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Injury crimes and the temporary incapacity for work: A critique☆,☆☆

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ABSTRACT

The duration of a victim's incapacity for work is a factor in sentencing for violent crimes in countries that are heirs to eighteen-century European penal codes. In this article, we consider pitfalls of this criterion. A major issue is the poor correlation between the criminal intent, the criminal act and the outcome of the injury. Furthermore, external factors unrelated to the aggression often contribute to punishment decisions under these systems. As an alternative, we highlight recent changes to the penal code in Spain. The Spanish system has replaced incapacity for work with a different health-related criterion for sentencing in personal injury cases. We argue that this approach places a greater focus on protection of bodily integrity that is more consistent with the ostensible intentions of laws against personal violence.

1. Introduction

The duration of incapacity for work due to a personal injury may be a factor in the financial compensation awarded in civil cases (Domínguez-Águila, 2010; Lambert-Faivre, 1997) and in prison sentencing in the penal context in countries whose legal systems are based on eighteen-century European penal codes, such as Belgium, France, Spain, and, by extension, many Latin American countries.

This article analyses the legal application of incapacity for work in our time and presents evidence from health sciences that supports the need to move beyond this system towards a more relevant classification of personal injury offenses.

1.1. Injury crimes and the right to bodily integrity

Many modern states recognize the existence of the right of bodily integrity, whose international incarnation is represented in the Universal Declaration of Human Rights, proclaimed by the United Nations in 1948. This fundamental document states that *everyone has the right to life, liberty and security of person* and, though many countries adhere to this principle, it is represented in various forms depending on the local legal system and its structure. As such, protection to bodily integrity can be found in national constitutions, jurisprudence of common law, and as an element in the definition of particular crimes (injury crimes, battery, assault, etc).

Although still under debate, the traditional interpretation of the right to bodily integrity relates to the principle of autonomy, protecting the body against intentional interference, or certain kinds of such interference (Douglas, 2014), making it the right to control one's own person (Shaman, 2008). Other authors prefer to separate the protection of the right to decide in relation to his or her body (bodily autonomy) from the protection of the body as the point of integration between the person's subjectivity and the rest of the objective world (bodily integrity) (Herring & Wall, 2017).

In this sense, there is still controversy about what aspects of the human being are protected by the right to bodily integrity and to which extent (Patosalmi, 2009; Ramachandran, 2017), including the discussion about the incorporation of the psychological integrity in it. This is not to say that people's psyche is left unprotected, for even the arguments that exclude the mind from bodily integrity still guard it under other rights such as freedom of speech, religion and choice-making. In this article, we use the term *right to bodily integrity* in its traditional sense, that is, the right of each person to determine what happens with his or her body, acknowledging its shortcomings but also its simplicity

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for the unaware reader in the following discussion.

Though it is beyond the scope of this article, it is important to note that even if the right to bodily integrity supports the existence of injury crimes, not all circumstances that would act against one's fundamental right are to be considered a criminal offense, and there are other mechanisms involved in the relationship between our bodies and society outside of the legal aspects, such as education and health. Examples of this are surgical interventions, which are intentional but justified harm, or the lack of access to proper sexual education. The decision of which acts are to be considered crimes given their severity belongs to every particular society.

In this sense, there is a common trend among legislations to make special considerations about violence towards vulnerable populations, a term that aims to represent people subject to some kind of risk, in its broad, ethical meaning. This concept of vulnerability is target to criticism and has been deemed too vague, lacking working criteria, prone to stereotyping and applicable to any human (Solbak, 2011), which had stemmed new concepts such as susceptible people and groups (Kottow, 2003), and the concept of special vulnerability imposed by the stages of human life and social, political and environmental determinants (International Bioethics Committee, 2013). As we will see for the purposes of injury crimes, some systems have decided a different approach when certain types of victims are involved, owing not only to their physical disadvantage but also to the fact that some of their basic needs are under the tutelage of a third party.

