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Overuse of the Criminal Justice System: Rules and Practices

Abstract

The study proposes a characterization of contemporary criminal justice policy in accordance to the overuse that public authorities make of crime control interventions. As a guideline for describing and evaluating the overuse, the article chooses the social exclusion effects that this excess brings about on three groups subjected to crime control, that is, suspects, offenders and ex-offenders. Once justified the selection of this criterion as more comprehensive than the usual one of punitiveness, the paper analyzes in 11 subsections a set of punitive rules and practices which are more and more rooted in our crime control systems and comprise the areas of criminalization, prosecution and enforcement of sanctions. In each subsection, the author shows the relevant social exclusionary effects that those punitive rules and practices entail.
Keywords: Criminal justice policy, overuse of criminal system, punitiveness, social inclusion / exclusion, punitive rules and practices.

I. An analytical approach.

For correctly assessing the extent to which a national crime control system overuses the punitive means at their disposal, it has, first, to be established which ones are the legitimate goals the system must pursue through those means. Therefore, we need to adopt a precise analytical approach before being able to evaluate the abuses into which crime control actors could be falling. This topic is dealt with in the following two sections.

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1. Punitive moderation as an objective

Current criminal policy has a strong tendency to compare different national crime control systems from the single perspective of their more or less punitiveness. Punitive rigorousness or moderation has become the point of reference for most comparative analyses of ongoing criminal policy in different countries. Moreover, this approach has gradually gained significance as an evaluating criterion of the diverse national crime policies.

This framework assumes that national crime control systems, as they develop the necessary social interventions to obtain their preventive aims, should make sure that crime control does not inflict more social suffering than strictly necessary. It means that criminalization should not go beyond what might be considered vital for protecting essential community interests, and that those, either suspects or offenders, subjected to criminal law enforcement bodies will experience moderate and proportional distress as a result of their behavior[1]. This objective is so relevant that it justifies that comparative criminal policy evaluations are guided in accordance of the degree to which different national systems come closer to an optimum of punitive moderation, notwithstanding the achievement of preventive goals.

It is important to question why, despite the strong moral and cultural dependence to which the ideas of criminal restraint or rigor are subjected to, this approach has got itself into such a big predicament[2]. Some reasons are worth mentioning: The hypothesis that most Western countries are moving towards a progressive harshening of the penal system has been very suggestive, and has permeated the criminal justice policy discussion[3]. In turn, a program aimed at reducing the punitive pressure commonly has

1 On the idea of punitiveness see, among others, Nelken, D, "When is a society non-punitive?. The Italian case", in Pratt J, Brown D, Brown M, Hallsworth S, Morrison W, *The New Punitiveness.* Cullompton: Willan Publishing, 2005, p. 219-222; Cavadino, M, Dignan, J, *Penal Systems*. London: Sage Publications. 2006, p. xii; Roché, S, "Criminal justice policy in France", in Tonry M, ed. *Crime, Punishment and Politics in Comparative Perspective.* Chicago: University of Chicago Press. 2007, p. 474-476, 494; Lappi-Seppälä, T, "Trust, Welfare, and Political Culture", in Tonry M ed. *Crime and Justice*. n. 37. Chicago: University of Chicago Press. 2008, p. 320-321; del Rosal Blasco, B, "¿Hacia el derecho penal de la posmodernidad?", *Revista electrónica de ciencia penal y criminología*. 2009, 11-08, p. 14-19.

2 See, among many others, Hinds, L, "Crime control in Western countries", in Pratt J, Brown D, Brown M, Hallsworth S, Morrison W. *The New,* cit. p. 47-65; Cavadino / Dignan, cit. p. 3-49; Downes, D, Hansen, K, "Welfare and punishment in comparative perspective", in Amstrong S, McAra L eds. *Perspectives on Punishment.* Oxford: Oxford University Press, 2006, p. 133, 143-153; Tonry. M, "Determinants of penal policies", in Tonry M, ed. *Crime, Punishment and Politics,* cit, p. 7-13; Lappi-Seppälä, T, "Trust, Welfare," cit; Larrauri Pijoan, E, "La economía política del castigo", *Revista electrónica de ciencia penal y criminología*. 2009, 11-06, p. 1-22.

3 See about the origin and evolution of this hypothesis, Díez-Ripollés, JL, "Social inclusion and comparative criminal justice policy", *Journal of Scandinavian Studies in Criminology and Crime Prevention,* vol. 14, 2013, p. 62-63; same author, "La dimensión inclusión / exclusión social como guía de la política criminal comparada". *Revista electrónica de ciencia penal y criminología.* 2011, 13-12, p. 2-3.

support amongst the field of criminal policy reflection. In addition, it has influenced the conceptual clarity and strength of this view, suggesting that a few indicators can explain it. And indeed we cannot forget that from the outset it has used easily accessible indicators of punitiveness, which has certainly increased its appeal.

However, drawing up descriptive and evaluative frameworks of comparative criminal policy on lesser or higher punitiveness achieved by different national systems entails a number of significant theoretical and methodological shortcomings.

From a theoretical point of view, the objective of punitive moderation places itself in an ideologically poor context. In fact, one could consider it a humanitarian approach to criminal policy that is content with guaranteeing that any criminal justice system, regardless of the adopted criminal policy model or its intended goals, does not reach unacceptable levels of severity. Hence, it is said that it is an evaluative proposal which can only question policies that lead to an increase in criminal reactions but not those which maintain or diminish such reactions[4]. This does not mean that punitive moderation is a trivial attribute or goal. On the contrary, as we shall see, it is necessarily woven into a broader and more complex criminal policy program, of which it constitutes an essential element.

Actually, assigning punitive moderation a prominent role simply correlates to the adoption of procedural justice as a criminal policy model, in this case, emphasizing the expansion and intensity of criminal reactions. Yet, I have shown elsewhere that procedural justice, without prejudice to the essential role legal safeguards have to play in any criminal justice system, does not fulfill all the necessary criteria to become a real strategy against crime, in other words, a criminal policy model[5].

