

SECURITY: A SUPRANATIONAL LEGAL ASSET

Manuel Monteiro Guedes Valente

mestradoquesvalente@gmail.com

Director of ICPOL and Lecturer at Instituto Superior de Ciências Policiais e de Segurança Interna (ISCPSI). Lecturer at Universidade Autónoma de Lisboa Researcher at *Ratio Legis* – UAL

ABSTRACT

This paper discusses the concept of security as a many-sided, multifunctional and multilevel regulation topology which requires its several actors to view legal assets from a polygonal perspective worthy of legal protection from local to global and from global to local space. The concept of security as a supranational legal asset requires criminal legislation which defines the principles of criminal policy and the intervention of criminal Law, barriers to security trends and to the attempt to enhance the principle of *presumed hazard* as a basis for criminal intervention. We contend that the obstacle to "human self-objectification" in the global polygon is a (new) *world legal order* as humanity's future balance.

Keywords:

Security; legal asset; criminal law; humanity; legitimacy; hazard; enemy; multifunctionality; multilevel regulation; topology; polygon; world legal order

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I. General background

1. The world is in turmoil and conflict in terms of the concept of humanity as effective subject with personal, social, economic, cultural and political rights and freedoms. The assumption imposed to science but not to non-scientific technique by internal and external phenomena (immersed in technique and efficiency without efficacy) towards *human self-objectification* which Habermas discusses (2006: 74) leads us to rethink the concepts that become topologies - *in geometrical spaces of group operations with two-sided topic correspondence among the participants* - and restructure a restricted system - in the *restricted space* - in an open system and macro system.

This perspective recalls community leading actors to pursue the basic tasks of States to ensure efficient effectiveness in the defence and guarantee of *harmonious social life, with quality and well-being*. These aspirations are typical of an organized, topologically structured State to create a *space of freedom, justice and security*. This space is built in daily life and systemic environment *i.e.* it is built in creating life within an *economic, political and legal operating system*. It is in this comprehensive system, *environment and life*, in which humanity finds the "dimension of being a person" (Figueiredo Dias, 2007: 118).

This dimension becomes more relevant at a time (and space) of mutability and uncertainty which values (almost exaggerates) some assets in detriment of others. The idolization of the asset "security" in detriment of the asset "freedom" has gained prominence at the end of the 20th century and the beginning of the 21st and has become almost social schizophrenia: *everything is and becomes security*. This *paneconomia* emerges from a deregulated economic and financial globalization and spreads at a time when real and effective security has the prominence it has never had (Bauman, 2009: 13-51).

2. This topological imbalance of the system's (or macro system's) essence, rooted in a fictional idea of growing fear and uncertainty in *late modernity*¹, can only be limited if we withdraw the idea of security from the *security* thesis and the *hazard* thesis, which advocate the implementation of a punitive preventative law and launch the need for this option to the scientific debate based on the idea that *security is the first freedom*. These theses overvalue security and ignore history and the moments when this has led to atrocities we stubbornly want to forget. These theses centralize the system as

¹ We agree with the topology by José de Faria Costa: "We live in the perverse simplicity of ephemera. Of temporariness. Of the present wishing to be always present. These are features of today's civilization, which some define as post-modernity but that we prefer to call late modernity" Faria Costa, 2010: 7).



human way of being based on security, when we prefer the system focuses on the *human being*: the only reason for *environment* and community *life*.

The scientific context and concept that *security* is nowadays *an asset* to me, to the "other", to "us", *an asset* to everyone, raise issues in scientific legal (and political) debate such as space limitlessness and territorial limitlessness and the challenge to build a topology of security as a *need* and as a *legal asset* crucial to the balanced development of society; the setting up of a constitutional right imbued with defence and protection of rights (and duties) and basic *personal* freedoms - aiming to supervise the "specifically *personal* sphere of action" [individually and collectively considered], as well as *social, economic* and *political* freedoms - aiming to supervise the individual's *social* sphere of action (Figueiredo Dias, 2007: 120-121).

This exercise of subjecting *security*, as a legal asset, to *legal and constitutional order* in a democratic constitutional State imposes a material, procedural and operational limitation, subjected to the principles of criminal policy and the intervention of criminal Law, presented as a value of optimising the individual and his or her dignity. This forces us to limit (and push aside) the hegemony of the *collective* over the individual and place the *human being* at the core of all scientific discussion.

