THE CRISIS IN LAW AND ITS DEPARTURE FROM THE WORLD OF LIFE: *the ideal of security in legal formalization*

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ABSTRACT

The objective of this study is to examine how the formalizing idealism of Law enables the constraint of freedom, thereby posing a threat to humanity itself. This discussion is warranted by the importance of elucidating the critical legal debate that the crisis in Law is a problem disguised as the formalization process, in order to emphasize that legal security exists only in a realm parallel to the world of lived experience, on a fictional level. The development of this work will employ a methodological approach that begins with particular premises regarding the essential elements of the formalization of Law to propose a systematic examination of Science and the world of lived experience through the scientific foundation of idealizations, given that security can only be guaranteed through distancing from the aforementioned idealizations. The methodology adopted is predicated on specific premises related to the formalization of Law, proposing a rapprochement between Science and the world of lived experience through the scientific concept of idealizations. The study highlights the fictitious nature of legal security, underscoring the necessity for critical thinking to establish freedom in Law, thereby overcoming dominant hegemonic discourses. This study concludes that it is imperative to recover and develop critical thinking to constitute freedom in Law through the assumption of openness that is inherent to humanity itself in order to transcend dominant hegemonic discourses.
Keywords*: Crisis in law; legal security; idealizations; legal formalization.*

1 INITIAL CONSIDERATIONS

As society proposes changes in its guidelines and values, it is coercive for the law to adjust to these changes in order to ensure social protection and stability in the face of the new norms and values that emerge over the years. Furthermore, it is crucial to emphasize that the law is also destined for judicialization, since its effective

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application is essential for the state, through the judge, to be able to interpret and implement the rules.

First of all, it is necessary to describe the traditional concepts of legal formalism, in order to reveal that the term is too obscure, sometimes serving to verify that the aforementioned word rejects what is presented in the world of life. In this context, we focus on some of the main authors and doctrines on the subject.

The next step is to discuss critical legal thinking in the context of legal certainty, in order to verify that this is a necessary but not sufficient condition for access to justice, and that the existential motivation of law is the value of security.

The third section will look at the reasons for the crisis in the law. To this end, it will be shown how the process of idealization of the world of life by the sciences is capable of constraining human freedom, disregarding the characteristic of openness and generating a legal system totally committed to a fictional plane.

In turn, the aim of this study is to demonstrate, based on a liberating critique, the need to rescue and develop critical thinking in order to constitute freedom in the law, so as to overcome the security constructed by mere idealizations.

From a methodological point of view, exploratory research was carried out by surveying the literature and describing the characteristics of the crisis in law and its detachment from the world of life.

In the development of the research, we started from particular premises of the formalization of Law in order to propose a systematic approach to Science. As far as the procedure is concerned, a sociological approach will be adopted, since law is a socio-cultural phenomenon and therefore critical thinking is privileged.

2 CONCEPTIONS OF LEGAL FORMALISM FOR ACHIEVING LEGAL CERTAINTY

As Atienza (2002) teaches, the concept of legal formalism is too obscure. For Bobbio (1995), the term is a conception of law that tries to explain the science exclusively by its formal aspect. As Nader (2010) emphasizes, the Law emerged as a means of defending human life and property. Initially, its function was solely pacification. Today, however, its area of protection is much wider.

The aforementioned concept of Law, as Cunha (2012) points out, is certainly centered on the idea of purity, excluding any moral or extralegal attachment.

For Bobbio (1995), the normative *corpus* itself will be the means and the restriction of the processes of justification of legal decisions, in such a way that

obedience to the principle will enshrine the justice that the Law seeks. In this sense, Sauer *apud* Nader (2010, p. 121) points out that “legal certainty is the proximate goal; the distant goal is justice”[1].

There is certainly a double meaning to legal formalism. The first of these is the idea that law consists of a set of exclusionary rules in the process of argumentation. This meaning has the characteristic of simplifying the argumentative process. The second conception aims to absolutize the formal elements of law in favor of building a theory centered on simplifying the operations of application and interpretation (Cunha, 2012).

In this context, as will be developed later, for Maximiliano (2011), hermeneutics is no longer a mere interpretative technique or a methodological tool available for determining the correct interpretation of legislation.

