

## **Sanction**

Sanctions are reactions of the society upon deviant behavior. The term originates from law. There it continues to be used for international relations only. Anthropologists have adopted the term for the social sciences (Radcliffe-Brown 1934). For modern sociology the concept of sanctions has become a central element of the social norms theory which serves for the explanation of social integration.

### **1     Patterns of Social Behavior**

#### *1.1   The Classification of Patterns*

For the variety of patterns of social behavior exist a whole range of terms which, however, are not clearly defined: usage, habit, custom, folkway, moral, convention, fashion, standard, rule, or law. For sociology the notion of social norms has become prominent. A social norm is a pattern of behavior which has become binding for the members of a group because it is protected by sanctions. Patterns of behavior without sanctions are just habit or routine. Sanctions only make patterns of behavior obligatory.

#### *1.2   Regulation Without Sanctions*

In everyday life there are plenty of patterns without a special control mechanism. Usually they are not called norms but usage, habit, routine or standard. Nevertheless this kind of patterns shows a high degree of compliance because they are expedient or at least they help with the necessity to make a choice.

In general patterns without sanctions dominate the less important fields of social life. Yet in premod-

ern stateless societies there exist basic patterns of behavior which lack the character of a binding social norm. Even though there is no rule prescribing marriage almost everybody is married. The reason is to be found in the many disadvantages which are connected with the position of a bachelor. He or she has little reputation and suffers economically because nobody helps him with his work. When ill or aged the bachelor is without protection and care which can be expected from children only. These negative consequences are not intended as punishment. But they suffice to let people behave uniformly (Nadel 1953).

### 1.3 *The Sanction as Criterion for a Social Norm*

Society has available a big arsenal of social pressure which brings about conformity of behavior. She who does not behave friendly or does not observe punctuality is forgoing social contacts. He who does not dress himself according to fashion and age risks not to be taken as serious. These and many other kinds of social pressure, however, are highly diffuse. Therefore it makes sense to draw a line where the social pressure becomes specific by taking the character of a sanction. Sanctions are negative consequences which do not come about automatically but which are afflicted upon the deviant by a social group or its members to demonstrate that the deviant behavior will not be accepted. This specific and narrow notion of the social norm originates from the work of Theodor Geiger (1947) who has elaborated the difference between customary behavior and binding rules and the conceptual relationship between sanctions and the effectiveness and validity of social norms. Sanctions can be applied only after the infringement of a social norm. The meaning of sanctions is, however, prospective. According to Geiger the validity of a social norm consists of the continuing expectation of sanctions in case of deviant behavior.

Legal rules, particularly the norms of criminal law, serve as the main example for social norms in this narrow sense. This makes the notion of social norms a key term for legal sociology. At the same time it demonstrates that law norms are only a subset of the much broader realm of social norms.

## 2     **Sanctions**

### 2.1   *The Intentional and Rule-Based Character of Sanctions*

The armory of sanctions stretches from verbal reactions like scolding, warning and lecturing to corporal punishment, from a mere declaration of the norm violating behavior through the inflicting of economic loss or the forfeiture of privileges to imprisonment, from the disturbance of cooperation through ostracism to death penalty. Even procedure may sometimes serve as a sanction (Feeley 1979). However, mere gossip or internal disapproval are no sanctions. For a sanction it is necessary that the deviant shall become aware of it. Sanctions are intentional of character. Individual revenge is not enough, either. For a sanction it is essential that the offense consists of violating a rule and that the regular incidence of a reaction against the wrongdoer is an integral part of the rule itself.

### 2.2   *Positive and Negative Sanctions*

Sanctions normally are negative. They consist of the infliction of disadvantages or the deprivation of privileges. Positive sanctions, i. e. rewards for compliance with social norms are the rare exception. For the law negative sanctions like penalties and damages are typical. It is difficult to mention a positive legal sanction other than the reward for

the honest finder. However, the asymmetry of positive and negative sanctions is not restricted to law. Compliance generally does not evoke explicit approval of the social group. Only during education norm abiding behavior gets rewarded more often. Unspecific consequences for compliance like trust or reputation are not a response to a single action but tie on an overall evaluation of a person's behavior. Special rewards are given not just for compliance to general norms but he who did more than could be expected gets a premium, e. g. someone who saved a life wins a medal of honor. General social norms which form the body of standard expectations are armed only with negative sanctions.

