Le perruquier de la préfecture (1871)
Gautier, Armand-Désiré
Paris Musées - Musée Carnavalet

PUNISHMENT

4th International Conference of SAFI
(Societas Aperta Feminarum in Iuris Theoria)
5-7 October 2023 - Paris

The concept of "punishment" is ancient, and it has acquired more and more disciplinary autonomy over time. It refers to the rationalisation of the punitive action – often questioned by authors like Friedrich Nietzsche, Walter Benjamin, Paul Ricœur – which aims at circumscribing the field of investigation to the specifically juridical concept of penalty.

Both punishment in a large sense (mythical-religious, pedagogical) and penalty in its stricter meaning expose the logic of *justified* violence. Then, the peculiar link between justice and law (*droit*) is pointed out. Benjamin contested the idea that law and justice are one and the same thing: according to him, law hides behind the appearance of the violence that preserves it, the one which founds it. Derrida also puts forth the necessity of distinguishing these two notions: the *law*, or *right*, as what can be deconstructed and *justice* as the experience of the impossible. Investigating the notion of punishment pushes us to explore this disjunction between *droit* and *justice*. It pushes us to ask questions such as: what kind of address to the other is held in the act of punishing? Then, what does it mean to judge? What does it mean to decide in the context of a court of law? These questions can be asked both *vis à vis* the relation to pre-written laws and jurisprudence, but also, more generally, it sends us back to the singularity of the individual who faces the generality of the legal system.

With this in mind, we can note that the long rationalisation process of punitive action coincides with:

1) First of all, the desire of legitimising the hiatus separating *just* punishment from *juridical* punishment, who took various routes. Theories that tried or try to offer a juridical *ratio* of the punishment can be reunited into three macro-groups (Brooks; Guillarme): (i) retributive or absolute theories (traditionally dating back to Kant and Hegel); (ii) utilitarian or relative theories (traditionally dating back to the school of juridical Enlightenment); (iii) mixed theories. The recent Anglo-American debate has argued for a modification of the classical foundations of sentencing through the development of 'normative justifications' – moral

(Murphy; Tadros) or political (Caruso; Kelly) –, reflecting in particular on the concept of responsibility.

2) Secondly, the gradual transition from 'big punishments' to 'small disciplines' – which includes the criticism toward death penalty (Beccaria; Derrida). The abandonment of exemplary punishments in favour of confinement and its associated dynamics also marked the gradual arising of a bio-political reflection aimed at highlighting the latent link between punishment and power (Foucault). In this context, the umbrella concept of 'preventive detention' plays an important role. Detention may occur ahead of proven wrongdoing (pre-trial detention), beyond the period of proportionate punishment (on grounds of public protection), or in parallel systems of civil commitment applied in the case of a diagnosis of mental disorder (Ashworth, Zedner): but these typologies of detention and internment should be thought of from the concept of punishment or does they belong to another framework?

In parallel to these questions, the prison system is still today at the heart of increasingly intense debates. These, following the critical issues that threaten to undermine inmates' rights (International Prison Observatory; Surprenant), include:

a) The problem of overcrowded prisons, against which the demand for decriminalisation of minor offences is formulated (deflationary *ratio*);
b) The complex relation – exacerbated by the pandemic – between confinement, mental health and, in general, the prisoners' access to healthcare;
c) The high-rate of suicide and self-harm cases, which seem to undermine the aims of recovery, rehabilitation and social reintegration of prisoners;
d) The question of violence in prisons (including the risk of mistreatment/abuse of prisoners): are we dealing with isolated cases or are we facing a systematic problem?
e) The binary structure of the prison system, which does not take into account the complexity of gender identities;
f) The insufficient attention paid to female detention (lack of dedicated services, shortcomings in term of resources…);
g) The oxymoron represented by parenthood and especially motherhood in prison;
h) The critical issues of juvenile detention and the challenge of education in prison;
i) The sensitive matter of deprivation of emotional and sexual relations in prison.

