

IN DEPTH

Punitivism and iron fist policies in Argentina: two cases, one double standard

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... I am a moral imperialist. One of my basic premises will be that it is right to strive for a reduction of man-inflicted pain on earth.

Nils Christie, *Limits to Pain*.

David Moreira was 18 years old, the same age as Fernando Báez Sosa.

David lived in Rosario, Santa Fe Province, Argentina.

Fernando lived in the capital city, Buenos Aires.

On March 22nd 2014, while riding a motorcycle, David attempted to steal a young woman's bag in a neighbourhood of Rosario. However, the victim resisted and he failed. While attempting to flee, a bystander grabbed hold of him and was soon joined by others. For fifteen minutes they beat him while he lay on the ground. Some got tired and left, only for others to arrive and join in. The police eventually arrived and took him to hospital, where he lay in agony and died three days later.

On January 18th 2020, Fernando got into a fight at a bar in the city of Villa Gesell, on Argentina's Atlantic coast. He punched Máximo Thomsen, a young man a little larger than him, in the stomach so hard that he knocked him over, along with the bouncer – “

patovica” in River Plate slang – who was leading him out of the venue. Fernando and Máximo were violently thrown out by security staff, along with their respective groups of friends.

On the street, Máximo and his seven friends, aged 18 to 21, sought out Fernando and his group, and in a less than a minute blows and kicks were raining down on him and he was killed on the spot.

It is not easy to find up-to-date news on the trial for David Moreira’s murder. We know that one of the individuals identified was given a three-year prison sentence for taking part in the attack, but the sentence was suspended, meaning he did not serve the prison time. Two others were meant to be tried in May 2021, but following several postponements, the trials have still not taken place.^[1]

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According to the prosecutor, the act amounted to “*homicidio en agresión*”: a crime in which a group of people cause a death, but it is impossible to determine individual responsibility, because all contribute, without prior agreement. A horror show of collective responsibility.

On February 6th 2023, five of the eight youths who attacked Fernando Báez Sosa received life sentences, while the other three were sentenced to 15 years in prison. It was adjudged that the act should be classified as a homicide doubly aggravated by the premeditation of two or more people and by malicious intent. Thousands of hours of television, radio and social network content, kilometres of paper and rivers of ink have been spent detailing the case. Millions of people have watched videos from every angle that show the moment the group of youths attacked. As well being recorded by security

cameras, eyewitnesses took images with mobile phones, because the events took place right in the centre of Villa Gesell, a highly popular summer holiday destination for young people from all over the country.

“We barely know what David Moreira’s face looks like; Fernando Báez’s smiling face challenges us day and night not to forget the brutal way his life was taken by eight young men just like him”

Since January 18th 2020, Fernando’s mother and father – and the pain that has overwhelmed them – have drawn the attention and support of millions of people. The family’s lawyer, Fernando Burlando – who has, in the legitimate exercise of his profession, previously defended the perpetrators of serious crimes – used the case to promote his run for Governor of Buenos Aires Province in the 2023 national and local authority elections. Thousands of people have repeated his slogan “Without life sentences, there is no justice” without stopping to consider what demanding a life sentence means in Argentina today and how disproportionate it is compared to other sentences, such as those for state crimes. Fernando’s family have also used the slogan, perhaps understandably, as have journalists, political figures and townspeople moved by the suffering of Fernando’s parents, which was presented as unique and exclusive. The five life sentences handed down seemed to strengthen Burlando’s argument, and he has promised to seek the increase of the three young men’s sentences from 15 years in prison to life.

We barely know what David Moreira’s face looks like, and see only a photo of his body lying on the floor before the ambulance took him away. Fernando Báez’s smiling face challenges us day and night not to forget the brutal way his life was taken by eight young men just like him, who became murderous monsters and were exhibited in court for us to view their distant gazes and grey faces.

“Innocent victims, guilty victims. Lives that both ended in the same way, with a fatal beating, but which were not worth the same”

David Moreira’s mother, father and little brother no longer live in Rosario. They moved to Montevideo, Uruguay, fleeing suffering that elicited none of the words of comfort Fernando’s mother and father received. Instead, they found rejection and blame. She was not mother to a spotless victim with almost saintly characteristics like Fernando – the good boy who studied at the Marianist school, who wanted to be a lawyer and gave out food to the poor. Her son David was a petty thief who tried to snatch a purse from a pregnant woman, and who lacked redeeming features.

Innocent victims, guilty victims. Lives that both ended in the same way, with a fatal beating, but which were not worth the same.

In one case, a single three-year sentence was issued to just one of the culprits. The other brought five life sentences, and three 15-year terms. How can we reconcile the brutal punitive act of sentencing five young people to jail for 50 years which almost no one finds disproportionate?

For what reason was a single three-year sentence issued in one case, while five 50-year sentences were handed down in another, apparently similar, case? Why did David Moreira’s death prompt almost no response from society, beyond his small family and some social organisations in Rosario? Human rights activists have tried to show that what had happened on that street was not a case of “taking justice into one’s own hands”, but a homicide with malicious intent driven not by justice, but by pure private revenge.

How can we reconcile the brutal punitive act of sentencing five young people to jail for 50 years, which almost no one finds disproportionate, with the different treatment of the perpetrators of the crime against David Moreira?

