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Does the Freedom Sentence Work?

Abstract

In the presented study, the main objectives of the freedom sentence are stressed. They are compared with the reality of statistics and practice in the imprisonment houses. Numbers of recidivists show the need for a better evaluation of the expected influences of this kind of punishment. Among various theories of criminality, the Cloninger's biosocial theory is presented. Within these terms, an antisocial personality is characterized through the high level of novelty seeking, low level of reward dependence and harm avoidance. This model provides an explanatory background for understanding persistent social failures as well as low correctional potential of the prison. It turns an attention to the basic problems of freedom and determinism, which are discussed at the closure of the paper.

Key Words

Freedom, Criminality, Imprisonment Sentence, Correction, Neurochemistry.

Özgürlük Hükümü İşe Yarıyor mu?

Özet

Bu çalışmada özgürlük hükümlerinin başlıca hedeflerine vurgu yapılmıştır. Özgürlük hükümleri, istatistiksel gerçeklerle ve hapisanelerdeki uygulamalarla karşılaştırılmıştır. Sabıkalı sayısının fazlalığı, bu cezalandırma tarzının beklenen etkileri üzerinde daha düzgün bir değerlendirme yapılmasının gerektiğini göstermektedir. Çeşitli suç teorileri arasından, Cloninger'in biyososyal teorisine yer verilmiştir. Bu dönemlerde yüksek düzeydeki yenilik arayışı ve düşük düzeydeki tehlikeden sakınma ve ödül bağımlılığı aracılığıyla antisosyal kişilik geliştirilir. Bu model, süregelen sosyal bozuklukların yanısıra hapisanenin ıslah etme olanağının da düşük olduğunu anlamak için açıklayıcı bir arkaplan sağlamaktadır. Böylelikle çalışmanın sonunda tartışılacak olan özgürlük ve determinizmin temel sorunlarına dikkat çekilmektedir.

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Introduction

Social deviations of any kind belong to the chronic problems of each society. As long as there are some rules set up, consequently those who contravene a rule of such law occur. The mechanisms to stop, prevent or minimize the number of offenses vary from the country to country. Some of them use very uncharitable methods of punishment – food or liquid deprivation, torture or even death; the others set a strict list of rules when and how it is even possible to limit somebody's rights while any kind of life threat is absolutely forbidden and illegal. However, most of them use a freedom limitation (imprisonment sentence) as a way to punish the offenders.

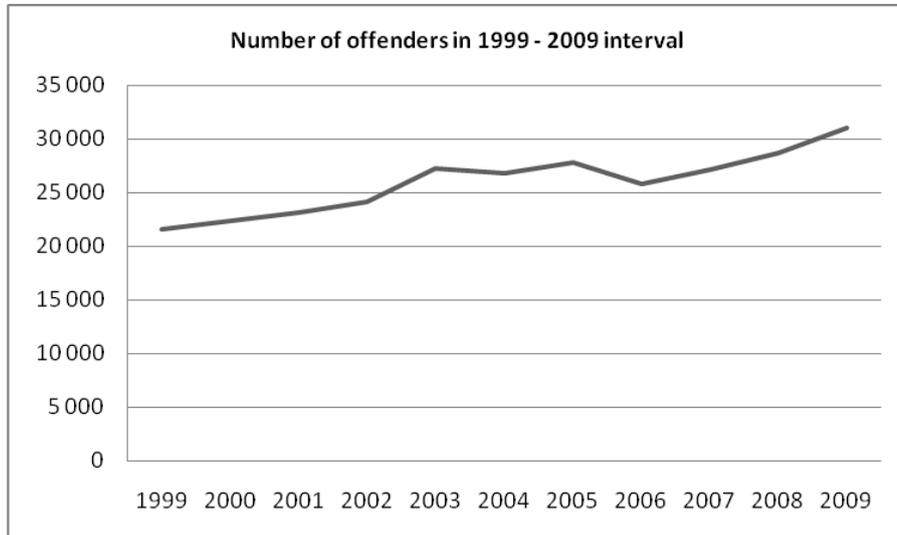
The possibility to punish somebody through some limitations (of freedom, money income, deprivation of honours, ban on activities) rises from the fact that these areas must be highly valued for the subject. If not, the chosen penalty would not be efficient. Therefore, in modern justice, the motivation and personality of offenders is analyzed to understand their behavior and to raise the effect of the punishment. The other very important feature of today's justice is the second aim of the penalty (in addition to the retribution for illegal act as the first) – it should be the device of the correction. Such aim is explicitly stated in the majority of criminal codes.

