

## THEORIES OF PUNISHMENT

Notes of prof. Torrente's lectures +  
Chapters 15 and 16 (Philosophy of Law - Mark Tebbit)

### JUSTIFY PUNISHMENT BY ITS EFFECTS (INSTRUMENTALISM)

Do we need to justify punishment? Or is it justified in itself?  
Can we say that punishment is a kind of social reaction? Maybe yes.

**Punishment** comes after something retained dangerous.

Who has the rights to give or implement this reaction in our modern society? The State.  
From when the state obtains the monopolistic rights to commit this reaction? When does the state obtain the right to be the only one to make this reaction?

From the Enlightenment/from the modernity, European and north American countries obtained the right to use the **violence**, the force in a monopolistic view, in order to punish.  
(In the past there were many subjects that had this right to punish (*f.e.* nobles).

The main tool that the state uses in order to punish is the **IMPRISONMENT**:  
from the late 17s and the beginning of 18s the deprivation of freedom and liberty has become the main tool adopted by these states in order to punish.  
Before this, in Middle Age society it was used **torture**, for example; before the Enlightenment and the modernity, there were several tools adopted by different societies in order to punish (mostly of them are now disappeared, some of them are still applied in some countries).  
After the Revolution, the main aim of the criminal law/politics in modern society was to move from a kind of punishment that directly touched the body of the convicted, to a kind of punishment that touches the mind, the freedom, something deeper from the body.  
Not by chance, the US constitution forbids any kind of violence against the convicted. Final **goal**: to kill without make suffer.

If we move "from the body to the soul", with which purpose do we decide to punish during the modernity? **Which is the final goal of punishment?** Re-education, re-habilitation, deterrence...

**Modern theories of punishment** can be divided into two main approaches/theories that include many different purposes:

1. The **utilitarian theories (INSTRUMENTALISM)**, the rehabilitative/correctional theories.
2. The **retributivist approach**, which moves from the idea that some crimes deserve a punishment; there is a strict connection between the action that has been committed by the convicted and the social reaction (it is justifying itself).

## UTILITARIAN THEORIES

Instrumentalism, in the philosophical language, is a synonym of utilitarianism.

Moving from that idea, the pain/suffering of punishment is not justified in itself, but it is justified for the effects (the **positive effects**) that punishment will produce; of course, these positive effects could be several (in this approach we can find many theories as there are different points of view), but they have the common idea that punishment is not justified in itself, it is justified by the final goal that it will produce. Punishment is justified only when it produces positive effects, which could be several.

These theories recognize that punishment is a social violent reaction against crimes, violations *etc.* What is important in this approach is that we can find many different theories, but they have the common idea that **punishment is not justified in itself, it is justified by the final goal it produces.**

Theories of punishment are not ONLY theories: in many situations we can find the concrete application of them, as they have become concrete policies adopted by the states in order to reach the goal they found as important.

Regarding the correctional approach/instrumentalism, we can probably find three main penal strategies that have been/are adopted:

1. The **preventive strategies** --> It moves from the idea to remove dangerous people/offenders from society. *f.e.* psychiatric hospitals, schools, confinement of migrants detained not for having committed crimes but as a preventive tool adopted by the state in order to control them;
2. **Deterrence in punishment** practices--> The use of punishment as a deterrent is the threat or the implementation of punitive sanctions in order to reduce crimes.

In order to do that, it has been largely adopted in many societies with two different goals:

- Specific deterrence is aimed at reducing recidivism and is directly applied to the person convicted; it provides a long period of detention. This is an easier way.
- General deterrence, a policy adopted in order to try to reduce all the crimes committed in societies.

3. **Rehabilitation** practices --> they are adopted with many different practices in order to promote rehabilitation or the reintegration of persistent offenders into society.

### Criticism of the instrumentalist theories:

Which are the positive features of the instrumentalist approach and which are the critics that we can move against this approach?

Instrumentalism is a theory that has been largely applied, but many critics both by philosophical and sociological point of views have been moved against it.

- It doesn't punish according to desert --> if desert is removed by justification: inappropriate light sentences for serious crimes;
- Offenders are treated as a means to an end, rather than as responsible human agents;

- The pursuit of utility leads to injustice.

