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Revisiting the Inevitability of Punishment for Criminal Offense: An Ethical Understanding of the Problem

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ABSTRACT

The author presents a critical examination and justification for his dissenting stance toward the thesis proposed by I.M. Ragi-mov, A.N. Savenkov, and H.D. Alikperov in their article titled “Etiology of Individual Criminal Behavior: A Different Perspective” (*State and Law*, 2023;(9):112–125. DOI: 10.31857/S102694520027657-3). This thesis posits that the perpetrator inevitably faces a lifetime of punishment for the crime committed. However, while the author acknowledges the value of the aforementioned article in its entirety, along with its other propositions and conclusions, he calls on fellow legal scholars to engage in a wide-ranging discourse on these matters.

Keywords: science; interdisciplinary approach; guilt; creative efforts; crime; punishment; good; evil; retribution; conscience.

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О неотвратимости наказания за уголовное преступление (попытка этического осмысления проблемы)

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АННОТАЦИЯ

Автор высказывает и обосновывает свое критическое отношение к тезису И.М. Рагимова, А.Н. Савенкова и Х.Д. Аликперова, сформулированному ими в статье «Этиология индивидуального преступного поведения: еще один взгляд на проблему» (Государство и право. 2023, № 9, с. 112–125. DOI: 10.31857/S102694520027657-3), согласно которому виновный всегда неизбежно несет пожизненное наказание за совершенное им преступление. Вместе с тем автор высоко оценивает названную статью в целом, содержащиеся в ней другие положения и выводы и призывает коллег-юристов к их широкому обсуждению.

Ключевые слова: наука; междисциплинарный подход; вина; творческие усилия; преступление; наказание; добро; зло; возмездие; совесть.

Как цитировать

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Philosophical problems in law have long been a subject of interest to scientists. In recent years, numerous studies of note and value have emerged that address the most significant issues in the philosophy of various branches of law, but with a particular focus on criminal law [1–4]. This has naturally led to further marked activity aimed at comprehending and developing a creative and comprehensive understanding of the foundational aspects of legal reality.

It is evident that numerous colleagues, including social scientists and humanities specialists (historians, philosophers, cultural anthropologists, psychologists, political scientists, and other professionals), frequently find the research, speeches, and reasoning of lawyers perhaps tedious and often lacking in depth. They often perceive lawyers' arguments to be overly complex and devoid of meaningful substance.

I will not remain silent, as such a perception is highly offensive to me. I have dedicated a significant portion of my life to the study of law and the state, and I have unintentionally but effectively developed the habit of paying close attention, and with sincere respect to this field of scientific creativity and the people working in this sphere. I must, therefore, state that some of the researchers on legal matters, including my contemporaries, have reached the pinnacle of their profession.

It must be recognized that the negative impression described above, formed by numerous scholars from other academic disciplines and based on publications of contemporary legal scholars, is largely justified. This is because the majority of them (sometimes intentionally, more often by default) limit their vision of social existence artificially, thereby obscuring their view of the world perceived exclusively through the lens of "legal glasses"¹. Consequently, the mental image arrived at is incomplete and inaccurate, appearing in a distorted light, and is deformed; the idea is damaged irreparably and so loses its natural organic integrity.

From my perspective as a discerning and even perhaps picky reader, I can state with confidence that the article by I.M. Ragimov, A.N. Savenkov, and H.D. Alikperov "Etiology of Individual Criminal Behavior: A Different Perspective" [1, pp. 112–125], which is the subject of my essay, stands out among other publications on similar topics [1, pp. 112–125]. It proved to be rich, interesting, and most importantly, fundamental.

¹ This vision is already constrained by the limitations of the human mind. Humans cannot perceive and explain the existence of the universe in all its complexity and multiplicity. This state of affairs is conditioned by two factors: the infinity of the universe and the limitations of the human mind. The universe is infinite, and the related process of cognition is similarly limitless. The human mind, however, is not without its shortcomings. Each new stage of scientific development places new boundaries on the way of the eternal, and the human mind is forever engaged in the intellectual and creative exploration of reality. However, it is inspiring to witness the relentless efforts of successive generations to push these boundaries.

I.

First, I will provide a brief overview of the merits of this approach.

