Short considerations about moral and religious foundation of commercial law

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Abstract

The contents of this paper analyzes the relationship between morality, religion and commercial law through an interdisciplinary research of the issue. The approach of such a vast topic aims to provide a view that demonstrates the moral and religious foundation of commercial law

Keywords*: morals, religion, commercial law, private law, public law, European Union law*

Argumentum

The contents of this paper analyzes the relationship between morality, religion and commercial law through an interdisciplinary research of the issue. The approach of such a vast topic aims to provide a view that demonstrates the moral and religious foundation of commercial law, especially because, according to some contemporary authors, there are three main concepts in the philosophy of law regarding morality, religion and law. We'll not dwell on them, they only be mentioned.

The first concept, with which we also agree, refers to the undeniable moral content of law, and we'll try to further demonstrate without being labeled as some apologists in the religious, but only to argue that the establishment in business and in our daily life of a moral and religious behavior, respecting the rule of law in obedience to God, the supreme legislator, is about the divine essence of man.

The second concept was founded by philosopher Hans Kelsen who in his fundamental "Rechtslere Reine" - Pure Theory of Law, published in 1934, removes morality from the content of the law and does not identify any link between the two. Kelsen assigns legal norms two features: the validity and effectiveness; the first designates prerequisite of the rules and is a Sollen, the second expresses their role and belongs to Sein. More specifically, rules and facts, respectively must be and it is are part of different worlds because they do not derive from each other and the validity of any rule of law in any legal system legislation is only a logical approach towards a clear distinction between legal norm analyzed as reality (Sein) and the rule of law taken as ideal (Sollen), Kelsen recognizing a single relationship of law, the

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relationship with the state, the law complying with state (“Alles ist Staatsrecht Recht, Staat ist jeder Rechtsstaat”)[1].

The third concept is sociological, mixed, recognizing the existence of legal norms with moral content, and of the rules in no relation to morality. To these, we present comparatively the three major areas of social life (morality, religion and law) starting from their common denominator, their interferences, but also what distinguishes them.

About morality

So what is morality? Morality is defined as "all rules of coexistence, of behavior of people to each other and to the community and whose violation is not punishable by law, but by public opinion " [2], and French dictionary "Petit Robert" in 1982 edition defines morality as "the science of good and evil; the theory of human action in its quality of being subject to duty and aims good; the rules of conduct considered absolute manner; set of rules of conduct arising from a certain conception about morality".

In the same vein is the term from the Greek, dikaion, expressing what is right and what is just, moral, and there is no other notion to define the two terms separately. Aristotle, in the Nicomachean Ethics Book V, defined law as any behavior that conforms to moral laws.

Morality has a prominent place in society, is a phenomenon always present, whether it is widely recognized or appears in a "hidden" form and morals is based on several principles: dignity, responsibility, freedom, solidarity, justice and charity and in a first meaning, the narrowest, would address the relationship between individuals of the same family, then the individuals of the same community, because in its widest sense to define all human relationships and all kinds of human activity regardless of their particular content and meaning. However, the moral term is equated with the ethics, although some authors have contrary opinions and avoid putting the sign of equality between these terms. Therefore, we have to see and what is ethics.

“Explanatory Dictionary of the Romanian language" in its 1975 edition defines ethics as “the science that deals with the study of moral principles, their laws of historical development, their class content and their role in social life; all rules of moral conduct of a given class or society”.

Ethics is a science, and its development was delayed by perpetuating the same type of knowledge, and in general, the same methods of Aristotle, and an understanding of ethics is difficult for us as individuals, as a sound ethics is the very essence of a civilized society. Ethics is the foundation on which all our relationships are built, it means our whole to relate to our neighbors, employers, employees, colleagues, customers, subordinates, suppliers and to the community in which we live. Ethics is not about the connections we have with others - all have links with each other - but the quality of these links.

Studying ethics as a practical discipline - called applied ethics - as the last current approach to this science, had a very important contribution in the fields of law, medicine, in which the legal ethics - or jurisprudence - and medical ethics are well-established topics, but also in business, approaches that have had an important contribution to the development of Business Administration as a subject in most faculties. For example, Harvard University, at Faculty of Business launch adopted pedagogical models developed by its faculties of law and medicine, in which the ethical approach of discipline has an important role. This was due to the fact that some teachers and businessmen found it necessary to impose the values accepted in business practice. There was a legal basis for incorporating this concept of business ethics; is supposedly contained in a decision of the U.S. Supreme Court, in 1906, which stated: „Corporation (company) is the creation of the state, and is meant to exist for community's good."

Finally we can say that the ethics knowledge developed in space "in width", by bringing new events or other determinations in the field of morality and less in depth, by widening the meanings and deepening the determination of moral considered phenomenon; otherwise said, the history of ethics is more a history of continued development of a single integrated way. In addition, the class character of the moral and social-historical determination of ethical doctrines was also factors that have hindered the realization of such an integrative approach [3].

About Law

3.1.Introductory Matters Regarding Law

An attempt to define law is as bold as it is delicate, especially that during the time law was given more definitions and is unlikely to encompass in an analysis. Yet, the concept of law has its origin in Latin directus which means straight line, direction.

In Latin, the notion of law as a set of rules is designated as jus, which denoted formulas justice was expressing, both notions translated into Romanian by one term: drept. A similar solution we find in English where right has the meaning of straight, direct, fair, or of the right of person (individual right), and the notion of objective right is designated by the term law.

