

Justifiability of the Differential Punishment of Citizens and Noncitizens: A Legal-Philosophical Perspective

More people migrate than ever before, both in Europe and around the world. This is beneficial in many ways and negative in others. One of the problems stemming from increased migration is the growing number of crimes committed by foreign offenders. The number of foreign prisoners is increasing as well. In order to deal with this problem, parallel justice systems have developed that are aimed at both criminal justice and migration control. Noncitizens (that is, offenders who are not citizens of the country) are placed in separate institutions, or distinct institutional arrangements and afforded different standards of rights. In short, they are punished differently.

This fact has not escaped the attention of criminologists and sociologists. However, legal philosophers have had little to say about differential treatment of noncitizens. Hundreds of books have been written on why we punish and what punishment should achieve. However, the fact that some of the criminals are not citizens and that they are punished very differently escaped their attention as of yet.

This project aims to fill this gap. It asks whether we are justified in punishing noncitizens differently. Is it justified that a person is deported for a minor crime just because this person is not a citizen? Why is it that citizenship matters so much? Should it be like that?

In order to shed light on such questions, this project will proceed in two steps. First, in close collaboration with criminologists, it will assess and describe all the different ways in which foreigners are punished differently - and there are many, ranging from deportation to early release schemes for foreign prisoners. The project involves a research stay at University of Oslo to help with this task - this is where the world's best criminologists concerned with the treatment of foreign offenders are based.

Secondly, it will analyse whether this differential treatment is justified from the point of view of most important philosophical theories of punishment. There are two philosophical questions.

First, we want to know whether those real, currently existing differences in punishment are justified.

Second, we want to know whether differential treatment of noncitizens is justified *in principle*, whether any differential punishment would be justified. The answers to those two questions are likely to differ in a major way. Current punishment differentials may be unjustified and wrong, but it does not necessarily mean that different treatment of noncitizens is always wrong in principle.

Philosophy is often an activity quite detached from the problems of the real world - for good and bad. In comparison to most philosophical reflections, this project is very practical. We are looking at a real problem and the cooperation with criminologists is there to ensure that we do see it clearly. At the end, we will have a philosophical assessment that can be used to shape public policy.