

## RESPECT FOR THE CRIMINAL TEXT DERIVED FROM SOCIAL REALITY

### *O RESPEITO PELO TEXTO PENAL DERIVADO DA REALIDADE SOCIAL*

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#### **Abstract**

The proper formulation of criminal provisions requires that the legislator be influenced, within certain limits, by moral rules, religious principles, and established social customs. It must also take into account prevailing economic and political necessities, as well as the interests and values of society. This is achieved through maintaining a balance between the public and private interests and ensuring the protection of individual rights and freedoms guaranteed by the constitution, in addition to the state's provision of public services. Such considerations reflect the necessity of upholding criminal provisions that regulate access to and enjoyment of these services. Accordingly, this study seeks to address this issue by identifying the fundamental bases that necessitate respect for criminal law by all individuals. These bases are reflected in the substance of criminal provisions, which are connected to social reality and responsive to political, economic, and cultural changes. They also embody a balance between safeguarding individual rights and freedoms on the one hand, and protecting the public interest on the other. Furthermore, the study examines the state's obligation to improve the service conditions of society and the impact of its failure to do so on the degree of compliance with, and violations of, criminal law by those subject to it.

**Keywords:** Criminal Text. Interest. Rights. Public Services. Respect For the Law.

#### **Resumo**

*A formulação adequada das disposições penais exige que o legislador seja influenciado, dentro de certos limites, por normas morais, princípios religiosos e costumes sociais estabelecidos. Deve também levar em conta as necessidades econômicas e políticas vigentes, bem como os interesses e valores da sociedade. Isso é alcançado por meio da manutenção de um equilíbrio entre os interesses públicos e privados e da garantia da proteção dos direitos e liberdades individuais assegurados pela Constituição, além da prestação de serviços públicos pelo Estado. Tais considerações refletem a necessidade de defender disposições penais que regulamentem o acesso e o gozo desses serviços. Assim, este estudo busca abordar essa questão identificando as bases fundamentais que exigem o respeito ao direito penal por parte de todos os indivíduos. Essas bases se refletem no conteúdo das disposições penais, que estão ligadas à realidade social e respondem às mudanças políticas, econômicas e culturais. Elas também incorporam um equilíbrio entre a salvaguarda dos direitos e liberdades individuais, por um lado, e a proteção do interesse público, por outro. Além disso, o estudo examina a obrigação do Estado de melhorar as condições de prestação de serviços à sociedade e o impacto de sua falha em fazê-lo sobre o grau de cumprimento e as violações do direito penal por parte dos sujeitos a ele.*

**Palavras-chave:** Texto Penal. Interesse. Direitos. Serviços Públicos. Respeito à Lei.



## **1 INTRODUCTION**

The necessity of having legal rules and working to follow them is an essential process that cannot be ignored. It practically pushes the authority to instill a sense in individuals and develop their desire to respect the law, all in order to eliminate the problem of crime. Implementing these rules does not rely on whether a person knows the reason behind a criminal law or the wisdom of its legislation; they just need to understand that enacting these rules is nothing more than responding to the public good and their own benefit.

Therefore, the legislator is expected to take into account the ethical and social considerations established by society and create legal provisions that fit its circumstances, in a way that aligns with its social structure and ability to embrace them.

Accordingly, this study examines the extent to which the respect for criminal law is related to its social reality, and explains the impact of the decline in public services on the weakening of adherence to criminal rules, with a focus on the Iraqi Traffic Law as an applied model for this issue. It also seeks to answer a key question: Is the mere completion of the legal framework of the criminal text sufficient to ensure its respect, or is its observance also affected by the extent to which the state fulfills its service obligations to society?

## **2 IMPORTANCE OF THE RESEARCH**

The study takes its significance from the importance of the existence of criminal texts and the social considerations their existence necessitates, due to the legal function they perform in protecting public and private interests. However, this protection has no effect unless these texts are respected, and such respect can only be demanded if those addressed by the text have confidence in the state and the services it provides, governed by the criminal text.

### 3 RESEARCH PROBLEM

The research problem arises from the hypothesis that the legislator, in enacting criminal texts, particularly special criminal laws, must take into account the sentiments of the community and consider the ethical and social considerations established by society, which leads to the following sub-questions:

- Is the completion of the legal construction of the criminal text sufficient for respecting the text and not violating it?
- If the state does not provide public services, does that have an effect on respecting the text governing the enjoyment of those services? And to what extent is this reflected in violations of the Iraqi Traffic Law?