In common law countries we translate right by law, and the primary source of law in the United Kingdom or the United States is found in the case law and not in codes, rather in the cases the judge decides than the paths indicated by the state [4]

The first definitions of the law are assigned to Roman Juris consults. Among these we note the definition of law by reference to the morality given by Celsus in Digesta: jus est ars boni et aequi (law is the science of what is good and fair); Ulpian said that "law is the knowledge of things divine and human, the science of what is right and wrong" (iuris prudentia est divinarum atque humanarum rerum notitia, iusti atque iniusti scientia); Cicero wrote in De Republica that the law is quidem vera lex, recta ratio, nature congruens difussa in omnes, constants sempiterna (it is a true law, right reason, in conformity with nature, spread in all, constant, eternal). Later, other authors have defined the law by the idea of equality (Thomas d'Aquino), by individual freedom (Kant), by the common good (Jean Dabin) or social interest (J. Rawls). Mircea Djuvara identifies law as "representative of a sacred ideal, bearer of highest aspirations which society has, towards justice and morality." [5]

Law bases its existence and functionality on principles, is directed by essential norms which support the whole legal framework, as in morals and religion we have principles, strict or holy rules we respect without hesitation or, at least, avoid to violate.

3.2. Principles of law

Principles of law are those guiding ideas of the content of all legal norms. They guide the development and application of legal rules in a branch of law or of the entire legal system, with strength and significance of superior general rules that can not be expressed in the texts of normative acts, usually in the constitutions, or that are not expressly formulated but are drawn in the light of promoted social values.

According to contemporary views the principle is defined as "a standard that must be respected, not because it will advance or protect an economic, political or social situation, considered desirable, but because it is a requirement of justice and

equity or another dimension of morality and "principles have a dimension that rules do not have - the dimension of weight of importance." [6]

The word principle comes from the Latin principium - beginning, origin, having also the meaning of fundamental element. Every principle is thus a start, in the ideal plan, a source or cause of action [7]. Principles of law are persistent elements, structurally perennial of legal normativity, true „invariants of the law", but not yet immutable, recording a socio-historical content and slower dynamics. A renowned contemporary professor, in a known work [8] retains and analyzes the principles of law: legality (legal functioning of the state with the principles of sovereignty and democracy), freedom and equality (reference is made to comply with both general and individual freedoms without any discriminatory elements), responsibility (individuals relate to legal norm actively and consciously), equity and justice (without which there would be no safety of social life).

Aristotle said that it is a peculiarity of the people to possess a sense of justice and injustice, and that they share a common understanding of justice, which creates polis. Principles of justice define an appropriate route between dogmatism and intolerance, on the one hand, and reductionism, on the other hand, which considers religion and morality as mere preferences [9].

3.3. Moral ontology of law. The ethical and legal system

About morality in the development of legal rules, about compliance with a moral foundation in close connection with the society requirements, we can only say that it is still of great interest, even if it was and continues to be an issue that has preoccupied the great theorists, philosophers and practitioners of law. The moral is, as I said, a social phenomenon by genesis, by its structure, by its functions and its historical evolution, a phenomenon that led to creation of a moral system governing the nature of human relations, morality appeared at a certain stage in history and it lasts as long as mankind.

Regarding the analysis of the occurrence of the law it shows that it is formed and acquired personality through gradual separation of religious and moral norms and customs, and in its embryonic stage extracted essential legal and moral norms, customs representative to human communities and their specific religious rules [10]. Morality, designed as fully homogeneous in which elements intertwine, can be regarded as a system, surpassing unilateral analysis and recognizing the complexity

of this phenomenon. Seen thus, the ethical system has so many common points, spheres of interference with the legal system that often law was defined by morals, considering that it is nothing but a “minimum of moral.” [11]

The law, unlike ethical system, there is not a coexistence of individuals, but their coexistence based on axio-ethical criteria. The law is limited to people relations between them; these relationships involve self-awareness, crystallized in self and the other’s consciousness, crystallized in you, he, that otherness, ad alterum; a ratio of cooperation, i.e. to commit to work together, or adversity, i.e. misfortune and cannot be other reality than self-conscious individuals and of the other able to choose partners or opponents on a value criterion [12]. As juridical and ethical are dimensions of the same social activities through which are established relationships between people, relations which often are both legal and moral, legal reference to the moral rules seems natural. Not the same opinion has Oliver W. Holmes, rising up against the confusion between law and morality, which is almost impossible to accomplish [13].

4. About Religion

4.1. The concept of religion

According to dex online religion means that “system of beliefs (dogmas) and practices (rites) regarding the sense of divinity that unites in the same spiritual and moral community all those who adhere to this system; all relevant institutions and organizations; religion; faith; belief; worship; discipline taught in schools, aimed at educating and training students in the spirit of religion."

Etymologically the term religion is derived, as is known, from the Latin word religio, whose etymology is, however, controversial. Thus in a first draft and supported among others by Augustine it was indicated as a source both religio (relegere=to bind, to collect, to gather), meaning that it requires belief in the existence of a link between man and divinity. A second version, with the source relego (relegare = gather again, to resume, rereading), which would have implied meaning of bringing acts of worship to the deity has been deducted by Cicero [14]. This word contrary to nerelegare (neglecting) refers in its primitive meaning, at the respect of all concerned worshiping gods, echoing the Roman conception of religion. Another etymology less grammatically correct, but given the proper meaning of Christian religion is that of Lactantius [15] , who inferred the word religion from

religare (to bind, to join) in the sense of union with God. However, this purely etymological aspect will continue to inspire philosophical debates until God will light the best sense.

But what is meant by religion? This is where discussions between researchers of religious phenomenon intervene. Most of them agree that the idea of Deity is part, of necessity, from the concept of religion, others reject this view. The definition of religion is therefore a controversial issue. Things can be simplified if we take the meaning of the word religion in the ordinary sense of „set of beliefs, feelings, moral rules and rites from the consciousness of individuals or communities that are related to a supreme being or beings more superior they depend on" [16].