The reason for the lack of positive sanctions is to be found in the scarcity of positive goods. Positive goods that can serve as rewards need not to be material or economic. Social esteem, praise, honors, and medals can do it as well. Yet these immaterial rewards are not unlimitedly available, either, because they depreciate quickly if dispensed generously. Negative sanctions, by contrast, are available almost at will. They cost little or nothing and help the dispenser sometimes even to a gain. Of course, the problem of scarcity has changed over time. The social wealth has grown to an extent that considerable means for the distribution as rewards are on hand. Negative sanctions are not anymore always for nothing. Humanity prohibits the "cheap" corporal punishment. Modern detention has become very expensive. On the other hand, the elevated level of wealth opens also new opportunities for negative sanctions because already the denial of normally expected benefits, e. g. for unemployment compensation, or maintenance, or the forfeiture of a privilege like the driving licence can work as sanctions.

The lack of positive sanctions causes a problem for the law because psychology has demonstrated that rewards are more effective for learning than punishment. Positive sanctions also avoid the negative

spiral which is often elicited by punishment when the punished himself perceives the punishment as aggression and answers with anti-aggression.

### 2.3 *Repressive and Restitutive Sanctions*

The opposition of repressive and restitutive law has been introduced by Durkheim as an element of his theory of legal evolution. It is, however, useful for the analysis of sanctions, too. Legal theorists find the meaning of damages in mere restitution and would not consider the award of damages a sanction or punishment (see *Remedies/Damages*). Only if damages are increased over the real loss of the victim (punitive damages) the character as a sanction becomes clear. However, the understanding of the inflicted actors is different. For them also mere restitution is a kind of penalty. The theorists of Law and Economics (see *Law and Economics*) back this understanding by attributing liability a strong preventive effect.

## 3 **The Organization and the Mechanism of Sanctions**

### 3.1 *Behavioral and Sanction-Norms*

Not always but often the breach of a social norm hurts someone. More than anyone else the victim is motivated to sanction the deviant. However, this kind of reciprocal sanctioning is always in danger because the deviant could try to resist. In this situation the stability of the norm would depend upon superior power on the side of the victim. Only if third parties intervene the norm can be enforced by sanctions against equals or even against a more powerful person. Where the reaction to an offense is not left to self help but socially organized a web of social relationships emerges which is conferring stability to the norm.



In smaller undifferentiated groups sanctions can be imposed by the entire group. Occasionally even large groups can react collectively, e. g. by a boycott. Yet normally larger and more differentiated groups establish special persons who are responsible to watch the observance of the group norms and in case of violation to apply sanctions. Third parties like mediators, ombudsmen, umpires, or courts are installed to administer sanctions. This kind of persons can be called sanctioning subjects.

Punishing someone for violating a social norm does not only carry a risk of retaliation by the sanction's target but brings about additional social costs. It seems as if people do not think highly of others who engage in sanctioning. Without a need for restitution or the internal revenge motive ordinary group members have little incentive to bear the cost of the sanction themselves. The involvement of special subjects in the process of sanctioning can overcome this problem if the sanctioning subjects get rewarded be it by status be it materially.

With regard to the sanctioning subjects it makes sense to differentiate between primary or behavioral norms and secondary or sanctioning norms. Behavioral norms demand from their addressees a specified conduct. Besides exist special norms which are directed at the sanctioning subjects telling them to act if the primary norms are violated. Around these sanctioning norms a cluster of additional rules can develop which give advice about procedure and cooperation between functionaries. A significant stage of legal evolution has been reached with the regular and orderly participation of third parties in the administration of sanctions.

### 3.2 *Intensifying and Waiving Sanctions*

In everyday life as well as in law it can be observed that sanctions are intensified if the offender breaks the same or a similar rule again. More interesting is the opposite strategy of provision-

ally waiving a sanction (Spittler 1970). In ongoing relationships it is often the case that misconduct is discovered but no sanction is applied. This strategy can serve different goals. Very often, particularly between equals, a kind of reciprocal immunity prevents sanctioning every norm violation. In other situations the provisional waiver of sanctions serves to build a credit which obliges the deviant to obey the norm in the future. A similar purpose is connected with the legal institution of probation.

