Life in the Logic of Exception: Violation of Rights and Abandonment

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Abstract

The objective of this paper is to problematize intervention practices in the life of juveniles that serve socio-educational measures of restricted freedom, from two distinct rationales: government and sovereignty. Based upon the philosophical works of Michel Foucault and Giorgio Agamben, we contemplate on how investment and disinvestment technologies directed toward life are operated. The research process developed from the analysis of official Brazilian documents related to public policies for juvenile offenders. We demonstrate that under the current paradigm of management there is a zone of indistinction between government and sovereignty that enables to establish a relation of abandonment and violation of rights with respect to the lives of youth in conflict with the law, which has been present in their lives previously to committing offenses.

Keywords: Abandonment, Juvenile offenders, Socio-educational detention measures.

Introduction

This paper is the result of a research that problematizes the mode in which the laws that govern the rights of youth in conflict with the law are applied, or not, in Socio-Educational Detention Measures in the context of the State of Mato Grosso do Sul in Brazil, from the analysis of official Brazilian documents and legal provisions. To elaborate on the discussion and analysis of documents, we based our research on the studies of Michel Foucault and Giorgio Agamben that support our contemplation on how technologies of investment and disinvestment administering life are put into effect.

Starting off with the idea that genealogy is a method that can problematize the present, exposing the relations of power and the production of knowledge [1-3], we construed our path of research from the analysis of Public Policies that target the population of juvenile offenders and from the discourses of health and legal institutions. We intend to problematize how the government of youth in conflict with the law is put into effect, from the paradigm of exception in which juridical order is suspended and what operates are practices with force-of-law [4]. Such problematizing brings us to the question that guides our contemplation in this paper: how do the principal practices of governmentality and force-of-law administered to youth take place, and what is the relation that they establish with life based on the paradigm of exception?

The discussion that will be presented indicates a paradigm where the zone of indistinction between government and sovereignty creates a relation of abandonment and violation of rights with respect to the lives of youth. This zone of indistinction puts into action two mechanisms – management and decision—that in certain points converge in an anomic space of law in which a sovereign decision, exemplified in force-of-law, determines the type of intervention in life [4]. It is in this context that we seek to contemplate upon the non-effectiveness of the specific legislation that determines the rights of this portion of the population, the Child and Adolescent Statute [5], and that produces and operates practices which amount to the exposure of their lives to death threatening situations.

Government: Life in the Dynamics of Politics

How did it come about that life became a political object to be invested, managed and governed? We turn to the thoughts of Michel Foucault [6], in the book “The history of sexuality, Vol. 1-The Will to
Knowledge” to understand the change from a sovereign logic to a governmental logic in relation to the life of the population. According to Foucault [6] sovereign power is characterized by the formula “power of life and death”; that is, intervention in the life of the sovereign’s subjects was conducted by exposure to death with the function of defending the sovereign and his/her sovereignty, and the taking of life occurred in the sense of eliminating it or letting it live, in a negative relation, understood as a relation of non-investment, non-encouragement, yet of forfeiture. However, this logic will be altered due to the emergence of Nation-States in the Modern Era and the problem of governing the population. Foucault [7] points out that: one of the greatest transformations of political right underwent in the nineteenth century was precisely that, I wouldn’t say exactly that sovereignty’s old right-to take life or let live – was replaced, but it came to be complemented by a new right which does not erase the old right but which does penetrate it, permeate it. This is the right, or rather precisely the opposite right. It is the power to “make” live and to “let” die [7].

Foucault (2008a) affirms that “to govern” is distinct of “to reign”, command or to make the law. So, government is different from sovereignty, whereas this is inscribed in the logic of domination and not a relation of power. The government is the exercising of power conditioned by a relation involving at least two elements: who exercises power and who resists or can resist exercising power. To Foucault [6], power is understood as a multiplicity of correlations of forces that come from the articulation that is established among diverse fronts, forming a network. Therefore, it is not about institutions and apparatuses of subjection in the form of rules, it is not a system of domination, and finally, it is not about the sovereignty of the State or the form of law; these are, according to the philosopher, the end forms of power. Thus, “power is not an institution, and not a structure; neither is it a certain strength we are endowed with: it is the name one attributes to a complex strategic situation in a particular society” [6].

