



CRIME AND PUNISHMENT: CHRISTIAN AND LEGAL ASPECTS

Yegor NAZYMKO,

Senior Research Fellow of the Division of Research of Donetsk Law Institute of MIA of Ukraine,
Candidate of Law, Senior Research Fellow

Summary

The author of the article considers Christian and legal basis for defining criminal-legal meaning of crime and punishment for committing. The author demonstrates a close connection between religion and criminal law in the process of forming the legislation concerning a criminal responsibility. The author notes that religion, influencing on the criminal law, regards as a sin breaking not only religious, but also legal norms and promoting, thus, carrying out these norms.

There is an analysis in the article of religious ethics influence on law-abiding behavior etalons, on the one hand, and the prohibition to commit crimes, on the other. The idea of a necessity for a criminal legislation to correspond to Christian norms and behavior rules is upheld. The special attention is focused on Christian principles of introduction of humane punishment for committing crimes.

Key words: religion, law, Christianity, crime, punishment.

Аннотация

В статье исследуются христианско-правовые основы установления уголовно-правового значения преступления и наказания за его совершение. Показывается тесная взаимосвязь религии и уголовного права в процессе формирования законодательства об уголовной ответственности. Отмечается, что влияя на уголовное право, религия признает грехом нарушение не только религиозных, но и юридических норм и способствует, тем самым, их выполнению.

Анализируется влияние религиозной этики на установление эталонов законопослушного поведения с одной стороны и запрет совершения преступления – с другой. Отстаивается идея о необходимости соответствия уголовного законодательства христианским нормам и правилам поведения. Особое внимание автором уделено христианским основам внедрения гуманного наказания за совершение преступления.

Ключевые слова: религия, право, христианство, преступление, наказание.

Statement of the issue. The actuality of the article is characterized by an affirmation that religion and law are the most important parts of social regulations system, which have an important influence on public life. The vital issue of nowadays is an influence of religious texts on developing national legal system, forming criminal and legal prohibitions, and also determination of the measures, enforced concerning the criminals.

We should note that Orthodox Church regards an «obscured state of human soul» as a basic reason of public criminalization, recognizing, side by side with this, a serious negative influence of economic and social problems, weakness of the national power. The most dangerous crime is hidden behind political and pseudo-religious motives.

Both secular state and the secular law are secondary. Any legal system, produced by a human community, from Christian point of view, bears the imprint of narrow-mindedness and imperfectness, although it contains some minimum of moral norms, bound to be obligatory for all the members of society. «The mission of secular law doesn't consist in converting the world filled with an evil into a Kingdom of God, but in preventing the world to turn into a hell». («Basis» IV.2). The human law can't contain the whole completeness of

Law of God, but, at the least, it has to correspond to Christian principles, not to ruin them [1].

The world, particularly European, law-making practice contain examples of recognition the priority of Christian values for modern nationhood and introduction it to Constitution – a basic law of state. The striking example is a new Constitution of Republic of Hungary that has come into force 1-st of January 2012. The Declaration, called «National credo», which forestalls the Constitution, among the other provisions, states following: «We recognize the role of Christianity in preserving our nationhood» [4].

There is no doubt, that the notion of sin is rather wider, than «crime» or «breach of law». Even Cesare Beccaria believed, that gravity of sin cannot be regarded as a criteria of crime, as sin degree is estimated through an anger of heart, whose deep sense cannot be known without Revelation of God [2, p. 97-98]. Additionally, the state laws, not accepted by consciousness and conscience of those, who is to observe them, can't work effectively.

The aim of the article is to analyze the correspondence of criminal and law prohibitions to Christian norms, discover special features of religious norms influence on a criminal and law regulation mechanism.

