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The Reform of Hungarian Criminal Policy

1. Reforms in an International Context

The assertion made by Géza Dombóváry about Hungarian criminal policy in the twilight of the 19th century,¹ according to which a huge number of various conceptions prevail concerning the imperative reform of criminal policy,² obtains validly in our days, as well. However, it is valid not only in a Hungarian, but also in an international context that multifarious conceptions concerning a major and urgent reform of criminal policy persist.

In my judgement, in countries under the rule of common law, criminal policy is marked by the correlation of punitive purpose and iron fist policy with restitutive justice. In the United Kingdom, government has proclaimed the directive of “tough justice”, but the necessity of the extension of the scope of protection for victims and witnesses and of the support of community justice in a broad scope is also emphatic. The institution of community justice is also promoted by the factor of cost reduction, furthermore, citizens’ confidence can also be reinforced by the opportunity for participation in the administration of justice. According to the operative criminal policy, criminal justice focuses on the compensation of victims of criminal offences. Perpetrators, on the other hand, have to reckon with a powerful and effectual criminal justice system that will take firm action, resolve cases and impose just punishment on offenders. Leng claims that traditional British criminology aligns with a notion of criminality, according to which the lower classes are preying upon the more prosperous middle classes. Nonetheless, the new directive of “Tough on crime

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¹ Géza Dombóváry (1874–1938), lawyer and free-lance contributor to law journals, such as *Büntetőjog Tára* and *Jogtudományi Közlöny*.

² Dombóváry, G.: *Fenyítőeljárasi és börtönügyi adalékok vármegyéinknek XIX. század-eleji gyakorlatából* (Excerpts on the Law of Criminal Procedure and Prisons from Early 19th Century Practices in Hungarian Counties). Budapest, 1931. 3.

and tough on the causes of crime” also recognises that it is in the main the lower classes who bear the burden of criminality as victims.³ The strategic plan for the period preceding 2009 continues to lay great emphasis on fighting crime and antisocial behaviour, which is substantiated by the assumption that the population is living in fear. Therefore, it is a priority in the United Kingdom to convince law-abiding citizens that they are safe.⁴ Accordingly, Act of 2000 on Local Governments stipulated the duty of local authorities to consult key stakeholders and elaborate community plans for the advancement and improvement of economic, social and environmental welfare in their areas and for contribution to sustainable development. Act of 1998 on Crime & Disorder set forth the imperative of co-operation of prisons and local governments so as to guarantee the safety of communities. Since its adoption in the summer of 1998, each local government in Britain has been obligated to elaborate and implement a strategy for the reduction of crime and disorder in the area within their boundaries.⁵ Vivien Stern introduces a British project (from 2000 to 2004) under the title “Prisoners Working for the Benefit of Others”. It had two main objectives, namely, to induce debate on the purposes of imprisonment and prisons and to generate practical changes in the functioning of prisons. These objectives were based on four tiers:

1. Promotion of new relations between prisons and communities,
2. Guaranteeing opportunities for prisoners to work for the benefit of others,
3. Raising the awareness of prisoners of the suffering of victims of criminal offences,
4. Establishment of new bases for conflict settlement in prisons.⁶

With respect to the US criminal justice system, according to Becket and Sasson, it is “a system of injustice”.⁷ The gross imbalance between high-level police operation and the excessive amounts of funds spent on the work of the police *vis-a-vis* the work overload of courts and their crippling lack of funding

³ Leng, R.: The Reform of Criminal Jurisdiction in England in the 1990s, in: *Kriminálpolitika és büntető igazságszolgáltatás Nagy-Britanniában a '90-es években* (Criminal Policy and Justice in Great-Britain in the 1990s). Miskolc, 2000. 34–48.

⁴ Administration of Justice, Rights and Democracy, DCA Strategies 2004–2009, Department of Constitutional Matters, www.dca.gov.uk/dept/strateg/dcastratch4.

⁵ Establishment of Relations of Prisons and Local Governments, papers from a conference held in Middlesborough on 9th July, 2003.

⁶ Stern, V.: *Prisons and their Communities: Testing a New Approach*. An Account of the Restorative Prisons Project, 2000–2004.

