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LAW AND MORALITY

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Introduction

Law and morality are two topics that have been widely considered to be intertwined with each other. The relation of morality to law forms a central part of legal philosophy. The important premise here is that what does morality expect from the laws of a community? Making judgement of what is right, wrong, good or bad can be decided by the community without the interference of a legal institution. So, it becomes clear that while laws differ from place to place, morality is universal. However, the relation between the two is extremely complex. A variety of questions arise. Are moral requirements a part of a society's law? Are legal and moral obligations the same? If a law violates moral principles, is it invalid? While hundreds of volumes have been written on these questions, conclusive answers have not been found.

Hart's Concept of Law and Morality

Professor Hart, in this work *The Concept of Law*, says that "there are many different types of relations between law and morals and there is nothing which can be profitably singled out for the study as the relation between them."¹ Before we discuss how he tried to describe their relationship, let us look at his definitions of law and morality separately.

He defines law as a union between two types of rules. The first is primary rules which refers to the specific actions that individuals should or shouldn't do. Secondary rules, on the other hand, is considered with primary rules themselves. They talk about the ways in which in which primary rules have to be ascertained, introduced, enforced etc. A union of these two, he says, is a very narrow definition of law.

¹ H.L.A HART, THE CONCEPT OF LAW 181 (1961).

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While defining morality, he says that moral rules are seen by society as having great importance in contrast with rules of etiquette. Moral rules cannot be enacted or repealed. They are inherently part of the community. He says that morality not only involves obligations, rights and duties, shared by a group or society but also includes highly personal, individual ideals.

There is a necessary connection between law and morality in its primitive stages where law is defined in terms of some primary rules of society, which evolved from morals. It is also observed that morality of natural necessity is the ground for the minimum forms of protection for persons, property and promises. Morality includes what is called 'minimum form of justice'. In this manner, a relation between law and morality can be seen – they both share a component of justice.²

There is no necessary connection between the existence of a law or a legal system and a moral obligation to obey the law. Those who affirm this necessary connection seem to maintain that there can be no legal obligation without the prior recognition of a moral obligation to obey the law. However, he talks about a causal connection between morality and law. The morality of a society greatly influences the law, its formulation and interpretation.

Morality as an Incomplete Guide

It seems clear that legal determinants of moral obligations are necessary to a co-operative morality whenever complex problems of coordination arise. Morality is not fully autonomous. Moreover, its dependence fits the view, admittedly disputed, that when laws lay down or imply the existence of obligations, they assume that these obligations have moral force. If laws serve as determinants of morality, it is easy to see why this assumption is made. That some laws do have moral force need not be just a self-interested claim on the part of governments or lawyers. It may be a necessary assumption for a society which aspires to having a viable morality. Of course, to claim moral force is not the same thing as to possess it. But sometimes, if the legal determinant of a moral obligation does not have moral force, there will be a vacuum.

Moral Conflicts

Legal determinants of morality are needed because even when we agree on moral values there is sometimes no way in which they can be translated into detailed obligations except by law. People often disagree about the values they should individually or collectively pursue. It is not

² William T, *The Relationship of Law and Morality*, 11 Ga. L. Rev., (1976).

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easy to define those moral conflicts that cannot be left for the members or subordinate units of a community to resolve for themselves. Moral conflicts spring up even among people who are trying their best to do what is right because different people have different values, each good in themselves, or have the same values but rank them differently. So now what is the role of law in cases of moral conflicts? Given that justice provides the motive for political intervention, laws do not usually rule on moral conflicts directly. They do not necessarily purport to declare that one side or the other is in the right. What they are ruling on is the question whether to permit certain behaviour or a certain institution creates serious injustice between those who make use of the permission and others. Legal intervention usually takes the form of prescribing or removing penalties, conditions or incentives which attach to behaviour or granting or withholding recognition from certain institutions.³

Conclusion

This account of the way in which law serves as a determinant of morality states only the minimum. Besides the areas in which law is necessary to a viable morality are others in which it helps morality by spelling out moral requirements in detail. There are morally useful as well as morally necessary laws. Indeed, there are probably no legal issues to which moral arguments are irrelevant. Even when the issue is in the end concluded by authority lawyers advance and judges consider arguments on the merits. The converse is also true. When the legal issue is not concluded by authority arguments from authority are nevertheless made and have some weight. In both argument and judgment moral arguments and arguments from authority proceed in tandem.

It is true that morality is in important respects separate from law. But the separateness consists in the critical role of moral thinking, in the fact that all laws are subject to moral criticism, so that to do what is legally required is not always to be morally in the clear, just as to do what is morally required is not always to be legally in the clear. But morality is not separate in the sense of being self-sufficient. On the contrary, morality and law intermesh in complex ways, only some of which have been touched on in this article.

³ Tony Honore, *The Dependence of Morality on Law*, 13(1) OXFORD JOURNAL OF LEGAL STUDIES, 1 (1993).