**PUNISHMENT**

**Meaning of Punishment**

According to Moberly (1968:379) a modern authority on punishment, “Whatever further qualities it may have, in the first instance, punishment is always an infliction of pain, or loss upon an offender in view of his offense”. To those who oppose punishment, like the conflict theorist, they see punishment, “as nothing more than an instrument of political discrimination.” (Mitford, 1973:232). In other words, punishment is seen in this context as an instrument of class and race oppression. That is, the poor and the vulnerable ones in society are the ones subjected to punishment for offenses, while the elite escape justice. It is easily seen then that views about punishment have oscillated between those who see punishment as advantageous, and those who insist that there can be no gain in the punishment of offenders advocating instead, the treatment of such offenders.

**Origin of Punishment**

Opinions are divided as to the exact origin of punishment. Some scholars such as Zilboorg (1968) strongly believe that vengeance is its source and as such the application of punishment is indefensible. Others contend that, it is the fear of the offended gods. Yet another group believe that its origin can be located in the conflict of the interests of different groups as one group imposes its authority upon another (Mitford, 1973). It appears rather unlikely now that we shall ever know how, when or why punishment originated; but it is probable that its roots were already present when man first appeared as a social being (Obarisiagbon, 1999:59).

**Purposes of Punishment**

The historical and global philosophy of punishment implies “the penalty inflicted by the state upon a person adjudged guilty of a crime”. However, in modern society, the administration of punishment usually involves the desire to produce some kind of pain, which is justified in terms of its assured values. The pain is usually intended to be either physical as in whipping or mental suffering, as in imprisonment. Thus, the two essential features of punishment philosophy are:

a. Public condemnation of anti-social behaviour, and

b. The imposition of unpleasant consequences by political authority.

Deriving from the two essential features of punishment philosophy, there are four principal purposes of punishment and these include: **Vengeance, Deterrence, Rehabilitation and Prevention**. These are discussed in the sub-units below.

**Vengeance**   
The justification of punishment on this basis implies retribution. This involves the consideration of two essential concepts: punishment as an end in itself, which means that punishment is not a viable means of reforming criminals. It is just “punishment for punishment sake”. The act committed deserves punishment. The implication of both is that society does not gain and the individual equally does not gain before and after the punishment of the offender. When punishment is an end in itself, then it cannot be considered as a viable means of reforming criminals. On the other hand, when the major justification for punishing criminals is that their acts deserve punishment, we are constrained to eliminate two very important factors:

(1) any gain for society and   
(2) any gain for the individual.

These viewpoints call to mind the ancient Lex Talionis (law of retaliation). The underlying philosophy of vengeance and retribution was first articulated in the middle of the 18th century by Immanuel Kant (1724- 1804) and Georg Hegel (1770-1831). While Kant argues that punishment was a “categorical imperative” and incontestable self-evident truth, Hegel believes that punishment is the criminal’s “right”. Their philosophies gave immeasurable support to the classical schools doctrine of absolute freedom of will. In addition to these, retribution is seen always as a reaction to an earlier act or event. Thus, any attempt to cope with a past criminal act, whether based on punishment or treatment, is retributive. In all of these retributive punishment is based on the assumption that human beings, and therefore criminals, are moral beings.

**Deterrence** This refers to the use of punishment to prevent other individuals from committing crimes. For this goal to be achieved, the offender is punished so that he will be held up as an example of what happens to people who go against the laws of the land. The next development in the justification of punishment was the belief that punishment has the specific potential of being able to deter (prevent) crime. In the classic work of Goerg Rusche and Otto Kirchheimer, feudal societies with their warrior-lords and serfs, were shown as possessing a well-defined legal relationship. The criminal law was an important means of preserving the social system and its hierarchy. In the early Middle Ages, penance, compensation (fines and the law of feud) were the main methods of punishment. The later middle ages were characterized by harsh capital and corporal (physical) punishments.

There has been a wide, often, violent debate over whether punishment deters (prevents) crime. It is impossible to determine whether severe punishment, especially capital punishment, can make people resist the urge to commit crime, because we can never know how many people have been in this manner deterred. This is even more so when we consider that those who refrain from criminality may actually have been deterred by their own value systems rather than by the fear of punishment. This first becomes apparent when we consider that most criminals do not consider the penalties attached to their crimes before committing the acts. Do armed robbers operating in different states in Nigeria consult the Laws of the states to find out the penalties that might be imposed for their crimes? Do burglars determine in advance the difference between first-and second-degree burglary and their penalties before they attack a target?

