

**Where is criminal legislation “taken” as a certain basis of the criminological studies from?**

**Abstract:** The first time in juridical science we have tried discovering these social processes of developed (monopolized) capitalism, which are caused such social phenomenon as right, crime and punishment.

**Keywords:** Philosophy of the right and wrong; positive right (law); legislation; surplus value.

**Being**

Dialectic logic of Georg Wilhelm Friedrich Hegel, the famous German philosopher is divided into the three parts: the logic of being, nature and concept.

1) First category of being – quality - includes three subcategories: a) individual possession as such; b) possession as being for another and therefore recognized by other (property); c) agreement as unity presence of the wills of all participating persons, which forms “being for itself” property. They directly determine the right, characterizing its *qualitative* side. Certainly, this definition, characterizing legal relations in form of the property relations only, is not an essence of the right developed, ex. of the legal system under modern capitalistic economic relations [10, p. 49]. Consequently, *an agreement* is only an external form of “being for itself” possession, and “being inside itself”, which is more important than the agreement, is the surplus value, as substance, sake of what the commodity owners exchange their goods.

2) “Nonequivalent exchange, - K. Marx writes, - is caused further opportunity of the arbitrariness of some individuals – their encroachment on equality of the sides in

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agreement, i.e. on the basis of the abstract right”. Legal expression of this arbitrariness, which enters in the logical category of quality, covers all three possible levels of the encroachment: 1) Violation of the equality principle, established by the right, when the parties do not suspect about non-equal value of the exchange, i.e. according to K. Marx, in course of subjective error at mutual assessment; 2) Violation of the contract, when infringed person abuses confidence of a counteragent in frame of the contractual relation, i.e. according to K. Marx, “in course, if one individual deceives other one”; 3) Crime, when infringed person violates the right (agreement) as a core, denying its significance, i.e. in course of entering of “isolated person” in fight “against dominating relations” [7, p. 323]. The first two forms constitute, mainly, a sphere of civil law, the third one – criminal law [10, p. 51]. This process is fixed by Hegel as quality.

3) Unity of quality and quantity forms *a measure*. From categorical point of view, legislation, including offense (crime) and punishment, are related to the logical category *a measure*. Hegel writes: “Measure as unity of quality and quantity is consequently, completed being” [1, p. 185].

According to Hegel, quality, quantity and measure as the states of abstract and positive law as a category of being are presented by itself different conditions of some *substance*. They do not exist for themselves, and constitute the definitions that prescribe or belong to other – *substance*. Therefore, relations of the measures (quality, quantity, measure) should be understandable, as the conditions in base of which is a substance, as their carrier that playing a role of cause and action. So, *the surplus value, as new knowledge, as true* is this substance. At the time, inscrutability of offense (crime) and punishment will disappear [14, p. 61-62; 5, p. 64-85].

The logical category of measure, as the quality one, is already a state’s prerogative. Offenses (crimes) and punishment is “the working field” for a lawmaker (parliament), i.e. the state institution. But, it seems us that initially, Hegel considers a society as “civil society”, which is rent with contradictory interests of the antagonistic society as a war

all against all. He shows how a state is separated from society and how a civil society “is transformed” into a state.

### **Entity**

Hegel writes: “Truth of being is an entity” [2, p. 7]. According to L.I. Spiridonov, “Initially, being as collective creature, single owner presupposes availability of other owners. Since a choice of activity kind are determined by the producers in dependence on “natural cunning, art of persuasion etc., i.e. by virtue of individual superiority of one person over other one”, as a product of labour of one person is differed from labour of another one. This is in turn caused a variety of the needs of producers-owners, motivate them to exchange and make necessity existence of the latter” [10, p. 47].

