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Law and Morality: An Apparent Contradiction

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Abstract: The issue of the connection between law and morality has been a constant concern of philosophers and jurists. The theories that develop this theme vary from a direction in which law is identified with morality, to the point where the law is being denied any influence of the morality. Although we observe that there are similarities and differences between law and morality, still the legal norms that govern the human activity in the society and that can be imposed at a given time by the public force makes the object of the legal science that has very close relations with the morality.

Keywords: law; philosophy; legal law; moral law; morality

1. Introduction

From the beginning we must emphasize the fact that it is not only the law that establishes the rules of the social conduct. The Romans, through the jurist PubliusJuventusCelsus (67-130 AD) defined the law as "arsboni et aequi" (the art of good and equity), but exactly the goodness and fairness were specific categories of the morality. Among the precepts of the Roman law we find both moral principles and principles of law. For example, the jurist-consult DomitiusUlpianus (170-228 AD), the adviser of the emperor Alexander Severus defines the principles of law as follows: "Iurispraeceptasunthaec: honestevivere, alteram non laedere, suumcuiquetribuere". (The precepts of law are these: to live honestly, not to harm

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another, to give everyone what they deserve). Here we can notice that the first two principles are moral principles, and the last one is a principle of distributive law.

2. The Notion of Morals and the Moral Law

It is clear so far that morality is a science of goodness and happiness, in relation to good morals. The term morality is closely related to the Latin adjective moralis, which is nothing more than the translation of the Greek ἦθος (ethics) into Latin. Cicero (De fato) preserves in his letters the meaning he had in Greek-moralis, being in fact, in close connection with the noun mos-moris, which means habit. At Seneca we find for the first time the term philosophiamoralis used, nowadays in widespread use. The field of research of the morality is represented by the human deeds or actions; of course we refer to the conscious and free deeds and actions of the man. Instincts, reflex acts, automatisms done out of fear or coercion do not fall into its realm.

From what can be seen above we can say that morality is the science that establishes and presents in a systematic and critical way the true norms according to which man must coordinate his life and activity for the achievement of good (Mladin, Bucevschi, Pavel & Zăgrean, 2003, p. 8). There are some other definitions of morality such as: "Morality is the science of moral values and laws" (Baudin, 1936, p. 30) or "the scientific exposition of human deeds in relation to their value" (Andrutsos, 1947, p. 1).

In a moral sense, the law is a guide of the human actions for the realization of the good or a prescription or a mandatory provision of a lasting nature, given and promulgated by the legitimate authority, in order to promote the public good. Its first characteristic, from an objective point of view, is the necessity (the law is necessary), and from a subjective point of view, the obligation; this means that the moral law is absolutely necessary for the moral order, and man has the obligation to fulfill it, not out of coercion, but out of his own conscience. By this characteristic the moral law differs from the laws or rules of art, grammar, mathematics or other sciences, by the fact that the latter can be respected or ignored, without the person suffering any lack, or any punishment, or receive any reward for their observance. The moral law, being an unconditionally obligatory law, cannot be consciously and voluntarily disregarded without punishment or any lack, which means that its obedience cannot be left to the good of man, but it is imposed as unconditionally compulsory.

From the moral law comes the natural moral law and the positive law which in turn includes the divine positive law and the positive human law. The positive human law includes the church law and the state civil law.

3. The Civil Law and the Notion of Law

Every human society, in order to exist and be able to maintain itself, needs certain laws. The state, as a form of organization of the society, must manifest itself through its organs and as a legislator. So the state is not only justified, but it really has a duty to give laws for the good of its citizens. One of the most complex definitions given to law in the legal literature is that of H.L.A. Hart, who, starting from a definition of the law given by his predecessors such as Hobbes, Bentham and Austin, which he then dismantles, writes: "*Wherever there is a legal system, there must be an authority that issues orders, which are generally respected, and there must be a threat of repercussions for those who do not respect them. Threats are met in the event of disobedience, and the authority implementing them is supreme and independent. Therefore, the laws of a country are orders given (generally reinforced by threats) by a sovereign or his subordinates acting under his authority*" (Hart, 1994, p. 99).

Speaking of the right to legislate of the state and of the laws that it gives as a legal or juridical activity, and about laws as norms of law, naturally the question arises: what is the right?

From the analysis of the process of the emergence of law, we notice that it was formed and it acquired personality through the gradual detachment from the norms of morals and habits. We can say that morality precedes law and that both of them have evolved in close interdependence.The notion of law has several meanings from which three main meanings can be deduced.

1. The first meaning is that by which the right is considered as an objective of the virtue of justice, a virtue that claims to be given to everyone what is his. In this respect, law means the good to which every man is entitled by his nature. This is how the Roman jurist Ulpianus defines it when he says: "*Iustitia est constans et perpetua voluntas ius suum cuique tribuendi*" (Justice is the steadfast and permanent will to grant everyone their right).

