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IS MORALITY PART OF LAW?

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Abstract: The relation between law and morality is a controversial issue in Law, jurisprudence. This paper examines morality and law in the legal system. The aim
Morality, of this research is to discourse whether morality is part of law. Objectively, this Legality, paper would (a) discourse what is morality, (b) it would expose law, (c) it will Legal discuss the relationship between law and morality, (d) and to elaborate on system difference between morality and law. This research adopted a qualitative design. Data for the study were gathered from journals, books and periodicals, and were subjected to the method of philosophical content analysis and evaluation. From here, this research finds out that; morality is the remote causes to guide human act which leads to an immediate cause, which is law. Furthermore, morality herself cannot stand in totality to guide behavior but law will. Law deals with her sanctions if anyone disobeys, and nevertheless, a good law must stem from morality as well. This paper further propose that law need to consider the morality of any society in making rules of such society for peaceful co-existences in any sovereign state.

Keywords: Law, Morality, Jurisprudence, Legal System, Legality

Introduction

Morality deals with a set of principles and rules about good or bad, right or wrong, allowed or not allowed in a particular society. The norms of morality are the creation of society or social groups. Law on the other hand, is the system of norms established or recognized by the state for the purpose of regulating the social relations in accordance to the will of the state, whose observance is guaranteed by the coercive force of the state.

Furthermore, between law and morality there is a close connection, thus, the law embodies within it moral principles, protects and guarantees fundamental moral values, and at the same time, its fundamental force is given by its moral obligation. For legal rules to be more effective, they must comply with moral standards that are accepted by their recipients. The legal doctrine has had great difficulties from the very beginning in delimiting the concept of law from that of morality. Most fundamental principles of law derive from morality, so a true lawyer must always look beyond the letter of the law and identify his spirit. Whatever the views of the differences between law and morality, they are nevertheless complementary. Thus, the principles of law originated in morality, this being the cornerstone of the law. In order to be able to correctly determine the relationship between law and morality, we must take into account the fact that only morality, as a duty, is related to the law. And this leads us to the reviews on law and morality.

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Review on Law and Morality

The various scholars of jurisprudence define law differently. For Plato and Aristotle, Law is the voice of reason (Lee 2019, p.12). The positivists from the command theory of law by John Austin, defines law as command backed by sanction (Austin 1995, p.37). The sovereign punishes his subjects for violation of his law. For St. Thomas Aquinas, Law is nothing else than a rational ordering of things which concern the common good; promulgated by whoever is charged with the care of the community (Lee 2019, p.45). Von Savigny of the historical school also defines law as, the expression of the common consciousness of a people (49). For him, law is formed by custom and popular faith, by internal, silently operating powers, not by the arbitrary will of a law-giver. The sociological school, as expounded by Von Ihering, conceives of Law as the sum of the conditions of social life as secured by the power of the state through the means of external compulsion. For Karl Marx, who sees law as the superstructure upon economic bases in our society? It is an instrument at the disposal of the dominant class (the bourgeoisie) to protect their position and possessions at the expense of the oppressed and exploited masses (the proletariat) Roversi 2018, 217).

A meaningful and acceptable definition of law has to include the essential ingredients of law distilled from the various schools of jurisprudence such as the certainty of source and coercive character as emphasized by the positivists; the social relevance and acceptance as advocated by the historists and sociological exponents, and the purposiveness of law (i.e. justice inherent rationality and satisfaction of the common good) which the naturalists claim is the decisive element of law. Law could also be defines as law the regime that orders human activities and relations through systematic application of force of politically organized society, or through social pressure, backed by force, in such a society. It consists in the aggregate of legislation, judicial precedents, accepted legal principles and customary law. The highest law of the land is the constitution which, as an embodiment of the collective will and social contract of the people, governs all persons and institutions in the state. It is the supreme law which imparts validity to all other laws. Any law that is inconsistent with it is, to the extent of the inconsistency is null and void. While on the hand, morality is a valueimpregnated concept relating to certain normative patterns which aim at the augmentation of good and reduction of evil in individual and social life. Morality like ethics,

deals with the absolute ideal or the universal good. Its first principle, according to Aristotle, is good must be done and evil must be avoided (Mihnea. 2013). The aims of morality in its social signification are directed towards increasing social harmony by diminishing the incidence of excessive selfishness, evil towards others, internecine struggle and other potentially disintegrative forces in societal life. For Immanuel Kant, the distinction between law and morals is to be found in the fact that the law regulates the external relations of men while morality governs their inner life and motivation (Kant 2002, p. 128). The Kantian theory postulates that law requires external compliance with existing rules and regulations, regardless of the underlying motive, while morality appeals to the conscience of man. The moral imperative demands that men act from praiseworthy intentions, above all from a sense of ethical duty, and that they strive after good for its own sake as well. Law, on the other hand, demands an absolute subjection to its rules and commands, whether a particular individual approves of it or not,

and is characterized by the fact that she always applies the threat of physical compulsion. Morality, according to this theory is autonomous (coming from within man's soul) while the law is heteronymous (being imposed upon man from without). And these, lead us to consider Dworkin's notion of law and morality.

