Sentences imposed in antiquity for acts of criminal nature

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***Abstract*:** *Murder, robbery, theft and others are facts we encounter in any human community. All these facts being "harmful" to the direct victims and "disturbing" for peace and collective security were over time, subject to not only to a defensive reactor (simple defense), but also punitive (punishment), who dressed in ancient times, various forms.*

***Keywords*:** *punishment; ancient times; criminal; repression*;

Introduction

Everyone, when it feels threatened by danger, resists, reacts instinctively. This reaction dictated by self-preservation, is by its nature defensive, meaning that is attempted a defense that lasts as far as threatening evil endures; it is so current (reaction coincides with the inconvenient action).

Man is endowed with superior spiritual faculties, has a more complex attitude against inconvenient actions. Like any other human being in the face of danger man reacts defensively, but keeps the memory of danger or harm suffered, which causes feelings: *fear* - that inconvenient action would be repeated, and *hate* - in any aggressor man seeing an enemy.

Fear and hate push the man reaction beyond the limits of immediate defense. Therefore in relations between people, plus a defensive reaction there is a repressive reaction, ie, next to a defense attitude there is repressing attitude [1].

At the beginning of human society were punished not only rational beings, but also animals or even inanimate things. Thus, punishable sheep, pigs, horses, etc., when harmed the human, considering that they are responsible for "crimes" committed. For example, Persian laws punished the dog who injured the man: on the first act they cut off its right ear, then the left, on the third bite they cut one leg, then the tail and so on, up to the sixth bite, when it was killed.

In ancient Greece, Solon and Platon admitted punishment of animals and inanimate objects, and there was even a special court, "Pritaneul", for judging animals or stones, insects, wood, etc., with what the crime has been committed.

Herodot told the story of Cyrus when he declared war to Babylon and one of his horses drowned in the river Gnyd, he was concerned for about one year to punish the river, causing it to flow through small channels kidnapping it its power. Similarly, when the great bridges were destroyed by the sea, Xerse ordered "to be put in chains" [2].

In Africa lions were crucified lions, because of fear, not to attack people [3].

1. Unlimited revenge

Crime, in the broad sense, in fact harmful committed by a man against another man, and, ***repression***, in the broad sense, the reaction against the one who has committed a crime, and both are manifestations inherent in collective life as ancient as human society.

In the natural way, *the first form of repressive reaction would be revenge*, from the one who has suffered an injury to the one who caused the injury. Vengeance took the collective form often

when people in conflict (the one who committed the crime and the one who suffered injury) belonged to different social groups (two-family, gens, clans, tribes, and so on). Due to lack of regulations, this form of revenge was regarded as unlimited and infinite, because no rule of law required individuals or members of groups in conflict a certain conduct on how they would revenge the harmed by the actions of others.

When one who suffered an injury was too weak to revenge himself, requested the help of relatives or other persons close, so that most of the time, minor conflicts escalated into collective and repeated attacks, which weakened the power of labor and defense of group, making it possible invasion from other communities stronger. For these reasons, the heads of social groups to minimize as possible these shortcomings tried to impose to members the duty not to commit acts that could cause a vengeance, and when they were victims of such acts, the group members who belonged to refrain from revenge, but leave the task to punish the guilty to the group leader.

These rules do not only concern the relations between members of the same group, but also behavior towards members of other social groups, meaning that it was forbidden to cause without permission of the head, another group social discontent, to avoid foreign conflicts and possibly vengeance of that group. Those who disobey these rules were banished from the group, or subject to certain privations.

In this way, in the consciousness of small social groups (family, tribe, clan, etc.) was formed the idea to regulate revenge imposing restrictions under penalty, which can form the germs of criminal law.

Development that had occurred in families, of nations, clans etc. was to be produced, in the end, in the large corporate sphere (states, nations). The same shortcomings that unlimited vengeance had for small social groups, could occur at a different scale to large communities who were continuously threatened by the invasion and conquest of other communities, so as to defend themselves they would need fighters fit, of good material condition, and order and social cohesion.

