The Ethics of the Relationship between Religious and Civil Norms

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Abstract

Ethics provide a common ground in the assessment of religious and secular norms. The close relationship between laws and the principle of religious freedom, the interference between them and the moral basis of both sometimes overlap; analysis from the perspective of morality is very important because it establishes a common language of assessment. To what extent can it draw a connection between religious and civil norms? What are the common elements overlapping between the two sets of norms? Is there a tension between the two sets of norms? What is the role of religious consciousness in relationship to the norms of society? This article will attempt to answer these types of questions and others not explicitly included here.

Key words: *religious norms, civil norms, freedom of religion, ethics, conscience, religion*

Pluralistic religiosity requires humanity to find a language for dialogue outside the religious-specific spectrum because religious language could seem exclusive to many people in this pluralistic contemporary society. Surely there are civic norms guaranteed and respected by society, like human rights, but even for those, an ethical debate is at the base of their formation. Surely the relationship between religious and civic norms has always been driven by ethical debate, even if the religious debate was dominant within the socio-political construct for a long time due to the fact that religion influenced much of the governance of society. Understanding this construct, then the deconstruction and differentiation between the two sets of norms could establish a clear demarcation between the two sets of norms and the links between them which is imperative for understanding the whole normative picture of society.

The Evolution of the Relationship between Religious and Civil Norms

The way an individual perceives and relates to the universe determines the relationship of the individual to the whole world around him/her, including divinity. Common phrases such as "the concept of world and life" basically define one's position in this relationship, including judgments on the basis of which they form opinions and preferences. The origin of religion was debated with much zeal to try to find those common elements that determine common primary facts.

Sigmund Freud (1975) thought that religions are ultimately rooted in obsessive neurons. Herbert Spencer understood religion as an experience with ghosts and the fear of ghosts (see: Peel, 1972, 206-216). According to Bronislaw Malinowski, cultures, whether viewed as "primitive" or "developed", highlight several ways in which individuals see themselves in relationship to the universe. One way is magic in which individuals seek by various means, gifts or charms, to attract the gods onto their side. The universe viewed through the prism of science is orderly, open to be studied or controlled by human beings. The religious view of the universe is more like that of magic (Sibley, 1984, 423). After having defined its relationship to the surrounding world, the individual registers his/her perceptions to then be useful for contemporary, but also for later civilizations. This moment is decisive for including religious and moral principles into laws in order to govern society.

> Worship began, perhaps, in a primitive way. Then people have put all sorts of questions. The prophets appeared and special religious people, who have imposed sets of laws and rituals. People began to ask ethical questions about worship. Thus began the debate. Primitive codes of law have occurred, which were in fact merged with the social practices (Sibley, 1984, 43-44).

This fusion between law and religion has led to a lack of clear differentiation or a precise demarcation between the two, thus creating confusion for most people in society. The law expresses and regulates a way of life, a kind of norm of social norms which, in combination with religion, generally applies "divine sanctions both for the norms and for the way (faith – p.n.)" (Sibley, 1984, 43-44). The overlap between these is so obvious that society was developed within these civil-religious normative limitations. The ancient Egyptian myths highlight the fact that Osiris had a human-divine role; being killed and resurrected, being immortal, leading his society, and also having a role in issuing laws (see: Budge, 1961). If he was not to be regarded as a deity, he was regarded as a human being through whom the gods formerly manifested themselves. The Egyptian thinking included the term *maat* which meant both the order of the universe and also a kind of "truth", which translated into the socio-political sphere, could mean matrix or mother, but also justice, harmony and regulation (Sibley, 1984, 44). A series of canon laws were identical to civil laws. For a very long period, they regulated the entire society that applied them thus contributing to the development of the laws. The Code of Hammurabi, *c.* 2000 BC, included an extensive legal order, mostly commercial, but where it was also mentioned that the king was of divine origin. The Code of God Shamash is also characterized by an overlapping of laws. Torah included both civil and religious laws, the overlapping of which makes it difficult to distinguish which one applies to religion and which is a civil norm ultimately defining the lifestyle of the Jews. The Decalogue of Exodus (Exodus 19:16-25), carved on tablets at Sinai, included regulations regarding relationship with God, with other deities and with others. The Hebrew Code highlighted the principle of justice which was dominant in the essence of the law. Greece has excelled in its society's preference for debates, broadening them for the non-sacred spheres and for other human experiences. Sophocles' "Antigone" is a paradigmatic case focused on the heroine's choice between religion and family tradition, considered *nuomos*, meaning law. King Creon represents the state law, politically governed by orders given through conscience deliberation. Plato believed that the law governs, but this governance is inferior to the human because it always contains arbitrary elements. Plato regarded the law as a "selfish-will, an ignorant man, that does not let anyone do anything but only what he orders and forbids anyone to question his orders [...] creating an impossibility, being something invariable and unqualified to do something in a satisfactory manner, as it is never uniform and constant" (Plato, 1063). However, he was involved in the writing of a system of laws developed in the *Law* dialogue. The Greek culture, influenced by political life, included many writings on this theme, like the fables of Lycurgus or Solon. The Romans raised the level of regulation, being in close relationship to the College of Pontiffs with the Pontiff Maximus and the administration that interpreted the laws. The law, religion and the family were central to Roman culture. The College of Pontiffs was under the control of the patrician class that managed the mysteries of religion, laws, and the wealth of the empire. The plebians started to demand rights that had been sometimes gained through non-violent resistance. Through the election of Tiberius Corucanius in 253 BC as prime Pontifex Maximus, knowing he was from the plebeian class, the patrician monopoly got broken and they lost control over both the laws and the religion. Corucanius invited the masses to his consultation room, leading to a system of *juris consult.* The legal system that included *praetor urbanus, praetor peregrinus, iudex,* and *iuris consult* contributed to the start of a set of measures that have helped cultural and religious pluralism (Sibley, 1984, 45-50).

