

*Poor, underprivileged and delinquent minors in Brazil
during the transition from Empire to Republic: a
historiographical balance*

Fabiano Quadros Rückert

UNIVERSIDADE FEDERAL DO MATO GROSSO DO SUL (UFMS)

José Carlos da Silva Cardozo

UNIVERSIDADE FEDERAL DO RIO GRANDE (FURG)

ABSTRACT

The article reviews the bibliography produced by the Brazilian academy about the poor, destitute and delinquent minority in Brazil, in the period that corresponds to the end of the 19th century and the beginning of the 20th century. Within this chronological frame, the article explores the role of the public power in the care of poor and disadvantaged minors and gives special attention to the Orphans Court and to the asylum institutions that worked in the assistance and education. Issues such as the criminalization of minors and the discussion about child labor are also covered.

Keywords: minority; historiography; Brazil; Empire; Republic.

O artigo revisa a bibliografia produzida pela academia brasileira a respeito da menoridade pobre, desvalida e delinquente no Brasil, no período que corresponde ao final do século XIX e começo do século XX. Dentro deste recorte cronológico, o artigo explora a atuação do poder público no atendimento aos menores pobres e desvalidos e concede especial atenção para o Juízo de Órfãos e para as instituições asilares que atuavam na assistência e educação. Questões como a criminalização dos menores e a discussão sobre o trabalho infantil também são contempladas.

Palavras-chave: menoridade; historiografia; Brasil; Império; República.

Introduction

The practice of the historiographical craft requires of the practitioner a prior contact with the epistemology of history, an interest in the relationship of the human being with time, and a willingness to reflect on the factors that influence the interpretation of the past. Added to this is the need for the practitioner to incorporate into the work problems and demands of contemporary society, building what Rüsen calls historical consciousness (Rüsen 2001).

The historian is expected to have, among other things, the ability to use methodological procedures in the selection and analysis of documentary sources; the capacity to extract and interpret relevant information in a given corpus of documentation; the ability to perceive and investigate the “indicative signs” dispersed in documentation; an understanding that the past involves multiple temporalities and the awareness that their work influences, directly or indirectly, the degree of acceptability of a given piece of historical knowledge. It is also expected that the historian presents an openness to interdisciplinarity and that they position themselves critically about their professional field and the multiple uses of History.

Society’s expectations in relation to the historiographical craft are complex, especially when we consider the incompleteness of history and the need for new research to review, discuss, and expand existing historical knowledge. Because it is incomplete, history needs to be constantly rewritten and reinterpreted; and, for the same reason, existing historical knowledge needs to be periodically synthesized. Aware of the incompleteness of History, we present in this article a literature review on the field of studies of the poor and underprivileged minorities in Brazil, in the context of the transition from the Empire to the Republic.

To avoid misunderstandings, we consider it pertinent to emphasize the strategic meaning of the concept field for the objectives of the text. As demonstrated by Pierre Bourdieu, in the context of science, the field is a social construct within which certain actors (subjects, professional corporations, or institutions) establish rules of conduct, define priorities, and negotiate hierarchical positions. In the conception of this author, the experiences of cooperation and/or conflict established between the subjects involved interfere in the dynamics of the field, and, consequently, influence the knowledge produced (Bourdieu 1989; 2004).

In the specific case of the present article, the subjects involved in the field are researchers from the Human Sciences who participated in the construction of knowledge about the poor and underprivileged minorities in Brazil, by means of

researches that address the final period of the Empire and the first decades of the Republic.

In the specialized bibliography, it is possible to identify a set of pioneering works – individual or collective – that have exerted influence on the proposition of recurring themes and problems. Among the pioneering works published in the 1990s, we highlight Jurema Gertze (1990), Henrique Luiz Pereira Oliveira (1990), Cláudia Fonseca (1995), Marcos Cezar de Freitas (1997), Irene Rizzini (1997), Maria Luiza Marcílio (1998) and Irma Rizzini (2000). Overall, the publications contemplate, from multiple perspectives, themes such as the abandonment of minors; the Brazilian orphanage legislation; the assistance rendered by philanthropic institutions to abandoned and poor orphans; the work of the Orphanage Court in the use of the guardianship procedure; the profile of tutors and guardians. In a transversal way, child labor exploitation practices; the criminalization of subjects who did not possess and the relations between minority/education and work pervade the above-mentioned works.

In view of the diversity and complexity of the topics that make up the field of studies of poor and underprivileged childhood in Brazil, we abdicated the idea of a literature review capable of contemplating all the variables of the field and focused our attention on four specific topics. These are: (1) the cases of guardianship of minors [orphans, poor and naïve] processed in the Orphan Court in the Empire; (2) the problem of the criminalization of minors; (3) the performance of asylums institutions in the care of poor and devoid minors in the First Republic; and (4) the work of the Orphan Court in the First Republic. The topics will be addressed in the text's sequence.

