

The History of Penal Law

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The Paper traces the history of Penal Law. It explores the foundation and the end of penalty. Preliminarily, the Author discusses the two reasons which motivated the study, namely: (1) the penal law has lived, is constantly living, and is always seen in life; hence, the necessity of inquiring into the foundation of its existence or of the right of the State to impose its sanctions; and (2) when one treats of infusing a higher judicial essence to the diction, to solve questions in the light of the juridical order, then there arises a need to penetrate deeply into their entrails.

The Paper goes on to discuss the more important schools of thought which seek to explain the end that should guide the State in the establishment of penal sanction. These are known as Classical, Correctionalist, Positivist, Critical, and Sociological.

The Classical school considers a crime as a juridical entity (*ente juridico*), an aggression not remaining solely on the terrain of pure acts but a juridical attack (*acontecimiento juridico*), an assault against the penal norm, an infraction of the law of the State. The said school of thought is further classified into three theories purporting to explain the foundation of the right to punish, i.e., absolute, relative, and mixed theories.

The Positivist school, on the other hand, shifted the point of reference and study from the crime to the criminal. Penalty is herein regarded as a means of social defense, and not operating beyond being a means of defending society. Also mentioned are new orientations known as the technico-juridical school, the humanist penal school, the so-called school of actualist idealism, and the school of pragmatic tendency.

Among the main tenets or doctrines of the Classical school, one stipulates that imputability is based on free will and moral responsibility.