1. I have previously discussed the criteria for scientificity, of which there are several. In this case, I will name only two, perhaps the most important of them. I believe that true science begins when an individual, deservedly claiming the exalted title of scientist, rises to a theoretical, preferably philosophical level of comprehension of complex, generally significant problems of existence and the alarming, severe challenges of time. This individual must offer adequate solutions. Second, scientific activity can be considered such if, throughout its course and from its results, new, advanced, original, and daring ideas are generated. A Nobel Prize winner in physics (1918) and member of the Prussian Academy of Sciences (1894), M.K. Planck (1858–1947) is undoubtedly correct in shrewdly noting that "Only ideas make an experimenter a physicist, a chronologist a historian, a researcher of manuscripts a philologist" [5, p. 593]. It is these fruitful and promising ideas that allow us to explore the universe; based on them, it is perhaps possible to positively transform, improve, and humanize the future life structure.

A meticulous examination of the article by I. M. Ragimov, A.N. Savenkov, and H.D. Alikperov, reveals that the criteria set forth have been met and we are dealing with significant scientific research.

2. Furthermore, this approach is conducted at the very intersection of numerous disciplines, including philosophy, psychology, sociology, criminal law, and criminology. From the perspective of guaranteeing optimal performance and the ultimate effectiveness of the cognitive process, this is of great value. After all, the world is one. It is only in our everyday, utilitarian perception that it is perceived as fragmented and hopelessly divided. Thus, by isolating discrete components of the world, focusing on specific details, and emphasizing particulars, it becomes much simpler for us to comprehend. However, in reality, the world is not as straightforward as that. Indeed, it is integrally interconnected, interdependent, and fundamentally inseparable. Any abstract, speculative division, whether into very large or small constituent parts, is merely a forced convention that is both annoying and essentially unnatural. While it is undoubtedly necessary for analysis and subsequent synthesis, it is not a natural phenomenon. The objective comprehension of the cosmos, the immanent substance of all social and natural objects and processes, requires a comprehensive and multifaceted approach. Consequently, I would advocate the extensive use of interdisciplinary methodologies in all academic endeavors.

It is, undoubtedly, challenging to develop clear and concise ideas that are both meaningful and original, to propose well-structured theoretical frameworks that are internally consistent and accessible and to engage in thought-provoking discussions that challenge existing paradigms in the social and humanitarian sciences, as well as in the technical and

natural sciences. The authors of the article under review have largely succeeded in this endeavor. First and foremost, their initial approach, which involved exploring the intersection of several scientific disciplines, on reflection appears to have been a prudent path to take.

It is perhaps unfortunate that many still attempt to preserve and protect their discipline (in this case, criminology) at all costs with the fervor of blind and inappropriate fanaticism, and that they seek to shield it from any outside intrusion. In opposition, the authors consistently broadened the scope of their research, their creative endeavors, and the tools, techniques, and methodologies they employed. This involved integrating insights and findings from other scientific disciplines with the accumulated knowledge and the outcomes of previous research.

3. The publication is an engaging read that encourages a contemplative approach to its content. It invites readers to engage in a thoughtful and deliberate examination of the material, while also encouraging a sense of calm and unhurried reflection. This approach allows for an in-depth close examination of the subject matter, which is particularly valuable in the context of legal and measured philosophical inquiry.

The text is written professionally and skillfully, and demonstrates a deep understanding of the problems analyzed. This is not surprising given the authors' extensive experience in the field of jurisprudence, in both practical and theoretical terms. Their professional and academic backgrounds, therefore, provide a beneficially solid foundation for their analysis.

Finally, it is worth noting the clear, concise, and convincing manner of presentation, which is evident in their ability to express thoughts lucidly. This is a commendable quality that has become increasingly rare in recent years.

II.

Following the established narrative, it would be logical to proceed to a discussion of the paper's shortcomings. However, I intend instead to devote the second part of this essay to a consideration of a single, but extremely important passage that caused me confusion, genuine skepticism, and, consequently, considerations of a more critical nature.

