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# ҐЕНЕЗА КОНЦЕПТУ ВИПРАВНОГО ПОКАРАННЯ: ВІД АНТИЧНОСТІ ДО НОВОГО ЧАСУ

**Анотація.** *У статті досліджено ґенезу ідеї виправного покарання. Авторами проаналізовано концепції та погляди на мету покарання Платона, римських юристів, європейських гуманістів, а також англійських тюремних реформаторів XVIII ст. Актуальність цієї тематики для вітчизняної правничої науки зумовлена триваючою трансформацією підходів до визначення мети покарання, переглядом у зарубіжній пенології стратегій у сфері покарань і розробкою виправної політики, з огляду на нові цілі. Ерою виправного покарання, безумовно, стало XIX ст. Основою пенітенціарного дискурсу у цей період була упевненість, що за допомогою належного тюремного режиму, сегрегації, гуманного ставлення та духовної опіки неодмінно вдасться виправити засуджених. І хоча ідеї виправного покарання з'являються ще в античну добу та набувають свого практичного втілення в середньовічній християнській традиції європейських держав, в історіографії превалює думка про першість англійських та американських тюремних реформаторів у справі започаткування пенітенціарних систем. Неупереджений аналіз систем знань та відмова від методології ідеологічної заангажованості дозволили довести, що пенітенціарні системи XIX ст. лише розвинули моделі тюремної дисципліни, започатковані у попередні періоди. Насправді мало місце відродження античної патерналістської концепції виправного покарання, доповненої релігійною доктриною, що передбачала вплив не на тіло, а на душу правопорушника з метою покаяння, виправлення та, як наслідок, повернення в суспільство. У кінці XVIII ст. світська влада запозичить зазначені дисциплінарні моделі. Найбільш масштабно вони будуть реалізовані у виправних та пенітенціарних будинках в Англії у процесі тюремної реформи 70-90-х років і в подальшому стануть основою для формування пенітенціарних систем, які реалізовуватимуться на практиці у більшості країн світу упродовж XIX – початку XX ст.*

**Ключові слова:** *виправне покарання; в'язниця; покаяння; пенітенціарні системи; паноптичний нагляд; виправний заклад*

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# GENESIS OF THE CONCEPT OF CORRECTIONAL PUNISHMENT: FROM ANTIQUITY TO MODERN TIMES

**Abstract.** *The article examines the genesis of the idea of correctional punishment. The authors analyse the concepts and views on the purpose of punishing Plato, Roman lawyers, European humanists, as well as English prison reformers of the XVIII century. The relevance of this topic for domestic legal science is due to the ongoing transformation of approaches to determining the purpose of punishment, the revision of strategies in the field of punishments in foreign penology and the development of correctional policy, taking into account new goals. The era of correctional punishment, admittedly, was the XIX century. The basis of penitentiary discourse during this period was the belief that with the help of a proper prison regime, segregation, humane treatment and spiritual care, it would certainly be possible to correct convicts. Although the ideas of correctional punishment appear in ancient times and acquire their practical implementation in the medieval Christian tradition of European states, the idea of the primacy of English and American prison reformers in the establishment of penitentiary systems prevails in historiography. An unbiased analysis of knowledge systems and the rejection of the methodology of ideological bias allowed proving that the penitentiary systems of the XIX century only developed the models of prison discipline that began in previous periods. In fact, there was a revival of the ancient paternalistic concept of correctional punishment, supplemented by a religious doctrine that provided for the influence not on the body, but on the soul of the offender to repent, correct and, as a result, return to society. At the end of the XVIII century, the secular authorities adopted these disciplinary models. They will be most widely implemented in correctional and penitentiary houses in England during the prison reform of the 70s and 90s and will later become the basis for the formation of penitentiary systems that will be implemented in practice in most countries of the world during the XIX-early XX centuries*

*Keywords: correctional punishment; prison; penance; penitentiary systems; panoptic supervision; correctional institution*

## INTRODUCTION

Discussions of theorists and practitioners about the correctional purpose of punishment have not been subsided for more than 200 years. Even John Howard, as one biographer noted, might be accused of regarding prisoners almost as animals that do not think about their actions and the future – only needed clean, dry housing and adequate food to reach acquiescence in their confinement. One could imagine his ideal prison as rather like a modern zoo, with well-scrubbed animals, staffed by well-tempered keepers. But any reformative hopes in such prison were speculative and accidental [1, p. 92].

The belief that with the help of a proper prison regime, segregation, humane treatment and spiritual care, it will certainly be possible to correct convicts was the basis of penitentiary discourse in the second half of the XIX – early XX centuries. This period can be confidently called the era of correctional punishment: imprisonment, along with the traditional punitive component – isolation from society, was increasingly presented as a correctional tool, prisons changed their name to penitentiary houses and reformatories – their main goal is to change the criminal. But the establishment of penitentiary systems of the XIX century was preceded by a significant period during which the beginning and rising ideas of correctional punishment were born, evolved and implemented in practice at the national level. Actually, the study of these ideas and their

conceptualisation is the purpose of this article. Our task is to show what path Western Penology has taken to establish correctional punishment as the basis of penitentiary systems, and to expand the traditional chronological framework for correctional prison Research.