Do rapists choose one victim rather than another because they know the difference between statutory rape and forcible rape? These are precisely some of the kind of thinking that motivates support against the deterrence theory of punishment. Arnold Green, a former professor of sociology at Pennsylvania State University added an interesting dimension to the issue of deterrence. Green argued that the primary purpose of punishment is not to change the behavior of the criminals, but rather to reward law-abiding citizens by giving them visible residence (the imprisonment of criminals) that their way of life is valued (Green, 1950: 554). Given drew upon an analogy first made by Justice Holmes of the US, applying it by inference to the imprisoning of criminals.

According to the analogy, the person waiting to be hanged and the soldier waiting to die on the battlefield are both sacrificed for the good of society. There is much support for the theory of deterrence although most correctional workers and scholars do not agree with the theory. For example, Fred Inbau and Frank Carrington have argued that severe punishment although necessary, does not go down well with liberal social scientists who are able “to explain the motivations of the criminal, but who can do little to protect the innocent against the mugger or armed robber” (Inbau and Carrington, 1971: 19-27).

Proponents of the deterrence theory believe that “it is a realistic rather than a punitive position. They believe that crimes of violence are mainly inflicted upon the poor, not the rich. Therefore, the deterrence approach (severe punishment) is seen as an effort to protect the most victimized – the poor. The justification for deterrence lies in the fact that the failure of society is the failure to arrest, convict, and imprison enough criminals. But because the poor are much more likely than the rich to get arrested, they would also be victimized disproportionately.

It is for this reason that Menninger considers deterrence as only a subterfuge for vengeance (Menninger, 1965: 206). Apart from the practical question of whether punishment deters or prevents crime, there is a much more fundamental issue, the ethics of deterrence which is seldom discussed (Zimring, F. 1971). This simply calls for the enforcement of the sanctions threatened for breaking laws, because it would be pointless to describe certain acts as criminal and yet provide no penalty for performing them. For example, sections of the Nigerian law have defined certain electoral practices as crimes, but how many persons, since the laws were created or in the history of Nigeria, have been punished for electoral crimes? The concept of imposing sanctions to prevent future misbehaviour raises an entirely different issue – the issue of justice. This presents an ethical dilemma. Is it proper to impose a penalty for behaviour that has not and may not be performed, in a future that has not yet taken place?

**Rehabilitation or Reformation**

This implies the reformation of the criminal. In developed nations such as the United States of America, the United Kingdom and Germany. Emphasis is placed upon rehabilitation of the criminal. Unfortunately, this may not hold for our country – Nigeria; except in theory. Rehabilitation ensures that after punishment the individual becomes useful to himself and society. He is easily integrated into society by virtue of his acquired skills while he was undergoing punishment for the committed crime. No single event or idea can be credited with motivating the shift from deterrence to a reformative or rehabilitative attitude toward criminals. Rather, several factors account for this shift in focus, the most important of which perhaps, concern the development of the scientific viewpoint and its application to the behavioural sciences. In this regard, the Italian school of criminology made an early contribution to the application of the scientific principle to criminology. Apart from this, it became apparent at a certain point, that punishment was not achieving its stated objectives (to prevent and control crime).

As a result, specific reformative techniques such as probation and parole were developed to help change people’s attitude toward the criminal. Also influential at this time was the increased belief in the philosophy of humanism with its overriding concern for human welfare. All these factors helped encourage the development of the reformative viewpoint. Before the mid-19th century, European efforts at curtailing crime were based on the retributive philosophy. In the society of titled landowners, which prevailed in the early middle ages, the overriding concern was the prevention of vengeance from developing into blood feuds. As a result, councils of free men were established and empowered to ensure that culprits either did penance or paid fines. This is because at this time, crime was seen as an act of war, and peace was maintained almost exclusively by the imposition of fines. The inability of the poorer classes to pay the fines eventually led to the introduction of corporal (physical) punishment. The introduction of the retributive system was predicated first on economic disparity, and then on increasing domination of judicial rights by the feudal lords and the incontrollable impulse to increase public revenues from fine.

Poverty has always been a strong determinant of criminal behaviour and its control. Poverty increased in Europe from the 15th century due to increase in the populations of cities, which consequently stretched to the limits, the ability of people to secure jobs that offered even the slightest opportunities for self-improvement. The flocking to the city of large numbers of property less serfs in societies where only the lords owned property, put intense pressures on the artisans (skilled workers), whose means of livelihood were threatened by the population increase. The usual problems that accompany sudden population growth – overcrowding, noise, filth, inadequate housing, unemployment, destitution, crime – developed, and wandering bands of workers sprang up, that provided cheap labour. Landowners quickly hired this cheap labour.

The consequent exploitation of the masses could well be said to have contributed immensely to the development of capitalism and its attendant problems. The poorer the masses became, the more their desperation to eke out a living by whatever means, the more the crime, and the harsher the punishments imposed for crimes. In the course of time, physical punishment, which initially served only as substitutes for fines, became the rule. Where execution and mutilation had been exceptions, they became the preferred forms of punishment. According to Barnes and Teeters (1950) there may well have been an average of six hangings per day during the reign of Henry VIII of England. Punishments were not only frequently imposed, they became increasingly brutal. With an over- abundance of labour, the value of life decreased, and the whole system could be described as a collective expression of sadism.

