

Punishment

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## Punishment

Throughout history, punishment has been regarded as the primary way of confronting and correcting aberrant members of the society. The effectiveness of punishment in the reduction of crime has been contentious. According to Zaibert (2016), punishment is a legally approved method of facilitating the task of controlling crimes. Its core objective is to expiate the victims, rehabilitate the offenders, and dissuade individuals from the wrong deed. As a social institution, punishment is an inherently complex activity that should be approached from several perspectives and theories due to its diverse meanings (Henman, 2016). There are several theories of punishment, including the reductive, deterrence, retributive, and incapacitation theories. With diverse theories and perspective explaining its perceptions, punishment has evolved throughout history from the ancient modes of banishment to modern forms like incarceration, probation, and parole.

### History of Punishment

The impulse of vengeance is documented as a central doctrine for the historical development of punishment. Research shows that vengeance is retribution or punishment, reflecting both the positive self-feelings and instincts inflicted for wrongdoing or injury (Garland, 2018). Despite the adoption of modernized penal codes in most legal systems, the sanctions applied in those codes originate from the moral indignation of primitive humanity and vengeance. Additionally, the most well-known criminal law scholars like Du-Bois, Tonnesen, and Tissault, believed that punishment originated from vengeance as its sole parent. The emergence of the tribal system resulted in another retributive doctrine and the notion of collective responsibility was put into practice (Henman, 2016). The retributive punishment was

established within the tribal justice system not only against internal violations of customs and tribal units but also for external encroachments since many actions were considered against the law. Some of the punishable actions included witchcraft, sacrilege, sexual taboos, poisoning, and breaching of hunting rules. In this regard, vengeance was the premise of criminal punishment.

Historically, punishments were severe and brutal deeds whose severity has lessened over centuries. It has impacted the world and how people live since the oldest civilizations to date (Zaibert, 2016). Garland (2018) argues that countries have developed punishments and crime regulation standards throughout generations to create the modern civilizations. During the medieval ages, Mesopotamia, Rome, and Ancient Greece had the most brutal punishment to the guilty individuals. With crimes like murder and theft being common during those ages, punishments were administered through mutilation, fines, being burned at stake, banishment, beheading, shaming, and death through hanging. This was done to instill fear among individuals who were planning to commit a crime. As time progressed, jails and corrective confinements were introduced, and they were embraced as effective punishment strategies with less contravention of human rights.

Punishments also developed from the Talion principal in the early Babylonian law. The law stated that criminals had to receive punishment precisely the damages and injuries they inflicted on their victims (Garland, 2018). In the ancient Palestine included, body mutilation, injury and theft. The wrongs were settled between the injured and the offenders, an attitude that also prevailed in ancient Rome. Until the end of the middle ages, Talion was providing rationale for corporal punishment like mutilation, branding, flogging, pillory and the stock. Some legal systems still use the Talion principle as a partial basis for assessment of punishments against minor offenders.

### **Courts**

Courts were introduced to determine the kind of punishments to be administered and find out if the offenders were guilty of their crimes. Special areas set aside for tribunal councils were the earliest forms of courts, including the African tribes in 200 B.C.E and the European tribes of 3300 B.C.E (Hayes, 2017). Decades later, countries like Babylon and Egypt established some formal designations for administrations whereby ceremonies and spiritual rites were to decide controversies and the kind of punishments to be administered. Soon the use of peer groups replaced the religious rituals and arguments from parties could be heard. However, an impartial body used to render judgments and hear crimes was introduced in Rome, which formed the background of modern-day courts. The contemporary court system in United States is made up of three main levels including the circuit courts, district courts, the Supreme Court and the court of appeal which governs the level of punishment administered to offenders. All the courts work differently due to the types of cases heard in each court. The Supreme Court is the highest court which has the power to decide appeals on all cases with the chief justice being the administrator appointed by the President.

### **Sentencing**

In the criminal justice system, sentencing alludes to punishment that has been ordered following a court proceeding. Like all punishments, the goal of sentencing is retribution after evaluation of undeniable evidence during the conviction process. Recent research indicates sentencing has to show fairness and equity of the offense or crime committed by a person.

Before any sentence is imposed, the courts have to give the defense counsel a chance to speak on behalf of the defendants (Cohen & Yang, 2019). The defense counsel would address the defendants personally, asking them to present any information necessary for the mitigation of



punishments. This legal process is imperative in ensuring that the guilt of the offender is determined beyond doubt to prevent unfair sentencing.

Sentencing has existed since the old ages and has also undergone a considerable reform in the past few decades. In the Roman law system sentencing was the decisions of the judging organ in both penal and civil trials as well as arbiters' decisions (Levi, 2016). In the modern Latin society, the system of sentencing is considered the final act made by the judges and can be administered in any field of law. In the United States, sentencing was imposed by the judges with nearly unlimited discretion and indeterminate sentencing guidelines. In 1984, The Congress passed the federal sentencing guidelines through the Sentencing Reform Act, which directed and established sentencing policies as well as the forms of punishments (Levi, 2016). The forms of sentencing can be fines, incarceration, and death penalty. The severity of the sentence is determined by the type of crime committed and nature of evidence presented. Despite the evolution of sentencing, the principle of fairness and equality has always been considered.