2. Another meaning of law is its objective meaning: the totality of rules, precepts and laws that govern the human activity in the society and which can be imposed at a given time by the public force (Pușcă, 2010, p. 9)

3. The last meaning of law is the subjective one: the faculty of an individual to have, to do or not to do something, which he takes advantage of compared to others in the society in the exercise of his activity (Pușcă, 2010, p. 9)

A contemporary philosopher wrote that "law is not just unless it is opened to a moral order that transcends it without impiety on it" (Trigland, 1999, p. 105)

4. Law and Morality

The notion of law, as we have seen above, can be considered both objectively and subjectively. We have seen that in its objective sense the law represents the totality of rules, precepts and laws that govern the human activity in the society and that it can be imposed at some point by public force. These legal norms constitute the object of the science of law which has very close relations with morality. However, from these relations we can observe that between law and morality there are also similarities and differences, namely:

1. Among the similarities, we can mention:

- both law and morality study the laws according to which the activity of people in the society must be guided, laws that impose certain precise duties on people, for which many human actions, as well as many debts, fall under the rule of both laws of law, or legal as well as moral laws (example: murder, theft, slander, etc.);

- in their entirety the legal laws, meaning the law, includes and expresses a minimum of ethical requirements, but of a fundamental importance, without which the order in the social life of people would be impossible. It is therefore clear that "any rule of law contains a minimum of morality".

2. Among the differences, we can mention:

- the rules of law coincide only in part with the moral rules, in fact fixing, in a precise form, only the moral requirements absolutely necessary in the social life;

- the norms of law regulate only the external aspect of the human actions, and do not refer to their internal aspect (intentions, motives, purpose), while moral norms address primarily to the conscience. Therefore, from the point of view of law, an

act can be perfectly legal, even if in reality it is not moral at all. Hence the saying: "Summum jus, summa injuria" (supreme right, supreme injustice).

- whereas the law, by its rules, takes into account the so-called elementary relations of people, relations which makepossiblethe social life, its rules are given by the state and provided for by external, coercive sanctions, so their observance can be imposed at any time with force. The situation is not the same with the moral norms, the observance of which is left to the discretion of the conscience, which can grant internal sanctions to those who do not respect them, or sometimes to that of public opinion, sanctions that do not have the same value for all people.

In "Nicomachean Ethics", Aristotle (384-322 BC) wanted to separate the "legal justice" (το δίκαίον) from the "moral justice" (δίκαιοσύνη). (Aristotel, 2012, p. 105) The first one is based on "equality", while the second one refers to the other, which the Gospel calls "your neighbor" (Luke X, 27-36).

The same great thinker of antiquity, Aristotle, states that the "legal justice" proceeds from the nature of things (κάτα φίσιν), while the "moral justice" derives from the "human nature", which actually determines any kind of guilt and any liability (criminal or moral) (Trigland, 1999, p. 110).

The "criminal justice" determines error in accordance with the existence of equality among people; it follows an approach that goes from the object to the subject, from the criminal act to the offender. But, if the law remains a means of protection of the human being through equity, morality, instead considering that it goes beyond the law, wants the freedom of man and, implicitly, the respect for the personal dignity of each one. This respect implies the perception of the reality of injustice, and, implicitly, the reality of the freedom of law which is a corrective freedom, of the freedom of a legal error committed against the natural law (Dură, 2003, p. 441).

According to the word of St. Paul, the natural law is enshrined in the law of nature. "The heathen that have no law, by nature they are of the law, these, having no law, are their law. Which shows the deed of the law, written in their hearts, which accuses or defends them" (Romani II, 14-15). It has been said over time that the ancient people (Babylonians, Persians, Assyrians, Egyptians, Romans, etc.) confused law with the morality. However, of all the ancient people, the Romans overcame this confusion, a proof that since the ancient times the norms of law were designated by the term "jus", and the religious ones by the term "fas" (Molcuț & Oancea, 1995, p. 5-6). It should be noticed that in the antiquity no clear distinction

was made between the religious-moral norms and the legal ones, because both of them were considered to be the result of a divine will, and their content did nothing but transform the divine will (voluntas Dei) into norms of life (lex vitae). Then, we must also notice the fact that at the Romans both the linguistic form and the content of the laws had a religious attire, so that the contracts were concluded in a religious form. For example, the form that the conventions took to become contracts was the religious one. The most important contracts in this form are the religious "sponsio" (promise) and the "jusurandum liberti" (oath of enslavement). (Molcuț & Oancea, 1995, p. 238).

Initially, even the international law (jus gentium) had a religious-moral character. It is known, for example, that among the Romans, the international issues fell within the competence of the senate and a priestly college (college of fetishists), led by a "Pater patratus", which had a special role in dealing with disputes, war, peace alliance treaties, according to a certain ritual. The fetishists applied the rules contained in a code of a religious character, called "jus fetial", containing the first germs of "international law" (Diaconu, 1995, p. 26).

In the ancient times, therefore, we cannot speak of a so-called confusion between jus and fas, because then all divine and human laws were considered to spring from the will of the divinity hence the formula commonly used at the time, namely "fas est ", that is allowed by the gods and permitted by the law. It was not until 449 BC, when the "leges XII Tabularum" (laws of the XII tablets) were published, that we could speak of a distinction between what is permitted by the gods and what is not permitted by law (per legem not licet).