II. Topology security and legal and criminal protection: validity/legitimacy

3. The concept of security as a legal asset of criminal protection is under internal and external debate and should lead us to contextualize it in terms of the specific *cultural thought* of a people, of the *conceptual (dogmatic) thought of the human being* and of the *thought of the State*. This trilogy of thought is, as we have already stated, the cornerstone of a people's organization, regardless of the ongoing organizing structure (Guedes Valente, 2011: 66-67).

Creating a *topology of security* must occur before limiting the legal asset under criminal protection; the scope of intervention of criminal law is extremely wide. This exploration requires the scientist to not be fooled or tempted by political *rhetoric*, typical of today, so that one day, like *Günter Grass*, we DO NOT HAVE TO WRITE and say we would "never" do a "thing like that" (Günter Grass, 2008: 12-15) to justify human monstrosities - *v. g.*, Auschwitz - and the abuse and violation of human rights and fundamental freedoms - *v.g.*, Guantanamo legitimated by the American *Patriot Act*; former URSS Gulag.

The rhetorical speech is based on a *cognitive idea of insecurity* spread by the speed of communication. The diffusion of the crime leads to individual crime becoming community (social) and globalized crime. A murder in a remote village in Portugal is today experienced, lived and (ethically, politically and legally) discussed in every home in the country, multiplied through news massification.

This is no longer one crime and is multiplied through speedy and consuming diffusion. This *hypervelocity* of knowledge of a crime may lead us to speak of insecurity and of the "reign of violence". The construction of a cognitive security topology cannot allow itself to be carried away by this speech but rather focus on the already mentioned trilogy of thought, otherwise a system will be created in which the legal asset of security takes the lead of preventative criminal Law.



4. The security topology has *high conceptual extension* and assumes a *manysided, multifunctional* and *multilevel regulation character*. These features will acquire greater prominence if thought and studied at *local, national, regional and international level* as they are evidence of the versatility and liquidity² of a *globalized world* within *glocalization*: local thought is expanding within global thought and global thought is fostered by local thought. Thinking about a legal asset such as security, worthy of criminal protection, must take into account the *uncertainty* and the idea that material and formal implementation of a *manysided topology* is a challenge, not limited in terms of territory but rather flexible and obtuse, subjected to *gravitational time and space*³ theory.

This structuring in the creation of a topology of security leads us to not confine the issue to moral values, to ethical values, to political values or to exclusively legal values. Furthermore, we cannot limit this structure to values inherent to the work of controlling institutions such as the Police and the Court (the Public Prosecutor and the Judge). As a *manysided, multifunctional and multilevel regulation topology*, security is rooted to a *multi shaped level* so as to encompass its *conceptual extension*. This awareness cannot exempt the legal expert (the legislator) from producing less successful legislation on security.

5. The *multilevel regulation character* of security is echoed in the *principle of legal security* weakened by the inconsistent and unsystematic character of criminal and criminal procedural legislation. On the one hand, criminal Law is called upon to intervene in the protection of legal assets which are unworthy because not directed to protecting the human being's *personal and social* sphere of action and are solely meaningful within a logic of criminal symbolism and promotion of negative prevention; the Law is called upon to be the *police* - in opposition to the scientific principles which should rule criminal intervention in human behaviour. On the other hand, new institutes for criminal prosecution are created, based on "industrialized and commercial" technologies and assigned to criminal police agencies without previous study and assessment of already existing institutes (Hassemer, 1995: 109-113). The process of *policing* criminal action is given more power, leaving the democratic constitutional architecture in force unprotected.

The *principle of legal security*, which should be the first pillar of the topology of security as a legal asset worthy of criminal protection, is in a crisis due to less successful legislation. There is a decrease in the certainty of how to *be* and how you *should behave* in a community that is imposed as "a system of action structures, interactive in many ways", based on a "susceptibility of rules and guidelines" (Zippelius, 1997: 47) rather than a lack of rules for human action.

This concept may be based on the *multilevel regulation character of security*: it encompasses all legal ruling - civil, administrative, economic, financial, criminal (material and procedural) and constitutional, national and supranational - and takes on

² Para um aprofundar da teoria do mundo líquido, Zigmunt Bauman (2007). *Tempos Líquidos*, [transl. into Portuguese – *Liquid Times (Living in Age of Uncertainty)* – by Carlos Alberto Medeiros]. Rio de Janeiro: Zahar Ed.

