

What should we do with persistent sexual offenders?

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PRESENTATION

On 29 September 2008 the Víctor Grífols i Lucas Foundation organized a discussion day on the subject «What should we do with persistent sexual offenders?» This was part of the *ethical questions* series, an initiative of the Foundation which is designed to bring together a range of experts to generate debate around a topical issue on which bioethics has a bearing.

The event was coordinated by Enrique Echeburúa, professor of Clinical Psychology at the University of the Basque Country. The speakers were Mercedes García Arán, professor of Criminal Law at the Autonomous University of Barcelona; José María Mena, former chief public prosecutor at the High Court of Justice of Catalonia; Joan Carles Navarro, director of Can Brians Prison Centre; and Santiago Redondo Illescas, senior lecturer in Psychology and Criminology at the Faculty of Psychology of the University of Barcelona.

Introduction

Enrique Echeburúa

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The term sexual offences refers to sexual behaviour which is imposed on the victim, either because the recipient is inappropriate (for example, children in the case of sexual abuse of children or sexual abuse within the family) or because the behaviour is violent in and of itself (for example, rape). Violent attacks are not necessarily committed by someone who is unknown to the victim. Sometimes the sexual offender is well known to the victim and exploits this closeness by abusing the victim's trust and forcing her into a relationship which she does not desire.

In contrast with other types of crime, sexual offences, or at least those which are reported, are relatively uncommon. Despite this, they are a cause of great social alarm. To cite just one statistic, although sexual offenders represent around 5% of the Spanish prison population (around 3,600 people), this does not prevent them from occupying a disproportion amount of space in the media. It may also be the case that official data underestimate the scale of the problem. Some victims conceal what has happened, either due to feelings of shame, or because they are afraid of revenge, or because they hate the thought of revealing family secrets (particularly in cases of sexual abuse within the family).

In sexual violence, the majority of victims are women, and the majority of aggressors are men. There are various reasons for this imbalance. Firstly, the *greater male sex drive* (a result, in part, of the increased levels of testosterone in the blood), which can lead to sexual attention becoming fixed on a greater range of stimuli. Secondly, the *greater aggressive component among men*, which can explain the adoption of violent behaviour connected to sex (as in the case of rape). Thirdly, the *fact that male sexual identity is less clearly defined*, which can lead to the exploration of various sexual stimuli. And fourthly, the *expectations of male sexual behaviour*, which may result in self-esteem being linked to a strong sexual impulse and having numerous partners.

Sometimes sexual crime is part of a wider criminal career (involving robbery, violence, etc.) committed by young, single men who abuse alcohol and drugs and have a low socioeconomic status, but in other instances (particularly in the case of child abusers) the offence is specifically sexual.

Why do people commit sexual violence?

There are many factors which give rise to sexual violence, and it is important to remember that, as the name implies, this is a type of violent crime in which sex and aggression combine. Sometimes, humiliating the victim is more important than any sexual enjoyment, and in fact many rapists, rather than pursuing sexual pleasure, are seeking to satisfy other urges towards domination, self-affirmation, competition and power. In reality, rape is both an act aimed at achieving forced sexual pleasure and a manifestation of power over the victim, above all in the case of gang rape, where the group functions as a human pack. In these cases, resistance by the woman may dangerously fuel the violent behaviour of her attackers.

Psychological factors are among those which give rise to sexual violence, including sexual excitement of the attacker as a result of the violence, a lack of self-control, low sexual self-esteem, the absence of empathy, having suffered from sexual abuse during childhood or poor skills at relating to people of the other sex; social factors such as the glorification of violence or the reification of women as sexual objects; and situational factors such as the appearance of an opportunity to offend, the excessive consumption of drugs and alcohol, or emotional contagion from the group. Individual weaknesses can lead to sexual violence through two distinct mechanisms: a) sexual disinhibition (in the case of drugs and alcohol); and b) a weakening of informal social control (someone who is alone, has no friends and doesn't have a job has little to lose in life and, as a result, has no motivation to exercise self-control).

Sexual offenders masturbate at an earlier age and with greater frequency than other males. As a result, sex becomes a coping strategy which is powerfully reinforced: a) positive reinforcement (masturbation); and b) negative reinforcement (a way of escaping from problems). Sexual offenders therefore use sex as their preferred coping mechanism for dealing with emotional inadequacy.

However, the difference between sexual offenders and others is more than just a higher level of sexual arousal or a failure in the inhibition mechanisms.

Among the factors which explain the failure of the inhibitory regulation of the aggressive-erotic impulses are physical and sexual abuse suffered during infancy, inadequate socialization and education, a disruptive family background, and aggressive or alcoholic parents or sexual deviancy.

Once the inhibition against forcing others into sexual acts has been broken, the probability of new sexual offences increases. Rapists tend to link their masturbation fantasies with previous rapes, and this makes this behaviour likely to recur. Negative thoughts such as the fear of being arrested or the memory of the victim's expression of panic or resistance to the attack are carefully banished from the offender's mind.

In sexual offenders, there may be a profound alteration of their system of thought. As a result, these individuals may exhibit cognitive distortions which facilitate their sexual behaviour (for example, believing that *deep down she wants me to do it* or, in the case of child abusers, that *sex with children is really a way of showing them affection*) and serve to justify it once it has taken place, *denying* its existence (*it wasn't really rape, she wanted it*) or *blaming* the victim for what happened (*she asked for it*).

Specific factors which can precipitate sexual aggression include the presence of certain circumstantial variables, such as a situation of prolonged stress, alcohol consumption, urgent sexual desire, a high level of irritability, the perception of seduction or defencelessness of the victim, together with the likelihood of the act going unpunished.

Types of sexual offenders

Not all sexual offenders match the same profile, pose the same level of danger, or the same risk of reoffending. The different types include the following:

a) *Occasional rapists*. These are young people, of normal appearance, who do not plan the rape in advance. They may be shy or socially inhibited individuals who, in addition to obtaining sexual gratification, use rape to

compensate for their personal shortcomings. They have low self-esteem and are easily frustrated.

They are driven to commit the offence when they find themselves in a situation of sexual arousal (an erotic film, for example) while under the effects of drugs or alcohol (in a nightclub or during a night of drinking). In these circumstances they are incapable of applying mechanisms to inhibit coercive sexual behaviour, and engage in violent acts in an impulsive and uncontrolled manner. The violence used does not go beyond what is required to overcome the victim's resistance.

In general, sexual violence is incompatible with these individuals' values and beliefs, and they may experience remorse after their behaviour. They are easy to rehabilitate and do not usually represent a major social danger.

- b) *Criminal rapists*. These are individuals who do not suffer from specific sexual problems but who instead commit sexual violence opportunistically within the context of other behaviours such as robbery, drug consumption, bullying and, ultimately, disregard for the basic rights of others. In this case, rape forms part of the individual's wider criminal career and occurs in criminal subcultures, having its roots in a history of inadequate socialization. When men commit gang rape, *physical advantage* combines with the *anonymity of the group* and the *chaos of the crowd* (amplified reaction).
- c) *Sexual psychopaths*. These individuals are characterized by being impulsive, emotionally cold (lacking the capacity to empathize), unscrupulous and feeling no remorse for violating social norms or when faced with the suffering of others. They are dangerous, particularly when acting in a group. The woman's resistance merely stimulates their sexual impulse and violent behaviour, and this may even lead to the death of the victim.

Sexual psychopaths despise women and tend to be more violent and sadistic than other sexual offenders. They treat their victims as if they belonged to another species, toying with them like a cat with a mouse,

and enjoying their fear. They humiliate them at will (and in extreme cases even kill them) once they have satisfied themselves, something which almost always results from the combination of sex and humiliation of the victim. These individuals are usually violent in other situations (home, family, workplace, etc.).

