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Review of the monograph of I.M. Rahimov "Philosophy of crime and punishment"

The book is a result of long and considerable thinking. Arguments given at the book are stated exactly and clearly; general scene designed in the details, from which is followed that the law is mainly criminal, at wide sense – this is not just common technicality.

The book is devoted to "punishment" problem, but it does not mean the "crime", being phenomena of public significancy, is underestimated. Author notes that unlike "crime" many approaches to "punishment" continue arise the questions, and therefore the author wish to spend special attention this topic.

Rahimov is at his element, expressing critical assertion concerning to epistemological and ethical foundations of criminal law, and on the law, which is understood like common juridical practice. His book follows accurately to established and stricly observed logical order of presentment.

The author put a goal to develop general system of guarantism, strongly tied it with legal state, which is based on protection of universal human freedoms and prevention of power usurpation.

Text reading is not difficult as the author operates with clear (but not simple) conceptions and masterfully uses facts. Views of author may attribute to critical legal positivism.

Work was influenced with two ideological directions: illuminism in philosophy and liberal socialism in politics. In that sense that those suggestions are good, which expand an area of individual liberty and press an area of non-productive power, therefore it is understandable the grounds for (contemporary) freedom limitation, where is required.

The author protects an idea of guarantism in his work, though there are no many

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scholars follow this direction in philosophy. Guarantism is a model and ideal, to which can be approached reality, but which is remained unachievable goal. But, in order to be a goal, the model should be defined at all its aspects.

The book is touching the problem of philosophical approach to criminal law, and it name "Philosophy of crime and punishment" not accidentally repeats C. Beccaria: author shares his thoughts, which is not typical for modern specialists on criminal law, and supports his idea that "criminal law is philosophy". Crime and punishment are combined together, as a reflection of each other: on the one hand an impact of human factors on human rights, and on other one - the study of causes, pushing to commit a crime.

Author prefers criminological approach to legal (in narrow sense of this word) that reflects his positive and normative view on the right. In his opinion, this approach better reflects the social causes of criminal phenomenon.

What the base of the law (criminal, international etc.) is? In order to find answer the author analyzes the arguments of various thinkers.

According to Bettiol, punishment is a legal institute, which guarantees civilized human society. But, on one side, punishment is the most suitable way to protect society from violence, on other one – this is also violence over a man, therefore, we should consider a punishment from point of view of human rights also. Being judged this way, we inevitably come to idea that criminal law has to have philosophical basis that implies not only a metaphysical approach and the recognition of natural law as the basis of philosophy of law, but also that principles a priory compile universal essence of the law.

The same opinion is kept an Italian criminologist of 19th century Carrara for whom science of criminal law is, at first extent, *philosophy* of criminal law. He based his judgements not on the arbitrary human will, but on reason and rational arguments. The doctrine of Carrara gained sufficient significance on technical and dogmatic level, but unfortunately, after him this direction is not used any more in Italy. Opposite, in Italy, Germany and Anglo-Saxon system the criminal law and philosophy is more contrasted. Reason is seen in "absolutist" legal positivism, which

is developed in Germany at the end of 19 century. So, Binding denied an existence of natural law and any philosophy of law. According to him, these notions are differ from jurisprudence and positive legal science.

Nevertheless, studying of the ties between philosophy and criminal law was not stopped in Germany. Due to absence of such academic subject like philosophy, many specialists of criminal law on necessity became also and legal philosophers.

Even in Anglo-Saxon system, which is not prone to metaphysics, an argument about philosophical problem of punishment is remained just the same lively.

There was long time a split (not a tie) between criminal law and philosophy in Italy; in that a role of "Technical and dogmatic school" was a high. At the beginning of 20th century Rokko determines a science of criminal law, which had one duty: steadfastly and scrupulously to adhere studying of the law, positive and valid one. Though, he does not deny the necessity paying some attention to philosophy of criminal law. Mancini, belonging to the same school, absolutely denies philosophy. Grispinie develops this direction and names it as "technical scientific": expression "scientific" presupposes that science of criminal law has no philosophic preconditions, and expression "technical" indicates on punishment function only like means of goal's achievement.

This affected to development of Italian science of criminal law, unreasonably closing off from philosophy, though, and the philosophy of law did not draw a proper attention to punishment problem.

Today, we may say about direction's change of this trend, in which a merit of Cattaneo is great, who tried to find different aspects and to compare theories from various cultural areas, and also to analyze a problem of punishment's explanation.

It is watched the same desire of Rahimov to research deep roots of this very arguable topic. The book emphasizes that philosophic base of criminal law should have strong ground that is not exclude a help from side of humanistic conscience. It is impossible to find in full accepted and satisfied decision in area of philosophy of criminal law, since philosophy of punishment is in permanent aspiration to reconcile two necessity: to punish a criminal and to protect his human value.

Based on above stated, punishment should be considered as special legal sanction, extreme and maximal. If to say about it in frame of general theory, punishment is a specific manifestation of compulsoriness of the law. Consequently, it is a part of mechanism directed to actual ensuring of legal norms. Punishment is not a sanction, and a kind of sanction; this is that sanction, which is established against violation of legal norm, i.e. affirms close ties between punishment and forced law.

Author is continuing, at least partly, an idea of Kant, masterfully catching a deep sense of his ideas concerning to this topic. Offense is an obstacle to freedom of other subject, but coercion, which follows to this action, is also to be considered as obstacle to freedom. This coercion might be considered as right and in consent with freedom since it acts as obstacle to violation of freedom other man.

But, some followers of Kant driven to extreme his ideas and defined a concept of punishment and its goal from forced law.

Punishment for Kant is not just forced way to protection of individual law, and has a form of public sanction, it includes not only interrelation victim-abuser, but are concerned all citizens of this legal system.

It seems that Rahimov follows to the way paved by Ferraioli, distinguishing among the goals, which justify punishment, prevention of the most reaction of a victim if punishment is not executed. Punishment in this prospect not only plays a role of crimes' prevention, but prevention of unfair punishments also.

Now, I would like to say also about topic, which is not discussed at this book, but concerns indirectly of it. I would like to draw your attention on consequences of above stated arguments, which based on Kant, in area of international law, where an issue about ways of non-peaceful resolution of arguments at international level is arisen. One of the guarantee forms in international law is self-defense, which is an opportunity for victim to act against aggressor. In this sense a self-defense is a sanction of international law since it closely linked with offense commission. It follows that the actions of a victim (punishment/sanction), which are illicit, become admissible on reason of loss made.

Each legal system might be divided into constituent parts. First constituent part is legal norms, and second one is guarantee. Concept guarantee is wider than sanction as includes any action, judicial procedure or situation directed on saving or restoring of violated public balance. It follows from that norm and guarantee mutually concluded, and norm is such if only it is guaranteed by society.