LISBOA SCHOOL OF ECONOMICS & MANAGEMENT

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Chapter I

The Concept of Law

Filipe Santos Barata

Chapter I - The Concept of Law

Topics covered in this chapter:

A. Presentation and practical guidance

i. The need of an Introduction to Law for students of Management. The study of other legal disciplines. Importance of a critical view of Law.

ii. Practical guidance on the method of study, documentation and evaluation.

B. Methodical Introduction – The "Art", the Science and Legal Technic

i. The legal "art". The Law as a set of rules of composition of conflicts of interest, in order to ensure social balance. The Law as a form of work, craft or profession, and as "aesthetic" referred to certain values. Comparison with the "art" of Economics, Finance and Management.

ii. The legal science ("Ciência jurídica"). The Law as autonomous and systematic set of knowledge, with a particular method. Other sciences who take the Law as object of study. The legal science and the economical, financial and management sciences.

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iii. The legal technique. The Law as a set of or rules aiming the effectiveness and efficiency in achieving its objectives. The legal technic and the economical, financial and management techniques.

iv. The legal method and the economic, financial and management method.

C. The Law as an "idea" and as an autonomous expression of values

i. The issue of autonomy of legal values. The social balance as the main juridical idea. Justice as an ideal of Law. Equity as the sophistication of justice. The need for legal certainty ("segurança jurídica"). Legal values and essential values in Economics, Finance and Management.

ii. The legal ideas and the Philosophy of Law. The main debates in contemporary Law. Contemporary Positivism and Jusnaturalism. The current three-dimensional conception of Law.

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1. The Social Nature of Men

According to Aristotle, "Man is a social animal" - Men live in society of establishing social relations.

Life in society is a necessary condition:

- For the preservation of species - men speak, generate and create friendly relations and affections and raise a family;
- For the safety of men - against natural hazards and against attacks of individuals with an aggressive nature;
- For the "division of work" (each one doing his craft, exchanging goods and services with others);
- For military defense (facing violent assaults or threats from outside communities, either neighboring or distant);
- For integration into a collective project with leaderships capable of holding together the individuals of the same community, meeting their primary needs.

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But, ultimately, how do we define a society?

The existence of a society requires something more than a mere group of people, even if physically close to each other.

Cumulative requirements of a society:

- Combined action – an action towards achieving an end;
- Existence of common purposes - It is necessary that the group has a collective purpose, regardless of the purpose of each group member. There is cooperation and mutual assistance between individuals;
- Stability - Permanence and duration of common purposes.

In short, society is an agglomerate of people with an acting conjugated form of action, with common purposes, for a certain stable period of time.

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Types of Societies:

- **International Societies** - with a wide dimension when comparing with States and with international purposes (EU, UN, OTAN, International Federations, Multinational Companies);
- **State Societies** - Different States;
- **Infra-State Societies** - organization of individuals who are oriented towards non-State interests (family, companies, churches, clubs and other associations, parishes, municipalities).

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2. The Social Authority

- What would be of human life in society without a social authority?
- Social life evolves around specific social groups, each representing a social authority - State; municipality; family; churches; clubs; associations; schools; companies.
- In all of them there must be a social authority that receives a steering power designed to:
  - Take collective decisions in relation to day-to-day problems, providing guidance to the social group (decision-making power);
  - Create a system of rules of conduct applicable to all members of society (legislative power);
  - Create a set of organs which implement the system of rules of conduct to their recipients (institutional power);
  - Enforce compliance with the rules of conduct rules and, if not complied, apply the corresponding penalties (sanctioning power);
  - Making rules, taking decisions, applying sanctions - these are the functions which result in the exercise of power by the social authority, within a human community.

3. Explanatory theories of "Men living in Society"

Several authors have attempted to explain the reason for men living in society. These explanations can be grouped into two Schools of thought:

3.1. Naturalist Conception of Society

- ✓ Classic Authors - Aristotle, Cicero, Saint Aquinas, Saint Augustine – are in favor of the natural origin of society.
- ✓ The origin of society lies in the natural sociability of man. He has a natural tendency to socialize with other men in order to meet his most basic needs.
- ✓ Only in close collaboration with others, can men develop their full potential and find fulfillment as a person.