This simplification, as Cunha (2012) teaches, causes difficult cases to be forgotten, since in this case all other occasions fall into the same category, dispensing with a proper theory of legal argumentation.

As the aim of this chapter is to establish the conceptions of legal formalism in order to achieve the value of legal certainty, it is necessary to highlight the definition proposed by Warat (1994). For the author, the legal system must be endowed with coherence (lack of antinomies) and completeness (absence of gaps). With these two major characteristics, a logically derivable system would be formed in favor of enshrining the value of legal certainty and the potential of the legal system.

Warat (1994) calls this potential of the legal system a “semiological utopia”. Certainly, with this potential, the author is proposing a real rapprochement between the ideal of justice and that of legal certainty, so that a judicial decision is fair if it is legal.

Warat (1994) teaches that no legal decision is legitimized if it fails to achieve legal certainty. In this way, the judicial decision will present in its grounds the final resolution of the contentious issue, as well as containing the factual subsumption correlated to the normative species.

To summarize the context adopted in this study, the analysis of Cunha (2012, p. 48) is crucial. He understands legal formalism as that conception of the Law that is

[1] Legal security is established when the Law accompanies social changes, ensuring the stability of the State and the well-being of its population.

"enclosed in a body of formal-normative idealities, in which the role of facticity is withheld or reduced to a secondary plane". Certainly, adopting this concept means that formalism is nuanced by its reference point of application.

For Faria (1988), the use of increasingly indeterminate and conceptually abstract rules ends up representing a legal formalism with a legitimizing function.

> Of course, this version of formalism can perfectly well accommodate others, but it doesn't need them, and it can live very well with any type of jusphilosophical matrix, whether positive or even naturalistic. To this end, it is enough that the normative body appropriated by the Law (regardless of which reference point serves as a test of validity or belonging for its norms) exercises its action in the practical field by abstracting from things themselves, as they are given to us in the pre-scientific world (Cunha, 2012, p. 48).

The key concept of "world of life", as elaborated by Husserl, is the subject of much debate in the phenomenological tradition. This conception, considered influential in various contexts and perspectives, emphasizes the integrality of the world of life in different senses, even in philosophical approaches after Husserl (Missaggia, 2018).

Struchiner (2007) contributes to this understanding by defining the world of life as the space-time that serves as the basis for all experiences, giving meaning to science itself. However, legal formalism, by disregarding an in-depth analysis of the cases presented, distances itself from the world of life. In this context, the legal definition assumes a central function that supersedes any argument put forward in relation to it.

Cunha (2012) exemplifies this dynamic by citing article 3 of Law 10.259/2001[2], which dispenses with a detailed analysis of the case, already establishing the definition of less complex causes. This type of approach, by prioritizing the legal definition over contextualized analysis, reflects the tendency of legal formalism to detach itself from the world of life, favoring predefined and normative criteria.

3 LEGAL CERTAINTY AS A NECESSARY CONDITION FOR ACCESS TO JUSTICE AND THE HERMENEUTIC PATH

Since the dawn of human evolution, as a result of their fragility and limitations, as well as the need for protection, individuals have sought to live collectively, subjecting themselves to harmony and peace. He gradually gave up his freedom (Romano, 1977).

[2] Law No. 10.259/2001 deals with the creation of Special Civil and Criminal Courts within the Federal Justice system.

Initially, there was no such figure as the state-judge who could intervene and resolve conflicts. Thus, those who had a claim had to satisfy it with their own efforts, resorting countless times to violence and acts that are condemned today. However, with the passage of time, he realized that collectivity brought with it great ills, among which insecurity and fear stand out, characterized precisely by being the cause of delay in local development and the perishing of the collectivity itself (Romano, 1977).

Given the scenario described, Grau (1970) sums up well the concept of security, which is inherent to every human being:

> *Man is an animal insecurum,* compared to other animals, whose possibilities for evolution are already defined in his situation, perfectly determined by his nature. Man's infinite possibilities can already be seen on the outside, in the infinite shades of his expression, his eyes, his hands, which create a radical restlessness in contrast to animal security, a true treat of nature [original spelling] (Grau, 1970, p. 26).

As a corollary of security, there is what is known as legal certainty. For Cunha (2012), this is a true impulse stemming from human nature itself when faced with the limitation of the entity. So much so that ignorance leads to insecurity, certainly due to the lack of predictability.