That said, then, how do the mechanisms of management make a population live? With the purpose of investing, strengthening and maximizing the potentials of life, in the seventeenth century disciplinary technologies were developed with the objective of taming, expanding the aptitudes and making docile the individual’s body. In the eighteenth century, together with the disciplinary technologies, the biopolitical techniques of regulating the population emerge, focusing on the species body, “as the basis of the biological processes: propagation, births and mortality, the level of health, life expectancy, and longevity, with all the conditions that can cause these to vary” [6]. A change in rationale occurs, according to Foucault [6] from sovereign logic to governmental logic, in which life will be the object for which several technologies will be administered, from which discourses will be made, knowledge produced and interventions experienced, now no longer from the perspective of the individual body, but as the life of the population. As Foucault [7] said “biopolitics deals with the population, with the population as a political problem, as a problem that is at once scientific and political, as a biological problem, as power’s problem” [7].

In “Security, Territory, Population”, lectures at the College de France between 1977 and 1978, Foucault [8] sought to inventory the issue of government from the analysis of how specific problems of the population emerged, looking specifically at the “definition of the government of the state, of what we would call, if you like, the political form of government” [8]. The author yet indicates the fact that mercantilism was the “first rationalization of the exercise of power as a practice of government, it is the first time that a knowledge of the state began to be formed that can be employed for tactics of government” [8]. This knowledge of the State that focused on specific phenomenon of the population – sex, birth, mortality, conditions of health, of sickness, among others-that is, all that can in some way make possible the growth and strengthening of the population, will be called biopolitics [8].

Scisleski, Silva, Caetano, Galeano and Bruno [9], inspired by the reading of Foucault [8], affirm that in a given population divisions are made creating different categories, as in the case of children and adolescents: each of the categories are governed and regulated in a specific way, as in policies such as the Child and Adolescent Statute, since the population has a heterogeneous aspect – this is one of the principal meanings of the Foucault’s concept of governmentality, which is a component of biopolitics, according to these authors. Resuming the lectures of “Security, Territory, Population” [8], the author develops the concept of biopolitics as a dispositive through which investments are made in the life of the population in order to strengthen the State, as it
is, initially, a governmental logic founded on the reason of the State. Yet in “The Birth of Biopolitics” [10], lectures that occurred between 1978 and 1979, that continue the previous discussions, the French philosopher discusses biopolitics displaced from the objective State to becoming an art of governing based on the economic doctrines of Neoliberalism, whose goal was aimed at strengthening the market economy of capitalism. The referred philosopher explains that this change in the objective of the government of men, which if previously the goal was to strengthen the State and the population was governed in pursuit of this objective, hence will imply in a displacement of the forms of governing – in this case, due to the reason of the market economy, based on Neoliberal logic. Foucault [10] affirms that Keynesian politics, the wartime social pacts and the growth of the Federal Administration, through economic and social programs, were the three contextual elements to which neoliberal thinking was set against and that made possible its formation and development.

Further, according to this philosopher, Liberalism in the United States was not configured simply as an economic and political option, but as a way of being and thinking-in other words, as a mode of subjectifying-as a relation between governors and governed whose main concern orbited around the problem of freedoms [10]. To elucidate this aspect, we can take two elements that, to Foucault, simultaneously characterize methods of analysis and types of programs: the theory of human capital and the program of analysis of crime and delinquency. These two elements explicit the incursion of economic analysis in fields that were not previously approached from this perspective, generalizing for the whole social field the configuration of a market economy rationale [10]. “It is still in terms of this same project, this same perspective of an economic analysis of types of relations that previously fell more in the domains of demography, sociology, psychology, and social psychology, that the neo-liberals have tried to analyze social issues” [10] (p. 336). On the topic of crime, Foucault [10] indicates that from the end of the eighteenth century and the beginning of the nineteenth century a legalistic solution was found for a penal system whose cost would be the lowest possible, already in an economic rationale implied in Liberalism.

