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Legal Rules in Ancient Rome between Law, Morality and Religion

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ABSTRACT: We chose as a research topic for our study one of the most important components of society and the legal order: the "norm" and we propose an interdisciplinary analysis. For this reason, we stopped at the analysis of the legal norm in the period of ancient Rome and at the connection between jus (law), lex (law, legal norm), mos (custom, morality, morav) and fas (religious norm). The structure of our paper begins with the presentation of the meaning of legal norms in Roman law, the elements of the legal norm, their significance, and the effects that a legal norm (written or unwritten) produced in the ancient Roman world. Then we continued to analyze the classification of law (jus) and the connection between ius / jus and justice, respectively, the connection between law and justice, finding that the Romans never separated the right from morality, from what they considered to be just. Continuing the idea of the norm, our paper analyzes the oldest source of law, the custom (consuetudo or mos maiorum - the custom of the ancestors). During the Empire, more precisely, during the Principality (classical era), the custom or custom appears as the will of the people, which was considered to come from the gods. In terms of these perceptions, the rules were designated by the term fas, which meant the relationship between man and divinity, but also what people could do or what was forbidden by the supreme will of Jupiter (jus).

KEY WORDS: law, legal norm, custom

Introduction

The Roman legal system is known as one of the most complex legal systems of all time. Roman law has demonstrated its viability by taking over rules, institutions, and legal procedures by the major legal systems. One of the sources of the Roman legal system was the law.

Roman law did not remain only a document of history, like other legislations of antiquity, but it exceeded, in terms of form, the limits of the society that created it. Basically, Roman law plays in history the role of a true "legal alphabet", the Roman legal concepts giving concrete expression to the most varied and subtle rules of law.

The Romans overcame before other ancient peoples the uncertainty between the two types of norms, delimiting and terminologically the right to religion. The legal norms were designated by the term "ius / jus", and the religious ones by the term "fas".

To talk about the connection between the legal, moral, and religious norms, we recall that, from the perspective of Roman law, there was an undeniable difference between the notions of lex and jus/ius. Thus, the will of the legislator was designated by the term lex, which is not to be confused with the will of the parties at the conclusion of a civil legal act. In the latter case, the will of the parties was censored by law/lex and by the social status of the contracting parties who were allowed or not to conclude certain legal acts (for example, we can speak, in this sense, about: natural law/ius naturale, gentile law/ius gentium or civil law/civil law).

We start from the idea that, before the legal norm, there was the social norm which, following the evolution of society, was imposed as a rule that ordered societies. Therefore, when we use the term "norm" we think of the rule, be it legal, moral or otherwise. The legal norm was seen as the foundation of law, which established the model of behavior and the requirements of society towards the conduct of its members in social relations.

When the Western world was covered by a wave of ignorance and primitivism, a people rose to rule this land. Overall, Roman law is the fundamental nucleus on which the legal system was built. So, it turns out that that radius of the set of norms and principles of Roman law has exerted a major influence on the legal system, as its twilight still illuminates the world today.

The relation legal norm - sacred / religious norm

We would like to mention that, in the beginning, the Romans did not make that distinction between legal norms, religious norms and moral norms. It follows that the ancient peoples did not have specific criteria for distinguishing.

Roman society was deeply marked by the religious element and strongly impregnated with morality, the process creating favorable premises for a discrepancy between law (jus), divine (fas) and moral norms (mos, mora). The Romans often confused the notion of religion with that of morality or of law with that of morality. In general, morality represents the set of norms of coexistence, of people's behavior with each other and towards the community and whose violation is not sanctioned by law, but by public opinion.

Moreover, the history of canon law recalls how there was almost always a certain degree of interference of categories and procedures between church and secular law, interference that would have been more sensitive in terms of the influence of Roman law on canon law. This limitation is based on the fact that religious norms primarily support aspects of morality and less of law (Rotaru 2014, 51-86).

