

The Relation Between Law and Morality

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ABSTRACT: Most specialists agree that between law and morals there is a close connection, because the moral principles of good, justice and truth are appliances and promoted by the rule of law, even if the right and the moral retains its identity. However, over time, their views on the problem of knowing what is the relationship between law and morals were contradictory. Between law and morals, I consider that there is only an apparent contradiction, because the two concepts are complementary. The right would seem a trap for lawyers in that could make them to resist the temptation to not see beyond the letter of the law, given that the need for law enforcement and understanding of its spirit. A true man of law must not only know the law but also to look beyond it and realize that the main attraction of the moral law.

KEYWORDS: law, moral, philosophy, religion, rationality

Introduction

Morality, according to doctrine, represents a set of concepts and rules about good or bad, right or wrong, allowed or not allowed. The norms of morality are the creation of society or social groups. Also, moral norms indicate to people, like norms of law, the necessary conduct and show the consequences of non-observance of this behavior, namely moral sanctions that are different from legal ones.

The law is the system of norms established or recognized by the state for the purpose of regulating the social relations according to the will of the state, whose observance is guaranteed by the coercive force of the state. Researching various aspects of law highlights the specific and essential features that determine the notion of law and thus delimits the law from other phenomena. However, between law and morality there is a close connection, of mutual conditioning. Thus, the law embodies within it moral principles, protects and guarantees fundamental moral values, and at the same time its fundamental force is given by its moral obligation. For legal rules to be effective, they must comply with moral standards that are accepted by their recipients.

History of the relationship between Law and Morality

The issue of the relationship between morality and law has been the concern of legal thinking since antiquity. If in ancient Greece there wasn't yet a clear delimitation between the two concepts of social norms, the Roman legal theory, being very preoccupied with the improvement of the legal system, took important steps to conceive the independence of the law in relation to morality. Originally, as the percept of the law, there was only the traditional *sum cuique tribure* (to give to everyone what they deserve), *neminem laedere* (to not bring any harm to anyone) being later mentioned.

The legal doctrine has had great difficulties from the very beginning in delimiting the concept of law from that of morality. According to a conception of doctrine, the sphere of law and morals would interpenetrate or the law would be a minimum of morality.

Aristotle (1996) believed that there must be a relationship of subordination between law and morality. So he said that as soon as the supreme goal of promoting virtue disappears, "the law becomes a simple convention, being merely a guarantee of individual rights, without any disruption to the morality and personal justice of the cities".

Morality is a foundation for law in Cicero's (1995) view also. Cicero is considered to be the first and one of the few lawyers who appreciated that justice, being a social ethic, presupposes people's love for others, an idea that was later taken over by Christianity as well. Of course, the origin of law is in nature because good and evil, being principles of nature, are judged in accordance with it. In this sense, the evangelist is the passage in the work of *De Re Publica*: "Yes, there is a righteous, true, rational law according to nature, engraved in all hearts, immutable,

eternal, whose voice dictates our debts, whose threats hinder us from to evil, without ever having her precepts pretended to be good or to move the wicked”.

Mihnea Jida (2013) asserts that the philosopher Ch. Thomasius was the first who, from the theoretical point of view, made a distinction between law and morality. In his essay, *Fundamenta Juris Naturalae et Gentium* (1705), he considered that law is distinguished from moral content, because moral obligations are imperfect because they do not provide for sacrifices, while legal ones are perfect with sanctions.

From the perspective of Immanuel Kant, which was distinct from ancient philosophy, moral action prevails. This, inherent in itself, allows it to subordinate the moral right, within the distinction between the two, the law to only external relations. So morality is a limit for the law, and it cannot act on the moral sphere of being. Although there is a distinction between these two concepts, law and morals still have a common link: the fact that both originate a common reason.

Also in the philosopher I. Kant's (2013) view in the book *The Metaphysics of morals*, morality is based on the consciousness of individuals, not on the fear of sanction, in the work of *Metaphysics of morals*, but we believe that the moral corresponds to rights which consist in the moral possibility of coercion in the fulfilment of moral obligations with the help of the public opinion. Hegel (2015) considered morality to be a motivation of law, and that it does not separate from it, but gives it substance by securing means within the sphere of law. Morality is an intermediate stage to the idea of law, and both law and morality must be subordinated to ethics. There are also authors who have gone to the other extreme in the sense that they exclude any connection between morality and law. Hans Kelsen (1962), for example, believes that the science of law is pure theory of law and that, in his research he must abstain from moral or political influences over the law.

