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The fairness of punishment: myth or reality

Abstract: It is necessity to obey the laws of the state is the foundation and key principle of fairness in society. But it is equally important that the scales of justice are fair and correct, and that the one of who holds them in his hand maintains a balance of weights and does not abuse his position for inappropriate purposes.

A fair retribution, i.e. the visible equality between crime and punishment, should represent a line over which the legislator has no right to cross. Crossing this line would mean crossing the boundary between the moral and immoral use of punishment as a means of achieving political and economic goals, and not preventing manifestations of crime.

The proportionality between crime and punishment requires, first of all, a requirement for data reporting on the relative severity between various crimes - since the only true measure of crime from the point of view of the legislator is the harm that it brings to the nation.

The possibility of the empirical measurement of social danger therefore seems more appropriate at this stage for each particular crime. The current task of the theory of judicial activity is the development of theoretically correct, appropriate and practically implemented indicators by which judges can determine the social danger of crime in order to maximise the individualisation of punishment.

Keywords: punishment; justice; state; society; legislator; crime; mathematization of juridical science.

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Punishment may be necessary and useful but if it is unjust then it does not comply with morals. So what does just punishment mean if we have not yet decided even on the concept of justice, even though this ethical category appeared long ago in the human mind? As Kant once remarked: “A man of natural simplicity very early on acquires a sense of justice, but too late, and usually he never gains the concept of justice.” [6, p. 196].

Even Socrates and Plato noted that people readily use concepts as applied to the workings of their life yet struggle to define them, i.e. to explain their essence. As a rule, such concepts at later stages have been called moral - including justice and morality amongst others. People understand what they are but do not know what they mean - in fact we distinguish just from unjust as based on our feelings, which of course are individual and unique. Hence everyone has their own understanding of justice. It also goes without saying that everyone thinks he is right and rejects the views of other people. As the Swedish theorist G. Ekelof warily observed: “The general concept of justice is similar to the concept of the Lord God - everyone talks about him but nobody knows what he is [3, p. 44].

However, mankind has always sought to provide a common concept for justice, and this problem naturally rests on the shoulders of the philosophers since this concept is purely philosophical and therefore abstract, controversial, difficult to detect and unearthly. Current in the philosophical literature is the idea that justice is determined as a virtue, the essence of moral beauty, as an acceptance of reality, equality before the law, and as an act of compliance with retribution. In short, justice finds its application in all spheres of public life without exception, although this concept in the history of ethical doctrine is most often considered as a measure of moral attitudes and demands. In principle, this understanding is correct and it is no wonder that the ancient emblem of justice is the scales - the first humans understood justice as an equal share in the distribution of spoils or land,



with compensation equal to the damage caused, i.e. with respect for the balance of scales as expressed by the Pythagoreans or, as the Book of Proverbs puts it, “divers weights and divers measures, both of them are alike an abomination to the Lord”.

For centuries, the concept of truth was linked to the beginning of equality, hence something was counted as fair when it was applied equally to all. This principle stems from the very nature and essence of the human personality. In the words of B. N. Chicherin: “All human beings are free creatures, all created in the image and likeness of God, and as such, are equal to one another. Recognition of this basic equality is the highest requirement of the truth, which from this point of view is called the equalising truth” [22, p. 96].

If we start off from the philosophical legal interpretation of justice as being “everyone should be awarded”, then punishment should correspond to the crimes committed or, as recommended by Beccaria, “as far as possible to be similar to the nature of the crime”.

But first of all the law itself must be fair, for otherwise the scales would be out of balance because the legislator or the state are able, in order to achieve their personal political economic intentions, to establish completely unjust punishments in the law. For example, during the Soviet period the death penalty was established in all codes of the union republics for the theft of state and public property of more than 10,000 rubles. There is no doubting the injustice of this law because neither the weight of the offence nor its nature corresponds to the punishment. We may recall the words of Thomas More when he spoke out against the death penalty for economic crimes: “In my opinion, it is unfair to take the life of a person for the theft of money. I think that human life at its value cannot be balanced with all goods on Earth. And if I was told that this punishment is not retaliation for money, but for the violation of justice, for the violation of laws, then why not name it rightly the supreme law of the supreme justice. God has forbidden to kill someone



else, but we so easily kill for the taking of an insignificant amount of money” [13, p. 68].

