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RAĐANJE ZATVORA – EVOLUCIJA IDEJE

SAŽETAK: Ne postoji društvo bez normi, kao što ne postoje norme koje se ne krše. Reakcija društva na kršenje osnovnih normi na kojima ono samo počiva u velikoj meri zavisi od epohe, odnosno od vrednosnog jezgra na kome je društvo utemeljeno. Zatvaranje postoji oduvek, ali se kroz istoriju drastično menjalo. Od zatvaranja bez svrhe i smisla, uz muke i patnju, do savremenih oblika lišenja slobode i savremenih zatvora. Sa idejnom revolucijom, menja se i vrednosna osnova društva, a samim tim i sve one norme koje iz takvih vrednosti proističu. Percepcija kazni i očekivanja od njih menjaju se, te se od XVIII i XIX veka razvija nova koncepcija zatvora kao ustanove kontrole, popravljanja, odnosno resocijalizacije. Zatvor postepeno prestaje da bude pakao na zemlji i postaje instrument uticaja društva na one koji se drznu da društvene norme krše. Ovaj rad prati tu evoluciju, to jest razvoj zatvora i ideje zatvaranja, od rupa i laguma, do savremenih kazneno-popravnih zavoda.

KLJUČNE REČI: kazna lišenja slobode, kazneno izvršno pravo, penologija, lišenje slobode, krivične sankcije.

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1. UVOD

Od kada postoji društvo kao organizovana zajednica ljudi koja zajednički obavlja određene poslove, postoje i norme koje takav zajednički život omogućavaju ili, u najmanju ruku, olakšavaju. Takvim osnovnim normama društvo teži da obezbedi zaštitu. Primarni način podrazumeva da kroz proces socijalizacije pojedinci prihvate društvena pravila kao ispravna i korisna, te da se dobrovoljno ponašaju u skladu sa njima. Pojedinaac postaje član društva koje ima svoju kulturu, svoja pravila, svoje vrednosti i ideje koje se na njega prenose upravo kroz proces socijalizacije (Avramović & Stanimirović, 2016). „Pounutrašljenje zahteva konkretne društvene zajednice je glavni cilj socijalizacije“ (Marjanović & Markov, 2011, str. 224). Takav proces je neizmerno složen, a njegovi ishodi su sve osim izvesni. Jedna od glavnih posledica neuspele socijalizacije predstavlja upravo nepoštovanje društvenih normi, kroz razne oblike i obrasce ponašanja koji bivaju okarakterisani kao devijantni (Bošković, 2012). Za takva ponašanja svako društvo propisuje odgovarajuće sankcije, s tim da što je norma za društvo važnija, odnosno što je vrednost koja se štiti značajnija, to će i sankcija biti stroža (Radoman, 2016).

Osnovni predmet ovog rada jeste analiza razvoja jednog specifičnog načina reagovanja društva na navedene pojave. Konkretnije rečeno – sama ideja zatvora i zatvaranja. Kazna lišenja slobode u svojoj savremenoj i masovno zastupljenoj formi nastaje relativno kasno, tek krajem XVIII i početkom XIX veka. Međutim, zatvaranje pojedinaca na kraće ili duže vreme, samostalno ili uz neke druge mere, postoji od početka ljudske istorije. Ideja zatvaranja nije nova, ali je put od tamničenja i okova do resocijalizacije kao savremenog cilja kazne zatvora, veoma složen. Paralelo sa ovim procesom tekla je i promena svesti o svrsi i suštini koju kazna treba da ostvaruje (Lakobrija, 2020).

Pretpostavka od koje ovaj rad polazi jeste ta da je nastanak zatvora kao ustanove neodvojivo skopčan sa prodiranjem pozitivizma u nauku i filozofiju, kao i sa snaženjem prirodnopravnih teorija uopšte. Kakav je značaj sa jedne strane retributivizma, a sa druge ideja racionalizma i utilitarizma u kaznenoj politici za nastanak kazne zatvora? Ovo su pitanja na koja će ovaj rad pokušati da odgovori.

2. NASTANAK ZATVORA

Zatvor i kazna lišenja slobode u savremenom smislu te reči ulaze u penološku praksu pre oko dvesta godina. To, naravno, ne znači da u prethodnom vremenu nije bilo raznih oblika zatvaranja lica koja su kršila društvene norme, samostalno ili u kombinaciji sa nekim drugim merama.

2.1. Zatvaranje pre zatvora

Zatvori, u savremenom smislu te reči, javljaju se relativno skoro. Zatvor kao ustanova uticaja koja treba da ostvari ciljeve odvajanja, raspoređivanja, vezivanja jedinki za određeno mesto, njihovog iskorišćavanja kao i nadzora i kontrole, nastala je znatno pre pojave kazne lišenja slobode kao osnovne kazne (Fuko, 1997, str. 223).

Prvi izvori koji nam govore o zatvaranju datiraju iz 2050–1786 p. n. e. iz Egipta (Stevanović, 2012). O raznim oblicima zatvaranja može biti reči i u ostalim državama starog veka poput: Vavilona, Persije, Grčke, Izraela, Rima, ali i Kine i Indije (Nikolić & Kron, 2011).

Između starog i srednjeg veka ne postoje suštinske razlike kada je zatvaranje u pitanju. U oba slučaja ono po pravilu nije predstavljalo samu kaznu, već meru koja treba da obezbedi zadržavanje lica, odnosno njegovo čuvanje ili eventualno „korekciju“ (Bosworth, J. [ed.] 2005). Takvo zatvaranje imalo je za cilj da spreči beg lica dok se nad njim ne izvrši smrtna ili neka druga kazna, dok ne vrati dug ili dok se ne odluči o njegovoj sudbini. Jednom rečju, bilo je potrebno da se obezbedi dostupnost tela kao osnovnog objekta kazne. U Srbiji je zatvaranje, kao mera za obezbeđivanje prisustva lica radi izvršavanja telesne kazne (a koja je izvršavana u obrocima, svaki dan pomalo), opstalo sve do XIX veka.

Ovakva zatvaranja su vršena po raznim mestima koja su za to bila pogodna, odnosno dostupna: lagumima, rupama, bunarima, pećinama, tamnicama, starim zamkovima, manastirima i ostalim ograđenim prostorijama koje onemogućavaju bekstvo. Kvalitet prostora, u smislu njegove pogodnosti za zdrav i human boravak, nije bio od značaja.

U periodu od XV do XVII veka dolazi do prvih značajnijih (ali ne i suštinskih) promena u praksi zatvaranja (Nikolić & Kron, 2011).

Kao posledica razvoja gradova i migracija sa sela, dolazi do pojave velikog broja skitnica, prosjaka, besposličara, vagabunda i sličnih lica koja predstavljaju opasnost po uspostavljeni red i poredak. Za razliku od Henrija VIII, koji je ovaj problem pokušao da reši tako što je naredio da se obesi 72.000 vagabunda (Radoman, 2016, str. 34), njegov naslednik Edvard VI donirao je Brajdvel, palatu svoga oca, u svrhu „čuvanja i popravljanja“ moralno hendikepiranih osoba (Roth, 2006, str. 44). Na taj način (1553. godine) dolazi do nastanka prvog zatvora, iako još ne u savremenom smislu te reči. U narednim decenijama i vekovima, „brajdvovski zavodi“ se šire po celoj Engleskoj. Međutim, ovde nije bilo reči o ustanovama u kojima je izvršavana kazna zatvora, to jest u koja su slata lica koja su izvršila teža krivična dela. U ovakvim zavodima (popravnim domovima, popravištima, radionicama) čuvane su skitnice, prosjaci i sitni kriminalci koji nisu imali sredstava za život. Da bi bili sprečeni u krađi i ostalim sitnim zlodelima, zatvarani su u ovakve ustanove gde su bili primoravani na rad kako bi na taj način sami sebe izdržavali. Kao što se može videti, ovakvi zavodi više liče na kampove sa prinudnim radom, a manje na zatvore u savremenom smislu te reči. Ideja ovakvih zavoda širila se i u kontinentalnoj Evropi, gde je izrodila niz sličnih ustanova. Za ostala lica, zatvaranje je ostalo nepromenjeno – tamničenje u neuslovnim prostorijama, ali u već navedenom smislu pogodnim.

U narednim vekovima dolazi do pojave zatvora u smislu za potrebe zatvaranja izgrađenih ili prilagođenih objekata (Nikolić & Kron, 2011): Amsterdam (1659), Libek, Bern i Dancig (1697), Hamburg (sredina XVIII veka). Valja napomenuti i Zavod Svetog Mihajla u Rimu (1703), popravni dom u Milanu (1759) i popravni dom u Holandiji (1775) koji su bili predviđeni za „čuvanje i vaspitavanje“ omladine sklonelinkventnom ponašanju i kriminalu. Prvi zatvor u Severnoj Americi datira iz 1773. godine (Burlingame, 2012, str. 9).

2.1.1. Uslovi u predmodernim ustanovama zatvaranja

Ukoliko je nesporno da su uslovi boravka u velikom broju savremenih zatvora XXI veka nehumani, a po zatvorenika štetni, može se postaviti pitanje kakvi su uslovi boravka postojali u trenutku nastanka ovih ustanova.

Najkompletniji pregled stanja u evropskim zatvorima s kraja XVIII veka daje nam Džon Hauard u svom radu „Stanje u zatvorima“ (Hauard, 2015), čije prvo izdanje datira iz 1777. godine. Kao što je već rečeno, kazna zatvora kao takva nije postojala, a zatvaranje je primenjivano gotovo isključivo na dužnike, prosjake, besposličare, beskućnike i slična lica, dok su za teža kažnjiva dela, smrtna i telesna kazna (uz kaznu deportacije/transportovanja koja je postojala u kolonijalnim silama zapadne i severne Evrope) i dalje bile osnovne. Tako od 4084 zatvorenika u Engleskoj 1776. godine u kategoriju dužnika spada čak 2437 ili skoro 60% ukupne zatvorske populacije u zemlji (Hauard, 2015).

