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## The Legal Good as the Foundation and Limit of Self-Defense in Criminal Law: An Analysis Based on the Thought of Claus Roxin

*The Legal Good As Foundation And Limit Of Criminal Self-Defense: An Analysis Based On The Thought Of Claus Roxin*

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### Summary

This article analyzes the evolution of the concept of legal good as the central axis of criminal legitimacy and a parameter for the institution of self-defense. The research traces the historical trajectory from the Enlightenment, with Feuerbach, through Birnbaum's materialism and Binding's normativism, culminating in Claus Roxin's teleological-rational functionalism. The objective is to demonstrate how the legal good transitions from a formal criterion to a material and constitutional foundation, serving as a limit to the state's *ius puniendi* and as a rational benchmark for individual defensive reaction.

The methodology adopted is bibliographic and descriptive research, based on classical and contemporary criminal law doctrine. The results indicate that, despite the expansion of punitive measures and the risks of the "risk society," Roxin's thinking remains essential to ensure that legitimate self-defense does not become private revenge, but an affirmation of the legal order based on the protection of concrete goods.

It can be concluded that the legal good is the ethical and constitutional criterion that maintains the coherence of the democratic penal system.

**Keywords:** Legal Interest. Claus Roxin. Self-Defense. Functionalism. Criminal Law.

### Abstract

This article analyzes the evolution of the concept of legal good as the central axis of criminal legitimacy and a parameter for the institution of self-defense. The research traces the historical trajectory from the Enlightenment, with Feuerbach, through Birnbaum's materialism and Binding's normativism, culminating in Claus Roxin's teleological-rational functionalism. The objective is to demonstrate how the legal good transitions from a formal criterion to a material and constitutional foundation, serving as a limit to the state's *ius puniendi* and as a rational benchmark for individual defensive reaction. The methodology adopted is bibliographic and descriptive research, based on classical and contemporary criminal dogmatics. The results indicate that, despite the punitive expansion and the risks of the "risk society," Roxin's thought remains essential to ensure that self-defense does not become private revenge, but an affirmation of the legal order based on the protection of concrete goods. It concludes that the legal good is the ethical and constitutional criterion that maintains the coherence of the democratic penal system.

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### INTRODUCTION

The concept of legal good has become established, throughout the history of penal thought, as the axis around which the legitimacy of punishment and the ethical-political limits of the power to punish revolve.

Based on the notion of legal good, Criminal Law ceased to be a simple instrument of Moral repression came to be conceived as a rational system of subsidiary protection of values. essential for social interaction.

However, the formulation of this category did not result from a linear process, but from a... A trajectory marked by ruptures and reinterpretations that reflect the tensions between freedom and security. Individual and State.



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The central problem addressed in this study lies in understanding how legal goods evolve.

From Feuerbach's Enlightenment formalism to Claus Roxin's teleological-rational functionalism,

It assumes a dual function of, on the one hand, providing a basis for criminal intervention and, simultaneously, by

On the other hand, it serves as a rational limit to the *right to punish*.

This discussion becomes imperative in light of contemporary punitive expansion and demands.

of the "risk society," which puts strain on the classic criteria of harm and protection, and in this scenario,

Legitimate self-defense emerges as the legal concept where this theory finds its most sensitive application.

requiring an analysis that transcends mere normative literalness to reach fundamentals

constitutional.

The rationale for this research is based on the need to reaffirm the guarantor role of...

Criminal law, by not focusing on the abstract defense of the legal good theory, but on demonstrating that

The contemporary crisis in this category directly compromises the criteria of proportionality.

legitimate self-defense, shifting the problem from criminal policy to the level of individual reaction.

In a context of increasing penal symbolism, revisiting the genesis and critique of the theory

Roxiniana allows us to identify the ethical and political parameters that should contain state violence and

to guide individual action in legitimate self-defense.

Given this scenario, the problem that will guide this research is to what extent...

The concept of legal good, as reconstructed by Claus Roxin, still offers material criteria.

sufficient to legitimize and limit legitimate self-defense in criminal law within a context of expanding punishment and

Risk society?

Methodologically, this work uses bibliographic and descriptive research, with an approach...

A qualitative and technically sound dogmatic analysis, centered on the works of Roxin and his interlocutors in science.

Brazilian and German criminal law.

The objectives of this work were outlined in order to ensure a systematic analysis of

problem and its unfolding in the general objective, which is to analyze the legal good institute, under the

A perspective on the foundation and limits of legitimate self-defense in criminal law, based on the functionalist thought of

Claus Roxin.

To achieve this purpose, the research initially aims to outline the historical trajectory-

Theoretical analysis of the concept of legal good, going back to Feuerbach's premises to reach the synthesis.

contemporary functionalist.

In parallel, it is proposed to analyze the transformation of this category from a mere criterion of

classifying injustice as an essential constitutional parameter for defining criminal policy.

Furthermore, the study aims to examine the applicability of Roxin's theory in the face of challenges.

imposed by the expansion of punitive measures and the rise of the risk society, which is a backdrop.

critical for evaluating the relevance of Roxin's theory today.



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Finally, the aim is to investigate the role of the legal good as a rational benchmark for assessing the Moderation and proportionality in the exercise of legitimate self-defense, consolidating as a criterion. indispensable for legitimizing individual reaction to injustice.