#### Research Methodology

We will proceed to follow the analytical approach to the components of criminal texts and study what government institutions commit to in providing public services, in addition to citing the Iraqi Traffic Law No. 8 of 2019 and its impact on the Iraqi service reality.

### 4 RESEARCH STRUCTURE

In our discussion of the topic, we do it largely in two sections. In the first section, we will address the determinants considered for respecting the criminal text, which will be done through two subsections: in the first subsection, we will discuss the reality of the criminal text, and in the second subsection, we will discuss the reasonableness of the criminal text. The second section will address the impact of the community's service failure on respecting the criminal text, which will be done through two subsections: in the first subsection, we will discuss the state's obligation to provide public services. The second subsection will explore the reconciliation between the obligation of the criminal text and the deterioration of the community's service reality.

#### **4.1 Section one: determinants considered for respecting the criminal text**

Due to the importance of the criminal text and its role in criminalizing certain acts and punishing them if committed, it is logical that it be built on considered foundations that enforce respect for it by everyone. Accordingly, this section can be further extended into two subsections: in the first subsection, we will address the concreteness of the criminal text, and in the second subsection, we will address the rationality of the criminal text, as follows:

#### **4.2 First subsection: realism of the criminal text**

The philosophy of criminal law and its justice requires that it reflect realistic values arising from the core of society, not values separate from its social environment. Values only gain their reality when they respond to the social necessities that produced them. Consequently, criminal justice must not ignore the social, economic, and political dimensions of society. And if the law regulates multiple social relationships, it does not create these relationships; rather, its role is limited to organizing them according to what their nature requires as it manifests in their social reality. Therefore, the function of the law lies in establishing the legal rules that govern these relationships to achieve a specific goal, which should be justified by a necessary social requirement (Al-Kilabi, 2017). On this basis, criminal law relies in its provisions on the reality related to the understanding of variables, whether political, economic, or cultural, as it derives its rules from the nature of facts and things, leaving no room for abstract mental assumptions. Any deviation from this framework is likely to negatively affect the respect for the criminal rule by those to whom it applies (Sidiqi, n.d.). This realism is reflected in the extent to which it is influenced, within certain limits, by the rules of ethics, principles of religion, and the economic system, as well as by the prevailing political system, the general social situation, and the customs, traditions, and established norms in society (Mustafa, 1960).

This, in turn, is reflected in judicial policy regarding the imposition of punishment. When the judiciary is tasked with imposing penalties in an automatic manner, in the name of the power of law, with the aim of establishing an ideal model that does not rely on a tangible human or social reality, this leads to granting the criminal judge unusual powers

and gives the judiciary a repressive character, as a result of overlooking the human and realistic dimension of the criminal matter (Al-Hamlili, 2011). And this is what distinguishes criminal laws from other branches of law, as they are concerned with guaranteeing the rights and freedoms of citizens, which cannot be infringed upon based on mere assumptions and possibilities (Surour, 1982).

Therefore, the element of realism in the provisions of the text has great importance in the world of criminal law, which is:

1. The element of realism in criminal law rules is considered a confirmation of the relationship between legal certainty in criminal law and the presumption of knowledge of it, justifying this by the fact that a criminal rule requires certainty that it is legislated in accordance with the spirit of society and the religious, customary, or moral heritage it enjoys. Accordingly, the individuals subject to this heritage are the ones who encouraged the legislator to cast it into a legal technical form so that his role is not to create the criminal rule but rather to search for it until he finds it. Based on this, knowledge is available to those addressed by this rule (Ahmed, 2019).
2. Limiting customs, traditions, habits, and moral rules of society according to the requirements of public order in all its elements and the necessities of the development and progress that society is undergoing, under criminal legal provisions, being matters of public order that cannot be violated or deviated from, are held in great respect by individuals (Salama, 1997).
3. The availability of realism in criminal texts ensures their consistency with prevailing social values and contemporary standards of justice, and this achieves a balance between the stability of these criminal texts and the flexibility of their application in light of social reality (Sayed, 2013).

