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Guilt, Responsibility and Repentance

In the course of a year, I conducted fieldwork in a female prison facility in the south of Portugal (Odemira) as part of a larger research project I had on security in prison (Frois 2016, 2017, 2020; Frois, Osuna and Lima 2019). Every month, for one-week periods, usually from 9 a.m. until 7 p.m., I could spend the day talking with the inmates and prison officers, or just hang around observing and getting the feeling for the place and its daily rhythms (Crewe 2009; Drake and Sloane 2015), perhaps not as someone who “belonged”, but surely as someone who, despite still an outsider, ended up becoming a familiar presence. The periods not spent with the inmates, I would take the time to talk with the guards and other staff or to consult the inmates’ records. These case files were of interest to me, not so much in terms of the bureaucratic details they contained, or as a means of comparison with the versions given to me by the inmates (Granja 2015), but rather as a useful source to understand legal or even biographical aspects, which sometimes inmates themselves had difficulty in explaining or remembering.

The analysis of court rulings, of the decisions drawn up by officials of the judicial and prison system, allows us to observe how a panoply of subjective considerations - referring to the sphere of emotions, crossing norm and deviation, moral, ethical, personal and collective values - are effectively mobilized in practice. In this chapter my aim is to discuss the way that compliance or infringement of the law and its rules, are assessed by simultaneously applying a set of abstract and general standards for the appraisal of an individual’s action, and by emitting an evaluative judgement on the conformity (or inconformity) of an individual’s conduct to a collective ideal that stipulates what *ought to be*. Thus, as will become clear throughout the following pages, "guilt", "responsibility", or "repentance" (Bartel 2009; Ben Hounet and Puccio-Den 2017), are categories that refer to an evaluative grammar of individual agency interpreted retrospectively, from whose conclusions an explanation for a present situation is drawn up - that is, a statement purporting to explain who that person *is*.

Therefore, during their interaction with the instances and agents of the judiciary and the penitentiary system, perpetrators of crime are subject to the scrutiny of their history, past choices, decisions and actions. This scrutiny aims to assess their consciousness, agency, willfulness and autonomy in the face of the law, society and fellow citizens in the moments that preceded the crimes for which they are being judged. Ultimately, the purpose of this process of study and examination of an individual is to substantiate the

responsibility for the practice of criminal acts and, therefore, to determine a degree of culpability. Once a person is found guilty of a set of charges, once a person is considered criminally responsible, the conditions are met for a conviction to be passed, for the corresponding penalty to be applied.

Among the factors taken into account in the determination and execution of the sentence, the question of repentance often arises as a way of verifying whether the person displays, at some point, the public admission and expression of said guilt (Murphy 2003, 2012; Sarat 2014). Showing and expressing repentance is tantamount to acknowledging to have transgressed the accepted norms and values, but in addition, not only does it reveal the subject's intention and commitment to reform oneself and be reintegrated, but also implies recognizing the court's legitimacy as the appropriate judging instance, in accordance with the law. In this sense, the assumption of responsibility/guilt and the demonstration or verbalization of "repentance" are crucial instruments in the different decision-making moments (Fassin 2013, 2018; Foucault 2014): whether during the passing of a sentence or its actual execution in the prison system, when the punishment is effectively carried out through a measure of deprivation of liberty, as in the cases described in the next pages.

This continuous process of an individual's evaluation in the light of norms and rules, summons a complex evaluative discourse that does not exhaust itself at the moment of reading a sentence, extending well beyond it: throughout the period of seclusion, a person's history and trajectory are evoked and scrutinized over and over, looking for indications and proof of a changes in behavior and, above all, the expression of emotions deemed consistent with the expected transformations induced in the individual.

We can observe several phases during which the judicial and penitentiary systems expect or seek manifestations or signs of assumption of guilt and responsibility from those who are being tried or who are already in the process of serving their sentence. Those are the moments when judicial and penitentiary instances can, on the one hand, fully recognize the legitimacy of their performance, and on the other hand, confirm an offender's expression of acknowledgment for their own deviant conduct and will to change.

