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Purpose of punishment

Abstract: Sense of just retribution (not revenge) that requires the existence and application of criminal punishment, without which the state itself cannot exist. That is why the punishment is lawful and fair. For the sake of eliminating lynching, lawlessness, revenge, society in the person of the state takes on the responsibility to punish the criminal, because this is required by a person who has suffered evil, has become the object of violence, insult, lost property, etc. Finally, to make sure that punishment is necessary or not, it is useful or useless in modern society, it is enough to imagine what will happen the next day, after the announcement of the abolition of criminal punishment for criminal behavior.

The history of punishment in the fight against crime testifies that the goal of keeping (prevention) people from committing crimes to the extent that we dream and hope for is not practically achieved. On the contrary, crime is not decreasing, but growing. Therefore, the question arises of the real level of achievement of the goal of punishment, which depends on its objective capabilities. We cannot demand punishment for what it is not capable of. Therefore, the limits of the possibility of punishment should be investigated.

Keywords: punishment; crime; purpose; retribution; justice; theory of goals.

We can talk about the “crisis of punishment”, about its futility in the fight against crime only when we are convinced that it is not able to achieve the minimum goals that society has set for it. In this case, naturally, one should take

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into account the objective possibilities of punishment and the real nature of the goal. Therefore, it is reasonable to start by clarifying the purpose of punishment.

With its origins, the doctrine on purposes of punishment goes into religion, and the first attempts to determine the purpose of punishment we find in religious sources. If to base on the Divine Scriptures, punishment for the purpose of retribution is a means of influence originally established by God on a human being created by him. It accepted to consider that first theological theories on purposes of punishment based on Old Testament postulates: punishment is retribution for evil; intimidation according to Talion rules “an eye for an eye, a tooth for a tooth” (Deut. 19-21).

Concluding his first Testament with Adam, the Lord warned him not to eat “from the tree of the knowledge of good and evil”, otherwise, “you will die by death” (Genesis 2.17). Therefore it may be assumed that the criminal law began with God’s Law, and the first person to violate it was the first person - Adam, who can also be considered the first person to be subjected to the original form of punishment - the death penalty. It is also important to understand the essence of punishment as defined by God. Punishment is retribution: “I will take vengeance on my adversaries and repay those who hate me”. ” (Deut. 32, 41), says the Lord. The question about the meaning of the expression: “you die death,” that is, about the punishment in the form of the death penalty, is ambiguous. But in any version of its interpretation it is impossible not to state that it is a punishment for disobedience, violation of the prohibition, the first law, that this punishment has the form of death, and it is from God. And it was established so that the sin committed by Adam would not become eternal (in a legal language - a crime) and would not take root, “would not live forever” (Genesis 3.22) [11, p. 70].

Therefore, punishment is set the goal of intimidation to prevent the commission of sins (crimes) by others. This is also confirmed by the fact that the Lord could show mercy and forgive the first sin of Adam, but He, as an all-seer,



rather proceeded from the inappropriateness and futility of such an act of mercy. At the same time, one cannot see the punishment of Adam as the act of revenge on the part of God.

Along with the idea of retribution, religion recognized other goals of punishment. So, for example, Isidore spoke of the importance of a general warning, intimidation and protection of the safety of civilians. Augustine also points to intimidation, but emphasizes the importance of correcting criminals. Undoubtedly, here we see a look at the goals of punishment, progressive in that it stood higher than the appropriating private-legal view of the new peoples settled in Europe, that is, compared with blood feud - this is a big step forward. However, we must recognize that the attitude of the canonists towards punishment does not rise above the detailed, expedient, and sometimes more humane views of ancient thinkers. They were not particularly seriously interested in the questions of the causes of crime, and therefore, the impact on them, including through criminal punishment, while these problems were the subject of deep reflection and research of the ancient sages.

In the Surahs of the Qur'an and in the statements of the Prophet Muhammad, retribution is also defined as the purpose of punishment. In developing the theory of crime, or rather crime, Muslim jurists proceeded from two fundamental philosophical and theological principles. First of all, they believed that all actions and even thoughts of people are somehow predetermined by the will of Allah. However, according to representatives of the most Muslim-juridical schools, the framework established by the "divine revelation" is flexible enough to allow a person in many cases to independently choose their own behavior. Therefore, any serious misconduct is considered as a punishable violation of Muslim bans, the meaning of which is the general orientation of Islam, in particular, its legal principles and norms, to protect the five basic values - religion, life, reason, the continuation of offspring and property. Another crucial moment is a consideration



as disobedience to the will of Allah. Therefore, a crime, according to Muslim law, is not only a violation of the criminal law of the state, but also a serious religious misconduct. Crime, on essence, is the act of injustice towards itself, sin against Allah. Based on this notion of crime, Islam religion fights to crime with a few methods. First, with direct religion ban on commission illegal actions that address to citizens' feelings. Second, through social influence that means a duty of each member of a society to fight against to crime. Third, - with punishment for committed crime. At the same time, Quran considers a punishment like a just retribution. "Oh people! I prescribe retribution for those killed: free - for free, slave - for slave, woman - for woman ..." (Quran. Surah 2.) .

