

THE CRIME OF ABUSE OF AUTHORITY AND BREACH OF LEGAL DUTY UNDER THE PENAL CODE OF THE STATE OF SONORA: A LEGAL AND ETHICAL ANALYSIS OF PUBLIC POWER MISUSE IN MEXICO

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ABSTRACT:

This paper analyzes the crime of abuse of authority and breach of a legal duty as defined in Article 180 of the Penal Code of the State of Sonora, Mexico. It explores the ethical and juridical dimensions of the misuse of public power, focusing on how actions or omissions by public officials erode institutional legitimacy and public trust. Using a juridical-comparative approach supported by Mexican jurisprudence and international legal theory, the study examines both the legal structure of the offense and its ethical implications for governance. The findings reveal that both abuse of authority and breach of duty constitute fundamental deviations from the principles of legality and moral responsibility. These crimes not only harm individuals but also weaken democratic accountability and ethical integrity within public administration. The research concludes that the effectiveness of sanctions depends not only on legal enforcement but also on the promotion of institutional ethics, civic participation, and transparent governance. Strengthening these mechanisms is essential to restoring public confidence and ensuring that state authority serves the collective good rather than private interests.

Keywords: *Abuse of authority, breach of legal duty, public ethics, governance, corruption, accountability, Mexico, criminal law.*

INTRODUCTION

The misuse of public power represents one of the most persistent challenges to democratic governance and institutional integrity in Latin America. In Mexico, this issue manifests through the crimes of *abuse of authority* and *breach of a legal duty*, codified in Article 180 of the Penal Code of the State of Sonora. These offenses penalize public officials who, through action or omission, violate the trust placed in them by society and act against the public interest.

Abuse of authority occurs when a public official exercises power arbitrarily, exceeding or distorting the legal faculties granted to them. Conversely, the breach of a legal duty involves omission—failing to perform a mandated responsibility, often due to negligence, corruption, or personal interest. Both offenses undermine the ethical and legal foundations of the state, eroding confidence in public institutions and weakening the rule of law.

As López Betancourt (1997) and Díaz de León (1998) emphasize, the abuse of public authority distorts the original purpose of state power, transforming an instrument of justice into a tool of domination. Similarly, Roxin (1963) and Rojas Vargas (2007) observe that omissions in public duty represent not only procedural negligence but also ethical betrayal. Such transgressions challenge the legitimacy of governance and compromise the moral social contract between the state and its citizens.

This paper adopts a juridical-comparative perspective to examine how Mexican criminal law, specifically that of Sonora, addresses these offenses. It seeks to understand how legal structures interact with ethical imperatives to

regulate power and ensure justice. The analysis combines doctrinal interpretation, case law, and ethical reasoning to illuminate the relationship between law, morality, and governance.

THEORETICAL FRAMEWORK

2.1 Abuse of Authority as Misuse of Power

Abuse of authority arises when a public servant acts beyond the scope of their legal authority, causing harm to individuals or the public administration (*López Betancourt, 1997*). It is both a legal and ethical transgression, as it converts legitimate power into an instrument of arbitrary control. According to Díaz de León (*1998*), this crime occurs when an official performs acts exceeding their legal competence or disregards duties prescribed by law. Martínez Garnelo (*2001*) asserts that authority must always serve public interest, not personal ambition. When authority is exercised capriciously or to satisfy personal desires, it becomes an abuse of power and loses its moral justification. Rodríguez Manzanera (*2000*) similarly describes abuse of power as the deliberate use of public authority for purposes that cannot be legally or ethically justified.

Zaffaroni (*2005*) situates this offense within the theory of “power crimes,” arguing that it reflects the corruption of institutional mechanisms designed to uphold justice. When state actors misuse their authority, they weaponize legality against the very citizens it is meant to protect. The abuse of authority thus represents a critical form of structural violence within the state.

2.2 Breach of Legal Duty and Omission as Ethical Violation

While abuse of authority involves acts of commission, breach of a legal duty concerns omissions. Roxin (*1963*) conceptualizes these offenses as *infringements of duty* (*Pflichtverletzungsdelikte*), committed when a qualified subject fails to fulfill an obligation derived from their position. Such omissions, when deliberate, violate the institutional trust that legitimizes public office.

Rojas Vargas (*2007*) expands on this concept, explaining that crimes of omission within public administration undermine the ethical framework of governance. Public officials are custodians of justice and collective welfare; their failure to act represents a moral collapse of their institutional role. The breach of duty is thus both a legal infraction and an ethical failure, as it disrupts the equilibrium between responsibility and authority.

2.3 Public Ethics and the Legitimacy of Power

The legitimacy of public authority depends on adherence to principles of justice, transparency, and proportionality (*OECD, 2021*). When officials act beyond these principles, the damage extends beyond immediate victims to the moral foundation of governance itself. Abuse of authority is therefore not only a personal crime but a structural pathology that corrodes the ethical core of public administration.