Legal and procedural guarantees erect themselves as a convincing and indispensable bulwark for the preservation of civil liberties and citizens' fundamental rights when exercising *ius puniendi*. Accordingly, procedural justice identifies well-founded principles for establishing legal interests to be protected by criminal law, for confining policing, for ascertaining the conceptual framework of criminal responsibility and its verification in criminal procedure, for shaping and for implementing the sanctions system. That is why it should be borne in mind and respected by policymakers as part of any given crime policy strategies. However, procedural justice lacks the necessary content to support a public policy such as criminal policy: this requires a strategy of social intervention which, integrated into the set of public policies, develops specific and measurable objectives aimed at preventing crime within acceptable social parameters. Procedural justice stops at the identification and strengthening of those parameters, that is to say, values, concepts and legal safeguards common to any rule-of-law-based crimi-

4 See Brodeur, JP, "Comparative penology in perspective, in Tonry ed. *Crime, Punishment and Politics,* cit. p. 67; Webster, CM, Doob, A, "Punitive trends and stable imprisonment rates in Canada, in Tonry M ed. *Ibídem,* p. 300-301.

5 See Díez-Ripollés, JL, "El nuevo modelo penal de la seguridad ciudadana", *Revista electrónica de ciencia penal y criminología.* 2004. 06-03, p. 31-33. Likewise Zaffaroni, R, *El enemigo en el derecho penal,* México DF: Ediciones Coyoacán, (2007, p. 184.

nal policy, and gives no indication as to which crime control strategy, among those compatible with such principles, one should select[6].

From a methodological point of view, the objective of punitive moderation uses too limited indicators. In fact, the most prominent indicator it uses is the incarceration rate per 100,000. There is no doubt, however, that this indicator has many virtues: it is easily accessible from various reliable sources; it provides long-standing data sets ranging over extended time periods; it focuses on the most severe punishment that a criminal law system may impose except for the death penalty; and it is usually a sanction which adequately reflects the outcome of penal policies and practices of particular criminal justice systems[7].

Nevertheless, criminological and criminal policy literature has repeatedly revealed its limitations. Above all, for unduly focusing the evaluation of the punitiveness of a criminal justice system on the use of imprisonment and thus marginalizing other relevant indicators, such as the number of criminal proceedings and sentences, the severity of the whole system of sanctions, the intensity and frequency of alternative sanctions to prison, and the rules on accumulation of penalties, amongst others.

In addition to this, as the relative use of prison in different national systems is measured in this way, the almost exclusive use of the incarceration rate per 100,000 inhabitants leaves out other relevant indicators, such as the average length of imposed prison sentences, the number of admissions to prison, the effective average stay in prison or the number of confinements outside the penal system. Moreover, one should not forget certain practices that may distort the figures, such as the use of waiting lists for admission into prison or the use of general pardons.[8]

Nevertheless, the preceding methodological critique does not question the undoubted significance that the rate of incarceration and its associated indicators have upon the

6 On the role of procedural justice for designing criminal policies, see Díez-Ripollés, JL, "El nuevo", cit. p. 31- 33. See also the Nordic debate contrasting offensive and defensive criminal policy, in Lahti, R, "Towards a rational and humane criminal policy", *Journal of Scandinavian Studies in Criminology and Crime Prevention.* 2000, 1, p. 147-148.

7 See, for all, Cavadino, M, Dignan, J, "Penal systems", cit. p. 4-5; Tonry. M, "Determinants", cit. p. 7.

8 See Balvig, F, "When law and order returned to Denmark". *Journal of Scandinavian Studies in Criminology and Crime Prevention.*2004, 5, p. 169; Hinds, L, "Crime control", cit. p. 47-48; Tonry, M, "Determinants", cit. p. 8-14; Tamarit Sumalla, JM, "Sistema de sanciones y política criminal", *Revista electrónica de ciencia penal y criminología.* 2007, 09-06, p. 6-27; Lappi-Seppälä, T, "Penal Policy in Scandinavia", in Tonry M, ed. *Crime, Punishment and Politics,* cit. p. 254-258, 266-270; Newburn, T, "Tough on crime: Penal policy in England and Wales", *Ibídem,* p. 435-436, 442-445; Snacken, S, "Penal policy and practice in Belgium", *Ibídem,* p. 145-150; Downes, D, "Visions of penal control in the Netherlands", *Ibídem,* p. 95-96, 97, 99; Levy, R, "Pardons and amnesties as policy instruments in contemporary France", *Ibídem,* Roché, S, "Criminal justice", cit. p. 502-511, 539-540; Pratt, J, "Scandinavian exceptionalism in an era of penal excess". I *British Journal of Criminology*, 2008, 48, p. 135; Nelken, D, *Comparative Criminal Justice*. Los Ángeles: Sage Publications. 2010, p. 61-66.
However, there have been relevant arguments on the remarkable ability of the incarceration rate to significantly subsume all those other useful prison indicators within itself. See Webster, CM, Doob, A, cit, p. 305-309; Lappi-Seppälä, T, "Trust, Welfare", cit. p. 322-332.

characterization of relevant aspects of a criminal justice system. What is being discussed are the unilateral visions that seek to evaluate an entire criminal justice system, or, in other words, its punitiveness, based solely on data concerning the rate of incarceration. This should not impede the point, however, that within more complex analytical models, this indicator is afforded a significant role

2. Social inclusion as an objective

Another way of conducting a comparative criminal policy description and evaluation is by studying the capacity of the corresponding national crime control systems to promote social inclusion and to minimize the social exclusion of those who come into conflict with criminal law[9]. This perspective is broader in scope than the previous one because it touches on the very core of the preventive objectives of the corresponding criminal policy model. It is no longer a question, as in the previous approach, to ensure that the preventive strategy chosen, whatever it is, remains within the limits of punitive moderation. The inclusion/exclusion social dimension expresses two different options of preventive strategy.

The aim of the inclusive approach is that the selection of any behavior to be punished is governed by impartial criteria on the social harmfulness of that behavior without any bias that might discriminate against specific social groups. Besides, the social-inclusive approach intends to ensure that suspects or offenders, after having been in direct contact with the crime control system, find themselves in the same or better individual and social conditions to voluntarily conduct their lives in accordance with the law.

The exclusionary alternative considers that the selection of any behavior to be punished must transcend the mere identification and control of socially harmful behaviors, and pursue additional controls of certain social groups. At the same time, it aims to ensure that suspects or offenders, after having been exposed to the crime control system, find themselves in individual and social conditions that make it more difficult for them to break the law or to avoid being caught[10].

As can be seen, while decisions on criminalization affect the society as a whole (even though certain groups or collectives may or may not receive equal treatment from the criminal justice system), at the time of prosecution and sanctioning those directly under penal control as suspects, offenders and ex-offenders are the ones who are mainly affected by the criminal justice system.

