Labyrinths of crime medicalization[1]

Labirintos da medicalização do crime

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Abstract

This article examines some aspects of the processes of crime medicalization, especially the medicalization of criminal dangerousness in contemporary societies. It starts with the identification of elements that organized the historical trajectory of the conversion of crimes into objects of medical knowledge - particularly, crimes characterized by the use of physical violence, usually involving homicides, done by individuals who were partially or totally irresponsible from the point of view of criminal justice. The focus of the analysis is on psychiatric evaluation of criminal dangerousness as a part of biopolitical strategies of management of risks and uncertainties in modern societies. In this sense, we attributed an important role to the changes experienced by medical knowledge regarding the introduction of new assessment instruments of criminal dangerousness, characterized by the formalization and standardization of parameters for defining crime, criminals, and their dangerousness. These new technologies are analyzed in their connections with the contemporary trends of crime control, regarding ways of surveillance and risk management that are becoming increasingly more actuarial and medicalized. Finally, we discuss in what way and to what extent these new technologies lead to the depoliticization of crime, considering that new forms of evaluating criminal dangerousness promote the emergence of a medical discourse grounded on increasing accountability of the individual and on the relative unaccountability of society in producing risks and threats in this area.
Keywords: Medicalization; Psychiatry; Crime; Criminal Dangerousness.

1 This paper discusses the results obtained in three studies financed by the National Council for Scientific and Technological Development (CNPq) and a PhD thesis financed by the Coordination of Higher Education Personnel Training (CAPES).

Resumo

Este artigo examina alguns aspectos dos processos de medicalização do crime e, em particular, da periculosidade criminal nas sociedades contemporâneas. Parte-se da identificação de elementos que organizaram a trajetória histórica da conversão do crime em objeto do saber médico e, fundamentalmente, da criminalidade caracterizada pelo uso da violência física, geralmente de caráter homicida, praticada por indivíduos parcial ou totalmente inimputáveis do ponto de vista da justiça criminal. O foco da análise é constituído pela avaliação psiquiátrica da periculosidade criminal e sua inscrição em estratégias biopolíticas de administração de riscos e incertezas nas sociedades modernas. Nesse sentido, atribui-se um papel relevante às transformações experimentadas pelo saber médico no que concerne à recente introdução de novos instrumentos de avaliação da periculosidade criminal, caracterizados pela formalização e padronização dos parâmetros que definem o crime, o criminoso e sua periculosidade. Essas novas tecnologias são analisadas em suas conexões com algumas tendências contemporâneas do governo da criminalidade no que se refere aos modos de vigilância e de gestão de riscos, cada vez mais atuariais e medicalizadores. Por fim, discute-se em que sentido e até que ponto essas novas tecnologias promovem a despolitização do crime, levando em consideração que as novas modalidades de avaliação da periculosidade criminal possibilitam a emergência de um discurso médico que se fundamenta na crescente responsabilização do indivíduo e na relativa desresponsabilização da sociedade pela produção de riscos e ameaças nessa área.
Palavras-chave: Medicalização; Psiquiatria; Crime; Periculosidade Criminal.

Introduction

This study intends to analyze the medicalization of crime and criminal dangerousness as part of broader processes of medicalization of social life, whose beginning the literature generally places from the second half of the 18th century (Castel, 1978; Darmon, 1991; Harris, 1993). In general terms, medicalization is understood as the set of processes characterized by the expansion of the field of objects of knowledge and scientific medicine-technical intervention; processes by which virtually all spheres of social life have been incorporated (Menéndez, 1984; Foucault, 1999; 2001; Barros, 2002; Ferreira et al., 2012; Mitjavila, 2015).

The conversion of crime into an object of medical knowledge and practice can be understood as part of the broader processes of medicalization of social life that organized the experience of modernity through diverse biopolitical strategies. The notion of biopolitics is used here to “designate what makes life and their mechanisms enter the field of explicit calculations and what transforms the knowledge-power in transformation agent of human life” (Foucault, 1978, p. 170).