Ethical governance requires institutional mechanisms—codes of conduct, accountability systems, and civic oversight—that prevent authority from devolving into domination (*Secretaría de Salud, 2022*). The Sonora Penal Code reflects this dual imperative by combining penal sanctions with preventive ethics. Nevertheless, the persistence of such offenses reveals the need for deeper integration between law and morality in the regulation of power.

METHODOLOGY

This study employs a juridical-comparative and documentary research design. The analysis is based on:

1. The Penal Code of the State of Sonora (2022);
2. Jurisprudence from the Supreme Court of Justice of the Nation (SCJN);
3. Scholarly works in criminal law and public ethics; and
4. Comparative insights from international conventions such as the Inter-American Convention against Corruption (OAS, 1996).

3.1 Juridical-Comparative Approach

The juridical-comparative method allows for interpreting Article 180 of the Sonora Penal Code within both national and international contexts. By contrasting doctrinal opinions with jurisprudential applications, the study identifies conceptual gaps between legal theory and enforcement practice. This approach clarifies how Mexican criminal law operationalizes ethical principles through specific penal norms.

3.2 Analytical Procedure

Data collection involved a review of primary legal sources (codes, judicial opinions, legislative records) and secondary sources (academic books, articles, and legal commentaries). Each citation was categorized according to whether it referred to:

- (a) the nature of authority;
- (b) the limits of legitimate power;
- (c) omission as a form of misconduct; or
- (d) the ethical implications of governance.

A thematic analysis was then conducted to synthesize doctrinal principles and jurisprudential interpretations. Extracts from SCJN decisions were used to illustrate the application of Article 180 in real cases involving police officers, prosecutors, and administrative officials.

3.3 Scope and Limitations

The research focuses specifically on the State of Sonora, though the legal reasoning applies to other Mexican jurisdictions with analogous penal frameworks. The study does not conduct empirical surveys but relies on textual and jurisprudential interpretation. While this limits generalizability, it ensures conceptual depth and doctrinal precision.

RESULTS AND DISCUSSION

4.1 Legal Configuration of the Crime

Article 180 of the Penal Code of the State of Sonora defines the crime of abuse of authority and breach of legal duty as offenses committed by public officials who, through action or omission, overstep their lawful powers. Penalties range from four to eight years of imprisonment, fines between forty and five hundred Units of Measure and Update (UMA), and disqualification from public office (*Código Penal del Estado de Sonora, 2022*).

The article details specific behaviors constituting abuse: unlawful use of public force, unjustified violence, denial of legal protection, improper financial gains, and arbitrary detentions. Each scenario illustrates how the misuse of authority directly threatens the rights and dignity of citizens.

4.2 Jurisprudential Interpretations

Judicial precedents confirm that abuse of authority is proven when a public official, acting within their formal duties, commits an unjustified act of violence or coercion. In *SCJN Case 215/2001*, the Court held that “the act of exercising public functions without legitimate cause constitutes sufficient evidence of abuse.”

Other rulings distinguish abuse of authority from related crimes such as torture, coercion, and negligence, emphasizing that the defining element is the misuse of legal competence. The Court has also clarified that the offense can coexist with other crimes, such as injuries or illegal detention, if distinct protected interests are harmed.

4.3 Ethical Dimensions and Institutional Responsibility

Ethically, the abuse of authority represents a breakdown in the moral contract between government and society. When officials exploit power for personal or political purposes, they transform legal authority into a tool of domination. As Martínez Garnelo (2001) argues, authority divorced from service becomes tyranny disguised as law.

The breach of duty through omission is equally corrosive. When public officials ignore their responsibilities—such as failing to report crimes, protect victims, or enforce judicial rulings—they perpetuate a culture of impunity. This omission violates not only legal norms but also the ethical expectation of diligence and justice inherent in public service (*Rojas Vargas, 2007*).

4.4 Comparative and Ethical Perspectives

Comparatively, similar offenses exist under other jurisdictions. For instance, Spanish penal law (Article 404 of the *Código Penal Español*) and the U.S. federal statute 18 U.S.C. § 242 (*Deprivation of Rights Under Color of Law*) both criminalize abuse by public officers. These parallels underscore the universality of ethical governance as a legal imperative.

Ethical frameworks from the *Organization for Economic Cooperation and Development (OECD, 2021)* and the *Inter-American Convention against Corruption (OAS, 1996)* emphasize that sanctions alone are insufficient; public integrity must be cultivated through education, transparency, and civic empowerment.

CONCLUSION

The crimes of abuse of authority and breach of legal duty embody a critical intersection between law, ethics, and governance. The legal analysis of Article 180 of the Sonora Penal Code reveals not only the juridical mechanisms for punishing misconduct but also the moral principles that justify the existence of such sanctions.

Public power derives its legitimacy from legality, but its sustainability depends on ethical conduct. When officials act arbitrarily or negligently, they betray the foundational trust that enables governance. Effective prevention requires not merely punitive enforcement but systemic reforms that strengthen civic oversight, ethical education, and institutional transparency.

Ultimately, the Sonora framework exemplifies both the progress and the limitations of Latin American legal systems in addressing power abuse. The legal system must evolve from reactive punishment to proactive integrity, integrating law with ethics to restore the credibility of the state and safeguard democratic governance.

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