My analytical proposal is based on the fundamental hypothesis that an unbiased selection of social interests to be protected under criminal law, and the maintenance of a certain level of social inclusion for suspects, offenders and ex-offenders is one of the

9 See thoroughly on this approach, Díez-Ripollés, JL. "Social inclusion", cit. p. 62-78; same author, "La dimensión", cit. p. 1-36.

10 See also, Cavadino, M, Dignan, J, "Penal systems", cit. p. xiii, 28, 338-339; Brodeur, JP, "Comparative", cit. p. 54-60, 81-82.

most effective strategies for crime prevention in the mid and long-term. And on the correlative hypothesis that any form of social sectarianism in the selection of social interests to be protected under criminal law, as well as an increase or consolidation of the levels of social exclusion for suspects, offenders, and ex-offenders by the crime control system, will foster greater levels of crime in the mid and long term[11].

However, while the maximizations of either the inclusive or the exclusive criminal policy program go to a great extent in opposite directions[12], the use of the preferred inclusive program does not rule out some contents of the exclusive program. But the inclusive program is designed so that the combination that is adopted reflects an optimum level of social inclusion.

Moreover, social inclusion/exclusion and punitive moderation/ rigorousness are not two parallel dimensions. In fact, interests linked to obtaining social inclusion can sometimes lead to the establishment of more distressing criminal interventions or sanctions than those demanded by any interests linked to social exclusion. Anyway, it would be normal that social inclusion and punitive moderation maintain close and direct relationships. What happens is that the social inclusion/exclusion dimension incorporates a more complex and rich vision of criminal policy phenomena.

In any case, the two hypotheses mentioned are pending demonstration[13], which is not the goal of this work[14]. But we will only achieve progress in empirically testing the preventive performance of inclusive or exclusive models if we identify punitive rules and practices that unequivocally generate evidence of one or the other effect. Identifi-

11 In any case, I do not intend to formulate hypotheses about the effects that either an inclusive or an exclusive criminal policy model may have about setting up a more or less inclusive society in all its aspects. No doubt, the adopted criminal policy program will have an impact on society as a whole, but my approach is not intended to go so far. On the contrary, about the consolidation of an increasingly less inclusive society and the corresponding adaptation to it of criminal policy, see an overview in Brandáriz García, JA. *El gobierno de la penalidad. La complejidad de la política criminal contemporánea.* Madrid: Dykinson. 2014. p. 43-73.

12 It is evident that, concerning its intervention on suspects and offenders, the inclusive program is inspired by those penological trends that promote the rehabilitation of offenders, and that the exclusive program is centered on the incapacitation of the offender. However, we should be cautious in identifying these criminal policy models with certain specific-prevention theories of punishment. Their objectives are more far-reaching, easily outstrip the impact on the convicted offender, and determine the configuration of the whole system of crime control. Something that is evident when making decisions on criminalization

13 See some considerations about them, in Uggen, C, Manza, J, Thompson, M, "Citizenship, democracy and the civic reintegration of criminal offenders". *Annals of the American Academy of Political and Social Science,* 605, 2006, p. 303-304. A significant recent research in Savage, J, Bennett, R, Danner, M, "Economic assistance and crime: a cross-national investigation", *European journal of Criminology,* vol. 5-2, 2008, with further references to previous researches.

14 Let me remind the reader that any program must be assessed on the basis of its success to prevent crime in accordance with socially assumable parameters. It is not enough to be able to identify and significantly reduce the frequency and severity of behaviors that are seriously harmful to society, and therefore criminal. Preventive work within socially assumable parameters entails in our Western democracies full respect for the rule of law principles and legal safeguards. See Díez-Ripollés, JL. "Dimension", cit. p. 4-5.

cation of those rules and practices should not be carried out on a theoretical level, but by looking for punitive rules and practices common in the developed Western world, either because they are enforced to a different extent, or because their possible implementation belongs to contemporary criminal policy debate. And this is an endeavor to which this study on the overuse of criminal law can collaborate.

II. Overview of punitive rules and practices.

Here, we will list and briefly describe a set of punitive rules and practices that illustrate the ideas presented. They are grouped into three sections, which correspond to the three defining moments of criminal intervention: criminalization, prosecution, and enforcement of sanctions. Within each section, there are subgroups of rules or practices that are conceptually close or share a common area. The selection will be made taking into account the socially exclusionary effects that they are estimated to produce.

1. Criminalization.

a. Selecting punishable criminal behavior

It is well known that unrestrained criminal legislative activity has been taking place for at least a couple of decades in many countries. In many cases, the phenomenon cannot be justified by an increase in socially deviant behaviors or improved prevention. Rather, it is because criminal law has become a useful instrument for achieving political and social goals that have little or nothing to do with crime prevention. In addition, this abuse of criminal law has consequences for the quality of legislative decisions: As the predominant objective is to produce certain symbolic or appeasing effects on the population, we find opportunistic and short-term laws, without regard to any rational decision based on the social reality to be intervened nor taking into account previous successful crime control interventions.

This expansion of criminal legislation has both a quantitative and a qualitative aspect. The first is expressed in the constant expansion of the scope of existing criminal provisions and in the creation of new ones, accompanied by a tightening of the penal reaction. In contrast, the processes of decriminalization, frequent at other times, are conspicuous by their absence. Furthermore, the qualitative expansion is mainly concentrated on a few behaviors: Certainly, the increasingly profound social rejection of violent behavior expresses a clear reformist line, which also includes terrorist acts. But beyond that, it is instructive to look at the other preferred areas of intervention: Firstly, crimes of trafficking, mainly of drugs and people, and traditional property crimes, behaviors that are carried out mainly by socially disadvantaged groups such as minorities, the poor, foreigners or youth; secondly, sexual offences, which have a limited prevalence but are suitable for imposing on the perpetrators (who are akin to contemporary witches) a disproportionate criminal reaction, which is aimed at calming vari-

ous extended social anxieties and discomforts. In contrast, there are many legislative decisions that create a lenient criminal law for crimes committed by the upper-middle classes, by offenders who are socially well-integrated; this is a criminal law with escape routes such as self-regulation provisions, rewards for whistle-blowers and financial redresses, which make possible an exceptional and moderate use of prison.

This manipulation of criminal law for unrelated purposes ignores principles such as harmfulness, subsidiarity and proportionality and concentrates punitiveness on groups, who are either disadvantaged or symbolically useful. This does nothing to encourage, due to its arbitrary and socially skewed character, respect for criminal law nor, consequently, social inclusion[15].

b. Maximum penalties.

