

Chapter 11

PUNISHMENT OF SEX OFFENDERS

Before turning to discuss the subject of this chapter—punishment of sex offenders—it is important to discuss the general characteristics of punishment as a whole. Antony Flew holds that punishment must contain at least five elements that distinguish this term from other hardships people may suffer from. First, the person who is punished must consider it a hardship or unpleasantness; this means that a punishment cannot be something beneficial to the punished person (I will argue later in this chapter that the rehabilitation of offenders cannot be considered punishments). Second, it should be a reaction to an offense, meaning that people should not be arbitrarily punished for no reason. Third, it should be inflicted only on the guilty offender and not imposed on innocent victims or suspects whose guilt has not been proven. This is a very important component, since it prohibits us from arbitrarily punishing persons who did not commit a crime or an offense. Fourth, punishments do not include natural disasters that harm human beings, but are administered by human beings. Fifth, punishments must be imposed by virtue of special authorities conferred by a system of rules, against which the offense has been committed; a person cannot take the law into his own hands to beat up a cheating neighbor, for example.¹ This general concept of punishment provides the background for certain expectations we have for the punishment of sex offenders.

Our usual guidelines and principles regarding punishment are somewhat insufficient when we discuss punishment for sex crimes, due to the propensity of these types of crimes to arouse extreme emotional reactions. In addition, there is often an assumption that sex offenders are not “regular” criminals but are “diseased,”

¹ These elements of punishment are In: Flew Antony. “The Justification of Punishment.” In: *Philosophy*, Vol. 29, No. 3, October 1954, pp. 293–295.

“ill,” or “sick.” This chapter, hence, deals with two related issues in which these points surface. One is the tendency to reduce the sentences of teenage sex offenders, both in length of incarceration and in severity of punishment (sometimes minimized to community service). The other is the relatively new idea of mitigated punishment pending the criminal’s consent to chemical castration. Both are complex in that not only do they expose ambivalent positions vis à vis sex crimes, but they problematize the concept of punishment itself.

In this chapter, I discuss two aspects of punishing sex criminals. The first deals with the outrageously mild punishments that are meted out to brutal sex criminals, something which strikes at our deepest instincts regarding the proportionality principle in which the punishment must fit the crime. The second example deals with the offering of plea bargains by the prosecution, in which curative treatment to the sex offender is a stipulation for reduced punishment. In this case, I argue that rehabilitation is not part of the prosecution’s role as a legal authority.

CASE 1

This case deals with the phenomenon of imposing extremely mild penalties on sex offenders in Israel and is at least partly relevant to other countries where penalties are also relatively mild. The first case deals with a group of teenagers who brutally raped a high school girl over a period of several months and were sentenced in the Tel Aviv District Court to very short periods in prison. The two leading offenders were sentenced to 4 years in prison, another one was sent to prison for two and a half years, and most outrageous of all was that the other four convicted offenders were not even sentenced to imprisonment, but only to 6 months of community service. These were the punishments for committing numerous gang rapes of a young girl. There are many other examples of scandalously mild punishments for sex offenders, such as the 6 months of community service and 8-month suspended prison sentence imposed (by an Israeli Natanya court) on a 24-year-old man convicted in February 2005 for nine cases of sexual attack of girls between the ages of 6–12 years old. The offender did not spend even 1 day in prison for the attacks, and it is almost anti-climactic to say that during the period of community service, the man sexually attacked a 7-year-old girl twice. Another horrific example is the case of a truck driver who tried to rape a young female hitchhiker. The young woman managed to escape her attacker by jumping out of the truck, but unfortunately she was run over by another truck and a car and was killed. In June 2005, the attempted rapist was sentenced by the Court of Hadera to only 1 year in prison (of which he will be incarcerated for no more than 8 months). These three representative examples point to a widespread phenomenon regarding the social norms and values of a State which metes such mild penalties for sex crimes.