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What are the Achievements of Theorising Punishment?[1]

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The author elaborates on recent developments in the debates surrounding the justification of punishment, with particular attention to how the traditional division between absolute and relative theories has been transcended. Special attention is paid to the integration of expressive theories into European theorising about punishment. While these concepts are not entirely new – having been previously discussed under different labels – the recent attempts to integrate victims' interests into the debate may be viewed as a genuine innovation. Another question is whether these developments could have broader implications for the understanding and practice of criminal law. While shifts in theoretical emphasis regarding punishment do not significantly impact the day-to-day operations of the judiciary or penitentiary systems, these changes may have the potential to influence the criminal justice system over the long term.

Keywords: punishment, absolute theories, relative theories, expressive theories, hard treatment, positive general prevention, victims, victims' rights, criminal procedure

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1 Introduction

"Theorising punishment" encompasses various approaches: it can refer to the description and explanation of punishment as a social phenomenon (sociology of punishment), the study of existing punitive practices (penology), or the general justification of punishment as an infringement on individual rights (philosophy of punishment). Ideally, these empirical and normative aspects would be examined within an interdisciplinary framework, but this is rarely the case in the real world due to the conventional division of academic labour (Duff & Garland, 1995).

In this article, I will focus on the persisting debate surrounding the justification of punishment, therefore my main approach will be a normative one. I will outline recent developments in the debate from a Euro-continental perspective, with particular attention to how the traditional division between absolute and relative theories of punishment has been transcended. I will explore what (if anything) is genuinely new in emerging approaches to theorising punishment, and specifically whether they have broader implications for the understanding and practice of criminal law. My thesis is that, in the short term, shifts in theoretical emphasis do not significantly impact the day-to-day operations of the judiciary or penitentiary systems. However, if taken seriously, these changes may have the potential to influence the criminal justice system over the long term.

Punishment requires justification for obvious reasons: it involves actions that, in most contexts, we would consider morally wrong, such as restricting a person's freedom or their ability to spend money. The task of a theoretical justification of punishment is to provide reasons why such interference with individual rights is acceptable. The more invasive a punitive practice is – meaning the greater the suffering it causes – the stronger the arguments needed to justify it (Königs, 2013).

The justification debate has traditionally been framed in dichotomies – absolute versus relative, respectively retributive versus preventive theories – forcing scholars to either take sides or adopt some form of compromise through "mixed" or "hybrid" theories. This bifurcated approach has been characteristic of German literature (Hörnle, 2021a) and, unsurprisingly, of Slovenian literature as well (Ambrož, 2008; Bavcon et al., 2013).[3] Framing debates in dichotomies or even antinomies (such as freedom versus security, conservative versus liberal or retributive versus preventive) has its benefits as well as pitfalls.

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[3] German literature continues to serve as the primary reference for Slovenian authors in the field of criminal law theory, although Anglo-American literature has been gaining influence for some time.

Complex social phenomena are easier to grasp when their analysis is framed in terms of binary contrast. Dichotomies reduce complexity, and focusing on fundamental contrasts makes it easier to understand and discuss issues at stake.

However, binary thinking often leads to oversimplification and reductionism, disregarding nuances and fostering highly polarised views of the issue (Hörnle, 2021b). A good example from theories of punishment is expressivism, which for a long time was excluded from continental European discussions of punishment, as it did not fit in the Procrustean bed of either retributive or preventive (Ambrož, 2020). While this might serve as a flagship example of how bifurcating theories of punishment can be limiting, there are other important reasons to challenge the traditional dichotomy – such as the essential distinction between the necessity (utility) of punishment and its legitimacy (Ambrož, 2018). Since arguments regarding the necessity of criminal law and punishment, and those concerning their legitimacy, follow different logics, it becomes impossible to address both persuasively within the absolute-or-relative framework (Hörnle, 2021a).

