



**Representation of the Punishment Concept by the Legal Terms
Punishment, Penalty and their Derivatives**

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**Representation of the Punishment Concept by the Legal Terms Punishment,
Penalty and their Derivatives**

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ABSTRACT

This paper covers the peculiarities of the **punishment** concept in the minds of American and British lawyers. The authors have found the basic constituents of the concept and determined its correlations with other legal and everyday concepts. Since the **punishment** concept has been viewed as the element of legal thinking and reasoning in the two countries, the differences, stemming from this fact, have also been noted. The materials for the analysis are the definitions from law dictionaries and the texts of works on legal issues both physical and online. The paper might be useful to law students and all the people who are interested in the professional legal attitude to crime and punishment in Britain and the US.

Keywords: concept, crime, punishment, morality, tort, contract, humanization, differentiation, specification.



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1. INTRODUCTION

This study has been made within the general trend of cognitive linguistics that is a very popular branch nowadays. We are especially interested in the specifics of collective consciousness in general and professional collective consciousness in particular. It is also obvious that the concept of PUNISHMENT, alongside with the concept of CRIME, is the basic element of the human mind. Our purpose is to identify the cognitive mechanisms of its interaction with other concepts and the details of its representation at the linguistic level. This idea has been inspired by such prominent scholars as Charles Fillmore, Beryl Atkins, Ray Jackendoff, George Lakoff (Fillmore & Atkins, 1992; Jackendoff, 1999; Lakoff, 1990).

2. THE TERMS PUNISHMENT AND PENALTY

In the beginning, we will consider the features of the representation of the PUNISHMENT concept by the legal terms punishment and penalty. The term punishment has the following definition: "some pain or penalty warranted by law, inflicted on a person, for the commission of a crime, or for the omission of the performance of an act required by law, by the judgment and command of some lawful court" (The Lectric Law Library, access date: 02/25/18). "To make someone suffer for a crime which he has committed" (Dictionary of Law, 1995).

The term penalty is used in the definition of the term punishment. In its turn, it is defined as follows:

- 1) "In criminal law, a money fine or forfeiture of property ordered by the judge after conviction for a crime" (Law Dictionary, access date: 02/25/18);
- 2) "Punishment (such as fine) which is imposed if something is not done or if a law is not obeyed" (Dictionary of Law, 1995).
- 3) According to the above-mentioned definitions, the legal notion of "penalty" is narrower than the notion of "punishment", as it presupposes only sanctions related to property ('fine', 'forfeiture of property'). The definitions reveal the semes, indicating that punishment is possible only in case it is provided by law ('law') and only by a court decision ('lawful court'). However, the term penalty may also refer to other sanctions ("a penalty of five years' imprisonment") (Dictionary of Law, 1995). Thus, the reference of the term penalty only to property sanctions can be considered as a peripheral semantic



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constituent of the PUNISHMENT concept.

The correlation of the CRIME and PUNISHMENT concepts results in the fact that a number of constituents that we have previously discovered in the legal concept of CRIME have also been revealed in the legal concept of PUNISHMENT. For example, the 'need of conviction' constituent is a part of both concepts. Identified with the concept of CRIME, a 'subjective perception' constituent is a consequence of the personal opinions "competition" that is typical of professional lawyers, as well as non-specialists in the field of jurisprudence (the jury, for instance). Consequently, this constituent is projected on the concept of PUNISHMENT. The same we can say about 'circumstance' and 'defense' constituents.