### Critics moved by philosophical point of view

The most important critics of the philosophical law moved against instrumentalist approach comes from the classic critic moved by **Immanuel Kant**. He critic all the utilitarian and instrumental approach as he thought that human beings in this politics are thought as tools in order to reach goals; in Kant's view, in this approach human beings are dehumanized, as they are not considered as human beings (with their will and options in order to choose different solutions) but they can become tools adopted by the state in order to reach the goals of the state.

This could be seen as a theoretical critic, but in the fact, many correctional practices that have been adopted in societies show how this critic could be real.

- ➔ Human beings lose their humanity in order to become a tool adopted by the state in order to provide a final goal of the state (to avoid migration, *f.e.*).

This is the most philosophical critic.

- ➔ Another critic is connected with it; it moves from the idea that many of the policies that are tried to be achieved with instrumental policies, can implement politics that in the fact will not have limits to the potential suffering of individual and minorities.

**Video** explains the differences between formal goals of that kind of laws and the social impact of the law.

Which is the limit of instrumentalism? Which is the limit that the state can reach in order to achieve final goals?

If we move from Kant's critics, we have to think about the legitimation of some kind of punishment in order to achieve some goals.

In another point of view, there is another question:

Which rights have to prevail in order to enact criminal policies?

The **video** shows two kinds of rights: the rights of the **victims** to recognize that some kind of crime has been punished and to avoid that some dangerous criminals repeat them and, at the same time, there are the rights of **minorities**, crimes strictly connected with social inequalities, foulness *etc.*

The final effects of the implementation of politics like this is to produce effects that are worse than the damage produced with crimes.

- ➔ In 2010 US had reached levels of almost 3 million of imprisoned people. After then, prison population in US come decreasing (rules changed).
- ➔ There are critics that could be made against coercionist approach, as probably sometimes it matches with the problem to use human beings as tools used by the state in order to reach goals (security, social order *etc.*); in order to do that the states use tools that are not completely morally acceptable.
- ➔ Are there some limits that the states have to consider in order to apply deterrence policies, or not?

→ **Law** has to think about a more general situation, it **shouldn't be enacted in order to answer to the emotions that follow some terrible crimes.**

### **Justify punishment retrospectively (RETRIBUTIVISM)**

- The approaches previously discussed have the common feature that they aim to pursue some goals that are in the future (correction, prevention, deterrence, etc.)
- The other points of view in the theories of punishment are those theories that justify punishment retrospectively, in the past; the most important theories in this approach are the **retributivism theories**, which have the common feature that don't try to justify punishment in the view of the final goal the punishment has to reach, but they justify punishment looking in the past, in the **offence** committed by the convicted.
- With this idea, we don't need to justify punishment as it will be able to rehabilitate and prevent crime, but in this view, **punishment** is justified and **derives from the offender's decision to break the law**. The violation of the law and of the rights of the victims is the justification of punishment.

Breaking the law is the justification of a social reaction: the punishment.

The past events/actions (and NOT the final goal) justify punishment.

Commitment of a crime is needed in order to justify punishment.

→ In this view, we can find two of the most important European philosophers of Enlightenment:

- **Hegel**; in his view, the punishment has of course a final goal, but it is not a social final goal, nor a criminal justice final goal: it can be defined as an ethical final goal, the goal to **nullify the crime**: the crime disappears as the sanction/punishment is the retribution that the state gives for the crimes committed. This **retribution** is what you have to pay for having committed a crime; when you have paid it, the crime disappears. The sanction finally produces the elimination of the crime both in the legal point of view (as after you have paid for your crime you still can come back in society and are a citizen that has paid for his crime), and also in a moral point of view.

Hegel introduced the idea of the **deserve theory** --> there are some crimes that deserve some kind of social reaction, which needs to be proportional with the crime committed. It is the idea that you have to pay for the crime committed, and once you pay for it, it's done, the state cannot apply any kind of preventive measure of control.

The criminal justice must be focused on the **action**, not on the people.

- The most important philosopher that has discussed the retributivist approach is **Kant**.

Kant has critiqued instrumental approach, as it uses human beings as tools in order to reach final goals that are the goals of the state, not of the human beings.

The point of view from which he moves is the idea that the offender has a free choice: he is free to commit a crime or to not commit a crime. The decision to commit a crime is a free choice, so, if they decide to commit a crime, they deserve a punishment/social reaction, BUT as we are in Enlightenment, there are some **LIMITS**. The idea in Kant's view is that someone's freedom finishes when it starts the one of another citizens.