DWORKIN'S "ONE-SYSTEM" CONCEPTION OF LAW AND MORALITY

For Dworkin, the traditional conception of the law and morality relation sees each as a collection of norms (Dworkin 2011, p. 252) that forms an independent system. The classical question, he asked, is whether and how, the content of each system affects the content of the other (253). He asks this question from each side of the relation. In thinking about how the content of law affects the content of morality, the classical question is whether we have a moral obligation to follow the law. In thinking about how the content of morality affects law, the traditional question is, how far is morality relevant in fixing law's content on any particular issue?(Dworkin 2006, p. 3-5). Dworkin, then, places his own earlier 'interpretivism' alongside 'positivism' and 'natural law' as approaches that have accepted the traditional conception in giving answers to these traditional questions. Further, positivists such as H.L.A. Hart have acknowledged that the content of morality historically has influenced the content of law. Rather; version that Dworkin selects as emblematic sees morality as a 'veto over law' (Allan 2021, p. 342), in the sense that if a purported addition to law is morally outrageous, it cannot count as valid law. Dworkin's other formulations, however, suggest a less unitary understanding: law is "embedded" in morality, or "flows from" morality, or "branches from" or is a "branch of" morality.

Dworkin asks how law should be distinguished from the rest of political morality (Dworkin 2011, p. 255). While this formulation might seem to imply a resurrection of the two-system schema, Dworkin adds quickly that he means to consider, how these two interpretive concepts should be distinguished to show one as only part of the other. From the above, Dworkin believes that political rights are both history and morality as well, which the judges must put into serious consideration in the course of legal adjudication. And this, leads us to know whether morality is part of law.

IS MORALITY, REALLY PART OF LAW?

Even though, unlike morals, the law regulates external conduct, there is no difference in nature or purpose between the rule of law and the moral rule. Moreover, even in its most technical appearance, law is governed by moral law. The only difference is character; the moral rule being invested with much more forceful means of enforcement (the possibility of state constraints that may intervene in case of violation).

In the attempt to establish a major distinction between ethical and legal, we observe that the sphere of morality is wider than that of law, regulating behaviour in the most diverse social relationships. But this does not mean that all norms of law are included in the sphere of morality.

For example, legal rules of a technical nature, such as civil or criminal procedural law, do not usually include a moral appreciation.

Another distinction is that moral norms are not usually written norms, which are not necessarily included in some official documents, because they are the product of the unorganized social collectives. Instead, the rule of law has an official form and is the result of the official activity of state bodies. It is

clear that the compliance with moral norms is not guaranteed by the coercive force of the state, as in the case of the rule of law, but by the action of social factors, public opinion, education, etc. Thus, the social environment reacts to the immoral facts through public abuse, contempt, etc.

For Djuvara (1999, p. 32) argued that "the foundation of law and morality is the same, the idea of obligation" and that "morality has as its object the regulation of internal affairs", and "the law has as its object the regulation of our external material facts in light of our intentions". Although the law cannot interfere with the inner processes of the individual, because it has as its object the regulation of the external manifestations of the individual, that is, the relations with the other people, which means that, the morality needs to penetrate into the law, sanctioning where it is necessary. In Ripert's (1927, 211) opinion, morality has as fundamental values as the principles of good, righteousness, justice and truth, values that are promoted and defended by the law too.

CONCLUSION

This function of filling in the gaps in the law is performed by the judge who is a member of the society and a product of its moral synthesis. In his interpretative and adjudicatory function, he calls in aid and draws inspiration from the general spirit of the legal system which must contains moral code of conduct of such society, for justice and fairness in the legal system. Any positive law devoid of moral conducts of such society would subject such legal system to the object of ridicule and will not sustain such law with the test of time. Therefore, this paper argues that, for law to be sustained in any sovereign state, that law must consider acceptances of constitution as part of their moral practices within the society for peaceful co-existences in such state.

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