

Study on Relationship between Law and Ethics

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ABSTRACT — Study the relationship between ethics and law and exchanges between them is a wide and basic material and has attracted many attentions. This paper deals with the distinction of these two categories with following titles. Difference of ethics and law in terms of purpose, the significance of intention in ethics, the existence of external executive warranty in law, the concentration of law on social problems, stability and generality of basic principles of ethics and restriction of law in the framework of ethical rules.

KEYWORDS: ethics, law, reason

Definition of law

Most definitions of words are name description rather than real definition. Therefore, there are many differences among them. Law is not an exception. Qasemzadeh defines law as follows: The sets of binding rules that are necessary for the establishment of social peace and providing welfare and material and spiritual comfort are called law (Qasemzadeh, 2005, 1). Hasan Farid Gholpaogani states that law is the sum of right and right verbally means worthy and stable thing. In law term it means the worthy extent, that every person or nation can benefit from other person or nation and that other person or nation should equally benefit from the former person or nation. This is called right (Farid Gholpaigani, 2007, 1).

Base and origin of ethics

Ethics base is one of the three following cases:

- 1-Region
- 2- Reason
- 3- Customs (social conscience)

Religious leaders believe that human does not access to all realities and reason arbitrations are not always correct. Therefore, prosperity way is to resort the source of revelation and follow commands of prophets. God is the source of absolute blessing and goodness. Since human reason cannot understand this blessing, should pay attention to the instructions of these messengers and recognize good and bad. In this point of view, ethics has a higher source than reasons and its main origin is love and gravity force of religious individuals who have correctly recognized divine commandments. Followers of intellectual school believe in correctness of reason commandments and consider ethics as a set of rules that reason knows as good and fair. Reason can understand rules that are integral for life and obtain natural rights based on its special nature (Raghebi, 2009, 2009). In terms of sociology, ethics is awareness of social customs. Ethical rules originate from social conscience. Common sense that people obtain toward a thing in given time is the extent of arbitration about its goodness and badness. In terms of this point of view, ethics continuously changes with the change of customs. It has not any stable rule. Sociologists believe if we know something as indecent and bad, it will not be due to its opposition with ethical rules. However, it will be because many individuals hate it. Therefore, everything that becomes common in a society is good and we should never complain about indecency of public ethics. Therefore, ethical rules are particular in every society and there is not a general rule for all humans. Ethics is not stable in community. It continuously changes like customs.

Ethics concept

Ethics is considered as a way to make individuals legitimate in societies. Ethics is a reaction to cooperation problems among rival individuals or groups and its purpose is to quench disputes that might take place in social environments. Of course, coercion is another way to arbitrate in struggle situations, but ethics differs from coercion. Ethics resorts to principles and rules of action that are legally plausible i.e. they are accompanied by a kind of credibility and confirmation that are accepted by majority of society (Khoramshahi, 1996, 5-6). R.F. Etkinson states that Ethics is a system of current belief in society about the nature and behavior of its individuals (Etkinson, 1992, 16). Folikeyh notes that Ethics is a set of behavioral rules that human can achieves his goals by consideration of them. Ethics deals with voluntary and rational actions, not unconscious and instinctive actions. The kinds of Ethics are as follow; 1-ethics award, 2- social Ethics, 3- Davati Ethics (Katoaian, 2010,8). The history of relationship of ethics and law we should seek divine root of Ethics and law in works of Aristotle who is famous philosopher of Greece. Aristotle divided wisdom into three branches of Ethics, household management and civil politics. This division has accepted in works of many philosophers, as Khajeh Nasir aldin Tosi noted about the kinds of practical wisdom that practical wisdom is divided into three parts of ethics refinement, households management and civil politics (Katozian, 2009,193). However, law has not been noted in this division, but what philosopher call household management and politics is the base of rules that discussed in law.

