

THE LAW OF MINORS AND THE CRIMINOLOGY OF CHILDHOOD IN AUTHORITARIAN BRAZIL (1964–1985): A HISTORICAL INQUIRY INTO THE GOVERNANCE OF UNDERPRIVILEGED CHILDREN UNDER A MILITARY DICTATORSHIP*

Alexander de Castro

Uniwersytet Warszawski, Polska

ORCID: 0000-0002-3316-2773

e-mail: alex.de.castro@hotmail.com

Summary:

This article examines the historical development of Brazilian juvenile law and its relationship with criminological thought during the 20th century, with an emphasis on the period of military dictatorship (1964–1985). The study employs qualitative document analysis to analyze legislative documents, official publications of the National Foundation for the Wellbeing of Minors (FUNABEM), and juridical writings such as Alyrio Cavallieri's Law of Minors – A New Law in order to understand how the institutional response to the “minors problem” was articulated by the government and the legal community. It shows that, grounded in a biosocial and etiological model of crime, childhood vulnerability was reframed as a social pathology and translated into legal categories that legitimized segregating impoverished and marginalized children and justified authoritarian intervention in their lives. The resulting reorganization of the juvenile legal system under the dictatorship produced a technocratic, medicalized model of tutelage that sought to impose social control through disciplinary methods. A key aspect of this process was the consolidation of a specialized legal field – the Law of Minors – that claimed scientific autonomy based on the concept of an “irregular situation” and culminated in the enactment of the 1979 Code for Minors.

Keywords:

Juvenile Law, Criminological Thought, Military Dictatorship, FUNABEM, Law of Minors, Irregular Situation Doctrine, 1979 Code for Minors

* This research is part of the project no. 2022/47/P/HS5/02396, co-funded by the National Science Centre and the European Union's Horizon 2020 research and innovation program under the Marie Skłodowska-Curie grant agreement no. 945339. For the purpose of Open Access, the author has applied a CC-BY public copyright license to any Author Accepted Manuscript (AAM) version arising from this submission.

Prawo małoletnich i kryminologia dzieciństwa w autorytarnej Brazylii (1964–1985): historyczne studium nad zarządzaniem dziećmi z warstw ubogich w okresie dyktatury wojskowej

Streszczenie:

Artykuł analizuje historyczny rozwój brazylijskiego prawa małoletnich oraz jego związek z myślą kryminologiczną w XX w., ze szczególnym uwzględnieniem okresu dyktatury wojskowej (1964–1985). W badaniu zastosowano jakościową analizę dokumentów (Qualitative Document Analysis, QDA) w celu zbadania aktów prawnych, oficjalnych publikacji Krajowej Fundacji Dobrostanu Małoletnich (Fundação Nacional do Bem-Estar do Menor – FUNABEM) oraz prac prawniczych, takich jak Prawo małoletnich – nowe prawo autorstwa Alyrio Cavallieriego. Celem jest zrozumienie, w jaki sposób instytucjonalna odpowiedź na „problem małoletnich” została ukształtowana przez rząd i środowisko prawnicze. W artykule pokazano, że opierając się na biospołecznym i etiologicznym modelu przestępczości, podatność dzieciństwa została przekształcona w pojęcie patologii społecznej i przełożona na kategorie prawne, które legitymizowały segregację ubogich i marginalizowanych dzieci oraz uzasadniały autorytarne interwencje w ich życie. W wyniku tego procesu doszło do reorganizacji systemu prawa małoletnich w ramach dyktatury, która doprowadziła do powstania technokratycznego i medykaliзованego modelu opieki, mającego na celu narzucenie kontroli społecznej poprzez metody dyscyplinarne. Kluczowym elementem tego procesu była konsolidacja wyspecjalizowanej dziedziny prawa – Prawa małoletnich – która rościła sobie naukową autonomię, opartą na koncepcji „sytuacji nieprawidłowej”, i doprowadziła do uchwalenia Kodeksu Małoletnich z 1979 r.

Słowa kluczowe:

Prawo małoletnich; Myśl kryminologiczna; Dyktatura wojskowa; FUNABEM; Prawo małoletnich; Doktryna sytuacji nieprawidłowej; Kodeks Małoletnich z 1979 roku.

1. Introduction

This study examines the formation and transformation of Brazilian juvenile law during Brazil's military dictatorship (1964–1985), with a particular focus on the intersection between legal discourse and criminological thought. It seeks to understand how, within different political and intellectual contexts, childhood vulnerability was translated into categories of legal intervention, producing a disciplinary system based on biosocial explanations of criminal and delinquent behavior. The objective is to trace the historical process through which institutions and doctrines concerning minors were consolidated and to reveal how technocratic governance came to justify practices of surveillance and control over impoverished children.

The analysis focuses on the reorganization of this system under the military regime (1964–1985), when the National Foundation for the Wellbeing of Minors (FUNABEM) and the 1979 Code for Minors redefined the objectives and methods of tutelary intervention. In both cases, the law operated as a privileged space for articulating (pseudo)scientific discourses that sought to address this social question by regulating deviant children.

Methodologically, the research employs qualitative document analysis (QDA)¹ and combines historical and hermeneutic approaches to the interpretation of normative, institutional, and doctrinal texts. The primary sources include legislative documents such as the 1979 Code for Minors; institutional pub-

1 H. Morgan, *Conducting a Qualitative Document Analysis*, “The Qualitative Report” 2022, vol. 27, no 1, p. 64–77.

lications such as *Brasil Jovem (Young Brazil)*, the official bulletin of FUNABEM; and juridical writings produced by key figures in the field, notably Alyrio Cavallieri's *Direito do Menor – Um Direito Novo (Law of Minors – A New Law)* from 1979. These materials are examined in relation to one another in order to reconstruct the discursive continuities and ruptures that marked the evolution of juvenile law in Brazil and its underlying criminological ideas.

By situating these sources within the intertwined histories of law and criminological thought, this study tries to demonstrate that the concept of “irregular situation” facilitated the reception of controversial criminological theories – grounded in an enduring neopositivist approach – and thereby enabled the emergence of a new legal field: the Law of Minors.

2. The “minors problem” and the criminology of juvenile delinquency in Brazil

Although the origins of the juvenile legal system in Brazil can be traced back only as far as the early 20th century, its social roots lie in the late 19th century. Amid the convergence of crucial historical transformations – the transition from monarchy to republic, the abolition of slavery, and the massive arrival of European immigrants – intellectuals and policymakers began to draw public attention to the issue of neglected youths in the urban landscape. The emergence of a juvenile legal framework occurred within a broader movement of reform and modernization, through which the new republican elites sought to address the social challenges brought about by this profound demographic change. At the same time, several popular pseudoscientific theories of the period (e.g., hygienism, eugenics)² offered a rationale for the special attention given to underprivileged children: they were seen as malleable subjects who could be disciplined into a productive citizenry aligned with the ideals of the young republic.³ In this context, partly under the influence of the Pan American Child Congresses (the first of which took place in 1916 in Buenos Aires, Argentina⁴) and of the child-saving movement,⁵ jurists, medical doctors, and politicians started campaigning for measures to deal with abandoned and delinquent children.⁶ Consequently, with the establishment of the first juvenile court (in 1923) and the enactment of the first Code for Minors (in 1927), Brazilian juvenile law took shape as a special branch of law directed exclusively at children of the underclasses and designed to transform them into instruments of long-term civilizational progress.⁷ By the end of the 1920s, the main institutional and conceptual pillars of this system had already been consolidated.

During the 1940s through the 1960s, rapid industrialization intensified internal migration from rural areas to urban centers.⁸ The resulting concentration of impoverished families within cities made the presence

2 N.G. de Sant’Ana e Silva Junior, R.M. Garcia, *Moncorvo Filho e algumas histórias do Instituto de Proteção e Assistência à Infância*, “Estudos e Pesquisas em Psicologia” 2010, vol. 10, no 2, p. 613–632; J.R. Franco Reis, “De pequenino é que se torce o pepino”. *A infância nos programas eugênicos da Liga Brasileira de Higiene Mental*, “História, Ciências, Saúde” 2000, vol. 7, no 1, p. 135–157; I. Rizzini, *O Século Perdido. Raízes históricas das políticas públicas para infância no Brasil*, Cortez Editora, São Paulo 2008, p. 46–48.