The Process of Differentiation between Ecclesial and Secular Norms

The relationship between law, state and religion should be evaluated especially in the light of its common historical development. The mixture of the three components was so interdependent that any act to gain human rights or to obtain freedom had to do, in one way or another, not only with the type or style of governance, but also with the religious precepts of the given religious state. In such a context, religion played a key role in defining and shaping the government's public politics and the society's reflexes. This religion-state dualism persisted even into the modern era, and to some extent, even in some democratic countries. Harold J. Berman, in "Religious Foundations of Law in the West: An Historical Perspective," highlights the fact that this dualism, even recently, "seems normal" including in countries like the USA. On behalf of the majority of the Supreme Court, O. Douglas wrote in 1951: "We are religious people whose institutions are given by the Supreme Being" (Berman, 1983, 5).

Specific standards relating to laws, principles and rules were considered as ultimately being derivatives of the Bible, church history and the Declaration of Independence. The Enlightenment, along with the other important events that produced the disconnection of the state from religion, also seemed to be instrumental in the separation of civil laws from the governance of religion. There were voices demanding that laws should be totally removed from any "system of morality other than the one of utilitarianism or pragmatism" (Berman, 1983, 5).

The tension between religious leaders and secular authorities was also focused on issues such as laws and authority. The Christian church created the first set of modern laws called *jus canonicum* which were different from the decrees and canons long existing in religions, mainly because they were conceived in a very systematic pattern. Also, a hierarchical system of courts was created culminating with the papal court. The first European university in Bologna, founded around the year 1087, was established to educate individuals to become professionals in the study and interpretation of canonical law, such as the law of Justinian from Constantinople, laws compiled around the year 535 AD.

> Justinian's texts came to be called for the first time "the body of Roman law (*corpus juris Romani*) and later the" body of civil law (*corpus juris civilis*). Gratian's book entitled characteristicly *The Concordance of Discordant Canons*, was the first comprehensive treaty law written in any language. In a modern edition it would have more than 1400 pages. Thus, the tradition of Western legislation has roots in the duality of ecclesiastical and secular jurisdictions, but also in the plurality of jurisdictions, each jurisdiction having its own system of laws. There was a dualism of ecclesiastical and secular laws, each authority needed a proper set of laws that empower them and ensured them the needed discipline [...] In other words the Western tradition of law system is rooted in the belief that human law could eventually express the divine law (Berman, 1983,7-9).