More, as we see, does not agree with those who believe that being just is something that complies with the law (Aristotle) or that the only measure of justice is the law itself so that no matter the norm that is ordered it will be just (Hobbes). Presumably, as not only Aristotle but Antiphon said, “justice consists in not violating the laws of state of which he is a citizen” [16, p. 75], an argument that highlights a sense of moral obligation to obey the law of the state even when it is considered improper or immoral. Socrates, for example, voluntarily took poison even though he was aware of the injustice of the sentence of death upon him, believing that obedience to the laws of the state was the moral duty of the citizen.

Undoubtedly the need to obey the laws of the state is the foundation and key principle of fairness in society. But it is equally important that the scales of justice are fair and correct, and that the one of who holds them in his hand maintains a balance of weights and does not abuse his position for inappropriate purposes.

So would it be possible to establish a precise punishment for a crime based on the principles of justice even if there is no common notion of this philosophical category? Marat in drawing up his Plan for Criminal Legislation tried, in his own words, “to reconcile with no loss to justice or freedom, the softness of retribution with its reliability and humanity with the security of civil society” [12, p. 213]. What was Marat after? He wanted punishment to be just and not to violate fundamental human rights or, especially, their freedom, while at the same time punishment is to remain humane and to help protect society from criminal attack. Yet this goes only so far as the legislator is able to take into account the interests and factors of all members of society individually. Or, as I. A. Ilyin observed: “If you follow only justice then the inequality in people’s lives will be considered complete yet there will be no order or organisation created in this life. And if you follow only the law, then order and organisation will be possible yet the vital



inequality of people will be lost. Order would be unjust and organisation would be lifeless” [5, p. 473].

Making demands therefore of the legislator to take into account the interests and individual characteristics - moral qualities, level of culture and consciousness, including a sense of justice and so on - of each individual in determining the nature of punishment are not realistic. Since private interests are unlimited and contradict each other, the law is not able to realise in full every private interest, and it can only be just in taking care of the interests of the common limits for the same benefits. The law establishes the limits of private interests and prevents the shifting of these limits. The aim of the law is not for everybody to gain their private purposes but only that they should aim at them and not break the balance of the benefits for others [18, p. 258].

For himself personally, the question of the justness of punishment is decided by a person on the basis of the moral norms that his conscience tells him. Of course, it is a subjective assessment of justness. For example, an individual will believe the abolition of the death penalty is unjust because the legislator has relied more on political reasons in this particular case while ignoring the interests of the victim as well as his own opinion. We can argue with the legislator of course, but it is impossible not to take into account his arguments in favour of retaining the death penalty since the same opinion will be shared by other members of society. Nevertheless, there are those moral norms which are perhaps more widely accepted than a normal thinking person could deny, so when we want to convince supporters of the death penalty of the justice of its withdrawal, we must, amongst other arguments, absolutely invoke the principle of humanism, seeking justice and punishment on moral principles.

The legislator, consequently, in determining the type and amount of punishment for certain acts in the law, must base his decisions on the norms of morality which are generally accepted in society, even if they are contrary to his



understanding of justice. Otherwise society, in practice and in real life, will face unjust punishment that has a consequent adverse effect. If a society believes that justice can only be carried out by God, who is capable of knowing the innermost thoughts of humans, then of course we have no comprehension of his inner motives and reasons for human behaviour, placing the legislator in a position where he is unable to determine the ideally just punishment because he does not have the capacity of the Almighty.

We have to accept therefore that between punishment and crime there is no perfect, ideal equality, it is impossible in principle, either in moral or legal terms. However, as Beccaria noted, “there should be proportionality between crime and punishment” [1, p. 95].

