Chapter I
Scope of the Work

1 From the Most Abstract to the Most Concrete

The main object of this investigation is that of the basis and the goal of punishment considered from a critical standpoint vis-à-vis the right to punish. Studies and works dedicated to punishment are scarce when we compare them to those dedicated to crime theory or some aspect thereof. The idea of punishment presents itself to us at first sight as a something we could not do without in a society which wishes to maintain order. That it fulfils a basic social function is an undeniable fact. What we set ourselves in this study is the why and what-for of punishment, and, likewise, the limits of the right to punish. Simply put, not everything goes. To this end, we pass in review the main doctrines that have dealt with the theme from Antiquity to the present. We shall not limit ourselves to the legal-philosophical sphere but shall also analyze the contributions of other of the Social Sciences. Together with theoretical approaches to the basis and goal of punishment – the focal point of our study – we shall, in the final part of the book, touch upon how these are reflected in the sphere of Positive Law.

When deciding upon the plan of the book, it seemed to us useful to carry out the study process by moving from the most abstract and general to the most concrete and specific. Thus we distinguish between various subjects relating to the concept which are not exactly equivalent

---

and that, nevertheless, are often terminologically confused with one another. These thematic blocks are:

- Punishment, as the widest concept, called *châtiment* in French, *castigo*, in Spanish. It is not exclusively used in the legal world, but also in the worlds of Pedagogy, Medicine, Psychology, Sociology, Literature, and the like. All these spheres will be taken up in the first part of the book.

- Punitive Practice — *sanction pénale, sanción penal* — touches upon a more concrete sphere, the legal world already mentioned and the law, one of whose prime characteristics is precisely coercion.

- Sentence — *peine, pena* — constitutes the third subject of our analysis. Here, the least generic concept is dealt with, having to do with that patch of law which is basically made up of Criminal Law. This constitutes the central part of our work and also the most extensive. There, via a dual structuration, we distinguish between punishments and deterrents, as the prime types of punitive practice, with a distinct historical tradition, diverse bases and functions, around which different sorts of theories and schools have developed: absolutist-retributive; and relativist-preventive, both general and special, in all their different forms — under the aegis of the State, also differently conceived.

- Penalty — *pénalité, punición*. This theme is analyzed in the final part of the work which closes with a series of critical conclusions as to what, in our opinion, should be a correct conception of punishment. This is true especially where penalty appears in other disciplines outside Criminal Law, mainly, though not exclusively, administrative sanctions.

2 **An Interdisciplinary Approach**

The subject of punishment has been one of the matters which has given rise to more philosophical reflection than any other since the Classical World. It has attracted thinkers from the most diverse schools and tendencies, from Plato or Aristotle, through Saint Thomas Aquinas, Thomas Hobbes, John Locke, Immanuel Kant, Georg Wilhelm Friedrich Hegel, Jeremy Bentham or John Stuart Mill, to the current legal-philosophical doctrines, especially the Anglo-Saxon.4