

## Human rights: The truth of numbers and the imperfection of reality

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### Abstract

Following the empirical study on the perception that law school students at the Portucalense University had about the respect for human rights, with regard to the subject of prisoners and the manner in which penalties are enforced, we had the opportunity to inquire in the July 2019 a law class, this time comprising Brazilian students from the most diverse states of Brazil and who went to the Portucalense University in Oporto, Portugal, for the sole purpose of attending the Master of Law course, in the area of specialisation in Political and Legal Sciences. This time the study had the purpose of analysing and studying this class, considering the peculiarity of the sample, with unique characteristics. The surveys were distributed and were answered freely, individually and anonymously by 13 students who were present in a classroom. This is a group of students with a middle age ranging between 30 and 40 years and who already had professional work experience in forensic areas (notaries, judges, lawyers, etc.). We wanted to know to what extent these students were sensitised towards the human rights issues relating to prison sentences, their purposes and ways of execution. We also wanted to verify if the students had in their luggage of knowledge, from the teaching of legal subjects acquired in Brazil, the notions of basic principles regarding to the execution of prison sentences. We concluded that these are students receptive to the principles of human rights related to prisoners and their penalties, unanimously defending the end of preventive penalties, even though only one of them said that he felt safe in his country, besides the remaining 12 demonstrated insecurity and 10 out of those 12 have already been victims of crime in Brazil. On the other hand, we recorded curious outcomes and, sometimes somewhat inconsistent, results that we crossed over so that we can relate them to each other and this can be seen in the rest of the article.

**Keywords:** Human rights, prison sentences, purposes of the penalties, victims of crime, insecurity.

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## 1. Introduction

Following an empirical study previously carried out, in the academic year 2018–2019, with law degree students from the University of Portucalense, whose results have already been publicly presented, we extend the research to other students. Here, the surveys, by questionnaire, were answered by Master's students, in the area of specialisation of the Legal and Political Sciences, of Brazilian nationality, who graduated in Brazilian universities. In this group, the students' age ranged from 30 to 40 years and they are already in the labour market and working in the legal field (some are judges, others lawyers, others notaries, etc.).

They were in Portugal attending the teaching part of their Master's, in July 2019. There were 13 students who agreed to respond. They completed the questionnaire, consisting of 11 questions, anonymously and totally free, in the context of the classroom, without any type of conditioning. Fulfilling the legal requirements, the researchers were ethically and legally responsible for protecting the rights of confidentiality of the data and the privacy of those students who participated in the study (Cohen, Manion & Morrison, 2018, p. 111).

In summary, the aim was to find out how these students understand the need of prison sentences, the ends to be achieved through its implementation and to envisage the implementation of criminal sanctions coupled with respect for human rights, with their vision sustained by the academic knowledge acquired in Brazil, with the life experience that the exercise of their active professions give them and based on the specific criminal reality of their country (which is distinct from the Portuguese reality).

We processed the data obtained, following the research design (McMillan & Schumacher, 2014, p. 30), and presented their conclusions. The data were analysed through descriptive statistics and content analysis for closed and open questions, respectively (Lemos, 2012, p. 4). We proceeded still with a link between legal basis of constitutional law and the Brazilian criminal law and the numerical results obtained in these surveys, verifying that they do not always coincide. Hence, the title of our work 'Human rights: the truth of the numbers and the imperfection of reality'.

## 2. Objective of the questionnaire

We assume that the criminal reality and penitentiary of Brazil are different from the Portuguese. The Brazilian prison system is under permanent criticism. Several authors highlight problems related to the enforcement of sentences. We highlight two of them: Greco (2015), who deals with the failure of the Brazilian prison system, and Tamer (2019, p. 19), who addresses to prison overcrowding. According to his report, for a prison capacity of 309,074 prisoners, there are 549,577 prisoners, being in deficit for 240,503 seats.

One of the objectives of the questionnaire was whether the students were supporters of the application of severe penalties, in particular, merciless nature penalties. Another of our purposes was to ask whether the students were more likely to be for retribution purposes or for preventive purposes. Within the preventive mode, we wondered whether they were in favour of the rehabilitation of prisoners as a State law, if is considered to be necessary to apply more severe penalties and, lastly, we intended to find out what were the students' opinions on the state of the Brazilian criminal justice, whether they felt safe in their country and whether they had been victims of a crime.