It may be of notice that, until this point, the concept of being able to work has not appeared related to bodily integrity or bodily autonomy, and that these concepts are subject to a broad spectrum of ethical, social, developmental and environmental factors beyond the working capacity which, one would think, call for a more comprehensive evaluation of the effects that result from personal violence. Nonetheless, there are practical difficulties when trying to input these considerations for the punishment of personal injury crimes.

2. Time of incapacity for work as a criterion for crime severity

2.1. Brief history of classifications of personal injury offenses

Personal injury offenses have been defined in various ways throughout history, and the duration for which the victim was incapacitated for work was first used to determine prison sentencing for the aggressor in the eighteenth century, under the French *Code Pénal* of 1791 (Décret de l'Asemblée Nationale, 1791, p. 22).

Historically, the concept of injury had been associated either with homicide, which was seen as the consequence of an injury beyond any possibility of repair; or with the Roman notion of *iniuriae*, whose precise meaning varied with the historical period but was always related to offenses against a person's honor or dignity, including physical violence, verbal assault, and other actions. The concept encompassed numerous offenses, with definitions ranging from any unlawful act to any attack on a person's public image, including offenses against the physical body. This term should not be confused with the contemporary English word *injury,* which tends to refer exclusively to bodily harm.

Morales-Payán (1997) notes that personal injury crimes have historically been classified according to either a descriptive or conceptual system, each of which reflects one of the two concepts of injury described above.

Descriptive classifications of personal injury offenses bestow special significance on the integrity of bodily function, listing actions of violence and their consequences, along with corresponding punishments, centering the focus on the physical and anatomical aspects of injury.

One of the earliest examples is the Law of the Twelve Tables (c.450 BCE), a document that established punishment according to the consequence of violent acts, such as a *membrum ruptum* (mutilation), *os fractum* (broken bone), or *ceteras iniurias* (Poste, 1875, p. 474), with the first two corresponding to clear circumstances and the last one included a spectrum of offenses. According to some scholars, it referred to any act of violence that did not produce an *ossis fractio* or a *membrum ruptum,* while others suggest that it comprised any offense to the person not included explicitly in criminal law, including offenses that were not necessarily physical. The intensity of the punishment would be determined by the severity of the consequence, proving that anatomical function was weighted more heavily than other aspects of the injury, since *membrum ruptum* carried a greater penalty than *iniuriae*.

Another example of the descriptive approach is the *Fuero Juzgo* used in the Kingdom of Castile (c. 1231), which was essentially a translation from the Latin version of the *Liber Iudiciorum* of the Visigothic peoples. This system established specific punishments for injuries that resulted in the loss of an eye, nose, hand, thumb, other finger, leg, etc. (De Hernández, 1792, p. 182–4), and also addressed unintentional homicide resulting from violence, reflecting the close association between the concepts of homicide and personal injury apparent in this judicial approach.

Descriptive systems rely on a poorly-developed judicial technique and lack a global conceptualization of personal injury offenses, making it necessary to provide thorough descriptions of the many possible outcomes of an act of violence. The advantage of a descriptive system is *judicial certainty*, that is, knowing the exact punishment to be assigned based on the consequence of the aggression, an asset not shared by other early judicial systems. However, this judicial certainty applies more to juries than citizens, given that one can hardly predict the outcome of violence.

A conceptual system, on the other hand, relies on a more subjective appreciation of the facts. Under this approach, crimes are not classified according to specific injuries, and bodily injuries often share the same category with other offenses against a person, under the umbrella of *iniuria.* These offenses may be physical but may also involve an offense against a person's honor without bodily repercussions. Interestingly, the latter offenses were often regarded as more important in early versions of this system, with physical injuries seen as a means to attack a person's public image.

The advent of this approach introduced the possibility of taking the victim's social standing into consideration when classifying the severity of the offense and, consequently, of the punishment and, in some cases, even defined the judicial mechanism for addressing the offense (e.g. violence against Roman citizens was resolved differently from violence against slaves, who were seen as property). Thus, this system required the judge to contemplate a wide range of decisions and to consider social variables not explicitly detailed within the law.