Ustanove zatvaranja ovog perioda bile su relativno male u poređenju sa današnjim. Najveći zatvori onog vremena, poput zatvora u Napulju, Veneciji, na prostoru današnje Holandije, u Portugalu ili Španiji, nisu brojali više od 500 do 1000 zatvorenika (Hauard, 2015), za razliku od savremenih zatvora za koje nije retko da čuvaju po više hiljada, pa i desetine hiljada lica (npr. zatvor u Los Anđelesu). Ono što je još specifično jeste odsustvo bilo kakve centralizacije i organizacije ovih ustanova. Dok su neke bile pod kontrolom države, druge su osnivali gradovi, okruzi, šire ili uže zajednice shodno sopstvenim potrebama i mogućnostima, kao i kaznenoj politici i filozofiji.

Stanje u ustanovama zatvaranja s kraja XVIII veka može se opisati samo kao katastrofalno. To su mesta na kojima su: „u istom jadu, hladnoći, gladi preživljavali i umirali nevini i krivci, muškarci i devojčice, žene i dečaci“ (Hauard, 2015, str. 7). Oni koje je zadesila nesreća da završe u ovakvim ustanovama često su imali goru sudbinu od roba. Robovlasniku je u interesu da svoju imovinu čuva kako bi je što duže iskorisćavao. Zatvorenik nije bio potreban nikome, njega niko nije štitio, o njemu niko nije brinuo. Jedina pažnja koja je ka njemu bila usmerena jeste pažnja drugih zatvorenika i tamničara koji su u njemu videli izvor profita, zabave ili i jednog i drugog.

Ljudi koji su ulazili u ustanove zatvaranja kao zdravi i snažni, ako su uopšte uspevali da ustanovu napuste, izlazili su bolesni, oronuli i propali. Bivši zatvorenici su postajali prosjaci i beskućnici, često sakate i moralno posrnuće osobe (ukoliko sve to već nisu i bili), koje kao takve nisu mogle da pronađu svoje mesto u „poštenom“ društvu, te su povratak u zatvor ili pak teže kazne bili izvesni.

U mnogim slučajevima su štale i obori za svinje održavani bolje nego zatvori. Od stoke seljak ima koristi, dok od zatvorenika koristi nema niko, osim eventualno čuvara i drugih zatvorenika. U ovakvim od boga zaboravljenim mestima, boravilo je i po 10–12 ljudi, na 10 kvadratnih metara po 24 časa dnevno. Bez prozora, svežeg vazduha, u totalnom ili polu mraku, bez tekuće ili bilo kakve druge vode, bez toaleta, a često i bez elementarne odeće, obuće, kreveta ili bilo kakvog drugog nameštaja. Kada govorimo o toaletu, mislimo na bilo kakve pogodne prostorije za vršenje nužde, poljski toalet ili bilo kakvu drugu mogućnost obavljanja nužde van same prostorije u kojima zatvorenici borave.

U ovakvim uslovima zaraza je vladala. Džon Hauard, koji je tokom svog života prešao skoro 70.000 km prilikom obilaženja zatvora u Evropi, beleži da nije nimalo retka pojava da čuvari nevoljno odlaze u pojedine delove zatvora, kako zbog nesnosnog smrada, tako i zbog straha od bolesti. Čak se i on sam prilikom obilaska jednog takvog dela zatvora teško razboleo, uprkos brojnim merama predostrožnosti i prevencije (npr. prao je odeću odmah po izlasku iz zatvora, dok je preko nosa držao maramicu natopljenu sirćetom, kako zbog smrada tako i zbog bolesti, uz izbegavanje bilo kakvog fizičkog kontakta.).

U nekim zatvorima, kao i u pojedinim popravnim domovima (brajdvelskim zavodima), situacija je bila nešto bolja. S obzirom da je ovde često bilo reči o dužnicima i sitnim lopovima, njih nije bilo potrebno zatvarati u tamnice i slične prostorije. Međutim, i ovde su uslovi bili katastrofalni. Ove ustanove su bile pretrpane. Na istom mestu su se nalazili i mladi i stari, i muškarci i žene, deca i povratnici, primarni prekršioc, ali i ludaci. Hrana i piće im često nisu bili dostupni besplatno, već se od njih očekivalo da ih od čuvara kupe. A do nešto malo novca moglo se doći samo kroz težak rad, često u okovima. U ovakvim ustanovama kocka i alkohol nisu bili retki, po pravilu u režiji čuvara. Neredi, svađe, tuče, maltretiranja, iznude nisu predstavljali retkost, dok čuvari nisu imali poseban interes niti obavezu da se o redu i disciplini posebno brinu.

Čuvari često nisu dobijali platu, već su zarađivali od tzv. honorara. Mesto čuvara je često bilo prodavano ili iznajmljivano od države, da bi onda čuvari, iskorišćavajući zatvorenike, vraćali ono što su na njihovo „čuvanje“ potrošili. Suštinski, jedina obaveza koju su čuvari imali

jeste ta da spreče bekstvo. Od zatvorenika su naplaćivali štošta – od toga da se prilikom samog ulaska od njega traži da plati određenu taksu, do toga da se naplaćuju boravak, hrana, voda, slamarica za spavanje (ako je uopšte ima), troškovi prevoza na suđenje, troškovi žalbi, konsultovanja sa lekarom/apotekarom (ako neka vrsta zdravstvene zaštite uopšte postoji), cena poseta, iznajmljivanje odeće, nameštaja, ali i jednokratna taksa za izlazak iz zatvora. Ako na sve ovo dodamo i dug zbog kojeg je neko i završio u zatvoru (dužnički zatvor), kao i kamatu, ta cifra može znatno da poraste. Ukoliko zatvorenik nema sopstvenih sredstava da plati sve navedene troškove, dug i kamatu, niti to može da učini neko u njegovo ime, jedino što mu ostaje jeste da teškim radom u okviru ustanove zaradi dovoljno kako bi sve to pokrio. I kada kaznu izdrži ili ako se utvrdi da je nevin, te da je tu bez osnova, iz zatvora neće izaći sve dok ne podmiri troškove svog boravka u njemu. Sve to dodatno komplikuju prodaja alkohola i kockanje koji su u zatvoru bili uobičajeni, pa i dozvoljeni. Stanje u zatvorima ovog perioda odstupa, u svakom smislu, drastično od zatvora kako ih mi shvatamo danas u XXI veku (više o tome: Rusche, Kirchheimer, 1994).

Na sve ovo treba dodati i to da se na suđenja često čekalo mesecima, a negde čak i celu godinu. Čak i ukoliko bi optuženik bio oslobođen, vreme koje bi proveo u ovakvoj ustanovi i sva ona fizička, duhovna, ali i materijalna šteta ostali bi nenadoknađeni.

Opisano stanje nije bilo svuda isto. Postojale su razlike kako od države do države, tako i od zatvora do zatvora u istom gradu. Pravilnost koja se može uočiti jeste da je u velikim silama onovremene Evrope, poput Engleske, Francuske, nemačkih država ili Rusije, stanje znatno gore nego u manjim (ali veoma bogatim) državama poput Holandije, Belgije, Lihtenštajna ili Švajcarske. Ali razlike, iako su postojale, nisu bile suštinske. U zatvor se lako ulazilo, iz njega se teško izlazilo. Zdravstvena i svaka štetnost boravka u ustanovi zatvaranja bila je notorna.

Navedeno stanje predstavlja doslednu i isključivu primenu principa retributivizma u praksi. Društvo ne interesuju posledice kažnjavanja. Država je tu da održi red i poredak, da propiše pravila i da kako zna i ume obezbedi njihovo poštovanje. Grubost i krajnje odsustvo humanosti predstavljaju i dalje dominantan princip. U ovo vreme ideje pozitivne prevencije, svrsishodnosti i humanosti u kažnjavanju apso-

lutno nisu bile u znatnijoj meri zastupljene. I vlast i „pošteni“ građani gledali su na zatvorenike (i delinkvente generalno) kao na neku vrstu taloga društva. Takvi ljudi nisu ni zasluživali bolje. Shvatanje da svaki čovek ima svoju ciglu u zatvoru i da svako tamo može da završi, jer život je sve samo nije predvidiv, te da u zatvor idu ljudi, a ne čudovišta, koji zaslužuju tretman dostojan čoveka, nije bilo rašireno (a nije ni danas u XXI veku).

Može se reći da penitencijarna praksa predstavlja samo odraz vrednosti i shvatanja određenog društva. Dok se odnos prema suštini kazne, čoveku i njegovoj dobrobiti, pravdi i slobodi nije promenio, ni kazna zatvora nije mogla da evoluiru (Radoman, 2016). To je takođe vreme velikih društvenih promena (Francuska buržoaska revolucija i Američki rat za nezavisnost), promena u filozofiji (uticaj epohe prosvetiteljstva), tektonskih promena u nauci (pojava pozitivizma) pa i pravu (nagli razvoj prirodnopravnih strujanja i ideja o neotuđivim pravima čoveka). Sa navedenim promenama dolazi i do reforme zatvaranja i njegovog prevođenja u kaznu lišenja slobode u savremenom smislu te reči, kao i do pojave savremenih zatvora.