2 Absolute Versus Relative

It is often assumed that the content of absolute theories is straightforward. However, it is more accurate to argue that they represent a bundle of theories, sharing a broad common foundation. The term "absolute" refers to *poena absoluta ab effectu*, meaning that punishment is justified by the wrongdoing itself, rather than by any consequences or social utility it may produce. From this point onward, however, things become more complex. There is a widespread intuition that wrongdoing must be compensated with some sort of suffering, however, authors run into difficulties when they have to justify in greater detail the "deservedness" of such suffering. A least for a sceptic, it remains a puzzle why (and how) the offender should "repay" their wrongdoing by being an object of some sort of hard treatment.

References to religious texts may not be very helpful in a secular state; however, the writings of German idealist philosophy are often regarded as a viable alternative. In contemporary German literature on state punishment, it is not uncommon to build upon the works of Kant and Hegel. Both of these grand philosophers vigorously opposed the preventive justification of punishment – just recall Kant's famous prohibition against treating people "merely as means" and Hegel's indignation at treating human beings "as if they were dogs". However, it is less clear whether they provided a conclusive positive justification for punishment (Hörnle, 2021a). Yet a rational positive justification is necessary: in secular societies, where individuals may not share faith in metaphysical premises, it is essential to identify a tangible purpose for infringing on the fundamental rights of citizens, which are recognized and protected by the state.

Another more recent variant of absolute theories focuses on human strivings for retribution, often referred to as retributive emotions. These emotions are widespread across various cultures and social strata and can be considered a social fact. It should be the state's duty to take these emotions seriously and to inflict an appropriate amount of suffering on wrongdoers; otherwise, it risks disappointing its citizens, undermining their trust in the rule of law, and even encouraging private retaliation (Ambrož, 2023). At this point, one cannot help but notice the emergence of intended beneficial future effects – such as maintaining public trust and preventing private retaliation – which highlights the challenge of justifying punishment without referencing empirical social purposes. Once a promise of tangible social utility is introduced, it becomes questionable whether we can still categorise this as an "absolute" theory, genuinely detached from any interest in the future consequences of punishment.

In other words, the introduction of expected social utility brings us to consequentialist theories of punishment, in the Slovenian and central European context more commonly labelled as "relative theories". The adjective "relative" is derived from the Latin phrase *poena relata est ad effectum*, meaning that punishment is to be justified with its future effects. There is a variety of effects that can be ascribed to state punishment, such as bringing satisfaction to people upset by the crime committed, reassuring victims of crime or preventing future crimes. Although the future effects of punishment may be manifold, relative theories of punishment have traditionally focused on one in particular: crime prevention. Consequently, the term "relative theories" is often used interchangeably with "preventive theories", which tends to overlook effects beyond mere crime prevention.

There are several ways to prevent crime through punishment; in this context, relative theories can draw upon either special prevention or general prevention. Special prevention can be "negative", achieved by imposing restraints on offenders (such as incarceration) or by delivering deterrent messages to them. However, it can also be accomplished through the rehabilitation of offenders and by reforming their criminal behaviour (positive special prevention). The latter has been a leading idea in Slovenian penology (Petrovec & Muršič, 2011), which has been relatively immune to the developments in Western penology marked by the decline of the rehabilitative ideal (Kanduč, 1988).

In this aspect, it is important to distinguish between rehabilitation in a thin sense and rehabilitation in a thick sense. Rehabilitation in the thin sense refers to a set of principles governing the implementation of prison sentences, while rehabilitation in the thick sense pertains to the justification of legal punishment as a whole. Slovenian literature has predominantly framed rehabilitation as a principle of prison sentence implementation, rather than developing a comprehensive justification of punishment grounded solely in rehabilitative purposes.

General prevention appeals to the general public with its preventive message. Its basic premise is that the discomfort associated with punishment will deter individuals from committing crimes (negative general prevention).

