
Preface

Does an offender have the *right* to be punished?

“The right to be punished” may sound like an oxymoron, but it is not necessarily so.

A 29-year-old man with no previous criminal record broke into his neighbor’s car and took it without permission. He was caught 2 h later by the police in a general check. In court he was found guilty and convicted of theft. The court learned that the theft was committed because of the defendant’s dire economic situation, having been fired from his job 2 weeks earlier and having a wife and son entirely dependent on him. The court must decide what is the appropriate punishment in this case: a fine, probation, or incarceration? If it is a fine, what is the appropriate sum? If incarceration, for how long?

This example raises some of the deepest questions about sentencing. For instance, when the court imposes a 3-year imprisonment, what exactly makes the offender deserve exactly 3 years and not 2 years and 11 months? What is the difference between 28 and 29 months of imprisonment? What exactly makes a particular punishment right and meet for a particular case? How should the suffering embodied in a particular punishment be measured? How can we measure deterrence? Can imprisonment be imposed on a corporation? What should be the difference between punishing a 35-year-old offender and a 95-year-old one? There are many similar questions that sentencing brings to mind.

One of the best-known maxims about the imposition of punishments in criminal law is that “... *the only golden rule is that there is no golden rule.*”¹ This maxim reflects the common legal understandings about sentencing in most legal systems today. In modern criminal law, whereas the imposition of criminal liability follows accurate and strict rules, there are no similar rules for the imposition of punishment. The process of sentencing is vague and obscure, as are the considerations used for the imposition of punishments.

Sharp differences in approach exist between different courts, benches, and even individual judges sitting on the same panel, regarding the degree of severity to be shown when sentencing an offender. The vagueness of sentencing damages the certainty necessary in criminal law and turns sentencing into an enigma for both

the offender and the society. Uncertainty in criminal law has an extremely negative social value that prevents legal social control or at least damages its effectiveness.

The phenomenon of uncertainty in sentencing is not unique to the legal process conducted in courts of law, where punishments are imposed on individuals. It is also characteristic of legislators who turn a certain act into an offense, which then carries a certain punishment. Both legislators and courts should be directed by simple, clear, and inclusive guidelines to determine punishments. The ultimate solution for achieving such a goal is by embracing a simple, clear, and inclusive doctrine for sentencing. But what would be the outlines of such a doctrine?

Criminal law needs modern doctrinal sentencing consistent with the principle of legality, which requires certainty and clarity in the imposition of both criminal liability and punishments. General research in criminology and penology made rapid progress in the twentieth century, but the same cannot be said about punishment doctrines in criminal law; whatever progress was achieved in this field was restricted to the implementation of ideas derived from criminology and penology.

The objective of this book is to propose a comprehensive, general, and legally sophisticated theory of modern doctrinal sentencing. The challenges of such a legal theory are many and complex. In addition to clarity and certainty, modern doctrinal sentencing must deal with modern types of delinquency (e.g., organized crime, recidivism, corporate offenders, and high-tech offenses) and modern principles of criminal law. Modern doctrinal sentencing must serve the social purposes of sentencing optimally. Furthermore, such a theory must be evaluated not only by classic legal measures but also by modern interdisciplinary ones, such as economics, criminology, penology, and psychology.

With the emergence of modern criminal law, the offender gained the *right* to be punished by a rational criminal law rather than being lynched by an angry mob. The present-day offender may have the *right* to be punished by doctrinal sentencing rather than according to vague, unclear, and uncertain principles.

This present book outlines a modern general theory of sentencing in six chapters. Chapter 1 (Punishment as Part of Modern Criminal Law Theory) contains the general legal linkage between punishment (and sentencing) and criminal law. It addresses the following issues: the development of punishment and sentencing, the role of punishment in criminal law, the applicability of the principles of modern criminal law to punishments, and the balance between criminal liability and punishments. Chapter 2 (General Purposes of Punishment) outlines the four general purposes of sentencing under modern criminal law: retribution, deterrence, rehabilitation, and incapacitation. The chapter describes the legal development of these purposes, their interactions with one another, their failures, and their function in the modern criminal law.

Chapter 3 (General Considerations of Punishment) focuses on the general considerations of punishment, which may be related to the offense (*in rem*) or to the offender (*in personam*). As such, the chapter examines proportionality, fairness, recidivism, personal status (offenders who are young, very old, unhealthy, mentally ill, etc.), corporate sentencing, organized crime sentencing, cooperation with the authorities, etc. Chapter 4 (General Structure of Doctrinal Sentencing) describes the

general structure of doctrinal sentencing under modern criminal law and examines the requirement of uniformity in sentencing and in the ways used to determine the proper punishment for each particular case.

Chapter 5 (Physical Punishments) examines the applicability of physical sentencing to modern doctrinal sentencing. The examination includes the following punishments: death penalty, flogging, mutilation, deprivation of civil rights and liberties, imprisonment (of all types, including suspended, supermax, shock, non-continuous etc.), public service, chemical castration, probation, and some other forms of physical sentencing. Chapter 6 (Economic Punishments) examines the applicability of economic sentencing to modern doctrinal sentencing. This examination includes the following punishments: fine, forfeiture, damages to the victim, legal expenses, and some other forms of economic sentencing.

Thus, the book answers the legal questions of modern doctrinal sentencing by defining it, analyzing its components, types, and elements, understanding its implications, and solving the major issues it raises.

The general theory of modern doctrinal sentencing presented in this book is based on lectures delivered in the past few years in the criminal law course of the Faculty of Law at Ono Academic College. I wish to thank Ono Academic College for supporting this project, Gabriel Lanyi for his comments, and Anke Seyfried for guiding the publication of the book from its inception to its conclusion. Finally, I wish to thank my wife and daughters for their staunch support along the way.

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