Right to retribution is called 'source of life'. The reasons of this are seen in the fact that the right belongs to an individual, but not the state, which is not entitled, at its discretion, to intervene in a conflict affecting the interests of its participants.

What are the objectives pursued by the punishment according to the Koran? First, it should note that the Holy Book of Allah provides for double punishment: one in the near life, the other, and crueler in the afterlife. This is mentioned in many Surahs of the Quran. So, Surah 5 reads: "To the one who intentionally kills the faithful, hell will appear in retribution, where he will be forever, and before that he will be subject to death".

The most important goal on Quran is educational, prophylactic and preventive. Surah 2 of Quran reads: "Law of retribution needs to stop thoughts of a killer and to save those whom he wants to kill".

However, the first place the purpose of punishment is an intimidation: "Thief and woman-thief cut off their hands in retribution for what they acquired as intimidation from Allah" (5:38).

Holly book of Muslims is aimed to form a deep feeling of disgust for crimes against other people, which thereby constitutes crimes against Allah. It is "going



beyond the limit,” according to the Quran, that is the main cause of social disasters and disruption of the normal order of human life. Therefore, punishment does not pursue the goal of gloating, repaying, settling scores, or an ardent desire to inflict pain or to keep society in a constrained, anxious position, or to cause torment and torment by cutting off parts of the body, killing, stoning. The purpose of punishment, according to the norms of Islam, is the rule of virtue and dignity. They say that a system of punishment on Islam is too hard. To this, supporters of the preservation of harsh punishments respond that this is the will of Allah, and no one has the right to cancel it. In addition, it must be kept in mind that bodily punishment provided for by the Quran is practically not applied nowadays, but it is of an effective preventive nature. Very often one may come across the following question: why is Islam more focused not on correcting the criminal, but on his punishment?

Muslim jurists believe that in Islam every social institution focused on instilling in a person moral values and feelings of responsibility. This process is carried out from the cradle to the grave. Therefore, “correcting” a person should be before he commits a crime, and not after it has already happened.

So, the Laws of the Most High give us an opportunity to conclude that God has determined retribution as the main goal of punishment. Therefore, all religions associated the punishment for this crime. The same idea prevailed for a very long time in philosophy. So, Aristotle, admitting punishment - retribution, wrote that people try to give evil - evil, and if such retaliation is impossible, then this state is considered slavery [1, p. 89].

Thoughts of retaliation as a purpose of punishment are also found in Plato, Cicero and Seneca. Such a philosophy of punishment was one of the very first punitive formulas introduced in ancient legislation and most of all corresponding to the prevailing view of the right to punish, as a manifestation of the instinct of revenge.



It was not possible to find any doctrines about the purposes of punishment in the works of Greek and Roman writers, although they left a separate aphorisms, thoughts, and positions on criminal law issues. So, Plato, for example, in a conversation about laws directly said that punishment is not imposed for the sake of a criminal act, but to prevent its recurrence in the future, which is achieved in a direct way: extermination of the criminal, for whom punishment is a medicine that cures his moral ailment; elimination of the influence of a bad example on fellow citizens; rid the state of a dangerous, harmful member. The same principles are indicated by Seneca [10, p. 42].

Supporters of the theory of the goal of retaliation sought traces of their doctrine, namely, on such statements not only by Plato and Seneca, but also by Aristotle, Cicero. Only with the beginning of philosophy did Hugo Grotius already receive the doctrine of the theory of the goal of retribution [5], although Grotius identifying punishment with the talion, he reinforces his view primarily with historical indications. In full color, this theory is only known in later German philosophy with various shades.

The first philosopher who recognised the idea of retribution as the only goal of punishment was Kant who wrote: “Evil requires payment by evil, only the retribution on the principle of equality can determine the measure and amount of punishment, or equality by force of action” [7, p. 187-191].

Particular importance, both for the development of philosophical thought and in the doctrine of criminal law, was Hegel’s theory of retaliation. According to Hegel’s teachings, law must restore itself by retaliation for violating it, in other words, subordinate the private, oppositional will to a self-existent reasonably free will, to law. Hegel states: “Punishment is retribution, but not retribution as a kind of equality in value between the damage caused by the crime and the damage caused to the criminal by punishment” [4, p. 49-51].



Thus, absolute theory of punishment of Kant and Hegel is concluded in retribution for the deed, requital for it: the crime was considered a sin, and the punishment for it was atonement for this sin. Difference is in the fact that Kant had developed the theory of material retribution, and Hegel – dialectical one, i.e. if retribution on Kant requires arithmetical equality then on Hegel – geometrical proportionality, equivalency.