The relevance of the problem of correctional punishment for Ukrainian legal science (not only the history of law, but also criminal and criminal executive law) is due to the transformation of approaches at the present stage to determining the purpose of punishment at the doctrinal level and at the level of legislation. The draft Criminal Code, prepared by leading Ukrainian experts in criminal law as part of the Working Group on the development of criminal law, does not mention correction as the purpose of punishment, unlike the current Criminal Code and Criminal Executive Code. The skeptical attitude of lawyers is explained by the fact that the process of correction is an abstract possibility that lies in the plane of psychology rather than jurisprudence. There is also a widespread opinion that the correction of a criminal is exclusively connected with the Soviet criminal law doctrine. The fact that the system of execution of sentences in the USSR since the 1930s was called correctional labour, and the main element in the mechanism of repression was correctional labour camps, adds to the negative attitude. But initially, Soviet penitentiary science was formed in line with progressive world trends and criticism of existing methods of correction – solitary confinement, meaningless mechanical labour, prayers and silence. The basis of penitentiary affairs in the Soviet state, as noted by Ya. Berman, in contrast to intimidation and punishment of bourgeois law, should have been the goal of correcting the criminal on new principles [2, p. 49-50].

In the 20-30s of the XX century and in the Western world, the penitentiary policy was revised, the transition to a therapeutic model began, it was replaced by a rehabilitation one [3], but they were also recognised as ineffective over time. The model of crime control, popular in the 1980s and 1990s, gave way to the reform approach revived in new economic, technological and social conditions, when the emphasis was placed on the reintegration of the convicted person into society. Now foreign criminologists insist on revising strategies in the field of punishments, since even a significant the quantity and quality of prison programming – by itself – will not fundamentally change the life course of prisoners, resulting in continued high return-to-prison rates for these offenders. With this in mind, they call for the development of corrections and sentencing policies – and the hiring of corrections personnel – based on the new goal of corrections: individual and community rehabilitation [4].

As we can see, the world penology is constantly in search of new, more effective forms of correction, using the achievements of psychology, medicine, and social management [5; 6]. Theorists and practitioners associate their hopes for achieving positive changes, as evidenced by the theme of their speeches at the current program of the 4th Technology in Corrections Conference: Disrupting Corrections, with the latest technologies, the possibilities of artificial intelligence, virtual reality, etc. And here it is fair to recall the thesis of Gerhard O.W. Mueller says that with rapid technological progress, people lose confidence in any institutions that existed in previous times. Brains conditioned in the mathematics of technological obsolescence cannot believe that previous generations have invented anything which can possibly be of more than historical interest for today's society. But the fact is that man's advance on the plane of ideas has proceeded at a snail's pace-compared with his lightning-like technological progress-and does not at all justify such a confidence bordering on arrogance [7, p. 58-59].

We believe that a retrospective analysis of the ideas and views of lawyers regarding the institution of correctional punishment is of research interest not only from the point of view of the history of law, but can also be useful in the context of integration of the Ukrainian legal system and its penitentiary component into the European community, orientation to global values and trends. The available research of the institute of correctional punishment at the doctrinal level concerned mainly views on the purpose of punishing individual lawyers and humanists, in particular Plato [8; 9], Filarete [10], Miquel de Giginta [11; 12], Filippo Franci, Jean Mabillon [13; 14], Jeremy Bentham [15] or the attention of scientists is focused on a certain historical period and the correctional concept was considered among a wide range of problems of organising prisons or houses of correction [1; 16-19].

## 1. MATERIALS AND METHODS

Regarding the methodological aspects of this study, it should be noted that in the conditions of the inability to explain numerous problems of legal and state reality using classical and non-classical methodology, the authors used mainly postmodern methodology. And it is even worth talking about a combination of methodological approaches that combine the provisions of classical, modernist and postmodern methodologies to solve the tasks set, based on the historical dimension.

Admittedly, the difference between an "objective" and a "subjective-interested" view of the historical past is rather conditional. Therefore, when claiming to be objective, researchers are forced to adhere to the

convention established in the profession. These conventions tend to change, reflecting the realities of their time. Thus, in the XVII century, in the conditions of that religious and moral atmosphere, ethical and aesthetic considerations were taken as a basis. However, in the following centuries, during the development of states-nations, the formation of national consciousness, historians tried to adhere to "national interests". The main guiding star in the picture of the world, for each particular nationalism, was the ideal image of ourselves, the national self-portrait, which was used as a template that was projected onto reality, and the latter was built in accordance with it. This trend began to increase from the second half of the XIX century, turning into "party historiography", where it was natural to be ideologically engaged, and "bias" was justified by the pressure of the present over historians.

It is this political expediency that has led to the formation of national myths that have developed around the institution of correctional punishment. Thus, we have a powerful Anglo-Saxon narrative, which, by the way, is accepted in Ukrainian penal science and is constantly reproduced in current research. At one time, French scientific thought followed the same path, and the Spaniards did not lag behind it. As for the Italians, there was no need to strain and invent something, just remember the ancient and canonical achievements. However, it is possible to remove this concept, invented first by the British, and then developed and widespread by American historical and legal thought, thanks to a methodology devoid of national ideological bias.

Therefore, the methodological basis of this research was formed by a functional approach, the essence of which consists in the perception of primary sources in the context of their functioning in the middle of the tradition that actually gave rise to this or that source. Working with texts that are considered as a historical source in this study, the internal criteria of scientific knowledge were taken as rationality and mutual correlation of empirical and theoretical knowledge. Special attention was paid to ensuring that in each Penitentiary discourse regarding the institution of correctional punishment, it was possible to clearly trace why and based on which documents, certificates, practices a particular sequence of events, versions and concepts was proposed. For this purpose, a number of primary sources were analysed by knowledge systems to study the possibilities of spreading previously formulated theories and their impact on other knowledge systems. It was this analysis that allowed questioning the persistent myth of the exceptional primacy of British and American prison reformers in the foundation of penitentiary systems.