In this sense, it is possible to see that the interference of forensic medicine and psychiatry in the construction of the notions of crime and criminal, as well as dangerousness, would not be dissociated from the set of processes that involved medical-hygiene intervention in the management of urban space, in the civilization of customs, in family organization, and in the prevention of deviant or offender behaviors. An example of biopolitical articulation of medical colonization of spaces, apparently so diverse, in the name of prevention of crime and of its resulting dangers can be found in the ideas and practices promoted by the Brazilian League for Mental Hygiene in the early 20th century[2]. From the perspective of the physicians who participated in this movement, the prevention of crime and criminal dangerousness should comprise a set of hygiene measures regarding the urban space, the

2 The Brazilian Mental Hygiene League was founded in 1923, in Rio de Janeiro, by psychiatrist Gustavo Riedel. It was a civilian institution funded by federal and philanthropic agencies. The actions of the League exceeded the scope of psychiatric care, progressively assuming an agenda based on hygienist ideas and biopolitical strategies of eugenic character (Costa, 1976).

school environment, and family life. These spaces were considered to be strategic, to locate factors of crime birth, whose neutralization or elimination surely would lead, by means of eugenic interventions, the improvement of the quality of the Brazilian population and the reduction of certain types of crime characterized by the use of physical violence (Delgado, 1992). Thus, medicalizing the crime involved medical interventions on conditions such as alcoholism, race, syphilis, lack of work habits, the behavior of the "incorrigible underaged youths", sexualities considered abnormal or perverse, among other etiologic factors. (Portocarrero, 1990; Costa, 1999; Venâncio, 2003).

In this way, the early 20th-century hygienism was a continuation of biopolitical strategies originated in prior periods and that leaned on the expansion of medicalization processes of wide institutional range:

> Medicine invests over the city, fighting for a place among the control instances of social life. [...] the presence of the physician as an authority that intervenes in social life, deciding, planning, and implementing measures, at the same time, medical and political [...] The figure of medicine as a scientific-technical service, directly or indirectly, belonging to the State (Machado, 1978, p. 68).

The social questioning of criminal behavior and dangerousness finds in the medical-hygiene strategies of this period a politically and technically efficient resource to social control and the defense of society before various types of threats. This is a process of expanding the borders of medical knowledge, which revealed, as pointed out by Foucault (2001), the emergence of a non-pathological medicine, embracing all kinds of deviation, both in statistical and moral or normative terms (Canguilhem, 2009). Therefore, medicine was progressively assuming a function of rearguard of moral human behavior, which contributed to the institutionalization of the role of physicians as arbiters of social life (Mitjavila, 2010). This transformation of the role of medical knowledge was not the result of a linear process, but of struggles, conflicts, and negotiations, involving, in addition to the professionals themselves, the State, the judiciary, and various segments of civil society (Castel, 1978; Harris, 1993). In this sense, physicians began to be recognized as advisers, experts, responsible for teaching hygiene rules, which would be essential for individual and collective health, and so should be respected (Rebelo, 2004), thus making medicine a powerful and legitimate source of production and validation of social norms.

The medicalization of crime and madness

The process of crime medicalization begins to be firmly established, both in Europe and Brazil, from the 19th century. A clear manifestation of the entrance of crime in the jurisdiction of medical knowledge can be seen in the widespread perception (that already existed in this period) regarding prisons as spaces that should categorize their inmates, not according to the offenses, but according to the condition of degeneration, diagnosed according to medical criteria. From this logic, medicine's goal of occupying a relevant space in judicial and prison institutions begins to be legitimated, initiating a process of medicalization of crime (Rebelo; Caponi, 2007).

