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Punishment and morality

Abstract: Formal defining of a notion punishment remains an opened many issues about essence and social significance of this phenomenon.

Whether is morally to apply punishment as an instrument of intimidation, retribution, psychological impact on people or it is time to find new measures of non-punitive influence.

Keywords: punishment; morality; state; crime.

There is possibly no other area of criminal law that has taken such a complex, mysterious and ancient journey as punishment. It has existed since the first appearance of mankind and yet what is this phenomenon? Can legal science alone provide the answers that reveal the concept and spirit of punishment? It would seem that punishment is one of those ideas that appears perfectly simple and clear to one and all, and yet we do not consider the difficulties faced not only by jurisprudence but also philosophy and history in seeking to accurately describe punishment as a defined concept. Even the very word 'punishment'—not only in everyday language but also in literature and even the specialist criminal literature—is given very different values depending on the context. Nevertheless the fact remains that any certainty or uncertainty about the concept of punishment depends on truth or falsehood, the sequence or the inconsistency of the whole theory of criminal law, and the stability or unsteadiness of criminal policy.

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What we are able to say is that punishment is a particular and specific tool placed in the hands of the state to keep people from committing crimes. This definition stresses the historical and unbreakable bond of punishment to crime, and it is obvious that this first concept has emerged as a result of the second. However, such a formal definition of the concept of punishment, which gives us dogmatic criminal law, still permits a great many open-ended questions to remain concerning the nature of this phenomenon, its meaning and the social sense of its appointment. This is why the ancient philosophers, not satisfied with the legal and formal definition of the concept of punishment, declared that is only through philosophical categories that we may understand the truth of this phenomenon, since such categories are methodologically universal tools and methods that reveal knowledge and understanding of the nature of things. To be more precise, philosophy as might be expected discovered itself in a position to analyse punishment as a philosophical concept because people believed that elements of punishment such as retribution, evil, good, suffering, justice, purpose and usefulness fall within the scope of ethics, which is clearly a category that is philosophical and not legal. Plato, for example, considered punishment a boon for criminals as a cleansing of their souls [4, p. 335], while others put forward the argument that since criminal punishment is harmful, it is evil [5, p. 103; 1, p. 221]. As we shall see, in describing punishment as both good and evil, the philosophers influenced the world of morality since these are concepts that are not legal but ethical.

A great many theories, schools and even whole branches of study focusing with the problems of punishment have since been developed based on the ideas of the philosophers. For example, in order to determine justice as a like for like reward, Pythagoras and his school recognised that for each evil caused by the crime, the same evil for the offender must follow, i.e. punishment. The German thinker Ludwig Feuerbach based his nineteenth-century theory of the psychological effects of punishment on the ideas of Aristotle, Kant and I Hegel.



The views of the great Cesare Beccaria were not formulated from scratch but on the opinions of giants such as Montesquieu and Diderot. And Beccaria was the first to admit it, stressing that “their immortal works developed in (his) soul feelings of humanity”. Indeed, on reading his treatise *On Crimes and Punishments* (1764), it becomes easy to realise that this is based on the IDEAS outlined by Montesquieu in his earlier work *The Spirit of the Laws*, and Thomas More’s call in *Utopia* for criminals to be treated leniently and humanely. Ultimately, it is thanks to philosophy and the philosophers that punishment has come to be based on moral principles.

It became obvious that without philosophical thought or philosophical categories, discerning the true nature of punishment as a complex phenomenon is impossible because legal knowledge is not sufficient to distinguish the essential from the inessential of this phenomenon. In other words, philosophy helps us to focus our minds in the search and definition of the absolute essence of punishment. Assuming that the subject of philosophy is an idea or, more simply, knowledge, then the philosophy of punishment is the knowledge of the essence of a historical phenomenon which consists of disputed properties. Philosophising about punishment is the scientific knowledge of this phenomenon, i.e. the desire, goal setting and striving to implement the target.

In contrast to legal learning regarding punishment, philosophising offers no answer to the question of what term should be served for a particular crime, instead it provides insights into the moral nature of punishment, its utility and necessity for justice and humanity. If the lawyer notes a legal sanction in the criminal code and examines its structure, then “the philosopher must evoke the power of imagination and intensely peer into the inner subject. And in this inner work the whole soul is involved, noticed or unnoticed” [3, p. 56].

