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Life imprisonment and the purposes of punishment in the penal system

Durkheim defines crime as an act that offends strong and precise states of collective consciousness, and the criminal as an indispensable agent for the revitalization of social cohesion insofar as its punishment makes possible the normative reaffirmation of the social bond.[1]

Abstract

The prison sentence, throughout history, was considered a more humanizing form of penal punishment than others that involved corporal punishment. Prison, a totalitarian institution par excellence, was the great invention of the nascent liberal bourgeoisie for those who disturbed the order, for those who denied the social contract. Today, life imprisonment is proposed with a merely retributive logic of punishment, without taking into account its true purpose, which is none other than that detailed in our Magna Carta and in the aforementioned international treaties with constitutional hierarchy: the social reintegration of the individual into the free world.

Keywords: penal punishment, life imprisonment, prison, law

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Introduction

We consider life imprisonment, as well as long custodial sentences, to be questionable because of their dehumanizing effects on the convicted person. "(...) In the field of criminal sanctions, life imprisonment and sanctions similar to it, either as prison sentences of excessive duration, or by the indirect way of security measures of indeterminate duration, are, together with the death penalty in countries where it is still in force, the maximum representation of the punitive power of the State".[2] Life imprisonment is the punitive strategy used by the penal system for the most serious crimes. The prison sentence, throughout history, was considered a more humanizing form of criminal punishment than others that involved corporal punishment. Prison, a totalitarian institution par excellence, was the great invention of the nascent liberal bourgeoisie for those who disturbed the order, for those who denied the social contract. It has thus become the backbone of the penal system in most countries. Prison has made it possible to apply punishment in a graduated and proportional manner to the crime committed, but what happens when it is applied in such a way that the person is expected to spend his entire life in prison? Throughout this paper, we will see how this type of sentence prevents the convicted person from modifying his behavior, reintegrating and living on equal terms with other members of society; a possibility that is raised both in human rights treaties with constitutional hierarchy, as well as in our Magna Carta, where it is reaffirmed that this would be the purpose of punishment, expressed in Article 1 of the Law of Penal Execution.

From a historical analysis perspective, the 1886 Weaver Code stated that those sentenced to indeterminate sentences could be paroled after serving 15 years in prison. In the draft penal code of 1906, persons sentenced to life imprisonment could be paroled after 20 years, a term that was adopted by the penal code of 1921. It is noted that "(...) historically the tendency in national legislation has been to avoid life imprisonment and also to favor with early release those persons who have suffered the maximum penalty provided for in the law." This criterion was maintained until the enactment of Law 25.892, which established the increase of this minimum to 35 years, marking a setback in the idea of humanizing sentences. Prison is a totalitarian Institution in terms of Erving Goffman, it is an institution where inmates, isolated from society for a certain period of time (it can be forever in the case of life imprisonment) carry out all aspects of their daily life, (sleeping, working, recreation), not only in the same place, but also under the same authority. "It is clear that the increase in deprivation of liberty is inversely proportional to the probability of success in the process of social reintegration at the time of release. Imprisonment (even the least restrictive of rights imaginable), has a deteriorating effect on the person and does not only affect their ambulatory freedom."[3] In Ferrajoli's words, "the degree of tolerable harshness of penalties is linked in each legal system to the degree of cultural development achieved by it."[4]

Position in the Americas

Article 5.6 of the American Convention establishes that "the essential purpose of custodial sentences shall be the reformation and social rehabilitation of prisoners," Article 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment states that "each State Party shall undertake to prohibit in any territory under its jurisdiction other acts which constitute cruel, inhuman or degrading treatment or punishment and which do not amount to torture as defined in Article 1, when such acts are committed by a public official or other person acting in an official capacity, and which do not amount to torture as defined in Article 1, when such acts are committed by a public official or other person acting in an official capacity, inhuman or degrading treatment or punishment which does not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations set forth in Articles 10, 11, 12 and 13 shall apply, replacing references to torture with references to other forms of cruel, inhuman or degrading treatment or punishment." In almost the same sense, Article 1, but this time of the Law of Penal Execution suggests: "The execution of the custodial sentence, in all its modalities, aims to ensure that the convicted person acquires the ability to understand and respect the law, seeking his adequate social reintegration, promoting the understanding and support of society", understanding that those who commit crimes

