ISSN: 2637-6067 DOI: 10.6918/IJOSSER.202107_4(7).0066

The Dialectical Relationship Between Law and Morality

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Abstract

The relationship between law and morality is not only a controversial issue in western academic circles, but also an important issue for many Chinese scholars to think and study. As different parts of the social superstructure, law and morality have significant differences in behavior standards, adjustment methods, operation mechanism and compulsory methods. In modern society, the law and morality of any country can not be completely separated. They are closely related in essence and content. They influence and infiltrate each other. Morality nourishes law, and law guarantees morality, forming a benign interaction.

Keywords

Law; Morality; Benign interaction.

1. Preface

The relationship between law and morality has always been a basic issue discussed in legal ethics. Dating back to the spring and Autumn period and the Warring States period, the debate on rites and laws holds that "the duty of human beings is the origin of Rites". Although a hundred schools of thought contend, those who advocate propriety more than law occupy the mainstream. Before modern times, law and morality were mixed together. With the development of society, the difference between law and morality gradually began to appear, especially in the modern West, the difference and connection between law and morality were clarified mainly by positivism" evil law is also law" and non positivism "evil law is illegal". As auxiliary tools to adjust social relations, law and morality have different connotative functions and play an irreplaceable role in the development of society. At the same time, as ideology, law and morality have decided to interact with each other in different degrees. In modern society, the combination of rule of law and rule of virtue can jointly promote the development of society, so that rule of law and rule of virtue complement each other, and law and morality complement each other.

2. The Definition of Law and Morality

2.1. The Meaning and Characteristics of Law

The so-called law is a social code of conduct formulated and recognized by the state, guaranteed by the state's coercive force, embodying the will of the ruling class, and centered on rights and obligations. Law has the characteristics of regulating social relations, embodying the will of state rulers and taking rights and obligations as its content.

First of all, law is the norm of behavior to adjust social relations. "The law does not ask for trifles." Law does not adjust all social relations. As a category of ideology, law only adjusts the social relations that it considers important and can adjust, and guides people's behavior. As a social norm, law differs from religion and morality. Law regulates people's behavior by

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regulating their external behavior. For example, through the promulgation of compulsory orders and regulations, it can regulate people's behavior. As Hart said, "in addition to guiding human behavior and providing a unified standard for behavior, further exploring any purpose for the law is just a useless attempt."[1]Therefore, the law is only to adjust the norms of behavior in social relations.

Secondly, the law reflects the will of the ruler of the state. Law is the embodiment of the will of the ruling class. This "rule" includes not only political, economic, but also ideological rule, relying on the state machine with coercion. Therefore, the will of the ruler needs to be expressed in the form of law, so as to establish and consolidate social order and protect the interests of the class. If people violate the law, they will be punished by the law, and the state will rely on the tool of coercion to ensure the implementation of the law. Law is the condensation of the will of the state, which maintains the public interest represented by the state, so law is the embodiment of the will of the ruler of the state.[2]

Thirdly, the content includes rights and obligations in law. Law is a two-way provision of rights and obligations, which stipulates both obligations and rights. There is a famous saying of FA Yan, that is, "there is no obligation without rights, nor is there any right without obligations." In the view of Professor Zhang Wenxian, rights and obligations are the core categories of law. They are related in structure, equivalent in total amount, complementary in function and primary and secondary in value. Unilateral promise in law is a typical embodiment of legal rights and obligations. The promoter has the right to recover the ownership of the lost property, but also has the obligation to pay the reward. Law is the best embodiment of rights and obligations, so rights and obligations are the core content of law.

2.2. The Meaning and Characteristics of Morality

Morality refers to the social norms, derived from human social customs and maintained by people's inner beliefs and public opinions. In the process of formation and development, it embodies human rational wisdom and a kind of non power social norms. The main characteristic of morality is the wisdom formed by human beings, which is a social tool and a non mandatory norm.