A fair retribution, i.e. the visible equality between crime and punishment, should represent a line over which the legislator has no right to cross. Crossing this line would mean crossing the boundary between the moral and immoral use of punishment as a means of achieving political and economic goals, and not preventing manifestations of crime. Punishment should be proportionate to the crime and can be accepted by all for a long time, and so this question is not debatable. The real question has to be where does this boundary lie and how should we define it? Perhaps this is the most difficult thing to ask, since to date there has appeared no single answer. When people suggest that criminal punishment has passed through a deep crisis right up today, doubtless this refers to the precise problem of measuring punishment.

So if the government establishes criminal penalties for criticising it, there can be no doubt that this represents a crossing of the borders between the act of justice and punishment, because the decision of the legislator has no defined basis and does not rely on any established criterion for evaluating the degree of public danger of the offence. As Beccaria puts it: “If there was a precise and universal ladder of crimes and punishments, we would have a true measure of the overall



degree of tyranny and freedom, humanity and cruelty of different nations” [1, p. 95]. Of course, if there was such a ‘ladder’, which could create this balance between crime and punishment, then it must strictly comply with the requirements of retributive justice according to the principle of punishment being like a drug that is not effective if the dose is either too large or too small. When it overcomes the measure of justice, then we can say that punishment is similar to the nature of the crime that morally justifies it. A. Frank is absolutely correct when he states that: “Once punishment exceeds or does not reach the number of parts that must be cut from the body of the offender, once punishment is not executed with the strictest accuracy, demanding unconditional equality, by necessity it becomes an injustice and a tyranny” [21, p. 133].

Unfortunately, Beccaria does not take into account the fact that the concept of just punishment for different peoples and nations differs in its evolution according to their historical development, customs, traditions and psychology. Every society has its own standard for life which they consider normal, and there is a particular limit beyond which lies an unacceptable extreme. The status of each nation requires, accordingly, level of their severity of punishment. Therefore, as Beccaria claims, “you must act by making more powerful and more sensitive impressions on the rough souls of people who are barely emerged from the state of savagery” [1, p. 156]. Each society always stands for the common good and recognises the necessity for severely punishing any violation of justice. From this, we may conclude that this universal ladder of crime and punishment for all peoples and nations cannot be created. We can talk only of attempting to create separate ladders for each community, taking into account its own peculiarities. The ladder of crime and punishment should therefore be individualised while still based on the universally recognised principles of justice. The proportionality of crime and punishment should be carried out by a legislator at the stage of lawmaking in the



definition and adoption of criminal legal sanctions, and during sentencing, i.e. in the judicial activities.

Plato spoke of the need for just punishment, both in its definition and in its appointment. For the classical school of criminal law, it is the measures of the scale that act as the consequences of the act and, for the positivists, the internal state of the individual. It should be noted that these positions are fundamentally different from each other, and so the dispute is not only of a theoretical character but, to an even greater extent, practical. And for the legislator, of course, the recommendations of the classical models are more convenient since this way it is easier to determine the significance and value of social danger of an offence and the criteria for the hardness/softness of punishment than to try by determining the type and measure of punishment in the law to attach any importance to the internal state of the figure. In our view, this is the correct choice, because the positivist point of view is more acceptable to the court in the appointment of a particular sentence where the importance of the act committed is put to the background, conceding to the strengths of the motives. The stronger the motive, the stronger must be the counterweight to it.

The penalty determined by the legislator must of course, in the first place, conform to the evil that it incorporates as a criminal act, but, above all, this should be established on the basis of the moral, religious, historical and cultural features of the people. At the practical implementation stage of punishment, advantage should be given to the criminal's personality and to the offender's internal state which needs to play a significant role in determining how punishment reflects the crime. We should not forget either the compliance of causing pain, suffering, deprivation of the convicted at the same time of the execution of punishment with the weight of their crimes. We speak of a requirement for the optimal limits of the process of humanization in serving the punishment, which is neglected at the moment since, without causing pain and suffering, punishment loses its purpose.



So how can we attain equality between crime and punishment in the law? Is it possible to create a system of scales for justice?