However, Foucault points to a paradoxical effect produced by this economy: “the law as law (…) was obviously indexed to the acts (…) the law only sanctions acts” [10]. And yet:“(…) the principals of the existence of the criminal law, the need to punish in other words, as well as the gradation of punishment, the actual application of the law, only have meaning inasmuch as it is not the act that is punished (…) an individual, an offender, who must be punished, corrected, and made to serve as an example to other possible offenders. [10].

According to the citation above, we could think that the law, in itself, doesn't punish; doesn't put into effect any measures. The law, juridical order, delimits a field of intervention and of knowledge. That is to say, one can only punish by operationalizing the law, and as Foucault indicates [10], an individual offender is punished. In this manner, we can affirm that the crime or the offense is the dispositive by which the legal system uses to capture life and administer a series of specific measures, in this way, producing a type of governmentality for these lives that will be captured.

**Sovereignty: Life in Political Violence**

Up to this point we have approached the issue of the management of life from governmental logic. And when it is about a matter of deciding on life? How is this decision made, an element of sovereign logic, in the current configuration of a paradigm operated in a State of Exception? To problematize this subject we'll use the studies of the philosopher and Italian jurist Giorgio Agamben to orientate our contemplation.

Agamben [11] approaches the problem of exception by means of the paradox of sovereignty in which the sovereign is at the same time in and out of juridical order. The sovereign is included, since it is the sovereign who, by means of force, establishes the order; and excluded, for not being submitted to this same order. So, as a result of this, if there is the figure of the sovereign on one side, on the other side, we have a life that could receive, or not, the suspension of juridical order, established by the sovereign. It is in this gap created by the process of deciding on the application or not of the law, from the perspective of sovereignty, that we can identify the relation of exclusion/inclusion established with life. It has to be said yet that, in the logic of exception, that which is excluded of normal ordering still maintains a relation with the rule of law, producing a topological zone of indistinction when that which is in between the outside and inside of
order is operated, in view of the fact that if the law is suspended, a space for exception is created producing in this space not protection, but exactly the opposite, the abandonment of life, by its inclusion in exclusion.

As Agamben [11] said: “the particular “force” of law consists in this capacity of law to maintain itself in relation to an exteriority. We shall give the name relation of exception to the extreme form of relation by which something is included solely through its exclusion” [11]. The syntagma force-of-law is a juridical element that divides the applicability of the rule of law from its legal formalization, bonding itself to the state of exception insofar that in this occurs the suspension of rights and the opening of an empty space, in which there is the suspension of juridical order and the operationalization of a practice relative to the aspect of decision found in sovereign logic [4]. In other words, the state of exception permits, due to its topological structure of “being-outside, and yet belonging” [4] a condition in which, on one side, the rule of law is being applied, but has no force, and on the other side, the operationalization of measures that have no legal value, but acquire its force and are applied [4].

The situation of vulnerability, in which youth who committed offenses are found, can be taken as an indicator of the paradigm of exception, since they only become visible by means of committing offenses and only then are public policies applied to them. Nevertheless, the Child and Adolescent Statute [5] provides integral protection to children and adolescents, who are, in thesis, perceived as subjects of rights to whom should be guaranteed health, education, dignity and freedom, among other aspects. That is to say, we can assume that before committing the crime these youth were abandoned by the law, considering that the Child and Adolescent Statute, even though in force, is not operating in the protection of these subjects and in guaranteeing their rights. However, by the dispositive of crime – as previously seen through Foucault’s thinking on the management of criminality – their lives become managed by government dispositives? In other words, this biopolitics in question operates in the invisibility of the previous procedures of abandonment. And, when taking the lives of these youth, the logic of these procedures doesn’t necessarily operate as an investment in their lives, but seeks to discipline them, with the objective to transform them into docile bodies, not to be invested in, yet to control and segregate these forms of life. In this manner, what we see emerging is precisely related to the idea of a zone of indistinction produced between the practices of government and sovereignty.