These issues, and many others, point out the necessity of thinking the practices of punishment with the help of care studies, feminist studies, critical race theory, queer studies and disability studies, but also in dialogue with fields such as architecture, pedagogy, media study…

New technologies are also part of the criminal debate, especially with regard to a so-called 'predictive justice' (Guinchard, Debard) – closely related to the idea of 'legal calculability' (Lebreton-Derrien). Although predictive justice is designed to be adopted mainly in civil law, it is not improper to ask what might be the implications of using decision-making algorithms in the context of criminal law (CEPEJ; Vermeulen, Persak, Recchia), particularly with regard to the use of computer techniques to measure the risk of recidivism of a convicted individual – for the purpose of determining the length of the sentence or proposing an alternative measure to imprisonment. The link between technologies and criminal law is also topical in view of the hypotheses of the

involvement of an AI system in the commission of a crime (e.g. the involvement of self-driving cars in road homicide, or a medical misdiagnosis by an AI…).

Moreover, the need for prison sentences alongside mere civil sanctions has been met with criticism, which led to both prison abolitionist outcomes (Davis; Ricordeau; Coyle, Scott) and the rise of a new paradigm, developed since the 1990s: "restorative justice" (Miller; Zehr; Mannozzi, Lodigiani; Gavrielides). This emphasises on a "restorative" approach as opposed to a punitive one, attempts to involve victims and offenders in a process of concrete reconciliation and accountability. Its growth has been prolific, both in theoretical and in practical terms. With the concept of punishment contrasting notions also emerges. Closely linked to crime or injustice is its legal counterpart – pardon –, and its moral counterpart – forgiveness – which has been the subject of several philosophical considerations (Hegel; Arendt; Jankélévitch; Derrida; Ricœur).

We can also think of the notion of impunity: what does it mean to not punish an action? It can both refer to the conscious choice of not prosecuting or the lack of a legal characterisation. Environmental justice is pointing out such stakes, also putting forth the notion of responsibility. The current debates on certain ecosystems obtaining legal personhood question the role of punishment in these future legal cases (Nash; Stone; Youatt; de Toledo). The notion of impunity emerges even concerning crimes against humanity (Pouligny, Chesterman, Schnabel), which see their processes of reparation often delegated to international criminal courts (Sperfeldt). One may then ask, in the face of the shortcomings of 'classical' justice, to what extent alternative forms of combating impunity – such as Truth and Reconciliation Commissions – can contribute to the reconstitution of a coherent community (Gready; Lefranc; Rotberg, Thomson). Impunity is also central in relation to historical injustices with current aftermath, such as colonial pillages. Acknowledging past wrongdoings allows a new juridical and social grammar to emerge; but what kind of 'reparation' should be considered in order to avoid impunity: punitive, economic, memorial? Is the concept of 'reparation' still adequate for this field, or should other perspectives be considered (Bessone, Cottias; Táíwò) such as "transitional justice" (Teitel)?

Another question that can be asked is: how aesthetic productions help us better grasp the concept of punishment? Literary and artistic productions have been a privileged space of reflection (Dostoyevsky; Kafka), of denunciation (Hugo; Camus) but also of figuration of the legal system and of prisons. Art (Ernest Pignon-Ernest's work is one example) has proven its extraordinary ability to show how prisons are spaces haunted by a certain history, often repressed by the collective, imposing a double punishment: incarceration and the promise to be forgotten.

This conference is open to contributions from speakers of all disciplines, in order to bring together different perspectives (historical-philosophical, moral, legal, socio-political…) in a transdisciplinary exchange.

Submission guidelines:

We invite contributors to send their proposals which consist in a 500-word abstract in French or English, accompanied by a title, the author's name, a 150-word bio, and contact information. Each presentation should be 20 minutes (followed by discussion time). Submissions from academics from underrepresented groups are particularly encouraged.

The proposals must be sent **at the latest on the 31st of March 2023** to the conference email address: Paris2023@hsu-hh.de. The results of the selection will be communicated by 15th May 2023.

The conference will be held in both French and English and will take place at the "Université Paris I Panthéon-Sorbonne" (Paris) on the 5-7 of October 2023.

For any questions, please contact **Alix Stéphan**, for SAFI: alix.stephan@ucdconnect.ie; or **Chiara Magni**, for SAFI: Chiara.Magni@etu.univ-paris1.fr

ABOUT SAFI

SAFI is an interdisciplinary network for the promotion of women researching law. The aim is to network internally, and to organize and to cooperate on various levels. In this way, academics can present their research to the outside world in a high- profile setting, and outstanding research by women can become established in science in the long-term. Membership is open to everyone regardless of gender or disciplinary background.

https://safi-network.org/