With Enlightenment there is the idea that the only one that can use force violence is the state, so citizens cannot react against the offender, but there is another institution, the state, that can react for the citizens. But in this reaction, there are some limits, as there is the idea of **human rights**; by punishing the person who has committed the crime, the state is PROTECTING him; f.e. torture is not allowed as it would be something against the protection of the **dignity** of the offender.

→ Story of **Cain and Abel** (Cain killed his brother and after that citizens tried to kill Cain for what he did; surprisingly, God was coming and told to the citizens "*Nobody has to touch Cain*"; Christianity --> idea that only God can punish the crime committed by Cain).

This idea has been replaced in the **Enlightenment** where God is replaced by the State; the State is the unique entitled to use violence, using the power of punishment, but at the same time it is protecting the offender's dignity from any kind of social reaction.

This is not just a philosophical idea; it is also at the base of the **protection of human rights**.

Retributivism --> it is important the idea of the LIMITS in the use of violence.

**Some kinds of social reaction could be harsher than the punishment itself.**

There are mainly three levels of **critics** that have been moved to the **retributivism approach**:

1. The first one regards the **MORAL STATUS** of the retributivism approach.

Retributivism moves from the idea that punishment is an alternative to revenge; punishment applied by the state should be something different from revenge.

The critics that have been moved to this approach is that in the fact when we look at the concrete modalities with which punishment is applied, we can often find an institutionalism of revenge, therefore the critic moved to the retributivist approach is that it hasn't found an alternative to revenge, but it has institutionalized it.

Another point: today the criminal justice does not punish only serious crimes, but, in the fact, mainly regards less serious offences; do we really think that also these least serious crimes deserve a punishment? It is easy to state that serious crimes deserve a punishment, BUT do we really think that also less serious crimes deserve a punishment?

If we move from the Kantian idea, all the crimes committed deserve a punishment.

The sphere of criminal law control is very large; in our society there are many light crimes that we could commit in our daily life.

There are very petty crimes for which criminology teach us that punishment of these crimes is the worst thing we can do, as punishment is not just a social reaction, but in the fact, it produces effects on the people that receive it, and these effects are bad (they produce **social stigmatization**, f.e.).

The system needs to be flexible. Probably not all the crimes committed deserve a punishment.

2. The other critic that has been moved is the **problem of intelligibility**; what we really mean when we state that a crime deserves a certain amount of punishment, what do we really mean when we state that a specific crime deserves a specific kind of punishment?

Problem of 'fit and match': what is the connection between the fit of the crimes and the match of punishment that they deserve? --> problem of proportionality: if we start to decide about what a crime deserves, it is very difficult to find a common idea on what crimes deserve as reaction.

Retributivism approach does not adequately consider the social conflicts: punishments are very different from different societies and also in a state it is controversial the idea of 'what has to be punished' and the problem of the amount of punishment.

Criminal codes are the final product of a social agreement about what to punish and which amount of punishment it deserves.

To state what a crime deserves is very difficult.

3. **Problem of rationality** --> as it is difficult to find a rational agreement about what a crime deserves, what seems to happen is that sometimes the social reaction and the definition of what a crime deserves is not founded using rational tools, but is reached using **emotional tools**; criminal justice seems to be affected by an emotional influence that is more important than the rational approach.

Retributivism approach moves from a rational philosophical idea (to avoid violence, *f.e.*) but in the fact if we use the sociological tools, we see that criminal justice's decision about how to punish is strictly connected with the emotional aspect that often follows some crimes.

The critics that have been moved to the correctional approach/retributivist approach is that they are based mainly on emotional ideas which seem to justify harsh punishments (in order of what are the emotions that this crime has produced); there is a difference between what a crime rationally deserves and the emotions that crimes produced and the actions that those emotions will follow).

Many times, criminal justice is moved by emotions and not by rationality.

- ➔ Retributivists' answer: the retributive emotions, controlled and channeled by law, express a wholly legitimate response to crime and this in itself constitutes a justification.

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## **CRITICAL PERSPECTIVE ON CRIMINAL JUSTICE AND PUNISHMENT**

Since the 1960 after the first half of 20th century, mainly Unites States (but also Europe) have started empirical researches studying how in the fact the criminal justice works, as the criminal justice (after the modernity), is founded on some general principles that regulate criminal justice system.