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3.2. Contractual Conception of Society:

- ✓ In seventeenth and eighteenth centuries, authors such as Thomas Hobbes, Jean-Jacques Rousseau and John Locke, argued that the life of men in society is not natural, and that the origin of society is based on a social contract (agreement of wills).
- ✓ Men waived their wandering and solitary life ("*Status Naturae*" – State of Nature), which was characterized by the absence of laws and authority, and started living in a " State of Society ("*Status Civilis*").

Major contractual theories:

The pessimism of Thomas Hobbes (1588-1679) - "Leviathan" (1651):

- In a State of Nature, man is selfish, greedy, hunger for individual power, and possesses a natural tendency to disrespect and to the pathological anarchy;

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- Left to their own, in the absence of a common power (State of Society), men will be, in the State of Nature, in a permanent state of war among themselves;
- Only the existence of a State of Society, created and legitimized by virtue of a social contract, can ensure justice, safety, peace, public tranquility and ownership of assets;
- Hobbes argues that men feel the need to pass from a Sate of Nature to a State of Society, abdicating almost all their rights and freedoms in favor of the State (with absolute power). The social authority of the State is absolute and strong;
- The State is a Leviathan, a monster designed to fight other monsters even more dangerous than the State, i.e., even more dangerous than men;

✓ Comment - Not all men are evil by nature; the existence of criminal acts does not mean that all people practice them; the authority of Democratic States is not as strong as to crush individual freedom, transforming it into a dictatorship or tyranny.

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Optimism of Jean-Jacques Rousseau (1712-1778) - "Of The Social Contract" - 1762:

- All men are born free and equal, and are good people. The "State of Nature" of men is comparable to the parmenidiana vision of reality, that is, an authentic paradise: peace, freedom, good, truth, happiness and harmony. It is called the "theory of the noble savage";
- In a "State of Nature" men are unaware of vanity, submission, esteem, disobedience, revenge, violence;
- If there are no laws, nor disobedience, nor crimes, authority would not be needed. Men could live in anarchy;
- Good men, in a wild state of condition, was corrupted by society from the moment he began to devote himself to agriculture and started saying "this is mine and that is yours." Men became possessive, selfish, envious - and hence crime was born;

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- It was therefore necessary to create a social authority - the State – which would maintain peace and safety through the social contract. Men passes from the "State of Nature" to the “State of Society“;

✓ Comment - Not all men are good by nature - criminals, delinquents, psychopaths. If this occurs in a "State of Society", where one can find laws, courts, police and prisons, what would happen in a "State of Nature"?

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The realism of John Locke (1632-1704) - "Two Treatises of Government" - 1689:

- Locke defends an intermediate position concerning the "State of Nature", because, for him, this kind of State is not a State of total war, nor does it configure an idyllic and benign paradise;
- In each man there are good and bad aspects, tendency for practicing good and evil; it all depends on temperament, education, socialization process, circumstances of life;
- In a "State of Nature," men are born free, equal and able to preserve their life, their health, their body and their assets. Most of them are rational and have a tendency to comply with the laws of nature and the respect of other men;
- The behavior of men is generally harmonious, guided by the laws of reason. However, there is always a minority of individuals whose negative inclination causes an imbalance of the *Status Naturae*;

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- Because of this minority, the need for a "State of Society“ urges, where individuals could live collectively with respect for the rights of each other;
- The State of Society is based on the creation of a social authority with steering power, which enacts laws and apply them, through the use of public force, when necessary;
- Lack of authority generates anarchy; excess of authority leads to tyranny. For Locke, the ideal solution is an intermediate regime, in which the social authority - the State - receives from men, through the expression of contractual will, the right to judge and punish the offenders, but is obliged to respect the individual rights of each man: the right to life, the right to liberty and property rights.

✓ Adopted Position – *Locke* – a more realistic view that is based on trust and on the good behavior of most men, but which believes that it is necessary the existence of the protective apparatus of the State - with laws, courts, police and prisons - to prevent or reduce unlawful practice.