The use of a system-information approach made it possible to visually structure the main problems associated with the use of empirical material in historical and legal research. Actually, a special feature was the use of information from the architectural field of knowledge. Because the emergence and formation of penitentiary systems is inextricably linked with the implementation of these ideas in the spatial plane. To introduce the concept of correctional punishment, an appropriate material base is urgently needed. Prison as a complex architectural structure, in the new system of execution of sentences, should provide certain technical, domestic, organisational conditions for correcting delinquents. Admittedly, the study of the object took place based on a dialectical paradigm, where problems acquire a historical character and are known by revealing existing contradictions. And the historical reconstruction of the model of correctional punishment was based on information from sources that were subjected to dogmatic understanding based on a critical attitude to the reliability or fallacy of a particular information.

## 2. RESULTS AND DISCUSSION

Research on the origins of the modern correctional prison, postulating the thesis of its "relative youth", is usually limited to the framework of the XVIII–XIX centuries. However, a small passage from Plato's famous *Dialogue* makes some reservations. Book X of the *Laws* we proclaims: prisons in the state (this refers to an imaginary utopian city Magnesia – *auth.*) there will be three: one on the square – general, for detainees and defendants; the second – correctional (sophronisterion (Greek: σωφρονιστήριον)); the third – in a remote place – for punishment [20].

Against the background of the all-encompassing punitive practices of Athenian penal practices, the philosopher drew attention to the criminal's personality and inner world. Since the offender, as Plato believed, commits a crime because of a sense of lawlessness in the soul, the punishment should be imposed depending on how spoiled his soul is, and be aimed not at his behavior, but at changing the state of mind [16, p. 31-35]. According to this, Plato established two categories of criminals: curable and incurable. Among the latter were those who had committed major crimes and also those where the curative treatment had once failed [8, p. 199].

In general, ancient Greek legal thought is characterised by the view of criminal behavior as a social disease. Thus, punishment is a certain "cure". Plato also followed this approach, but, in contrast to the current practice: expulsion of the criminal from the community or physical destruction, he proposed to "treat" in society, differentiating the means of influence depending on the internal state of the criminal from educational to repressive [8, p. 198-200; 16, p. 31-33].

Researchers of Plato's criminal-right views note that the philosopher was one of the first to develop a correctional system of punishments, the main purpose of which is "therapy" of the criminal's state of mind [9, p. 354]. Plato, being convinced that law – abiding behavior is the result of appropriate upbringing and education, believed that criminals who did not have a completely spoiled soul could be corrected by placing them in a Special Correctional Institution – sophronisterion, which literally means "a house where wisdom is taught". Their rehabilitation should take place for 3 or 5 years in isolation from the outside world according to a certain program: discipline, a clear daily routine, etc. Such convicts had to be visited by members of the Night Council (the highest body responsible for the moral education of Polis residents). They were supposed to instruct and take care of saving the souls of offenders. Communication with virtuous respectable citizens should lead to the formation of positive skills and law-abiding behavior, partly through imitation, partly through self-education [16, p. 35-36]. The philosopher believed that after serving the established term in a correctional prison, a person who has been rehabilitated and normalised can return to society [20].

As Virginia Hunter rightly points out, apart from its reformative innovations, it is also worth noting that Plato's prison anticipates some of the principles that lay behind the penitentiary of the nineteenth centuries. In both cases, the focus of penal practice is on the criminal's face and inner world. With the only difference that Plato's goal of such correctional punishment is to heal the soul, but he does not talk about redemption of guilt and repentance [8, p. 201]. These concepts will be introduced by Christian doctrine as early as the late antique period.

Being the quintessence of existing practices and innovations, Plato's doctrine of punishment was later subjected to numerical interpretations and in its pure form the ideas of correctional punishment were not borrowed. However, based on his concept, a paternalistic vision of the role of the ruler in the upbringing of subjects, the formation of their law-abiding behavior not only through punishment, but also encouragement was formed, which was developed by Roman lawyers, in particular Seneca. The mercy shown by the head of the family in relation to the members of the Roman family subordinate to him in its broad sense should also become the virtue of the emperor as a "father" to his subjects when assigning punishment. Seneca tried to derive the concept of Imperial punishment from parental and therapeutic influence on the offender and used the term *emendatio* in the sense of the means of influence that parents applied to children, which, according to the philosopher, could also be extended to the practice of punishments. Seneca also repeatedly used the word *castigatio* – corrective measures. It was in them that the philosopher saw the realisation of the thesis that punishment should look to the future, not the past, and be in favor of the criminal as a medicine. Strict measures should have been applied only if it was extremely necessary [16, p. 38, 49-50, 56; 21].

In Latin, in the context of the purpose of punishment, the terms *castigatio* and *emendatio* were equivalent to Greek *κόλασις* and *νουθεσία* and meant correction, improvement, treatment of the disease, etc. One of the synonyms *emendatio* there was a verb *corrigo* [16, p. 38-40]. Actually from this Latin word and its variations *correctum* also comes English *correct*. In the first centuries of the new era, correctional influence increasingly begins to compete with punishment. Roman emperors tried to differentiate punishments depending on whether the offender should be removed from the community, or whether his "shortcomings" are acceptable and he can integrate into society. The reaction to minor offenses was *emendatio* – educational activities. Although they were not widely used in ancient Roman practice. With the establishment of Christianity, the ancient educational concept *emendatio* supplemented by *penitential*. Theological reflections on sin and repentance, as well as the emperor's responsibility for the sinfulness of his subjects, further strengthened the attitude to the offense as a disease, the reaction to which must first be "therapeutic" measures of influence, and only if this did not work, severe punishments [16, p. 113].

