

Postmodern Openings

ISSN: 2068-0236 | e-ISSN: 2069-9387

Covered in: Web of Science (WOS); EBSCO; ERIH+; Google Scholar; Index Copernicus; Ideas RePeC; Econpapers; Socionet; CEEOL; Ulrich ProQuest; Cabell, Journalseek; Scipio; Philpapers; SHERPA/RoMEO repositories; KVK; WorldCat; CrossRef; CrossCheck

2022, Volume 13, Issue 4, pages: 376-388 | <https://doi.org/10.18662/po/13.4/523>

Submitted: September 14th, 2022 | Accepted for publication: October 5th, 2022

The Liberal Model of Criminal Repression in the European Space

Denisa BARBU¹

¹ Associate Professor PhD, Valahia University of Targoviste, Department of Public Administration, Romania, denisa.barbu77@yahoo.com

Abstract: The transformations that have occurred at the state economic level, the change in the trends of opinion that animate postmodern societies, the increase in population have strongly affected the crime rate in the last 10-20 years in all the states of the world. The trends in the matter of sanctions vary greatly, whether it is the frequency of custodial sentences, the harshness - in general - of criminal sentences, the preference for punishments whose special maximums are higher or lower or the adoption of some alternative measures to imprisonment or even criminal justice in general. Many of the new criminal policies are justifiable in the context of the national law of states, but few have a real chance of globalization. Penal reform was or is on the working table of all states of the world. The details vary from case to case, but the trend is general. The Scandinavian countries modified their sanctioning system and created new punishments, the Western European countries created systems for sanctioning and re-educating delinquents in an extra-criminal regime, in the U.S. one can note, paradoxically, the generalized tightening of punishments, a model followed by Great Britain and Australia, but at a lower level. There is a continuous debate at the level of legal doctrine on the appropriateness of adopting an authoritarian system of repression in criminal matters. This article aims to analyze the advantages and disadvantages of the liberal model of criminal repression in the European space, in the context of the phenomenon of globalization.

Keywords: *liberal model of criminal repression; retributive justice; restorative justice.*

How to cite: Barbu, D. (2022). The Liberal Model of Criminal Repression in the European Space. *Postmodern Openings*, 13(4), 376-388. <https://doi.org/10.18662/po/13.4/523>

1. Introduction

The harshness - seen as excessive (Cullen & Wozniak, 1982) - of some convictions for antisocial acts of low gravity, as well as the devastating impact of these convictions on the life of the person sanctioned, have determined the appearance of trends of opinion directed against the lack of proportionality that characterizes - or characterized - certain judicial systems in criminal cases, movements initiated by ex-convicts, their families and relatives. Thus, the idea was born (Bayer, 1978) that criminal justice must not only punish, but also educate in order to eradicate the phenomenon of delinquency, reform and reorganize the life of deviants in a society, in order to carry out their effective reintegration into the community after the moment of assuming responsibility for the committed acts passes. This way of acting was seen (The Harvard Law Review Association, 1966, p. 654) as the most appropriate way to fight against recidivism and to revive the individuals' consciousness of belonging to a homogeneous social group (Apostu, 2016). In this way, the concept of restorative justice was born, a concept that is based on and includes the sum of the theories brought to the doctrine of criminal law by the supporters of the liberal model of repression.

Penal liberalism was defined (Pradel, 2002) as the recognition, by the state apparatus, of the individual as an autonomous value in itself, implying the respect for the human dignity; applied to the delinquent, it also assumes care for one's social reintegration; applied to the victim, it also involves repairing the damage caused to them. Criminal liberalism aims to ensure a balance between the fight against crime and the protection of individual rights and freedoms, being technically structured on two essential concepts: human rights and the rule of law, the latter necessarily implying compliance with the principle of the hierarchy of norms, which implies the submission of state affairs to the law. This means that the rule of law has a liberal foundation, because it is inspired by a lack of principled trust in the state, whose criminal power must be limited to ensure the defense of the individual.