First of all, morality is the wisdom formed by human beings. As a high-level animal, human beings are different from other animals mainly because they have a sense of good and evil, integrity and shame, which is not possessed by low-level animals. In the process of human development, a common consensus has been formed, which has been tempered by time to reach the inner conviction of human beings. As Darwin, the father of theory of evolution, said, "only through training can we train moral concepts and moral conscience." Morality is a kind of morality formed by people with self-consciousness when they realize the needs of society, have the needs of interest relations and pursue interests. The formation of morality is the process of human's promotion of rationality. Therefore, we can say that morality is the wisdom of human's rationality.[3]

Secondly, morality is a social tool. Whether it is natural science, or humanities and Social Sciences, all take morality as the premise, and morality seems to be innate. However, from the perspective of social evolution, morality is a trait developed by human beings after long-term progress. Morality is a kind of cultural norms created by human beings under the promotion of their own needs evolution, and with the development of society, it is a tool for evaluating social values such as good and evil, right and wrong. We should correctly handle the relationship between human beings and morality, clarify the functional connotation of morality, and give full play to the instrumental attribute of morality. As a tool, the connotation of morality will change with the change of environment. Constantly adapt to the required social environment and create a good social atmosphere.

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Thirdly, morality is a non mandatory norm. Morality has the same social attribute as law, but morality is only a non power norm in social norms, which does not have the compulsion and power of law. In social life, everyone will have behavior, everyone's behavior will make mistakes. Morality regulates all human behaviors, but law only regulates part of them. The adjustment of morality to behavior is a non compulsory binding force, which mainly relies on the discovery of people's inner conscience to censure. This is because morality does not rely on the protection of national coercive force and has no power.[4] However, the condemnation of the illegal morality is the main rely on inner belief and public opinions.

3. The Significant Difference Between Law and Morality

From the concept of law and morality, we can see that there are many differences between morality and law, which are mainly reflected in the following aspects:

3.1. The Difference Between Law and Morality in Behavior Standard

From the perspective of behavior standards, legal behavior is clear, while moral behavior is vague. Law is the product of the subjective design of the rulers, and determined in a certain way of writing, which reflects the will of the rulers. As a code of conduct, law has its own clear behavior, which is manifested through various sources of law. Because the code of conduct is deterministic, we can judge which behaviors are legal and which are illegal through people's practice. Law guides people's behavior by setting rights and obligations. Morality is a general consensus formed by people's inner beliefs, which is not guaranteed by the state's coercive force and does not need to reflect the ruler's will. It is people's subjective view of something. The consensus formed in people's heart is not determined in the form of words. As for which behaviors are moral and which are not, the performance is vague, and it is difficult to have specific guidelines to punish those who violate morality. Therefore, the law is clear and concrete in behavior, while morality is vague and abstract in behavior standard.

3.2. The Difference Between Law and Morality in the Way of Adjustment

From the way of adjustment, law pays attention to external behavior, and morality pays attention to internal motivation. From the legal level, we should investigate a person's criminal behavior; first of all, from the objective level, we should analyze whether the perpetrator has committed an illegal act, only the perpetrator has committed a criminal act. As a means of sanctions, the law will further analyze the actor's intrinsic motivation when pursuing responsibility, which is intentional, negligent or accidental. Therefore, the first concern of the law is external behavior. If there is no external behavior of crime, the law will not punish subjective fault, and the law will not punish ideological crime.[5] Morality pays attention to internal motivation. Morality not only pays attention to internal motivation, but also pays attention to external behavior. In terms of behavior, morality is higher than the law, and the behavior required by the law can be done as long as it does not violate the provisions of the law; while the behavior in morality requires people to carry out certain behaviors in order to pursue the truth, the good and the beautiful, and be restrained by the noble quality in the heart. For example, there is "good intentions do bad things" in society. For some people, although they do bad things, they have good intentions and may not be morally condemned. However, the occurrence of "bad heart to do good" and doing something with impure purpose brings unexpected gains, which will be morally condemned at this time. This is that morality pays attention to people's internal motivation, but also notice people's external behavior. This also shows that the way of moral adjustment is wider than that of law.

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3.3. The Difference Between Law and Morality in Operation Mechanism

All activities related to the law must comply with the procedures. The law itself is procedural, and the procedure embodied in the operation of the law is rigorous. Violation of the law will have to bear the corresponding legal responsibility, but the premise of bearing the responsibility is the trial. In the trial, both parties are allowed to debate, cross examine and other rights according to law. The way of governance is "heteronomous", and the consequences of this way will not have any impact on the effectiveness of the law because of the individual's subjective will. However, morality is non procedural in its operation. If it only violates morality and does not violate law, it will not be punished by legal procedure. Morality is mainly regulated by "self-discipline", which is manifested in the regulation and condemnation of the behavior of immoral people, and there is no procedural step in the process of moral punishment, just the judgment of the good and evil of the inner concept.[6] As far as morality is concerned, without the existence of procedure, it will not be subject to compulsory sanctions by law. The non procedural nature of morality is only the introspection of the self disciplinarian, and the strength of this binding force can be completely changed by the self disciplinarian's subjective will.

