

## ON SANCTION AND CRIMINAL NORM, NUANCES OF INTERPRETATION OF THE WILL OF THE STATE

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**Abstract:**

*The role of the norm is to ensure the stability of the organization of social life and the functioning of the state. The deviation from the legal norm, the penalty is the price paid for the deviation from the legal norm by the coercive force of the state. The article aims to present aspects of the philosophy of ancient criminal law, namely Plato's thinking on The Laws, Book IX, to compare the role of the ancient criminal sanction, associated with moral education, with the relativity of the legal norm in modern and contemporary times.*

**Key words:** *law science, legal norm, criminal sanction, coercive force.*

### **Conceptual clarifications**

The law is the system of norms recognized by the state in order to regulate the relations between the members of the community, translating the general will of the state. "The constitution of the law as a fully contrived entity can be appreciated to occur with the constitution of the public power as state power in the countries of the Ancient Orient and in the Greco-Roman antiquity." [1, 56]

Other conceptual clarifications refer to the concept of order and norm. The order expresses a spatial-temporal distribution, certain relatively invariant rapports, ensuring certain regularity in the predictable inter-human manifestations and behaviors. One can speak of a natural order, one specific to society, one specific to thinking. There is a specific type of order at the level of society, the legal order, belonging to the law and with normative value for the entire social life. Norms are firm obligations for social individuals, tracing the action range and, in the case of violation, emphasizing the coercive effects. It does not follow from this that all norms have the same degree of social acceptability, nor that the coercive force, which arises through their non-observance, is equally applicable.

"In the case of violation of legal norms, the social reaction reaches the highest degree of constraint in relation to the pressure exerted by society for the compliance with

non-judicial norms, involving the intervention of the specialized institutions of the public authority (police, justice, penitentiary system, etc.).” [1,36] In other words, the system of legal norms is much more restrictive and any offense brings with it sanctions, with different degrees of application that describe the seriousness of the act. Unlike the moral norm that governs human relationships and behaviour without institutionalized constraint, the legal norm requires a range of factors contributing, depending on the degree of legal responsibility, to the application of sanctions.

We are about to ponder on another concept, that of the law. The law has the role of ordering the life of society fairly and normally. It was considered, in classical ancient Greece, as the reason for the rule of a state. Plato considered them a “regulator” of the city, ensuring the leadership of the ideal state. They have the role of preventing abuse, of restraining intemperance, being the price paid for the commission of injustice. Applying the law is done for the sake of the one being punished. The law is the expression of the reason that ordains the city. The existence of a code of laws has the role of putting forward a statement of reasons before each law. Such a function reason of the fortress has the purpose of ensuring everyone’s happiness and this must be understood by every inhabitant of the city.

The modern world brings with it rights and freedoms that will often be in rather tense relations with individual interests. The law has the role of inserting the future in the present, guaranteeing equality for all citizens, regulating competences among various social actors. There are also situations where anti-social facts go beyond the power of regulating laws. In this case, we are witnessing the emergence of new realities that the market economy encompasses and that operate by placing politics as a dominant factor in the landscape of social life. The independence of justice is relative when the electoral act records a clear dominance of a political force. The entire legislative process may also make changes that will not be aimed at the public good and, in this case, deviations from the fundamental values of human rights appear. Which entails that the democratic majority can not always defend general rights and freedoms, being able to follow the path of group interest. Machiavelli motivated the way of gaining the goals by any means, understanding that the prince will be the one who decides the way of maintaining the state. “Whoever understands that it is wholly to the praise of a prince to act upon the word

and to proceed honestly, not cunningly.” [2,63] We have brought forth this argument to clarify the idea of the wise ruler and not to misunderstand the metaphor of the lion and the fox used by Machiavelli when he considers that the prince must use the means of the lion and fox to recognize races and those of the lion to scare the lions. As we can see, the modern world nuances the place and role of the legal in regulating inter-human and interstate relations.

### **Comment on Plato’s Laws. Book IX**

The work *The Laws* represents the last work developed by the great philosopher, a major change in vision relative to the ideal state imagined in *The Republic*. This is how the role of reason is taken by the laws governing the city, the deeds committed by the three classes, and their punishment when they offend the harmony of social life. Laws are not mere abstractions, beyond the particularities of a state, but they are adapted to its best functioning. They can not be associated with all the cases that take place in the life of the city. This is where the magistrates’ regulatory role appears together with their competence in applying laws to the variety of cases. Let us not forget that the role of the laws was associated with good morals in the city, in the absence of positive moral values, the legal sanction had no purpose in the city. The punishment was the price paid and the liability assumed for the deviation from the legal norm.