The outlook for psychopathic rapists is very poor, as they have very little motivation for treatment and have a high reoffending rate (although the likelihood of reoffending falls with age, particularly after 50, as age tempers their sexual impulses).

- d) *Sadistic rapists*. These are persistent rapists with violent sexual fantasies who plan their rapes carefully. Sometimes the violent behaviour is driven by pornographic material and the consumption of drugs and alcohol, together with fantasizing about acts committed previously.

Sadistic rapists are few in number, but are very likely to reoffend and are highly dangerous. Sadists tend to have a predilection for injuring the woman's erogenous zones, pinching or stabbing the nipples, vagina, buttocks and genital area. They derive sexual pleasure from their victim's pain and fear.

The sadistic rapist is insecure, suffers from psychological complexes, is introverted, is emotionally and socially isolated, a heavy user of pornography, sexually shy, with vivid sadistic fantasies and with a childhood background of sexual attacks.

- e) *Mentally handicapped rapists*. These are mentally handicapped individuals who look for a woman in order to find an outlet for their impulses (sexual hunger) and take these out on minors, whom they perceive to be more accessible. They are, in general, very young (aged 17 to 20). In these cases, rape is associated with hostility linked with seeking vengeance as a result of an inferiority complex and the perception of rejection to which the individual feels he is subjected. The mentally handicapped tend to commit unplanned acts which can be interpreted primarily as sexual rather than aggressive acts.

Moderate or borderline cases of handicap sometimes present certain criminal features, given their weak inhibition, while they are also motivated by similar stimuli to those which motivate normal people.

However, it should be noted that the mentally handicapped are more likely to feature as victims of sexual abuse than as perpetrators, because of their inability to resist.

- f) *Mixed rapists*. Sometimes rapists are unbalanced mentally handicapped individuals with a psychopathic personality or sexual psychopaths with limited intellectual capacity. This mixture significantly increases the dangerousness of the rapist.
- g) *Serial rapists* are fundamentally drawn from the ranks of sexual psychopaths and sadistic rapists. In these cases, rape is an addiction. After the temporary release after the *prize has been achieved*, the tension reappears and leads these individuals to plan new sexual attacks. As a result, new rapes occur at ever shorter intervals. This chain of behaviour is motivated by sexual arousal, together with the added value of transgressing a norm, impunity, and insensitivity to the suffering of others.

Serial rapists usually exhibit *criminal narcissism*, which leads them to boast about their offences and even claim to have committed more crimes than they really have. For example, Spain's worst serial rapist (the so-called «*Pyramid rapist*») was accused of 43 rapes, but eventually confessed to 140 sexual attacks.

Do sexual offenders reoffend?

The reoffending rate among first-time sexual offenders is relatively low (around 20%), well below the rate for crimes against property (around 40%).

By contrast, reoffending rates are very high among persistent sexual offenders (who have very low motivation towards treatment), and ranges from 33% to 71% of cases. In these individuals, the likelihood of reoffending only falls with age, due to reduced strength and declining testosterone levels.

Reoffending is more likely in sexual psychopaths and sadistic rapists. Indeed, psychopathy is an indicator of violent sexual reoffending, particularly if it is combined with drug abuse, a lack of family cohesion, the absence of a stable partner, poor social relationships, cognitive distortions with regard to women, the rejection of a treatment programme, failure to recognize the crime which has been committed, etc. Similarly, previous offences with multiple victims and the use of violence on them within the context of a history of criminal offending contribute to a more gloomy outlook.

In summary, many occasional sexual offenders can be rehabilitated, especially if they are young, do not have a history of offending, feel remorse for their actions, have not exhibited extreme violence, display a capacity for empathy with their victims, are able to draw on a stable network of family and social support, and are prepared to take part in a specific treatment programme.

The treatment of sexual offenders in prison

Rehabilitation is possible

So long as there is a degree of motivation to change on the part of the aggressor and he recognizes the inappropriateness of his behaviour, then it is possible for sexual offenders to be rehabilitated. In fact, reoffending rates are not as high as is generally believed. (However, every failure, particularly if it leads to the death of the victim, is dramatic.) A programme conducted recently in Catalan prisons by Professor Redondo (of the University of Barcelona) succeeded in reducing reoffending rates by 14 percentage points (from 18.2% in subjects who received no treatment to 4.1% in those who received treatment).

On the basis of results like these, treatment programmes are becoming more widespread in Spanish prisons, where between 15% and 16% of those serving sentences for sexual offences (around 570 inmates) are participating in such programmes.

Treatment used

Treatment programmes vary from case to case, but some elements are common to all of them. These include recognizing the problem, accepting one's own responsibility, controlling one's excessive or deviant impulses, training in empathy and expressing one's emotions, changing false beliefs about women and sex, developing communication and problem-solving skills, and preventing relapses.

Treatment is indicated towards the end of the sentence, when the subject has the possibility of being moved to an open prison prior to release on parole. Intensive programmes last from 6 to 12 months and use a group format.

Sometimes, anti-androgen drugs (so-called chemical castration) can help, but only to reduce excessive sexual excitement in the context of an integrated treatment programme. This reversible hormone treatment only makes sense when used (as a treatment, not as a punishment) to reduce a pathologically heightened sex drive, something which only occurs in a minority of sexual offenders. It is a reversible treatment which affects sexual fantasies and behaviour. In these cases, the drugs help to reduce inappropriate sexual impulses: they may inhibit sexual desire at the start of treatment and facilitate the establishment of a psychological treatment programme, at the same time as providing a degree of social protection.

However, drugs are of little use when the main motive is to humiliate or dominate the victim. Drugs are indicated when there is a very high sex drive and a lack of control over impulses, but the results are poor where the sexual offender is violent, engages in drug or alcohol abuse or suffers from a personality disorder (psychopathy, for example).

Persistent sexual offenders

As we noted above, it is not true that reoffending is the norm. Rather, there are a few offenders, above all psychopaths, who do not recognize the problem and are very likely to reoffend. In other words, there are a lot of sexual

offences but they are committed by a relatively small number of individuals. In fact, sexual offenders account for no more than 5% of the total number of inmates in Spanish prisons.

Sexual offenders cannot be kept in prison for ever, because this is not permitted under Spanish law, nor can they be subjected to intensive surveillance after completion of the sentence. If, upon completing his sentence, the offender is relatively young and is to be released into society, then an effort must be made to rehabilitate him while he is in prison and to offer him appropriate additional treatment in the community. In fact, this approach is gradually being adopted in Spanish prisons.

Should sexual offenders who are serving prison sentences be allowed out on temporary licence?

The granting of temporary licences should be decided in accordance with the situation of the sexual offender (length of sentence, recognition of crime, treatment received, etc.). In any event, modern technology makes it possible to monitor sexual offenders who are released on temporary licence (for example, by the use of GPS technology).

The requirements demanded of such prisoners are the following: a) they must have completed more than half of their sentence; b) they must have participated positively in treatment programmes in prison; c) the likelihood of reoffending must be low; and d) they must have family or social support.

This system offers at least two advantages: a) offenders released under temporary licences before completing their sentence are less likely to reoffend; and b) knowing that they are being monitored helps to improve the behaviour of offenders.

What should be done when a rapist leaves prison upon completion of his sentence and the outlook is poor?

If a rapist has completed his sentence, then no measures can be imposed upon him, even if the outlook is poor. The only thing that can be done is to monitor him (confirm that he is still living at his address, monitor the area to identify whether anyone has noticed anything strange, etc.), without violating his rights as a free person. In other words, he is treated as a suspect. This is what we might term *non-invasive, non-intensive* surveillance, which does not violate a citizen's fundamental rights such as the right to privacy of communications, or the sanctity of the home. Non-invasive surveillance is designed to ensure that others come to no harm, and falls within the crime prevention remit of the security forces.