During the trial, in addition to the facts presented to the court based on the police investigation, to the examination of reports and biographical expert reports describing and explaining the socio-economic context and the appraisal of the motivations leading to the practice of the crime, the panel of judges also hears the statements from the accused and inquiries into the personal reasons underlying their conduct and actions. While the

right to remain silent cannot be formally interpreted either as an admission of guilt or a declaration of innocence, typically the court will characterize this attitude negatively, insofar as it does not contribute to explain the crimes committed.

On the other hand, for the women who participated in this study, the circumstances, motivations, and causes behind their (illegal) actions form a combination which they look upon as a unique experience, and in fact some of the cases seem to follow what could be understood as an almost text-book example: the drug addict who prostitutes herself and does petty robberies to support her habit; the young woman who finds herself in financial problems and resort to drug trafficking; the woman who is an almost lifelong victim of domestic violence and one day kills her partner and abuser (Bloom 2003; Covington and Bloom 2003; Gomes and Granja 2015; Merry 2008; Rowe 2012) . All of them distinguish an element of inevitability in their trajectory, as if it were just a matter of time before they reached that point and even if, while verbalizing it, attribute the outcome either to personal causes such as “despair”, “fear”, or “bad luck”; or to external circumstances like “unemployment”, “injustice”, or “discrimination”.

The role of double punishment

As I mentioned, the study of judicial judgments and the documentation available in the individual cases of prisoners allowed to reconstruct paths and interaction with the prison system, giving "voice" to other actors involved in this path. During fieldwork I sought to clear up some misunderstandings or questions left unanswered, as for example in Gina's case, a 32-year-old Mozambican woman. Gina was living in Portugal from the age of 17, having joined her mother and sisters, who had come over before her. Having finished her 6th grade in Mozambique, she decided to go to Portugal to complete her education. Of her immediate family, only her father and brother had stayed behind. Upon arrival, however, she didn't find much encouragement from her family to pursue her studies. Seeking employment was considered a more useful endeavor, and so they helped Gina find work in the hospitality and hotel sector, where her mother and sisters already worked. In her typically reserved demeanor, hefty constitution and beaming expression, she assumed that I was a social worker, or a psychologist assigned to “help” her (as she put it) deal with her crime. In this frame of mind, she was quick to make it clear that she was not a newcomer: “I don't like to speak about the past. I have been here for a while now, almost six years, and I've had plenty of time to think about it. After all this time, I just want to forget and to leave this place.”

A short while after she left school and began working as a cook, she started getting into trouble, going behind her family members' backs and dealing drugs with her friends around the neighborhood. Her eyes betrayed exhaustion and disappointment looking back on those years following her move to Portugal. In retrospect, she now considered that her drug trafficking venture had been a major mistake, saying that at the time she was "blind and totally clueless" both to the risks and dangers it entailed. Despite her succinctness when speaking about these activities, she described how she had started hanging out with other dropout youths in the neighborhood that had turned to drug dealing, albeit on a small scale, selling drugs on the street. Having been caught twice during police raids, on both occasions she was carrying drugs on her. Since she was tried separately on those two indictments, she was given two separate prison sentences of six years, and five and a half years, and in addition a deportation penalty was appended.

Gina's daily routine in prison was different from most other inmates. Her work in the officers' cafeteria meant that she spent most of her days in the prison's administrative area, meaning that she had little contact with other inmates during the day, but on the other hand developed an even closer relationship with members of the prison staff:

My schedule is always the same. I leave the cell at 7:30 a.m. to go to work all day and return to the cell at 8:00 p.m. In the cafeteria I make the breakfasts, then sometimes cook lunch; it's like my own little restaurant. [laughs] All this time I've had has allowed me to think a lot. I was totally deluded about life, and I never even had time to figure it out. Maybe today I could be having a steady life; I could be working as a cook, like I do here.

Everything could be different; prison can only help us to correct our mistakes; all this time spent here feels like an eternity gone to waste.

Gina was thus caught in this conflict: on the one hand her prison experience constantly reminded her of a past she struggled to leave behind, while on the other hand she could not come to terms with the severity of her conviction, which she considered too harsh for a first-time offender. She would ask me why no one had given her "a chance", and why did she have to be expelled from the country: "Going back to Mozambique after all these years...What for? Why? My whole family is here!"

