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Book Review:
Cultural and historical roots of the Public Criminal Law

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A careful attitude to the origins of the birth, formation and development of law in general, certain industries that affect minds, the creation of ideas and the rationale for concepts, their implementation in the fabric of legislation has long established in the traditions of Russian jurisprudence. It is not without reason that so many hours are devoted to the study of the history of the state and law of Russia and foreign countries in the programs of legal education of Russian universities - as opposed to foreign ones. This ingrained in our country is quite rational and reasonable approach, the implementation of which makes it possible to expand the horizons of future lawyers, to show them that the legal science of modernity did not emerge from scratch, that legal thinking was formed over the centuries, having experienced numerous ups and downs, crises and breakthroughs into the future, often affecting the solution of problems that are perceived as requiring urgent action. This ingrained in our country approach is quite rational and reasonable, the implementation of which makes it possible to expand the horizons of future lawyers, to show them that the legal science of modernity did not emerge from scratch, that legal thinking was formed over the centuries, having experienced numerous ups and downs, crises and breakthroughs into the future, often affecting the solution of problems that are perceived as requiring urgent action. That's why lawyers specializing in Criminal Law or planning to devote their activities to the fight against crime, strengthening the legality, Law and Order in the Russian State should pay attention to an extremely interesting book created by the efforts of a group of authors headed by professor A.A. Aryamov. It is worth to mention that the peer-reviewed publication is a good example of an interdisciplinary approach to the study of a specific problem: it combines legal, historical, philosophical, cultural, sociological views on the origins, dynamics and features of the formation of Russian Criminal Law - the branch of Law in relation to which disputes are held, critical arguments are expressed, the branch, which (as history shows) often served the achievement of political objectives, providing for this the most rigid and cruel legal instruments, means and mechanisms.

From the very beginning, the authors' specific approach to the coverage of the problems of the roots of domestic criminal law draws attention. The authors paid special attention to the development of Criminal Military Law and devote a special chapter to it in addition to the standard reference to the main sources such as the Russian Truth, Sudebniks, etc., studied in detail by Russian lawyers. It is a significant moment, because Military Law is becoming increasingly important in our days due to numerous crises and conflicts, and in fact, it was "pushed aside" after World War II and the Nuremberg process.



Let us return to the accepted standard of review: the book consists of sixteen chapters and a brief epilogue (p. 455). Most chapters are not divided into paragraphs (Ch. 1 - 14). Only two concluding chapters - the fifteenth, "Development of Russian Criminal Military Law" is divided into six paragraphs, and Chapter 16, "Essays on the Historical Formation of Separate Criminal Law Institutes in Russia", into twelve paragraphs. Of course, it is the right of the authors to determine the structure of the work, but still, preliminary information about the issues under consideration would be useful for the reader. Although, on the other hand, the reader interested in the subject should go through the topic "from A to Z".

The beginning of this path is defined in Chapter 2 "The " Fragmented " Period. Truths and Statutes" (p. 20-80). However before we move in the direction of modernity, we should refer to Chapter 1 "The Mythological Basis for the Formation of Legal Culture" (p. 6-19), which sets the tone for the whole book. A.A. Aryamov analyzes not only the methods of creating myths (for example, an appeal to "trampled national pride", but also the principles of Judeo / Christian mythology of power, state, law, Roman-Hellenic mythology, reveals the content of basic concepts that are important for subsequent research; "myth", "mythology", "mythologemma" in it (p. 11-17), and then turns to the concept of justice, pointing out that: "Justice is not equated with judgment (although they are related kindly), thus, both unfair judgment and illegal justice are possible" (p. 19).

The second chapter (p. 20-80) is devoted to the description of Individual Criminal Law Institutions, but not to the development of Criminal Law in general, since - strictly speaking - it played an important but less important role than the regulation of the foundations of government and external relations of the prototype of the Russian state that existed at that time. A.A. Aryamov devotes the main attention of this Chapter to the problem of reception of Russian / Byzantine law, analyzing the statutes on ecclesiastical courts, various editions of the Russian Pravda, the Pskov and Novgorod Judicial Charter, and other sources of law. Later A.A. Aryamov analyzes the lawsuits of Ivan the Great (1497), Ivan the Terrible (1550), Fedor Ioannovich - Boris Godunov, Vasily Shuisky (Consolidated) from 1606-1607, highlighting the criminal law norms and their role in regulating relations between the government and the people in the third chapter, successfully entitled "The Period of the Judiciary" (p. 81-108).

