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One of the dimensions of human rights and sensitivity to its acceptance

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Abstract

This paper addresses the perceptions of the law students on human rights education, with regard to the purpose of the sentences, discussing whether they had learned the values passed on to them in class and if they were sensitive to this dimension of the human rights. As there is a popular tendency that, contradicting the Portuguese constitutional principles, defends more severe punishments, the article explored the reasons why the students' perception and acceptance of these issues were aligned with this opinion. To achieve these objectives, data were collected through surveys with 13 questions answered by the Portucalense University students. The results showed that the students were not sensitised to the human rights dimension with regard to the purposes of sentencing. It was concluded that the majority of them were more receptive to the public opinion, published in the media channels, than to the knowledge that was provided to them in the Academy about the legitimization of the criminal punishment.

Keywords: Purposes of sentencing, punishment, severe criminal sanctions, education for human rights, educational research.

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1. Introduction

Criminal punishment must serve useful purposes for both the condemned and the community itself. Therefore, these utilitarian purposes are compatible with the principles of human dignity and proportionality present in Articles 1 and 18 of the Portuguese Republic Constitution, respectively. As a democratic rule of law, Portugal prohibits the death penalty, life imprisonment, forced labour, corporal punishment and the Portuguese Penal Code, based on the constitutional principles and norms, assumes the prevention as the main purpose of the sentences, being away the idea of the retribution for the committed crime. However, there is a popular formed opinion that contradicts what is legally established, by defending a punitive tendency that demands more severity and more harsh sentences and less consideration for the rights of the accused.

After the students have learned Constitutional Law in the first year, in the second year some of these contents are retransmitted to them, in the sense of coordinating the constitutional principles with the purposes of the criminal punishment. The concept of punishment in this context 'can be understood as the state's imposition of any type of sanction for an act that has violated criminal law' (Ginneken, 2016, p. 4), therefore, is 'synonymous with sentence or legal sanction' (Ginneken, 2016, p. 5). The reasons that led to carry out the present study and to prepare a questionnaire were related to the fact that we had noticed the students, when learning criminal law, often disagree with constituted law, presenting hard opinions about the penal system (e.g., harsher punishment), which is against not only to the teachings transmitted to them but also to the portuguese legal system, given that the Portuguese Republic Constitution prohibits violent penalties.

The fact is that there is an existing gap about human rights education and its sensibilisation/comprehension, especially when comes to law students, so it seemed timely and relevant to address this subject. Gibbs et al. (2017) highlight 'the use of action research in higher education (...) has proven to be a central approach to the investigation, reflection and improvement of practice'. The study of Leitch and Day (2000) focuses on reflective practice and action research. The authors discuss the important part played in teachers' development by different kinds of action research. Effective assessment occurs when 'there is a clear understanding of the knowledge and skills students are expected to demonstrate as a result of their learning at each grade'. It is necessary a 'greater involvement of teachers as practitioners in the research process, in order to establish a reliable, evidence-base of what students learn' (p. 5). Therefore, action research represents a potentially powerful means of developing reflective processes across the teaching profession (p. 9). Shulman (2011, p. 6) consider that 'the activity of teaching can never be marginal to research because teaching is research in itself' and the teachers have 'the duty to collaborate in developing new forms of assessment for evaluating student progress'.

The present study argues what was the perception and acceptance of the purposes of the sentences in one of the dimensions of human rights. Based on pedagogical practices in classroom, the investigation aimed to analyse the impact and potential effects of teaching-learning on those issues, by presenting and discussing them in the classes of Criminal Law curricular unit, followed by a survey among the students, applying methodologies for educational research (Cohen, Manion & Morrison, 2018, p. 471). McMillan and Schumacher (2014, p. 12) consider that evidence-based inquiry provides valid information and knowledge about education that can be used to make informed decisions and improve educational practices. The choice between the qualitative, quantitative or mixed methods depends on 'which is most appropriate and likely to provide the type of data that will answer the research question' (Ary, Jacobs, Sorensen & Walker, 2014, p. 27). Lemos (2012, p. 20) emphasises the importance of knowing and interpreting the teaching and assessment practices as a necessary instrument to 'understand the relationship between these practices and students' learning'.

