

Prision Psychological Treatment: A Psycho-Legal Perspective

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ABSTRACT

Prison psychology has as its field of action the evaluation, diagnosis, prognosis and treatment of persons deprived of liberty, this implies that the professional has basic knowledge of the legislation applicable to Social Reinsertion and Prison System, it is also required to have extensive knowledge and preparation to evaluate and treat personality disorders, psychiatric disorders, substance use disorders, and other particulars such as domestic violence, pornography, impulsivity, aggressive behavior and others that mark the applicable laws. Therefore, the purpose of this paper is to analyze prison psychological treatment from a psycholegal perspective through a qualitative study using the documenta method. Among the results, an overview of the historical evolution of prison treatment, the laws applicable to prison treatment and the current social reintegration model is offered, in addition to making visible the challenges of prison psychology and highlighting the need for institutions of higher education that offer a psychology degree to include legal, forensic and prison psychology as a basic subject. From this, it is concluded the relevance of going beyond the clinical model, to make visible the mental and psychological health of the person deprived of liberty that, in sum, contributes to their social reintegration.

Key Words: *Psychological treatment, Legal sociology, Prison system, Legal psychology*

RESUMEN

La psicología penitenciaria tiene como campo de acción la evaluación, el diagnóstico, el pronóstico y el tratamiento de las personas privadas de la libertad (PPL). Ello implica que el profesional cuente con conocimientos básicos de la legislación aplicable a la reinserción social y al sistema penitenciario, así como una sólida preparación para la evaluación y el tratamiento de trastornos de la personalidad, trastornos psiquiátricos, trastornos por consumo de sustancias y otras problemáticas específicas, como la violencia familiar, la pornografía, la impulsividad y la conducta agresiva, entre aquellas previstas por en la legislación vigente. En este contexto, el objetivo del presente trabajo es analizar el tratamiento psicológico penitenciario desde una perspectiva psicojurídica, mediante un estudio cualitativo de tipo documental. Entre los principales resultados, se ofrece un panorama general de la evolución histórica del tratamiento penitenciario, de las leyes aplicables en la materia y del modelo actual de reinserción social. Asimismo, se visibilizan los retos que enfrenta la psicología penitenciaria y se subraya la necesidad de que las instituciones de educación superior que imparten la licenciatura de psicología incluyan, como asignaturas básicas, la psicología jurídica, forense y penitenciaria. Se concluye que resulta pertinente ir más allá del modelo clínico tradicional, a fin de visibilizar de manera integral la salud mental y psicológica de las personas privadas de la libertad, contribuyendo así de forma efectiva a su proceso de reinserción social.

Palabras Clave: *Tratamiento psicológico, Sociología jurídica, Sistema penitenciario, Psicología jurídica.*

Introduction

The involvement of psychology within the Mexican Penitentiary System is not recent; however, its practice, functions, and theoretical bases remain little known and are frequently confused with those of forensic, legal, criminal, or criminological psychology. This lack of knowledge exists even among psychology professionals, largely because numerous higher education institutions lack specific subjects regarding penitentiary psychology. In many cases, there is also no systematic training in forensic or legal psychology; at best, these are offered as open elective courses, meaning only students with a special interest will be able to take one of these subjects.

In this sense, Legal Psychology (Psicología Jurídica) is the foundational area of psychology that aims to study human behavior in terms of social control, moral, social, economic, and cultural damage, etc., with the purpose of understanding and explaining it based on existing theories or creating new ones to serve as a basis for the creation and modification of laws.

Meanwhile, Forensic Psychology is the applied branch of Legal Psychology. Its basic function is to implement knowledge, methodologies, and techniques to evaluate behavior regarding the law; therefore, it has applications in all areas of law. On the other hand, due to its particularities, Penitentiary Psychology utilizes the scientific knowledge of both Legal and Forensic Psychology within the prison context. Here, its applications involve the evaluation, diagnosis, prognosis, and treatment of persons deprived of liberty.

Given the foregoing, this chapter aims to present a general overview of the evolution of the concept of social reintegration and how psychology has come to occupy a fundamental role within the Penitentiary System since the major reforms to the Political Constitution of the United Mexican States (CPEUM), the National Law on the Execution of Sentences (LNEP), the National Penal Code, the Federal Penal Code, and Human Rights (HR) standards. This serves to place the reader in context regarding the legal basis and the participation of psychology in this environment.

