

CONSIDERATIONS ON THE RELATIONSHIP BETWEEN MORALITY AND LAW

Associate Professor, Mihail NIEMESCH, PhD.

Titu Maiorescu University Bucharest-(ROMANIA);
Associate Scientific Researcher – Romanian Academy,
Institute of Legal Research „Acad. Andrei Radulescu”
avocatniemesch@yahoo.com

Abstract

The connection between law and morality seems at first glance to be simple and comprehensible. The reality of contemporary democratic societies illustrates the fact that the two notions have major differences from the point of view of the constituent elements, but above all the realm of responsibilities and forms of responsibility.

Of course, the question is whether the natural moral law is sufficient and whether other laws are needed in a society. Normative systems, whether legal, moral or religious, impose command lines that prescribe a certain type of behavior. On the other hand, the company has the obligation to provide appropriate training and education.

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In the analysis of the following subject, it is of great help to define the two notions, true normative systems, as follows:

The law represents the total legal norms developed or recognized by the state power, which aim at organizing and disciplining the behavior of the subjects of law in the most important relations of the society, according to the social values of the respective society, establishing legal rights and obligations whose observance is ensured, if necessary, by the coercive force of the state. [1]

Morality is a set of rules of conduct by which people can establish what is right and wrong, just and unjust, and it involves self-respect, respect for our fellows and helping those in need.

Regarding these three components, we ask whether the law should raise these moral elements to the legal rule? The answer is a positive one.

We note that the first element refers to individual morality and the third refers to the idea of charity. At first glance, modern law is not supposed to sanction acts or inactions that might violate self-esteem and inaction of not helping the person in need.

By way of example, the current Romanian legislation requires self-respect, and we specify that the positive right establishes that the persons participating in court hearings are required to have a decent attitude and behavior in the courtroom, otherwise the magistrate may take punitive measures against them. Of course, this attitude also concerns respect for others. On the other hand, the leaving without help of a person in need represents, in the opinion of the Romanian legislator, a crime with deep moral connotations, being regulated by art. 203 criminal code, even if it does not necessarily refer to the idea of charity. The offense involves a civic obligation that pulls itself out of morality. Regarding the moral principle of respect for our fellow men, it is obvious that any violation of this moral rule also entails a legal sanction. The question is whether the natural moral law is sufficient and whether other laws are needed in a society. Positive laws are justified by several considerations: the moral law merely summarizes the primary principles, of a general nature, which gives it universality; the prescriptions of the moral law are again of utmost generality (for example, we will not encounter in the natural moral law how the judges should be elected, how the judgment should proceed ...). [2]

As stated in the Romanian doctrine, in distant epochs, morals are confused with the law and with religion, most often considering that norms originated in the divine will. Pythagoras affirmed that all rules of behavior come from the gods, and those who do not respect them offend the divinity and are punished by it. [3]

By observing the two definitions we conclude that law and morality are two inextricably linked sciences without which social order cannot be secured.

According to Professor S. Popescu, morality is made up of common ideas about good and evil that are found in individual consciousness and form, can be said, the consciousness of a people at a time of its evolution. [4] Also, ideas of good and justice are in close connection with ensuring equality and non-discrimination between the subjects of law. [5]

Trying to highlight the importance of morality in the interaction with law, Eugeniu Sperantia shows that: the main force, the fundamental force of law is its logical validity and moral obligation. [6]

In the same vein, Guy Durand's opinion that "morality has always served as a social proto-legislation" is also worth noting.[6]

An incursion into the history of law compels us to stop in ancient Rome, noting that the Romans defined the right as the art of good and equity. Ideas of good and justice are a creation of the moral person and the right itself is a moral-religious creation.

Current Romanian legislation uses the term "good morals". Good morals are the rules of good practice and show the subject of law what must be done and what is forbidden.

Since law and morality are normative, it is obvious that there are similarities and differences between them.

Similarities:

- both law and morality are logical and rational;
- both law and morality protect the ideas of justice, freedom, equality;
- both prescribe a behavior to follow,
- both protect the concept of justice.

With regard to this last aspect, the explanatory dictionary of the Romanian language defines justice as the moral legal principle, which demands to give to each one what he owes and to respect his rights.[7] We conclude that justice is a moral principle, which acquires a binding character with the support of positive legal norms. The right man is the man who respects the law in force, and the right and moral person is the one who obeys both the legal rules and the other social norms. Last but not least, the right and moral man should also obey the religious norms, insofar as we are not talking about an atheist. A controversy could arise here from the perspective of different religious views, different procedures, but especially from the perspective of different beliefs. In reality, I think that only in appearance we could speak of a controversy, because above all religion, there is absolute justice, a universal divine justice. In addition, all religions have a common trunk and all urge man to justice, kindness, and truth.

Differences:

- morality is based on religious perceptions or individual or collective commandments, while right is a static creation;

- the purpose of law is social organization, whereas the purpose of morality is to improve human virtues;

- the highest distinction is found in the sanctioning regime, since the violations of the norms of law are sanctioned according to the written laws, with the help of the state constraint force, violations of moral norms are sanctioned by the intervention of public reluctance, disregard, marginalization etc.

Prof. Ion Craiovan emphasizes that the "territory" of morality is wider and deeper than the sphere of legal regulations ... legal norms promote and guarantee moral values, but we must point out that not all legal norms are susceptible to moral significance, examples of various procedures, land publicity, technical, organizational rules, etc.. [8]

Regarding the relations between law and morality and especially with regard to the differences between the two normative systems, Prof. Al. Vallimarascu [9] identifies several theories and groups them into four distinct categories:

- Theories that distinguish the moral right as discipline,
- Theories that distinguish them from the point of view of their nature, essence or content,
- Theories that distinguish them as to their purpose,
- Finally, the theories that distinguish them from the point of view of the sanction.

