

Punishment without punitive content

Abstract: It is considered theories of punishment without punitive content, but it is called into question an opportunity of decision with similar ways of the objectives standing by a society.

Keywords: punishment; morality; intimidation; crime; prevention; impact.

In different times moral gist of punishment had been impugned by philosophers, jurists and writers. Despite their explanations and reasoning are different on form of stating and correspond of the world view and professionalism of each of them, but on gist and final conclusion they are coincided: any punishment is an evil, violence and nemesis, therefore it immoral and might not be used against crime. Concerning immoral nature of punishment said in its time English sociologist I. Bentham who asserted that “any punishment is a harm; any punishment is an evil” [1, p. 221]. Great writer L.N. Tolstoy being clarified the words of Jesus Christ: You have knowledge that it was said, An eye for an eye, and a tooth for a tooth”, wrote: “He speaks simply, clear: that law of resistance to evil, which you put in the foundation of your life, is false and unnatural, and gives another basis - non-resistance to evil, which, according to his teaching, one can save mankind from evil. He says: you think that your laws of violence correct evil, they only increase it. You are a thousand years trying to destroy evil by evil and did not destroy, but increased it. Do what I am saying and doing, and find out if it’s true” [6, p. 195].

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As we see this statement in principle repudiates an ancient Law of Moses about fair retribution on formula “an eye for an eye” as violence according to Tolstoy, can never be good useful in any circumstances. In context of criminal policy it means denial of punishment as means in fight against criminal manifestations, its usefulness, senseless, that is immorality.

Quite great attention of moral essence of punishment was drawn by famous Russian philosopher-jurisprudent V.S. Solovyov in his work “Law and moral. Essays from applied ethics” (1897). Therefore it should be dwelled in details on his views, which in generalized form determined in the following thesis: “One of the two: either main sense of punishment in intimidation, and then it is necessary to assume painful execution as measure that more corresponding to this essence, as intimidating or to adapt with moral beginning that give what is permissible and impermissible, and then it is necessary to refuse from the intimidation principle as a motive, in actually, immoral or impermissible from the point of view” [5, p. 65].

It is not difficult to notice that V.S. Solovyov categorically opposite punishment-intimidation as it pursues one purpose – to keep people, society in fear. On his opinion, this logically will be led to application more severe and cruel, than it necessary, punishments that contradicts and does not corresponds to moral beginnings of punishment. As in this case a criminal is transmitted in the means or an instrument for public benefit. Such principle is immoral in attitude not only to human dignity in face of committed crime but also to whole society.

Like a philosopher-humanist V.S. Solovyov acts against using a man by society for achievement of their purposes if even they are socially useful. At the same time, understanding that any punishment has natural feature of psychological intimidation, in principle he does not deny a theory of intimidation, being understood it in sense of main determining beginning of criminal justice, but not in sense only of psychological circumstance. Therefore, he supposes that punishment like a intimidating retribution might not be justified just from moral standpoint because it denies in criminal a man, deprives his inherent of any person the right to life and moral improvement and makes from him dependent instrument of other’s

safety. On his opinion, even the most severe punishments have no visual intimidating impact, in objective presentation of deep mind, about what it testifies a history of fight to criminality with application of the wildest, blood kinds of punishments. Consequently, it is necessary not physical torment of criminal, but his moral treatment or correction. One word, punishments, even the wildest, has never been effective and reasonable in achievement of formulated target, and it means that they cannot be morally justified.

Being denied an idea of punishment in sense of intimidation, V.S. Solovyov believes that punishment is a notion more multilateral, but its various sides is identically determined by general moral humanity, embracing both resentful person and insulter. This, in turn, will lead to disappearing of the notion about punishment in sense *in advance*, finally notifying measure of impact on criminal. Here, a philosopher is faced with very important question: how to fight to evil, crime, how to contract them, how to prevent, and if to refuse from intimidation and so from punishment? Naturally, V.S. Solovyov understands the meaning and sense of these questions and therefore he considers that the same way it is not also morally justified a passive attitude to crime, leaving it without contraction, but makes clear it: to contradict to evil by evil is impermissible and usefulness, to hate a villain for his atrocity and therefore to revenge him is a moral puerility or ferity.

It is easy to notice that V.S. Solovyov, like L.N. Tolstoy, is under influence of teaching of Jesus Christ. Just based on this belief, V.S. Solovyov suggests considering punishment without punitive content, without suffers, which are caused to a man, and the main – without elements of intimidation and fear. What is it a means of non-punitive impact, which acts as alternative to punishment? If to be brief: it is an idea to punish not for offences, but in connection with conditions of its commission applying the punishments measures in compliance with presupposed danger features of personality of criminal. This is a refusal from punitive content of punishment, i.e. from sufferings, hardships, and pain, which are inflicted to a person who committed a crime.

This system based exceptionally on principles of recovering of criminal's identity or if it possible his isolation until it necessary in order to prevent him to commit crime again. For that, some representatives of this theory offer to involve psychiatrists, psychologists to recover mind of a person committed crime. In principle, non-punitive impact on criminal and measures on recovering his identity in compliance with criminal punishment, which has long, in some stage even dark, gloomy history, looks like an enlightened, moral, humane and modern.