Development

Brief Historical Review of Social Reintegration

Some classics such as Foucault (1975), Goffman (1984), and Parrini (2007) coincide in that the penitentiary system was created to replace—with a humanitarian aim—capital punishment and exile. In this view, prisons (now penitentiary centers) should not be limited to being containment spaces to protect society; however, they have focused little on treatment, and even fewer results are seen regarding behavioral modification to allow lawbreakers to reintegrate into society.

According to Foucault (1975), these spaces function to reaffirm a system's code of values; societies invent their political and judicial rules, and crime serves to guarantee their permanence. For Payá (2006), prisons are the inverted mirror of society; thus, the space occupied by prisons acquires a deeply symbolic dimension. Considering that they are usually found on the outskirts of cities, they remain places of banishment and confinement for disorder and evil, demarcating a field of signification for that which is strange and external to the social body, where recidivism is the living proof of the failure of this political-judicial project.

To prevent torture, corporal punishment, and other cruel treatment within prisons, various international documents have been created to guide governments, officials, prison staff, etc., regarding minimum standards or basic principles for treatment within prisons. Examples include the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, the United Nations Standard Minimum Rules for the Treatment of Prisoners, the American Convention on Human Rights ("Pact of San José, Costa Rica"), the Bangkok Rules, and the Universal Declaration of Human Rights, among others. The principles of these documents are already found in the CPEUM (Mexican Constitution), primarily regarding social reintegration.

As one can observe, the main approach to penitentiary treatment centers on the respect and guarantee of Human Rights. While this includes health, vulnerable groups, women, and dignity, the health approach remains medical-clinical and does not explicitly contemplate mental and psychological health. It was not until 48 years later, on February 23, 1965, that

the first reform to the Mexican penitentiary system was carried out, adding job training, education, and the separation of men and women as means for "social readaptation." Therefore, the term "regeneration" was changed to "social readaptation."

However, the person deprived of liberty was still viewed as someone maladjusted who needed to be "readapted" to society to become functional within it. Four decades later, in 2008, Article 18 of the CPEUM was reformed, establishing that the guiding axes for treatment in prisons would be job training, work, education, health, and sport; this serves as a means to achieve the social reintegration of the sentenced person, ensuring they do not offend again. Consequently, the term "social readaptation" was replaced by "social reintegration," assuming that when a person enters prison, it is to repair the damage caused, based on a Human Rights approach.

Social Reintegration: Current Perspective

Given the evolution of the Mexican penitentiary system, a treatment approach for the social reintegration of the sentenced person is assumed. In this sense, Article 199 of the Federal Penal Code (CPF) establishes that all penitentiary centers must have rehabilitation services for drug-dependent inmates. It is important to highlight that while being a drug-dependent person is not considered an antecedent of bad conduct within the execution of the sentence, the person must be required to attend treatment.

Likewise, Article 202 BIS establishes that those who commit child pornography crimes, in addition to the prison sentence, must undergo specialized treatment. The same is established for sex tourism crimes (Article 203-BIS), pederasty (Article 209-BIS), and family violence (Article 343-BIS). Treatment in freedom or semi-liberty is also contemplated for non-imputable persons (those deemed legally insane or incompetent) and those who have the habit or need to consume narcotics or psychotropics (Article 24). Naturally, for Article 24, certain conditions must be met, as established by the CPF, the National Code of Criminal Procedures (CNPP), and the National Law on the Execution of Sentences (LNEP).

Furthermore, the CNPP, in Article 195, establishes that a conditional suspension of the process may be requested if the accused participates in addiction prevention and treatment

programs. Article 410 manages the criteria for the individualization of the penal sanction, such as the physiological and psychological motives or conditions that led to the commission of the criminal conduct, in addition to age, educational level, social and cultural customs, among others. Numeral 109 indicates the right to urgent psychological attention and all necessary measures to prevent danger to physical and psychological integrity.

Consequently, the National Law on the Execution of Sentences (LNEP) had to be reviewed and reformed. It is organized into six titles, integrated by chapters and articles. For the case at hand—the participation of psychology within the penitentiary system—Titles Three through Six integrate observation, evaluation, diagnosis, and treatment from a psychological perspective in dialogue and interdisciplinary work, since various sciences act as auxiliaries to achieve the basis for social reintegration and ensure the person does not reoffend.