Another area of intersection between the legal and medical worlds, which propelled the medicalization of crime, was the ambiguous and problematic status from the point of view of criminal law that characterizes the "crimes of reason" – i.e., violent crimes that culminated in homicidal practices by individuals who, from a psychiatric point of view, could not be considered sick or crazy. These are cases that cannot be explained as a result of madness as loss of reason, but neither as a result of an action of rational character moved by greed or the desire to obtain another type of personal advantage. This kind of crime led to the insertion of physicians in courts (Castel, 1978; Harris, 1993; Carrara, 1998), giving rise to forensic psychiatry as a medical specialty.

The answers of medical knowledge to explain this type of crime arose along a winding path –

whose best-known expressions are: the notion of "mania without delirium" by Pinel; the idea of "born criminal", formulated by Cesare Lombroso (Darmon, 1991); and the different versions of the concept of "psychopathic personality" of kraepelinian origin, most recently transformed into the Nosological category "antisocial personality disorder" (APA, 2002).

These medicalization processes opened a field of medical knowledge objects under a modality that, to Crawford (1980), is characterized by the replacement or supplementation of competences which, to a certain point, belonged to other institutions or spheres of social life – in this case, the judiciary. These skills would be basically two: (i) the determination of criminal liability in terms of (non-) liability of the defendant; and (ii) the assessment of the risk of recurrence and/or the dangerousness of the perpetrators.

The sociological significance of this transfer of powers lies, among other things, in the displacement of certain aspects of crime under the traditional law for the space of standards, according to the pioneer perception of Michel Foucault (2006).

Nowadays, this type of crime still raises high levels of social uncertainty and perplexity insofar as it does not respond to known parameters of reason nor madness, becoming, therefore, as well as unintelligible, highly unpredictable – characteristics that constitute relevant aspects which shall be called dangerousness to the crime and psychiatric areas (Kemshall, 2006; Doron, 2014).

Psychiatry in the labyrinth of criminal dangerousness

In modern societies, the process of determining the dangerousness of an individual crime has involved, at least from the second half of the 19th century, an area characterized by the combination of two kinds of rationalities for judging it: legal rationality and medical rationality, two types of knowledge responsible for, in addition to defining, the use of instruments to detect and manage dangerousness. To this end, a strict distribution of roles among the representatives of these knowledges will indicate who can legitimately categorize an individual as dangerous, as well as when and how it can be done.

More than one type of criminal dangerousness exists. From the point of view of this paper, our interest was to delimit the analysis of medicalization of dangerousness to individuals who, being considered partially or totally imputable according to the law, comply with security measures in units known as judiciary asylums or custody hospitals. The duration of these security measures is subjected to the psychiatric evaluation of cessation, or not, of the criminal dangerousness. The safety measure is not directed to the offense, but to the dangerousness that it represents. Similarly, criminal dangerousness in these cases resides or is founded not in the nature of the act committed, but in the virtuality of recurrence or relapse of violent criminal behavior (Doron, 2014).

Therefore, in this context, who can be considered a dangerous individual? Certainly, dangerousness here is not synonymous to illegality or actual violent behavior, although these attributes can be associated to it (Foucault, 2001). In fact, the attribution of dangerousness is based, from the point of view of the agents of the medical and legal universes, on the set of variances or anomalies that allows anticipating or predicting the future occurrence of violent criminal behavior.

The dangerous individual who is serving time as a security measure is subjected to a continuous monitoring and evaluation regime. Unlike those sentenced to prison, these individuals will remain confined for as long as their dangerousness lasts. It is a confinement that can become perpetual, as it lacks a preset deadline and depends on periodical medical-legal evaluations to determine whether or not the criminal dangerousness ended.

These assessments respond to a kind of secular ritual that begins by the judicial requirement of psychiatric expertise focused on the evaluation of permanence or cessation of criminal dangerousness. It is a type of psychiatric evaluation that (despite the transformations that it has been undergoing recently) still retains its interrogation technique as the main source of monitoring and evaluation. The main purpose of the interrogation is to provide

reality to mental insanity (or its absence) and to dangerousness (or its absence), depending on the clinical observation of statements, gestures, attitudes, memories, confessions, silence, and denials – of all mental and bodily reactions of the individual subjected to the interrogation. As stated by Foucault (2006, p. 348), through interrogation, "to transcribe the demand as a disease and to make the reasons for the demand symptoms of a disease is the first function of psychiatric evidence".