Problem

Using the data from Slovakia (with the realistic assumption that in the majority of European counties is the situation very similar) we will try to point out to the multidisciplinary based (with the help of psychology, neurology, philosophy) problems of the imprisonment sentence:

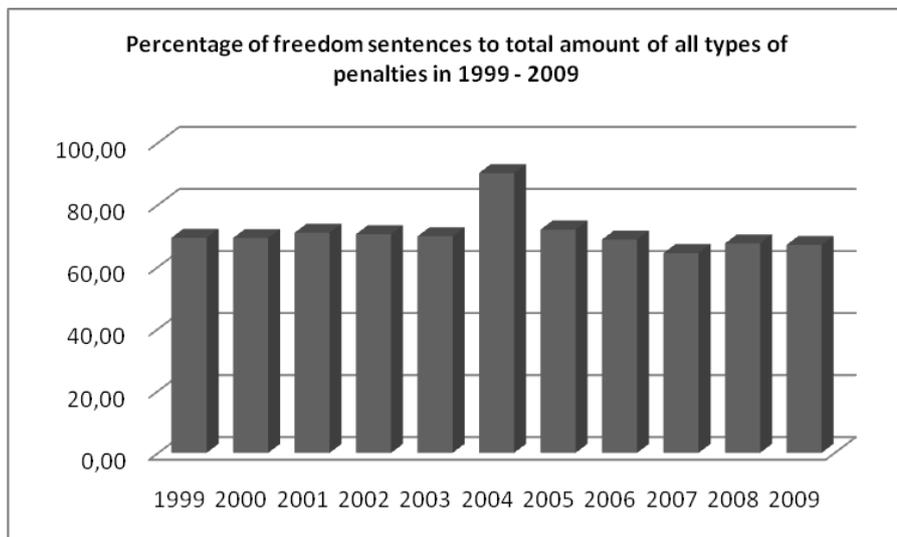
- Analyzing the fundamentals of delinquent behavior we will examine the potential of freedom loss (imprisonment sentence) to be beneficial to regulation of behavior and prevention.
- From the findings we will discuss whether the offenders even own a “freedom” which they can lose with the imprisonment.

The number of criminal offenses and those who committed them has an increasing tendency (see graph 1). This fact points out to the problem of low respect for the rights and freedom belonging to the other people.



Graph 1. The number of convicted offenders between 1999 and 2009 in Slovakia (MS SR, 2010)

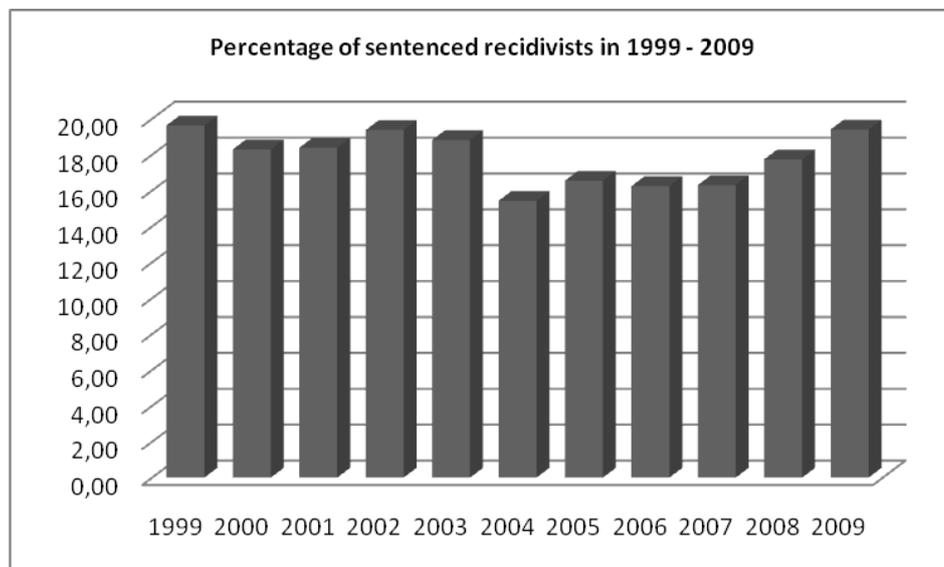
There are several ways of punishing such people (of course, only if they are detected and convicted); this is realized according to the ordinary written law of the country. The imprisonment sentence (either unconditioned or conditioned – probational) is the most used type of the penalty (see graph 2).



Graph 2. Percentage of freedom sentences among all penalties adjudged by Slovak courts of justice between 1999 and 2009 (MS SR, 2010)

From the graph 2 it is obvious that the freedom penalty makes up around 70% of all legal court sentences. The question is, whether the experience of freedom loss (in case of unconditioned penalty) or the threat of the freedom loss (in case of probation) influences offender's behavior in a positive, desired way.

