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The Criminal Policy Model of Social Inclusion.[1]

José Luis Díez Ripollés[2]

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Abstract: The study puts forward a strategy of penal intervention for crime control, which stresses the beneficial effects for socially acceptable crime prevention of a correct way of reacting on the part of the agencies of crime control. The correct reaction of such agencies refers to those groups that constitute their priority object of control, namely, suspects, defendants, convicts and ex-convicts. The model proposes to evaluate these interventions through the prism of their capacity both to recover, consolidate or not worsen the level of social inclusion of these citizens, and to eliminate, reduce or not increase the social exclusion of these same citizens. Having established the model, the study sets out a first and detailed implementation of it, focusing on the penal interventions that produce the greatest social exclusion. In its first pages, the study frames the notion of the criminal policy model within the concept and constituent elements of criminal policy. The final pages highlight the transformative power of international comparative indices; among them is the RIMES, designed in accordance with the proposed implementation of the criminal policy model of social inclusion.

Keywords: *Models of Criminal Policy, Social Inclusion, Social Exclusion, Rimes, Comparative Criminal Policy.*

1. Introduction

1.1. Public policies are interventions by public authorities aimed at maintaining or modifying certain social realities in order to achieve objectives of collective interest. These interventions take the form of actions of promotion, assistance, stabilization, alteration, or obstruction of various social realities.

Criminal policy is one more public policy, embedded within the broader set of public policies with which it interacts and upon which it mutually relies (among others, Ortiz de Urbina, 2004; Binder, 2010; Becerra Muñoz, 2012; Rodríguez Fernández, 2021). Consequently, it cannot be designed apart from these other public policies. And, like all of them, it is credited with the ability to significantly influence social realities.

The function of criminal policy is to contribute to the maintenance and improvement of social order through a specific form of social control—namely, that exercised by the subsystem of crime control (Hassemer, 1981, pp. 292-297). By crime control, I mean the set of legal and social interventions directly aimed at preventing crime.

The objective of criminal policy is to prevent criminality in a society within socially acceptable parameters. Preventing criminality refers to achieving a significant reduction in the frequency and seriousness of criminal behaviour. Social acceptability means that such prevention is exercised while respecting the values, principles, and rules governing coexistence in a given society. It is not legitimate to obtain preventive goals at the cost of

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[2] Correspondence to: ripolles@uma.es

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contradicting the very foundations of coexistence that prevention seeks to defend (Borja Jiménez, 2003, p. 148; Corral Maraver, 2020; Miró Llinares, 2022, pp. 194-195; Zúñiga Rodríguez, 2023).

The criminal policy of a society will be conditioned by the specific political and socio-economic system adopted in that society. Thus, the basic characteristics of that society will shape criminal policy in a manner consistent with that system and, accordingly, will assign specific objectives priority over others.

1.2. Criminal policy gives substance to the exercise of crime control within a political and socio-economic system through the development of crime intervention programmes. By crime intervention, I mean public and public sector-dependent actions that, in the exercise of crime control, are carried out or promoted by public authorities to directly prevent crime. It encompasses criminal and non-criminal legal actions, as well as other social actions. By programmes, I mean the content that public authorities have decided should structure and guide these crime control interventions.

Crime intervention programmes are pluralistic in nature, as they define the full range of actions that public authorities can take in the exercise of crime control. Furthermore, these programmes are discretionary, in the sense that different configurations of them are compatible with the same political and socio-economic system. However, not all configurations of them are compatible with the current system (Delmas-Marty, 1992, pp. 45-57).

The implementation of these programmes requires a particular strategy, which constitutes a criminal policy model. These models are also discretionary, as different strategies may exist to advance the same set of crime intervention programmes. Ultimately, they aim for greater effectiveness, efficacy, and efficiency of programmes in achieving the objective of preventing crime within socially acceptable parameters.

When establishing a specific strategy to better achieve this objective, any criminal policy model involves, among other things, prioritising or promoting certain programmatic content over others. This does not imply abandoning or disregarding the implementation of the rest of the programmes content.

Consequently, criminal policy models should not be confused with crime intervention programmes. These are limited to structuring, in an orderly and coherent manner, the set of public and semi-public actions aimed at directly preventing crime. It is true that their configuration responds to a specific socio-political choice for crime prevention within socially acceptable parameters. However, they aim to cover all the actions considered necessary in an exhaustive and descriptive manner. A criminal policy model, on the other hand, constitutes a specific strategy for the best implementation of these programmes, which implies prioritizing certain aspects of them and, in any case, applying their content in accordance with those preferences.

Nor may criminal policy models be identified with punitive models. The latter, which constitute a class of criminal policy models, are characterized because their strategy revolves almost exclusively around the social effects that can and should be achieved through criminal sanction enforcement. This gives them a very marked but limited profile (Cid Moliné, 2009, pp. 29-48). However, they lack the strategic complexity of broader criminal policy models, whose priorities impact on more varied components, actors, or fields of the intervention programmes. In any case, given the importance of punitive reaction in any crime control

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intervention programme, punitive models are an important point of reference in the political-criminal debate.

1.3. Once implemented, criminal policy models must be subject to scrutiny for social accountability. This involves conducting periodic evaluations of the performance of the corresponding model. This, in turn, requires the use of accredited indicators capable of identifying progress, setbacks and side effects regarding the strategy developed and, again, with the ultimate goal of preventing crime within socially acceptable parameters (Karstedt, 2006; Tamarit Sumalla, 2007; Tonry, 2007; Rosga & Satterthwaite, 2009; Rodríguez Fernández, 2021).

The results of such scrutiny can and should have a relevant impact on the criminal policy model under consideration and the crime intervention programmes on which it is based. They may even redirect attention to the broader political and socio-economic system, the transformation of which may be a prerequisite for the proper exercise of crime control [3].