Report of the main part of the research. Every famous philosophical and

ethnic concepts and approaches, which try to understand an activity of society is characterized by a unification of crime and criminality with an evil that, in its turn, is peculiar to the human being itself because of its imperfect nature (T. Hobbs, I. Kant, V. Solovyov). So, human being is imperfect, as it has no corresponding finished life-conditions and tries to make it. On the contrary, Christian idea of evil origin has an approach, explaining the human imperfectness through its fall. In other words, both approaches regard crime as an integral feature of human being life-activity as a social being according to the essential characteristics of society itself. However, there is a recognition of the fact, that an evil has its own special inaccessible to human understanding sub-basis and preconditions, in other words, it exists in the transcendental (the other world) reality. But the reasons of an evil are really tangible, as they exist in social sphere and the anthroposphere, in other words, they are in empirical area of things and human existential being. The majority of existing philosophical and sociological concepts recognize crime as an unavoidable and insuperable attribute of civilization, special symbol of disharmonic relations between human being, world around and beings of the same kind.

However, the mankind doesn't refuse from the idea of «social harmony», which



was being reproduced by watching the natural, space order, within of which human life, that includes wars, hatred, aggressive counteraction in fight for physical surviving, seemed to be inadequate, disordered, not being a part of natural Universe, which seemed to be integral, good and wonderful. Settling this matter demanded making great intellectual efforts of many generations. Since first primary forms of human ideas about world – mythology, religious knowledge to refined modern philosophical concepts, the problem of crime is represented as a problem of counteraction between good and evil. But this world outlook issue within its instrumental, practical aspect of nowadays has the following formulation – how to define an evil within legal norms.

Religion is an important and necessary phenomenon of spiritual life of human being and society. According to the explanatory dictionary, a religion is «one of social consciousness forms, a complex of spiritual ideas, based on a faith in supernatural powers and beings (gods and spirits), who are the subject of worship» [3, p.665].

Philosophy of religion analyzes the essence of religion, elucidates a correlation between the faith and consciousness, and analyzes the relations between human and God, ethical significance of religion, its significance for social life, for spiritual development of mankind.

All the people of the world need a spirit and corresponding ideas, feelings and experience. The religion feeling is peculiar to human beings. But the matter means, that if it is not directed to the constructive way, if people are not protected from destructive religions cults, the mankind won't be able to develop.

The criminal law exists to restrict arbitrariness, antisocial and antihuman inclinations and encourages, that are regarded as the interests understood in a wrong way and sick attractions. It is a necessary condition for a civil freedom.

The religion influences essentially on appearance and formation of a criminal law. The legal consciousness, from the first, is closely connected with religious one. Considering criminal law or its separate institutions, religion regards as a sin breaking not only religious, but also legal norms and promotes observing. There is no doubt, that it's impossible to form a good society without moral

principles, which define the rules of human «good behavior» in public life. But, ethic norms, values of criminal and legal guarding are still to appear. They, in its turn, derive from religious doctrine.

Human public life is subject not only to legal, but also ethic regulative principles, which are studied within ethics. The religious ethics by means of God's word formulate for people some behavioral etalons (norms), first of all, moral, which are to regulate relations between people. Very often, talking about ethic norms, moral principles are meant. So, the problem is following: you have a high level of morality, but society is degraded or you have developed society, but the level of morality is low. It's very important for these notions to be developed equally, they should harmonically add each other. It's necessary for morality to correspond to the level of public development in order to regulate the relations and real functioning. Many things depend on people, as they define what kind of values are to have a public maintenance, it's, in its turn, is regulated under the moral norms.

Religious norms are independent type of social norms, they contain religious behavioral rules for people, and they have all necessary features of social norm. But state legal norms are aimed at citizens of a state; religious norms care all the people, without exclusions.

Ruining the religious basis, wherever it happens, had never resulted in favor for law and legal order, as still, law and religion are appealed to strengthen and confirm ethic values, these are the routes of their interaction. The more Christians, observing its obligations before God, the more love to each other and the less evil and sin, because love eliminates, eradicates evil and sin.

Religious (moral) norms have influenced on a formation of mentality and world outlook of Ukrainian nation. First of all, these norms is a complex of Christian admonitions and beliefs, which are a guidance for people, who create and enforce criminal law (it's not by chance, that Criminal Code of Ukraine of 2001 used to provide for renewed formal components of crime against a freedom of conscience and for the first time has noted crimes against public morality).