As you can see, legal certainty is a structural principle, which requires stability and predictability, cutting across the legal system and the desires of the parties. So much so that Dimoulis and Martins (2014, p. 123) state that "legal certainty is, however, a duty of the ordinary legislator and, above all, a constitutional duty, as shown by the dogma of the state's duty to protect".

Legal certainty refers to the idea of stability in individual situations and predictability under the law. It is a guiding value of the national legal order, as explained in the Federal Constitution, which alludes to security as something to be provided to members of society in general, based on the Democratized State of Law (Henkel, 1968).

Security is thus an offshoot of public order, through the harmonious and peaceful coexistence of citizens under state sovereignty. As can be seen, the value of legal certainty is at the heart of the country's legal system, which is a system of legality that provides individuals with the certainty of the law in force (Henkel, 1968).

In addition to the system of legality inherent in legal certainty, legitimacy is required, whereby objective law enshrines values that have been deemed imprescriptible. Axiology, as a science that studies values, is one of the cornerstones

of security. The concept of this and certainty are not to be confused. The first is objective and manifests itself through a Law that has certain qualities, while the second expresses the state of knowledge of the legal order by individuals (Díaz, 1977).

For Cunha (2012), legal certainty plays the role of planning conduct, guiding human action. In order to do this, it is necessary for the legal rules to be clear, known and complied with. According to Nader (2010), legal norms regulate people's conduct or provide for the production of legal effects that are considered fair and appropriate. They don't simply describe, they prescribe.

Of the four legal possibilities that arise in this framework, namely (i) justice and security as independent terms, (ii) justice and security as equivalent terms, (iii) justice as a necessary condition for security and (iv) legal security as a necessary condition for justice, the last possibility is the one that allows us to conclude the definition of security based on the possibility of knowledge and the occurrence of the foreseeable.

The existence of contemporary dialog on the challenges facing legal certainty and justice is universal. According to Nader (2010), systematic interpretation and the theory of material legal certainty must be sought, as they are the basis of any legal system.

Camus, quoted by Nader (2010, p. 121), states that "there is a mutual connection between justice and security, and the coexistence of both is absolutely necessary for the orderly development of a civilized society".

In this vein, Nader (2010) ponders that:

> In legal terms, security is the first and most urgent need, because it concerns order. How can justice be achieved if there isn't first an organized state, a defined legal order? Goethe's famous saying: 'I prefer injustice to disorder'. Among the many effects produced by the Code of Napoleon (the French Civil Code) at the beginning of the 20th century were the following. In the 19th century, we can add the fact that it entirely conditioned French jurists to the value of security. The new criteria adopted for the study and application of the law, which can be called *codicism,* were limited to the interpretation of the legislative text, with no recourse to any other source or principles [original spelling] (Nader, 2010, p. 121).

Positive law is the path to legal certainty. This implies the dissemination of the law, which must reach everyone and not just those to whom it is addressed. In this way, the motivation for the existence of law is the value of security and, certainly, the essence of law is its function of promoting security (Siches, 1973).

Among the basic principles of law that reinforce the value of security are the following: (i) positivity of the law, (ii) security of orientation, (iii) non-retroactivity of the

law, (iv) relative stability of the law. The institute of usucaption, *verbi gratia*, is one of the cardinal objectives of the law and the true justification for its foundation (Chamoun, 1968).

In today's world, the value of security has been considered insufficient in the face of the argument that it is not enough for the legal order to generate security, but rather for it to enable coexistence with the value of justice, the apex and essence of legal science. The reconciliation between justice and security must be a master weapon in order to make the paths to effectiveness and certainty viable (Luño, 1994).

In this way, legal certainty is an unattainable ideal. Legal changes create insecurity as a natural coefficient. The ultimate human goal is to enjoy justice and one of the great challenges facing legislators is to harmoniously balance the twofold certainty and security (Siches, 1973).

3.1 THE HERMENEUTIC PATH TO ACHIEVING LEGAL CERTAINTY: THE JUDICIAL DECISION AS KNOWLEDGE DERIVED FROM INTERPRETATIVE ACTIVITY

The first half of the 20th century produced important revelations for philosophy and law. In the first, they intensified the problem of an absolute concept of truth and its consequent implication in the question of the foundation. The problem of method - the way to achieve absolute truth - also appeared on the philosophical scene (Reale, 2007).