An understanding of criminal policy as outlined here clearly shows that expert's reflection, whether theoretical or practical, only makes sense to the extent that it has access to political and social agents capable of making socially transformative decisions (Loader & Sparks, 2011).

2. The Theoretical–Political Framework

2.1. The theoretical–political framework adopted in the proposal we develop here is that of social democracy, a conceptual framework that aspires, within a democratic political structure, to create societies that are not only free but also equal. Today, it stands in contrast to a theoretical–political framework that, also within a democratic structure, is largely limited to fostering free societies. This contrast is reflected in contemporary political economy in the opposition between the welfare and neoliberal state projects, respectively (Díez-Ripollés, 2013, pp. 66-68; Reiner, 2021).

However, not all theoretical–political currents opposed to neoliberalism move in this direction. Young (1998, pp. 85-86; 2003, pp. 231-292) argues that postmodern society has moved away from a welfare-oriented system that has generated an undesirable culture of assistance. Postmodern society is characterized by strong economic exclusion combined with strong cultural inclusion. His proposal, with clear echoes of Mertonian functionalism, is based on addressing this social structure through a meritocratic socialist sociopolitical model grounded in a strong community of values among citizens and leaving behind welfare-state assistance.

Bauman (2006, pp. 179-212), on the other hand, emphasizes that the defining feature of modern society is its "liquidity," as opposed to the solidity of previous social structures. We now live in a society of many individual freedoms within a context of great personal insecurity—uncertainty in life plans, job precariousness, immediate consumerist gratification, unstable couple relationships … Under these conditions, he argues, lost security is sought in

[3] This takes us back to the theoretical tradition on the political economy of crime control and, ultimately, of criminal policy models. Against the traditional reductionist theses—closely tied to singular economic factors—current research tends to focus on global social systems, such as neoliberalism or social democracy, or on analysing a panoply of political□ structural, socio□ economic, or cultural factors present to varying degrees in societies (see Tonry, 2007; Lappi□ Seppälä, 2008; Hamilton, 2014a; Brandáriz García, 2019).

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communitarianism, in identity groups or collectives where these vulnerable individuals find shelter.

2.2. Without denying the shortcomings revealed by social democracy and the welfare-state project in recent decades, especially their inability to respond effectively to neoliberalism in socio-economic and cultural terms (Reiner, 2021, pp. 14-26), the transformations undergone by contemporary society do not undermine most public policies inspired by the welfare state. Rather, they make it necessary to persist in such policies and improve on some of them that are insufficiently developed.

A particularly useful guide to these welfare-oriented public policies is one that assesses them based on their ability to promote the social inclusion of citizens at all levels, notably the socioeconomic, cultural and representative ones.[4] By social inclusion, I mean that citizens have a social status or condition that allows them to enjoy social goods and services without significant disadvantages compared to their fellow citizens, and to participate politically in their selection and development. Public policies aimed at this goal should create or strengthen social interventions that seek to eliminate or reduce initial or subsequent disadvantages of individuals or the groups to which they belong.

In contrast, neoliberal policies[5] assume as inevitable, or choose not to reduce, or even promote the social exclusion of certain citizens to varying degrees in socio-economic, cultural, or representative terms. By social exclusion, I mean that some citizens have a social status or condition that places them at a clear disadvantage compared to their fellow citizens when it comes to accessing social goods and services or participating politically in their selection or development. Consequently, such public policies proceed from the assumption that certain citizens cannot or should not adapt to a spontaneously self-regulated society, and they seek to create, promote or not rule out social interventions specifically aimed at preventing or mitigating the social disruptions that these individuals, or the groups to which they belong, inevitably cause (on social exclusion, and on penal social exclusion, Subirats Humé, 2005; Larrauri & Sales, 2021; Cid Moliné, 2023) .

2.3. This tension between socially inclusive and socially exclusionary policies has clear implications for criminal policy. Insofar as it is a public policy that seeks to prevent behaviours that clearly deviate from social norms, criminal policy is directly confronted with the dilemma of how institutions of crime control should react to citizens who engage in such behaviours.

Although both approaches may at times be complementary, the fundamental alternative is between striving to help individuals themselves to decide to desist from such behaviours or ensuring that they are unable to continue engaging in them even if they wish to do so. Translated into the way crime control agencies react, the dilemma becomes one between socially inclusive and socially exclusionary responses.

2.4. The model proposed here takes as its point of reference the socially inclusive or exclusionary effects produced by crime intervention policies on those directly subject to them. It is well understood that these effects of inclusion or exclusion, which are strictly

[4]In Habermasian terms, the three levels mentioned should enable citizens to achieve the systemic integration, social integration, and political autonomy demanded in contemporary society.

[5]The contrast refers to a general characterisation of the public policies of the two sociopolitical models. It is not claimed that both models necessarily, and in every social domain, develop mutually opposed public policies.

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criminal in nature, have a direct impact on social inclusion or exclusion in general. And we are going to construct this model from the perspective of the welfare-oriented social project, rather than from a neoliberal perspective.[6]

Various theoretical models have highlighted, to varying degrees, the relevance of the social inclusion /social exclusion dimension in shaping criminal policy. A prominent example in continental Europe and Latin America is the debate on criminal law for enemies (*Feindstrafrecht, derecho penal del enemigo*), focused on whether it is legitimate to apply emergency-type criminal law, with fewer individual guarantees, to offenders deemed marginal in various senses (Jakobs & Cancio, 2006; Díez Ripollés, 2005; Zaffaroni, 2007). More generally, scholars have noted the increasing social exclusion of offenders in a postmodern society particularly intolerant of diversity and social nonconformity, or, conversely, the importance of the effective implementation of inclusive social factors—rooted in freedom, equality, and political participation—for reducing crime (Medina Ariza, 2011; Díez-Ripollés, 2013, pp. 66-68; Larrauri Pijoan, 2018; Reiner, 2021).