Sachsenspiegel, written in 1220, was the first legislation in German and not in

Latin as was customary in the ecclesiastical sphere, and it was used in some parts of Germany almost until the year 1900. *Sachsenspiegel* said succinctly, "God Himself is the law, so law is dear to Him".[1]

The Protestant Reformation was marked by the dualism of law, according to Luther's thesis of the "two kingdoms" or "realities" (*reiche*); the earthly reality of politics and law interacts with the heavenly reality of grace and faith. His thesis, however, strongly interfered with the secular jurisdiction, canceling its application in the church sphere of influence:

> Lutheran jurisprudence is based on a theology that withdraws the law entirely from the heavenly "reality", and therefore from the ecclesiastical sphere. It relies on the will of God, for the earthly "reality", which, according to Luther, is given by God, God is in it. However, He is not "revealed" there (as is the case with the heavenly reality), but "hidden" in it. Lutheran Reformation and the German principalities revolution that have embraced this have broken the Roman Catholic ecclesial and secular dualism by removing the laws of the church. Luther proclaimed the abolition of church jurisdiction. In 1520 he publicly burned the canonical laws books (Berman, 1983, 11-12).

This act thus had a heretical connotation, and the burning of the canonical books meant for Luther not a reaction against the law itself, but against its essence which he considered to be a tradition without biblical foundation. According to Christian patristic tradition, humanity was regarded as rational and prone to natural law, both of divine origin. Lutheranism contests this thesis considering that both reason and human will are corrupt, such that human law reflects only corruption. Reformers, however, were forced to face the challenge of creating a legislative code which made their contribution essential for the western legal system (Berman, 1983, 17).

The relationship between secular law and religious law, state law and church law, is very important in the process of evaluating religious freedom. Those who view the law positively would object to the idea of having an ecclesiastical law saying that this is an improper name for it. Those who take a pluralistic view will give the ecclesiastical law a status similar to the regulations of unions or associations. In states with erastiane views,[2] the ecclesiastical law is strictly subordinated to the law of the state. In fundamentalist states, religious law is rated as superior to any other law. Gelasius, from the Middle Ages, postulated the theory of a society with two spheres of authority. Gelasius admitted that the responsibility of a religious leader is greater at the divine judgment compared to

1 *Sachsenspiegel*, site: http://dca.lib.tufts.edu/features/law/books, accessed 27 August 2008;

2 From Thomas Erastus (1524-1583), theologian, who introduced the thesis of a state's supremacy over religious life, a concept known as erastianism;

that of an earthly leader because his/her leadership responsibility includes not only people's souls, but also their spiritual guidance. The tension between the jurisdiction and supremacy between the two laws has fueled a permanent debate (Sibley, 1984, 60). Even though in democratic states the jurisdiction issue is clarified, the primacy between the two centers of power continues to be a debated theme, especially on moral grounds.

The Moral Role in Selecting the Criteria for the Formation of Laws

Horace left a proverb that refers to the close relationship between morality and law, saying: *quid leges sine moribus vanae proficiunt?* ("What good are empty laws without morality?") (Horace, III, 24). Several opinions have been advanced for how to develop laws in relation to morality. Most researchers believe that legislation should take into account the way society develops in terms of political, economic and social circumstances, knowing that social norms are those that ultimately dictate the formation of laws. These are given by the social values accepted by the majority of the society. Others believe that decisions should be made in accordance with the theories for the correct laws which actually implies a "pedigree of proceedings", the law being thus unable to be an objective fact, but a preference of those who created it.

The major question here is about the objectivity and morality of the law. If, in the designing of the law, various majorities or groups are taken into consideration, the laws will be created with this shape, formulating the law on what is good, right and correct for the groups envisioned. The law will then include rights that ignore the individual and his/her preferences and interests as a human being, and will treat him/her as a mean. The oppressive laws of Fascist and Marxist ideologies are examples of such manipulative systems based on subjective-arbitrary preferences, thus being also immoral. The law may encourage a reductionist view of the individual. According to liberal theory, the state must be a minimal one; its intervention is only to regulate the proper distribution of common goods, to guarantee the participation of people in the political process, to encourage the competitive market, gender equality, the market economy, etc. All these values have their own importance but sometimes fail to cover all aspects of the individual good, which probably includes essential elements such as education, health, art, environment and spirituality. The law may encourage a subjective perspective on individual interests, looking at the individual as a producer or consumer without taking into account other interests of the individual, interests that may be of major importance to him/her. Faced with this challenge, the state may decide to design a legal system based on moral norms. Such an approach should forbid intrinsic evil, a justified act, which would bring specific prohibition through negative laws

(Morden, 1984,8).