3 I. Rizzini, *O Século Perdido...*, p. 26–27.

4 It was followed by the ones in Montevideo, Uruguay, in 1919; Rio de Janeiro, Brazil, in 1922; Santiago, Chile, in 1924 and Havana, Cuba, 1927, etc. About the early Pan American Child Congresses, see D.J. Guy, *The Pan American Child Congresses, 1916 to 1942: Pan Americanism, Child Reform, and the Welfare State in Latin America*, “Journal of Family History” 1998, vol. 23, no 3, p. 272–291.

5 About the child-saving movement in Brazil, see A. de Castro, Furlan Rigolin I., *A criança marginalizada das primeiras décadas do século XX no discurso dos salvadores da criança: contribuição à história do direito do menor no Brasil*, “Revista Quaestio Iuris” 2024, vol. 17, no 1, p. 421–443; A. de Castro, H. Diniz Meira, *O recolhimento de Pedro Bala ao reformatório. O Código de Menores de 1927 e os direitos da infância e da adolescência*, “Revista Eletrônica do Curso de Direito da UFSM” 2022, vol. 17, no 1, p. 423–432.

6 A. de Castro, *Codes of Law for Underprivileged Youths. An Overview of Brazilian Juvenile Law in the 20th Century (1927–1979)*, “EViR Working Paper” 2024, vol. 16, p. 6–13.

7 A. de Castro, I. Furlan Rigolin, *A criança marginalizada...*, p. 433–436; A. de Castro, H. Diniz Meira, *O recolhimento de Pedro Bala...*, op. cit.

8 C.F. da Silva Rodrigues, R. Schmidt Filho, *O processo de industrialização. Repercussões e perspectivas*, “A Economia em Revista – AERE” 2017, vol. 25, no 1, p. 77–89; W. Suzigan, *Industrialização brasileira em perspectiva histórica*, “História Econômica

of street children ever more visible.⁹ In 1964, the democratic regime collapsed under a military coup that established a conservative, pro-West dictatorship. Confronted with the growing numbers of abandoned and delinquent youths in the country's urban landscape,¹⁰ the newly installed authorities treated the issue as a matter of national urgency and began describing it as the “minors problem.”¹¹ The segregationist tradition of Brazilian juvenile law was reinterpreted by the military government through the lenses of its authoritarian project of national security and social order.¹² Acknowledging the inadequacies of the *minorist* system¹³ created in the 1920s, the regime dismantled the Service of Assistance to Minors – an institution created to supervise and coordinate the work of the reformatories¹⁴ – and inaugurated a new model to address the situation of delinquent, destitute, and abandoned minors. The regime replaced the abolished institution with FUNABEM, the *Fundação Nacional do Bem-Estar do Menor* (the National Foundation for the Wellbeing of Minors), a federal agency charged with conducting “studies, inquiries and research” on the “minors problem,” formulating a “National Policy for the Wellbeing of Minors,” and coordinating its implementation across the country through state-level agencies.¹⁵ The traditional reformatories and preservation schools¹⁶ were replaced by the *Fundações Estaduais para o Bem-Estar do Menor* (FEBEMs, or State Foundations for the Wellbeing of Minors), which operated under FUNABEM's supervision and were responsible for the institutionalization of children and adolescents.¹⁷

FUNABEM also promoted exchanges with the legal community through dialogue with the Brazilian Association of Judges of Minors, culminating in the drafting of new legislation. The result of a decade-long revision of the previous code, the new Code for Minors was enacted in 1979. During this debate, in which

& História de Empresas” 2012, vol. 3, no 2, p. 7–25; M.A.P. Leopoldi, *O difícil caminho do Meio. Estado, burguesia industrial e industrialização no segundo governo Vargas (1951–1954)*, [in:] T. Szmrecsányi, W. Suzigan (eds.), *História econômica do Brasil contemporâneo*, Editora da Universidade de São Paulo, São Paulo 2002, p. 31–77; R.C. Carvalho, *As migrações e a urbanização no Brasil a partir da década de 1950: um breve histórico e uma reflexão à luz das teorias de migração*, “Revista Espinhaço” 2019, vol. 8, p. 24–33.

9 I.C.R. da Cunha Frontana, *Crianças e adolescentes nas ruas de São Paulo*, Edições Loyola, São Paulo 1999, p. 67.

10 Ibidem.

11 The first time this expression appeared in a legal document was in the statute that created FUNABEM: see Article 7, I, of the Lei nº 4.513, de 1º de dezembro de 1964, https://www.planalto.gov.br/ccivil_03/leis/1950-1969/L4513imprensa.htm [accessed: 9.04.2025]. See also I.C.R. da Cunha Frontana, *Crianças e adolescentes...*, p. 67.

12 L.C. Bazílio, *O menor e a ideologia de segurança nacional*, Editora Veja/Novo Espaço, Belo Horizonte 1985; da Cunha Frontana I. C. R. da Cunha Frontana, *Crianças e adolescentes...*, p. 69–96; A. de Castro, I. Furlan Rigolin, *O sistema penal subterrâneo no trato aos “menores” durante o regime militar brasileiro. Breve história da violação sistemática de direitos da infância e adolescência no Brasil*, “Revista Eletrônica Direito e Política” 2022, vol. 17, no 2, p. 326–328. About the National Security Doctrine (the semi-official ideology of the regime), see N. Dias de Oliveira, *Os Primórdios da Doutrina de Segurança Nacional. A Escola Superior de Guerra*, “História” 2010, vol. 29, no 2, p. 135–157; and D. Pion-Berlin, *Latin American National Security Doctrines. Hard and Softline Themes*, “Armed Forces & Society” 1989, vol. 15, no 3, p. 411–429.

13 The Portuguese neologism *menorismo* and its adjectival form *menorista* are commonly used in Brazil to refer to the pre-1990 legal system concerning children and its attendant institutions. We have chosen to craft a cognate neologism in English to translate them. See, for instance, M. Nilvane Zanella, *A implantação do menorismo na América Latina no início do século XX. Tendências jurídicas e políticas para a contenção dos mais pobres*, “Revista Ibero-Americana de Estudos em Educação” 2019, vol. 14, no 3, p. 1750–1766.

14 F.A. Tomé de Souza, *A Institucionalização do Atendimento aos Menores – o SAM*, “Revista Brasileira de História & Ciências Sociais” 2020, vol. 12, no 24, p. 61–92; V. de Paula Faleiros, *Infância e processo político no Brasil* [in:] I. Rizzini, F. Pilotti (eds.), *A Arte de Governar Crianças. A história das políticas sociais, da legislação e da assistência a infância no Brasil*, Cortez Editora, São Paulo 2011, p. 33–96.

15 Articles 5, 7 and 10 of the Law 4.513/1964. See Lei nº 4.513, de 1º de dezembro de 1964, https://www.planalto.gov.br/ccivil_03/leis/1950-1969/L4513imprensa.htm [accessed: 9.04.2025].

16 “Escolas de preservação” (preservation schools) were, alongside reformatories, one of the institutions to which children could be committed, according to Article 55 of the 1927 Code for Minors. See Decreto nº 17.943-A, de 12 de outubro de 1927. *Consolida as leis de assistência e proteção a menores*, https://www.planalto.gov.br/ccivil_03/decreto/1910-1929/D17943Aimprensa.htm [accessed: 4.04.2025].