U narednom poglavlju prvo će biti obrađena osnovna teorijska i filozofska shvatanja koja su udarila pečat velikoj reformi, ili je možda bolje reći rađanju zatvora, bez kojih se sama evolucija ideje zatvaranja ne može pravilno razumeti.

2.2. Idejna revolucija

Nastanak kazne zatvora ne može se posmatrati izolovano od velikih promena u nauci i filozofiji onog vremena. Ono što je opšti pečat ovog razdoblja jeste raskid sa verskim misticismom, konzervativizmom i fundamentalizmom uz sveopšte jačanje racionalizma kao dominirajućeg i podrazumevanog principa u nauci sve do danas.

Teoretičari, ali i društvo u celini, problematici kriminaliteta i njegovog suzbijanja počinju da pristupaju na jedan suštinski drugačiji način. Kažnjavanje se više ne posmatra isključivo kao okajanje greha, zadovoljenje božje pravde, izražavanje pravednosti ili kao odbrana suverenog veličanstva, već kao praksa koja treba da bude korisna, to jest praktična (Konstantiović-Vilić, Ristanović-Nikolić, & Kostić, 2010).

2.2.1. Revolucija opštih ideja

U razdoblju od XVI do XVIII veka, zajedno sa razvojem prirodnopravnih teorija prava, razvijaju se mnogobrojne teorije društvenog ugovora. Ono što je svima njima zajedničko jeste upravo jačanje racionalizma u shvatanjima društva i države. Država i sve njene ustanove ne objašnjavaju se više pomoću verskih i teorija baziranih na tradiciji, već se njima sve više pristupa objektivno, a često i vrednosno neutralno. Suština novih shvatanja jeste u tome da država nastaje na osnovu sporazuma, direktnog ili prečutnog, članova društva. Ona predstavlja kvalitativno drugačiju zajednicu, koja kao takva može da obezbedi sigurnost i prosperitet na znatno višem nivou od preddržavnih formacija. Radi ostvarenja tog cilja, na državu se prenose određena ovlašćenja, odnosno njeni pripadnici se odriču dela svojih prava. Državljanima – građanima – članovima nešto dobijaju, a nešto gube. Cena reda i sigurnosti poretka jeste odsustvo potpune slobode, odnosno obaveza ponašanja na određen način. Nepoštovanje te obaveze povlači sankcije.

Ovo je, naravno, uprošćeno predstavljanje teorija društvenog ugovora i ono je načinjeno kako bi se uvidela kvalitativna promena percepcije društva i države. Oni se više ne posmatraju kao bogom dane tvorevine kojima upravljaju savršeni i blagosloveni vladari koje je odredilo providenje i kojima svi duguju bezrezervnu poslušnost. Država više nije mistična tvorevina, već ustanova koju su stvorili ljudi zarad ostvarivanja određenih ciljeva, zbog opstanka, ali i napretka. Država nema svoja večna prava, već njeni pripadnici – građani. Oni imaju prava i slobode kojih se odriču delimično i sa određenim ciljem, a sve kako bi jedna takva zajednička tvorevina mogla da funkcioniše. Ovo je takođe i vreme opšteg smanjenja sklonosti ka nasilju (samim tim i surovim telesnim kaznama), vreme kada dolazi do svojevrstne pacifikacije običaja i svakodnevice (Mišambled, 2015).

Formira se novo merilo ocene sveukupne stvarnosti, pa samim tim i svih pojava u njoj, a to je upravo korisnost, tj. svrsishodnost. Ovo je očekivano jer je upravo ovo period prosvetiteljstva na koji se nastavlja epoha pozitivizma u nauci (fra. *positivism*, ono što proizlazi iz iskustva, lat. *positivus* ono što jeste, što postoji, pozitivno pravo – važeće pravo, nasuprot istorijskom ili prirodnom pravu). Društvene i prirodne po-

jave posmatraju se empirijski, egzaktno. Teži se utvrđivanju objektivnih uslova neke pojave i faktora njene dinamike, a sve to kako bi se one mogle usmeravati ili suzbijati.

Sve će ovo dovesti do brojnih promena u evropskim društvima i, u krajnjoj meri, do nastanka industrijskih država zasnovanih na principima racionalnosti uz garantovanje privatne svojine i postepenu sekularizaciju sveopšteg društvenog života.

2.2.2. Klasična škola prava

Isti pristup se javlja i u krivičnom pravu. Pripadnici klasične škole prava započinju prvo ozbiljno, sistemsko proučavanje načina i postupaka sprečavanja i suzbijanja kriminala (Jovašević & Kostić, 2012). Teoretičari ove škole prvi put na jedan pravnički, formalno ispravan način definišu niz opštih pravnih pojmova u krivičnom pravu. Sve navedeno, zajedno sa novopostavljenim zahtevima u ovoj oblasti (pre svega zahtev za doslednim načelom zakonitosti), dovodi do rađanja novog pristupa kaznama i kažnjavanju i do formiranja kazne lišenja slobode u savremenom smislu te reči. U isto vreme, dolazi i do pojave penologije kao nauke o kaznama i kriminologije kao nauke o kriminalitetu.

S obzirom na temu ovoga rada, na ovom mestu neće detaljno biti obrađena shvatanja i principi ove škole. Biće reči samo o osnovnim idejama koje je formulisao još Čezare Bekarija 1763. godine u svom čuvenom traktatu „O zločinima i kaznama“ (Bekarija, 1984). Ove ideje izvršiće ogroman uticaj na nauku i praksu krivičnog prava u celini.

Bekarijine ideje mogu se prikazati kroz tri osnovna zahteva (Pradel, 2008):

1. Strogi legalitet u krivičnom pravu,
2. Svođenje broja inkriminacija na razumnu meru,
3. Utilitarnost kazni.

Zahtev za uvođenjem danas nespornog strogog legaliteta u krivično pravo potiče upravo od Bekarije. On je prvi koji je definisao jedno potpuno načelo zakonitosti u ovoj oblasti prava. Ono se ne odnosi samo na pitanje krivičnih dela i kazni (lat. *nullum crimen sine lege, nulla poena sine lege*), već i na procedure otkrivanja i presuđivanja za krivična dela, kao i na izvršenje izrečenih kazni. Načelo zakonitosti zahvata ne samo krivično materijalno pravo već i krivično procesno i kazneno izvršno. Rađa se ideja da se ovlašćenja sudija, tužilaca, policajaca i islednika, kao i čuvara u zatvorima moraju unapred precizno i jasno definisati. Bekarija je u ovom zahtevu išao toliko daleko da se zalagao za apsolutno određene kazne, gde bi sudija bio samo automat za mehaničku primenu prava. Bez mogućnosti za tumačenje i kreativnost, ne može biti ni zloupotreba. Uvidevši svu arbitrarnost i zloupotrebu do kojih je dolazilo u njegovo vreme, smatrao je da samo potpunim isključivanjem slobodnog delovanja navedenih subjekata teško stanje može biti prevaziđeno.

Drugi zahtev na neki način predstavlja most ili spregu između prvog i trećeg. Ukoliko postoji bezbroj pravila, ukoliko su rasuta po različitim ne toliko dostupnim zakonicima, uredbama, naredbama, odlukama i drugim pisanim ili nepisanim aktima, kako se od običnih građana (u ono vreme izvesno nepismenih i u potpunosti neobrazovanih) može očekivati da ih saznaju i poštuju? Kada se zapovest ne može saznati, kako se ona može poštovati? Ako se nije ni moglo očekivati da neko pravilo može da se ispoštuje jer nije ni poznato, koje je opravdanje kažnjavanja njegovog kršenja? Kako bi zabrane mogle da budu efikasne i svrsishodne, moraju biti dostupne, a samim tim i umerene u broju.

Treći zahtev je za nas najznačajniji. Bekarija predstavlja autora koji zahteva jedan odsečan prelazak sa filozofije retributivizma na ideje konsekvencijalizma u kaznenom pravu uopšte. Kazna, po njegovom mišljenju, mora nečemu da služi. I to ne nekom apstraktnom, dalekom cilju, već praktičnom i ovozemaljskom. „Kazne imaju za cilj samo da spreče krivca da i dalje šteti društvu i da odvrate druge od vršenja zločina“ (Pradel, 2008, str. 27). Negativna specijalna i generalna prevencija treba da budu ishodište i utoka kažnjavanja i kazni, njihovo jedino opravdanje i kriterijum procene. Iz navedenog zahteva proizlazi niz drugih koji će u svojoj krajnosti upravo dovesti do pojave savremenih zatvora.

Sve kazne kojima je primaran cilj da nanese bol, da izazovu patnju, muke, sablazan, gađenje ili neku sličnu muku, apsolutno su beskorisne i štetne. Bekarija je načelno protiv smrtne kazne i telesnog kažnjavanja, dok se zalaže za pojačanu primenu novčane kazne, kazne prinudnog rada i kazne zatvora. Samo te kazne mogu da ostvare navedeni cilj. Mučenja, sakaćenja i slična zlostavljanja ne služe ničemu osim uništenju čoveka, a to se nije pokazalo kao put kojim se navedeni cilj može ostvariti.

Bekarija još zahteva i uvođenje jednakosti u kažnjavanju. Kazna mora biti jednaka za sve, kako za bogate, tako i za siromašne, za moćne podjednako kao i za slabe. Ovaj princip dugo neće biti u potpunosti prihvaćen, ali i danas kada formalno jeste ispoštovan, u praksi ne daje uvek jednake rezultate. Različit tretman onih koji to ne zaslužuju (protekcija i nepotizam), nije redak. Sa druge strane, ukoliko je za neko ponašanje predviđena ili se primarno primenjuje novčana kazna, dok sprečavanje lica u vršenju krivičnih dela ne postoji ili je neefikasno, tada je takvo ponašanje zabranjeno pre svega siromašnima.