⁷ Becket, K.–Sasson, Th.: *The Politics of Injustice: Crime and Punishment in America*. Thousand Oaks, CA., 2000.

strikingly resembles a well-organised system of the disregard of justice.⁸ Accordingly, as Wacquant asserts, the US criminal policy is currently offensive, which is considered by many the only way to fight crime.⁹ As to more moderate views, the prevention of antisocial behaviour and fighting crime is not feasible via the “get tough” trend. The lower classes, expelled to the periphery of the labour market and forsaken by the welfare state, constitute the main targets of the policy of “zero tolerance”, which, as a consequence, divides both experts and the general public. According to Katalin Gönczöl, a confidence crisis has shaken the foundations of the welfare state and of criminal policy,¹⁰ the latter of which has ascended to the level of emotionally overheated great power politics.¹¹ The epoch of the welfare state is over, since it is withdrawing and yielding its role to the punitive state. Therefore, Katalin Gönczöl assumes that severe changes have ensued in US criminal policy. The justice system does not deal with the causes of crime, since it merely purports to punish offenders, compensate the innocent and protect the interests of law-abiding citizens.¹² Earlier, the “underclass” received aid, whereas now, the state strikes down on “criminal lower classes” with an iron fist. Nils Christie quotes Mauer by stating that, undoubtedly, the US has a high crime rate, whereas, research conducted in 2004 shows that despite falling crime rates, the number of the incarcerated is rising in the United States.¹³ The latest figures also suggest that the recent increase in the number of the incarcerated is not due to a rise in the number of offences, but to the more stringent criminal policy of the past decade.¹⁴

Criminal policies in the Nordic countries are not unified. Nevertheless, according to Lahti, a “Scandinavian criminal policy” that demonstrates several common features is distinguishable. Several common criminal policy strategies (e.g., social and situational crime prevention, consideration of costs and benefits, sanctions policy) prevail in order to ensure the proper application of the

⁸ Wacquant, L.: *A nyomor börtönei* (Prisons of Destitution). Budapest, 2001. 35.

⁹ *Ibid.* 50.

¹⁰ Gönczöl, K.: Szolgáltassunk igazságot! (Administration of Justice). In: Kovacsics Józsefné (ed.): *Egy élet az igazságügyi statisztika szolgálatában. Ünnepi kötet a 70 éves Varró István tiszteletére* (A Life in the Service of Judicial Statistics. Special Volume in Honour of István Varró at the Age of 70). Budapest, 2006. 47–55.

¹¹ Gönczöl, K.: A nagypolitika rangjára emelkedett büntetőpolitika (Criminal Policy Ascending to the Level of Great Power Politics). *Kritika*, 2001. 12. 116–121.

¹² Wacquant: *op. cit.* 46.

¹³ New Incarceration Figures: Rising Population Despite Falling Crime Rates. The Sentencing Project. www.sentencingproject.org.

¹⁴ Nils, Ch.: *Büntetésipar* (The Industry of Punishment). Budapest, 2004. 110.

fundamental elements of Scandinavian criminal policy.¹⁵ Anttila analyses the common requirements posited by Scandinavian criminal justice,¹⁶ which involve that *a*) conditions in penal institutions should correspond to everyday social life to the largest possible extent, *b*) penalties must be enforced in such a manner that they do not needlessly encumber, but potentially promote the future reintegration of convicts into society, *c*) the period of imprisonment should be effectively utilised, *d*) disadvantages incurred by the deprivation from freedom must be precluded so far as possible.