Any dependence should have its own specific units of account. Where there is no unit of account, there is no accounting, no measures, and therefore it is ruled by a primitive, irresponsible and unsubstantiated estimation, 'by eye'. If the criminal law for two crimes that cause different forms of harm to society provide the same punishment, then there is a lack of motivation to prevent the commission of the more significant offence since it is connected to a more considerable benefit. In any case, the ability to accurately weigh and measure the parts of anything is a pledge and guarantee of the possibility of a correct decision, and lawmaking should be no exception. For example, a doctor prescribes a powerful medicine and in the prescription he indicates the dose required for the patient. If he writes the vague recommendation "take a little" or "take a lot", it invites the direst of consequences.

We understand that equality in principle is possible and necessary in many areas, particularly in the economy, but it is barely possible in physical or especially moral form to achieve conformity between crime and punishment. However this does not imply that the legislature is expected to ignore all morality and principles of justice in deciding on the system and character of punishment. It is interesting how, in his treatise *On Crimes and Punishments*, Beccaria often resorts to mathematical language, for example, when he observes that "if geometry was and is applicable to countless obscure combinations of human actions, there would have to exist an appropriate ladder of punishments from the most serious to the least".

This approach is unsurprising since the philosophy of the seventeenth and eighteenth centuries was closely associated with the study of mathematics and physics, although Beccaria (d'Alembert) was urged to abandon his use of mathematical language. This he was unable to do because one of the main provisions of his work lies precisely in the requirement of balance, that crucial



proportionality of punishment to the crime. Of course Beccaria understood, as do we, that the creation of a precise, and universal ladder of crime and punishment is impossible even today in our age of great achievements in the natural and exact sciences. This is why A. Korobeev defines the problem as ‘cursed’ and so asks the following questions: “What should a perfect ladder of criminal punishment look like? What steps should it include? What does have punishment to apply to offenders in order to be a cure for them and a remedy for society?” [8, p. 9-10].

Speaking at a conference on punishment held in Beijing in December 2012, N. Havronyuk noted with a deep sense of regret and surprise that: “From century to century, from millennium to millennium, using the best minds known to humanity, when it comes to the question of criminal punishment legalists have made, quite frankly, not much progress. In fact, all they have concluded is that punishment needs to be just and merciful... And, in fact, not much has been achieved to ensure that punishment in every case should be treated this way. We still do not know what punishment should be imposed on the perpetrator in order to attain the purpose of punishment or to ensure that the perpetrator is corrected and will not commit a crime again”.

It is impossible to dispute this. The causes of this condition are associated not only with the objective circumstances but also with the subjective, since criminal legal science does not fully utilise the achievements of other sciences for its purposes that would allow us at a certain point to identify the criteria for distinguishing crimes according to their public danger and seriousness and to help build a more or less fair system of proportionality of punishment to the act committed. It is also true that to date we have not been able to develop a particularly efficient and fair ‘tool’ that allows a judge to appoint and determine punishment that is not simply plucked out of the skies but emanating from scientific basis.



The proportionality between crime and punishment requires, first of all, a requirement for data reporting on the relative severity between various crimes - since the only true measure of crime from the point of view of the legislator is the harm that it brings to the nation. Based on this, of course, the topmost step on the ladder will hold those crimes that destroy society itself and encroach on the lives and health of its members, and on the lowermost step will be found the smallest, unintentional and thoughtless crimes along with acts that violate the rights of the individual and so on.