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Thus we can state that:

- The "State of Nature" corresponds to the pre-history of Law.
- The "State of Society" corresponds to the origin of Law. This stems from a social authority, endowed with steering power, laying down rules of conduct to be observed by all members of society.
- Thus, in the "State of Society" the social life is directed and guided by a suitable and instituted authority : the Law.
- The Law is a socializing reality. Concepts of men, society and Law are inseparable.
- *ubi homo, ibi societas* (where there is men, there is a society).
- *ubi societas, ibi jus* (where there is a society, there is Law).

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4. Multiple meanings of the world *Law*

a) **Law as "Objective Law"**, i.e., a set of rules of social conduct - *law*. It is the set of rules that are objectively binding on all men and to which men owe obedience (in this sense we are speaking of the Portuguese Law);

b) ***Law as "Subjective Law",*** i.e., as a power conferred by law to the holder of an Objective Law, to act or not according to its content - *right* (in this sense, the Civil Code states that, by effect of a purchase and sale agreement, the purchaser has the right to receive the acquired goods, whilst the seller is entitled to receive the price);

c) **Law as "Science of Law"**, i.e., as a social and human science which scientifically studies and theorizes, the objective Law and the subjective Law (in this sense, we say that A is a Law teacher or B is studying *Introduction to Law*).

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5. The Objective Law

5.1. Characteristics

a) **Essence of Law** – Positive Law vs. Natural Law - two types of Objective Law.

b) **Scope of Law** – State Law vs. Supra-State Law vs. Infra-State Law.

- **Supra-state Law:** International Public Law, European Union Law, Canon Law (private Law of the Catholic church), specific Law of international sports federations (football, tennis, motor racing).
- **State Law:** Law arising from the political organs of the State, and law enforcement as a task of the State. If it is the State that must make laws on behalf of the people, it is also the State that is obliged to apply the Law to specific cases.
- **Infra-State Law:** Private Law of the Autonomous Regions, municipalities, parishes, schools, hospitals, associations, companies, families, ...

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c) **Form of Law**:

c.1) **Written Law**:

Portuguese Constitution (CRP), Civil Code (CC), Criminal Code (CP), Companie's Code (CSC), Portuguese Procedual Code (CPC), Criminal Procedural Code (CPP), Labor Code (CT)

c.2) **Unwritten Law:**

- Customary Law - Practices that are accumulated over time and are becoming mandatory (e.g.: queues);
- Oral Law – imposed at a specific moment in time (e.g.: hours for having dinner).

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5.2. The Essence of the Objective Law: two types

a) **Positive Law** - the set of rules regulating social relationships, arising from the will of men, variable in time, and from society to society.

b) **Natural Law** - a set of rules and principles superior to Positive Law, which allow measuring the legitimacy or illegitimacy of the Positive Law.

Question: Is there only the Positive Law (State) emanating from the sovereign people or their legitimate representatives? Or is there, above it, and conditioning it, another Law - Natural Law - resulting from higher sources of legitimacy than the Positive Law?

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To solve this problem, two diametrically opposite answers have been given:

- Natural Law does not exist, or it is not a true Law, therefore, nothing interferes or affects the Positive Law - Positivist School of thought;
- Natural Law does exist, and is superior than Positive Law (and influences it – Jus naturalist school of thought.

Examples of rules of Natural Law:

- Do not kill;
- Honor your father and mother;
- Bury the dead and respect them;
- Rescue victims and injured people in distress;
- Punishing criminals.

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Historical perspective of Natural Law:

I) Greece - "Antigone" by Sophocles - laws above the State order were found. These were always in force, but nobody knows how they arose.

II) Rome - "Treaty on the Republic," by Cicero - the existence of a true law was found, present in all men, diverting them from evil. It is a natural order and created by God.

III) Middle Age - influence of Christianity - the Natural Law had a divine origin, and its main theorist was S. Thomas Aquinas. For this author, the universe is the result of three orders of laws, properly prioritized:

- Eternal law (at the top of the hierarchy, arising from the will of God);
- Natural law (under the eternal law, it is a reflex of the divine law in men);
- Human Law (derived from natural law, it is a creation of political society).