³ In terms of *system fallibility theory*, including that of mathematical expressions, Karl Popper (2003). *Conjecturas e Refutações*, (transl. into Portuguese – *Conjectures and Refutations* – by Benedita Bettencourt). Coimbra: Almedina. pp. 293-338 (310-322). In terms of *gravitational time and space theory*, Etienne Klein (1995). *O Tempo*, (Transl. into Portuguese *Le Temps* by Fátima Gaspar and Carlos Gaspar). Lisboa: Instituto Piaget.



a crucial role in social life; it accommodates private and public Law, as an asset to preserve, essential to balanced development of the community.

Security, because of its multilevel regulation character, creates a sense of uncertainty which is not typical of fallibility but of the demonstrative type of ruling we have been living in during the last decades. However, it should be the source of fallibility typical of a topology constantly adjusting to the phenomena of a *global risk society* (Beck, 2009: 56-58) and assuming a topology which encompasses the trilogy of thought - *cultural thought, human being's conceptual (dogmatic) thought* and *State's conceptual thought* - and disseminates a globalized operationality.

6. The *multifunctional character* of the security topology is connected with the idea of it being developed in *several spheres of action, in several areas* and in *several spaces* by *several actors* with similar or different functions and competences in accordance with their levels of intervention. The topological structure should aggregate the highest number of active and passive security functionalities to its core and the widest operating public and private scope of activity and production of security.

Constitutional recognition of *security* as basic value to a democratic society and democratic citizens adds the principle of freedom to the multifunctional character of security. This principle includes security in its core as a multifunctional necessity and value: the *individual* overrides the *collective*, enforces compliance to the *principle of freedom* as the highest value of justice and a space of dignity of the human being and as a safe haven.

The *multifunctional character* arises, thus, not from isolated freedom but from several freedoms that charge the *collective* of defending and ensuring the security in the several spaces of freedom of the *individual* [circulation, job choice, marriage, education, environmental, religious, demonstration, expression, etc.]. These freedoms (and human needs) give origin to local and global multifunctionality of security and require science to rethink and rebuild the topology security as *local, national, regional and supranational legal asset*, to find it again among the assets worthy of criminal protection and to restructure it in autonomous criminal types in accordance with the behaviour and injury or danger of injury of the legal asset security [in particular and very restricted or exceptionally in general].

7. The reconstruction of the topology security as legal asset - *value undertaken by the legitimate, valid, in force and effective order* - is the responsibility of science which should consider it a *manysided topology*. Security is a *manysided* topology, i.e., it consolidates as a construction in parallel with forces of the several actors (many-sided or one-sided force) and in proportion with the degree of multilevel regulation and multifunctionality at a given time and place.

This feature of security is expressed throughout criminal history and in the criminal legislation code of protection of **legal individual assets** - *for example, life, physical integrity, freedom* (of decision and of action - movement), *property and its use* - **supra individual legal assets** - *for example, justice, credibility and transparency in the functioning of financial markets, free competition and good functioning of the economy, integrity of the legal State* - and **diffuse legal assets** (which are individual and supra individual) - *for example, the environment with quality, security of road traffic*. The *value security* is a *manysided value* in relation with other values protected by criminal Law and undertakes, in many criminal typologies, as a capsule around personal legal



assets: *v.g., road traffic security* which is the protection of life and physical integrity of all road users.

This leads us to *conceptual extension* of topology security in all criminal (and administrative penalty) legislation, which is extended to spaces of *multilevel regulation* and *multifunctionality* of a *criminal legal assets*: a vital personal (individual) and an essential and structuring supra individual interest for the development of the human being in community and as anthropocentric value of *personal* and *social* action, worthy of criminal protection. However, this conceptual extension does not imply arbitrariness in criminalizing human negative behaviour but rather expresses the integrating extension of an essential concept to the human being - *legal asset*- limited by *multifunctionality, multilevel regulation character* assessed by formal and material Constitution, *i.e.*, assessed by constitutional law (Figueiredo Dias, 2007: 119-121).

The conceptual extension of topology security means subjection to a value topology of cognitive epistemological and axiological construction as a vital (but not absolute) asset of all the community (national and supranational). A community without security is a community in which human development and growth is unprotected and, more importantly, it allows the spontaneous *topic (τόπος)* the decision of security as legal asset, whose despair increases with the mutability of *liquid times*. Notice that this statement *is not an appeal to the idolization of security*. It is an appeal to its *inclusion in the dogmatic foundations of State punitive intervention*.