Logically, then, the most brutal punishments such as the death penalty and life imprisonment should be placed at the top of the ladder, and then in descending order we find term of imprisonment, correctional labour, fines, probation and so on. Clearly the more important the object that is guarded by the law, the more important is the crime itself - but every nation has its own views on the value and importance of what that object is. Undoubtedly, the importance of the object and the social danger of the offence must be taken in any society today as the basis of punishment, in other words the severity of punishment and its form and limits depend on this condition and legislators must follow this in determining punishment. Therefore, the initial task of the legislator, when determining punishment is to provide a proper evidence-based system of objects of crime. Only after that will it be possible to create punishment that is just and effective and its individual forms thereof. Of particular interest to this is Bentham's opinion on the proportionality of punishment and crime [2] where he agrees with Kant that retribution in cases where it is enforceable and not overly expensive will have a greater advantage over other means of punishment. Bentham, in principle, supports the idea of retaliation yet has his doubts about the possibility of its practical application always and in all cases. What then does Bentham have to say on this exactly? He believes that the closest analogy that may exist between crime and punishment is when the harm or loss they produce possess the same properties. In



other words, it is the analogy that forms in the circumstance of then identical harm - the closest analogy to crime is punishment, i.e. retaliation. Hence Korobeev 'cursed' problem.

Bentham specifically recommends that legislation should comply with the following rules in determining the proportion between punishment and crime. Firstly, the amount of punishment must be not less than what is judged sufficient to outweigh the gains of crime. For if it is not, then the full range of punishment disappears and punishment is rendered invalid. Simply put, the essence of this rule is that punishment in its severity should be not less than the harm caused by the crime, otherwise it will not reach the set goals, in particular that of general prevention. At the same time, punishment should not be greater than required this is the second rule. Next Bentham drew attention to the manner of the execution of punishment, i.e. the capacity of punishment to produce suffering that is too harsh or too soft, or even none at all. In this case, under certain circumstances the greater part of the suffering produced is not necessary, while under other circumstances there would not be suffering at all. In short, we should not make the measure of punishment and suffering any more than is required by other rules. Bentham leads us to conclude that the quantity of penalties should increase with the level of seriousness of the crime, i.e. when damage increases, the severity of punishment increases, even if it is not known whether the offence is prevented by the punishment. Therefore the greater the harm caused by the crime, the greater must be the loss incurred by the punishment.

Undoubtedly Bentham's suggestions are interesting from a theoretical point of view and they are applied generally in many guises today by legislators. However, the practical application of this model in any deeper detail is doubtful since too many differing circumstances and conditions need to be considered when establishing proportionality between crime and punishment. Here we are speaking specifically about the circumstances relating to the offence, punishment, offender,



public and the law. Interestingly, Bentham himself admits this: “Notwithstanding this rule, my fear is that in the ensuing model I may be thought to have carried my endeavours toward proportionality too far. Hitherto scarce any attention has been paid to it. Montesquieu seems to have been almost the first who has had the least idea of any such thing. In such a matter, therefore, excess seems more eligible than defect. The difficulty is to invent: that done, if anything seems superfluous, it is easy to retrench” [2].

Practically speaking, it is impossible to calculate the harm of crime in real terms because crime as provided within the law is nominal crime, meaning that harm does not have a real character but a nominal one. Another point to bear in mind that that when a crime has been committed by a specific person, it is possible to estimate and measure the harm, taking into account the individual circumstances. For example, the infliction of injury on someone with weak health or who is elderly may be more dangerous than if inflicted on a healthy or young person. It follows that the punishment should not be the same but different, otherwise it is not based on moral principles. So punishment should be considered from two perspectives: nominal and real. Nominal punishment is that which is provided in the law for a nominal crime, and real is that which is provided for a specific crime for the specific person. Consequently, a nominal punishment is not the same real punishment and since the legislator is unable to provide for every occasion or circumstance of a crime, such an assessment of the strength and the impact of real punishment is given to the judicial system.

In determining the measure of punishment in the law, the legislator also draws on the fact that an act cannot be termed a crime nor can be considered serious unless it has been decided in what way it is connected with its originator. Hence the subjective aspects are no less important to the legislator than the objective. In this case, the legislator of course ignores and cannot bear in mind the guilt of the future criminal. Guilt will be considered by the court, which should have sufficient



space for this. The main problem is that the legislator cannot adequately reflect in punishment through quantitative methods the danger to the public of an act that is forbidden in the law. We must agree with Korobeev who claims that the current theoretical basics of sanctions constricting in the principles of criminal law are still not sufficiently developed, while the practice of law, deprived of scientific advice, is often forced to resort to trial and error, establishing sanctions not by way of the scientific comprehension of the essence of criminal legal prohibitions but, so to speak, 'wondering' as if on a roulette wheel over sanctions that exist in other compositions and on the subjective views of the participants [9, p. 142].