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IV) Modern Thought - the great school of thought are present here, divided into two groups:

- Statement of Positivism:

  - *Positivism Anti-Jus naturalist* - There is no natural law; there is only a Positive Law that is established by human authority.

  - *Agnostic Positivism* - I do not know whether the Natural Law exists or not, but, as a men of the laws, I do not need to know, because my job is to interpret and apply the Positive Law.

- Reaffirmation of Jus naturalism:

  - *Catholic Jus naturalism* – There are divine natural rules above Positive Law, created by God. These rules exist and are present in our society. Natural Law has a religious nature.

  - *Rationalist Jus naturalism* – The human reason leads us to conclude that there are higher principles above Positive Law: the natural principles. Natural Law has a rational nature.

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Positions to be taken in relation to Natural Law:

- Everyone should be able to legitimately defend the position that fits him best;
- The current State is secular and its courts can not apply a Law taken as religious or of divine origin.
- One should seek to consider the issue of Natural Law in a non-religious perspective. Natural Law can only be considered from a human point of view.

A critique to Positivism – only accepting Law as the positive Law and accepting it as an indisputable fact means one has abdicated to criticize or even rejected.

- Men, by using their freedom of thought and expression, have the right to criticize Positive Law;
- The fair and the unfair, the legitimate and the illegitimate - are decided by appealing to higher values to Positive Law: those involving notions of justice, safety, equity and welfare.

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Is Natural Law a true Law?

- It is a true Law if their rules are recognized and enforced as Law, by any social authority, especially by Courts.

Some examples of application of Natural Law:

- The defense of the legitimacy of the Revolution of 25 April 1974, stated in the Judgment ("Acordão") of the Supreme Court of Justice of 20 January 1982;
- The Nuremberg Trial.

Field of application of Natural Law:

- It is increasingly reduced, because their rules are being progressively included in Positive Law. But there will always be cases for potential application of Natural Law.

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Features of Natural Law:

- It is Law;
- It is unwritten Law;
- It is human right.

Current Roles of Natural Law:

- Grounds and validity criterion of Positive Law;
- Grounds of duty of obedience to legitimate rulers;
- Inspiring source of Positive Law;
- Source of integration of "lacunae" in Positive Law;
- Grounds, in borderline cases, to acquire the right to civil disobedience and the right to start a revolution.

5.3. Concept of Objective Law - A set of rules of conduct stated by the social authority, who leads a human society, to its members, under the threat of sanctions, in order to ensure justice, safety, equity and economic, social and cultural welfare in the society.

6. The Force of Law

Is physical coertion, or at least the possibility to exercise it, an essential element of the concept of Law?

- Statesman Conception - The possibility of the use of physical coercion is an essential element of the concept of Law.
- Pluralistic Conception - The possibility of resorting to physical coercion is not an essential element of the concept of Law, because it does not generally exist, in Supra-State and Sub-State Law.
- Adopted Conception - The State currently holds the monopoly on the legitimate use of physical force. The possibility of coercion in order to enforce Law is part of the notion of State-Law, but is not essential to its, because it lacks or may lack in Supra-State and Sub-State Law.

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7. The Normative Social Orders - Society (social order), so it can survive as such, requires a set of normative orders that:

- Promote the harmonization of social activities;
- Solve conflicts of interests between the various members of a society.

Types of Normative Social Orders:

- Moral Order - It belongs to the order of consciousness and it seeks the betterment of the individual, driving him for good. It only influences the social organization in a reflexive way.
- Religious Order – It is an order of faith or of transcendence; it regulates relations established between the individual and God or Gods. The foundation of religious rules is the Divinity itself, considered as a superior and perfect being.
- Social Conduct Order – an order that comprises a set of rules of courtesy and politeness, which respect facilitates the civilized development of human relations within a society. Also identified as social uses. E.g.: giving way to an older person; greeting the neighbors; thanking a gesture of courtesy in traffic.