#### **4.3 Second subsection: reasonableness of the criminal text**

In reality, interests and values in society, no matter how diverse, ultimately fall into two types: either public values and interests aimed at meeting general needs related to society or the state, such as the state's right to maintain civil peace and its internal and external security, and what follows from that, such as criminalizing certain behaviors that

affect this right; or private individual interests related to property, the right to private life, personal freedom, and other rights and liberties guaranteed by the Constitution. Any conflict that arises between these interests, if it is between private or individual interests, is generally governed by the rules of private law (civil, commercial, labor, etc.). However, if the conflict is between public interests and the rights and personal freedoms enjoyed by individuals, it is generally subject to the regulation of criminal law. In this context, the idea of balancing legal interests emerges, which gains special importance in criminal legislation as it is one of the most important areas of law where the conflict between public legal interests and private legal interests is most intense (Surour, 2002). In this sense, the principle of balance (Azer, 1972) can be defined as 'that relationship between values and interests that differ in their social importance, which is based on evaluating these values and interests and studying them in light of the importance of their social role, leading to organizing or resolving any conflict that may arise between them in a way that satisfies the needs of the individual and society' (Jalal, 2004).

It means that rationality in criminal law is achieved through balancing the protection of individual rights and freedoms on one hand, and safeguarding public interest on the other hand. This balance can only be realized by observing the principle of proportionality within the scope of protection granted to each, and exerting the utmost effort to prevent the protection of one from harming the other. Based on this, the criminal legislator, when organizing provisions for the protection of rights and freedoms, must balance the requirements of this protection with the rights and freedoms enjoyed by others, in addition to the need to achieve a balance between this protection and the requirements of public interest within the framework of public order (Abd al-Zahir, 2011).

In other words, reasonableness in the penal text is achieved through balancing the protection of individual rights and freedoms on the one hand, and safeguarding the public interest on the other hand, and this balance is only achieved by observing the principle of proportionality in the scope of protection established for each of them, and exerting the utmost possible effort to prevent the protection of one from infringing on the other. Based on this, the criminal legislator, when regulating provisions for the protection of rights and freedoms, must balance between the requirements of this protection and the rights and freedoms enjoyed by others, as well as the need to achieve a balance between this

protection and the requirements of the public interest within the framework of public order (Surour, 2002; Saidi, 2018).

We can deduce from the above that respecting legal rules is an absolute necessity that cannot be neglected for the sake of promoting stability, ensuring justice, and achieving sustainable development. Law is not merely rigid texts by which the constitutional document is enacted and then approved in parliament; in essence, it is an expression of social consensus and a tool to regulate relationships among individuals, protect rights, and define duties. Therefore, the nature of the provisions set forth by the legislator within criminal texts and the extent to which they are socially respected can only be realized if those provisions are consistent with the convictions of the members of society or the social environment in which they are intended to be applied, through two essential elements that ensure this respect, which are the realism of the criminal text's provisions and their rationality within the time frame in which they are issued.

#### **4.4 Section two: effect of societal service failure on respect for the criminal text**

However, despite the criminal text being constructed in a way that aligns with social reality and the legislator's skill in balancing interests and favoring what is most deserving of protection, we find in some cases behaviors that indicate a lack of respect for the legal rule and attempts to violate it by individuals. This is due to the service reality and the weak infrastructure of society, which can be referred to as the service failure of society (Al-Jaouni, 2009). Therefore, this section can be extended in two further subsections: in the first we will address the state's obligation to provide public services, and in the second we will address the alignment between the binding nature of the criminal text and the deterioration of the community's service reality, as follows:

#### **4.5 First subsection: the state's obligation to provide public services**

The contemporary conception of the modern state is based on redefining the relationship between it and individuals, so that the state is no longer an authoritarian entity that subjugates society to its will, but rather has become an organizational tool in the

service of humans, responsible for managing public affairs with the aim of achieving the common good and preserving human dignity. Since the people are the source of authority and its legitimacy, the administration of the modern state is based on the concept that the state serves the people. This is one of the fundamental pillars of modern constitutional and administrative thought, due to the legal and ethical obligations it entails, which require the public authority to fulfill its duties towards everyone within its territory, whether they are citizens, residents, or foreigners, without any discrimination based on race, religion, or social affiliation (Ammar, 1998).