Despite assuming she had committed errors and that her sentencing was "deserved", she was obviously frustrated with her conviction, and even more so with her deportation. The

decision to send her back to her country of origin, where she virtually had no remaining family ties, seemed disproportionate to Gina. She also believed that the lawyer who had been assigned by the court had proved incompetent or at least not totally committed to her case, revealed amongst other things in his unpreparedness and subsequent untimely reaction to move against what came to be the court's ruling for deportation without any further appeal.

The deportation penalty bore consequences on what would be the usual execution of the prison sentence itself. Typically, on completion of the terms established for a similar prison sentence, any person would already have been eligible for temporary home leaves; that is, at this moment Gina would have already had the chance to visit her family on the sentencing judge's and the prison board's discretion, were it not for the deportation penalty that pended upon her sentence. However, this option was not open to her.

The law states that home leaves seek to promote the strengthening of bonds with family and community as a means to "prepare the future" after release from prison. The sentencing judge found "no legal grounds for its exercise", in view of the fact that Gina was eventually going to be deported. As a result, Gina had to face serving the total remainder of her sentence, after which she would be sent to Mozambique where she could "start her life afresh". In this particular case, given that most of Gina's family lived in Portugal, that she had a permanent residence visa, and additionally, that the quantities of drugs involved in her conviction were relatively small, this decision seemed especially hard to comprehend.

All things considered consulting Gina's personal file emerged as a potentially essential element of clarification. The file wasn't very extensive, basically containing the court ruling, the Inmate's Individual Correction Plan, a clemency plea and the supervisory judge's statement regarding a request for home leave. In the court decision we find the following:

Drug trafficking is punishable with a prison sentence from 4 to 12 years (Article 21, n° 21, Law-Decree 15/93). General preventive measures are imperative attending to the frequent occurrence of this kind of crime in our country. Considering the (small) quantity, the quality and type of substance involved (both heroin and cocaine are in the category of "hard drugs", due to the health risks they pose and the dependence they cause, in comparison to the so-called "soft drugs"

such as cannabis), aggravated by the fact that the defendant had the intent to distribute, we are led to consider this act to be of medium gravity.

In this short excerpt, we are presented with a number of relevant elements. Law-Decree 15/93, named by some authors “the new drug law”, sets the penalties for drug trafficking but does not embody the spirit of another law that was passed later (in the 2000s) regarding the decriminalization and depenalization of drug use and possession. Therefore, the judges’ admission that Gina was carrying a “relatively small amount”, explains why they do not put her crime in the category of serious or very serious offences. Her sentence, however, seems to be a clear response to a phenomenon that far surpasses Gina’s particular circumstance, thus the reference to the recurrence of similar cases—namely those of drug dealing and drug use. They emphasize the intent to distribute as an aggravating factor, which in another part of the ruling is used to determine “the defendant’s intentionality”, and thus her culpability, especially considering that since she was not an addict, the drug was not for personal use, which could be a mitigating circumstance. The ruling continues, passing judgement specifically on Gina’s responsibility and history:

She was previously convicted twice on drug trafficking charges (the last of which resulted in a five years and six months imprisonment), having committed this offence *sub judice*, subsequently to her other two condemnations, revealing a high proclivity to commit such crimes, as well as an inability to learn from her previous punishments. Moreover, the defendant does not acknowledge the seriousness of her actions, and neither does she demonstrate repentance. On the other hand, the defendant does not have a professional occupation. In light of these facts, positive preventive measures are strongly advised.

After reading this documentation it was obvious that by “first-timer”, Gina had meant that it was her first prison term, but not the first time she had been convicted of a crime. Her first conviction had resulted in a suspended prison sentence, and her second had led to a prison sentence that she was not yet serving when she committed the crime for which she was now being accused. The considerations made by the judges about her attitude and her “inability to acknowledge her own crimes” seemed to fit with the complaints made by other inmates about the counsel given by attorneys to “withhold potentially

incriminating statements”, even those they thought might defend them. In the court’s eyes, this was someone who not only repeatedly committed the same crimes, but also showed a lack of repentance, or even admitted to verbally recognize the seriousness of her actions.