Therefore, legitimate self-defense will be analyzed not as a permissive exception to violence, but as an institution whose legitimacy depends on the effective protection of specific legal assets, in accordance with the terms of teleological-rational functionalism.

## **1. THEORETICAL FRAMEWORK**

### **1.1 The birth of the theory of legal goods and the thought of Feuerbach and possible clues**

**textual aspects of its influence on the structure of legitimate self-defense.**

As Andrade (2004, p. 61) observes, the trajectory of the idea of legal good would not unfold in a straight line, but describes a spiral motion. Theories that at a certain point ideas that seemed outdated are regaining prominence in new contexts, reinterpreted according to... historical and cultural demands of each era.

At this point, Feuerbach's proposal would reflect the Enlightenment effort to subordinate the pen to reason. Influenced by Kant, he would shift the sanction from the moral field, linked to sin, to the field of In legal terms, it is understood as a logical consequence of violating the rule.

Criminal law would therefore be integrated into the rule of law system, and punishment would cease to be... to be an expression of the sovereign's will, becoming a necessary reaction to the breach of the legal pact. (Brandão, 2006).

Feuerbach conceived of the State as the result of a contractualist conception. This State It would be the result of a contract, the objective of which would be to guarantee compatibility between the freedoms of each individual, that is, between the subjective rights of freedom and its own functioning (Andrade, 2004, p. 43).

In this model, the crime would consist of a human action that, as defined by criminal law, violates the subjective right of another person. Criminal law would have the function of protecting these external rights, which They were constituted as projections of individual autonomy in the legal space (Luz, 2013).

This conception, by focusing on the idea of "harm to others", would approximate from the liberal philosophy of John Stuart Mill, according to which the only legitimate basis for state coercion would be the prevention of harm to third parties (D'Ávila, 2009, p. 11).

Thus, any conduct that did not cause harm to the rights of others would remain outside the scope of this law. Scope of Criminal Law. Subjective rights, understood as inherent faculties of the person. as holders of private legal positions, they would constitute the core of criminal protection (Godoy,



2010).

As Reis (2011, p. 68) observed when interpreting Feuerbach, the State could only punish behaviors that involve concrete danger or harm, never the sin, the intention, or the mere contradiction to moral duty. It would not be up to the State to formulate judgments about morality, nor to... to establish himself as a protector of religion. Morality and religion become private matters, hence, Precisely.

The right to life, security, and liberty is not defined in the form of a permission. negative, as exemption from the sphere of domination, but rather in terms of legal faculty, as legal capacity positively sanctioned (Santos, 2010, p. 17).

Feuerbach viewed crime as the violation of a limit imposed on legal freedom, and Anyone who transgressed the boundaries established by the social contract and the law would be violating the law. from another person (Prado, 1997, pp. 27–28).

On the other hand, this same logic would reduce the scope of Criminal Law to protection. of property and freedom, leaving aside the social dimensions of life in community.

This conception would inaugurate an essentially formal and relational reading of the crime, aligned to the bourgeois liberalism of the 19th century. In this paradigm, punishment would only be legitimate when there was effective injury to an individual subjective right, which would reinforce the ideal of legal certainty and a decrease in the arbitrary power of the State, which left deep marks on criminal law doctrine.

Centuries later, Roxin would revisit this paradigm by conceiving of the State as a mediator. A rational balance between freedom and security, recognizing that punitive power would only be legitimate when indispensable for preserving a free and peaceful coexistence among citizens.

Roxin's teleological-rational functionalism, although intended to overcome the formalism of In the 19th century, it would preserve the core of legal guarantees inherited from Feuerbach, the idea that all punishment It should be found at the limit of the right itself (Mendonça, 2010; Godoy, 2010, p. 45).

Returning to the issue of self-defense, this fits directly into the structure that Feuerbach conceived this, therefore, as presupposing the existence of an unjust aggression against subjective rights. A defensive reaction would be justified because the aggressor would be breaking the social contract by violating or threatening it. an individual subjective right.

In this step, by allowing the individual to react to protect their subjective rights without In order to commit a crime, legitimate self-defense embodies Feuerbach's Enlightenment ideal that law does not one must yield to injustice.

An individual's subjective right could only be limited by law. subjective of another individual (Luz, 2013, p. 39; Silva, 2013, p. 67). The same material criterion that limiting the *right to punish* also legitimizes the exclusion of unlawfulness; therefore, both the penalty and the defense They would only be justified by the presence of a real injury or threat to an individual's right.



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In this sense, Brandão clarifies that legitimate self-defense would be the clearest practical manifestation of the protective function of subjective rights in the material theory of crime (2006). This idea would anticipate, To a certain extent, current theories of general prevention, which are based on the persuasive function of The norm is based on the rationality of prudent human beings.

From this perspective, crime would represent the rupture of these formal conditions of coexistence of freedoms (Toledo, 1994). This construction, although endowed with conceptual elegance, would distance the Feuerbach's system of concrete social reality, in which human relations effectively take place. They were developing.

Feuerbach's formalism, by linking the crime to the violation of an abstract legal faculty, This would eventually distance Criminal Law from empirical reality. At this stage, criminalization would cease to... to be guided by the protection of concrete goods of social life and to rest on constructions predominantly normative (Silva, 2013).

This limitation would pave the way for the reformulation proposed by Birnbaum, who sought to replace the notion of violation of subjective rights with that of harm to actual and tangible assets, introducing the material concept of legal good.