From another perspective a definition states that every religion is a „form of social consciousness which is characterized by belief in supernatural beings or forces through a religious ceremony and the existence of appropriate institutions and organizations." [17]

Religiosity, as an attitude of respect and attraction to invisible and therefore its reporting to visibly is shown to be an attested feature of the human, of humanity in general. Everywhere and always, the man was, is, and undoubtedly, will be homo religious (religious man), just as is the homo faber (man creator), homo ludens (man who plays) etc. [18]

From a doctrinal, psychological, institutional, etc. point of view the great religions know an incomparable historical stability relative to other social and spiritual phenomena. Viewed overall, the main religions known today (Christianity, Islam, Judaism, Confucianism, Buddhism, Hinduism) presents a multi-secular and millennial historical continuity. Changes in the historical development of major religions have steps and specific forms. It is no less true that the historical development of religions exists and, despite appearances, the trends of modernization of religion is not an invention of our time. [19] Religion is essentially an act of faith, expressing itself through denominations and religious practices. Faith is of another order and operates with another language than science. In the concept of the believer, is the certainty that God does not need to be demonstrated (appealing to evidence such as miracles, angels army etc.) to exist [20]. Characteristics of some religions, especially Christianity and Islam, through the eyes of report it laid with moral and legal rules are subject to distinct sections.

4.2. Religion and law. Moral rules and legal requirements

The link between religion and law are inevitable in history and contemporaneity. Nowhere law was born with secular physiognomy which has in modern times: Authority that has law finds its basis in the divine origin attributed to rules of law. It was noted that the state is built on three different forces: material force, of coercion, specific to law which is effective when employed against a minority, the majority giving its moral support to the law; the force of reason (specific to morals) on the logical necessity of the law and enforced by man as a social being, considered present only to a tiny minority, even in civilized societies; mystical sense based on emotionality, intuition, belief in divinity (of religious origin).

If religion is based unquestionably - by definition – on mystics, moral and law also rely mostly on the mystical feeling. Of course, at first, in the history of states, the law was be confused with religion in the sense that rules of law are considered as emanating from the divine. Little by little, the institutions secularize leading to demarcation more or less pronounced between religious and secular functions and institutions, to separate church and state. But in this case the connection is kept latent, diffuse, at psycho-social level, between law and religion. Traditionally in the evolution of religion and law in the minds of Al. Vălimărescu has shown the existence of three phases:

a) a first stage represented by the total confusion, both on the field of public law and that of private law, the law with religion (here are met two forms: theocracy - direct rule of society by gods like Pharaoh in Egypt or Jehovah in Hebrew and monarchy by divine right - government by representatives of divinity, at ancient peoples: Persians, Chinese, Greeks, Romans);

b) the second stage puts us in the presence of gradual emancipation of private law from religion, by the emergence of economic, political, social, demographic factors;

c) the third phase is the separation of religion by law, at least in a formal sense, on the political ground when sovereignty will not be of divine right, but as popular right.

Secularization of public law was achieved with the French Revolution. The father of modern democracy itself, JJ Rousseau, has called his system a „civil religion”. As the absolute monarch had lives and property of its subjects in the name of God, so the „general will" as Rousseau conceives, will have life and property of

citizens. As I said, “Thou shalt not steal!” is not only a moral rule or a "commandment” of religion, but a regulatory or legal prescription. Even if not afraid of divine punishment and even if no qualms thief should fear the "long and relentlessly arm" of the law. Clear distinctions can be made between legal and moral prohibition of theft?

First, the authority that requires legal prescription is, like God, heteronymous, but unlike the Divine Being, it belongs to the earthly world, it is always a political institution, administrative or judicial Parliament, Government, Presidency, Prefecture, City and so on. Requirements imposed by the legislative power are protected and enforced, if necessary, by force by the police, prosecution, courts, courts of appeal, etc. Rather, the moral norm is autonomous, being respected as an individual is himself convinced of his reason and will, of its universal validity. He who doesn’t steals only by fear to withstand the rigors of the law can always be tempted to acquire other property whenever it feels safe from the legal consequences of his act - whether it is satisfied that it will never be found, whether rely on certain immunities possible a corrupt and inefficient judicial system. While a truly moral person will not steal again, whether or not exposed to danger from the rigors of the law after his act.

Secondly, the subject of legal requirements is always circumscribed within groups “subject” of certain institutional authority. As a citizen of Romania I have a legal obligation to pay the taxes I owe the Romanian state, according to our road code I’m bound to drive with the car on the right, when traveling in England, however, I’m obliged to respect the laws of British, to pay at British customs for certain products I introduced in their country and if I want to get to the destination safely, I must drive on the left side, as unnatural and uncomfortable as it may seem. Instead, the subject is always generic moral norm: Nobody has the right and is not right to steal, whether Romanian citizen, British or Pakistani and whatever the law on theft in each country.

The most significant difference appears between legal and moral sanctions. Typically, law doesn’t provide awarding penalties, only punitive. Respect for the law is not rewarded, as it represents a duty or obligation, at most one can say that law enforcement entails an indirect reward as citizens gives the correct entitlement to state protection in the exercise of his freedoms. Nobody expects a reward from the authorities for not stealing, lying, cheating or not killing anyone. Instead, the scope of the law is full of penalties for violators. These punitive sanctions are most often

physical or material fines, damages, confiscation, imprisonment, suspension of certain rights, etc. Repentance or remorse of the convict matters little or not at all. No one will be exempted from legal punishment due to after stealing because he is sorry; on the other hand, after having served his sentence, a thief on the loose resumes life as though nothing happened, even if to himself he has no regrets at all for stealing, but only the misfortune of being caught and convicted. In the sphere of morality, things are not so at all. On the one hand, moral behavior entails awarding penalties - like praise, respect, admiration and gratitude of others - or punitive - blame, reproach, scorn and disgust of others. Beyond these rewards or punishments from outside, the strongest and most specific moral sanctions are those that come from within each individual consciousness. They are mental or spiritual distress; one who has sinned against conscience is punishable only by regret, repentance, remorse or shame, in which a strong moral will is born desire and determination not to repeat the same mistakes and, if it can, the intention of correcting the wrong done to himself or others.

