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The Moral Value of Legal Norms

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ABSTRACT: This paper argues that the legal phenomenon, driven by practical and utilitarian intentions, constitutes a marginal and subordinate reality, and is thus opposed to justice as a moral value. Attention should be directed toward justice itself, as it carries absolute values, in contrast to the limitations of positive law. Living according to moral principles means to orient one's life toward the good, developing internal dispositions—virtues such as prudence, justice, fortitude, and temperance, considered cardinal—which become habits guiding correct, reasoned action toward a good and happy life, in harmony with universal values such as honesty, respect, and responsibility, in order to become a better moral agent.

KEYWORDS: charity, right, law, morality, religion, legal positivism, human dignity, state value

Introduction

The theme of the relationship between law and morality is one of those sensitive topics that a philosopher or jurist cannot avoid addressing. Some philosophers have analyzed law and morality from an epistemological perspective, although discussions are often marked by confusion and misunderstandings. If we take a retrospective look, it is enough to recall Socrates, Plato, and Aristotle, who explored concepts such as justice and virtue. These Greek thinkers laid the foundations of Western moral philosophy (Rotaru, 2006, pp. 127, 162, 171-172).

Socrates discusses morality and justice through the pursuit of virtue via self-knowledge and knowledge of the good, arguing that ignorance is the cause of evil and that justice resides in the reason of the soul. He urges us not to commit injustice, even at the cost of suffering, and to respect the laws of the polis for the common good, as demonstrated in his dialogue with Crito, when he accepts his death sentence. His ethics is intellectualist: anyone who knows the good cannot fail to act accordingly (Vimercati, 2013, pp. 49-51).

For Plato, morality is based on the harmony of the soul, guided by reason (wisdom) which governs the other two parts: will (courage) and desires (temperance), in order to achieve justice, the supreme virtue that reflects the ideal

order and leads to happiness through knowledge of the good. Ethical life is a process of purification and intellectual ascent, freeing oneself from passions and the body, attaining inner harmony and imitation of the divine, with individual freedom residing in the conscious choice of virtue (Zeitler, 1983, p. 44).

Aristotle analyzed ethics and justice as fundamental components of life in the polis, profoundly influencing later conceptions of natural law. This concept was also debated by other important theological authors, such as Thomas Aquinas, who developed reflections on morality, especially in relation to natural law and justice.

Hugo Grotius, known as the father of international law, developed the philosophical theory of law centered on the distinction between "natural law" (based on human reason) and theological morality (derived from God), emphasizing that "natural law," even in the absence of God (a revolutionary idea in Thomas Aquinas' time), would still be valid, grounding human society on rational principles—a crucial step toward the secularization of law—although he still acknowledged the close connection with theology.

Immanuel Kant, regarding the distinction between morality and law, argues that morality consists of imperatives, which are followed because of their intrinsic value, compelling humans to respect them (Landucci, 1994, p. 15). Law, in contrast, consists of imperative norms that humans obey and act upon for reasons other than the intrinsic need to follow them (Kant, 1956).

Norberto Bobbio, who thoroughly analyzed the nature of human rights, argued that these are historically and culturally determined principles that must be continuously negotiated and balanced with other values. Hans Kelsen, who developed a theory of law that clearly separates it from morality, defined law as a dynamic order of norms based on a Grundnorm. Kelsen initially considered morality to be the realm in which absolute value judgments are made. To affirm that something is right means to believe that it is an ultimate end, which is not in itself a means to a further end. Such a judgment is always determined by emotional factors. Legal science must be freed from these moral judgments, not only because they are "moral," but above all because they are not scientific (Moreso, 2020, p. 143).

The Relationships between Morality, Law, and Freedom

Morality and law are both systems of norms that guide behavior, but they primarily differ in their applicability and origin. Law is enforced through coercion, and violations lead to external sanctions (such as a fine or imprisonment), whereas morality is based on internal principles, and its violations produce internal sanctions, such as guilt. Moreover, morality may have a more universal and immutable foundation (as in the case of ethical principles), while law is dynamic and produced by a specific authority (Kelsen, 2009, pp. 10–13).