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- Legal Order – an order that comprises a set of legal rules, governing the most important aspects of life in society. It is a social order governed by Law.

The legal order, understood as such, holds three key principles, namely:

a) **Principle of Freedom** – The recipients of legal rules are neither required a total loss of freedom in order to meet such legal rules, nor a relative loss of freedom.

b) **Principle of plenitude of the legal order** - Law, despite not covering all situations of social life, has a solution for all the issues that may arise. Obviously, Law does not contain a list of innumerable possible cases and their legal solutions, but it establishes principles, sometimes of great generality, which are the base of how most problems can be solved. The principle of the completeness of the legal order is specifically provided in art.8, no. 1, of the Civil Code.

c) **Principle of perfection of the legal order** - Basic feature of legal order, connected with the principle of plenitude. I.e., as set forth in art.9, no. 3, CC, one must assume that the solutions provided by the law maker were the more accurate and the most valid ones.

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8. Relations between different Normative Social Orders

a) Law and Religion

	Religion	Law
Purpose/Scope	Relations of men with a Divinity (vertical relations)	Relations of men with other men (horizontal relations)
Nature (externality)	Intra-subjective (internal divine relation)	Inter-subjective (relation between men)
Subjective conscience	Based on faith (divine nature)	Not related to faith (human based)
Coercivity	There is no material coercivity, but merely spiritual sanctions	Material coercivity, with use of physical force, if necessary

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- ✓ These two orders are predominantly separated by relations of indifference, in which Law limits its action in order to ensure, with its rules, the free exercise of religious activity, without assuming itself the content of religious norms.

- ✓ The Constitution (CRP) states in art.41 the freedom of conscience, religion and worship. The Portuguese State is a secular one, meaning that it does not give any privilege neither persecutes any religion.

- ✓ Nevertheless, there are also some matching relations, and even of conflict between the respective contents.

- ✓ Legal rules coincident with Religious standards - not to kill; consecration of the days of Christmas and Easter as official holidays; Catholic marriage.

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- ✓ Legal rules contrary to Religious Standards - Divorce in Catholic weddings; marriage between people of the same sex (in countries that have legalized); abortion (in countries that have legalized); euthanasia (in countries that have legalized);

- ✓ Religious rules indifferent to Legal rules - Praying every day; thanking God for meals.

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b) Law and Morality

	Morality	Law
Purpose / scope	It aims to lead the individual towards the good; it aims the improvement of the individual	It aims the improvement of men by means of the establishment of rules
Nature (externality)	Intra-subjective; it relates the individual with its conscience	Inter-subjective; it establishes relations between men
Subjective conscience	Each individual's conscience	Human authority based on external conducts
Coercivity	Psychic coercivity (remorse, guilt)	Material coercivity, by means of physical force, if necessary

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- ✓ Between Morality and Law there are several broad areas of agreement, because it is difficult to conceive a legal system that is totally contrary to the moral concepts prevailing in society, or that does not have the support of one of its most important sectors.

Law rules that match Moral rules:

The right of self-defense against aggression (art.337, CC); traffic priority to ambulances carrying wounded (art.65, CE); the rule that assigns the donor the right to revoke the donation if, subsequently, the receiver shows ingratitude (art.974, CC). The vast majority of incriminating criminal rule as well: crimes against life (art.13 to art.142, CP); crimes against physical integrity (art.143 and following, CP); crimes against personal freedom and against sexual and self-determination freedom (art.153 and following, CP).

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Between these two orders is also common to arise some relations of indifference or even conflict:

- Moral standards that Law does not accept - giving alms to the poor; helping a blind person crossing the street; visiting the sick and imprisoned.
- Law rules without any moral meaning - the Rode Code rule that states that one should take the right side when circulating; rules on procedural deadlines; rules that regulate industrial or commercial companies (legal organizational or technical rules); urban planning rules.
- Legal rules contrary to moral rules - abortion, euthanasia.