For deterrence to be effective, three levels must interact: it is not enough to merely threaten punishments; people must also be convinced that the courts will impose them, and that the imposed punishments will ultimately be enforced. This principle is based on a straightforward common-sense assumption: when individuals see that the stove is hot and that some of their fellow citizens have already been burned, they will think twice before touching it. This belief about the deterrent power of fear of sanctions has been subject to empirical testing (Hirtenlehner et al., 2014; Meier, 2006). While the severity of the anticipated punishment appears to have very little effect, the possibility of prosecution seems to moderately influence behaviour in many cases, with variations depending on the specific criminal offence in question. It is clear that fear of sanctions may play a different role in offences of tax evasion compared to cases of impulsive offences against life and limb. Nevertheless, even leaving minutiae of specific criminal offences aside, it is plausible to say that the absence of sanctions would result in a rise in crime, not only due to the lack of deterrence but also because of eroded public confidence in the rule of law.

Doubts about whether infringements will be sanctioned undermine people's willingness to submit to the rule of law. This is not only true for unscrupulous opportunists; even the conformity and loyalty of well-adapted individuals have limits. They typically endure as long as compliance seems reasonable, but waver when one begins to feel like "the last fool following the rules" (Ambrož, 2016). Therefore, the legal order cannot rely on widespread conformity in the long term if it allows violators to be better off than law-abiding citizens (Dölling, 1990). This brings us to the opposite end of negative general prevention, commonly referred to as "positive general prevention".

The idea of positive general prevention seeks the purpose of punishment in building confidence in the rule of law, strengthening people's legal awareness and meeting their expectations that offenders will be punished, which should – in the long run at least – promote norm-compliant conduct.

Positive general prevention is a child of German legal thought and shares some common ground with Anglo-American expressivism, which views punishment as a form of communication. However, it aims to achieve more than merely conveying symbolic messages to the public. As its name suggests, positive general prevention is a preventive theory that relies on communication with the public as a means to prevent crime. This prevention goes beyond simple deterrent messages with short-term effects; instead, it focuses on "positively" motivating law-abiding citizens, reassuring them that law-abidance pays. This is a long-distance run, where particularly the following social-psychological mechanisms are supposed to be at play: learning of social values, strengthening norm acceptance and trust in the rule of law, and pacification of unrest and reactive attitudes evoked by the crime committed.

There has been extensive debate about whether the alleged effects can be empirically proven or whether they should be regarded as mere normative claims (perhaps even wishful thinking) that are immune to empirical testing. It is plausible to say that the absence of punishment would lead to an increase of crime in the medium and long term, not only because of a lack of deterrence but also because public trust in the system of norms would collapse (Hörnle, 2021a). Apart from this all-or-nothing consideration, it is less clear whether subtler differences in sentencing can affect public trust and norm acceptance (Ambrož, 2016).

Positive general prevention has attained a prestigious status as the leading theory of punishment in Germany; however, somewhat surprisingly, it was not mentioned in Slovenian literature before 2016 (Ambrož, 2016). The adverb "surprisingly" should be understood in the context of Slovenian theorising on crime and punishment, which is otherwise significantly influenced by concepts and ideas steaming from German legal thought. However, for a long time, our treatises on general prevention remained silent on its "positive" variant, focusing exclusively on Feuerbachian deterrence. One speculative explanation might be that positive general prevention was feared to be a "cuckoo egg", essentially retributivism in disguise. Indeed, there are aspects where narratives on positive general prevention resemble those of retributivism – for example, discussions on norm re-affirmation or pacification of people's reactive attitudes.

It is important to note, however, that in absolute theories, the concept of norm re-affirmation is an effect-independent

endeavour; it focuses on the re-affirmation of norms for its own sake. In contrast, positive general prevention introduces a preventive element: the re-affirmation of norms or the pacification of reactive attitudes serves merely as a means to an end – specifically, maintaining crime rates at a reasonably low level. This distinction may have been too subtle for Slovenian scholarship to recognise positive general prevention as a genuine preventive theory rather than merely an absolute theory cloaked in preventive rhetoric. Another plausible explanation is that positive general prevention has simply gone unnoticed by Slovenian researchers for a considerable time, without any specific reason.