Punitivism in Argentina: a brief history

In July 2017, a cycle of regressive reforms that began in Argentina in April 2004 was completed. Once again, two events caused public uproar and elicited the same reaction and a repeat of the same type of responses. In this case, the kidnapping and subsequent death of Axel Blumberg (23) in March 2004 and the rape and femicide of Micaela García (21) in April 2017. Both crimes carried mandatory life sentences at the time they were committed. What would happen next was clear and predictable: overreaction, instrumentalisation of the victims, approval of laws that restrict rights, increased sentences and use of pain, uselessness, lack of future results, new debates when another serious event occurs, and so on. In both cases, each time tough-on-crime policies are applied the apparent justification is that increased punishment prevents new crimes. “Apparent” because those who use the argument know it to be false – otherwise the United States would have zero violent crime. Everyone, even those who live their lives through Netflix, know that this is not the case.

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Among the consequences of the “Blumberg laws” – approved by a show of hands, almost without discussion, with the argument that “you can’t argue with a grieving father” – terms were increased to 50 years, among other cruel repressions. Successive reforms to the Criminal Execution Law^[2] have established that most perpetrators of crimes of a certain degree of seriousness – ranging from attempts to kill to selling drugs – must serve the entirety of their sentence in prison, whether that be 5, 15, 30 or 50 years. In many cases, this means leaving prison either old or dead. The five young men convicted of killing Fernando Báez Sosa will be old or dead by the time they get out, no matter what they do, however they change and whatever they grow up to be. It was not Mr Blumberg who wrote the catalogue of proposed punishments that legislators from all political forces voted to approve between April and November 2004, but his

legal adviser, Roberto Durrieu, Under-Secretary of Justice for the dictator Jorge Rafael Videla. In other words, thanks to the votes of democratically elected representatives, rules were incorporated into our criminal code that were drawn up by one of the genocidal dictatorship's most prominent legal figures.

When Luis Petri, the lawmaker who drove the 2017 proposal, says things like “let them rot in jail”, “they shouldn’t be able to rejoin society” and “we’re going to shut the revolving door”, he is rolling back centuries of progress on the conception of the criminal law, and in the process violating constitutional guarantees and ultimately constructing new disposable subjects who are liable to be subjected to torture and who deserve to suffer a living death. And all for no actual result. It is pure revenge and retributionism – an eye for an eye – which is both useless and counterproductive as a method for reducing any type of social violence. Sadly, he was not alone, but aided by each and every lawmaker who supported and voted for his proposal, with greater or lesser conviction.

“For a large number of convicted persons the right to reintegration has fallen by the wayside or is a false promise. Where will a 25-year-old young man sentenced to life imprisonment be reintegrated? What hope can he hold of returning to life?”

In 2017, as in 2004, political groupings that theoretically disagree with such right-wing approaches lacked the courage to oppose the discourse and facilitated the incorporation into our penal code and legal system of provisions on sentencing that are completely alien to our constitution and our criminal and penitentiary traditions. The organisation of prisons and prisoner treatment has a rich history that culminated in 1996 with the approval of Law 24660 on the execution of custodial sentences, which was based on four principles: the convicted person's right to reintegration; individualised treatment of prisoners; sentence progression; and judicial oversight of the execution of

sentences.

The reforms made between 2004 and 2017 mean that for a large number of convicted persons the right to reintegration has fallen by the wayside or is a false promise that is impossible to fulfil. Where will a 25-year-old young man sentenced to life imprisonment be reintegrated? What hope can he hold of returning to life in society when his sentence bars him from walking the streets until he is 75, if he even lives that long?

And in terms of individualised treatment, what is the point of agreeing which subjects or vocational tasks to study and which symbolic resources to acquire given the prospect of decades of uninterrupted confinement? There is no sentence progression, wherein a person gradually advances through various phases of prison regime, moving from stricter and more rigid structures to spaces in which self-discipline can be exercised. All of this has been torn to shreds. The lack of prospects and the absence of any hope of regaining freedom make life in prison a kind of suffering that is no different to planned torture.

#NoALaMuerteEnVida

The coverage of the Fernando Báez Sosa murder trial facilitated discussion of one of the most brutal expressions of punitivism: life imprisonment without temporary release or parole. A group of people and organisations have decided to launch a campaign to debate this type of punishment.^[3] Just as we would fight the death penalty if we lived in a country whose legal system allowed it, we will fight the 50-year death-in-life prison sentence that life imprisonment entails in our country today.

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The European Court of Human Rights has repeatedly stressed that all prisoners must have a realistic prospect of obtaining their freedom, and that this cannot be merely theoretical or illusory. With no “right to hope” there is no possibility of freedom, and this constitutes inhumane treatment.

Those of us behind the campaign, which uses the hashtags #NoALaPrisiónPerpetua and #NoALaMuerteEnVida[4], know the destructive effects on a human being of spending decades in prison, and we believe that whatever the crime committed the possibility must exist of making amends for the damage done and restarting a life in community, beyond the prison walls. Opposing life sentences (#ContraLaPrisionPerpetua)[5] is a way to fight for the right to hope that we believe should extend to everyone in a democratic state. Even those who have committed serious crimes.

The fight against punitivism and iron fist policies must first include the victims of these policies. Hence, we propose to work with the perpetrators of these crimes and their families in order to stop talking about them, and start talking and walking a path with them. Many questions need asking. Are there other ways to make amends for the damage caused? How can adequate reparation policies be constructed? How much is down to individual responsibility, and how can the social and collective contribution be measured? What can we do to contribute to reducing the number of crimes and the involvement of young people and adolescents in crime?

The words of Nils Christie will guide us as we seek to reduce the pain of state punishment.

[1] See [this link](#).

[2] Particularly Law 27375, approved on July 5th 2017, known as the Petri Law after the right-wing deputy who was its main proponent.

[3] See [this link](#).

[4] English translations: #NoLifeSentences; #NotoDeathinLife.

[5] English translation: #AgainstLifeSentences.

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Photography

The hand of a refugee prisoner on a cage fence with barbed wire. Author: Ruslan Tugushev (Shutterstock).