> These absolute rules do not allow privileges for the state and the individual. The *intellectus* limits of the law for autonomy, equality and neutrality of government are insignificant compared to the full possibilities of the human person. They allow the risk to abdicate from the internal and stable moral, by which any positive law could be evaluated and against which any standard can be measured. The main language suggests that objectivity of the law requires an *intellectus* to oversee the balance of rights and responsibilities for individuals grounded in the nature of the human person (Morden, 1984, 8).

The law of contemporary society is perceived rather as the primary tool of control that the society has as a moral support. Richard Land (1995, 54) considers that "laws against murder, theft, rape or racial injustice represent a regulation of morality. When we vote such laws, we do not actually try to impose our morality on criminals, thieves, rapists or racists, but we try to stop them from imposing their immorality on the victims."

Because there is a link between secular laws and religion, a relationship based on measures that can strengthen the moral and religious values of society must be established between the two. There are many clarifying questions that must be addressed before a set of measures that can be regulated can be decided: questions regarding the correct formulations and the principles involved from different fields or spheres that are affected by that particular law.

Because the categorization of laws falls within the ethical debate, Kathleen A. Brady has ranked the laws in an eloquent way for understanding the morality of the laws. In this categorization, alongside *permitted* or *forbidden* categories, Brady (2006-2007, 165-166) introduces the *mandatory* category, considering that the same type of assessment is applicable to laws, both judicial and moral. The categories are:

1) Legally permitted and morally permitted;
2) Legally permitted and morally forbidden;
3) Legally permitted and morally mandatory;
4) Legally forbidden and morally permitted;
5) Legally forbidden and morally forbidden;
6) Legally forbidden and morally mandatory;
7) Legally mandatory and morally permitted;
8) Legally mandatory and morally forbidden;
9) Legally mandatory and morally mandatory.

Brady finds that to highlight a moral act, one definitely needs a moral question that can be answered only by individuals. This is where the conflict arises, being created by different perspectives over morality.

There is no common ground on which legislators, judges and citizens can sit down and rationally arbitrate conflicts between moral perspectives. Any such land will actually be under the illusion of moral neutrality prospects, but will result in disregard of other moral views of other citizens. Furthermore, we tried to make clear that at least there is no one single question about the legal application of moral beliefs, but a set of questions (Brady, 2006-2007, 165-166).

There is, however, a wide range of moral principles and social concerns that do not have much to do with the law, but are rather placed within private or voluntary activities. These activities are more related to freedom, initiative and individual preferences. Most issues regarding the personal interests of the citizens are in the areas of freedoms and rights, and are the reason why individuals are motivated to make the laws that govern them to meet their moral convictions. In this context, it is important to, in the most comprehensible manner possible, use debate, recognizing the moral essential character of the law. This is in order to model a norm to correspond with the requirements of a pluralistic society, but without losing its moral foundations, at the very least keeping up with the golden rule and Kant's practical imperative.

Religious Consciousness and Civil Law

Religion, family, education, social norms, culture, etc., are formative factors of moral consciousness which includes intellectual, emotional and volitional elements. An individual's morality, by content and structure, includes both an explanation of the *what* and the *why* of morality. Though a pattern of development can not be predicted for the content, the structure has a well established pattern. Religion constitutes itself as a formative factor in religious consciousness regardless of the stage of one's moral development.[3] The conflict between religious consciousness and state law has generally been the source of violations of religious freedom. Whether or not to obey which state laws, how to obey them, and to what extent, are questions raised in the religious conscience of the individual. Mulfrord Q. Sibley in "Religion and Law: Some Thoughts on Their Intersections" offers a broad perspective on the intersection of state law and religious consciousness. Socrates introduced the idea of ethical consciousness. Consciousness enables the individual to raise him/herself

3 Lawrence Kohlberg distinguishes three phases: pre-conventional morality phase (up to 9 years), being a heteronymous morality, sprung from personal needs; conventional morality stage (9-20 years), based on the needs of the community of origin; post-conventional morality stage (after 20 years) anchored in the autonomous principles (see: Ward, 1978, 61).

above the law, the culture and collective judgments, providing the individual with an opportunity to disassociate from these appreciations. The moral development of the individual enables him/her to better master his/her critical judgment function over the surrounding phenomena. There is a religious conscience that mainly deals with an individual's spiritual and religious matters. Conscience judgments involve reason and avoid non-rational elements, but do not avoid irrational elements. The identification of cultural, social and legal elements does not involve a group action, but is the result of an individual's reflection. Others' opinions matter in these decisions as do religious precepts and legal provisions, but they do not have the last word in these matters. Consciousness is thus born at the intersection between culture, religion and law, but with more emphasis on religion (Sibley, 1984, 63-64).