The essence of the imprisonment sentence (unconditioned freedom loss) is to prevent society from illegal activities of offender, to punish him for such actions and to exert activities leading to the change of offender behaviour (Trestný zákon, 2005). These goals ought to be fulfilled by the correctional programs held in jail houses. The efficacy of programs can be measured only by the number of those, who commit another crime after the release from the prison as the system of postpenitential monitoring does not allow to watch out for all who have been released. Statistics show that around 1/5 of offenders are recidivists (for more detailed data see graph 3).



Graph 3. Percentage of those who committed a crime in 1999 -2009 and have been sentenced repeatedly (MS SR, 2010)

System of correctional activities is rather limited. It is based on the system of rewards and punishments given according to the way prisoner fulfils the demands of regime. This assumes, that the reward and punishments will change the offender's behaviour and through such motivation and repeating it will slightly modulate it. The inevitable condition of this system is the fact that one can influence behaviour by rewards and punishments and that their presence modulates one's actions. The first problem occurs when we analyze the data relating to the essence of criminal behaviour. There are several theories of criminal behaviour:

- sociological, based on the presumption that society through its rules forms the delinquent (e.g. C. Shaw and H. McKay (Siegel, Senna, 1988), R.K. Merton (Démuthová, 2006), A.J. Quetelet (Heretik, 1994));

- biological, based on hereditary features leading to criminality (e.g. C. Lombroso and E. Ferri (Heretik, 1994), R. Garofalo or Ch. Goring (Siegel, Senna, 1998));

- psychological, which believe that the psychological characteristics and features are responsible for socio-pathological behaviour (e.g. D. Abrahamsen, A. Aichhorn (Heretik, 1994), S. Freud, D. Mundt (Démuthová, 2005)).

There is a clear tendency to collect the knowledge from various points of view nowadays, therefore the strictly biological or sociological view stressing one side of causes of delinquency is considered to be limiting. Multidisciplinary kind of attitude opens wider options for explanation on one hand; on the other it complicates the efforts for finding the cause of delinquency in particular case. In this situation, the theories taking into consideration most of influences known within several approaches and at the same time forming a clear and confirmatory are highly valued. During last years a lot of professionals from the area of personality theories turn their attention to work of C. R. Cloninger. His findings in eighties set up a great interest for neurotransmitters which by biological way modulate the way how the subject interacts with his surroundings. This new approach showed a new way for understanding multi-etiological background of personality disorders (together with antisocial one) with the maintainance of the clear origin of such deviations. The role of neurotransmitters in human behaviour has been stressed several times after and led even to some Nobel prizes (e.g. Nobel Prize in Medicine and Physiology in 2000 (Science, 2010)).

C. R. Cloninger supposes (Cloninger, 1987), that the level of three important neurotransmitters – dopamine, serotonin, and norepinephrine and their aberrations from the normal form the biological disposition for certain personality disorders. This disposition is viewed in a way of different reactivity to outer stimuli which can lead to disorders in behaviour. Dopamine modulates the system of behavioral activation and is responsible for the personality dimension called “novelty seeking” (see table 1). Novelty seeking is meant to be a tendency for frequent exploratory activities and towards intense excitement in response to new stimuli. Serotonin forms the behavioral inhibition and is characterized by personality dimension “harm avoidance”. This is the tendency to avoid punishment or frustrative nonreward and the system is intensively responding to signals of aversive stimuli. The last neurotransmitter is norepinephrine (in Europe the term noradrenalin is more used) which is connected with the system of behavioral maintenance and forms the dimension “reward dependence”. This method for description of personality variants has been widely accepted and used.

According to mentioned, antisocial behaviour is characterized by high level of novelty seeking, low harm avoidance, and low reward dependence (see table 1). It is useful to stress, that these characteristics originate in biological basis of neurotransmitter levels (their aberrations). A large amount of research data on antisocial personalities (see e.g. Tikkanen et al., 2007; Noyan et al. 2009) refer to Cloninger’s theory in the practice.