The existing proposals for persistent sexual offenders with poor prospects are a separate issue. These include a range of security measures: the registration of offenders, additional sentences of release under supervision for periods of 3 to 5 years (involving the monitoring of movement and consensual, reversible hormone treatment, where indicated, to reduce sexual desire in offenders who have completed their sentences and are at high risk of reoffending). However, all of this would require a reform of Spanish criminal law so that completing a sentence would not necessarily mean regaining full freedom in cases where the prospects for rehabilitation were not good. Such offenders could be subject to post-release security orders requiring them to stay away from their victims, or could even have a chip fitted to identify their location.

However, one thing is ultimately beyond question. We cannot impose sentences on people simply because they are dangerous, only for their acts. This is because we live in a society which is based on the rule of law, in which a free man who has paid his debt to society cannot be lynched, deprived of his rights or subjected to other measures (electronic bracelets, chemical castration, compulsory psychological treatment, warnings to those living nearby, the publication of open lists, etc.) which could harm his reputation, his right

to privacy and his ability to re-enter society. A society of risk such as the one in which we choose to live entails the impossibility of achieving absolute security in a democratic society (rather than a police state).

Summary: the heterogeneous nature of sexual offenders

- In comparison with other crimes, sexual offences are relatively infrequent. Despite this, they give rise to great social alarm.
- Contrary to popular belief, sexual offenders, in particular those who are occasional offenders or whose offences occur within the context of other criminal activity, can be rehabilitated if they receive appropriate treatment, either in prison or in a community setting. However, sexual psychopaths, sadistic rapists and child abusers have a very poor outlook.
- The risk of reoffending correlates with the level of violence inflicted on the victims, the intensity of the offender's violent fantasies, the scope of the offender's criminal activity, the lack of empathy with victims, and the offender's motivation to receive treatment.
- Paedophilia and sexual abuse within the family are not the same. While in both cases the victims are minors, the difference lies in the fact that the paedophile is exclusively sexually aroused by minors of one or other sex (depending on whether heterosexual or homosexual paedophilia is involved) while the sexual abuser within the family has recourse to children on an occasional basis to make up for some kind of personal dissatisfaction. Sexual abusers, in contrast with paedophiles, primarily target pre-adolescent or adolescent individuals (unlike paedophiles, whose preferred targets are children), and may also maintain sexual relationships with other adults. The outlook for sexual abusers is much better than for paedophiles, particularly if they recognize the inappropriateness of their behaviour and agree to receive treatment.

Further reading

- Echeburúa, E. and Guerricaechevarría, C. (2000). *Abuso sexual en la infancia: víctimas y agresores*. Barcelona. Ariel.
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Considerations on the criminal justice system's response to sexual offending

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I will seek to contribute to this discussion of what should be done with sexual offenders from the perspective of criminal law. However, due to the state of flux in which the criminal law currently finds itself, there is a real risk of this legal perspective overwhelming the ethical dimension. To avoid this, I have decided to put forward a series of points for consideration, and I should therefore stress the somewhat schematic nature of these points, designed as they are to be filled out or developed during the discussion.

I should also point out that, while all of the issues I have selected are based on principles which are reflected in law, each also presents an ethical dimension. One example of this is the *universal nature of individual rights* which are attributed to all citizens, including those convicted of criminal offences. In particular, everyone is entitled to *human dignity*, which article 10 of the Spanish constitution describes as the «foundation of political order and social peace». Human dignity includes the right to be treated as a person and not as an object and this prohibits at least two types of response: forced medical interventions on the human body, and decisions regarding the offender which have the sole purpose of reducing social alarm (and thus use the offender as an instrument of social policy).

1. What to do ... and why?

The first point to make is that our responses to crimes of this sort may be designed to achieve various objectives, and these may not always be compatible. If our aim is to *give the victim satisfaction*, then we will probably come up with proposals which go beyond the limits of our existing criminal code and this, for reasons which I do not have the space to set out here, should be ruled out as a starting point. Instead, we begin with the *social* objective of preventing new crimes: a) by threatening future criminals with punishment (general prevention) and, b) by intervention aimed at those who have already offended (specific prevention). The second of these, in turn, is compatible with two approaches: avoiding reoffending by definitive social segregation of the offender or acting on the basis that, upon completion of his sentence, the

offender will regain his freedom and that we must therefore act to ensure that he does so under conditions which prevent him from reoffending. The constitutional requirement that prison sentences lead to the *re-education and social reinsertion of the offender* (article 25.2 of the Spanish constitution) obliges us to deal with offenders on the basis of this second option.

2. Different individuals, different responses

The public image of sexual offending tends to focus on violent attacks and offences against minors, not just because of the greater social disapproval which such acts attract but also because of the coverage they receive in the media. However, the law also applies to situations such as the following.

- The rape of a wife by her husband who believes this is merely his «entitlement» (and it should be noted that not so long ago this behaviour was not considered to be a crime, while the Catholic church continues to talk of conjugal «duty»).
- Non-violent behaviour such as exposing oneself to minors or non-consensual physical contact by rubbing oneself against other people while travelling on crowded buses or trains.
- A consensual sexual relationship between a 14-year-old and a 13-year-old. In this case, the 14-year-old is subject to the Law of Criminal Responsibility of Young People while the 13-year-old is deemed unable to give his or her consent.

These examples highlight the fact that sexual offending covers a wide range of situations, and this requires a differentiated response, not only due to the differing gravity of the behaviour but also because it does not always imply the same risk of reoffending or a specific pathology. However, the social alarm generated by the most serious cases means that debate centres almost exclusively on these, and this leads to a hardening of the legal response across the board, which ultimately affects all situations, regardless of whether or not such an approach is appropriate.

Having issued this caveat, it is precisely these serious cases on which we will be focusing: not only are they the ones this seminar was organized to address, but these are also the cases which give rise to most social debate, both of an ethical and a more strictly legal nature. These are crimes involving violence or threats (technically, sexual aggression) and any crimes committed against minors, whether or not these involve violence. More specifically, the focus of concern is the likelihood of *the offender's compulsion to commit the crime*, a feature which increases the likelihood of reoffending.

It should also be noted that in such cases the legal sanction is usually prison and this is therefore the option we will primarily be discussing, although it should also be remembered that other sentencing options are available and these may be appropriate in some of the situations identified above. However, the ubiquity of prison within our sentencing system is another debate.

3. The illusion of «zero risk»

Sociology, law and criminology have long identified the concept of the «risk society» as one in which there is a high perception of insecurity in the face of new dangers. Irrespective of whether or not these are actually on the rise, the increased availability of information and better knowledge of such risks increases the subjective sense of danger and the accompanying demands for security, and this also applies to crime. This lends weight to the so-called «precautionary principle» on the basis of which we seek to anticipate danger, and this leads, in its most developed political form, to «preventive war» and, in the case of the criminal law, to the continuous introduction of ever tougher reforms.

If we are to take a rational approach to today's seminar topic we must start by accepting that «zero risk» does not exist and cannot be achieved, however harsh the law, as is demonstrated by the fact that murder continues to be committed in countries with the death penalty (indeed, in such countries it is often more common than in countries which do not apply capital punishment). However, the illusory social demand for the absence of risk is leading

to a legislative frenzy, even when we recognize that the risk is minimal. In response to the desire to reduce or minimize risk, we arrive at what we might colloquially describe as a criminal code which is tougher «just in case», even if this does not necessarily make it either more effective or more justifiable. The problem is that, by proposing the complete and total segregation of offenders, we discard limits designed to respect individual rights or existing principles such as that of social rehabilitation.

