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DOI: 10.25108/2304-1730-1749.iolr.2021.63.55-70
UDC 343.9

Philosophy of the death penalty

Abstract: Lawfulness of the death penalty using is more justified not by the fact that it is useful and necessary, but by the fact that it is fair in relation to certain categories of murderers who have committed particularly grave, skilled murders with grave consequences. In other words, by using of the death penalty, the society, which is represented by state power, does not aim to demonstrate its cruelty and atrocities. It wants to convey to people information on the fullness of the possibilities at its disposal in responding to challenges posed by individual members of the community.

With the advent of the state, a man decided to transfer his right to kill to new formed body, saying: respect my life, protect it; for my hand, I will act the same way in respect of others, i.e. I promise not to deprive life for anyone; we agree mutually to be deprive the life by the state power if unjust deprived the life of anyone of members of his community. In actually, this tacit, voluntary agreement between power and an individual means that not the state has right to use the death penalty, and a criminal lost the right to life. Society does not create a new law, but only uses the old natural law. When use this punishment, it takes the place of a private person. It follows from all this that an individual retains the right to take away his right of blood feud, which was once transferred to the state, if he sees a clear violation of the principle of justice, stipulated and approved in the agreement.

Consequently, if some time the members of society transferred their right to the state, proceeding just from the necessity, usefulness and justice, then only themselves can refuse from using of death penalty, when they will convince in its immorality, injustice and uselessness.

Keywords: death penalty; punishment; morality; vital activity; law; state; justice.

The ongoing controversy over the death penalty is, in principle, a mixture of retributive and utilitarian discourses. If the first type of discourse is purely philosophical, because philosophy lies in justifying the legitimacy (legitimate nature) of the right to deprive a criminal's life, then the second type of discourse is based on sociology and psychology, since we are talking about the study of the usefulness of this punishment.

Once A. Berner said that "to declare the question of the death penalty as a simple question of benefit, in which there is no place at all for the participation of philosophy, is to prove the surface of one's understanding" [5, p. 95]. Therefore, it is not surprising that both opponents and supporters of the death penalty in order to prove their positions have always relied on philosophy, which literally means "mastership of wisdom". At all times, all thinking people have had a lot of questions that cannot be answered within the framework of any specific area of cognition. What questions can we, lawyers, not find an answer to when studying the problem of the death penalty, and what do we want from philosophy?

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Juridical cognition is not able to answer, in particular, the following questions. Is the death penalty generally moral as a punishment? How should the principle of justice and humanism be understood in relation to this measure? Should this punishment be understood and applied only as an act of retribution and intimidation? Who has the right to punish with the death penalty and who gave this right?

It is clear that without answers to these questions it is impossible to imagine the true essence and social purpose of this institution. It is also obvious that legal categories are helpless to explain this phenomenon within their capabilities. The maximum that criminal legal science is capable of is to give a formal definition of the death penalty as the organization of a reaction to a crime on the side of the state and to answer the question: due to what preconditions an action becomes a crime, and the reaction to it becomes a punishment in the form of deprivation of the life of a criminal. Will this approach satisfy us when we try to determine the fate of the death penalty? Even ancient philosophers gave a negative answer to this question, and the doctrine of the death penalty, like many problems, was considered by them as the subject of philosophical thought.

Striving for cognition of being, philosophy answers the question: what does it mean to be? Philosophy sees the meaning of cognition in striving to reach the original foundations of the universe and the world order. It connects the conclusions of other sciences into one coherent whole and examines the provisions underlying them and applied by them dogmatically.

Philosophy is unified and diverse, a person does not do without it in any of the areas of his life, as he always ponders over the universal problems of "the world – man". All areas of knowledge border with the unknown in the space surrounding us. When a person enters or goes beyond border areas, he falls from science into the sphere of speculation. His speculative activity is also a type of study, and this, among other things, is philosophy (B. Russell). It is quite obvious that without philosophical categories it is impossible to distinguish the essential from the insignificant in the meaning of the concept of the death penalty, for the issues of good and evil, suffering and punishment, retribution and justice, morality and expediency belong to ethics, that is, these are ethical categories, not legal ones, without which this phenomenon is unthinkable. It is the philosophical comprehension of the essence of this punishment that will give us the opportunity to intervene in the essence of the death penalty, bring it under the categories developed by philosophical thought and find answers to the above questions.

A profound mistake of representatives of positivism is the assertion that the science of law is self-sufficient and it is not worth involving philosophy, ethics and other sciences to reveal and understand the essence of legal phenomena. Better than Hegel, and you will not answer: "Jurisprudence is part of philosophy" [9, p. 17-18]. Consequently, we should treat with great attention to philosophy and its capabilities in the study of those theoretical problems that are not fully available to legal sciences. As Plato noted, if "the lack of interest in philosophy is a sign, rather, of self-righteous ignorance, rather than the superiority of true knowledge, then the lack of such interest in a lawyer is already a disregard for his own professional business, neglect is all the more unforgivable that his result may be death jurisprudence from the onslaught of alien teachings" [7].

Lawyers assert that philosophers say many beautiful, but very far from practical benefits of things, and try to explain many legal phenomena in too complex concepts and categories that are not entirely accessible to jurisprudence. Perhaps, but, in fact, philosophy itself is not so much complex as the language in which it is expounded by most philosophers is complex.

