

## Contents

|  |           |
|--|-----------|
| Introduction .....   | 17        |
| <b>Chapter I. Penology: A Discipline Allied to Criminal Law Studies .....</b>  | <b>22</b> |
| Punishment as a Subject of Inquiry of Philosophy, Social Studies<br>and the Humanities .....   | 25        |
| Criminal Law Studies and Allied Disciplines .....  | 27        |
| Penitentiary Sciences (a Part of Criminal Justice Studies) .....   | 28        |
| Penology .....   | 34        |
| <b>Chapter II. Principles of Culturally Integrated Studies .....</b>   | <b>46</b> |
| Category of Historical-Cultural Background .....   | 47        |
| The Notion of Evil in Criminal Punishment .....  | 50        |
| The „Metaphysics” of Punishments in Studies of Culture .....   | 50        |
| The Meaning of Punishment as a Cultural Phenomenon .....   | 52        |
| The Question of the <i>Differentiae Specificae</i> of Criminal Punishment ....   | 54        |
| The Question of the Historical Continuity of Criminal Punishment .....   | 56        |
| Misfortune (Fate) as a Source of Punishment .....  | 58        |
| Punishment as a Result of Sin .....  | 60        |
| Cultural and Religious Roots of the Notion of Fault .....  | 64        |
| Cultural Factors in the Development of the Notion of Fault<br>in Criminal Law .....  | 65        |
| Cultural and Religious Sources of Reflections on Free Will .....   | 68        |
| The Cultural Identity of Punishment .....  | 70        |
| The Category of Social Institution .....   | 71        |
| An Advanced Definition of Criminal Punishment and its Importance<br>for Research .....   | 78        |
| <b>Chapter III. The Formation of Penological Reflection .....</b>  | <b>82</b> |
| Antiquity .....  | 82        |
| From the Middle Ages to Modernity .....  | 87        |
| Classification of Theoretical Lines of Rationalization of Punishment.....  | 98        |
| Theories of Punishment Determined by Instincts or Hatred .....   | 105       |
| A Theoretical Framework of Ideas of Penological Positivism.....  | 109       |
| The Development of Theoretical Trends of Criminal Anthropology<br>and Sociology Towards Penological Ideas of Social Defence<br>and Resocialization (Rehabilitation)..... | 117       |
| The Influence of Rehabilitation Ideas on the Identity of Criminal<br>Punishment in its Organizational Form of Deprivation of Liberty .....                               | 122       |

|   |     |
|---|-----|
| <b>Chapter IV. Anxieties of Civilization</b> .....  | 128 |
| Neoclassical Renaissance and Humanitarian Criticism of Punishment .....   | 128 |
| Halfway Between New Penology and Populism: The Return of Fascist<br>Rhetoric .....                              | 145 |
| <b>Chapter V. Jeremy Bentham. The most Influential Penological Idea<br/>of Punishment in Modern Times</b> ..... | 167 |
| The Importance of the Penology of Jeremy Bentham (1748-1832) .....  | 169 |
| The Framework and Principles of the Social and Philosophical Ideas<br>of J. Bentham .....                       | 170 |
| Jeremy Bentham's Notion of Punishment .....   | 174 |
| Rules of Statutory and Judiciary Sentencing .....   | 176 |
| Circumstances Crucial for the Determination of the Ratio of Punishment<br>to Crime .....                        | 181 |
| Principles of Sentencing .....  | 183 |
| The Aim of Punishment and Different Kinds of Punishment .....   | 185 |
| The Main Purpose: General Prevention .....  | 186 |
| Improvement of the Convict .....  | 187 |
| Incapacitation of the Perpetrator .....   | 190 |
| Compensation and Penalties Affecting Property .....   | 191 |
| Prison .....  | 192 |
| Prison Reforms .....  | 195 |
| The Death Penalty .....   | 197 |
| Corporal Punishments .....  | 198 |
| Bentham: Penology of Golden Means .....   | 201 |
| <b>Chapter VI. Analysis of the Notion of Punishment. Anglo-Saxon Experiences</b> ...                            | 205 |
| Starting Point of the Debate: The Idea of Retribution at the Turn<br>of the XIX and XX Centuries .....          | 208 |
| F.H. Bradley: Criticism of Practical Reason versus Darwinism .....  | 208 |
| T.H. Green: Post Kantian Reflections, Punishment as a Guardian<br>of Legal Rules .....                          | 209 |
| B. Bosanquet: from Kant to Hegelism .....   | 211 |
| H. Rashdall: The Non-Christian Aspect of Retribution .....  | 212 |
| A.C. Ewing: Condemnation of the Evil Deed .....   | 212 |
| W.D. Ross: Punishment as a Fulfilled Promise .....  | 213 |
| J.D. Mabott: On the Completely Erroneous Character of Utilitarian<br>Rationalization of Punishment .....        | 214 |
| All-round Arguments of Anthony M. Quinton: Semantics of Punishment .....  | 219 |
| A. Flew: On the Trap of Ontological Argument in Penological Theories .....                                      | 221 |
| J. Rawls: On the Utilitarian Character of Retributive Punishment .....  | 223 |
| K.G. Armstrong: On Incorrect Reasoning in Criticism of Retribution .....  | 228 |
| J.F. Doyle, Hegel in America, Punishment as a Condition of Just Order .....                                     | 232 |
| H.L.A. Hart, Prolegomena to the Theory of Criminal Punishment .....   | 234 |
| On the Importance of the Reflections of H.L.A. Hart .....   | 234 |
| The Basis of the Ideas of H.L.A. Hart .....   | 235 |
| General Justifying Aim and Principles of Distribution of Punishment ...   | 235 |
| The Issue of Dispensation, Unpunishability and Understanding<br>in Sentencing .....                             | 240 |

---

|  |            |
|--|------------|
| Individualization of Punishment .....  | 247        |
| <b>Chapter VII. Sociology of Punishment .....</b>  | <b>252</b> |
| On the Tragedy of Punishment .....   | 252        |
| Historicity: The Genealogy of Punishment .....   | 253        |
| Sacredness and Collective Consciousness .....  | 258        |
| Socio-Economic Determinism of the Development of Organizational<br>Forms of Criminal Punishment? ..... | 266        |
| E.B. Paszukanis: Punishment as a Shady Business.....   | 273        |
| Michel Foucault and the Compulsive Rationality of Penalty.....   | 279        |
| Afterword .....  | 291        |
| Quoted Literature .....  | 295        |
| Personal Index .....   | 320        |
| Podsumowanie .....   | 329        |
| Summary .....  | 341        |
| Zusammenfassung .....  | 354        |