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are subjects with difficulty or inability to understand the law. "This provision, included in the article prohibiting inhuman treatment and punishment, is unique in international human rights law. It expressly links the prohibition of inhuman treatment to imprisonment, which becomes contrary to the Convention if the social readaptation of prisoners is not taken into account."[5] Being "The objective of the Social reintegration of the convicted person constitutes the basis of the whole system of the execution of the custodial sentence,"[6] having as a criterion to think of the law execution of the sentence and the prison itself as a form of regulated social reintegration. The State must not move from this principle and must adjust its entire prison policy to the objective indicated by the aforementioned regulations. Consequently, "whichever theory is adopted, the special preventive purpose of the execution of the sentence must be recognized and accepted."[6]

Both life imprisonment, understood until the person exhales for the last time, as well as long sentences, go against the resocializing function, established in our constitution through the International Covenant on Civil and Political Rights, Pact of San Jose de Costa Rica, and the law of penal execution, and do not solve the criminal problem affecting the community. These sentences appear to be unconstitutional because they are cruel, inhuman and degrading, as is the fact that many of those sentenced will spend years of their social and working lives, or even their entire lives, in prison, in violation of Article 7 of the International Covenant on Civil and Political Rights and Article 5.2 of the American Convention on Human Rights. Taking the case of TIBI VS ECUADOR, it is pointed out that the situation in prison is undoubtedly one of mistreatment, irrational punishments for inmates, showing the lack of preparation of custody personnel and the impunity of the culprits, constituting "time bombs" and increasingly frequent explosions.

Article 18 of the Constitution states that any measure that mortifies convicted persons will generate responsibility on the judge who authorizes it. In this sense, in ESTEVEZ CRISTIAN ANDRES OR CRISTIAN DANIEL s/ROBO CALIFICADO POR EL USO DE ARMAS ETC. -CAUSA N°1669/1687, it is stated: "(...) the truly life imprisonment penalty harmed the intangibility of the human person because it generated serious personality disorders, so it was incompatible with the prohibition of any kind of torment enshrined in Article 18 of the Constitution". The Argentine Penal Code violates the principle of humanity: the life imprisonment penalty currently in force is unconstitutional since it prevents the resocialization of the person. There is no way to readapt a person who must remain most of his active life in confinement. Re-socialization, considering in the Penal Execution Law 24.660 (art. 1) and in the international treaties of Human Rights, arts. 5.6 CADH and 10.3 PIDCP, should be considered mandatory for the State together with providing the convicted person with an adequate development to generate tools and resources for his subsequent integration into society.

The positions that maintain that life imprisonment, in our country, is not cruel and degrading, are supported by the possibility of granting parole. This is an institute that can be accessed by fulfilling the temporary requirements, 35 years, for its concession, but also, having regularly observed the prison regulations and having a report where it is observed that his social reintegration is feasible. Otherwise, he will remain incarcerated indefinitely. "To accept this answer to legitimize this penalty is to admit that uncertainty can take the place of certainty in the criminal field" (ETCHEVERRY, GONZALEZ and VARELA, MARTIN s/ HOMICIDIO CALIFICADO POR EL CONCURSO PRECURSO PREMEDITADO DE DOS O MAS PERSONAS; LESIONES GRAVES CULPOSAS Y ROBERY). There can be no resocialization if a convicted person's expectation of freedom is outside his productive stage of life or if, because of the age at which he enters prison, freedom is a possibility outside his life expectancy. In short, the sentence of life imprisonment violates the prohibition of cruel, inhuman and degrading punishment. Thirty-five years of duration, a period in which there is no certainty of regaining freedom, is a decision clearly against human dignity, in addition to violating Articles 5 of the American Convention and 16 of the Convention against Torture.