Her lawyer ultimately appealed the additional penalty of deportation, arguing that the “the defendant is a legal resident along with all of her family. Expulsion from the country would result in the breakup of the family and cause great harm to all its members.” This appeal was denied, and the court ruled that “there is no reason to risk the defendant causing any more damage to Portuguese society, especially considering the likelihood of the defendant’s need to go back to drug trafficking given her incapacity to find other means to provide for her own subsistence.”

When Gina was already serving her prison sentence, she sought the help of a prison officer to file for a clemency plea regarding her deportation, and in both of the correctional treatment staff opinions contained in her file, the institution’s assessment was similar. Contrary to the court’s ruling, they found that Gina “exercised a self-critical view of her own criminal acts”, complied with prison rules, and had “assimilated the punitive purpose of her sentence”.

As mentioned earlier, the additional penalty of deportation prevented Gina from applying for home leave schemes, which are usually denied in these cases on the grounds of flight risk. In spite of this, she made the plea to the supervisory judge, using the recurrent argument in these cases: “wished to spend some time with her mother, sisters and remaining family”. The response was categorical:

The inmate has been sentenced to an additional deportation penalty. On release, she will have to leave Portuguese territory and will be forbidden from returning for a five-year period. The inmate will thus have to make a new start in a different country. In light of this and considering that the purpose of home leaves is to promote the strengthening of family and social bonds to the community with a view to preparing the subject for life in freedom, it is clear that this request lacks valid grounds for approval.

The court rulings included in the inmates’ prison files became an important tool, not only towards understanding how an individual is held account able for a criminal act in light of an existing legal framework, but also to complement an analysis of subjective and

moral aspects underlying these decisions. While the accountability factor is at this point evaluated through the formal elements that establish factual authenticity, including some and discarding others, the testimonial evidence, the reports and expert opinions that contribute to the case's appreciation also inform the court's final decision.

The judgement of the act itself is contained in that final statement, measuring the impact of the specific crime on society as well as its author's character and degree of responsibility—including the subject's personal history and record—thus providing a kind of moral profile on which his/her judgement must be based. The biographical relevance does more than provide a context for judging an isolated act that is being attributed to a particular person. It inevitably leads to that person's definition within a fixed category—indigent, outsider, delinquent, and so forth—rather than as a person, in this case as a woman.

In other words, the process of crystalizing a trajectory through the records and reports obtained from an array of sources—social assistants and institutions (e.g., juvenile care homes, courts or correctional services), courts, police authorities, prison facilities, and so on—provides a means to classify and situate the person in question in order to evaluate their present conduct and even envisage their future. As Michel Foucault so aptly observed:

It is these shadows lurking behind the case itself that are judged and punished. They are judged indirectly as 'attenuating circumstances' that introduce into the verdict not only 'circumstantial' evidence, but something quite different, which is not juridically codifiable: the knowledge of the criminal, one's estimation of him, what is known about the relations between him, his past and his crime, and what might be expected of him in the future. (1995: 17-18)

Institutional identities: how one should be

It is important to question and problematize how such cumulative knowledge influences the judgement of authorities—from the court judge to social workers, prison guards, supervisory judges, and so forth. We may ask ourselves, for instance, to what extent does this method, and its potential for anticipating future behavior, not become a self-fulfilling prophecy, insofar as it seems to neglect that its own interference may in fact condition the agency of the subject under evaluation, providing the script for a story that has already

been somehow “officially” written, and thus contradicting the primary goal of reintegration, which these same institutions supposedly work to achieve?

This kind of questioning becomes all the more important if we consider that this process of assigning what we could consider to be an *institutional identity* becomes one of the most influential elements at the moment of applying a sentence—justifying its purpose and calculating its extension. In other words, it is in the course of a trial, and specifically when a ruling is deliberated, that the subject’s detrimental conduct is pointed out, and his/her shortcomings attributed to specific social and personal traits. That is the moment when the trial becomes a moral judgement; when all the attenuating and aggravating factors are weighed.