Morality and freedom are two closely related philosophical concepts. Morality refers to the principles of right and wrong that guide human actions, while freedom is the capacity to choose these principles and act according to them, thereby putting morality into practice. Although freedom involves moral choice (the freedom to choose good or evil), morality itself provides the framework for the authentic exercise of freedom, aligning it with the common or individual good. Without freedom, morality would merely be constraint. Freedom is, therefore, the primary subjective root of morality, just as divine and human law constitute its objective form: root and norm, freedom and law, placed in an original and incommensurable relationship that does not correspond to any already known, for example, that between act and object, matter and form, or external and internal (Kant, 2022, p. 88).

Freedom and norms are not dialectical moments but rather constitutive of each other and from each other (Hart, 2023). There is no freedom without norms, just as there are no norms without freedom. This means that the moral world, like the sphere of the authenticity of the spirit, is and must also be an inverted world, in comparison with the world of immediacy and appearances. On one hand, the ultimate meaning of freedom seems to stem from its reference to freedom as radical subjectivity, in accordance with the constitutive belonging of the act to the subject; on the other hand, the same reference resolves into an empty tautology if it is not mediated by transcendence, if it is not objectified toward the original perspective of good and evil, and, consequently, in the divine and human law that founded it (Rotaru, 2019, pp. 201-215).

In fact, in the moral sphere, something entirely new and original occurs, which does not happen in the cognitive sphere: that is, while knowledge moves from subjectivity toward objectivity, action—moral action (Rotaru, 2024a, pp. 301-318) and human action—starts from the objectivity of the world and society and moves toward the depths of the "self," which liberates and fulfills itself through its aspirations—a contrast between the cognitive and the moral spheres, between centrifugal and centripetal movement: knowledge is centrifugal, despite appearances even in the modern immanentist tradition, whereas morality is centripetal (if we may put it that way!).

Therefore, it is necessary to distinguish between legal values, which are relative, and the values of justice, which are absolute. From the perspective of relative value judgments, any legal system is moral, because "if law is defined as a norm, this means that what is in accordance with the law is good." From the perspective of value judgments, the legal system is a moral system among other systems of positive morality. Only behavior, that is, reality, can have value, whereas the norm is a value. However, a norm allows objective value judgments only if its validity is conditioned by facts (Villa, 1999, p. 241). The facts that determine the validity of a legal norm are the effectiveness of the entire legal system to which the norm belongs, the presence of a fact that creates the norm, and the absence of any

fact that would annul it. These facts make it possible to verify, even indirectly, the value of the law as a scientific guarantee of relative value judgments.

Principle: "Ipsa res iusta"

Thomas Aquinas takes up this concept, defining *ius* as the object of justice (the just act), *ipsa res iusta*, that is, what is due to a person on the basis of a proportional relationship. The principle of *ipsa res iusta* ("the thing itself is just") in the philosophy of law means that *ius* is not primarily an abstract norm, but the concrete action that realizes justice by attributing "to each what is due" (*suum cuique tribuere*). The search for this *ipsa res iusta*, by immersing it in dialectics in the classical sense, brings it to the epistemic level—that is, to the primacy of form derived from the finality that guides interhuman exchange—and thus makes it possible to recognize its intelligibility and to share in its pursuit even amid the discursive clash of interpretative hypotheses that seek to bring to light the intelligibility of the object of the case (Popović, 2022).

The primacy of dialectics in the classical sense, which is completely different from Hegelian dialectics, signifies a break with and liberation from instinctive and functional immediacy. This primacy of dialectics—of the search for the right to exist through controversial debate—makes it possible to understand law as a form of life, that is, as a form of coexistence that does not overlap with human personality itself (Kelsen, 2021, p. 82).