The idea from which these researches moved is the question 'is there any difference between principles and the concrete application of the law? Can we state that the general principle of equity, of rule of law, of dignity *etc.* are in the fact concretely applied by the criminal justice system?'

Of course, these researches moved from a philosophical theoretical approach with law to a more sociological one. The researches that moved from this approach left the Kelsen idea of a mere theoretical study of law, trying to investigate how in the fact law works.

In particular, these researches began in US in the west coast (California university) with 2 main approaches: **sociological** and **anthropological approach**. Not by chance, these researches have been thought and processed in US, where the influence of legal realism of course has a role in promoting this kind of research (legal realism paid a lot of attention in law in the fact). In Europe this research has been done later because its traditional approach with law was more influenced by Kelsenian approach.

### **SOCIOLOGICAL METHOD**

It tries to find evidence from the reality, from the concrete application of law adopted by the criminal justice.

These researches individuated 4 main points about the **RADICAL CRITICS** on criminal justice in MODERN legal systems:

1. **Unfair** aspects of standard **trial procedures** --> trial procedures should be fair and equal between citizens, but many researches found how they are unfair in the fact; people with less economical resources match more difficulties when they have a criminal trial and have to fight in a criminal trial, whereas people with more economical resources have more opportunity to not be found guilty in a criminal trial.
2. They have been found several kinds of **discrimination against women or ethnic minorities**. Many evidence has been produced about the discrimination in the field of feminine crimes, sexual crimes *etc.*, as criminal justice system has been thought mainly by men. Furthermore, there are many evidences about discrimination that minorities find in criminal trial procedures and also during the imprisonment (in US in 2010 there were more than 2,5 millions of jailed people and large part of them was represented by minorities such as black people and Hispanic people).
3. The ideology of **equality** comes **in conflict with the concrete criminal justice practices** (Courts, prison system, police social control) --> what we call principle of equity and equality seems to be in many cases more than a principle, a real ideology in conflict with the concrete criminal justice practices.
4. Criminal justice system seems to have a general **contradictory approach** in many situations.

### **The critic of the Enlightenment liberalism**

Some of these evidences produced by empirical research and critics move against the idea that has founded the Enlightenment ideology: the idea of the *mens rea*, which is the idea that if there are no kinds of mental illness problem, we have to consider the social agents (the individuals) as free rational agents.

The liberalism idea is founded on the idea of rationality: you are a free agent that can choose what to do. As you are a free agent in the social relationship, if you commit a crime, it is your fault and you have to be punished for this (same ideology of the retributivism approach).

- The critic is that this idea of the social agents/individual does not consider the social dimension of the rationality and the individual as social actor.

**We are not free as we live in a social dimension where our action is influenced by the social dimension.**

We have different opportunities to decide and the social position influences the opportunity to commit a crime and on the other side the opportunity to be found guilty and, moreover, if the professor decides to commit a crime, he has more chance to not be convicted than me, as his social position gave him more opportunities to not be found guilty.

→ The idea of the *mens rea*, of a free agent free to choose to commit or not to commit a crime, is simply an **ideology** without any mirror in the reality.

Another question: should the judge consider the social position of people that have committed crime or should he just judge only considering the crime committed?

It is very difficult to find a common agreement on this topic.

We have not a definitive answer but we have many evidences that tell us that the idea of the social agent is a mere ideological belief.

### **The main critical approaches**

In the frame of the philosophical and sociological thinking, the critics to criminal justice system and to society in general move from three main levels:

- The critics from **Marxism, critical legal studies** (CLS is an approach with law born in US in the 60s).
- The **feminist criticism** on criminal law --> feminism has had many approaches in critics to the masculinity of our society; there is of course a feminist approach with law and with criminology.
- **Structuralism** and **postmodernism** --> deconstructions of all the doctrines/theories/concepts that sustain criminal law.

### **Marx**

He made an historical analysis of criminal law as an instrument of class oppression. Critique of liberalism and its 'monadic' individual, abstracted by social relations.

Bourgeois ideology imposes this fictitious conception of the individual, which is just a myth designed to legitimize the legal system.

### **Critical connection between individual and society**

We move from the approach of the CLS.

From this approach, we can find a radical critic to the modern legal system that reflects the liberal modern society.

They state that the individual action, the crimes cannot be evaluated without considering the social relationship. In this approach, the individual free agents, the *mens rea*, the free will of individual is an **artificial fiction**.