2.5. In any case, any criminal policy model must be not only analytical (Garland, 2018; Brandáriz García, 2019), but also transformative. In other words, it should not be limited to providing an accurate description of the political-criminal reality from a particular significant perspective. As a strategy for developing specific crime intervention programmes, it must be offered as an instrument for transforming political practice to better achieve the ultimate goal of preventing crime within socially acceptable parameters. To do so, it must be capable of attracting, accessing, and influencing political and social actors who make transformative and collectively binding decisions.

3. The Criminal Policy Model of Social Inclusion

3.1. The model I propose places emphasis on the beneficial effects that a proper way of reacting by crime control agencies to deviant individual behaviour produces for the socially acceptable prevention of crime.

By crime control agencies, bodies or institutions, I mean those that have among their direct objectives the prevention of crime. This includes the legislative, executive, and judicial branches in their actions specifically aimed at crime prevention (parliament, the police, the administration of justice, the prison and sentence-execution system, and bodies with registration, regulatory, promotional, service-providing, or assistance roles across all levels of government. It also covers auxiliary agencies outside the state's institutional structure that pursue the same goal partially or exclusively—generally under public regulation— such as private police, security companies, corporate security departments, and non-governmental (NGOs) or volunteer organisations, among others.

3.2. The proper way of reacting by crime control agencies is assessed in light of the penal interventions that fall upon a small number of social groups—the reference groups—namely, those who constitute the priority target of criminal justice agencies, insofar as they have come

[6]In the field of criminal policy, there is a widespread view that the dimension of social inclusion/social exclusion in criminal matters corresponds to the contrast between welfare and neoliberal socio-political models, respectively (see Garland, 2001; Beckett & Western, 2001; Cavadino & Dignan, 2006; Downes & Hansen, 2006; Lappi Seppälä, 2008; Díez Ripollés, 2013; Reiner, 2021; Brandáriz García, 2019; Hamilton, 2023, among many others).

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into conflict with the crime control system or are very likely to do so. Specifically, suspects, defendants, convicts and ex-convicts of the commission of a crime (in a similar way, Cavadino & Dignan, 2006; Hamilton, 2014).

Consequently, the proposed model relegates to the background, without excluding them, crime control interventions targeting the general public, which are carried out using a wide range of techniques, from general and communicative prevention or preventive policing, to community, situational or early prevention mechanisms directly aimed at preventing crime (Medina Ariza, 2011). These components will undoubtedly be part of the crime intervention programmes, for whose better service this criminal policy model has been designed. And this without losing sight of the fact that the best prevention of crime among the general population is achieved to a significant extent through policies unrelated to criminal policy, policies that play a prominent role in the social prevention of crime, even though lying outside the scope of crime control.

3.3. Preferential attention to certain collectives is not new; it has been characteristic of various criminal policy models.

Thus, the rehabilitation model—also understood as the ideology of treatment—focused on repeat, habitual, professional, or career offenders and neglected occasional offenders (for all, Garland, 2001, pp. 41-44). In this sense, some have argued (Cid, 2021, pp. 172-176) that the present model's emphasis on tertiary prevention (preventing criminal conduct among those who have already offended) is a shortcoming it shares with the rehabilitative model, insofar as it sidelines primary and secondary prevention.

To this, one can respond that the model also addresses suspects and defendants, who are also targets of secondary prevention. Furthermore, it is necessary to mention once again the distinction, already outlined above, between crime intervention programmes and a criminal policy model: While the former encompasses the set of penal interventions that public authorities implement, or intend to implement, in a given society, the latter constitutes a specific strategy for putting into effect those programmes, which involves prioritising or promoting certain programmatic objectives over others, without abandoning the rest. Therefore, a criminal policy model must be characterized and assessed by its priorities, which need not extend to every intervention envisioned in the broader programme— though a general assessment of this programme does require attention to all of them (further arguments in Díez-Ripollés, 2013, p.72).

For its part, the law-and-order or public safety model focuses its attention on violent, sexual, organised, terrorist and street offenders and, in general, on all those who are considered enemies of society, insofar as they are thought to challenge fundamental values for social coexistence. Consequently, it leaves socio-economic crime, or crime committed by the powerful social classes, in the background (Gracia Martín, 2003; Díez-Ripollés, 2005).

3.4. Within the above framework, the proposed model evaluates crime control interventions from the perspective of the capacity of crime control agencies to restore, consolidate or at least not worsen the level of social inclusion of those citizens who are the primary targets of crime intervention, as well as the capacity of same agencies to eliminate, reduce or prevent the increase in social exclusion of such citizens. It should be clarified that, from this point onwards, we understand social inclusion or exclusion to mean penal social inclusion or exclusion, that is, those effects which are subject to the direct influence of crime control.

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Under those conditions, and in theoretical terms, a criminal policy model will have social inclusion as its primary objective if it concentrates its efforts on ensuring that members of the target groups of crime control intervention find themselves, after passing through the criminal justice system, in equal or better individual and social conditions to voluntarily lead a law-abiding life.

This objective of social inclusion resembles, but is not identical to, the rehabilitative aim sought through the enforcement of criminal sanctions. It differs, above all, in that the social inclusion of the groups targeted by crime intervention is a broader objective than the rehabilitation of the convicted person. It also differs in that rehabilitative effects are sought through interventions that aim to correct the offender's defective behaviour by the imposition and enforcement of the penalty, while socially inclusive effects on the target groups are sought through a certain mode of action by the set of agencies of crime control. This is without prejudice to the fact that rehabilitative interventions on the convicted person also belong to this model.