Exchange relation gives to the owners new definitions deducing them for the bounds of own oneness. Since individual “A” can satisfy his needs if only he would receive the goods of individual “B” and vice versa – then they are used by each other as with means. Consequently, each of them, being an end in itself for him (being for himself), is become an entity for other one. In this sense, they consider themselves mutually *equal* to each other [10, p. 48]. Here, we are also watching fundamentals of capitalism as more specific form of the abstract law – positive law turns into legislation, which is unified scale of human actions’ assessment. Question is arisen. Is it attempt of an individual on juridical norms does not touch an economic basis of exchange? According to K. Marx, there is nothing more wrong than the way when a society is considered from the standpoint of its economic conditions [8, p. 213]. In our opinion, K. Marx’ idea moves in right direction, but he had never wrote that a substance of the wrong might be a *surplus value*. Certainly, K. Marx understood well that a surplus value had for the society not only economic but also great social significance. But, first, K. Marx studied main the economic “side” of the *surplus value*.

Here, we should emphasize an interesting idea of L.I. Spiridonov. In his book “Social development and law” he writes the next: “... we are not talking about essence

of a society in general; but on the essence of capitalism, not about value as such, but about surplus value etc.” [10, p. 25]. Unfortunately, the author of the present article does not know why further L.I. Spiridonov did not develop an idea about surplus value and its linkage with the law and offenses.

*Surplus value* has a principle social and legal significance, and the main – an existence of the *surplus value* as a social and economic category, cannot prove it by only economic methods as this tried to do many economists, for example, the French Jacques Attali, the American Paul Sweezy, the Estonian U. Mereste and others, who, unfortunately, badly or absolutely did not know the dialectic logic of Hegel. Therefore, their “scientific works” have remained without attention. Certainly, the economists’ task at capitalism is development of the methodology: how can be increased surplus value in order to it would serve to whole society, but not capitalists only.

### **Essence as reflection in itself**

*Identity*: In chapter of *essence* of his logic, Hegel enters a concept of abstract (formal) identity, to which, in our opinion, is corresponded a man as a member of the society.

As it known, first in the world practice, capitalism had to be confirming that all material and mental weal producers are equal before the society (although formally). Capitalistic way of production could not be existed without this. First, in 1789 this was declared in France in famous “Declaration of the Rights of Man and of the Citizen” (fr. *Déclaration des Droits de l’Homme et du Citoyen*), which had been a political will of the French bourgeoisie. The Declaration was adopted by the National Constituent Assembly on August 26, 1789. In the basis of the “Declaration of the Rights of Man and of the Citizen” had put a conception of the equal rights and freedom, which belonging to everybody from a birth. The Article 1 of the Declaration says: “People are born and remained free and equal in the rights. Public distinctions can be based on total benefits only”. The freedom of an individual, freedom of speech, freedom of conviction, right to

resist oppression had been declared as *natural rights of a man and the citizen*. Till now the Declaration underlies in the French Constitutional Law [4, p. 26-29].

*Distinction*: But an abstract (formal) identity includes distinction in itself, which acts first as *difference*.

Close consideration of the Declaration shows that there is talking about the rights of *an egoistic individual only*. It does not envisage in ideal establishing of the ties between people as *human relations*. Each individual is an obstacle for other one. “Liberty consists on opportunity doing everything that does not harm others, - says article 4, - therefore, a bound of implementation of the natural rights of a one man is limited by necessity to provide the same rights for other members of society”. If to consider that a private property is recognized by the most important from the rights (art. 17) then the Declaration might be named as declaration of the rights for *private owner*.

It is known from history that some individuals want to receive surplus value, i.e. increase to a property existed, on account of other individuals in order to increase his private property. It is also known from history that these people usually become the kings, chieftains, reach men and even pirates etc., who have a power over the other people and receive the surplus value as a basis of private property. One wonders, where do these men “come” from? K. Marx wrote the following: “... due to natural cunning, art to convince etc., one word, due to individual superiority one person over other ones” [8, p. 187]. Differentiation of people is a basis of the next logical category – opposite.

*Opposite*: Unity of abstract (formal) identity and differentiation forms *the opposite*. Developed differentiation, i.e. private property is a basis of opposites.

It declared all citizens politically equal and put the state (political society) over the civil society. Under these conditions real man is recognized only in form of *egoistic individual*, from whom all human qualities are detached by capitalism.

Consequently, a real individual transformed into the object (this issue will not be considered in this article) [10, p. 145].