Without doubt, the death penalty, despite its persistence in a significant number of countries, some of them very prominent, is in decline worldwide. Some regions such as Europe or Latin America have virtually eradicated it, with some international regional organizations playing a very active role in this respect. However, there has been an increase in very long prison sentences. Many countries have passed legislation that permits custodial penalties in excess of 25 and even 30 years. In addition, life imprisonment is increasing, instead of being drawn back, and it is sometimes endorsed by prestigious international courts such as the European Court of Human Rights. The more severe laws on recidivism and the disproportionate reaction to certain crimes such as murder, terrorism, drug trafficking, organized crime and sexual offences, among others, means that life imprisonment is a very real option.

Long custodial penalties and life imprisonment aim mainly to incapacitate the offender, with an offender's rehabilitation and even the principle of proportionality being alien to them. Certainly, the review of life sentences, if progress is seen in the social reintegration of the offender, commonly occurs after a tariff that is rarely less than 20 years. But what cannot be ignored is the fact that the length of already elapsed deten-

15 See Haffke, B. *Tiefenpsychologie und Generalprävention.* Frankfurt: Verlag Sauerlander. 1976; Tham, H, "Law and order as a leftist project?". *Punishment and society.* Vol. 3(3). 2001 p. 409-426; Díez Ripollés, JL, Prieto del Pino, AM, Soto Navarro, S, *La política legislativa penal en Occidente. Una perspectiva comparada.* Valencia: Tirant. 2005; Lappi-Seppälä, T. "Penal Policy", cit. p. 234, 246, 252, 256; Snacken, S. "Penal policy ". cit. p. 150-172; Newburn, T. 'Tough on crime ". cit. p. 436-449; Dünkel, F, Lappi-Seppälä, T, Morgenstern, C, van Zyl Smit, D, "Gefangenenraten und Kriminalpolitik in Europa: Zusammenfassung und Schlussfolgerungen", in Dünkel, F, Lappi-Seppälä, T, Morgenstern, C, van Zyl Smit, D, *Kriminalität, Kriminalpolitik, strafrechtliche Sanktionspraxis und Gefangenenraten in europäischen Vergleich.* Band 2. Mönchengladbach: Forum Verlag Godesberg. 2010, p. 1042-1048; Díez-Ripollés, JL, García Pérez, O, coords. *La política legislativa penal iberoamericana en el cambio de siglo.* Montevideo: B de F. 2008; Díez-Ripollés, JL. "Rigorismo y reforma penal. Cuatro legislaturas homogéneas. Parte I y Parte II". *Boletín criminológico.* n.142-143. 2013; v. Hofer, H, Tham, H, "Punishment in Sweden: A changing penal landscape", in Ruggiero, V, Ryan, M, eds. *Punishment in Europe*. Palgrave McMillan, 2013, p. 46-49.

tion and the uncertainty about the review decision are factors that will discourage any effort on behalf of the prisoner in that regard. This means then that these penalties are a privileged instrument for the social exclusion of offenders through their direct segregation from society[16].

c. System of sanctions.

The dissocializing effects of imprisonment have long been well-established. However, notwithstanding the marked differences between incarceration rates in different regions and countries[17], imprisonment as a form of punishment is expanding. The maximum tariff of the prison penalties provided for many different crimes is often raised, something that occasionally entails higher prison sentences than reviewable life imprisonment sentences. It is also worth mentioning the renewed prestige and application of short prison terms, until recently discarded due to their negative effects on offenders' social reintegration, but which are now being reclaimed for their strong deterrent effects.

The optimism generated by the proliferation of penalties different to prison should be tempered, although these new sanctions are mainly designed in favor of the social reintegration of the offender. First of all, we must not overlook the fact that their growth, which has only just started, has been slowed in regions such as Latin America, encompassing the consolidation of punitiveness. In addition, the net widening effect gives rise to an expansion of crime control to areas where it did not exist or existed only occasionally, rather than replacing prison sentences with these non-custodial sentences. Meanwhile, although fines in wealthier societies have been credited with enough distressing effects as to successfully replace incarceration for many crimes, its disproportionate use can produce remarkable socially exclusionary effects. This can be the case if the use of fines too often leads to default imprisonment or creates insurmountable financial burdens over time. A good example of the ambivalence of these new penalties is the electronic monitoring of offenders: This practice ranges from be-

16 See Zimring, F. *The contradictions of American Capital Punishment.* Oxford, Oxford University Press, 2003; Penal Reform International. "Alternatives to the death penalty: the problems with life imprisonment". *Penal Reform Briefing.* N.1 (2007) www.penalreform.org. p. 1-11; Díez Ripollés, JL. "La política legislativa penal iberoamericana a principios del siglo XXI", in Díez-Ripollés, JL, García Pérez, O. *La política legislativa penal iberoamericana*. cit. p. 502-503; Arroyo, L, Biglino, P, Schabas eds. *Hacia la abolición universal de la pena capital.* Valencia, Tirant lo Blanch. 2010; Garland, D. *Peculiar institution: America´s death penalty in an age of abolition.* Cambridge, Mass: Harvard University Press. 2010; Cervelló Donderis, V. *Prisión perpetua y de larga duración.* Valencia: Tirant lo Blanch. 2015. p. 59-108; ECtHR, Judgment 12 February 2008 Kafkaris v. Cyprus, Judgment. 9 July 2013 Vinter y otros v. United Kingdom, Judgment 13 November 2014 Bodein v. France, Judgment 3 February 2015 Hutchinson v. United Kingdom.

17 On recent trends to a decrease in imprisonment rates in some regions, like Europe and USA, see Coyle, A, Fair, H, Jacobson, J, Walmsley, R, *Imprisonment Worldwide*, Policy Press, 2016.

ing a penalty that restrains the movements and activities of offenders without imprisoning them, to its use as a pervasive and insensitive tool of control of probationers and parolees, which exponentially increases the number of revocations and prison readmissions[18].

2. Prosecution.

a. Control of public spaces.

The city is a privileged place of social interaction that facilitates the relationship between acquaintances and strangers and, if well-organized, generates feelings of belonging, which is an important component of social integration. At the same time, the city can be organized to hinder or reduce social interaction between certain groups of residents, which then results in the segregation of such groups. Recently, the use of control techniques in public spaces has clearly intended to reduce any contact with those members of society whose mere appearance, lifestyle or socio-economic status makes them potential criminal suspects. These members of the community are not only excluded from certain public spaces, but limits are also placed on their mobility in the city and they are subjected to continuous monitoring.