Consequently, we can affirm that demands for the institution of a more unified or harmonised criminal policy on an international as well as on a European level persist. Alternative punitive sanctions tend to be instituted all over Europe. One of these is the flexible method of mediation, which is more customary in the area of problem-solving. Mediation is based on an intense and broad participation of the parties concerned in the criminal procedure. Owing to this method, the sense of responsibility of offenders may increase.¹⁷

Eventually, Vivien Stern claims that it is market society per se that tends to produce criminality. Stern argues that with globalisation, crime and punishment transgresses national borders. The rich retreat into communities behind expensive security systems, at the same time, the poor tend to fall prey to criminality and abuse by corrupt police. In parallel, an extended range of acts and an increasing proportion of the population are criminalised and imprisoned. She claims that the tendency of criminalisation and imprisonment does not eventuate more effective control of criminality and safer communities, furthermore, she expands on the manners of the criminalisation of the poor and of shaping social responses to crime by commercial interests.¹⁸

In Hungary, according to László Korinek, a growing “moral panic” prevails owing to the impact of the media and politics,¹⁹ which tend to focus on winning eligible voters over to the cause of the party in government, and before long, in

¹⁵ Lahti, R.: Towards a Rational and Human Criminal Policy—Trends in Scandinavian Theory of Penal Law. *Journal of Scandinavian Studies in Criminology and Crime Prevention*, Routledge, (1) 2000. 141–155.

¹⁶ Anttila, I., *Criminal Justice and Trends in Criminal Policy*. In: *The Finnish Legal System* (ed.: Uotila, J.). Finnish Lawyers’ Publishing Company Ltd., Helsinki, 1985. 232–242.

¹⁷ The Ministerial Committee of the Council of Europe defined the basic principles of mediation under Protocol No. 19 of 1999.

¹⁸ Stern, V.: *Crime and Punishment in a Market Society. How Just is the Criminal Justice System?*—Lecture at the British Institution of Human Rights, 9th February, 2006.

¹⁹ Korinek, L.: A statement made at a conference organised by the Faculty of Political and Legal Sciences at the Eötvös Loránd University on April 8, 2006.

an effort to get messages through to voters, politicians will be using the Penal Code as a “message book”.²⁰ As he established, the importance of safeguarding “security” becomes more emphatic, when the majority of society is overwhelmed with fear and anxiety.

2. Elements of Criminal Policy

The purpose of criminal policy is the circumscription of the *objects and manners of punishment*. The term of sanction (*sanctio*) originally denoted sanctification or consecration, i.e., response to human behaviour with different implications. Bona fide deeds are sanctioned with rewards, male fide behaviour with punishment.²¹

The conceptualisation of *individual responsibility* by the law-maker will determine the definition of the *objective of punishment*. In a determinist approach, the individual will forever bear the stigma of his/her determination to commit criminal offences for either genetic, biological, psychological or sociological reasons. If the individual is regarded as a determined offender, the state will respond with the elimination and isolation of the person. In this case, the individual shall bear no responsibility, since his/her acts are mechanically determined by external or internal factors. Whereas, the offender’s responsibility is not established, he/she will not be relieved of responsibility, since society must be protected from determined offenders. According to this approach, offenders are in a difficult situation, since they have to endure the uncertainty of confinement for indefinite, but possibly very long periods. In a non-deterministic approach, the individual that resorted to unlawful action out of free will shall receive equitable punishment in direct proportion to the crime committed.

As Beccaria formulates, *penalties* are explicit instruments that prevent forceful and law-breaking individuals from immersing society into a primordial chaos. Accordingly, Carrara also claims that punishment is not designed to guarantee either the predominance of justice, or retaliation of the perpetrator, or compensation for damages of the aggrieved party, or the intimidation of citizens, or the correction of the offender. These may be (desirably) appurtenant with the

²⁰ Korinek, L.: quote from lecture.

²¹ Angyal, P.: *A jogbölcselet alaptételei* (Maxims of Legal Theory). 5th Edition, Pécs, 1926. 94. Angyal defines sanctions (*sanctio*) as follows: Legal consequences of any human behaviour affecting the subject of that behaviour. Legal sanctioning by the state manifests itself in the regulation of the consequences of acts. Bona fide acts entail rewards, whereas, male fide acts entail punishment and compensation.

penalty, however, its imposition would still be imperative without any of these effects.²² The objective of punishment consists basically in the restoration of law and order, since criminality eventuates in moral damage by reason of the disturbance of order. Therefore, punishment is assigned to redress such damages and restore order. As Carrara concludes, criminal law, which must be limited by justice, must be based on the protection of human rights.