The concrete person cannot be considered without considering the social context/family contexts and the environment of the social classes within which people are considered.

There are two different ideologies:

- By one side, the ideology by which the human agents have a free will;
- On the other side, the determinism ideology: human beings are not free and every action is determinate by many facts (social position, psychological influences...)

### When people have real choices and when not?

Probably the true is in the middle:

we are not completely free, it is false to state that human beings have a complete free will because we are partially determinate by our experiences, social positions, family relationships *etc.*, but it is also false to state that we are completely determinate, because we have opportunities to choose; the problem is that we have different opportunities.

→ In the social psychology it has been founded the definition of **limited rationality**; when we make a decision, we can see just a part of the opportunity of choices that we have.

The point is that criminal liability completely depends on the presence or absence of rational choice; we cannot punish if we decide to move from the idea that humans are not rational.

We decide to punish moving from the idea that social agents have at least a partial rationality in order to take actions.

### Free agency and the right to punish

- The main body of criminal law moves from the assumption of the rational legal subject that is able to engage with the world. Without such assumption, it would be impossible to justify a system of punishment. The system of punishment moves from the idea of a rational choice.
- BUT the CLS says that this is an anachronistic assumption and that the idea of free will has been supported and idealized by a privileged elite; it is just an ideology of the legal system. This is the most important critic that has been moved to the right of punishment introduced by the liberal legal system.
- There is another problem: if we decide that the legal system has the right to punish, how does the legal system concretely punish? Idea of the **DIGNITY** --> (retributivism approach and Kant in particular underlines that punishment is something different from revenge; we decide to punish to avoid revenge from the victims/relatives *etc.* not by chance, the European modern legal system has provided the concept of 'human rights' which has been introduced in order to avoid that punishment will violate the principle of hr.)

Critical legal studies have produced many researches that have found evidences about the fact that sometimes the legal system is a little bit different from what it should be.

→ **Video that** shows what has been done in a prison in Italy after an attempt of riot by the prisoners. The police guards did not all work in that prison.

Into the prison system, in many cases, it has been found an excess in use of violence.

In the view of the philosophical justification of punishment, there is a problem: if we justify punishment (as it is a reaction by the State to avoid a private reaction after a crime and punish without violence), how can we say the concrete organization of punishment is justified?

It is not justified, as the justification itself is violence, too. This kind of reaction is a revenge, but as Kant and all the enlightenment theories state, punishment is needed in order to avoid revenge.

The critic is that we are not avoiding violence, we are producing a violence.

If the punishment loses the (political) foundation from which it moves, how can we justify it?

- ➔ **Luigi Ferraioli** describes this situation as a state of nature (Hobbes), it seems to come back to a state of nature.

### The critics on total institution

This situation has been interpreted with the critics that have been moved to the **total institution**, which are institutions that have been created mainly after the modernity in order to deal with specific social problems (f.e. prison is an institution that was born in the early 17s in order to deal with criminality; psychiatric hospitals, monasteries...).

The definition of 'total institution' has been critiqued by a sociologist, **Erving Goffman**. In 1961 he elaborated this idea of total institutions as closed places where detained people have few contacts with external world, spending a lot of time there and gradually losing their free will because they are told everyday what to do. People progressively lose their autonomy and their abilities that we use in our everyday life (such as a lion in a zoo which has lost his ability to live in a jungle). These institutions, apart few exceptions, are not able to really reach the goals for which they have been created. **Prisons are not able to rehabilitate offenders.**

Not by chance, **recidivism rates** are usually very high in every part of the world, demonstrating that this kind of punishment is not able to rehabilitate people.

These institutions are not able to help offenders in order to avoid to commit new crimes --> this is another critical point that has been introduced by the sociological studies on punishment, as they found that, in the fact, the total institutions seem to be unable to favor any kind of rehabilitation, as they mainly are what we saw in the video.