For its part, a criminal policy model will have social exclusion as its primary objective if it concentrates its efforts on ensuring that members of such targeted groups find themselves, after passing through the criminal justice system, in individual and social conditions that make it more difficult for them to break the law or avoid detection.

This objective of social exclusion is similar, but not identical, to the objective of incapacitation pursued through the application of criminal sanctions. It differs, above all, in that the social exclusion of the groups targeted by crime control intervention is a broader objective than the incapacitation of the convicted person. Likewise, while the effect of incapacitation is intended by making it impossible for the offender to carry out their harmful behaviour while serving their sentence, the achievement of social exclusion effects in the target groups is intended through a specific course of action by all crime control agencies. This, once again, is without prejudice to the fact that incapacitation measures against the convicted person also belong to this model.

3.5. Such preferred objectives, socially inclusive or exclusionary, are not unknown to different criminal policy models.

The rehabilitation model may be seen as assuming a more limited social inclusion objective insofar as it restricts itself to convicted persons and, occasionally, ex-convicts, and does so primarily within the framework of the enforcement of penalties.

Cid Moliné (2021, pp. 115 ff.) has convincingly demonstrated the similarity between the rehabilitative model and previous formulations of the social inclusion model that we are presenting here (see also Díez Ripollés, 2013). Without questioning his central thesis, I believe it is important to note some significant differences: the rehabilitative model is a punitive model and, as we have already mentioned, it focuses on the effects to be achieved with the penalty to be imposed and its enforcement on the convicted person, extending its actions at most to the ex-convict. It is true that, as Cid has pointed out, the inclusion of approaches linked to desistance in the rehabilitative model has meant that its initial objective of preventing recidivism has been extended to ensure the convicted person's genuine participation in society, i.e. promoting their social inclusion.

By contrast, the present model does not limit itself to the purposes of punishment, nor does it refer exclusively to the convicted person and, at most, the ex-convict, but includes two other groups. Furthermore, the object of intervention in this model is certainly not the

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convicted person, nor the four reference groups, and even less so the general public, but rather its transformative objective is directed at crime control agencies, whose modus operandi is intended to be modified so that, from now on, it promotes social inclusion or reduces social exclusion among the four reference groups on which these agencies mainly have an impact.

We could say that if the rehabilitative model, in line with its punitive nature, targets convicted offenders and aims to use their penalty as an opportunity to reintegrate them into society, the model proposed here targets criminal justice agencies and aims to ensure that their actions have socially inclusive, or less exclusionary, effects on the four target groups. Naturally, among these intervention agencies are those that deal with the imposition and enforcement of penalties.

For its part, the law-and-order model is clearly oriented towards the objective of social exclusion, which is certainly not confined to the enforcement of penalties domain (Wacquant, 2000; 2009). In this sense, the present model, as will be seen below, constitutes a clear alternative to the law-and-order model.

3.6. Our criminal policy model of social inclusion has two main objectives: to maintain or increase the social inclusion of the groups targeted by crime control intervention, and to reduce or prevent an increase in the social exclusion of those same groups. And it aims to achieve these objectives primarily by transforming how crime control agencies operate, so that their reactions foster social inclusion and reduce social exclusion for the relevant groups.

While these objectives and the means to best achieve them characterise the model, they do not preclude the establishment of additional objectives and corresponding means that belong to the broader crime intervention programmes in which the model is embedded. Ideally, however, the two preferred objectives of the model should inspire crime control in its entirety.

Its focus on how crime control agencies work distinguishes it from other criminal policy models, which centre either on the effective reduction or elimination of deviant behaviour (the law-and-order model) or on transforming the offender's behavioural patterns (the rehabilitative model). In any case, these objectives are not abandoned, insofar as they are embedded in the undelying crime control intervention programmes from which the model derives.

3.7. The priority given to the functioning of crime control agencies brings this model closer to the due process or guarantee-based model (also Brandáriz García, 2023) and to the conclusions of the procedural justice approach.

- The due process model's core priority is to forestall the excesses that the exercise of punitive power may cause in the rights and liberties of defendants and convicts. It therefore focuses on principles and rules governing the adjudication of responsibility and its verification, and, to a lesser extent, those ruling the legal assets to be protected and the sanction system. Penalty goals, particularly their preventive, general, and communicative effects, although frequently placed as prerequisites for the configuration of the above contents, are not in fact determinative and occupy a lesser place.

Therefore, the due process model coincides with the present proposal in targeting the crime control agencies and focusing on groups that come into direct contact with them. It also shares that it is not a punitive model and therefore does not emphasize the effects to be achieved through punishment.

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The differences arise because the due process model primarily pays attention to two of our four reference groups (defendants and convicts), although it could extend its influence to the others. More importantly, its driving idea of guaranteeing the individual rights and freedoms of the aforementioned groups by ensuring the validity of certain principles and rules, also a component of the model proposed here, lacks the broader context in which the latter is inserted, namely, the promotion of social inclusion and the reduction of social exclusion of these and the other groups. This, together with the secondary role attributed to the purposes of punishment, gives the guarantee-based model a configuration that we could call deontic or *principled*, that is, centered on correctly determining the prescriptive criteria within which the effective prevention of crime must be carried out. However, it neglects this second aspect of any criminal policy.

This has led me on several occasions to reject the guarantee-based model as a criminal policy model (Díez Ripollés, 2004; 2019), criticizing it for lacking a strategy to combat crime. I rectify this, in the sense that it is undoubtedly a criminal policy model, although, as befits any criminal policy model, it has legitimately focused its priorities on clarifying and ensuring those prescriptive parameters. This does not prevent criticism of the scant attention it pays to the preventive strategy of crime.