3.4. The Difference Between Law and Morality in the Way of Coercion

From the way of coercion, law is external coercion, and morality is internal coercion. Law is an organized national compulsion, and morality mainly depends on the internal conscience recognition and censure. The enforcement of all laws depends on the national coercive force, which is also the common feature of all laws. Because the state, as an organization to maintain social rule, needs a kind of coercive force to maintain its operation. The law just reflects the will of the ruler, which is used to maintain the stability of the whole society. When someone revolts against the rule of the state or infringes upon the legitimate rights and interests of citizens, the law of state violence will punish them.[7] If we violate the law or infringe upon social rights and interests and do not punish them with the force of law, then the deterrence of the law will be in vain, and the legal provisions are just words written on paper. Morality does not need to rely on national coercive force, it mainly depends on people's inner conscience and censure. Violation of morality will only be condemned by conscience, and this kind of binding force is not external compulsion. People can abide by morality on the basis of inner belief or public opinion, but it will not be forced by the state. Therefore, it is only a spontaneous and internal behavior to abide by morality.

4. The Close Relationship Between Law and Morality

Although there are many differences between morality and law, they are closely related, which are mainly reflected in the following aspects:

4.1. The Essential Connection Between Law and Morality

Whether there is a connection between law and morality in essence has always been a controversial topic in the field of law.[8] This paper discusses "evil law is also law" advocated by positivism and "evil law is illegal" advocated by non positivism. First of all, positivism thinks that law should not be connected with morality. They think that law is a relatively independent social tool. Among them, the analytical positivist school thinks that the reason why a law is called "law" is not whether it conforms to the moral norms, but whether it is created by the authoritative subject, that is, whether the maker is authoritative; the legal socialist positivist school thinks that it depends on whether the law has social effect, that is, whether people generally accept it or not, and they call the law with social effect "law"; Both analytical positivism and social positivism believe that there is no necessary connection between law and morality, and advocate that "evil law is also law". On the contrary, the classical naturalism of

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non positivism holds that "the correctness of content" is the only standard for making laws, and that law and morality are closely related. Non positivism holds that the law which is not in line with morality is not law, and that "evil law is illegal." In contemporary society, most scholars hold that law and morality are related, so the opposite view of "evil law is illegal" and "evil law is also law" shows the necessity. "Evil law is illegal" reflects the essential characteristics of human pursuit of truth, good and beauty. This ensures that the laws created by the state's legislative activities are in line with morality and safeguard the interests of the people to a certain extent.[9] Human beings are full of rational wisdom. We can't call all laws "laws". Only when they are in line with the moral value of society, can the implementation of laws produce the desired effect. Therefore, only good law and good governance can produce more benign binding force.

4.2. The Relationship Between Law and Morality in Content

Both law and morality belong to superstructure and are determined by certain economic basis. Both of them are social norms to adjust people's behavior, which are determined by the existing social and economic basis. In terms of content, law and morality embody some social needs, and they permeate each other. On the one hand, the formulation of any law reflects a certain degree of social morality. In modern countries, the law is formulated by the national legislature and expressed as a normative document of social rules. As a system of social behavior norms, morality is mainly manifested in a certain amount of public opinion, so morality is relatively conservative and spontaneous to a certain extent. Therefore, the law must keep a certain degree of harmony with social morality. On the other hand, any legal system embodies the moral value judgment about freedom and justice, which also reflects the legislators' pursuit of a certain legal moral concept. Law is not only the external binding force, but also the connotation of morality. On the one hand, there is no vitality for the law that does not implement the moral concept, because there is only the written expression of the law, and there is no touching power. On the other hand, society is changing, people's behavior is changing all the time, and no legal provisions can be comprehensive. Law can't involve all fields, but morality can involve social behaviors that law can't touch. On this basis, morality plays a role of mending loopholes.[10] Therefore, we need to correctly understand the important role of morality in building a just social order. Law to morality can play a clear characteristic of coercive force, which is conducive to maintaining the stability of social order and the popularization of moral concepts. Only by assisting each other, law and morality can play a complementary role in the optimal adjustment of society.