The penal response to crime should only be to reduce risk to a minimum, renouncing as impossible the goal of absolute security, a goal which, when pursued at all costs, can only pose a threat to our existing rights.

4. Some data on the risk of reoffending and the prognosis for offenders

When discussing the risk of reoffending and the prognosis for individual offenders, it is a good idea to start by setting out some of the data¹ which puts the problem in perspective. Firstly, the reoffending rate for sexual crimes is lower than for other offences. In Catalonia, general reoffending rates stand at 38% of offenders, while for sexual crimes the rate is 18%. However, this rate falls to 5% in those cases where offenders have undergone treatment programmes, an issue to which we will return later.

At the same time, if we are trying to prevent risks, these should be identified as reliably as possible, rather than being simply assumed with the result that rehabilitation is *a priori* declared to be impossible. Of systems to predict the risk of reoffending, the SVR-20² is one of the most highly regarded, and correctly predicts 79.9% of non-offenders and 70.8% of reoffenders. In the

1. All the data here is taken from: Boletín *Invesbreu*, no. 39, October 2007, which describes research into «Sexual offences and reoffending». Published by the Centre for Legal Studies and Specialist Training of the Regional Government of Catalonia (Ministry of Justice).

2. Analysed in the research indicated in the previous note.

remaining cases, the available indicators do not allow a prediction to be made. The issue –both legal and ethical– is whether we are prepared to use this prognosis as a basis for tougher action in these unpredictable cases «just in case» or, to put it more technically, in line with the *precautionary principle*.

My point here is that using such prognoses in criminal law is a very delicate issue because it entails limiting individual rights on the basis of a debatable prediction. Criminal law uses such prognoses in cases where the law needs to be made to fit individual circumstances: for example, in deciding whether to grant or deny release on parole towards the end of a sentence, to conditionally suspend execution of a short prison sentence in a first-time offender, etc. However, a legal system based exclusively on such prognoses would be unacceptable and would destroy the principle that we are responsible for what we *do*, not for what we *are*.

5. Unreasonable responses

Let us start with the easiest task, that of identifying what should *not* be done: increasing the length of sentences, particularly in serious cases, where they are already very high, and sometimes disproportionately so when compared to other offences (in Spain, the maximum penalty for rape is higher than for murder). However, such increases are just what are demanded, even when the problem has nothing to do with the length of the sentence. So, for example, the disastrous failure of the legal system which enabled a convicted paedophile to remain at liberty without serving his sentence and to kill a child led to the inexplicable demand for an increase in sentences which, unless the original failings were addressed, might not be served.

It is also worth mentioning so-called prison benefits: leave, open prison (day-time employment outside of the prison) or, finally, release on parole during the final period of sentence, subject to control. Placing the offender in any of these situations entails a degree of risk of non-compliance with the conditions or of reoffending, and this must be assessed when granting such privileges.

However, denying them to *all* sexual offenders also means denying policies of rehabilitation. Such prison benefits seek the gradual restoration of freedom through a series of «trials» rather than simply granting total freedom at a stroke, and as a result they help to promote rehabilitation. Offenders who suddenly regain their freedom are twice as likely to reoffend as those who pass through a series of gradual stages which relax the conditions of their confinement. And this is another risk we should evaluate.

Another clearly unreasonable response is the demand for public registers of those convicted of sexual offences. This is a separate issue from the existing register of offenders, which is not accessible to members of the public and which may be required for post-release monitoring of offenders by the legal apparatus if this option is introduced as a result of legislation. However, making such data available to the public, even after offenders have served their sentences, not only nullifies all the efforts made to rehabilitate offenders but also carries the risk of individuals taking actions which violate the rights of the offender and supplant the state. In the USA it is possible to publish the identification details of those sexual offenders classified as high risk, something which is quite simply absurd.

6. And finally: what can we do?

One of the central proposals in this debate is the issue of so-called «chemical castration», with regard to which perhaps the first thing which should be said is that we should stop referring to it by this name, which is both inaccurate and alarmist. Castration involves physically mutilating or removing the testicles, while what we are talking about here is the administration of hormonal drugs to inhibit the sex drive, whose effects are reversed when the drugs cease to be administered. According to experts, the drugs which are currently available have side effects on the recipient's health, although progress is now being made towards bringing these under control. Such treatment may be useful in *non-violent* sexual offending, but only as a complement to essential psychological therapy and a broader intervention to address the problem. In general,

they are believed to be ineffective in treating *violent* sexual offenders, because here the problem is violence rather than sexual impulses. Indeed, in these cases removing the sex drive may be counterproductive as violence is then channelled into other forms, including murder.

Pharmacological treatment, used as a complement to psychosocial intervention, can only be applied with the informed consent of the offender in the light of the potential benefits and costs for his health, because direct procedures carried out forcefully on the human body are a violation of human dignity³. However, we should also note that any consent granted to the State, with all the coercive power which the latter possesses, may only be free in a relative sense, and that a measure such as this one cannot be deemed to be based fully on freely granted consent when the offender is told that his refusal of treatment will lead to his serving a longer sentence or to his prison term being served under harsher conditions.

However, even if we accept that, as in any decision, such consent is usually conditioned by all sorts of factors, and even more so where individuals are deprived of their liberty, the issue here is to what degree acceptance of treatment should be linked to specific benefits in prison (home visits, etc.). Here the issue is not so much that of the «formal perfection» of consent, but rather the efficacy of the treatment. There is wide agreement that actions of this sort –as with those designed to fight addiction– are unlikely to be effective if the individual concerned is not convinced (so far as is possible) of the need and appropriateness of the treatment. And the necessity of this psychological acceptance of treatment means that the offender should not accept it *solely* to obtain a given reward. For this reason, any incentives to accept the treatment should be set within the wider context of a global intervention which, we should not forget, is based on psychological therapy in which pharmacological treatment is merely a supporting element. In other words, benefits should

not be offered as a simple reward for accepting pharmacological treatment, but rather as an incentive for or response to the offender's participation in the treatment programme as a whole.

Before we go any further, there are a few basic concepts we need to clarify. If a person who has been convicted of a sexual offence serves a lengthy prison sentence, this is because, at the time of committing the crime, he was considered to be fully responsible for his acts. It is therefore contradictory to declare, upon his release, that his psychological characteristics *absolutely determine* that he will offend again and that, as a result, he should remain in prison, because if this were really the case then the offender should never have been declared legally responsible but should instead have been subject to therapeutic security measures in a special centre, as provided for by the Criminal Code for subjects who are *not* criminally responsible but are still dangerous, such as those with serious mental illnesses.

Leaving aside this extreme yet commonly held position, the majority of cases involve an individual who is responsible but who also has characteristics which give rise to the fear that he may reoffend after completing his sentence. In technical terms, he is guilty and displays dangerous traits.

Combining a response to guilt (primarily punitive), with treatment of danger (primarily re-educational) is one of the most difficult challenges faced by criminal law, and an issue which we do not have time to explore here. However, we should remember that if what concerns us is the risk of reoffending then the response should focus on reducing this risk rather than seeking an (almost always unobtainable) compensation for the victim by imposing the harshest punishment possible.

Any response which centres on reducing this risk must address the problem in all its complexity, *during the prison term* and not only after this has been completed and there is a sudden need to reduce the social alarm generated by the offender's release. This means improving psychological interventions in the form of treatment in prison at the earliest suitable moment, because of the proven efficacy of such approaches in reducing risk. It also means revitalizing the discarded concept of *post-prison social work* which, regardless of the sen-

3. The report drawn up by the «Commission for the study of measures to prevent reoffending in serious crimes», appointed by the Ministry of Justice of the Regional Government of Catalonia (2008), also concluded that it was impossible to apply such treatment without the consent of the offender.

tence served, helps to provide or maintain those conditions which contribute to a better outlook for the released prisoner.