Nevertheless, his system would remain anchored in an exaggerated formalism and in a an ideal conception of subjective right, which would ultimately limit its material scope, on the one hand, but On the other hand, it would prepare the ground for dogmatic and scientific transformations regarding law. which would give rise to the current theory of legal good.

The result was a criminal law that was elegant from a normative point of view, but incapable of capturing the material complexity of concrete social conflicts.

## **1.2. The importance of Birnbaum's concept and its developments in the works of Binding and of Liszt and his correlation with the concept of legitimate self-defense.**

Birnbaum's doctrine emerged as a direct reaction to the idealist limitations of the system. Feuerbach's approach would be guided by an expansion of the state's *right to punish*.

Birnbaum's contribution would lie in the proposal to break with formalism, which This would be limiting the concept of crime and associating it with the transgression of a legal right. For the author, Criminal Law should not protect rights in themselves, but rather goods. and real-life values, whose preservation would be a condition for social coexistence (Godoy, 2010, p. 49).

This methodological shift would mark the beginning of the transition from subjective right to the common good. substantive legal framework, shifting the focus of the theory of crime from normative violation to data damage in empirical view (Godoy, 2010, p. 49).

While Feuerbach restricted criminal wrongdoing to the violation of subjective rights, Birnbaum



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I would understand that these rights would not have an autonomous existence outside of social reality. All  
According to him, law only exists as an expression of the social utility of a particular good. Thus,  
Criminal protection should focus not on the right itself, but on the specific object of its protection: the good.  
legal (Prado, 1997, p. 29).

This conception would lead the study to a replacement of the formal category of law by  
Another [approach], from the material category of property, brings Criminal Law closer to concrete social experience.

The crime would cease to be an affront to the legal order and would instead represent an actual injury.  
to values recognized by the community. Through Birnbaum, a dimension would be introduced.  
empirical and anthropological approaches in criminal law, which would allow for the analysis of crimes based on their...  
social relevance and not just from its legal compliance (Machado, 2016, p. 87).

Mendonça (2010, p. 23) explains that, although Birnbaum's concept of legal good does not  
Even if it indicated a political-criminal meaning, but only a dogmatic one, it would carry a guarantee-oriented advance.  
when understood as an instrument for protecting concrete values.

And if a crime only exists when there is concrete harm or danger to a real legally protected interest, then...  
This concept would help to better understand the role of self-defense, because when a person reacts  
In the face of unjust harm, the subject would be effectively protecting concrete and individualizable goods (life,  
physical integrity, freedom, honor) in their existential reality (Mendonça, 2010, p. 22).

In this context, Karl Binding's formulation would mark a turning point in reacting to  
Birnbaum's empirical materialism. In his view, legal goods do not possess a...  
It is an independent existence outside the law, being whatever the legislator declares worthy of protection.

Mendonça would explain that Binding would argue that the legal good was contained in  
the normative statement itself, being inherent to it (2010, p. 24).

The core of this view is that the value protected by law is inseparable from and contained within the law, and not something else.  
which transcends Law and the State, which, in Binding's conception, each norm carries within itself its  
The legal good itself. These are inseparable terms, and the good cannot be established from any other source.  
external basis to Law and the State and, therefore, its infringement implies a breach of the duty of  
obedience, reflecting the subjective right of the state (Niño, 2008, pp. 8-9).

This methodological gain, however, would be accompanied by a loss of density, since...  
The legal good would cease to function as a limit to punitive intervention (Silva, 2013).

Because it is a normativist paradigm, Binding would shift the justification of legitimate self-defense away from  
The real sphere would be reduced to a purely formal and state-controlled sphere. Legitimate self-defense would cease to be a right.  
natural inalienable (as in Feuerbach) to be a state permission where the State, holder of  
The system, which has a monopoly on punishment, grants individuals the right to protect property in exceptional cases.  
It would thus become incapable of materially justifying the punishment, being reduced to a structure.  
formal imputation (Roxin, 2012, p. 41).



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The element that paved the way for the current state of the art was von Liszt's theory.

who would conceive of crime not as a simple violation of a norm, but as a social phenomenon.

The study of Criminal Law would also involve that of social policy, aimed at the defense of... indispensable values for human coexistence (Toledo, 1994, p. 72). Liszt argued that the basis of criminal law would be based on the living conditions that pre-existed legislative valuation (Mendonça, 2010, p. 25).

Unlike Binding, for Liszt the interests would be pre-existing; it would not be the ordering. legal framework that would generate it, but the interest, if not life itself (Niño, 2008, pp. 10-11). This conception, Known as methodological dualism, it seeks to harmonize the normative and empirical planes.

By acknowledging the influence of criminal policy on legal doctrine, Liszt would transform the jurist. in a mediator between social reality and normative "ought-to-be" (Godoy, 2010, p. 56), whereby, In this model, legitimate self-defense comes to be understood as a socially necessary response to protection of pre-existing vital interests, reinforcing its material and preventive character.

And, as will be seen, this openness to criminal policy and social reality is precisely the point. a starting point that would later allow for Claus Roxin's functionalist formulation.

### **1.3. Roxin, legal good, legitimate defense and the political-criminal bases of a model of justification**

Claus Roxin's contribution would represent a milestone in the reconstruction of criminal law doctrine. postwar period, proposing a system in which the legal good would become the normative and axiological axis of all Criminal Law<sup>1</sup>.