The validity and legitimacy of the assumption of security as a legal asset worthy of criminal protection are in undertaking its essence and necessity and demand to human *personal* and *social* activity and in having an *anthropocentric relational structure* in protecting a value/interest [necessity which becomes legal asset through legal (von Liszt, 2003: 139-146)] individual and supra individual order, crucial to the balanced development of the human within the community. As a legal asset worthy of criminal protection in a democratic constitutional State, *security is at the service* (and thus it is instrumental) of *freedom* and is created in accordance to a people's *cultural thought*, the *conceptual (dogmatic) thought of the human being* and the *State conceptual thought*.

Our epistemological and axiological construction of the establishment of topology security as legal asset, requiring legal and criminal protection, as a source for legitimate intervention of criminal Law *denies the functionalization of criminal Law to meet the emerging needs and demands of the risk society* - based on the idea of hazard and specific edifying threat of criminal Law of risk - Figueiredo Dias, 2007: 138-139), *i.e.*, denies criminal preventative Law or presumed (abstract) hazard and pushes aside the idea of criminal Law with a "police officer's uniform" (Faria Costa, 2010: 10).

III. Space and the legal asset "security"

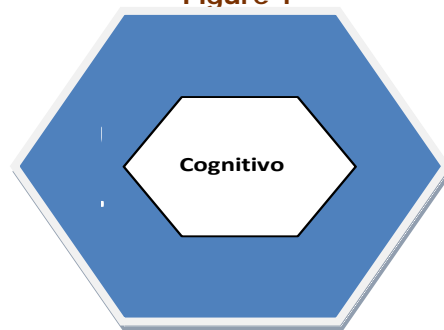
8. Security, as a mansided topology, is present in several parallel polygon levels which interact and are interconnected within national and supranational multifunctionality and multilevel regulation. The texture of this polygon, which involves the round texture of the globe, is *local, national, regional* and *supranational*. An enhancement is made to security's spacial elasticity in regards to the *mutability of nomadic crime* of a sedentary society and is based on the idea of building a space of



freedom and justice, subject to a balanced, approximate and horizontal political speech which has reduced that space of security to security theory (and warlike here and there).

Converting restricted spaces into an *open system* and a *macro system* arises from the realization of security as anthropocentric topology in space and time and creator of different and centralizing lives. Committing a crime affects the real and cognitive state of topology security in the restricted identifiable space: the *local* space or geographically restricted territory [real polygon]. The multifunctionality and multilevel regulation focus on a mansided concept of territory and time configuration and determination of specific personal and community effects.

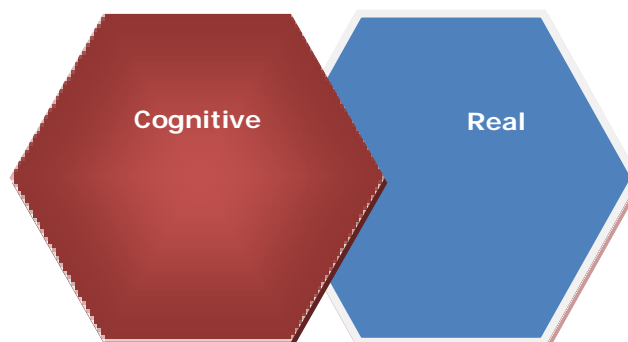
Figure 1



The scalability of the effect of crime is limited to a localized polygon: the *principle of territoriality* finds expression in criminal Law. Real encompasses the cognitive and the whole topology security is established within a *restricted system* which vanishes in time (also restricted because part of the whole system).

9. The gravitational effect of certain crimes projects them beyond the local polygon and increases national space and occupies a world of - local- reality and the world of cognition. This process is guaranteed with the emphasis media gives to crime affecting the *direct victim* (the claimant and owner of the damaged or placed in danger legal asset), the *indirect victims* (personified by the *members of the local community* who see legal assets being damaged by human behaviour) and *members of the national community* (who feel and realize the restriction of space and time in topology security).

