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### **Religion on punishment**

**Abstract:** The theory of Divine origin of the right to punish seeks the basis of punitive right not in the properties of an individual, but in the conditions of the emergence of human intercourse, in the laws of universe. It requires examination, rather, theological, than legal. The state has the right to punish only as a vicar of God. Just as God in his eternal kingdom judges spirits and performs internal justice, so the state created by him administers justice. “But select capable men from all the people - men who fear God, trustworthy men who hate dishonest gain - and appoint them as officials over them...” (Exodus 18:21). Thus, rulers are the representatives and messengers of God on earth. Their first prerogative, their first attribute of power should be to exterminate criminals, to use punishment and to enjoy the right of life and death in all its severity. It is clear that such understanding of the meaning of punishment in the fight against crime could not but lead to its toughening and public character. However, crime grew, despite the fact that religion had used punishment with maximum cruelty and deceit, not to ‘treat the sick’, but to intimidate others.

**Keywords:** religion; punishment; basis of responsibility; law; legislator; justice.

Religion like a normative ethic system forms a basis and an inexhaustible reserve of law development in general and criminal one in particular

The issues of punishment occupy an especial place in all recognized world religions. It is historically accepted that the first theological theories about

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punishment were based on the Old Testament postulates: punishment is a reward for evil; intimidation according to the rules of Talion “an eye for an eye, a tooth for a tooth” (Deut. 19-21). It is known that after the end of the flood, Noah was commanded the principle: “Whoever sheds human blood, by humans shall their blood be shed; for in the image of God has God made mankind” (Genesis 9:6).

Among religious sources that have the historical significance, the Law of Moses should be highlighted - the Law passed to the Jewish people by God through Moses. On its nature this law is legal one. It has a number of the indications inherent the criminal law. Determinations concerning guilt, punishment, and circumstances that exclude liability are the more important of them. In the Law of Moses there is no concept of guilt in our modern understanding. A legislator recognizes the mental, subjective basis of responsibility along with the objective, i.e., a person cannot bear the liability only for the fact of causing harm, it is also necessary to establish the nature of his mental attitude to the deed. Punishment is an integral component of the Law of Moses; it is sanctified by God, taken by the Jewish people for granted. Punishment is regarded as the initially established by God the means of influencing the human being created by him. And it was established so that Adam’s perpetual sin (in juridical, legal language is a crime) did not become entrenched, and “must not live forever” (Gen. 3.22) [3, p. 70].

It should be kept in mind that when we are talking about the attitude of religion to punishment and its impact on development of this institution, one cannot overlook an importance attached in the field of justice to the teachings of Christ himself, as well as the outlook of Moses, which during the Middle Ages were developed by canonists, i.e. by representatives of the church. M.P. Chubinsky notes that “influence of canonist ideas on further development of criminal law was so serious that some researchers on attitude, for example, to the German law,



consider this influence hardly more essential than an influence of the receptions of Roman ‘Law’” [4, p. 110].

Christ “revealed the ideal of God, the Father of men, who wanted not the death of a sinner, but his correction and life, and ... laid down the theories of love and condescension to his neighbor” [1, p. 67-68]. During the middle ages and subsequent centuries, the canonists replaced Christ’s outlook on a criminal with Moses’ worldview that was more suitable to their ideals, and therefore it couldn’t have a serious impact on the emergence of new views in the concept, meaning and goals of criminal punishment. All this led to the fact that preaching the public nature of punishment and its practical organization, the canonists simultaneously introduced approval of cruel executions. It was announced that the right of punishment belongs only to God and without his authority no one, even society, has the right to impose a hand on a person, on his freedom and life. Asserting that the right of vengeance belongs only to God, the canonists, at the same time allowed delegating this right to spiritual and secular rulers. Punishment was considered to be as security measure, and namely in the sense of retribution. For example, Thomas Aquinas asserted that punishment for natural human inclination is intended a goal to punish and restore order [6, p. 27-30]. Many of the canonists (Chrysostom, Isidor Pelyuziot, Theodoroth, and others), being carried away with the ideas of the Moses legislation, had reached for the defense and propaganda of Talion [5, p. 74-76]. It should be especially noted that early writers of Christianity cared more about purity and spread of the faith than about expanding the power of church. To the forefront in the matter of punishment they had set the goal of correcting a criminal and recognized it so important that they had not almost paid attention to the idea of retribution and did not raise it to the principle of punishment. So, Lactantius was categorically against the death penalty and severe punishments for crimes, in particular, of a religious nature. “Religion, he noted, - should not be protected by the executions... because if someone wants to protect it