3 Uncovering Expressivism

Another justification of punishment focuses on the symbolic and communicative aspects of penal practices. While the expressive dimensions of punishment have long been recognised by sociologists of punishment (Durkheim, 2013), it was Joel Feinberg's pioneering work that brought the idea of punishment as expression to the forefront of normative theorising about punishment. He sees punishment as "a conventional device for the expression of attitudes of resentment and indignation, and of judgements of disapproval and reprobation, on the part either of the punishing authority himself or of those 'in whose name' the punishment is inflicted" (Feinberg, 1995).

If punishment is to be understood as an expressive act that conveys the community's condemnation of the criminal offence, who should be the intended recipient of these censuring messages? Beyond the defendant, condemnation can also be communicated to the victim and the community at large. Consequently, there are various forms of penal expressivism, which can be broadly categorized into four groups: 1) those that primarily emphasize the symbolic reinforcement of legal norms; 2) those that focus on communication with the offender; 3) those that address communication with the victim; and 4) those that aim to send pacifying messages to the general public (Hornle, 2021a). The first and last group may seem familiar at first glance, as they can be viewed as reduced versions of positive general prevention. They seek either to reaffirm the violated legal norms or to pacify the emotional responses of the public, but without any aspirations for crime reduction.

This renunciation of preventive goals might be the reason that none of the two has gained broader attention in Slovenia, where preventive considerations have traditionally played a forefront role in theorising punishment. A similar argument can be made regarding the second group, which emphasises communication with the offender. A key aspect of this communicative endeavour is the act of censuring the offender (Duff, 2001), which is why this version of expressivism has sometimes been linked to absolute theories of punishment. However, this classification is unconvincing when one considers that censuring messages are conveyed with a specific purpose (Bomann-Larsen, 2010). This purpose is to provide the offender with an opportunity for some form of moral rebirth or "secular penance" (Duff, 2001). Nevertheless, such moral-philosophical considerations cannot justify legal punishment, having in mind that moral self-reform cannot and should not be pursued through state coercion (Ambrož, 2020; Hörnle, 2011).

The last variant are the victim-oriented expressive views. They cover an important gap in continental European theorising about punishment, where victims' interests have traditionally attracted only little attention. This reticence can be explained by the fear that bringing the needs of victims into the debate would dangerously emotionalise the discourse and infect it with destructive, vindictive impulses. Therefore, when asked what the role of the victim and their needs should be within theories of punishment, the traditional answer has been "None whatsoever!" (Weigend, 2010).

However, there are good reasons for the integration of victims' needs into normative theorising about punishment, at least in cases of serious crimes against a person (such as crimes against life and limb, personal freedom and sexual autonomy). An important feature of today's legal systems, as well as social practices, is the distinction between accident (chance, fate) and criminal wrong. This distinction is also important for those affected by tragic events and their psychological processing of the event (Hamel, 2009). It can be argued that it is a legitimate interest of the victim that the state investigates the facts of the case, attributes responsibility and censures the offender. By doing this, the state acknowledges that the event was not just bad luck or a stroke of fate, but a criminal wrong (Günther, 2014; Hörnle, 2017b). Such an acknowledgement may help the victim to process the event psychologically, yet the victim's interest in such an acknowledgement is also legitimate when they have a very stable mental structure and have not been psychologically derailed by the act (Hörnle, 2011).

Do victims' legitimate interests end when the offender receives censure, or do they include a legitimate expectation that the offender undergo some form of hard treatment? More broadly, this question concerns the relationship between the condemnatory statement (censure) and the hard treatment of offenders in expressive theories of punishment. If punishment is understood as a form of communication, the question then arises: why should it also involve hard treatment?

In one view, hard treatment is the means (medium) by which the censure is expressed (Feinberg, 1995); in another view, the censure is first expressed verbally and then reinforced symbolically by non-verbal means (Hörnle, 2011). Both views share a common idea: without hard treatment, punishment would be a mumbling of words that none of the addressees (offender, victim, social community) would take seriously (Ambrož, 2022).