## 3. Questionnaire results

Question 1: Life sentence got four responses in favour, eight against and one student did not answer.

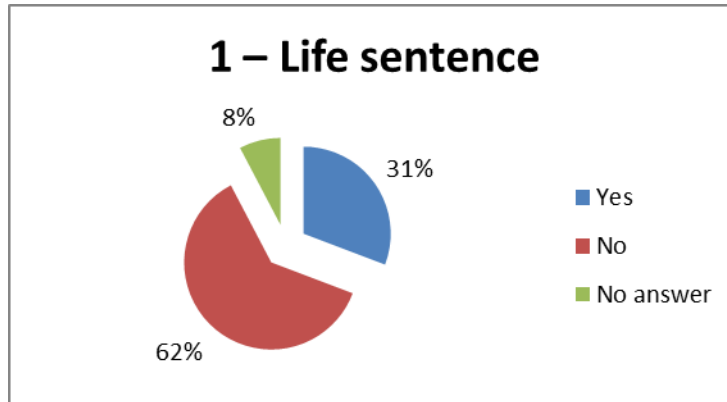


Figure 1. Life sentence

Question 2: Death penalty got 11 responses against and two in favour.

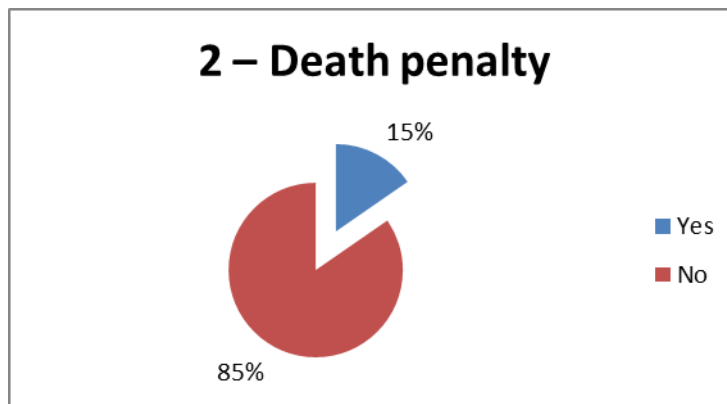


Figure 2. Death penalty

Question 3: Penalty of hard labour had six responses in favour and seven against.

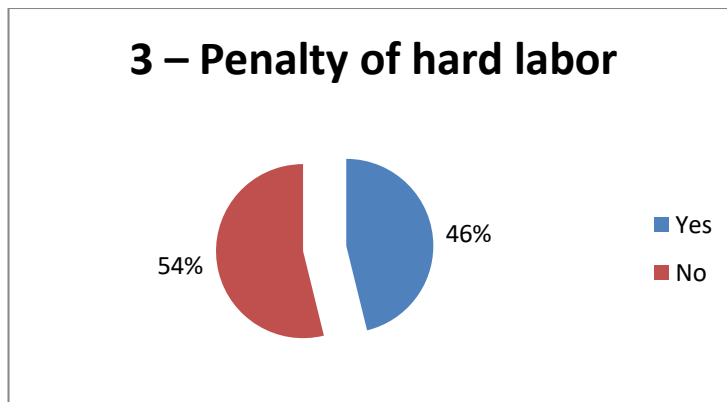


Figure 3. Penalty of hard labour

Question 4: Corporal punishment had only 1 answer in favour and the remaining 12 answered against.

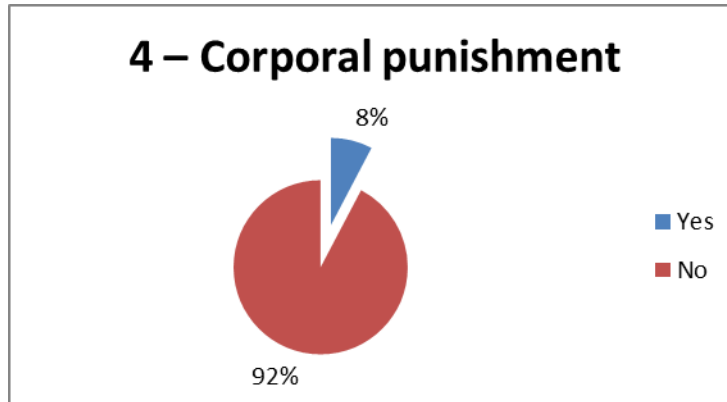


Figure 4. Corporal punishment

Question 5: Retributive purposes of the penalties were the choice of the majority, with six responses in favour, five against and two students did not comment.