2. The liberal model of criminal repression – criminal techniques in the context of human rights and globalization

The techniques of expressing liberal-penal views are manifested on three levels: the crime, the procedure (procedural law) and the punishment (Pradel, 2002, pp. 157-166)¹.

In the matter of the crime, the adoption of the liberal model leads to the non-incrimination of the criminal resolution and the preparatory acts, as well as to the requirement of the defendant's guilt towards the injured party. In terms of guilt, what the liberal model brings is that the determination of responsible persons will be understood in a strict manner, which implies the elimination of civilly responsible persons or the liability of the legal person. In the matter of special criminal law, liberalism manifests itself by the fact that criminal offenses are suppressed or limited, even abandoned, and punishments are tamed. A good example of liberal criminal legislation is provided by the German Penal Code of 1975 (Federal Ministry of Justice, 2021), para. 46 - 1: "the guilt of the delinquent is the basis for determining their conviction". Attention must be focused on the future evolution of the delinquent's life in society. These two pillars, guilt and special prevention, are liberal by nature. What confirms the liberal orientation of the German Penal Code is the absence of any reference to the authoritative concept of general prevention.

Regarding the procedure (the aspects of procedural law implied by convicting crimes), it is designed from the perspective of affirming human rights. The tendencies were, at times, to exacerbate the application of these principles, which led some authors to see a real "Trojan horse" in the concept of human rights in criminal procedural matters (Pradel, 2002, p. 159). This concept, if it is not sufficiently clearly determined, can become superficial and vague, hence the difficulty of extracting a series of beneficial legal consequences. The legislator must proceed to an exact enumeration and definition of the principles, without allowing them to be deduced from the general structure of the procedural law.

Regarding the punishment, retribution is no longer the dominant objective of the criminal law, because the reformation and rehabilitation of the delinquent have become the essential goals of the general criminal law theory. There are three characteristics of the punishment, as it is viewed by the liberal criminal doctrine (Hart, 1968).

¹ For a thorough treatment of these aspects, see Pradel (2002, pp. 157-166).

A first characteristic is given by the fact that liberals are hostile, in principle, to the death penalty (thus, the European Convention on Human Rights² and the additional protocols to the Convention prohibited the application of the death penalty regardless of the circumstances, as a violation of art. 2 of the Convention, which defends the right to life). Moving forward, imprisonment is not excluded, but alternative punishments are promoted. While the authoritarian model makes deprivation of liberty the *princeps ratio* of punishment, the liberal model makes it the *ultima ratio* of criminal sanctions. The liberal punitive system prioritizes fines, daily fines, community service over deprivation of liberty, especially the latter being seen as a punishment that fulfills the purposes of deprivation of liberty, without, however, constituting such a deprivation.

A second characteristic of the punishment is given by its relative moderation, moderation which is prolonged in the stage of execution, with the application of the principle of humanism, which brings into focus the prisoner's rights. A final feature is given by the importance of the role conferred on the judge in the process of individualizing the punishment.

Criminal doctrine (Marinos, 2005) drew attention to the fact that the punishment has several dimensions, depending on which the appropriateness of a conviction must be analyzed. The symbolic purpose of the punishment was seen (Marcuse, 1969, pp. 340-359) as the main reason why a reduction of the special maximums would not be desirable. However, a criminal act presents, in concrete terms, numerous nuances given by the connection between the act that meets the constitutive content of a crime and the context in which it was actually committed. What should be taken into account more seriously is that the efficiency of a sanctioning system is given by the way in which certain sanctions are adapted to certain facts, vis-à-vis which it is determined what preventive measures would be most indicated, whether for sanctioning or combating the crime. Thus appeared, in the American doctrine (Bassiouni, 1993), the notion of *criminal equivalent*, which is based on the idea of creating a sanctioning system complementary to the one dominated by the deprivation of liberty, as the main punishment specific to criminal law, in order to thus try to find a series of equivalent sanctions, which achieve the same goals.