A person and the sum of all his/her actions are, in many cases for the first time, brought together and inspected to produce an objective and distanced evaluation, based on pieces of information that are sewn together in the shape of a figure, a character. The problem is, as Roux underlines, that “since the reports [from social workers, psychologists] are submitted to the magistrate, they must remain ‘informative’ without the agents ever questioning the nature of the information they provide, or the effects produced by this neutralization within the judicial process.” (Roux 2015:185).

Institutional narratives are thus created and supported alongside numerous sources, which are, a priori, already formatted according to what seems to be a bureaucratic device—following a predetermined script—rather than an assessment of all the encompassing elements that could otherwise be considered relevant. On the one hand, an individual’s action affect society in general with an impact that must not only be assessed but also interrupted, and on the other hand, the same action implies deliberate infliction of damage on specific victims. It is precisely this willfulness that a person must be held accountable for, not only for the practice of an act but also for the inability to restrain from practicing it; it is on this point that a person’s agency is measured and evaluated. In the words of philosopher José Gil:

At the heart of penal responsibility we find the definition of a common negative behavior: restraining want...It summons the intervention of common sense and its assessment of the possibilities open to common person as a measure for the transgressor’s responsibility: if the average person can avoid infraction, thus so should the accused... What the former “can”, the latter “should”: the difference

between what a normal person can do and what the person who practiced the action in question didn't do, gives us the measure of accountability. (1999: 203)

The accountability or mitigation of sentences applied to female inmates implies an appraisal that includes objective as well as subjective elements. The roles of "womanhood" and "motherhood" are clearly brought to bear, whether as aggravating circumstances in conduct, or as a factor to ponder at the time of applying a sentence as we can see in the following excerpt of a court ruling:

The defendant had six children from three different relationships. The education of the children was essentially entrusted to their respective paternal families or care institutions, revealing the accused's shortcomings in terms of her parental abilities. The defendant reveals a reduced cognizance of her own delinquent life history furthermore revealing a tendency to underestimate the damage caused to her victims and the society in general.

As a woman she was being portrayed as betraying her role with her promiscuous, futile and even sinful behavior. But this normative evaluation also judges her "motherhood" (Codd 2008; Haney 2013; Mahtani 2013; Tabbush and Gentile 2013; Moore and Scranton 2014), once more pointing out the same signs of negligence, and the same failure to live up to expectations and responsibilities, insofar as the children's education was left up to the father or their families; the main offence here being against the female role as main caretaker and provider. Thus, the court is not judging this person solely for the act that brought her before them in the first place but is indeed making a moral judgement based on the appraisal of her performance in a series of social roles.

The next case concerns a 35-year-old woman, mother of five children aged between 2 and 17 years old at the time of our conversation. Having two children from her first marriage, Joana had three more during her second engagement, characterized (like the previous one) by a conflicting relationship, with recurrent physical and verbal confrontation between the couple. Throughout this second union, the main targets of her companion's abuse were Joana and the children from her first marriage, whom her partner seemed to reject. Joana explained that the court procedures began with a domestic violence complaint against her husband she had formally presented to the police after having been assaulted with a knife.

Apparently, the narrative lacked sense. How did a domestic violence complaint where, allegedly, the assailant was the man against the woman (as Joana initially described) result in both being convicted and sentenced to six years' imprisonment for acts that bore no relation to it—in this case, child maltreatment? Her answer was simple: over a period of several years she had witnessed the partner inflicting personal injuries to her eldest sons, through punches, kicks, death threats, physical and psychological abuse. Even though she was present at those occasions, she never acted or reacted by trying to defend the children. She was arrested by the police because on the day she made the domestic violence complaint, her mother—to whom, meanwhile, the grandsons told what was happening—decide to expose the situation, even if that meant her own daughter being imprisoned. The court considered her responsible and up to a certain point, an accomplice. She said that during these violent episodes she was afraid of being subjected to retaliation against herself. But added one more reason: “cowardice”.