Indeed, verbal messages sometimes require symbolic reinforcement. However, using hard treatment for this purpose might be seen as a mere convention – similar to how champagne is a conventional means of celebrating great events (Feinberg, 1995). Speaking of conventions suggests they could be altered or replaced. One can easily imagine celebrating without champagne, but can we imagine censuring offenders without subjecting them to some form of inconvenience or suffering? Perhaps in theory (Günther, 2014; Hanna, 2008), but this seems unlikely in societies like ours (Hörnle, 2017a). In this respect, expressivism is not fundamentally different from retributive or preventive theories. While it aims to distinguish itself by prioritising communication over retribution or deterrence, this communication is ultimately supported by the same firm hand of unpleasant treatment.

4 Mapping the Developments and Their Consequences

It can be argued that the most significant recent development in the continental European context is the incorporation of a third pillar into punishment theories, namely expressive theories. While these theories are not entirely new in substance – some of their concepts have been previously discussed under different labels, most notably as "positive general prevention" – the recent attempts to integrate victims' interests into the debate may be seen as a genuine innovation. This has the potential to address a previously neglected gap in the justification of state punishment.

The key question is whether these conceptual shifts will also lead to tangible, practical consequences. As previously mentioned, victims' interests do not play a major role in every criminal trial; however, they gain significance in cases involving serious personal wrongs. Will normative discussions on the role of victims' rights in punishment theories influence the structure of these trials (e.g., by enhancing victims' powers to steer or to dismiss the proceedings)? Or will they impact sentencing deliberations (e.g., by introducing some kind of victim impact statements or granting victims a voice in the determination of punishment)?

None of the above seems particularly likely. Currently, crucial procedural decisions – such as dismissing a case or engaging in plea bargaining – are entrusted to public prosecutors. Generally, victims do not have the power to decide whether a trial should take place or whether it should be dismissed once it has begun. There is, indeed, a limited window of opportunity for victims to influence the future course of proceedings, which is restricted to offences prosecuted at the victim's request (a typical example in Slovenia would be offences against sexual autonomy committed against a spouse or partner). However, prosecutors are far from enthusiastic about this exception, let alone in favour of extending it to other offences. They find it particularly frustrating when victims withdraw their requests mid-proceedings, as it implies that all their previous work on the case has been in vain.

Interestingly, even criminal law theorists who advocate for a greater role for victims in punishment theories do not necessarily conclude that this requires an expansion of victims' rights in criminal proceedings (Hörnle, 2017a). At first glance, this may seem counterintuitive. If one argues for the recognition of victims' right to receive a condemnatory statement regarding the wrongs done to them, does this not also imply the need to expand victims' procedural rights, including the power to decide whether or not there will be a trial? After all, granting victims the right to receive a condemnatory statement should also encompass the option to waive that right.

Yet, there may be compelling reasons to keep victims' procedural rights unchanged. Hörnle (2017a) describes the state's role in criminal proceedings as that of a fiduciary "who has to take victims' interests into account, *but also other interests*" (emphasis mine). She highlights collective interests, such as the equal treatment of offenders who have committed similar crimes. Furthermore, these "other interests" may also relate to victims' interests – not to individual choices, but to the interests of groups of victims. The fiduciary role of state agencies must protect socially or personally vulnerable victims. In my view, this presents a strong argument against extending the list of offences where the process depends on a victim's request to prosecute. While this option theoretically enhances the autonomy of individual victims by granting them a choice, in practice, it often invites pressure on vulnerable or socially dependent victims to withdraw their requests.