The form of normative expressions can be of great use when we want to distinguish moral rules from legal requirements. Most times, a legal prohibition is accompanied by a moral prohibition, but not vice versa. “Thou shalt not steal," "Thou shalt not kill," Thou shalt not lie” etc. are both legal and moral prohibitions. “Thou shalt not be greedy," "Thou shalt not be lazy!" are moral prohibitions that have no equivalent in legal terms. But the most characteristic difference is that, where the law only issue a ban, adds moral duty or obligation that cannot be imposed by external authority of the law, but only the inner consciousness of each individual. Morality requires you, as the law, do not steal, do not lie, do not murder, etc. but only morality requires you to be generous, selfless and even magnanimous. It's not good enough to not take from another; a man with a strong moral conscience accepts it's his duty to impart from his fullness to those who need and deserve support. It's not enough to not lie, a moral man feels compelled to tell the truth, even if this takes some risks. Not enough to not murder; morality requires you to do everything in your power to save a life in danger. No one can be called before the judge because he wanted to give his brother or neighbor a sum of money he needed to treat his sick wife or child to send to school. No one may be legally condemned for being silent when not asked, did not disclose the injustice or wickedness of which he was aware. As no one can be charged to court for not trying to save a drowning child or a woman in a house in fire.

From the moral point of view, however, these behaviors without altruism are more or less blamed. We thus understand that legal rules prohibiting anti-social acts - such as stealing, lying, deceit, murder, tax evasion – are designed to ensure a minimum of sociability, without which society would turn into a jungle, while moral norms asking altruistic behavior, seek to establish a maximum sociability, so society to facilitate personal development and improvement of the human condition.

The distinction between moral norms and legal requirements is of utmost importance in the business world. Many people believe that the only obligation of an honest businessman is to respect the laws in force; the corollary is that any management decision maximizing profit within the law is not only legitimate, but also morally binding. Things are not so, for several reasons. First, the very decision to comply with the law is a moral. As good on paper, the laws are laughable and ineffective in a social environment whose ethos cultivates and encourages dishonesty and corruption. What is happening today in Romania painfully illustrates this fact.

On the other hand, legal rules as such are subject to moral judgment. Some legal requirements are downright immoral. Black slaves in the U.S., for example, have long been legally established until moral progress of American society has imposed its abolition. Unfortunately, today there are a number of laws ambiguous or ill prepared; the effects could not be less morally legitimate. On the other hand, in some situations, it may be law more progressive only partly than ethos at a time in a specific company. There are countries that have legislated artificial insemination, organ transplants, cloning, gay marriage, consumption of certain drugs or euthanasia, but the bulk of citizens reject these new freedoms for moral reasons. Essential is the fact that in a democratic society the respect for the law is a moral decisive value. A bad or outdated law requires changes by constitutional methods, but until its change has to be respected as is, because the force of law is more important than any possible transient inconvenience of a law or another. Finally, the law cannot and should not regulate everything, impending the work and social initiative in some overly rigid patterns. Most dynamic and best performing in all areas companies are based on fewer laws, short and clear, applied with full probity and transparency.

With our life after the fall, when good is required to be helped, and evil fought, for the organized freedom to acquire a value and a positive role in our lives, the only

organizer of freedom is the law. Human society has no other effective means for creating and maintaining the order within it, than law and natural law is written in the law of nature. Indeed, as the Apostle of the Gentiles said, "the heathen who have not the law do it by nature, the law, these, not having the Law, are law nonetheless. Which shows that the law written in their hearts, by the testimony of their conscience and their judgment that blames them or defends them." [21] Natural law and moral law, planted in the heart of man from creation, is thus stated by the power of human reason, which is destined for the human being, regardless of whether or not a religious or moral.

It was said that the ancient people (Babylonians, Egyptians, Romans, etc.) made confusion between law and morality. But that, unlike the other nations, the Romans have overcome this confusion, evidence that as early as the old age rules were designated by the "Jus" and the religious ones and the term „Fas". First, it should be noted that - at that time - there were no distinction between the religious and moral norms and legal ones, because both were considered to be the result of the same divine will and their content would only express moral and religious precepts, this „voluntas Dei" imposed as „lex vitae" (rule of life). Then, it should be noted that in old age, at the Romans, the laws had a religious garb so as linguistic expression and on their contents. Indeed, in old age, even legal institutions, such as contracts were concluded in the form of religion. For instance, the form of contract to become agreement had to be religious. The most important contracts in this form are sponsio (promise) and jusiurandum liberty (oath of liberated).

Initially, international law (jus gentium) also had a religious character. We know, for instance, that at the Romans, international issues were within the jurisdiction of the Senate and a sacerdotal college (Fetial College) led by a pater patratus, which had an important role in cutting disputes, starting the war, conclusion of peace, treaties of alliance, after a certain ritual. Fetials applied the rules contained in a religious code called jus fetiale, including the first germs of international law.

A comprehensive process of desecration of Roman society, and, ipso facto, a distinction between jus and fas took place after the expulsion of the last king and the establishment of the republic, only in 509 B.C. As an immediate consequence, „Pontifex Maximus" had largely lost its political powers. But we can still speak of a so-called "cult" of the laws of the Romans? It also stated that in the concept of primitive Romans, rural and superstitious the cult laws figured with the cult of gods, whose

goodwill was invoked for the purposes of social relations. Of course we can not speak of a culture of law, much less a religious parallel - of laws and gods - but only a sacralization of laws. Their sacred character derives from the worship of the gods, who were considered the source of the law itself, hence, the obligation of observing and applying them as divine commands. But, it should not be understood that these laws involved a cult like brought to the gods, and even less so to talk about the "cult of the laws" without risking to frieze ignorance of religious reality of primitive Romans, and especially submitting our thinking in the area of ideological mindsets, revolute, from the so-called “golden age”.