The judicial ruling told a story that it was not very much different from what Joana told me, but it was underlined that she had had a direct intervention in the children's maltreatment. She was accused and convicted of insults and verbal attacks inflicted on the children, such as calling them “sons of a bitch” and forcing the older ones to take care of the toddlers, including feeding and bathing them; of menaces and punishments; and of tying the children to a chair if they didn't have “manners” at the table. Three years after these events, she said she had reflected on it and was self-critical: “I wasn't raised this way, my parents always went along. They had fights but nothing like this.” The court's ruling in Joana's case was very explicit in its moral evaluation of both her and her companion's behavior:

In this concrete case, we consider that not even all the goodwill of this court could find this sentence sufficient punishment. Indeed, the defendants' notoriously perverse personalities make them unfit for the most basic rules of family life. We are certain that they would be a source of trouble and harm to any community. They are bad parents, bad neighbors, and absolutely impervious to any kind of admonition.

The “goodwill of the court” in this context would be synonymous of the benevolence and understanding that could decisively influence the sentence applied, thus revealing the extent to which it is a choice made in a particular instance. As the ruling states, on the

counts of physical abuse inflicted on their children, a monetary fine could be applied, which might ultimately be converted into community work. But the tribunal considers that such a solution would be largely “insufficient” or, in other words, would not be a proportional punishment to the damage inflicted by the acts under consideration. It is, therefore, based on specific features of the crime, which the court values in subjective terms when it describes the defendants’ personalities as “notoriously perverse” and incompatible with the conventional rules of family life.

The ruling also includes evidence from outside sources, namely the description of a disturbance with neighbors, involving the exchange of insults and threats, and which the police were called in to intervene. The judges once again appraise this conduct in subjective terms: “bad parents and bad neighbors”, whose presence is a negative influence on any community. In sum, the court judges these two individuals as “bad citizens”.

The richness of the material found in these rulings gives us a very detailed view into the underlying reasoning behind the notions of accountability and guilt being pondered. The actions practiced on the children involved are censurable, but beyond that, there seems to be a general assessment of disconformity with society and the community, which goes to the defendants’ standing as citizens, as responsible and self-determining individuals. In light of this, the interpretation of culpability that defines personhood is informed by an individual’s history. In some cases, socioeconomic precariousness and family instability may be used by the court to frame the subject within a given profile or category (Comfort 2008). While in some cases a person’s trajectory serves either as an attenuating circumstance or as corroboration of an almost inevitable outcome, as constituting a pattern, in other cases it is precisely its exceptionalism that is subject of appraisal, moral judgement and punishment, as an aggravating factor.

Sónia, 36 years old woman, who had been convicted for small-scale drug trafficking, cried every day with the grief of being separated from her children—in her mind the worst ordeal of being in prison. Since Sónia was a first-time offender, the judge had handed down a five-year suspended sentence. The court’s decision took into consideration the same elements we have been discussing, but in this instance with a different interpretation and consequences:

We find that it is still possible to make a favorable prognosis judgement, to the effect that the simple censure of the fact and the dissuading threat of prison are found at this point sufficient punishment and effectively ensure that the defendant

will refrain from future crimes. In fact, it was proved that the defendant is socially well adjusted and has a stable family life— being the mother of three children, all of them minors; that the facts occurred in circumstances of dire economic need and unemployment, and that the defendant has no prior convictions. On the other hand, the defendant showed contrition and sincere repentance, so it is the court's belief that the threat of prison conviction and her present remand in custody, away from her children, allowed her time to reflect upon the demerit of her past conduct.

In this small excerpt we observe that several attenuating factors were considered: having family support, being a devoted mother of three underage sons—described as having “contrition and sincere repentance”, who is suffering from being apart her children; the criminal acts being the result of financial difficulties due to unemployment—and not, as was evaluated in Gina's case, as way of life—and, lastly, for being a first-time offender without criminal background. In short: this is a woman, (and also a mother as underlined) who while in custody was suffering from being separated of her children and was remorseful of her illegal actions. It is also noted that because of having family ties and because she had experienced eight months in prison remand, she “reflected upon” and “interiorized” the damages she committed. As if somehow the characteristics here underlined corresponded to what a woman, as well as a mother, *should* be.