Poslednje što ćemo ovde još pomenuti jeste shvatanje da je izvesnost primene kazne nemerljivo efikasnije po prevenciju od brutalnosti njenog izvršenja. Rečeno savremenom pravnom terminologijom: izvesnost primene pravne norme znatno intenzivnije utiče na potencijalne učinioce krivičnih dela u smislu odvraćanja (prevencije) od visine zaprećene kazne. Da je obratno tačno, u starom i srednjem veku ne bi ni bilo kriminala s obzirom da se za krađu sekla ruka, za uvredu sekao nos, dok se za napad na lik veličanstva nabijalo na kolac, mučilo i teško sakatilo. Fuko u svom delu „Nadzirati i kažnjavati“ opisuje veoma detaljno sve muke kroz koje prolazi Damjen kao neuspešni atentator na francuskog kralja Luja XV. Ritual mučenja, čerečenja, sečenja delova tela, zasecanja, pa onda brige o ranama kako ne bi došlo do prerane smrti, čupanja kože, vađenja očiju i čupanja udova, izvršen je javno u velikom ceremonijalu pred velikim brojem okupljenih građana. Opisan proces je trajao više dana.

Svi navedeni zahtevi uticaće na brojne teoretičare, filozofe, ali i praktičare, kako pravne tako i drugih orijentacija, da postepeno reformišu celokupno krivično pravo, što će dovesti i do nastanka savremenih zatvora.

Najvažniji predstavnik nove orijentacije kada govorimo o kaznama i kažnjavanju, konkretno reformi ustanova zatvaranja, jeste engleski filozof i teoretičar Džeremi Bentam (1748–1832). Kao savremenik Kanta, Hauarda, Bekarije i mnogih drugih velikana ovog prelomnog vremena, on je bio neposredno upućen kako u sve probleme onovremenog društva, tako i u nova strujanja i nove ideje koje je u velikoj meri i oblikovao.

2.2.3. Panoptikon

Potpuno novi pristup lišenju slobode kao obliku kažnjavanja Bentam je izneo u svom delu „Panoptikon“ (1787). Iako ideja panoptikona nikada nije primenjena u svom čistom obliku, Bentamovo shvatanje izgleda i funkcije zatvora izvršiće ogroman uticaj kako na teoretičare, tako i da nosioce javnih vlasti tokom narednog veka.

Bentam je težio da osmisli takvu ustanovu lišenja slobode koja će dovesti do eliminisanja korupcije, proizvoljnosti, zavera, epidemija i bolesti (Bentam, 2014). Interesantan je navod Bentama da je Prva engleska flota tokom Američkog rata za nezavisnost izgubila preko 2000 ljudi od bolesti, do koje je došlo usled kontakta sa otpuštenim zatvorenikom iz jednog londonskog zatvora. Više ljudi je odnela bolest od pomorskih bitki i samog rata na moru.

Kako bi to postigao, on je osmislio niz arhitektonskih i drugih rešenja na kojima zatvor treba da počiva. Polazna osnova svega jeste ideja konstantnog, sveprisutnog, svevidećeg nadzora.

Zatvor treba da bude kružnog oblika. Zgrada ne sme da bude previše velika. Njen obim bi trebalo da bude približno 30 metara. Sa dva sprata i ćelijama od oko 4,5 m² (oko 2,5m x 1,8m) raspoređenih ukrug. Ovako zamišljen zatvor mogao bi da čuva oko 96 zatvorenika. Ukoliko bi se povećao broj spratova, u jednoj ustanovi moglo bi da boravi i do približno 300 štićenika. Zgrada bi trebalo da ima oblik svojevrsnog kruga sa praznim centrom. Dok bi po obodu zgrade bile ćelije, u sredini bi stajao nadzorni toranj, a između njih prazan prostor.

Bentam je smatrao da ovakav dizajn može da se primeni, pored zatvora, i na ludnice, bolnice, ali i škole i fabrike, to jest na sva ona mesta kod kojih postoji potreba za konstantnim nadzorom i kontrolom. Iz

ovih zamisli, s vremenom će se pod uticajem Fukoa razviti ideja panoptizma kao novog mehanizma sveopšte kontrole i nadzora savremene države nad njenim građanima.

Svaki zatvorenik bi imao sopstvenu ćeliju. Ona bi bila tako postavljena da je od susednih ćelija odvojena bočnim zidovima. To bi sprečilo komunikaciju između zatvorenika, a samim tim i kriminalnu infekciju, kao i dogovaranje i planiranje ne samo bega već i nereda. Na spo-ljašnjem zidu bi trebalo da stoji veliki prozor kroz koji bi u ćeliju, pored svežeg i čistog vazduha, ulazila i svetlost. Unutrašnji zid bi imao otvore sa rešetkama. Ovakav dizajn treba da omogući nadzorniku koji stoji u centralnoj kuli (koja je zamračena kako bi zatvorenicima bilo onemo-gućeno da vide da li je i kada je nadzornik prisutan i kada ih nadgleda), da sa lakoćom, samostalno i sa velikom sigurnošću može da kontroliše veliki broj zatvorenika. Svaki zatvorenik bi sam boravio u čistoj ćeli-ji, sa dovoljnom količinom vode, hrane, po mogućstvu i sa sopstvenim toaletom. Navedeno ne podrazumeva nikakav luksuz, već minimalne i dovoljne uslove koji su potrebni da ne bi došlo do narušavanja zdravlja zatvorenika. Život zatvorenika, u krajnjoj meri, koliko god bio „pristo-jan“, ne sme biti bolji od života prosečnog čoveka na slobodi (Rusche & Kirchheimer, 1994). Sve ovo treba da eliminiše zaraze, bolesti, a samim tim i teške uslove i veliku smrtnost u zatvorima. Ali šta se svime ovim želi postići?

Panoptikon podrazumeva tehnologiju moći koja pomoću nad-ziranja i kontrole većine od strane manjine, uz pomoć discipline, treba da reši problem kriminaliteta. Nasilje, mučenje, bedni uslovi boravka i besmisleno nasilje nisu doneli društvu ništa dobro. Na mesto takvih ustanova, koje su predstavljale pakao na zemlji i rasadnike zaraze, dola-ze ustanove apsolutne kontrole.

Svaki zatvorenik je u potpunosti nadziran i kontrolisan. Svaki njegov pokret, svaki njegov čin, vidljiv je. Nije potrebno primeniti nika-kvu prinudu, ni silu, pa ni pretnju. Činjenica da zatvorenici znaju da su pod nadzorom svakog trenutka, odnosno da postoji realna mogućnost da budu nadzirani svake sekunde, dovoljan je mehanizam kontrole. Već je rečeno da je izvesnost drastično efikasniji princip od brutalnosti.

Na taj način je obezbeđeno efikasno čuvanje zatvorenika. Oni su pod nadzorom i ne mogu ni sebi ni drugima da naškode. Međutim,

to nije krajnji cilj, već samo početna faza. Totalna kontrola kroz stalni nadzor samo je nužan preduslov kako bi se preduzele naredne mere. Zatvor nije hotel u koji su zatvorenici poslati na odmor. Kada se uspostavi kontrola, prelazi se na rad. Zatvorenici su dužni da u okviru ustanove tokom celog dana rade. To ne smeju biti poslovi koji podrazumevaju faktičko mučenje ili besmislene poslove. To moraju biti aktivnosti koje donose profit ustanovi, a zatvoreniku, sa druge strane, omogućavaju da razvija ili formira svoje radne sposobnosti.

Iz ovakvog krajnje pojednostavljenog predstavljanja ideja Bentama i panoptikona može se uočiti nekoliko osnovnih zamisli koje su kao takve bile u potpunosti revolucionarne i koje će poslužiti kao ideje vodilje u reformama do kojih će doći u narednom veku:

1. Uslovi u zatvoru ne smeju da budu takvi da predstavljaju mučenje i faktičku smrtnu kaznu.
2. Ustanova mora biti tako organizovana da je moguć konstantan i potpun nadzor svih aktivnosti zatvorenika, 24 časa dnevno, sedam dana u nedelji.
3. Zatvorenici moraju da rade, kako iz razloga što će na taj način ustanova da se izdržava i da bude ekonomična, tako i da ne bi došlo do propadanja ličnosti zatvorenika, a samim tim i onemogućavanja njihove reintegracije u društvo.
4. Zatvorenici moraju biti odvojeni jedni od drugih, kako radi sprečavanja kriminalne infekcije, tako i radi očuvanja reda u zatvoru.

Od takve kazne zatvora društvo ima korist ne samo zato što u njih zatvara kriminalce već i zato što te ustanove više nisu rasadnici bolesti, nemorala i kriminala. Korist po zatvorenike bila bi više nego očigledna. Ovakav zatvor omogućava uvođenje kazne lišenja slobode kao osnovne kazne koja treba da zameni telesne, ali i smrtne kazne koje će tokom XIX veka postepeno nestajati iz pravnih sistema evropskih država.

Nekoliko zatvora je izgrađeno pod neposrednim uticajem Bentamovog panoptikona (Bentam, 2014, str. 117) i to pre svega: Puni u

Indiji (1818), Milbenk u Londonu (1830), Rond haus zatvor u Australiji (1830), ali i mnogi drugi.

Glavni nedostatak ovakvog pristupa jeste što je zatvorenik posmatran kao objekat, kao pasivno lice na koje se primenjuju određene mere i koje ih usvaja po očekivanom automatizmu, odnosno na planiran način. Pokazaće se kao nesporno da zatvorenici nisu nimalo pasivni, štaviše da se veoma aktivno suprotstavljaju svim oblicima intervencije u zatvoru, što će za posledicu imati dalju promenu pristupa kazni lišenja slobode u XX i XXI veku.