This fragment is of great significance, particularly in light of its reference to the esteemed Russian and world literature classic of Fyodor Mikhailovich Dostoevsky (1821–1881). Dostoevsky's influence on the development of philosophy on a world-scale is truly immense. The passage reads: "In both historical and contemporary criminal law and criminal procedure, the assertion is made that the punishment for a committed crime is always and everywhere imposed by the court on the basis of a guilty verdict, which determines both its type and terms (amounts). This postulate was refuted as early as 1866 by F.M. Dostoevsky in his bestseller *"Crime and Punishment"*, in which he demonstrated that the punitive function is not solely and consistently performed

by the court. In particular, the writer of the famous novel convincingly demonstrates that in society, crime is inevitably followed by punishment. This is because the punishment effectively catches up with the perpetrator, whether or not the perpetrator evades justice, whether or not the perpetrator commits a crime that is not identified.

This is a unique form of punishment that is not explicitly outlined in any criminal code. However, it is a real phenomenon that is imposed on the perpetrator by their own conscience, rather than by a court of law. This phenomenon is commonly referred to as "Raskolnikov's syndrome". In other words, the inevitability of punishment for the committed evil is not only the prerogative of the court, but also an inherent property of the everyday existence of the social environment, as well as the providence of the Almighty, as theologians claim" [1, p. 115].

I will leave to one side a rather free, not quite correct, and arguably restrictive interpretation of the meaning² of Fyodor Mikhailovich's brilliant work [6]. After all, in the context of my colleagues' reasoning, it is not so important. In any case, they did not pursue the goal of commenting on the content of such a wonderful work.

The question at hand is fundamentally different. It is a concrete and, at the same time, essentially existential question. It arises when one considers whether the authors are correct in their assertion that in any community, a criminal act is inevitably followed by retribution. Are they right in saying that retribution inevitably catches up with the sinner not after his death but necessarily in the continuation of his earthly life, and our human existence at all times is organized in such a way that the villain is, of course, punished, if not by his compatriots or tribesmen, then by his inner self, i.e., by his own conscience?

It is incontestable that the anguish experienced by individuals tormented by remorse, painful mental experiences, and unbearable anguish over their past actions is indeed terrible, and sometimes immense. It is not without reason that L.N. Tolstoy (1828–1910) in his great historical-philosophical epic *War and Peace* put into the mouth of Prince Andrei Bolkonsky a saying that immediately became widely known. Polemicizing with Pierre Bezukhov, the prince declared unhesitatingly, "Je ne connais dans la vie que maux bien réels: c'est le remord et la maladie. Il n'est de bien que l'absence de ces maux"³. Mortals experience a multitude of other forms of distress and misfortune. However, it can be posited that these are among the most profound and traumatic.

Returning to the question posed previously, I maintain that my colleagues are mistaken in their assessment. Rather than evaluating the actual state of suffering souls objectively

² More precisely, the meanings (plural), because his work is amazingly multifaceted and multilayered, touching spiritual substances of different levels and orders.

³ "I know only two real misfortunes in life: remorse and illness. And happiness is only the absence of these two evils" [7, p. 110].

and impartially, they tend to rely on wishful thinking. These souls are engaged in a relentless battle between good and evil, light and darkness, and righteousness and wickedness. A phrase comes to mind from F.M. Dostoevsky's final novel, *The Brothers Karamazov*, uttered by Dmitri Fyodorovich in a conversation with Aleksey Fyodorovich: "Here the Devil and God are fighting, and the battlefield is the hearts of people" [8, p. 113]. In this eternal, uncompromising battle, dark, demonic forces do often prevail. Consequently, there is a vast array of malevolent individuals, routinely exhibiting a multitude of reprehensible behaviors, including a considerable number of heinous acts of terrible cruelty, sadistic sophistication, insatiable greed, and a pervasive cynicism regarding criminality. These individuals exemplify the full spectrum of vices and depravities that are, sadly, inherent in human nature⁴.

In addition to individuals who exhibit antisocial behaviors, such as criminality, corruption, and malevolence, throughout history and across diverse cultural and socioeconomic contexts, there have also been those who have consistently demonstrated a lack of moral agency. These individuals have no intrinsic sense of right and wrong, and the concept of moral choice, therefore, does not apply to them. This is explained by the commonplace fact that they lack a conscience, or, at best, it is in a rudimentary state. They are, in a certain sense, spiritually inferior and flawed, and for some reason, they lack such a necessary, seemingly organic, inalienable element of humanity itself.