The Orphanage Court and the guardianship issue in the final decades of the Empire

In Imperial Brazil, an important part of the issues concerning poor children was dealt with by the Orphan Court - an institution with a long temporality. According to Cardozo (2013, 29), the origins of the Orphan's Court date back to the Manueline Ordinances of the 16th century. The position of Orphan Court was instituted in the colony in 1731. Initially, the institution served the minors of the elite and dealt with issues such as orphans' inheritance, guardianship, and their relations with other family members.

During the Empire, the promulgation of the Free Womb Law caused a change in the profile of the cases processed in the Orphan Court, since it was up to this institution to deliberate on the guardianship of the naïve - the children of female slaves born after September 28, 1871. Besides establishing the conditions for the naïve to be set free, the 'Free Womb' Law (Lei do Ventre Livre) dealt with

other aspects of the relations between captives, slave owners and freedmen, among which we highlight: it provided for the possibility of the owner delivering the naive at age 8 to the care of the imperial government (receiving an indemnity of 600\$000), or “use the services of the minor until the age of 21” (Article 1); allowed the slave to constitute a “savings fund” and use it to buy their freedom or provide assistance to their family in case of death (Article 4); determined that each province should create a fund with resources that should be used annually for the emancipation of the captives (Article 3); and prohibited the separation of spouses and the separation of children under 12 years of age from their parents in cases of “alienation in transmission of slaves” (Article 4, § 7).

There is disagreement among historians about the effectiveness of the Free Womb Law. José Murilo de Carvalho claims that it “produced no practical effect” because the provincial emancipation funds received few resources and because few ingenuous were entrusted to government care (Carvalho 1996, 293). Sidney Chalhoub approaches the subject from another perspective and states that it meant “the legal recognition of a series of rights that the slaves had acquired by custom the acceptance of some objectives of the blacks’ struggle” (Chalhoub 1990, 27). Arethusa Helena Zero interpreted the Free Womb Law as a strategy of “gradual transition from slave to free labor” that enabled “the exploitation of the labor of minors in a free and illegal way” (Zero 2004, 4). Martha Abreu and Alessandra Martinez, in turn, consider it as “one of the main engines for the progressive election of the child as a social problem” (Abreu and Martinez 1997, 24).

Without diminishing the importance of issues such as the fund for emancipation of captives, the permission for the use of savings to buy alchemy or the prohibition of separation of the captive family in cases of “alienation in transmission of slaves”, we consider it appropriate to focus our attention on aspects of the Free Womb Law that impacted directly or indirectly on the work performed by the Orphans’ Court. First, we point out that in Article 2, § 3, the law attributes to the Orphans’ Court the competence to appoint those responsible for the “education of the said minors, in the absence of associations or establishments created for this purpose”. In this specific point, one can see a concern of the imperial government with the destiny of the ingenuous that were eventually given away or “abandoned” by the slave masters. Foreseeing that this would happen, the legislators reserved to the government the prerogative of delivering the minors to associations “authorized by it”, and, at the same time,

activated the legal instrument of guardianship that was under the competence of the Orphans' Court¹.

Orphanage guardianship, in its simplest definition, was a judicial act through which the Orphans' Court recognized the responsibility of an adult (the guardian) over a minor. The guardian should prove suitability and have the financial and physical conditions to provide for the minor's support and education. There were three types of guardians: testamentary, legitimate, or dative. According to Urruzola (2014, 21): "Testamentary guardians were those appointed by will; legitimate guardians were those appointed in the absence or incapacity of the testamentary ones, and dative guardians were appointed by the judge, in the absence or incapacity of both".

The effectiveness of the guardianship implied the signature of the Term of Guardianship. This document could be signed with or without a soldada contract, this being defined by the age of the minor under guardianship and by the existence (or inexistence) of family ties between the parties. Once provided for in the Term, the value of the soldada (determined by the Orphans' Court) was to be delivered to the public coffers and could be used by the government to grant loans (Cardozo and Moreira 2016, 163).

According to the imperial legislation, the guardian's commitment to the soldada was mandatory from the age of 14. For the guardians between 7 and 14 years old, the requirement of a soldada contract was at the discretion of the Orphans' Court. In the opinion of Gislane Campos Azevedo, the absence of the compulsory requirement of the soldada for the age group between 7 and 14 years, and the recurrent use of child labor, especially in domestic activities, contributed to the guardianship becoming a way to legalize compulsory child labor. According to the author:

Gradually, guardianship - a mechanism to find a family for orphans - and the soldada contract - a labor relationship involving poor and abandoned children - became part of the same universe and were adopted almost always with a single objective: to take children off the streets to be educated through labor (Azevedo 1996, 25).

In analyzing documentary sources from the Orphans' Court of Rio de Janeiro, Alan Wruck Garcia Rangel found that the soldada functioned as "a type of savings" that remained retained in a "public vault" until the individual's majority or emancipation, "at which point one becomes eligible to request a withdrawal" (Rangel 2020, 62). With the consent of the Orphans' Court, the

¹ It is worth remembering that the Orphan's Court was already working with orphaned and ejected children.

soldiery could also be used to pay for medical expenses of the minor or to cover funeral expenses.