The main philosophical question of the death penalty is the question of its moral essence. The legitimacy (lawfulness) of the right to life, the death penalty was called into question in the 18th century. It is argued that the deprivation of a person's life is immoral, because only the Most High has the right to take the life that He gives. Thus, the immorality of the death penalty, according to V.S. Solovyov, is that society in the person of human justice has appropriated to itself the right that belongs absolutely only to the judgment of God as an expression of Divine omniscience [21, p. 80]. The author considers such an action on the part of society as impious, inhuman and shameful, and therefore, as a fundamental denial of the fundamental moral attitude towards man. But if we agree that only the Almighty gives life to a person and no one except Him has the right to take it away, then what about the murderers who, with particular cruelty, deliberately, knowingly, advisedly deprive the life others of their own kind? Is it possible to believe that the Almighty gave these murderers the right to deprive the life of those whom He also created? That is why A.Yu. Kizilova's question looks absolutely correct and logical: is it possible to recognize the ontological status of a murderer as equal to the Divine, since by causing death he "dares" what only the Lord has the right to do? [15, p. 85]. After all, if, on the basis of a social contract, a person consciously and voluntarily agreed to be deprived his life, and then one of the most important conditions of the moral principles of the death penalty is observed. In this case, one can hardly believe in the idea that society, represented by the state, has appropriated to itself a right that belongs absolutely only to the judgment of God as an expression of Divine omniscience. If, as A.P. Chekhov said, "the state is not God", it has no right to take away what it cannot return, and this right belongs only to the Creator himself, then the action of society, of course, should be considered, in the words of V.S. Solovyov, as "impious, inhuman and shameful", and therefore fundamentally denying the fundamental moral attitude towards man. In this case the death penalty is immoral, because human life is sacred, inviolable, a gift from God.

In general, speculating with morality as a philosophical category is already an immoral event in itself, especially when it comes to such a complex problem as the death penalty. It is best to turn to the emergence of morality as a complex multidimensional process determined by the objective laws of the social being of people, starting from the primitive period. This will make it possible to correctly and objectively assess the role of morality in the formation of a person as a rational social being and in the regulating of the behavior of an individual in a community, since primitiveness was characterized by the fact that morality was directly inscribed in everyday life. It is in this that the historical role of morality in the development of mankind is seen, since for neither religious nor legal means have yet been formed that can, by prohibitions and threats, protect people from dangerous, harmful and evil deeds.

Thus, life activity, in accordance with the moral norm, becomes the first and most important fundamental requirement of public morality. As a result, with the development of human society within the bounds of primitive morality, various rules, prohibitions and prescriptions appear, the observance of which is considered unconditionally obligatory. As a rule, customs and traditions survive for a long time those conditions and specific historical circumstances by which they were once directly determined, and therefore, in new conditions, they seem meaningless and incomprehensible, and most importantly, immoral. The human mind gradually strives in its historical development towards a more mature concept of moral principles. Therefore, there is a natural need to get rid of already unnecessary, harmful customs and traditions that once corresponded to the moral level of community development and was defended under the threat of punishment.

In other words, there is happened a selection and preservation of values and their transfer to subsequent generations. It was through customs and traditions that the moral continuity of generations and the social inheritance of spiritual wealth were carried out. And in this process a huge role was played by punishment, which improved with the moral development of mankind. The need to apply punishment for the existence and progress of society is so obvious that it hardly needs proof. In cases where the appropriate rules of conduct are not enough to establish public order, there is an unconditional need for morally lawful coercion through punishment.

Everybody realizes that if all of a sudden everything prohibited by law ceased to be prohibited, then an absolutely impossible state of affairs would be established. However, punishment is permissible and morally justified only to the extent that it is capable of eliminating some greater evil. Consequently, punishment is lawful from a moral point of view if it does not violate the boundaries defined by the general principles of justice and humanism, on which all forms of state coercion should be based. In this regard, naturally, the question always arises regarding the limits of the permissibility of punishment. It is hardly possible at all to deny the important connection between moral and legal principles of punishment. If an immoral act is a violation of the command to love one's neighbor, then a crime as a legal phenomenon is a violation of the prohibition to commit acts harmful to one's neighbor. The moral command is guarded by conscience, and the punishment for immorality is pangs of conscience.

Morality requires not only that our actions are in agreement with the good of our neighbor, but also that the motives for these actions are imbued with love for our neighbor. "... If I speak in human and angelic tongues, but have no love, then I am a ringing copper, or a sounding cymbal. If I have the gift of prophecy and know all the secrets, and have all knowledge, and all faith, so that I can move mountains, but do not have love, then I am nothing. And if I distribute all my possessions, and give my body to be burned, but I have no love, there is no benefit to me" (Apostle Paul. First letter to the Corinthians. Chapter 13). Consequently, morality requires that both our thoughts and actions be imbued with love for our neighbor. It is clear that, in essence, society cannot impose punishment for immoral behavior. The norms of morality do not have in themselves any other force compelling to fulfill them, except for moral feeling, and other sanctions on earth, except for pangs of conscience. This other sanction and sufficient force of coercion must be created by a person, as the moral order could not be gained foothold in the world without this sanction.