2.3. Pojava savremenih zatvora

Razvoj u nauci i filozofiji, novi senzibiliteti, jačanje ideje o prirodnim i uopšte ljudskim pravima, svojevrсна opšta humanizacija, kao i jačanje ideja utilitarizma i racionalizma uopšte, dovešće u XIX veku do prvih velikih reformi u praksi izvršenja kazne lišenja slobode.

Prvi pravno regulisani sistem izvršenja kazne zatvora jeste ćeljski sistem, još nazvan pensilvanijski ili filadelfijski (Radoman, 2016), nastao u Sjedinjenim Američkim Državama početkom XIX veka. On je podrazumevao strogo odvajanje zatvorenika u ćelije bez ikakve mogućnosti komunikacije sa drugim zatvorenicima. Potpuna osama kako bi se sprečila kriminalna infekcija, te kako bi zatvorenici bili sami sa sobom i svojim mislima, što treba da im pomogne da razumeju i prevaziđu svoje „grehe“ zbog kojih su i završili u zatvoru.

Posle njega se na istorijskoj sceni javlja tzv. obernški sistem nastao takođe u SAD. I on je podrazumevao strogo osamljivanje zatvorenika, ali je ipak u određenoj meri dozvoljavao rad i makar vizuelnu komunikaciju sa drugim zatvorenicima.

Krajem XIX veka javlja se progresivni sistem zatvora. Prethodni sistemi i strogo osamljivanje zatvorenika, koje se pokazalo kako potpuno suprotno ljudskoj prirodi, zamenjeni su novim pristupom. Sistem progresivnog zatvora podrazumeva veru u samog zatvorenika. Kazna zatvora je podeljena na određene faze. Da bi zatvorenik izdržao svoju kaznu, potrebno je da prođe kroz sve faze. A on sam je mogao da doprinese kraćem trajanju pojedinih faza, to jest kraćoj kazni zatvora. Ukoliko se zatvorenik ponašao disciplinova, ukoliko je valjano radio,

poštovao red u zatvoru, učio zanat, ispunjavao radnu ili neku drugu normu, odnosno ukoliko bi se u zatvoru valjano vladao, brže bi prelazio u narednu fazu. I tako sve do krajnje faze koja podrazumeva izlazak iz zatvora. Što se zatvorenik valjanije ponaša, to će mu kazna kraće trajati.

Sistem progresivnog zatvora (u svojim mnogobrojnim varijantama) ostao je glavni sistem izvršenja kazne zatvora do danas. Jedino što se na njega nadovezuje jeste naglašena ideja klasifikacije u savremenim penitensijarnim sistemima. Kako bi se ciljevi kazne ispunili, treba što doslednije sprovesti klasifikaciju osuđenika. Učinioci lakših krivičnih dela, kao i primarni učinioci, ne treba da izdržavaju kaznu zajedno za povratnicima i učiniocima težih krivičnih dela. Žene moraju biti odvojene od muškaraca, deca od odraslih, stariji od mlađih, bolesni od zdravih i tako dalje. Sam stepen klasifikacije zavisi pre svega od ekonomskih mogućnosti konkretnih društava.

Kazna lišenja slobode i ustanova zatvora u Srbiji nastaju relativno kasno (Mirković, 2013). Pre Prvog srpskog ustanka kazna lišenja slobode kao takva nije postojala. U vremenu ustaničke Srbije počela je da se javlja sporadično, pre svega kao sredstvo za obezbeđivanje prisustva radi izvršenja neke druge kazne ili mere. Tek od sredine XIX veka i ukidanja telesnih kazni, kao i od pojave prvih zatvora u pravom smislu te reči i usvajanja prvog srpskog krivičnog zakonika iz 1860. godine, može se pratiti razvoj penitensijarne prakse u Srbiji.

3. ZAKLJUČAK

Ukoliko je ideja kažnjavanja kao takva stara koliko i samo društvo, ona nije statična, to jest jednom data i nepromenljiva. Što su dominantne vrednosti i iz njih izvedene prakse različitije, to će i praksa kažnjavanja biti drugačija.

Celokupna istorija kažnjavanja može se grubo podeliti na dva velika perioda. Period privatne reakcije je kao takav duže trajao, budući da on podrazumeva period od pojave prvih predrđavnih formacija do nastanka prvih organizovanih država starog veka. Do smene nije došlo svuda i naprasno. Veliki broj ljudskih zajednica ostao je na plemenskom

nivou organizacije još dugo posle nastanka prvih država. Čak i danas znatan broj ljudske populacije i dalje živi u preddržavnim, plemenskim formacijama. Dok je za period privatne reakcije karakteristično odsustvo sistematičnosti, odnosno organizovanog kažnjavanja i veliki uticaj običaja, za period državne reakcije u znatnoj meri važi suprotno. Sa nastankom i jačanjem države, specijalizovani organi pod kontrolom vladara preuzimaju sve poluge normiranja i kažnjavanja ne više toliko zasnovanih na običajima, koliko na potrebama samog društva, ali i onih koji ga predstavljaju, odnosno koji njime rukovode.

Ni period državne reakcije nije jedinstven. U okviru njega može se uočiti više faza. To su, pre svega, faza zastrašivanja i ispaštanja kojoj, grubo rečeno, odgovara retributivistički pogled na kazne i kažnjavanje. I faza humanizacije i individualizacije koju prati promena svesti ka konsekvencijalizmu, konkretnije utilitarizmu i utilitarnoj kaznenoj praksi.

Dok su život čoveka i njegovo zdravlje bili nisko postavljeni na lestvici vrednosti, kaznena praksa nije mogla biti drugačija do surova. Tek sa velikim promenama u nauci i filozofiji, a shodno tome i širim društvenim tokovima s kraja XVIII i početka XIX veka, dolazi do razvoja jednog kvalitativno drugačijeg pojmljenja čoveka, države i njihovog međusobnog odnosa.

Sa jačanjem pozitivizma u nauci i filozofiji uopšte, dolazi do demistifikacije učinilaca krivičnih dela. Sve navedeno, zajedno sa novim zahtevima koji proizlaze iz francuske i američke revolucije, dovodi prvo do teorijskih, a zatim i do korenitih reformi same prakse kažnjavanja i pojave kazne lišenja slobode i zatvora u savremenom smislu te reči.

Velikim delom svoje istorije, kazneni sistem se nije mnogo i drastično menjao, dok je u poslednja dva veka doživeo suštinske promene do kojih je došlo usled potpuno promenjene percepcije o suštini i svrsi kazne.

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BIRTH OF PRISON – EVOLUTION OF THE IDEA

ABSTRACT: A society without norms does not exist, just as norms that are not violated do not exist as well. The reaction of society to violation of basic norms on which it itself is based largely depends on the epoch, that is, on the value core on which the society itself is based. Imprisonment has always existed, but it has changed drastically throughout history – from imprisonment without purpose and meaning, alongside torment and suffering, to modern forms of deprivation of liberty and modern prisons. The ideological revolution has changed the value basis of society, thus changing all the norms that had arisen from such values. The perception and expectations of punishment have changed and, from the 18th and 19th centuries onwards, a new concept of prison as an institution of control, correction, or resocialization has been developing. Prison has ceased to be perceived as hell on earth and became an instrument of society's influence on those who dare to violate social norms. This paper follows this evolution, that is, the development of prisons and the idea of imprisonment from holes and dungeons to modern penitentiaries.

KEY WORDS: prison sentence, penal law, prisons, penology, incarceration, criminal penalties.

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1. INTRODUCTION

Ever since the emergence of society as an organized community of people that perform duties together, there have been norms that made such cohabitation possible or at least easier. These norms are the way to assure that the society is protected. The main method to achieve this is the process of socialization through which the individuals will accept social norms as correct and useful, and therefore willingly obey them. Thus individuals become members of a society that has its own culture, norms, values as well as ideas, all of which are transferred onto them through the process of socialization (Avramović & Stanimirović, 2016). “Internalization of society’s specific demands is the principal goal of socialization” (Marjanović & Markov, 2011, p. 224). Such a process is immensely complex and its outcomes are anything but certain. One of the main consequences of unsuccessful socialization is non-compliance with social norms through various forms and patterns of behavior characterized as deviant. (Bošković, 2012). For such behaviour every society prescribes adequate sanctions; the more important the norm for the society, or, in other words, the more significant the value being protected, the stricter the sanction will be (Radoman, 2016).

The objective of this paper is to analyze the evolution of a particular way the society reacts to non-compliance of social norms: that is, the concept of prison or imprisonment. Imprisonment, in its contemporary and widely accepted form, appears relatively late, in the late eighteenth and early nineteenth century. However, the imprisonment of individuals for a shorter or longer time, as a sole punishment or together with other measures, has existed ever since the dawn of human history. The idea of imprisonment is not novel, but the road from dungeons and shackles to resocialization as a modern objective of a prison sentence has been long and complicated. Simultaneously, the understanding and awareness of the purpose of imprisonment as a form of punishment have been undergoing major changes as well (Lakobrija, 2020).

This paper starts from a hypothesis that the origins of prison as an institution are inseparably linked with the permeation of positivism into science and philosophy, as well as with the emerging natural law theories in general. How did the concept of retributive justice, on

the one hand, and the ideas of rationalism and utilitarianism in penal policy, on the other hand, contribute to the emergence of incarceration as a form of punishment? These are the questions that this paper will attempt to answer.