The punishment has a multidimensional status, there is a wide range of factors, determined by the factual context, which become extremely important at the moment of individualizing the sanction (by individualization, we understand both the establishment of the type of

² https://www.echr.coe.int/documents/convention_eng.pdf

punishment and its amount). An institution that maintains the symbolic value of the custodial sentence, but which practically avoids its application, is that of replacing the sentence (Marinos, 2005, p. 442).

However, finding equivalent punishments - and when we use the term equivalent, we refer to the equivalence of finality and purpose of the sanction - to that of imprisonment, means changing the mentality of those who are empowered to create the sanctioning system.

Different punishments have different functions, related to the nature of the crime. For example, the criminal fine, no matter how high, is regarded by the majority of society members as not being a sufficiently effective punishment compared to the deprivation of liberty, often its application being perceived by the convicted persons as similar to the situation in which they would have managed to escape punishment. Therefore, the effectiveness of a punishment must be analyzed beyond its severity. In addition to the quantitative dimension of the punishment, the qualitative dimension must also be taken into account. Therefore, it would seem inappropriate to replace the custodial sentence with community service in the case of a crime of bodily harm, but the latter sanction would be appropriate for an act against patrimony (destruction, theft, etc.) (Marinos, 2005, p. 444).

The common-law doctrine introduced the concept of "*intermediate sanctions*", which were defined (Tonry & Lynch, 1996) as those measures of a criminal nature taken against convicted persons and which presuppose the replacement of the application of classic punishments - imprisonment and criminal fine - with other sanctions, of a non-custodial nature, less coercive from the point of view of restricting the individual's personal rights and freedoms, but which justifies its effectiveness by forcing the delinquent to directly give back to society what they took from it or, in other words, to have a fundamentally opposite conduct to the one that attracted their punishment (as an example, we can list community service, electronic monitoring of convicts, rehabilitation programs etc.). These measures ensure the continuity of the sanctioning and re-education process that began with the application of a classic punishment. The studies carried out (Ellis, 1986) concluded that 78% of criminals consider intermediate sanctions to be more difficult to execute than classic ones and, therefore, harsher, because they force them to adopt a completely different behavior than they had before committing the crime and forces them to reshape their perception and way of thinking about life, but at the same time they considers these measures to be welcome, because they avoid the prison sentence, which is by far viewed with the greatest hostility (Spelman, 1995, p. 107).

The birth of intermediate sanctions was determined by a problem raised by a number of criminal law theoreticians (Loughran, et al., 2011), who asked themselves the question whether in certain cases it is more appropriate to waive punishment than to punish, because society would have more to gain by adopting such an attitude. This question must be asked every time the factual situation meets all the conditions that allow the state to prosecute an offender, but when, due to the personal circumstances of the offender, it is appreciated that an alternative sanction would better achieve the goals of a punishment than an actual sentence. This point of view is an utilitarian one par excellence and is currently reflected by a series of institutions such as the postponement of the application of the sentence or the postponement of the execution of the sentence (Clear, 1996, p. 94).

From this perspective, the punishment was analyzed (Clear, 1996, p. 94), metaphorically, by creating a parallel with the game of football. In the hypothesis of applying a penalty for a foul in the box, its purpose and effects are to erase any advantage that the player who broke the rules might have during the game, but this does not ensure their future compliance, which is why very often the same player receives a red card. Therefore, there are three disadvantages of punishing a criminal by incarceration, without trying alternative methods of re-education: the imposition of additional costs, generated by the detention regime, on the members of society who are innocent in relation to the committed act (such as the effects of a penalty, in football, are felt by the whole team, which can receive a goal from a kick from 11 meters, although only one of the teammates violated the rules); the law is seen as unfair, because it lacks proportionality, the limits in which it should apply being unjustifiably exceeded; placing some members of society in disadvantage for the second time, as long as some criminals commit various criminal acts due to a socio-material disadvantageous situation in relation to others, from which it follows that the state has not fulfilled its fundamental social protection obligations towards them, but is willing to punish them for some acts that they were somehow "forced" by circumstances to commit (Clear, 1996, pp. 96-98).