An example of this system was found in the *Partidas*, also from the Kingdom of Castile, during the Late Middle Ages (13th c.), which considered “hitting a person with a knife or any other weapon in a way that the wound would bleed or that he would lay crippled” as a means to damage the *honor* of another person (López, 1844, p. 163). This statutory code also gave examples of aggressor-victim relationships that demanded more serious punishment, such as son to father, vassal to lord, or citizen to a judge of his jurisdiction.

The codex avoided any guidance on the punishments for this kind of offense, stating that “we cannot reasonably establish the atonement that men must make to others after the events and dishonors occurring between them […] because persons and their deeds cannot be counted as equals” (López, 1844, p. 164).

Under this system there would seem to be an enhanced focus on protecting individual rights, as violent actions are punishable regardless of the physical result of the attacks, but at the same time these early laws conflated the social standing of victims with the seriousness of the crime, a concept that goes against our contemporary ideal of equality before the law.

The descriptive model disseminated over continental Europe and its colonies in Latin America during the following century, due to the powerful influence of the French Empire's penal code. These countries inherited a scale of punishments for personal injury crimes that was

Table 1
Thresholds, in days of incapacity for work, for increasing the severity of punishment for personal injury crimes in 2018.

Argentina	> 30			
Belgium[a]	> 120			
Bolivia	≥30		> 180	
Brazil[a]	> 30			
Chile	> 30			
Colombia	> 30		≥90	
Ecuador	4–8	9–30	31–90	> 90
France[a]	> 8			
Guatemala	10–29		≥30	
Uruguay[a]	> 20			
Venezuala[a]	10–19		≥20	

[a] These countries have established that the term *incapacity* refers to everyday activities and not to the ability of the victim to perform his or her regular paid employment.

based on the number of days for which the victim was unable to work (Table 1), with various exceptions for special cases. However, the definition of *work* sometimes varied by country.

2.2. Medico-legal role of physicians

Since antiquity and all around the world, physicians and their predecessors has been asked their expert opinion by justice administration authorities whenever it might be helpful for them to make funded decisions about a particular case. Crimes of physical violence, be they murder, injuries or rape; abortion; poisoning; human identification; medical liability and even public health issues are all topics that might need a medical expert opinion to fill the information the authorities need to qualify a particular fact. For instance, they may need to clarify what are the expected cognitive effects of a given concentration of blood alcohol in a road incident, or if the voluntary administration of a pharmacological agent could explain an abortion, or which autopsy findings are consistent with strangulation in a particular death.

Although every legal system has its own peculiarities and every case is different, common medico-legal questions in personal violence cases are the intensity and duration of functional limitations following the aggression, if the injury characteristics agrees with a presumed object or mechanism of violence, if the injuries could be explained by other mechanism present in the scene, and what could be the most probable natural progression of the injury without medical assistance.

In the countries present in Table 1, the duration of the incapacity to work becomes relevant for the classification of the offender's act as a less or more severe crime.

2.3. The scale of penalties

In those countries that employ duration of incapacity for work to classify personal injury crimes, these offenses are considered *material* or *result* crimes - meaning that the type of crime and the severity of the offense is determined by the outcome of the action - depending on each country's respective legal tradition. In this case, the outcome is the length of time that the injury takes to heal, although the intensity of the punishment may be adjusted to account for aggravating or mitigating circumstances (Table 2). Also in respect to each country's respective legal tradition, different nations have defined recovery from an injury in various ways.

It is worth mentioning here that the mere presence of an injury caused by a third party is insufficient to automatically consider an act as an injury crime, and what modern penal systems try to acknowledge, in a case-to-case basis, is what the intent of the offender was. The same injury could be the result of a frustrated attempt of homicide, a successful attempt to injure or an unforeseen accidental event for which no penalty is granted in the penal system, though it could demand financial compensation by means of civil responsibility. If the intent to injure is established, thus configuring an injury crime, only then the temporary incapacity for work becomes the factor that will define the severity of punishment.

