

DEBATES ON THE FAILURE OF THE PENAL SYSTEM IN ECUADOR DURING THE LIBERAL STATE , 1910-1920

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SUMMARY

In this conference the debates of Ecuadorian jurists on the failure of the functioning of the penal system during the liberal State at the beginning of the Twentieth century are presented, taking as a starting point arguments such as the impossibility to “regenerate the criminales” and ideas on the juridical positivism which already conceived prisons as “schools of crime”.

A critical revision of the debates of the era indicates that in neither in social nor penal terms prison was functional, a revisión crítica de los debates de la época indican que la cárcel no era funcional en términos. On one hand, the liberal reforms, supposedly focused on the recognition of the rights of the penitentiary population (such as education in the prison school and labour workshops), really constituted rhetorics with fragile policies for the social reintegration of prisoners; and, on the other hand, the debates reveal the discriminatory view of jurists, spokesmen of the authorities of the State and the power groups who, beyond conceiving the penitentiary population as subjects of rights – though in an emerging way in the liberal State – were aiming at hardening the punishments and the experimentation of new penitentiary systems that could guarantee the best isolation of individuals considered dangerous, in a context in which new types of crimes had appeared linked to the emerging of modernization processes and bigger poverty, due to the effects of decrease of sales cocoa abroad. In this context poverty is criminalized; in the middle of a sense of insecurity and the necessity to protect the private property from the social elite, the hardening of the punishments and the bigger security in prisons were designed as indispensable measures for social control.

During the second decade of the Twentieth century jurists recognized that the panoptic system, adopted in the only National Penitentiary founded in 1874, was obsolete: the overcrowding of prisoners in the establishments – given the increase of population – was considered as an indicator of the low efficiency of the system to hold back the commitment of crimes. The jurists started to analyze different causes, some of which biological: “the indomitable nature of offenders or the second criminal nature”; other psychological causes linked to behaviour patterns or moral conducts such as “alcoholism or laziness” or poverty, seen by themselves as a kind of vicious circle which pushed women, for example, into prostitution, abandoning their children or committing crimes, amongst others. In the juridical debates on the nature and characteristics of the penal system the analysis socio-economic of the causes of criminality and of the origin of the penal system in Ecuador are

being ignored, due to a great extent to the fact that the place of enunciation of the proper jurists compromises, and they debate mainly on their worries as social class and in defense of their interests. From this point of view it can be understood that, once the failure of the penal system is recognized, they intent to migrate from one system to another: from the panoptic system to the system of Auburn and then, to the search for the penal agricultural colony, located far from the continent, for the subjects considered most dangerous.

As a result of these trials of penal systems we find all during the Twentieth century and during the present century as well, an ambiguous penal system, fruit of the experimentation during different epochs and by different governments that insist in the reforms of “regeneration” or social reintegration of the offenders with mecanisms and politics that have historically failed, since their origen: the social perception of prisoners was shaped from the positivist ideas of the end of the Nineteenth century based – according to Lombroso in *Homo delinquens* (1874)- in the assumed genetic condition of the delinquents as individuals dangerous for society. And for women, matching moral prejudices derived from ancient religious believes brought from the colonial epoch in which they were judged – still in the liberal State – with punishments that were not modern (prison for moral causes: adultery or infidelity) or the perception of the lack of decency or the feminine criminality attributed to the lower passions. These type of presumptions, implicit in the penal debates, had social repercussion as in the collective imaginary the prisoner is associated with criminality as if it were an atavism.

The majority of Ecuatorian jurists assimilated Lombroso’s criteria at least till the first half of the Twentieth centruy, their ideas are expressed in different reports of the penitentiary authorities and were part of the plan of studies in the Law Faculty of the Central University of Ecuador. The juridical debates on the penitentiary system constituted the themes of essays and doctoral dissertations, which indicates their relevance in the epoch in spite of the fact that the rate of criminality or commitment of crimes in Ecuador was lower than in other countries of the region. This aspect takes us to the idea already brought up that the debates on the penal system are of urgent nature for jurists as representatives of the social elite, and their reflection to a large extent has its origin in the search for a safer penitentiary system to avoid escapes; at the same time, the debates point at the idea to strengthen the action of justice and attack “the inertí of authorities” from whom they demanded major police control.

The conference covers the principal arguments of the prominent jurists of the epoch analyzed from a critical perspective. In order to achieve this, the starting point is a brief revision of the origin of the penitentiary system in the Republic, and is based on the hypothesis that sanction and the prisons hve not been functional in Ecuador as they form part of a system adopted from other historical contexts, born in different circumstances and adapted to the local-national context in an artificial way, converting into a system of punishment and social control.