The same methodology can be traced in chapters 4-8, devoted to the issues of Canonical Criminal Law in the period of formation of absolutism in Russia and the adoption of a number of acts by the Zemskiy Sobor (p. 109 – 113), the creation of Statutory charters (p. 114-127), the first reception of European law in the Lithuanian Statute and in the Ustav of Alexei the Quietest (p. 128-192), dogmatic principles of criminal law (here very briefly discusses the results of the implementation of ideas of T.K. Kagoshihin, P. Mogila, hieromonk Timothy and V. Calligraph (p. 193). Then A.A. Aryamov goes to one of the most striking stages in the development of Criminal Law in Russia – the epoch of Peter I. The Chapter 8, "an Eclectic-receptive period of the early Empire" (p. 194-200), and – as already noted, Chapter 15 Military Law are dedicated to His reforms and assess their impact on contemporary Criminal Law. In Chapter 8 (also too short on my opinion), the author selected only military and naval articles of March 30, 1716 as the subject of analysis, leaving behind the scope of the study other acts developed personally by Peter I or at his command. Perhaps A.A. Aryamov considers it possible to expand this chapter when re-publishing the book



under review. We must agree with the author in his assessment of this period as “massive and uncritical borrowing of European legal ideas and ignoring the domestic legal heritage” (p. 194). Almost 300 years have passed, but the law-making practice of the 90s of the XX century confirms the stability of this tradition in Russia, and not only in the sphere of Criminal Law Regulation. It is hard to say: fortunately or unfortunately. Time will tell. Several chapters of the book under review are devoted to the study of scientific schools and their influence on the systematization and content of Russian criminal legislation. These are chapters 9 “Scientific School of Criminal Law of the 18th Century” (p. 201-212), 10 “Theoretical schools of the period of systematization of imperial Criminal Law” (p. 213-224), 11 “Perception of the domestic Criminal Law doctrine of European concepts” (p. 225-232). The analysis carried out by the authors of these chapters allowed to proceed to the research problems of systematization of domestic legislation in Chapter 12 (p. 233-247) and more detailed analysis of the classical school of Russian Criminal Law of the turn of the nineteenth and twentieth centuries (p. 248-263), which played a significant role in the formation of modern Russian Criminal Law.

As part of the review, it is impossible to analyze and evaluate all the provisions of a voluminous book, but it is still necessary - let it be with excerpts - to cite at least some of the provisions formulated by the authors in the chapters mentioned above. In this case, one of the comments formulated in the monograph is worth quoting. So, speaking about the XVIII century, A.A. Aryamov is absolutely convinced that: “Russia borrowed the legal ideas of European states, where they were formed naturally, were based on local legal traditions and customs. But had being transferred to the Russian legal field and had being cut off from the formation environment, had being mixed with other concepts, often incompatible, they had turned into abstract forms devoid of living content, and in their entirety formed a haphazard set of concepts and categories, often taking the form of absurdity ”(p. 201). Of course, there is no way to draw parallels with modernity. But still (although the should follow European, international, and what it means for domestic judicial and investigative practice.

It is naturally, that A.A. Aryamov analyzes, tracing the restorative nature of criminal responsibility, the continuity of Russian criminal law with the French Penal Code of 1810, using the provisions of the Ulozhenie of the Criminal and Correctional Penalties 1845, the Statute of Punishments imposed by the magistrates, 1864, Military charter of punishment in 1869, the Criminal Code, 1903 , in chapter 12 "Systematization of the domestic legislation" (p. 233-247). In fact, it is justified: the period in the history of Russian criminal law-making, marked by the adoption of the Ulozhenie, 1845, is extremely bright and important indeed. There had been written a lot about the meaning and content of the Code. And, of course, the author of this chapter could not (and he did it right) reproduce all the assessments of the reform and its consequences, expressed in the literature “hot on the heels” and expressed much later, including in our days.