In the interwar Romanian doctrine, Professor I. Găvănescul [10] pointed out that the sanction of the law hits hard, degrading. Unfortunately, the pain of public opinion disapproval is terrible, sometimes formidable; but it is in the power of man that has been hit by it, to detract from its effects ... the pain of legal sanction, with its physically accented character, finds it more difficult to be circumvented by sophistication and dialectics ... yes, of course, the laws, when applied, stop social disintegration. It is the last refuge for total anarchy, which begins in the form of moral disorientation.

Both law and morality urge the individual to behave in a manner that is responsible for nature does not cause harm to society, not to harm others.

The Austrian philosopher F.Hayek [11] quoted by author Lucian-Sorin Stănescu in his doctoral thesis in October 2017, mentions that society if it is democratic "advertises, perhaps more acutely than anything else, that people's action be guided by a sense of responsibility that goes beyond the duties imposed by law and that the general opinion approves the consideration of individuals as lawyers and that the general opinion approves the consideration of individuals as responsible both for the success and the failure of their own enterprises. When people are allowed to act as they think fit, they must respond to the outcome of these actions."

Social responsibility does not have an abstract dimension, but it acquires a concrete character depending on the type of actions or inactions that strike the relationships between the subjects of law. Thus, at social level, besides legal and moral responsibility, human relations also imply other types of responsibility such as political, religious, professional responsibility, etc.

Normative systems, whether legal, moral or religious, impose command lines that prescribe a certain type of behavior and a certain type of responsibility. On the other hand, the company has the obligation to provide appropriate training and education.

The concept of accountability is a social constant, indissolubly linked to our actions or inactions, and obviously to the social results of our deeds. As a consequence, responsibility arises from the perspective of injured society as a sanction against the author of the act by which the values protected by society are violated [12]. On this point, Hans Kelsen, which excludes from the scope of law any reference to moral values, shows that responsibility is not the same as duty, representing "the relationship of the individual against whom the sanction is directed, with the offense committed by him or by another"[13].

Is legal liability based on a moral source? The answer can only be positive for several reasons. First of all, even the legal phenomenon enshrines the thesis that anyone who causes damage is obliged to fix it. This provision is a moral one and human society responds to the author of the antisocial deed in the sense that the established social values will be protected. Here is a principle of life transposed into a legal norm. The law does not distinguish between material damage and moral damage but enshrines the obligation to repair damage regardless of its nature. Moral damages are of a non-

patrimonial nature and may consist in causing psychic suffering, damages to honor, reputation, damaging the right to name, etc.

In the field of civil law, it is considered that ... tort liability is the common law in matters of liability and contractual liability is only an exception [14]. In essence, the constituent elements of civil liability, and so on. the existence of an unlawful act, an injury as well as the causal link between the deed and the damage, attests that the liability can be activated under strict conditions, beyond arbitrariness. It is appropriate that the sanction, if the conditions of liability are met, be fair and proportionate to the consequences and damages incurred. Thus, we can see here the moral character of the sanction, as long as the righteousness that is closely related to impartiality and fairness is an element of morality.

The concept of morality also impinges on criminal liability that is closely related to the principle of humanism in criminal law, the principle which, according to the doctrine, implies that no punishment, the punishments being the most severe category of criminal sanctions, should cause physical suffering or torture or detract from the convicted person whether inhuman or degrading. Humanitarian law of criminal law is also found on the way of calculating punishments and preventive measures ... [15]

Eugeniu Safta-Romano points out that the monetary reparation of moral prejudice is not a creation of modern law, as some are tempted to believe. A thorough historical analysis of civil liability in general, reported to the great civilizations of the world, would highlight that moral damage has always attracted money repairs. [15] By way of example, the author makes reference to the Old Testament by which the one who has acknowledged his guilt is obliged to accompany the recognition with material reparation. The author also exemplifies the provision in the Bible, Deuteronomy 22:19, that the man who has spread slander to a woman must pay her father the sum of 100 shekels of silver.

On the other hand, modern human society has understood to defend by law the good morals that are practically a set of rules of conduct that strike social consciousness and their observance has become a necessity through constant, uniform and long-lasting application.

In this respect, we mention by way of example the provisions of art. 11 Civil Code stating that "It cannot be derogated from by unilateral conventions or legal acts from the

laws that concern the public order or the good morals", but also the provisions of art.375 penal code that criminalizes and sanctions the offense of extermination against good morals, in meaning "the act of the person who, in public, expose or distribute without right images expressing sexual activity other than that referred to in art. 374, or perform acts of exhibitionism or other explicit sexual acts shall be punished by imprisonment from 3 months to 2 years or by fine. "

Regarding the moral character of liability in law, we need to recall the opinion of Hans Kelsen, a prominent personality of law, the creator of the pure theory of law, and who excluded from the sphere of the legal phenomenon any moral aspect.

Conclusions

We notice that modern law is more severe than common morals. It is also natural because modern law operates with the facts and sanctions provided by the laws in force, the final goal of the law being social organization. While the jurist in general, but especially the law practitioner, seeks to attain perfect justice, the moralist remains detached from the space-time relationship, being satisfied with the idea of wider justice, perhaps a little permissive from the perspective of the legal phenomenon, but dominated by the idea of equitability. The moralist has at his fingertips his analysis, the experience of past generations, and the fact that all moral concepts have a universal character.

The idea of separating the morality from law is a bad idea, erroneous by the nature of dehumanizing the law. The two systems work together with common goals, mainly education of social behavior. Often, social norms of coexistence contain both moral and legal elements.

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