Similar concerns can be raised regarding the idea of enhancing victims' powers to determine or influence sentencing decisions. Hörnle (2019) categorises these competencies into three groups: 1) the right to be heard, 2) the power to be involved in decision-making, and 3) control rights, such as the right to appeal against presumably lenient sentences. She rejects the idea of increasing victims' powers in the second

and third groups for both pragmatic and principled reasons. The pragmatic concern involves maintaining a manageable volume of appeals, while the principled objection centres on the need for equal treatment of offenders. However, she places greater emphasis on the right to be heard during the sentencing stage, which can take various forms. A thin concept of this right includes only testimony regarding facts known to the victim that are relevant to sentencing. In its broader sense, it allows victims to provide more extensive, subjective testimony about the harm they have suffered and the suffering they have endured. This broader interpretation of the right to be heard is problematic, as victims' emotional narratives can exert a subconscious influence on judges. For this reason, Hörnle (2019) is hesitant to endorse its use.

I have taken this digression into criminal procedural law to assess the practical effects of punishment theories that aim to integrate the interests of victims into the patchwork of purposes of punishment. These victim-oriented theories are characterised by a relatively high level of abstraction; they incorporate victims' rights into the philosophical justifications of punishment without advocating for a fundamentally different role for victims in the actual processes of investigation, trial and sentencing. In fact, they caution against significant shifts in favour of victims, as such changes could disrupt the existing balance in criminal procedure. In this respect, theorising about punishment seems to have evolved into a relatively autonomous exercise, with modest ambitions for changing the realities of criminal justice.

5 Conclusions

The central thesis of my paper is that shifts in theories of punishment do not, at least in the short term, significantly impact the day-to-day operations of the judiciary and prisons. In the final section, I will present additional examples to support this claim. Historically, general prevention was based solely on the idea of deterrence through the example of punishment. However, over the past 50 years, this harsh rationale has gradually given way to the concept of positive general prevention, which focuses not on intimidation but on "education", "confidence-building" and "reassurance". While this shift alters the rhetoric surrounding punishment, it does not necessarily change its substance – whether through intimidation or reassurance, the expectation remains that the offender's hard treatment will have a preventive effect on society as a whole.

As mentioned earlier, in Slovenia, we were relatively unfamiliar with the concept of positive general prevention until recently. However, this does not appear to make the Slovenian justice system function significantly differently from those where this theory has long been established or even predominant. The more benign rhetoric of positive general prevention does not necessarily result in a more lenient penal policy. For example, the German Federal Court has invoked positive general prevention to justify stringent measures, such as mandatory life imprisonment for murder (German Federal Court, 1977).

In other words, the substantive differences between negative and positive general prevention may be smaller than they initially seem. Some scholars have even questioned whether positive general prevention is merely a repackaged form of deterrence (Schumann, 1989), while others go further, suggesting that it may serve as a rhetorical veil, rationalising unconscious and repressed aggressive instincts (Mir Puig, 1990).

In the European legal landscape, the emergence of expressivism, or communicative theories of punishment – previously known primarily in Anglo-American legal circles – has added a new dimension to theories of punishment. Judging by its name and underlying concept, it represents a notable innovation. The communicative aspects of punishment offer a fresh alternative to traditional preventive theories, which have long been uncomfortable due to their reliance on the hard treatment of offenders as a means of crime prevention. In contrast, communication, as it is commonly understood today, is seen as a non-violent, inclusive act – essentially the opposite of hard treatment (Günther, 2014).

However, despite the prominence of the idea of punishment as communication, it has not led to substantial change for offenders. It turns out that effective communication in matters of criminal law requires a "specific add-on" – specifically the hard treatment of offenders, which serves to symbolically reinforce the communicative message.

The expressivist turn in punishment theory is not monolithic; rather, it encompasses several variants, depending on who is considered the intended recipient of censuring statements. Some aspects of expressivism, such as norm validation and public reassurance, are already familiar from retributive theories of punishment and positive general prevention. However, the version of expressivism that seeks to incorporate the interests of victims into the punishment framework introduces new considerations. This approach adds an important layer to punishment theories by including the perspective of those most directly impacted by the criminal wrong. That said, much of the discussion remains a principled reflection on the question, "What does the state owe to victims?" rather than an effort to fundamentally change the existing principles and rules governing criminal procedure and sentencing.