By integrating dogmatics, criminal policy, and constitutional principles into one. field of rationality,

Roxin would break with the methodological neutrality that had characterized legal positivism and This would restore the ethical function of penal knowledge. Therefore, his theory would shift the focus away from the simple... Formal subsumption for the material legitimation of the norm, conferring upon Criminal Law a function. guaranteeing and rationalizing punitive power, guided by the Constitution and the protection of freedom (Greco, 2019; Ismael, 2014).

His work emerged in a historical context in which German Criminal Law sought to regain legitimacy after the ethical and institutional crisis caused by National Socialism.

That's because finalistic dogmatism is credited with seeking principles and values independent of... state will in an era dominated by a terrible legal positivism, corresponding to omnipotence of the Nazi state (Roxin, 2006, p. 55).

The prohibition against instrumentalizing man, the demand that "man should never be





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"treated by another man as a mere means, but always also as an end," stems from dignity.

human (Roxin, 2006, p. 39).

The science of criminal law in postwar Germany was based on the main idea that the law...

Criminal law should protect specific legal interests, not political or moral convictions, or doctrines.

religious, ideological conceptions of the world or simple feelings (Roxin, 2009, p. 12).

Roxin would start precisely from the need to reconstruct this normative basis, repositioning the

Human dignity and individual freedom as the foundations of punishment (Roxin, 2009, p. 15). His

Teleological-rational functionalism, as summarized by Greco (2019), would be a model system.

open, teleologically oriented (purpose-oriented), in which the criminal justice system should not be

to be linked to ontological data, but rather to be guided exclusively by the aims of criminal law.

Typicality, unlawfulness, and culpability would cease to be autonomous categories.

and abstract, becoming part of a coherent and functionally oriented system for the protection of assets.

concrete legal aspects (Machado, 2016, p. 34).

According to Roxin (2006), typicality would have the function of legal determination; unlawfulness would act

within the framework of social conflict resolution through the balancing of interests; and culpability should

Consider the limiting function of punishment and the demands of theories of the purposes of sanction. Roxin himself

This would define Criminal Law as only being legitimate when it serves to protect essential legal assets.

to human coexistence (Roxin, 2009, p. 29).

It is precisely on this plane of material unlawfulness, guided by the balancing of interests.

concrete legal aspects, where legitimate self-defense finds its foundation in the Roxinian model, up to

because, in that scenario, the legal good would cease to be a criterion for criminalization and would instead become...

A parameter for legitimizing individual reaction, within the framework of necessity and proportionality.

This model provides the political and criminal basis for understanding self-defense not as

An exception tolerated to violence, but as an instrument for affirming the legal order founded on

protection of essential legal rights.

### **1.3.1 Constitutional Foundations of the legal good and political-criminal parameters for the legitimate self-defense**

Roxin's theory of legal good arose in connection with the need to rebuild the State.

of Law. Based on this diagnosis, Roxin would argue that the legitimacy of penal intervention

It would depend on the substantial compatibility of punitive norms with constitutional values.

especially with freedom, proportionality and the protection of the human person (Roxin, 2009, p.

15).

The Constitution would thus come to occupy the center of gravity of the penal system. Every norm

Criminal law should find its axiological and teleological foundation in the Constitution, because...





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On the contrary, such a penal norm would be materially illegitimate (Roxin, 2012, p. 56).

In fact, the only instrument of defense against state excesses would be, for Roxin, the insistence on inviolable human rights and freedoms.

In Germany, they were embraced by the German Constitution (*Grundgesetz*), so that the Respect for them and their achievement would be compelling for any penal doctrine that argues politically. criminally (Roxin, 2006).

The normative science of Criminal Law must "approach the Constitution," and the existence of A scientific and democratic criminal law is only possible through the "fulfillment of these same principles." "principles and rules" (Poli, 2019).

From this perspective, the legislator, when creating criminal offenses, should observe the principle of proportionality, so that Criminal Law would always act as a *last resort* for protection. legal (Roxin, 2012, p. 58).

Punishment, conceived as the most intense form of intervention in the sphere of the subject, It would only be legitimate when indispensable to the protection of values whose safeguarding was necessary. social coexistence and the realization of human dignity (Roxin, 2012, p. 62).

This constitutional structure, as interpreted by Roxin, would have direct implications for the The concept of legitimate self-defense, since this concept is anchored in a fundamental principle of order. In legal terms, fundamental rights, which, in themselves, are also an autonomous mechanism for the protection of assets. legal rights. From this perspective, the legal good would serve the dual function of legitimizing the punishment of the offender. of the legal order and the legal good, on the one hand, and, on the other hand, of being an instrument of restraint. the power of the State to punish.

In this respect, legitimate self-defense would not be exempt from constitutional review, since the action Necessary action would only be legitimate when the individual's reaction protects assets that the Constitution... recognize them as essential and when that reaction is compatible with the structuring principles of penal system. This material compatibility can be understood as a judgment of proportionality in the strict sense between conflicting legal interests.

These constitutional parameters allow us to understand self-defense as an institution. of rationally weighing legal interests in a conflicting situation, which will be examined below.

### **1.3.2. Transformations in the theory of legal goods and their role in the rationalization of legitimate rights. defense**

Claus Roxin's work would mark a turning point in the evolution of criminal law doctrine. contemporary in articulating Criminal Law, criminal policy and constitutional principles, in what It was called teleological-rational functionalism.