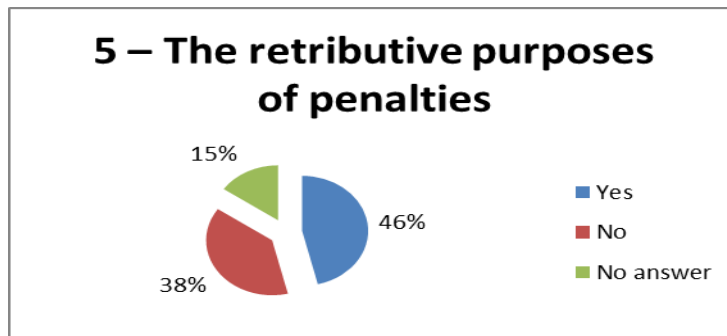


Figure 5. Retributive purposes of penalties

Question 6: The preventive purposes of penalties exhibited the unanimous choice of all, with 13 responses in favour.

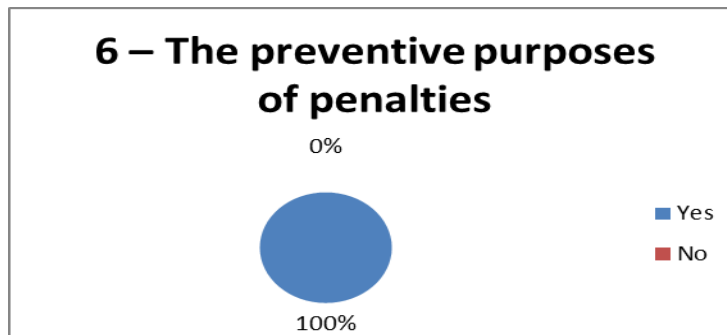


Figure 6. Preventive purposes of penalties

Question 7: Correction/rehabilitation of the prisoner imposed by the State in conjunction with the prison system, even against the will of the convicted, received eight responses in favour and five against.

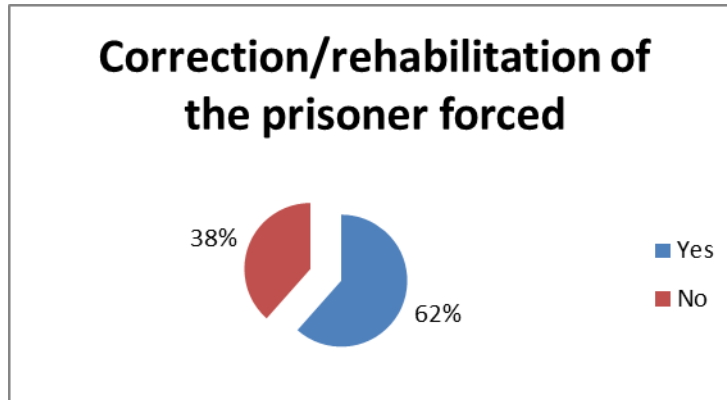


Figure 7. Correction/rehabilitation of the prisoner forced

Question 8: With regard to the need to apply more severe penalties, we had nine answers in favour and four against.

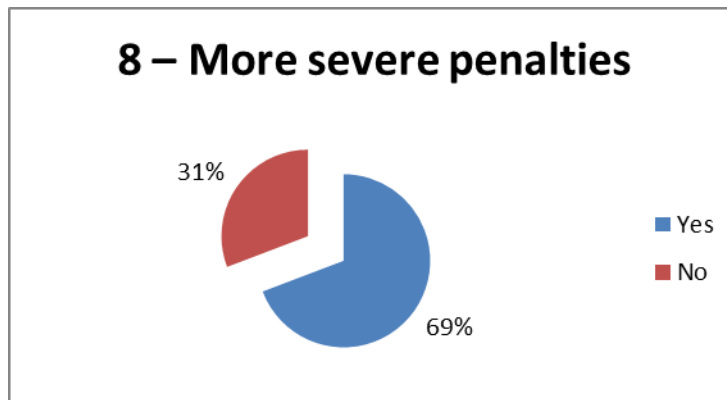


Figure 8. More severe penalties

Question 9: With regard to the state of the Brazilian criminal justice, the responses were the following:

Very good = no answer; good = two answers; reasonable = five answers; weak = three answers; very weak = three answers.