2. ORIGINS OF PRISON

Prison and imprisonment, in the contemporary sense, entered the penological practice around two hundred years ago. Naturally, different forms of imprisonment (as a sole form of punishment or accompanied by other measures) for individuals who violated social norms, existed long before that.

2.1. DETENTION BEFORE IMPRISONMENT

Prisons, in the contemporary sense of the word, have emerged quite recently. Prison as an institution is meant to accomplish the following objectives: separation, dispersal and confinement of individuals to a specified place, their exploitation, surveillance and control. However, these objectives, as well as the restraint of a person's freedom as a form of punishment, began long before incarceration (Foucault, 1997, p. 223).

The first sources on imprisonment date back to ancient Egypt, from 2.050 to 1.786 BCE (Stefanović, 2012). More information on different forms of imprisonment may be found in the ancient world, in the states such as Babylon, Persia, Greece, Israel, China and India (Nikolić & Kron, 2011).

No significant differences can be found in terms of imprisonment in the Antiquity and in the Middle Ages. As a rule, the imprisonment did not represent a punishment in itself but a measure meant to ensure detention, that is the guarding or possibly „correction“ (Bosworth, J. (ed.) 2005). Such form of imprisonment aimed to prevent a person from escaping before being sentenced to death or other form of punishment, until their debts are paid, or their destiny decided. In other

words, to ensure the availability of the body as the primary subject of punishment. Imprisonment, as a means of securing one's presence for the purpose of executing a corporal punishment (executed in portions, a little each day) was in force in Serbia until the nineteenth century.

Imprisonment of this kind was imposed at various places: mines, holes, wells, caves, dungeons, old castles, monasteries and many other facilities for that suitable that hinder escape. The living conditions in these spaces and their effect on prisoners' health were of little significance.

The first important signs of changes in the imprisonment practice, yet not essential, occurred in the period from fifteenth to seventeenth century (Nikolić & Kron, 2011). Rapid development of cities and the migrations of people from the countryside have caused the increase of wanderers, loafers, vagabonds and other people alike who imposed a danger to the established order. Unlike Henry VIII, who tried to solve this issue by ordering 72.000 vagrants to be hanged (Radoman, 2016, p.34), his heir Edward VI donated his father's palace for the purpose of „guarding and correcting“ morally handicap people (Roth, 2006, p.44). Thus, the first prison was founded in 1553, although not in the modern sense of the word. In the decades and centuries ahead, „Bridewell houses“ spread across England. Still, these institutions were not the places where the prison sentence was served, that is where the individuals who committed serious crimes were incarcerated. In those institutions (houses of correction or workshops) vagrants, beggars and petty offenders with no means of subsistence were kept. So as to be held back from thievery or other petty crimes, they were kept in houses of correction and forced to work to support themselves. Evidently, these institutions were more like labour camps rather than prisons in the contemporary sense. Later, the idea of similar institutions spread even to continental parts of Europe where many more were built.

In the centuries ahead, many prisons were created for the purpose of closing the already built or adapted facilities (Nikolić & Kron, 2011): Amsterdam (1659), Lübeck, Bern and Danzig (1697), Hamburg (mid-eighteenth century). The Institute of St. Michael in Rome (1703), juvenile detention center in Milan (1759) and in the Netherlands (1775) are also worth the mention, as they were intended for „guarding and ed-

ucating“ the young prone to delinquent behaviour and crime. The first prison in North America dates back to 1773 (Burlingame, 2012, p.9).

2.1.1. CONDITIONS OF PRE-MODERN CONFINEMENT INSTITUTIONS

If we agree that the conditions in most modern prisons of the nineteenth century were indisputably inhuman and harmful for the prisoners, we may inquire about the conditions of these institutions at the time of their establishment.

John Howard gave the most thorough overview of the situation in European prisons established by the end of eighteenth century, that can be found in his book *The State of Prisons* (Howard, 2015), first published in 1777. As already stated, the prison sentence as such did not exist, and imprisonment applied exclusively to debtors, beggars, the unemployed, homeless and the like, while death and corporal punishment still remained as primary form of punishment for serious offenses (along with the punishment of deportation – transportation that existed in colonial forces of the Western and Northern Europe). Out of 4.084 prisoners in England, in 1776, 2.437 were debtors, almost 60% of the total UK prison population (Howard, 2015).

Institutions of confinement of this period were relatively small in comparison to the ones present today. The biggest prisons of that period, as the ones in Napoli, Venice, present-day Netherlands, Portugal and Spain, could not hold more than 500 to 1,000 prisoners unlike modern prisons that keep thousands, even tens of thousands of people (e.g. the Los Angeles prison). Another point worth mentioning is the absence of centralization and organization of any kind when these institutions are concerned. While some were under the control of the state, others were founded by cities, counties, larger or smaller communities, depending on their needs and abilities as well as their criminal policy and philosophy.

By the end of the eighteenth century, the conditions in the institutions of confinement could be described disastrous, where „both the innocent and the guilty, man and women, girls and boys lived and died in misery, coldness and starvation“ (Howard, 2015, p.7). The unfortu-

nates who ended up at such institutions often had it worse than slaves. For a slave owner, conservation of property for its long-term exploitation is a major objective. Conversely, nobody needed prisoners, no one protected or took care of them. The only attention a prisoner received was the one coming from other prisoners or jailers who perceived them as a source of profit, entertainment or both. People who entered institutions of confinement as healthy and strong individuals left sick and crushed, if they left at all. Ex-prisoners would become homeless beggars, often emotionally crippled and morally disengaged. As such, they couldn't find their place in an "honest" community. Thus, it was certain that they will return to prison or even undergo severe punishments.

In most cases, even the pig sties and stalls were kept in better conditions than prisons were. A farmer can benefit from the cattle, but nobody can benefit from a prisoner, except a guard or other prisoners. Ten to twelve people were forced to live in such godforsaken places in 10 square meters for 24 hours without windows, fresh air, in total dark or half-light, without running water or water of any kind, without toilet and even clothing, footwear, bed or furniture. By toilet we mean any space adapted for urination and defecation, an outhouse or any other place beyond the one the prisoners were enclosed at.

John Howard, a man who traveled nearly 7.000 km in his visits of European prisons, notes that it is a common sight that even the guards leave certain parts of prisons not only because of the unbearable smell but for fear of diseases as well. Clearly, prisons were overwhelmed with infectious diseases in such poor conditions. Even Howard himself got seriously sick during one prison tour despite all the taken precautions (e.g. washing clothes immediately after exiting prison, holding a handkerchief soaked in vinegar over the nose, and avoiding physical contact).

On the other hand, the situation was slightly better in several other prisons and detention centers (Bridewell Prison). Given that these facilities were mainly for debtors and petty thieves there was no need to incarcerate them in dungeons or other rooms alike. But, even so, the conditions were still disastrous. These facilities were overcrowded and everyone was kept in the same dwelling: the young and the old, men and women, children and returnees, primary offenders and even lunatics.

Moreover, food and beverages often did not come for free. Yet, the prisoners were expected to buy them from the guards, and the only way to earn money was by doing heavy labor, often in shackles. Gambling and alcohol consumption were quite common activities, often arranged by guards, as well as riots, quarrels, fights, harassment, extortion etc. and the discipline was imposed only when in guards' interest or under their obligation.

In addition to the guards, they often didn't receive a salary, they earned through a so called honorarium and basically their only duty was to prevent prison breaks. However, a job position of a guard was often sold or rented by the states, thus, those same guards would later exploit the prisoners to pay off the sum they invested for a respective position. They charged prisoners for various things starting from the entrance fee, bedding, food, water, sleeping pallets (if any), transportation costs for the trials, appeal fees, doctor's or pharmacist's consultations (if any medical protection even existed), visit costs, clothes and furniture renting and the gate money. When adding the debt for which one ended up in prison to all previously mentioned prison debts, plus the interest, the total sum substantially increases. Thereby, unless the prisoner possesses funds to cover all the costs thereof, the debt and the interest or unless there is someone to give payment instead, the only thing left is to attain money by doing heavy labor within the prison facility in hope to cover the total cost. Namely, even if one serves the prison sentence or is proven to be innocent, leaving the prison before paying off the total debt is not possible. Evidently, the conditions in prisons of that period drastically differ from the prison of the 21st century (more on that matter: Rusche, Kirchheimer, 1994).

Not only that the scheduling a trial sometimes took months but, at some places, it took years and even if the accused got released, the time spent in such a facility while suffering physical and emotional trauma, along with the material damage, remained irretrievable.

The aforescribed conditions in prisons did differ from state to state or prisons of the same city. Yet, a pattern can be noticed according to which the conditions in prisons of all great powers of Europe such as France, England, German states or Russia were much worse than in smaller (yet wealthy) countries as the Netherlands, Belgium, Liechten-

stein and Switzerland. But, despite the existing differences, they were not of essence. It was still easy to end up in a prison, and quite hard to leave making the harm caused by the imprisonment notorious.

The stated condition represents consistent and exclusive application of retributivism in the concrete. The society itself is not interested in the consequences of punishments and the state is primarily there to maintain order, prescribe rules and secure that they are followed at all costs. Crudeness and complete absence of humanity remained a dominant principle. During this period, prevention with positive expectancies, purposefulness and humanity in punishment were not notably advocated. Both the government and „honest“ citizens perceived prisoners and delinquents in general as the dregs of society, as the ones who didn't deserve better. The notion which states that anyone can become a prisoner since life is all but predictable and that actual people are held there, not monsters, was not widely accepted (and neither is now in the twenty-first century). Prisoners deserve to be treated decently.