With regard to the penalties available, a proposed reform to the Spanish Criminal Code in 2007 (which did not make it onto the statute books before the end of the government's term of office) introduced the sentence of *monitored freedom* which is gaining support as a potential approach following release from prison. This option should not be ruled out if it is genuinely aimed at rehabilitation and is properly funded and implemented. However, it would not be constitutionally acceptable for the authorities to impose monitored freedom *after* completion of a prison sentence, solely on the basis of the offender's prognosis for reoffending. As a penalty which involves restricting the individual's rights, any sentence should only be imposed on the basis of the guarantees provided by a trial and with the satisfactory testing of the facts upon which it is based, irrespective of whether it is then possible to remit the sentence if, upon release, it is deemed to be unnecessary in light of the offender's conduct.

Last but not least, we must improve care for victims who are, naturally enough, indifferent to all the statistics about reoffending, efficacy of treatment programmes or legal principles discussed here. There is an imbalance between the vast amount of coverage afforded to the claims of victims who call for harsher sentences and the paucity of the support they receive to reduce the effect of the actual crime of which they have been a victim and which, it should be noted, will not be improved by any reforms which impose harsher penalties.

A system which, together with rehabilitation, also seeks so far as is possible to re-establish the situation which existed prior to the crime, must *immediately* offer the victim support ranging from medical and psychological care to financial compensation if the offender is insolvent. These are the victim's true rights, not some hypothetical «right to punishment» which has no constitutional basis and cannot be exercised in an objective manner because the victim's perspective is by its very nature partial. By contrast, the State must, by definition, be impartial, objective and rational, addressing the causes of problems and rejecting those options which, however much support they may

receive in the media, are merely symbolic responses which, what is more, endanger the system of rights which belong not only to sexual offenders but to all citizens. Of course, just how the authorities should resist such media harassment on legal affairs is another issue.

What should we do with persistent sexual offenders?

José María Mena

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Sexual attacks are one of the forms of human behaviour which arouse the most deeply felt and widespread social revulsion, and which give rise to the strongest demands for revenge. When public opinion hears about a sexual attack, the resultant tension tests our social harmony to the limit, raising a series of ethical questions which go beyond questions of a strictly legal, sociological or psychological nature.

In answering these ethical questions, there are three issues we must address in turn: 1. Who are the people who commit these sexual attacks? 2. Who will be affected by our decisions regarding what has to be done? 3. What are the most significant of the proposals on offer?

1. The offenders

Sexual offences vary greatly in terms of how they affect their victims and the social reactions they provoke. I shall refer here to those offenders guilty of rape, defined in accordance with Spain's Criminal Code as sexual penetration of the vagina, anus or mouth, or penetration of either the vagina or anus with any part of the body.

The rapist who raises the legal and ethical problems which we will analyze is one who is incorrigible, one who is set to repeat his crime when released after serving his sentence. In the first place, then, we must distinguish this from the technical legal concept of the persistent sexual offender, which refers to a person who, when committing rape, has already been found guilty of this crime before. The judicial treatment of this rapist is clear and unequivocal: reoffending is a circumstance which aggravates his criminal responsibility, and this means he will receive a sentence in the upper range, of between nine and twelve years of prison.

By contrast, the person to whom we refer here is one who, having been convicted of rape, presents a high risk of committing further offences after leaving prison. In other words, we are talking about the risk of reoffending, whether or not the individual himself is a reoffender.

At this point, we can identify our first ethical question. Does this type of offender, someone who is both odious and terrifying, enjoy the same guarantees, the same rights, and the same constitutional, legal and humanitarian considerations as other offenders, even when public opinion and social values express the highest possible levels of revulsion for his crime and demand, at times, that this incorrigible rapist be treated as an enemy rather than as a citizen who has committed a crime?

Jakobs draws a critical distinction between citizen's criminal law, which punishes individuals for acts committed, within a framework of constitutional and legal guarantees, and enemy criminal law, which would punish for events which are forecast to be committed, within a framework which prioritizes preventative efficacy. Terrorist crimes, the more complex forms of organized crime, or the most reprehensible serial rapists would be examples of this sort of «enemy» who, according to Jakobs, are the subject of a «second speed» criminal law.

And this is the fundamental ethical question: that enemy criminal law should be rejected and the criminal law of the citizen-offender should prevail even in the most unpleasant crimes and in those situations where the outlook for reoffending is bleakest.

The outlook for reoffending cannot be a vague, abstract statistic which generates an arbitrary increase in the severity of the sentence, as a result of public demands, publicity or the politicization of the individual case. Instead, the outlook must be identified as a result of a specific study which makes it possible, with as much scientific precision as possible, to determine the personal, psychological and criminological reality of the offender whose risk of reoffending is being analyzed. This study will then be used to identify the need for specific courses of legal action and imprisonment in light of the offender's individual circumstances and receptiveness to rehabilitation. In this way, predicting the risk of reoffending in an offender who is serving a sentence, will be characterized by an objective approach, drawn from the work of multidisciplinary teams, conducted speedily but involving contrasting points of view, including that of the victim, and under the guarantee of the legal authorities. This guarantee is an essential support for the technical

teams who have to issue their reports within the context of public demands which do little to promote calm and respect for their scientific qualifications.

2. Who will be affected by our decisions regarding what has to be done?

The ethical question of what we should do is addressed to a number of audiences. Society, legislators and the courts are all involved in providing a legal and ethical response.

However, society is not homogeneous. Victims and those close to them –family and neighbours– express their understandable pain and fear, and demand solidarity, revenge and sometimes compensation. The mass media play their role in society on the basis of their condition as commercial companies governed by «the unlimited drive for profits». And as such they transmit and amplify the statements of the victims and those around them. More general social sentiments, while mixed, are almost exclusively the consequence of this transmission and amplification. Politicians, as opinion leaders, are necessarily linked to these same sentiments and even to the process of amplifying them in the media, for the sake of votes. In other words, society, in all its diversity and contradictions, is not a monolith. Each of the different elements of society has its own, separate voice.

The legislators of the Spanish Parliament represent the Spanish people in accordance with the Constitution. Working within a context of diversity, disagreement and consensus, they must respond to the social demand for protection from persistent rapists, starting from recognition of the certainty that it is impossible to provide full immunity against such threats. Zero risk is impossible.

Here we can identify a second ethical question. What should be the purposes of punishment for these specific offenders? We should remember that, according to the Constitution, the purpose of punishment is re-education

and rehabilitation. These aims are not ultimately in contradiction with the requirements of both particular and general prevention which the Ancients defined as «quia peccatum est» (because *he* has sinned) and «ne peccentur» (so that *they* will not sin). In other words, individual punishment and general example.

Punishment in general, and the punishment imposed on incorrigible rapists in particular, must obey the principle of proportionality. Legislators are limited by this principle, the scope of which shifts over time, is culturally imprecise and socially disparate. Proportionality excludes excessive retribution, however much, on occasions, there may be pressure from the majority of society on legislators. But proportionality also means that excessive mercy should not be shown in reducing the sentence for each of the rapist's various crimes to a few years.

Some have argued for a «primitive» proportional approach, based on the principle of an eye for an eye. Fight rape with castration, they say. This proposal is incompatible with our civilization, to say nothing of our constitution and our humane principles. However, recent events, not just in Spain but in other European countries as well, have given rise to proposals described by the unfortunate phrase «chemical castration» which, as we all know, is not a punishment, is not castration, and is not chemical.