Considering the existence of the device of the *soldada*, and without losing sight of the fact that minority is a temporary condition, it is incorrect to think that the guardian could exploit the labor of a guardian, aged 14 or older, without offering a financial counterpart. In this sense, we agree with Rangel (2020, 54) when he states that *soldada* was a type of

remuneration made available to the orphan, in exchange for the service rendered, along with other duties inherent to the institute of guardianship, such as feeding, clothing, providing medicine in case of illness, besides the requirement to treat him well. It is, therefore, a *sui generis* service lease contract mediated by the judiciary because the contracted parties are orphans and minors.

In fact, the *soldada* regime, linked to the legal instrument of orphanological guardianship, became effective as a specific type of “leasing” of the guarded minor’s service – a leasing that was economically interesting for the guardians, although it also benefited the guardian on adulthood or emancipation.

The research carried out by historians in different locations in Brazil show that requests for guardianship of orphans, foster children and ingenuous, in many cases, involved the economic interests of the guardians. These researches, although different in the analysis procedures, spatial scales and samples, have in common the use of documents produced by the Orphans’ Court and share an interest in understanding the relations between juvenile care, Justice and the world of work. In this sense, we understand that they are constituent parts of the field of studies on poor childhood.

The relationship between minority and work is present in the research of Luciano de Araújo Pinheiro who deals with the discussions about poor childhood in Rio de Janeiro, in the period between 1879 and 1899. The author consulted documents from the Orphans’ Court and reports from the Court’s Chiefs of Police, Ministers of Justice, and Presidents of the Province of Rio de Janeiro (Pinheiro 2003). The documents indicated the coexistence of multiple discourses regarding poor children and the type of education that minors should receive. In the author’s opinion, with which we agree, “the Free Womb Law was a kind of driving force that made imperial leaders pay more attention” to the problem of poor children on the streets of the Court” (Pinheiro 2003, 45).

It is worth noting that the concern with the circulation of poor children in the streets of the Court, as well as the concern with the increase in the number of ejectives, were not products of the Free Womb Law. They existed before 1871.

And, as Conrad (1978, 71) has shown, critics of the respective law accused the imperial government of creating a situation that would result in the abandonment of thousands of children.

The data presented by Lima and Venâncio (1988) indicate that in the capital of the Empire, the Free Womb Law, in fact, provoked an increase in the number of abandoned black and brown children. Based on the documents of the Santa Casa of Rio de Janeiro, the authors found that: "From 1864 to 1881, the number of children delivered to the Santa Casa practically doubled in the case of browns (from plus or minus 130 to 260 per year) and tripled in the case of blacks (from plus or minus 30 to 90 per year)" (Lima and Venâncio 1988, 28).

The rapid growth in the number of abandoned children in the Court, pointed out by Lima and Venâncio, although impressive, cannot be decontextualized from other factors that impacted negatively on the living conditions of the population of Rio de Janeiro. The increase in the cost of living, the constant epidemics, the competition for paid work between immigrants and free black or brown people, and the accentuated demographic growth that was underway in the Empire's capital, aggravated the survival conditions of the poor population. For this social segment, the abandonment of newborns in the wheel of the exposed of the Santa Casa was a way to avoid a childhood of privations.

The concern with the rejected and poor children on the streets, observed in Rio de Janeiro in the final decades of the Empire, also existed in the city of Recife. According to Gabriel Navarro de Barros, in the capital of Pernambuco, the promulgation of the Area Law provoked in the elite sectors the fear of social decontrol - a fear registered in the press of the time. Researching the documents of the Orphans' Court and the press of Pernambuco, in the period between May 13, 1888, and the end of the year 1892, the author found that the guardianship regime, despite being controlled by the magistrates, involved other spheres of public power, such as the police, the Casa dos Expostos, and the press that positioned itself regarding the presence of children in the streets and discussed conduct of guardians and guardians (Barros 2014). In Pernambuco, the transformation of the naive into freed minors, resulting from the Lei Áurea, generated fears that were registered by the press and by the documentation of the Orphans' Court (Barros 2014, 165-166).

The "fears" about the future of the naive transformed into free minors by the Áurea Law, recorded in the press of Pernambuco (Barros 2014), in the documents of authorities of the Court (Pinheiro 2003), in a certain aspect, can be considered local manifestations of a broader and more complex issue: the question of the fate of naive in the context of transition from slave labor to free labor. In this sense, the research conducted by

Hugo do Rosario Modesto (2018), Matheus Henrique Obristi Castilho (2018), and Arethusa Helena Zero (2004) on documents from the Orphans' Court offer important contributions to understanding the relationships between minority, justice, and the use of minors as labor.

