



From torture to penal humanization: Brazilian legislation in contrast with the reality of the country's prisons and the legacy of Cesare Beccaria

Da tortura à humanização penal: A legislação brasileira em contraponto com a realidade prisional no país e o legado de Cesare Beccaria

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ABSTRACT

Obtaining confessions through torture or degrading treatment is widely recognized as ineffective and susceptible to producing false statements. In addition, each person has different levels of resistance and sensitivity, which means that even an innocent and highly sensitive person can be led to confess under torture. Therefore, these methods of coercion not only violate ethical principles, but are also unreliable.

Keywords: Torture, Penalties, Prisons.

RESUMO

A obtenção de confissões por meio de tortura ou tratamentos degradantes é amplamente reconhecida como ineficaz e suscetível à produção de falsas declarações. Além disso, cada pessoa possui diferentes níveis de resistência e sensibilidade, o que significa que até mesmo uma pessoa inocente e altamente sensível pode ser levada a confessar sob tortura. Portanto, esses métodos de coerção não apenas violam princípios éticos, mas também são pouco confiáveis.

Palavras-chave: Tortura, Penalidades, Prisões.

1 INTRODUCTION

Obtaining confessions through torture or degrading treatment is widely recognized as ineffective and susceptible to producing false statements. In addition, each person has different levels of resistance and sensitivity, which means that even an innocent and highly sensitive person can be led to confess under torture. Therefore, these methods of coercion not only violate ethical principles, but are also unreliable.

Given this context, this article aims to examine the state's adherence to the ban on torture as a means of obtaining confessions or punishment. The research was based on an analysis of academic articles and news stories related to prison systems. The study also investigates the appalling conditions in these institutions and identifies the main perpetrators of torture today.

By analyzing Cesare Beccaria's classic work, "Of Crimes and Punishments", this article aims to trace the evolution of law over time. Beccaria's work exposes torture as a monstrous procedure used to extract confessions and investigates how the state used this cruel tactic to establish the truth, as well as the evolution of society since then to prohibit it.



According to the author's analysis, torture was widely used in the past, in a brutal way and deviated from its current purpose in society. In the past, torture was applied during the judicial process, even when the accused was presumed innocent, and did not achieve its intended objectives. Its four main objectives, which included obtaining guilty pleas, reconciling inconsistencies, identifying possible accomplices and revealing other illicit activities, were not achieved.

The justification for carrying out this study is based on three fundamental points. Firstly, the prohibition of torture is an ethical and human rights issue that requires in-depth analysis. It is necessary to understand how the state does or does not adhere to this prohibition and what the consequences are for individuals and society as a whole. Secondly, research into the conditions of the prison system and the identification of the main perpetrators of torture are essential to bring to light the reality of these institutions and seek solutions to the problems they face. Finally, an analysis of the evolution of the law over time, based on the work of Beccaria, allows us to understand how society has advanced in the prohibition of torture and what challenges are still faced in this process.

2 OBJECTIVE

The general objective of the work is to discuss the problem of torture as a coercive means, as well as its humanization with progress. The specific objectives are To express the position of Brazilian legislation with regard to torture. To point out Brazilian prison conditions. To mention the state's omission in the face of the country's prison situation.

3 METHODOLOGY

In terms of approach, the research is qualitative, as it allows for different positions throughout its construction. According to Prodanov and Freitas (2013, p. 70), "in qualitative research there is a dynamic relationship between the real world and the subject, that is, an inseparable link between the objective world and the subjectivity of the subject that cannot be translated into numbers".

As for the procedures used, the study used a bibliographical review, which includes the analysis of academic articles and news related to the topic. This approach allows for the collection of up-to-date information based on previous studies, contributing to an understanding of the current panorama of the prohibition of torture to obtain confessions or punishment.

This study also uses documentary research, since it includes laws, which are first-hand documents that contain positions. Carvalho et al (2019) explains that one of the advantages of documentary research is that the researcher can go straight to the source, without the possibility of reproducing an error or a hasty analysis.



4 DEVELOPMENT

4.1 BRAZILIAN LEGISLATION ON TORTURE

Brazilian legislation has a set of rules aimed at curbing and punishing the practice of torture, which is considered a serious violation of human rights. The classification of torture as a heinous crime is a relevant aspect in the Brazilian legal context. By receiving this designation, the practice of torture is treated as an extremely serious crime, with harsher penalties and specific conditions for the progression of sentences and benefits for those convicted.