### **Corrections**

Corrections and sentences are closely intertwined in the sphere of criminal justice. They have been an umbrella in describing the functions conducted by government agencies involving punishment, treatment, and supervision of those offended (Henham, 2017). Using sanctions punishable or rewarding sanctions are the foundations of all criminal theories as well as the major aims of deterrence and social control of deviant behaviors. (Hayes, 2017). Most services in the United States conform to certain correctional theories despite being heavily customized. The two main theories include the contemporary direct supervision model and the traditional remote control supervision, which is mainly used to determine the nature of security operations and facilities designs (Cohen & Yang, 2019). The Direct Supervision model positions the prisons

officials in the population of inmates, thus forming a more distinct presence. On the other hand, the Remote Supervision Model involves the officials observing the inmates from remote positions.

The history of corrections can be riddled with the worst of abuses and the best of intentions. Correctional facilities and practices were created to remove perennial offenders and control the social and moral ways of the communities (Levi, 2016). Also, correctional themes, including the influence of money and its lack have been constant over decades and even centuries. However, the desire to make changes and political sentiments have had a tremendous influence on corrections. For instance, there seems to be an evolving sense of humanity and compassion with the creation of prisons being a major improvement over the brutality of punishments.

### **Prisons**

Prisons are established facilities for confining offenders and criminals who have been convicted and found guilty. Incarceration, as one of the sentences passed in the legal criminal justice systems, aims at keeping the offender in prison for a specified period depending on the nature of their crime and the evidence provided by the prosecution. Historically, the prisons were a form of corporal punishment intended to separate the offender from the society. The prison concept was created by Jeremy Bentham as a substitute for the death penalty for the condemned individuals (Crowther, 2016). In this regard, prisons were founded on the philosophical assertion of respect for human life. The objective of prisons have evolved from deterring people from committing subsequent crimes, preventing offenders from corrupting the society, to rehabilitation of the convicts. Penitentiaries and imprisonment strip individuals of some of their human freedoms and rights (Ashworth, 2017). This denial of freedom and perceived inhuman

conditions in prisons has often been criticized by human rights and civil organizations. Prisons in the contemporary society serve as punishment and rehabilitation for the offenders.

### **Probation**

Probation is a form of sentencing in which the court releases the convicted individual to the society instead of incarcerating them. The individual is then expected to serve their sentence under observation and is periodically assessed. With the vital exceptions of rehabilitation critiques, philosophers of punishment often do not have probation as their main concern. The relative neglect is considered mutual such that when probation scholars, practitioners, and policymakers reflect on their values, work, and practices, the philosophical insights of punishment are rarely in the chosen resources (Ashworth, 2017). The origin of probation can be traced from English criminal law during the medieval ages (Crowther, 2016). Brutal punishments were administered to children and adults even with petty offenses. Some of the common punishments for menial crimes included flogging, execution, mutilation, and branding. The brutality of these punishments led to dissatisfaction in some English society progressive segments that were more concerned with how the justice system evolved. As a result, the courts started suspending sentences despite the process being controversial. The philosophical concept of probation has been historically humanitarian with the rejection of harsh concepts of punishment being insisted in many instances to protect the people.

### **Parole**

After punishment has been administered to prisoners, they are often granted parole under certain conditions before the maximum sentence period. Most often, parole is granted after a certain percentage of sentences has been served. Some terms that parolees have to abide by



include meeting with their parole officers regularly, living within the state, providing proof of employment and residence and submitting to drugs tests. If parolees violate these conditions, then they are often re-imprisoned. In the United States, New York was the first in adopting an all-inclusive parole system during the 1900s (Crowther, 2016). Years later, all the states, including the federal government, had adopted the parole system. However, the trend started to draw attention to the highest number of crimes being committed by the paroled felons. As a result, the trend led to the standardization of the parole system and truth in sentencing.

### **Community Corrections**

With the growth of jail and prison populations, many states determined that petty and nonviolent criminals could be sentenced to community and house imprisonments. The offenders could check in the community service center and drug treatment programs daily (Levi, 2016 ). With this notion, most societies were inspired to establish the community-based programs, which are widely used today to solve petty crimes. Proponents of community corrections further argued that the community programs were in realism more effectual than the prisons measured in terms of reduction in recidivism as well as avoiding contact to unattractive effects (Hayes, 2017). Therefore, community-based corrections facilitate many successful re-integration and better treatment programs for the offenders. Apart from prison and jails, criminals can also be punished through other alternative sentences like fines, differed adjudication, and restitutions. However, they are often determined by their course of action.

Despite the controversies on the effectiveness of punishment in reducing crimes, it still functions to separate the lawbreakers from those who abide by the law. More so, it changes the behavior of people, making them avoid wrongdoings and breaking the law for fear of being punished and its outcomes. The philosophy of punishment has largely been founded on the



theories of rehabilitation, retribution, deterrence, incapacitation, and the restoration of justice.

The theories justify the predispositions of the society on punishment give an ethical rationale for imposing punitive and correctional measures on offenders. The criminological approach to punishment centers on penal policymaking, control of crime, and imprisonment. Consequently, the relevance of punishment in the criminal justice system sufficiently provides a rationale and justification for crimes and criminal behaviors.

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