Mátyás Vuchetich, author of the first Hungarian scholarly work on criminal law, asserted that the legal grounds for punishment consists in the stipulation of the threat of punishment. As he maintained, a counter-motive needs to be instituted *vis-a-vis* the intent to commit criminal offences. Since punishment can never be an objective per se, its immediate objective consists in the enforcement of the principle of “quo peccatum est ne peccatur”, while, a more prospective objective is safeguarding law and order and the persistence of the state under the rule of law.²³

While analysing *retaliatory measures*, István Bibó emphasised their emotional character. Retaliation, accomplished in the form of rational and strict legal procedures and institutions, is a legal consequence that originates in and releases resentment. Wherefore, we are unable to accept a punitive system based exclusively on practical defence, since such a system is deemed indifferent, extremely tolerant with criminality and void of sympathy for the resentment of the aggrieved party or community, which is a characteristic feature of all forms of institutional retribution.²⁴

In recent theory, the assumption that criminal offences should not be necessarily followed by punishment has gained ground, whereas, the necessity of the enforcement of the principle of *equal opportunity* has been also emphatic. Tibor Király regards the *imperative of legality* as a theoretical parallel of equality before the law, which implies that citizens are guaranteed equal protection of the law and that all offenders shall receive equal and proportionate punishment for the crime committed. Despite the embracement of the principle of equal opportunity, the state sometimes renounces punishment for practical reasons, such as economisation on and adjournment of proceedings or for bare

²² Carrara, F.: *A büntető jogtudomány programja* (The Program of the Science of Penal Law). Volumes 1–2., Budapest, 1878, Vol. 2, 74.

²³ Madarász, A.: *Vuchetich Mátyás*, in: *Büntetőjogász professzorok a Pázmány Egyetemen* (Professors of Criminal Law at the Pázmány University). Budapest, 1942. 24.

²⁴ Bibó, I.: *Etika és büntetőjog* (Ethics and Penal Law). (1938) In: Bibó, I.: *Válogatott Tanulmányok* (Selected Essays 1935–1944). Budapest, 1986. 161–182.

negligence.²⁵ Accordingly, Ákos Farkas maintains that the enforcement of the principle of equal opportunity seems to supersede the imperative of legality. Therefore, it is no longer evident that criminal offences must be followed by punishment. Criminal justice does not always impose proportionate penalties, sometimes it merely threatens with punishment.²⁶

In point of principle, one major alternative of criminal policies obtains, viz., the options of *restrictive* and *restorative policies*. The first alternative is based on the assumption that the criminal justice system can rely on citizens' traditional respect for legality, therefore, conventional and strict penalties will be supported by the public. In return, the state provides guarantees for citizens that it will not tolerate the infringement of norms and it will resort to force in order to promote enforcement of the law. This improves the citizens' sense of security and supports the image of a powerful state, which may resort to preventive measures, criminal investigation and law-enforcement. Whereas, a drawback of the *restrictive* alternative consists in the difficulty to ensure timely responses to new developments. Furthermore, it hampers facing the fact that delinquents are part of the same society that the majority belongs to. Whereas, offenders do not receive assistance or models to follow concerning the appropriate manner of conflict settlement that meets the expectations of the majority of society, besides, they do not recognise reasons for being personally interested in showing due respect for the norms of the majority. As to the *restorative* alternative, it is based on the conception that criminality is a product of society, therefore, criminals are not responsible for the offences committed. Accordingly, upon the judgement of criminal offences, the circumstances facilitating that the individual followed norms deviating from those embraced by the state and the majority of society must be taken into consideration. The enforcement of that policy, however, requires active co-operation by society, which means that citizens must learn to apply important defence methods and instruments, which relieves considerably higher costs of external policing as well as the public's fears. Norms can be just partly enforced by administrative principles and mechanisms, since infringements of norms and their causes tend to have local characteristics. These can be effectively eliminated by local methods and instruments, furthermore, local achievements

²⁵ Király, T.: Bizonyítás a készülő büntetőeljárás kódexben (Evidence to the Currently Drafted Code of Penal Procedure). In: Domokos, A. (ed.): *Kriminológiai Közlemények* 54. Budapest, 1996. 90–103.