However with all the commitment to reform, on my opinion, it would be worthwhile to draw a parallel with the idea of updating the national legislation, which ended with the adoption of the Criminal Code of the Russian Federation in 1996, de facto debunking the concepts of harmonization of Russian criminal legislation and ensuring its stability as the basis of the rule of law in the country in connection with the countless - hundreds! - made pro-



posals for changes in the current Code which exists a little more than 20 years, and it is precisely in that act that provides for the most stringent, if not to say cruel sanctions and proclaims, regulates and determines the relations “power / state - person” at the highest degree (compared to other laws). There is no talk about the ideas of abolitionism, refusal of criminal prosecution, punishment, etc., but only that “continuity” in reforming criminal legislation in Russia is in the 19th, 20th, and 21st centuries, clearly traced. . It is, alas, obvious.

Considering in chapter 13 the achievements of the classical school of Criminal Law of the turn of the nineteenth and twentieth centuries (p. 248-263) A.A. Aryamov refers to the works of A.F. Kistyakovsky, I.Ya. Foinitsky, N.D. Sergeevsky, N.S. Tagantsev and other scientists (whom they like to pull out of context so much - to quote the authors of their theses, who did not read the works of these scientists), successfully distinguishes precisely those positions formulated by them and, which have affected and still affect the content of modern Criminal Law of the Russian Federation and determine the criminal law policy of our state.

Extremely interesting (and original!) the question about the development trends of Canonical Criminal Law in Chapter 14 (p. 264-269). A.A. Aryamov briefly analyzes the norms of Byzantine Canon Law implemented in Ancient Russia, acts of subsequent state formations and eras in it. He does not formulate conclusions and assessments. However even the list of sources of law, carefully compiled by him, speaks volumes and provides a lot to think about.

I deliberately avoid assessing the development of Russian Criminal-Military Law, being very far from the subject of the study in this review, and therefore I turn to the content of chapter 16 "Outlines of the Formation of Certain Criminal-Legal Institutions in Russia" (p. 339-454).

This chapter consists of 12 sections, allocated according to various criteria: from anti-corruption legislation to criminal law support for subsoil use. In my opinion, it does not always include a coherent logical scheme for describing individual institutions of the Common Part (for example, necessary defense -16.3, extreme necessity — 16.10, etc.), the Special Part of Criminal Law (for example, criminal law protection of honor and dignity - 16.2) and theoretical, including historical and theoretical, texts. Examples are § 16.11 “Thesis of the criminal legal concept“ object of criminal law protection ”, paragraphs 16.5“ Thesis of the legal institute of criminal punishment in the views of domestic criminologists of the XVIII-XIX centuries ”; 16.6 "Stalin" Criminal Code or the actual state of domestic criminal legislation as of 1952.

There is no question of condemning by the authors of this chapter. They are reasonable, fair and need to be understood in many ways. Still, the very idea of the book is somewhat blurred by the chaotic selection of problems analyzed in the final chapter. Although the author explain this by the argument: it is not so easy to find specialists who can adequately perform an assignment on the subject of the cultural and historical roots of Russian Criminal Law in relation to a specific criminal law institution. Therefore, the reader is lucky: he can be acquainted with a diverse palette of questions and answers and, if desired, add them.



In conclusion, it is necessary to point out that this was published at the right time: the interest of society, social groups of individuals to the national history of law and the state has increased in recent years. It is not without reason that the work of Boris Akunin on the history of Russian statehood enjoys such popularity, having ordered another volume of which we have to wait one or two months for its delivery. As has been noted at the beginning of the review, Russian legal historiography occupies a worthy place in a number of disciplines of the legal cycle, but the publication of a book on the cultural and historical roots of Criminal Law in Russia will certainly complement the thesaurus of science, the history of law, as well as the science of Criminal Law.