Christianity has shifted the focus in the penalised discourse to the identity of the offender. But if Plato believed in the restoration of the soul solely through educational influence on the individual, then the church fathers, in particular St. Augustine, argued that the salvation of the soul is possible only through acceptance of one's sinfulness and repentance. Tertullian connects these two concepts with respect to the purpose of repentance: But where there is no fear, in like manner there is no amendment; where there is no amendment, repentance is of necessity vain, for it lacks the fruit for which God sowed it; that is, man's salvatio [22, p. 258]. Thus, among early Christian theologians, correction becomes possible only through penance as an awareness of sin, which was considered, so to speak, a preparatory stage for God's judgment.

The British researcher Julia Hillner proves that Christian apologists, introducing the ideas of penance, did not reject their own punishment, but, identifying sin and crime, offered a merciful alternative to severe punishment – a therapeutic approach [16, p. 113-114], which was supposed to lead to "correction-recovery". For its implementation, monastic imprisonment was most suitable, which was presented as a bloodless humane punishment [17, p. 86]. Unlike a traditional Roman prison, it is filled with a new meaning: isolation for a certain period (including solitary confinement) not for suffering and punishment, but for the purpose of

repentance and correction, through prayer and restriction. Fasting, silence, physical and other restrictions in such conditions were presented as a path to spiritual rebirth, not punishment.

Monastic incarceration, the conceptual basis of which was the church's postulates on spiritual repentance, also carried a certain potential for Public penalty practices as a humane, merciful means of influencing the offender, who, ideally, will return to society after repentance. Penitential isolation corresponded to the church doctrine of punishment, the purpose of which is to rehabilitate the sinner-criminal and return him to the bosom of the church. The main means of achieving this goal eventually became prison. It was she who connected punishment, repentance, and reconciliation with God. Thanks to this, the prison was no longer considered as a terrible place of physical torment and waiting for death. Instead, it became an institutional metaphor for repentant sinners, bringing them closer to the Kingdom of God [23; 24, p. 104].

In the Middle Ages, monks involved in systematic spiritual reform in the fight against apostates received broad powers for "forced correction". And the "penitentiary system" moved from the monastery to the city center, where the first inquisitorial prisons were organised [25, p. 108]. Incarceration in secular prison, which since the middle of the XIII-XIV centuries have become familiar urban institutions, unlike inquisitorial prisons, which supported the penitential and Correctional component of isolation, was not a sacred act and a metaphor for "vita angelica", only a pre-trial or punitive procedure. This was a different vector of development of punishment practices compared to the monastic-penitential one.

Among the first to criticise the existing system of punishments in the XV century were Italian humanists [10, p. 71]. In the philosophical treatises of the XV century, the images of the universe not only reflect the worldview of the early Renaissance, but also views on the further development of penal practices. In 1464, the Milanese architect Filarete, published *A treatise on architecture (Libro architettonico)*, in which I outlined it the perfect city Sforzinda. The image of the city comes from reality, supplemented by elements whose time has not yet come, where the real and the desired meet. Filarete's treatise is often called a revolutionary book precisely in the history of ideas [26, p. 28]. Sforcinda is a metaphor for a city with specific instructions for social and spatial transformation. This transformation is possible only if a person is constantly educated and instilled with virtues. The influence on the individual in Sforcinda occurs in various ways: through the organisation of urban space; through institutions, particularly schools and prisons; through "speaking" buildings, such as the famous House of Virtues and Vices [27, p. 53].

The prison in Sforcinda fully corresponded to the current practices in Italian cities: mostly debtors and defendants were held there. Unlike Sforcinda, in Pluziapolis, which the author presents as a model city, the author's fantasy is depicted – a hard labor prison Ergastolon, is intended for the detention of criminals "worthy of death", since the death penalty was not applied in Plusiapolis [28, p. 378-382]. The motive for the rejection of the death penalty and, accordingly, its replacement with imprisonment, in Filarete is not Christian charity or even Platonic correction-improvement that was supported by some Italian humanists, but effectiveness: it is unwise to take a person's life if he can benefit Society [10, p. 72]. Filarete insisted not only on the employment of convicts, but also on the unemployed, tramps. Therefore, Ergastolone can also be considered as a prototype of workhouses that will appear in European cities only in 150 years, as well as penitentiaries, the time of which will come only in the XIX century.

Regarding the education of antisocial elements (not criminals), according to Filarete, the key to improving and correcting vices lies through work and knowledge. This idea is embedded in the project of the House of Vices and Virtues. It was supposed to be a ten – story building with a tower in the center and galleries around it. The striking similarity of Filarete's sketch of the building is striking [26, p. 22] and the appearance of the Bentham's Panopticon. Filarete's main message was that the path to pleasure and vice was easy and disastrous: entertainment venues, wineries, baths and a brothel were located on the lower floors. It is easy to get there, but as the face sinks lower and lower (both literally and figuratively), it is unlikely to be able to get out – a prison is designed on the lowest floors, in the basement [26, p. 21]. To gain virtues and knowledge, a person had to climb up and achieve them by work. Separate narrow staircases led to the upper floors, where there were classes of arts, crafts and sciences [28, p. 333-342]. The concept of the House of Vices and Virtues will become very relevant during the period of social reforms initiated in the XVI century in European countries in the context of the fight against poverty and idleness, and later will find its implementation in penitentiary reforms.

Labour, not only as a punitive element for criminals, but also as a correctional element for a wide range of delinquents, will become a key component in the new Protestant ethics and broader discourse of social transformation. At the turn of the XV-XVI centuries, refugees, impoverished peasants, pilgrims, tramps and petty thieves filled the cities and became a real threat. In traditional Catholic doctrine, charity and charity towards such persons is the duty of every good Christian. And the church in no way tried to eliminate the cause of pauperism. On the contrary, she called on believers to perceive poverty as part of providence. Such a

"solution" to the problem of poverty critics of the prevailing doctrine called sentimental, haphazard and even harmful, since it only contributed to the formation of a whole "class" of professional beggars [29, p. 446-447]. Protestant theologians insisted on a more rational model of helping the poor, fighting not the consequences, but the causes: idleness, vagrancy, laziness, etc.