17 I. Rizzini, I. Rizzini, *A institucionalização de crianças no Brasil: percurso histórico e desafios do presente*, Edições Loyola, São Paulo 2004, p. 36–48; I.C.R. da Cunha Frontana, *Crianças e adolescentes...*, p. 151–163.

the criminological theories developed and/or sponsored by FUNABEM were converted into legislative proposals, jurists worked to distance these legal frameworks from the nascent discourse on children's human rights, reaffirming instead that such norms were to be applied solely to destitute youths.¹⁸ The earlier, quasi-utopian ambition of producing a disciplined working class through (pseudo)scientific legal intervention gave way to a more pragmatic and repressive objective: imposing social control over what was now perceived as a troublesome segment of the population.¹⁹

FUNABEM advanced an etiological model of crime in its approach to juvenile delinquency, grounded in the search for biological causes of deviant behavior and portraying antisocial conduct as the manifestation of an underlying disease.²⁰ The foundation's ideas were disseminated through its official bulletin, *Brasil Jovem*. In an article published there and titled "The Revolt of the Antisocial," the institution proudly asserted that "Cesare Lombroso, the renowned author of the book *The Delinquent Man*, has just seen his thesis confirmed by Genetics: that crime is, in most cases, the result of a hereditary predisposition manifested through physical and moral defects."²¹ Under this logic, delinquency was not merely a social or moral deviation, but a biological fate: certain children were thought to be born with an inborn tendency toward crime. These children – Glauco Carneiro, the author of the article, continues – display their antisocial traits early on, both in their bad behavior in school (they are "that undisciplined one we all know") and in their physical features: "a peculiar chin, an arm span greater than his height."²² In synthesis, Carneiro concludes, "this child is abnormal: an antisocial creature."²³ Therefore, within this medicalized framework, children exhibiting certain characteristics were construed not as moral subjects, but as biological abnormalities to be diagnosed and contained.

The obvious consequence of considering criminality a disease was that it could potentially be treated. Quoting Leonídio Ribeiro, the Brazilian medical doctor and criminologist,²⁴ Carneiro claims that the allocation of resources for fighting crime should be focused "on preventive and re-educational work for the 5% of *antisocial* individuals."²⁵ These abnormal individuals should be studied "just as is done with lepers and cancer patients," he continues, "in order to determine the reasons that led them to engage in antisocial behavior," which should facilitate the defense of society and the protection of criminals themselves by "treating and educating them for their full reintegration into the community."²⁶ Accompanying the article was a picture of three poor children with a caption underneath that reads: "Many children may have a hereditary predisposition to crime."²⁷ Altogether, the text presented delinquency as a pathological condition rooted in heredity and poverty and the poor child as its visible symptom: a figure to be studied, treated, and morally rehabilitated in the name of social defense.

But why did only impoverished children fall within the scope of the Foundation, even though social factors such as poverty were not considered root causes of antisocial behavior? The answer was that poverty, in fact, was not completely out of the equation in the mechanisms that lead to crime. Citing Nicola Pende,

18 A. de Castro, *Codes of Law...*, p. 16–17; A. de Castro, *A evolução do direito do menor no Brasil: um exame crítico das mudanças na legislação para crianças e adolescentes ao longo do século XX (1927–1979)*, "Revista Eletrônica do Curso de Direito da UFSM" 2023, vol. 18, no 3, p. 18–19.

19 A. de Castro, I. Furlan Rigolin, *O punitivismo no Brasil, o Estado Penal e os adolescentes criminalizados*, "Revista InterAção" 2023, vol. 14, no 3, p. 12.

20 A. de Castro, *Codes of Law...*, p. 15–16; A. de Castro, *A evolução do direito do menor...*, p. 16–17.

21 G. Carneiro, *A revolta dos associaís*, "Brasil Jovem" 1969, vol. 3, no 12, p. 77.

22 *Ibidem*, p. 78.

23 *Ibidem*.

24 About Leonídio Ribeiro, see G. Gutman, *Criminologia, Antropologia e Medicina Legal. Um personagem central: Leonídio Ribeiro*, "Revista Latinoamericana de Psicopatologia Fundamental" 2010, vol. 13, no 3, p. 482–497; M.C. Alvarez, *O homem delinqüente e o social naturalizado: apontamentos para uma história da criminologia no Brasil*, "Teoria & Pesquisa" 2005, vol. 47, p. 71–92.

25 G. Carneiro, *A revolta dos...*, p. 80.

26 *Ibidem*.

27 *Ibidem*.

the controversial Italian medical doctor and eugenicist,²⁸ Carneiro adds that “emotional traumas combined with the effects of poverty and hunger (...) are serious factors that act on a large scale upon still immature children and adolescents.” However, these environmental factors contributed “as co-causes, that is, as triggering or externalizing conditions of what we call amoral diathesis or delinquent constitution, a consequence of a cerebro-endocrinopathic predisposition of an essentially endogenous nature.”²⁹ Therefore, poor children would be at a greater risk of developing antisocial tendencies because their social circumstances were more likely to trigger their possible “delinquent constitution,” when they effectively have such inherent traits. As a consequence, “the marginalized minor, who represents the highest incidence in relation to the minors problem in our country,” becomes the target demographic of FUNABEM policies. And “since the marginalized minor, by definition, is one who lacks the conditions to meet one or more of their basic needs,”³⁰ addressing these adverse social circumstances was thus part of the treatment for antisocial behavior.

Tackling these environmental factors that triggered antisocial behavior, however, did not entail social reforms aimed at reducing poverty and social inequalities. In FUNABEM’s operational framework, providing relief to the social needs of children was part of the medicalized “treatment” of prospective delinquents, as a kind of prophylaxis of a social disease.³¹ After all, the origin of juvenile delinquency – according to Edson Sêda de Moraes, director of FUNABEM’s Prevention Plan – lies in the fact that “entire groups of individuals form communities affected by problems severe enough to marginalize their children, creating the so-called ‘minors problem.’” Therefore, “preventive programs against such marginalization should be implemented in urban areas where the incidence of abandoned, vulnerable, or delinquent minors is highest.”³² These preventive programs – according to FUNABEM experts and officials – could reverse the process of marginalization that poor children were undergoing, if the right techniques were employed to reconduct them to the path of socialization: “both minors and adults found to be in a process of marginalization can, in theory, undergo a process of social reintegration through appropriate techniques of a polyvalent nature (bio-psycho-pedagogical-social).”³³ Thus, rather than confronting the structural roots of poverty and exclusion, FUNABEM’s approach remained centered on adapting the individual to society, reinforcing a model in which marginalization was treated as a pathological deviation to be corrected,³⁴ rather than a social condition to be transformed.

In order to achieve this goal, FUNABEM “implemented 30 projects across the country” that aimed “to keep minors off the streets, address school dropout [rates], provide leisure activities, and prevent the commission of antisocial acts by minors living in disadvantaged urban areas,” as reported by Mario Altenfelder in an international symposium of criminology.³⁵ The strategy of implementing preventive programs in problematic urban areas instead of the simple and all-too-common criminalization of poverty, Sêda de Moraes explained, was chosen due to practical considerations – namely, the fact that even “if it were possible to institutionalize everyone, we would have thousands of institutions, which is obviously not desirable in terms of social organization.” In other words, the prophylaxes of the social disease of juvenile delinquency

28 About Pende’s contribution to eugenics, see L.C.L. Thomaz, *Raízes eugênicas da biotipologia neo-hipocrática francesa no período de entreguerras* [in:] A. Mota, M.G.S.M.C. Marinho (eds.), *Eugenia e história: ciência, educação e regionalidades*, CD.G Casa de Soluções e Editora, São Paulo 2013, p. 73–83, 75–78; About Pende’s influence on the so-called “Latin eugenics”, see C. Becalossi, *Latin Eugenics and Sexual Knowledge in Italy, Spain, and Argentina: International Networks across the Atlantic*, [in:] V. Fuechtner, D.E. Haynes, R.M. Jones (eds.), *A Global History of Sexual Science, 1880–1960*, University of California Press, Berkeley 2017, p. 305–329.

29 G. Carneiro, *Menor: um soco na sociedade*, “Brasil Jovem” 1971, vol. 5, no 2, p. 11.

30 F. de Paula Ferreira, *O Menor e o Desenvolvimento*, “Brasil Jovem” 1974, vol. 8, no 3, p. 11.

31 I.C.R. da Cunha Frontana, *Crianças e adolescentes...*, p. 186–201.

32 E. Sêda de Moraes, *Noções básicas sobre a prevenção da marginalização do menor nos centros urbanos*, “Brasil Jovem” 1974, vol. 8, no 3, p. 35.

33 *A FUNABEM e o menor com desvio de conduta: síntese da apresentação feita pelo presidente da Fundação Nacional do Bem-Estar do Menor, Dr. Mário Altenfelder, no Simpósio Internacional de Criminologia, realizado em São Paulo, entre 8 e 17 de agosto de 1974*, “Brasil Jovem” 1974, vol. 8, no 3, p. 5.