Victims and perpetrators

It is worth considering another case that helps us to understand the connection between the experience of domestic violence and the ensuing crime of homicide, even though one should be cautious in assuming that there is a nexus of cause and effect. Matilde, unlike Mariana claimed that not a single day went by that she didn't feel repentance for killing her partner, even considering the hardships she had been through living with a man whose long-term unemployment and alcohol and drug abuse had been at the root of many arguments and frequent verbal and physical aggressions against her.

Mother of two underage children who had been left in the care of relatives upon her conviction, Matilde was a serene, cheerful woman, whose suffering came not just from being imprisoned, but actually from having taken another's life. During our first conversation, she repeatedly declared that he was a “bad man” but that she was in love with him, and in any case, she had no “right” to kill him. Living with her action was a constant punishment, and prison was faced almost as an experience that allowed her to

atone for her past deeds. Ultimately, she accepted that she deserved being incarcerated; that there was no other way to offer reparation for her crime. The courtroom decision revealed the paradoxes implied in passing a murder conviction on someone who had been subjected to prolonged, daily abuse and maltreatment.

On the same day that Matilde killed her partner, the police had been called in to intervene at their household, after some neighbors had reported a row between the couple, which resulted in physical assault. The police officers took evidence of multiple marks left on Matilde, and when they tried to talk with the offender, he managed to escape. A few hours later that day, and when Matilde was home alone, she heard her partner's cell phone receiving text messages from another woman regarding a date apparently planned at a bar that same night. Matilde said she felt a rage surge inside of her—not only did she take daily beatings, she also had to endure being cheated on. She headed out to the place in question with the idea of exposing and confronting both of them, and she took a kitchen knife with her. She was met by him with insults and more aggressions, but this time she decided to fight back, stabbing him.

The swift medical intervention called on the scene was not enough to prevent the man from dying a few hours later in the hospital. The judicial hearing sentence is almost a transcription of what Matilde described to me: “The defendant did not intend to kill the deceased, convinced that the stab wound would only cause slight injuries, and her actions were dictated by a state of despair, her judgement clouded by the discovery that her partner, who was also her aggressor, was having a romantic relationship with another woman.”

Matilde claimed that her motive had been jealousy, and rage, given the attacks she had been subjected to. At that moment she felt she could also cause him the same kind of damage she had endured. During the trial, the defense argued that the experience of domestic violence should be considered an attenuating circumstance, which should reflect on her sentence. However, the judges found that Matilde's actions could not be considered a direct response to the aggressions she had suffered, and neither did they constitute a “means to put an end to an alleged situation of domestic violence, since her actions in this particular instance had not been caused by said aggressions, but out of jealousy”.

This is a particularly difficult case to consider, especially given that the events took place in such a short period of time. No more than three hours elapsed between the initial domestic incident, the intervention of the police, and the mortal stabbing at the bar.

Nevertheless, what the court is being called upon to judge is not her husband's aggressive behavior, or even if there is cause for legitimate defense in view of such aggressions: "The existence of a present or imminent aggression on the part of the victim has not been proved, and is thus considered irrelevant as grounds for considering legitimate defense for circumstances that occurred a few hours before in a different context in which the defendant claims to have been attacked."

This means that the court distinguished between the moments in which Matilde committed a crime motivated by jealousy, and the previous situation in which she was a victim of abuse. In other words, at the moment of the crime it was considered that she was not under any direct threat, and furthermore there had even been an element of premeditation in her act, given that she had left home that day armed with a knife.

Guilt, responsibility and repentance: concluding remarks

There are different moments in a sentence when an inmate can file for temporary or early leave from prison, and they are all inscribed in the Code of Enforcement of Prison Sentences and Imprisonment Measures. According to Chapter IV, "Prison Facility Exit Leaves", these can occur upon reaching the middle of the sentence, on completion of two-thirds, and finally when the inmate has served five-sixths of the sentence. When these periods are achieved, an assessment is made based on a report drafted by the chief of guards regarding the inmate's behavior, as well as on a report made by the social worker or correctional treatment officer following the case (determining whether the inmate in question has incurred disciplinary infractions, or whether she is well adapted and participant in prison activities), and finally on a report from the prison director.