If we take some of the data from the report “Research Report of the Socioeconomic Profile of Juvenile Residents of the Educational Detention Facility of Mato Grosso do Sul” [12] to contemplate on youth in detention programs in the Educational Detention Facilities of the State of Mato Grosso do Sul/Brazil, we can see that 32% of them were not enrolled in educational institutions until committing an offense, besides the 82% failure rate among those regularly enrolled. Concerning work experience, 86% of juveniles had some experience, however only 8% had registered their work in their Employment and Social Security Book [12]. Therefore, we can perceive here that there are two important elements of social exclusion previous to committing the crime: school drop-out and informal employment. Yet, we frequently see that these juveniles, during and after complying the social-educational measure, do not always return to schooling and be formally hired in the work market. Which makes us think that the juridical norm of integral protection, postulated by the Child and Adolescent Statute, was not applied for these juveniles; these abandoned subjects will be trapped by legal mechanisms, especially by another dispositive: the offense. We comprehend, thus, that it is through violence that life is included in the dynamics of politics.

To illustrate the relations that the sovereign makes when establishing juridical order, the Italian philosopher uses a figure that is present in the archaic period of Roman law: the homo sacer, who belongs to the ban, a limit-concept that involves this form of life that doesn’t submit itself to juridical order, escaping the law [11]. The homo sacer was that to whom sacrifices to the gods were prohibited and who anyone could kill without committing homicide, therefore, a life that can be killed yet at the same time cannot be sacrificed. So, the relation of the law with life was not that of application, but of abandonment [11]. In the words of Agamben [4]: If exception is the original dispositive through which law refers to and encompasses life by means of suspending law itself, then a theory of the state of exception is the preliminary condition for any definition of the relation that binds and, at the same time, abandons the living being to law [4].
We can establish an epistemological difference between the thinking of Foucault and Agamben. If for the French philosopher life is inscribed in the dynamics of politics with the emergence of the Modern State and the problem of population, for Agamben the inclusion of life in the dynamics of politics occurs long before the classical period. However, not as some inclusion that sought to administer techniques for promoting life, that is, a management logic that has the objective of strengthening biological life, but an “inclusive exclusion”, the foremost relation with life by the law: abandonment and neglect. Here, again, we see the sovereign logic of forfeiture coming from decision making mechanisms that, as we seek to discuss in this paper, still presently operate, specifically referring to the lives of juveniles who are serving Socio-Educational Detention Measures.

It is in the semblance of the homo sacer, in bare life, that Agamben [11] establishes a focus to think on the problem of politics, where “once modern politics enters into an intimate symbiosis with bare life, it loses the intelligibility that still seems to us to characterize, nevertheless, the juridical-political foundation of classical politics” [4]. So, the fundamental distinction between governmentality, approached by Foucault, and force-of-law, discussed by Agamben, is that governmentality is in the dimension of a government that is effective based on dispositives that are aimed towards management, towards the investment and subjectifying of individuals using the operationalization of knowledge that endows the furtherance of life; in sum, it is about an economy on the phenomenon of population. While force-of-law is exercised based on sovereign logic, operated as a decision; that is, in a specific situation in which, from the point-of-view of sovereignty, life is decided upon by violence, and it is from this that an action is produced that will be operationalized and administered to this subject who is in a relation of abandonment with the law. In this manner, it is understood that to exercise the government it is necessary that life be included in juridical order, nevertheless at the same time, when it is about an applicable law that is not operated, what we find is the production of abandonment. Which puts the matter no more in the domain of government, but of exception, and that is the competence of sovereignty, in which the law is not being operated, yet force-of-law, pure decision.

To claim that the actions operationalized for the category of juveniles that serve Socio-Educational Detention Measures are, in certain aspects, based on what is established in law; however, permitting practices that are not regulated, but have force-of-law [4], referring to the matter of applicability of juridical norm.