From the requirements of the moral law follows the duty of public life, from the duty of public life - the obligation to maintain the rule of law, from the obligation to observe the law - the need for external compulsion to implement it. And compulsion is an essential feature of punishment. This is what makes it different from conviction, from morality. In principle, the area of the moral is the kingdom of freedom, and where there is freedom, there is no place for compulsion. Consequently, when we talk about the death penalty as a punishment from the point of view of morality, we must remember that we are talking about relative morality, because the deprivation of a person's life is carried out compulsorily.

So, if morality was the basis and result of behavior, determined the line of human behavior in society, limiting it to a given framework, then punishment served as a means of restoring normal order in society, eliminating conflicts not only between individuals, but also between the individual and society. Thus, the punishment for violating the accepted rules of behavior in society is morally justified, since the very idea of this measure is taken consciously by the whole community as a reaction based on moral norms, although this reaction "at the dawn of human culture among primi-

tive societies was in the nature of revenge, often proportionate not to the severity of the crime, but with the force of irritation" [8, p. 49]. And this is quite natural, because, as E. Durkheim justly noted, "first of all, punishment consists in a reaction released by passion. This sign is all the more obvious, the less cultured societies" [6, p. 86].

Now it is very easy to condemn the customs of our ancestors, who widely and roughly used the death penalty, but at the same time it is worth thinking about how unfair our descendants will be in several centuries, when they learn that we are for many crimes, including premeditated murders with a special cruelty, they used such a cruel punishment as life imprisonment. That is why it will be correct to assess the morality or immorality of any punishment from the point of view of the historical era of its application, taking into account the level of the moral state of the people at that time. Therefore, when assessing the necessity or uselessness of the death penalty for a certain epoch and a certain people, one must always take into account the viability of this measure, which has been worked out by people's life and is intended to serve the interests of this life. What was inevitable and useful in the 17th, 18th, 19th centuries would be not only useless, but also harmful cruelty at the present time. According to C. Beccaria, "on the coarse souls of the people ... it is necessary to act with stronger and more sensitive impressions" [3, p. 156].

Possessing the property of inflicting suffering on a person by means of coercion, as I. Bentham argued, in particular, "any punishment is harm; any punishment is evil in itself" [4, p. 221], because it is essentially retribution, intimidation. But does this mean that the punishment is immoral and that the blood feud of our ancestors was based on immoral principles?

It is possible that at the initial stage of formation, that is, when the period of private blood feud began, the source of this reaction was not determined by ethical ideas. Blood revenge as a form of reaction was alien to links with ethics, as morality is a product of human history. However, a significant disregard for the moral element in the foundation and evolution of the institution of blood feud, in our opinion, is also wrong, because "among the forces that shape reality, morality is the very first" [20, p. 103].

Even since ancient times, morality began to regulate not only human behavior in society, but also the relationship between individuals and society as a whole in the person of a community, tribe, group, since morality acts, first of all, as a product of joint creativity of the masses, who develop their moral ideal. Therefore, when we are talking about morality or immorality of the death penalty we should understand that we are talking about the attitude not only of an individual to this punishment, but the society as a whole. This means that the death penalty can be considered based on moral principles when it corresponds to a moral assessment on the part of the entire community, and not an individual. The death penalty is a means to achieve the goal set by the whole society, that is, a reaction to preserve and strengthen the society itself and its members. Therefore, if morality is the basis and result of behavior, determines the line of human behavior in the community, limiting it to a given framework, then the death penalty serves as a means of restoring normal order, eliminating conflicts not only between individuals, but also between them and the community as a whole. Consequently, the deprivation of human life for violating the accepted rules of behavior that are of vital importance in society is morally justified, because the very idea of this punishment is taken knowingly (consciously) by the whole community, as a reaction based on moral norms.

The next doubt in the legitimacy of the right to the death penalty, and therefore in its morality, is seen in the fact that this punishment is evidence of revenge, of retribution. So, for instance, V.S. Solovyov noted: "While contrary to the fundamental principles of morality, the death penalty,

at the same time, is a denial of law in its very essence. We know that this being consists in the balance of two moral interests: personal freedom and the common good, whence the direct conclusion that the last interest (of the common good) can only limit the first (personal freedom of everyone), but in no case have it in the intention complete abolition, for then, obviously, all equilibrium would be upset. Therefore, measures against any person, inspired by the interest of the common good, can in no way reach the level of intimidation of this person as such through deprivation of his life or through life-long deprivation of his freedom" [21, p. 80].

L.N. Tolstoy was an ardent and implacable opponent of retaliation, denying the moral character of the death penalty. Basing of the famous call of Jesus Christ "do not resist evil", he substantiated his theory of "non-resistance to evil by violence", which means the recognition of the original, unconditional holiness of human life. Therefore, the recognition of the life of every person as sacred is the first and only foundation of all morality. Consequently, the death penalty is essentially an inhuman and immoral means.