This classification system is evidently subjective, given the lack of universal medical criteria or biological rationale for rating an injury as mild, moderate, or severe in relation to the number of days of incapacity. Fig. 1 exemplifies the lack of correlation between the magnitude of the injury and the punishment for the aggressor in different countries. These parameters of severity are ultimately a legislative decision.

3. Challenges for the incapacity for work as a penal criterion

3.1. The need for a clear definition

The first challenge for legislators is to define *incapacity for work*. A poor definition runs the risk of an ambiguous and inconsistent application of criterion.

In Belgium (Beauthier, 2007) and France (Haute Autorité de Santé, 2011; Manaouil, Pereira, Gignon, & Jardé, 2011), incapacity for work refers to physical activity, that is, the duration of time for which the victim is partially or completely incapable of performing everyday activities (e.g. dressing, sleeping, walking, eating). In contrast, the Chilean system interprets incapacity for work in the same sense as in the civil context. Medical-legal evaluations often use the duration of medical leave from employment to determine the duration of incapacity for work in the penal system, with non-standardized extrapolations in cases involving children, retired workers, or unemployed persons.

As a consequence, the period during which the affected person is able to engage in gainful employment but continues to experience difficulties performing everyday activities does not influence the offender's punishment. Consider, for example, the case of a singing teacher with a left wrist fracture, who may return to work despite remaining in rehabilitation for the injury and lacking complete functionality for other activities.

Another point of confusion is that in Chile, a personal injury offense is classified as severe or moderate if the incapacity for work *or illness* lasts for more than thirty days (Ministerio de Justicia de Chile, 1874, article 397-2), and there is no standard criterion to clarify which takes predominance when the duration of the two intervals does not match. In this case, penalties may be calculated differently depending on whether the victim is unemployed (in which case the duration of the illness will be used, as with children and homeless people) or employed (in which case the duration of medical leave as a result of the injury might be applied), creating a situation in which the application of criminal law for the same case is different depending on the laboral status of the victim. In this way, an ankle sprain that takes six weeks to completely heal but allows return to work at four weeks has two possible intervals to be considered for the severity of the crime if the victim is an active worker (incapacity-for-work time or illness time), but only one obliged interval if he or she is unemployed (illness time), possibly resulting in different sentences for the perpetrator. This inconsistency becomes more evident for independent workers, people that work at home and any other circumstance that potentially broadens the gap between return-to-work and total illness time.

In Argentina (Chiappini, 2016), there is an ongoing debate regarding the meaning of the term “work” in the penal codes. Some scholars interpret the term to mean the victim's specific type of employment, but it may instead be seen as referring to any type of paid work, regardless of the victim's actual vocation, which demands a situation of near complete incapacity. Indeed, the term could refer to *any* physical work, including everyday activities, thereby approaching the definition established in France and Belgium. Some scholars, however, consider this last stance excessive.

Table 2
Scales of personal injury crimes by severity and special cases, in Belgian, Chilean, and French penal codes.

Belgium	
Severe offenses	Classified as "crimes": Voluntary injuries and violence, with premeditation, that result in: - Incapacity to work for more than four months, or - A disease of untreatable nature, or - The complete loss of an organ, or - A serious mutilation
Moderate offenses	Classified as "offenses": - Voluntary injuries and violence - Voluntary injuries and violence that result in incapacity for work - Voluntary injuries and violence, without premeditation, that result in incapacity for work lasting more than four months; a disease of untreatable nature; the complete loss of an organ; or a serious mutilation
Mild offenses	Classified as "fourth-degree misdemeanors": Mild assaults and violence that do not injure the victim
Special cases	Torture and inhuman treatment: Increases the punishment if the action results in incapacity for work lasting more than four months.