“The natural order of our laws is to talk about actions in justice (...)”, [3, 262] declares Plato in the Book IX of *The Laws*. Such actions concern the “property offense” in the area of agriculture and “punishments due”, which associate the “competence of judges”. All legal actions must be able to “cultivate virtue”, proving the good organization of the state. The legislator has the role of stopping crimes and punishing “wrongdoing”. Laws address people to “bend” or “soak”, like seeds that resist fire”. [3, 263]

The laws address human weaknesses and must be related to “hard to heal or incurable” facts. “Every man, whether a master or a slave, who will be caught stealing a holy thing, after having been engraved on his forehead and hands with the imprint of his iniquity, shall be cast naked across the borders.” [3, 263] Such a measure takes into account two aspects: either he will become better or he will be prevented from doing something worse. As for the fate of his children, the judges will determine what the

appropriate measures to get rid of the parent's "habits" are. If the judgment includes the payment of a fine, the "law-keepers" will report to the judge the incomes of the convict for the sum to be covered.

No offense remains unpunished and no one can escape the execution of the sentence by fleeing. As far as the death sentence is concerned, it is up to the guardians of the fortress, the best magistrates from the previous year.

Only the appeal procedure is up to the young legislators. The sentence will be public, "all judges will sit down in a row according to the old age, having the plaintiff and the accused in front of them. Citizens can assist at these meetings if they do not have "urgent matters", the meetings having an educational role. The strength of the arguments will be weighed and the decision will be taken by the signature of all the judges.

The gravity of the crimes begins with the disregarding of the gods and continues with conspiracies against the state. There follows an overlooking of public interest, for those invested with public functions. The punishment applied to the grandfather or father will not affect the child. Families in which there are boys older than 10 will choose ten of them, their names will be transmitted to Delphi, and the god's voice will choose the heir of the expelled citizens. The judge will have an educational mission, "curing" these diseases that make them slaves of undue use.

Therefore, the legislator also makes civic education giving "advice on what is beautiful, good and just" [3,267] in order to lead a happy life. In the analysis of legal sanctions, Plato brings clarifications that harmonize the justice (just) with the moral good and the aesthetic dimension of human behavior, the beautiful. Morality and politics make a common body until the emergence of politics as a science of government, along with Machiavelli. From this moment on, a new morality emerges, specific to politics, to the interest of maintaining the state by any means.

Returning to the statute of the laws in Plato's view, he emphasizes their educational role on the man in the city: "the law is to teach and, especially, to oblige, that in the future, never to dare the will of unrighteousness" and to instill "people loathe for injustice and make them love the nature of justice (...)". [3,272]

For the investigation of a serious criminal offense, Plato ponders on the crime, excluding the mad or the old ones who can no longer control their deeds. The only case

that can not be exempt is homicide, "when the guilty has blood-stained hands." [3, 274] We mention that the status of the slave is associated with the good that you possess. Because of this status, the one who kills the slave of another master, believing that is his own, will pay the respective price to the master, and if he does not recognize the deed, he will pay double. Whoever kills a free person will give to the family of the deceased the places where the deceased used to walk and will be exiled for one year. The same punishment applies to a foreign person. In the event of non-compliance with the judgment, he will be expelled five years from his homeland. The exile represented the worst punishment for the Greeks.

Murder can be "willful" or "angry". The premeditated one draws the toughest punishment. The law-keepers consider all types of crimes. Thus, the one who is blinded by anger and carries out a murder shall be exiled forever, and if he returns to the country he shall be punished like the foreigners. The slave who kills his master or any other free person will be killed in the way desired by the relatives of the deceased.

Family murder has its own place in the sanctions. If "a father or a mother - (...) - kills his/her son or daughter with strikes or otherwise violently, they shall do the same penances as the other murderers and shall be exiled for three years." [3,278] The same punishment is also applied in the case of husband-wife, brother-sister. "Anyone who kills his father or his mother in anger is punished by death." [3, 279]

All these deviations are considered to be the effects of bad education. They are added to those premeditated deeds that are due to "insatiable and unlimited desires." Plato mentions that "the Greeks and barbarians give too much importance to wealth." [3, 279] Several causes are the reason for voluntary homicides: greed and ambition, plus the fears of the cowardly and unjust man to not be found doing unrighteous deeds.