Once these documents are given over to the sentencing judge, the merit of the request is appraised taking into consideration other elements: the length of the sentence and the time already served; the type of crime and its impact on the community; the support network that the inmate will find upon release (where she will stay and with whom, what reasons are alleged for release—maintaining family bonds are the most frequent); and how cooperative and motivated to "change previous behavior" an inmate is (see also Article 78° of the Code of Enforcement of Prison Sentences and Imprisonment Measures).

On this point, we are in the sphere of expectations and perceptions regarding what is fair and what is unfair, of what "prison"—considered as an institution which reifies justice through the walls, bars, guards, correctional treatment staff and directors that configure it—is expected to deliver to those it confines, based on their conduct.

Thus, inmates displaying “good conduct” during imprisonment will expect their behavior to be rewarded (or at least acknowledged) by the judicial authorities when the time comes to evaluate them for leave. Insofar as there is no gradual system of privileges in place (although there is a system of penalties that includes being dismissed from work, or being put in isolation—something which at Odemira is only used to punish extremely serious breaches of prison regulations) and since inmates and prison officers work closely to maintain a cooperative and smooth operation of the prison, whenever someone “gets the cut” instead of what they supposed would be an approval, it is received with surprise and almost seen as a betrayal. In other words, given that inmates make a positive assessment of their trajectory in prison, striving to comply with all they consider to be expected of their behavior, when they see their claims denied, they feel as if they have been cheated, as if after all “it was all for nothing”. Thus, early on in their reclusion every inmate learns to identify the decisive moments in their sentence, and to infer the chances they present. There is obviously always an element of convenience in these relations, which all parties manipulate one way or another: inmates make an effort to become adjusted to prison life, acting according to what they believe is expected of them: conformity, obedience, cooperation. They know that “good behavior” is a key element, and more or less consciously they act upon this knowledge to approximate their demeanor as much as possible to purported expectations. In turn, the prison officers, the social workers and the directing board are constantly advocating cooperation, valuing and praising its accomplishment. In this environment, however, no one on either side ever loses sight of their purpose: inmates are intent on leaving as soon as possible, and prison staff are focused on ensuring the smooth operation of the prison (Carlen 1982; Crewe 2012; Tait 2012). The sentencing judge ends up being a somewhat abstract entity who reveals little about him/herself.

While everyday experience allow inmates to form a personal opinion of the guards and the correctional treatment staff, just as they also manage to build up an image of what the “lady director is like”, it is harder to do the same with the sentencing judge, who is not only almost a stranger to them, but more importantly they are unable to influence on a daily basis, by exhibiting their “good behavior” or demonstrating how “changed” their attitude has become (whether genuinely or calculatingly). Therefore, it is as if this critical moment of evaluation is perceived as unpredictable, almost as a “wheel of fortune”, actually inverting the legal precepts in which everything is supposedly well defined.

What we saw is that judicial rulings that Odemira's inmates, and the debates whether their female gender identity had bearing on those decisions— whether it can be seen as an attenuating factor or conversely as an aggravating circumstance; if discrimination, censorship, or condescendence weigh into those decisions (Bosworth and Kaufman 2013). While the question of gender is unquestionably paramount in the context of relations between individuals and institutions, the practice of justice and the application of the law are also discussed as subjective and moral procedures. Throughout this research, I was able to verify that the “attitude towards crime” and the “attitude towards the victim”—two items that are usually found in any formal assessment performed on inmates during imprisonment—suffer the inflexions that characterize processes of gradual rationalization and distance from the facts, the evolution and transformations in the judicial processes, as well as a greater or lesser acceptance of the condemnation, and the validity of justice and impartiality on the part of those who delivered it.

Every time inmates recount their personal history, every time they describe their crimes—as well as the justifications and explanations they offer—new elements emerge and add further reasoning, deeper context and even new interpretations of the facts. This does not merely result from a process of self-reflection alluded to earlier but is also due to prolonged contact with other life histories, whose similarity or contrast influence the repositioning of their own identity. Comparison with other inmates and with fragments of their stories—leading them either to discriminate or to empathize with others, to minimize or condemn their actions—influence how they come to see themselves and their own actions, especially their crime.

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