> It should also be noted that the intellectual and classical stance is underpinned by a long hermeneutic tradition that values traditional forms of interpretation, which are still linked to absolute truths. As a result, legal teaching and practice (still) work from a viewpoint of law exclusively from the dogmatic-normative angle, which leads the interpreter to heuristic legalism, in which his reasoning is naïve, logical, precise and comfortable. The illusion of perfection and completeness obtained simply by subsuming the general rule to the specific fact must be overcome in favor of complexity, an essential, necessary and inseparable hermeneutic complexity (Marin, 2012, p. 118).

In the legal field, positivist schools emerged. Depending on the concept of truth that is professed, there is a position on the foundation. The philosophical tradition has coined two types of concept of truth. The first is that which believes that truth is the product of the correspondence of the thing to the intellect, the so-called correspondential. This thinking had been the predominant paradigm in Classical Antiquity and Medieval Philosophy. However, with the masterful teachings of Kant (1980), a new concept of truth was achieved. This is a cognizing subject, and from then on the subjective view of the aforementioned emerged (Reale, 2007).

It is not necessary to inquire into the essence of things or what the subject is sure they know, but rather to question the conditions of access to the symbolic and meaningful universe produced by language - the code that allows legal science to be based (Maximiliano, 2011).

In this sense, Gadamer *apud* Maximiliano (2011, p. 84) points out that "language does not stand alongside art, law and religion, but represents the medium that sustains all these phenomena".

For Maximiliano (2011), legal hermeneutics is the idealizing core of language:

> Hermeneutics is perhaps the least certain and most imprecise chapter in the science of law, because it shares the fate of language. Like the latter, it is used thousands of times unconsciously, by those who don't know its precepts, its organic structure. The difficulty for the theory lies in the subject matter, the object of study, the unlimited number of auxiliary materials and the multiplicity of applications. There is a disproportion between the norm, legislative or customary, and the law itself, whose complex nature cannot be exhausted by the abstract rule. It is up to the exegete to recompose the organic whole, of which the law offers only one side (Maximiliano, 2011, p. 31).

The theories of Kelsen (2000) and Hart (2007) were part of this linguistic turn in philosophy. In fact, all types of study produced at the beginning of the previous century start from the inexorable assumption that the analysis of language is the ultimate framework for understanding the legal phenomenon. The linguistic turn alone did not prove sufficient to answer the problems of truth and foundation in philosophy, and this produced unwanted effects in the field of theories of law (Neves, 1983).

Oliveira (2001) reflects on the passage of the linguistic turn:

> Little by little it became clear that, in the case of the '*linguistic* turn', it was a new paradigm for philosophy as such, which means that language moves from being the object of philosophical reflection to the 'sphere of the foundations' of all thinking, and that the philosophy of language can now claim to be 'first philosophy' at the level of the critical consciousness of our times (Oliveira, 2001, p. 12-13).

For a better solution to the problem of foundation, language and understanding, they must be correlated in a circular structure that is typical of what is known as the hermeneutic circle. Thus, in conclusive tones, one could point out that the Law is its language, since any legal issues must go through the exploration of the hermeneutic element that characterizes the legal experience (Oliveira, 2001).

In this sense, hermeneutics is no longer a mere interpretative technique or a methodological tool available for determining the correct interpretation of legislation. Language, therefore, is the very core of man's world. With these brief explanations, it

can be understood that interpretation is no longer merely conceptual knowledge, but experience (Maximiliano, 2011).

> Man understands himself when he understands being, in order to understand being. But then Heidegger goes on to say: 'You can't understand man without understanding being'. So fundamental ontology is characterized by the circle: one studies that entity whose task is to understand being, and yet, in order to study that entity which understands being, one must already have understood being, and yet, in order to study that entity which understands being, one must already have understood being. The human being does not understand itself without understanding being, and does not understand being without understanding itself; this in a kind of ante-predicative sphere that would be the object of phenomenological exploration - hence the idea of the hermeneutic circle, in the deepest sense (Stein, 1988, p. 79).