Great Britain uses the electronic monitoring system of criminals as an alternative measure to the usual criminal sanctions, for two reasons: first, it aims to avoid the incarceration of convicted criminals, and second, it has been proven that this measure reduces the rate of recidivism. Criminological studies (Schauffler & Hannigan, 1974; Huidu, 2019) have shown that electronic monitoring has an effect especially for offenders who commit minor criminal deeds or those who commit crimes habitually, because they are more reluctant to fulfill the measures ordered by the courts at the time of

sentencing. Although currently there are still many discussions regarding the types of crimes for which such a measure is the most suitable, it is unanimously accepted that its application must be made in the case of acts for which the prison sentence is provided within some special reduced limits. The measure led to a 40% decrease in incarceration for the acts and criminals mentioned above and also presents financial advantages, reducing the costs that society must bear for keeping convicted persons in the penitentiary system (Smith, 2001).

However, the electronic monitoring system does not originate in Europe, but, like many other innovations in criminal matters, was "imported" from the United States of America, where it has been applied since 1984. Sweden has also been using this system since 1990. The main advantage of the method is that it eradicates, for the persons involved, the risk of criminal contamination that occurs in the prison population, being used in various contexts: as a condition for granting bail or conditional release, to ensure compliance to the measure of house arrest, as an alternative punishment to that of prison, as an additional measure to the execution of the sentence of community service etc.

The measure involves the installation of a chip on the body of the convicted person, a chip that is connected to a police monitoring network and that provides data on the movement of the wearer in space. Monitoring is done by GPS system, the destruction or removal of the chip from the body being automatically reported to the tracking network. The method was initially designed to ensure compliance with measures such as the ban on visiting certain places, the ban on leaving the country or the locality, the ban on returning to the family home etc. (Smith, 2001, pp. 202-203).

There were also some extremely radical points of view - which deny the sanctioning role of punishment - and lacking in practical applicability, arguing, in essence, that Emir Durkheim's theory (Durkheim, 2012) on delinquency should be understood in the sense that punishment should be viewed in expressionist and not instrumentalist terms, which means that fixing, by the criminal law, more or less serious punishments and punishment limits must mainly have a symbolic connotation, but the actual sanctioning, re-education and social reinsertion of criminals must be done in particular through the application of additional extra-penal measures.

At the level of the philosophy of law, these theories were combated by stating that a society with a just moral code will have just laws, and a perverted society will have unjust laws. The balance must be maintained, although it is unanimously recognized that excessive legislation demonstrates

the existence of numerous problems at the level of a community (Tonry, 2001, pp. 518-519).

3. Variants of the liberal model of criminal repression

From a historical perspective, the liberal model went through two stages of evolution at the level of European legislation - and not only -, stages that form its two variants of manifestation. A first variant is that of the moderation of the authoritarian model, based on distrust in repression, a stage in which only a moderation of the influence of the authoritarian system was attempted, starting from the theory of human rights. A second option is the transformation of the criminal law, a stage in which two methods were used regarding the transformation of the criminal systems.

The method called by the doctrine (Pradel, 2002, p. 168) *a priori* presupposes prevention in the strict sense, meaning a prevention which is external to criminal law and which has acquired particular importance in certain countries due to the development of crimes. Opinions are still divided (Packer, 1964), but one thing is certain, namely the fact that the fight against crime cannot be achieved exclusively by preventive means, even adopting an ultra-liberal perspective.

For this reason, the process of liberalizing criminal legislation was taken to another, higher level, thus appearing the second great way by which the effects of the criminal system can be limited once an act against the social order has been committed - the *a posteriori* method. This consists in using techniques that are very varied, but which until now have not yet been the subject of a general theory. These techniques, sometimes qualified as new social strategies, are three in number: dejudicialization, depenalization and decriminalization, which involve a gradual evolution, in the sense that depenalization is more radical than dejudicialization, and decriminalization is the most radical of all three techniques. These are, in essence, particular manifestations of criminal liberalism and which are found in a large number of countries, in different formulas.