Chile	
Severe offenses	Classified as "crimes": - Castration - Mutilation of important body part - Injuries resulting in dementia[a], permanent incapacity for work, sexual impotence, incapacitation of an important body part, evident deformity
Moderate offenses	Classified as "simple offenses": - Mutilation of important body part - Mutilation of less-important body part - Incapacity for work lasting more than thirty days - Incapacity for work lasting thirty days or less
Mild offenses	Classified as "faults": Injuries considered of lesser legal relevance by the tribunal based on the conditions of the persons involved or the specific situation
Special cases	Domestic violence: Increases the punishment in these cases and considers psychological repercussions. Traffic law: Increases the punishment, especially in the context of alcohol consumption. Torture and inhumane treatment: Increases the punishment if the action results in a permanent incapacity for work or involuntary injuries.

a: "Dementia" in the legal sense, understood as the severe and permanent loss of intellectual capacities and/or self-determination.

France (Includes psychological violence by Art. 222-14-3)	
Severe offenses	Classified as "crimes": - Violence resulting in unintended death - Injuries that result in mutilation or permanent disability if the victim is vulnerable or belongs to other specific classes of victims - Frequent violence against a person less than fifteen years of age or a vulnerable person if results in death, mutilation or permanent disability. [þ]
Moderate offenses	Classified as "offenses": - Injuries resulting in mutilation or permanent disability - Injuries that cause incapacity for work lasting more than eight days - Injuries that result in incapacity for work lasting eight days or less or injuries that do not lead to incapacity for work, if the victim is vulnerable or belongs to other specific classes of victims - Frequent violence against a person less than fifteen years of age or a vulnerable person, with or without incapacity for work.[þ]
Mild offenses	Classified as "fifth-degree misdemeanors": - Violence resulting in incapacity for work lasting eight days or less in a non-vulnerable victim. - An action that unintentionally results in incapacity for work lasting three months or less Classified as "fourth-degree misdemeanors": - Violence that does not result in incapacity for work if non-vulnerable victim.
Special cases	Torture and acts of barbarism Violence against public authorities

þ: The punishment times for this crime encompasses the categories for crimes and offenses. (See art. 222-14 and art. 222-14-1 of French Penal Code.)

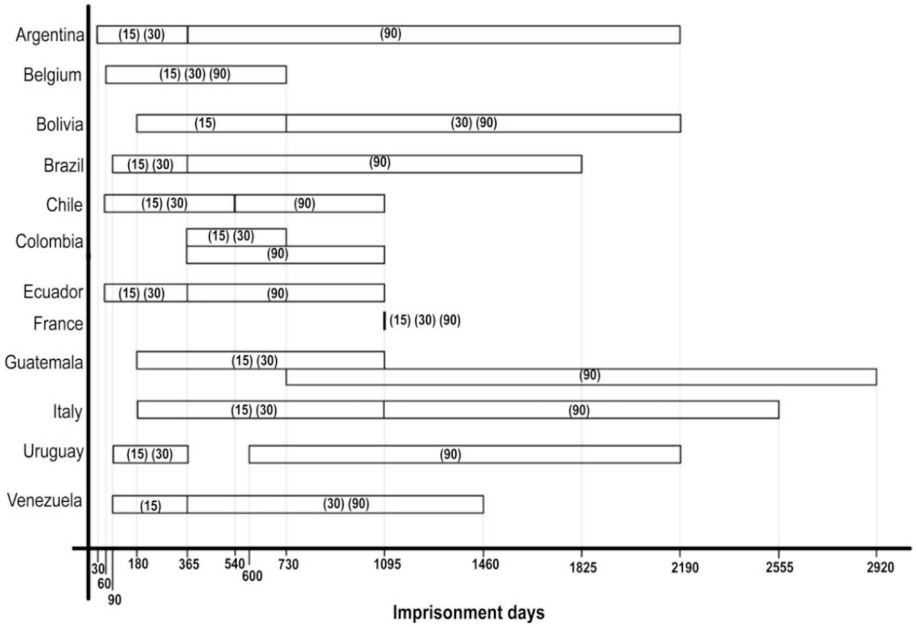

Fig. 1. Imprisonment periods for personal injury crimes resulting in 15, 30, and 90 days of incapacity for work, by country.

