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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.

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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 where 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 aforedescribed 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, conservativism 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 propencity 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. *positīvus*, 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.