What is a rule if not that concerning a general proposition? That proposition doesn’t refer to a real issue, but sanctions acts that could occur. However, it is the offense that concerns a concrete reality. “In the relation between the general and the particular (...) it is not only a logical subsumption that is at issue, but first and foremost the passage from a generic proposition endowed with a merely virtual reference to a concrete reference to a segment of reality” [4]. The Italian philosopher asserts that in relation to juridical norm, the concrete case demands a “trial” that, in turn, involves numerous participants and has, as a result, the pronunciation of a sentence. This sentence is that which is enunciated and that has, as a reference of praxis, the operationalization of a measure that is guaranteed by institutional powers [4]. Such as Foucault [10] states that “the law as law was evidently indexed to acts (...) the law sanctions only acts”, for Agamben [4], the matter to be problematized on the application of juridical norm demands that it be transferred from the context of logic to that of praxis.

As previously said, the law encompasses the field of crime and the offense is the dispositive by which the legal system captures life [10] [4] [11]. From this assumption, we question: shouldn’t the legal system be occupied with the violation of rights of youth as it is with the offenses they commit? It is evident, in face of the context in which Socio-Educational Detention Measures are operationalized as punitive dispositives, that a relation of abandonment is maintained with a youth population, when they are an “inclusive exclusion” in juridical order. A sovereign decision, more than a government one, will be exerted for the youth population that serve socio-educational measures in Detention Facilities; Constitutional Amendments Proposals are forged for this population that will serve detention measures.

**Life in the Logic of Exception: Violation of Rights and Abandonment**

In the current configuration of the political field, it is evident that the life of youth in conflict with the law pertains to a dimension of abandonment and not protection, for if the directives of the
Child and Adolescent Statute are not applied, it is because this rule has been suspended and what is operating is the dispositive of exception, or yet, practices with force-of-law that determines life and death measures for this category of the population [4]. In this respect, we point out that in Article VII of the Child and Adolescent Statute, The Right of Life and Health, which declares that children and adolescents have the right to “the protection of life and health, through the application of public social policies that allow for healthy and harmonious birth and development, under dignified living conditions” [5].

In the report “Map of Violence 2013-Homicides and Youth in Brazil”, Waiselfisz [13] demonstrates the opposite of any rule of law that seeks to promote and protect the life of Brazil’s impoverished youth. According to the author, Brazil is 7th among 95 countries in the world with data on the matter of homicides; with a total population of 190.8 million, there’s a rate of 27.4 homicides per 100 thousand inhabitants and 54.8 per 100 thousand youth. Yet, according to the author, youth represent approximately 18% of the total population, and the rate of homicides among the youth, in 2011, was 53.4% per 100 thousand. When taking into account race/color among the youth population, the number of homicides of White youth, in 2011, falls to 39.8%, while the rate of Black youth victims increased to 24.1% [13].

Besides the aforementioned data on homicides, that demonstrate the level of abandonment that the lives of Brazilian youth are exposed to, when we analyze data from the report “National Panorama: Application of Socio-Educational Detention Measures” [14] a profile takes shape of the youth who committed offenses and with whom a relation of abandonment and violation of rights is maintained. The report indicates, from interviews with adolescents on a national level who are in compliance of measures of restricted freedom, that 47.5% of them committed their first offense between the ages of 15 and 17; indicating yet that, if we consider the maximum period of three years of detention, we can ascertain that most of the juveniles become legal adults during the time they were serving their measure. Furthermore, 43.3% of the adolescents interviewed had already been in detention at least once; the offense most committed on their first detention was robbery, as much as for the second detention by repetition of the offense. Regarding education, even though 91% of the youth are literate, 86% dropout of primary schooling, interrupting their studies between the ages of 8 and 16. On the use of psychoactive substances, we found from the respondents that 75% of them had been using illegal drugs [14].

In that scenario, we perceive not only the violation of rights previous to the offenses, but a violation of rights that perpetuates yet for juveniles that are complying to Socio-Educational Detention Measures, not only because of the lack of conditions of the facility’s infrastructure – as we shall discuss further – but moreover because of the lack of elaborating the PIA [Plano Individual de Atendimento-Individual Care Plan]. According to the report “National Panorama: Application of Socio-Educational Detention Measures”, the Individual Care Plan is a fundamental pedagogical instrument in the socio-educational process as stipulated by the National Socio-Educational Care System [15]. However, this report indicates that only 5% of the processes have some information on the application of the Individual Care Plan, with 77% of the processes not applying it at all. “Therefore, in practice, it appears that the Individual Care Plan is not applied in the detention processes of youth in conflict with the law, at odds to what is stated by the National Socio-Educational Care System” [14]. Namely, lives that are abandoned and disinvested, laws that are regulated, but do not have force, are not operationalized or are so occasionally, and practices that are not regulated but have force-of-law [4]. What is occurring is the suspension of juridical norm, the capture of life by sovereign logic, and that occurs by the means of an exercise of a violent praxis towards life.