Analyzing the documentation of the Orphans' Court in the city of Belém, Modesto (2018) located 53 guardianship processes of ingenuous in the period between 1871 and 1889. In these, there were 75 minors, 47 girls and 28 boys. The age range of these subjects was concentrated in the strata between 08 and 12 years (34.66%), and between 12 and 21 years (20%)². The data gathered by the author indicates that in Belém there was a preference for the guardianship of girls. As for the age range, the numbers coincide with the age at which the minors were ready to be inserted in the labor market. Of the total 53 cases of guardianship of ingenuous located by the author, 27 were processed in the year 1888 and 26 date from 1889 (Modesto 2018, 38). The concentration of cases in the 1888-1889 biennium is an indication that the instrument of guardianship was used more frequently in the year of the Lei Áurea and the first year of post-abolition. In the subset of the 52 cases processed in the 1888/1889 period, there are cases of former masters who requested guardianship of naïve minors born in the period before the abolition, and, conversely, there are cases of mothers (freed by the Golden Law) who went to court to remove their children from the control of their former masters (Modesto 2018).

In different places in Brazil, in the post-abolition period, the Orphans' Court was called by freed mothers who sought to guarantee the right to family custody of children who were under the guardianship of their former fathers. And the same institution was called by former landlords who requested the granting of guardianship for minors born after 1871.

Walter Fraga Filho (2006), in a study focused on the documentation of the Bahia Orphans' Court, identified situations of use of guardianship as a resource for former landlords to ensure the permanence of minors on their properties. The author affirms that in the post-abolition period, the agrarian elite of the Recôncavo Baiano undertook a double movement to control the flow of the freedmen: on one hand, they forwarded to the courts requests for guardianship of the ingenuous freedmen by the Áurea Law – aiming to maintain bonds with the parents (former slaves) and the children; and, on the other hand, they pressured the government to approve laws to repress the crime of vagrancy (Fraga Filho 2006).

² The total number of minors (75) is higher than the number of guardianship cases consulted (53) because in certain cases, more than one minor was mentioned. The author also reports in his text that it was not possible to identify the age of 14 of the total set of minors (Modesto 2018).

Patrícia Urruzola (2014) investigated guardianship proceedings in Rio de Janeiro between 1880 and 1890. The author found that it was common in guardianship requests forwarded by former masters, the depreciation of the mother, considered poor and unable to ensure the support and education of the child. By depreciating the mother, the petitioner reinforced a discourse that attacked the dignity of the freedwomen and increased the possibilities of receiving the guardianship of a certain minor. When dealing with the aggressive logic of the discourse about the freed women in the post-abolition period, Maria Aparecida Papali states that

being considered incapable of “educating and caring for their children” conferred on the freed women, freed slaves or free poor a moral misery much greater than their material poverty. Moreover, such statements (and they were not few) when judging the presumed poverty and “incapacity” of poor women, left implicit, as a counterpoint, the material and moral wealth that the candidates for guardianship of their children thought they possessed (Papali 2003, 157).

In addition to the interest of former landlords in using the labor of minors born between the date of the promulgation of the Free Womb Law and the promulgation of the Golden Law, post-abolition guardianship cases also show the interest of freed mothers in preserving family ties by removing their children from their former landlords. In certain cases, the freed mothers requested the restitution of family guardianship and presented evidence that they were able to support and educate their child; in other cases, the mothers acknowledged their poverty and requested that the Orphans’ Court grant guardianship to a relative (a godfather or an uncle), claiming that these were in more favorable economic conditions (Urruzola 2014, 125).

Castilho (2018) investigated the Guardianship Actions in the São Paulo municipality of Pindamonhangaba, in the period between 1888 and 1892. He found that the abolition caused a growth in guardianship requests and pointed out two factors that influenced this growth: on one side, weighed the interest of the former slave owners in keeping under their control the minors transformed into *ingênuas* by the Free Womb Law; on the other side, there was the interest of the mothers who went to court to contest guardianships arbitrarily granted and to claim the right of maternal custody. According to Castilho (2018, 37): “The poor child and descendant of the *senzala* was the profile sought by guardians in the post-abolition period in Pindamonhangaba. The ingenuous were the most

requested by tutors. The guardianship mostly took place over the children of former slaves"³.

Zero researched the situation of tutelaged children in the city of Rio Claro, between the years 1871 and 1888. Without neglecting the limitations and inaccuracies in the documental sources, the author elaborated the profile of the tutors and the guardians. Most of the 140 minors involved in the consulted processes were male (61%) and in the age range between 9 and 12 years (21%). The numbers indicate that there was a preference among guardianship applicants and, at the same time, a preference for minors who, due to their age range, could be more easily inserted into the labor market (Zero 2004, 81). Regarding the profile of the guardians, only 18% (43 individuals) had the professional occupation specified in the files⁴. In a certain aspect, the data is surprising, because the financial condition of the applicant was an important factor for the Justice to decide on the granting of guardianship. However, we must consider the fact that many applicants were farmers (landowners) and, in the technical terms of the time, being a landowner was not a professional occupation.

Among the many information presented by Zero regarding the guardianship processes in Rio Claro, the low participation of women in the guardianship group draws attention.

