

ON PENOLOGY: CORE ISSUES IN PUNISHMENT AND CORRECTIONS

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Abstract

This paper which covers basic issues in penology, argues that, punishment, as an integral aspect of penology, depends upon, and is fuelled by the activities of deviants and criminals. Thus, in all epochs of human history, different, but appropriate punishments—both formal and informal—emerge, and exist to deal with offenders. The major aim of punishment is, and should be corrections. After reviewing the harsh consequences of punishment, the paper suggests the primacy of correction, and correctional institutions, for effective dealings with wrongdoings.

Keywords: corrections, crime, deviance, penology, punishment

Introduction

In each age of human history, new patterns of norms violation emerge, in response to which societies evolve social control mechanisms to regulate human conduct. According to the Commission on English Prisons (2009, as cited in Scott and Codd 2010), the punishment crisis confronting us helps us in a way, by presenting us with an opportunity to challenge the very basis of the manner we do react to crime. This assertion by the Commission indicates that societies are in perpetual struggle to adopt the most suitable, appropriate, and effective punishment for multitude of deviants and/or crimes committed by wrongdoers. Thus, the central question remains as to what mode of social control is contextually effective to deter, and correct deviance and/or crime?

Though not new phenomena, the subjects of punishment, and correction receive increased attention, as are the social causes of crime themselves. But the truth, as Pojman (2003) observes, is that we do not know the exact nature of the causes of crimes or violence. This paper is set to look at punishment, its types, forms and historical evolution, as well as briefly assess the relevance, and effectiveness of correction for reforming and rehabilitating offenders. In other words, the science of penology is the theme of this paper.

Penology is a body of knowledge that deals with the punishment, corrections, reformation, and rehabilitation of offenders. To Encarta Dictionary, penology is the scientific study of punishment of crime, prison management, and rehabilitation handling. Punishment consists of all those negative social sanctions inflict on an individual or group who are found guilty acting contrary to societal norms and rules. Punishments are essentially geared towards correcting the behavior of offenders. To say it differently, correction is the last aim of punishment. Correction, therefore, in penological sense, refers to a state of individual - society equilibrium, in which an offender adjusts his/her behavior to a socially approved direction. Correctional institutions are structures put in place, purposely to correct the behavior of offenders. These two definitions of penology above, confirm the necessity to always include deviance and crime in any meaningful discussion of the sub-discipline. This is because, logically, it is only when norms or laws of the society are disregarded, issues pertaining to punishment and corrections come in.

Despite confusing by many, deviance can easily be differentiated from crime. Whereas deviance connotes actions contrary to societal norms, crime is any action that violates criminal law. Thus, all crimes are deviant acts, but not vice versa.

Historical Development of Punishment and Corrections

It is difficult to come up with a specific time and place for the origin of punishment, not even an institution as complex as the prison (Sommer, 1976). Punishment, like deviance or crime is an old phenomenon. From theological perspective, punishment is traceable as far back as to the origin of man as contained in religious parables, when Adam (AS) and Eve and the story of their children (Abel and Cain) in which Cain murdered Abel and then God began to mention proscriptions for wrong acts, such as murder as well as citing the appropriate punishment for each an offense. The topic of punishment is therefore an old one just like this religious digression indicates. The 3rd century's Christian writer and theologian Origen and his school taught that the purpose of such punishment is purgatorial, and that it was proportionate to the guilt of the individual (Redmond, 2009).

Origen held that, with time, the purifying effect would be accomplished in all, even devils; that punishment would ultimately cease; and that everyone in hell eventually would be restored to happiness. This doctrine was condemned by the Second Council of Constantinople in 553, and a belief in the eternity of the punishments in hell became characteristic of both the Orthodox Church and the Roman Catholic Church. It also passed into the creeds of the churches of the Reformation but the doctrine of hell was rejected by many of the more radical thinkers of the Renaissance (ibid). It should however be noted that, punishment in religious term takes place in phases from material universe to the underworld. Historically, punishments inflicted on criminal defendants, include, but not limited to, physical torture, branding, whipping, and for most felony offences, death sentence. During the Middle Ages, the philosophy of punishment was to “torment the body for the sins of the soul”(Siegel and Senna, 2004:305). Violation of norms and rules implies moral corruption which requires a disciplinary measure for deterrence and corrective purposes.