The Christian holy book (The Holy Bible) consists of two parts – the books of Old and New Testament.

Now some scientists regard Bible as an origin of criminal law that is characterized by a clear order in defining sinfulness (illegality) of an act and formulation of responsibility principles.

There is a first written mention about crime is in Holy Bible. The first book of Moses contains prohibited acts, which are dangerous for a human, namely: eating the fruits of Tree of the knowledge of good and evil, breaking this prohibition could lead to the concrete punishment – death (The Book of Genesis, 2:17). In this case a sense of a sin is similar to the sense of a crime and contains a formal attribute – illegality, namely: sins are clearly defined by a religious norm (The Exodus, part 20). But we should note that material side of a sinful action is made not only by a social sense, but also the moral one. In other words, a sinful action contains not only a public danger for the rest of people, but also for existing person, who makes a sin. That's why a formal and material side of a sin unites both social and moral sense, taking into account a definite stage of statehood development, when a state was legalizing religious norms and guaranteeing fulfilling by means of state enforcement, - there was a legal sense of this public and spiritual phenomenon. Breaking of law is made by committing an evil act, so, there exists even a synonymous similarity between sin and crime.

Torah contains a partial answer this question, there are basic principles of a prohibited behavior of human being, which are similar to the actions regarded in Criminal Code of Ukraine as criminal and which are under the punishment. The example of the latter is Bible principle «Thou shalt not kill» (The Exodus, 20:13). If a human being breaks this principle, he sins, that is to be under the punishment. This principle corresponds to the article 115 of Criminal Code of Ukraine, which also regards murder as the gravest crime and predicts the punishment for committing. In the same way it's possible to make a parallel between the principle «Thou shalt not steal» (The Exodus, 20:15), which corresponds to the article 185 «Larceny»; the principle «... neither lie one to another» (The Book of Leviticus 19:11) corresponds to the article 192 «Property damage by deceiving or abusing confidence», article 225 «Deceiving the buyers and clients», article



226 «Falsification of measuring means»; principle «Ye shall do no unrighteousness in judgment» (The Book of Leviticus 19:15) corresponds to the article 372 «Bringing to criminal responsibility the person, known to be innocent», the article 373 «Coercion to bear evidence», the article 375 «Ordering by a judge the sentence, adjudication, decision, ruling known to be illegal»; the principle «Thou shalt not bear false witness against thy neighbor» (The Exodus, 20:16, Book of Deuteronomy, 5:20) corresponds to the article 383 «False informing about committing a crime», the article 384 «Deliberately false evidence» etc.

It is interesting to note, that Old Testament (The Book of Leviticus 5:2) contains presumption of knowledge of God's laws, in other words, if someone doesn't know them, it doesn't release from responsibility: «Or if a soul touch any unclean thing, whether it be a carcase of an unclean beast, or a carcase of unclean cattle, or the carcase of unclean creeping things, and if it be hidden from him; he also shall be unclean, and guilty».

So, such features as defining the actions under the prohibitions and foreseeing some type of a punishment for committing are the uniting components of notions of crime and sin. So, the actions, corresponding to these two notions, are characterized by an illegality, public danger, fault, immorality and punishability.

The list of sinful actions, in the same way as criminal, are clearly defined (The Exodus, 20:3-17). The difference consists only in defining by a state the criminal character of an action as formal rules of behavior, which are ensured by a state coercion (punishment), but a sin – by God, the mechanism of punishing the sin is undetermined.

Considering the penal system according to Moses laws, it's necessary to note, that it is not absolutely structured and its character is severe, as it predicts death penalty (The Exodus, 21:12, 14-17, 29; The Book of Leviticus, 20:10, 27; Numbers, 35:17-18) and «Eye for an eye» principle (The Exodus, 21:23-25; The Book of Leviticus 24:19-20; Numbers, 35:33; Book of Deuteronomy, 19:21). There is no imprisonment as a separate punishment in Torah, but there is a first enforcing case in Second book of Chronicles when the prophet Micah is

imprisoned (18:25-26). The same laws contain the bodily punishments, namely: beating the person (not more 40 heats) in judges' presence (Book of Deuteronomy, 25:2-3) and mutilation (Book of Deuteronomy, 25:12).