Despite the contradictions in approaches to social transformations, their origins lay not in the religious dogmas of individual camps, but, as Pieter Spierenburg notes, in general, in the humanism of the new era, which was a through stone of a broad intellectual movement [18, p. 28-34]. The first person who theoretically justified the need for social policy itself was the Catholic theologian Juan Luis Vives. In 1526 his work was published *De Subventione Pauperum Sive de Humanis Necessitatibus* [30]. Book one *On private assistance* she described general principles and traditional approaches to helping the poor. The second book *On public relief* had more interest and publicity. It contained practical instructions on the organisation of social care as the duty of the ruler to ensure the "health of the city". In J.L. Vives, we meet the paternalistic approach familiar to us from ancient times: "let us act as wise doctors in relation to the sick, as wise fathers in relation to lost sons, even if they resist, but this is for their own good" [31, p. 236]. Vives calls idleness a source of personal and social troubles and offers employment as a universal means of rehabilitation [31, p. 188-189].

Vives' treatise became widely known in Europe and influenced the development of legislation on the poor in England, Spain and other countries where workhouses began to be organised. Despite the well-established opinion, Pieter Spierenburg argues that workhouses were not a product of Protestant ethics alone [18, p. 26-28]. The practice of workhouses in Catholic countries, where they appeared even earlier than in Amsterdam, proves this. However, we believe that it was the Protestant approach to work – not only as a way to earn a living, but as a means to change themselves, as a path to the Lord-that brought reformist meaning to isolation. Therefore, the experience of prison workhouses in Northern Europe is of interest in the context of the evolution of correctional punishment. Although, it should be noted that their work was only one of the elements of correction. The main goal was to teach the craft, take jobs and earn money for the maintenance of workhouses.

The topic of employment, segregation and correction of delinquents is also central in the Treatise of the Spanish lawyer, canonica Miquel de Giginta *Tratado de remedio de pobres* (1579) [32]. In the midst of discussions in Spain about different approaches to social care, Giginta outlined his own proposals for organising assistance to the poor, the essence of which was reduced to the idea of "controlled freedom" in special institutions – mercy houses and hospitals for the poor. *The author proposed to organise charity houses on new principles: control of local authorities, a combination of municipal funding, collection of targeted donations and self-sufficiency, simplicity and economy* [11].

The architectural plan of the House of Mercy – in the form of a Greek cross, in the center of which is an altar, made it possible to more efficiently control the persons held in the institution, and place them in categories. It was Giginta who came up with the idea of "centralised supervision", which, with the light hand of Michel Foucault, we used to associate exclusively with the Panopticon of Jeremy Bentham [15]. In the treatise, it was proposed to equip a room above the altar where the steward and his family would live, from which, through the louvered windows facing four sides in accordance with the wings of the building, everyone could be constantly secretly observed. Such supervision is especially important at night. For this purpose, the sleeping areas were designed in such a way that each bed was visible from a central point and illuminated by a lantern all night [32, p. 33-34].

Researchers of Giginta's work doubt what exactly inspired the author to come up with this idea: a secret door in monasteries, a control and eavesdropping system in the Sultan's Palace, or a treatise on architecture by an unknown Italian author [11]. The question also remains unanswered: were the Bentham brothers familiar with Giginta's treatise? In the spatial solution of the manufactory Samuel Bentham the caretaker in the center was not invisible [33, p. 719-720], but in the Panopticon "the central box of the overseer" is already equipped with blinds (as an option, it was proposed to cover it with a cloth that would have small holes [34, p. 73]). By approval Francisco Alvarez Uria, the National Library of Spain houses an anonymous manuscript, the authorship of which is attributed to Giginta. It states that the author has found a "way to correct the poor" (it is about this centralized invisible surveillance – *auth.*) and provided it is implemented, "begging will be easily eradicated". If the number of poor people is large enough, then supervision can be strengthened by additional officials who would be in each building, on a hill covered around the perimeter with a thin linen cloth to create the appearance of permanent control [35, p. 68].

As you can see, Giginta was the forerunner of panoptic surveillance not only because he proposed this spatial solution. The more important goal he set was to create the illusion of constant supervision when the presence of a manager or other official became optional. Delinquents cannot be sure at any time that they are not being watched, and a sense of natural shame or fear does not allow them to violate the rules of decency [12].

Thus, Foucault's "reproaches" to J. Bentham, who launched the panoptic disciplinary "machine", are misplaced. In fact, it was developed 200 years before the "invention" of the Bentham brothers]. Thus, even in the XVI century, we see the origins of not only reformation influence, occupational therapy, but also control and supervision as a means of correction. These components will become the basis of penitentiary systems of the XIX century and will not leave their relevance in our time. During the same period institutions were formed that will determine the concept of Correctional punishment in the XVII-XVIII centuries: ordinary prisons, the purpose of which is isolation and punishment, prison workhouses, where work was the main component of the regime, and charitable institutions operating under the patronage of the Catholic Church, their purpose is to provide social assistance and control over the homeless, prostitutes and beggars.

In the middle of the XVII century, within the framework of the concept of charitable assistance to those in need, an understanding was formed that in addition to punitive functions, these institutions should also carry corrections. Especially for juvenile delinquents and children who were jailed by their parents for disobedience or misdemeanor. A separate section of a lengthy treatise *De visitatione carceratorum* (1655), authored by Bishop Giovanni Battista Scanaroli, dedicated to the correctional punishment of minors. Scanaroli proposed to establish special prisons that would correct the causes of sin by mercy, not by punishment [36, p. 41-42].