Providing public services occupies a central position in the structure of the social contract that links the state with society, as it represents the practical expression of social justice and legal equality among individuals in benefiting from public facilities. This commitment also constitutes one of the main indicators of the extent to which the state respects human rights and ensures a decent standard of living that achieves a minimum level of welfare and stability. Therefore, planning for public services, implementing them, developing them, and evaluating their quality are among the essential topics in the science of public administration and contemporary administrative law (Jniyh, 2008). Public services, according to administrative jurisprudence, refer to those activities aimed at satisfying the basic needs of individuals and the community, which cannot be entirely left to the forces of the private sector, due to their close connection with the social and economic public order. These services are represented in the fields of health, education, infrastructure, and other facilities that the state undertakes to provide either directly or through the organization and supervision of the private sector, ensuring that the public interest prevails over individual interests and achieving comprehensive social development (Rais, 2016).

Based on this, the basic types of public services can be reviewed:

- 1) Infrastructure: This sector is considered one of the fundamental pillars of the national economy, due to the pivotal role it plays in directly and continuously affecting individuals' daily lives. At the same time, it serves as a basic benchmark for evaluating the efficiency of public administration performance. This infrastructure includes various service facilities that underpin social and economic organization, such as roads, bridges, airports, land and sea ports, water and sewage systems, electricity and communication networks, and other physical components

that complement each other to ensure societal stability within the framework of modern life requirements (Mar'i, 2017).

- 2) Educational services: Another essential and important sector is the education services, which drives the country's wheel towards progress and prosperity. Education represents one of the fundamental areas through which human resources can be developed, improving and developing the educational level of citizens by building educational institutions of various types that reflect the urban, scientific, and technological development of contemporary societies, capable of creating individuals who are more positive and advanced in facing the political, economic, and social issues that the state encounters, making them more effective in development and education programs (Amin, 2022).
- 3) Health services: Education alone is not enough to measure a country's progress; health is a key partner in it, because the treatment and prevention it provides touch on the most basic human right to live with a healthy body. It is the state's duty these days to make it a developmental priority, as it is the main barrier against diseases and helps ease their burden on both individuals and society as a whole (Khudair&Hassan, 2017).
- 4) Housing services: One of the fundamental duties incumbent upon the state is to provide adequate housing for citizens, in both urban and rural areas alike, within a healthy and proper environment with integrated services and facilities.
- 5) Municipal services: Municipal services are considered essential services necessary to provide a decent living for citizens, including the provision of drinking water, sewage, street cleaning, and others (Mar'i, 2017).

After reviewing the conceptual framework of the state's obligation to provide public services, we examine the constitutional basis for this obligation by the Iraqi legislator. The 2005 Iraqi Constitution recognizes the state's responsibility to provide the means for a decent life for citizens. This is reflected in the provisions that oblige public authorities to guarantee economic and social rights, foremost among them the right to health, education, and housing, in addition to other public services that achieve welfare and progress. The Constitution also adopts the principle of equality and non-discrimination in benefiting from these services as one aspect of equality before the law (Iraq, 2005). But despite the clear constitutional basis for the state's responsibility in this

field, in practice there is a big gap between the constitutional obligations and the actual reality of public services. This is what we see in Iraq, where public services of all kinds are characterized by deterioration and unacceptability due to poor management, weak institutional structures, lack of strategic vision, and widespread financial and administrative corruption, resulting in the disruption and irregularity of public facilities (Iraqi Council of Representatives, 2019).

#### Second Subsection: Alignment Between the Binding Nature of the Criminal Text and the Deterioration of the Service Reality

It is noticeable that the state is considered the original party and the primary entity responsible for ensuring the provision of basic public services, whether it carries this out directly or through the regulation of the role of the private sector, and it is not permissible for it to abandon this function without affecting the fundamentals of social justice and political stability. Conversely, respect for the law by individuals is considered a natural behavior, reflecting their discipline and trust in institutions (Talba, n.d.).

However, in some cases, reality reveals a phenomenon that occurs most of the time, represented by some citizens resorting to breaking the law, not out of ignorance of it or lack of knowledge, or rebellion, but as a form of revenge against the state, when they feel that the institution that is supposed to protect their interests and ensure their well-being has not fulfilled its promises or has been negligent in performing its service duties (Salim, 2017).