3.2. The question of validity

Beyond the challenge of the definition, there is an underlying question regarding any work-related scale of punishment for personal injury crimes, be it incapacity for paid work or everyday activities: How well does incapacity for work reflect the severity of the offense? Is incapacity for work a valid measure for use in determining the penalty?

From a biological point of view, injuries and healing processes vary widely in presentation, depending partly on individual factors such as age, nutrition status (e.g. obesity), and comorbidities such as diabetes, peripheral vascular disease, wound infections, or stroke-related disabilities, as well as on social factors that have little to do with the actions or intentions of the offender or victim, such as the latency of the health care system's response, access to health care, the capacity of the health system to treat the injury, and the capacity of the patient to follow treatment instructions (Harper, Young, & McNaught, 2014; Khalil, Cullen, Chambers, Carroll, & Walker, 2015; Ubbink et al., 2015).

It must be also noted that medical knowledge evolves quickly. More effective treatments may be discovered, or evidence of a given treatment reaping little benefit or even hindering rehabilitation may emerge. Access to medical advances is not homogeneous across a nation's territory - even in those that are developed - and access or lack therefore indirectly influences the healing process of any injury (OECD, 2017, p. 94–5; WHO, 2016, p. 31–49; Devaux, 2015; Guillou, Carabantes, & Bustos, 2011; Doorslaer, Masseria, & Koolman, 2006).

All of this means that the severity of the injury derived from an act of violence depends at least in part on factors that are not linked to the cognitive processes, will, or actions of the offender. As a result, punishments determined under this criterion are influenced by variables unrelated to the intention or execution of the offense. Even if the offender had knowledge of factors such as the victim's comorbidities, access to social security, or likely wait time for receiving treatment before committing the offense, most penal systems consider these variables when evaluating premeditation.

Clearly, punishment decisions should not be dissociated from the effects of the crime on the victim. The legal system cannot ignore the effects of violence on the body, but the code should be revised to improve the way in which these consequences are evaluated.

3.3. The case of Spain

Written in 1944, the Spanish penal code used duration of incapacity for work of fifteen, thirty, and ninety days to scale penalties for personal injury crimes, an application similar to those of other countries whose systems are based on the French *Code Pénal* of 1791.

When legislators addressed the possibility of updating the penal code, the Basque Parliamentary Group (*Grupo Parlamentario Vasco*) proposed the following change:

> The phrase “the loss of, or significant limitations to, capacity for work” should be eliminated.
>
> The loss of, or significant limitations to, the capacity for work of the passive subject [the victim] must be reflected in determining civil responsibility, but not duration of imprisonment, as statutes regarding personal injury protect the legal right to physical health, not capacity for work.
>
> (Boletín Oficial de las Cortes Generales, 1995, p.112)

With the proposal accepted, the new definition of personal injury crimes is as follows:

> Any person who, by any means or actions, injures another and undermines his or her bodily integrity or his or her physical or mental health will be punished as guilty of a personal injury crime, with a prison sentence from three months to three years or a day-fine of six to twelve months, whenever the injury objectively requires medical or surgical treatment beyond first aid administered immediately after the injury. Mere medical vigilance or following the evolution of the injury is not to be considered medical treatment.
>
> (Ministerio de Justicia Español, 2015, article 147)

We see in this new formulation a change from the descriptive approach to a more conceptual system that does not contemplate the victim's capacity for work in deciding the punishment for personal injury crimes. Following the description of the basic offense, the penal code also considers the social condition of the victim in certain cases as a factor in determining the penalty. However, unlike the examples from previous centuries cited earlier, the law takes into account social *vulnerability* rather than social standing (i.e. victims younger than twelve years of age; victims with a disability; a current or previous emotional relationship between the victim and offender; or a particularly vulnerable victim that lived with the offender) (Ministerio de Justicia

Español, 2015, article 148).