What does fall within the framework of proportionality and corresponds to a constitutional approach and with the democratic, civilized aims of punishment, is the application to the offender of personalized treatment in prison which incorporates elements of psychological or psychiatric care, as appropriate, including, where medically indicated, hormonal inhibition designed to eliminate or reduce the rapist's sex drive, his sexual fantasies, and his erection. This treatment is reversible, and the offender recovers his physiological levels within one or two months of treatment being suspended. It must be freely accepted by the offender, who has the right to clear information about the nature of the treatment, including its side effects. This voluntary treatment, which may be refused, is therefore not a punishment and is not designed to make the offender's punishment more severe.

Instead, its purpose is to ensure that any punishment achieves its constitutional objectives.

At the same time, we should recognize that the offender's consent is, in principle, a symptom of his desire for rehabilitation, and that this will have a positive impact on his progress in prison. This is the exact opposite of the intentions of those arguing for «chemical castration» as an added punishment in response to social demands for greater severity, in the light of dramatic events involving incorrigible rapists.

So far we have not identified any proposed new penalties which legislators could consider. However, in the situation we are considering here –that of incorrigible rapists– it is clear that simply applying the existing penalties is insufficient as a means of addressing this incorrigibility. As a result, some argue for the need to increase penalties. However, in Spain the penalty for rape is so high (from six to twelve years imprisonment - which is almost as high as the penalty for murder, of between ten and fifteen years). The length of the sentences, and the differences between them, is a reflection of the damage caused by the crime, be it rape, manslaughter or whatever. If we increase the penalty for rapists, then it will equal or exceed that for manslaughter. In order to maintain the difference, we would in turn have to increase the penalty for manslaughter, and if we did that we would, in turn, have to increase the penalty for murder, and so on. This would start an inflationary spiral which would exhaust the criminal system, with each event provoking demands for greater severity, quickly taking us beyond the limits which are consistent with our cultural standards. And we would soon find ourselves not just with life sentences (the actual duration of which in those countries where they exist is no longer than the upper limits of Spanish prison sentences), but with capital punishment. Maximum prison sentences in Spain are already among the highest in western Europe and the efficacy of our criminal justice system must, therefore, be based on something other than simply imposing ever harsher sentences, an approach which is, anyway, at odds with our cultural values.

Monitoring the behaviour of offenders who have completed their sentences but still pose a severe threat of reoffending constitutes part of the punishment in most other western European countries. In Spain, however, once the

offender has served his sentence, he «has paid», he is a free citizen: free, even, to reoffend. The outlook for reoffending is irrelevant. Legislators should therefore amend the Criminal Code by incorporating to it a punishment of this sort, to be imposed together with a prison sentence and to be served once the offender had been released either definitively or on temporary licence. The duration of this period of monitoring should, of course, be established by law, and should reflect the need to prevent reoffending, which means that it will be of lengthy duration. However, if the supervising judge has access to reports which, on the basis of sound scientific evidence, attest to the disappearance of the risk which motivated the imposition of the sentence, then he or she may suspend or rescind it. Obviously, there would need to be sufficient specialized staff to implement such sentences, which would be rendered absolutely pointless if they were reduced to a mere bureaucratic formality or were applied indiscriminately, both of which would be real dangers.

Reforms should also be made to the legislation which regulates the police database of DNA identification so that this database can also include data obtained without consent from those convicted of serious crimes including rapists, as this would be the only way of ensuring the effective implementation of the law, to enable «such data to be used subsequently in other or future investigations, without the express consent of the person to whom the data pertains».

Such data should be obtained when the circumstances indicate there to be a high risk of reoffending, assessed on the basis identified above and subject to the relevant legal restraints in the form of a well-founded legal decision and the principles of proportionality and reasonableness, in accordance with the criteria established by the Constitutional Court. This measure would represent a significant restraint on rapists, who would be aware that any physical material left on the victim would immediately lead to their identification and arrest, particularly if they were already being monitored.

In addition, as stipulated in the data protection act, the data obtained from the offender's DNA would only be that relating to the identification of the offender, thereby ensuring that the remaining DNA-based data affecting other areas of the subject's right to privacy would be protected by the corresponding judicial guarantee.

White and hairy

Joan Carles Navarro

Director of Can Brians Prison

I will start with an autobiographical note. Some years ago, like many other children, I was taken on a trip to the zoo with my classmates. At that time, the white gorilla known as Snowflake was the main attraction. I remember that he had a custom which one might at the very least describe as bizarre: he picked up his own faeces from the floor, squashed them against the glass which separated him from his visitors and, with his fingers, placed it in his mouth as if he were savouring a delicious chocolate cake. Children and adults alike expressed our disgust, while the gorilla looked at us with profound indifference. One of the keepers put a name to this conduct: aberrant behaviour. He explained that animals in adverse situations which involve high levels of stress react with anomalous and inappropriate behaviour, directed either at those close to them or at themselves. As a child, I summed this up with a far simpler formula: *those who aren't well do strange things*.

Some time later, by which time I had become a psychologist, I came to know someone who we shall refer to as Miguel. He had been in prison since he was 16 and was now 28. At that age he committed six rapes including kidnap and robbery, and received sentences totalling over a hundred years. The consequences for his victims were devastating. However, every day he would show up at the doctor's, have himself measured (1.52 m), and would ask, «*Am I one and a half metres tall yet?*» It was an absolute mystery how this individual had managed to do what he did.

Miguel was born on the outskirts of Barcelona. He was the fifth of eight brothers, and his mother had died of cancer when he was ten years old. By then he was already an infrequent presence at school. He was a hyperactive child at a time and place when hyperactivity was not yet recognized. He was the official troublemaker, the one who spent his days being punished and expelled. Things were no better at home: his mother was no longer there, and his alcoholic father subjected him to savage beatings whenever he remembered his existence, and ended up chaining him to his bed for want of more appropriate means of education and discipline. As a result, one of the first things Miguel learns was how to open padlocks and run away. On his escapes from home and school he gradually became familiar with the most deprived groups in his area. With other children, he began sniffing glue and commit-

ting petty theft, but he didn't feel at ease with them because they laughed at him for being short and a bit *slow*. As a result, he ended up becoming a loner. But loneliness also carries its risks for a child of that age, in a setting of deprivation, and on two occasions he was sexually abused by adults.

In summary, we are dealing with a person who has constructed his identity, his sole form of social recognition, by getting into trouble, by breaking the rules. Someone who lives a profoundly unsatisfactory reality, who is a constant victim of various types of violence: physical, psychological and sexual; at home, at school, in the street, even in his peer group. Someone who has frequently been humiliated. And someone who is ill at ease with himself, incapable of standing up for himself, who feels inferior to others, useless. It is hardly surprising that, in these circumstances, he took refuge in fantasies. In his fantasy world, he was dominant, the powerful one who came out of every situation on top, thanks to his amazing abilities. In his fantasy, he was the one who dominated the others, who humiliated them just as he himself had been humiliated so many times. And this was how he reached adolescence: without having acquired the basic aspects of socialization. Put another way, he didn't know how to relate to others and least of all to girls of his own age. He had not acquired the ability to connect to others. His approaches were clumsy and, as a result, doomed to failure. And his interpretation of this was always the same: they're laughing at me, just like everyone else. Despite this, he had one opportunity which could have changed his future. For a few years, a neighbour paid attention to him. Almost inevitably, Miguel got his hopes up, because this was the first time anything of the sort had happened to him. He suggested they have sex, probably in a rushed and inappropriate manner, but he didn't know any better. The girl's refusal broke something inside him. It was the final humiliation, there was another world in which he was the king, and he had already learned that you could also take things by force. That same evening he went out armed with a knife and committed his first rape. *People who aren't well do strange things*.

Snowflake's abnormality was chromosomal. His genes determined that he would be white and hairy and this was largely responsible for shaping his life. However, it was the circumstances of his captivity which led to the appear-

ance of his aberrant behaviour. When his circumstances changed, so did his behaviour.