Of course the legislator cannot find absolutely precise mathematical data on the relative severity of various crimes and of the required ratio between the relevant offences and the type and size of punishment. But it is also equally obvious that in general these evaluations are also made in criminal law and judicial practice, though not always flawlessly. We are therefore not in a position to agree with those writers who consider that ensuring the proportionality between crime and punishment is like a meaningless abstraction or academic exercise. Based on these assumptions, there is impossible to compare as the character and degree of the public danger posed by inhomogeneous crimes so the comparative assessment of crime and punishment. As a result, we may formulate the conclusion that a just punishment is an expedient punishment and in nothing else can justice be expressed [17, p. 100].

Modern life and criminal policy compel us to remove, even if only partially, the responsibility from the legislator of proportioning punishment to the crime, which may have a significant and far-reaching effect in all the areas of criminal law as a result, and which could lead to a productive fight against crime. But we cannot talk about 'exceptional accuracy' because a specific crime and the person who has committed it are multifaceted, varied and complex, and so it is mathematically impossible to proportion punishment. We can only talk about the



maximum and real proportioning of crime and punishment. Can the legislature of today then look to the mathematical methods offered by the digital revolution to help solve this problem? In the UK, USA and Germany more than twenty-five research projects have been developed to date that involve artificial intelligence in the process of lawmaking and legal reasoning. In its legislative and legal practice in the last decade, Russia alone has created around a dozen similar legal expert systems.

No one doubts the opportunities opened up by this sort of technology in the criminal lawmaking sphere, in particular in the building and determination of punishment. But how far does this go? Can the computer replace the legislator? In other words:, is it possible to create an ‘artificial legislator’? During the twentieth century, the law was influenced by a set of methodological schools that supported the mathematisation of jurisprudence. This is a perfectly natural process, since ‘mathematics, as well as other exact sciences, attracts lawyers through its ability to achieve high accuracy and certainty by eliminating unproductive complexity and abstraction from the variety of the objective world of rules such as Occam’s razor” [11, p. 52].

It would not be assumed that with the further development of science all the phenomena available to scientific explanation will be brought in line with mathematical formulae or expressed by the correct numerical ratio, nor can we accept that this is the ultimate goal of scientific work [4, p. 205]. How this directly relates to criminal lawmaking then lies in determining fair measures and the limits of punishment, although “if you take cybernetics as a question of homeostasis for society, we can achieve a great deal, but it is dangerous to approach this question from a purely mathematical point of view” [19]. Hence, when creating intelligent systems in the legal field, it is essential to take its features into account. Justice cannot be measured on scales either by logic or mathematics, just as a computer



cannot synthesize a draft law that incorporates the age-old wisdom of jurisprudence and practice [14, p. 107].

Therefore, even with benefits such as near unlimited memory legislator in determining the types and sizes of punishment, because a machine does not have the ability to understand and evaluate the legal, moral and psychological bases of the construction of punishment. Still, we cannot ignore the fact that information technology has the capacity to not only handle huge volumes of information that are unavailable to the legislator but also to provide information about the future result received after the present decision. This is what the legislator should be using in determining punishment but, unfortunately, this is not the case. We have to agree therefore with D. A. Kerimov's argument that: "For decades we have heard, understood and agreed with the calls for the need for cooperation and collaboration between the social sciences and the natural and technical sciences. But from words to deeds the path has been not only long and difficult but also, with rare and insignificant exceptions, unclimbed and unresolved . . . The interest of the natural and technical sciences in cooperation and interaction with the social sciences has been and still remains minimal" [7, p. 500-501].