Punishment ideas as retribution turned out to be so firm that for centuries they ‘outlived’ the theorists of these ideas. Convinced supporter of the retribution theory was pre-revolutionary scientist A.A. Zhizhilenko who considered retribution as an essence of punishment but not a goal of it. He wrote: “So, we recognize that the inner content of all punishment, its essence, is retribution, and since we generally think punishment as a kind of legal institution that is different from other related institutions, we present it as an institution that contains an element of retribution, and this element is not the purpose of punishment, but its very essence” [6].

As we see, A.A. Zhizhilenko especially emphasized that we must differentiate an idea on retribution the idea of retaliation as the content or essence of punishment, and the idea of it as the purpose of punishment. This is a very important clarification.

In the Soviet period, the idea of retaliation was supported by such famous scientists as: N.A. Belyaev, V.G. Smirnov, I.I. Karpets and some others. So, for example, Prof. N.A. Belyaev linked retaliation with the satisfaction of a public sense of justice. “Punishment,” he argued, “appears as retribution when suffering and deprivation are inflicted on the perpetrator for the act committed in order to satisfy the sense of justice of the society against which the crime was committed” [3, p. 27].

In general, an analysis of existing views on retaliation as the goal of punishment in the criminal law literature allows us to distinguish the following



five groups among them: this is 1) an understanding of retaliation, as smoothing down or an equation; 2) the understanding of retaliation as satisfaction, and this satisfaction is obvious either in the sense of the need inherent in the individual, or in the sense of the need of a social and even state; 3) an understanding of retaliation in the sense of a general warning; 4) the understanding of retribution in the sense of retribution to a person, causing him certain mental experiences; 5) an understanding of retribution, as a response to what is committed.

The theory of retaliation has always been subject to serious objections. She categorically was not accepted by quite reputable and well-known authors. The socialist revolution generally abandoned it. Therefore, in the days of communist ideology, this problem did not become the subject of serious research and discussion. Existing objections to retaliation in the literature seem very diverse in their initial points of view. So, in particular, it is noted that retaliation is unacceptable in modern public life, as a relic of the past, because there is the same revenge, that is, something that is beyond the limits of a reasonable human activity and that is generated by that instinctive attraction that is understandable on the initial stages of human development, but without which one can do now. V. Solovyov writes: “The criminal law doctrine of retaliation, completely devoid of the both logical and moral meaning, is only a relic of a wild state, and criminal punishments, which are still common today, since they intentionally inflict physical harm or deprivation on a criminal are set as the goal of a legal reaction to a crime, and represents only a historical transformation of the primeval beginning of blood feud” [9, p. 60].

It is also indicated on the immoral nature of retaliation. S.V. Poznyshev observes that “this idea (that is, the idea of retaliation) prompted by an animal sense of revenge is immoral” [8, p. 60].

There are authors who point out the insufficiency of the theories of retaliation because they are deprived of a certain stable criterion for indicating of punishment



measure [2, p. 56; 10, p. 310]. The internal content of the punishment, its essence, as they find their expression in criminal law, allows us to note that the hallmark of the institution of punishment in comparison with other legal measures is its inherent element of retribution. Moreover, it should be emphasized that it (retribution) is not an invention of the legislator, and is not an element that is not today - it can be 'sucked out' tomorrow at the request of any of the contents of the sentence. Retribution is a phenomenon that lies in the objective nature of punishment. Punishment is a phenomenon lying in objective nature of punishment. We understand retribution not as a purpose of punishment but as a moment that characterizes the very content of the punishment. It is impossible to imagine a punishment without this moment. Retribution rests on a feeling of indignation that arises from the commission of a crime. That is why retaliation is a means of satisfying a sense of social justice in society. People will refuse retaliation when the need for punishment disappears, and new measures will replace it, which will supplant this weapon against crime. Very often, opponents of the theory of retaliation refer to the fact that retaliation and revenge are identical concepts. Therefore, the idea of retaliation as revenge entails the immoral nature of retaliation, and hence its inadmissibility in modern conditions of the cultural life of mankind. But as A. Zhizhilenko correctly noted, "retaliation undoubtedly lies at the bottom of revenge, as it lies at the bottom of punishment, but this does not undermine the significance of retribution as an element of punishment. Commonality of the grounds of revenge and punishment cannot discredit the point of view that recognizes retaliation as an essential element of the concept of punishment" [6, p. 223].

The idea of retaliation is not the idea of Talion, formal qualitative or only quantitative equality. It is not revenge, which is characterized by rudeness, instinctivity, the immeasurable and senseless reaction of the victim. It is not the satisfaction of the latter, the smoothing out of harm, nor is it, at the same time,



moral retribution unrecognizable by the human eye. She is the idea that a crime, as a violation of public order, should in life cause an attitude towards itself corresponding to its negative assessment. It is an element of the content of punishment, which is implemented when sentencing.

In conclusion, it should be emphasized that before setting a specific goal before the punishment, it is necessary to understand for itself the means of its achievement, as well as to think about the reality of this goal, its practical attainability and the objective possibilities of the punishment itself.

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