

Purpose of Punishment and Death Penalty*

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I. Purpose of Punishment in General

Criminal Law provides a set of rules to fix the limits of socially tolerable conduct and to prohibit those acts that are out of bounds.¹ Main purpose of the system of penal sanctions is to make as many people as possible to obey the rules of Criminal Law and thus reduce criminality. Therefore imposing punishment is legitimate only if it has two purposes: one, to reduce criminality and the second, to force the population to obey the norms of the Criminal Law.²

For centuries, various theories of punishment and their implications on the penal system have been discussed. Aims of punishment may be classified taking into consideration different interests.

1. Interests of society:

- a. Deterrence of the offender and of others,
- b. Retribution,
- c. Incapacitation for protection of the public and the maintenance of law and order.

2. Interests of both society and the individual: rehabilitation of the individuals.³

These aims inevitably overlap.

Another classification is as follows:

1. Protection of offenders and suspects from unofficial retaliation and thus protection from vengeance.

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1 Gross, A Theory of Criminal Justice, New York, 1979, p.7

2 Prins, Criminal Behaviour, An Introduction to Criminology and Penal System, London, 1982, p. 120

3 Prins, p.121.

2. Reductivism, which targets to reduce behavior prohibited by Criminal Law, i.e. general and individual deterrence.

3. Humanitarianism, which aims to cause the minimum of suffering to the offender and to others.⁴

4. Retribution: Ensuring the offenders to atone by suffering for their misdeeds. But retribution is limited with the gravity of the offense. Unpleasantness of a penal measure must not exceed the limit that is appropriate to the culpability of the offense.

5. Denunciation: Punishment aims to demonstrate society's abhorrence for crime. A symbolic way of telling the offender of the society's disapproval or the inherent wickedness of his act.⁵ It has often been argued as an important aim in relation to the imposition of capital punishment for murder, saying that such a drastic penalty denounced murder as a crime particularly abhorrent to society.

II. Corporal Punishments and Death Penalty

It is a known fact that adults who were beaten frequently as children tend to accept corporal punishment for adults more easily. As Justice Brennan says, death penalty does not "comport with human dignity", because it treats "members of the human race as nonhuman objects to be toyed with and discarded".⁶

Van den Haag says that, only animals are still punished bodily and therefore physical punishment reduces people to animals. Human dignity requires *noli me tangere*.⁷ I personally go beyond this and as a person who is in close contact with animals, I declare that even animals should not be physically punished. When they are scolded they understand that the act they committed is not approved and have the tendency not to repeat it.

Several centuries ago people were embowelled, burnt, beheaded, hung, torn into pieces, their heads were immersed into the water, and were tortured in many other ways.⁸ People publicly rejoiced and enjoyed this as a spectacle. In those days, suffering was routine. Anesthetics were unknown and patients had to suffer horrendously. But today modern medicine has made pain unfamiliar

4 Beccaria, *Delitti Delle Pene*, Milano, 1973, pp.53-55

5 Walker, *Punishment, Danger and Stigma: The Morality of Criminal Justice*, Oxford, 1980, pp. 24-30

6 Saltzburg-Diamond et al. *Criminal Law*, Virginia, 1994, p.140.

7 Van Den Haag, *Punishing Criminals, Concerning a Very old and Painful Question*, New York, 1975, p.201

8 Sutherland, pp.335,347.

and inhuman.⁹ So today we no longer want to make anyone suffer, including the criminals we condemn. The aim of the penal sanctions is not "to punish", but "to rehabilitate". For this very reason prisons are not "penitentiaries" but they are "correctional institutions".

Death penalty does not have the features (characteristics) of a modern penal sanction. A penal sanction aims to rehabilitate and put the criminal back to the society. But the death penalty cannot do this. As Beccaria put it years ago: "La pena di morte non ha mai resi migliori gli uomini",¹⁰ which means that death penalty has never been able to make man better. How can it, if it puts an end to the human life.

There are arguments for and against death penalty. Those in favour of death penalty say that it is deterrent and argue that the civil society would not depend not in the fear of God but on the fear of punishment.¹¹ Deterrence theory assumes that potential offenders exercise rational judgment in deciding whether to kill, at the time of the decision to act.¹² But whether death penalty deterred anyone from committing a crime can never be known.¹³ Beccaria argues that for centuries death penalty did not prevent people from harming the society.¹⁴ On the other hand, serious crimes with death penalty keep being committed. I do not think that it would deter anyone. Deterrence theory assumes that potential offenders exercise rational judgment in deciding whether to kill, at the time of the decision to act, with a feeling of vengeance. Most murders are acts of passion between angry and frustrated people who generally know one another.¹⁵ Criminal statistics show that the repetition rate of crimes decrease with their gravity. For example, recidivism rates of theft and robbery are much higher than homicide. Today statistics also indicate that the homicide rate does not vary greatly with or without the death penalty. I doubt that offenders are aware of the absence or presence of death penalty. No individual will start a murderous career from which he had hitherto refrained, after abolition.¹⁶