When we talk about human beings, we refer to genetic predisposition, exposure to risk factors, protection, vulnerability and resilience, predisposing and precipitating factors, but in the end and despite the differences and the greater complexity of human nature, it is easy to identify parallels. However, there are also major differences in terms of cognitive mediators and decision-making capacity. Miguel took his own decisions, and as a result is responsible for his acts. And this is why he has been sentenced to imprisonment.

At this point perhaps someone in this hall, in the second row on the left, for example, will exclaim: *Poor Miguel, what a terrible life he has had; society didn't protect him when he was a child and we owe him a second chance.* Another, maybe sitting further back, might say: *Yes, but we've got to think about the victims, he's a danger to society, he must serve his sentence in full.* And finally, someone sitting a little further to the right will raise his hand and declare: *He should be castrated, that's what he deserves!*

How should we respond to arguments weighted with such emotion?

In response to the first point:

- a. Opportunities must be realistic. Miguel has a long path ahead of him, many things to understand and reorganize inside himself. Without the right treatment and if his circumstances remain unchanged so too will his aberrant behaviour.
- b. However, there are also many potential *Miguels* in this world and in the end taking preventive measures is both cheaper and the best way of preventing future victims.

In response to the second point:

- a. A society can be defined by how it treats those who break its rules, and it should seek to include these individuals, who are, ultimately, an indicator of how healthy the society is. From a practical point of view, imprisonment on its own is nothing more than a parenthesis which can make the underlying situation worse rather than better.

- b. But at the same time, there is no room for naivety, and when the risks are very high then the right precautions must be taken.

And in response to the third point:

- a. Try to imagine a judge issuing a ruling in these or similar terms, perhaps phrased differently with the same core message: *Among other penalties, Miguel, I sentence you to castration, but don't worry, it will only be chemical.* Consider whether you would like to live in a society based on the law of an eye for an eye and a tooth for a tooth, with all which that would imply.
- b. But we should also recognize that for some individuals at specific periods it is appropriate to help them control their behaviour by reducing their urges, as one element of a wider treatment programme. However, we should not confuse the main aim of the treatment (changing the offender's long-term behaviour) with one of its effects (reducing short-term desire).

Our society has relatively low levels of violence and, correspondingly but perhaps not coincidentally, our laws limit the level of retribution applied to those who break these laws. We cannot avoid asking ourselves what sort of alternative society we are building as we make our laws harsher. And I will therefore end with another question: *Do societies which aren't well do strange things?*

What should we do with high-risk sexual offenders?

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In seeking to answer the question of what should be done with high-risk sexual offenders, I will divide my contribution into five short sections, addressing the following issues: the difficulty of predicting serious sexual reoffending, the factors linked to sexual offending and reoffending, the psychological treatment options to reduce the criminal motivation of offenders, the need to provide better support and social controls for these offenders, and the collective responsibility of different sectors of society in this regard.

1. Difficulty of predicting serious sexual reoffending

The likelihood of serious sexual reoffending is particularly difficult to predict, and this is made more difficult by the fact that it is in fact relatively uncommon. This is because infrequent biological, social and behavioural phenomena are inherently much more difficult to predict than those which are more frequent.

With regard to human behaviour, it is easier to predict regular, everyday, high-frequency events than very uncommon ones. So, for example, it is easier to predict that people will have breakfast every day, leave the house, go shopping etc. than it is to predict sexual reoffending, however serious and harmful this may be. An example from the natural sciences would be the difficulty of predicting major earthquakes, where the very infrequency of such events means that they are also difficult to forecast with precision. In the case of sexual reoffending, our problem is that, while it is an infrequent event, it is also one which is devastating for its victims (Brown, 2005).

Most sexual offenders in prison will not reoffend after completing their sentences, for a range of reasons: perhaps their previous crime or crimes were situation-dependent and this situation (for example, the availability of a younger victim in the family) will not reoccur, or because the attack was committed while the offender was a juvenile and he has now become an adult, or because the offence was committed under the influence of a criminal peer group with which the offender is no longer in contact, etc. However, around

20% of these individuals are likely to reoffend at some time in the future. And of these, a few cases will be particularly serious and repetitive.

The difficulty of predicting these serious cases is due both to purely statistical reasons (the unpredictability of infrequent events) and the multiple causes of the phenomenon of sexual aggression. However, the need to make a prediction as to future reoffending, especially in the most serious cases and, at the same time, the difficulty of making such predictions, means that arriving at an appropriate balance between the methods and the objectives involves both ethics and the law.

In other words, the urgent need to predict and monitor risks does not mean this should be done regardless of the ethical or legal price: making excessive predictions that individuals pose a high risk of reoffending would unfairly increase the risk of *false positives*, or cases which are identified as being high risk but in fact are not. In any event, we need to improve, as far as is possible, our predictions of the risk of offending. We already have several useful tools for this purpose, such as *Sexual Violence Risk-20*, which uses the evaluation of 20 items or pieces of information regarding an individual's personal characteristics, past behaviour and future prospects to estimate the level of risk (Martínez, Hiltermann and Andrés-Pueyo, 2005). However, although this instrument performs reasonably well by correctly predicting a high percentage of reoffenders, it cannot predict all cases precisely, and this generates a degree of error and unpredictability (Pérez, Martínez and Redondo, 2007). We therefore need to continue working to improve and fine-tune such predictions.

2. Risk factors in sexual offending and reoffending

Current knowledge suggests there are three categories of factors which contribute to the risk of sexual offending and reoffending (Redondo, 2008c). The first relates to the *personal characteristics* of individuals, both congenital and acquired, in aspects such as impulsiveness, sexual arousal, beliefs regarding

the glorification and use of violence as a means of forcing sexual contact, etc.

A second category relates to the social support and social control available to individuals, and these are the core element of the process of socialization. The outcome of people's lives –in this case, whether they become offenders or not– is closely linked to what these lives have been like, in terms of the dedication and affection they have received from parents and carers and, also, the controls and reprimands to which they have been subject as a result of their behaviour. These elements –the personal characteristics of the individual and the social support he receives– condition the sex offender's «criminal motivation» or inclination to offend.

However, for a fuller explanation and understanding of his criminal actions we must take into account a third category of risks regarding the opportunities the individual has to offend. These opportunities play a key role in offending by making available potential victims such as, for example, the availability of boys and girls for sexual abuse, women walking unprotected in certain places where they could become victims of rape, etc. This is in no way to suggest that the victims of sexual crimes are at all responsible for the attacks they suffer, but is merely to point out that the presence of potential victims is a necessary condition for crime and that taking this into consideration helps us better to explain the risk of offending.

3. Psychological treatment as a means of reducing criminal motivation

In the context of the range of factors linked to sexual aggression, an important question is how a systematic treatment, such as that currently applied in Spain and other developed countries (and which includes psycho-educational elements and could also include drugs to inhibit the sexual impulse), can reduce the risk of reoffending. It is reasonable to expect treatment to help partially reduce the risk, but it should not be expected to eradicate it completely as the risk involves other factors in addition to those affected by the

treatment (Redondo, 2008a). In other words, there are individual factors such as a higher sex drive, which can only be modified partially and imperfectly, in addition to which the offender may have had past experiences such as having suffered maltreatment and sexual abuse in childhood which also play a role but which cannot be influenced precisely because they form part of the individual's past experiences which cannot simply be erased.