Women, except mothers and grandmothers, were excluded from the guardianship imposed or given by the judge, because it was believed that they did not have the necessary capacity for such an important act. The situations analyzed in the processes involving the Rio de Janeiro society show us the small and difficult participation of female guardians, being a tiny percentage of 16%, in contrast to the 84% of male guardians. Many mothers who sought justice to get their children back did not succeed mainly because they were considered unfit to perform the function of guardians (Zero 2004, 191).

The predominance of men as guardians is an indication that the operation of the system of guardianship of minors was subject to the moral imperatives of the time. And, despite important changes in the composition of Brazilian society, in the final decades of the Empire, the differentiated treatment for men and

³ It is worth mentioning that the lawsuits filed by the mothers of inbred children, located by Castilhos in the documentation referring to Pindamonhangaba, have a differentiated value because they highlight the protagonism of black women in the post-abolition period.

⁴ Of this set of 43 guardians, according to Zero (2004, 85), "farmers represent the highest rate of guardians involved in the processes, 34.89%, followed by merchants, 20.93%, and civil servants, 11.63%. We also find a small number of lawyers, 6.98%, colonel 2.32%, in addition to those who had no declared profession 23.25%."

women – with privileges and superior status for the first group – underwent few changes.

The First Republic and the problem of the criminalization of minors

As we have shown previously, in the final decades of the Empire, the public authorities became increasingly concerned about the poor and underprivileged minors. With the Proclamation of the Republic and the adoption of federalism in the Constitution of 1891, the fate of this social segment came to be governed by republican laws. However, despite the legal and institutional changes implemented in the early years of the Republic, the situation of poor and underprivileged minors continued to be marked by an ambiguity inherited from the imperial period: on one hand, there was an effort by the public authorities to ensure, through the Orphans' Court and the instrument of guardianship, conditions of sustenance and education for this social segment; and on the other hand, there was a police apparatus used to intensify the criminalization of poor and underprivileged minors.

According to Rizzini (2011), since its implementation, the republican regime took a repressive stance in the treatment of poor minors. In the Federal District, Law 947/1892, used the category “vicious minors” when specifying those who should be sent to correctional colonies. In that context, the distinction between poor and devalued minors and delinquent minors was under construction; and, from 1900 on, these categories started to coexist with the juridical figure of the “abandoned minor” (Rizzini and Rizzini 2002).

The classification of minors into subgroups involved jurists, physicians, educators, and political authorities, and their results exceeded simple nomenclature in that they influenced the treatment that the groups received from the public authorities. For underprivileged and abandoned minors, the State offered a more educational and assistential treatment; and for delinquent minors it offered prison. In this aspect, we agree with Lima (2015, 20) when the author states that: “Poor and abandoned children were privileged targets of state action characterized by the understanding of work as a factor of social regeneration and as an effective measure of childhood protection”. However, we consider pertinent to register that the dividing line between poor/disabled/abandoned minors and delinquent minors was imprecise, and, consequently, all these subgroups were subject to state authoritarianism and could be criminalized.

The criminalization of minors reflected a legal positioning that became recurrent in the First Republic. The result of this positioning was the increasing “intervention of the State in the private life (of the poor), overriding paternal authority, when it came to the internment of minors” (Rizzini 2011, 228).

In its broadest sense, the criminalization of minors cannot be dissociated from the authoritarian behavior adopted by the republican state apparatus in its interaction with the popular classes. Authoritarianism manifested itself in several ways and one of the most aggressive was the crime of vagrancy. Typified in Art. 399 of the 1890 Penal Code, vagrancy was widely used to control the movement of the poor. According to Rückert (2019, 325):

[...] all those who did not have a legal professional occupation and could not prove a fixed residence, could be arrested, and punished under the charge of vagrancy. Between arrest and punishment, there was little margin for the subject to defend himself against the accusation.

In the case of poor and destitute minors arrested on charges of vagrancy, when not accused of other crimes, their fate could be temporary detention at the police station or referral to a correctional institution. In both cases, detention created a difficult situation for family members and could be used as a justification for the suppression of the *pátrio poder* (Pereira 2020).

In Rio de Janeiro, the capital city of the Federal District, the problem of poor and underprivileged minors gained greater projection and was widely discussed in the press and in the National Congress. In this city, the Federal Union promoted several actions aimed at modernizing the care of poor and underprivileged minors. Rizzini (2011, 143) states that in the Federal District:

The first measure of organization of assistance to children appeared with the Federal Budget Law n. 4.242 of 5/1/1921, which created the "Service of Assistance and Protection to Abandoned and Delinquent Children". The implementation of this "service" consisted in the foundation of two new institutions for minors, the enlargement of the 15 de Novembro School and the appointment of a "Judge of law privative of minors". The law determined the creation of a shelter for the provisional collection of minors of both sexes and a preservation house for female minors.