Law No. 8.072/1990, known as the Heinous Crimes Law, defines and establishes the characteristics of crimes considered heinous in Brazil. Among these crimes is torture, which was included in the legislation later, through Law No. 9.455/1997. Authors such as Almeida (2017) have highlighted the importance of this inclusion and discussed the legal and social impacts of considering torture a heinous crime.

The classification of torture as a heinous crime reflects the seriousness and social repudiation of this practice. Authors such as Silva (2015) have analyzed the grounds for this classification, such as the need to protect human rights and the collective revulsion at acts of extreme violence. These studies emphasize the importance of establishing harsher penalties and stricter conditions for serving sentences in the case of heinous crimes, including torture.

It is worth noting that the classification of torture as a heinous crime has significant implications for the Brazilian criminal justice system. Authors such as Pereira (2019) have explored the application of this classification in concrete cases and discussed the challenges faced by the justice system in investigating, prosecuting and punishing those involved in torture cases.

One of the main legal milestones in the fight against torture in Brazil is Law No. 9.455/1997, known as the Torture Law. It defines torture as a crime that cannot be condemned and is not subject to grace or amnesty, as well as establishing severe penalties for offenders. In the context of Brazilian legislation, it is also important to mention Law No. 12,847/2013, which established the National System for Preventing and Combating Torture (SNPCT). This law established mechanisms to prevent and combat torture, as well as creating the National Mechanism to Prevent and Combat Torture (MNPCT), a body responsible for carrying out periodic visits to places of deprivation of liberty.

The Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948, contains articles that expressly condemn torture. Article 5 states that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Authors such as Rocha (2019) have explored the importance of these articles and their relevance in the international context of human rights protection.

In Brazil, Law No. 9.455/1997 defines torture as a crime and establishes the corresponding penalties. Article 1 of the law sets out what we can define as torture:



"Art. 1 The practice, by a public official or a person acting with their acquiescence, instigation or consent, of acts of physical or moral constraint, with the aim of obtaining information, statements or confessions from the victim or a third person, or of provoking an action or omission of a criminal nature."

Campos (2018) states that Brazil is a signatory to international treaties that also deal with torture, such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the UN in 1984. Article 2 of this convention establishes the absolute prohibition of torture and obliges states parties to take effective measures to prevent and combat this practice. Silva (2017) analyzed Brazil's adherence to this convention and the effectiveness of the public policies implemented to combat torture. According to the author, torture is a serious violation of human rights, and the Universal Declaration of Human Rights and Brazilian legislation are fundamental to combating it.

4.2 TORTURE IN THE BRAZILIAN CONSTITUTION

Brazil's Federal Constitution, promulgated in 1988, is the country's main normative document and establishes the fundamental rights and duties of citizens. With regard to torture, the Constitution has provisions that guarantee its prohibition and establish its seriousness as an unacceptable crime.

Article 5, III of the Federal Constitution states that "no one shall be subjected to torture or inhuman or degrading treatment". This constitutional provision reinforces the absolute prohibition of torture, as well as any form of inhuman or degrading treatment. It is an essential safeguard for the protection of human dignity and the fundamental rights of all people.

In addition, Article 5, item XLIII of the Constitution establishes that the practice of torture is considered a heinous crime. This classification makes the crime of torture more serious and implies harsher penalties, as well as restricting benefits such as regime progression and amnesty.

The Federal Constitution also establishes the imprescriptibility and non-bailable status of torture crimes, as provided for in Article 5, item XLIV. This means that these crimes cannot be pardoned or statute-barred, ensuring that those responsible are punished even if considerable time has passed since the crime was committed.

These constitutional provisions are fundamental to guaranteeing protection against torture and reaffirming the Brazilian state's commitment to combating and punishing this heinous crime. They reflect the importance given to human dignity, fundamental rights and the construction of a just society free from violence.



4.3 THE PRINCIPLE OF HUMAN DIGNITY, THE PRINCIPLE OF ISONOMY AND THE RELATIONSHIP WITH TORTURE: AN ANALYSIS IN THE LIGHT OF THE ARISTOTELIAN MAXIM

The Aristotelian maxim of treating the equal equally and the unequal unequally is one of the philosophical bases for understanding two fundamental principles in the field of human rights: the principle of human dignity and the principle of equality.

The principle of the dignity of the human person, recognized as one of the foundations of the Democratic State of Law, states that each human being has an intrinsic and inalienable value, regardless of any condition, and should be treated as such (MOURA, 2020), in view of this it is possible to perceive the legal protection in relation to the human being and their particularities.