Even more important is the strategy of ignoring misconduct. It would in fact be impossible to sanction every case of unlawful behavior that comes to the knowledge of those who are able to impose sanctions. However, for the norm in order to be taken seriously the group has to save the expectation that a breach of norms will have negative consequences. A common strategy of impression management is just to refuse to take notice of the deviant behavior. This strategy of ignorance has a preventive effect as it saves the group members responsible for applying sanctions of becoming overwrought. At the same time it leaves deviance invisible increasing the well established fact that people usually underestimate the extent of misconduct, particularly of crime. The latency of deviant behavior has a positive function for compliance. If crime and criminals appear to be even more exceptional than they are in reality the authority of rules and sanctioning subjects stays intact (Popitz 1968).

#### **4 Functions and Effects of Sanctions**

##### **4.1 Prevention by Deterrence**

The basic model is that of a rational actor who is deterred by negative sanctions and motivated by positive ones. It is for sure that sanctions can have preventive and deterrent effects. However, when

it comes to details, the connection between norm, sanction and behavior is dependent on many variables. Research on sanctions is extensive and has brought about many details (see *Prevention/Deterrence*). However, sanctions do only partly account for norm abiding behavior. Compliance with social norms is embedded in a cultural system, and it is dependent upon complex psychic and situational variables (see *Compliance/Legal Obedience*). People abide by the social order in countless situations where they could do otherwise with impunity. In most situations compliance is not directly a consequence of rational choice.

Nevertheless, the model of the rational actor who chooses between the advantages of deviant behavior and the risk of being sanctioned is basically sound. It tells that the effect of sanctions is dependent on the perception which the addressee of a social norm has about the kind of sanction and the certainty and swiftness of its application. Empirical research indicates that the risk of detection is usually overrated while the severity of punishment is underestimated. In addition, there is a moral factor: The expectation for sanctioning increases with the moral condemnation of the norm violation and even more so the assessment of the severity of punishment (see *Knowledge about Crime*).

A positive relationship between the severeness of the sanction and its effect cannot be denied, either, but it seems to be weak. It is common to refer to historical and actual examples which shall demonstrate that the increase of a punishment has had not any or only little effect and that particularly extraordinary high penalties have failed as instrument for deterrence. The most prominent example is of course capital punishment (see *Death Penalty*). If a norm is in accordance with moral convictions of the public every serious sanction is sufficient to bring about considerable compliance. It is not important,



either, that the sanction is applied frequently and rigorously.

#### 4.2 *Sanctions as Retaliation*

Social norms generally are restrictive. They are experienced as requiring one to act against his or her short-term self interest. The burden of abiding social norms is usually shouldered without much consideration. However, if others make light of normative restrictions and thus gain advantages over their group fellows who obey the norm the basic psychic mechanism of reciprocity calls for compensation. The need for retaliation is felt particularly strong from those personally offended. Sanctions enable expressive behavior by offering a legitimate opportunity for revenge.

#### 4.3 *Sanctions as Support for Normative Behavior*

The basic function of sanctions is that of deterrence and prevention. However, Luhmann (1983) stresses that this function may be secondary only. He starts to explain his theory of social norms as expectations which are safe against disappointment by differentiating between cognitive and normative behavior. Expectations of every kind can be disappointed. The disappointed may react by learning, i. e. by recognizing that her expectation was unrealistic and must be foregone. This is the cognitive mode of dealing with expectations which is common in science as well as in the marketplace. The disappointed can, however, stick to her expectation, i. e. she can behave normatively. Normative behavior is difficult to hold out. The actor has to fight cognitive dissonance and his environment may blame her for not learning. Therefore the actor who holds on to her expectations even if they have been disappointed from addressees needs support for a new interpretation of the situation and find ways to express her

normative behavior. The situation must be interpreted in a way that the disappointment has nothing to do with an error or naivité but that the blame is on the part of the deviant. His behavior has to be explained by variables which he could not command. Historic examples are witchcraft and other supernatural forces. Modern explanations rely on illness, force majeure or social constraints, or they refer to bad intentions or guilt of the deviant. Explanations of the disappointment are accompanied by expressive behavior by which the disappointed demonstrates that she is determined not to learn but to hold on to her expectations. Sanctioning points to the perpetrator as the person who has to learn. From this point of view sanctioning serves first to internally fight cognitive dissonance, second to demonstrate to observers normative behavior, and only third though not least to influence the deviant person and others in a way that prevents future disappointments