- Regarding procedural justice, Miró Llinares and Castro Toledo (2021, pp. 183 ff.) consider that a prior formulation of the criminal policy model defended here (Díez Ripollés, 2013) has notable similarities with Tyler's proposal for procedural justice. This, as is well known, is based on the idea that crime control institutions that are concerned with ensuring the procedural quality of their decisions, as well as the quality of treatment of the citizens affected by them, generate social perceptions of the legitimacy of the criminal justice system and, consequently, promote regulatory compliance and, ultimately, crime prevention (Tyler, 2003, pp. 183 ff.; Fernández Molina, 2023, pp. 1747 ff.).

In my opinion, it is true that both political-criminal proposals coincide in two relevant aspects: both pay special attention to the mode of action of crime control agencies, and both have aspirations that go beyond the effects to be achieved with punishment, a restriction typical of punitive models.

However, there are important differences between them: Procedural justice aims to have an impact on the general population, although it acknowledges that its effects will not be the same among those who have personal experience with criminal justice institutions and those who do not (Fernández Molina, 2023, pp. 1755). In contrast, the model proposed here limits its scope to groups that have personally come into conflict with criminal law. Furthermore, procedural justice aims to generate social perceptions and mental representations among citizens, an intervention which is psychological in nature. However, the model proposed here seeks to promote, or at least not hinder, the behavioral skills of these groups to lead a law-abiding life, thereby reducing the need for other skills aimed at evading the law.

On the other hand, if we rethorically juxtapose, despite the fact that both proposals aim to move away from a strictly punitive framework, the purposes of punishment with the purposes of crime control bodies, we observe that procedural justice aspires to generate a new general preventive effect, not so much linked either to positive or communicative general prevention, but rather to trust in the criminal justice institutions, and referring to potential offenders or even those who are not. The model defended here, for its part, is closer to the aims of rehabilitative prevention, as well as distancing itself from incapacitative

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prevention, and referring to those who have already come into conflict with the criminal justice system.

- To conclude this subsection, it can be added that the model I propose bears, to a certain extent, some resemblance to the starting point of critical criminology and labeling theory. It agrees with them that the emphasis should be placed on the actions of the crime control agencies. And it does not question the undoubted biases these actors introduce into the characterization of crime and criminals, nor the need to overcome them. However, unlike these schools of thought, it unreservedly assumes that crime must be prevented and that, to this end, criminal law based on legal assets in need of protection, and on responsibility and sanctions systems in accordance with the reality of the deviant and deviance, is legitimate[7].

3.8. Ultimately, the model outlined above is based on two complementary assumptions: maintaining or improving the social inclusion of the groups in question reduces crime in the medium and long term. Creating or reinforcing the social exclusion of these groups leads to higher crime rates in the medium and long term.

Both assumptions, although increasingly plausible, still lack sufficient empirical verification (however, Reiner, 2021). The criminal model proposed here does not attempt to empirically confirm them either. Nevertheless, compared to other models that are more ideologically charged and theoretically self-referential, the criminal policy model of social inclusion, as we will see in its first implementation below, submits its development to continuous empirical scrutiny, accepting that this may affect its content.

4. An implementation of the criminal policy model of social inclusion.

4.1. In the following pages, I will outline a first implementation of the criminal policy model of social inclusion, which, of course, does not preclude other complementary, even more significant, developments of the model. It consists in articulating a strategy of penal intervention that can be described through eight characteristic elements: progressive, comprehensive, legal, realistic, operational, consensual, dynamic, and political.

The strategy will be described by analysing each of these elements. Before doing so, it must be noted that its overarching purpose is to transform current criminal policy practices. Accordingly, the configuration of each element is conditioned by the requirement expressed in its final component.

4.2. First, this is a *progressive* strategy. This is because it refrains from addressing the two preferred objectives of model of social inclusion jointly and simultaneously. Instead, it concentrates on crime control interventions that produce greater social exclusion, leaving aside interventions that improve or do not hinder social inclusion. In short, it focuses for the moment on one of the model's two preferred objectives: reducing or at least not increasing the social exclusion of the reference groups, namely suspects, defendants, convicts, and ex-convicts.

This decision is based on the following arguments:

[7]Illustrative are recent calls by authors belonging to the school of political economy of punishment, or the sociology of punishment, to pay greater attention to the proximate causes of crime control changes, among them the modus operandi of the various agents of crime control (Garland, 2018, pp. 20-25; Brandáriz García, 2019, pp. 67-71; Sozzo, 2022, pp. 370, 387-388).

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The most striking feature of the evolution of contemporary criminal justice systems is the increase or reinforcement of socially exclusionary criminal justice interventions. Given the political dimension of the model, it is preferable to address interventions that, according to the model's assumptions, worsen crime prevention, rather than those that improve it. Among other reasons, because the presence of the former adds unnecessary suffering to citizens, while the absence of the latter merely fails to alleviate existing suffering.

Furthermore, we do not currently have an adequate methodological instrument to measure and analyze the social inclusion generated by the crime control system. However, as we will see at the end of this paper, a reliable tool is available for measuring and interpreting the effects of social exclusion that our crime control institutions are producing.

Finally, it would be conceptually wrong (however, Díez Ripollés, 2013, pp. 68-69; Cid Moliné, 2021, p. 169) to give in to the temptation to integrate both variables, social inclusion and social exclusion, into a single dimension, which would move in opposite directions. No matter how much this would have the advantage of allowing both dimensions to be analysed simultaneously. We will pause on this issue:

If both variables, social inclusion and social exclusion, were integrated into a continuum, the increase in the socially inclusive effect of a given crime intervention would generate a corresponding decrease in its socially exclusionary effect. For example, if the quality and effectiveness of post-penitentiary treatments are increased, we can assume that the social inclusion of those subjected to them will increase. Indeed, a person who has been subjected to such an intervention will be more likely to voluntarily lead a law-abiding life. Let us imagine that this treatment has taught them to behavior by sexual dating and courtship without using intimidating techniques. However, it cannot be categorically stated that this intervention will reduce their social exclusion, in the sense that this person will find themselves in conditions where it will be easier for them, if they so wish, to break the law or avoid being discovered: most likely, such crime control intervention entails that this offender has been identified and registered as a person with a strong tendency to commit sexual assaults, which facilitates their subsequent location by the police or the courts.