It could be said that penitentiary practice is nothing but a mere reflection of values and perceptions of one society. Not until the attitude towards the purpose of punishment, man and his well-being, justice and freedom changed, could the prison sentence evolve (Radoman, 2016). Those were also the times of major social changes (French Bourgeois Revolution and The American War for Independence), changes in philosophy (the influence of the Enlightenment period), tectonic changes in science (positivism) and in law (the rapid development of natural law and the idea inalienable human rights). Subsequently, with all these changes comes a reform of incarceration expressed as imprisonment in the modern sense of the word, along with the birth of modern prisons.

In the chapter ahead, we will be dealing with the basic theoretical and philosophical understanding that left a mark on this great reform, or, better said, the birth of prisons without which the evolution of the very idea of imprisonment cannot be adequately understood.

2.2. AN IDEOLOGICAL REVOLUTION

The emergence of prison cannot be contemplated in isolation from major changes in science and philosophy of that time. The general mark of this period is the breach from religious mysticism, conservatism and fundamentalism along with the strengthening of rationalism as the dominant and implicit principle in science up to this day.

Theorists, and the society as a whole, accede the problem of crime and its repression in one essentially different manner. The concept of punishment is no longer seen exclusively as atonement, satisfying God's justice, bringing out justice or as defending sovereign majesty, but as a practice that should be useful and practical.

2.2.1. THE REVOLUTION OF GENERAL IDEAS

From the sixteenth to the eighteenth century, numerous social contract theories developed with the development of natural law theories. What they have in common is the strengthening of rationalism in perception of the society and state. The state and its institutions are no longer elucidated through religious theories or theories based on tradition, but rather through a more objective approach and often value neutral. The hypostasis of these new cognitions lies in the fact that the state is created on the basis of agreement between society members, directly or tacitly. It represents a qualitatively different community that, as such, can provide security and prosperity at a significantly higher level than pre-state formations could. In accomplishing this goal, certain authorities are transferred on the state, in other word, the state's members renounce the part of their rights, so the citizens and the members gain but also lose some things. The price of order and the certainty of polity is the absence of complete freedom, that is an obligation to follow a certain pattern of behaviour. Disrespecting this leads to sanctions.

This is, indeed, simplified representation of the social theory contract for the sake of realizing the qualitative changes in perception of the society and the state. The two are no longer seen as God's creations to whom unreserved obedience is owed, operated by ideal blessed rulers set by the providence. Likewise, the state is no longer considered a mys-

tic formation, but rather as an institution created by ordinary people for the purpose of achieving certain goals, for surviving and progressing. The state has no perennial rights - the citizens do. They are the ones with rights and freedoms they renounce partially or with a specific cause, so that such a common creation could function. These are also the times of general decrease of propensity to violence leading to a decline in severe corporal punishments, and subsequently a decline in severe corporal punishments, as well as the times of pacification of customs and everyday life (Misambled, 2015).

Finally, a new measure of evaluating reality is formed, along with all its occurrences, and that is usefulness, i.e. expediency. It was expected since this is, indeed, the age of enlightenment to which an epoch of positivism in science continues (fr. *positivism*, what comes from experience, lat. *positivus*, what is, what exists, positive law – valid law, in contrast to historical or natural law). Social and natural phenomena are perceived empirically. What the state aspires to is determining objective conditions of one occurrence and factors of its dynamics so that it could be controlled or suppressed.

All this led to numerable changes in European societies and ultimately to the creation of industrial countries based on the principals of rationality with the guarantee of private property in gradual secularization of social life

2.2.2. THE CLASSICAL SCHOOL OF LAW

The same approach is used in criminal law. The classical school of law begins with the first significant and systematic study of ways and procedures for preventing and suppressing crime (Jovašević & Kostić, 2012). For the first time, theorists of this school manage to define general legal concepts in criminal law in a legally and formally correct way. All of the above, together with the newly set requirements in this area of law (primarily the requirement for a consistent principle of legality), leads to the birth of a new approach to punishment and imprisonment, in the contemporary sense of the word. Concurrently, penology is es-

tablished as the science of punishment along with criminology as the science of crime.

Considering the subject of this paper, the concepts and principles of this school will not be discussed in detail here, but only its basic ideas, formulated by Cesare Beccaria in 1763 in his famous treatise “On Crimes and Punishments” (Beccaria, 1984). These ideas will have a huge impact on science and practice of criminal law as a whole.

Beccaria’s ideas can be set forth through three basic requirements (Pradel, 2008):

1. Strict legality in criminal law,
2. Reducing the number of incriminations to a reasonable level
3. The utilitarian nature of punishment

Firstly, Beccaria himself requested the introduction of today’s undisputed strict legality into criminal law. He was the first one to define a complete principle of legality in this area of law. This principle applies not only to criminal offenses and penalties (lat. *nullum crimen sine lege, nulla poena sine lege*) but also to the procedures of detecting and adjudicating criminal offenses as well as the execution of imposed sentences. The principle of legality covers criminal substantive law as well as criminal procedural and criminal executive law. Moreover, the idea that the scope of jurisdiction of judges, prosecutors, police officials and investigators, as well as prison guards, must be precisely and clearly defined in advance, is born. Beccaria went so far in his request that he advocated for absolute punishments in which the judge’s role would be applying the law in a machine-like manner. With no room for interpretation and creativity, there can be no abuse of the legal system. Being aware of all the arbitrariness and abuse that took place in his time, he believed that the only solution for overcoming this difficult situation was to completely take away the subjects’ right to act freely.

Beccaria’s second request is in a way, a link or connection between the first and the third request. If there are countless rules and

if they are scattered across various, inaccessible codes of law, statutes, decrees, decisions and other written or unwritten enactments, how can ordinary citizens (which were, at that time, illiterate and completely uneducated) be expected to know and respect those rules? When a commandment is not known then how can it be obeyed? If the expectation to follow a certain unknown rule is unrealistic, what justifies the punishment for the violation of that rule? In order for bans to be effective and purposeful, they must be accessible and therefore moderate in number.

The third request Beccaria made is also the one that bears most significance to us. Beccaria is an author who demands an abrupt transition from the philosophy of retributivism to the ideas of consequentialism in criminal law in general. According to him, punishment must serve a purpose, and not some abstract, distant purpose, but a practical and feasible one.

“Punishments are only intended to prevent the perpetrator from continuing to harm society and to deter others from committing crimes” (Pradel, 2008, p. 27). Negative special and general prevention should be the starting point for and source of punishment, as well as the only justification and criterion for evaluation. From this above stated request, many other requests arose that, in their extremes, lead to the appearance of modern prisons.

All punishments whose primary goal is to inflict pain, to cause suffering, torment, offense, disgust or other similar distress are completely superfluous and harmful. Beccaria is primarily against the death penalty and corporal punishment, while he advocates for the increased use of fines, forced labor and imprisonment. Only these punishments can achieve the stated goal. Torture, mutilation and similar abuses serve nothing but the destruction of man, which has not proven to be the way in which his stated goal could be achieved.

In addition, Beccaria demands the introduction of equality in punishment. Punishment should apply equally to the wealthy as well as the poor, the powerful as well as the powerless. This principle was not fully accepted for a long time and even today, when it is formally respected in practice, it does not always yield equal results. The unfair treatment of those undeserving of it (protection and nepotism) is not uncommon. On the other hand, if a fine is envisaged or primarily

applied for certain conduct while the prevention of criminal offenders committing such acts is non-existent or ineffective, then this kind of illegal behaviour is forbidden primarily for the poor.

The last thing to mention here is the understanding that the certainty of receiving punishment is much more effective in prevention than the brutality of its execution. Being said with reference to contemporary legal terminology: the certainty that a legal norm will be applied has a much stronger effect on potential criminal offenders in terms of deterrence (prevention) than the monetary amount of the threatened punishment. If the opposite were true, crime would not have existed in the ancient times and the medieval century since one would have his hand cut for theft, a nose for insulting someone, while for attacking a figure in power, the offender would be impaled, tortured and severely mutilated. In his work "Discipline and Punish", Foucault gives a very detailed description of all the torment inflicted on Damien, an unsuccessful assassin of French King Louis XV. He was tortured, slashed, his body carved into and parts of his body cut off. After that, his wounds were tended to so as to prevent premature death and they proceeded to rip off his skin, remove his eyes and pull out his limbs. This process lasted several days and was performed publicly as a large ceremony in front of a crowd of gathered citizens.

All these requirements influenced numerous theorists, philosophers and practitioners, both legal and other, to gradually and fully reform criminal law which lead to the emerging of modern prisons.

When it comes to punishment and everything it encompasses, specifically the reform of prisons, the most important representative of the new orientation is the English philosopher and theorist Jeremy Bentham (1748-1832 BCE). As a contemporary of Kant, Howard, Beccaria and many other greats of this significant period, he was knowledgeable of the societal problems of that time, as well as new currents and new ideas which he largely shaped.

2.2.3. THE PANOPTICON

Bentham introduced a completely new approach to imprisonment as a form of punishment in his work “Panopticon” (1787). Although the idea of a panopticon has never been applied in its purest form, Bentham’s understanding of the prison appearance and its function will have a huge impact on both theorists and public authorities over the next century.

Bentham sought to design an institution of imprisonment that would eliminate corruption, arbitrariness, conspiracy, epidemics, and disease (Bentham, 2014). Bentham interestingly stated that the First English Fleet lost over 2,000 people to disease during the American War of Independence, which was the result of a contact with a released inmate from a London prison. More people lost their lives to the disease than they did in the naval battles and the war at sea itself.

In order to accomplish his goal, he designed a series of architectural and other solutions, on which a prison should be based. The principal idea is constant, omnipresent and omniscient supervision. The prison should be in the shape of a rotunda. It should not be too large and its circumference should be approximately 30 meters. It should have two floors with 4.5 m² (about 2.5m x 1.8m) cells arranged circularly. Theoretically, this type of prison could hold approximately 96 inmates and if the number of floors increased, approximately 300 inmates could be held in one institution.

