the criminal practices and its repression, as well as the changes of its representations. In the current criminology, this perspective constitutes a privileged place of comment of the complexity of the functioning and the cultural dynamics.

An interpretative methodology was used to observe the actors, the circumstances and the significance of the use of violence by women and against them. Particular attention was given to family relations and how the transformations of the judicial system, of the violence perceptions and of their social actors had conditioned the crime processing that women got involved with. Finally, the role of justice in the reproduction of the violent private patriarchy was also examined.

We don't understand the significance of the facts without inserting them in the historic and cultural context that makes it intelligible. The statistics are the first step of the adventure in the understanding of the facts in a holistic and deep perspective. Yes, it is an adventure that begins with the sensitivity to seize in the

narratives and in the testimonies fragments of worlds in conflict, of self-images and images of the others.

The adventure continues when letters, petitions, orders, files, reports and statements reveal the strategies and personalities of judges, defendants, victims, witnesses, experts and officials, while they expose the disagreements, the negotiations, the arbitrations, finally, the fragments of the interaction of persons coming from different cultural backgrounds, with unequal powers.

The anthropological perspective of justice and violence requires differentiation of rules, law and practices, consideration of cultural diversity and complexity in space and time, attention to the dynamic of persistence and change, relation of the macro and micro, of individual and collective levels, without forgetting the gender dimension.

The studies of the Portuguese 19th century cultural dynamics show that values of honour and shame persist. This implies feminine passivity and the submission to the patriarchal power. However, this traditional culture is in the process of change, in different rhythms in the space, time and social groups, while at the same time the State and its new social control instruments are working to construct a discipline, self-control and individual value culture.

2. Representations of criminal violence in 19th century anthropological discourse

In the first Portuguese Constitution (1822) the new principles of equality of the citizens, of necessity, legality, proportionality and generality of the law were recognized. This Constitution abolished the torture and the confiscation of the goods and all “the cruel and infamous” penalties, laws of the Ancient Regime, inadequate to the new time inspired by the proposals of Beccaria (1764).

The first Portuguese Penal Code published in the end of 1852 consigned the principle of proportionality of the punishment for social prejudice caused by the offence, the principle of gradual penalty according to the circumstances of the crime and the principle of equality of citizens before the law, by defining the offence or crime as Beccaria did: ' the fact that voluntary declared punishable by criminal law '.

However, the principle of equality of citizens before the law has undergone a distortion by sex of aggressor and victim. In fact, the Penal Code of 1852 replaced the public works penalty by imprisonment with work or without work in the case of a defendant being a woman. But the other bodily sentences, which included the death penalty were applicable to women, except in the case of pregnancy, in which the sentence would be postponed, taking place one month after childbirth (only until abolition in 1867).

Differences in sex determined the ranking of the sentence. But there were also other key aspects like age and the fact that the crime be committed with offense or contempt of respect for the victims dignity.

Despite the differentiation of penalties according to the sex of the accused, the softening of the penalties for the crime of adultery, abortion and infanticide is expressive of the values and sensitivity of the political elite of the mid-19th century.

In the validity of the Ordinances it was considered legitimate for the husband to make justice with his proper hands, that is, to kill his wife and the adulterous one. According to the law, the husband would not kill his rival if he was socially superior to him. Moreover, gender inequality in adultery was attenuated with the first Criminal Code. If the husband committed adultery he would be fined and given a penalty of three months to three years. Wives had harsher penalties.

The questions of the differentiation of the penalties and of the gender asymmetry of crime had constituted one of the main problematic axles of the debates and of the proposals presented for the involved reformers, among which we have the magistrates and jurists, as Ayres Gouveia (1860).

The positivistic culture and the process of differentiation and institutionalization of the new sciences of Life, of Man and of Society developed the human palaeontology, the prehistoric archaeology, the criminal anthropology and the ethnography, an enormous area of inquiry today assigned commonly to Anthropology. Therefore, in this context, the authority to speak of the criminals,

especially of the “savages of the civilization”, was dislocated from the jurists, supported by the doctors (general practice) and the unqualified ones who practised medicine, for the psychiatrists and anthropologists: a change for the reconstruction of social politics and of the speeches. This displacement was followed by an increasing public interest for the questions related with the crime, justice and psychiatry, interest nominated for Castello Branco in its *Notice sur l' Évolution du Droit Pènal Portugais* (1888).

3. Changes in Justice and Criminal Violence in Gender Relations

In the transformation process of the criminal violence of gender relations three periods were distinguished:

The first, between 1820 and the publication of the earliest Penal Code (1852), was characterized by the Civil War involving liberals and absolutists, by the subsequent liberal victory and need of pacification and by the reforms of the penal and process laws. In this period criminal justice became more efficient and closer to the people and to the liberal ideals. The old law based on the principle of the privileges of the condition was substituted by the law based on the principle of citizens' equality.

The second, which covers the period up until the 1884 Penal Reform, is branded by the beginning of a new sensitivity to the violence in association with economic, social and cultural modernization of the «Regeneração», by the effects of the first Penal Code application in the judicial practise, as well as the juridical framework of family relations defined with the first Civil Code. These changes, restrained the husband's domination over the wife and children, and this facilitated the transformation of the women's relation with violence and justice, by giving support to the development of the resistance to violence in the private patriarchal domination.

In this period, with the different behaviours processed by the judicial system, as a result of the empowerment of this system and of the diffusion of a new sensitivity as to actions that jeopardized the social role of maternity, the children's specificity, the chastity, and the limits of the exercise of power and confidence, the increase of the efficiency in the punishment of death crimes, particularly the poisoning, happened simultaneously. For the most part, this was the effect of the innovations in the analyzer's methods of the toxic substances and the result of the consensus about experts' proof validity in toxicology. The legal medicine established itself as a scientific interdisciplinary area, mobilising the new resources and knowledge acquired from medicine, chemistry, gynaecology, psychiatry and anthropology sciences, having obtained the full judicial recognition in the final century. In this context, different strategies of prevention, control and penal

processing of crimes as abortion, infanticide and newborn abandonment were tested.

The third, after the mid eighties, the gender divergence of criminality and victimization became more evident, developing the resistance to the private patriarchal violence. The penalised behaviours increased, the interpersonal violence was more and more punished, including the marital aggressions, because of the changes on the mode of policing, on the penal and process laws, on the crime's and criminal's perceptions, on the women's insight and on the women's biological and cultural reproductive roles views.

The homogenisation of the criminological space, the generalization and masculinisation of crime and the feminisation of victims, which are observed at the end of the eighties, are associated with the state's efforts to monopolize the exercise of violence on social relations, including the family sphere. In this perspective, the criminalization of the violent exercise of the private patriarchy and the women's resistance composed a double face of the family civilization process, in which justice assumed a repressive role, but also a pedagogical one, at the same time as other institutions, with the intention of the imposing new values and new behaviours in marital relations.

Simultaneously, the judicial system moved forwards and the result was a more efficient penalty of the women's violence, mainly when their behaviour didn't correspond to the feminine model of who decided about guilt and penalties, especially when they committed the most serious crimes. However, it is useful to

refer that each crime is a specific case, as it was demonstrated by the analysis of the changes in the poisoning and the infanticide judicial processes.