This new definition provides a more medical approach to the legal concept of injury, and distances the concept of protection of bodily integrity from the idea of bodily function. Nonetheless, the first applications of this definition made it clear that there was a need to define the concepts used, a matter addressed by jurisprudence.

3.3.1. What is medical treatment?

One of the first questions to arise was whether verdicts regarding personal injury crimes would become completely dependent on the opinion of the physician whose duty it is to indicate the treatment. However, while the medical opinion is crucial supporting evidence for the necessity of a given treatment, as well as an expert judgment on the health consequences suffered by the victim, the *judicial* concept of medical treatment remains within the domain of the tribunal (López, 2013).

> Jurisprudence has defined medical treatment in the following terms: … the system used to cure an illness or attempt to reduce the consequences of an illness that is not curable, regardless of whether this activity is executed personally by the physician or entrusted by him to other health care providers, also by means of prescription of pharmacological agents to the patient, or by means of a prescribed behavior, exclusive of mere diagnostic or preventive procedures.
>
> (Supreme Tribunal, 2014a, p. 3)

This definition aims to prevent the punishment from being dependent upon the conduct of the patient in the cases where he or she decides to self-medicate or use methods prescribed by non-certified persons. The crime is determined by the *necessity* of a given treatment according to contemporary medical criteria, not by the fact of actually having *received* said treatment. Conversely, this definition allows the judge to ignore unnecessary treatments prescribed by certified physicians.

At the time of treatment prescription, it is the physician's responsibility to provide all of the information needed to consider such instructions as medical treatment, and jurisprudence has defined that the physician must detail the specific pharmacological agent and dose in the context of objective bodily harm for a drug to qualify as treatment from a legal point of view (Supreme Tribunal, 2017, p.11).

3.3.2. What is objectively necessary?

This requirement works on two levels. The statute excludes consideration of treatments not linked to the injury (e.g. the prescription of antibiotics for an ankle sprain) or self-prescribed treatments, as previously mentioned. However, the statute does allow for consideration of therapies aimed at avoiding complications from the definition of medical treatment, provided that the complications are to be reasonably expected as a result of the given injury, according to modern medical opinion, even if the complications do not actually occur in the given case. This point, born out of discussions regarding the prescription of antibiotics to treat wounds that do not yet have objective signs of infection, is extensively cited in the jurisprudence (Supreme Tribunal, 2002).

3.3.3. What is surgical treatment?

The question regarding the level of resources needed for an intervention to be considered a surgical treatment was also one of the first challenges for the Spanish judicial system. The Supreme Tribunal addressed this point:

> … surgery occurs whenever one acts medically on the body of the patient in an “aggressive” way, such as opening, cutting, extracting from, or suturing the body; that is, anytime healing is pursued by a direct intervention on the anatomy of the patient.
>
> (Supreme Tribunal, 1998, p.3)

3.3.4. Alternatives to surgical treatment

Another concept that required clarification was whether the use of procedures less invasive than the traditional surgical intervention should be considered treatment from a legal point of view. The most-cited discussions involve the use of adhesive bandages to cover wounds that might have been treated instead with surgical sutures.

Here, Spanish jurisprudence determined that although application of adhesive bandages cannot be considered surgical treatment, this intervention counts as a medical treatment that continues beyond first aid.

> … the intervention extends its effects in a stable fashion over the duration required to produce regeneration and healing of damaged tissues (…) Therefore, it must be considered that the injured zone remained under treatment, that is, medically sustained, by a stable pressure, under conditions that the body could not have achieved without the intervention.
>
> (Supreme Tribunal, 2014b, p.5)

Before this opinion was decided, the point was discussed during court cases in which adhesive bandages had contributed to wound healing, but one of the parties claimed that this intervention did not constitute treatment beyond first aid. Other discussions took place in the context of cases in which surgical sutures were used, but one party argued that the sutures were unnecessary and that adhesive bandages would have been sufficient.