Conversely, if this continuum existed, the increase in the socially exclusionary effect of a particular crime intervention would generate a corresponding decrease in its socially inclusive effect. For example, if the duration of juvenile detention is increased, we can assume that the social exclusion of those subjected to this deprivation of liberty will increase, in the sense that it will be more difficult for that person to break the law or avoid being discovered. Their prolonged stay in detention will result in strong social stigmatization and labeling in their everyday environment, in addition to the corresponding police and criminal records. However, it is difficult to state categorically that this intervention will lead to less social inclusion, i.e., that it will be more difficult for them to voluntarily develop a life in accordance with the law. We hope that this extended detention has provided them with access to educational and social skills programmes that will enable them to integrate easily into the professional world.

This does not prevent them from sometimes being so closely related that they tend to be seen as opposites. For example, someone sentenced to life imprisonment with possible parole suffers an increase in socially exclusionary, or stigmatizing, effects the longer they remain in prison. This coincides with an increasing loss of social inclusion as they lose their ability to relate to the outside world. But even in such cases, the exclusionary and inclusive

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effects are not inversely proportional. Following the above example, socially exclusionary effects may peak and stabilize at a certain level after a certain amount of time in prison. Meanwhile, the loss of socially inclusive effects continues to accelerate over time beyond the point at which the maximum socially exclusionary effect is reached.

In other words, an increase or decrease in the socially inclusive nature of a particular crime control intervention only shows that the intervention is more or less inclusive. The same can be said about the increase or decrease in the socially exclusionary nature of an intervention.

4.3. Second, this is a *comprehensive* strategy. It aims to address the reality of crime control in any jurisdiction by considering most of the relevant areas of this intervention, coinciding in this respect with other non-reductionist approaches (Hamilton, 2014; 2014a; 2023, pp. 236-240). The selection criteria of those areas are twofold: the capacity of all of them together to express the reality of crime control; and the inclusion of the crime control interventions that generate the greatest socially exclusionary effects.

In this sense, it does not suffer from the shortcomings of other political-criminal models, which focus on certain specific areas of crime control. For example, the imposition and enforcement of criminal sanctions in the rehabilitation model, the adjudication of responsibility and its verification in the guarantee-based model.

To this end, the strategy proposed here identifies nine major areas of crime control that are both representative and likely to include highly exclusionary interventions: control of public spaces, legal safeguards, sanctions and sentencing systems, harshest penalties, prison rules, preventive interventions, legal and social status of offenders and ex-offenders, police and criminal records, and youth criminal justice.

As can be seen, crime control interventions relating to specific crimes have not been taken into consideration. No doubt that some of these can say a lot about the reality of a criminal policy model. This is the case with how crime control agencies react to violent crimes, sexual crimes, illegal trafficking in drugs, people, weapons, etc., and organized crime. However, it has been concluded that these interventions are ultimately reflected in the general patterns of crime intervention that are the subject of the model.

In turn, these nine broad areas can be illustrated more specifically around twenty-five sub-areas, distributed among them: gated communities, video surveillance, urban access policies (control of public spaces); undermining of due process safeguards, hindering of judicial reviews (legal safeguards); judicial discretion, aggravated recidivism laws, extensive use of prison, intermediate sanctions, electronic monitoring (sanctions and sentencing systems); death penalty, life imprisonment, long-term prison sentences (harshest penalties); living conditions in prison, prisoners' rights, release on parole (prison rules); indefinite preventive detention, pre-trial detention (preventive interventions); disenfranchisement, deprivation of further political and civil rights, accessibility to social resources (legal and social status of offenders and ex-offenders); expansion and accessibility of records, public notifications of ex-offenders (police and criminal records); age thresholds, differentiated treatment from adults (youth criminal justice).

As can be appreciated, other possible sub-areas have not been considered. For instance, in police and criminal records, lists of terrorist individuals and organizations. Given the proliferation of increasingly specific records—sex or gender offenders, road traffic offenders, migrants, etc.—the general data on their number and accessibility is more relevant.

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Nor has been addressed, in prison rules, the phenomenon of private prisons, as it is considered to have little expressive capacity for social exclusion.

4.4. Third, it is a *legal* strategy. The interventions it addresses are substantial components of crime control by legal means. More specifically, it refers to rules and practices integrated into the legal control of crime, often of a criminal nature.

Rule is understood to be a norm integrated into the legal control of crime that establishes specific consequences for certain behaviours or situations related to crime. *Practice* is understood to be the way in which the norm that establishes specific consequences for certain behaviours or situations related to crime is actually applied.

These rules, or the practices that implement them, do not necessarily have to be punitive or even sanctioning in nature. However, they do have to be integrated into crime control, or in other words, they are legal interventions aimed at directly preventing crime[8].

4.5. Fourth, it is a *realistic* strategy. It is based on the penal resources actually available, rather than on theoretical proposals requiring future operationalization. It therefore draws on the arsenal of crime control measures that is currently being used or is available for use.