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c) Law and Social Conduct

	Social Conduct	Law
Structure	One-way rule: it does not impose any rights and duties	Two-way rule: it imposes rights and duties
Coercivity	Social coercivity accompanied by a sanction with no institutionalized nature (social reproach, getting away from social relations)	Material coercivity, by means of physical force, if necessary

✓ Most social uses, such as those relating to fashion or courtesy are completely indifferent to Law, which leads to the establishment of relations of indifference between Legal Order and Social Conduct.

9. Purposes / Core Values of Law

a) Justice

Justice is a lighthouse that illuminates the paths of Law. Law seeks Justice, as a compass is oriented for the North.

Notions of Justice:

- **Legal Justice** - Justice as a value or a set of values that are assumed in every law.
- **Extra-Legal Justice** - Justice as a criterion or a set of criteria that compel men beyond what the is stated in Law. Since Aristotle, equality and proportionality appear as the major criteria of justice, beyond what the law itself can say about what is fair and unfair.

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(Notions of Justice)

- **Social Justice** - With Plato, the traditional conception of individual justice is abandoned (justice in terms of individual behavior), and a conception of justice as an egalitarian criterion of general organization of the State and Society starts to be built (we start talking about a fair State and a fair Society).

- **Supra-Legal Justice** - With St. Thomas Aquinas, justice emerges as a value or a set of values that are prior and superior to the law and, therefore, should guide the drafting of laws by the Government, allowing citizens to criticize them, and, eventually, to disobey them.

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Types of Justice:

- Commutative Justice or Corrective or Synallagmatic – it aims for correcting inequalities that may exist in relations between private persons and ensuring equivalence of benefits or equivalence between damages and compensations. It operates according to a simple criterion of equality or arithmetic, which translates into the equivalence of benefits, based on the principle of equality and reciprocity.

- Distributive Justice - Partition of common goods that Society must do for all its members, according to criteria of proportional or geometric equality, which serves the purpose of distribution and the personal situation of the recipient.

- Legal or General Justice – it governs the participation of the members of society in common charges, according to the criterion of proportional equality, with contribution and sharing by all society members.

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Logical elements of Justice:

- Equality - guaranteed by the generality and abstraction of juridical rules, embodied in equal treatment of equals and in unequal treatment of unequal (art.13, art.16 to art.18, art.81, art.103, CRP).

- Proportionality - Given by criteria of proportional nature: necessity, appropriateness and balance (arts.1, 2, 9, 23, n. 1, art.205, no. 1, art.266, no. 2, CRP).

- Alterity - Justice evaluates socially relevant conducts, i.e., those addressed to others with whom we interact. It results from here that everybody has the same value, and, therefore, the respect for human dignity imposes itself to positive law (art.1, CRP).

✓ Justice is the abstract criterion of conflict resolution. It is the ideal which is the reason for the existence of Law. However, it is not the sole purpose served by Law.

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b) Safety - Although hierarchically lower than Justice, legal safety is another of the values that Law seeks to ensure.

- Homeland State Safety (with a sense of social peace) - Law shall allow the development of social relations in an atmosphere of order and tranquility (art.272, CRP). Law must fulfill its peacekeeping mission, which is also extended to international relations, so each State does not interfere in other State's internal affairs, and respects the principle of national independence (art.9, paragraph a, CRP).

- Safety, stability and certainty of Law - The certainty corresponds to a need for stability and predictability in legal life, so it is necessary that each one can predict the legal consequences of his actions and know what he can count with, in order to guide his conduct or plan his life (art.2, 3, 27 and 29, CRP).

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- Citizens' safety before the State - The State is the main guarantor of safety, but Law makes the safety of citizens before the State possible, that is, Law establishes rules, principles and establishes mechanisms that aim to protect the autonomy of the individual, in a way to safeguard his sphere of rights, freedoms and guarantees, facing the State (art.2, 3, 18, 20, 23, 52, 202, 267 and 268, CRP).

✓ The complexity of life situations can highlight problems of a certain antinomy between justice and legal safety.