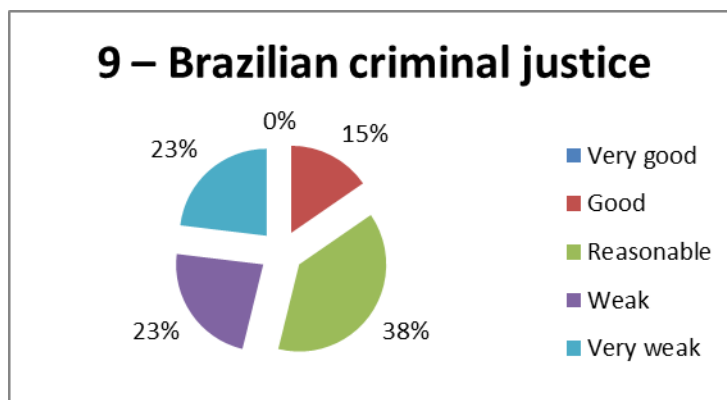


Figure 9. Brazilian criminal justice

Question 10: With regard to the sense of security in the Brazilian state, 1 said yes and the remaining 12 students said they did not feel safe.

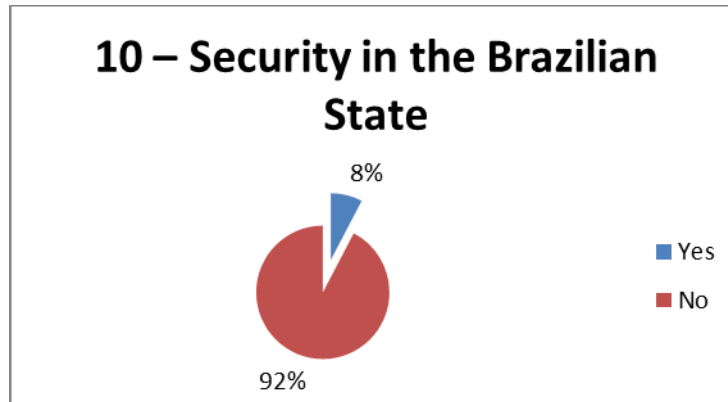


Figure 10. Security in the Brazilian state

Question 11: If they had been victims of crime in their country, 10 said yes and the remaining three said no.

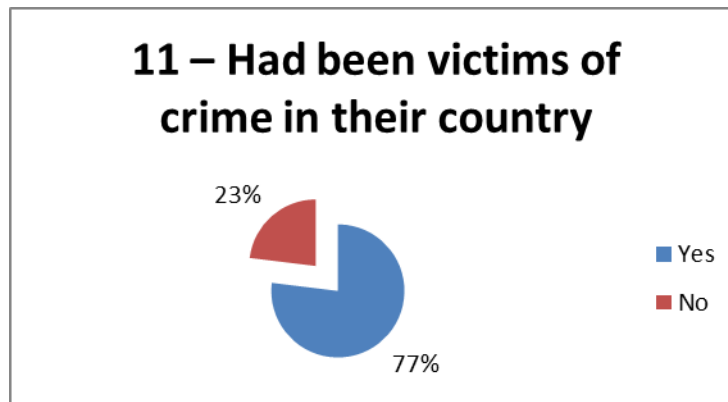


Figure 11. Had been victims of crime in their country

#### 4. Data analysis

As most of the answers were against life sentence, against the death penalty, against the sentence of forced labour and against corporal punishment, students revealed considering the human rights framework that should guide the punitive power of the State, contemplating the dignity of the human being. These responses have special value when the international community is aware of the existing high crime rates in Brazil. On the other hand, it is also known that it generally spreads a security and punitive tendency of criminal law to punish criminal offenses with much tougher penalties, which could have been reflected in the responses, but it has not been found. Moreover, as Zaffaroni (2002, p. 156) says, 'the state of contemporary law is threatened by an unlimited growth of the punitive apparatus, especially its executive agencies and prisons'.

