

Children's Dignity within a Culture of Sanctioning - Images of Recipients of Child Welfare Services

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1 Introduction

In residential care institutions sanction, discipline, and control young people by means of restricting freedoms, temporary social isolation, working hours or the withdrawal of communication and information media. So far, there are only indications about the extent and the scope as well as about country differences in the use of these practices (cf. G nder et al. 2009; Lindenberg, Prie , 2014, de Valk et. al. 2015, de Valk 2016). Pedagogical helplessness, the desire to exercise power, and the development of cultures that have an escalating effect have been identified as background of motivations of social workers to act punishably in this form. . These cultures seem to be more far-reaching than the level of organization. The attempt to force states or modes of behaviour by means of sanctions may rather be understood as a phenomena related to current capitalist accumulation and regulation regimes including welfare arrangements. These occur at both global and national levels. Countries like Greece, which have been hard hit by the global recession since 2008, are being forced into austerity policies. The International Monetary Fund links financial aid to the condition that existential state benefits and services are cut-off. This will hit the resource-poorest hardest.

On the national level sanction-oriented welfare reforms have been taking place in Europe since the 1990s. The sanctions index developed by Eleveld (2016) shows that 25 countries in Europe operate with work-related sanctions, 23 of them adopted at least five out of six work-related sanctions.¹ The states are operating with varying degrees of severity, with the Scandinavian welfare systems in particular maintaining a minimum standard welfare provision despite sanctions. Basic social rights thus become conditionalized, which endangers a guarantee of a dignified life in Europe. This hegemony of sanction-based activation policies addresses recipients of welfare state transfers and services as deficient others who are to be forced into a productive state with social hardship. Such deficient images of beneficiaries are also reflected in practices of out-of-home care. In this area of Child and Youth Welfare, we find standardised sanction techniques that aims at generating good behaviour and at preventing potential breaches of rules.

This article provides an ethical reflection of controlling and disciplining practices in residential care institutions, based on the results of a qualitative study. The database comprises guideline-based interviews with 15 young people aged between 10 and 21 who live in five different residential care settings, with four employees from these organisations and five employees from a youth welfare office responsible for the interviewed young people. First, the article gives an overview of the modes of control and discipline reconstructed from the interviews with the young people. The focus of this article is on the analysis of patterns of

¹ The sample of this study comprehends 25 countries in total.

justification and legitimacy of the youth welfare officers for tight regulations and sanctions, which follows in in second section.

2 Everyday life practices of sanctions in residential care for youth

The fact that the body may no longer be the primary object of punishing children and adolescents should not be confused with the fact that there is no physical access to children and adolescents or that current punitive practices would now be "incorporeal corporal punishment" (Foucault 1976/2015). Access to the bodies does not necessarily take place through direct physical use of force, but through confinement, coercion to work or isolation. In particular, the deprivation of freedom and isolation in addition to other forms of 'educational' coercion (e.g. fixation) - the compatibility of which with the right to a non-violent upbringing is critical - are currently discussed above all in the context of secure residential care (Kessl/Koch 2012 / international source). The secure residential care and the forms of control and coercive discipline they imply are legitimized as last resort measures. The results of this qualitative study show, that there are also pedagogical elements in 'regular' residential care settings that use punishment instruments within the mundane everyday practices of residential care. Irrespective of the question whether the argument catches that restrictive measures are needed in the hindquarters for "difficult" young people, this study shows that children and adolescents are also confronted with strict regulations in regular, inpatient facilities, which serve to prevent and control potential misconduct. This control may be implemented in terms of disciplinary measures according to standardised procedures. The young people from the various institutions report on the following penalty modes and procedures: a compulsion to work in various institutions is a form of tightening that is implemented in different ways. One organisation had a fixed number of working hours, which allocates each life-regulating rule. A penalty account documents these extra work hours. Other punitive methods in the facilities of the study are temporary restrictions on mobility freedoms, which vary depending on the severity of the violation: The mild form of freedom restriction includes not being allowed to leave the premises of the organisation. In cases that are more serious, the young people remain isolated in their rooms and eat there without contact with the group. Young people also reported that the restriction of freedom is combined with turning off electricity in one's own room. Another punitive measure is the threat of a three-strikes-out rule, which states that three "warnings", as results of rule violations mean the loss of the place in the residential group. This conditions access to Child-Welfare Services. The good behaviour of young people is a prerequisite to remain eligible for this position. Collective penalties are also imposed for infringements of the rules by individuals, for example in the form of monetary deductions for all residents in the case of unfinished household chores by individuals. Finally, a young person sketched the phase model, an approach borrowed from boot camps. Access to devices that make different media consumable or enable communication (music systems, smartphones or computers) must be developed by means of good behaviour that conforms to the rules. Access to these devices is gradually being extended. In case of a rule violation, the young people fall back into a phase with fewer privileges.