Figure 2





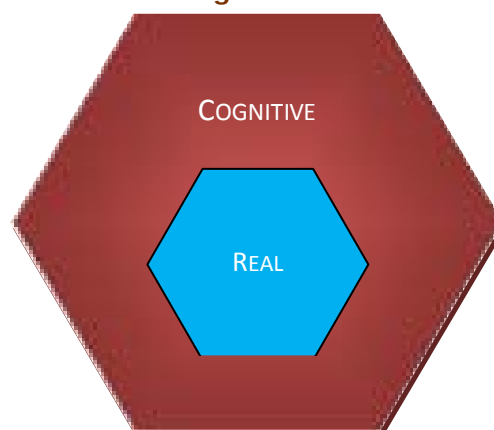
This process no longer simply occupies the *epistemological and axiological field* - the field of reason - which fills the *real polygon*, but occupies the *fictional space* - the field of emotion which fills the *cognitive polygon*. The cognitive polygon increases size and intensity and, with the force provided by the media, engulfs and dominates the real polygon.

The *multifunctionality* and the *multilevel regulation* should be used to reduce the cognitive polygon and establish the legal constitutional statement of *principle of criminal territoriality* within the State territory. Let us consider that, though the (material) function is established through multilevel regulation of topology security, this functionality should be subject to regulation imposed by the place the crime took place in as well as the degree of suffering and intensity of damages caused by human negative behaviour. In case the *cognitive polygon* is encompassed by the *real polygon*, security is established as legal asset at local and national level because the dissemination of *πανεως* was contained.

10. The awareness of crime of reflexive explosion and shockwave, due to its high *personal* and *social* damages and the anthropological perception of seriousness, lead us to establish doctrine and operation implementation of crime "network of networks" (Wilkinson, 2006: 127) of *undetermined and illegible victims*: all citizens at any place and time are victims of structured and organized negative behaviour damaging and/or hazardous to supranational or diffuse individual legal assets.

The *polyhedron* security is, in the area of crime, no longer exclusively local or national, it extends through regional polygon - spaces such as the European Union, the Portuguese-speaking countries, Mercosur, the African Union, the *Commonwealth* (etc.) - and the supranational polygon. The establishment of supranational space extension is undertaken by the scientific and the general community, even by the media, which disseminates the effect of crime through national and supranational space and foster the *subordination of the real polygon towards the cognitive polygon*.

Figure 3



The balance between polygons is essential and only possible if operators - police, judiciary, politicians, journalists and citizens - promote confluence in topology security: multifunctionality, multilevel regulation, conceptual extension which heightens the intensity of force and security operators as many-sided. This conceptual structuring



brings to the debate the rethinking of topology security as local legal asset - *committing a crime* - of national, regional, supranational refraction and as a supranational legal asset with regional, national and local convergence; and imposes the intervention of criminal Law as "solidarity of the cultural world against (international / transnational crime" (Jescheck/Weigend, 2002: 182).

Local becomes global and global converges in local. This pendular and elliptical movement is in accordance with legal thinking on the mutability and liquidity of late modern society and states the *principle of extra territoriality* by means of (complementary) *principle of nationality*, the *principle of protection of national interests*, the *principle of universality* and the *principle of supletive administration of criminal justice* by applying criminal Law in the space because crime, though committed there, regardless of place within the "network of networks" the crime was committed in, is liable of universal criminal charges ⁴because *they damage or endanger legal assets in the national, regional or international polygon*.

11. Furthermore, we must refer to *damaging crimes* - distant or immediate - to *supranational topology security* which affect the *real and cognitive status* of all world citizens because they represent a damage to the core of human rights: *v.g.* crimes against humanity [*for example*, genocide] and crimes against local and global society [*for example*, terrorism] The genocide in Rwanda or the terrorist attacks on September 11, 2001, 11 March 2004 and 7 July 2005, represent an injury to the core of human freedom and security. In this crime scenario, we have *immediate victims* of the massacres and attacks - human beings dead or assaulted - and their *distant victims* - all citizens believe that life, physical integrity and freedom as sacred values and essence of dignity in the human being.

This scenario makes "us all" victims of barbarianism we are all exposed to and makes us possible targets. *Territorial indefiniton* and *target indefiniton* - victims - creates a state of cognitive insecurity, which encompasses the real state of insecurity and creates the schizophrenic fear - *ναρεον* - leading to a *decapitalization of rights, liberties and guarantees* which are crucial to idolized topology security. The consumption of the real polygon by the cognitive polygon generates a conceptual non-rationality and leads to a defence of an armoured State and a space of freedom and justice submerged in the ocean security produced by the theory of presumed hazard. The obstacle to this utopic euphoria of cognitive security is the Law, which is (or should be) a material and formal manifestation of a people's *cultural thought*, the *conceptual (dogmatic) thought of the human being* and the *State conceptual thought*.