Practice was the key element in the investigative process for the sharing of teaching and learning experiences and continuous improvement of methodologies applied to the teaching of the criminal law. Arksey and O'Malley (2005, p. 5) considered the use of action research in higher education,

specifically academic teaching, and included a discussion of research and pedagogy practice. The authors also defended the need to use a framework for conducting a scoping study that must be documented in sufficient detail to enable the study to be replicated by others.

The main objective of the paper was to know if, and to what extent, the students after learning these subjects, during two semesters of criminal law, were sensitised to the human rights dimension of the purposes of the sentences; and if there was an effective human rights education. In order to reach the proposed objective, and to carry out an effective evaluation and assessment, the researchers submitted to the students a questionnaire survey with 13 questions collecting an individually written answer, followed by data analysis.

Researchers in education and social sciences use surveys frequently (Ary et. al., 2014, p.30) and some experiences in this field show this tool and quantitative research method allow educational researches to address challenging questions (McMillan and Schumacher, 2014, p. 12). Survey is an important tool in an investigative process, that permit the researcher to summarise the characteristics of different groups or to measure their opinions toward some issue, based on a statistical analysis of numeric data, using quantitative methodology approach.

Following quantitative research design (McMillan and Schumacher, 2014, p. 29), the survey research uses instruments such as questionnaires to gather information from groups of individuals. The collected data were executed in the Criminal Law curricular unit, from a sample constituted by 39 students of the fourth year in law degree, from the Oporto Portuguese University, in the current academic year 2018–19. Subsequently, the data were organised and analysed through the action-research method, which means an investigation of a predominantly quantitative nature. In the present research the data were treated using descriptive statistics for closed questions and content analysis for open questions (Lemos, 2012, p. 5). This paper summarises and disseminates the relevant research findings in this specific area of inquiry.

Some of the expected results through the students' answers were related to know if they were or were not sensitised to the purposes of the criminal sanctions and their acceptance or rejection of the idea that criminal punishment must serve useful purposes for both the condemned and the community itself. It was also expected from the surveys' data analysis to understand if the law students were aligned with the public opinion, that defends severe sentences even those that are forbidden by the Portuguese Law, as was said above, or if the students were receptive to the referred constitutional principles of human dignity and proportionality that was provide to them at the university.

This research was limited by ethical and legal concerns and diversity. For the ethical and legal considerations, as educational research focuses essentially on human being, there was mandatory that the researchers were ethical and legally responsible for protecting the rights of confidentiality of the data and the privacy of those students who participated in the study (Cohen et al., 2018. p. 111). To fulfil these requirements, all the participants were informed of the purpose of the questionnaire, their willingness to participate and the guarantee of confidentiality and anonymity in the treatment and analysis of the data.

Another limitation was the diversity of the participants. Because there were many differences between students, related with differences in culture, religion, nationality, academic preparation and socioeconomic circumstances, for example, the present research had to be interpreted taking into account the context in which it was carried out, the place and time in which it took place. Examining sociocultural context was critical to understanding the results of the present research.

2. Education for the human rights

Within the scope of the teaching, particularly on the subjects of the Law Degree, great emphasis is given to the human rights, with respect to its content, its theoretical and practical dimension and its

relevance to the understanding of infra-constitutional legal norms. In addition, the Constitution, because of its importance and hierarchical position that occupies in the legal context, is a preponderant source, influential of the legislative activity that gives form to the other contents. Therefore, in the first year of the Law Degree, students learn Political Science and Constitutional Law and, in the second year, continue this learning process with the subjects of Constitutional Justice and Fundamental Rights.

The subject of Criminal Law is also an integrator of the second year of the Law Degree and is one of the curricular units that has closer connections with Constitutional Law and Fundamental Rights. One of the contents taught to the students is about the purposes of criminal penalties, providing them the knowledge to understand why the State punishes criminal behaviour and the functions of criminal sanctions. In this context, we have implemented the principle of human dignity enshrined in article 1 of the Constitution of the Portuguese Republic, and, in particular, the normative instruments present in articles 24, n. 2 e 30, nos. 1 and 5. Portugal is a sovereign Republic, based on the dignity of the human person, which is based on respect for and guarantee of the realisation of fundamental rights and freedoms (article 2). Indeed, the Constitution prohibits the death penalty. 'The Constitution does not only guarantee the right to life as a fundamental right of the people. It also protects human life, independently of its owners, as a value or objective good', as stated by Canotilho and Moreira (2007, p. 449). The Constitution also prohibits the imposition of penalties and security measures that are exclusive or restrictive of perpetual liberty and the sanctions of indefinite or indefinite duration. On the other hand, it guarantees to convicted persons, to whom custodial sentences or security measures were applied, the maintenance of their fundamental rights, with the exception of sacrifices and limitations pertaining to the meaning of the conviction, the requirements of their execution and the impositions for reasons of order and security of the prison establishment, according to article 6 of the Code of Execution of Sentences and Privative Measures of Freedom (approved by Law no. 115/2009 of 12 October).