Continuing with the LNEP, Article 9 establishes the rights of Persons Deprived of Liberty (PPL), including receiving treatment for integral health care, nutritious food, non-discrimination, and physical, sexual, moral, and psychological integrity, among others. For this, penitentiary authorities must present a specialized diagnosis containing, at a minimum, physical, mental, and chronic ailments, so the Execution Judge may determine what corresponds.

Additionally, Article 33 of the LNEP establishes that penitentiary centers must have at least 23 protocols to guarantee dignified and safe internment conditions for the population deprived of liberty, as well as the safety and well-being of the staff and other persons entering the centers. In the case of this study, required protocols include the safekeeping of persons deprived of liberty in situations of special vulnerability, addiction treatment, prevention of sexual aggression, and suicide prevention, among others. Penitentiary authorities must also perform diagnostic evaluations to establish an individualized treatment plan for each person deprived of liberty.

Chapter Eight of the LNEP alludes to Therapeutic Justice as a benefit of sentence substitution for people who committed non-violent property crimes, who have substance dependence, and where this was the main cause of the crime. It establishes procedural, conditional, and treatment bases. Within the latter, intervention measures include psycho-

pharmacological treatment, individual, group, and family psychotherapy, family groups, mutual aid, psycho-educational, cultural, and sports activities, occupational therapy, and job training. It even marks the treatment stages (Article 175): initial diagnosis, treatment plan design, clinical treatment, rehabilitation and community integration, evaluation, and follow-up.

Therefore, it is necessary to have staff trained technically, methodologically, scientifically, and professionally to provide treatment for addictions, personality disorders, chronic degenerative diseases, psychiatric disorders, and so on. In this regard, the works of Arroyo & Ortega (2009) and Fazel et al. (2016) have documented the prevalence of mental illnesses in PPL related to anxiety disorders, personality disorders, and substance abuse, which represent mortality risks due to violence, suicide, and self-harm.

Regarding this, in a sample of Mexican PPL, it was found that 19.9% are at risk of suicide, and that the risk of suicide is higher in prisons than in the general population (Santana-Campas et al., 2019). On the other hand, Santana-Campas and Juárez (2020) reported that 68% of the studied sample reported drug use. This exemplifies the need for specialized treatment required in treatment centers, in addition to the challenges implied by dual pathologies and comorbidity with drug use, as well as treatments for sexual abuse, pornography, and family violence, among others referred to by the cited laws.

To monitor the application of the protocols mentioned in the LNEP, treatment plans, respect for human rights, and generally all principles that should govern the Mexican Penitentiary System, the National Human Rights Commission (CNDH) implemented the National Penitentiary Supervision Diagnosis (DNSP). This evaluation is carried out annually and is organized into five axes: 1) Aspects guaranteeing the integrity of persons deprived of liberty; 2) Aspects guaranteeing a dignified stay; 3) Governance conditions; 4) Social Reintegration of persons deprived of liberty; and 5) Groups of persons deprived of liberty with specific needs (DNSP, 2019, p. 6).

To evaluate these axes, the CNDH conducts interviews with prison officials and persons deprived of liberty. Likewise, the institution analyzed the care and treatment model for persons with drug dependence in state prisons, finding that 30% do not have specialized

drug dependence prevention programs, 40% lack detoxification programs, and across all Penitentiary Centers, there were only 28 professional programs for addiction treatment and mental health problems.

Of the 20 federal centers existing in 2016, only eight did not have programs for addiction prevention and voluntary detoxification. This is a serious problem, given that 94% of men and 6% of women in prisons have some degree of drug dependence, and the most frequently consumed drugs are marijuana, cocaine, solvents, methamphetamines, crystal meth/crack, and heroin (CNDH, 2017).

The foregoing evidences that much remains to be done for the Mexican Penitentiary System to fulfill its Constitutional mandate of social reintegration and ensuring the sentenced person does not reoffend. To achieve this, it must be organized based on respect for human rights, job training, work, education, health, and sport.