All these sanctions have in common, that they are more or less standardized by the manuals of the institutions.

The core idea to justify these kinds of standardisation – or principled punishment – is fairness in terms of non-discrimination. Sanctions are detached from persons and personal attributes like their skin-color, gender or rhetorical skills. But this formulation of fairness comes with some costs:

1. It veils the stigmatizing effect that the present of the deterring strategies of punishment. Entering the institution as a young person means entering a system of punishment, which addresses each of those young persons as a potential wrong-doing person.
2. Pedagogical relations are being de-personalized. Sanctions are independent of motivations and meaning-making processes of concerned persons. Yet, concern for others is a central motivation for solidarity. What value has a pedagogical relation based on techniques, rather than on concern for human beings and their opportunity to live a dignifying life?
3. Finally these technical approaches of standardized sanctions risks de-professionalizing social work practices. Decisions follow a manual rather than professional judgement of social workers.

Beyond the mere registration of the penal practices of stationary child and youth welfare, the analysis of the interpretation patterns of youth welfare officers now follows. With reference to the rigidity and punitive practice of one of the participating organisations of the study, the compatibility of punitive educational means and pedagogical guiding principles of participation has been discussed together with professionals from the relevant youth welfare office. The following section comprises an analysis and ethical reflection of the image of addressees as starting point for the perspectives on punitive measures in residential care.

3 Justification-patterns for sanctioning young people in residential care

In their role as "street level bureaucrats", youth welfare officers interpret the rights of children and adolescents as well as the rights of parents to educational assistance. These rights include, on the one hand, that the state gives priority to the best interests of the child in all actions over other considerations and, on the other hand, that the will of the child is sufficiently listened to and given due weight with regard to the level of development of children and adolescents. In the Convention on the Rights of the Child and in the German Child and Youth Welfare Act, the concept of development was anchored, among other things, in order not to have to set a minimum age limit below which young people would not be able to participate (cf. Liebel, 2013).

In the interviews with pedagogical staff of the Youth Welfare Office, the other side of the coin becomes clear in social work practice. The assessment and classification of specialists in terms of the development of young people can also act as a barrier to participation. The assessments of the development of the addressees serve, among other things, to legitimise regulation, control and discipline for child and youth welfare as an appropriate and necessary educational tool. This legitimation takes place both at the level of attribution of a functional need for discipline and at the level of paternalistic interpretations of needs. Certainty and clarity, which are supposed to be achieved through rigidity, regulation and punitive practices, are weighed against participatory concepts along the lines of an assessment of the ability of the addressees to deal with freedoms. With these considerations, the professionals respond to a question about the practices of an institution that is rigid in its self-description and that imposes penalties with the help of standardized penalty catalogues. The interviewer asked to what extent the dense regulation and the punitive practices of this institution linked to it are compatible with participative practices or whether this pedagogical approach (mobile phone withdrawal, standardised penalties) should be revised against the background of participatory pedagogical orientation patterns.

The re-interpretation of punishment as consequences

The interviewed professionals reformulate and reinterpret the concept of punishment within a framework of certainty or safety rhetoric. The standard language that determines the grammar of the child and youth welfare service - its bundle of rules - (Garland 2008, p. 99) does not provide for 'punishment' for describing pedagogical practice. Instead, punishment is reinterpreted as a consequence or reaction, which in turn are characterized as part of structures that bring clarity and certainty with them. Consequences and reactions are classified as part of a fixed set of rules that young people 'need' to be able to show desired behaviour:

"Yeah, well, it's always what you call the question. Is it consequence or punishment, right? That usually doesn't take so much. The young people know what the rules are in the groups and what they have to stick to, and they also know from the outset what the consequences are if they do not stick to them. So, um, a lot of young people just need this reaction, too, because if there is no reaction, they think well, I'm not allowed to, but nothing happens, I just keep doing it like that. And that's why it's good when the clear structures and boundaries have been set." (Youth Welfare Officer 3)