The Portuguese Penal Code (approved by Decree-Law no. 400/82 of September 23), with a humanist meaning and in line with the provisions of the Fundamental Law, with regard to criminal sanctions, assumes a utilitarian tendency of preventive staining (general positive prevention and positive special prevention—article 40). It reserves resocialisation for the exercise of the rights of the condemned person, without being able to impose this purpose against his will, not being a right of the State, rather his duty and 'it is the responsibility of the State to provide the condemned with the necessary conditions for their reintegration into society' (Antunes, 2013, p. 116). Penalties are an instrument of prevention, and the application of punishment as an instrument of retribution, punishment for punishment *per se*, is excluded. As a consequence, penalties may be applied to the extent of the fault of the agent and may fall short of the degree of his fault; they cannot exceed the degree of guilt of this. In summary: 'Any penalty that adequately responds to the preventive requirements and does not exceed the measure of guilt is a just penalty' (Dias, 2007, p. 84). This perspective ensures that the human being is not objectified, that is not instrumentalised, that is not the means to the service of the State to impose its criminal policies, being as it is an end in itself (Silva, 2012, p. 251).

3. The students' perception

3.1. Results of the surveys

The next stage of the research corresponding to *designing the research*, where the *design* consisted in the researcher's plan for the study, which included the method used and the data that was gathered (McMillan & Schumacher, 2014, p. 18). Have the students learned the values passed on to them in class and are they sensitive to human rights with regard to the purpose of the sentences? In order to respond to this concern, a survey was prepared and had taken place at the Oporto Portucalense University, in Portugal, during the criminal law classes, in the first month of the academic year of 2018–19.

The survey was distributed to 39 students in the fourth year of law (finalist students) who have answer in an unexpected way, as explained below. From the survey, there were 13 questions to be answered in a direct manner, so that students could only pick one of the two options available, 'yes' or 'no', of the aspects in question, with exception of question no. 11 where they were asked to justify the reasons for the option made.

The results of the surveys were as follows:

1—Should life imprisonment penalty exist?

A: 56.4% yes, 43.6% no.

2—Should death penalty be applied?

A: 10.3% yes, 89.7% no.

3—And regarding to force labour penalty?

A: 66.7% yes, 33.3% no.

4—And corporate penalties?

A: 5.1% yes, 94.9% no.

5—What about penalties to substitute imprisonment, such as fines?

A: 51.3% yes, 48.7% no, corresponding to 20 yes answers and 19 no answers.

6—Should criminal sanctions repay the wrong caused by crime?

A: 46.4% yes, 53.8% no, corresponding to 18 yes answers and 21 no answers.

7—Should criminal sanctions prevent future crimes?

A: 94.9% yes, 5.1% no, corresponding to 37 yes answers and 2 no answers.

8—Should the prison system correct/amend the convicted person even against his will?

A: 69.2% yes, 30.8% no, corresponding to 27 yes answers and 12 no answers.

9—Should penalties be more serious?

A: 84.6% yes, 5.1% without answer, 10.3% no, corresponding to 33 yes answers, 2 without answer and 4 no answers.

10—Criminal justice is:

A: Very good 0%; Good 20.5%; Reasonable 48.7%; Weak 27.2%; Very weak 2.6%.

11—Indicate one or two causes to justify your choice:

'Crime compensates'—2.6%; 'Media cases'—2.6%; 'Economic power + resources'—2.6%; 'Respect for the rights of the condemned'—7.7%; 'Prevalence of the person sentenced to the victim'—5.1%; 'Inadequate means'—2.6%; 'Corruption'—7.7%; 'Benevolence of penalties'—30.8%; 'Slowness of justice'—35.9%; 'Many suspended sentences'—7.7%; 'Non-agreement with decisions'—2.6%; 'unfair penalties'—5.1%; 'Good law enforcement'—2.6%; 'Safeguarding of society/preventing future crimes'—7.7%.