4. Discussion

Certain crimes against life or body, such as homicide, are typically treated as dichotomies in penal codes given there are no degrees of being dead, and what one discusses at a trial is whether or not such a state existed from a legal point of view as a consequence of a third party's action. This point should not be confused with the degree of completion of the crime, which is the discussion regarding how many resources the offender set in motion to accomplish his or her criminal objective in a specific case, and if he or she actually succeeds.

In contrast, the biological spectrum of injury severity has been translated into a legal scale of punishments for personal injury crimes in countries that follow the duration-of-incapacity criterion. These codices require that injuries of differing degrees be treated as different types of offenses (e.g. severe injury crimes, moderate injury crimes, mild injury faults). This structure attaches an increased gravity and therefore a harsher punishment to injuries resulting in more severe trauma.

At first, this approach might appear to be logical, and perhaps this system is more rational than its predecessors from a historical point of view. However, the selection of incapacity for work as the unit of measurement seems a peculiar choice, even for eighteenth century Europe, as this criterion would have been difficult to apply to many subsets of that society (i.e. intellectual workers and homeless people). It is difficult to ascertain whether the system is the consequence of poor design; whether personal injury crimes were seen as conduct exclusively related to the working class; whether the aim was to protect economic production; or a combination of the above. It is also possible that the term always referred to *incapacity for everyday activities* and that other interpretations were born after the adoption of this system by other countries.

Regardless of its historical origins, it is noteworthy that numerous nations have applied some variation of the concept of incapacity for work in determining punishment, and that the concept remains a fundamental element of many penal codes to date, although the periods of incapacity and definitions of severity levels required for each category have changed over time. There is a radical difference in the rights protected by laws relating to personal injury if one considers incapacity for carrying out everyday activities, which relates to general bodily integrity, or incapacity for work, which reduces the importance of the body to a relevant but restricted area of human development, namely,

productive work.

Moreover, the health conditions that determine the outcome of an injury, including individual and social variables, result in a weak correlation between the criminal intent, the criminal act and the outcome of the injury. Therefore, the duration of incapacity, be it for paid work or everyday activities, cannot be justified as a penal consideration. This factor may be more appropriately applied in the civil context in which compensation is demanded for the injuries provoked, including the cost of restitution and lack of income due to the injuries. If the penal system is to address the right to bodily integrity, it should make use of more comprehensive criteria to define personal injury crimes.

The most recent approach undertaken in Spain, a country that had historically depended on a results-based classification system for personal injury crimes, provides us with a logical way to classify and punish every significant injury provoked. In this context, significance is evidence by the need for medical treatment, indicating either that the specific injury was of such intensity that the body was unable to resolve it independently, or that it presented a rational possibility of complication.

In this way, the result of the violent act is neither ignored nor given definitive relevance for the punishment, allowing the penalty to remain independent of factors external to the criminal intent and act.

5. Conclusions

Classifying personal injury crimes and their punishments represents a historical challenge that has been subject to wide-ranging solutions. It is clear that there is a weak relationship between the duration of incapacity for work in the victim, be it paid work or everyday activities, and the criminal intent of the offender. Moreover, it is evident that many variables unrelated to the criminal act may influence the outcome of an injury. Therefore, one can ask whether this type of offense should be quantitatively scaled in the penal context, or whether a qualitative classification might be more appropriate. Despite its initial challenges, the approach recently adopted in Spain seems to mark a step towards greater focus on protecting the right to bodily integrity in countries that have inherited a results-based classification system for personal injury crimes.

A better conceptualization of personal offenses could help achieve a more consistent application of the law for all of society and reinforce confidence on the legal system, assuring the criterion used to determine severity of one of the most common of crimes is shared by all the subsets of the population and that it is as independent as possible from events unrelated to the criminal act.

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