Contemporary of L.N. Tolstoy, the famous naturalist E. Haeckel, a follower of Charles Darwin, had tried, appealing to the natural laws of the struggle for existence, to substantiate the justice, morality and salutariness of the death penalty, as he had expressed it, "incorrigible criminals and scoundrels". Opposing him, Tolstoy had asked: "If killing the bad man is good, then who will decide: who is bad?" The writer did not accept the violence argument that violence is justified when it suppresses more violence. He believed that, having executed a criminal, again, one cannot be 100% sure of his immutability, non-repentance, and therefore of useless cruelty.

The fact that the death penalty cannot be justified not only from a legal, but, in particular, from a moral point of view, was also said by V.D. Nabokov: "As slavery, as torture, as mutilating punishment, the death penalty will be expelled from the legislation not by theoretical reasoning, but by a continuous, ever-growing and embracing protest of an outraged moral feeling" [5, p. 23].

So, answering the question why the death penalty is immoral, opponents of this measure answer: because it pursues only one goal - retribution (recompense). Let's see what philosophy says about this.

Aristotle, for instance, wrote that people try to return evil with evil and if such retribution is impossible, then such a state is considered slavery [2, p. 89]. It is easy to understand that the great philosopher had in mind not the death penalty, which is a public act of retribution, but blood personal revenge as a response to an offense. Therefore, it can hardly be argued that Aristotle considered retribution to be the goal of the death penalty. Plato, Cicero and Seneca reasoned approximately in the same way, who did not try to grasp the difference between the purpose and essence of the death penalty. So, Plato, in a conversation about laws, directly said that the death penalty was imposed not for the sake of a committed criminal act, but for the sake of preventing its repetition in the future, which is achieved in a direct way: by exterminating the criminal for whom this punishment is a medicine that heals his moral ailment; elimination of the influence of a bad example on fellow citizens; ridding the state of a dangerous, harmful member. The same principles are indicated by Seneca. Only with the beginning of philosophy, already in Hugo Grotius, the doctrine of the theory of the goal of retribution receives a clearer outline, although Grotius, identifying punishment with talion, supports his view mainly with historical indications [11].

In its most holistic form, this theory gains prominence only in later German philosophy. The first philosopher who recognized the idea of retribution as the only goal of punishment in general and the death penalty in particular was Kant, who wrote: "Evil requires payment with evil, only one

retribution on the principle of equality can determine the measure and scope of punishment or equality in terms of the force of action" [13, p. 187-191].

Of particular importance, both for the development of philosophical thought and in the doctrine of criminal law, was Hegel's theory of retribution. According to the teachings of the German philosopher, the law must restore itself by retribution for violating it, in other words, subordinate the private, oppositional will to the self-existent rational-free will, 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" [9, p. 49-51]. Thus, the absolute theory of the goals of punishment by Kant and Hegel consists in retribution for the deed, the payment for it: the crime was considered a sin, and the punishment for it was the atonement for that sin. The only difference is that Kant developed the theory of material retribution, and Hegel - dialectical, that is, if retribution, according to Kant, requires arithmetic equality, then, according to Hegel, geometric proportionality, equivalence. Retribution as the goal of punishment in the form of the death penalty turned out to be so tenacious that it "outlived" the theorists of this view for centuries.

Is it correct to ask the question of the goals of punishment in general? This question, as we will see in what follows, is of fundamental importance for understanding the moral essence of extreme penalty of the law. Any activity, including the activity of the state, has a specific purpose, otherwise this activity is meaningless. In this case, accordingly, the necessary effective means are used to achieve this goal. However, not every means, even if it serves the common good, can be considered morally justified, because the principle "the end justifies the means" is itself immoral. The goal arises earlier than its real embodiment in reality. It is outlined in advance by a person, a state, a corresponding body in its still subjective form. With regard to punishment, the goal acts as an internally motivating principle in the activity of the legislator to transform into reality. The goal is considered as ideal phenomenon, an anticipation of the result, an ideal mental image of value. Therefore, the goal of the legislator when constructing punishment is defined as a mentally outlined of the image of a state, the result of the level of crime in the country. As rightly noted by D.A. Kerimov, the goal must be recognized as the starting point and the motor force of volitional activity and at the same time the guiding factor in this activity [14, p. 272-273].

It follows from the foregoing that the goal is not a criminal-legal category, but a philosophical one, which is understood as the anticipation in the mind of the result, towards which the actions are directed. Hegel wrote: "The goal is in the nearest way something that exists inside me, subjective" [10, p. 39]. And this means that the goal that society, the state intends to achieve through the use of punishment in the form of the death penalty, is subjective, because it is formed by people, expressed in legislation and implemented by the subjective activities of people. Punishment, including the death penalty, in essence, does not pursue any goals, all the more it is impossible to set any goal for them, because goals can be set by subjects, that is, by the state, society, power, etc., taking into account the naturally objective possibilities of punishment. Thus, the death penalty, as well as other types of punishment, must be considered as a means of achieving the goal determined by the subject - the state. This means that it is not the death penalty that should be considered immoral or moral, but the state in whose hands this measure of punishment is.