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In some cases, the option is for safety (certainty and stability), because it considers law as a social structure designed to prevent chaos; it reduces the right to law, whether fair or unfair; and, absent of a judgmental attitude, it resorts to syllogism to get a correct logical application. Some principles are referred, in which the requirement of legal safety (certainty) is likely to sacrifice legal justice:

i) *The ignorance of law is not relevant (art.6, CC)* - legal life would turn into chaos if the offender (of a certain legal rules) was allowed to claim no knowledge of it. However, ignoring most men the reach and purpose of many legal rules, it does not seem fair what Safety demands of them;

ii) *If it accepts the effect of res judicata* and a court judgment is considered final and not appealable (art.672 to 675 and art.282, no. 3, CRP). It would be absurd that a dispute would be dragged on *ad aeternum* without anyone being sure of its outcome. However, the sentence constitutes a human work and because of human err (to err is human), the possibility of an injustice is not set away.

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iii) *If it prohibits the retroactive nature of law (art.12, no. 1, CC)*, although expressly providing the retroactive application of the criminal rules of more favorable content to the defendant (art.29, n. 1 and 4, CRP). Legal certainty does not tolerate that our conditions of life, which Law recognizes and protects, are destroyed by a law that applies to the past, voiding given rights.

iv) *If it acknowledges and safeguards vested rights*, although its exercise may collide with fundamental values, such as legality, or may counteract any general interests (adverse possession - art.1287 and following, CC), in order to prevent the perpetuation of uncertainty situations.

However, the hypothesis that the true owner (not the possessor) may be harmed by the loss or limitation of property, without any compensation, is not set away.

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v) *If it consents the statute of limitation ("prescrição") and the expiry ("caducidade") of rights (art.298, CC), of criminal prosecution and penalties (art.118 and following, CP)*.

Extinction of subjective rights occurs when they are not exercised for a certain period of time set by law (statute of limitation), or for having elapsed the term set forth by law, or derived from the will of the parties (expiry – "caducidade").

The statute of limitation and expiry are based on the negligence of the owner of the right, that does not use it during the proper period of time, and, also, the consideration that the certainty or the legal safety requires that the legal situation of the parties does not stay indefinitely unaltered, even when these legal institutes are not fair.

c) Equity

- Equity, in Latin, was designated by *aequitas*, which meant equal or fair.
- Equity is understood as a synonym for "justice of the specific case", meaning that, when law is being applied, the specific circumstances of each case should be taken into account.
- Equity is intended, therefore, to soften the rigors of a blind application of law, humanizing Law.
- Equity appeals to feelings of compassion and indulgence. Examples in our legal system are: pardon and commutation of sentences granted by the Head of State (PR) to certain prisoners (art.134, paragraph f, CRP), or passing laws on Parliament that grant amnesties or general pardons for certain crimes (art.161, paragraph f, CRP).

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Types of equity:

- Wide, “Strong", “Intense" Equity – An equity trial, in contrast to a legal trial, is not legal and corresponds to the judgment that comes from the spirit of the judge, before the facts (the Solomonic decision that is applicable to the *sub judice* case and for no other.

- Restricted, “Weak", “Moderate" Equity - There is a “continuum” between law and equity, appearing this as a correction of “lacunae” and mismatches that inevitably arise from the generality of law. The judge who resorts to equity can adapt, given the circumstances of the case, but cannot ignore, the spirit of Law.

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Functions of Equity:

- It softens the rigor of law and humanizes Law with certain values or feelings (loving kindness, compassion, indulgence);
- It is a criteria for taking decisions, replacing pre-established solutions in legal norms (judges decide according to their conscience);
- It adjusts the legal rules (general and abstract) to the specific case;
- It is a weighting factor in the "lacunae" integration process;
- It corrects, modifies or restricts the law, removing nonsensical solutions that opposes teleology of the norm and the intention of the lawmaker.