The building should have circularly arranged cells around a supervision tower placed in the center of the otherwise empty middle space.

Bentham thought this design could also be used for mental health institutions, hospitals as well as schools and factories, that is, institutions where constant supervision and control is needed. It is from these ideas that Foucault’s idea of “panopticism” developed as a new mechanism for universal control and supervision of the modern state over its citizens.

In theory, each prisoner should have his own cell, separated from the neighboring cells by side walls in order to prevent communication between prisoners, and thus criminal infection, as well as the

arranging and planning of breakouts and riots. There should be a large window on the outer wall through which light could enter the cell in addition to fresh and clean air while the inner wall should be open and covered with bars. This design would allow the supervisor standing in the central supervision tower (which is obscured to prevent prisoners from seeing if and when the supervisor is present and watching them), to be able to control large groups of inmates with ease, independently and with great certainty. Each prisoner should reside in a clean cell, with a sufficient amount of water, food, and if possible, a toilet. This does not imply luxury by any means, but instead the minimal and acceptable conditions so as not to harm the prisoners' health. The life of a prisoner, no matter how "decent" it may be, must not be better than the life of an average law abiding citizen (Rusche & Kirchheimer, 1994). The purpose is to eliminate infection and disease, and also difficult conditions and high mortality rates in prisons. But, what is the purpose of these efforts?

The panopticon is supposed to solve the problem of criminality by using discipline and the supervision and control of the majority by the minority. Violence, torture, miserable living conditions and senseless violence never brought anything good for society and institutions that represented such conduct. These types of institutions, which were perceived as hell on earth and were hotspots for infections, were to be replaced by institutions of absolute control.

Inside the panopticon, every prisoner is under full supervision and control and his every move is visible. There is no need to use coercion, force or even threat because the fact that the prisoners know that they are under surveillance at all times and highly likely are being watched every second, is a sufficient control mechanism on its own. As stated previously, the certainty of punishment is drastically more effective than brutality.

In this way, the efficient confinement of prisoners is ensured. They are supervised and therefore cannot harm themselves or others. However, this is only the initial phase. Establishing complete control through constant supervision is only a prerequisite for taking the subsequent measures. Once control is established, it is quickly made clear that the prisoner is not on vacation and the prison is not a hotel. Prisoners are required to work all day on prison grounds, but their work should

not be pointless or torturous. They should partake in activities that are profitable for the institution while also enabling the prisoners to develop their working abilities.

From these rather simplified presentations of Bentham's ideas and the panopticon, one can observe a couple of basic principles which were revolutionary and would be utilized as guiding ideas for reforms which emerged in the following century:

1. The conditions of prisons must not be such that they are considered torture and can easily result in subsequent death,
2. The prison facility must be organized in a way that complete and constant observation of all prisoner activities is possible, 24 hours a day, 7 days a week.
3. The prisoners must work. Partly for the reason of sustaining the facility in an economical way, but also in order to prevent mental deterioration of prisoners which would in turn make their reintegration into society impossible.
4. The prisoners must be separated from one another. Both to prevent criminal infection and also to keep the order inside the prison.

Societies can benefit from this type of prison punishment, not only because it puts away criminals, but also due to the fact that these facilities are no longer breeding grounds of illness, immorality and crime. Moreover, the benefits for prisoners themselves are more than apparent. This type of prison enables for punishment through the imprisonment to become the basic form of punishment meant to replace corporal punishment as well as the death penalty, which will gradually disappear from legal systems across Europe throughout the nineteenth century.

A handful of prisons were built under the indirect influence of Bentham's panopticon (Bentham, 2014, p.117), such as Poona in India (1818), Millbank in London (1830), the Round House prison in Australia (1830) and also many more.

The most significant disadvantage of this approach is that the prisoner is seen as an object. The prisoners are seen as passive entities

to which certain measures are applied and which are expected to accept these measures automatically, in a planned way. Prisoners will show that they are not just passive objects, but that they actively oppose all forms of intervention in prison, which will in turn lead to further changes to imprisonment in the twentieth and twenty-first century.

2.3. THE APPEARANCE OF MODERN PRISONS

Developments in science and philosophy, new sensibilities, strengthening the idea of rights and human rights in general, as well as strengthening the idea of utilitarianism and rationalism in the nineteenth century bring about the first great reforms in the practice of serving the custodial sentence.

The first legally regulated system of prison sentence is the solitary confinement system, also referred to as the Pennsylvania or Philadelphia system (Radoman, 2016), born in the United States of America in the beginning of the nineteenth century. The system entails strict separation of prisoners into cells, without any possibility of communication with others. The complete isolation was utilized in order to stop the spread of criminal infection, as the solitary confinement was a way to leave prisoners alone with their thoughts, which was intended to help them understand and overcome the “sins” they committed which led them to prison in the first place.

After the solitary confinement system, the Auburn system is introduced, also founded in the USA. Similarly, it entailed the strict confinement of inmates, however it did, to an extent, allow working and some visual communication among them.

Towards the end of the nineteenth century, the progressive prison system appears. The previous systems and prisoner isolation, which turned out to be incompatible with human nature, are replaced by a new approach. The progressive prison system implies having trust and faith in prisoners themselves. The prison punishment is divided into distinct phases. It is necessary for prisoners to go through all phases in order to serve their sentence, however, prisoners can affect and contribute to shortening of particular phases, and thus, their sentence in general. If inmates behave in a disciplined manner, work hard, respect

rules and orders, learn a trade, fulfill work or other quotas, or in other words, properly carry themselves, they will move onto the next phase of their sentence in a shorter period of time. The better the prisoners carry themselves, the shorter their sentences will be.

The progressive prison system (in its many variants) has remained the principal system of punishment until today. The only newly introduced concept in contemporary penitentiary systems is the emphasized idea of classification. In order for the objectives of punishment to be fulfilled, it is necessary to carefully classify those convicted. Those committing less severe crimes, as well as first-time offenders should not serve their sentence with those who committed more serious crimes. Moreover, women should be separated from men, children from adults, older prisoners from younger ones, the sick from the healthy and so forth. The level of classification depends, first and foremost, on the economic resources of societies.

The punishment through imprisonment and prison facilities in Serbia appear relatively late (Mirković, 2013). Prior to the First Serbian Uprising, imprisonment as such did not exist. Throughout the period of the uprising in Serbia, prison punishment began to appear sporadically, mostly as a means to ensure presence in the process of other forms of punishment. The development of penitentiary practices in Serbia can be traced from the second half of the nineteenth century and after the abolishment of corporal punishment, as well as after the appearance of the first prisons and the adoption of the first Criminal Code in 1860.

3. CONCLUSION

If the idea of punishment as such is as old as society itself, then it is not static, i.e. defined and unchangeable. If there is a wide diversity of the dominant values and practices, the practice of punishment will also reflect this diversity.

The entire history of punishment can be roughly divided into two major periods. The period of private retribution lasted longer and encompasses the period from the first primitive societies to the first or-

ganized states of the Antiquity. The shift did not happen everywhere and at the same time. The organization of numerous societies remained at a tribe level long after the first states were formed. Even today, a significant number of human population still lives in pre-state tribe formations. All this is characteristic for the period of private retribution – the absence of any system, i.e. organized punishment and great influence of tradition, while the opposite stands for punishing within the state. With the emergence and strengthening of the state, specialized state bodies, under the control of a ruler, are completely in charge of criminal punishments, which are less based on tradition, but more on the needs of the society, including the ones who represent it, that is the ones who operate it.

In this sense, the period of state reaction is not distinctive either. Several phases can be noticed. Firstly, the phase of intimidation and suffering which roughly corresponds to the retributivist concept of punishment. Also, the phase of humanization and individualization followed by the change in consciousness towards consequentialism, more specifically utilitarianism and utilitarian penal practice.

During this time a person's life and well-being were low on society's values scale and criminal practice could be nothing but cruel. It was only when significant changes in science and philosophy happened, and consequently changed the social trends at the end of the eighteenth and the beginning of the nineteenth century, a qualitatively different conception of an individual, the state and their mutual relationship was formed.

The strengthening of positivity in science and philosophy brought about the demystification of offenders. All of the above, together with the new demands arising from the French and American revolutions, led to the theoretical and radical reform of the punishment practice and the appearance of the modern concept of imprisonment and prisons.

For much of its history, the criminal system had not experienced neither major nor drastic changes. Yet, in the last two centuries some substantial changes did occur due to a completely changed perception of the nature and purpose of punishment.

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THE BIRTH OF PRISONS– EVOLUTION OF AN IDEA

ABSTRACT: A society without norms does not exist, just as norms that are not violated do not exist. The reaction of society to violation of basic norms on which it itself is based largely depends on the epoch, that is, on the value core on which the society itself is based. Imprisonment has always existed, but it has changed drastically throughout history—from imprisonment without purpose and meaning, alongside torment and suffering, to modern forms of deprivation of liberty and modern prisons. The ideological revolution has changed the value basis of society, thus changing all the norms that had arisen from such values. The perception and expectations of punishment have changed and, from the 18th and 19th centuries onwards, a new concept of prison as an institution of control, correction, i.e. re- socialization has been developing. Prison has ceased to be seen as hell on earth and became an instrument of society's influence on those who dare to violate social norms. This paper follows this evolution, that is, the development of prisons and the idea of imprisonment from holes and lagoons to modern penitentiaries.

KEY WORDS: prison sentence, penal law, prisons, penology, incarceration, criminal penalties.