In the quotation it is possible to observe two initiatives, dating from 1921, by means of which the Federal Union intended to expand its capacity to control minors. They are (1) the expansion in the number of correctional institutions aimed at this social segment; and (2) the designation of a judge to handle cases involving minors in the national capital. Two years later, Presidential Decree n. 16,272 of December 20, 1923, approved the Regulations for the Assistance and Protection of Abandoned and Delinquent Minors. In 1927, after a long passage

through the National Congress, the Children's Code was approved⁵, sanctioned by President Washington Luís. With these actions, the Federal Union set in motion a policy of care for minors that, although applied in the Federal District, intended to be a reference for all federal units.

The 1920s was a period marked by the concern of jurists, political authorities, and the press with the problem of "delinquent" minors. In that context, the ideas defended by jurist José Cândido de Albuquerque Mello Mattos regarding the need for specific laws for minors, as well as his opinion on child criminality, provoked ambiguous reactions in the society of the time: on one side, supporters of the legal change proposed by Mello Matos and supporters of his more effective intervention by the State in controlling criminality and child labor positioned themselves; on the other side, critics of a legislation aimed at minors classified as "poor" and "deviant" (Pinheiro 2014).

The content of the Juvenile Code was analyzed in detail by Sônia Camara, in the work *Under the Guardianship of the Republic* (Camara 2010). In her analysis, the author pointed out the scope of the Code in the typification of the abandoned "minor" (Art. 26), addressed aspects related to work performed by minors, highlighted the age subdivisions set in the law and dealt with the procedures of deprivation of liberty of minors proven delinquent. In Camara's (2010, 266) opinion, the Juvenile Code constituted itself as "an important instrument in shaping protective measures for childhood, especially early childhood, [...]". However, in being an intervention of the state in the social order, it "was not realized as an attempt to universalize rights, but rather as an effort to consolidate the control and disciplining of the poor without, however, modifying the living conditions and abandonment to which children were exposed" (Camara 2010, 267).

Asylums and the care of poor and underprivileged minors in the First Republic

The same republican regime that in the first decades of its existence used the crime of "vagrancy" to remove minors from the streets and that sent many of them to Correction Houses or to Sailor Apprentice Schools, also expanded its performance in the care of poor orphans through the creation of asylum institutions aimed specifically for this social segment. In this aspect, it is important to emphasize that the work done by religious institutions in assisting poor orphans was not a target of the republican laicism. On the contrary, in

⁵ The Juvenile Code corresponds to Decree 17.943-A of October 12, 1927.

many cases, orphanages maintained by religious orders received subsidies from public authorities.

In recent decades, historians have produced important research on the asylum institutions that served poor and underprivileged children in Brazil during the First Republic. Among this research, we highlight the thesis of Marina Tucunduva B. Porto Vieira (2006); the dissertation by João Valério Scremin (2009), and the dissertation by Miriam Fernandes Muramoto (2016).

Vieira (2006) investigated the welfare and educational practices promoted by the Santos Orphans Asylum between 1899 and 1914. This asylum institution attended boys and girls and was created by the Associação Protetora da Infância Desvalida⁶. Based on the consultation in the Registers, Meetings Minutes, Statutes, Reports and Rules, the author analyzed the organization of the asylum, the administrative procedures, the profile of the children assisted, and the educational work done by the institution. Vieira found that the Asilo de Órfãos de Santos transitioned from a predominantly charitable welfare model to a model that incorporated scientific foundations. In this transition, the sisters of the Congregation of the Purissimo Coração de Maria – responsible for the administration of the asylum – received the collaboration of citizen volunteers (teachers, musicians, doctors, craftsmen) who taught crafts to the boarders⁷ and instilled medical-hygienic principles in the daily life of the institution.

While the Asilo dos Órfãos de Santos started its work in the care of poor and underprivileged children, in the city of Campinas, in the countryside of São Paulo, the religious order of the Franciscan Sisters of the Heart of Mary participated in the creation of the Asilo de Nossa Mãe, an institution founded in 1896 and focused on the care of underprivileged girls. The history of the institution and the welfare and educational work it carried out are the central themes of the research conducted by Scremin (2009). Starting from data on school education in Piracicaba and analyzing documents produced by the Asylum and by the local press, the author addressed the different proposals of assistance to poor children existing in Brazil of the First Republic. One of the interesting aspects of this research is the finding that the municipality of Piracicaba proved resistant to cooperate with the Asilo de Nossa Mãe and rejected several requests for granting aid forwarded by the religious who administered the institution⁸.

⁶ The Associação Protetora da Infância Desvalida brought together members of the São Paulo elite interested in promoting philanthropy.

⁷ In the Statute of the Santos Orphans Asylum, the intention was to ensure that the boarding schools would have the opportunity to learn a trade. To achieve this goal, in 1908 the Associação Protetora da Infância Desvalida created the Dona Escolástica Rosa Institute to attend the boys of the Asylum (Vieira 2006, 121-122).

⁸ According to Scremin (2009, 67), it was only in 1913 that the Piracicaba City Council started granting financial aid to the Asilo de Nossa Mãe.