3.1. Dejudicialization

Starting from the 1950s - 60s, a criminological trend developed, which is part of what is called "criminology of social reaction", especially in the USA. It is what was then called labeling theory (Bernburg, 2019), the theory of labeling (or the interactionist trend) stigmatization. It offers an original explanation of delinquency, seeing its source in the labeling done by criminal justice to certain citizens. As the American author Edwin M. Lemert pointed out (Pradel, 2002, p. 168), "it is not deviance that leads to

social control, but social control itself leads to deviance". It is a generally known fact that the recidivism rate is higher among former prison sentences than among those sentenced to the execution of other criminal sentences (criminal fine, community service etc.). Many recidivists return to criminal activities in the belief that they will not be caught a second time. This belief is based on different reasonings, but the most common ones are determined by the belief that it would be extremely unlucky to be discovered once again, appreciating that the chances in that direction are modest and the risks acceptable, and other times by the conviction that during the detention they learned enough tricks so that they will not be caught the next time (as forensic psychologists show, they have an unjustified trust in criminal contagion) (Pogarsky & Piquero, 2003, p. 95).

This criminological trend has led to a dejudicialization movement in the criminal process, in which the behavior of delinquents remains criminalized, but less serious acts are removed from the jurisdiction of the criminal courts. The course of social reaction is diverted towards non-criminal courts, proposing alternative models to criminal justice. Currently, dejudicialization has turned into a very dynamic notion, both in doctrine and in practice. The concept has become so complex that it no longer translates into the total avoidance of criminal legal institutions, but is used from the perspective of simple avoidance of criminal sanctions.

3.2. Depenalization

Considering that in the case of dejudicialization, the deed is still criminal in nature, depenalization strikes precisely at the criminal nature of the deed, in the sense that it leads to the exclusion of a deed from the traditional criminal sphere, without eliminating, however, the idea of sanction. The act ceases to be a crime, but remains punishable by administrative or other means. "Criminal justice is dismissed in favor of a non-criminal court" (Coulson & Nutbrown, 1992, p. 179).

The phenomenon of depenalization has a complex historical explanation. At the end of the 19th century, intensive crime developed. Technologically advanced societies systematically resorted to criminal sanctions to repress new behaviors, which were harmful to the community, but which, however, did not contravene traditional morality. Thus, there appeared in the U.S. and in Great Britain those regulatory offenses and public welfare offences, crimes from very different fields: labor law, traffic law, environmental law etc. Shortly after, the phenomenon also appeared in the Latin states. Thus, we have come to speak of criminal inflation, of overcriminalization.

First of all, it was noted (Petersilia, 1999) that this overcriminalization, which overloads the criminal justice system, incurs special costs. Secondly, it was observed (Coffee, 1992) that, by criminalizing these acts, any moral legitimacy is removed from their structure, in the context in which the legislator qualifies as criminals those whose acts do not present morally reprehensible conduct. These two reasons led to the proclamation of the need for decriminalization, a reduction of criminal norms, a selection of behaviors susceptible to criminal sanctions. The goal is to create a criminal law that becomes a subsidiary instrument for the protection of social values, an extreme way within a wide range of social control measures.

Recent trends towards the introduction of more severe criminal sanctions, which some Western states have shown, have been considered (Brown, 2002, p. 403) to undermine the fundamental trends of modern criminal law: proportionality, scientism and self-limitation. A closer analysis, however, revealed a number of factors that justify this departure from modern theories, to more postmodern ones. Some authors (Petersilia, & Deschenes, 1994a) have even stated that there are areas in which the excess of criminalization and punishment is a component element of modernity. In recent years, the vast majority of Western European states have experienced a significant increase in the severity of criminal sanctions. A number of commentators (Petersilia & Deschenes, 1994b) saw in this the return of authoritarianism and the end of postmodernity in contemporary criminal law. On the other hand, it is stated (Johnson & Dipietro, 2012) that this is a false image, because in fact the promotion of new trends still continues, but, with changes that are determined by the appearance of new and extremely serious anti-social acts, like terrorism, as the institutions of criminal law had to adapt to the new requirements of the times, and this process involved a return to the modern paradigm of authoritarianism.