So in old age, we cannot speak of a so-called confusion, since by then, all divine and human laws were considered definite or arising from the will of the deity, hence the common expression at the time: “fas est", i.e. allowed (by the gods) or permitted by law. As we know, in 449 B.C. were published “leges XII tabularum” (Laws of XII Tables); engraved in brass plates, they were fixed in sight. So just at this time we can speak of a distinction between what is allowed or permitted by the gods and that is not permitted by law (per legem non licet), although any act of obedience to the will of the Roman legislature meant another submission to the will of Deity. This should be highlighted and withheld the more since we do not know the original text of the law of XII Table, because we have not received them, as bronze tablets were destroyed early in the fourth century B.C. when Rome was burned by the Gauls. It should also be evident and the fact that this law on which the impressive building of the Roman law was built, it was never repealed. From the formal point of view, it has been in force since 11 centuries. The meaning that it expressed by the notion of “lex”, submission to the will of the gods, was indeed expressed and embodied by the legislature in the Empire era (27 BC -565 AD), when at least in the principality era (27 BC and 284 AD), all power was concentrated in the hands of the emperor, the autocratic leader of the state, the "Saint" (Augustus), revered by virtue of his election by the will of the gods. Moreover, during this period, although the senate and old magistrates survive, they are nothing but a smokescreen behind which conceals monarchy, the Romans of old school thought was - like other peoples of the time - divinely willed the law.

The real distinction between „fas” and „lex" we can talk in the fourth century, when Christianity became the religion of the Roman Empire (year 380). The emperor, however, continued to be considered "God's Anointed" until the collapse of the

Roman Empire, the Eastern (Byzantine), in 1453, where the idea was in fact transferred to all countries in Europe, including the Romanians, and the laws have continued to be issued in the name of Deity and the legislature, alias, king, prince etc.

Even from these brief details we can realize that it is inappropriate to speak of a so-called confusion between law and morality or an overcoming of this confusion by conveying the two notions,"fas" and "lex" because, on a real divorce between the sacred and the profane can not only speak in modern times, but even then, it was in part and not everywhere. That it was not consumed in its entirety, shows us the practice today that we find in some of Europe courtrooms or oversea where the oath on the Bible or on behalf of Divinity is still a reality. Motto „In God we trust" also testifies the same faith in the Supreme Legislator! The same specialists in Roman law state that in classical texts, especially in the Juris consults writings, reflect the old confusion between law on the one hand, morality and religion, on the other hand.

First, we must specify that it is not a so-called confusion between legal and moral name of religion, but a true expression of these peoples conception of the idea of law, and, ipso facto, their conception of the relationship between divine and human. Moreover, the Romans thought about law, was quintessential in those utterances about the nature and purpose of law, expressed by legal consultants in those concise, unique formulas, which attested the fact that for them, the principles of law and morality have their common source. This reality confirms us Celsus and Ulpianus. For Celsus, for example, that “jus est ars boni et aequi” (law is the art of good and equity), means that just word has both a moral and legal sense. Also, for Ulpian, the Roman law principles intertwine – in their utterance or their definition - with the moral in an organic and osmotic way. Indeed, for him, “Juris praecepta sunt haec: honeste vivere, alteram non laedere, suuiti cuique tribuere" (principles of law are these: to live honestly, to injure no other, to give each his own).

According to some experts, in the theory of Roman law, in the definition of Ulpian we learn that "a moral principle is put together by two legal principles, for if not to injure another and to give everyone what are his are principles of law, to live honorably is a moral principle." However, as can be easily found in Ulpian's definition we cannot, however, identify a moral principle put together with two legal principles, as stated by respective Romanists, but three principles with a common content, and more specifically, a moral and legal content. Moreover, no harm another is above all

a principle of moral law - enshrined in the Law of the Decalogue [22] - and then a principle in legal utterance. A moral principle also - before one of the legal nature - is to give everyone what is his. Here's why, in Ulpian's famous definition we must see a fortunate expression of both principles, both legal and moral, which, at that time defined the very conception of Romans about the relationship between the sacred and earthly, hence the requirement "divanarum atque humanorum notitia" (knowledge of things divine and human), and, ipso facto, "what is just and what is unjust" (insti atque injusti).

Moreover, the definition of the same famous Roman jurist, Ulpian (Sec. II), resulting in the most eloquent possible way that the very science of law is "justi atque injusti scientia" (the science of what is right and wrong). However, to distinguish between what is right and wrong - both conceptual and factual - requires first of all having clear understanding about what is moral and immoral, good and evil, allowed and disallowed etc. in accordance with the precepts of the natural moral law. Therefore, that from this definition of Ulpianus we have to remember this intrinsic relation that exists between the moral law and legal law, and to be taken into account when evaluating, categorizing, or judge human act, rather than refer to only its social aspect. That even a "political" law must take into account the principles of "religious and moral law", we hold true even some theorists of law for which the State is "a moral person political and territorial".

Naturally, moral norms have no legal value and do not operate through coercive measures (constraint). And yet, they are binding even in international law, is often observed under public pressure. The principles of the moral law actually affect all branches of international law, civil and criminal. For example, „international morality" – regardless the religious principles (Mosaic, Buddhist, Christian, Islamic, etc.) – is influencing international law in the sense that more and more rules of morals and justice are respected by states enriching international law, turning into its rules. "Violation of the rules of morality and fairness exercised contrary, a negative effect on international law. Conversely, respecting international law - writes Mr. Professor I. Diaconu - ensure the promotion of a moral element in relations between states, in which moral values, even unprotected by rules of law are respected."

Under its appearance as human institution, the Christian Church needed and needs to fulfill its mission - the legal rules. Therefore it means that the Church has to achieve its purpose, subject to some forms of law. "In reaching the state on the other

hand – a Romanian Orthodox canonist wrote at the end of the nineteenth century - and contacting a church with another result again some relations that have to be determined by principles of law." But the Church being a divine-human institution, with spiritual nature, its rules based on law have binding power, but not constraining as civil laws. Therefore, in terms of the nature of laws, religious law bases its authority on moral actions, not on the coercive aspect (binding) as civil laws. It should also be known that, in the Church, any offense shall be tried first as sin, and according to its severity is assessed the seriousness of the offence, hence the evaluation through the Christian moral law.