The resistance of the Chamber in cooperating and the critical posture of the press in relation to the welfare work done by the Catholic missionaries in Piracicaba are parts of a more complex plot: a plot of clash between the confessional Catholic education and the secular and scientific education defended by the Republicans. Regarding the daily practices, Scremin states that the Asilo de Nossa Mãe was a conservative institution that adopted strict procedures to instill in the boarding schoolgirls the values considered relevant by the Catholic Church. In the author's words, "The institution was disciplinary, vigilant, in its modes of organization, in the tasks performed by the students, as well as in the disciplinary methods established to guide the girls' attitudes" (Scremin 2009, 119).

During the First Republic, religious orders played an important role in the care of poor and underprivileged children. The work done by religious orders, although linked to the Catholic Church, involved networks of charity and philanthropy through which society participated in the care and education of boarding schools. Muramoto (2016), when dealing with the history of an asylum that existed in São Paulo, in the Mooca neighborhood, in the period between 1903 and 1923, investigated the relationships established between the Congregation of the Pequenas Irmãs da Divina Providência – responsible for the orphanage – and the community. According to Muramoto, the orphanage depended on donations, grants and alms to attend the poor girls sheltered by the sisters.

The research of Muramoto (2016), Scremin (2009), and Vieira (2006) are three examples of the work done by historians who address the asylums institutions focused on the care of poor and disabled minors in the First Republic. Certainly, there were many other similar institutions that have not yet been researched. In this sense, it is pertinent to register the need for new research on this theme.

The work of the Orphans' Court in the First Republic: general aspects

The performance of the Orphanage Court, in the context of the Republic presented some particularities in relation to the work developed by the institution in the Empire. One of the particularities was caused by the abolition of slavery and the extinction of the figure of the *ingénue*. After the promulgation of the Lei Áurea, the bonds between the children of captive mothers born after the 'Free Womb' Law and their former masters lost validity. The new conjuncture produced an interesting legal phenomenon: the emergence of conflicts between mothers or relatives of children who claimed the suppression of guardianships granted before the abolition and former landlords who disagreed with the suppression. Described this way, the issue seems simple. However, it was

complex and demanded special attention from the magistrates who worked in the Orphans' Court.

Another particularity was the creation of an orphanage justice linked to the state governments. In this case, the change was a consequence of the federalism adopted by the Federal Constitution of 1891. Backed by federalism, the states produced specific legislation and expanded their role in assisting poor and underprivileged minors. Part of this care was the responsibility of the Orphans' Court magistrates, and another part was the responsibility of the police apparatus that was used to control the behavior of the Brazilian society.

The repressive posture of the federal government in treating poor and underprivileged minors presented similar versions in state governments. However, within a federalist system and in a country with marked demographic disparities, it would be incorrect to standardize the phenomenon, disregarding the weight of regional particularities. In this sense, historiographical common sense recommends a careful look at the specificities of the federal units that made up Brazil in the First Republic. And considering the bibliography studied, one can see that historians are committed to exploring regional particularities.

The dissertation by Kátia Regina Lopes Costa (2013) is an interesting example of a well-developed regional research focused on poor and underprivileged minors. The author investigated the documentation of the Judiciary of Aracajú and, based on cases processed in the capital of Sergipe, between 1891 and 1927, composed a profile of the delinquent minors in Sergipe. In a set of 122 minors identified in the documentation, 110 were boys; 55.74% were illiterate and 103 were between 16 and 20 years old (Costa 2013, 110-112). From the data collected by the author, what is most surprising is that most of the juvenile offenders tried in Aracajú declared to have a paid occupation. In only 8 cases, "no livelihood/no occupation" was reported (Costa 2013, 120). The occupations reported were generally low paid. However, they refute the discourse produced by the press that considered criminality as a refusal to work.

Alba Barbosa Pessoa investigated the role of the press in Manaus in the propagation of ideas that associated the lack of work with vagrancy and reinforced the need for teaching trades to poor children. The author found that the press used pejorative expressions to treat poor children and treated children from other social classes more respectfully (Pessoa 2010, 14). Seeking information about the types of trades performed by poor children and the working conditions they faced, Pessoa also consulted documents from the Juízo de Órfãos and documents from the Instituto Affonso Penna and the Instituto Benjamin Constant. Pessoa's conclusions regarding the relationship between the judiciary and child labor in Manaus of the *Belle Époque* indicate that the magistrates of the Orphans' Court contributed to the exploitation of child labor. Regarding this

issue, the author states that “some members of the Judgment perceived that the institution’s actions were contributing to this exploitation, and they resented this situation, often reversing their decisions by annulling undue guardianships” (Pessoa 2010, 170).

The role of the Orphans’ Court in the care of poor children in Belém during the First Republic was the subject of the research of Rezende (2012). The author focused her attention on the justifications for granting guardianships issued by the respective body, in the period between 1897 and 1923. The set of documents consulted by Rezende allows us to know the arguments used by those who requested guardianship, and, at the same time, allows us to identify factors that motivated the suppression of the paternal power and the referral of the minor to another family. Generally, the poverty of the biological family was the determining factor, but in certain cases, the holders of the paternal power (that were not always the biological parents) were accused by the guardianship applicants of presenting behaviors considered immoral for the standards of that time. In the conception of the members of the Judiciary, the combination of poverty and immorality, when duly proven, justified the suppression of the paternal power. On the other hand, the applicant’s suitability and economic conditions to provide for the minor’s education justified the granting of guardianship. In this sense, we agree with the author when she states that in order to maintain the right of the paternal power, a family, even being poor, should be “capable of following the parameters of the established morality and if it proved incapable of educating and watching over its children it could see its right to paternity revoked” (Rezende 2012, 137).