3.3. Decriminalization

As far as decriminalization is concerned, the break with criminal law is very obvious. In the context in which depenalization is based mainly on the care not to incur criminal liability, decriminalization is more radical, in the sense that it tends to declare such behavior as not being criminal. Such behavior leaves no room for any sanction, be it criminal or non-criminal. Decriminalization is, therefore, the extreme version of liberalism. Decriminalization is, in general, the expression of an ethical choice, when conflicts arise between antagonistic rights, resulting in numerous discussions and hesitations in terms of positive law. We refer here to the legal

consequences of certain behaviors such as: abortion, adultery, homosexuality, euthanasia, low-risk drug use (marijuana) etc.

4. Conclusions

The liberal model of criminal repression had an evolution over time that was likely to change the law from its very foundations. Initially, it started as a reaction to the principle of humanism, correlated with the principle of proportionality, then added to it were the utilitarian tendencies of a society that is oriented more towards repairing the consequences of the crime than towards the consumption of resources necessary to punish it. At present, however, the liberal model of criminal repression represents, we believe, the key in which criminal justice will respond to some innovative aspects facing today's postmodern and globalized society. We are referring here to aspects of ethical finesse, to which modern science still does not have final answers (such as euthanasia, the use of new technologies in medicine, industry, labor relations, etc.), but the law is forced to adapt and preserve a difficult balance to achieve between the fundamental rights and freedoms of individuals and the repression of acts harmful to society (or potentially extremely harmful).

References

- Apostu, I. (2016). The Two Dimensions of Infidelity. *Postmodern Openings*, 7(2), 167-178. <http://dx.doi.org/10.18662/po/2016.0702.11>
- Bassiouni, M. C. (1993). Human Rights in the Context of Criminal Justice: Identifying International Procedural Protections and Equivalent Protections in National Constitutions. *3 Duke J. Comp. & Int'l L.*, 235.
- Bayer, R. (1978). Heroin Addiction, Criminal Culpability, and the Penal Sanction: The Liberal Response to Repressive Social Policy. *Crime & Delinquency*, 24(2), 221-232. <https://doi.org/10.1177/001112877802400207>
- Bernburg, J.G. (2019). Labeling Theory. In: Krohn, M., Hendrix, N., Penly Hall, G., Lizotte, A. (eds) *Handbook on Crime and Deviance. Handbooks of Sociology and Social Research*. Springer, Cham. https://doi.org/10.1007/978-3-030-20779-3_10
- Brown, M. (2002). The Politics of Penal Excess and the Echo of Colonial Penalty. *Punishment and Society*, 4(4), 403-423. <https://doi.org/10.1177/1462474502004004044>
- Clear, T.R. (1996). The Punitive Paradox: Desert and the Compulsion to Punish. *Journal of Research in Crime and Delinquency*, 33(1), 94-108. <https://doi.org/10.1177/0022427896033001006>