Sanctions are possible not only for unlawful acts, but for omissions as well ('omission', 'something not done'). Analysis of the second definition of the term penalty shows that it involves sanctions not only for criminal offenses, but also for other illegal acts ('law not obeyed'). There are common constituents in the concepts of CRIME, TORT and CONTRACT due to the peculiarities of Anglo-American law development throughout history. The common features of sanctions for commission of a crime, tort, and the violation of contractual obligations are obvious, and it is due to the same factor. The main difference between criminal sanctions and civil ones is that the main purpose of the latter is not just to punish a wrongdoer, but to compensate the victim for the damage caused. In case of non-fulfillment of contractual obligations, the injured party must be compensated as well. However, when a tort is committed, the wrongdoer violates the norms that are binding on all members of the society. In case of failure to fulfill contractual obligations, the norms in question are obligatory only for the parties to the contract (McKendrick, 2000). The term penalty, as a term of contract law, has the following definition: "an amount agreed in advance if payment is not made on time, such as a "late payment" on a promissory note or lease, or a financial penalty for each day a building contractor fails to complete a job" (Law Dictionary, access date: 02/25/18). According to this definition, contract law presupposes only property sanctions.

Some civil sanctions are punitive. An example is the sanction, associated with the term punitive damages. Though the term punitive damages are not, of course, derived from the terms punishment or penalty, the similarity of their external forms, due to the common



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Latin roots, justifies the analysis of the term punitive damages in the context of the word group under consideration. The definition is as follows:

- 1) "The purpose of punitive damages is to punish a defendant and to deter a defendant and others from committing similar acts in the future" (The Lectric Law Library, access date: 02/25/18);
- 2) "Damages which punish the defendant for the loss or harm caused to the plaintiff or heavy damages awarded to show that the court feels the defendant has behaved badly towards the plaintiff" (Dictionary of Law, 1995).

The first definition highlights one of the functions of punishment – the function of social and individual restraint ('deterrence'). The second definition confirms the "subjective perception" constituent in the concept of PUNISHMENT as well as common constituents in the concepts of PUNISHMENT and MORALITY ('feeling', 'bad behavior'). One way or another, common constituents in the everyday concept of MORALITY and the legal concept of CRIME attests to the existence of common features in the ordinary concept of MORALITY and the legal concept of PUNISHMENT.

Punitive damages are the consequence of acts defined as quasi-criminal, i.e., half-crimes and half-torts. Despite the fact that punitive damages are paid in a civil suit, they have much in common with a fine for a non-serious crime. Punitive damages are practiced both in Britain and in the USA (West's Encyclopedia of American Law, 1998).

In everyday English the words punishment and penalty have the following meanings respectively:

- 1) "Causing (someone who has done something wrong or committed a crime) to suffer, by hurting them, forcing them to pay money, sending them to prison, etc." (Cambridge International Dictionary of English, 1995);
- 2) "a penalty is a punishment, or the usual punishment, for doing something that is against a law" (Cambridge International Dictionary of English, 1995);

In everyday English the word punishment, unlike the word penalty, means punishment, not only for unlawful, but also for any other unworthy acts. Both the general language and terminological meanings of the analyzed words presuppose the suffering of a punished person. Property sanctions are not perceived as causing pain ('pain or penalty'). Apparently, this is due to the fact that property losses are not only possible as punishments



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for crimes, but also in other life situations. All other punishments, currently applied in Britain and the US, are possible only as such. Therefore, a non-property sanction is perceived as more severe and causing actual suffering. However, the definition of the term to punish does not imply such a distinction. Therefore, the opposition of property sanctions and other punishments can be considered an interpretative peripheral constituent of the legal concept of PUNISHMENT.

As Hugo Bedau points out, punishment, by nature, causes suffering. It is unpleasant, often painful, and, in any case, consists of depriving the subject of any value and makes him/her go through difficulties (Bedau, 1986). Thus, we can conclude that the central constituent of the legal concept of PUNISHMENT is the constituent of 'suffering imposed by law'.

Traditionally, scholars distinguish four main purposes of state punishment:

- 1) Restraining or warning function (deterrence). An offender is punished to make other people refrain from criminal activity, and this is general deterrence. Punishment also aims at making the punished person refrain from criminal activities in the future, and this is specific deterrence;
- 2) Protective function (protection) is done through isolation from society in order to protect citizens from further crimes that might otherwise be committed by the offender;
- 3) Corrective or educational function (reformation) has the purpose to change the offender for the better;
- 4) Punitive function (retribution), which is actually the revenge of the society for an offense.