It is noteworthy that in many countries, there has been a proliferation of gated communities: they break city networks and consequently reduce social interaction, and ensure that well-off sectors of society can voluntary segregate themselves away from the most disadvantaged groups in society. Elsewhere, there are urban plans that actively promote the segregation of different social strata within the same neighborhood, such as with gentrification, which albeit in a less obvious way produces similar results. With regard to social outcasts such as beggars, loiterers and the homeless, or people devoted to small-scale drug trafficking and street prostitution, the use of exclusion techniques in these spaces is more stringent. These include bans on accessing areas such as shopping centers or quarters, historic sites, transport hubs and parks among other places, giving rise to criminal sanctions for the repeated infringement of these bans. Not to mention public places and street furniture, which have been designed to prevent or

18 See Tonry, M, *Sentencing matters.* New York: Oxford University Press. 1996 p. 100-133; v. Hofer, H."Die elektronische Überwachung von Straftätern in Schweden", in Jehle, JM ed. *Täterbehandlung und neue Sanktionsformen. Kriminalpolitische Konzepte in Europa.* Mönchengladbach: Forum Verlag Godesberg, 2000, p. 349-358; Petersilia, J. *When prisoners come home. Parole and prisoner reentry.* New York: Oxford University Press. 2003. p. 88-92; Tamarit Sumalla, JM. "Sistema de sanciones". cit. p. 1-40; Díez Ripollés, JL. "La política legislativa penal iberoamericana a principios", cit. p. 501-504; Lindström, P, Leijonram, E, "The Swedish prison system", en Tak, P, Jendly, M, *Prison policy and prisoners' rights.* Nijmegen: Wolf Legal Publishers. 2008 p. 559-570; Harris, A, Evans, H, Beckett, K. "Drawing blood from stones: Legal debt and social inequality in the contemporary United States". *The American Journal of Sociology.* Vol. 115 n. 6, May 2010, p. 1753-1799; Aebi, M, Linde, A, Delgrande, N. "Is there a relationship between imprisonment and crime in Western Europe? *European Journal on Criminal Policy and Research.*Vol. 21 n. 3. 2015. p. 425-446.

make staying or gathering there uncomfortable. The explosion in the use of CCTV in public places and in private places of public access, despite being proven useless in preventing crime, is another key element in the conversion of public space to an inhospitable environment, where spontaneous or equivocal behavior must be avoided[19].

b. Legal safeguards.

The contemporary system of criminal liability has been built on a strict respect for the legal safeguards of any citizen under crime control. Fear that the authorities would take advantage of *ius puniendi* for curtailing individual rights was present at the very birth of modern criminal law in nineteenth century liberal societies. This fear kept conditioning the configuration of criminal law throughout the twentieth century, giving rise to ambitious programs like the continental legal theory of crime or the due process principles of American case law. This procedural justice develops citizens' trust in criminal law, whose legitimacy is acquired in this way, and is essential for its compliance. However, biased or exaggerated claims of effectiveness and efficacy, which have increasingly been applied to criminal law, have perceived legal safeguards as an obstacle. The growing reduction in these guarantees makes citizens under crime control significantly reluctant to trust the legal system, something that generates social alienation.

Reflecting this attitude is the disturbing trend of international legislation, supported by national laws, to blur significant gradings of criminal liability, such as those that distinguish conspiracy or attempt from commission of a crime, with a paradigmatic example being the configuration of the mere belonging to a criminal organization or a criminal group as an autonomous crime; or those that make a clear distinction between perpetration or complicity of a crime. Also, the recognition of legal safeguards is no longer uniform as certain offenders experience significant restrictions: Violent and sexual offenders, terrorists, members of criminal groups and recidivists bear the brunt of a

19 See Lynch. M, "From the punitive city to the gated community: security and segregation across the social and penal landscape", *University of Miami Law Review,* 56, (2001); Norris, C, McCahill, M, Wood, D, "Editorial. The growth of CCTV: a global perspective on the international diffusion of video surveillance in publicly accessible space". *Surveillance and society,* 2 (2/3), (2004); Midtveit, E, "Crime prevention and exclusion: from walls to opera music", *Journal of Scandinavian studies in criminology and crime prevention,* 6, (2005); Baumann, Z, *Modernidad líquida*. Buenos Aires: Fondo de cultura económica. 2006. 99-118, 190-192; Doherty, J., Busch-Geertsema, et al. "Homelessness and exclusion: regulating public space in European cities". *Surveillance and society,* 5 (3), (2008); Welsh, B, Farrington, D. *Making public places safer. Surveillance and crime prevention.* New York: Oxford University Press.2009; Beckett, K., Herbert, S. *Banished. The new social control in urban America.* New York: Oxford University Press. 2010; Medina Ariza, J. *Políticas y estrategias de prevención del delito y seguridad ciudadana.* Montevideo: B de F. 2011. p. 281-323; Björklund, F, Svenonius, Q. eds. *Videosurveillance and social control in a comparative perspective.* London: Routledge. 2013; Díez-Ripollés, JL, "El control de espacios públicos como técnica de exclusión social. Algunos contrastes regionales", *Revista española de investigación criminológica,* 4, 12 (2014).

criminal law that is more focused on criminals than on criminal behaviors. Moreover, we should be aware of the increasing effort required for making sure that a stigmatizing society fairly takes into account and evaluates behavioral disturbances that affect criminal liability. The additional contribution of a gimmicky criminal procedure, which is willing to give up essential elements of due process in exchange for alleged efficacy, must be addressed: This can be seen in the proliferation of speedy trials, the generalization of plea bargaining and the international admission of violations of the rule of evidence for forfeiture proceedings[20].

c. Youth justice.

The differentiated approach to juvenile offenders is a characteristic feature of any inclusive criminal policy. Minors can be strongly influenced as they are still forming their personality, so they provide crime control with the opportunity to focus on recovering or ensuring their proper socialization. However, over the last few decades of the twentieth century, the perception grew that the informality and discretion common to the welfare or protectionist approach towards juvenile offenders left them defenceless against a procedure and rulings, which, although usually well-meaning but paternalistic, ignored them as citizens. A new youth justice was proposed, which recognizes that minors require legal safeguards and due process without neglecting the predominant goal of social reintegration. Unfortunately, this transformation coincided with criminal policy trends towards punitiveness and social exclusion. The result has been a distortion of the initial objectives, so that the transition to a justice model has often meant the incorporation into youth justice of objectives and intervention techniques of adults' criminal law.