If all individuals were to repent sincerely and actively of their past misdeeds and crimes, thereby accepting the consequences of their actions, and if they were to make efforts to correct the situation and to rid society of the negative consequences of their past misdeeds and transgressions, we would be able to move forward on the path of building a moral, just society and state successfully and rapidly. However, this is not observed. Those lacking a conscience are unlikely to experience the remorse that would prompt repentance.

It seems appropriate to cite here the inferences of the prominent philosopher L.I. Shestov (1866–1938) from his book *Potestas Clavium* [The Power of the Keys] [9, pp. 129–131]. In his analysis of the works of F.M. Dostoevsky and L.N. Tolstoy, he directs the reader's attention to the fact that both writers (and numerous

other intellectuals, including writers and scientists from Russia and Europe during that period) frequently engaged in profound and prolonged contemplations on Napoleon I Bonaparte (1769–1821), his thoughts, actions, victories, and defeats, and the essence of his personality. They sought to comprehend the rationale behind Napoleon's apparent lack of remorse, despite bearing the greatest responsibility for the misfortune and suffering endured by millions of fellow citizens and the subjects of other states as a consequence of his actions.

It is challenging to comprehend this concept, particularly if one adheres to the perspective of these two most prominent Russian moralists, who espoused the belief that all humans are fundamentally similar. From the perspective of L.I. Shestov, both held the conviction that if their conscience did not leave them in peace for a moment during their entire life, it should, therefore, have tormented Napoleon all the more. However, this was not the case, as the philosopher posited that not all people are the same and not everyone has a conscience. Consequently, responsibility was not an issue for Napoleon.

L.I. Shestov posits that the gifted French politician and commander acted following the tenets of Stoicism, which instructs its followers to "act according to nature". In this context, the scientist draws on the parable of the eagle and the raven, as recounted by E. Pugachev in the story *The Captain's Daughter* by Alexander Pushkin (1799–1837). The eagle, which feeds on fresh meat, eating its prey while it is still alive, lives for approximately thirty years. In contrast, the raven, which feeds on carrion, lives for approximately three hundred years. It is unlikely that they will ever come together or understand each other [10, p. 314]. In his pertinent observation, L.I. Shestov argues that a person who believes that "responsibility is the consciousness of the moral beginning, living in the heart of everyone" is not given to "understanding" Napoleon, who, although he knew of this word, either did not understand it or understood it in such a way that it would be expressed by a completely different word, approximating to "irresponsibility" in the view of, for example, Dostoevsky [9 p. 130].

In light of the aforementioned considerations, the assertion made by my colleagues regarding the inevitability of an individual's lifetime retribution for sins and crimes appears to be overly definitive. A review of the historical data reveals that, in practice, the outcome of events is often not as predictable as was previously assumed. Indeed, the evidence suggests that the very opposite may be true. It is not uncommon for those who perpetrate evil acts to evade punishment, leaving their victims forever unavenged. If the guilt of the lawbreaker is not evident and not proven; if he is not exposed, captured, and arrested by the court; and if he has no conscience at all, i.e., if in the end, he suffers in no sense, whether physically, morally, or psychologically, then what grounds are there for believing that he will certainly be punished

⁴ It is of interest, importance, and concern to note the pessimistic observation of Professor A.I. Alexandrov, who posits that a meticulous and contemplative examination of the social history over many millennia leads to the conclusion that it can be justifiably regarded as a chronicle of perpetually committed, endlessly reproducing, and constantly evolving types of criminality. In the ongoing conflict between good and evil, the researcher hypothesizes that an illogical situation emerges: evil is consistently more powerful, more organized, more focused, more cunning, and sometimes more intelligent, yet ultimately yields to good. While this may not happen immediately, in the broader historical context, good ultimately prevails. The unambiguously life-affirming position expressed in this quote is not controversial — it provides strength, inspiration, and hope. This is its undoubted value.

in the future? What is the basis for punishment's alleged imminence, and in what must it consist? Could it be that the proclaimed inevitability is really an illusion, at least in this world? Does not the noble, yet somewhat naive, idea of the inevitability of punishment of a criminal on earth, and not in the kingdom of otherworldly forces, exist only in the distraction, only in the inflamed consciousness, inherent, as a rule, in the heralds of all times and peoples of the coming, necessarily impeccably just social order? It is important to recall that the inevitability of punishment for criminal acts is, according to I.M. Ragimov, A.N. Savenkov,

and H.D. Alikperov, an inherent property of everyday existence in the social environment [1, p. 115].