Specific measures also have to be taken in order to reduce opportunities for offending, including better protection for potential victims, increased obstacles to offending, the creation of physical obstacles such as better street lighting, restricted access to children's playparks, etc. The treatment of offenders obviously has little direct bearing on these issues. However, treatment should aspire to improve individuals' ability to resist such temptations, even when they are presented with easy opportunities to offend. We should also be aware that those who are motivated to offend will not wait passively for opportunities to present themselves, but will actively seek them out. And this is why the key objective of treatment is to reduce the criminal motivation of sexual offenders so that they neither capitalize upon any opportunities which do arise or deliberately seek them out. To achieve this, treatment must develop the emotional capacity of these individuals and their ability to empathize with their victims, and must reduce their cognitive distortions and the justifications they offer for their offending (ideas favouring the use of violence, degrading women, etc.), improve their standards of behaviour, and strengthen their ability to anticipate the consequences of this behaviour.

However, the multi-factorial nature of sexual offending means that we cannot expect treatment to completely eliminate the risk posed by sexual offenders, but only to reduce it significantly. Indeed, empirical data bears this out, with treatment resulting in an average reduction of between 7 and 10 percentage points, starting from base rates for reoffending of 20% (Redondo, Navarro, Martínez, Luque and Andrés, 2005).

What is the role played by medication to inhibit the sex drive? Put simply, it may constitute one more method which, combined with the psychological treatment already applied, could contribute to reducing the risk in those cases

in which uncontrollable sexual urges are a significant factor in causing sexual offending. The therapeutic use of medication to inhibit the sex drive does not require any reform to Spanish law as the existing Prisons Act provides for the use of all educational, psychological, social and medical methods to treat inmates, and anti-androgens are clearly a medical method.

4. Social support and controls for high-risk sexual offenders

Although the proposal that prisoners be monitored after they have completed their sentences is one which deserves attention, in Spain we already have the option of releasing prisoners on parole, even if this approach is currently little used. Parole means that prisoners serving custodial sentences may be released during the final quarter of their term while remaining subject to control by the legal system and the prison authorities. As part of this, offenders can be obliged to participate in treatment programmes and abide by certain rules of behaviour, and surveillance and monitoring measures can be put in place, rehabilitation programmes encouraged, etc.

The key point I would like to propose here is that both during the parole period and, perhaps, during a subsequent period as well (if the necessary legislation was introduced), one of the key elements in promoting the rehabilitation of sexual offenders and thereby reducing the risk of offending is by working proactively to address the informal social support and controls which will be a feature of their daily lives. Such support and controls, including family and social relationships, the workplace etc., play a key role in organizing and controlling people's behaviour. A major problem in this area is the absence of community support and control structures to help draw up and implement proactive plans for the rehabilitation of offenders and to reduce the potential risk of future offending. This kind of support and control is the basis of every individual's life as a positive member of society, and it should also form the basis of the lives of those who have committed crimes in the past and now need to be accepted back into society.

5. Collective responsibility and common sense

If it is to be effective, the prevention and control of sexual offending, just like other types of offending, requires politicians, the media, citizens' associations and others to accept collective responsibility. The media clearly have and should have a major role to play in this, with regard to the presentation, dissemination and interpretation of the crime issues and how we deal with them. However, the media in general and television in particular tends towards an alarmist and exploitative approach to crime, the threat posed to the population by former offenders who have been released from prison, and the alleged softness and naivety of the justice and prison systems.

This significantly increases public alarm, and perhaps we should question the received wisdom that the media should regulate themselves and that this is the best guarantee of equity, ethics and truth. Violence and crime, both topics which arouse great public interest, should not be used as a «hook» for advertising and business, which are two of the main concerns of today's media companies.

Finally, in the political sphere one often has the sensation that we are losing our notion of what is progressive and what is reactionary, in the most literal and direct sense of these terms, with regard to what constitutes an advance in criminal justice and what, on the contrary, is a backward step. From this perspective, we should remember that those proposals aimed at softening penal control, such as reducing prison sentences and introducing alternatives, have historically been and will probably continue to be progressive initiatives which represent an advance, an improvement, a civilization of the criminal justice system. By contrast, other measures aimed at making penalties harsher (and in Spain we already have the longest effective prison sentences in the European Union) or relating to the many manifestations of so-called «zero tolerance» have historically, both because of their ideological inspiration and their very nature, been regressive, backward-looking measures for the criminal justice system, and probably remain so today (Redondo, 2008b).

In summary, when dealing with a complex, multi-factorial problem such as sexual offending, it makes no sense whatsoever to propose simplistic solutions such as the notion that the misnamed «chemical castration» of offenders would drastically reduce sexual reoffending. Complex problems –as sexual offending quite clearly is– necessarily require complex and diverse social and technical solutions.

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Debate and conclusions

Confused terminology

The discussion focused on some of the issues raised in the presentations. One of these was the use of the term «chemical castration» instead of reversible hormone therapy. The participants all agreed on the role of the media in spreading this misconception, and stressed that «so-called chemical castration is actually a drug-based treatment designed to reduce the offender's levels of testosterone and sexual desire.» Everyone agreed that this treatment should form part of a wider programme designed to promote the rehabilitation of the offender.

Another issue which often gives rise to confusion is considering treatment as a punishment. While public opinion views «chemical castration» as a penalty, the experts taking part in the discussion see it as part of a multidisciplinary treatment programme to which the patient must have given his consent.

Informed consent

This brought us to the issue of informed consent, one which seminar participants felt was of some importance. José María Mena pointed out that if the offender accepted treatment then this was an indicator of rehabilitation and could therefore bring him benefits within the prison system. However, Echeburúa sounded a warning note regarding the context within which this consent was given, and whether the prisoner was able to make a free choice or was inevitably influenced by the fact of his imprisonment.

Joan Carles Navarro based his contribution on his experience as a prison director, and explained that, in accordance with the law, all treatment is voluntary. While «in 1996 it was difficult to find people who wanted to participate in programmes using this treatment, now the opposite is the case and there are volunteers who are unable to take part in trials.»

Inclusion in the criminal code

Another issue which came up was the need to include anti-androgen drug treatment in the criminal code. Mercedes García argued that «the treatment which is currently offered can still be given without any requirement to amend the law, although modifications will eventually be made due to the pressure which exists in this area.» For his part, Mena argued that it was necessary to modify the law in order to protect those applying the treatment.

Public perception

Finally, the participants discussed the need to communicate this concept accurately to the general public. Santiago Redondo stressed that it should be put in the context of social support and prevention. He ended by warning of the danger «of generating a pathological model of offending». According to Redondo, criminality is not an illness and therefore not all offenders should be treated as if they were in hospital rather than in prison.

Publications

Monographs:

17. *Individual Good and Common Good in Bioethics*
16. *Autonomy and Dependency in Old Age*
15. *Informed consent and cultural diversity*
14. *The issue of patient competence*
13. *Health information and the active participation of users*
12. *The management of nursing care*
11. *Los fines de la medicina* (Spanish translation of The Goals of Medicine)
10. *Corresponsabilidad empresarial en el desarrollo sostenible* (Corporate responsibility in sustainable development)
9. *Ethics and sedation at the close of life*
8. *El uso racional de los medicamentos. Aspectos éticos* (The rational use of medication: ethical aspects)
7. *La gestión de los errores médicos* (The management of medical errors)
6. *Ethics of medical communication*
5. *Problemas prácticos del consentimiento informado* (Practical problems of informed consent)
4. *Predictive medicine and discrimination*
3. *The pharmaceutical industry and medical progress*
2. *Ethical and scientific standards in research*
1. *Freedom and health*

Reports of the Foundation:

4. *Las prestaciones privadas en las organizaciones sanitarias públicas* (Private services in public health organizations)
3. *Therapeutic Cloning: ethical, legal and scientific perspectives*
2. *An ethical framework for cooperation between companies and research centers*
1. *Social Perceptions of Biotechnology*

Ethical Questions:

1. *What should we do with persistent sexual offenders?*

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