Regarding the ends of the penalties, we observed a certain tendency towards the adoption of retribution; however, two students showed hesitation because they did not respond. Then, unequivocally, students unanimously pronounced themselves in favour of preventive purposes of penalties in order to prevent future crimes. Beccaria (1998, pp. 84–85) already said that 'the purpose

of the penalties is neither to torment and afflict a sentient being, nor to undo a crime already committed,' advocating an effect of penalties 'more effective and more durable over the spirits of men, and less torturing on the defendant's body'. On the other hand, we still have to take into account the principle of personality of criminal law since Monteiro (2013, p. 167) states that 'the legal and criminal provisions (...) have addressed individual citizens and not groups or masses' and 'the legal and criminal consequences (...) are personal'.

There is a difficult fact to explain: eight of the answers that say yes to the purpose of prevention advocate the correction / amendment / rehabilitation of the condemned even against their will. Now, as we know, the rehabilitation of the condemned only works through a personal exercise of internalisation of the 'evil' practiced and in a totally voluntary way. The regenerative capacity is something very personal, it depends on each prisoner. It is necessary that the convicts reflect on their past conduct, understand the seriousness and consequences of their acts, have a repentant attitude and are willing to return to the outer life by adopting a responsible behaviour according to the social rules and legal standards. Correction of the offender is his right, which he may exercise or not, and there are offenders whose amendment is very difficult if not null. The position taken in the surveys did not take into account the teaching of dogmatic criminal law. This fact is perhaps due to the deep concern of respondents with high crime rates in the country; however, they did not realise the inconsistency of the positions it has taken when the correction is imposed and forced upon the prisoner.

With regard to life imprisonment and death penalty, we found that there are seven answers that say not both simultaneously. We related the defence of the purpose of retribution to the answers given in questions 1, 2, 3 and 4: of the six answers that say yes to retribution, all answered no to the death penalty and corporal punishment, three of them answered no to the penalty of forced labour and four of them answered no to life imprisonment. These answers are also surprising because there is a particular link between the retributive purpose of sanctions and this typology of penalties.

We also related the protection of the purpose of the retribution of penalties with the defence of more serious sentences: we noted that there is greater consistency in these responses as out of six responses in favour of retributive purposes, five of them responded simultaneously yes to more severe penalties (only one answered no).

Subsequently, those who are in favour of the existence of more serious penalties (eight in total), five answered no to life imprisonment, seven answered no to the death penalty, five responded not to the penalty of hard labour and seven answered no to body penalties. It follows that while defending the need to apply more severe penalties, this opinion does not matter the paradigm shift of the type of penalties; it is being understood that the proposed amendment should operate only at the quantitative level of penalties and not at the qualitative level of penalties.

The feeling of insecurity in Brazil is dominant (12 out of 13 replies). The only answer in favour of the feeling of security in their country says it has been a victim of crime. There are also three answers which express feeling insecure in their own country but have never been a victim of crime.

Finally, we found the relationship between respondents being victims of crime (10 out of 13) and advocating the application of more severe penalties: only 6 answers said yes to both questions and 4 did not establish such a connection. We can conclude that there is no direct relationship between these two aspects.

## **5. The numerical results of the surveys and the Brazilian legal framework**

### ***5.1. The constitution of the Federative Republic of Brazil***

The Constitution of the Federative Republic of Brazil (1988), in Title II (Fundamental rights and guarantees), Chapter I (Individual and collective rights and duties), in Article 5, provides for the

inviolability of the right to life, liberty, equality, safety and property. Specifically, with regard to penalties, it states that under that article:

‘XLVI – The law shall regulate the individualisation of the penalty and shall adopt, among others, the following:

- a) deprivation or restriction of liberty;
- b) loss of assets;
- c) fine;
- d) alternative social benefit;
- e) suspension or prohibition of rights.