Accordingly, this behavior, although it appears on the surface to be a kind of violation individually or a group of individuals, but in its connotations it bears a deep reflection of a state of rift in the relationship between the individual and the state. When citizens feel that the infrastructure is neglected, health services are poor, education is not keeping pace with ambitions, and social justice is absent, trust in institutions begins to weaken, and an internal feeling arises that the law no longer reflects a system of protection of rights, but rather a tool for imposing discipline without tangible compensation. In such circumstances, breaking the law, whether it is traffic violation, building without a permit, evading taxes or trespassing on public property, turns into something like a letter to the authority that is summarized in an undeclared concept: “Why do I abide by the rules of a state that does not abide by its duties towards me?” (Dawood, 2011).

To clarify further, we can refer to the Iraqi Traffic Law No. 8 of 2019, as it is one of the special criminal laws that represents the trends of modern and contemporary formal crime, which requires individuals to comply with its provisions daily and repeatedly. Its articles almost accompany their daily lives in order to reduce the phenomenon of traffic accidents by ensuring the smooth flow of traffic on public roads inside and outside cities, out of concern for protecting people and property from the dangers of these accidents (Al-Tahafi, 2001). Indeed, in some cases, many people may commit traffic violations that fall under criminal offenses, which necessitates imposing financial fines on them. These violations may sometimes be forced upon individuals, such as running a traffic light due to poor available services and the lack of electricity powering the traffic light, or parking in a place not designated for parking due to the absence of designated parking spots. Driving at high speeds on public roads can occur due to the lack of traffic signs warning drivers. Furthermore, frequent accidents can result in the loss of citizens' lives or expose them to significant danger because of the absence of main roads designated for large vehicles, or roads not being paved or planned according to globally recognized standards (Iraq, 2019; Abd al-Aal, 1997). But on the other hand, a citizen may realize that he is committing a violation, yet his disregard for the criminal rule is due to a disposition he has that drives him to take revenge on the public authority for the lack of public services, particularly roads, inside or outside cities, keeping pace with the development of the modern and contemporary state (Biskri, 2019).

We believe that this kind of action cannot be justified in any way or under any circumstances, and the danger should not be ignored, simply because breaking the law, whatever the reason, results in two main consequences: it disturbs public order and helps to create confusion that weakens justice and equality. We believe that this kind of action cannot be justified in any way or under any circumstances and the danger should not be ignored. And this is simply because breaking the law, whatever the reason, results in two main consequences: it disturbs public order and helps to create confusion that weakens justice and equality. Addressing this phenomenon, however, is not only through tightening oversight or punishments, but first begins with recognizing the existence of a flaw in service performance, where there was no fulfillment of the minimum expectations of citizens. Therefore, for the state to ensure respect for the law, it needs to restore the social contract that links it to its citizens. This can only be achieved through fair

development policies and quality services across all sectors that restore citizens' trust in public authority, with a professional and honest administrative apparatus that works to advance public facilities regularly and consistently, drawing on the experiences of developed countries.

## 5 CONCLUSION

At the end of this research, we can point out here the most important results along with proposals.

Findings:

- 1 – For the criminal text to have a proper formulation and a complete legal structure, it must express realistic values originating from the core of society and be linked to an understanding of the changes that occur to it on all levels. Moreover, it should be properly employed in protecting rights and balancing conflicting interests.
- 2 – Respect for the criminal text or its acceptance is not determined by the legislator's feeling that he has fulfilled realism and reasonableness when drafting the text. Rather, there are other reasons related to either the management or the corruption of governmental institutions that drive individuals to violate it. Thus, the violation occurs not out of ignorance of the law, but out of motives of revenge and distrust.
- 3 – Individuals may be compelled to violate criminal texts, particularly private criminal provisions, which result in acts punishable by law. This is due to the deterioration of community services, especially traffic violations that occur repeatedly in their daily lives, which are committed as a result of the lack or weakness of services provided by the responsible governmental institutions.

Proposals

- 1 – In order for the state to ensure respect for the law, it needs to rebuild the social contract that connects it with its citizens. This can only be achieved through fair developmental policies and quality services in all sectors, which restore the citizen's trust in public authority by having a professional and honest administrative apparatus that works to develop public facilities regularly and steadily, while drawing on the experiences of advanced countries in this regard.

2 – Due to the frequency of traffic accidents and the resulting daily loss of many lives, as well as the material damage to vehicles, we call on the concerned Iraqi governmental institutions in this field to improve the service reality of roads and bridges within and outside cities, in a manner consistent with the progress achieved in advanced countries, so that there is respect for the provisions of Iraqi Traffic Law No. 8 of 2019 and no violations thereof.

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