In some cases, however vengeance took violent and unlimited shapes accompanied by strange attitudes manifested by the massacre of communities. For example, in the exercise of vendetta, some tribes executed not necessarily the author of the crime, but the "first to come", as happened in the Philippines, where in time of "head hunters" triggered to punish a murderer, was killed any individual which was not part of the punished group members or the allied groups [4].

2. The revenge limited or The law of retaliation

To avoid weaknesses specific to revenge, holders of public powers have imposed to local members rules on repressive reaction, regulations adopted taking in the course of time various forms. In ancient times an important role in the evolution of punishment process of those who had committed violations was *the law of retaliation*.

Moreover, at all times, the idea of law and justice has emerged as a well-measured, well weighed aspect, considering that nothing satisfies more people's sense of justice than gender Payback. This idea of equality in regulating repression was very plastic expressed since the earliest times of antiquity, with the words "*eye for eye, tooth for tooth*".

The basic content of the law of retaliation was "*if any mischief thou shalt give, life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, stripe for stripe*" [5]. Vengeance so limited, was given the name of talion or principle (the law of) *retaliation.*

Retaliation is therefore a legally binding form of repression, because revenge is recognized as a *right* which corresponds to a *duty* not to exceed the limits of appropriate reactions to the injury suffered. When the reaction could not be perfectly identical, the special rules provide an equivalent (ie,

when a pregnant woman aborted because of injury to an assailant, her husband had the right to kill one of the aggressor's children).

Retaliation although it seemed to correspond to an ideal justice, had many drawbacks in practice and could not remain a sustainable form of fighting conflicts between people. Like any revenge, *retaliation perpetuate hatred and discord between individuals and between social groups*, and its application often affect due to symmetries carried to absurd, the innocent (eg. if a wall teared down killed a child, the victim's father had the right to kill the son of the craftsman who built the wall, although the child was not at fault).

Some authors assign retaliation originated in ancient Jewish legislations as the Old Testament and Talmudic writings make frequent references to the law of retaliation. Retaliation is found in the oldest collections of laws that mankind knows: Laws of Manu (India), the Code of Hammurabi (Mesopotamia), the law of XII Boards (ancient Rome), etc. The retaliation has clearly not only one place of origin, it represents the legalization and control by the state of private vendetta that was prevalent in many parts of the world.

The law of XII Boards consecrates law of retaliation in relation to offenses against the person, according to the rule "*si membrum rupsit ni cum eo pacit talio esto*", and matter of offenses against property by the rule: "*furtum manifestum*" or "*furtum nec manifectum*". Thus law gave sanctions by death for theft at night or by a gunman or the possibility to th defrauded by of selling as a slabe the perpetrator or received from this a compensation which in time increased to fourfold from double.

During antiquity, besides law of retaliation was *the canon law*, the law of retaliation, but there is a contradiction between these two ways of sanctioning. Thus, the canon law said "*Thou shalt not kill*", but the law of retaliation "*defeated*" this provision if the perpetrator had to be killed by the victim as revenge. Therefore, we can say that *the law of retaliation was highly derogatory, constituting an excusable cause for deviation from religious law*, consisting of capital punishment imposed to offender. It is known that what is immoral (contrary to church) is largely illegal. In fact, the law of retaliation introduced an exception to this reasoning, leading to the conclusion - somewhat contradictory - that what is immoral may be legal. Thus, it was immoral to kill in religious terms, but in terms of the law of retaliation was legal if the offense is committed in retaliation for another murder committed by the "*victim*".

The Old Testament states: "*Whoever strikes his slave or servant with a rod, and they die under his hand, then he should be punished, but not by the law* "*soul for soul*"".

This exception can be justified by the fact that the law of retaliation was a special law in relation to the canon law, which can be regarded as a general non-criminal law, so that, under the threat of retaliation would operate under the principle of "*specialit derogat generalibus*".