People, who receive a private property for account of other people are named the rich men (propertied), and people, who do not received a surplus value for account of others are named the poor men (non-propertied). Usually rich men are “positive” and poor men – “negative” ones. So, the both sides are opposite each other. They are negative to each other. But they can be replaced by each other, and each side can be positive or negative one. Ideologists of capitalism and some famous writers declared that people can be replaced from category of “poor” into category at capitalism

Indeed, the famous German philosopher I. Kant was of a saddler’s son, famous clergyman Martin Luther was a miner’s son, US President A. Lincoln was a son of non rich farmer, and G. Ford took part in cars assembly. But, these are separate events and we should not forget that according to Hegel everything is concrete on the level of *being*, and relatively and probabilistically – on the level of *substance*.

*Contradiction*: First reflective definitions – identity, differentiation and contraposition go into its truth, just to contradiction because the contradiction is a root of any movement and vitality [3, p. 389]. Positive is as presupposition of a society, as private property and negative is as absence of the private property. We should understand that *private property together with its “engine – surplus value”* is a linking tie for the members of capitalistic society and continuation of the society (humanity) existence. At the time, we believe that a *private property* is a *self-conscience of the capitalistic society where the relations between members of society act mainly through private property*.

Social features, that given to an individual is an external for him only.

Capitalists and wage earners, as external phenomenon, come to contradiction, where the owners of private property are positive side and workers – negative ones, that is by other words, it means to be a private owner or a worker (i.e. the leading social groups or “classes”, as would say Marxists).

Marxists severely criticized Hegel for such “evolutional theory of society” because, according to their theory, the contradictions between private owners and workers should

be mandatory lead to revolution. But, the main mistake of the Marxists of all times were and remain the prematurity of Bolshevik revolution due to the society did not have self-conscience [10, p. 22].

It should note that the logical category the contradiction occupies the central place not only in the “Great Logic” and in “Encyclopedia of the philosophy sciences”. It is considered to be one of the important in another works of Hegel’s doctrine. Since the logical category - the contradiction – goes to the base then, according to Hegel’s doctrine, an essence determines itself as the base, which is evolved as absolute and certain base.

### **Absolute base**

Hegel writes: “The essence determines itself as base of its negativity” [6, p. 70-73].

Absolute base, i.e. the form and essence, the form and substance (where the form and substance have a specific role) and the form and content (essence), is one of the difficult categories of the dialectic logic of Hegel. The philosopher as if “shows the way” how it should conduct the research.

*The form and content (essence):* In our opinion, the first problem is the problem of differentiation of the essential and inessential features of capitalist society.

Today, we live in society, in which the developed (monopolistic) capitalistic mode of production of the material and spiritual benefits is existed. In his main work “Capital”, which is considered to be classics nowadays, from position of the dialectic logic K. Marx studied the mode of production as the base of capitalistic social and economic formation, as a certain system [11, p. 24]. Through discovering of the surplus value he uncovered the secret of capitalistic production, found out its inner mechanism, opened the law of its movement, the main directions of development [12, p. 244-245]. He wrote: “The capitalistic production is called by us such social mode of production, under which the process of production is subordinated to the capital, i.e. which is based on the relations between the capital and wage labor” [9, p. 148]. But it is completely

clear that *the surplus value* is created by each type of production of the different social and economic formations.

Hegel writes: “By that, certainty of the substance as the base is become by two-fold certainty of the base and certainty of created. First, it is a substance as the base, determining to be by the substance confronting to positedness as non-positedness. Second, it is the main, direct, plain, but not in itself and for it – positedness as positedness. Thereby, the positedness is identity with itself, and the same time it is identity of the negative in itself. Consequently, the identity with itself a negative and identity with itself a positive is the same identity” [2, p. 74].

It should make clear Hegel said. First, capitalistic production relations are the substance, i.e. the base, and surplus value is based, and vice versa, the surplus value is the substance, i.e. the base and capitalistic production relations are based. Second, there is not the surplus value without capitalistic production relations, and vice versa there are not capitalistic production relations without the surplus value. Wherein, the surplus value is received by the owners of the means of production, i.e. the capitalists, which are owners of capital as universal *engine* or *force* of the capitalistic society [2, p. 74]. The surplus value created on the basis of private property and exploitation of the wage workers is embezzled by the property and capital owners. Therefore, we may say that capitalistic production relations and surplus value are identity.