4.3. Religion and International Law

Regarding the place and role of religion in international law, it was noted that this is only one aspect of culture, sometimes marginal, sometimes essential, especially when defined as an interpretation of life [23]. When religious culture is linked to the social, political and ethnic culture, cultural accumulation process can be discerned more easily. State appearance in ancient cities integrated human sphere in the religious one. Thus the laws, creation of states passed through the filter of religious ideas and concepts with positive aspects sometimes or negative in other periods.

The great religions of the world, among Christianity and Islam have an important place, seem make controversial candidates to play a constructive role in building an era of human rights, as sacred texts and canons refer more to the commandments and obligations than the freedoms and rights. Religious nature of man reveals an essential and permanent aspect of humanity, the first representations which the individual made about the world being of religious inspiration. In contrast, international law attempts to define religion based on elements of authority failed although there are numerous international legal instruments accepted worldwide, including in some Islamic states.

To be accepted by all States contemporary public international law had to avoid focusing on the adoption of a law of religious inspiration, because it resulted in a weakening of its universal and secular character. More and more lawyers, although aware that Western values are not mandatory to be shared by other cultures, are reluctant to speak with people from other cultures. They appreciate that the scientific

approach to law should exclude religion and that the law cannot be truly "modern" and "rational" unless is totally separate from religious beliefs.

From this point of view, it is argued that the old law of nations of Christian inspiration was abandoned just because it relied too much on religion. Religion invariably intervenes in all aspects of international relations. In ancient times the most restrictive religious covenant, brought God's intervention or of protecting gods against the party who didn't respected the commitment. Rules of conduct of states were more or less religious in relation to different periods of law history. Even so, social sanctions and penalties were pronounced at state institutions based on legal arguments. The importance of the religious law, to understand the predominance of religion on international law, is now a reality especially in countries that comply with Muslim tradition.

As in recent years, conflicts have seen an unprecedented scale, researchers have tried to determine their underlying causes, taking into account not only the political, ethnic or social factors, but religious too [24]. It's almost impossible not to notice the destructive force that may have a conflict between two cultures, two religions respectively. Such conflicts not only maintain „boundaries" between religious and national cultural identities, but they also are emphasized [25]. Therefore, in the spirit of tolerance and in accordance with the international law, the Romanian state law, given the fundamental nature of the rights of thought, conscience and religion, provides no restriction on the exercise of these rights.

In conclusion, we can say with good reason, that religion plays an important role in shaping the legal rules, but is not the only factor. Among the latent functions of religion may be mentioned legitimizing the goals of society itself (makes believers more caring, serving as the Supreme Court), conferring an identity of individuals and communities and strengthen the sense of identity and social control of the emotions of the masses, which can quickly escalate the disruption of social order [26]. Religion becomes vital, transforming itself in the ideology of a community only when it is perceived as absolutely indispensable in perpetuating identity of that community.

Political instrumentalization of any religion is built on exacerbation of actions on behalf of the faith. After Russian researcher, Nonka Bogomilov, "political instrumentalization of religion mechanisms is primarily related to the operation of a doctrinal reductionism on religion. [27]Group mythology eliminates universal appeal of religion, placing it in orbit of a heroic past. Sacralization of the past develops

aggressive strategies for cultural and political preservation, exacerbating the political hostility.

The second mechanism characteristic to political instrumentalization of religion is to move the focus from moral and spiritual value that it has for the individual, to the symbolic functions it holds within the society. The Iranian Islamic revolution, for example, rapidly surpasses the religious barriers, its binders representing collective hate to Western modernism held responsible for profound social inequalities.

This social component supports the third mechanism of “politicization” of religion, which is its active mobilization in transforming the religious doctrine from one with defensive and self-purifying nature, oriented towards inside ego into a aggressive strategy with political finality. In traditional Islam, patience, non-resistance, tolerance, peaceful coexistence, spiritual overcoming of sufferance is the focus of religion. Interpreted by a fundamentalist movement, Islam is support of an active type group manifestation and terrorist claims often have a political background.

The current trend is that the values of the modern age and religion are incompatible and mutually exclusive especially in the Western world. Question of the relationship between religion and political power is central to debates in the world today. From Western perspective, Islam aims at capturing all political, economic, social spheres, which does not allow a separation of the spirit from time. From this point of view, Islam is not a religion of individual salvation dealing with its eternal destiny but a normative model of a society that bears the mark of the sacred. Muslims reply to this way of the question it is that Islam, like any religion, expresses, at the same time, eternal aspirations and practical needs of man. [28] There is therefore an emphasis on the process of secular and religious institutions removal. This is the consequence of the tendency of separation between political bodies and religious institutions developed over the centuries due to the conflict between the representatives of the church and kings, and were specific to Western Europe and North America.

For monotheistic religions, as Christianity and Islam, the distinction between universal matters, timeless valuable of religion and the temporary expression specific to daily life newspapers is not something new. In these respect, in Muslim societies this event is increasingly obvious, witnessing both a return to the religion that is called upon to provide solutions to current problems and an approximation around religious ideas by asserting a common identity. For many Muslims conservation of

values and religious heritage of Islam attests modernity. This view is seen as a reaction to secularism and secular nation's actions, to barbarism and ignorance. Rejecting these views influences the acceptance or rejection of international law.

Typical values of the Islamic world are beyond geographic boundaries and form a strong legacy shared by Muslim countries having charia as a common denominator. Currently members of the Muslim world have become part of most treaties of international law and the principle pacta sunt servanda is accepted and reflected in Islamic law in a specific design. Any Muslim state insists on the law of Muslim origin and often refers to "fundamental principles" and "values" of Islam to emphasize convergence with international law.

The current trend is to individualize cultures after religious criteria which could have the effect of supporting logic of confrontation. The challenge in these conditions is to identify solutions to establish a dialogue individually or collectively, in a world where differences are emphasized, as well as the tendency to demonize the other. "Intercultural dialogue and "interreligious dialogue" in this context can be a solution to the resurgence of terrorism. Without knowing other cultures, we might be inclined to believe that Islam or Christianity seek to assimilate other cultures, and this justifies the need to promote a dialogue between people of good will from all over the world. The fear that foreigners may have something different that affect us should be removed and the solution is to train future generations to discover the diversity of cultural riches, adopting other treaties which they must comply. Resistance to the temptation to follow the promptings which calls for "defending their own identity, which is in danger" and "discovering common cultural heritage of humanity" [29] is a gateway to a universal world humanity can be proud.