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The German author would break with the supposed formalist neutrality of the positivist tradition and This would redefine the role of Criminal Law as an instrument to guarantee and limit the punitive power of... State.

For Roxin, criminal law doctrine could not be self-sufficient or neutral; it had to be... functionalized, that is, constructed rationally and systematically according to political purposes. criminal acts that would justify the very existence of the penal system.

Criminal law should therefore be structured teleologically and guided by values. constitutional principles, as well as the objectives of subsidiary, proportional, and rational protection of assets. legal.

In *Criminal Policy and the Criminal Justice System*, Roxin (2002, p. 82) argues that decisions Political-criminal values should permeate the penal system, so that all categories of crimes play a specific political-criminal role.

Thus, each element of the crime should be defined and interpreted in a way that fulfills... adequately fulfilling its role in protecting legal assets (Roxin, 2002, p. 62).

Roxinian functionalism, therefore, should not be considered merely as a method. interpretive, but as an axiological and guarantor theory that seeks to ensure that concepts dogmatic principles are duly linked to the constitutional purpose of protecting liberty. and human dignity.

The principle of proportionality, in its dimensions of suitability, necessity and Proportionality, in the strict sense, would be the central parameter for controlling penal interventions. always having the legal good as a point of reference (Roxin, 2012).

Thus, Criminal Law would only be legitimate when it acts to protect legal interests. with material relevance and constitutional backing.

The mission of the penal system, in a democratic state governed by the rule of law, would be simultaneously It is a principle of due process and proportionality, restricting punishment to what is indispensable for coexistence. social (Roxin, 2009, p. 28–29).

Neo-Kantian thought, although it introduced the evaluative method, would maintain the axiological indeterminacy when treating the legal good as *ratio legis*, a formal concept that It approaches positivism, emptying it of material content and preventing it from acting as a parameter of control of the legitimacy of criminal law (Roxin, 2012, p. 163).

During the German National Socialist regime, the concept of legal good was practically suppressed, replaced by the violation of duties or by offense to a supposed "healthy feeling of people".

Conversely, Roxin's teleological-rational functionalism would open up the penal system. to the influx of criminal policy founded on constitutional principles, seeking to give content



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material to the concept of crime and to protect the minority against the domination of the majority (Roxin, 2012, p. 163).

In this sense, the *goal* of protecting legal assets would seek to implement a criminal policy. rational, humane and liberal (Roxin, 2012, p. 140), which would point to a guarantor conception of Criminal Law, according to which criminal offenses would be materially illegitimate when they did not protect the free development of the person, that is, their fundamental rights.

The legal good would thus fulfill the role of acting as a material criterion of legitimation. of penal intervention (transcendent function) and as a structuring element of the theory of crime (function (immanent), since the criminal wrong would manifest itself as harm to or endangerment of a protected interest. legal (Roxin, 2009, p. 39), to a certain extent, overcoming the idea that law should not yield to unfair.

Legitimate self-defense, based on the idea that the law should not retreat in the face of injustice, one could make use of the notion of the threatened legal good to promote the affirmation of the order itself. legal, it is sufficient to establish a legally reprehensible relationship between the action and the personality of the agent (Vergara, 1996, p. 81).

In short, by replacing closed formalism with an open, value-oriented system. constitutional principles, Roxin would consolidate the current guarantor-based penal doctrine, redefining the relationship between Dogmatics and criminal policy.

The rationalization of legitimate self-defense thus stems from the possibility of subduing the reaction. defensive based on objective criteria of proportionality and protection of constitutionally protected legal rights. relevant and therefore, legitimate self-defense ceases to be understood as exceptional tolerance of violence is understood as a rational and constitutionally oriented expression of protection of essential legal rights.

### **1.3.3. The legal good as a dogmatic parameter of typicality and self-defense.**

Claus Roxin's most significant contribution to contemporary criminal law doctrine would lie... in the formulation of a system in which the legal good would play a dual role of acting, of a on the one hand, as a political-criminal foundation for the legitimacy of punitive power and, on the other hand, as structural element of the theory of crime.

The result would be the formation of a model of material and constitutional coherence, in which the The legal good would become the axiological core of criminal injustice, guaranteeing that state sanction It would only be justified when aimed at protecting values fundamental to social coexistence. (Roxin, 2012, p. 234).

Roxin would start from the classic structure of the crime, with its elements of typicality,



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unlawfulness and culpability, but I would propose an advancement with the introduction of the idea of responsibility, which would include culpability.

From a dogmatic standpoint, typicality and unlawfulness would be evaluated in light of the harm caused. or the concrete danger to the legally protected interest. Brandão explains that the typical and unlawful conduct should to be understood as that which harms or concretely endangers a legally protected interest, ceasing to express a simple formal violation of the norm and instead representing an offense. socially relevant to a constitutionally protected value (2015, p. 125).

Guilt would then evolve into the broader concept of responsibility, which requires... demonstration of the need for prevention and proportionality of the penalty as conditions of legitimacy.

Roxin would situate culpability as one of the elements of the larger category of his system, the responsibility, which would be formed by the culpability of the offender and the necessity preventive of criminal sanction (Brandão, 2015, p. 124). In this model, culpability is maintained. autonomous in relation to preventive considerations, fulfilling the function of a maximum limit for the penalty, preventing the sanction from exceeding the measure of personal disapproval (Roxin, 2006).