In fact, it was a revival of the ancient concept of correctional punishment – *emendatio*, initiated by Plato, which, according to Antonio Parente, in Italy earlier and to a greater extent than in other countries, was implemented in practice [37, p. 95]. In 1677, a correctional department was organized for the first time in the Pious House of Refuge for poor boys in the Hospice of San Filippo Neri of Florence, where homeless people and orphans were kept. It was intended for two categories: violators of discipline and Sons of Florentine families who were placed there by their parents or guardians. Privacy was important to the family's reputation, so the correctional facility was located in a remote part of the shelter. The cells were exclusively solitary. This ensured not only anonymity, but also isolation from the outside world. Solitary confinement (both day and night) was supposed to contribute to reformation: young people were left alone with their thoughts, could reflect on their behavior and repent. Founder and ideologist of the shelter Filippo Franci this approach was justified by the fact that he "sought not punishment, but correction" [38, p. 64].

Persons placed in the correctional department could attend worship services, but for the sake of complete privacy, their heads were covered with hoods. The arrival and departure from the hospice was also as secret as possible. This approach was later borrowed and implemented in the practice of penitentiary houses organised according to the Pennsylvania System [13, p. 109-110]. But in the XIX – early XX centuries, the reason for wearing masks or hoods by convicts is different-to divide and even more privacy. Thus, over time, the absolute utilitarian goal of privacy was transformed into an inhumane prison method.

Prisoners of the shelter St. Filippo Neri were allowed to communicate only to two protectors, who were to treat them with fraternal charity and should be shown the right road of living by efficacious exhortations. Filippo Franci insisted that compassion and friendliness was much more effective than rigor and severity [13, p. 107-109]. Rumors about the success of F. Franzi's activities spread around the city, the hospice gained fame as a correctional institution and began to specialise in this. Small young thieves were also placed there in the hope of correction [38, p. 60-62].

There is an assumption that the shelter St. Filippo Neri it was taken as a model during the organisation of St. Michael's House of Correction for juvenile delinquents in Rome, built in 1703-1704 on the initiative of Pope Clement XI. However, considering the regime of the latter – solitary confinement at night and joint work during the day in complete silence, then it rather implements the concept of the Holland spinhouse [13, p. 110-111]. The spatial solution of the House of Correction for Boys in the Hospice of Saint Michael was developed by the papal architect Karl Fontana, taking into account the requirements of the regime and supervision. The solitary cells were arranged in three stories along the galleries on either side of the large rectangular hall. Only three guards could effectively carry out supervision due to the fact that each cell had two windows: one External, the other facing the hall and everything that happened in the middle was clearly visible [39, p. 309].

In general agreement with the conclusions of Thorsten Sellin that the solitary confinement regime in the shelter of St. Filippo Neri was the first practical attempt to use this mode of treatment for the avowed purpose of correction and his use of cellular segregation by day and by night preceded the so-called Pennsylvania system by more than a century [13, p. 112; 40], we note that the analysis of the regimes of correctional institutions in Florence and Rome gives grounds to conclude that both models of prison discipline (solitary confinement and congregate system) originated in the late XVII – early XVIII centuries. Given this thesis, Sean McConville, that the forerunners of these systems of prison discipline were the regime principles of Prisons in Horsham and Petworth in West Sussex seems such that it does not correspond to reality [40, p. 98]. Because English prison reformers only developed the models of prison discipline introduced in Italian houses of correction.

It is obvious that the basis on which the model of correctional punishment in shelters for minors established by religious fraternities was formed was penitential ideas and corresponding prescriptions of canon law. More systematically, they were implemented in the principles of organising new prisons for clergy and monks, founded by the Roman Curia in the same period and called Penitentiary houses. At the initiative of Pope Urban VIII, such a prison was opened in Corneto in the XVII century. The main purpose of keeping it, in addition to the actual isolation, was re-education, which should be achieved not by violent methods, but by charity, spiritual practices, conversations with the confessor, admonitions and prayers. In the regime of penitentiary houses, the principles of medieval monastic penitential imprisonment were revived. Ideologists of the revived penitentiary punishment believed that isolation in a cell should automatically have a positive effect on the soul of the criminal [41].

The Corneto prison regime and its rules were an innovation. The conditions of detention of clergy and monks who committed crimes in France, Spain, and Portugal were more severe and continued inquisitorial practices. It was the latter that drew criticism from the Benedictine monk Jean Mabillon. About what he wrote an essay in the 90s of the XVII century *Reflections on the prisons of the monastic orders* with a call to reform the system of church punishments.

In *Reflections on the prisons of monastic orders* Mabillion developed a penitential approach and compared secular and ecclesiastical legal proceedings. The main goal of the secular court is to restore law and order and intimidate, while the ecclesiastical court is to restore the soul and its well – being. Therefore, you should always use tools that would make it possible to achieve the goal. When implementing church punishment, preference should be given to the means of influence that are most able to fill sinners with the spirit of mercy and repentance [42, p. 332].

Mabillion emphasised a paternalistic attitude towards sinners: "judges (like the church and, ultimately, God) should show first of all mercy and parental care. Analysing the history of church punishments, Mabillion notes that the Church and of Religion, which does not employ such punishments except to bring its children to a salutary correction" [42, p. 324]. Thus, in the penal concept of Mabillion, the focus is on correction, but it is not related to strict regime. He was skeptical of strict solitary confinement: monks were kept in complete isolation, excommunicated from mass, and there was no one to attend. Such forced "repentance" alone in 4 walls will only lead to the fact that they will lose their minds without communication, walking, or a certain occupation. In such conditions, the prisoner will not feel God's grace, but only sadness and sadness.