All of the above suggests that theorising about punishment has limited impact on the realities of criminal justice. This is especially true since discussions in this field often focus more on punishment as an "idea" rather than a "social practice", with little ambition to affect what happens in courtrooms and penitentiaries. However, it would be inaccurate to suggest that scholars who write on punishment theory have no desire to influence criminal law and its institutions at all.

Let me highlight three of the most notable attempts to rethink the entire criminal law system through the lens of punishment theory. First, according to Jacobs' functionalist understanding of guilt, guilt is viewed as an expression of society's need for positive general prevention. More succinctly, guilt is viewed as a "derivative of general prevention" (Jacobs, 1976; Stuckenberg, 2024). Also noteworthy is Roxin's functionalism, which asserts that the purposes of punishment should guide decisions on attributing criminal responsibility (Ambrož, 2017; Roxin, 1973).

Both approaches interpret criminal law through the framework of punishment theories, yet neither has caused a major upheaval in the criminal justice system. In Jacobs' case, the focus is less on providing concrete guidelines for judicial decision-making and more on offering an external perspective aimed at describing how the criminal justice system operates and what are its latent functions (Jacobs, 1976). Roxin (1973), on the other hand, aims to provide decision-making guidelines, but they are so general that they are unlikely to significantly influence judicial rulings.

Hörnle (2019) offers a more nuanced connection between punishment theories and criminal law by asking how incorporating victims' interests into punishment theory should impact criminal law. As noted earlier, she is cautious about significantly expanding victims' procedural rights, and instead she presents a vision of how the shift towards victims' interests should shape the structures of substantive criminal law. The answer to the question "why punish" determines the focus and perspective from which to look at the event that is judged as a crime. Traditionally, the focus has been primarily on the offender, particularly their intentions, attitudes and motives. However, Hörnle (2019) argues that the spotlight of criminal law should be broader, it should focus on the relations and interactions between offender and victim, and should trace the rights and duties individuals owe to one another. Additionally, the consideration of justifications and excuses should take the victim's perspective into account, asking questions such as "Does this matter from the victim's perspective?"

This example illustrates how fundamental and far-reaching changes to the system of attributing criminal responsibility can also arise from shifts in the emphasis of punishment theories. However, it also highlights the recurring challenge of implementing such changes in the short and medium term. The rules governing criminal responsibility form a rigid system, and even well-founded interventions are neither quick nor easy to accomplish. Nonetheless, it remains useful – indeed, I would argue essential – for theorists of criminal law and punishment to maintain a broader perspective and allow ourselves a reasonable amount of ambition. This means not limiting ourselves to proposing cosmetic fixes that may be achievable in the short term. Instead, by rethinking fundamental issues – punishment being one of them – we can potentially advocate for more substantial changes to criminal law, which may take generations to achieve.

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Kaj nam prinaša teoretiziranje o kazni?

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Avtor v prispevku obravnava novejši razvoj teorij kazni, pri čemer posebno pozornost namenja preseganju tradicionalne delitve na absolutne in relativne teorije. V nadaljevanju obravnava recepcijo ekspresivnih kaznovalnih teorij v evropskem prostoru. Vsebina teh teorij ni v celoti nova, saj smo nekatere njihove nastavke poznali tudi prej, le pod drugačnimi imeni. Pomemben idejni premik pa je vključevanje interesov žrtev v teorije kazni. Vprašanje je, ali bo razvoj na področju teorij kazni imel širše posledice za teorijo in prakso kazenskega prava. Čeprav novi poudarki znotraj teorij kazni ne vplivajo bistveno na vsakodnevno delovanje pravosodja ali zaporov, bi določene učinke lahko imeli na dolgi rok.

Ključne besede: kazen, absolutne teorije, relativne teorije, ekspresivne teorije, trda obravnava, pozitivna generalna prevencija, žrtve, pravice žrtev, kazenski postopek

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