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Meta-legal Sources of Criminal Law

In law science, this or that officially recognized and state controlled and regulated normatively expressed any form of rights and obligations of human beings is considered as the source of law.

From this point of view, any normative system (religious, moral, habitual or other) beyond the boundaries of normative system, but at the same time profoundly impacting the whole legal system, may be discussed as the meta legal source of law, without which, law can not be understood and assessed relevantly. To study law by law itself, i.e. not leaving the frames, is like trying to go out of water by pulling own hair. That's why, to pay more attention to law, in this case to meta legal sources of criminal law is not privilege for sophisticated lawyers working in criminal field but it is substantial necessity to get rid of positivistic faceless monotony and banal, crammed formal-judicial dogmatism. The difference between the systems of criminal law of different nations is conditioned by the peculiarities of their disposition, world perception, world outline, ideology, religious, moral tradition of way of life and culture, their own vocation in the common stream of spiritual-historical development of mankind and their reflection and source of destination. Without envisaging the common reflections and peculiarities of this process, the assessment of legal systems and differences between them, often in the conditions of sheer opposition of common sense and specific objectives is not possible. For example, while legislator of China characterized with the great number of population envisages certain restrictions and prohibitions towards large families, the legislator of Armenia and Mountainous Karabachos fosters the families for having more children. But in both cases, despite some controversy between the activities of national legislators at a glance, one obvious objective, strengthened with legislation is clear- to achieve optimization of the number of population in their countries, to strike balance between the number and natural recourses, to raise the level of welfare of their nations in the conditions of stable order.

Only with such a broad approach we can see the substantial unity of different activities and visa versa, the difference between the same kinds of activities.

We must note, that Meta legal sources of law, namely of criminal law existed long before the creation of state and law and the relationship between human-beings was well regulated. When inefficiency of the above mentioned sources in the regulating process of these relationships became evident and tangible, law appeared as means of assistance and that's why the means originated from them or complemented with them was used for keeping order in the society. Thus as a rule, the norms of law could not contradict their original sources. They only complemented and strengthened them.

Of course, in the history of society development, against the background of development of consciousness and common culture of human-beings, some law norms were changed, some vanished (e.g. vendetta, slave-owning, carnage of slaves, Indian custom, according to which departed husband should be accompanied by his wife in the grave). Despite this, many norms of religion, morals and customs transformed into state law, application of which was carried out forcefully. It's understandable, that the norms stated as laws or formed as forceful sanctions accordingly still continued existence as religious, moral and custom norms. That's why, abuse of any of the legislation against the content and essence of these norms never brought kindness. On the contrary, it caused destabilization of order in the society.

It is a well known fact that, all law systems of the world (Roman-German, continental, Anglo-Saxon, general-precedental, traditional-communal etc.) possess religious, moral and other values and principles. For instance, continental and Anglo-Saxon legal systems are characterized with their Christian (Western-European) sources of religious traditions, as they are historical protuberances of law system.

The legislation of almost every Muslim country is based on the principles of Koran and Shariah; Jewish-on Old Testament of Bible, Torah, Talmud and other religious works; Indus- on the principles of Buddhism; Japan- on the basis of Sintoism religion.

The substantial difference between them is that non-legislative commandments of God is directed towards cleaning soul from sins, inflation of soul with Holy Spirit and not towards punishment of law-breaker or revenge. But to the

extent the criminal law tries to change culprit person for good, it is originally blended with the religious commandments of God appealing culprits, not sacred ones for eternal repentance of sins, accordingly with Christ and his commandments.

In the countries having Muslim religion traditionally or in a state way, the main source of criminal law is Shariah that regulates all sides of way of life of believers of Muslim religion from birth to death. For all Muslims, the first and foremost book is Koran which is the collection of Muslim-law indications, preaches and prophecies of Prophet, the mediator of mighty Allah.

In the law system based on Shariah judges and other law authorities (Ijtihads) are given considerable place enabling them to define their discretionary rights.

Custom norms, emerging from religious or ideological aspiration of societies of a given period of time may become the important Meta legal sources of criminal law.

Similar processes acquired quite other form in the dark period of atheistic, unreligious Communist epoch that provided fertile ground for emerging the faces like Pavlic Morozoff who sometimes suffered from remorse for spying his father and sometimes felt missionary pride of a builder of great communism. Accordingly with the demands of moral code of the builders of communism, the republics of USSR laid down the legal responsibilities for refusing to give disclosing evidence against their parents or other relatives. But it's natural that communist moral torn away from real life should be withered on its own roots and be cleaned from godlessness, immoralities and nonsense.

Customs have great role in formation, explanation, and practical application of criminal law legislative norms, as it is Meta legal source of codification of social law perception

of everyday life and criminal law that impacts on the internal and external nature of human-beings.

We can say freely, that the whole legislation and separate court decisions are in force only to the extent to which they are merged with the relevant religious and national customs, local peculiarities of life and to the scale of consciousness of the given nation. For example, vendetta, unlike other laws, was considered as positive event and it was used as the means of punishment and observed more thoroughly than other norms of sanctioned legislation. As Aristotle noted, "the law based on customs has more importance and it addresses more important cases than written laws."

The fact that, criminal law was not written down in Greenland until 1957 and customs based on religious belief and oral legends were used is worth mentioning. Later, due to the lack of norms in criminal law legislation many cases were settled analogically in Greenland and the norms of special part of criminal law code comprised only qualifying signs of crime consistence definition, without indicating the concrete criminal law sanctions and types of punishment and measures. You could not meet death penalty and suppression of freedom among the types of penalties.

Even in our time, in many countries of Africa the norms of criminal law are not applied. They are applied only in the cases when these norms are in full conformity with the natural national customs. At the same time, many high-rank officials are acting according to these customs.

The legal importance of customs institute is recognized at all official levels, even at the level of constitution and common obligatory international-legal or regional agreements, where there are indications about different kinds of customs and habits.