Computers and robots of course cannot replace the human legislator, but they can work together to help each other, to 'reinforce' one another. In terms of performance, reaction time, memory, formal logical operations and even the reproduction of a new formalised knowledge, computers considerably exceed some human abilities without representing an awareness, mind, intelligence or creativity [7, p. 483]. So even if information technology and cybernetics are currently opening up a huge avenue of opportunity in the field of criminal lawmaking, we still cannot talk of creating an artificial legislator. At the same time, in the task of selecting the correct and fair punishment, artificial intelligence could help, as already stressed, in the organisation of a reference resource that could rapidly and



accurately navigate crime statistics of the past and the present, both as a whole and for individual categories and sectors, as well as help in the prediction of crime.

These types of indicators are important for the legislator when selecting effective punishment. The computer's assignment is to while the task of the human legislator is to understand the artificial legislator and to take the right decision, which in many ways depends on the legal and general culture of the legislator, his work. It should not depend on a superficial primitive attitude to his professional activity because defined punishment is the product of conscious activity. P. I. Lublinsky in his textbook "Technique, Interpretation and Casuistry of the Criminal Code" wrote that the word of the legislator is a deed which can be carried out perfectly only by someone with a gift from God which creates an intuitive holy order in living accordance with the spirit of the people and real powers.

The first steps in the application of mathematics in this field were taken in sentencing, i.e. in judicial activities. Writing in the nineteenth century, I. Foinitsky observed that "the essence of justice is in a person causing exactly the same as he had done to another; a matter of justice should cover a matter of resentment and be mathematically commensurate with it" [20, p. 18]. One notable attempt to develop a mathematical model proportionate to the crime and punishment was made at the beginning of the twentieth century by N. D. Oranzhireev, who considered that the methods of generating the sentencing in court rests on the same basis as that used a thousand years ago, and in this respect has hardly progressed [15, p. 8-9]. In order therefore to overcome the various accounting element methods and the factors that lead to the process of sentencing being "strongly reminiscent of guesswork", Oranzhireev proposed moving to a mathematical comparison of the circumstances essential for determining guilt. For this purpose, every crime would be given the value of a quantitative equivalent relating to its sanction, and to record the different options special coefficients need to be identified.



The essence of Oranzhireev's idea lies in having a method of scaling. In line with this, sixty years later V. I. Kurlandsky recommended using evaluation points on the one hand to give a value to a certain unit of punishment and on the other to give a value to the significance of its appointment related to the act and to the individual. The division of the sum of the points obtained from the evaluation of the criteria by the number of points in which the unit of punishment is assessed gives us a figure that could represent a complementary tool in facilitating the work of judges in making decisions and helping them to avoid serious errors in sentencing [10, p. 93-95]. There have been other ideas from Soviet and foreign scientists, but so far unfortunately our concept of the subject are not complete enough to be acceptable for practical use in forensic work. The problem is that the measurement procedure is essentially dependent on the comparison of the properties of the object and so, because of the varying crimes and non-identities of the attributes that determine the methods, any attempt at measurement will face huge obstacles.

The possibility of the empirical measurement of social danger therefore seems more appropriate at this stage for each particular crime. The current task of the theory of judicial activity is the development of theoretically correct, appropriate and practically implemented indicators by which judges can determine the social danger of crime in order to maximise the individualisation of punishment. Here of course we cannot do this without mathematics and computers, and it is for good reason that since the mid-twentieth century extensive scientific debate in the legal literature has been conducted on the possible use of expert systems in lawmaking and judicial activities. Some would limit the role of any automated legal information systems solely to the task of collecting, storing and retrieving the necessary legal information, while others have set out to prove the worth of using computers in the modeling of decision-making processes.



It should be noted that the USA has experimented for a long time with the idea of the scoring system. In sentencing since 1985, federal courts are guided not only by the relevant legislation but also by the recommendations of the United States Sentencing Commission, composed of experts in various fields of law, economics and psychology and which acts as an independent body within the country's judicial system. The commission evaluates the level of danger of the crime and category of the offender, of which there are currently 43, and the court then sets the minimum and maximum sentences of imprisonment in months according to the list.

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