3. Voluntary composition and legally composition

To avoid some of the disadvantages of applying retaliation, holders of public powers have resorted to voluntary composition (revenge subsidiary), requiring community members to first try to reach a reconciliation, if not managed, they were allowed to use the law of retaliation.

Attempting reconciliation, however, was not regulated concerning the conditions for its realization and the amount of damages; it depended on the warring parties. It is assumed that, often, the reconciliation was achieved through the intervention of heads of families or social groups, urging parties to peace, to avoid consequences that implied retaliation.

Optional composition itself was more convenient, but difficult to realize in practice.

When holders of public power have come to strengthen position and increase authority to the members of the community, they have decided that those who had a conflict, to reach reconciliation (*mandatory or legal composition*).

For this obligation to be performed, determining the amount of compensation that should not be left to the parties, so that with the imposition of a fall from an agreement to set a kind of tariff providing for the compensation due for each type actually harmful. Thus, neither victim could claim more, no culprit could not refuse the amount fixed by the tariff. The victim could resort to the retaliation only when the culprit refuse payment required.

With time, to the rate established legallly for the victim was added an amount needed to belong to the public treasury by way of *collective redress* for the harm to society through nuisance and public power efforts in order to restore disturbed.

Mandatory composition was convenient, but it may be applied only to the culprits who had possibilities to pay compensation and reparation collectively; when the culprit was insolvent, the amounts set for his actions over his possibilities to pay, composition could not be applied and the victim regain the freedom to resort to revenge.

Ever increasing public power has led to a tendency to not let this right of subsidiary revenge to reach of individuals, so that gradually, the state assumed the role of ensuring the repression of crime, while the guilty could not pay for the damage and fine set by the tariff law. In this way, *repressive reaction reached its latest form, becoming older, being an attribute of public power*.

4. Nationalization of repression for committing crimes

Nationalization of repression against those who inflict injury to others interests and community values was determined by a threefold necessity, namely:

- the need to ensure the authority of state leaders;
- the need to protect the security of the state against foreigners, repressive measures extending over time to the people who committed acts of nature to achieve collective security;
- when the public power became strong private power of repression had to disappear, individuals will listen to public power to leave it the right and the duty to punish the guilty;

In ancient times, the punishment in different countries, has evolved from an exaggerated severity to a "balanced" leniency.

The early Egyptian criminal law provided for the death penalty for any crime, until the time of Menes, and the Arab world one of the most severe punishment was cutting limbs [6].

Manu, the ancient lawgiver of the Indians, approved punishment harsh enough in "Manovra", "Dharna" and "Sastra": *fine, seizure, loss of caste, exile, imprisonment, mutilation or other physical suffering and death*. This last sentence was executed by many processes, such as: *beheading, commissioning spike, razor cutting, drowning, pouring boiling oil into his ears and mouth, throwing sentenced to dogs, crushing by elephants, burning*. If anyone dared to teach Brahmin on its debts, the king commanded that it be poured hot oil in the ears and mouth, and if a Sundra seated on a Brahmin's chair, he applied a hot iron on the back or cutting his hand or foot for hitting a Brahman.

The old law of Hammurabi sanctions were also very severe, capital punishment was provided for 34 offenses. It was applied for committing crimes against property (eg. theft of royal heritage or temples - article 6) but it was provided also against those who despised the rules of coexistence in the family, such as murder the man by the woman (article 153). Charms and curses unfair on a man (article 1 and 2), injury of witnesses, when it was a crime punishable by death (article 3), drunkenness (article 9 and 10), concealing stolen items from holy places, adultery, deflower a girl who lived in the parental home, the abuse of power by officials, and more other acts were punishable by death. If due to design flaws, the house killed a landowner, the architect was killed, and if the child of landowner was killed, architect son was killed. It was also punishable by death: deceit, unjust accusation of theft,

aiding a runaway slave, rebels hosting into a pub, incest, and deception of a "surgeon" to put "bookmarking" on an inalienable slave.