with torment and blood shedding, he will not protect, but, on the contrary, tarnish it and bring it harm” [5, p. 71-73].

Thus, the canonists introduced in the concept and goals of punishment and had put a number of harmful and inconsistent ideas into the practice, which for long time covered the justice with dark and repulsive shadow that had ruined a mass of innocents and caused an incredible cruelty. At the same time, giving to the punishment the character of publicity, canonists had entered into a fruitful struggle with bloody revenge and private-law views on crime, that were inherent in the society of that time.

According to the Quran, the essence of punishment is only a part of a much larger integrated whole. It is considered an integral part of the concept of justice. Significance and functions of punishment are determined, first of all, attitude to crime’s concept. Although the punishment, according to the Quran, is essentially retribution, nevertheless, it is intended to maintain a sense of justice in the members of this community by publicly condemning those actions that go beyond the boundaries set by Allah.

So, the Law of the Most High, i.e. the Bible and the Quran, give us an opportunity to draw some fundamental conclusions from standpoint of religion regarding the significance and role of punishment in society, in general, in fight against criminal manifestations, in particular. First, criminal behaviour is based on freedom of human will. The Lord God forbade Adam to eat from the tree of knowledge of good and evil, but did not rule out such a possibility. He presented Adam himself to choose how to act. Second, God sees the real source of Adam’s act – this is Satan in the form of snake, which is punished first. Third, punishment is an admonition that carries kindness, compassion and healing in itself, it is deterrence in order to prevent the commission of new crimes. By punishing Adam through deprivation access to the tree of life, the Lord God shows compassion for him: one cannot allow the plight determined by Adam and Eve to last forever.



“Made this in order that the life-giving gift should not serve their distress, and acceptance from the tree of life had no brought them greater misfortune, in comparison with the fact that the tree of knowledge brought to them” [2, p. 250]. Forth, the right of punishment belongs only to God as he is the Creator and the builder of the Universe. Throughout all the books of the Bible from Genesis to Revelation, as well as the Koran, the instruction that judgment is the work of God repeatedly slips. “Allah owns everything in this world; he punishes and forgives as he pleases” (Sura 3). God is the only Lawgiver and Judge over all. It is on this idea that the theory of the divine origin of the right of punishment is built. Relying on the fact of worldview, they taught that, together with the laws of physical structure of the Universe, the Creator gave the foundations of the moral order, that therefore right is a revelation of the will and mind of the Eternal One, which distributes and organizes our life and activities. The criminal encroaches on the commandments of God, commits a sin, which is worthy of punishment.

As we see, the theory of Divine origin of the right to punish seeks the basis of punitive right not in the properties of an individual, but in the conditions of the emergence of human intercourse, in the laws of universe. It requires examination, rather, theological, than legal. The state has the right to punish only as a vicar of God. Just as God in his eternal kingdom judges spirits and performs internal justice, so the state created by him administers justice. “But select capable men from all the people - men who fear God, trustworthy men who hate dishonest gain—and appoint them as officials over them...” (Exodus 18:21). Thus, rulers are the representatives and messengers of God on earth. Their first prerogative, their first attribute of power should be to exterminate criminals, to use punishment and to enjoy the right of life and death in all its severity. It is clear that such understanding of the meaning of punishment in the fight against crime could not but lead to its toughening and public character. However, crime grew, despite the fact that religion had used punishment with maximum cruelty and deceit, not to



‘treat the sick’, but to intimidate others, so that they would not get sick of this disease, i.e., they would not have become criminals. It took time, needed other ideas.

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