As for retribution, this is the essence of the death penalty, that is, an inalienable quality, without which this punishment cannot be thought of, this is its inner content, which is expressed in the unity of all diverse and contradictory forms. Therefore, in order to know the essence of the death penalty as a punishment, it is necessary to identify the main, basic and determining factor in its

functioning and development, to reveal its purpose, to understand why it is necessary. Therefore, the use of the death penalty, that is, the right to this punishment, is morally justified when it is a just retribution. In other words, it is justice as a philosophical category that is an objective indicator of the morality of retribution. So, for example, during the period of Soviet power for the theft of state and public property for more than 10 thousand rubles, the law established a punishment in the form of the death penalty, which was actually applied, although T. More opposed this measure in relation to economic crimes. In this case, of course, the use of the death penalty for this crime testified to the immoral nature of the state's criminal policy, but not to the immoral essence of this punishment. The application of the death penalty for the consumption of narcotic drugs (Singapore, Thailand), for adultery, blasphemy (Iran), etc., can hardly be considered moral, since the retribution does not correspond to the norms and principles of generally recognized justice. Another thing is retribution for premeditated murder by the death penalty in exceptional cases, when this crime is characterized by particular cruelty and grave consequences. In these cases, the use of the death penalty is morally justified, since this retribution is the only indicator of justice. So, the death penalty can be morally justified when it is a just retribution, or immoral if it is applied not as a just retribution, but as a means of state power revenge.

If to consider that the idea of justice is a guiding moral beginning, then punishment, both when it is determined by the state and when it is appointed, should take place in all indicated cases and only in the required bounds. Most importantly, one should proceed from the fact that justice is the beginning that regulates, and not only limits, punishment. Consequently, the requirements of justice must be strictly fulfilled and in no case can they change in the direction of softening or increasing their severity under the influence of any useful goals.

P. Rossi wrote: "Punishment should never go beyond just retribution. As soon as it exceeds the deserved evil, at least by one atom, there is no more justice" [19, p. 169]. Thus, in principle, it should be accepted that the idea of just retribution requires a certain size; it opposes that the guiding beginnings of punishment not only provide for a greater evil for the crime, but also unjustifiably mitigate the inevitable severity and implacability of the principles of punishment. And this means that if the essence of the crime is an attempt on the freedom and life of a person, then the punishment consists in the threat of imprisonment and the life of the one who has infringed, that is, the criminal. Consequently, if the severity of the crime is measured by the degree of violence against the freedom of another person, then the severity of the punishment is the term of imprisonment of the criminal. Here is the basic scheme of punishment-retribution, which follows from the formula: equality in freedom according to the universal law. The thesis about the value of human life cannot be disputed. And this means that the higher a human life is valued, the higher the punishment for taking it away should be. As you know, there is no greater punishment than the death penalty. Therefore, logically, it can only be applied for premeditated murder, and only in this way is it possible to feel the justice of retribution, because the thought of punishment as retribution has penetrated so deeply into the mind of a person that he simply does not see in him anything more than retribution, but retribution. in the sense of just retribution as an expression of the moral public assessment of the crime. And this is justified, because the psychological basis of punishment-retribution is the feeling of revenge, the natural desire of people who have suffered from a crime to "return pain and suffering" to the villain, so that he can go through such torments, atone for his guilt and repent. I. Kant, in contrast to the assertions about the immoral essence of punishment as retribution,

put forward his concept of punishment, which is based on the idea of abstract justice, expressed by the formula of Roman lawyers: "Let justice be done, even if the world died for this" [12, p. 58-59].

It was the idea of retribution, thoroughly and fully investigated by Kant, that played a decisive role in his understanding of the moral principles of the death penalty. It was precisely in the implementation of the requirements of the "categorical imperative", in the implementation of justice at all costs, that Kant saw the only meaning and justification of the morality of the death penalty. On the question of the morality of the death penalty, Hegel also considered it fair for premeditated murder to only impose the life of a criminal. This followed from Hegel's law of negation of negation. However, Kant's attitude to the death penalty, proceeding from the theory of retribution according to the principle "equal for equal, life for life", posed a very difficult question before us: should his philosophical principle of abstract justice and specific balancing be recognized as contrary to the basic beginnings of morality? Is it possible to violate the justice of punishment by utilitarian considerations, that is, expediency, utility? After all, if to violate it, then the punishment contradicts the fundamental moral beginnings, which means that this punishment is unfair. If all these conflicts are resolved in favor of justice, then, in fact, the intended utilitarian goals will lose the meaning of goals. Woe to him, says Kant, who will be guided by the serpentine instructions of the principle of benefit, the Pharisaic dictum: it is better for one person to die than for the whole people to suffer, for if justice is destroyed, then human life will lose its value. This view of the death penalty as a retribution for murder directly follows from the general logic of the "golden rule of morality", which reminds people that if they commit premeditated murder, that is, the deprivation of the life of another person, the culprit will expect the same.

It is impossible and unacceptable to oppose the principle of justice to the category of morality, because justice finds its application in all, without exception, spheres of public life, although this concept was most often considered in the history of ethical teachings as a measure of moral outlook and requirement. On the whole, we consider this understanding to be correct. No wonder the old emblem of justice is the scales. If we proceed from the philosophical and legal interpretation of justice as "giving everyone his due", then the death penalty as a punishment must correspond to intended killing as a crime.