Law of retaliation was planned in the same code in several cases: eye for an eye (article 196), bone to bone (article 197), tooth for tooth (article 200) [7]. Imprudence of doctor and failed operation by surgeon's fault attracted cutting hands. If a son struck his father, his hands were cut off and if a priestess went into the tavern and drank, she was burned. There were punishments in kind either directly, such as: slave to slave, animal for animal, or in grain equivalent, calculated proportionally with fallow field area (article 44).

Hebrew law was considered one of the most gentle, but it still prescribed four capital supplicants ways: *stoning, burning, beheading and hanging*. A common punishment was flogging: the sanctioned one was naked, with his hands tied to a pole and beaten bloody \ using the straps which were provided with lead balls or iron spikes, so sometimes death occured [8].

The Romans crucified criminals, painful death on the cross was painfull and full of contempt; a free roman should not be crucified free, only beheaded.

According to the laws of the XII boards, pater familias had the right of life and death over other family members. Also, the debtor could be sold or killed by its creditors.

Later, cruel punishment reached the highest degree. Nero made lamps of human bodies, smeared with oil, and slaves served as animal feed. Also, stoning or conviction to fight wild animals was practiced.

The Greeks are famous for their severity of Dracon's laws. Greek philosophers considered all crimes equal, so draconian punishment provided for the offense less dangerous death. Even Platon was quite severe, admitting "branding" criminals, refusing burial, etc.

In Sweden, as in other Nordic peoples, public assembly - according to the old customary procedure - first said "fredlös" (no peace) on one guilty of committing a crime (against an individual or against the social order), after which the offender could be killed by anyone, without the latter being punished.

Prosecution of criminals in the Germanic tribes was decided by the People's Assembly by acclamation and clash of arms.

Some American Indian tribes punished a number of crimes by laughter and ridicule, humiliating effect was so pronounced that it forced the offender to leave the tribe, which amount to murder, in the conditions in which isolated people easily become prey of animals.

Geto-Dacian law included, as well as other ancient regulatory systems harsh rules, some of which have continued to maintain even after the formation of the state (for example, "blood vengeance"). Horace's lyrics recall the death penalty of adulterous wife. They were also severely punished: violation of religious prohibitions, considered sacrilege, the consumption of wine or meat, prohibited by the clergy, etc. [9]. Sometimes the offender was subject to public opprobrium and forced to leave the community (ostracism law) or commit suicide. However, gradually gained the aspect of judicial duel both as conclusive evidence and executory [10].

Conclusions

Law of retaliation and legal composition, occurring in antiquity, are the first revelations in the regulation of thinking and social reaction against crime, influencing future developments in criminal law.

Retaliation not only was a way of nationalization of social reaction against crime, but by the proportion of social reaction against the offender, the idea of retributive character of punishment is formed, an idea that any modern criminal doctrine can not do without. Similarly, voluntary composition, then the legal composition is a monetary estimate of the damage caused by the offense.

The most expressive reminiscence of the law of retaliation is the death penalty, on which not even in the XXI century was not abolished in all countries, although its elimination as penalty is based even on international conventions.

Time philosophers have stood aside and criticized the law of retaliation, disagreeing with *distributive justice*. It was also shown that a *difference should be made between the voluntary and the involuntary "mistake"*, and manslaughter by imprudence should not be punished as severely as murder, it was concluded that the law of retaliation can not summarize justice.

If the idea of *corrective justice*, as the balance of damage and punishments, had a great influence until Kant and Hegel, subsequently it generated numerous discussions, showing that *responding evil with evil*, doesn't mean evil is canceled. Execution of convicted doesn't entail resuscitation of the victim. Conversely, *two blessings are gathered* and not canceled. Situation after the event does not coincide with the one before it.

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