Regarding the relationship between the legal norm and the religious norm, nowadays, the two types of norms are usually included in collections of specific laws (of legal or religious nature, as the case may be. In both types of norms, it finds its place "Morality", which intervenes as a balance in perfecting the form of a norm and its correct applicability.

Going back in time to ancient Rome, we can see that the relationship between the legal norm and the religious norm was very close, in the sense that sometimes this confusion was confused, especially by those who elaborated the norm, but in some periods the confusion was intentionally made by those who applied the rules. Using the idea that the norm (whether legal or religious) was transmitted by the gods only to certain persons, the Roman aristocracy (patrician) applied the rules according to its own interest.

An example in this sense is the matter of the right of property, which knew regulations associated with sacrifices that were meant to capture the goodwill or blessing of some deities (Rotaru 2020, 154-160).

Another example is the trial procedure that used magic-religious formulas or the trial with jurors (people who swore invoking deities), in order to establish whose side the truth is in the dispute that had to be resolved by the magistrate or judge, as appropriate - this example can be found in later epochs, but in other forms; to this day, when certain participants in the process (witnesses, experts) have to take an oath before taking statements or receiving their specialized opinion.

The structure of the legal norm in ancient Rome

In Roman law, the legal norm was composed of three elements, namely:

- praescriptio (disposition), which contained the name of the magistrate who proposed the law, the place and date of voting, the order in which it was voted, other aspects related to the introductory aspects of the respective law;
- rogatio (proposal), which contained the actual text of the law;
- sanctio (sanction), which contained the effects / consequences that could occur as a result of non-compliance with the provisions of the law. Sometimes, we encounter the expression "sanction of the law" when we refer to the interventions of Romanian jurists who interpreted the legal provisions and made annotations on the texts of the law.

Making a comparison between the legal norm in Roman law and the legal norm nowadays, we find that the latter also includes three elements, respectively:

– the hypothesis, which represents the factual situation to be regulated by the legislator;

– the provision, being the legal regulation itself;

– the sanction, respectively, the punishment provided by law and which can be applied to the one who violates the provision of the law.

Among these three elements, we encounter the text of the law (legal provision) and punishment in both types of norm and we also encounter the intervention of morality that is the basis of legal regulation, as well as the basis of sanction. The fact that the regulation or punishment characterized the society in which they appeared and applied is undisputed (Covalschi 2013, 38).

The golden law of the Roman world, the law of the XII Tables

In principle, it is claimed that legal ties between people were preceded by religious ties. The religious oath was the means used to keep a promise (Radu 2008,5). The most important law of Roman law was the Law of the Twelve Tables, known as the symbol of Roman spirituality. According to the historian Titus Livius, this is the source of all public and private law. Next, we will briefly present its ethnogenesis and its connection with morality, as this term was perceived by the ancient Roman world.

At first, Roman justice was guided by a series of tribal rules, customs and old procedures, many of which were kept out of the sight of the common people. In 462 BC, Caius Terentillius Arsa requested the drafting of a collection of public laws that the councils were to observe in their legal work. Only in 450 BC., the senate agreed to draft the first written legal norms. Because the Romans had no experience in formulating and drafting such normative acts, they had the idea to send a delegation to Greece to bring children to Rome according to Solomon's laws and other Greek laws.

The Roman delegation no longer had to travel to Greece, they found models in the southern part of the Italian peninsula also called Magna Graecia. From the beginning, 10 magistrates called decemviri (consular decemviri imperio legibus scribundis) were elected and they had the power to write the first legal norms. Among them were only patricians (but could also be elected commoners), led by Caius Claudius Appius. For a year, the deceders wrote only 10 tables of laws, requiring the re-election of the commission.

One of the laws written by the new commission was the prohibition of marriage between patricians and commoners,„which is why Cicero described this clause as inhuman" (Beard 2016,133).