What did the author suggest to change? Persons who commit offenses for the first time, according to Mabillon, should not be punished in the form of imprisonment. Fasting and physical labour would be more effective in correcting them. As for the length of the imprisonment, it should depend on the nature of the offense and the disposition of the culprit. One would be more punished by six months in prison than another by several years there [14, p. 591; 42, p. 333]. Prisoners, according to Mabillon, should not be permanently isolated. They should be allowed walking in the fresh air, meeting their loved ones, and providing access to books that would encourage them to repent. But a prisoner can't just read, meditate, and pray for years. It would be worth arranging courtyards near the cells, where convicts could walk, breathe fresh air and work [42, p. 335].

The head of the prison should use all means to comfort prisoners, study their personal qualities, instruct them to correct and repent: "treat the sick, not dominate" [14, p. 591]. It would also be good if priests or decent members of the community visited and communicated with prisoners. Mabillion allowed a certain relaxation of the regime of detention after the first stage of imprisonment, provided that the person took the path of Correction and repentance: first solitary confinement, and then general detention [14, p. 592; 42, p. 335]. Mabillon concluded his essay with the phrase: "I am sure that all this will pass for an idea from a new world but whatever is thought and said about the matter, it will be easy when the desire arises, to make these prisons both more useful and more easy to end" [42, p. 335]. This can be considered the slogan of future prison transformations, although Mabilion's essay has remained a monument of penitentiary thought. Mabilion's ideas not only did not fit into the penal theories of his time [14, p. 593], but also in the penitentiary concept of the XIX century. However, they are understandable from the point of view of modern approaches to serving a sentence: the introduction of correctional programs, social adaptation, and the establishment of positive relations between staff and convicts, as is the case in Scandinavian prison systems [43].

Thus, the ideas of correctional punishment were formed in Europe at the level of doctrine and were implemented in practice in Italian houses of correction for juvenile convicts and penitentiary houses in the second half of the XVII – early XVIII centuries. This was a revival of the ancient paternalistic concept of correctional punishment, supplemented by a religious doctrine that provided for the influence not on the body, but on the soul of the offender to repent, correct and, as a result, return to society by a law-abiding citizen. Essential elements of the correctional regime were: solitary confinement, silence, prayers and spiritual care by

a mentor. The implementation of correctional punishment at this stage took place, in fact, only within the limits of ecclesiastical jurisdiction. At the dawn of large-scale prison transformations in European countries, secular authorities will borrow these disciplinary models, complementing them with the concept of occupational therapy from the experience of European workhouses. They will be most widely implemented in bridewells and penitentiary houses in England as part of the prison reform of the 70s and 90s of the XVIII century.

One of the first English prison reformers to develop the doctrine of correctional punishment was Jonas Hanway. He developed the thesis of *Cesare* Beccaria that it is necessary to apply only those punishments that […] would have the greatest impact on the soul of the criminal [44, p. 103, 105]. J. Hanway was an ardent advocate of solitary confinement for penance and re-education, and was skeptical of joint prison work. The perfect prison that would change the soul of a criminal, J. Henway called it a reformatory. Convicts should be provided with sufficient food, kept in comfortable, safe conditions for health, and there should be no violence in word or deed. A special role was assigned to the priest. The very spirit of prison should carry repentance, then, believed J. Henway, the most notorious criminal will change [45].

In law, the rule of "reforming the individuals" as the purpose of punishment by imprisonment, particularly in the penitentiary house, was first established in the Penitentiary Act of 1779 [46, p. 419], based on which local county prison acts were developed. The Houses of Correction built in counties in the wake of prison reform in 1779-1786 were fundamentally preventive rather than reformatory. The criminals were isolated for the night in solitary confinement, and during the day they worked together. According to Sean McConville, any reformative hopes were speculative and accidental [1, p. 92]. The first institution based on the ideas of reform influence and the principles of strict solitary confinement was the Petworth House of Correction, opened in 1787. The Rules of the House of Correction prohibited contact between convicts: they had to stay in their cells both day and night, performing work that was possible in conditions of strict solitary confinement. In fact, the construction of the Petworth House of Correction revived the isolation of correctional institutions from ordinary prisons, not only in name, but also in content [1, p. 94].

The Petworth House of Correction regime was based on the concept of correctional confinement, which was defended by representatives of Protestant churches. It was first publicly voiced in 1740 by the influential theologian Joseph Butler: "Then, as the only purposes of punishments, less than capital, are to reform the offenders themselves, and warn the innocent by their example, everything which should contribute to make this kind of punishments answer these purposes better than it does, would be a great improvement. And whether it be not a thing practicable, and what would contribute somewhat towards it, to exclude utterly all sorts of revel mirth from places where offenders are confined, to separate the young from the old, and force them both, in solitude with labour and low diet, to make the experiment how far their natural strength of mind can support them under guilt, and shame and poverty. Then again, some religious instruction particularly adapted to their condition would as properly accompany those punishments which are intended to reform as it does capital ones. But since it must be acknowledged of greater consequence in a religious as well as civil respect how persons live than how they die" [47].

A proponent of this approach was George Onesiphorus Paul, who implemented a large-scale prison reform in Gloucestershire and opened England's first penitentiary house in 1791 in Gloucester. G.O. Paul noted: "I am far from thinking that prisons should be places of *Comfort*. They should be Places of Real Terror, to those whom the Laws would terrify; of Punishment to those whom they would punish […] The regime should be such as will produce Reflection; the Food such as will support Life, and preserve Health, but by no means animate the spirits. Dejection and Solitude are the natural Parents of Reflection'. Even religion was to offer little comfort: The Terrors of a future World are Essential to the Reformation of Men, who have learnt to brave the Powers of this" [1, p. 100].