All historical accounts have to strike a balance in resolving the tension that exists between focusing upon the continuities that can be identified across different historical periods, and emphasized the changes that take place between eras. This history is no different, because there is no master-narrative that explains how and why social controls, (in penological sense) have been institutionalized as it is today. In his *Understanding Social Control*, Martine Innes (2009) attempted to explain the forces that necessitated the transformation of institutionalized form of social control in general and punishment in particular, thus: “...is because in complex societies there are complex forces at work consisting of sometime convergent, at other times divergent patterns, distributed across various domains of social, political and economic life”(p.33). Crime in modern society is interpreted by the political authority and the punishment attached to the criminal law violation is also defined based on the perceived threat of the crime upon the economic, social, and/or political structure(s).

As at the Middle Ages (which characterized the fifth to thirteenth centuries), there were few or even no laws in some locations. Offences were settled by blood feuds carried out by the families of the injured parties. Sometimes, the Roman tradition of dispute settlement was applied, i.e. bloodshed is replaced by fine or exchange of property. With the dawn of feudalism, after 11th Century forfeiture of land or property was adopted as penalty for norms violation or for defaulting the lord's obligations. Then by the 12th Century, the concept of *felony* emerged as was derived from *felonia* (breach of faith for one's feudal lord). The emphasis of criminal law as of that time was to maintain public order because the punishment was aimed at preventing escalation of conflicts between feuds. When a person wronged another, the community members would gather to decide an appropriate judgment like fine or make culprit to do penance, in order to compensate (called *werglid*) and pacify the wronged person. If the culprit is serf and could not pay, *corporal punishment*, physical torture like whipping or flogging, would be his/her nemesis.

In early Greece and Rome, the most common state-administered punishment was banishment or exile; only slaves were commonly subjected to harsh physical punishment. Even murder that resulted from interpersonal violence was regarded as a private matter and therefore would not call for state's violation (Siegel and Senna, 2004). As at then, economic punishment was enforced on offenses such as assault on a slave and arson-the offender is to be charged with fine.

Punishment and Corrections in Africa

Generally, the paraphernalia with which Europeans associated law were virtually non-existent in Africa (Driberg, 1934). However, history reserves that, not only was punishment enforced on offenders, Northern Nigeria inherited an organized Shari'ah Law from Othman Empire which had specified and codified rules of the state, whose violations might attract sanctions in accordance with the Islamic law. Besides, it was acknowledged that some sanctions are typically universal in Africa (ibid). In West Africa, for instance, secret societies tend to operate as police societies among Oro and Ekemeku-serving as guardians of public morals, as well as instruments for punishing offenders. Sanctions like religious and magical ones, collective responsibility (e.g. Clan Law), ridicule and ostracism were common contexts and modes of punishments in traditional African societies.

Nevertheless, there is controversy over an analytical distinction between the concepts of 'crimes' and 'civil' in the ancient Africa and Europe alike. Henry Maine, in his *Ancient Law* (1912) influenced subsequent legal scholars on the existence of such difference even in the course of penal judgment. His controversial statement is reiterated by Rubin and Cotran(1970:102) thus:

...the primitive belligerency of the savage, who are supposed to be always at war with one another and whose daily life is, because of the prevailing social chaos, supposed to be dominated by crime...
Now the penal law of ancient communities is not the law of crimes, it is the law of wrongs, or, to use the English technical words, of Torts.

It is apparently a contradiction, as commented by Rubin and Cotran (1970), as to say that a penal law is a law of civil wrongs; but what the jurist really implied is that penalties for all wrongs are extracted by the affected individual or his clan as a matter of private vengeance or redress. In Southern Nigeria, as Talbot (cited, as in Rubin and Cotran, 1970) studied, the distinction between criminal and civil offences was not so crystallized, and the same act might be regarded as either depending on the tribal group or clan. Offences of criminal character have been found among Kamba of Kenya. When the "utui" elders felt that a crime was too serious to be atoned for by the fine of a bull, or by driving the culprit away from the community, they would arraign its perpetrator formally before the *king ole* as an undesirable member of the community. If he is found guilty of the charges, depending on the *king ole's* decision, he might be executed or be hanged by the neck from a tree in a public thoroughfare to serve as general deterrence.