In the specific field of Roman law, according to an ancient tradition, the commission charged to draw up the Roman code of the Twelve Tables (451–450 BCE) traveled from Rome to Athens to study and analyze in depth the laws of Solon, and they actually incorporated some of those precepts. The conception of the law of nations (*ius gentium*) and the aedilitian edict ("caveat emptor"), with important innovations in the law of sale, are also,

among other things, good examples of the influence of Greek law upon Roman law (Domingo 2017, 5).

"One of the fundamental principles of legal liability is that everyone is responsible for their own deed. By crime, the Romans understood any harmful deed, sanctioned by civil or praetorian law. The Romanians distinguished public crimes from private ones. Public crimes affected the interests of the community as a whole (desecration, murder, betrayal). Public crimes were punishable by corporal punishment, up to the death penalty. the disproportionate and uncontrolled repression caused by the crime. Thus it was decided that private revenge should be carried out with certain formalities and not to surpass the evil produced by crime (the law of retaliation). For that old and ancient period, the notion of responsibility did not exist in its modern sense, but meant the fixation in the person of a certain individual of the reaction produced by the committed fact. Private crimes were punishable by a fine - a sum of money fixed by custom or law. It is the monetary equivalent of forgiveness from the victim. Only the perpetrator paid the fine and not his successors. When the act was committed by several perpetrators, the victim had the right to prosecute all perpetrators and receive a fine separately from each. The victim's right was extinguished by reconciliation. The actions arising from private crimes were: criminal; persecuting kings; mixed

During an evolution that spans millennia, illustrious Romanian lawyers have asserted themselves on the political arena and approached the topic of law. One of them was the famous jurist Consul Ulpian, in whose conception the principles of law are:„iuris praecepta sunt haec: honeste vivere alterum non laedere, suum cuique tribuere" (the principles of law are these: to live honorably, not to harm another, to give each one what is his), where we have presented principles related to both morality and law.

In the book „Justinian's Institutions" we also find the definition of jurisprudence:„iurisprudentia est divinarum atque humanarum rerum notitia, justi atque injusti scientia" right and wrong), being confused the definition of law with that of religion in the first part and with that of morality in the second part. Another famous classical jurist is Celsuls who defined law as the science of what is good and fair (ius est ars boni et aequi), where we also see this confusion of the principles of law with those of morality (Pîrțac 2013, 22).

Conclusions

Following the comparative analysis of law, morality and religion, we distinguish both similarities and differences.

During Rome we have great differences between law, morality, and religion. If we refer to the similarities between law and morality, we notice that both tend to be rules that must be respected. The only difference, in our opinion, is that the legal norms are contraventions and the violations are punished according to the law, while the moral norms can be violated only by a sanction.

Roman law reached an unprecedented balance between justice and fairness, natural and civil justice, private and public interest, moral authority (*auctoritas*) and coercive power (*potestas*), judicial flexibility and legal certainty, grammar and intention, tradition and innovation, simplicity and scholarship, and abstraction and casuistry. Roman law constitutes a perennial model for the appropriate development of legal systems for all times, as well as a foundational pillar of emerging global law. Roman law offers a good example of how a legal system can be developed and modernized based on equitable ideas and principles. For these reasons, among others, Roman law still commands the respect and admiration of independent legal thinkers and practitioners of different legal traditions as a unique tradition of legal thought (Domingo 2017, 3).

In conclusion, if the legal norm is the basic cell of law, then it is easy to understand that they are particularly important for our society. Or, the social activity is carried out on the basis of some rules, and between people there are a multitude of relations of an extreme diversity which, in their totality, form the social life. If human activity does not affect the legitimate interests of another person, this activity is lawful, all other activities being illegal.

Roman law remains immortal being indestructibly implemented in the historical and rational structure of modern law because it gave rise to some principles and legal rules that allowed the creation of forms and structures political-legal that represents the matrix of many systems of private law existing today (Gidro, R., and Gidro, A. 2018, 7).

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