The work performed by the Orphans’ Court in Manaus had similarities with the work developed by the same institution in Rio Grande do Sul in the First Republic. Based on the dissertation by Cardozo (2013), we know that the South Rio Grande do Sul Orphans’ Court dealt with several issues related to poor children. Researching a documentary corpus of 823 guardianship cases judged in the period between 1900 and 1927, in the district of Porto Alegre, the author explored variables such as the profile of guardians and guardians, the legal texts that guided the work of the Judges, the procedures adopted by magistrates and other judicial officials, and highlighted cases of conflict over the guardianship of minors involving families in different socioeconomic conditions. Cardozo found that this institution sought to act in accordance with the law, and, at the same time, positioned itself as the defender of a bourgeois model of family. In this model, the home was conceived as a moral stronghold, the man should provide for the household, the woman should fully dedicate herself to the care of the children, and the children should attend school, staying away from the streets and public spaces (D’Incao 1989; Pesavento 1994).

The use of the bourgeois model of family as a reference for the performance of the Orphans' Court magistrates, in Brazil of the First Republic, is not a matter of little importance. As we pointed out elsewhere in the text, the poverty of a particular family could compromise the maintenance of the children's custody, especially when they circulated through the streets of the cities and were involved in illicit activities. And the situation worsened when the poor family did not have a father figure and the support of the offspring depended on the mother - which we know, was something recurrent⁹.

Concluding Remarks

The literature review exercise carried out in this article contemplated three historical processes that coexisted in Brazil in the transition from the 19th to the 20th century. The first concerns the changes and continuities in the work carried out by the Orphans' Court. The institution was responsible for the use of the instrument of guardianship and, through it, oversaw the care of orphans and poor and underprivileged children, having also overseen the guardianship of the ingenuous during the period in which the Free Womb Law was in force. Besides the diversity of the public served, the studies consulted indicate that the procedures and decisions made by the Orphans' Court, despite being supported by the legislation of the time, were permeated with conflicts of interest among the social actors who claimed guardianship; and, in certain cases, record situations that could be typified as a "legalization" of the exploitation of minors.

While the Orphans' Court adapted to the federalism implemented by the republican regime and was increasingly concerned with the guardianship of poor and disabled minors, the public power gradually expanded the practices of control over the poor and produced what José do Amaral Lapa called "institutionalization" of the aid to the disabled (Lapa 2008). Among these practices, the studies consulted highlight the creation of public asylums and the granting of public resources to institutions maintained by religious orders. The specialized bibliography presents several studies on orphanages, highlights the importance of religious orders in the assistance and education of poor and devalued minors and, at the same time, evidences the inexistence of a national policy aimed at this social segment. This allows us to infer that the "institutionalization" of the assistance to poor and underprivileged minors

⁹ When talking about the poor family in the First Republic, it is worth remembering that there were differences between the family model idealized by the elites and the reality lived by most of the popular families. The researches of Fonseca (1995) and Arendt (2001), both involving popular families of Porto Alegre, emphasize that the differences were manifested in practices such as sexuality, marriage, task division between spouses, and children's education, among others.

operated in the scope of the municipalities and state governments. We believe that this is a theme that demands more attention from historians, especially because there is a need for comparative historical studies - studies that allow us to identify similarities and disparities between municipal and/or state experiences.

The third process was the increasing use of the police apparatus to control the popular classes, which included minors being homeless. When directed to minors, this police apparatus resulted in arrests, trials, and punishments that often disregarded the effect of poverty and violence on the minors' behavior. Blamed for criminal behavior and criticized by social segments that considered poverty a lack of virtue, many of the so-called "juvenile delinquents" were deprived of their freedom and served sentences in institutions incompatible with their age. The treatment given to the "delinquent minors", despite being disapproved by important jurists and political authorities of the time, remained practically unchanged throughout the First Republic. It is worth remembering that it was only after the promulgation of the Juvenile Code, in 1927, that the Federal Government committed itself to the construction of penitentiaries specifically for minors. However, the impact of the Juvenile Code on the promotion of differentiated penitentiary care is a topic that exceeds the objectives of this text.

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Fabiano Quadros Rückert has a PhD in History and Heritage and holds the position of Adjunct Professor at the Federal University of Mato Grosso do Sul - Brazil (UFMS).

Email: fabianoqr@yahoo.com.br

José Carlos da Silva Cardozo has a PhD in History and holds the position of Adjunct Professor at the Federal University of Rio Grande - Brazil (FURG).

Email: jcardozo@furg.br

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