Hence in African countries, such as Nigeria, Kenya, and Cameroon, punishment has been in existence for an eon in their history. For instance, all tribal groups in Kenya recognized adultery with a married woman as a criminal offense on the male adulterer not the woman. But the adultery in some cases has civil aspects as the adulterer is charged to pay fixed customary compensation of one bull and one goat by Kamba law; five rams and one ewe by Kikuyu law, taboo acts like *Mogyadie* (incest) was punishable by death-for both individuals involved(Rubin and Cotran, 1970).

Before the colonial period, the area which comprises modern Nigeria had an enormous history. More than 2,000 years ago, the Nok culture in the present Plateau state worked iron and produced sophisticated terracotta sculpture. In the northern cities of Kano and Katsina, recorded history dates back to about 1,000 A.D. In the south-west, the Yoruba kingdom of

Oyo was founded about 1,400, at its height from the 17th to 19th centuries attained a high level of political organization and extended as far as modern Togo (Winslow, 2015). Inherent in all these organized political states and kingdoms was the existence of punishment measures, for the creation, and sustenance of largely norms, and law abiding societies. It is important to note that, one major aim of punishment throughout ages, and across societies is to correct the behavior of the offender(s). Hence, punishment and corrections go hand in hand.

TimeLine of Punishment

Punishment was not, and is still not commonly held to be legally, morally, or naturally right across societies, and periods. Variations in cultural practices is reflected in differences of the type, mode, and application of punishment. One, and the same type or form of punishment seen as suitable in one society, could be considered barbaric by the other. Consequently, agitations on the brutal nature of certain forms of punishment necessitate changes in the penal codes. The impact of liberal democracy also informed some adjustments as far as human right is concerned. Paradoxically, as more punishments are abolished, new forms are introduced. The table below highlights, in chronological order, various punishments enforced and some abolished, in the history of the world:-

Table 1: Punishments in the World History

Year	Country/Empire/Place	Type of Punishment	Nature/Type of an Offence	Done/Introduced /Abolished
337AD	Roman Empire	Crucifixion	.....	Abolished
818	China	Death Penalty	.....	„
1307	Dublin	Beheading People	..... ....	Introduced
1401	England	Burning	Poisoning	„
1431	France	Burning of Joan of Arc	.....	Done
1431	England	Burning Alive	Poisoning	Introduced
1547	„	„	.....	Abolished
1630	New England	Hanging of John Billington	.....	Done
1632	North American Colonies	Hanging of the first Woman – Jane Champoin	.....	Done
1735	Britain	Last Pressing to Death	.....	Done
1747	„	Last Beheading	.....	„
1778	USA	Hanging of the first woman – Spooner- in the USA	..... ...	Done

1787	Britain to Australia	Transportation of First Prisoners	..........	.....
1790	Britain	Burning to Death	..... ...	Abolished
1792	France	Guillotine	..... .....	Introduced
1817	Britain	Sentencing Woman to Ducking Stool for the Last Time	..... ...	Done
1824	„	Last Use of Scolds Bridle	..... ...	Done
1827	Germany	Breaking on the Wheel	.....	Abolished
1829	Britain	Branding with Hot Irons	.....	„
1837	„	Pillory	.....	„
1857	„	Hulk Prisons	.....	„
1868	„	Last Execution in Britain, and Transportation of Prisoners from Britain to Australia	.....	„
1870	„	Britain Hanging, Drawing, and Quartering	..... ....	„
1881	„	Flogging in the British Army	..... ...	„
1898	„	Crank, and Treadmill in British Prisons	.....	„
1899	..... ....	Martha Place was the First Woman to be Executed by Electric Chair	.....	Done
1924	USA	Gas Chamber was First Used for Execution	..... ....	„
1941	London	Last Execution in the Tower of London of Josef Jakobs	.....	„