5. The Positive Interaction Between Law and Morality

In the difference and relation between law and morality, morality nourishes law and law guarantees morality, which form a benign interaction.

5.1. Morality Nourishes Law in Legislation

Morality nourishes law in legislation. Law is the most basic morality and morality is the highest level law. To integrate the moral idea into the legislation is actually to raise the most basic moral idea into the legal form and standardize it. Just like the principle of public order and good customs in the general principles of civil law in the civil code of China, it integrates morality into the code to embody human wisdom, but at the same time it also legislates this kind of moral culture; the gene editing in the eleventh amendment to the criminal lawis the norm of human ethics and morality, "law is the minimum morality," any behavior in the society If we touch the bottom line of morality, we will be punished by law. The legalization of morality has been playing an important role both at home and abroad since ancient times. This is just like the ancient "entering the law with propriety" and "concealing each other in the first place" is the

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manifestation of moral legalization. Since ancient times, China is a big cultural country that pays attention to ethics and morality. Law wants to be abided by and believed by people, like morality, which requires legislators to pour their moral feelings into law, nourish law with morality, and embody the social value of law based on the value of morality.[11] Morality nourishes law in the aspect of law enforcement; fairness and justice should be reflected in the process of law enforcement, which requires law enforcement personnel to improve their comprehensive quality. Although it is the implementation of the law, but also to arm themselves with morality. Law enforcement officers can strictly crack down on unethical behavior only through fair law enforcement. At the same time, it also enhances people's social morality consciousness. By punishing domestic violence in accordance with the law, we can promote the cultivation of family virtues; in law enforcement, we should add humanization and increase flexibility. In order to maintain justice, we should be impartial, at the same time, we should inject moral feelings, and combine law enforcement ideas with moral concepts. Especially in the civil field of law enforcement activities, the law enforcement cases involving family disputes are not only executed by judgment, but also by morality and human feelings, which not only maintains the dignity of the law, but also takes into account the moral feelings, so as to achieve the most ideal state.

5.2. Law Guarantees Morality

Morality nourishes law and law guarantees morality. Only when morality is protected by law can it play a great role and achieve good social effects. The law legalizes and institutionalizes the social moral concepts and basic principles through legislation, and maintains the moral norms with the force of law. The construction of the legal system is to transform the moral concepts in the society into laws by means of legislation, so as to form a clearer code of conduct in the aspect of standardization and legalization. Moreover, the force of law can effectively promote people to abide by the principles of morality, so as to maintain social order in a wider range, protect people's social life, and truly realize the combination of self-discipline and heteronomy. Law and morality are the carriers of society. It is helpful to promote the renewal of moral concepts to carry forward moral concepts under the protection of law. On the one hand, we can promote the popularization of moral norms through legislative means. For example, in the transaction activities confirmed by the civil code, the principle of good faith is initially the moral norms. After long-term social development, legislators regard its specific content as the basic principle of civil law, making it legalized and standardized. From the spirit of law, law uses its own modern spirit of right standard, contract freedom and efficiency priority to cultivate and educate people, so as to form a healthy and orderly social life order. This is conducive to the integration of legal spirit and moral concept, and jointly promote social development. On the other hand, by institutionalizing the concept of morality, the law defines the moral norms in the society as the legal norms, so as to make people more clear about their moral obligations. In addition, law has played an irreplaceable role in promoting the social moral value system and improving the moral level.[12] Through its own institutional mechanism, law promotes the progress of morality and the development of spiritual civilization. The development of society not only depends on morality and law, but also needs the joint efforts of morality and law to promote the faster progress of society.

The purpose of law and morality is to maintain social order, just like the view of "evil law is illegal". Law and morality cannot be separated completely. Mencius, the great thinker in ancient China, said that "it's not enough for us to follow the law by ourselves." law and morality complement each other like two wheels of a cart. Law is written morality, morality is inner law. Morality nourishes law and law guarantees morality. At the same time, we should not only guard against "the omnipotence of law", but also guard against "the supremacy of morality".

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Only by recognizing the essence of law and morality can we establish a good social order and create a good environment for the healthy and orderly development of society.

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