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Punishment between narrative dimensions and today's challenges

This Forum seeks to explore, from an interdisciplinary perspective, key issues related to punishment, with a particular focus on the relationship between punishment and its narration – understood in a broad sense that encompasses multiple forms, including fictional narratives, biographical accounts, and worldviews conceived as theoretical frameworks shaping our practices of life. This approach allows for the identification, on the one hand, of the patterns of thought that have contributed to the normalization of certain entrenched critical aspects of punitive practices, and, on the other, of more recent conceptual frameworks that prompt philosophical and legal reflection on punishment to confront emerging challenges.

What follows is a summary of the central arguments and theses presented in the various contributions.

Giulia Battistoni and Chiara Magni (*The Right to Punish Today: Navigating Scientific and Cultural Shifts*) introduce the key conceptual tensions that run through the volume, offering a critical framework for the essays that follow, while underscoring the contradictions that continue to affect the meaning and legitimacy of the right to punish. Retributive justice, often equated with institutionalized revenge, has been widely challenged since the Enlightenment. Utilitarian approaches – centered on deterrence or rehabilitation – raise concerns about the weakening of individual responsibility. The intrinsic violence of punishment remains difficult to justify, fostering interest in alternatives like restorative justice. Narrative forms – like fairy tales and prison writing – reveal punishment's symbolic and emotional undercurrents. Foucault's account of punishment as biopolitical control offers a critical lens on the modern penal system. At the same time, neuroscience and forensic psychiatry increasingly question the foundations of legal responsibility and free will. Still, retributivism retains essential legal principles such as guilt and legal certainty. Rather than advocating the abolition of punishment, the authors propose a renewed approach that affirms human dignity, moral agency, and a reflective, ethically engaged role for judges.

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Building on this conceptual groundwork, the focus turns to a specific narrative tradition – European folk and fairy tales – in which ideas of responsibility and punishment are both reinforced and contested.

Elisabetta Orlandi (*It's only fair... It's only a fairy tale! A reflection on responsibility and punishment in European folk and fairy tales*) explores the intertwined themes of responsibility and punishment in European folk and fairy tales, highlighting their dual role as pedagogical instruments and vehicles for subversive critique. Drawing on both oral and literary traditions – from the Grimms and Sicilian folktales to the French salon tales of the 17th century – the author examines how these narratives shape individual and collective moral frameworks by presenting characters who must act – often in difficult circumstances – and face the consequences of their choices. Responsibility is approached on two levels: as the storyteller's duty to build and strengthen a sense of belonging, and as a process, a path that must be explored to disclose the character's full potential. This journey often leads to reward, while failure to meet communal or ethical standards results in spectacular and often grotesque forms of punishment. Although the retributive scheme prevails in folk and fairy tales, they also employ irony, sarcasm and theatricality to question authority and expose structural injustice: punishment is not merely “didactic”, but deeply embedded in issues of power, gender, and class. For Orlandi, folk and fairy tales thus function as cultural mirrors – sometimes upholding social norms, sometimes offering an imaginative space to resist and reimagine them.

From the moral and imaginative narratives of folk and fairy tales, the focus then shifts to personal and historical narratives, where lived experiences of punishment reveal the power of storytelling to challenge, expose, and rethink the structures of justice.

Sophie Rothé (*Punir le système carcéral? Des lettres de prison prérévolutionnaires au service d'une réflexion sur la punition contemporaine*) explores the punitive function of the prison system through a historical and literary lens, focusing on the prison letters of Mirabeau and the Marquis de Sade during the pre-revolutionary period in France. These writings offer a rare and critical perspective on the carceral institution at a time when Enlightenment thinkers such as Beccaria and Voltaire were calling for penal reform. Mirabeau and Sade, imprisoned by *lettre de cachet* without trial, denounce the arbitrariness, disproportionality, and cruelty of their punishment. Their letters, marked by vivid descriptions of inhumane conditions and rhetorical reversals of power, becomes both a personal defense and a political indictment, revealing the prison not as a place of

correction but as a site of physical and moral suffering. Their critiques anticipate many concerns raised in present-day discussions: the disproportionality of punishment, the inhumanity of prison conditions, and the need for systemic reform. Mirabeau and Sade, by challenging the justice of their time, offer an enduring critique that echoes today—urging us to rethink how we punish and whether we can do so in a way that preserves human dignity.

These historical and literary accounts invite a broader reflection on how narratives – both personal and cultural – continue to inform our understanding of punishment and justice.

Vera Moser (*The Influence of Worldviews on Criminal Policy. From Newtonian Mechanics to Forensic Psychiatry*) argues that worldviews – culturally shaped narratives – deeply influence how we understand criminal law, justice and morality. After contrasting Kant’s retributivism with Bentham’s utilitarianism, Moser highlights a contemporary shift toward crime prevention, rooted in Franz von Liszt’s call for a scientific criminal law capable of predicting crime. This led to practices like preventive detention, justified by psychiatric risk assessments or algorithms. Moser traces these to Enlightenment worldviews shaped by determinism (every act has a cause) and reductionism (complex behaviors explained by simpler components). Her main argument is that Voltaire imported Newton’s mechanical and physical worldview into morality, wrongly applying it to human behavior and that von Liszt embraced this view, seeing crime as scientifically predictable. Yet Moser critiques this as based not on empirical science but on a transposed worldview. Today’s forensic psychiatry inherits the idea that behavior can be assessed by dissecting the psyche into biological and social factors. Recognizing that criminal policy still rests on worldviews is a crucial point when it comes to measures like preventive detention.

This reflection on the influence of scientific worldviews in shaping criminal policy sets the stage for a closer examination of how scientific expertise operates within the courtroom itself.

Alessia Farano (*The legitimization of ius puniendi via science. The case of expert witness*) explores how scientific expertise – particularly genetic and neuroscientific evidence – is used in court to justify punishment, reflecting a truth-oriented, cognitivist model of justice. Rooted in Enlightenment ideals, especially Bentham’s notion of truth as a basis for just punishment, this model relies on expert knowledge, as also emphasized by Foucault. As confession alone becomes insufficient, science – especially psychiatry –

gains a central role in producing “judicial truth”. Neuroscientific evidence is used to demonstrate mental disorders and support insanity defense, challenging the concept of free will and destabilizing traditional theories of responsibility and punishment. This creates a paradox: the search for truth risks eroding responsibility, grounding *ius puniendi* in deterministic and consequentialist logic. Farano thus rejects deferentialism – the uncritical acceptance of expert testimony – and argues that judges must retain the responsibility to critically evaluate scientific input. This approach preserves the Enlightenment value of democratic truth-seeking while avoiding overreliance on science. Neuroscience may also foster a more human, individualized justice, promoting a rethinking of the philosophical foundations of *ius puniendi*.

Together, these contributions shed light on the narrative dimension of punishment, revealing it not only as a legal practice but also as a cultural, historical, and epistemological construct. From the moral worlds of fairy tales to the personal and political critiques in prison letters, punishment emerges as a story we tell – to educate, justify, or resist. These narratives shape collective understandings of responsibility, guilt, and justice, oscillating between conformity and critique. At the same time, legal systems today face major challenges. Advances in neuroscience and forensic psychiatry have reshaped our understanding of legal responsibility, calling into question the existence of free will and destabilizing traditional retributive frameworks.

The articles included in this Forum thus offer tools to problematize these tensions and raise awareness, while also suggesting possible pathways toward more just and reflective legal practices.