

THE KINSHIP OF LAW WITH MORALITY

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ABSTRACT: *The relationship between the two great normative systems, law and morality, which regulate and control human conduct in society, has been a subject of intense debate for a century among legal scholars, philosophers, and social scientists.*

Even if there is a long and controversial history of the debate regarding the relationship between law and morality, most doctrinaires maintain that law and morality, in their quality as hypostases or distinct aspects of human society, enjoy a firm relationship, an interconnection and conditioning mutual and dynamic.

Despite well-documented debates in the literature, there is no clear consensus on the basic questions this topic raises.

This short essay aims to clarify the interplay between law and morality by examining their conceptual distinctions, the influence of morality on law, the limitations of each in addressing societal concerns, the role of morality in lawmaking, judicial interpretation, and legal application. of law, the dynamic interactions between law and morality according to their evolution over time.

KEY WORDS: *law; morality; legal normativity; legal connection; similarities and differences.*

JEL Code: *K0*

DOI: 10.62838/cjjc-2024-16

1. FEW CONSIDERATIONS ON MORAL AND LEGAL PRECEPTS

The need of human society to survive and evolve imposed behavior models that take the form of various mandatory rules, namely, moral, customary or legal rules, under the sanction of collective punishment and the obligation of their recipients to submit to them.

All of these behavioral commandments imposed in society forms the social normativity, the one without which neither the existence nor the survival of the society is possible.

The kinship of the two great systems or social phenomena, morality and law, as well as their role in society, has been observed and preoccupied human thinking since ancient times. Ancient Greek and Roman philosophy did not accept any distinction between law and justice, the law being the object of justice, of that moral virtue which is defined as a

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free and constant disposition of the will to do good, to attribute to everyone what is due. Later, modern philosophy succeeded in a gradual separation of moral from law that lasted until the emergence of legal positivism (Neff, 2012).

Thus, we can say that the difference and confusion between law and morality are both ancient and modern themes.

Denying the similarities between them has often been judged to be pointless on the grounds that their similarity is obvious (Linte, 2014). Although morality can influence the law world in a considerable way, it is considered that a total confusion of these assumptions of social life would be dangerous because it shakes the basic notions of law, even denies it and replaces it (Steinhardt, 2008).

Certainly, the progressive development of the legal field had as a consequence the awareness of real differences between morality and law, two normative disciplines involved in guiding and regulating human behavior.

If we refer to their sphere, certainly, the morality dimension is wider and more comprehensive than that of law, since it regulates or regulates human conduct in its complex relationship. Of course, by this we must not understand in the sense in which all legal norms are included in the sphere of morality.

It is constantly stated at the doctrinal level that, in distant ages, morality was identified with two other social phenomena, law and religion, to which divine power was attributed (McKay, 2015) (Wainwright, 2005) (Kodama, 2019).

Despite the conceptual differences of the two systems, morality certainly had a significant impact on the development and interpretation of law (Craiovan, 2020). Certainly there are a number of legal systems in which moral considerations have shaped the law in areas such as human rights, criminal law, commercial law or family law. In this context, we want to show that, for example, the human rights law is based on moral principles that aim to protect the dignity and freedom of individuals, while the criminal law mainly reflects the moral judgments of society on human conduct by prohibiting criminal acts.

Morality and law in their quality as normative disciplines are in a close relationship of interdependence on the grounds that both aim at the social life of man. The moral and legal reality is presented in the form of a set of precepts whose observance conditions the smooth development of societal relations (Bădescu, 2020). For example, if we take into account the educational function of the law, the elimination of the moral element from the content of the legal norms can determine the decrease or even the disappearance of its effectiveness. Certainly, law devoid of moral substance is nothing more than an amalgam of dehumanized norms, an instrument through which the masses are governed by imposing rules of conduct contrary to the general will.

Despite the variety of ways in perceiving and understanding the relationship between law and morality, one aspect is obvious, namely, legal and moral norms exist separately even if they interrelate and overlap.

2. COMPLEMENTARITY AND DISTINCTION

Certainly, the common ground of morality and law is found both in the concept of individual autonomy and in that of equal respect for all individuals participating of social life.

The common idea promoted by law specialists is that the relationship between these two social phenomena is a complementary one because, on the one hand, law has the ability to balance any functional weaknesses of morality, and on the other hand, morality is able to slow down a mechanical implementation of objective law rules through the notions of solidarity and responsibility (Kramer, 2008) (Habermas, 1986) (Bădescu, 2020).

However, if we approach the doctrinal opinions regarding the dynamic relationship between law and morality, we will find that they are as divergent as possible (Popa, 2020) (Mubelo, 2016) (Mineur, 2012).

There are doctrinaires who recognized the correlation between law and morality, but appreciate that these systems are distinct, independent, arguing that no law can be ignored by its addressees because that it is not moral enough. Other thinkers argue the existence of a mutual conditioning and interdependence of law and morality, because any law that holds to regulate the behavioral expectations of individuals in a society at one moment must correspond with moral norms.

Certainly, the role of morality and law in society is a crucial one in ruling interpersonal relations, in shaping beliefs, in guiding human behavior as well as in maintaining social order. Law and morality often complement and influence each other, so the understanding their roles is important in creating a more cohesive society.