So, if from the point of view of moral feeling the death penalty is immoral, then from the point of view of fair retribution its application is justified, because in addition to the sense of morality in real social life, the principle of common sense dominates, based on the idea and belief in the objective necessity, usefulness and fairness of the existence of this punishment as an effective means of protecting the common good from brutal murders and atrocities. However, in order to determine how much the death penalty is necessary, it is necessary to find out the usefulness and effectiveness of this tool in the fight against especially grave crimes, in particular with premeditated murder. And this is already an area of utilitarian discourse that requires a sociological study of the practical application of the death penalty, which will be the subject of further discussion.

The center of the controversy over the death penalty since the end of the 18th century to this day, there is a philosophical statement by C. Beccaria that the death penalty is not based on any legal right, because a person, entering society, did not concede the right to his life. In his opinion, life does not constitute a blessing given to a person by the state, and therefore the state does not have the legal right to take this life away. Life is a gift from God, its termination or prolongation depends only on the will of the Creator, and the state, automatically stopping it, appropriates a right that does not belong to it [3, p. 125].

Indeed, why did a person have to transfer to the state or some other authority the right to deprive him of his life, which is his natural right given to him by God? And in general, is there a limit to the rights transferred by an individual to protect the common benefit? Indeed, with the same success it can be argued that an individual, a member of society, did not transfer to the state the rights to life imprisonment, since freedom is also his natural right, given by the Divine. But the fact remains: in the process of the historical development of human society, this right ended up in the hands of a public organization formed by the members of the community themselves. But how did this institution of punishment end up in the hands of a subject who has no greater power over a person than the ability to take his life for violating the rules of behavior established by the community? There is no doubt that the rationale for the death penalty has always flowed from the needs of this institution. And not only the history of the question of the right to deprive a person of life, but also of the system of punishment in general, for several centuries occupied prominent minds in all civilized countries. According to C. Beccaria, tired of eternal strife, people finally decided to sacrifice a part of their freedom in order to enjoy the rest peacefully and safely. Thus, the source of the right to punishment is, in his opinion, the need to protect public safety from the violence of some individuals.

However history does not give any example of formation of a state on individuals' agreement. Therefore, Therefore, Goller, not without reason, argued that society was not created artificially, in the form of its usefulness, by the agreement of individuals, but arose naturally, independently of human agreements; its roots are deeply rooted in human nature. Consequently, the right to punishment rests, in his opinion, not on a contract, but on a force that can provide protection. The right to punish is the natural right to defend yourself and take care of your safety. It is not exclusive to state power, but is now the common property of all people. Some authors confuse the issue of the right of punishment with the principles on which it should be based. So, for example, the Italian lawyer F. Carrara believed that the right to punish is based on three principles: justice, benefit and sympathy [18]. Representatives of theological theories also deduce the right of punishment from the benefit, since, in their opinion, natural law allows only the fact that serves the good of humanity. Consequently, the right of punishment has its source in justice, as Divine law prescribes only absolutely fair. Finally, it cannot but used by universal recognition, since the moral law is inscribed by the creator in the heart of man, prompted by moral feeling and sound reason; his demands cannot fail to meet with a response in all hearts not spoiled by passion. However, one should not forget that any theory that elevates its principles to a religious basis is, as S.V. Poznyshev, "shaky and risky in the sense that it cannot provide sufficient guarantees of the actual conformity of its principles to the will of the Almighty and always raises a fundamental doubt: does it not represent human inventions as the command of the supreme Divine will?" [17, p. 111]. Therefore, attempts to find the basis for the right of punishment in religion are senseless and have no scientific basis.

We will proceed from the fact that the theory of the social contract on the transfer of the right of punishment by the leaders of tribes, clans, unions to the hands of the state is more close to reality. Socrates spoke about this, in whose opinion the duty of law-abiding behavior is not prescribed "from above", but is the result of the free, voluntary choice of an adult Athenian at the time of his adoption of citizenship. But this does not mean at all that the state happened or was formed as a result of the arbitrariness of people.

In the end, people realized that the community is not only a necessary, but also a reasonable condition for human existence. Due to the weakness and inadequacy of the human organism only in a society of his own kind, he can find support and assistance in the struggle for existence, find the means and ways to implement the highest tasks of mankind, the gradual development of the material and spiritual interests of everyone [22, p. 13]. Therefore, without a doubt, it should be recognized that the formation of the state is based on a moral necessity, because people realized that by their very nature they are forced to live in a state, which in the ancient period was considered from two opposite positions: as a collective over social area necessary for society for protection of rights and freedoms, and as a mechanism for limiting individual expressions. According to Epicurus, justice, laws, the state are the result of an agreement "not to harm and not to suffer harm" [16, p. 217]. The purpose of such an agreement (contract) is to ensure the common good as mutual security. Community members were convinced that even Epicurus' recommendations - "live imperceptibly", "safety is achievable thanks to a quiet life and distance from the crowd", "one must get rid of everyday affairs and social activities" - cannot save (protect) a person from dangers outside of society. In the name of this general security, punishment should be used, which is considered as a legally equalizing force in a society of people of different qualities. Punishment, as it were, ensures the equality of the parties to the agreement, the agreement in the community. People realized that peace in society can only be maintained by punishment, because only when it exists, a person goes to bed calmly and wakes up calmly [1, p. 42].