Firstly, this contamination can be seen in the evolution of age limits: Contrary to international legislation that considers a child to be a person under the age of 18, most jurisdictions have retained a more reduced minimum age for making possible the application of youth justice, with the effect that reactions that are increasingly punitive in

20 See Feeley, M, Simon, J, "The new penology: Notes on the emerging strategy of corrections and its implications". *Criminology.* Vol. 30. N. 4 (1992); United Nations General Assembly. *Resolution 55/25 of 15 November 2000. United Nations Convention against Transnational Organised Crime.* art. 2; Tyler, T. "Procedural justice, legitimacy and the effective rule of law". *Crime and justice.* Vol. 30. Chicago: University of Chicago Press. (2003). p. 283-357; Tonry, M. *Thinking about crime.* New York: Oxford University press. 2004. p. 141-150; Díez-Ripollés, JL."De la sociedad del riesgo a la seguridad ciudadana: un debate desenfocado". *Revista electrónica de ciencia penal y criminología.* Vol. 07-01. (2005), p. 22-31; Corrado, M.L. "Sex offenders, unlawful combatants and preventive detention". *North Carolina Law Review.* 84 (2005-2006). p. 102-103; Lappi-Seppälä, T. "Trust, welfare", cit. p.361-365, 375-377; Díez-Ripollés, JL. "Tendencias político-criminales en materia de drogas", in Díez Ripollés, JL. *Política criminal y derecho penal. Estudios.* 2ª edic. Valencia: Tirant lo Blanch. 2013. p. 850-852; European Parliament and Council. *Directive UE 2014/42 of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union,* arts. 4 a 6.

nature are applied at very early ages. At the other extreme, there is the frequent establishment of legal provisions allowing the juvenile court to refer the case to an adult court, given the personal conditions of the minor or the kind of offence. Furthermore, we must not forget the increasing questioning of the special regime for young adults. Secondly, there has been a noticeable hardening in the system of sanctions for juvenile offenders, no matter whether they are considered penalties or not. With custodial sentences being handed down in a greater number of crimes, such custodies are increasingly enforced under closed regimes, and they extend for longer periods. Finally, it is more and more common that certain juvenile offenders serve their sentence from the beginning, or at least as soon as they become young adults, in adult prisons[21].

d. Sentencing system.

The system of sentencing is undergoing substantial changes in a significant number of jurisdictions. Aggravating circumstances due to recidivism or repeated offending are on the increase everywhere. Concerns about the violation that such aggravating circumstances entail for the principle of punishment for the act committed, which once recommended the abolition of these circumstances or, at least, their transformation in discretionary dispositions, have lost support. Instead, ground has been yielded to legal reforms that provide an increase in the effects of aggravating circumstances as the offender repeatedly returns to commit crimes; the "three strikes and you're out" laws in the US have been at the forefront of this change. On the other hand, it does not seem an exaggeration to say that one of the most repeated patterns in numerous recent legal reforms is the reduction in the scope of judicial discretion in setting tariffs. This can be achieved by various methods, among which may be the continuous raising of the mandatory minimum for penalties to be imposed, or complex and dysfunctional sentencing guidelines that make the judge seem little more than an accountant. This distrust shown for expertise in sentencing projects its influence on the corrections system through the so-called truth-in-sentencing: Their provisions curtail the flexibility of the prison regime, and maintain a harsh serving of the sentence over a prolonged period of time, regardless of the personal conditions of the inmates.

Again, all this is nothing but a corollary of the prominence acquired by the new demands for the social segregation of offenders. They are able to disregard the principle

21 See ECtHR, Judgment 16 December 1999 T. v. United Kingdom, Judgment S.C. v. United Kingdom 15 June 2004; Tonry, M, Doob, A. eds. *Youth crime and youth justice: Comparative and cross-national perspectives. Crime and justice. A review of research.* Vol.31. Chicago: The University of Chicago Press. 2004; Tonry, M. *Thinking* cit p. 150-156; Vázquez González, C. *Derecho penal juvenil europeo.* Madrid: Dykinson. 2005; Cavadino, M, Dignan, J. *Penal systems*. cit. p.199-303; Muncie, J, Goldson, B, eds. *Comparative Youth Justice.* London: Sage Publications. 2006; Commitee on the Rights of the Child. United Nations. *General Comment no. 10. Children's rights in juvenile justice*. 2007. CRC/C/GC/10. p. 11-13; González Tascón, M-M. *El tratamiento de la delincuencia juvenil en la Unión europea.* Valladolid: Lex Nova. 2010. p. 119-365.

of proportionality when what is intended is to keep the repeat offender away from social life for as long as possible, as plainly accepted by certain supreme courts. They are the ones who reject judicial expertise in sentencing, because it excessively prioritizes the offender's needs for rehabilitation as opposed to retributive and incapacity requirements. And they are the ones who are not willing to accommodate the serving of the sentence to the personal conditions of inmates, at least until they have spent some time in social isolation[22].

e. Pre-trial and preventive detention.

The detention of persons suspected of having committed an offence, as well as of those who, after serving their prison term, are still considered criminally dangerous, has experienced notable recent abuses. On the one hand, we must mention the anti-terrorism legislation enacted in many different countries after the Islamist attacks of September 2011 in the United States and which was later replicated in other places on the planet; this emergency legislation permits indefinite detention or disproportionately prolonged detention of people without charge; the persistence of Guantanamo Bay detention center is its most conspicuous example. But we must not forget the intensive use of remand detention in a number of legal systems, which is singularly affecting the duration and reasons of detention together with the enforcement conditions. On the other hand, detentions after the completion of the sentence are going through a phase of re-legitimization. This allows authorities to legally establish new cases of dangerousness, to admit indefinite detention, and to expand the use of preventive detention to new jurisdictions

The detention of suspects, especially if no charges have been brought against them, although it may be justified in certain cases, must not only be exceptional, but also strictly linked to ensuring prosecution. Overcoming these limits erodes the trust in the criminal justice system of those affected, who become alienated from its values and internalize their rejection to criminal justice. Detentions after completion of the sentence, due to alleged criminal dangerousness, are unjustified, and especially when they can potentially be indefinite: It is unfair to take an uncertain prognosis on the already ex-offender and it means the assumption of the failure of the prison system to provide