Challenges of Psychology in the Penitentiary System

Penitentiary centers are in conditions of overcrowding, overpopulation, and a general lack of personnel, and psychology is no exception. For example, consider the Men's Preventive Prison "Oriente" in Mexico City, which in 2021 had 8,196 inmates despite a capacity of 6,208. Assuming there are 10 psychologists (which in most cases is fewer), each psychologist would have to attend to 819.6 persons deprived of liberty. Knowing that a psychotherapeutic process (at least in the initial stage) recommends one session per week, they would have to attend to 204.9 people per day, which is impossible.

In addition to all administrative activities and reports that must be performed—such as initial personality assessments, evaluations for treatment plans, treatment follow-up evaluations (every six months per inmate), evaluations for early release, and evaluations for suspension of the process—there are also the programs that must operate for vulnerable groups and the protocols mentioned in the LNEP. This is just to mention some of the functions of penitentiary psychologists.

Given this scenario, the main strategy for attention and therapeutic work is group psychotherapy, with greater emphasis on formative-informative groups. It should not be

forgotten that one of the constants in the DNSP is the lack of training, and psychologists are no exception. Therefore, one of the great challenges of penitentiary psychology is the specialization of psychology staff for the treatment of personality and psychiatric disorders, addictions, mood disorders, aggressive and violent behavior, family violence, etc.

Added to the challenge of specialization is another related to the solidity of theories, diagnostic instruments, and psychotherapies that have demonstrated effectiveness in this population. One must not forget the cautionary statement for the forensic use of the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) as it represents a reference for courts and tribunals (American Psychiatric Association [APA]).

In the same sense, there is a precautionary note in the World Health Organization's International Classification of Diseases. This highlights the need to search for, create, or adapt all diagnostic criteria, instruments, and psychotherapies to the forensic population, to have greater scientific evidence of the effectiveness of interventions from psychology in the penitentiary and forensic field. This is a major challenge for higher education institutions: to create programs that address this need and, of course, to encourage both basic and applied research to contribute to the construction of knowledge in this area.

Another challenge concerns the mental health care of penitentiary staff, such as psychologists. Due to the characteristics of the system, which results in the depersonalization of staff and inmates, the risk increases as the years pass and the penitentiary population grows. In the words of Goffman (1984), this represents a totalizing tendency by absorbing the interest and time of those involved regarding other daily activities.

Furthermore, two groups emerge from stereotypes: 1) Penitentiary staff who perceive themselves as just and superior, and who usually consider PPL as cruel and undeserving of trust; and 2) PPL who identify penitentiary staff as mean, arrogant, and despotic, fostering feelings of inferiority, guilt, weakness, and censure. This affects penitentiary treatment and, more specifically, the work of psychologists, where inmates view them as part of the system, of the structures of power and control, influencing psychotherapeutic processes negatively.

Conclusions and Final Reflections

Penitentiary Psychology has a clear object of study and application; therefore, it differs from Legal and Forensic Psychology and should not be confused with them. Although opinions may exist that Penitentiary Psychology is a branch of Forensic and Legal Psychology, let us remember that the field of action for Penitentiary Psychology is unique and exclusive to penitentiary centers. Furthermore, the participation of private practice psychologists as external or private experts in this context is very unlikely, whereas in Forensic and Legal Psychology, there is a wide range of action possibilities for both public and private psychologists.

The Mexican Penitentiary System is organized based on job training, work, education, sport, health, and respect for human rights. However, much work remains to be done in the legislative and executive spheres, as well as in public policy, regarding the provision of sufficient trained personnel to meet the care and research needs in this context.

In higher education institutions with psychology programs, it is important to include subjects on Legal, Forensic, and Penitentiary Psychology in the basic curriculum. This is because, according to current legislation, only a degree and professional license are required to work in these areas. Consequently, methodological, diagnostic, and prognostic errors are often committed, as well as errors in the use of mental disorder classification manuals, due to a lack of knowledge in these specific fields.

Within Penitentiary Systems, there should be mental and psychological health care programs for penitentiary staff (psychologists, doctors, social workers, educators, operational staff, etc.). If the goal is to humanize prisons, one should start with the staff, in addition to protecting them from the effects of the prison as a "total institution."

While the area of health has been made visible in current legislation applicable to the Penitentiary System and Social Reintegration, this follows a medical-clinical model. While there is nothing inherently wrong with this, there is a need to make mental and psychological health visible as another of the guiding axes of Social Reintegration, ensuring they are not left merely to interpretation or remain blurred.

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