The property issue is also mentioned in Holy Bible. For instance, damaging the property (or animals) used to demand the compensation, but four or five times as much (The Exodus, 22:1). The arson of the harvest demanded the complete compensation of damages (The Exodus, 22:6). Together with a material compensation of damages there used to enforce expiation – peace-offering (The Book of Leviticus 4:13-17) and confession (Numbers, 5:6-8). Sacrificing had, partially, a material character, as materials were sacrificing (animals, foods). The confession was made only in a case of a human clearly recognition of its sin and public repent to God that has more actual influence on criminal behavior, than an ordinary punishment.

There should be considered the approach, contained in Holy Bible, to the criminals, who committed involuntary homicides. For this purpose, God orders Moses to build six protective cities (Numbers 35:6, 11-13) to save murder from an avenger. It's interesting, that God obligates a society to save murder from an avenger (Numbers, 35:25), preventing, thus, shedding innocent blood and blood on their own hands (Book of Deuteronomy, 19:10). In other words, the gibbet law was forbidden.

So, we can conclude, that the system of Moses law is characterized not only by a death penalty and bodily punishments, but also by penalties, not connected with either death or imprisonment, that are characterized by a property compensation of damages and moral suffering.

The norms of Moses law forbid the groundlessness of the sentences. The example is a provision concerning the forbiddance to judge a human, taking into consideration an evidence of one witness. God believes, that one witness's evidence can contain less truth, that two or three witnesses' evidences. That's why God says: «One witness shall not rise up against a man for any iniquity, or for any sin, in any sin that he sinneth: at the mouth of two witnesses, or at the mouth of three witnesses, shall the matter be established» (Book of Deuteronomy,

19:15) and stresses, that only in accordance with an evidences of two or three witnesses, a sentenced person is to die (Book of Deuteronomy, 17:6). False evidence could lead the witness to the penalty he demanded for a sentenced person (Book of Deuteronomy, 19:19). Criminal Code of Ukraine, if the similar situation happens, contains a clear list of penalties for such a crime (art. 383 «False informing about committing a crime», art. 384 «Deliberately false evidence»).

The principles of equality and legality in accordance with Holy Bible's rules on sentencing are equal and interconnected, whose basis is an objective truth. God says: «Thou shalt not wrest the judgment of thy poor in his cause» (The Exodus, 23:6), «Cursed be he that perverteth the judgment of the stranger, fatherless, and widow. And all the people shall say, Amen» (Book of Deuteronomy, 27:19), «Keep thee far from a false matter; and the innocent and righteous slay thou not: for I will not justify the wicked» (The Exodus, 23:7).

The effectiveness of these two principles is ensured under the immunity of a law and equality before it: «Thou shalt not wrest judgment; thou shalt not respect persons, neither take a gift: for a gift doth blind the eyes of the wise, and pervert the words of the righteous» (Book of Deuteronomy, 16:19). The forbiddances to false the laws exists also in our national criminal legislation (part 3 art. 3 of Criminal Code of Ukraine). The equality of everyone before the criminal law is laid down by a united for all the citizens' basis – formal components of a crime (part. 1 art. 2 of the Criminal Code of Ukraine). The bribe-taking is also regarded as a criminal action (art. 368, 369, 370 of the Criminal Code of Ukraine).

The power of a punishment in New Testament is decreased and there is an accent on appeasement and forgiveness, whose power is aimed at reproduction and preservation of moral and spiritual state of both criminal and suffered person that makes it possible, through the deepness of a conflict to get effective means for settling. For example, Jesus Christ says: «Ye have heard that it was said, An eye for an eye, and a tooth for a tooth» (Gospel of Matthew, 5:38) «But I say unto you, resist not him that is evil: but whosoever smiteth thee on thy right cheek, turn to him the other also» (Gospel of Matthew, 5:39); «Ye have



heard that it was said, Thou shalt love thy neighbor, and hate thine enemy» (Gospel of Matthew, 5:43), «But I say unto you, love your enemies, and pray for them that persecute you» (Gospel of Matthew, 5:44).