Today we know that many hazardous actions such as drunken driving, speedy driving and smoking enhance death but this does not restrain people

9 Van Den Haag, *Principles of Criminology*, Chicago, 1974, p. 202

10 Beccaria, p.57

11 Berns, *For Capital Punishment, Crime and Morality of Death Penalty*, New York, 1979, pp. 85-85

12 Bowers, *Legal Homicide, Death as Punishment in America*, Boston, 1974, pp.271-274.

13 Sellin - Royal Commission on Capital Punishment, in Van den Haag, p. 215

14 Beccaria, p.58

15 Bowers, pp.279-281

16 Van Den Haag, "On Deterrence and the Death Penalty", 60, *Journal of Criminal Law and Criminology*, 1969, pp. 145-147.

from driving this way or smoking.¹⁷ So why should death penalty deter people from committing crimes?

Conclusion

Today no one can argue that death penalty serves to any purpose of punishment. Death penalty is not humanitarian, it is a cruel and inhuman punishment and is against the International European Convention of Human Rights (art. 5), United Nations Convention on Prevention of Torture and Inhuman and Degrading Treatment, the European Convention of Human Rights (art. 3) and The Turkish Constitution (art 17/3). Because it is obvious that cruelty exists in every aspect of the death penalty: the cruelty of death, the cruelty of the manner of the death, the cruelty of waiting for death, and the cruelty of the innocent persons attached by affection to the condemned. Death is indeed a cruel and unusual punishment. No sane person can doubt that the agony of waiting and of execution is cruel in the colloquial sense.¹⁸ Because every minute that passes between conviction and execution is spiritual torture and it is both cruel and against human dignity.¹⁹

Because of the frailty of human judgment, innocent people may be convicted of capital crimes as of other crimes. According to Bedan and Radelet, 350 persons have been wrongly convicted of capital punishment in the United States during this century and 23 innocent people actually executed.²⁰ Since executions cannot be revoked, proof of innocence after the execution would be too late.²¹ Indeed, death penalty is an irreversible punishment where errors cannot be corrected.²²

As Bentham said, "the most perfectly irremissible of any is capital punishment ... though other punishments cannot, when they are over, be remitted, they may be compensated for". Only death sentence is irrevocable.²³ An infliction of this sort is an indication of hostility than punishment.²⁴

Contemporary law tries to protect the human life. It is against all humanitarian principles to put an end to human life in a cold blooded manner.

17 Van Den Haag, pp.212

18 Black, Capital Punishment: The Inevitability of Caprice and Mistake, New York, 1974, pp. 23-28.

19 Gemalmaz, Bir İnsan Hakkı İhlali Ölüm Beklemesi Olgusu, Milletlerarası Hukuk Bülteni, Year 10, No. 1,2, p.98

20 Saltzburg-Diamond et al., p.144.

21 Van Den Haag, pp.218-219.

22 Taner, Ceza Hukuku Umumi Hükümler, Vol. 1, İstanbul, 1953, p.590

23 Bentham, The Principles of Morals and Legislation, New York, 1948, p. 200; Van Den Haag, p.211.

24 Bentham, p.197; Erman, "Vahşi ve İlkel İntikam", Milliyet, April 12, 1995, p.20.

Modern society must aim to rehabilitate the criminals, integrate them into the society and make them law abiding citizens. A person put to death cannot be rehabilitated.²⁵

On the other hand, it is not the intensiveness but the length of the punishment that effects the human soul.²⁶ In terms of deterrence, to keep a person in a correctional institution for a long period of time will be more effective than putting him to death.

Indeed, the death penalty is not supported by the public conscience. Executions used to take place publicly. For example the French erected a guillotine on a platform in the Place de la Concorde and invited the public as witnesses.²⁷ The same was true in Turkey until 1965: executions were made in public. Putting an end to this indicates that we are not expecting any deterrent effect from this punishment anymore. In fact, with every amendment of the Turkish Criminal Code, death penalties in various articles are converted to life imprisonment. Today there are only about 25 crimes with death penalty and for more than twenty years no death penalty is executed in Turkey because they are not ratified by the Turkish General National Assembly. The new Criminal Code Project abolishes death penalty from the Turkish Criminal Justice system all together.

25 Artuk, "Ölüm Cezası", Prof. Dr. Jale Akipek'e Armağan, Selçuk Üniversitesi Hukuk Fakültesi, Konya, 1991, p.174

26 Beccaria, p.58.

27 Berns, p.26.