XLVII – No Penalties:

- a) death, except in case of declared war, under the terms of art. 84, XIX;
- b) of perpetual character;
- c) of forced labour;
- d) of banishment;
- e) cruelty.

XLVIII – the sentence shall be served in separate establishments, according to the nature of the offense, the age and sex of the convict.

XLIX – Prisoners are assured of respect for physical and moral integrity’.

## **5.2. International instruments to which Brazil is a signatory**

Brazil has been an integral part since the founding (American Declaration of the Human Rights and Duties of Men, 1948) of the Organisation of American States (OAS – Washington, DC). This organisation aims to contribute to the enhancement of peace, justice, democracy, the rule of law, human rights and support among the countries of the American continent. The Brazilian state is also a signatory to:

- a) The American Declaration of the Human Rights and Duties of Men (1948), which enshrines:  
In Article 25 that:

‘No one shall be deprived of his liberty except as provided by law and in accordance with the rules established by existing law. (...) You are also entitled to humane treatment for as long as you are deprived of your liberty’.

In Article 26 that:

‘(...) Everyone accused of an offense has the right to be heard in an impartial and public manner, to be tried by courts already established in accordance with pre-existing laws, and to not be given cruel, infamous or unusual punishments’.

- b) The American Convention on Human Rights (1969), provides in the relative chapter of civil and political rights.  
In Article 4 that:
  1. Everyone has the right to respect their lives. This right must be protected by law and generally from the moment of conception. No one can be arbitrarily deprived of life.
  2. In countries which have not abolished the death penalty, the death penalty may only be imposed for the most serious offenses, in compliance with the final judgment of a competent court and in accordance with the law establishing such a penalty, promulgated before the



offense was committed. Nor will its application extend to offenses to which it does not currently apply.

3. The death penalty cannot be reinstated in states that have abolished it.
4. In no case may the death penalty be imposed for political offenses or for common offenses connected with political offenses.
5. The death penalty should not be imposed on a person who, at the time of the commission of the offense, is under the age of eighteen, or over the age of seventy, nor should it be applied to a woman who is pregnant.
6. Any person sentenced to death has the right to request amnesty, pardon or commutation of the sentence, which may be granted in all cases. The death penalty cannot be executed while the request is pending a decision before the competent authority’.

In Article 5 it predicts that:

1. Everyone has the right to respect for their physical, mental and moral integrity.
  2. No one shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment. Every person deprived of liberty must be treated with respect due to the inherent dignity of the human being.  
(...)
  7. The penalties of deprivation of liberty shall have as their essential purpose the reform and social re-adaptation of the convicted’.
- c) Inter-American Democratic Charter (2001), provides:  
In Article 7:

‘Democracy is a condition for the full and effective enjoyment of human rights and fundamental freedoms’.

- d) Social Charter of the Americas (2012), which does not refer directly to these aspects of penalties, in general terms, states:  
In Article 1:

‘All people are born free and equal in dignity and rights. Member states reaffirm their commitment to universal respect and observance of human rights and fundamental freedoms as essential elements for the achievement of social justice and the strengthening of democracy’.

### **5.3. The penal execution law**

The Penal Execution Law (1984) – right in Article 1 provides that criminal enforcement must concretise the provisions of the sentence and provide conditions for the ‘harmonious social integration of the convicted and the interned’. In Article 25, no. I, it provides the guidance and support for subsequent reintegration.

This law contains a chapter on labour, which begins with Article 28, where the work of the condemned is seen as a ‘social duty and condition of human dignity’, for educational and productive purposes, and being established in Article 31, the obligation to work of the convicted in deprivation of liberty, according to his aptitudes and capacities. The obligation to work makes an exception for those convicted of a political crime (Article 200). According to Article 32, the work to be assigned to the convict must take into account his or her qualifications, personal condition, future needs of the prisoner and market opportunities. Under Article 39, the execution of the work is one of the convict’s duties, and one of his rights is respect for his physical and moral integrity and proportionality in the distribution of time for work, rest and recreation (Articles 40 and 41). Prison facilities must have work areas (Article 83). Convicted persons over 70 years, severely ill patients, convicted women with minor or physically or mentally disabled children and pregnant women (Articles 114 and 117) may be exempted from work. Article 126 provides for the possibility that the penalty may be redeemed part of the time for the execution of the penalty for work or study.