34 I.C.R. da Cunha Frontana, *Crianças e adolescentes...*, p. 186–201.

35 *A FUNABEM e o menor com desvio de conduta...*, p. 5.

through preventive programs strategically located “in urban areas where the problem is most acute” was considered the only viable solution “to interrupt the cycle of marginalization and effectively carry out control and educational processes” in order to neutralize the social danger represented by “minors who are becoming accustomed to idleness, begging, underemployment, and the practice of antisocial acts.”³⁶ Ultimately, these preventive programs functioned less as instruments of social transformation than as mechanisms of containment and normalization, aimed at neutralizing the perceived social threat posed by poor and marginalized children.

The projects implemented by FUNABEM in the 1970s were essentially preventive in nature, aimed directly at urban areas considered critical and offering socio-educational activities designed to keep children and adolescents off the streets and to interrupt cycles of marginalization. According to Mario Altenfelder, they were intended to address school dropout rates, idleness, lack of leisure opportunities, and behaviors deemed antisocial among minors living in disadvantaged urban zones.³⁷ These projects were organized mainly through the creation of Community, Social, or Educational Centers strategically installed in neighborhoods identified by urban planning authorities as areas of social risk.³⁸ In these units, FUNABEM structured an open-regime system of community education, offering guidance and monitoring to youths considered “on the path toward marginalization” or already marked by behaviors viewed as deviant, such as vagrancy, underemployment, begging, or antisocial conduct.³⁹ The content of the programs included a wide range of pedagogical, cultural, and socialization activities, as described by the Foundation itself: classroom activities, craft and expressive workshops, group activities, physical education, leisure, and vocational initiation.⁴⁰ An article published in *Brasil Jovem* presented “the results obtained in a first stage of the implementation and execution of the plan to prevent the marginalization of minors in Londrina,”⁴¹ a city in southern Brazil. The Londrina experience confirms this model, detailing actions such as recreational activities (futsal, dodgeball, or handball), medical and dental care, school support for children already of school age, and artistic activities for those still below school age. The service center also provided meals for the children and offered forms of boarding and semi-boarding when necessary.⁴² Taken together, FUNABEM’s projects constituted integrated programs of preventive protection, aimed at providing occupation, education, and basic care and functioning as an alternative to large-scale institutionalization and the penal framing of juvenile poverty. However, these projects operated within the logic of what Erving Goffman called “institutional display,” focused on offering the public external to the institution (in this case, the entire FUNABEM system) “an ‘appropriate’ image of the establishment.”⁴³ As a result, they were extremely limited in scope and, regardless of any potential merits, they could not effectively achieve the objective of preventing the marginalization of minors at any meaningful scale.

As regards the treatment of individual minors, the basic presumption is that “a minor exhibiting antisocial behavior is, above all, a deprived minor.” Therefore, “FUNABEM’s approach is primarily founded on addressing their basic needs (health, love and understanding, education, recreation, and social security).” After meeting these basic needs, the treatment of the individual antisocial minor would proceed on the psychological level through “the redefinition of their individual and social values.” This would be achieved by “establishing a living environment in which positive conditioning prevails.”⁴⁴ The “individual therapy” is crafted through inputs from different “technical approaches in Social Work, Psychology, Peda-

36 E. Sêda de Moraes, *Noções básicas...*, p. 35.

37 *A FUNABEM e o menor com desvio de conduta...*, p. 5.

38 E. Sêda de Moraes, *Noções básicas...*, p. 35.

39 *Ibidem*.

40 *A FUNABEM e o menor com desvio de conduta...*, p. 7.

41 O. Battini, *Londrina – Uma Experiência em Prevenção*, “Brasil Jovem” 1974, vol. 8, no 3, p. 36.

42 *Ibidem*, p. 38–39.

43 E. Goffman, *Asylums: Essays on the Social Situation of Mental Patients and Other Inmates*, Aldine Transaction, New Brunswick 2009, p. 102.

44 *A FUNABEM e o menor com desvio de conduta...*, p. 6.

gogy, and Medicine, based on the idea that antisocial behavior reflects issues related to various domains.” The studies of each case, conducted through different specialized fields, “provide comprehensive data for assessing the problem, diagnosing, formulating, and implementing the Treatment Plan.”⁴⁵ Therefore, the treatment process was to achieve behavioral adjustment through a technocratic model of individualized intervention.⁴⁶ Here too, it becomes evident that meeting the “basic needs” of the child was not an end in itself, nor a genuine strategy to address poverty or inequality, but a functional means of producing socially conforming, law-abiding members of society.

3. The 1979 Code for Minors and the introduction of the concept of an “irregular situation”

On August 14, 1975, Senator José Lindoso submitted to the Senate his substitute for the draft of a new Code for Minors that had been under consideration by the upper house since the previous year.⁴⁷ After the revised draft was sent to the Chamber of Deputies,⁴⁸ it was analyzed by the members of the Brazilian Association of Judges of Minors. Overall, the judges disapproved of the core innovations of the draft and proposed a series of amendments to correct their supposed flaws. These amendments were published in *Brasil Jovem* along with their justifications, where their criticism of the original draft was visible. Alyrio Cavallieri, then president of the Association, also manifested his discontent separately. In an article titled “the Law of Minors is Not the Same as the Law of Children” he is quoted as stating that the shortcomings of the draft version of the new Code for Minors “may hinder the necessary distinction between what constitutes the Law of Minors and what is generally understood as the Law of Children”⁴⁹

The shortcomings that Cavallieri referred to are the welfarist elements present in the draft of the new Code for Minors. According to Article 1 of the draft, the Code was to regulate “the assistance, protection, and supervision of minors” who are “up to eighteen years of age” and who “lack access to their basic needs due to the absence or neglect of parents or guardians.” In turn, Article 2 defined the minors’ basic needs as “a) health; b) education; c) vocational training; d) recreation; e) social security.”⁵⁰ These opening provisions were among those rectified by the amendments. According to the judges, “the draft exceeds the scope of the Law of Minors”⁵¹ when it assigns responsibility over the provision of children’s basic needs to the judges of minors.

The specific issue that the Law of Minors was intended to tackle, as demonstrated above, was the “minors problem.” Therefore, its subject “is not any child, but rather the minor in a condition of broad social pathology.”⁵² This “condition of broad social pathology” should be defined as a series of particular circumstances where children were placed in conditions of social vulnerability or legal irregularity that necessitate formal judicial action.⁵³ To that end, the Association of Judges of Minors proposed amendments to Articles 1 and 2 in order to define these “specific situations.” These single definitions were meant to be

45 Ibidem.

46 I.C.R. da Cunha Frontana, *Crianças e adolescentes...*, p. 186–201.

47 Projeto de Lei do Senado n° 105, de 1974. Institui o Código de Menores, p. 108, <https://legis.senado.leg.br/sdleg-getter/documento?dm=9953905&ts=1747672312289&disposition=inline> [accessed: 9.04.2025].

48 Projeto de Lei n. 1.573, de 1975 (do Senado Federal). Institui o Código de Menores, p. 7, https://www.camara.leg.br/proposicoesWeb/prop_mostrarintegra?codteor=1187142&filename=Dossie-PL%201573/1975 [accessed: 9.04.2025].

49 *Direito do Menor não é o mesmo que Direito da Criança*, “Brasil Jovem” 1976, vol. 10, no 2, p. 56.

50 Projeto de Lei n. 1.573, de 1975 (do Senado Federal). Institui o Código de Menores, p. 7, https://www.camara.leg.br/proposicoesWeb/prop_mostrarintegra?codteor=1187142&filename=Dossie-PL%201573/1975 [accessed: 9.04.2025].

51 *Um sistema em favor do menor*, “Brasil Jovem” 1976, vol. 10, no 2, p. 79.