We can only talk about a real distinction between fas and lex from the 4th century AD, when the Christian religion became the religion of the Roman Empire (380). However, the emperor continued to be considered the "Anointed One of God" (canon 69 Trulan), until the collapse of the Byzantine Empire (1453), from where the idea was transferred to all the European states, including the Romanians, and the laws continued to be issued in the name of the divinity and the legislator, be he the emperor, the king, the ruler, the prince, etc.

For us, the Romanians, the "Romanian law", referred to in the Rules of the Country (from Govora, 1640, from Târgoviște, 1652, etc.,) first of all presupposed the observation of the Christian moral law. We know more that once, in the Romanian Lands, the Rulers had "oppression only on God and the law". (Cantemir, 2011, pp. 92-93), ie the divine law (moral-Christian) and the human, nomocanonical state and church law, both results from a synergetic, the divine-human will. It is

therefore inappropriate to speak of a so-called confusion between law and morality or of overcoming this confusion by using the two notions of "fas" and "lex", because we can speak only of a true rupture between sacred and profane in the modern age, but even then this happened only partially and not everywhere. That this has not been completely consumed and that the connection between fas and lex has been preserved to this day is shown by the practice we encounter in some courts in Europe or overseas, where swearing on the Bible or invoking the name of the Divinity is still a reality. At the same time, we must not forget the fact that the profane is nothing else "than a new manifestation of the same constitutive structure of man, which before, manifested itself through sacred expressions" (Eliade, 2005, pp. 13-14).

Moral norms have no legal value and do not operate through coercive (coercive) measures. And yet they are binding even in international law, often being respected under the public pressure. The principles of moral law influence all branches of the international law, civil, criminal, etc. For example, the "international morality - no matter what religious and moral principles are violated (Mosaic, Buddhist, Christian, Islamic) - influences international law, in the sense that more and more rules of morality and equity, being respected by states, have enriched the international law, becoming its rules. Violation of the rules of morality and fairness, on the other hand, has a negative effect on the international law. Conversely, respect for the international law ensures the promotion of morality in the relations between the states, in which moral values, even unprotected by the rule of law, are respected (Diaconu, 1995, p. 11).

Among the Romanians, the notion of "law" had, among other things, the meaning of "religious, Christian, orthodox faith" (Cernea & Molcuț, 1996, p. 55) which expresses, as the philosopher Constantin Noica says, "to bind from within, through faith and conscience", what was transmitted to the Romanians through the unwritten law, that is, through "old man" (custom). It is no coincidence, then, that when the Nomocanonical Collections (Country Rules) appeared, people called them the "divine law" or the "God's law" (Dură, 2003, p. 445).

Unlike law, which ensures compliance with legal norms, enshrined in the law, through the form of coercion, morality ensures compliance with the rules of human coexistence, usually not written, usually by secular traditions. Or, it is precisely through this custom that the moral relations between people were established, who found in their religious faith the support and the criterion of judging their deeds. In the last decade of the last century, Professor Antonie Iorgovan considered that we

cannot talk about "the moral recovery of the country without the moral recovery of the government and the administration, and the latter are not possible without professional elites and elected officials" (Iorgovan, 1996, p. 344).

Hence the clear conclusion that there is a close connection between law and morality, between what is right and what is unjust. This connection is confirmed not only by the historical reality of human life, yesterday and today, but also by some theorists of law, hence a natural conclusion: there must be no law without morals, without the assertion of healthy humanistic moral principles, always considering goodness, justice and fairness, precious values of the European humanism, as they are provided by the moral law, of biblical origin and required by the universal human rights, being valued as a "religion" of human beings, today and tomorrow (Năstase, 1992, pp. 1-2).

With regard to these universal human rights, the Charter of the Fundamental Rights of the European Union states in its preamble that the Union is founded on the indivisible and universal values of human dignity, liberty, equality and solidarity; it is based on the principles of democracy and the rule of law. The Union places the person at the center of its action, establishing citizenship of the Union and creating an area of freedom, security and justice" (Carta Drepturilor fundamentale ale Uniunii Europene/ Charter of Fundamental Rights of the European Union, p. 1). This Charter of the Fundamental Rights of the European Union, which provides for "freedom of thought, conscience and religion", as well as "freedom of expression and information", also presents the values of the universal ethics, which are found in the religious-moral norms of the great religions.

5. Conclusions

Nowadays, obviously we might ask ourselves: can the sentence pronounced in a court decision, which does not take into account the elementary principles of a moral law, unanimously universal, also be right?

We clearly notice that there is no contradiction between the legal norms and the moral norms, but on the contrary. There is a close correlation, a specific connection that makes the two categories of norms intertwine, complement each other, borrow from each other the most realistic and valuable elements.

At the same time, the modern law has the obligation to include in the content of the legal norms those provisions of morality that are dominant in a human community,

bringing them into line with the interests of the state. The field of the morality is much wider than that of the law; law is included in the sphere of morality, which appreciates in the terms of its values the legal order and its values, while the legal order together with its values does not censor in any way the moral order.

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