Table 1. Basic characteristics of personality categories (Cloninger, 1987, p. 581)

Personality disorder	Novelty seeking	Harm avoidance	Reward dependence
Antisocial	High	Low	Low
Histrionic	High	Low	High
Passive-aggressive	High	High	High
Explosive	High	High	Low
Obsessional	Low	High	Low
Schizoid	Low	Low	Low
Cyclothymic	Low	Low	High
Passive-dependent	Low	High	High

Discussion

Turning back to the essence of the imprisonment sentence the goals of this punishment have to be revised. First of all, according to Cloninger's proposals criminals are being characteristic by low harm avoidance. It means that they do not response to threats in the future, or they do it significantly less than noncriminal part of population. Using the imprisonment sentence in order to prevent future antisocial behaviour by the threat of freedom loss is therefore rather overestimated. The system of behavioral inhibition modulated by the level of serotonin enables to engage in activities that are highly risky for the others, but not for these subjects. They might be possible to evaluate these situations as dangerous by cognitive mechanisms, but they do not sense threat, fear, and anxiety equivalent to the seriousness of the situation. In normal subjects (in a sense of having normal serotonin level), these feelings inhibit actions or they might even block it. Prisoners often state that the conditions in prison are quite discouraging from further criminal offences and that the loss of freedom and the form of regime are the source of big problems for them (Démuthová, Mutalová, 2010), but in the situation of actual decision making in critical situations after the release from prison these threats do not work enough.

Second characteristic of antisocials is the low reward dependence. This fact seems not to be such important for the criminality for the first sight. However, its background shows that in these subjects another important regulator malfunctions. The system of behavioral maintenance based on norepinephine reinforces those activities which are expected to be rewarded. When this motivation fails, any activities modulating behaviour through rewards fail. Checking the main activities held in the prison in order to form the criminal leads to the outcome that they are based on the system of rewards and punishments. Untypically working systems of reward dependence and harm avoidance throw a spanner into this effort. Furthermore, subject also fails in social situations – a great amount of human behaviour is regulated by the expectance of approval, compliments, acknowledgement or any other positive reaction from the others. All types of these reactions belong to the significant social motivators.

The third system influences the process of behavioral activation. People featured by high level of novelty seeking influenced by dopamine constantly seek thrilling

adventure, make decisions on vague and global intuitions and expressions and their behaviour is impulsive. Impulsivity is considered to be a characteristic feature of adult and even juvenile delinquents (Kendall, Moses Jr., 1980). Except the fact that criminal offenders do not react for the stimuli of reward and danger (harm) they act very quickly with the lack of decision-making and consideration. Time between the thought and action is very short and this disables any influence of regulators. Even if the correctional activities are so successful in a way that they form some inhibitors of criminal behaviour, they have no space to work because of the lack of time.

Collecting all data mentioned above, the possibility of correction of criminals in imprisonment houses through the system of present activities is rather low. Problem of neurobiological correlates of criminal and delinquent behaviour reveals another problem. Levels of all three neurotransmitters are set by biological nature of the subject. They influence behaviour from early childhood and form the reaction to stimuli during whole life. Anamnestic interviews of criminals often show that their behaviour has been problematic even in the puerility. Parents of juvenile delinquents refer, that they often failed in formative endeavor. These problems are logically caused by upbringing methods used in childhood with combination of neurobiological functioning of the brain. According to L. Kohlberg's theory of moral development (Heidbrink, 1997) based on works of J. Piaget (Heidbrink in Lück, Miller, 1999), early formation lies on the principles of punishment and reward. In matutinal stages of human development higher regulators (law, rules, principles, reciprocity etc.) do not work yet and all formation has to be done either through rewards and penalties of with the help of observational learning (later on). Having on mind that the surroundings of young delinquents and their intellectual capacities keep them in lower moral stages longer than in the rest of population, upbringing becomes very problematic. Now, the question is, how we can form (in childhood) and correct (in adulthood) such behaviour when it is biologically based and resistant to "classic" formational ageneses.

The last, but probably the most important idea connected with information on neurobiological correlates of criminal behaviour lies in the essence of such behaviour. If we accept the idea, that human action can be influenced by the biology hereafter we have to consider the possibility and amount of such influence. If the reactions are set (at least to some level), than there is a considerable limit put on the free choice within decision- making. According to a presented theory (and also research findings) delinquents (children and adolescents) and criminals (adults) are predisposed to react impulsively, to get involved and to prefer risky activities, to resist to signals of social (or any other) reward and also to feel less fear, anxiety and threat in dangerous situations. Are we (and the justice) able to figure out to what extent is this predisposition compelling and bounding for the subject? Is it then appropriate to punish such people if they are not completely and fully responsible for their actions? Do they really have a free will in their decisions or are they constantly forced to react in strange, anti-social way? What freedom we are limiting by imprisonment sentences in these subjects if they already lost it in the moment of their neurochemical brain potential (as already Spinoza in *The Ethics* outlined)? What for do we jail them if this punishment does not work? And what do we expect to happen when we threat them in imprisonment houses by the system of rewards and penalties? Is it really the correction, fair penalty

and prevention what justice realizes or do we only declare it? Is it still the humanism in our system which we are so proud of?