The substance as the substrate correlated, i.e. *the surplus value*, is a certain substance that is in developed capitalism meant that *the owners of productions means receive surplus value not spending a labour or with minimum one* [13, p. 379], at the same time, wage workers receive the surplus value only with their labour. It is completely clear that the owners of the production means will be protect their surplus value, which they receive without spending of labour and which is the basis of their wealth, and they are the *right* to. This important issue will be considered in the next pair of category “form and matter (substance)”.



*Form and matter:* Entity has a certain form, which is the substrate or surplus value and determination of the form, which are the surplus value in class societies which are received only by the capitalists, as the owners of production means. But a question is arisen. Whether the capitalists have the rights to appropriate the surplus value without spending a labour or spending not much one? Yes. They have the rights. The capitalists have such rights because they are owners of the production means and they are the owners of manufactured goods and private property. Wage workers do not have the rights to receive the surplus value because they are not the owners of the private property. Consequently, the right and justice have always two poles – positive and negative, which, in turn, mean that the right is just a social phenomenon. This is an important postulate!

Term *fairness* had caused a lot of discussions in Estonia and other countries. I. Tamello (1917-1982), our famous scholar-jurisprudent, studied an issue of the fairness in details. He wrote that fairness is a positive ethical social value, according to which the share is given to everybody [15, p. 279]. He noted that idea of fairness, in form presented definition, is not applicable in the theory of law. A value of the knowledge of I. Tamello is that he noted very correct that it should be the “second side” in the fairness. But, it is clear that the right of one man or group of people on a thing or object cannot be fair in respect of other man or group of people. Plato, an ancient Greek philosopher, distinguished the two kind of fairness: *the fairness* in respect of private persons and *the fairness* in public sense [6, p. 32].

Hegel writes: “Substance is become by the matter (i.e. the right – A.L.), when its reflection determines itself so that it is related to the substance (surplus value) as to devoid form of the uncertainty (the right as uncertain notion or term – A.L.). Consequently, the matter is a simple and devoid differences identity, which is a substance (so to say “after” capitalistic production relations – A.L.), with definition to be another form... If to move away from the definitions, from any form of any something then a certain matter is remained. The matter is something absolutely abstract. The

matter cannot be seen, felt etc. – but what is seen or felt is *the certain matter*, i.e. unity of a matter and form” [2, p. 408]. Said by Hegel is meant that the members of society, who receive the surplus value without spending of a labour, are cared about that the surplus value “relegates itself up to simple identity through itself” to *the right*.

Further, Hegel writes that a form *presupposes* of a matter, to which the latter is correlated. But it does not mean that the form and matter *counter to each other* externally and randomly; neither the matter nor the form capable to exist independently, i.e. they are not *eternal* [2, p. 408]. This Hegel’s statement is one of the important postulates of his dialectic logic. *Surplus value* (as a form) that *received without spending a labour or spending not much labour* and *the right* (as a matter) are not eternal. Consequently, class societies, including to capitalism, are not eternal.

Under capitalism, the owners of production means, that is considered to be a *positive*, have *the right* to receive the surplus value without spending a labour or spending not much labour and the right. The wage workers, as *negative*, do not have such *right*. But, under socialism, which should be “society of a labour”, the members of society cannot received the surplus value without spending a labour or spending not much labour because such behavior is considered to be a crime.

It is arisen one very important question. Though under capitalism the owners have the right to receive the surplus value, but this right is not protected. The law just fixes their right to receive the surplus value, which is a positive law.

*Form and content*: Now *the right* as a matter (which is a passive one) and as a substance, which is considered to be a correct (positive), according to which the capitalists should receive the surplus value (as a form), will transform (reflect) into positive law, as *a form*, which will protect them and threaten with punishment to the wage workers who do not have the right to receive the surplus value. Consequently, *violence* is a content of *the absolute base* as the capitalistic production relations. We should note that the *positive law* is not *legislation* as lot of scholars-jurisprudents write

[2, p. 83-84]. Positive law only stipulates these principles, which should be fixed in legislation acts, in Criminal Codes in our case.