To clarify this, the strategy outlined here circumscribes its scope of action, in geo-cultural and socioeconomic terms, to the countries of the developed Western world. By "countries of the developed Western world" I mean in this context criminal jurisdictions, identifiable with, or integrated into, a sovereign state, located in Europe, America, or Oceania, and which have achieved a high level of economic and social development. In turn, these countries will have achieved a *high level of economic and social development* if they have a high capacity to generate wealth and to distribute it among their entire population in such a way as to achieve high levels of well-being in their living conditions. For this purpose, international classifications of economic and social development of different countries around the world will be useful, such as the United Nations Human Development Index (HDI), the International Monetary Fund's index of advanced economies, or the World Bank's index of high-income countries, among others.

A certain degree of vagueness is assumed in relation to the geographical scope and the level of socioeconomic development. This is because it could be justified to incorporate into the strategy advocated here countries that do not belong to that geo-cultural region or, to a lesser extent, have a lower level of socioeconomic development, if their available arsenal of crime control measures shows clear similarities with that of the countries initially included.

4.6. Fifth, it is an *operational* strategy. This means that it is designed to be used to its full potential. To begin with, as already indicated, it selects areas and sub-areas of penal intervention that are highly representative of the social exclusion generated by crime control. It then formulates a limited catalog of highly socially exclusionary legal rules and practices derived from those sub-areas and areas. These rules and practices must be precisely defined, distinguished from related rules or practices, and grouped with others belonging to the same sub-area and area. In this way, it is possible to clearly identify which crime control actions the strategy advocated here should target.

[8]Hamilton argues for including legal indicators, and not merely indicators of legal enforcement performance - while warning against excessive attention to rules at the expense of practices, which are harder to assess (Hamilton, 2014a, pp. 3, 193-195; 2023, p. 240). On the problems of tying comparisons exclusively to rules, Edwards & Hughes & Lord, 2014.

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Undoubtedly, this approach entails a reduction in the scope of the strategy that aims to counteract social exclusion, as it leaves out other relevant rules or practices in these or other areas of crime control intervention. On the other hand, however, it facilitates the achievement of the desired transformative effects by focusing on the most socially exclusionary crime control actions.

4.7. Sixth, it is a *consensual* strategy. Indeed, the selection of those legal rules and practices should be carried out through an agreement of international experts (approvingly on this technique, Edwards & Hughes & Lord, 2014; Hamilton, 2023, p. 2041). This should be a broad and qualified group of specialists in criminal policy, criminal law, and criminology belonging to the aforementioned geo-cultural and socioeconomic sphere. Their identification should be carried out according to rigorous personal, geographical, and experience criteria.

The consensus will refer to which rules and practices are the most socially exclusionary. To facilitate their work, experts might choose from a broad catalogue of potentially exclusionary rules previously selected by a regional team of specialists in criminal sciences.

Certainly, we are not in a position, either in terms of research outcomes or in political terms, to wait for rigorous fieldwork to empirically demonstrate which legal rules or practices are most socially exclusionary. Instead, the aim is to reach a *judgment of experts'* agreement, among a large group of international specialists, on which legal rules and practices are the most socially exclusionary from among a large number submitted for their consideration. This does not preclude the promotion of empirical studies to increase knowledge about which legal rules and practices are the most socially exclusionary.

4.8. Seventh, it is a *dynamic* strategy. Its catalog of socially exclusionary rules and practices allows for modifications over time and space.

The passage of time may make it advisable to modify the contents of the strategy. Above all, certain areas of crime control intervention now included may lose their socially exclusionary significance. And other areas of intervention not currently considered may acquire greater socially exclusionary relevance. In addition, new rules or practices may emerge within the areas currently included, others may disappear, or some may be implemented differently (Brandáriz García, 2023).

Similarly, the set of legal rules and practices can be modified to accommodate diverse geographical and sociopolitical contexts. We have already said that the strategy has been designed for a specific geo-cultural and socioeconomic area, that of the developed Western world, without prejudice to a certain degree of flexibility. However, it is conceivable that a similar strategy could be replicated in different geopolitical contexts, such as South America (Sozzo, 2022; Prado Manrique, 2023) or East Asia.

In any case, it must be a strategy that, at all times and in all places, faithfully and comprehensively reflects the reality of social exclusion generated by crime control agencies, enjoying consensual validation and having the capacity to transform the legal rules and practices in which it is embodied.

4.9. Finally, it is a *political* strategy. Its main goal is to trigger changes in the way crime control is exercised by different countries (Miró Llinares & Castro Toledo, 2021; Brandáriz García, 2023, share this approach). In the sense, already expressed, of eliminating or significantly reducing the most socially exclusionary penal interventions generated by crime control agencies.

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This socially transformative political purpose has been repeatedly emphasised above. Several aspects deserve mention: the focus on socially exclusionary rather than inclusive penal interventions; the selective focus on key areas of crime control intervention and, within them, on very relevant rules and practices; attention to real, identifiable and manageable rules and practices; and the decision not to wait for full empirical verification but to rely on international expert consensus.

The strategy's first political objective is to expose the most socially exclusionary crime interventions in different crime control systems. Only a clear and differentiated identification of such interventions makes them susceptible to political reform. Its second political objective is to promote political actions aimed at reducing the most socially exclusionary features of the corresponding crime control system by removing the legal rules and practices that best express them.

The first objective is not only a prerequisite that defines the scope of action of the second objective but also has a direct influence on the better achievement of the latter. Indeed, it is assumed that it is politically untenable for any country or jurisdiction to demonstrate and disclose that its crime control is based on a marked accumulation of highly socially exclusionary legal rules and practices. This implies that crime prevention is based on the social marginalization of a growing number of its citizens. This is a pattern of public intervention that is difficult to defend in political terms.

The resulting delegitimization of such a criminal policy can only be partially counteracted if it can be proven that the crime prevention achieved in this way far exceeds that which would be achieved by being less socially exclusionary. However, this assertion is diametrically opposed to one of the increasingly plausible assumptions, although not yet fully verified empirically[9], of the political-criminal model to which the strategy we advocate belongs: the implementation or reinforcement of socially exclusionary techniques on the reference groups generates more crime in the medium to long term.