52 Ibidem.

53 Ibidem.

examples of the category “irregular situation,”⁵⁴ a concept that had been promoted by the Inter-American Children’s Institute, an agency of the Organization of American States (OAS).⁵⁵

According to the amended Article 1, the Code was to regulate “the assistance, protection, and supervision of minors,” specifically those “up to eighteen years of age who are in an irregular situation.”⁵⁶ In turn, the amended Article 2 specified that “a minor is considered to be in an irregular situation when” the following circumstances occur:

- a. deprivation of essential conditions – that is, when the minor is “deprived, even temporarily, of essential conditions for subsistence, health, or compulsory education, due to: a) the absence, action, or omission of the parents or caregiver; b) the manifest inability of the parents or legal guardian to provide such conditions”
- b. mistreatment – when the minor is “a victim of mistreatment or excessive punishment imposed by the parents or legal guardian”
- c. moral danger – when the minor is “in moral danger, due to: a) habitually being in an environment contrary to good morals; b) being exploited by a third party in an activity contrary to good morals”
- d. lack of legal representation – when the minor is “deprived of legal representation or assistance due to the temporary absence of the parents or legal guardian”
- e. behavioral deviation – when the minor is “exhibiting behavioral deviation as a result of serious maladjustment to family or community life”
- f. the commission of a criminal offense – when the minor is “the perpetrator of a criminal offense.”⁵⁷

The version of Articles 1 and 2 ultimately approved by Congress differed only in minor details from the proposal put forward by the Association of Judges of Minors.⁵⁸

The irregular situation doctrine dispensed with the categories of “abandoned” and “delinquent” minors, which over time had acquired a “pejorative connotation.”⁵⁹ Instead, it sought to subsume all forms of social pathology affecting children into a single classificatory framework – an irregular situation – conceived as a continuum with multiple degrees (as discussed above), the most severe of which corresponded to “the perpetrator of a criminal offense.”⁶⁰ By collapsing distinct circumstances, such as abandonment and delinquency, into one overarching category, the doctrine allowed essentially the same set of tutelary and custodial measures to be applied to all these children. These measures were enumerated in Article 14 of the 1979 Code for Minors, ranging from mild admonition to full custodial confinement: a) judicial warning, b) return to parents, guardians, or another suitable person under formal responsibility, c) placement in a substitute home, d) the imposition of assisted liberty, e) placement in semi-liberty institutions, and, at the most severe end of the spectrum, f) institutionalization in educational, occupational, psychopedagogical, medical, psychiatric, or other specialized facilities.⁶¹ In practice, this graduated system of interventions applied uniformly to all children deemed to be in an irregular situation, regardless of whether their condition stemmed from abandonment, an absence of legal representation, or the commission of a criminal offense.

54 Ibidem.

55 H.R. Campos, C.P. Cavalcante, *O adolescente e o estatuto jurídico: transgressão e lei no Brasil*, [in:] L.L.P.C. Souza, D.B. Rodrigues (eds.), *Justiça juvenil teoria e prática no sistema socioeducativo*, Editora da UFRN, Natal 2014, p. 33–48, p. 37–38.

56 *Emendas Propostas pela Comissão de Juízes de Menores*, “Brasil Jovem” 1976, vol. 10, no 2, p. 68.

57 Ibidem.

58 Lei nº 6.697, de 10 de outubro de 1979. Institui o Código de Menores, https://www.planalto.gov.br/ccivil_03/leis/1970-1979/L6697impressao.htm [accessed: 7.05.2025].

59 *Um sistema...*, p. 79–80.

60 *Emendas Propostas...*, p. 68.

61 Lei nº 6.697, de 10 de outubro de 1979. Institui o Código de Menores, https://www.planalto.gov.br/ccivil_03/leis/1970-1979/L6697impressao.htm [accessed: 7.05.2025].

4. The formulation of a “new law”: The autonomy and scientific legitimacy of the Law of Minors

Originally published in the *Revista da Faculdade de Direito, an academic legal journal of the Federal University of Minas Gerais*, in 1979, Alyrio Cavallieri’s article “*Direito do Menor – Um Direito Novo*” (“Law of Minors – A New Law”) can be regarded as virtually a theoretical manifesto asserting the autonomy of a disciplinary field that had already taken shape, in practice, over the preceding years. The text was written in the context of debates surrounding the draft of the new *Code for Minors*, which would be enacted later that same year, replacing the 1927 *Mello Mattos Code*.⁶² Cavallieri argued that the *Law of Minor* should be recognized as an autonomous branch of law, endowed with its own principles, institutions, and methods, and directed toward the legal treatment of minors “in an irregular situation.”⁶³

The idea of a “new law” emerged from an effort to confer scientific legitimacy and institutional autonomy upon a legal practice already consolidated within the *juvenile courts*, whose function extended beyond the classical jurisdictional scope to include tutelary, welfare, and disciplinary actions. Cavallieri acknowledged, in a programmatic tone, that the *Law of Minors* “cannot be contained within the limits that have been imposed upon it” and that its “autonomy has become imperative.”⁶⁴ This autonomy, however, did not imply a rupture with the existing legal order, but rather a reorganization of legal power around new subjects and new forms of state intervention over impoverished children.

In advocating for the existence of a distinct legal science, Cavallieri sought to address the problem that judges and *curadores de menores* (court officials acting both as juvenile court prosecutors and guardians *ad litem*) operated without any theoretical training on the subject: “none, absolutely none, received, during their time at the Faculty of Law, the slightest information concerning the matters upon which they are called to decide.”⁶⁵ His proposal therefore aimed to fill this doctrinal void by creating university chairs in Law of Minors and a coherent normative structure capable of supporting the authority of a specialized field within the national legal system.

At the core of the innovation introduced by this *new field of law* was the figure of the “minor,” which Cavallieri sought to distinguish from other individuals who had not yet reached the age of majority. On this point, Cavallieri is explicit: “here, in this sphere, we are not speaking of children, or boys, or adolescents, or youths.” On the contrary, “the reference is to minors,” human beings characterized not only by “an age inferior to that of adults,” but also – and above all – by being “immersed in a state of deficiency before society.” After all, as Cavallieri himself acknowledges, “it is not without reason that, traditionally, in our country, the word *minor* has been reserved to indicate the subject of this new law.”⁶⁶ In this way, the distinction was reaffirmed between the *integrated child*, the object of family and educational protection, and the *marginalized child*, the object of state tutelage and correction.⁶⁷ The outcome of this distinction was evidently a juridical rationalization of social exclusion, legitimized by the discourse of protection and the superior interests of the minor. And in a way, it also contributed to normalizing the violence against socially vulnerable children.⁶⁸

62 Decreto nº 17.943-A, de 12 de outubro de 1927. Consolida as leis de assistência e protecção a menores, https://www.planalto.gov.br/ccivil_03/decreto/1910-1929/D17943Aimpressao.htm [accessed: 4.04.2025].

63 A. Cavallieri, *Direito do Menor – um direito novo*, “Revista da Faculdade de Direito” 1979, vol. 27, no 21, p. 391.

64 Ibidem, p. 387.

65 Ibidem, p. 388.

66 Ibidem, p. 390.

67 I.C.R. da Cunha Frontana, *Crianças e adolescentes...*, p. 48–60; F.T. Londoño, *A Origem do Conceito Menor*, [in:] M. del Piori (ed.), *História da Criança no Brasil*, Contexto, São Paulo 1996, p. 129–145.

68 C.A. Luppi, *Agora e na bora de nossa morte. O massacre do menor no Brasil*, Brasil Debates, São Paulo 1981, p. 9–82; I.C.R. da Cunha Frontana, *Crianças e adolescentes...*, p. 163–86; A. de Castro, I. Furlan Rigolin, *O sistema penal subterrâneo...*, p. 335–342; A. de Castro, I. Furlan Rigolin, *O punitivismo no Brasil...*, p. 1–22.

Alyrio Cavallieri begins his argument by asserting that the *Law of Minors* constitutes a revolutionary, though not subversive, discipline: “it is not subversive, because it does not seek to alter the essence of legal science; but it is revolutionary, because it intends to bring to light a wide range of conflicting situations, some latent, others evident.” He thus describes it as a “new law” devoted to solving such situations, to “showing new paths, unseen solutions.”⁶⁹ This ambiguous characterization – revolutionary yet compatible with the legal order – reveals the author’s effort to reconcile innovation and authority, presenting the doctrinal rupture as an expansion of the system rather than an epistemological, let alone political, challenge to it. Cavallieri contends that the autonomy of the *Law of Minors* is a necessity imposed by the very recipients of its norms, the “minors in an irregular situation;” it arises, he writes, “as an imperative of the recipients of its norms, its subject of law.” He argues that this field “is no longer subject to subordination to the noble branches of Civil, Criminal, or Procedural Law,” but instead “seeks coexistence rather than subordination.”⁷⁰ The metaphor of *coexistence* thus replaces that of *hierarchy*, signaling the aim to symbolically elevate the *minorist* field to be equivalent to other legal specializations. At the same time, this claim to autonomy conceals a strategy of institutional preservation: the creation of a relatively independent space of power, where *judge of minors* could exercise normative, executive, and judicial functions.