They are evidence that do not have a material substrate, i.e., they are poor regarding somatic manifestations – in addition to being characterized by a profound moral content. Therefore, the competence and suitability of these records come from a translation process, through the medical knowledge, of this disciplinary power exercised during interrogation: here, the very exercise of disciplinary authority has the function of establishing to the psychiatric medicine authority and a monopoly on the production of truth about madness and dangerousness.

The medicalization of crime and the governing of dangerousness

From the last two decades of the 20th century some changes began to be observed in the strategies of criminal dangerousness which were manifested, among other things, on the standardization of assessment instruments by tests that supposedly allowed introducing more objective criteria than those that prevailed in the clinical assessment of dangerousness.

The creation and use of these new instruments are part of a wider process of renewal of the biopolitical strategies of risk management in contemporary societies. For this reason, the new methods of assessesment begin to replace the term "dangerousness" by the word "risk". This semantic shift would correspond to the emergence of a new kind of rationality, based not only on the language of risk, but also in the prioritization of an economy of punishment, which points to the economic and political efficiency of management mechanisms and to the standardization of classification of the population using criteria for risk of criminal behavior.

Indeed, the transformations experienced by the psychiatric knowledge in this area would answer to new forms of neo-liberal management of dangerousness based on the individualization of risk and on the biopolitical management of punishment, which is subscribed in the context of "new penology". In the midst of these transformations, unprecedented mechanisms of surveillance, classification, and monitoring of individuals emerge, based on exposure to risk factors of criminal recurrence and dangerousness.

As pointed by Castel (1978), risk mapping technologies produce dissolution of the individual singularities operating as the substrate from which the population risk mapping becomes possible. However, population risk mapping becomes a laboratory for the creation of instruments which, due to their standardized character, are functional to the rationalization of management of scarce resources in the area of criminal justice (Kemshall, 2006).

Some of the main effects of new management technologies of criminality can be observed in new instruments for psychiatric evaluation of criminal dangerousness, which are becoming increasingly less clinical and actuarial, due to the formalization of ways of categorizing individuals. Although there is no consensus in the field of psychiatry on the relevance of issuing judgments on dangerousness, the Brazilian forensic psychiatry continues to respond positively to this social mandate, allowing the language of risk to be introduced in the psychiatry manuals from the late 1990s, as well as in other publications in this area (Mitjavila, 2009).

On the other hand, the introduction of standardized forms of dangerousness assessment would answer the needs experienced by forensic psychiatry to legitimize its speech through the formalization of its instruments in the light of a scientific model that supposedly moves away from inferential principles of psychoanalytic theory, "which should be rigorously avoided in the judicial context due to the impossibility of being supported concretely" (Taborda, 2012, p. 80).

This scientificization would answer to the extended perception among forensic psychiatrists that

> the psychiatric diagnosis must be a process fundamentally objective and logical, based on clearly perceptible signs and symptoms, to be understood and criticized by the layman, rather than characterized with fantastic or magical features, which could only be made by people who understand the mysteries of the mind and the unconscious phenomena (Taborda, 2012, p. 81).

This new medical objectivism can be observed in two of the most widely used standardized risk of violence assessment instruments. Both are forms of measurement of levels of risk – low, medium, high – as a result of a score distributed in 20 items and processed as a simple sum index. Those instruments are HCR-20 (Historical, Clinical, Risk Management)[3] and PCL-R (Psychopathy Checklist Revised)[4].

