



THE MORAL, RELIGIOUS AND LEGAL VALUES - THE NECESSARY LIAISON OF THE RULE OF LAW

The Moral Norm and the Morality of the Legal Norm

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Abstract: The present study brings for analysis the fact that Law cannot be understood and detached from moral norms, the proof being the first legislations that had a threefold aspect: moral, religious, and legal. From this perspective we have questioned the removal of moral-religious precepts and provisions from the state legal system and the effect of this decision on legal norms. At the same time, we distinguish between legal norms and canonical norms, by which we also mean their moral dimension. Law incorporates and assimilates many moral precepts and, therefore, there is no split or separation between law and morality, but they are closely linked, morality being the basis of law. We see, therefore, that there is a relationship of dependence between the legal and the moral orders, the same relationship that can be seen in the dependence of law on the good.

Keywords: legal norm; moral norm; church law; canon law; moral order

Introduction

Man by nature is a free being who can express himself in society as he wishes. He is also by nature a social being who is meant to live in communion with his fellow human beings. However, if each person were to exercise his freedom fully in relation to his fellow human beings, he would become one with his neighbors and the result would be a lack of harmony, making social life impossible. But man's path is enlightened by a faculty of the soul which shows him the right way not to harm his neighbor and disturb social life, and this is intelligence.

Law in general is the direction of a person's freedom through intelligence. The rules ordained by intelligence, according to which man is bound to live and conduct himself in such a way as to ensure both his own existence and that of his fellow men in society, are called laws or legal rules. A definition closer to reality can be found in the canonist Liviu Stan, who states that law is a higher principle or value, dependent on truth, which tends to remove any contradiction in the order of external, free and

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conscious human facts and relations, having a social character, and thus to achieve a perfect legal order (Stan, 1943, p. 201) to build a better and fairer world that aims for perfection.

An inherent desire of human nature is the search for justice and righteousness, rooted in the fact that the person subsists in a context of social order. The social order is based on an ontological hierarchy, realised on the difference of powers within the social class.

Moral order can be seen through the prism of people's actions as they try to clarify everything around them according to the criteria of good and evil. So, we see that everything comes down to a moral qualification, on the principle that everything that is good is also right. Right is subordinated to good and an act that is judged in relation to good results in a moral judgement. If the assessment is made in relation to the theory of law and injustice, we can speak of a legal assessment. We can say that the moral order that moves along the trajectory of life represents that state of balance between law and moral obligations.

Religious-moral Norm versus Legal Norm

Law is not subject to, nor does it condition, moral religious laws, but is conditioned by them. It is subordinate to them and is guided both in terms of its content and its scope of action by moral and religious values (Stan, 2017, p. 34).

The norm is a rule that addresses the conduct that people must follow in their relationships, either with nature or with the society of which they are a part. A complex of social norms with a certain specificity act on human behavior, which aim to promote and defend social values existing within a community. The existence of these norms is necessary because no society can do without them, otherwise it becomes anomic. In his work „*Theorie generale du Droit*”, Jean Dabin divides these social norms into moral and religious norms, legal norms, rules of social conduct, rules of professional ethics or technical norms (Dabin, 1969, p. 18). Although there is a multitude of social norms, but well structured, there are different links between them forming a system of social norms.

Church law is a collection of religious rules by which the Church lives and is administered in its activity. It does not relate to either public or private law but is a separate and independent area of law. Also known as canon law, ecclesiastical law is made up of rules or canons enacted within the Church to guide the members of the Christian community towards moral perfection and to preserve their unity. Dogma is the teaching of the faith, which is based on a revealed truth, formulated by the Church in theoretical form, unchangeable, given for the salvation of the

Christian. The term dogma defines the relationship between the human mind and the revealed divine truth.

Belonging to the ecclesial society is not a forced work as it happens in other spheres of social life, it has nothing to do with social origin, race or nationality being only an expression of one's own will in the choice made.

We can therefore say that ecclesiastical law regulates relations established between people based on a religious belief, having a legal but predominantly theological character, but lacking the coercive force specific to secular law.

The science of Canon Law is part of the group of legal-theological sciences which deals with the scientific and systematic study of all the rights and obligations of the Church in general and of its members in particular.

Historically, the canons were enacted at ecumenical synods in the first nine centuries. These synods established norms for the whole of Christendom in accordance with certain questions of general interest starting from dogmatic, canonical or moral issues. Dogmas determine the content of moral norms, but also of social norms, called canons. Canonical norms form the whole of canon law.

Of course, an often-debated issue is the validity of canons in the present day and whether decisions taken almost two thousand years ago are still applicable in the life of Christians today. The question arises as to whether the canons are unchangeable laws or whether they are also subject to change and adaptation to the needs and challenges of the Church today.

In order to formulate an answer, we must clarify the association of church and state legislation, which is increasingly common today. A first clarification concerns the fact that just as the laws of the state are binding on the citizens of that state, so the canons and current church legislation are normative and binding on the faithful. The canons do not restrict the freedom of the person, they are not coercive like the laws of the state, since they have only spiritual consequences, they are not a code of simple laws to regulate the life of the Church, but are sacred rules that lead the Christian to the acquisition and fruition of God's grace.

The second clarification is related to the principle "*lex posterior derogat prior*", meaning that the new law replaces the old one, so that a previously adopted canon can be repealed by a later canon, but only if it is issued by the same competent legislative authority.

In the exercise of divine right, the canonical legislator also issues laws inspired by natural law, dealing with the social relations created around temporal goods, using also civil law. It is obvious that ecclesiastical norms are the emanation of the ecclesiastical legislator.