The conclusion is that 'deterrence', 'protection', 'reformation' and 'retribution' are among the central constituents of the legal concept of PUNISHMENT.

3. THE TERMS AMNESTY AND PARDON

Now we are going to consider the representation of the PUNISHMENT concept by the terms that express the possibility of punishment mitigation or the release from punishment. The analysis of these terms in the context of the terms punishment, penalty and their derivatives seems rather appropriate, since punishment and penalty are the terms of the upper classification level and denote the most general legal notions about punishment. The term amnesty can be defined in the following ways:

"A general remission of punishment, penalty, retribution, or disfavor to a whole group or



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class; it may imply a promise to forget" (The Lectric Law Library, access date: 02/25/18);

1) "Blanket abolition of an offense by the government, with the legal result that those charged or convicted have the charge or conviction wiped out" (Law Dictionary, access date: 02/25/18).

2) According to the definitions, the amnesty presupposes the release of several persons from punishment ('group or class', 'several people', 'those'). At the same time, the amnesty implies the cancellation of the previous conviction, if it takes place after they came into force. The forgiveness without the criminal record cancellation is denoted by the term pardon:

1) "To use the executive power of a Governor or President to forgive a person convicted of a crime, thus removing any remaining penalties or punishments and preventing any new prosecution of the person for the crime for which the pardon was given" (Law Dictionary, access date: 02/25/18);

2) "Action of forgiving an offence (by the Sovereign or by Parliament)" (Dictionary of Law, 1995).

A pardon can also terminate a sentence and free a prisoner when the chief executive is convinced there is doubt about the guilt or fairness of the trial, the person is rehabilitated and has performed worthy public service, or there are humanitarian reasons such as terminal illness (Law Dictionary, access date: 02/25/18).

The meaning of the term pardon reflects the differentiation of the PUNISHMENT concept in Britain and the US that is rooted in the difference of the governmental structures ('governor or president', 'by the sovereign or by parliament'). In addition, the scenario (i.e. dynamic, non-static) character of the PUNISHMENT concept is expressed in the fact that the person's behavior while serving the sentence and after being very important. The "subjective perception" and "circumstance" constituents are manifested in the state officials' influence on the specific punishment of a particular person for a specific crime.

4. THE PHRASAL TERMS

The phrasal terms, built up on the basis of the terms crime and offense, are collectively referred to the groups of unlawful acts. The syntactic derivatives of the terms punishment and penalty, in their turn, are referred to the specific types of punishment. The term death penalty has the following definitions:



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- 1) "The sentence of a criminal to be executed" (Dictionary of Law, 1995);
- 2) "The sentence of execution for murder and some other capital crimes" (Law Dictionary, access date: 02/25/18).

The term capital punishment is defined as follows:

- 1) "Punishment of a criminal by execution" (Dictionary of Law, 1995);
- 2) "Execution (death) for a capital offense" (Law Dictionary, access date: 02/25/18).

In B.A. Garner's dictionary the term capital punishment is represented as a euphemistic synonym of the term death penalty (Garner, 2001).

Due to the general trend towards punishment humanization, the use of the death penalty is abolished in Britain (the last execution happened in 1964) and extremely limited in the United States. This can be explained by the extreme severity of this punishment.

In the United States, there is a precedent of the Supreme Court's annulment of the death penalty for a person who committed murder at the age of fifteen. The bulk of American lawyers believe that, taking into account the Eighth Amendment to the US Constitution, it is necessary to refuse from the execution of death sentences if a person committed a crime before the age of sixteen (Burnham, 1995).

According to the information of the Death Penalty Information Center, which is monitoring the corresponding statistics in the US, by November 9, 2016 death penalty was used in 31 states and abolished in 19 states (Death Penalty Information Center (a), access date: 02/25/18).