- Coffee, J.C. (1992). Paradigms Lost: The Blurring of the Criminal and Civil Law Models--And What Can be Done about It. *Yale L.J.*, 101, 1875-1893.
- Coulson, G. E., & Nutbrown, V. (1992). Properties of an Ideal Rehabilitative Program for High-Need Offenders. *International Journal of Offender Therapy and Comparative Criminology*, 36(3), 203–208.
<https://doi.org/10.1177/0306624X9203600304>
- Cullen, F., & Wozniak, J. (1982). Fighting the Appeal of Repression. *Crime and Social Justice*, 18, 23-33. <https://www.jstor.org/stable/29766163>
- Durkheim, E. (2012). *Moral Education*. Dover Publications.
- Ellis, L. (1986). Evolution and the nonlegal equivalent of aggressive criminal behavior. *Aggr. Behav.*, 12, 57-71. [https://doi.org/10.1002/1098-2337\(1986\)12:1<57::AID-AB2480120108>3.0.CO;2-5](https://doi.org/10.1002/1098-2337(1986)12:1<57::AID-AB2480120108>3.0.CO;2-5)
- Federal Ministry of Justice. (2021). German Criminal Code. www.gesetze-im-internet.de/englisch_stgb/
- Hart, H.L.A. (1968). *Punishment and Responsibility: Essays in the Philosophy of Law*. Oxford University Press.
- Huidu, A. (2019). The Psychopathology of Serial Killers. *Eastern-European Journal of Medical Humanities and Bioethics*, 3(1), 38-54.
<https://doi.org/10.18662/eejmhb.19>
- Johnson, B.D., & Dipietro, S.M. (2012). The Power of Diversion: Intermediate Sanctions and Sentencing Disparity under Presumptive Guidelines. *Criminology*, 50, 811-850. <https://doi.org/10.1111/j.1745-9125.2012.00279.x>
- Loughran, T.A., Paternoster, R., Piquero, A.R. & Pogarsky, G. (2011). On Ambiguity in Perceptions of Risk: Implications for Criminal Decision Making and Deterrence. *Criminology*, 49, 1029-1061.
<https://doi.org/10.1111/j.1745-9125.2011.00251.x>
- Marcuse, H. (1969). *Reason and Revolution: Hegel and the Rise of Social Theory*. Beacon
- Marinos, V. (2005). Thinking about Penal Equivalents. *Punishment and Society*, 7(4), 441-455. <https://doi.org/10.1177/1462474505057120>
- Packer, H.L. (1964). Two Models of the Criminal Process. *University of Pennsylvania Law Review*, 113(1).
<https://heinonline.org/HOL/LandingPage?handle=hein.journals/pnlr113&div=9&id=&page=>
- Petersilia, J. (1999). A Decade of Experimenting with Intermediate Sanctions: What Have We Learned? *Justice Research and Policy*, 1(1), 9–23.
<https://doi.org/10.3818/JRP.1.1.1999.9>

- Petersilia, J., & Deschenes, E. P. (1994a). Perceptions of Punishment: Inmates and Staff Rank the Severity of Prison Versus Intermediate Sanctions. *The Prison Journal*, 74(3), 306–328. <https://doi.org/10.1177/0032855594074003003>
- Petersilia, J., & Deschenes, E. P. (1994b). What Punishes? Inmates Rank The Severity of Prison vs. Intermediate Sanctions. *Federal Probation*, 58(1), 3-8.
- Pogarsky, G., & Piquero, A.P. (2003). Can Punishment Encourage Offending? Investigating the „Resetting” Effect. *Journal of Research in Crime and Delinquency*, 40(1), 95-120. <https://doi.org/10.1177/0022427802239255>
- Pradel, J. (2002). *Droit pénal comparé*, 2^e édition. dalloz.
- Schauffler, R., & Hannigan, M. (1974). Criminology at Berkeley: Resisting Academic Repression, Part 2. *Crime and Social Justice*, 2, 42–47. <http://www.jstor.org/stable/29765908>
- Smith, D. (2001). Electronic Monitoring of Offenders. The Scottish Experience. *Criminology and Criminal Justice*, 1(2), 201-214.
- Spelman, W. (1995). The Severity of Intermediate Sanctions. *Journal of Research in Crime and Delinquency*, 32(2), 107-135. <https://doi.org/10.1177/0022427895032002001>
- The Harvard Law Review Association (1966). The Cruel and Unusual Punishment Clause and the Substantive Criminal Law. *Harvard Law Review*, 79(3), 635-655. <https://doi.org/10.2307/1339087>
- Tonry, M. (2001). Symbol, Substance and Severity in Western Penal Policies. *Punishment and Society*, 3(4), 517-536. <https://doi.org/10.1177/14624740122228401>
- Tonry, M., & Lynch, M. (1996). Intermediate Sanctions. *Crime and Justice*, 20. <https://doi.org/10.1086/449242>