As the primary tool of legal hermeneutics, the statements that make up legal texts carry with them an enigma that resides in the remnants. This is because the enunciation is an enigma that derives from existential interpretation, and in this way there is always something that cannot be mentioned by the language. Only Hermeneutic Philosophy and Philosophical Hermeneutics can show that before the statement there are a series of factors and reasons that lead to its formation (Streck, 2007).

In light of the concepts described above, interpretation is no longer merely conceptual knowledge, but experience. To interpret the law is to penetrate its true and exclusive meaning, and when the law is clear, interpretation is instantaneous. Once you know the text, you immediately learn the content (Streck, 2007).

Certainly, for Nader (2010), interpreting the law means establishing the meaning of a rule and discovering its purpose, uncovering the values enshrined by the legislator. In this sense, all subjectivism must be avoided when interpreting, and the interpreter must always aim to achieve the core values of the law: justice and security, which promote the common good.

Diniz (2010) believes that to interpret is to discover the meaning and scope of the rule, searching for the meaning of legal concepts, revealing their appropriate meaning for real life and leading to a decision. In this search for the true meaning of the rule and in the revelation that must be made by the interpreter, it is possible to perceive the strong presence of the subject-object dichotomy, typical of the philosophy of consciousness, in which language is a *tertius* act in search of silent truths. This concept is still dominant in Brazilian doctrine.

In the same vein, Maximiliano (2011) teaches that to interpret is to seek clarification, extracting from a phrase, a sentence or a rule all that is contained. Similarly, Brutau (1989) considers that interpretation is a word with Latin roots, certainly formed from the words *inter* and *pars*. An interpreter is someone who mediates between the parties, an intermediary who can facilitate an understanding.

According to Oliveira (2001), interpretation should be understood as the inquiry into the meaning of the rule, the determination of its content and its effective scope *in* order to measure its precise application *in the case* it governs.

Dominant legal thinking is still opposed to hermeneutic access to the law, believing that the jurist's role is still to discover a meaning that is veiled in the will of the law and the legislator. Looking at the content of article 111 of the National Tax Code - CTN[3], one comes to the conclusion that this controversy has resurfaced. Thus, the doctrine is reluctant to discover what it means to interpret a text literally (Streck, 2007).

Paulsen (2011) points out that the literal, grammatical or logical-grammatical method is only the beginning of the interpretative process, which must start from the text, with the aim of making the letter compatible with the spirit of the law. For this very reason, it depends on linguistic conceptions about the adequacy of thought and language.

The controversy between the intention of the legislator *and* the will of the law also gives rise to debate in the field of the operation of the law. This controversy harkens back to the old dictum that separated the objectivists from the subjectivists, with the former adhering to the will of the law as the seat of the meaning of norms and the latter to the will of the legislator (Streck, 2007).

Strong traces of voluntarism are present in subjectivist theses, renewed in the 20th century by concepts that replace the voluntarism of the legislator with the voluntarism of the judge, present in the free scientific investigation proposed by Kantorowicz's Free Law Chain and Kelsen's Pure Theory of Law. Objectivism in the interpretation of the law and the Constitution, on the other hand, has become the favorite position of formal positivists. During this period, respectable constitutionalists

[3] Article 111 of the National Tax Code – Tax legislation that provides for: I - suspension or exclusion of tax credits; II - granting of exemption; III - exemption from compliance with accessory tax obligations shall be interpreted literally (Brazil, National Tax Code, 1966).

were formed from the point of view of international doctrine, such as Mauz, Duerig, Forsthoff, Hans J. Wolff and Von Turegg (Streck, 2007).

For Maximiliano (2011), hermeneutic access to the law allows us to overcome an obsolete view of legalistic positivism for which the *law in the books* would already be the norm, readily applied to the concrete case, through syllogism. The norm is not to be confused with the legal text (enunciation). It only arises when the case, whether real or fictitious, is problematized.

The traditional view based on legalistic positivism is refractory to hermeneutic access, since it ignores the fact that the law must be concretized in the singularity of each case, and not just through the subsumption of facts to normative predictions, ignoring the unrepeatable particularity of each legal case. Dominant thinking makes the mistake of equating text and norm (Atienza, 2002).