The scientific legitimation of this autonomy is constructed through an analogy with other specialized branches of law. Cavallieri draws on classical authors – Waldemar Ferreira, Alfredo Rocco, Miguel Reale, and Haroldo Valadão – to list the requirements that confer independence upon a discipline: “its own subject matter, specific content, unmistakable principles, distinctive institutions, homogeneous doctrines, legal categories, laws, norms, scientific and didactic independence.”⁷¹ The author demonstrates that the *Law of Minors* would meet all these criteria, possessing its own norms, original institutions (such as *liberdade assistida* [supervised liberty] and *legitimação adotiva* [adoptive legitimation]), and an exclusive thematic field centered on the protection and reeducation of minors. To carry out such a mission, it would be necessary to establish academic chairs and courses dedicated to this new branch of law. In fact, Cavallieri proudly cites the creation of a Chair in *Law of Minors* at Gama Filho University – “with five classes and about three hundred students”⁷² – as a milestone in the institutionalization of *minorist* knowledge.

Therefore, the *new law* does not merely represent a reorganization of the normative system, but rather the creation of a hybrid disciplinary field in which law merges with pedagogy, psychology, and social work. The structuring of a specialized body of knowledge of a legal-dogmatic nature – one that, in addition to a legislative corpus of reference (the code), possesses its own principles, is supported by a doctrine produced by a body of specialists, and is taught in university chairs dedicated to it – strengthens its legitimacy of a rational-legal type (in the Weberian sense).⁷³ Ultimately, the scientific character invoked by Cavallieri relegates to the background the political dimension of the practices consolidated and/or created by the new legislation, ensuring the continued expansion of state power over impoverished children, justified in the name of protection and welfare (after all, FUNABEM was still the Foundation for the *Wellbeing of Minors*). In this case, juridical rationalization does not restrict arbitrariness, but rather clothes it in a legal form.

In this way, the formulation of the *new law* corresponds to a strategy of juridical rationalization of tutelage, through which paternalistic intervention is reinterpreted as a technical and civilizing duty. The claim to scientific autonomy of the *Law of Minors* thus consecrates the autonomy of the tutelary apparatus itself, which comes to operate with its own authority within the authoritarian state of the 1970s.

69 A. Cavallieri, *Direito do Menor...*, p. 387.

70 Ibidem.

71 Ibidem, p. 391.

72 Ibidem, p. 389.

73 M. Weber, *Economy and Society: A New Translation*, Harvard University Press, Cambridge 2019, p. 343–354.

5. The doctrine of the irregular situation and its conceptual implications

The notion of an irregular situation constitutes the conceptual core of Alyrio Cavallieri's theory and the element that gives unity to his project of establishing the autonomy of the *Law of Minors*. Inspired by the recommendations of the Inter-American Children's Institute,⁷⁴ an agency linked to the Organization of American States, the author defines the *Law of Minors* as the "set of legal norms concerning the definition, treatment, and prevention of the irregular situation of the minor."⁷⁵ This definition encapsulates the ambition to endow the field with an internal logic and a theoretical object of its own, replacing traditional moral and charitable categories with ostensibly technical terminology.

Cavallieri explains that the expression was chosen "to encompass the states that define the primary addressee of the norms,"⁷⁶ i.e., the minor, an individual in a state of social pathology (or on the verge of falling into it). The concept of irregular situations was also meant to function as a comprehensive legal category, capable of unifying all forms of childhood vulnerability – abandonment, delinquency, moral exposure, and family maladjustment – under a single normative framework.⁷⁷ By defining *minors* through their irregularity, the author situates them within a social topography of abnormality: it is not every child that is at stake, but rather the *deviant child*, whose divergence from the norm calls for tutelage and correction. As noted above, the application of this *new field of law* was not distinguished solely by an age criterion, since it did not refer to children, boys, adolescents, or youths in general, but specifically to *minors* – that is, those who, beyond being younger in age, were "immersed in a deficient state before society."⁷⁸ This negative definition – the *minor* as one who lacks, who is deficient, who stands "below" the social norm – forms the foundation of the entire doctrinal edifice. The *minor* thus comes to be conceived not as a subject of rights, but as a subject of deprivation, whose place in law is determined by their social abnormality.⁷⁹

Citing Mendizábal, Cavallieri states that "the notion of irregular situation cannot be identified as strictly sociological, although it is regarded as a form of social pathology."⁸⁰ The notion thus presents a dual dimension. At the sociological level, it designates a state of deviation or social pathology,⁸¹ drawing on categories characteristic of positivist criminology.⁸² At the juridical level, it transforms this deviation into an object of legal regulation, allowing the state to intervene preventively, regardless of the commission of any offense.⁸³ Cavallieri acknowledges that the term *irregular* refers to "that which is not in accordance with the rule, the norm." This rule, however, is not necessarily a criminal or legal norm; it refers only to patterns of behavior considered normal and, in that sense, regular. Not even a violation of morality is presupposed, "for there are irregular situations in which morality is not offended and yet the state must exercise its protective tutelage."⁸⁴ In this sense, irregularity is a factual condition converted into a legal status that legitimizes tutelary action and rhetorically transforms state intervention into a form of social therapy. In Cavallieri's own words: "The expression *irregular situation* has a parallel, *state of social pathology*, which is

74 H.R. Campos, C.P. Cavalcante, *O adolescente e o estatuto jurídico...*, p. 37–38.

75 A. Cavallieri, *Direito do Menor...*, p. 391.

76 Ibidem, p. 391–392.

77 J.B.C. Saraiva, *Direito Penal Juvenil: adolescente e ato infracional: garantias processuais e medidas socioeducativas*. Livraria do Advogado, Porto Alegre 2002, p. 39–44.

78 A. Cavallieri, *Direito do Menor...*, p. 390; I.C.R. da Cunha Frontana, *Crianças e adolescentes...*, p. 48–60; F.T. Londoño, *A Origem do Conceito...*, p. 129–145.

79 A similar opinion is shared by C. Carvalho Leite, *Da doutrina da situação irregular à doutrina da proteção integral: aspectos históricos e mudanças paradigmáticas*, "Revista do Ministério Público" 2006, no 23, p. 97.

80 A. Cavallieri, *Direito do Menor...*, p. 392.

81 C. Carvalho Leite, *Da doutrina da situação irregular...*, p. 97.

82 On the history of positivist criminology in Brazil in 20th Century, see M.C. Alvarez, *O homem delinqüente e o social naturalizado...*, op. cit.; a key representative of positivist criminology applied to children in Brazil is E. de Moraes, *Criminalidade da Infância e da Adolescência*, Livraria Francisco Alves, Rio de Janeiro 1927.

83 C. Carvalho Leite, *Da doutrina da situação irregular...*, p. 96–97.

84 A. Cavallieri, *Direito do Menor...*, p. 392.

comprehensively a pathological state framed within juridical terminology.⁸⁵ Consequently, the concept of an irregular situation operates as a bridge between sociological diagnosis and juridical intervention, translating social deviation into a category of law and thereby laying the theoretical foundation for the tutelary system that governed Brazilian juvenile law in the late 20th century.