Specific features

Even though, unlike morals, the law regulates external conduct, there is no difference in nature or purpose between the rule of law and the moral rule. Moreover, even in its most technical appearance, law is governed by moral law. The only difference is character; the moral rule being invested with much more forceful means of enforcement (the possibility of state constraints that may intervene in case of violation).

In the attempt to establish a major distinction between ethical and legal, we observe that the sphere of morality is wider than that of law, regulating behaviour in the most diverse social relationships. But this does not mean that all norms of law are included in the sphere of morality. For example, legal rules of a technical nature, such as civil or criminal procedural law, do not usually include a moral appreciation.

Another distinction is that moral norms are not usually written norms, which are not necessarily included in some official documents, because they are the product of the unorganized social collective. Instead, the rule of law has an official form and is the result of the official activity of state bodies.

According to Momcilo Luburici (2014), compliance with moral norms is not guaranteed by the coercive force of the state, as in the case of the rule of law, but by the action of social factors, public opinion, education, etc. Thus, the social environment reacts to the immoral facts through public abuse, contempt, etc., and the one who committed an immoral act and is conscious of it, may have reproofs of conscience, evil opinions, etc.

Mircea Djuvara (1999) argued that “the foundation of law and morality is the same, the idea of obligation” and that “morality has as its object the regulation of internal affairs”, and “the law has as its object the regulation of our external material facts in light of our intentions”. Although the law cannot interfere with the inner processes of the individual because it has as its object the regulation of the external manifestations of the individual, that is, the relations with the other people, the morality needs to penetrate into the law, sanctioning it where necessary.

In Ripert's (1927) opinion, morality has as fundamental values the principles of good, righteousness, justice and truth, values that are promoted and defended by the law.

Conclusions

Thus, the principles of law originated in morality, this being the cornerstone of the law. The core of the distinction between legal and moral norms, according to Del Vecchio (1993), is that “the law constitutes objective ethics and the moral subjective ethics”.

In order to be able to correctly determine the relationship between law and morality, we must take into account the fact that only morality, as a duty, is related to the law, it can be transposed into legal norms, but we cannot regard morality as aspiration to be related to law, centered on virtue.

Although the law is autonomous, it must not be taken to the extreme, because there is a risk that, if it escapes from rational and moral control, atrocious legislation like Nazi Germany will be built. A right which is not in the service of morality and which does not aim to spread human virtues is no longer a right. Because the right is rational, its violations will only be regarded as accidents, because the recipients who leave themselves to reason will respect it by conforming. Only a rational right can hope to be respected principally in such a way. Thus, legal sanction, as an essential element of any legal norm, is only exceptionally manifest in law.

The primary purpose of the law is the realization of justice, so it is a means by which justice is done, since the entirety of the law represents a multitude of rules and principles that clearly derive from morality. Thus, the end of the law is also morality.

Jurisprudence must appeal, when necessary, to moral principles and equity, because the law cannot regulate all possible situations. On this issue, Aristotle (1996) has an interesting parable, a comparison that he made between the moral rule and a lead ruler that was used by the inhabitants of the island of Lesbos. This ruler was made of a more flexible material; it could be more easily moulded if the measured material had bumps. Thus, the rule of law may be likened to a lead ruler, which may undergo changes in some cases.

Most fundamental principles of law derive from morality, so a true lawyer must always look beyond the letter of the law and identify his spirit.

Whatever the views of the differences between law and morality, they are nevertheless complementary. The lawyer who dominated the Romanian legal scene in the interwar period, Micescu (2000), states that “*law is a kind of morality, but a morality imposed, with the guarantee of securing the respect it owes. In other words, the law is the morality of those who do not have morals ‘and that unlike other sciences who’ are content to find what it is and to express what it finds, the law has an extra claim: after having found, after has noticed, after detaching the relations as they are, to judge them under the angle of view of moral values and, instead of looking with resignation to what it is, to impose with authority what must be.*”

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