That is why the task of future in prevention of crimes the representatives of this theory see in replacement of punishment with measures of impact without elements of retribution. In this sense, certainly, non-punitive impact is perceived like a noble and moral measure as it directed to one target – to return a social health to a man, treat him from crime. We should note that idea of non-punitive impact is not new one and has quite long history. Still C. Lombroso based on anthropology, criminal statistics, criminal law and penology, suggested to refuse from punishment like a means of worthless and to replace it with other measures.

Doctrine of criminal anthropological school, recognizing biological features of criminality, offered to replace criminal punishment with “measures of social protection”. Such replacement come to searching of universal means prevention of criminality like social psychological phenomenon through psychological medical and social impact to conscience of criminal. In this connection we should note that in standpoint of theoretical logics an opportunity of disappearing, and more exact, transmission of punishment in form of non-punitive impact is not excluded. The matter is that history of criminal policy testifies on gradual reduction of punitive content of punishment, on it gradual softening about what are testifying the modern limits of criminal legal sanctions, and also practice of punishment's execution. Since it parallel happens also improving in social psychics and behaviour of man and there are no any grounds to assert that it would not further be continued. It is obviously, the limit of evolution to which is sought application of punishment, in finally, might be only “nil”, i.e. disappearing of punitive features of punishment. But, it is only *a theoretical* model of development of punishment

institution. As for practical side, then unlikely we should think about disappearing of punishment in principle until humanity exists. One may only hope in approaching of application of punishment to nil.

By the way, today some authors believe that “criminology of 21 century has to draw attention to perspective nature of non-punitive sanctions and to include them in context of individual prevention of crimes” [3, p. 12]. In modern Europe it is quite popular idea “pain reduction” in the content of punishment. In particular, N. Christi, being a proponent of this position, writes: “I do not see serious reasons to recognize today’s level infliction of pain rather fair and natural as this matter is an important and I have to make a choice; I do not see another position, which might be advocated apart from fight against reduction of pain” [4, p. 47]. As we see, the author does not refuse from criminal punishment, understanding that in modern conditions this looks like utopia. It is talking here only about minimization of pain in possible extent. What way should it be achieved?

N. Christi suggests to aware a gist of punishment, which he defines like infliction of pain, sufferings, destitution etc., and also to solve an issue about limits of infliction of this pain for what instead of punishment it should be established self-regulating communities. Discussion about matters of general prevention, in his opinion, this is discussion not the fact like a pain directly affects into criminal, but mainly, like it impacts into “A” the fact that “B” subjected to punishment. In our view, it is completely obviously that punishment is an intentional infliction of the sufferings and destitutions, but not the means of their diseases’ treatment. Pain is caused as retribution of committed, and also in interests of other people. Therefore, destructing the pain’s feature from punishment is equal its denial. Other matter is regulation of a pain, which becomes an important issue from moral standpoint.

It should be noted that modern Europe is tried in practice to draw alternative measures of non-punitive impact through limitation of application of criminal punishments, when offenders are seldom subjected to detention and punishment in form of deprivation of freedom. So, for example, during 2007 in Germany courts received cases in respect of 575152 criminals, punishment in form of deprivation

of freedom assigned to 128046 persons, but only 41324 of them - in really, and others - conditionally. For comparison: in Azerbaijan annually 50% of all criminals are sentenced to deprivation of freedom. At the same time the Europeans began to understand that liberalism of criminal policy has its limits, crossing the borders of which is resulted with destructive consequences and increasing probability to return to repressive actions [2, p. 204]. For instance, in the Netherlands is observed trend of the growth of number of sentenced persons to deprivation of freedom: from 1998 to 2008, i.e. for ten years, from 11760 to 16416 persons.

In principle, it might be distinguished two main varieties of continental system of impact on criminality through punishment. *South European* model (Italy, France, Portugal, Spain) is characterized mainly with development of medical psychiatric forms of impact onto identity of criminal and prevention of criminal behaviour. The founder of the clinical school of fighting crime is the Italian C. Lombroso with his theory of “born criminal”. *North European* or Scandinavian model (Norway, Sweden, Denmark, Iceland, Ireland, Finland) is distinguished with accent on prevention of criminality, in base of which is a doctrine “welfare state”. Particularly successful this theory is developed by representatives of the Scandinavian school (N. Christi). In their view, it should be refused from institution of punishment that means abolishment of criminal law in principle. They based on that state has no to determine kind of punishment and way its execution. According to them, this task should jointly be solved with relatives of criminal and victim. There is suggested to develop meditative technologies for that. In whole, Scandinavian criminal policy is concluded in maximum minimization of application of deprivation of freedom, i.e. only when it is necessary in really. Therefore, the scientists characterize their model as progressive and humanistic, distinguishing with low level of punitive impact. First of all, it should be solved social problems. They consider punishment as means in prevention of crimes.

One should say that search of alternative to punishment is a main task of liberal criminology. It is carried out in different variants.

One of the founders of movement of “new social protection”, which targeted conducting of rational and humane criminal policy in alternative with criminal punishment, is M. Ansell who set up and headed in 1949 the international society of social protection

An Italian scientist F. Grammatika offered to replace a system of criminal punishment with system of “social protection” as state, in his opinion, has no right to punish criminal, it has to socialize, i.e. to eliminate his asocial nature through preventive educational and remedial measures.

In actually, these ideas are denial of punishment as criminal behaviour of an individual is considered from position of anthropology, psychology and psychiatry. Different variants non-punitive impact as alternative to criminal punishment can attract with its moral beginnings and humanistic principles. But is it possible with these means of impact on criminal and society in whole to resolve those tasks, which we are facing?

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