On the hermeneutic path to achieving the value of legal certainty, Maximiliano (2011) states that:

> **The jurist, enlightened by Hermeneutics, discovers, in a Code, or in a written act, the implied phrase, more directly applicable to a fact than the expressed text.** It multiplies the usefulness of a work; it affirms what the legislator would have decreed if he had foreseen the incident and wanted to prevent or resolve it; it intervenes as a helpful aid to the realization of the Law. It makes special determinations, not by means of new materialized provisions, but by the concretization and practical unfolding of formal precepts. It does not disturb the harmony of the whole, nor does it alter the architectural lines of the work; it goes down to the foundations, and from there it pulls out treasures of ideas, latent until that day, but lively and lucid. It explains the matter, removes those latent until that day, but lively and lucid. It explains the matter, removes apparent contradictions, dispels obscurities and lack of precision, highlights the entire content of the legal precept, deduces from the isolated provisions the principle that forms their basis, and from that principle the consequences that flow from it [emphasis added] (Maximiliano, 2011, p. 12).

The problem identified in the text concerns the lack of theoretical consistency, evidenced in the apparent contradiction between the author's criticism of the subject-object dichotomy and his subsequent affirmation, when quoting Maximiliano (2011), that suggests a conception linked to this scheme. Furthermore, the lack of correspondence between Maximiliano's thinking and the works of Gadamer (2014) and Streck (2007), briefly mentioned, reveals an unsubstantiated theoretical syncretism. The solution to this problem involves a conceptual and theoretical review, seeking to harmonize the ideas presented. The contradiction in the approach to the subject-object dichotomy needs to be clarified, considering the internal cohesion of the argument.

Furthermore, it is crucial to establish a more solid connection between the ideas of Maximiliano (2011) and the aforementioned authors, Gadamer (2014) and Streck (2007), in order to eliminate theoretical syncretism (Atienza, 2002).

The delimitation of the theoretical frameworks adopted in the work must be made explicit, demonstrating how these references are related and contribute to the construction of the argument. Cohesion between key concepts, such as world of life, interpretation-comprehension and principles, must be strengthened, ensuring a solid and consistent theoretical basis throughout the text. Thus, solving this problem requires a more in-depth analysis of the interrelationship between the concepts presented, as well as a critical review to eliminate inconsistencies and promote a more robust theoretical foundation (Atienza, 2002).

Thus, in order to enshrine the value of legal certainty, the interpretative process needs to be productive and not reproductive. The addition of meaning to each new interpretation and the uniqueness of each situation is evident in legal hermeneutics (Maximiliano, 2011).

Thus, for Maximiliano (2011), the decision of a magistrate*, verbi gratia,* cannot be considered as an act of positivization of the will of either the law or the legislator. If the decision is considered to be a syllogism, as procedural doctrine seems to want, judicial activity becomes a mechanical operation guided by the imperatives of logic. Contrary to what this doctrine would have us believe, and based on the guidelines of legal hermeneutics, the sentence is the fruit of living knowledge that comes from the jurist's creative interpretative activity.

4 THE FORMALIZING IDEALISM OF LAW AND THE LOSS OF FREEDOM: LEGAL CERTAINTY ELEVATED TO THE FICTIONAL PLANE

The main characteristic of modernity was the break with ancient tradition, delimiting on a precise basis the scope of science, as well as that which is external to it. For Santos (2006, p. 21), scientific rationality "is a totalitarian model, in that it denies the rational character of all forms of knowledge that are not guided by its epistemological principles and methodological rules".

For Augustine (1998), through rationality, human beings occupy an important place in creation, which qualifies them to belong to the highest of creatures and eminently below God and the angels. Created by goodness and the divine will itself,

all creatures participate in perfection and, sequentially, are good because they participate in Being par excellence.

According to Santos (2006), there was a loss of reference in the scientific model. This was based on mathematical rigor, which, by characterizing phenomena, shaped them. In this apparent crisis, he establishes the exteriorization of the object, making it incommunicable.

Along these lines, law cannot remain outside rationalism. In this way, science is based on objective knowledge, glazed in the dichotomous subject-object model, usurping the method proposed by the natural sciences. This relativity and uncertainty has caused a major shake-up in the law. This is because the ideals of neutrality and objectivity have simply become fragmented. This certainly had repercussions on the value of security, and the control of decisions, based on the items described in this paper, led to the same ideology (Barroso, 2006).