The continuance of punitive logic and violation of rights is emphasized yet in the report “On-site Visit Report of the Dom Bosco Educational Detention Facility” [16]. The document, of April 2014, reports the conditions of an UNEI [Unidade Educacional de Internação - Educational Detention Facility], indicating at the very beginning that “the ‘educational’ facility is, in reality, very similar to the Prison Facilities of the State of Mato Grosso do Sul, except for the prohibition of cigarettes and money, as well as the theoretical differences introduced by the Child and Adolescent Statute” [16]. Hereupon, the report refers to the changes in terminology, where “cells” are called “rooms”, “pavilions” are “wards”, “solitary confinement cell” is “Time-out Room”, and “prison guards” are “educators”, highlighting though that such modifications do not result in
any practical difference. The objective of the report, resulting from an on-site visit, was to “verify the conditions of the Facility, adolescents and civil servants, after news came out about breakouts and rebellions of the detainees, happening in March this year” [16]. According to the document, since 2013 the Educational Detention Facility is under an injunction by court ruling; another matter denounced by the report concerns the amount of educational agents, since there are only 10 professionals, however a minimum of 17 are necessary. The premise has a health clinic that was inaugurated in 2009, but up to the date of the visit it had not been in operation yet. The facility has a dining hall – according to State prison standards-but, due to inadequate installations, the adolescents have their meals in their rooms, in which there are four to five beds, gathering a number of individuals above the maximum of three per accommodation that is established by the National Socio-Educational Care System. When it comes to the matter of education itself, the report indicates that there are not enough teachers to give classes, underscoring yet that “the precarious structure, with an excess of loitering in the facilities, is one of the most evident motives for the constant turmoil” [16].

Besides this, there are proposals in Brazil’s congress to reduce the age of majority, by means of PECs [Propostas de Emendas Constitucionais- Constitutional Amendment Proposals], especially PEC No. 33/2012 and PEC No. 21/2013 which seek to reformulate the Child and Adolescent Statute, both were not approved. More recently voted, the PEC No. 33/2012 suggests in its text the need for the Public Prosecutor’s Office to exercise institutional functions to promote, exclusively, the criminal action and the event of excluding from non-criminal liability of those less than eighteen and more than sixteen years old. Highlighted among the requirements for the Public Prosecutor’s Office, in the procedures of examining infractions, to propose the event of excluding from non-criminal liability: the recurrence of serious personal injury and aggravated theft and the capacity to understand the criminal character of the conduct – taking into consideration his/her family, social, cultural and economic background, as much as the criminal record, certified in technical report [17]. The content of the proposal asserts that the protective character of the Child and Adolescent Statute, aimed towards children and adolescents, creates conditions so that minor offenders commit offenses harbored from criminal liability that is offered to them, attributing to the philosophy of the Child and Adolescent Statute not only the fact that youth commit an offense, as much as for repeating the offense. Besides the intention to include in juridical norm the possibility of its own suspension - inclusive exclusion-, “that the current limit be maintained, but opening the possibility that this general rule could be made exceptional, in cases equally exceptional”, the proposal would attribute to Congress the decision on exceptional and extraordinary cases in which the minor offender would be considered as an adult criminal, reaffirming the division in the category of youth, and yet: “cease to be accountable to the Child and Adolescent Statute, but to the Penal Code” [17]. Explicitly, such a proposal was, fundamentally, the attempt to include the state of exception in juridical order, even though it was not approved. The objective was to maintain non-criminal liability for minors of 18 years of age, however, in exceptional cases, an equally exceptional measure: the suspension of non-criminal liability would be operationalized.