Life imprisonment in international law

Article 3 of the European Convention on Human Rights prohibits torture, degrading and inhuman treatment, and it is in this light that life imprisonment was analyzed, considering, as we have said, the expectation of the convicted human being to be able to be released at some point in his or her life. In other words, life imprisonment should be revisable from time to time. The penitentiary regime will consist of a treatment whose essential purpose will be the reform and social readaptation of the convicted. In the same vein, the European Court of Human Rights, in the case of KAFKARIS vs CYPRUS, declared that life imprisonment is not incompatible with the aforementioned Article 3, as long as at the domestic level there is a procedure that allows for some expectation of release of the convicted person.

In the VIOLA vs ITALY: case, it is justified in proportion to the crime, but the ECtHR holds that the second requirement, the purpose of the penalty is social reintegration, it must allow an expectation of freedom and not condition it to an objective category where the individual, no matter how hard he tries to change his behavior, this does not influence the principle of reintegration, when this is what is sought. Bronson Blessington and Matthew Elliot v. Australia. Australia: The Human Rights Committee (OHCHR) ruled that no prison system should be solely retributive and that it should seek, fundamentally, the reformation and social rehabilitation of the inmate. It considered that life imprisonment, applied to perpetrators of criminal acts, was not in accordance with the State's obligations as defined in article 7 (protection against torture), together with articles 10 (reform and social rehabilitation of prisoners), paragraph 3, and 24 of the International Covenant on Civil and Political Rights, and its article 37 on the rights of the child. We bring this up because the perpetrators, at the time of committing the crimes, were minors. On the other hand, the Inter-American Court of Human Rights only ruled in one case, analyzing whether it was valid to impose life sentences on persons who were minors at the time of committing crimes. The IACHR rejects life imprisonment because of its incompatibility with the principle of social reintegration, in cases where it is applied to children or adolescents, but did not issue precise and forceful considerations regarding the invalidity of its imposition on adults.

Hutchinson v. United Kingdom: The ECtHR ruled that countries are free to impose life imprisonment, which is not prohibited, but requires that persons sentenced to life imprisonment must know, from day one of their sentence, what they can do to have the possibility of regaining their freedom. In Larrauri's view, "the most severe penalty for the most serious crime is a social convention; some countries maintain the death penalty, others admit life imprisonment and others consider that the most severe penalty to be imposed is twenty years of imprisonment."[7] The general criterion that we can extract, from international jurisprudence, is that while life imprisonment is admissible, it has to be reviewable or give some kind of expectation to the convicted person that at some point he or she may be released, given that "international law specifically prohibits inhuman and degrading treatment and punishment, providing, in theory, a solid basis on which harsher punishments can be challenged."[5]

Is resocialization possible?

In 1853, the year in which the Argentine National Constitution was drafted, there were no doctrines linked to the different theories that later weighed on the justification of penalties, however, the conceptualization of the purpose of resocialization of confinement was already present. As we well know, the penalty "consists of a restriction of rights that the competent organs of social control impose on any person considered responsible for the commission of a punishable act."[8] Life imprisonment "reifies the individual by reducing him to the condition of an object that due to his malfunctioning must be taken out of circulation without considering his possible recovery. It constitutes the physical and psychological destruction of a human being."[9] In addition, Article 18 states that any measure that mortifies convicted persons will make the judge who authorizes it responsible. His positive version of special prevention is closely related to the humanity of punishment. Starting from an idea of proportionality of the penalty (retributive purpose) when applying the penalty, and in connection with its application what is called: a positive special prevention, this being the purpose of the reaction system, social reintegration.

Ferrajoli warns that "Prison punishment adds psychological affliction: loneliness, isolation, disciplinary subjection, loss of sociability and affectivity and, consequently, of identity, in addition to the specific affliction that goes hand in hand with the reeducational pretension and in general with any treatment aimed at folding and transforming the prisoner's person."[4] The process of social reintegration of the sentence must be accompanied by a critical dynamic, which the convicted person must go through during his detention process, that is, questioning himself about his life, what he wants to do with it, what he can do, what tools he has at his disposal while in prison so that when he is released he can lead a life without committing crimes. It may seem paradoxical, but the aim is to imprison a person so that he can learn to live in freedom.