Even if in international law there is a strong tendency to secularization, the role of religion in determining commercial law and the means of influence it is more than evident. Consequently, religious factor can not be ignored and must be taken into account both in military and especially in the development of legal regulations with general validity, especially as the society remains attached to religious values, the relation between religion and society being two-way.

4.4. About the relation between religion and society

The society is founded on the existence of institutions, and it is a fact that can not be avoided. According to the Dictionary dex-online institution is a "body or

organization (of state) carrying out social, cultural, administrative, etc. activities, a form of organization of social relations, according to the legal rules established on activity fields", a significant practice, a relationship or an organization in a society or a culture [30]. Local neighborhood association is an institution that unites neighbors. Church, synagogue or mosque are institutions that creates a bond between believers. Automobile company that produces cars that we drive is built on a similar type of institution that brings together employees, shareholders and directors, and our city has an institution that unites people between them.

The relationship between society (Geselschaft) and community (gemainschaft) of a state grows stronger to the extent that this relation is resolved and manages to unite its subjects by indestructible bindings. Germany was such a state that has imposed almost by itself, but which had in substrate the guarantee of a perfect social cohesion. For these reasons, it has to be given religion a special role. A society does not became organic unless religion acts to approach all citizens. Citizens of a country should feel as parishioners of a parish community to ensure progress. We have much to learn from the work of specialists. Fortunately, nowadays concerns are more than generous. From the Bible to the present day the book market has been honored with many philosophical and religious creations. We who live in an atmosphere of suspicion and discord we also need encouragement coming over time and from other geographical areas to restore our spirits. Religion can be such a landmark. In these works there are dissociations and approximates of finest nuances are made, showing those neurotic joints of a society and how they can be treated. It also show us which are the cures of community stiffness. Although religion leaves spaces of communication, we must have insights that prevent excessive individualism. It is necessary to understand that a nation is much more than a population gathered within borders. This is a patriotic attitude for the future of our country will be grateful. And not only this.

The relationship between religion and society is indestructible, and God's word is not indifferent and produces in us an outstanding vibration. When treating such subjects you feel at ease. That fact that I treat this subject is not accidental. In my fiber there is a dimension of imperishable tradition. In everything I've done I've tried to reach a haven of serenity. I aspired to that "calm of values", I wanted to do not only education but also culture, without getting wasted in useless duels. Literacy is above all passion, and over the years I have closed to God without ever flaunt my religious

commitment. I like to think I made my faith a discreet vehicle for wearing and affirmation of ideas, as I considered the treasure of knowledge of humanity with devotion, feeling that in everything written so far was felt the presence of God who inspired the authors. The relationship between a moving world and a divine timelessness should be seen staring at the stars' sky without being tormented by mode, a man of culture being beyond the vagaries of time. That is why we try to see some historical cultural determinations of ethics.

4.5. Historical cultural determinations of religion

What we expect in this excursus to culture is to put in light specific aspects of customary and conventional nature of ethics, which ensures the whole field the guarantees of compliance with provisions stipulated in religious canons. Closely related to those mentioned is the intention to familiarize those interested with the peculiarities of manifestation of Christian and Islamic cultures, to facilitate their acceptance as key factors in business. Also, given the profound echo the confrontation between the two cultures and civilizations has in the public consciousness, the present approach can be viewed as a contribution to harmonize views on compliance with ethics in international affairs.

Achieving a balanced analysis regarding the influences Christian and Islamic cultures have had on crystallization of rules of doing business, is not an idea full of originality, but it certainly is one of the pioneers. Approach in theory, but especially in business ethics in action plan from a religious perspective, is a relatively recent concern to us, if we consider that the structures and institutions with exclusive responsibilities in this area are more recent. And we refer here to expanding corporate social responsibility across the European Union, especially that the purpose to implement such a strategy, according to the European Commission, is to have a process to integrate social, environmental, ethical aspects, issues concerning human rights and the consumer's in social activities.

To achieve these objectives, we will focus on identifying the elements necessary for a comparative analysis between traditional secular legal system and legal system built around Christian canon law and of Charia (Islamic law). Our attempt is based on a set of arguments, among which we highlight the most important ones. First, we should bear in mind that this issue is recommended by reality of today's world, in which the coexistence of different cultures and civilizations,

the globalization of phenomena and the international community's involvement in solving social and economic problems requires a knowledge of the cultural and religious particularities in a globalized business environment.

Then, historical, geographical position of Romania and the involvement of our country as a member of the UN, NATO and the European Union, at international trade in areas under the influence of other cultures and civilizations, recommend this approach. Commitment and availability of these organisms and thus their members to comply with legal instruments forming the commercial law. Taking into account the specifics of the application of legal rules in relation to local customs and traditions is an important dimension of the behavior of economic agents.

It is a requirement, as people, as Samuel P. Huntington believes, are tempted to divide peers into "us" and "them", in those who are within the group and others, "our civilization" and "those barbarians" [31] with the repercussions of conflict in several times. Non-Muslim researchers, shows the same author, analyzed the world in terms of East and West, North and South, center and periphery. In turn, Muslims have traditionally divided the world into dar-al Islam ("House of Peace") and Dar-al Harb („House of War") [32]. To identify on these coordinates the commonalities and understand the differences, are major concerns in the international community.

Relevant in terms of our approach is that participation in the international exchange of goods and values is necessary activity given the sensitivities of multinational and with local and regional environmental respect. Analysts and experts have shown that this principle has its justification in the lessons learned lately when globalization has included the business conducted in areas with a culture and a civilization significantly different from the Euro-Atlantic area. From these experiments it was concluded that, to know and to respect cultural particularities means taking into account a factor that can foster their success, while neglecting the customs, traditions and local culture can bring major disservice to achieve the objective are present there.