The items that make up the HCR-20 scale are the following:

> **Historical items**: H1: previous violence; H2: first violent incident at a young age; H3: instability in relationships; H4: employment issues; H5: problems with drug use; H6: more serious mental illness; H7: psychopathy; H8: early maladjustment; H9: personality disorder; H10: history of failure (behavioral) while under supervision.
>
> **Clinical items**: C1: lack of insight; C2: negative attitudes; C3: active symptoms of mental illness; C4: impulsiveness; C5: lack of response to treatment.
>
> **Risk management items**: R1: unenforceable plans; R2: exposure to destabilizing factors; R3: lack of personal support; R4: non-adherence to attempts at correction; R5: stress (AAbdalla-Filho, 2004, p. 282).

The items that compose the PCL-R scale are:

> 1) loquacity/superficial charm; 2) inflated self-esteem; 3) need for stimulation/tendency of boredom; 4) pathological lie; 5) control/manipulation; 6) lack of remorse or guilt; 7) superficial affection; 8) insensibility/lack of empathy; 9) parasitic lifestyle; 10) fragile behavioral control; 11) promiscuous sexual behavior; 12) early behavioral problems; 13) lack of realistic long-term goals; 14) impulsiveness; 15) irresponsibility; 16) failure to take responsibility; 17) many short-term marital relationships; 18) juvenile delinquency; 19) revocation of parole; and 20) criminal versatility (Morana; Stone; Abdalla-Filho, 2006, p. s76).

These scales reflect some of the main characteristics of contemporary psychiatry views about criminal dangerousness. A first observation regarding the scales refers to the extent in which the amount and content of items reflects the expansion of the universe of human attributes, which are defined and treated as medical problems involving, among others, aspects related to issues such as social interaction, sexual behavior, values, and lifestyles.

A second aspect that deserves to be registered concerns the personality of the individual as a locus of criminal dangerousness. It is an individualizing look of etiological factors of crime as the items in the scales and, especially, those who make up the HCR-20 scale, reveal a diagnostic strategy strongly anchored to the biographical trajectory of the subject, including items that refer to the past, the present, and the future of this trajectory. When individualizing the etiology of criminal dangerousness, we create conditions for the updating of etiological models that assume the existence of a criminal constitution unrelated to factors of crime birth located within the society.

On the other hand, a significant proportion of dangerousness assessment items present in these scales refer to behaviors considered socially undesirable, as they are distant from the standard of normalcy regarding aspects such as violence, employment,

3 Instrument developed by Webster et al. (1995) and published by the Simon Fraser University, in Canada.

4 Scale created by Robert Hare (1991).

drug abuse, laziness, love life, self-control, sexuality, behavioral creativity, among others.

On the other hand, we can observe the absence of items to assess pain, discomfort, and other features usually privileged in the diagnosis of diseases (Canguilhem, 2009). The normalizer character of a type of "scientific technology" predominantly aimed at categorizing and pathologizing regulatory deviations is, thus evident.

> It is, therefore, on "individuals" -separated subjects, marked, serialized and identified - that standardization procedures are applied in different movements: standardizing, defining a priori "technical" criteria, indexes, averages, curves and a whole set of comparative measures; then, applying assessment instruments seeking to raise the profile of each individual; after that, each one of them would be sent to the standard set for their group, comparing and classifying individuals regarding each other, still marking the deviations in relation to the average; and then, isolating, marking, diagnosing, and naming each type of deviation as a pathological form; and, finally, applying to all deviations a set of therapeutic, corrective, and orthopedic procedures, seeking to reinstate the devious individual to normality. (Prado Filho, 2010, p. 188)

As previously noted, the use of standardized instruments - such as the scales presented here - would answer to the demands of the new forms of governing of dangerousness, which has in the idea of risk one of its main foundations. Indeed, to predict the occurrence of criminal behavior is a task, if not impossible, extremely risky. In this sense, the instruments based on risk logic play a immunological role - as long as the predictions of dangerousness are made, not in terms of tangible and directly observable attributes, but considering the probability (albeit not statistically based) of occurence of a given future criminal conduct. The prediction becomes unstoppable, i.e., immune to any result (both positive and negative) about a prognosis that does not give absolute guarantees of fulfilment of the predictions.