With this redefinition of punishment as a 'consequence' within 'clear structures', punishment as such is removed from the need for legitimation. Penalties do obvious need justification, and might be confronted with numerous ethical objections. Consequences and reactions, on the other hand, mark transgressions of the rules, maintain them and are thus an integral part of structurally consolidated procedures. A penalty, in the sense of a deliberate infliction of suffering, is a form of action based on a choice, which must be justified, e.g. the harshness of sanction needs to be appropriate in respect to spurious action. Thus, punishing persons bears a moral responsibility for the punishment, as he or she judges on the relationship between punishment and offence. In contrast to a punishment, a consequence is not an action, but a reaction that follows logically or naturally the event of the rule violation and can be derived causally from this event. Within the structures and boundaries of the institutions, the consequences result directly from the rule breaks of the young people, whereby the situational weighing and individual negotiation of pedagogical interventions with a view to their respective goal guidance and their appropriateness give way to fixed procedures that follow uniform and person-independent 'consequences' of potential misconduct. If the punishment is thus no longer based on a decision for which case-specific and situational legal, ethical and pedagogical considerations are made, the semantically invisible (but nevertheless practically real) reaction of the punishment no longer appears justifiable. The responsibility for a consequence lies with the 'perpetrators'. The "ugliness of punishment", as Foucault calls it, is buried in bureaucracy and social workers thus become technicians who make corrections to their addressees (Foucault 1976/2015, p. 17 ff.) With the identification of the need for behavioural modifications, addressees of child and youth welfare are classified as delinquents to be disciplined by measures (cf. Kessler 2011), "so that they do not think that I will simply continue to do so".

Conditional Participation

In addition to the legitimation of punishment through this identified need for discipline and the anticipated need of the young people for boundaries and security, the statement of the welfare officer refers to the previous consent of the young people when they move into the residential group. The young people knew from the beginning what rules exist in the groups.

The passive previous consent, which takes place through moving into a residential group, seems to weigh more heavily than acute resistance and the attempts of the addressees to emancipate themselves from the regulative systems. Paradoxically, therefore, the decision-making ability of young people at the time of moving into a residential group justifies the subsequent curtailment of autonomy and freedom in the educational process in the residential group.

Conversely, a lack of ability to deal with or participate in freedom is also used to legitimize control and discipline:

"I think that depends again on the individual case and you always have to look very individually at what is suitable for the young person in each case. So, if he can still deal badly with freedoms in this way or with participation itself, then perhaps it is also sometimes necessary to make clearer specifications, to introduce strict rules and structures there, simply in order to also give security there, if one cannot deal with freedoms in any other way. To simply, yes, be able to design the help itself better. So I think participation might reach its limits if you can't deal with it." (welfare officer 2)

The right to participation is made conditional by tying it to a diffuse arsenal of capacities. In the case of a certified deficiency, the right to democratic participation seems to be replaced by "clear guidelines, strict rules and structures". The nature of the need for skills that would be necessary for a 'sanction-free' education is set out in another interview:

"it would be nice (...) if a sanction-free education were to take place. But the children (...) and teenagers we accommodate usually have their backpacks with them and they are full to bursting. and the] cannot behave at all so (...) rule-compliant as a rule. And I think (...) some people just learn with sanctions, too (...)." (welfare officer 4)

The ability of the young people to behave in accordance with the rules is regarded as a prerequisite for being able to refrain from punishments in education. Discipline is therefore both a mean and an end of education. The professionals, despite the explicit question about the compatibility of punishment with participatory educational maxims, do not place maturity and autonomy, the ability to recognize oneself as a subject with rights and to claim these rights for oneself, in the overall expectation horizon of these social work interventions. Instead, the focus is on avoiding the deviance of the addressee and satisfying the need for complexity reduction for those who, other than through punishment, do not learn and need strict regulation as an orientation aid. These educational goals, which are oriented towards loss-making images of users of the child and youth welfare system, make 'sanctions' and punishment appear to be a necessary means of child and youth welfare. The diagnoses of the deviance of these young people and their lack of freedom and the ability to participate are starting points of the patterns of legitimation of control through tight regulation and discipline through punishment. This procedure is legitimized by a deficiency that does not classify young people as uneducable, but due to cognitive limitations attributed to them, they are denied the right to a form of coexistence in which they may not only be addressees of rules, but also authors of them. The young service users are classified as deficiently 'others' who do not 'yet' seem to be capable of freedom. It is questionable whether a tight-knit regimentation, underpinned by punitive practices, enables people to freedom and what understanding of freedom then underlies these practices.