The legal good would permeate all categories of the theory of crime, serving as a criterion. Material basis for the accusation. The principle of harm, which enshrines the idea that there is no crime without harm. or danger of harm to a legally protected interest, would consolidate as a direct corollary of exclusive protection. of legal goods.

According to Roxin, when there is behavior that does not harm in any way the possibilities for the development of other people, that is, when there is no violation of the legal right. On the other hand, it cannot be considered a criminal injustice (Roxin, 2012, p. 2).

According to the author, injustice would be the taking of an impermissible risk that would materialize. in cases of injury or endangerment of a legally protected interest, with the risk criterion serving as the primary one. parameter for limiting punishment to what would be "intolerable" from a social point of view (2002, p. 4-5).

In this model, legitimate self-defense would become an example of criticism of functionalism, because It exposes the tension between the structure of the crime and the preventive functions of punishment. However, this tension does not From the perspective of legal good, this would imply a complete rejection of self-defense, but only when if this were not analyzed solely from the perspective of its preventive function, given that the legal good It would remain as a material criterion for justifying the defensive reaction.

In the functionalist system, the legitimacy of the defense could be explained by its preventive function. of the norm, bringing the justification closer to the purpose of the punishment and corroborating Roxin's criticism. "functionalizes" structural categories (Brandão, 2015, pp. 124-125). Even so, the function The interpretative view of the legal good in self-defense would manifest itself teleologically, in which each



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The type of classification must be understood according to the constitutional value it intends to protect.

In the Roxinian system, self-defense acts as a means of correcting material aspects of the crime. and of unlawfulness, preventing penal protection from becoming unjustified violence. In Ultimately, the legal good would represent the balance between social protection and respect for freedom. individual.

Costa summarizes this reasoning by stating that the concept of legal good must be shaped in the Constitution, as they are "given circumstances or useful purposes for the individual and their freedom development within the framework of a global social system" (2011, p. 56).

By integrating legal doctrine with constitutional values, Roxin would ensure that Criminal Law remained a rational instrument for the protection of liberty, conditioned by necessity and proportionality of state intervention, and thus the legal good reveals itself not only as not as a criterion for criminalization, but as a structuring axis of all democratic penal rationality.

#### **1.3.4. The contemporary evolution of the legal good and its impacts on proportionality.**

##### **legitimate self-defense**

Claus Roxin's theory of legal good emerged in a historical context. deeply marked by the reconstruction of the Democratic Rule of Law. Its political purpose- criminal matters outside the scope of rationalizing penal intervention based on material limits derived from Constitution. However, the development of complex societies and the emergence of new Forms of social, economic, technological, environmental, and transnational risk would put the A model designed by Roxin.

Contemporary criminal law would gradually expand its scope of application. shifting the focus from the concrete harm to legally protected interests to the abstract prevention of dangers.

Roxin (2006, p. 80) refers to Beck and his book on the *Risikogesellschaft* (Risk Society). Risk) and clarifies that in late modernity the so-called "risk society" emerges, marked by Production and diffuse perception of threats.

In this environment, the legislator would tend to allow punishability even at a stage prior to a... injury to legally protected interests, classifying conduct that occurred in stages prior to actual injury, with based on the mere creation of abstract danger to legal goods of a collective nature (2009, p. 28).

The effect of this process would be the progressive replacement of concrete harm with mere harm. presumption of dangerousness, breaking the material link between the crime and the actual damage (Roxin, 2009, p. 39).

The paradigm of *ultima ratio* would give way to a criminal law of a preventive nature and symbolic. The phenomenon of symbolic criminal law would demonstrate this inversion of logic, in which the



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This type of crime would be created not to protect actual legal interests, but to fulfill expectations.

social security and control (Roxin, 2009, pp. 24-25).

Under these circumstances, the legal good would then operate as a mere rhetorical label. Roxin (2006, pp. 50-51) would go so far as to state that the legal good as the notion of public health would be vague; Since the term "public" doesn't have a real meaning, it wouldn't be possible for something like public health to exist. existed in the strict sense of the word.

The same would apply to the idea of "public peace," which would concern a protected good. indirect, and grounds for punishment based solely on the suitability of to disturb such peace.

The proliferation of abstract endangerment crimes and mere conduct offenses demonstrates this. The trend toward proactive risk management. Roxin would warn of this risk, noting that the concept A legal good, when emptied of its material content, could lose its limiting function and to become an apparent basis for harsher penalties (Roxin, 2009, pp. 42-43).

The author warns that the rules cease to describe specific injuries and instead begin to state them. Abstract dangers, creating legal goods with a high symbolic charge that are impossible to grasp. empirically (2009, pp. 18-19).

Finally, Roxin (2012, p. 10) argues that criminal law norms "predominantly Symbolic measures should be rejected, as they do not generate concrete protective effects, serving only to... manifestation of ideologies.

The principle of subsidiarity dictates that punishment should only be imposed when it is impossible to impose a penalty. to achieve the same protective effect by less burdensome means (Roxin, 2006, p. 250).

This structural mutation reveals that Criminal Law, previously conceived as an instrument of The protection of citizens' freedom tends to evolve into a right to public safety. weakening the guarantee function that originally guided the system and impacting the very rationality of the limits of legitimate self-defense.