Still we had the PEC No. 21/2013, whose document, differently from the PEC No. 33/2012, did not have the intention of creating a complementary law, but the reduction of the age of majority to 15 years of age; in other words, minors of 15 years of age would be non-criminally liable, being susceptible to specific norms of legislation, that is, the Child and Adolescent Statute. The text of the proposal indicates non-criminal liability as a “juristic fiction determined for the need of criminal policy, being indispensable in subduing and preventing criminal acts, and offering society greater security” [18]. That is, from this excerpt, law can be understood as the instrument that will guarantee security for society, by means of subduing and preventing crime. How could a law be able to prevent a criminal act? For the fear and severity of punishment? By reducing the age of majority, would offenses committed by youth be reduced as well or would the population of incarcerated youth increase geometrically? The proposal presents the argument that psychiatry has not proven that persons less than 18 years old have incomplete cognitive development and that, to the contrary, the “evolution of modern society has given them the possibility to understand the facts of life ever more prematurely” [18]. Therefore, the intention is to punish the youth who commits offenses because he/her obtains an understanding on the facts of life through the changes that the evolution of society provides?
In general, we perceive that the objective of the Constitutional Amendment Proposals (PECs) is to create a new law substituting another. It resembles an abstract combat among juridical norms that are ever more punitive, without any consideration on the likelihood of intervening in the context of the lives of the youth who committed the offense. In face of so much violation of rights, situations of social vulnerability and exposure of the lives of this population, it is not about, based on the logic of the Constitutional Amendment Proposals, guaranteeing access to public policies, but of punishing again and again. As Foucault affirmed, “The law is the most economical solution for punishing people adequately and for this punishment to be effective” [10]. It is not merely a relation based on economic criteria wherein poverty is associated with crime, in the sense of criminalizing situations of poverty, but because it is economically more practicable to pass laws than to create strategies to resolve social issues of inaccessibility of rights established in law. Failure to resolve the inaccessibility of rights of this population maintains them under conditions of social vulnerability and violation of rights.

Final Considerations

To currently problematize the mode in which interventions practices are applied in the lives of juveniles, who serve socio-educational detention measures, requires us to perceive that it was not until offenses were committed by these youth that their lives became noticed. This text discussed and contemplated the mode by which this category of the population is managed, exposed, invested and disinvested. A population that is taken as an object for which truth-producing discourses will be forged and, from which a management logic will direct interventions to administrate the youth’s life, who’s rights are repeatedly violated, as much prior to committing the offense, as while serving the socio-educational measure.

How can one think of socio-educational measures as techniques of resocialization, if the logic of these measures is based on punitive models, as highlighted by the reports, the indicators used in research and the Constitutional Amendment Proposals? How can it be possible to implement the Individual Care Plan if it is not even observed? How can it be possible to project a future for these youth if they themselves do not even have the present? These are questions that arise due to what has been done with the lives of youth who serve measures of restricted freedom, since these lives are not taken merely as “potentially criminal”, they are treated as “criminal lives”, and have been for a long time.

When we underscore the non-effectiveness of the Child and Adolescent Statute, it is not about proposing more rules of law, or exceptional rules of law, as suggested in the Constitutional Amendment Proposals, however it is about demonstrating the disqualification of these lives that are abandoned by the law. Thus, this paper sought to produce an ethical contemplation on how the logics are directed towards this young population and how, based on the paradigm of the State of Exception, violent measures are operationalized and justified, since the legislation that foresees integral protection of children and adolescents was suspended, allowing for the emergence of exception; that is, the force-of-law, of pure violence that exposes life, taking it and administrating measures of capture, forfeiture and death.

References


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¹ Master’s Thesis
² Employment Foundation of Mato Grosso do Sul
³ Employment Observatory of Mato Grosso do Sul
⁴ Brazilian Center of Latin-American Studies
⁵ National Justice Council
⁶ Justice for Youth Program
⁷ Brazilian Bar Association/Mato Grosso do Sul
⁸ Permanent Commission on Human Rights
⁹ Federal Senate