²⁶ Farkas, Á.: *A büntetőeljárás reformja és a bűnmegelőzés* (Reform of the Regulation of Criminal Procedure and Crime Prevention). In: *Büntetőpolitika, bűnmegelőzés* (Criminal Policy and Crime Prevention). Budapest, 1994. 9–29.

result in a sense of higher local security. A drawback of the *restorative* alternative is that a policy based on the unconditional protection of the individual can expect less support by the community, than conventional criminal policy. Then again, the enforcement of the instruments of national criminal policy is not always feasible on a local level. The co-ordination of various crime-prevention institutions can be far more difficult, than the institution of administrative control mechanisms. Besides, it may also result in the abandonment by the state of its key administrative tasks. In our days, advocates of community punishment and community policing are criticised as utopians.

Recently, the importance of *social control mechanisms* and the responsibilities of small communities have been subject to deliberation. As Károly Bárd articulated in the 1980s, the functioning of the justice system is impossible without social support and recognition. As we are aware, criminal justice functions as a minatory institution operated by the state, however, if it expects social recognition on a long term basis, it shall not content itself with the establishment of the enforcement apparatus, but it must function so as to facilitate that society supports the exercise of jurisdiction and assumes it as a social cause.²⁷

3. Hungarian Criminal Policy in Retrospect

As early as a hundred years ago, József Trócsányi emphasised that all regulations, morality and the rule of law purport to promote social needs, whereas, their ultimate purpose is the sustenance and protection of social life. Adopted norms compel observance of the law, which is enforced by state administration *via* its “mechanical compulsive authority” (Jhering’s term), whilst, society resorts to psychological pressure to impel moral behaviour.²⁸ Then again, in the early 20th century, Ákos Pauler criticised the legal system, including the system of criminal justice, for failing to create ideals. As he claimed, any correct law, i.e., ideal law is sanctioned by the demonstration of respect for human beings. Thus, by prescribing citizens to sustain culture, the state will also be constituted as a state founded on the rule of law pursuant to its purpose to be governed by law.²⁹

²⁷ Bárd, K.: Társadalomtudományok és büntető igazságszolgáltatás (Social Sciences and Criminal Justice). In: Kerezsi, K. (ed.): *Kriminológiai Közlemények*, 26–27. Budapest, 1989. 5–19.

²⁸ Trócsányi, J.: *Erkölcstelen ügyletek* (Immoral Transactions), Budapest, 1909.

²⁹ Pauler, Á.: *Az ethikai megismerés természete* (The Nature of Ethical Knowledge). Budapest, 1907. 228.

In connection with correction by imprisonment, Eötvös and Lukács maintained that punishment is aimed at repression and correction. Lajos Kossuth wrote a pertinent editorial on 14th August, 1842, in which he urged Bertalan Szemere, the Interior Minister to substantiate punishment by imprisonment as a manner of correction. As Deák-Hertelendy formulated in his deputy report of 1840: "Punishment loses its objective of benefiting the common good, if it is imposed on offenders merely in retaliation, not as a corrective instrument, if prisons are mere places of suffering and no attention is paid to moral improvement. Neither the rigour of punishment, nor the certainty of its immediate imposition will suffice to reduce the number of criminal offences, because fear without stronger morality will not generate observance of the law in the general public." "Prisons have so far functioned as schools of criminality."³⁰

Early emerging practical points of view are instantiated by Balla's contention, which demonstrates that arguments for equal opportunity and expedience were not first propounded in the second half of the 20th century. Balla suggested that the costs of building more modern prisons in order to provide more human accommodation for convicts could be easily covered by the establishment of lotteries. He claimed that "although, lotteries are decadent institutions, pure decency does not prevail in real life. Politics can be administered by decent instruments as long as these prove useful, however, it is beyond doubt that lotteries are not so detrimental morally as the horrendous damages, or, in fact, perils caused by currently functioning prisons."³¹ This peculiar suggestion for prison reform may seem naive, however, pragmatic ideas proliferated in the late 1800s.