It is my sincere hope that the individual considerations of a critical and undoubtedly debatable nature will not affect the high evaluation of the article analyzed. I would like to extend a recommendation of this work to all those interested in philosophical and ethical problems of law, in particular, criminal law. Furthermore, I would like to extend an invitation to scholars and practitioners to discuss the issues raised in the article and to express their judgments in the pages of all kinds of scientific publications.

REFERENCES

1. Ragimov IM, Savenkov AN, Alikperov KhD. Etiology of individual criminal behavior: another look at the problem. *State and law*. 2023;(9):112–125. (In Russ.) EDN: MLRDFQ doi: 10.31857/S102694520027657-3
2. Maltsev VG. Revenge and retribution in ancient law. Moscow: Norma; INFRA-M; 2012. (In Russ.) EDN: SDQSOP
3. Alexandrov AI. Philosophy of evil and philosophy of crime (issues of philosophy of law, criminal policy and criminal procedure). Saint Petersburg: Saint Petersburg State University; 2020. (In Russ.) EDN: VDJNFN
4. Bochkarev S.A. Philosophy of criminal law: formulation of the question. Moscow: Norma; 2019. (In Russ.) EDN: NNDWUL
5. Anthology of wisdom. Moscow: Veche; 2007. (In Russ.) EDN: QWSJSL
6. Dostoevsky FM. Collected works: in 30 volumes. Vol. 6. Crime and punishment. Leningrad: Nauka; 1973. (In Russ.)
7. Tolstoy LN. Collected works: in 90 volumes. Series 1. Works. Vol. 10. Moscow: Fiction; 1938. (In Russ.)
8. Dostoevsky FM. Collected works: in 20 volumes. Vol. 13. The brothers Karamazov. Moscow: TERRA, 1998. (In Russ.)
9. Shestov LI. Collected works: in 2 volumes. Vol. 1. Moscow: Nauka; 1993. (In Russ.)
10. Pushkin AS. Collected works: in 10 volumes. Vol. 5. Novels. Stories. Moscow: TERRA; 1997. (In Russ.)

СПИСОК ЛИТЕРАТУРЫ

1. Рагимов И.М., Савенков А.Н., Алиперов Х.Д. Этиология индивидуального преступного поведения: еще один взгляд на проблему // Государство и право. 2023. № 9. С. 112–125. EDN: MLRDFQ doi: 10.31857/S102694520027657-3
2. Мальцев В.Г. Мечь и возмездие в древнем праве. Москва: Норма; ИНФРА-М, 2012. EDN: SDQSOP
3. Александров А.И. Философия зла и философия преступности (вопросы философии права, уголовной политики и уголовного процесса). Санкт-Петербург: Санкт-Петербургский государственный университет, 2020. EDN: VDJNFN
4. Бочкарев С.А. Философия уголовного права: постановка вопроса. Москва: Норма, 2019. EDN: NNDWUL
5. Антология мудрости / сост. В.Ю. Шойхер. Москва: Вече, 2007. EDN: QWSJSL
6. Достоевский Ф.М. Полное собрание сочинений: в 30 т. Т. 6. Преступление и наказание. Ленинград: Наука, 1973.
7. Толстой Л.Н. Полное собрание сочинений: в 90 т. Серия 1. Произведения. Т. 10. Москва: Художественная литература, 1938.
8. Достоевский Ф.М. Собрание сочинений: в 20 т. Т. 13. Братья Карамазовы. Москва: ТЕРРА, 1998.
9. Шестов Л.И. Сочинения в 2 т. Т. 1. Москва: Наука, 1993.
10. Пушкин А.С. Собрание сочинений: в 10 т. Т. 5. Романы. Повести. Москва: ТЕРРА, 1997.

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