As Adriano Moreira states, "tyranny, a concept similar to despotism and close to totalitarianism, indicates types of government throughout history which adopted fear as a tool of submission of society, using violent, cruel and indiscriminate means" (2009: 208). Our conceptual construction aims to avoid this growing tyrannicide in regional and supranational *open spaces and macro systems*. Only the Law may establish a *new world order of reference and human stability* because it claims justice as a substitute of violence (Tocqueville, 2002: 180).

The Law should present itself as the support to *multifunctionality* and *multilevel regulation* imposed by the *supranational security polyhedron* which acquires the status

⁴ We bring up the principal of universality of criminal Law created by Hugo Grotius in *De Jure Belli ac Pacis*, dedicated to Louis XIII of France, in 1625.



of legal asset with legal criminal protection under a (*new principle of European or international territoriality*). The "Law cannot be underestimated" (Oeter 2006: 217) in preventing and repressing hideous crimes by operators who should act according to principles of legal order in a democratic constitutional State.

The *prevention and repression of international crimes - for example, terrorism, arms trafficking, drugs trafficking, asset laundering and corruption - which threaten supranational peace and security* should be subjected to *valid, national, regional and supranational material legal order*. State and supra state operators should implement the *principle of extra territoriality* through the *principle of universality* of criminal Law and prevent a feeling of impunity of criminals which deny a space of freedom as justice due to the nihilification of topology security.

At this point, we may consolidate the idea that the space of topology security is, nowadays, an illegible space at the real territorial level and at the cognitive level; **it is, at the same time, a local/global and a global/local space**. As Otfried Höffe (2005: 19-24 (22) teaches, the principle which, at a local scale, leads individuals and groups to become organized under the Law and Justice must rule at a global scale. The polygon security, watertight, with well defined, flat lines and historically identified and specific spots becomes a multi shaped polygon whose legal and criminal intervention must be adapted without resorting to presumed criminal preventative or policing Law.

IV. Typology "security" becoming autonomous as a transnational legal asset and a restriction to security and hazard thesis

12. The dismantling of borders and economic and financial (including banking) expanding has required that the scientific community rethinks and restructures concepts and ideas on the intervention of the State and national operators in the framework of supranational space. Economic *globalization*, followed by *cultural globalization* becoming *world culture* or *the kingdom of hyper culture* (Lipovetsky, 2001: 14-112), impels us to step out of the limited system towards the open system or macro system of *security as necessary and vital asset to the balanced development of the human being in a legally organized society*.

The economic, financial and cultural expansion, which should promote globalization of political thought rather than political hegemony or economic hegemony, leads to consider security space within a space of freedom and justice under the law due to the easy political hegemonic opportunism of conceptual subversion, of manipulation of fear and withdrawing real protection of the human being. This conflicting reality demands a reconstruction of the legal asset security as an individual and supra individual legal asset as well as a legal asset of supranational criminal protection. This challenge demands *independence* or that the *status quo* be strengthened.

The vulnerability or vulnerable opportunity of human beings *becoming closer* (rather than *blending*) - *v.g.*, in cultural, religious, educational, economic, ideological, political terms - requires that the polyhedron security be analyzed as a necessary and vital asset to community life, as an essential value to human beings' fulfilment, an individual and supra individual value worthy of criminal protection because it is the lynchpin to the balanced development of the community. It is a legal asset that spreads through the consistent and systematic mesh of protecting legal constitutional values by means of criminal Law and administrative offences Law. This implies an assessment of possible



formal and topic independence, better, a material independence inscribed and assessed of the legal types of crime.

13. *Independence in legal types of crime* specifying negative security threatening behaviour, models of damaging behaviour or threatening the legal asset security, realizes the *material dimension* and the *formal dimension* of crime.