So, the right to punishment passed to the state not by force, but with the consent of people who refused certain rights and freedoms, including the right to revenge, which belonged to them in their natural state. Man handed this right into the hands of a newly formed organism so that in the future the state would have this right to the extent that the common good would require it. At the same time, the right to punishment is transferred by each person only with the best intention, in order to preserve himself, his property and freedom. It should be agreed that, from the point of view of moral and material, to punish people is by no means an enviable right, but, on the contrary, a very onerous duty, from which the state can no longer evade, because the natural beginning - the basic principle of the right of punishment - follows from the need to protect not only the individual, but also the social organism itself. Voluntarily transferring to the state the right of punishment that once belonged to the leaders of tribes, clans and unions, people understood that this right also implies the undeniable right of state coercion. But why people, having voluntarily united into a new community, were not able to observe and respect each other's rights and freedoms without being forced? In other words, was it possible for civil consent on the basis of a free choice of law-abiding behavior without state coercion, detailed legislative regulation of all aspects of life? Was it impossible, uniting in communities, to agree not to offend each other, not to violate the established rules of conduct, so as not to be punished later? Does not the mechanism of state coercion contradict the highest moral consciousness, the freedom of the individual? After all, in principle, the right of freedom excludes any compulsion, which is absolutely unlawful, because it abducts the inner freedom of the individual. But this was the case at the beginning of the history of mankind, when everyone was born free, should be free and could only act at his own discretion. However, the time came when the community of free people thought about the structure of relationships between members of the community, since it became clear that if everyone acts only at their own discretion, then it will be impossible to resist evil with violence, otherwise the inner freedom of the individual is stolen.

Entering society, a person, in return for what he loses by becoming a member of society, acquires certain benefits that are inaccessible to him in a natural state. Everyone has the right to defend his freedom by force, has the right to compel the offender of his rights to observe the established rules. However, such coercion had neither force nor guarantees of legitimacy, because it was disorganized. Therefore, members of the community were forced to give (transfer) their right of coercion, that is, their power and their right to judge, to a third, neutral subject, which should be stronger and more just. This is how the need arose for the legal right of the subject to apply coercion, which was not given by nature, but is a product of the conscious, expedient activity of people on a voluntary basis in order to ensure a fair order.

This forcible coercion, which we now call state coercion, was based, figuratively speaking, on the agreement of all members of the community. It had suited everyone, because if earlier the right to exercise coercion belonged to the members of the community themselves, then the offended could easily find himself in a state of impossibility to exercise this right due to his weakness. In addition, the subjects of law themselves could not determine the measure of coercion, that is, they were not able to judge whether the right was violated, to what extent it was violated, etc. As Fichte said, "there is no right of coercion without trial". The paradox is that a person voluntarily agrees to the use of coercion against him by a third subject, understanding (realizing) that by this he loses part of his freedom, restricts it. However, if to understand well into the essence of this historical process, it becomes clear that, on the contrary, it is through organized legal coercion that the rights and freedoms of each member of society are protected. Otherwise, the rights of everyone would be constantly violated: the strong would offend the weak, the healthy - the sick, etc. Therefore, coercion, in principle, does not allow one to rule over others. For this, everyone was forced, first of all, to limit their freedom so that next to it the freedom of another person could exist. Moreover, this limitation requires strict reciprocity: I limit my freedom only because and only to the extent that another person limits his. Coercion, of course, contradicts freedom and violates it, but legal coercion is the resolution of this contradiction and the elimination of offenses, for coercion is here destroyed by coercion; legal compulsion is "the second compulsion, constituting the abolition of the first compulsion". According to Hegel, it is the denial of the denial of freedom and therefore the affirmation of freedom.

So, the question of the natural beginning of transition of the right to punishment to the state is clear to us. However, the problem of the death penalty remains unresolved: was this measure also stipulated by a social contract? Logically, if the death penalty is attributed to a type of punishment, that is, if this measure is a punishment and has all its features, then its application was agreed with the members of the community. Otherwise, the death penalty should be considered state repression or revenge against individuals, not stipulated by a social contract. Consequently, such a measure has no moral basis.

From a practical point of view, it is possible to pose the question in such a way that should be considered a punishment? The answer is simple: punishment is a special specific means in the hands of the state or another entity that has the appropriate rights to accept and apply it to achieve certain goals. This is approximately how the science of criminal law understands the concept of punishment. Well, more specifically, traditionally the legislation gives the following definition of punishment: "Punishment is a measure of state coercion imposed by a court verdict". Such a legal definition, as we understand it, enables the subject to choose and use any means, including, of course, the death penalty as a punishment. In this case, one has to admit that the death penalty as a

form of punishment is morally justified, as well as other types, if necessary, useful and fair. This is required by common sense and logic. However, this does not mean that it fits the truly philosophical concept of punishment, which is directly related to human rights, including the right to life, because under the death penalty, the criminal is deprived of his rights in the broad sense of the word by the fact of a crime. In other words, the first condition of any right - existence is taken away from him.