Understanding the connection between these phenomena is important because it helps to appreciate the complexities involved in the creation, interpretation and application of legal norms in different contexts. However, the connection between law and morality is not very clear nor constant, considering that both values and social attitudes evolve gradually (Xhemajli, 2022) (Tardivel, 2023).

But how can the differences or similarities be expressed between these two concepts or systems that are on the one hand distinct, and on the other, interdependent?

According to the criterion of their source or origin, law comes from an external source, being obtained through rules and regulations enacted by legislative bodies, while morality comes exclusively from internal sources, being the individual product of a person. Furthermore, if the law treats all people as recipients of its norms in a unitary and objective manner, without changing from one person to another, morality is a strictly subjective concept.

The difference between law and morality given by the way it is expressed assumes the following. If morality is an informal system expressed through the internal behavior of the individual and his relationship with other people, law is a system of rules imposed by the public power, which applies to the external behavior of individuals in their relationships, in its capacity of objective ethics.

Moral and legal ideals are addicted in terms of their evolution and content on two main coordinates, namely, time and space.

According to the temporal coordinate, both are shaped on a certain state territory, being permanently influenced by a series of economic, social, political and cultural factors acting in society at a given moment. Likewise, moral and legal ideals can differ considerably from one geo-political space to another and even within the same state (Donnelly, 2013).

Another similarity between subjective and objective rules of conduct, consists in the idea that both are characterized by a logical, rational content. The compliance their norms

becomes a natural thing for the individuals who form the vast majority of the social mass, a normal fact that does not require a special effort of understanding.

It also represents an similarity between these categories of social rules, their ability to offer offer to the individual, as I said above, solutions for a lot of problems that intersubjective relationships inevitably involve.

Thus, the two ethical positions, morality and law, are embodied in two guides or benchmarks that individuals have whenever they interact with each other (Bădescu, 2020). Any person must knows that if he respects moral and legal rules, can be sure that the social organism to which he belongs will not manipulate or marginalize him. It is the reason why people education in the spirit of respecting these two categories of rules of conduct must be a fundamental function of law and morality.

Certainly, the similarities that exist between law and morality cause the existence of a relationship of complementarity between those two fields (Craiovan, 2020). But, although the purpose of these social rules is common, the means used differ. The effectiveness of legal norms is considerably greater in terms of influencing a person's societal behavior in relation to moral norms, since non-compliance with its provisions attracts a legal sanction that is much more severe than a possible stigmatization of the collective that can intervene on the grounds of non-compliance with a rule morals. We can say that legal norms are the last barrier that society puts in the way of chaos after the barrier of moral norms of behavior has been overcome.

The complementarity between the two ethical systems, law and morality, is absolutely necessary for establishing a society in which social order can be preserved (Kelsen, 2000) (Dogaru, 2006).

In order to show the differences, must be indicated their source. Thus, if the source of law is the law, the source of morality is the inner forum of the person, the one that indicates the behavior, the moral path to be followed. Furthermore, law based on objective criteria protects the rights of individuals without distinguishing between their personal moral values.

The distinction between the two fields also lies in the basis and application of their rules. If law refers to the set of rules and regulations adopted and applied by the state to maintain social order and protect individual rights, morality refers to the set of values, principles and beliefs whose role is to guide person behavior based on societal and personal standards of good and bad, fair and unfair. And if laws are legally binding and are applied through formal systems, morality is subjective and is frequently applied through social norms and the personal conscience of each individual.

We also remind here that the law regulates exclusively the external aspect of human actions and not their internal aspect (intentions or motives), and morality is mainly addressed to the human conscience.

Also in the category of distinctions, we can show that the legal rules differ from moral precepts by the fact that they often provide for a legal sanction for their non-compliance, moral norms being devoid of such a characteristic.

Finally, we also add that if in law all obligations assumed in relation to other persons or institutions must be respected, in the case of morality only the obligations assumed by the individual towards himself and compliance with his own moral ideals must be respected (Kalashian, 2019) (Petrazycki, 2014).

Despite the differences between law and morality, I have shown that the two are not completely separate from each other.

The entire relationship between law and morality cannot be appreciated as a static one, but one of dynamic interaction with evolutionary connotations over time. Simultaneously with the change of societal values, the moral norms also change, so the legal systems must adapt and eventually respond to these changes.

3. CONCLUSIONS

During the approach in this work, the goal was to reveal important perspectives on the two concepts that are both separate and intertwined. The undeniable reality is that, these distinct concepts relate in interesting ways.

The complicated relationship between the two fields includes the influence of moral values not only on the process of legislation but also on judicial interpretation, the legal application of morality and the dynamic interactions between them on their evolution.

Understanding the complex interactions between law and morality is essential to developing legal systems that effectively balance individual autonomy, societal values, and the pursuit of justice.

The lack of a doctrinal consensus regarding the relationship between law and morality is, we believe, the consequence of some approaches that involve certain aspects, such as, for example, the extent to which the substantive content of the law must be consistent with morality. imperative for it to be properly correct. The relationship between these depends considerably on what a person considers to be law and how morality should be understood (Ho, 2022).

The sensitive and complicated relationship between law and morality encompasses the influence of moral values not only on legislation, but also on the legal interpretation and application of morality, as well as the dynamic interactions between law and morality according to their evolution over time.

Certainly, understanding this complex interaction has an essential role in the development of legal systems of states that balance individual autonomy, societal values and the achievement of justice in an effective way.

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