Another category is based on the characteristic of the contemporary world that there is an increasingly strong mutual interference of religion with politics. This phenomenon can not be ignored in the context of the international community, through the UN or other regional alliances (NATO, EU, OSCE, OAS, ASEAN, the Arab League, etc.) attends high international standards in countries under Islamic influence in that normality implies the application of religious precepts, including the

organization and functioning of the state in all its dimensions. Initiating and promoting actions for bringing the two worlds together and with the specific knowledge of the business environment to act in addressing this theme makes a test, with the intention to establish a dialogue which, for various reasons, was avoided, although it was necessary.

Addressing the issues mentioned, with the express purpose of investigating the particularities of the two major world religions, there will not be a predominantly religious character. It is intended primarily to highlight similarities and differences they are perceived, interpreted and applied some aspects of commercial law from the perspective of two legal systems created, developed, affirmed and promoted by Christian and Islamic cultures. Recourse to some religious explanations only for understanding and reasoning the role in shaping the religious factor specificity of the two systems submitted to our attention. Aspects of the relationship between culture and business ethics were an important research direction, and for this we have examined other dimensions of culture, such as those pertaining to religious side which are equally important for achieving the objective pursued the material.

We also appreciate that our approach fits into the broader context of contemporary ideas, concerns, to communicate the specific aspects of various branches of social science applied to business. It also contributes to the understanding of economic phenomena in its complexity, which in addition to addressing the correlation between war and different areas of the social system - politics, economics, demography, science and technology, law, ideology, suggests treating their relations with civilization, culture and religion. Expected consequence of this endeavor will be to overcome the narrowness and unilateralism determined strictly or exclusively by specialized approaches and providing openings to other horizons and dimensions required by current realities.

On the set of presented arguments, we consider that approaching a subject with this content can only serve to broaden the horizon of knowledge of businessmen and streamline their actions in a certain geographical area.

Although the main objective of this work was to address business ethics from historical and theoretical perspective, it could not escape the practical aspects of a cognitive approach to the conflict side of human action - profit. Although we have not pursued in our research to pay special attention to the works with religious character, I must admit that they were an important source in an attempt to present somewhat

symmetrical way are understood and addressed various aspects of economic phenomena, the cultural and civilization standards and how they were reflected in bridging the case of Christianity, namely Islam. In literature there are few approaches studied from the perspective that we propose. They are prevalent worldwide and almost absent in Romania. Many papers refer only to specific aspects of Islam on the one hand, Christianity on the other, to highlight areas where they are in an open confrontation. Our approach was to investigate the influences that cultural particularities have on the system of law based on Christian canon law and Charia and traditional legal system based in a particular area, the business, and in particular which are aspects that can contribute to improving their own conditions.

Of the many bibliographic sources we refer to two of them, who have supported and shaped the image on the realization of a synthesis of relations between cultures. One of them is the work The Clash of Civilizations, S. Huntington, makes frequent confusion between culture and civilization, which presents a wide variety of belief systems or values. The consequence of this error based on an ambiguous semantics, has resulted in the inclusion in the agenda of the UN General Assembly of point „dialogue of civilizations", which in fact could deepen the split between the alleged civilizations such as the Western and Islamic. This approach weakens the call to a unique civilization and effective action to safeguard them. Basing his reasoning on the causes of conflict in this conception, Huntington believes that awakening civilizations and their entry in the competition, in the context of globalization of the economy and globalization of computerization is a general feature of the XXI century. Excluding those civilizations that are less developed in the context of renaissance of secular conflict Islam and the West, it is considered that this is one of the major risks of the present days. Paradigm supported by him exacerbates conflicts of momentum and neglects local conflicts within civilizations, where the cultural factor may be the real engine of collisions. This is confirmed today by large-scale movements, unprecedented in Islamic space, but which may extend to the entire planet.

A second paper belongs to Anghel N. Rugina, who, in his Principia Economica, New and old foundations of economic analysis, published by Romanian Academy, Bucharest in 1993 tried to build a new paradigm in economics with particular regulatory elements of an economic system (concern for social, social justice, equity, etc.), in a word moral values as catalyst forces, revealing of a general

manner the significance of the moral factor. Our approach sought to identify and highlight impact of specific moral values on Christian and Islamic cultures and conflicting relations between them.

Each footprint on the setup of business ethics is reflected in role in the creation of some rules to ensure their protection. The importance attributed by Professor Rugina of moral forces and his insistence that he returns on it in different chapters of the work are arising from interpreting commerce as a social activity in which people fully engage around the values that configures their own identity. That is why the issue of moral factors held a special attention during our analysis to identify the elements that give us terms of comparison of the two cultures and civilizations.

5. Conclusions

Complying to the scope of this approach of research, I've adopted the decision to submit with priority the issues from the position of the scientist, who must be familiar with the cultural peculiarities of the environment in which he operates, including the religious, which put their strong imprint on his way to behave and understand the facts, rather than to meet some rigorous scientific principles. Free from political constraints, career in military, grew and formed a Christian spirit - the army is Christian – of order and discipline, converted from the profession of arms to the legal norms, I deliberately take responsibility to discuss the issues of life, with arguments of course, even risking, in my turn, to be labeled as "political". In this respect, specifying the manner to which I've appealed for investigating problems, I was encouraged by the appreciation of the historian Ed Meyer who addressed to professionals regarding the way followed in his research, stating: "…I saw no other option than to refrain myself to obey principles". [33] It is possible that by acting in this manner, to have committed another error, otherwise inevitable when trying to condense a subject so rich that offers a vast literature and includes both specialized fields, such as economics, business ethics culture, civilization, religion.

I noticed, as a conclusion regarding the literature that I managed to get, that the most interesting works that sought to provide practical solutions to conflicting issues are those who derive their ideas from finding correspondences to facilitate understanding and tolerance. It is also the only principle which we have tried to obey to.

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