The concept that sustains confinement, without pretending to change the personality of the individual, must produce a subjectivity, with sufficient tools to be able to live in society. This personal work, which must be carried out and facilitated by the conception of the prison system, will allow the convict to work on his individual psychic construction, in order to analyze himself, question himself, reevaluate his whole life and avoid his dehumanization. In the words of Felix Guattari, punishment has as its "acceptable purpose the production of a subjectivity that continuously enriches its relationship with the world". But how can we understand the possibility of readaptation in the case of life imprisonment, when the end of the process may be the death of the convicted person, or if he is released, he may be released at an advanced stage where without the help of the State it will be difficult for him to be inserted because he is over the age of working activity and also because he is burdened with the deterioration of institutionalization. We are reaching a certain clarity regarding the possibility of re-socialization without a real time perspective of a person's stay in prison. If it is desired or sought as an end, reintegration is the result of certain mechanisms granted for adequate social integration, which will go hand in hand, among others, of considering the vital moment in which freedom is granted and the psychic, material and potential conditions to be able to readapt.[10–12]

Conclusion

How to overcome the current logic and effectively seek a way in which the purpose of punishment is none other than to develop citizens who respect themselves and respect a social construction? Life imprisonment, supported by a potential freedom, can be really indefinite and total in case of not being able to access it. Today, life imprisonment is proposed with a merely retributive logic of punishment, without taking into account its true purpose, which is none other than that detailed in our Magna Carta and in the aforementioned international treaties with constitutional hierarchy: the social reintegration of the individual into the free world. Although it does not oppose the resocializing purpose that requires the convicted person to be placed under a penitentiary treatment, with a critical dynamic that enriches the process of self-analysis and development of a social conscience, together with the desire to adapt and be included, it contradicts the action and the concept of spending one's whole life in prison, assimilating it to a "death penalty" while alive. These long sentences in Argentine law are in contradiction with constitutional mandates, both because of the impossibility of fulfilling the purposes both conceptually and in concrete and effective terms. Added to this is the obstacle generated by its fixity to grade the guilt and correspond the punishment, both from the republican perspective and from the perspective of materialization of the constitutional guarantees, which leads to observe it as a punishment that dehumanizes and degrades, being in short, a penalty similar to the death penalty and contrary to our legal order. To make it coincide with the end of the life of the person who must serve it, is conceptually equivalent to the death penalty, and can generate an even greater psychological suffering.

In the words of Mario Juliano, "The only thing that can oppose the threat of perpetuity is the certainty of finitude, the certainty that the punishment has a precisely determined duration, that one day the confinement will end. Between the two extremes - certain perpetuity and strict temporality - there are no remnants of humanity." (ETCHEVERRY, DANIEL RICARDO; GONZALEZ, CESAR JUAN MANUEL and VARELA, MARIO MARTIN s/ HOMICIDIO CALIFICADO POR EL CONCURSO PREMEDITADO DE DOS O MAS PERSONAS; LESIONES GRAVES CULPOSAS Y ESPURIO). Returning to the initial question of these conclusions: How to think of punishment mechanisms that contain real processes of resocialization? How to install in the penitentiary system devices with critical dynamics that facilitate and question the vital questions of a person: Why am I in this circumstance, how did I get here, what do I want, who am I, what can I offer to society that will enable me to integrate into its values?

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None.

Conflicts of interest

The author declares there is no conflict of interest.

Jurisprudence

Bronson Blessington and Matthew Elliot c. Australia

Estévez Cristian Andrés or Cristian Daniel s/robo calificado por el uso de armas etc.

Etcheverry, Daniel Ricardo; Gonzalez, Cesar Juan Manuel and Varela, Mario Martin S/ Homicide aggravated by the premeditated concurrence of two or more persons; grievous bodily injury and robbery.

Lujan Ibarra, Omar Remigio s/ Double aggravated homicide to facilitate the crime of aggravated robbery

Hutchinson v. United Kingdom

Kafkaris v. Cyprus

Viola vs Italy

Tibi Vs Ecuador

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