The *minor* “in an irregular situation” need not be guilty of a criminal offense; it is enough that they are deemed inadequate (according to the many forms of irregular situations, some of which were defined rather vaguely). Legal tutelage, by anticipating any infraction, takes on a preventive and disciplinary character.⁸⁶ Thus, the *Law of Minors* becomes a mechanism for managing abnormality, through which the state authorizes itself to act upon situations of presumed social pathology.⁸⁷ The conception of irregularity formulated by Cavallieri also fulfills a homogenizing function. By merging within a single concept a variety of situations – extreme poverty, orphanhood, delinquency, maladjustment – the Code dissolves the social causes of inequality, transforming them into individual attributes.⁸⁸ The refusal by Cavallieri and Mendizábal to adopt a purely sociological approach embedded in the concept of an irregular situation indicates an effort to shift the issue of poverty and exclusion from the realm of social-welfare policy to the judicial sphere, where the problem is translated into misconduct and a lack of socialization (in the sense of social deviance). This discursive operation helped to reconcile the rhetoric of child protection with the practice of institutional segregation. What presents itself as protection is, in fact, a form of differentiated social control, justified by the idea that the *minor* must be “reeducated” for life in society – hence the importance that Cavallieri attributes to measures of treatment and prevention.⁸⁹

Cavallieri defines the doctrine of *irregular situation* as one in which “minors are subjects of law when they find themselves in a state of social pathology, legally defined.”⁹⁰ From the standpoint of legal theory, therefore, the *concept* introduces a conceptual anomaly: the *subject of law* ceases to be defined by the possession of rights and comes instead to be defined by the need for “protection” and “treatment.” The result is a paradox: a law founded upon the negation of the subject. The *minor* acquires juridical relevance only when they cease to be an autonomous agent and become merely an object of regulation. Their voice is completely replaced by that of the judge, the guardian, or the social worker no matter their age. The category of irregularity, while justifying state intervention, simultaneously nullifies the legal subjectivity of the *minor*, establishing a model of tutelage that is not meant to prepare for the exercise of citizenship, but to ensure their adaptation to the social order through discipline and obedience, rather than through the recognition of rights.

6. Conclusion

The evolution of Brazilian juvenile law throughout the 20th century reflects the gradual construction of a tutelary system aimed at managing the problem of impoverished children through legal, medical, and pedagogical mechanisms. From its beginnings early in the century, this system emerged in response to the social transformations that accompanied the end of slavery, the rise of the Republic, and the urbanization that reshaped the country’s demographic and economic landscape. The first Code for Minors, enacted

85 Ibidem.

86 About the disciplinary character of the doctrine of irregular situation, see G.E. Rossato, *Infância abandonada e Estado de Bem-Estar no Brasil: de menor marginalizado a meninos e meninas de rua*, “Acta Scientiarum: Human and Social Sciences” 2008, vol. 30, no 1, p. 21; Interestingly, both the minors who have committed a conduct defined as a criminal offense and those who have been found in other, non-criminal irregular situations, were committed to the same institutions. About that, see J.B.C. Saraiva, *Direito Penal Juvenil...*, p. 39–44; C. Carvalho Leite, *Da doutrina da situação irregular...*, p. 97.

87 J.B.C. Saraiva, *Direito Penal Juvenil...*, p. 14.

88 H. Smidt Simon, D. Maria da Silva, W. Roberto Theodoro Filho, *Um panorama das políticas de proteção infantojuvenis no Brasil: do contexto da Situação Irregular para o modelo da Proteção Integral*, “Hegemonia – Revista Eletrônica do Centro Universitário Euro-Americano” 2022, no 32, p. 120.

89 A. Cavallieri, *Direito do Menor...*, p. 392.

90 Ibidem, p. 393.

in 1927, embodied the belief that the modernization of the nation required the moral and productive integration of the lower classes. It was within this context that children became divided into two distinct categories: the integrated child, protected by the family and the school, and the “minor,” the child of the poor, who required state intervention and surveillance.

After 1964, the military regime reinterpreted this tradition in light of its authoritarian project of national security and social order. The creation of FUNABEM marked a turning point in the institutional treatment of juvenile delinquency, replacing the earlier philanthropic and judicial initiatives with a centralized and technocratic model. FUNABEM’s activities combined criminological, medical, and educational discourses to present delinquency as a pathology that could be diagnosed and treated. In its main publication, the bulletin *Brasil Jovem*, the foundation revived Lombrosian ideas of biological predisposition to crime and redefined poverty as a condition that could trigger deviant behavior. Through this lens, poor and marginalized children were portrayed simultaneously as victims of deprivation and as potential threats to social stability.

Preventive programs were developed to act upon these so-called risk areas, seeking to “reintegrate” children and families into social life. Yet these initiatives did not aim to transform the structural causes of inequality; instead, they focused on adjusting individuals to the existing social order. The rhetoric of protection thus coexisted with the practice of control and the therapeutic vocabulary of reeducation concealed the disciplinary nature of these interventions. The same logic guided the individualized treatment of minors in institutions, where multidisciplinary techniques – taken from psychology, pedagogy, and medicine – were employed to correct behavior and promote obedience, ensuring conformity with the moral and legal standards of society.

The 1979 Code for Minors consolidated this institutional and doctrinal evolution. By introducing the notion of an irregular situation, the new legislation provided a legal category capable of uniting diverse circumstances – abandonment, delinquency, and maladjustment – under a single framework. It also confirmed the existence of a specialized field, the Law of Minors, which claimed scientific autonomy and established its own concepts, institutions, and principles. This autonomy reinforced the technocratic aspect of the disciplinary power of the state over impoverished childhood, legitimizing its intervention as a legal duty. The figure of the “minor” was defined not by the possession of rights, but by the lack of them. Taken together, these developments illustrate how Brazilian juvenile law evolved as an instrument for governing social difference. What appeared to be protection was often a form of control within a disciplinary framework in a process that reveals the deep historical entanglement between the governance of childhood and the rationalization of social inequality.

Bibliography

Scientific publications

A FUNABEM e o menor com desvio de conduta: síntese da apresentação feita pelo presidente da Fundação Nacional do Bem-Estar do Menor, Dr. Mário Altenfelder, no Simpósio Internacional de Criminologia, realizado em São Paulo, entre 8 e 17 de agosto de 1974, “Brasil Jovem” 1974, vol. 8, no 3, p. 3–7.

Alvarez M.C., *O homem delinqüente e o social naturalizado: apontamentos para uma história da criminologia no Brasil*, “Teoria & Pesquisa” 2005, vol. 47, p. 71–92.

Battini O., *Londrina – Uma Experiência em Prevenção*, “Brasil Jovem” 1974, vol. 8, no 3, p. 36–40.

Bazílio L.C., *O menor e a ideologia de segurança nacional*, Editora Veja/Novo Espaço, Belo Horizonte 1985.

Beccalossi C., *Latin Eugenics and Sexual Knowledge in Italy, Spain, and Argentina: International Networks across the Atlantic*, [in:] V. Fuechtner, D.E. Haynes, R.M. Jones (eds.), *A Global History of Sexual Science, 1880–1960*, University of California Press, Berkeley 2017, p. 305–329.