The youngest person ever executed after 1976 was a 22-year-old man, the oldest one – a 77-year-old woman (Death Penalty Information Center (b), access date: 02/25/18).

Proceeding from this, we find the 'specification of a punished subject' constituent in the PUNISHMENT concept. The subject is specified by age. In addition, the age when a person can be legally executed differs from state to state. It allows one to speak of the "subjective perception" constituent and the regional differentiation of the legal concept of PUNISHMENT in the United States.

An identical tendency has been observed while analyzing the number of executed women. As of October 1, 2016 there were 54 women on death row. This constituted 1.86% of the total death row population of 2,902 persons. Since 1976 16 women have been executed (Death Penalty Information Center (c), access date: 02/25/18). Thus, the 'specification of



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a punished subject' constituent of the PUNISHMENT concept can specify the subject both by age and by sex.

Public morality justifies the right of society to punish the offender. However, the development of social culture may lag behind the development of legal culture (for example, people often are against the abolition of the death penalty), or, on the contrary, outstrip it (the non-application of the punishments imposed by law for adultery in the United States, the non-application of corporal punishment in British schools before its official cancellation). This fact is an additional confirmation of common constituents in the everyday concept of MORALITY and the legal concept of PUNISHMENT.

5. THE VERBAL AND ADJECTIVAL DERIVATIVES

We have found verbal and adjectival derivatives of the terms punishment and penalty. The term punishable has two meanings: "liable to", if it refers to a noun denoting a person, and "entailing", if it refers to a noun denoting a crime – «she is not legally punishable», «an offense punishable by a \$500 fine» (Garner, 2001).

The term penal means "referring to punishment" (Dictionary of Law, 1995). It functions as an element in a number of phrasal terms that specify the broad notion of "penal", making it much narrower. For example, the term penal code ("set of laws governing crime and punishment") specifies the notion of "penal" by legal prescriptions, regulating the interpretation of crimes and punishments (Dictionary of Law, 1995).

In modern law, penitentiaries are denoted by the term penal institution ("place (such as a prison) where convicted criminals are kept"). The synonymous terms penal laws and penal system specify the notion of "penal" by the prescriptions, governing the correlation of existing types of punishment and crime (Dictionary of Law, 1995). The definition reflects an interpretative peripheral constituent of the legal concept of PUNISHMENT, namely, the differentiation of property sanctions from all the others.

6. CONCLUSION

Summing up, we have come to the following conclusions:

The correlation of the CRIME and PUNISHMENT concepts makes the 'need of conviction' and 'subjective perception' constituents be the elements of both of them.

Some civil law sanctions are punitive by nature, and the term penalty belongs not only to criminal law but to contract law as well. That proves the correlation between CRIME,



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PUNISHMENT, TORT, and CONTRACT legal concepts.

The terms death penalty and capital punishment specify a punished subject both by age and by sex. In the US, the age when a person can be legally executed differs from state to state. It reveals the "subjective perception" constituent and the regional differentiation of the legal concept of PUNISHMENT in the United States.

The use of death penalty is much restricted, and it is a sign of the punishment humanization tendency. The fact highlights common constituents in the everyday concept of MORALITY and the legal concept of PUNISHMENT.

The 'deterrence', 'protection', 'reformation' and 'retribution' constituents of the PUNISHMENT concept stem from the functions of criminal law sanctions. The central constituent is 'suffering imposed by law'.

Some lawyers refer the term penalty only to property sanctions, but others perceive the term much wider. That is a sign of a 'subjective perception' constituent.

The meanings of the terms related to the punishment mitigation and the release from punishment reflect the differentiation of the PUNISHMENT concept in Britain and the US, which is due to the difference of the governmental structures.

The dynamic character of the PUNISHMENT concept is proved by the importance of a convict's behavior. The way a person behaves affects the development of the penal sanction imposed on him/her.

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