12—Feel safe/secure in Portugal?

A: 89.7% yes, 10.3% no.

13—Have you ever been the victim of a crime?

A: 33.3% yes, 66.7% no.

3.2. Assessment of the results of the investigations

The results obtained were surprising in the bad sense. Although students feel mostly safe in Portugal and only a minority have been victims of a crime, surveys have shown that they have a maximalist stance regarding the purpose of penalties and the role of criminal justice. This position hides and silences the legal-constitutional material contents that inform and shape criminal law.

Surveys indicate that students were not sensitised to the importance of human rights' values and that the knowledge transmitted, in the different curricular units, namely, in criminal law, did not touch them with the intensity intended, in order to allow themselves to be influenced by the constitutional's principles and rules. They also showed that there is no agreement with the strong humanist position of our Penal Code. Indeed, the majority were in favour of life imprisonment and the penalty of forced labour, both flagrantly unconstitutional for violation of human dignity.

Almost half of the students defended the non-substitution of the prison for other alternative sentences despite having learned that the prison sentence had a stigmatising and even criminogenic effect, giving the legislator prevalence to non-custodial sentences whenever this appears compatible with the purposes of punishment. Almost half of the respondents also defended the retributive purpose after learning that imprisonment, as a simple punishment and retribution of the evil caused by the crime, devoid of other purposes, had no practical effect.

The student perspective demonstrated in question no. 8 was merciless and constitutes a complete break with human dignity. They replied, by a significant majority, that the State must correct or amend the condemned person even against his will. The respondents omitted from the thought that the state cannot carry out the innocuousness of the individual for lack of legitimacy to do so. They had also forgotten that resocialisation itself only occurs when and if the condemned person desires, and there is the will and co-operation of his own so that the socialising effect is genuine and fruitful. In fact, resocialisation is a right of the condemned and a duty of the State and not a right of the State.

Almost all understood that penalties should be more serious, perhaps because of the message that had been passed through the mediatisation of certain criminal cases in the media and because of a growing pragmatic, populist and securitarian tendency that is not exclusive to Portugal. It was in this sequence that it was understood that almost all the students considered that the penalties should be more serious, defending ways of hardening the sanctions and hardness in its forms of application. It is a populist tendency that comes against the anguish of insecurity (Valente, 2013, p. 43), which has spread, especially after the fateful attacks of September 11, in which both weakened the structure and content of fundamental rights and affected a set of principles that underpin the construction of a democratic penal system' (Lopes, 2017, p. 797).

Most respondents identified Portuguese criminal justice as reasonable, not having a single answer that qualified as very good, diversifying the opinions between the good and very weak. The reasons most invoked for this qualification were based on benevolence of justice with the application of light penalties and on its slowness. This was the look of the students of the fourth year of the Law Course regarding the relationship of constitutional rights, freedoms and guarantees and criminal law with regard to the purpose of sentences.

4. Conclusions

The students of the fourth year of the Law degree were asked about the purposes of criminal punishment.

The answers showed that:

1. They are in favour of life imprisonment and the penalty of forced labour;
2. They are not in favour of the penalties that substitute imprisonment;
3. They allow the interference of the State in the prison system by imposing the correction/amendment of the convicted persons even against their will;
4. They believe that penalties should be more serious;
5. They believe that penalties should be more serious;
6. They feel safe in Portugal.

The answers obtained indicate that the students were not adequately sensitised by the human rights dimension even though there had some disciplines throughout the Course that focus on this matter. In the discipline of Criminal Law, they were taught about the purpose of sentences and their close connection with constitutional law. Nevertheless, the answers showed a coldness towards fundamental rights, which leads to the adoption of positions with security tendencies and punitivists. It was concluded that the majority of them are more receptive to the public opinion, published in the media channels, than to the knowledge that is provided to them in the Academy on terms of reflection about the legitimation of the criminal punishment. Based on these results, we propose to rethink the way of communicating these programmatic contents in order to sensitise the students and bring them to the interiorisation of the constitutional values and the indispensable human rights.

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