#### **5.4. Articulating synthesis between survey results and the Brazilian legislative framework**

We stated earlier that rehabilitation cannot and should not be imposed for the reasons we have claimed. In analysing the survey data, we were surprised with the will of the majority of the students manifested in question 7, in favour of the correction/rehabilitation of the inmate imposed by the state, even against the will of the convict, with eight favourable responses and five against.

Studying the Brazilian legal framework, we found that, after all, this result is compatible with the formulation of the law, despite the existence of constitutional guarantees enshrined in Article 5, which should sustain human life, in its various dimensions and aspects. The dignity of the human person, as Nabais (2017, p. 340) says, is a 'value or fundamental principle which is then very important achievements throughout the Constitution (...)', he continues that 'the precedence of the constitution of the person due to the constitution of the society (economic) and to the constitution of the state (political)'.

In this particular situation, everything lies in identifying work as a strict right of the prisoner, that he may or may not exercise, or as a duty to the prisoner to himself and to the society. It appears that Brazilian law is in favour of this second conception. We believe that the Brazilian legislature adopts the path of labour imposed on prisoners as an opportunity to provide them with a professional background capable of making them fit for the labour market, when their sentence ceases, to say that they can rebuild their lives and have a more prosperous future. But work as a duty of the prisoner takes us on a path close to the so-called forced labour which, in turn, is prohibited by the Brazilian Constitution.

Tamer (2019, p. 141) draws attention to the need for vocational training in prisons, but puts the focus on their interconnection with the 'formal education', which should not be limited to the prisoner only acquire capabilities for the work environment. Moreover, this is the aspect adopted in the State Education Plan in Maranhao prisons.

Indeed, it cannot be forgotten that rehabilitation does not depend exclusively on job opportunities. Education, teaching, psychological assistance, religious assistance, attendance at programmes for the transmission of ethical values, among others, are very important factors in the process of regeneration of prisoners, which may influence them in a decisive way later in life.

We found that students turn out to be sensitive to the issue of more serious penalties, not accepting inhuman punishment, such as the death penalty, life imprisonment, forced labour and corporal punishment. Almost all students oppose the death penalty and body punishment.

As for life imprisonment and the penalty of forced labour, the students were already further divided: four accepted life imprisonment and six admitted forced labour as a sanction. We tend to interpret this broad admissibility of the penalty of forced labour as a consequence that results from the obligatory work of the prisoner that is imposed by the Brazilian law of execution of sentences, because as we mentioned earlier the work of the condemned is considered a 'social duty' and not a 'social right'. In addition, the Brazilian Constitution prohibits the penalty of forced labour.

In this legal framework, the preventive purposes of the sentences defended unanimously by the students become understandable. A possible interpretation of these results is as follows: students believe in rehabilitation by way of the convict labour, admitting that with preparation and experience, the prisoners in the future will be more likely to engage in a career and might be autonomous in order to return to the social life in a responsibly way and to be integrated in the society without committing crimes.

## 6. Conclusion

Brazilian students who responded to the questionnaire revealed:

1. To be mostly against the application of life imprisonment, the death penalty, forced labour and corporal punishment.
2. To be unanimously in favour of the preventive purposes of penalties.
3. To be mostly supporters of the application of more serious sentences and imposition of the correction of convicts, even against their will.
4. To consider the Brazilian criminal justice between reasonable and very weak.
5. Do not feel safe in their country and have already been victims of crime.

We combine the results with the Brazilian law and found that:

6. The Brazilian Constitution prohibits the death penalty, life sentence, forced labour penalty, banishment penalty and cruel punishment.
7. The Law of Execution of Sentences imposes the obligation of work to the prisoner, being their duty. This is a mechanism provided by the law on behalf of rehabilitation purposes of prisoners. In this context, the position taken by the students when asked about the prisoner rehabilitation imposed against his or her will is notable.
8. They are generally attentive to the issue of human rights regarding the types of penalties and its mode of execution.
9. No wonder the results obtained in relation to the sense of insecurity expressed by the students and the fact that they have already been the victims of crimes, since the issue of public security and violence, is at present one of the main priorities of the Brazilian State.

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