The *material dimension* of crime means effective guarantee of negative behaviour (types), limiting the legislator in terms of legislating and criminalizing those behaviours, restricting those who will interpret and apply the rule to the concept and material legitimacy of criminalization or the previewed administrative sanction and establish itself as a real protection of the criminal agent towards *ius puniendi*. This dimension enhances the balance of the Law, in particular, of criminal Law: effective protection of legal assets damaged or placed at risk of damage by delinquent and the delinquent's protection before the State's sanctioning "machine".

The *formal dimension* of crime ascribes the subjection of security actors' actions to the Constitution and democratic legality. It requires to act in compliance to the Law. Requiring the previous existence of constitutional protection of the manysided legal asset security is *conditio sine qua non* for the legislation to opt for criminalizing a negative damaging behaviour against topology security. This constitutional provision is a reality - article 27.º of CRP – and the *supraconstitutional* provision is found in article 3 and 29, n.º 2 of DUDH, in article 5 and 8, n.º 2 of CEDH, in articles 9, 21 and 22 of PIDCP, art. 6 of CDFUE and art. 4, n.º 2, al. j), 67, 68, 82 to 89 of TFUE.

14. The manysided topology security, like liberty and justice, is a legal asset of constitutional and supraconstitutional provisions. However, the validity and legitimacy of a legal asset lies beyond the formal dimension and its material dimension is present in art. 18, nºs 1 and 2 of the Portuguese Constitution. Opting to criminalize negative damaging behaviour, in particular the manysided legal asset security, imposes on the legislator to submit the validity and legitimacy of the option to *the guiding principles of criminal policy* -legality, culpability, humanity and rehabilitation - in terms of its *content and scope of its vectors* - legitimacy and efficiency.

To this list of constitutional and supraconstitutional principles, we should add the *guiding principles of criminal Law intervention*: the principle of *subsidiarity*, the principle of *excess prohibition or of minimum intervention* and *of proportionality in a wide sense* which requires checking the corollaries of *necessity* and *enforceability*, of *adequacy* of criminal intervention to the specific negative behaviour, of *reasonableness* (proportionality in the strict sense), the principle of *indispensability* of criminal intervention and sentencing, the principle of *efficiency*, assessing *future efficiency* of criminal intervention and the principle of *ultima et extrema ratio*.

Based on this material and functional enumeration of the validity and legitimacy of protecting the legal asset security, we may, on the one hand, defend that it is possible for damaging negative behaviour to be independent and establish legal types of independent crimes and, on the other hand, consider that there are spaces inherent to the manysided perspective of security which, for that reason, does not allow for a positive formal independence. However, we consider that this independence is in the material side of the legal type of crime because there you can find the specific legal asset - *for example* physical integrity or freedom - as well as the manysided legal asset security in terms of its multilevel regulation and multifunctionality.



15. The assumption of the mansided topology *security* as a legal asset of multifunctional and multilevel regulation topology which requires a legal criminal protection because it is an essential and vital asset to human life - inherent to personal and social being - and to legal *being* in community, is a model to reinforce. This reinforcement aims to take on cornerstones of supranational intervention of criminal Law values such as the dignity of the human being [*conceptual (dogmatic) thought of the human being*], the will of the people [*cultural thought of the people*] and the democratic constitutional State [*conceptual thought of the State*].

This assumption of security as a legal asset of mansided and multi shaped spaces *sets aside or limits and establishes itself as an obstacle* to the promotional changing security criminal policies of criminal Law and founders of an *emergency criminal Law* typical of a *exceptional status*, sheltered by the democratic constitutional State (Canotilho, 2009: 24). This assumption of security establishes itself as an obstacle to security temptations and to policies of *privatizing* basic tasks of a democratic constitutional State: *i.e.*, as a barrier to *deconstitutionalizing* the legal system (Canotilho, 2009: 25) and replace it with a relational privatization of the individual towards the world, leading to objectification of the individual, an "enemy" of the *legal status*. It is fostered as an insurmountable obstacle of criminal Law of legal asset and of criminal Law of freedom. This concept of the polygon security, legal asset subject to criminal dogma, is an insurmountable obstacle of criminal Law of human being.

This model is rooted in the idea that this is a restriction to human exposure - with *dignity in equality* - and to the rise of a *criminal Law of presumed hazard* and of *national security* or of a *criminal Law of risk*. By defending a comprehensive criminal system of the legal asset of (national and supranational) material legal constitutional assessment, we have blocked the (political) rhetorical speeches, to *cool, publicity and void of ideas'* speeches (ZAFFARONI 2007: 70-91), and built alternative bridges of criminal intervention because we have subjected it to validity and legitimacy of meta-legal values.