In this context, Cunha (2014) teaches that the anthropocentrism inherent in modernity is accompanied by a feeling of freedom, since there is a break with preconceptions, enabling the construction of new meanings through the reality presented.

Drawing on Augustine (1998), we can see that Augustinian morality is a concrete response to the existential drama of the human being, who is absorbed by both material goods and the only thing that is eternal. This is how the Bishop of Hippo developed his thesis of “ordered love”, which is directed by rationality and freedom. The main mark of human decay is limitation, division and imperfection in its essence. Because they are not identical to the Creator, creatures are - in truth - unending finitude without the possibility of being fully. This deficiency is ontological, since human beings are limited to their own fallen condition.

Even though a libertarian movement has been consecrated, there has been no significant progress, so that man ends up losing his own humanity, and technology is no longer a provision but an indispensable complement. Cunha (2012, p. 61) accurately states that “through technique, man is objectified in the phatic, he is fetishized”.

The crisis described in this work is characterized by the need to establish effectiveness with the exaggerated trust in the law, which is an essential character of formalism, as already highlighted in the first chapter. Santos (2006) believes that in this case there is certainly a metaphysical hijacking of reality.

The great and disastrous consequence of transforming technology into an indispensable complement is forgetting the world of life itself, so that the real origin of idealizations is lost and life itself loses meaning. This is precisely because of the disregard for man's inherent openness. Man, by essence, is exactly that open being as he is launched into the world. Human freedom comes about through transcendence (Cunha, 2012).

Going a step further, this association has repercussions on the law and the most serious consequence is the construction of a legal science that is uncommitted to the world of life and therefore regulates what is not necessary. In this way, formalizing idealism in the law compromises human freedom, elevating legal certainty to a fictional, parallel plane. Certainly, by saying that legal certainty does not exist in the world of life, one would be saying that the rules of conduct are not suited to that world, but rather to another, totally fictional one (Cunha, 2012).

Considering this paradigm, the picture of total crisis is associated with the problem of the formalization of law, given that this model is shaped by an ideal of ineffective security, understood as the possibility of knowledge that allows for the predictability of acts. This is because the law certainly allows itself to be dominated by that process of idealization, constraining human freedom (Barroso, 2006).

5 FINAL CONSIDERATIONS

In view of the relevance of the subject, the topic dealt with in this work was analyzed from various perspectives, starting with an analysis of some aspects of legal certainty in the Brazilian legal system, going through some concepts of legal formalism, and ending with an analysis of the crisis in the law.

Some conclusions can be drawn from all the above. A first consideration is to recognize that you cannot force beings to be what they are not. As there is existence, there is transcendence, which makes freedom necessary.

Of course, it is also a matter of concluding that man - in this scenario - ends up losing his own humanity, so that technology is no longer a provision but an indispensable complement. This is due to the disregard for the characteristic of human openness, which generates a legal system that is totally committed to a fictional plane.

Furthermore, the development of this work has shown that the crisis in the law is a problem that is disguised in the process of its formalization, in such a way as to show that legal certainty only exists in the world parallel to the world of life, on the

fictional plane, since the law certainly allows itself to be dominated by that process of idealization. Law then becomes a true science sustained by mere technique, capable of manipulating categories and concepts, whose crisis is a problem in the context of its formalization.

At the end of the day, one thing is clear: the need to bring the law closer to the world of life is only possible through the scientific foundation of idealizations. It is certainly not a question of demanding a stance that allows judicial activism, or at least establishes public policies or any kind of skepticism on the part of the Judiciary.

It is therefore necessary to rescue and develop critical thinking in order to constitute freedom in law by assuming the openness that is inherent to humanity itself in order to overcome dominant hegemonic discourses.

The work highlights the importance of freedom in existence, but observes the loss of humanity in the face of technical dominance. He identifies the crisis in law as intrinsic to formalization, indicating that legal certainty exists only in the fictional world, subjugated by idealizations. It proposes bringing law closer to the world of life through idealization, seeking to rescue critical thinking in order to constitute freedom in law and overcome hegemonic discourses. The final challenge is to rethink the role of law, recognizing its interdependence with the world of life, avoiding the artificiality of excessive formalization in favor of a more humanized and reflective approach.

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