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Plato’s theory of punishment in book IX of Laws


Abstract: The basis of moral responsibility is the central issue of Book IX of Laws, where Plato develops his theory of punishment, conciliating the Socratic thesis that no one is voluntarily bad (οὐ δεὶ ς ἑκὼν κακ ός), with the practical necessity for a gradation of penalties, the latter being derived from the traditional distinction between voluntary and involuntary offences. Distinguishing two independent aspects of crimes – injury (βλάβη) and injustice (ἀδικία) – Plato argues that the former requires only restitution, whereas injustice calls for punishment, conceived as a measure to improve the soul, affected by disordered emotions or ignorance, causes of injustice.

Keywords: Plato, Laws, Punishment, Greek Law.
Greek law generally tended to disregard the mental element of action, its intentionality or lack thereof, but this was certainly not the case in the homicide law. It seems that since an early age the Greeks distinguished between intentional and unintentional homicides, treating the former as worse. In Athens, since the seventh century BC, the homicide law of Draco explicitly mentioned that in case of unintentional homicide, the murderer should go into exile and stated provisions about justified killings, such as self-defense (Gagarin, 2008, p. 93-99). During the Classical period, the distinction between voluntary (ἐκὼν) and involuntary (ἀκὼν) wrong was a central concept, which defines, for instance, if a killing should be considered justified or not and the court responsible for the trial. In fact, the Greek words ἐκὼν and ἀκὼν, and their correlatives ἐκούσιος and ἀκούσιος, here translated as ‘voluntary’ and ‘involuntary’, have a broader sense and can also mean ‘intentional’ and ‘unintentional’, ‘willing’ and ‘unwilling’, or ‘with consent’ and ‘forcefully’. Besides the words ἐκὼν and ἀκὼν, the Greeks use other words to specify the presence or absence of a mental element, like ἐκ προνοιας (‘deliberate’ or ‘with premeditation’) and ἀπροβουλία (‘without planning’) and μετ᾽ ἐπιβουλής (‘with planning’). Although, there was not a clear legal distinction between these terms, which could be subsumed under two broad categories.

In regard to the legal discipline of homicide in Athens at this time, the most important historical sources rely in Antiphon’s speeches and a few more by Demosthenes and Lysias. According to these evidences, were considered involuntary, and so lawful,
cases such as accidental killings of a compatriot in athletic contest; in war or military training or of a patient by a doctor, as result of treatment. It seems that were also considered lawful: the killing of a nocturnal thief who enters the killer’s house; a man who kills an adulterer caught in bed with his wife. Concerning procedure, in general terms it could be said that the Areopagus was in charge of trials of voluntary killings of Athenian citizens, when the murderer acts with his own hands. Other cases were assigned to the ephetai, such as: unintentional homicide; charges against a person accused of planning a murder performed by someone else; killings of slaves or strangers (MacDowell, 1978; Todd, 2005; Yunis, 2005; Cohen, 2005b; Gagarin, 2008; 2011).

In Laws, the Athenian Stranger – Plato’s voice in which is considered his last work – and his companions, the Cretan Kleiniás and the Spartan Megillus, discuss the laws and political institutions they should decree to Magnesia, a new colony to be found in Crete. When the three elders begin to deal with the criminal law, a problem arises. Throughout the dialogue, Plato reaffirmed the thesis according to which no one is voluntarily bad (οὐ δεῖ ς ἑκὼν κακός). First the Athenian mentioned that “every unjust man is unjust involuntarily” (V 731c2-3: πᾶς ὁ ἄδικος οὐ χ ἑκὼν ἄδικος). Few pages forward, he returned to the same point, now saying that “no man can possibly be licentious voluntarily” (V 734b4: πᾶς ἐξ ἀνάγκης ἄκων ἐστ ἶ ν ἀκ όλαστος). In the Book IX, once more he states that “all bad men are in all respects involuntarily bad” (861d: οἱ κακοί πάντες εἰς πάντα εἰς ἵν ἀκοντες κακοί), revealing it was a central point in his conceptions about action, which