The phenomenon of "canonization of civil rules" is based on a fundamental principle, that of subsidiarity (Harosa, 2013, p. 38). This canonization of civil norms represents an appropriation of state laws as well as their compatibility with ecclesiastical law and their full applicability within the canonical system.

As regards the application of canonical norms, like legal norms, we can speak of their application in time, in space, and to persons.

The rules of law are the logical emanation of people's legal conscience, through which they act on material realities and legal life, establishing an order, laying down certain rules of conduct and eliminating other rules that no longer correspond to reality, with new ones taking their place.

The legal norm has the role of setting rules by which people's conduct is guided, contributing to the strengthening and development of social order and state relations. The specificity of this norm, which is different from the canonical one, is that the State can sanction any violation of it and, if necessary, it ensures its coercive force and general binding force.

The totality of norms forms normality, specific to society, deviation from normality causes its dysfunctionality, whether it is non-conformity or non-conformity (Dogaru & Mihai, 2015, p. 3).

In the general theory of law, it is considered that, in principle, any legal rule, regardless of the branch of law to which it belongs, comprises three elements in its structure: the hypothesis, the provision and the sanction. The hypothesis is that part of the legal rule which states the 'circumstances' in which it may apply. The provision is that part of the legal rule which prescribes the conduct which the parties to the legal relationship may or must adopt. The sanction is that part of the legal rule which lays down the consequences of failure to comply with the provision contained in it. By imposing sanctions, both the State and the Church aim to restore legal order but also to prevent future violations of the rules.

Some legal theorists point out that the progress of law is due to morality, which could make justice a great social virtue, and laws the achievement of order and harmony, with the aim of good, truth and beauty (Vasilescu, 1939, p. 14).

Morality defines a set of ideas and rules about right and wrong, right, and wrong. Morality is based on each person's personal conscience and inner conviction and the aim is primarily self-respect. Moral norms guide people's conduct and thus relate their behavior to the moral values of right and wrong, from which the definition of this behavior as moral or immoral follows.

Law cannot be understood and detached from moral norms, as the first laws, which had moral, religious and legal aspects, testify. The passage of time, the development

of society and the evolution of the legal system have all had the effect of separating the two areas. As a negative consequence, religious precepts and provisions in law were removed, canon law was discarded, and other regulations took its place.

Legal and philosophical doctrine, in studying the influence of law by morality, took two important positions: the first conceived of law as a minimum of morality ("justice through law and morality") and the second, corresponding to legal positivism, according to which the state is the sole basis of law ("order of law without morality") (Bădescu, 2020, p. 79).

The first theory offers the two, justice and morality, as two principles of the same phenomenon. Morality has as its object the regulation of internal facts, man's intention, and law has as its object the regulation of external material facts (Djuvara, 1995, p. 321). If the theorists claim that morality has influenced law, we can say unequivocally that legal law is also an important means of moral education in the formation of man. Legal rules that do not conform to moral principles are unjust (*lex injusta non est lex*).

According to the second theory, the right would be self-contained and detached from any other reality, referring only to its relationship with the state. The basic idea behind this principle is that it cannot be said that law must be moral since there is no such thing as absolute morality.

Although they appear to be in opposition, law and morality share the common objective of positively influencing human conduct. Legal norms are inspired by ethical norms, which have had a very great influence on their formation and application. Both legal rules and moral rules are normative and logical rules. Morality underpins law because law cannot be immoral.

However, there are also differences between law and morality, moral norms in a society are not necessarily unitary like the norms of law, and from the point of view of sanction, the most important difference between the two categories of norms appears; while the norms of law can be ensured by the coercive force of the state, moral norms have a specific sanction which is at the level of personal conscience. Moral sanctions can be external and represent the reaction of the social environment to the person's immoral act (public opprobrium), or internal moral sanctions (regrets, regrets) which are closely linked to the person's conscience, this aspect having to do with the internal moral profile of the individual who feels both forms more or less deeply, the effectiveness of the sanction being closely linked to conscience.

Conclusions

The principles underlying creation form a balance called order. The whole of creation is in a perfect balance called cosmic order and any change to this order would result in cataclysms. Such a state of equilibrium coexists between the elements of ethics, i.e. between reason, freedom and conscience, and they are coordinated by good, resulting in moral equilibrium.

The goal of the moral order is the good, which the greater the good, the more stable the moral order. But when good is confused with evil, disorder arises. Moral order is the state of balance between justice and moral obligations.

The legal order is not based on the defining elements of the moral order but is made up of a series of human phenomena and relations which have law as their supreme principle. We can say that the legal order can be defined as the balance achieved between human rights and obligations, imposed by laws.

Based on these two precepts, Liviu Stan states that there is a relationship of dependence between them, the moral order not being limited by the legal order, law having the same role in the legal order that good fulfils in the moral order (Stan, 1943, p. 115).

From this report the following points emerge. A legal law is also a moral law, but not every moral law is also legal. You cannot get out of the control of the moral order, but you can get out of the control of the legal law, since you are not under total control. Moral order can exist without legal order, but not legal order without moral order. The legal order is permanently censored by the moral order, which is an auxiliary to it.

If we are to talk about the development of society in a specific case, the highest level will be reached when what is deemed illegal is also immoral and what is declared legal is obviously moral.

Society will be truly ethical only when the differences between the legal norm and the moral norm are insurmountable and, above all, when the moral norm is integrated and fully reflected in the legal system, thus leading to the morality of the legal norm.

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