22 See Tonry, M. *Sentencing matters.*cit.; Zimring, F, Hawkins, G, Kamin, S. *Punishment and democracy. Three strikes and you're out in California.* New York: Oxford University Press. 2001; US Supreme Court. *Ewing v. California,* 538 US 11, 2003, *Lockyer v. Andrade*, 538 US 63, 2003; Whitman, J. *Harsh Justice.* New York: Oxford University Press. 2003. p. 53-56; Castiñeira, M-T, Ragues, R. "Three strikes. El principio de proporcionalidad en la jurisprudencia del tribunal supremo de los Estados Unidos". *Revista electrónica de derecho penal y criminología.* n.14. (2004), p. 59-85; Brodeur, J-P. "Comparative penology", cit. p. 55-60; Tonry, M. "Determinants", cit. p. 27-30; Dünkel, F, Lappi-Seppälä, T, Morgenstern, C, van Zyl Smit, D, "Gefangenenraten und Kriminalpolitik", cit. p. 1046-1048; Zysman Quirós, D. *Castigo y determinación de la pena en Estados Unidos. Un estudio sobre las United States Sentencing Guidelines.* Madrid: Marcial Pons. 2013.

effective ways of rehabilitation. In any case, the chosen option keeps the ex-offender temporarily or permanently socially excluded[23].

3. Enforcement of sanctions.

a. Prison regime.

During the last third of the twentieth century, prison regimes were inspired by two central ideas. Prison conditions should safeguard the greatest possible number of inmate rights not directly restricted by the sentence; and inmates, notwithstanding the abandonment of the treatment model in countries where it once was rooted, should have access to rehabilitation treatments and social reintegration assistance while serving their sentence. Developments in the last twenty years have gone through quite different routes: the social segregation and the incapacitation of inmates have gained rapid prominence, together with the reaffirmation of imprisonment as a retributive and deterrent measure. It has been said that the prison system resembles a waste management institution, where human waste – mostly from socially disadvantaged groups, the poor and illegal foreign residents – is handled and processed.

This change in emphasis has allowed significant modifications of the penitentiary framework: the emergence of private prisons that are scarcely committed to more than inmates' custody; an increase in the capacity of new prison facilities; and the normalization of maximum security and supermax security prisons, where draconian prison regimes are enforced not just for very dangerous or disruptive inmates but are also the first destination for other offenders or those with certain sentences. The living conditions of inmates are another phenomenon to consider. Surely, prison overcrowding is a persistent reality in both rich and poor countries and, as a consequence, it is not surprising that penitentiary administration must proceed on the basis of controlled releases mainly aimed at keeping the facilities in good conditions of operation, if not, in extreme cases, it leaves inmates themselves to take over the internal management of the prison. But more revealing is the development of policies that intentionally seek to worsen the material and regime conditions of prisoners in order to reinforce the whole distressing and stigmatizing effect of any stay in prison. Also, while there has been a growth in victims' rights to have a say in the offender's sentencing and prison enforcement conditions in accordance with their interests, there has been a decrease in the inmates' abilities to protect their rights for fair living and regime conditions. Thus, it is

23 See Corrado, M.L. "Sex offenders", cit, p. 77-122; Vervaele, J. *La legislación antiterrorista en Estados Unidos. ¿Inter arma silent leges?.* Buenos Aires: Editores del Puerto. 2007. p. 52-56, 68-75, 86-98; Viano, E. "Guantánamo: the crucible for human and constitutional rights in XXI century USA", in Tak, P, Jendly, M, *Prison policy* cit. p. 75-129; van Kempen PH ed. *Pre-trial detention. Human rights, criminal procedural law and penitentiary law, comparative law.* Cambridge: Intersentia. 2012. p. 3-46, Part Three p. 225-819; van Kempen, P.H, Young, W. eds. *Prevention of reoffending. The value of rehabilitation and the management of high-risk offenders.* Cambridge:.Intersentia. 2014. Part Three. p. 145-335.

common that inmates confront serious, sometimes insurmountable, obstacles for appealing against penitentiary decisions about living conditions, or related to the regime or discipline, not to mention the frequent denial of inmates' rights to associate or to file a collective claim. Also, by making use of the theory of inherent limitations, prison authorities deprive inmates of rights other than those related to the conviction based on organizational arguments. Finally, the widespread crisis of parole is worth noting: conditions attached to its obtaining or maintenance are increasingly stringent, revocations are rising, and certain crimes and offenders are beforehand generally not eligible[24].

b. Legal and social status of offenders and ex-offenders.

Deprivation of political, civil and social rights for offenders and ex-offenders is increasingly widespread, though its intensity is different according to geographical areas and legal traditions. In other words, judicial or administrative authorities can impose disqualifications on these rights by the mere fact of a conviction, even if those disqualifications are not linked to the nature of the crime committed or the dangerousness of the offender. These disabilities can have effects after the completion of a sentence over significant periods or time, sometimes for life. Among the political rights that are affected are enfranchisement, jury service, the right to legally reside in a foreign country and eligibility for naturalization. Among the civil rights that may be affected are parental rights, adoption of children, access to public service positions or many kinds of private employment, public contracting or attaining a driving licence. Offenders may also be deprived of social rights such as the eligibility for social welfare benefits, public housing or student financial aid, the access to health prevention programs or to receive compensation as a victim of a crime. These collateral sanctions until recently have not been carefully considered by legal practitioners, and offenders and ex-offenders are often only aware of them when they try to use or access them. They have been called *invisible punishments*.

Given their indiscriminate application, one can only think of it as a new dimension of social incapacitation. Offenders and ex-offenders must have a political, civil and social status inferior to other citizens; they must be placed in a permanent situation of stigmatization that keeps them on the margins of society and be governed through

24 See Kurki, L, Morris, N. "The purposes, practices and problems of supermax prisons", in Tonry, M. ed. *Crime and justice. A review of research.* Vol. 28. 2001 p. 385-421; van Zyl Smit, D, Dünkel, F. *Imprisonment today and tomorrow. International perspectives on prisoner's rights and prison conditions.* The Hague: Kluwer Law international. 2001; Whitman, J. *Harsh Justice,* cit. p. 19-25, 56-62, 70-80; Tonry, M. *Thinking* cit. p. 156-163, 183; Jacobs, J. "Prison reform amid the ruins of prisoner's rights", in Tonry, M ed. *The future of imprisonment.* New York: Oxford University Press. 2004. p. 179-194; Simon, J. *Governing through crime.* New York: Oxford University Press. 2007 p. 141-144, 152-175; del Rosal Blasco, B, "¿Hacia el derecho penal?", cit. p. 9-10; Tak, P, Jendly, M, eds. *Prison policy* cit.; US Supreme Court. *Brown v. Plata.* 563 US__2011, *Brown v. Plata* 570 US__2013.

crime control institutions. To this end, the community involves social actors and institutions in its governance that are not originally related to crime control. The persistent exclusion of these people from social activities that are unrelated to the crime significantly hinders their social reintegration – not to mention their families – and it seems no coincidence that, given the prevalence of crime, these disqualifications are concentrated in socio-economically disadvantaged groups[25].

c. Police and criminal records.