Logically everything is such as right, as a criminal who committed even serious crime has some right; punishment continues to have criminal legal meaning. But if to take away his right without exception, then punishment is deprived its necessary element – criminal legal subject and transform in non-punishment. Other words, in case of the death penalty, it is destroyed the form of punishment; legal subject and punishment deprives its legal meaning. Indeed, if we consider punishment as a state condemnation that strikes a criminal in certain rights, then is it correct to consider the death penalty as a punishment, if the guilty person loses his legal personality, becomes deprived of rights before the state, turns from a person into another living being?

If punishment has meaning and value as long as there is still a legal subject as a bearer of the idea of law, as a member of a legal union, then, indeed, the death penalty can hardly be considered a punishment. This means the absolute power of the state over the individual. But, what about the recognition of inalienable human rights? As impact of the state on an individual through punishment, as reaction on behaviour, have the bounds of the punishment's essence. The state, depending on the current situation, in order to strengthen the protection of the safety of society, can go over these bounds. However, this justified transition is obviously no longer a legal punishment, that is, not a criminal legal act, but an act of temporary public safety. This usually happens after revolutions or during war. Therefore, in this case we are talking about the separation of punishment as a means of counteracting crime and a measure of public safety. Is it justified in this case to cross the limit of the boundaries of punishment with a sharp increase in the most serious crimes, intended murders? Certainly, when determining the limit of boundaries, one should proceed, first of all, from the fact that a person is not deprived the rights, but is the bearer of inalienable rights that are not subject to violation by the state, the content and volume of which can vary for each given epoch, for each people, but the idea of the existence of some inalienable rights remains unchanged. Therefore, a criminal, no matter what serious crime he committed, is not deprived of his rights, and first of all the right to life, which was given to him at birth.

In support of the provision that the death penalty is not a legal punishment, it is necessary to provide such evidence to which sane and reasonable people from the most diverse sectors of society could join. But we haven't heard those yet. After all, we must not forget that when we are talking about the legality of the death penalty as a punishment from the point of view of morality, we must remember that we are talking about relative morality, for the deprivation of a person's life is carried out by the state in a compulsory manner.

The death penalty could not be considered a punishment if the state set the goal of taking revenge on the offender, applying this measure, causing evil or suffering. But, if society just wants to protect itself and its citizens from new murders, and at the same time to satisfy people's sense of justice, is not it entitled to use any means within certain boundaries of morality? Lawfulness of the death penalty using is more justified not by the fact that it is useful and necessary, but by the fact that it is fair in relation to certain categories of murderers who have committed particularly grave, skilled murders with grave consequences. In other words, by using of the death penalty, the society,

which is represented by state power, does not aim to demonstrate its cruelty and atrocities. It wants to convey to people information on the fullness of the possibilities at its disposal in responding to challenges posed by individual members of the community.

So, with the advent of the state, a man decided to transfer his right to kill to new formed body, saying: respect my life, protect it; for my hand, I will act the same way in respect of others, i.e. I promise not to deprive life for anyone; we agree mutually to be deprive the life by the state power if unjust deprived the life of anyone of members of his community. In actually, this tacit, voluntary agreement between power and an individual means that not the state has right to use the death penalty, and a criminal lost the right to life. Society does not create a new law, but only uses the old natural law. When use this punishment, it takes the place of a private person. It follows from all this that an individual retains the right to take away his right of blood feud, which was once transferred to the state, if he sees a clear violation of the principle of justice, stipulated and approved in the agreement.

Consequently, if some time the members of society transferred their right to the state, proceeding just from the necessity, usefulness and justice, then only themselves can refuse from using of death penalty, when they will convince in its immorality, injustice and uselessness.

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DOI: 10.25108/2304-1730-1749.iolr.2021.63.55-70
УДК 343.9

Философия смертной казни

Аннотация: Законность применения смертной казни более оправдана не тем, что она полезна и необходима, а тем, что она справедлива в отношении определенных категорий убийц, совершивших особо тяжкие, квалифицированные убийства с тяжелыми последствиями. Иначе говоря, применяя смертную казнь, общество в лице государственной власти не преследует цель продемонстрировать свою жестокость и зверство, а желает довести до людей информацию о всей полноте имеющихся в его распоряжении возможностей в реагировании на брошенные вызовы отдельными членами сообщества.

С появлением государства человек решил свое право убивать нападающего на него передать новообразованному органу, говоря: уважайте мою жизнь, защищайте ее; я, со своей стороны, буду точно так же действовать в отношении остальных, то есть и я обещаю никому не отнимать жизнь; согласимся взаимно быть лишенными жизни со стороны государственной власти, если несправедливо лишим жизни одного из членов своего сообщества. Данное негласное, добровольное соглашение между властью и индивидуумом практически означает, что не государству дано право применять смертную казнь, а преступник потерял право на жизнь. Общество же не создает нового права, а только пользуется старым естественным правом, становясь при использовании этого наказания на место частного лица. Из всего этого следует, что за личностью остается право отнять переданное когда-то государству свое право кровной мести, если она видит явное нарушение принципа справедливости, оговоренного и утвержденного в договоре.

Следовательно, если когда-то члены общества это свое право передали государству, исходя именно из необходимости, полезности и справедливости, то только они сами могут

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отказаться от применения смертной казни тогда, когда убедятся в ее безнравственности, несправедливости и бесполезности.

Ключевые слова: смертная казнь; наказание; нравственность; жизненная деятельность; закон; государство; справедливость.

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