Understanding that law is a form of life, that it has intrinsic significance for humanity, that it possesses its own inherent goodness and beauty, constitutes the link between law and morality and the entire process of building self-consciousness. Those who practice law, for example in civil life, in the sense of *ipsa res iusta*—as balance and respect, as the search for the reasons of all parties involved through the balanced arrangement of the matter at hand—know that the study and practice of law offer, in their own way, a form of joy, a distinctive joy, and possess their own beauty: a beauty that arises from understanding, in a more or less differentiated way, and that reflects the fact that things are done well and in a correct manner.

Moving beyond the law and entering the realm of morality that surpasses justice—a realm that calls for reflection when referring to charity—and addressing the relationship between justice and charity, we can say that charity is owed; it is an obligation, an obligation that cannot be legalized, but one that resides in that process of profound self-awareness which allows us to live alongside others (Romano, 2023). Thomas Aquinas, commenting on this passage, states that the righteous, even without external law, tend to practice justice by themselves, since charity moves them in place of the law and makes them act freely. External law was necessary only for those not inclined toward good; in this sense, "the law is not made for the righteous but for the unrighteous" (1 Timothy 1:9). Charity guides a

person toward the same good commanded by the law. Charity constructs a more perfect justice. Charity does not replace the obligations of justice but encourages me to recognize and affirm the rights of others, even at the cost of voluntarily renouncing my own rights; to bear the burdens of others and to find in my brother's hands the means to bear even my own burden.

In the thought of Blessed Augustine, law and morality are intrinsically connected and grounded in the Eternal Law (*Lex Aeterna*), which is the reason of God, and are manifested in charity (love of God and of one's neighbor) as the guiding principle. Augustine distinguishes between human law (changeable and imperfect) and divine law (perfect), placing justice at the service of the common good and the salvation of the soul, thereby anticipating modern concepts of human rights by extending dignity to all, even to the humble. For Augustine, true justice and true law are not created by human beings but are found in God, who is Truth itself (Christ). Human reason is illuminated by this truth and finds its norm therein. Divine Law is reflected in natural law, imprinted in the human heart, which impels the human person toward the Absolute Good (God) (Rotaru 2024b, pp. 878-890). All the elements of modernity that have so far been highlighted in the theoretical conception and practical application of earthly justice find, in Augustine, their center of gravity in the human being understood as interiority, self-consciousness, image of God, a meeting point of beginning and infinity, of immanence and transcendence—a place inhabited by truth conceived as a synthesis of all positive values that the will and intellect are capable of discovering there.

From the perspective of the Christian Church, the question of the relationship between law and morality, and the obligation to love—self-giving love—constitutes the connective tissue, the bridge toward justice, which makes law and morality comparable and yet distinct (D'Agostino, 2000, p. 39). If there were no obligation to love others—what in the Gospel is love of neighbor, even when that neighbor is an enemy—morality and law would not be able to communicate, law remaining enclosed within the forms of justice and morality dispersed in the dream of self-sacrifice. Moreover, if love toward one's neighbor is disinterested, it is already difficult and scandalous, since the neighbor is often anything but worthy of love; love toward one's enemy breaks every boundary and places the relationship beyond dialectical comparison. This idea originates in the Gospel, occupies a primordial place in the thought of Blessed Augustine, and has re-emerged in Benedict XVI's encyclical *Spe Salvi*.

There is, therefore, a growing awareness—especially among Catholic jurists, perhaps even as a matter of professional experience—that law is in crisis, that there is a generalized loss of the virtue of justice. These painful events—indeed—have led even proponents of secular ethical dogmatism to speak with concern about a crisis of law and a moral crisis which, after suppressing from its ethical content the relationships between the human being and God and between the human being

and the self, has reduced the virtue of justice merely to social ethics, that is, to purely intersubjective relations. Rather, the increasing ethical impoverishment, the permissive amorality of legislative and jurisprudential activity in many states, and, consequently, the progressive weakening of the rationality of laws and judicial decisions lead to the depreciation of law and to the loss of its substantial binding force.