The police, criminal and prison records of suspects, or those who have been prosecuted or convicted of crimes have grown in substance and volume, thanks to the ubiquitous use of new electronic media. New registries, such as criminal intelligence databases or administrative infractions repositories, also take on a new role. The extension of the terms for the limitation of crimes, as well as for sealing or expungement of criminal records, together with the added difficulty of actually getting records sealed or expunged, keeps them operative for longer and longer periods. Although there are significant differences depending on the type of records and national traditions, the fact is that conviction records are becoming available in greater numbers and more easily to non-penal institutions, businesses or private organizations, and individuals. In fact, a clean criminal record is a requirement prescribed by law for a progressive number of jobs, and its demand has established itself as a good business practice. The impact on stigmatized offenders, especially sex offenders and other types of offenders that are gradually being included, is more than just about appearing on a register: they are forced, sometimes for life, to provide accurate information on their whereabouts after conviction for the purpose of public knowledge.

Criminal records and community notifications thus become the contemporary shaming penalties, as has been explicitly demanded by some scholars and legal practitioners. The rights to honor, privacy and personal data protection, as well as the social interest in the social reintegration of offenders, are cast aside. In turn, we not only find an exaggerated form of freedom of speech, but also the transfer to the community and

25 See Mauer, M, Chesney-Lind, M. eds. *Invisible punishment. The collateral consequences of mass imprisonment,* New York: The New Press, 2002; Petersilia, J. *When prisoners come home* cit. p. 105-137; Mele, C, Miller, T. eds. *Civil penalties, social consequences,* New York: Routledge, 2005; Uggen, C, Manza, J, Thompson, M, "Citizenship, democracy", cit; Manza, J. / Uggen, C. *Locked out. Felon disenfranchisement and American democracy.* New York: Oxford University Press, 2008; Ewald, A, Rottinghaus, B, eds. *Criminal disenfranchisement in an international perspective*, New York: Cambridge University Press, 2009; Pinard, M. "Collateral consequences of criminal convictions: confronting issues of race and dignity", *New York University Law Review,* Vol. 85, (2010); Díez-Ripollés, JL. "Sanciones adicionales a delincuentes y exdelincuentes. Contrastes entre Estados Unidos de América y países nórdicos europeos". *Indret.*4, (2014); Jacobs, J. *The eternal criminal record,* Cambridge: Harvard University Press 2015, p. 246-300.

individuals of the responsibility to assess ex-offenders' dangerousness, together with the overvaluation of social stigmatization as a social control mechanism[26].

III. Conclusions.

The chosen analytical approach has allowed us to integrate into a single conceptual framework, both descriptive and evaluative, numerous punitive rules and practices whose actual or potential application characterizes the current evolution of contemporary criminal policy and conditions the doctrinal debate. Given that this approach is based on a clear strategic alternative to prevent crime, it can develop a discourse that identifies large areas for criminal intervention and within them, diverse rules and practices that acquire a clear sense under such an analytical approach. This sense is no longer constrained to generic considerations on whether an expansive or rigorous use of criminal instruments.

Previous formulations of this approach have focused on identifying indicators to highlight differences between different national criminal policy models according to the social inclusion / social exclusion dimension[27]. In this case, we have used one of the poles of the strategic alternative, which of social exclusion, to group together rules and practices whose progressive consolidation in our systems of penal control will mean a clear evolution towards an exclusionary criminal policy model and, consequently, to an overuse of criminal intervention means. Thus, this social inclusion / social exclusion dimension becomes useful beyond its rich ideological content when discriminating between different criminal policy models.

Selected aspects correspond largely with those already chosen to confront the exclusionary and inclusive criminal policy models, but this time, an aspect related to the selection of criminal behaviors has been added, and any of the other aspects already considered has been divided into two. In addition, they have still all been grouped according to the three most important phases of criminal intervention: criminalization, prosecution and enforcement of penalties.

26 See Louks, N, Lyner, O, Sullivan, T, "The employment of people with criminal records in the European Union", *European Journal on Criminal Policy and Research,* 6 (1998); Petersilia, J, *When prisoners come,* cit. p. 106-112, 127-129; Petrunik, M, Deutschmann, L, "The exclusion-inclusion spectrum in state and community response to sex offenders in Anglo-American and European jurisdictions", *International Journal of Offender Therapy and Comparative Criminology,* vol 52, 5 (2008); Wacquant, L. *Punishing the poor. The neoliberal government of social insecurity,* Durham: Duke University Press, 2009, p. 208-239; Thomas, T, "European developments in sex offender registration and monitoring", *European Journal of Crime, Criminal Law and Criminal Justice*, 18 (2010); Larrauri Pijoan. E, "Legal protection against criminal background checks in Europe", *Punishment and Society. 16 (1),* (2014); Harris, A, Levenson, J, Ackermann, A. "Registered sex offenders in the United States: Behind the numbers", *Crime and Delinquency,* vol. 60 (1). (2014); Jacobs, J, *The eternal criminal record*, cit; Fernández-Pacheco, C. "Intimidad y publicidad de los antecedentes penales. Los registros para delincuentes sexuales", en Doval Pais, A dr. *Nuevos límites penales para la autonomía individual y la intimidad,* Cizur Menor: Thomson Reuters, 2015.

27 See Díez-Ripollés, JL, "Social inclusion", cit, p. 68-71.

At no time has there been an attempt to enter into the analysis of the political, socio-economic or criminological causes that may be influencing the evolution towards this increasingly interventionist criminal law.

However, the catalog of rules and practices that has been identified is large, well interconnected and consistent with the analytical approach developed. In that sense, it offers important clues to the way forward to make decisions against the evolution that has been outlined.