Gyula Wlassics, as an advocate, albeit, not an explicit disciple of the classic school, acknowledged the necessity of reforms. As he asserted, "whenever a new trend of criminal policy challenges the constitutional guarantees and their moral and legal foundations, we must defy."³² For instance, he precludes the possibility that a criminal justice system may impose unspecified punishment, which he, however, deems admissible *in re* specific offences. With respect to first offenders, some conceptions emphasise that, in order to avoid social stigmatisation, even the reprimand of offenders should be avoided. An article by Dombóváry illustrates that this is by far not a new idea: "With regard to the

³⁰ Dombóváry, G.: *Fenyítő eljárás és büntetési rendszer Pest megyében a XIX. század első felében* (Punitive Procedures and the System of Punishment in Pest County in the First Half of the 19th Century). Budapest, 1906. 272.

³¹ See: *ibid.* 278.

³² Proniewicz, F.: *Wlassics Gyula*. In: *Büntetőjogász professzorok a Pázmány Egyetemen* (Professors of Criminal Law at the Pázmány University). Budapest, 1942, 88.

minor significance of the offence, the court will establish that the crime was committed, but will not impose punishment. With regard to valid mitigating circumstances, culpability is so slight that even the usual reprimanding procedure will be neglected.” In this case, „the remission of punishment is grounded on lenience”, which corresponds to the standpoint of most recent criminal law.

At the previous *fin de siècle*, Liszt was accused of abandoning the classic path of criminal law for the Romantic approach of criminal policy. Later, Finkey defended Liszt *vis-a-vis* his contemporary critics, by asserting that the revision of the practical elements of criminal law was also imperative.³³ While focusing on the required reform of the penal system in 1935, Finkey insisted on the institution of a purposeful criminal policy by maintaining that more severe penalties should be imposed on offenders who commit serious criminal offences, whereas, penalties *in re* lighter offences committed for pardonable reasons should be mitigated. The necessity of differentiation could hardly be formulated more matter-of-factly today.³⁴

Currently, the reformulation of the Penal Code is in progress. With respect to the requirements posited by international criminal policy, the attainment of the substantiation of social peace, of the differentiation of the system of sanctions, of the enforcement of community punishment in the broadest possible scope is expected. If we compare the before-mentioned objectives with those of the turn of the 19th and 20th centuries, we can discern that the basic purposes of criminal policy are still the same, since specific objectives are recurrently reformulated upon the commencement and implementation of reform processes. The ultimate purpose of the current reform of Hungarian criminal policy may be assessed as the institution of a “fair and equitable” criminal justice system. Ferenc Irk, while elucidating the criminal policy of risk society in Hungary, concludes that changes need to be effected in criminal law, since, upon the examination of effective regulations, we can establish that those were framed to meet the demands of the 19th century and the first two-thirds of the 20th century. Whereas, a continuous change has marked the recent 25 years *in re* the priorities of judgement of dangerous social behaviour, this made no impact on criminal policy, even though Hungarian penal law looks back on an era of 150 years of successful adjustment of theoretical principles to practical require-

³³ Finkey, F.: *A XX. század büntetési rendszerének reformkérdései* (Reform Issues of the 20th Century Penal System). The General Meeting of the National Association of Judges and Prosecutors in Kaposvár on 15th September, 1935. Budapest, 30.

³⁴ *Ibid.* 31.

ments.³⁵ We can only affirm, it is unquestionable that an overwhelming demand for change prevails, which is also supported by a large number of publications. In prospect, we'll see, whether according incentives will finally effectuate a comprehensive reform, and particularly, whether ideas in concordance with the legal requirements of the 21st century will permeate the regulations of new Penal Code.

³⁵ Irk, F.: *A társadalmi–gazdasági változások és a bűnözés kapcsolata. A kockázat-társadalom kriminálpolitikája* (Connection between Social–Economic Changes and Criminality. The Criminal Policy of Risk Society). In: Irk, F. (ed.): *Globalizáció és kriminálpolitika* (Globalisation and Criminal Policy). Budapest, 2006. 36–48.