From categorical point of view this issue is presented the following way: Hegel writes: “During consideration of contraries between the form (positive right – A.L.) and content (violence – A.L.), it is essential important not to overlook that content is not formless (content as violence – A.L.) and the form is contented as in the content so presented itself something external (the principles of legislation, including to criminal legislation). Here, we have doubling of the form: first, it is as reflecting inside itself is content; second, it not reflecting inside itself (i.e. a form as positive law – A.L.) is an external, indifferent for content (i.e. violence – A.L.) of existence. Here, *itself* is given absolute relation, relation between form and content (i.e. in positive law that capitalists have the right to receive the surplus value, and wage workers do not have this – A.L.), and namely, transition them to each other. So, content is transition of a form into content, and a form is a transition of content into form. The transition is one of the important definitions.” [1, p. 224].

### **Certain basis**

*Formal basis:* The formal basis has only the *one* content for basis and based. This means that legislation, including to criminal one, protects, first of all, capitalistic production relations that based on a private property. By virtue of this identity of basis (on private property based on capitalistic production relations) and based (legislation, including to criminal one) as on content so and a form. The basis is a sufficient one. Hegel says that it is insufficient which of them are first, whether it transit from one to other basis and vice versa [2, p. 85-86].

*Real basis:* When a formal attitude of the basis has one only content for the basis and based then the real basis has different content. A base of the real basis is *the surplus value*, which is “manufactured” on the private ownership that is based onto capitalistic production relations, i.e. according to Hegel this is something “third”. Consequently, in

the real basis the legislation, including to criminal one, protects the private property that based on capitalistic production relations, which *produces* the surplus value. *The surplus value* is a connecting chain between various corpus delicti and appropriate to them punishments.

*Surplus value* is as a quantum, which acts as particle from one side and as wave – from other one, because the surplus value has single meaning under the crimes and other meaning under the punishments. It is absolutely clear that under committing a crime, the latter is the surplus value for criminal and punishment is as withdrawal of the surplus value.

According to Hegel, one deed, ex. crime, might have various bases, each of which can be presented as a basis. Search and pointing out of the bases is the endless plunging from side to side, not coming to any final determination [2, p. 422-423].

As for punishment, under punishment is usually understood a revenge of a guilty individual, rehabilitation and correction of him in order to prevent committing of further criminal deeds. As to imprisonment, this measure is an isolation of a criminal from society in order to prevent him not committing new crimes. Abovementioned definitions of the punishment are not wrong, but “collected together” they do not give that phenomenon, which is called by Hegel as a content of punishment [2, p. 420-425].

But, none of these bases, neither crimes nor punishments exhort an essence of matter, constituting their *combination* and keeping them together; none of them are *sufficient* basis, to which is *a surplus value*.

Therefore, the surplus value is the “third” in real basis. Consequently, in our opinion, *crime is a surplus value that forbidden by criminal legislation*.

It is known, that under committing crimes, a criminal receives a surplus value, and under punishment this surplus value is withdrawn from him *and all members of society receive of it*.

Absolute basis: Now we should make what social including to juridical science could not do until now – namely, to show what really is a content of legislation,

especially a criminal one. What is legislation presented by itself in whole, including to criminal legislation?

As it known, the capitalists protect their right to receive a surplus value through legislation, and especially criminal one, which is initially formal basis. As we noted earlier, legislation (including to criminal one) must protect a surplus value of the capitalists and punish those members of society, who do not have the right to receive the surplus value but wish to get it, i.e. commit crimes. The said is a *content* of legislation (and especially criminal one) in capitalistic society.

**Summary:** In our opinion, first, this article declares that a violence is the content of absolute basis of developed capitalistic relations; second, discovers a secret of the law in general, and secret of legislation, including to criminal legislation; third, it discovers juridical (normative) basis of criminology.

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