1948	Britain	Birching, and Hard Labour in Prisons	..... ....	Abolished
1955	„	Ruth Ellis was the Last Woman to be Hanged	.....	Done
1964	„	Last Executions	.....	„
1965	„	Five Year Experimental Capital Punishment Abolishment	..... ....	„
1969	„	Hanging	.....	Permanently Abolished
1981	France	Capital Punishment	..... ...	Abolished
1987	Britain	Corporal Punishment in State Schools	.....	„
1999	„	Corporal Punishment in Private Schools	.....	„

Adapted from Lambert (2014)

Types of Punishment

There is no uniform typology of punishment because different authors developed varied categorizations or typologies of punishing offenders. The simplest, and perhaps most relevant to this paper, is the one by O’Brien and Yar (2008), and Innes (2009) who broadly, identified informal and formal types of punishment. *Informal punishments* encompass all those negative sanctions, largely haphazardly done, and usually carried out by informal groups like parents, peers, and some voluntary community members. They are the dominant types of punishment in simple societies. In contrast, *formal punishments* are highly organized negative reactions in which formal structures, and institutions, with recognized authority take charge of handling offenders. The latter type of punishment is more effective in contemporary society, obviously, due to its complexity.

Forms of Punishment

Chaturvedi (2006) discussed eight different forms of punishment, each of which represents a particular type in which penalty is imposed. They are: fine (amercement); detention (house arrest, custodial sentence, life imprisonment); capital punishment; electronic tagging; exile (personal exile, nation in exile); ostracism; penal harm (largely added to custodial sentences); psychological punishment; public humiliation (shameful exposure, painful humiliation, public punishment, torture marks). The most important ones have been briefly explained below:

(i) Financial laws-fines

This is the monetary or material losses that are attached to an offence. This type of punishment is rationally imposed with the aim of compensating the state for the damage or injury inflicted on her (by violating the state it is assumed, that the state is victimized). Siegel and Senna (2004) recognized financial law as an intermediate sanction which reduces the overcrowding of prisons or jails. The typical financial laws are imposed by *fine*, monetary payments imposed on offenders as an intermediate punishment for their criminal acts (Siegel and Senna, 2004). Common examples of fines are monies paid for violations of traffic laws. Depending on the gravity of a crime, fines might be paid alongside community service or short prison term (Chaturvedi, 2006). *Asset seizure* is also imposed as a form of financial law. When a person take bank's loan or stole some property and does not pay back, authority or court may decide to confiscate his house or car to compensate the complainant. As a form of financial law, *amercement* is another way of imposing monetary charges on an offender. An amercement is a financial penalty in English law, common during the Middle Ages, imposed either by the court or by peers. While it is often synonymous with a fine, it differs in that a fine is fixed sum prescribed by statute and was often voluntary, while an amercement is arbitrary. They were commonly used as a punishment for minor offences, as an alternative to imprisonment (Chaturvedi, 2006).

Fine is advantageous. Siegel and Senna (2004) observed that, offenders who are fined seem less likely to commit another crime than those who receive jail. To ensure that, the level of severity of the fine commensurate the gravity of the offence and ensure that an offender pays the fine; some judges take into account the daily income of the offender. But other things are also considered, such as number of dependents to achieve what is called 'day fines'.

Fines may impact on very poor offender, but it is not certain that they can pay. Besides, it is discovered that financial laws are not always effective. For someone who has millions of Naira to be penalized with a fine of 5 thousand Naira (25 Dollars), the money incurred may not teach him/her a lesson and thus not effective. This is especially irrelevant in Nigeria because embezzlement and loot of public treasury is taking place with propound enormity and if the culprits are brought to justice, the financial penalty is not much that it will pain them. This is obtainable in amercement and asset seizure.

(ii) Imprisonment as a form of Punishment

As stated in the history section, it is difficult to account for the era in which prison began, but most historians credit the American Quakers of the eighteenth century with the first implementation of imprisonment as appropriate method to deal with civil criminality (Sommer, 1976). Prior to this development, there had been dungeons and cells for religious, political, and civil offenders, but these were places for detention until a person's fate was decoded.