This shift in criminal protection, from concrete harm to abstract danger, would have an impact. directly impacting the rationality of self-defense, insofar as the legal good would lose substance. material and would become a symbolic category, weakening the criterion that allows us to measure the The necessity, proportionality, and legitimacy of the defensive reaction.

This undoubtedly opens the door to excessive responses that are disconnected from the protection of assets. concrete legal issues.

### **1.3.5. The legal good, legitimate self-defense, and grounds for protection and limits of the defensive reaction.**

Self-defense, as a cause for excluding unlawfulness, plays a prominent role in



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A reflection on the criminal protection of legally protected interests. Since natural law, the institution has been conceived as... expression of the right to self-protection and the preservation of individual liberty in the face of aggression unfair.

In this sense, Brandão (2015, pp. 111-112) would state that legitimate self-defense would be a reaction. natural human instinct, stemming from the very instinct for self-preservation, adding that even if If there were no legal system, there would certainly be defensive reactions.

Similarly, Toledo (1994, p. 191) would corroborate that the recognition of the faculty of Self-defense against unjust aggression does not constitute a state delegation, but rather the legitimation by legal order of a factual situation, in which the law prevailed over the unlawful act.

Feuerbach already saw it as a necessary reaction to the violation of the legal order, intended not only not to repel the attack, but to restore the balance between the conflicting interests.

Luz (2013, p. 40), analyzing the German author, would explain that the ontological foundation of his The view that self-defense stems from a violation of the social contract would be... The freedom guaranteed by a penal law would constitute a crime, understood as an action that contravenes... the subjective right of another.

With the maturation of legal doctrine and the development of the concept of legal good, the Legitimate self-defense would then be understood as an exceptional form of protecting essential values. subject to the principles of necessity, moderation, and proportionality.

In this step, Reis (2011, p. 143) would explain that the legitimacy of the anticipation of the injunction It would depend on the possibility of combining the protection of legal rights with a system that respects... fundamental rights and should not produce greater violence than that which one wishes to avoid.

Toledo (1994, p. 204) adds that legitimate self-defense would only be the human conduct that One should retaliate against unjust aggression with moderation, within reasonable limits of necessity. Therefore, one could not... To claim such an exclusion is someone who acts in response to an aggression that has already ceased, since the will to defend oneself... It only exists if there is an attack (Brandão, 2015).

In Roxin's functionalism, the foundation rested on the prevalence of the protected good over... the sacrificed good, which, in the face of unjust aggression, constituted a rupture of order, and the reaction it constituted the authorized means to restore it, provided that the value of the preserved asset was equal to or greater than that of the asset affected (Brandão, 2015).

According to Toledo (1994, p. 183), a balance must be struck between conflicting goods and duties. so that it becomes possible to identify in the sacrificed good a value equal to or less than that of the good being defended.

Still according to Toledo, it can be understood that the protection of legal rights found its limits in Structural criteria, which include the need to employ the least harmful means and the recency of the aggression. and moderation of the response. The defendant who does not know how to control himself and cease his reaction when... cessation of danger involves an excess that may be intentional, negligent, or excusable (1994, p. 203). This





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The reading suggests that legitimate self-defense should have an ethical limit, such that the reaction only occurs if...  
It would be legitimate when indispensable to the preservation of a person's freedom and integrity.

From this perspective, legitimate self-defense exemplifies the theory of legally protected interests.  
The offense that is justified is the one that preserves a superior material value, not the one that responds to impulses.  
subjective.

As Santos (2014, p. 95) explains, human dignity can be understood as a  
The value that embodies the promotion of the free development of the human being, moving away from a  
conception of reform and formal legitimation of norms and their validity (Figueiredo, 2014, p. 1088).

However, Roxin's interpretation reaffirms that force is only legitimate when exercised in self-defense.  
of freedom, since the necessary defense is based on the principle that the law does not need to regress.  
in the face of injustice (Toledo, 1994).

Thus, legitimate self-defense reveals itself as the space in which the legal good is exercised.  
Simultaneously fulfilling its function of protecting freedom and containing violence, thus affirming order.  
Legal action is only permitted to the extent strictly necessary for the preservation of essential legal rights.

## **2. The legal good, criminal policy, and criteria for legitimizing and limiting the power to punish.**

The concept of legal good would transcend the dogmatic domain of the theory of crime to assume  
The political-criminal role of legitimizing and limiting punitive power. A reflection on its nature.  
It would not be restricted to typicality, but would reach the axiological plane, in which reason itself is defined.  
of being part of Criminal Law.

Since Feuerbach, it has been recognized that punishment is only justified morally and legally.  
when aimed at protecting assets essential to social coexistence.

However, it was in Claus Roxin that the concept would reach its full political dimension.  
He believed that Criminal Law should only protect those goods essential to life in community, and only  
when other less burdensome means prove insufficient.

In this sense, it can be seen that Roxin argues that the concept of legal good still  
It plays an indispensable political-criminal role in limiting the power to incriminate and cannot,  
As some authors argue, it should be replaced by the principle of proportionality.

According to Reis (2011, p. 11), the theory of legal-criminal good would assume a political-criminal meaning.  
negative, functioning as a guiding criterion for criminalizing activity through imposition  
of a limit. In addition, Prado would establish that the criterion indicated for this was,  
primarily, that of the freedom and dignity of the human person, recognized as the foundation of  
political order and social peace (1997, p. 64).