## 5      **The Reaction Definition of Deviant Behavior**

If taken verbally deviant behavior is constituted by an act which violates a social norm. However, in modern criminology the notion of the deviant person has partly lost its reference to a violation of a special norm to which society answers with a specific sanction. The model of norm and sanction has the advantage of conceptual clearness. It misses, however, quite often reality. In reality it is often difficult to operationally connect a social norm, a violation of the norm and a specific sanction. To grasp the dynamics of social life it needs a more complex analysis of deviant behavior: (1) Instead of isolated social norms a cluster of partly overlapping, partly contradictory legal and social patterns of behavior and expectations comes into consideration. (2) The focus is not any more on specified sanctions but on the instances of social control which care in preventive, restitutive, and repressive ways for social order. (3) Most important: In-

stead of a singular violation of a norm which gets as response a specific sanction a process of career-like entrapment in a deviant role can be observed. During this process deviant actions and reactions of social control screw each other up. Finally a person is "labeled" as deviant not so much because he violated certain social norms but because he has fallen victim to the sanctioning machinery of society.

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# International Encyclopedia of the Social & Behavioral Sciences

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November 17, 2000 / jd

## Encyclopedia Entry "Sanctions"

Sehr geehrter Herr Röhl,

Thank you in advance for helping us to offer excellent entries in an encyclopedia that will hopefully be around for quite some time.

As you know, there has been some discussion of your entries entitled "Law and popular culture" and "Sanctions" with Professor Lauren Edelman, one of the editors responsible for the area of Law. Based on several reviews which Professor Edelman and I have obtained, our decision is to work toward accepting one of the two entries prepared by you for publication in the *International Encyclopedia of the Social and Behavioral Sciences*.

I am very interested in keeping the entry on "Sanctions." To improve its quality I have made use of the editorial procedure of this project which includes a review by a group of experienced readers coordinated through my office. The readers are peers of high stature.

They are asked to review the entries simulating the role of a potential Encyclopedia user. Please consider this process as a means to help us reach the highest level of excellence possible. We would appreciate your tolerance for this approach and hope for your cooperative spirit.

It will be necessary to pay careful attention to the following list of queries and suggestions compiled by the reader:

1. The notion that "sanction" is used only for international relations seems to be a translation problem. The German word "Sanktion" does not have the identical scope of usage as "sanction."
2. If sanctions in international relations are mentioned, a brief overview over their scope — e.g., economic boycott etc. — would be useful.
3. Section 1 on patterns of social behavior leads away from the topic. There is nothing wrong with defining "sanction" as a criterion for social norms, but the way to get there takes some detours. The last part (5. The reaction definition...) is apparently supposed to close the circle. However, this last part focuses more narrowly on criminal sanctions and criminology.



4. Section 2.2 on "Negative sanctions" leaves me a little helpless. The problem goes away when we speak of rewards or incentives. There is no quote as to an ongoing discussion of "positive sanctions" in social sciences.
5. In Section 3, I feel that third party involvement, procedure and legitimacy deserve an extra caption.
6. Among "Functions and effects" (Section 4), civil liability is missing. Does the author make a point in 2.3 that liability for actual damages is not a sanction? This is unclear to me, and doubtful, too. At least punitive damages could be mentioned again under 4.
7. Are restoring order or other symbolic functions of sanctions not worth mentioning?
8. The Bibliography seems a little arbitrary, but this may not be the case.

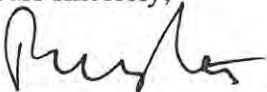
I very much hope that you are willing to engage in revisions based on the reader's suggestions. In my experience, the field of law is one of those where there are large national differences in conception, argument, and methodology. Therefore, I hope that the revisions suggested by the (German) reader are in line with your own thinking. Thank you in advance for your cooperative spirit.

The revision (which can also be submitted in German and then translated) should please be sent as an attachment to Julia Delius (delius@mpib-berlin.mpg.de). **The final deadline for final manuscripts (in English) is January 15, 2001.** Entries received at a later point in time cannot be included.

I hope you will be able take the comments into account. Please keep in mind that we are striving for encyclopedic coverage.

We look forward to hearing from you.

Yours sincerely,



Paul B. Baltes

Cc: L. Edelman  
N. Smelser



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Bochum, den 31.01.2001 Kn.

Encyclopedia Entry „Sanctions“

Sehr geehrter Herr Kollege Baltes!

Sie vermuten ganz richtig, dass ich keine Überarbeitung des Sanktionenartikels beabsichtige.