John the Apostle defines the notions of crime as follows: «Everybody, who commits a sin, breaks the law» (1 Gospel of John 3, 4). Making sins, according to 20 and 21 parts of The Exodus formulates a responsibility for committing a crime, as it damns him (Book of Deuteronomy, 27:26), as in this case the subject is crossing the line, forbidden by God. So, the notion of a crime, as a social dangerous action, has a great significance as it leads to breaking the inviolability of public life rules, laid down by God.

Conclusions. The correspondences of criminal and legal prohibitions to religious norms are the obligatory condition for the most optimal ensuring the mechanism of criminal and law regulation. Reforming criminal legislation needs to accent an attention on Christian forgiveness, whose power is aimed at reproduction and preservation of moral and spiritual state of both criminal and suffered person that makes it possible, through the deepness of a conflict, to get effective means for settling.

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СИСТЕМНЫЙ ПОДХОД И ЕГО ЗНАЧЕНИЕ В ИССЛЕДОВАНИИ ПРАВОВЫХ ЯВЛЕНИЙ

Ирина НАСТАСЯК,

кандидат юридических наук, доцент,
доцент кафедры теории и философии права
Львовского национального университета имени Ивана Франко

Summary

This article carried solid analysis of a systematic methodology in research. The characteristics of a systematic approach that determine its versatility are standing out. More in detail is considered notion of «system» as the basic category of the system approach. We define the meaning of the term «structure» as a logical apparatus system approach. The characteristics and patterns of use of the systems approach to exploring social objects are studying. The role of the theory of categorical systems in the knowledge of the legal validity is explaining. Attention is paid to methodological foundations of formation of the concept of «legal system». The conclusion about the need for a systematic approach to the study of legal phenomena is made.

Key words: system, theory of systems, systems approach, law, legal system.

Аннотация

В статье осуществляется основательный анализ системной методологии в научных исследованиях. Выделяются характерные особенности системного подхода, которые определяют его универсальность. Подробно рассматривается понятие «система» как базовая категория системного подхода. Определяется значение понятия «структура» в логическом аппарате системного подхода. Исследуются особенности и закономерности использования системного подхода в исследовании социальных объектов. Выясняется роль категориального аппарата теории систем в познании правовой действительности. Уделяется внимание методологическим основам формирования понятия «правовая система». Делается вывод о необходимости использования системного подхода в исследовании правовых явлений.

Ключевые слова: система, теория систем, системный подход, право, правовая система.

Постановка проблемы. Дифференциация и интеграция научного знания ведут к глубокому пониманию действительности, в том числе и правовой. Естественно, научная методология должна отыскать соответствующие способы для обоснования построения многоуровневой и многомерной картины правовой действительности, и для этого именно системный подход оказывается наиболее адекватным, а иногда просто незаменимым. Поэтому теоретическое исследование и дальнейшее правильное применение системного подхода чрезвычайно важны для получения объективных знаний о правовых явлениях и во многом определяют направление развития юридической науки в целом.

Актуальность темы исследования обусловлена необходимостью правильного использования системной методологии теоретико-

правовых исследований, а также существенным значением системного подхода для глубокого изучения и адекватного понимания сложных явлений правовой действительности.

Состояние исследования. Изучению возможностей и специфики системного подхода посвящены работы мыслителей разных исторических эпох и научных направлений. Существует большое количество разработок, посвященных системному подходу, философскому обоснованию принципа системности, теории систем. Значительный концептуальный материал по системному подходу в правовых исследованиях содержится в исследованиях В. Баранова, А. Венгерова, В. Гоймана, Д. Керимова, В. Кудрявцева, Л. Луць, А. Малько, С. Марковой-Мурашовой, С. Нарыковой, Н. Онищенко, Н. Пархоменко, В. Сырых, Ю. Тихомирова, Л. Тиуновой, Р.