Overall, these legitimations and justifications of the need for punishment can be summarised in terms of aspects of social and individual needs. The social need for sanctioning young

people is linked to their potential deviance. Individual needs interpretation are based on the assumption of cognitive impairments. Certainty or clarity are brought to the fore against the subjective idea of a good life, for those, classified as persons with as lack of abilities to act, make reasonable choices. This form of need interpretation on the part of professionals correlates with a sketch of young service users, as people whose abilities seem to make sanctions as educational instrument necessary. With these patterns of legitimation, it becomes clear that the widespread approach of punishment as a last resort, which states that control and discipline or even "coercion" are legitimised for those young people, for which "less serious measures are unlikely to lead to the goal" (Zinsmeister 2015, p. 11), also implies ethical problems. A prognostic-based legitimation of control and discipline that does not consider "less serious" or perhaps simply different, participatory social work practices to be appropriate for (particular) youth welfare recipients, implies an declassification of young people, which are not meant to flourish but to behave. The identification of deficient personal attributes (like the supposed inability to deal with freedom) correspond to a restrictive form of pedagogy that is certainly not oriented towards the emancipation of young people. A prognostic that divides between social agents on the one hand and people who need structure, clearness and sanctions, cannot be fundamental for dignifying social work practices. The standardized sanctioning of young people may contribute to equal treatment of within settings of residential care; it may even actually generate a subjective sense of certainty, but it is based on a discriminatory violation of universal principles of equality, which is carried out with the collective devaluation of young service users as deficient others.

4 Discrimination as violation of equality and well-being

Martha Nussbaum (2016) points out that discrimination violates both equality principles and the well-being of people: "What is wanted [...] is equal respect for human dignity. What is wrong with discrimination is its denial of equality, as well as its many harms to well-being and opportunity" (Nussbaum 2016, p. 28). This restriction of well-being is clearly reflected in the interviews with the residents of the residential care settings. The young people speak about violations of emotional aspects of human dignity:

“Yeh, I mean, we’re not antisocial, but the rules are so, I don’t know, they pin you down, well, (pauses 6 sec.) I kinda feel hounded by the rules. (Young person, living in residential care).”

The lack of trust in his ability to be a capable agent is perceived as a debasing stigmatisation as an anti-social being. His critique is not so much addressing the question of being punished after a potential wrongdoing. Rather he worries about the preventive character of the rules. It is the preventive restriction of his agency due to anticipatory mistrust based on attributed wrong being as anti-social. When everything is okay, they could led it up a bit. This again, points at the discriminating effects, of standardized rules, implemented in order to reduce complexity and provide clearness and certainty for young people. This paternalistic sanctioning-approach lacks to recognize young service users as capable social agents. This problem is clearly identified by those addressed as objects of regulating sanction practices of organisations of youth welfare services:

“Yeh, and to sometimes just be able to discuss the rules. ‘cause I mean when it’s just not working out, then you can like put more importance on like rules, but when everything’s okay, you can let up a bit, ya know, and when everything’s still okay, then you can discuss the rules, ya know.”

Young people claim the realisation of basic democratic principles within residential care. They claim to be the author of those rules they are effected and subjected by.

5 Conclusion

The qualitative research presented in this article is an example, of discrimination and subordination of young people in need for assistance within a culture of sanction. This study has shown amongst others, that seemingly individual power desires of social workers are far too limited as an explanation for punitive practices. Cultures of sanctions are established within residential care settings, by the use standardized sanctioning manuals. In the participating institutions, technical sanction practices became visible, which attempt to undermine abuse of power, but also scopes of professional judgment. These preventative regulations address young people as potential deviant and deficient others, in need for behavioural corrections. The core question for ongoing research is the systematic embeddedness of these organisational cultures within broader welfare arrangements. Is there a culture of sanctioning, which goes all the way down from the global level, to the welfare state level to the “street-level” as condition of well-being of young persons, living in residential care? It needs comparative research of different child-welfare systems in order to identify general rationalities of child-welfare services and their effects on the well-being of young people in out-of-home care.

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