In order to do this, it really is necessary to summon all the power of the imagination to take in the phenomenon that is punishment, and key to this is to



take the process through your inner soul. For example, to speak about the death penalty necessitates the experience of passing the meaning and significance of life through your soul. If you ponder a punishment such as life imprisonment, you should find a way of creating a similar experience to it in your own imagination. Philosophising on the concept of punishment will always be accompanied by doubts since true knowledge can be extracted only through doubt. Doubts about the usefulness of punishment in general and about the morality of the death penalty in particular is one guaranteed way to deepen our knowledge about these concepts.

Philosophy as a theoretical science takes as its point of study the nature of punishment as an eternal institution. Despite its continuous appearance in many distinct forms over the ages, the meaning and value of punishment are not strictly dependent on the physical influence of history's changes on the forms of punishments. As S. Hessen writes: "Punishment also came to people's minds. Slowly releasing itself out of ancestral revenge and public safety measures, just as science for a long time after its inception had traces of its origin in technical and religious-technical knowledge. Successive legal opinions and punishments will endlessly replace what has come before, but nowhere is this very change apparent as in the continuous struggle for fair rights and just punishment to emerge with such a clearly indestructible value - one of the greatest creations in history" [2, p. 204-205].

Naturally our assumption will be that punishment is, first of all, a just legal act which expressly serves criminal law, although it may also be used for other purposes that are not legal. We then need to explain the essence of punishment without going beyond criminal law and punishment, considering it in terms of their legal meaning, significance and value. Can we be satisfied with this approach? The answer must be yes, provided that we confine punishment to being an organised reaction to a crime, since formally speaking punishment is directed to the restoration of impaired justice. However, when we begin to delve more deeply into



the meaning and significance of punishment and ask questions about the rights of the subject with regard to punishment, to its limits and the recognition of the inalienable rights of the person and, at the same time, the recognition of the importance of the public interest, it is clear that it is not possible to define the true nature of punishment solely by means of legal science.

To establish a formal concept of punishment means focusing on the preconditions for the action that becomes an offence, and the reaction to it, i.e. punishment. There is no more of which criminal legal science is capable. Meanwhile philosophising about the nature of the sentence also offers us the chance to connect with the essence of this historical phenomenon, to reel it into the category of developed philosophical thoughts, of which punishment is composed generally speaking. At the same time, this process reveals many other aspects of the problem of punishment, thus proving that it rightfully belongs to the philosophical discipline.

In contrast to the legal approach, any philosophical consideration cannot be formal because philosophy's particular task has to be to discover and then understand what is common to all forms of punishment that have existed since the introduction of this institution into the arena of history. We encounter punishment as moral problem at the very beginning of the Age of Enlightenment - at first isolated timid protests could be heard and then, as those faint fragmented voices grew ever stronger, they merged into the mighty chorus of the general educational movement at the end of the eighteenth century, that glorious era championed by Voltaire, Montesquieu, Rousseau, Beccaria and no many other great minds who were lawyers, philosophers, writers and scientists. The noble motivation and vision of these minds soon became the property of the masses, and the eighteenth century, when humanity found itself enriched by great reforms, is a particularly significant period for the institution of punishment and punitive law. Corporal punishment left the stage, at the same time as the usefulness of the death penalty was questioned,



and sentiments were such that it began to die out despite the efforts of those who sought to revive it. As new ideas appeared such as those of Englishman John Howard, who put forward new ideas .mil practical provisions to reform the prison system, it became clear that here was a wave of moral principles demanding that punishment does not exceed the basis of equity, that crime .mil punishment should be clearly defined in advance, that punishment should fit the severity of the crime. From the vantage point of the development of human civilisation and culture, these ideas are no less great than Copernicus's theory of heliocentrism, Mendel's laws of inheritance, Hooke's opening up in 1665 of cell theory, or the foundations of embryology developed by von Baer in 1828.

Punishment and its execution therefore became a moral problem for society itself, although mankind has continued long after to ponder the question of whether it is moral to punish, especially long-term imprisonment and the death penalty. Should we continue to use punishment as a deterrent, retaliation, even if it imposes suffering and creates a psychological impact on the population that, according to some, does not in fact achieve society's goals? Is it time perhaps to replace punishment with some equally effective non-punitive mechanism, differentiated by more humane content and based on clearer moral principles?

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