- ➔ In Italy, in 2014, they have been closed the forensic psychiatric hospitals, which were reserved for people that had committed a crime and that have serious mental illness for which the judge decide they cannot be punished for the crimes committed, but they deserve a specific security measure. These hospitals were terrible places where detained spent terrible period of time, but nothing has been done before they were published videos witnessing the atrocities perpetrated ([video](#) "Lo stato della follia").
- ➔ In some fields of knowledge, we had many progresses in the institutionalization practices; Italy --> enactment of "**Basaglia law**" (1978) --> takes name from the promoter, an Italian psychiatric who founded a particular approach called '**democratic psychiatric**'; in Italy from late 70s mental hospitals have been closed.
- ➔ Probably the largest problems are in the specific field of criminal law, where we match many attempts to find alternatives to prison, as we have a lot of evidence that it is surely not a tool useful in order to rehab people, often violating the fundamental human right of prisoners. But these alternatives haven't produced a decline of the prison system. In all the European frame, **the prison detention rate has increased since the early 70s to 2010.**

- We have a real problem of large use of total institution in criminal justice system.
- **The real problem lies in the justification of punishment.**

## THE FEMINIST CRITIC OF CRIMINAL LAW

Probably the most influential feminist critic to law was born in the 60s in a Californian university campus, where it was born the movement for the freedom of women, which has influenced all the American societies but also the European feminist movement in the 20<sup>th</sup> century.

Radical critics to the society and to the social relationship based on the men's point of view.

Law, of course, is a field where the men's point of view is very strong; **many codes reflect a social relationship founded on masculinity** (family law, many kinds of law that reflect the point of view of men about society).

### Formal equality and concrete injustice

What has been critiqued by feminism regarding law is the idea of equality, which, if applied literally, of course does not consider the concrete injustice; **when the law is formally the same for both the sexes, it does not consider women specificities**.

The critiques to the law system move from the idea that the apparent balance of the criminal law does not mean that the laws are also fair.

The application of the formal equality, in many cases, reinforces the substantive unfairness; there are many legal concepts that are formally equal but, in the fact, reflect the unfairness in social relationships between men and women.

Also, the idea of **MENS REA** can be criticized moving from the feminist approach with the point of view that has to consider the concrete options for women in many cases are different from men's options, as men have usually more options than women; the concept of *mens rea*/free will of agents needs to consider the fact that **mens rea is influenced also by gender differences**. The social position of women in society calls that women have less opportunities of choice than men.

### Domestic violence and rape

The critique of feminist movement has touched several aspects of the justice, of the law and of the criminal law: there are specific fields of study that have been investigated by feminist approach; the most important in the field of criminal law are the phenomenon of domestic violence and rape.

- In the last few years in Italy the criminal justice system started to precede domestic violence; for many years these crimes were part of the 'dark number of the criminality', which means that the crimes that are effectively committed but that are not discovered by the agencies of social control; crimes committed within the domestic frame, for many years have not been punished by the criminal law agencies, for many reasons: women were not able to denounce these crimes for fear but also for their low social position into the families.
- In the later years, in Italy, we are finally dealing with a phenomenon of increasing of men accused of domestic violence; this increasing means that finally Italian women are accusing

men for domestic violence, so criminal justice system knows that crime and acts consequentially.

- ➔ Researches on **victimization** (made in order to find crimes that are not discovered by agencies of social control) discovered that the most dangerous place for women is their family, their house: it is in this context that they are victim of the most serious crimes.
- ➔ Criminal justice system in many cases is not able to find tools in order to avoid the social differences between men and women. Unfair positions which produce effects in the concrete practices of the criminal justice system.
- ➔ Of course, other important researches have been made about **rape trials**. There are many reports made about rape trials where we can find a very change in the position of the accused: during rape trials, women feel to be the offenders rather than the victims of the crime, because of the questions they are questioned (what they were wearing, if they were drunk etc.) --> **Sexualization of women's body**.

- In 2022, is the feminist critique too deviate?
- Are the police the first agencies that products social control for women? No, the first is the family, then the church (religion).
- A point of view in order to explain the low rate of imprisonment of women: traditionally, the social control for women has been reserved to agencies that operated before the criminal law agencies (family, church...). Of course, the reason is also that it is thought that the legal system is too harsh for women who committed crimes, so judges try to avoid their imprisonment.

### **Is the rule of law an empty ideology? Is the criminal justice a mere instrument of oppression?**

If we follow the critics that have been moved against the rule of law, we should consider that it is just an ideology without a real goal, intrinsically linked with the interests of the few.

In part it's true, but we can see probably a little "light" at the end of the tunnel: we have to consider that **in the last centuries we had a growing awareness on individual human rights**. They have been approved many laws in order to **promote social justice** (workers' statute, family law reforms, penitentiary law) and, in the last years, they have been adopted a lot of practices in order to **promote rights of minorities** (such as the strategic litigation practices).