It seems that these questions are considerable, but, on the other hand, most of us feel that crime has to be punished. This originates in basic principles of natural law. The question is, whether the punishment is the best way of treating the offenders and if we choose it, whether our system of correction within imprisonment has a chance to change an individual (according to goals listed in codexes). Taking the first part of the idea into consideration, not all thinkers strictly stand out for an idea, that criminals must be punished. E.g. I. Kant (Kant, 1922) due to his ideas (the conscience is the only impeccable judge, not the society) prefers treatment to punishment. The second part points out to a mistake when system of rewards and punishments is believed to be a correctional for prisoners. The way how the imprisonment houses are being organized enables only to have an effect for the control of behaviour. This has been stressed already in 1975 when M. Foucault (1995) pointed out to important feature of modern punishment, where the prisoner has to watch out for his own behaviour (the principle of Jeremy Bentham's Panopticon) and to discipline himself. Imprisonment sentence is though rather the way how society clearly and strictly declares its disagreement with the illegal actions and how it protects other subjects from the criminal for some period. The other goals of the imprisonment are from this point of view difficult to fulfill and taking into consideration the majority of imprisoned criminals the only realistic improvement of the behaviour can be realized through the constant discipline which has to hold a prisoner on himself.

Bibliographical References

- CLONINGER, C.R.: (1987) A systematic method for clinical description and classification of personality variants, *Arch Gen Psychiatry*, 44, June, pp. 537 – 588.
- DÉMUTHOVÁ, S.: (2006) *Mladistvý delikvent*. Pusté Úľany, Schola Philosophica.
- DÉMUTHOVÁ, S.: (2005) Dieťa a mladistvý ako páchatel' trestnej činnosti. In: ČECH, J. et al.: *Psychológia pre políciu a justíciu*. Trnava, UCM, pp. 203 – 216.
- DÉMUTHOVÁ, S., MUTALOVÁ, N.: (2010) Prežívanie trestu odňatia slobody dospelými mužmi. In: Démuthová, S. (Ed.): *Kondášove dni 2010. Zborník abstraktov*. Trnava, Katedra psychológie Filozofickej fakulty Univerzity sv. Cyrila a Metoda v Trnave, p. 11.
- FOUCAULT, M.: (1995) *Discipline and punish. The birth of the prison*. New York, Vintage Books.
- HEIDBRINK, H.: (1997) *Psychologie morálního vývoje*. Praha, Portál.
- HEIDBRINK, H.: Jean Piaget. In: LÜCK, H. E., MILLER, R.: (1999) *Illustrierte Geschichte der Psychologie*. 2. Auflage. Weinheim, Psychologie Verlag Union, pp. 131 – 135.
- HERETIK, A.: (1994) *Základy forennej psychológie*. Bratislava, SPN.
- KANT, I.: (1922) *Die Krankheiten von antropologischer, pragmatischer Hinsicht*. Stuttgart.
- KENDALL, P., MOSES Jr., J.: (1980) Impulsivity and persistence in adult inpatient "impulse" offenders. *Journal of Clinical Psychology*, 36, Nr. 1, pp. 363 – 365.

MS SR - Ministerstvo spravodlivosti Slovenskej republiky (Ministry of Justice of the Slovak republic) – *Štatistické ročenky*. [online], Available on URL: <<http://www.justice.gov.sk/wfn.aspx?pg=r3&htm=r3/statr.htm>> [cit. 2010-07-04].

NOYAN, C.O. et al.: (2009) Antisosyal kiflilik bzukluđu tanılı bireylerin karar verme süreçleri ile psikopati ve mizaç-karakter özellikleri arasındaki ilişki. *Klinik Psikofarmakoloji Bülteni*, 19, Suppl. 1, pp. S257-S259.

SCIENCE, Selections from Science, The Nobel Prize in Physiology or Medicine. [online], Available on URL: <<http://www.sciencemag.org/feature/data/nobelprize/>> [cit. 2010-07-05].

SIEGEL, L.J., SENNA, J.J.: (1988) *Juvenile delinquency. Theory, practice, and law*. 3rd edition. New York, West Publishing Company.

TIKKANEN, R. et al.: (2007) Tridimensional Personality Questionnaire data on alcoholic violent offenders: specific connections to severe impulsive cluster B personality disorders and violent criminality. *BMC Psychiatry*, 7, pp. 36 – 42.

Trestný zákon – *Zákon 300/2005 Zb. zákonov*, čiastka 129, IURA EDITION, s.r.o. 2005.