A different approach to correction was implemented in the Southwell House of Correction: solitary confinement was applied only to newly arrived convicts and violators of discipline; convicts were placed in separate blocks of 5 people. Chaplain of the institution Rev. John Thomas Becher argued that the correction and formation of positive habits is possible only in society. Joint detention extended to a small number of people, which, with the careful control of supervisors, made it impossible for criminals to negatively influence each other, but allowed achieving correctional influence [1, p. 122]. Thus, in Gloucester, correction had to be achieved through solitude and reflection and, as a result, repentance, and in Southwell – through work, the formation of positive skills and social adaptation. But in both cases, the prison chaplain should have been the key figure in the correction process.

These approaches to correcting J. Bentham contrasted the concept of a Panopticon, which combines correctional influence and control. A criminal in solitary confinement in a Panopticon is not so much to reflect on what he has done, pray and repent, as to learn to control himself and work. These are the main components of correction and a return to a law-abiding life. Solitary confinement, as noted by J. Bentham, in essence,

corresponds to the purpose of correction and Panopticon is most suitable for this. For a jailer, there are many prisoners, but not a crowd, all of them alone. Thanks to the architectural solution of the Panopticon (the rounded shape of the building, cell windows and latticed doors), everything that happens in the cell is clearly visible from the central point where the inspector's inspection "cabin" is located and he can observe all the cameras, but remains invisible [48, p. 5-20].

As you can see, J. Bentham adopted Giginta's idea of centralised surveillance, the purpose of which is to influence delinquents (even technical subtleties are borrowed, and this suggests that J. Bentham or his brother Samuel was familiar with the Spanish treatise – *auth*.) and supplemented it with architectural innovations, which were first tested in the House of Correction of St. Michael in Rome. J. Bentham tried to create the illusion of constant surveillance in the Panopticon. The convict could never be sure that he was not being controlled, and was forced to constantly behave as if he was being watched.

Later J. Bentham revised the thesis of solitary confinement as a necessary condition for correction. After analysing the organisational foundations of the new prisons, where the division only for the night prevailed, J. Bentham came to the conclusion that the disadvantages of solitary confinement are much more than the benefits. Security and correction can be achieved through clear rules and proper management, not just strict isolation. With a reasonable distribution of convicts for cohabitation, the Reformation impact should have been preserved [34, p. 33-34].

The Project of the Panopticon by J. Bentham was one of the last purely theoretical correctional concepts. At the level of doctrine at the beginning of the XIX century in Britain the concept of *a system of penitentiary imprisonment*, which is understood as "a system of imposition, not confined to the safe custody of the person but, extending to the reformation and improvement of the mind, and operating by seclusion, employment, and religious instruction" [49]. It is this approach that will be decisive in the next 100 years: prison reformers will implement disciplinary models in practice, organising large-scale penitentiary institutions for hundreds of prisoners and experimenting with correctional measures.

## CONCLUSIONS

The conceptualisation of correctional punishment was the basis of the penitentiary discourse of the XIX century. The Anglo-Saxon experience became a model for building national penitentiary systems, which led to the creation of the myth of the exceptional primacy of English and American prison reformers in their foundation. However, it was not possible to create an ideal model of correctional punishment, and the world penology is constantly in search of effective forms of correction. Although it is difficult to imagine that previous generations have created concepts that may be of not only historical, but also practical interest, it is worth noting the modest progress of humanity in the field of ideas, and this, on the contrary, forces us to get rid of mythological perception and recreate the origins of the doctrine of correctional punishment.

The first conceptual ideas regarding correctional punishment are found in Plato's reflections, which contain a paternalistic vision of the role of the ruler in the upbringing of subjects, the formation of law-abiding behavior, which was developed by Roman lawyers. Thus, even in ancient times, an anthropocentric concept of punishment was formed, the purpose of which is to correct and return to society. In the early Christian period, it is supplemented with a penitential component. The first penitentiary institution, in fact, in which the origins of correctional punishment in the form of imprisonment lie, was monastic imprisonment.

Calls for the humanisation of the system of punishments during the Renaissance are conditioned by a utilitarian approach: it is unwise to take a person's life, if it can bring benefits – to work. In the XVI century, labour, not only as a punitive element, but also as a correctional one, became the basis of social policy implemented in workhouses. Innovative ideas for the organisation of centralised supervision of delinquents to achieve their correction first formulated by Miguel de Giginta in 1579. This approach was later upgraded by Jeremy Bentham in the Panopticon concept.

The ideas of correctional punishment were formed in the European expanses at the level of doctrine and had practical implementation in correctional and penitentiary houses in the late XVII – early XVIII centuries. This was a revival of the ancient paternalistic concept, supplemented by a religious doctrine that provided for influencing the soul of the offender for the purpose of repentance and correction. The analysis of the regime principles of correctional institutions in Florence and Rome gives grounds to conclude that it was during this period that two penitentiary systems: solitary confinement and congregate system which in the XIX century will compete for the championship in penal practice in most countries of the world. Given this, the thesis that the forerunners of these systems were the regime principles of English correctional houses seems such that it does not correspond to reality. The main components of the correctional regime that originated in previous periods: solitary confinement, silence, spiritual care and work, at the end of the XVIII century were borrowed by English prison reformers, supplemented and implemented in the practice of correctional houses.

The quintessence of the above-mentioned concepts became the basis for the formation of penitentiary systems of the XIX century, which proves the progressiveness of the ideas of correctional punishment, especially given the fact that some of their elements are still used in the practical activities of prisons and correctional institutions.

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