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d) Economic, Social and Cultural Welfare:

- There is a concern with the satisfaction of collective needs of material, social and cultural nature – Social-Law State or Welfare State, that emerges in Europe, on the 2nd half of the twentieth century, after the end of World War II. It is a son, although, of the 1929's crisis (Great Depression) and of the Keynesian thought.
- It is the State only, through Law, based on the mobilization of common resources, to the general satisfaction of needs, that can guarantee citizens the access to goods and services, considered inherent to a humanistic conception of welfare (social security system, health, education, culture ...).
- The CRP characterizes the Portuguese State as a democratic State-Law aiming at achieving economic, social and cultural democracy (art.2, art.9, al. d, art.81, § a) and art.58 to 79, CRP).

10. The Sciences of Law

- **Juridical Science ("Ciência Jurídica")** – the study of Law in its normative expression. It aims, through the own instruments of the legal method, to reach a fair solution.

- **Sociology of Law ("Sociologia do Direito")** – deals with the analysis and understanding of life situations regulated by Law, which are the basis of an assessment on the opportunity and the need for legislative reform.

- **Philosophy of Law ("Filosofia do Direito")** – the study of Law according to a critical perspective which argues that an assessment on conformity or nonconformity of legal solutions provided in positive Law, within a set of values associated with the fundamental idea of justice.

11. Juridical Science

Major components of Juridical Science:

- ✓ ***Legal Dogmatic ("Dogmática Jurídica")*** – related with the rules of a specific legal system and, based on the interpretive method, seeks to understand the contours of Law and harmonize the different legal content.
- ✓ ***General Theory of Law ("Teoria Geral do Direito")*** – it studies the logical and formal structure of legal systems, in seeking a legal language tending to be universal (concepts of juridical rule, legal personality, legal capacity, court, ...).

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What is the scope of the Science of Law?

- Rules? Facts? Values? General principles?
- Adopted position: the main object, although not exclusive, are the legal rules, but it also covers, namely, facts and values.

The three-dimensional conception of Law:

- Law presents a triple dimension: normative, factual and evaluative. This means that, in the legal reality, three interrelated dimensions coexist: rule, fact and value.
- Therefore, we can say that Law is (a set of):
    - Rules – principles and rules;
    - Facts – Law is intended for regulating events in social life;
    - Values – the regulation that takes place according to certain values (justice in particular) .

12. Other sciences that study Law

- Comparative Law ("Direito Comparado") – it studies Law by means of the comparison of branches systems, of areas of Law, and of legal institutes;
- Legislative Policy ("Politica Legislativa") – it studies the legal systems in order to find starting points for future changes that may realize the fundamental design of the adaptation and improvement of legislative solutions;
- History of Law ("História do Direito") – it starts with the knowledge of Law as an historic act and intends to reconstitute past legal orderings. The historical analysis of Law allows us to know the past, to understand the present and to anticipate the future.

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- Economic Analysis of Law – it studies the legal system, trying to explain it and modify it, by using specific economic sciences' tools and techniques, such as:
  - Theories of games applicable to legal decisions;
  - Calculations of costs and benefits related to a particular legal solution;
  - Application of optimization and efficiency criteria in assessing legislative decisions.

✓ Economics and Management invaded the concerns of modern men, always in search of progress and improvement of their living conditions; Law is increasingly regulating the Economy, being applied by economists and managers, and is influenced by it; it is essential to emphasize the complementarity, the cooperation and the interdisciplinary between Law, Economics and Management.

13. Major Auxiliary Sciences of Law

- Political Science – it studies manifestations, forms and regularities of political facts, through the behavior of individuals, with the view of extracting from them a rational and systematic understanding.

- Economy – it is a social science concerned with the study of individual and collective decisions, including public decisions, taken in an environment of scarcity. It seeks to determine the reasons that underlie economic decisions, and which tend to provide some balance in the functioning of the market.

- Science of Administration – it studies the Public Administration as an element of the collective life of a particular State.

- Theory of international relations – it studies the behavior of States, of international organizations and other actors of international life, in order to define a coherent and systematic set of propositions that could explain this action in international relations and, in particular, to predict their future developments.

- Legal Medicine – it corresponds to the set of physical and medical knowledge that allows magistrates in addressing issues related to the administration of justice (time and cause of death on a homicide; establishing paternity using DNA testing), and advise the lawmaker on development of the most suitable legislative framework (field of cloning).