- Campos H.R., Cavalcante C.P., *O adolescente e o estatuto jurídico: transgressão e lei no Brasil*, [in:] I.L.P.C. Souza, D.B. Rodrigues (eds.), *Justiça juvenil teoria e prática no sistema socioeducativo*, Editora da UFRN, Natal 2014, p. 33–48.
- Carvalho Leite C., *Da doutrina da situação irregular à doutrina da proteção integral: aspectos históricos e mudanças paradigmáticas*, “Revista do Ministério Público” 2006, no 23, p. 93–107.
- Carvalho R.C., *As migrações e a urbanização no Brasil a partir da década de 1950: um breve histórico e uma reflexão à luz das teorias de migração*, “Revista Espinhaço” 2019, vol. 8, p. 24–33.
- Castro A. de, *A evolução do direito do menor no Brasil: um exame crítico das mudanças na legislação para crianças e adolescentes ao longo do século XX (1927–1979)*, “Revista Eletrônica do Curso de Direito da UFSM” 2023, vol. 18, no 3, p. 1–33.
- Castro A. de, *Codes of Law for Underprivileged Youths. An Overview of Brazilian Juvenile Law in the 20th Century (1927–1979)*, “EViR Working Paper” 2024, vol. 16, p. 3–29.
- Castro A. de, Diniz Meira H., *O recolhimento de Pedro Bala ao reformatório. O Código de Menores de 1927 e os direitos da infância e da adolescência*, “Revista Eletrônica do Curso de Direito da UFSM” 2022, vol. 17, no 1, p. 423–432.
- Castro A. de, Furlan Rigolin I., *A criança marginalizada das primeiras décadas do século XX no discurso dos salvadores da criança: contribuição à história do direito do menor no Brasil*, “Revista Quaestio Iuris” 2024, vol. 17, no 1, p. 421–443.
- Castro A. de, Furlan Rigolin I., *O punitivismo no Brasil, o Estado Penal e os adolescentes criminalizados*, “Revista InterAção” 2023, vol. 14, no 3, p. 1–22.
- Castro A. de, Furlan Rigolin I., *O sistema penal subterrâneo no trato aos “menores” durante o regime militar brasileiro. Breve história da violação sistemática de direitos da infância e adolescência no Brasil*, “Revista Eletrônica Direito e Política” 2022, vol. 17, no 2, p. 319–349.
- Carneiro G., *A revolta dos associaís*, “Brasil Jovem” 1969, vol. 3, no 12, p. 77–80.
- Carneiro G., *Menor: um soco na sociedade*, “Brasil Jovem” 1971, vol. 5, no 2, p. 4–13.
- Cavallieri A., *Direito do Menor – um direito novo*, “Revista da Faculdade de Direito” 1979, vol. 27, no 21, p. 384–399.
- Cunha Frontana I.C.R. da, *Crianças e adolescentes nas ruas de São Paulo*, Edições Loyola, São Paulo 1999.
- Dias de Oliveira N., *Os Primórdios da Doutrina de Segurança Nacional. A Escola Superior de Guerra*, “História” 2010, vol. 29, no 2, p. 135–157.
- Direito do Menor não é o mesmo que Direito da Criança*, “Brasil Jovem” 1976, vol. 10, no 2, p. 56–66.
- Emendas Propostas pela Comissão de Juizes de Menores*, “Brasil Jovem” 1976, vol. 10, no 2, p. 67–77.
- Franco Reis J.R., *“De pequenino é que se torce o pepino”. A infância nos programas eugênicos da Liga Brasileira de Higiene Mental*, “História, Ciências, Saúde” 2000, vol. 7, no 1, p. 135–157.
- Goffman E., *Asylums: Essays on the Social Situation of Mental Patients and Other Inmates*, Aldine Transaction, New Brunswick 2009.
- Gutman G., *Criminologia, Antropologia e Medicina Legal. Um personagem central: Leonídio Ribeiro*, “Revista Latinoamericana de Psicopatologia Fundamental” 2010, vol. 13, no 3, p. 482–497.
- Guy D.J., *The Pan American Child Congresses, 1916 to 1942: Pan Americanism, Child Reform, and the Welfare State in Latin America*, “Journal of Family History” 1998, vol. 23, no 3, p. 272–291.
- Leopoldi M.A.P., *O difícil caminho do Meio. Estado, burguesia industrial e industrialização no segundo governo Vargas (1951-1954)*, [in:] T. Szmrecsányi, W. Suzigan (eds.), *História econômica do Brasil contemporâneo*, Editora da Universidade de São Paulo, São Paulo 2002, p. 31–77.
- Londoño F.T., *A Origem do Conceito Menor*, [in:] M. del Priori (ed.), *História da Criança no Brasil*, Contexto, São Paulo 1996, p. 129–145.
- Luppi C. A., *Agora e na hora de nossa morte. O massacre do menor no Brasil*, Brasil Debates, São Paulo 1981.
- Moraes E. de, *Criminalidade da Infância e da Adolescência*, Livraria Francisco Alves, Rio de Janeiro 1927.

- Morgan H., *Conducting a Qualitative Document Analysis*, “*The Qualitative Report*” 2022, vol. 27, no 1, p. 64–77.
- Nilvane Zanella M., *A implantação do menorismo na América Latina no início do século XX. Tendências jurídicas e políticas para a contenção dos mais pobres*, “*Revista Ibero-Americana de Estudos em Educação*” 2019, vol. 14, no 3, p. 1750–1766.
- Paula Faleiros V. de, *Infância e processo político no Brasil*, [in:] I. Rizzini, F. Pilotti (eds.), *A Arte de Governar Crianças. A história das políticas sociais, da legislação e da assistência à infância no Brasil*, Cortez Editora, São Paulo 2011, p. 33–96.
- Paula Ferreira F. de, *O Menor e o Desenvolvimento*, “*Brasil Jovem*” 1974, vol. 8, no 3, p. 9–14.
- Pion-Berlin D., *Latin American National Security Doctrines. Hard and Softline Themes*, “*Armed Forces & Society*” 1989, vol. 15, no 3, p. 411–429.
- Rizzini I., *O Século Perdido. Raízes históricas das políticas públicas para infância no Brasil*, Cortez Editora, São Paulo 2008.
- Rizzini I., Rizzini I., *A institucionalização de crianças no Brasil: percurso histórico e desafios do presente*, Edições Loyola, São Paulo 2004.
- Rossato, G.E., *Infância abandonada e Estado de Bem-Estar no Brasil: de menor marginalizado a meninos e meninas de rua*, “*Acta Scientiarum: Human and Social Sciences*” 2008, vol. 30, no 1, p. 17–24.
- Sant’Ana e Silva Junior N.G. de, Garcia R.M., *Moncorvo Filho e algumas histórias do Instituto de Proteção e Assistência à Infância*, “*Estudos e Pesquisas em Psicologia*” 2010, vol. 10, no 2, p. 613–632.
- Saraiva J.B.C., *Direito Penal Juvenil: adolescente e ato infracional: garantias processuais e medidas socioeducativas*. Livraria do Advogado, Porto Alegre 2002.
- Sêda de Moraes E., *Noções básicas sobre a prevenção da marginalização do menor nos centros urbanos*, “*Brasil Jovem*” 1974, vol. 8, no 3, p. 31–35.
- Silva Rodrigues C.F. da, Schmidt Filho R., *O processo de industrialização. Repercussões e perspectivas*, “*A Economia em Revista – AERE*” 2017, vol. 25, no 1, p. 77–89.
- Smidt Simon H., Maria da Silva D., Roberto Theodoro Filho W., *Um panorama das políticas de proteção infantojuvenil no Brasil: do contexto da Situação Irregular para o modelo da Proteção Integral*, “*Hegemonia – Revista Eletrônica do Centro Universitário Euro-Americano*” 2022, no 32, p. 108–130.
- Suzigan W., *Industrialização brasileira em perspectiva histórica*, “*História Econômica & História de Empresas*” 2012, vol. 3, no 2, p. 7–25.
- Thomaz L.C.L., *Raízes eugênicas da biotipologia neo-hipocrática francesa no período de entreguerras*, [in:] A. Mota, M.G.S.M.C. Marinho (eds.), *Eugenia e história: ciência, educação e regionalidades*, CD.G Casa de Soluções e Editora, São Paulo 2013, p. 73–83.
- Tomé de Souza F.A., *A Institucionalização do Atendimento aos Menores – o SAM*, “*Revista Brasileira de História & Ciências Sociais*” 2020, vol. 12, no 24, p. 61–92.
- Um sistema em favor do menor*, “*Brasil Jovem*” 1976, vol. 10, no 2, p. 78–87.
- Weber M., *Economy and Society: A New Translation*, Harvard University Press, Cambridge 2019.

Official documents

- Decreto nº 17.943-A, de 12 de outubro de 1927. Consolida as leis de assistência e proteção a menores, https://www.planalto.gov.br/ccivil_03/decreto/1910-1929/D17943Aimpressao.htm [accessed: 4.04.2025].
- Lei nº 4.513, de 1º de dezembro de 1964, https://www.planalto.gov.br/ccivil_03/leis/1950-1969/L4513impressao.htm [accessed: 9.04.2025].
- Projeto de Lei do Senado nº 105, de 1974. Institui o Código de Menores, <https://legis.senado.leg.br/sdleg-getter/documento?dm=9953905&ts=1747672312289&disposition=inline> [accessed: 9.04.2025].

Projeto de Lei n. 1.573, de 1975 (do Senado Federal). Institui o Código de Menores, https://www.camara.leg.br/proposicoesWeb/prop_mostrarintegra?codteor=1187142&filename=Dossie-PL%201573/1975 [accessed: 9.04.2025].

Lei nº 6.697, de 10 de outubro de 1979. Institui o Código de Menores, https://www.planalto.gov.br/ccivil_03/leis/1970-1979/L6697impressao.htm [accessed: 7.05.2025].