Santos (2018) analyzed the importance of this principle in the context of human rights and its relationship with protection against torture, highlighting that torture is a direct violation of human dignity.

In turn, the principle of isonomy, also present in the Brazilian Federal Constitution, establishes that all people are equal before the law, without any form of discrimination. This principle seeks to guarantee fair and equitable treatment for all individuals. Oliveira (2020) explores the application of the principle of isonomy in the fight against torture, emphasizing that everyone must be treated equally before the law, whether they are victims or offenders.

For Santos (2018), when analyzing the relationship between the principles of human dignity and equality with the issue of torture, it is clear that torture violates both principles in a striking way. Torture treats people as objects of violence and dehumanization, denying their intrinsic dignity. Furthermore, by allowing differentiated and unequal treatment, torture violates the principle of isonomy by creating a situation of abuse of power and injustice.

In this sense, the Aristotelian maxim of treating the equal equally and the unequal unequally reinforces the importance of protecting the dignity of every human being and ensuring that everyone is treated fairly and equally. Torture, as a serious violation of human rights, is an affront to the principles of human dignity and equality, as it subjects individuals to cruel, inhuman and discriminatory treatment (OLIVEIRA, 2020).

4.4 BRAZILIAN PRISON CONDITION: OVERCROWDING AND TORTURE IN THE PRISON SYSTEM AND POLICE PRACTICES FOR CONFESSIONS

The Brazilian prison situation is marked by significant challenges, including overcrowding and reports of torture in the prison system. Prison overcrowding is a serious problem in Brazil. Data from the 2020 National Penitentiary Information Survey (INFOPEN), prepared by the National Penitentiary



Department (Depen), reveals that the Brazilian prison system houses significantly more inmates than its capacity can support.

Santos et al. (2018) pointed out that overcrowding contributes to precarious living conditions in prisons, increasing violence and hindering the resocialization of inmates. In addition, the issue of torture in the Brazilian prison system has been a matter of concern.

Reports by human rights organizations, such as Human Rights Watch (HRW) and the National Mechanism to Prevent and Combat Torture (MNPCT), have documented cases of physical and psychological torture, including beatings, electric shocks and humiliation (SANTOS et al., 2018).

Fonseca (2017) analyzed these cases and emphasized the need to combat and prevent torture in prisons. For the author, in the context of police practices, it is important to highlight that there are reports of human rights violations in the search for confessions.

Souza (2019) discussed the pressure exerted by some police practices, including torture, to obtain confessions, pointing out the violation of the principles of due process and the presumption of innocence. The author's analysis reveals the urgency of measures to address the challenges of the Brazilian prison situation. It is essential to invest in disincarceration policies, as alternatives to imprisonment, as well as improving living conditions in prisons and promoting the training and monitoring of police practices, in order to guarantee respect for human rights and the dignity of detainees.

4.5 THE STATE'S OMISSION, THE NEED FOR PUBLIC POLICIES AND THE INSALUBRITY OF PRISONS

The state's failure to address the prison situation in Brazil is a problem that demands attention and the implementation of effective public policies. The state's omission can be seen in the lack of investment and adequate planning to deal with overcrowding and precarious prison conditions. Silva (2017) pointed out that state inefficiency contributes to the perpetuation of a prison system marked by violence, insalubrity and human rights violations. The need for public policies is evident given the urgency of transforming the prison reality.

Oliveira (2020) argued about the importance of resocialization programs, alternatives to prison and investments in education, health and work in prisons. The implementation of effective policies is fundamental to guaranteeing the dignity of inmates and providing adequate conditions for their reintegration into society. The insalubrity of prisons is a worrying issue. Lack of hygiene, adequate ventilation and access to health care are recurring problems in these environments.

Santos et al. (2018) emphasized that insalubrity contributes to the spread of disease, violence and the deterioration of inmates' physical and mental health. Given this reality, it is essential that the state assumes its responsibility and adopts concrete measures to improve conditions in prisons. It is necessary to



invest in adequate infrastructure, training for prison guards and access to basic health services. The implementation of effective public policies is essential to guarantee respect for human rights and promote the social reintegration of inmates.