The cruelty that prevailed, however, as Rasche and Kircbheimer have observed, could only be understood in terms of the special interrelationships of the period (Rusche and Kirchheimer, 1939:19). Owing to the increasing severity of punishment, early attempts were made to seek better ways of dealing with offenders. In the 13th century for example, the Laterran Council outlawed trial by ordeal as a way of extracting a confession or determining guilt. Also, in the 17th century, the Quakers opposed the inhuman treatment of persons in the colonies. The efforts of the Quakers perhaps, more than any other factor, was responsible for Pennsylvania becoming the cradle of prison reform in the United States. In Britain as in other parts of Europe and the new world, houses of correction began to be established because of the concern for the welfare of the young. The first European house of correction was established in Amsterdam and was one of the few that offered any real hope of correction, as most others were miserable places.

In the 18th century, men like John Howard (1726-1790) helped the thrust for correctional reform. Through his popular book, the State of Prisons, Howard brought to the fore, the critical need for prison reform embodying rehabilitation and reformation rather than deterrence. Apart from Howard, Sir Samuel Romilly (1411-1818), was another untiring advocate for correctional reforms. He attacked the barbarous English criminal code with its excessive capital punishment. Through his work, England’s first modern prison, the Millbunk Prison was built. In the middle of the 19th century, correctional reforms were helped along by the efforts of Alexander Maconochie in Austrialia and John Augustus in the United States, both of whom made penological history by originating parole and probation as reformative treatment devices.

**Prevention/Protection**

Punishment ensures public protection. Hence, it is argued that the rehabilitation or reformation of criminals and the protection of the public go hand in hand. It is further argued that if reformation or rehabilitation is achieved, the public is protected. However, there has been a major shift in philosophy from reformation of criminals to the prevention of crime. It has been argued that the rehabilitation or reformation of criminals and the protection of the public go hand in hand. If rehabilitation or reformation is achieved it is argued, then the public is protected. However, there has been a major shift in focus which has been encouraged by the development of the social sciences and especially by sociology, psychology, and cultural anthropology (the study of differences between societies).

The earlier approach of providing mono-causal explanations for crime, whether biological (caused by bodily difference), anthropological (caused by racial inferiorities), or psychogenic (caused by mental or emotional conflict), changed as a result of discoveries in biology, anthropology, sociology, psychology, as well as in other disciplines. Where sociology has shown the influences which social institutions and social interactions have on behavioural patterns, cultural anthropology has exposed the influence of cultural factors and cultural conflicts on the development of behaviour, psychology and psychometric (measurement of mental capability) have exposed classificatory biases and the deficiencies of earlier diagnosis. These disciplines in the social sciences have shown that people become criminals not because they were criminal by nature or that they wished and preferred being criminals, but because social injustice, deprivation, class inequality, cultural conflict, and some other socio-genic factors ensured that they became criminals.

This social science knowledge has been introduced into the treatment of criminals. Since society has become aware of some of the social factors responsible for crime, it behoves on society to perform corrective surgery that would reduce if not eliminate the scale of the problem. It has been established that poverty and the constant economic and social pressures on the have-nots create a climate conducive to crime and delinquency. Many scholars have accumulated data on the causes of crime in society. These suggest that if we could discover the factors responsible for crime, we would be able to determine the areas where crimes are likely to occur and the individuals who might develop criminal careers. We could then begin preventive treatment early in their lives.

**Methods of Punishment**

From time immemorial, man’s imaginative potential have been displayed in his device of diverse methods for the punishment of those who violated the laws of the land. Some of the most common methods include:

Physical torture e.g. flogging,

Branding which involves branding of the first letter of his offence on the forehead, hand or face of the criminal

Mutilation of the body which includes castration, disfigurement, dismemberment, blinding or plucking out of the offender’s eyes.

Payment of fines e.g. forfeiture of lands, goods or monies

Death penalty, which executed either by burning, suffocation, drowning, poisoning, fracture (breaking at the wheel), burial alive, or boiling in oil till the offender dies (capital punishment).

Imprisonment is used mainly for detention prior to trial.

Banishment (i.e. excommunication of the criminal from that community or state).

Social humiliation and degradation, which include indecent exposure, ridicule, forced wearing of headgear, badges and other symbols of shaming. The stolen item (dog goat, fowl, clothes) may be hung round the neck of the offender while he/she is paraded and forced to dance around the public square as among the Igbo of Nigeria.

STAY SAFE ALWAYS