Ich hatte viel Arbeit in den Artikel „Law and Popular Culture“ gesteckt. Herr Edelman hat ihn mit der Begründung zurückgewiesen, der Gegenstand sei durch andere Artikel abgedeckt. Ich kann diese Begründung aus drei Gründen nicht akzeptieren.

Erstens: Überschneidungen mit anderen Artikeln sind nicht mein Problem.

Zweitens: Ich habe die Nähe zu anderen Artikeln durchaus gesehen und, wie ich meine, erfolgreich versucht, Überschneidungen dadurch zu vermeiden, dass ich mich auf popular legal culture als wie media legal culture konzentriert habe.

Drittens: Ich sehe in der Begründung von Herrn Edelman eher einen Vorwand. Der eigentliche Grund für die Ablehnung liegt wohl darin, dass ich mich offen gegen die in den USA maßgebliche Konzeption der cultural anthropology wende, indem ich von einem staatszentrierten Rechtsbegriff ausgehe. Ich sehe daher in der Ablehnung eine Art von Zensur.

Was den Sanktionenartikel angeht, steht es mit den von Herrn Edelman vorgebrachten Einwänden nicht viel besser. Sein Hinweis, ich hätte Durkheim nicht gebührend berücksichtigt, beruht schlicht auf einem Missverständnis. Auch Ihre Einwendungen kann ich nur zum Teil akzeptieren.

Zu 1.: Wenn ich richtig sehe, reden auch in England und in den USA die Juristen nur selten von sanctions, wenn sie Strafe oder Schadensersatz meinen. Von Sanktionen reden eigentlich nur Soziologen. Wenn man Platz hätte, könnte man natürlich erklären, dass im juristischen Sprachgebrauch die Sanktion(ierung) ursprünglich gar nicht die Reaktion auf einen Normbruch war, sondern die feierliche oder förmliche Bekräftigung einer übernommenen Verpflichtung.

Zu 2.: Ein Überblick über die in internationalen Beziehungen praktizierten Sanktionen verbietet sich schon aus Raumgründen, könnte aber vielleicht durch eine Verweisung erreicht werden.

Zu 3.: Für mich ist die Charakterisierung der sozialen Norm mit Hilfe der Sanktion ein Kernstück. Norm und Sanktion gehören zusammen. Um das deutlich zu machen, scheint mir der erste Abschnitt unverzichtbar.

Zu 4.: Der Abschnitt über positive Sanktionen ist sicher in erster Linie meine eigene Zutat. Aber an der hänge ich. Die Idee zu dieser Gegenüberstellung stammt immerhin von Dahrendorf. Das muss sicher kenntlich gemacht werden, ist aber unterblieben, weil der Homo Sociologicus nicht so recht in die Bibliographie zu passen schien.

Zu 5.: Die Beteiligung Dritter ist nach meiner Ansicht in 3.1, 2. Absatz hinreichend betont. Natürlich kann man hier auch noch das Verfahren erwähnen. Dazu hätte ich einiges zu sagen (vgl. Anlage). Aber zu näheren Ausführungen ist kein Raum. Dann bringt auch die Erwähnung nichts. „Legitimation“ ist wie Qualm, der sich überall verbreiten lässt, aber nur bei kontrollierter Handhabung nützlich ist.

Zu 6.: Civil liability sollte nach meinen Vorstellungen mit 2.3 hinreichend bedacht sein.

Zu 7.: Der Symbolbegriff ist, ebenso wie der der Legitimität, so schwierig, dass es m. E. wenig Sinn macht, ihn beiläufig - mehr wäre nicht machbar - zu erwähnen. Der Begriff der sozialen Ordnung passt nicht recht zu meinem handlungstheoretischen Zugang.

Zu 8.: Die Bibliographie ist in der Tat unbefriedigend, und ich hätte sie gerne ergänzt, obwohl das nicht ganz einfach ist, da die Literatur aus meiner Sicht zu sehr kriminologisch orientiert ist.

Ich schreibe Ihnen das alles, um Sie wissen zu lassen, dass ich Ihre sachlichen Einwände durchaus ernst nehme. Aber das ändert nichts mehr an dem Ausgangspunkt: Man kann nicht zwei Artikel bestellen und dann nur einen abnehmen. Dann gibt es gar keinen.

Mit freundlichem Gruß

(Prof. Dr. Klaus F. Röhl)