4.6 THE STATE'S ADHERENCE TO THE PROHIBITION OF TORTURE TO OBTAIN CONFESSIONS OR PUNISHMENT ACCORDING TO CESARE BECCARIA

Beccaria was one of the first thinkers to question the effectiveness and legitimacy of torture as a means of obtaining information and as a form of criminal retribution. He argued that torture often leads to false confessions, since people tend to say anything in order to end up in jail with suffering. Furthermore, Beccaria considered torture to be an inhumane and unjust practice, violating the natural rights of individuals.

The influence of Beccaria and his work was fundamental to the development of the movement known as the penal Enlightenment, which preached the humanization of laws and the reform of the penal system. His arguments based on rationality and respect for human rights were incorporated into discussions on criminal law, influencing the abolition of torture in many European countries.

The author contributed to a paradigm shift in the understanding of punishment and in the conception of human rights. His ideas helped pave the way for the abolition of torture and the promotion of fairer and more humane penal systems, based on the notion of dignity and respect for the physical and moral integrity of individuals.

The publication of "Of Crimes and Punishments" sparked an intellectual and legal debate about the efficacy and morality of torture as a method of punishment. Beccaria's ideas influenced not only other thinkers, but also legislators and rulers of the time, leading to significant changes in penal systems.

In the 19th century, many European countries began to adopt penal codes that abandoned torture as a means of obtaining confessions and punishment. New principles were established, such as the proportionality of the penalty in relation to the crime committed and the idea that punishment should have an educational purpose. These changes were accompanied by advances in legislation and penal practice. More humane prison systems emerged, in which the rehabilitation and resocialization of offenders became central objectives. Prisons gradually replaced torture as a form of punishment, although many of these prisons still had inhumane conditions and degrading treatment (RODRIGUES, 2016).

In short, the work of Cesare Beccaria played a fundamental role in the paradigm shift in relation to torture, influencing the historical development of penal practices. His criticism of torture as a method of obtaining confessions and his defense of a more just and humanitarian penal system contributed to the progressive abolition of torture and the promotion of human rights throughout the world.

After the publication of Beccaria's "Of Crimes and Punishments", other voices joined the movement for penal reform and the abolition of torture. In short, the criticisms of Cesare Beccaria and other



Enlightenment thinkers triggered a penal reform movement that contributed to the abolition of torture in many countries. However, the fight against this inhumane practice has not yet been fully won, and efforts continue to promote justice, human dignity and the absolute prohibition of torture in all circumstances (ALMEIDA, 2017).

5 FINAL CONSIDERATIONS

Despite extensive research and efforts, it is clear that torture is still prevalent in Brazil. Instead of being eliminated or combated, it has been reconfigured and camouflaged in a new way, rooted in the country's history and structure, with the government being the main perpetrator. Despite the existence of multiple laws and regulations, torture persists to this day, and the problem is not the absence of legal frameworks, but the behavior of the criminals who practice it. The current state of the prison system, where the accused and those found guilty are subjected to precarious and degrading conditions, is a source of revulsion and humiliation. Despite the legal regulations in place to guarantee the proper treatment of prisoners, these fundamental rights are often violated, leading to a loss of human dignity. It is imperative to address torture with a focus on structural reforms in penitentiaries that offer basic dignity to prisoners. The current state of these facilities not only calls into question the concept of the democratic rule of law, but also requires the intervention of state power itself.

In conclusion, Cesare Beccaria's "Of Crimes and Punishments" played a seminal role in the historical development of torture and in the search for more just and humane penal systems. His blunt criticism of torture as a method of punishment influenced thinkers, legislators and social reformers, driving the abolitionist movement and the emergence of new perspectives on criminal justice.

Over the centuries, the ideas of Beccaria and other advocates of the abolition of torture have catalyzed significant changes in criminal law and practice. Torture gradually lost its legitimacy as a means of obtaining confessions and punishment, being replaced by penal systems that value proportionality, rehabilitation and respect for human rights.

However, despite progress, torture still persists in some regions and under certain circumstances, challenging efforts to eradicate it completely. The battle against torture requires constant vigilance and coordinated action at local, national and international levels, strengthening the application of laws and ensuring accountability for perpetrators.

Beccaria's work remains a fundamental reference for understanding the principles of criminal justice and human rights. His work reminds us that torture is an inhuman practice and incompatible with a civilized society, reaffirming the importance of protecting the dignity and integrity of every individual, regardless of the circumstances.



In this way, we continue to move forward in the search for a world where torture is completely banned, where justice is promoted on the basis of ethical and humanitarian principles, and where all human beings are treated with respect and dignity at all times.



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