V. Security as supranational legal asset and the limitation to collective hegemony

16. The Law - not the positive or formal law but the *the natural law of material legitimacy* - legitimizes the action of security operators to restrict citizens' rights and freedoms as long as that restriction is simultaneously a damage to security as legal asset (and never as expectation) protected by the *criminal legal constitutional axiological order*. This is the *unbreakable axis* of the polygon security which geopolitics or geostrategy of security in hypermodernity have to comply to.

Human action to protect security - the basis for public peace and globalized and globalized legal peace - cannot idolize it nor, in order to implement it, derogate the values of our time and state enshrined in ECHR, as did the United Kingdom in 2001 to have the *law on security and against terrorist crimes* approved, which legalized and legitimized restrictions to freedom through unlimited arrest by ministerial decision, without detainees having access to any evidences (Marchisio, 2006: 198-199). This option is the negation of democracy and the affirmation of *πανεισκρατος*: the power of *paneonomia*.



The American option to reuse *hostis judicatus* - the enemy of the legal state or of the legally and politically organized people, *i.e.*, the enemy with no face or army (Smith, 2008: 378)-, through the *Patriot Act* and the United Kingdom's for the *security law*, is the negation of historical awareness and our ancestors' struggle for a society based on human rights. This reality demonstrates there is no historical awareness, beaten by the immediacy of security efficiency and the affirmation of the hegemony of the collective over the individual.

17. The defence of topology security as legal asset of criminal Law of freedom and the human being (Guedes Valente, 2010: 99-100) is the only alternative to the hegemony of the collective over the individual - the whole imposes security and everything is security - and the only legitimizing source to the action of security operators for the protection of vital assets of the members of a local, national, regional or supranational community.

As Stefan Oeter declares (2006: 215-218), with whom we agree, only an anti-terrorist (police, judicial and, in certain scenarios, military) action, subjected to national and international order is legitimate⁵, because it is in the Law that all geopolitical (and geostrategic) concept and action find sociological (the people's) legitimacy, which ensures the right and duty to act against negative human behaviour, damaging to individual legal assets, supra individual and diffuse: *v.g.*, *security*.

Criminal law of legal asset, as Right to freedom and of the human being, which secures the politician and the legislator to the canon of axiological legal constitutional and international (supranational) order, is the only **centrifugal force** of *absorption of the cognitive polygon of security by the real polygon* and of *negation to create a criminal Law of security or of presumed hazard* leading to a *depersonalized and objectified human being*.

The constant affirmation of a supranational criminal Law, whose positivation and constitutionalization are of daily life, leads to legal science viewing the human being as subject to *international legal rights and duties under international law*: this is the case of CFI, ECHR and ECJ. We may defend that **topology security** as supranational legal asset worthy of legal criminal national and supranational protection, **revokes the hegemony of the collective** and **approves and becomes effective the hegemony of the human being as humanity's genes** and establishes itself as topology inherent to "all concept of legal community" (Faria Costa, 2010: 40) but never as an absolute and sacred asset, otherwise we will crush not only the other rights but the human being as well. Or, as Grass states (2008: 52), "unless humanity gives up on itself".

VI. Small starting idea, but great starting space

18. We advocate a system which searches answers and alternatives within the *valid, legitimate, in force and effective axiological legal constitutional order* without derogating meta-legal values intrinsic to a democratic constitutional State: *v.g.*, the value of freedom. The obstacles to the limitlessness of intervention by several actors in the geometric spaces of two-sided group operations can be found in the epistemology and in the axiology of legal order: they provide legitimacy and restrictions.

⁵ See this consideration by Diogo Freitas do Amaral (2003). *Do 11 de Setembro ao Iraque*, Lisboa: Bertrand Editora.



Our contention is that the challenge is effectively assuming that *topology security* as *manysided legal asset of conceptual extension and rooted in multilevel regulation and multifunctionality*, of legal order in liquid times. This is the only path we believe adequate to *block the wave of security* and the *wave of presumed hazard* based on the media amplification of crime.

This theoretical construction we have put forth for reflection and debate is based on the conceptual extension and development of a criminal Law of freedom and the human being in the framework of *world legal order* or *supranational legal order*, which asserts itself as the *future balance of humanity*.

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