The Influence of Morality on Law and Their Separation

Morality influences law by defining fundamental values (the good, justice, human dignity) that inspire legislation, by establishing ethical principles (such as freedom of conscience) that the law must protect, and by guiding the interpretation and application of legal norms, especially in the presence of general clauses (for example, "good faith") or in order to fill normative gaps. Nevertheless, law is distinguished from morality by its coercive nature and by its apparatus of external sanctions, as emphasized by philosophers such as Hans Kelsen and Immanuel Kant (Severino, 1999, p. 126).

Kelsen analyzes the distinction between ideal morality and positive morality, the latter being ultimately the only one susceptible to scientific knowledge. Alongside the relationship between legal science and the doctrine of natural law, which represents ideal morality, there is also the relationship between legal science and ethics, understood as the descriptive science of positive morality.Traditionally, such debates have been addressed under the unifying label of the question of the separation (or connection) between law and morality—legal positivism aligning itself to defend the thesis of separation (or separability) between law and morality, while natural law theories or other forms of anti- or non-positivism firmly support the existence of a necessary connection between law and morality.

This problem acquired a particular perspective and, in its own way, an urgency following the fall of the fascist and Nazi totalitarian regimes in the first half of the twentieth century, with their atrocities committed even under the aegis of state organizations and legal apparatuses, and with the Nuremberg Trials (a true founding event of contemporary law, alongside the constitutions of the mid-twentieth century). Later, during the period of the Iron Curtain, legal positivism in the communist era took the form of an extreme and ideologized positivism, which viewed law as an expression of the will of the Party and the State. Law was thus identified almost entirely with positive law (the socialist state), excluding natural law and subordinating law to political objectives (the construction of socialism).

In these situations, legal positivism was accused of cowardly (or selfish) amoralism and legal technicism, of legislative fetishism and statolatry, and, in essence, of having educated more than one generation of jurists and citizens to submit shortsightedly to the legislator of the moment, forgetting that "law" cannot

be reduced to "statute," and that there exists a deeper dimension of legality in which law is intertwined with moral and civilizational values.

On the other hand, it has been emphasized that the conceptual separation between law and morality serves not only to prepare the possibility of a scientific knowledge of law, but also to prevent the recognition of law as possessing an intrinsic moral authority on which an obligation to obey the law as such could be based (Hart, 2023, p. 56). Thus, for several decades of the twentieth century, the "separation between law and morality" functioned as a kind of slogan around which a significant part of global philosophical-legal debate developed—between those who used this slogan as a weapon of polemical struggle and those who, by contrast, attacked it as an outdated fetish to be demolished at all costs.

Now, after several decades of debate, at least one thing has become increasingly clear: the problem of the "separation between law and morality," besides being central and even strategic for the self-representation of certain philosophical currents, is also irredeemably ambiguous, and in several respects (Hart, 2023, p. 62). This is because, first of all, behind this slogan lie—and are intertwined—distinct problems, which can and must be addressed separately. Consequently, it is entirely possible to maintain, without any contradiction, that some types of relationships between law and morality are not necessary but merely contingent (and therefore that law and morality are, from the relevant perspective, conceptually separable), while recognizing that other types of relationships are, by contrast, necessary.

In short, it is one thing to establish the conditions under which law can be considered valid, and quite another to determine its morality: law cannot replace morality, but, equally, morality cannot replace law. The critical evaluation of law in the light of moral criteria is, of course, often commendable, but it does not serve to establish its legal validity.

Conclusions

We can observe that the relationship between law and morality is a central theme in the philosophy of law. Both establish norms, but they differ in origin (individual conscience vs. institution), coercibility (internal vs. external sanction), and purpose (inner perfection vs. social order). Nevertheless, they are interconnected, as law often reflects and translates moral principles, while morality can critique law, generating debates (natural law vs. legal positivism) about how closely these two should coincide or remain separate.

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