Along these lines, the penal system could not serve moralization or social control, but rather act...



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as a subsidiary mechanism for the protection of fundamental values. Machado (2016, pp. 66-68) would explain Roxin understood, in his methodology, that only behavior that... could be punished. infringes on the rights of others and that criminal law is neither legitimate nor appropriate for education. morals of citizens.

Therefore, following Prado (1997), it can be stated that the subsidiary and *ultima ratio* action of this This branch of law confirms that its intervention can only occur in cases of serious harm to these individuals. vital assets for the peaceful coexistence of society.

This reinforces the dual role that the concept of legal good would assume, as we have seen, of to limit the legislator, preventing the use of punishment for ideological purposes, and to guide the judging body, restricting the application of Criminal Law to cases where there has been actual harm to the value constitutionally protected.

In contrast, Machado (2016, p. 77) concludes that the guarantee function is negated in the face of A modern criminal law system marked by an increase in transindividual offenses, which It weakens the legal rights of those who are targeted by the system.

Roxin (2009) warned that the symbolic use of Criminal Law would destroy its rational function. transforming it into an instrument of political power. This "symbolic criminal law" would consist of devices that do not generate concrete protective effects, serving only the expression of groups. ideological (Reis, 2011, p. 116).

Based on this model, a rational criminal policy must observe three material criteria, starting with necessity (*ultima ratio*), moving on to proportionality and ending with fragmentariness. Prado (1997, pp. 59-60) reinforces that criminal protection should be considered legitimate. when socially necessary to ensure living conditions and social peace.

The concept of legal good would thus conclude the theoretical cycle begun in the illustration, of being seen as the moral foundation of punishment and, now, understood as a political criterion for limiting power, consolidating itself as the democratic landmark of contemporary Criminal Law and an instrument of assessment of the action in self-defense.

These same political-criminal criteria are projected onto legitimate self-defense, since the The rationality that limits the state's power to punish should also limit individual defensive reactions. preventing the protection of legal rights from turning into excessive violence or preemptive actions. illegitimacy of criminal protection.

## CONCLUSION

This analysis has shown that the concept of legal good, far from being a category... While static, it constitutes a dynamic and central element in the legitimization of Criminal Law today.



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By traversing the historical-theoretical trajectory proposed in the initial objectives of the research, A shift in ideas about the institute was observed, moving through a more formal phase, of Subjective rights, as conceived by Feuerbach, arrive at a material and social conception. by Birnbaum and Liszt.

And, based on these foundations, a strong functionalist trend can currently be identified. Claus Roxin's teleological-rational approach in the analysis of the legal good institute, indicating that the The terminology gained status and became consolidated into a theoretical paradigm that seeks to balance effectiveness. of social protection in light of Constitutional principles and individual guarantees.

Regarding Roxin's thought itself, it has been demonstrated that his greatest The contribution was the integration of criminal law doctrine with constitutional values, through the idea of a criminal policy.

In this context, the legal good would cease to be a concept or a classification of facts. of life, to become an axiological filter of criminal policy, in which state intervention only occurs. This would be justified by the subsidiary protection of assets essential to free development. of human beings, as well as their peaceful social coexistence, according to their values. constitutional.

Thus, the legal good fulfills the dual function of foundation and limits, in the field of Functionalist thinking, given that it legitimizes the *right to punish* by identifying the value to be protected and the It contains (the punitive power) by prohibiting the criminalization of conduct that lacks harmfulness or that whether they are motivated by purely moral or ideological reasons.

Regarding the impacts of the so-called risk society and the expansion of criminal justice, the research It became clear that the Roxinian paradigm would face several challenges, especially when considering... that the anticipation of criminal protection and the creation of collective legal goods, which tend to be vague, such as "public peace" or "collective health," threatens to empty the material content of harmfulness. indicating that there is still room for expansion and improvement of the debate.

Nevertheless, Roxin would persist in establishing the requirement of a real legal good and constitutionally anchored as the effective antidote against so-called "Symbolic Criminal Law", which would use the rule to produce a false sense of security at the expense of freedom. individual and the requirement of specific harm.

In the field of self-defense, the study confirmed that the legal good, when located in the center of the penal norm, it acts as a rational and functionalist benchmark to assess moderation and proportionality of the defensive reaction.

Self-defense, based on Roxin's conception of legal good, would cease to be a permission. In an abstract sense of retaliation for the violation, it is configured as an exceptional legal protection of assets. of life, certainly in the face of injustice. The legitimacy of the necessary defense would therefore rest on



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prevalence of the protected value (the legal good of the human person) over the legal good that would be sacrificing, under the scrutiny of necessity and material proportionality, anchored in values constitutional.

In this context, the theory of legal goods, as reconstructed by Claus Roxin, offers a A criterion of resistance to the expansion of punitive measures and the symbolic use of Criminal Law, requiring that both state criminalization of individual defensive reactions should remain strictly linked to protection of specific legal assets that are constitutionally relevant and materially capable of being protected. harmfulness.

Preserving this rationality proves to be an indispensable condition for Criminal Law, And perhaps, Brazilian Criminal Law will maintain its guarantee-oriented and democratic vocation, preventing that... legitimate self-defense does not become an instrument of excessive violence, or the state's power to punish is not exercised. deviate from its constitutional limits.

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