(iii) Capital Punishment

Capital punishment is the imposition of death sentence for a capital offence (Hughes and Croehler, 2010). In other words, capital punishment is the legal infliction of death as a

penalty for violating criminal law. Throughout history, people have been put to death for committing variety of criminal acts. Methods of execution have included such practices as crucifixion, stoning, drowning, burning at the stake, impaling, and beheading. With increasing industrialism and technological advancements, capital punishment is typically accomplished by lethal gas, injection, electrocution, hanging, or shooting (Zimring,2008).

The death penalty is the most controversial penal practice in the modern world. Other harsh, physical forms of criminal punishment—referred to as *corporal punishment*—have generally been eliminated in modern times as uncivilized and unnecessary. In the majority of countries, contemporary methods of punishment—such as imprisonment or fines—no longer involve the infliction of physical pain. Although imprisonment and fines are universally recognized as necessary to the control of crime, the nations of the world are split on the issue of capital punishment.

Correctional Institutions

As stated categorically, and implied throughout this text, punishment is meant to correct offenders behavior. After conviction and sentencing, offender enters the correctional system. Correctional agencies administer the post-adjudicatory care given to offenders, which can range from informal monitoring in the community to solitary confinement in a maximum-security prison, depending on the seriousness of the crime and the individual needs of the offender (Siegel, 2011).

Criminal defendants who are sentenced to a year or less for misdemeanors are typically held in *jails*, or houses of correction. Jails are also used to detain those awaiting trial or involved in other proceedings, such as grand jury deliberations, arraignments, and preliminary hearings. Many of these institutions for short-term detention are administered by county governments. State and federally operated facilities that receive felony offenders sentenced by the criminal courts are called *prisons or penitentiary*. They may be minimum-, medium-, or maximum-security institutions. Prison facilities vary. Some have high walls, cells, and large, heterogeneous inmate populations; others offer much freedom, progressive correctional programs, and small, homogeneous populations (Siegel, 2011). Both the jail and prison populations have been steadily increasing despite a reduction in the crime rate, probably because sentences have been increasing and the proportion of those convicted who are sentenced to prison has been increasing. In addition, legislative *truth-in-sentencing* initiatives that require inmates to serve a greater percentage of their sentences behind bars have also contributed to prison overcrowding.

Debates on the Fate of Prison Institution

Spotlighting this tendency towards the dispersal of social control exercised by the state, the radical sociology of the prison hastened to denounce the anticipated perverse effects of ‘decarceration’. Andrew Scull (1977, as cited in Wacquant,2015) maintained that the movement to release inmates, from behind the walls of penitentiaries and mental hospitals alike, into the community worked against the interests of deviant and subordinate groups by giving the state license to unload its responsibility to care for them. Conversely, Cohen (1979, as as cited in Wacquant, 2015) warned against the dangers of the new ideology of the ‘community control’ of crime on grounds that diversion from prison at once blurs, widens,

intensifies, and disguises social control under the benevolent mask of 'alternatives to imprisonment'. These academic critiques were echoed for the broader public by such journalistic exposés as Jessica Mitford's portrait of the horrors of America's 'prison business' and of the 'lawlessness of corrections', leading to the denunciation of further prison building as 'the establishment of a form of legal concentration camp to isolate and contain the rebellious and the politically militant' (Mitford, 1973: 291 quoted in Wacquant, 2015).

Conclusion

The concept of punishment evolves over centuries as a drift away from retribution to rehabilitation and reform, and by extension correction. Punishment is historically fuelled by the activities of deviants, and criminals, who in a way compel societies to fashion, and sustain a suitable, and appropriate social control mechanisms, to checkmate their behavior. Being one major aim of penology, correction, therefore, is at the heart of penology as a sub field of study. This paper sides with the view of some scholars, such as Chatruvedi (2006) by doubting the efficacy of severe punishment in dealing with crimes. Hence, correction and correctional institutions should be given primacy, by both, formal and informal social control, so that the disastrous consequences of punishment, which may violate the universal minimum standard of punishment by the United Nations, will drastically be reduced.

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