Final remarks

Since its origins, psychiatry has been summoned to explain and to intervene in the administration of a wide repertoire of individual behavior characterized for representing some form of threat to social order. The role of medical knowledge is due, among other things, to the institutional confidence that modern societies place on science and technique as administration sources of fear, uncertainty, and threats. Crime exposes the fragility of the social fabric to manage behaviors that represent a deviation of the standard and, at the same time, escape the institutional social control schemes (Mitjavila; Mathes, 2012; Mitjavila, 2015). In the specific case of dangerousness, fear and uncertainty seem to lead institutions to psychiatric medicine as the main source of security.

At the same time, the introduction of the language of risk in the assessment of criminal dangerousness presents itself as an institutionally efficient resource for the administration of the fear and social uncertainty posed by crime. In contemporary societies, the risk has been converted into a biopolitical device with forensic properties for the arbitration of various kinds of social problems (Mitjavila, 2002), being criminal dangerousness one of them. Determining the dangerous character (or not) of an individual due to the presence of risk factors would be a way to manage the uncertainty. However, as previously analyzed, also of immunizing failure because, due to its probabilistic nature, dangerous behavior prediction includes both the occurrence and the non future occurrence of this threat. Thus, exclusively in the name of a possible occurrence of future criminal behavior, and not the actual current or past behavior, punitive measures may be justified and applied for such long periods, which can result in perpetual confinement of individuals undergoing assessment.

Among the main features of this new profile of medical discourses on criminal dangerousness are the expansion of the field of individual behaviors and attributes encoded as signs of social dangerousness and the predominance of etiological-therapeutic models that locate risk factors in the biological

and mental constitution of individuals themselves. We could infer that in the case of crimes, deviations of conduct, ethical infractions, and noncompliance with social norms, the socially maladjusted individual may always be an abnormality, and, therefore, an object of psychiatric medicine. That way, every single attribute that can cause "prejudice in social functioning, professional or other important areas of life of the individual" will be considered a symptom (APA, 2014, p. 684), as it shows "a persistent pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture" (APA, 2014, p. 646).

The accountability of the individual and unaccountability of society in the production of crime and criminal dangerousness would be elements invariably present in the discourses of contemporary psychiatric knowledge. Biographization, while diagnostic strategy that seeks the intelligibility of the behavior and criminal dangerousness exclusively on the life trajectory of an individual (Mitjavila, 2010), appears systematically in the psychiatric assessment instruments of dangerousness most cited in the literature (Mitjavila; Mathes, 2013).

In some ways, it is possible to think that this etiologic model type, when finding the causes of crime in individuals themselves, give historical continuity to the classical notion of criminal constitution that emerged in the 19th century, with the definition of "born criminal". Although this was not one of the objectives of this study, it would be appropriate to examine the current directions of the etiological models that organize biological psychiatry from the point of view of the production of discourses on contemporary criminal constitution. So, for example, the increasing conduction of research aimed at identifying the genetic basis of various types of behavioral deviations (Shostak; Conrad; Horwitz, 2008), among which is crime, outlines a research field for the humanities and social sciences that is promising from the point of view of the individualization of social processes (Basso, 2014).

Finally, it is worth asking what would be the current biopolitical status of individuals considered crazy for being dangerous (with the medicalization of crime) and considered more dangerous for being crazy (criminalization of madness) in the context of a psychiatric reform which, in the case of Brazil, seems to have excluded them of its agenda regarding their human rights. In this context, as in other areas of biopolitical management of the social, it would seem that there are lives not worth living for being condemned to perpetual social segregation in the name of defending society.

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Authors' contribution

The authors wrote the manuscript together. Mitjavila was responsible, more deeply, for the analysis of the medicalization of dangerousness from the point of view of contemporary biopolitical strategies of crime management. Mathes contributed, especially, with the empirical material and analysis regarding the historical trajectory and forensic assessment instruments of criminal dangerousness, with emphasis on the scales of dangerousness presented in the text.

Received: 06/13/2016
Approved: 07/08/2016