The laws are needed to live in the city for the "good of the community". Because of its transience, man wishes to have more than the others, he only thinks of his own personal interest, "runs away from pain and pursues pleasure in a foolish manner." [3, 284]

In addition to homicide, the criminal offenses that Plato examines in The Laws are of various instances to be decided by the judges. The holding of court sessions may be closed or public, as the judges decide. The tribunals "are organized as well as possible, where the judges are educated and elected after rigorous exams." [3, 285]

In terms of hitting people of the same age, they can defend themselves “with bare hands, without arms”. The legal procedure and the application of the sanctions will take place when someone hits a person older than him, at least by 20 years. Two years of imprisonment will receive the stranger who hits an old man. The punishment is higher for a foreigner domiciled in the country, who will receive three years for violating the law. Such trials are judged by “army generals and others.” [3, 289]

All these criminal aspects analyzed from a philosophical point of view prove that the legal act is understood as a means of education, that justice does not involve only legal elements - the organization of the courts, the selection of judges, the care for the defeat of any injustice - but particularly the civic education of the citizens. Morality and justice form a common body, and the legal act has as its central purpose the exemplary citizen. In this way, the judge had the most important role in consolidating the state. The magistrate’s decision could not be subjective, without arbitrary deviations. Citizens’ rights and obligations were binding, and they strengthened the state order. The state order will also be taken over in the modern age, amid the emphasis on the area of citizens’ rights and freedoms.

### **Modernity and the way of relativity of the criminal deed**

Any relativity in the case of the legal act is equivalent to mistrust in court judgments, leaving room for abuses of any kind. At the same time, the revisions to the Penal Code, the Criminal Procedure Code, are equivalent to a lack of confidence in the courts, with the diversification of deviations from the legal norm in order not to have the power to decide on the punishment. If the flight was an offense, severely sanctioned in antiquity, it becomes a way used to evade punishment in contemporaneousness. The act of justice takes the form of a lost illusion, concealing strange shades, especially when conducting the tele-visual juridical analysis. Media coverage offers performances on television sets, inoculating the idea that justice can be done by anyone and shifting the purpose of the vigilante to the journalist who can avoid any judgment without arguments. That is why social networks, television channels have come to be able to issue any information, relativizing the rigor of the law, and raising the perpetrator to the rank of savior of justice. It is a way of political marketing that falsifies/ sells the image of the person you want to

receive the consent of as many recipients/consumers as possible. Thus, justice is integrated with the laws of consumption and transforms into a commodity that can be sold.

The Penal Code, the Criminal Procedure Code and the Implementing Laws can be modified in such a way that a number of sanctions are abrogated and the judicial decisions are no longer viable. Such relativization in relation to what is or not a crime is correlated with the new aspect of the facts included in the criminal law at the time when it was committed.

“The criminal law shall apply to offenses committed during the period in which it is in force.” [4 Art. 3, Chapter II, Section 1] and Article 5 (1) clarifies the application: “If one or more criminal laws have intervened since the commission of the offense until the final hearing of the case, the more favorable law is applied.” [4 ] Article 6 (1) has the details: “When, after the final judgment of the conviction has been enforced and until the punishment or imprisonment has been fully enforced, a law which concerns an easier punishment has intervened, the sanction applied, if it exceeds the maximum specially prescribed by the new law for the offense committed, is reduced to this maximum.” [4]

All these changes in the content of criminal laws demonstrate the intent to clarify when the codes were drawn up, then the existence of another orientation in relation to the criminal case, moving from the obligation to apply the punishment to possible interpretations of the facts. In this way, justice can no longer fulfill the rigorous normative status of the science of law in society. The legal rule should not be referred to cases, it is a system of obligations for human conduct.

### **As a conclusion**

Let us consider the Hegelian perspective on the law and justice, the law being considered “something holy in general” because it is the “existence-in-fact of the absolute concept.” Every step of freedom has its own law, because it is the very expression of freedom. “The law regards liberty, what is more divine and holy man in him, which, since it is to become an obligation for him, he himself must know.” [5, 61]

### **References:**

- [1] Ion Craiovan, *Filosofia dreptului sau dreptul ca filosofie*, Universul juridic, Bucharest, 2010.
- [2] Niccolo Machiavelli, *Principiele*, translation by Nina Façon, Mondero, 2008.

[3] Platon, Legile, Cartea a IX-a, translated by Stefan Bezdechi, Editura Univers Enciclopedic Gold, Bucharest, 2010.

[4][w.w.w.codpenal.ro/legislatie/document/lege-286-din-218-codul-penal-titlu-1-legea-penală-si-limitele-ei-de-aplicare-1261-63622.html](http://w.w.w.codpenal.ro/legislatie/document/lege-286-din-218-codul-penal-titlu-1-legea-penală-si-limitele-ei-de-aplicare-1261-63622.html)

[5] G.W.F.Hegel, Principiile filosofiei dreptului, translated by Virgil Bogdan and Constantin Floru, Editura Academiei, Bucharest, 1969.