Civil disobedience is also part of what consciousness dictates. The expectation is that one must recognize their obligation to submit oneself before the formative factors, culture or law, meaning by those to submit to one's parents, though it may be easy not to do so. When one's conscience is offended, that one can choose disobedience because adherence to the law has become destabilized. The particular expression of a state law may be considered immoral, which challenges and opens the door to civil disobedience. Human obedience comes from a critical evaluation of consciousness which involves many factors before the making of a decision. The standard by which one's conscience directs itself is an ideal, a norm of behavior that has an intrinsic value (Sibley, 1984, 63-64).

The intersection of one's conscience with the law or public reflexes sometimes produces disobedience or reprehensible acts. Often, one's conscience can be in conflict with ecclesiastical law even if the individual is part of that particular religious group. There are no set principles or laws, written or unwritten, that can prevent the acts dictated by the conscience. There is a close relationship between religious belief, conscience and the individual will. The design of legal norms had a great impact on personality development, consciousness and will. This is because it was realized that the set of facts included in the legal norms as being evil and unjust, or punishable in society, stopped the growing trend of an individual's aspirations for personal justice and annihilated the desire for rebellion. The secular law is thus permanently challenged by the individual conscience and faith which are rooted in the community and in one's transcendental experience. The personal and group religious conscience is in a constant dialogue with the community to which it belongs and with the laws and norms that govern its reality regardless of whether they are considered sacred or secular (Sibley, 1984, 67). Not even human rights are able to exclude ethical evaluation, rather its role is enhanced due to the fact that human rights are based on an ethical debate.

> The universality of human rights ethics do not result from the claim that are based on a natural law ethics which all rational people agree with by default.

> Rather there are many different faiths and ethics (and interests and loyalties) that different people based their support for human rights. The universality is not standing on a common agreed base, but on the intention to include all people as having human rights that has to be respected. Thus, the valid interests of all are included, even if we have a different belief [...] that does not mean that we must reduce our ethical basis of human rights in a thin rationality. We affirm the richness of differences of belief, because each brings his narrative faith and deep theology in support of human rights for all people (Stassen, 1992, 159).

The moral principles that result from the recognition of the human dignity in each individual build the foundation for an underlying respect for each individual. The emphasis and value shown to these principles by including them in the legal norms that govern a community are desiderations of any society that respects and facilitates the respect for the human dignity of every single individual.

Conclusion

To create norms in a multi-paradigmatic society that has many ethical systems is an enormous challenge. However, the pluralism of contemporary society requires finding common norms in order for all human beings to be able to live together in harmony regardless of their religion or adopted lifestyle. To discover and implement these norms through social conventions, there is a need to find a common base on which to build. That is not given by law because the law is itself created according to a social context. Ethical principles could therefore be a foundation for this important construction in the context of pluralism. An emphasis on moral principles does not annihilate religious faith, nor lead to a forced secularization of society or destruction of religious phenomena. The intention is to identify those common ethical values on which to build a state of consciousness and religious freedom. No matter how complicated or controversial this project to find a common moral ground for society may look, a project of creating a moral minimalism, the project itself deserves all the interest possible. This is because it is only in this way that society can benefit from having a solid foundation, a ground on which to stand, a standard by which all can relate.

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Ben-Oni Ardelean

Etika odnosa između vjerskih i građanskih normi

Sažetak

Etika pruža zajednički prostor za procjenjivanje vjerskih i sekularnih normi. Tijesan odnos između zakona i načela o vjerskoj slobodi, njihovo uzajamno

miješanje i moralni temelj ponekad se preklapaju; određuju analizu s perspektive moralnosti kao veoma važnu zbog toga što uspostavlja zajednički jezik procjene. U kojoj mjeri ona može pokazati vezu između vjerskih i građanskih normi? Koji su zajednički elementi preklapanja između ta dva niza normi? Postoji li napetost između ta dva niza normi? Koja je uloga vjerske svijesti u odnosu na te društvene norme? U sadržaju ovoga članka pokušat ću dati odgovor na ovaj vid pitanja kao i na druga koja nisu izričito uvrštena ovdje.