Even if this were proven, which is not foreseeable at present, the question would remain as to whether greater efficiency would justify the high level of social exclusion of an increasing number of citizens. Such intense social exclusion can only be accepted as an undesirable side effect, but not as an objective in itself. No other conclusion can be reached if we consider the ethical and political implications mentioned above, as well as the socio-economic costs generated by the social exclusion of large groups of citizens, which should be a cause for concern for any well-managed society (further arguments in Brandáriz García, 2023, pp. 95-96).

Furthermore, the debate takes on another dimension if it can be shown that these, or even better, levels of efficiency in crime prevention are being achieved in other countries or jurisdictions with less exclusionary criminal policies.

And this is where the highly significant criminal policy role that comparisons between different criminal jurisdictions can play comes into the picture (Brodeur, 2007; Nelken, 2010; 2022; Díez Ripollés, 2013, pp. 71-72; Edwards & Hughes & Lord, 2014; González Guarda,

[9] A distinction must be drawn between, on the one hand, the need to establish empirically whether the rules or practices included in our implementation of the criminal policy model are highly socially exclusionary—beyond the expert consensus to that effect—and, on the other, the empirical verification of the hypothesis that highly exclusionary techniques generate higher crime rates in the medium and long term (see Cid Moliné, 2021; Miró Llinares & Castro Toledo, 2021; Reiner, 2021, pp. 66–76).

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2017; Garland, 2018; Barberet, 2022; Hamilton, 2014; Hamilton & Nelken, 2022; Brandáriz García, 2023; Corral Maraver, 2023; Prado Manrique, 2023; Becerra Muñoz, 2024). The experience gained from various international comparative indices operating in other areas of public policy, such as the PISA Report, the World Justice Project's Rule of Law Index, and Transparency International's Corruption Perceptions Index (further references in Nelken, 2022; Barberet, 2022), shows us the usefulness of having a convincing and comprehensive index for comparing different national criminal policies.

Specifically, having a comparative index that measures the degree of social exclusion produced by different national crime control systems, in the sense expressed in these pages, would be a particularly useful tool for the strategy advocated here: it is to be hoped that it will activate a spirit of emulation among political actors of different national crime control systems (Nelken, 2022; Barberet, 2022). And that would ultimately trigger reforms of such control systems in a less exclusionary direction[10]. These predictions are supported, as mentioned, by the context of difficult justification and uncertain effectiveness of criminal policies focused on highly socially exclusionary techniques.

5. The RIMES index for measuring criminal social exclusion.

With this latter purpose in mind, the international comparative index RIMES (Díez Ripollés & García España, 2019; García España & Cerezo, 2024) has been developed. It seeks to assess the extent to which penal systems in the developed Western world produce social exclusion among four key collectives particularly vulnerable to penal intervention: suspects, defendants, convicts, and former convicts.[11]

Following Nelken's classification (2022, pp. 349-362), RIMES constitutes a second-order comparison, since its primary aim is not to describe a criminal policy reality, but to transform it, although the second task presupposes the first. Furthermore, it does not seek to make comparisons that show similarities and differences between the units (jurisdictions) compared, but rather commensurations, that is, demonstrations of how far the different units compared are from a reference criterion, in this case, social exclusion caused by crime control agencies in the respective jurisdictions. Consequently, the indicators that make up the index are not explanatory, measuring variables, nor political, measuring performance, but rather standardizing, as they aim to rank the units studied with the purpose of improving their performance according to the reference criterion just mentioned (on some shortcomings of these indices and indicators, and of RIMES in particular, see Nelken, 2010; Hamilton, 2014a, pp. 4, 15-25, 196; Díez Ripollés & Garcia España, 2019; Arenas García, 2024).

RIMES has been designed and validated according to the guidelines outlined in the specific implementation strategy of the socially inclusive criminal policy model described in the previous section. Some of its most relevant characteristics are: It is based on the concept of penal social exclusion described earlier. Its very existence constitutes a major step forward

[10]Nelken warns of either disproportionate or cosmetic political reactions (Nelken, 2022, pp. 355, 358–359).

[11]Hamilton (2023, pp. 231–241) offers an illuminating comparison between his MDT punitiveness scale (see, for more details, Hamilton, 2014a) and the RIMES instrument. After highlighting their notable similarities, he credits RIMES with going beyond the measurement of punitiveness, being more comprehensive in the domains analysed, avoiding subjective gradings through its dichotomous structure, and wisely resorting to expert consensus validation, among other points. See also Brandáriz García (2023).

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in correctly identifying crime control interventions that generate greater social exclusion, relying on experts' consensus. Its catalog of indicators covers, from a crime control perspective, the three main axes traditionally used for conceptualizing social exclusion in general (see above section 2), including indicators specific to certain groups, such as minors or foreigners. It is adaptable over time and space to the changing conditions of penal social exclusion by replacing or transforming the indicators that build it.

The index has already been applied in a substantial number of European countries and US states (nine and four, respectively) and its application to additional criminal jurisdictions is currently underway. The results already obtained allow researchers (García España & Cerezo, 2024a, pp. 269-295; Cerezo & Rando Casermeiro, 2026, in this volume) and will allow even more as data from more countries are incorporated, to rank national criminal jurisdictions on a scale from most to least socially exclusionary. RIMES is also able to create specific scales referring to the different areas of intervention studied, a feature that allows global judgments about a given country to be relativized by highlighting its specific areas of intervention that generate greater social exclusion. And, of course, it identifies the specific legal rules and practices that are highly socially exclusionary in each country.

In summary, the validity and conceptual richness of RIMES provide the necessary basis for generating the political effects described earlier.

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