Notwithstanding power, customs and compulsion of religions rules were separation barriers of Ethics and law. In ancient Greece and throughout Middle ages governmental regulation did not have any purpose except propagation of religion and ethics. Russo stated that ancient societies did not require law and habits in social customs and religion performed the function of law. In ancient Rome, paying attention to personal rights and support of human personality had caused that law scholars sometimes distinguished between law and ethics (Raghebi, 2009, 215-216). Paul in his famous sentence states that what is allowable in law is not always corresponding to ethics, but this recognition exterminated in the Middle Ages. In 18th Century, the separation of law and ethics obtained many followers. Philosophers of this century paid special attention to personal rights and respect for human. They believed that dominance of laws over human conscience is contrary to his freedom. The prevision of freedom of opinion and religion caused that philosophers of this age emphasized the independence of ethics and law and determined particular purpose and topic for each of them. Consequently, 1-Separation of law and ethics is the results of advocacy of personal rights. Therefore, the more social conscience replaces reason and feeling, the less will be the importance of this division. 2- Government should resort to ethics for will adjustment. Katozian believes that ethics not only influences the preparation of legal rules, but it also influences the execution and interpretation of them. Therefore, we should not consider ethics as one of the foundations of making rights. Code of ethics is the main factors of establishment of rights. An active force directs law and has the capability of exterminating its rules (Katozian, 2009, 169). Difference between legal cases and ethical cases: Ayatollah Mesbah Yazdi states that there are many differences between these two classes of cases. Here, we refer to one of them that is difference in goals. The main goal of law is social prosperity of people in the world life that is provided via legal rules with executive warranty of government, but final goal of ethics is eternal, happiness and spiritual perfection. Its Scope is broader than social problems. Therefore, legal and ethical matters overlap. In one hand, a case is legal since it relates to social prosperity of human and is supported by government. On the other hand, it is ethical since it influences eternal happiness and spiritual perfection such as incumbency of loan rejection and prohibition of betrayal. In such cases if observance of this rule is just due to fear from government punishment, it will not have an ethical value although it is consistent with law scales. If it performs due to the higher goal that is ethics, it will be an ethical action (Mesbah Yazdi, 2003, 662).

The relationship between law and ethics

Alliance of law and ethics

It is known that law and ethics differ from each other. Scholars who state the theory of alliance of law and ethics believe ethics is social customs and law is a way that people choose for their plan and action as customs. Most proponents of this theory support socialism rights. Since rights, relativity issue raises in socialism rights. This means that individuals can possess the privileges which law considers for them if they will not be in conflict with intention of legislator in legislation and social resources (Raghebi, 2009, 221). This theory is consistent with ethics, which means social customs. Some of the law scholars emphasize the close relationship between ethics and law. Jeorje Ripper who is famous professor of law in France can be one of the pioneers of this class of scholars. He demonstrated in his book "ethical rule in civil commitments" that the main source of commitments rules in civil rights of France is religious ethics and in his other book "Constituent forces of rights" noted his main opinions about close relationship of law, ethics and religion. Ripper believed that ethics dominates law and is the standard of its assessment. Therefore, ethics is the main factor of establishment of rights. We should not consider it just as one of the various bases that law scholars establish rights on it. Ethic is a powerful and lively force that directs the establishment of legal rules. It can even void law. Certainly we cannot impose legal rule on people in the name of religious ethics, but there are rules in law that are nor plausible unless should be based on ethical rule. This ethical rule is acceptable only with belief in some religious concepts about world (Mousavi Bojnourdi, 2010, 160-161).

Conflict of law and ethics

Scope and executive warranty of ethical rules differ from legal rules in terms of purpose. Salmond states in this field that ruling class can change law, but they cannot change ethics by means of law. Legislator never passes a law for ethics and his intervention in this work is not acceptable. This implies that the effect of legislator intention in ethics and law is not similar. However, it appears that although the effect of legislator intention in ethics and law is not similar, but legislator is influenced by ethics in enactment. Therefore, ethics is one of resources and foundations of law. On the other hand, legislator intention is not ineffective in the emergence of (long terms) ethics in a society. Therefore, when we consider customary practices as the source of ethics, legislator intention that is effective in the emergence of social custom will become effective in ethics (Raghebi, 2009, 222).

It is evident that this attitude has been raised according to common sense of ethics that is customary practices, but law in ideal Islamic societies cannot influence ethics. If like Mr. Langhroudi we define Msavq as jurisprudence, then we can claim that among Islamic society's ethics of ruler is influenced by Islamic rights. Without doubt, ethics is one of the foundations and resources of law. Ayatollah Mesbah Yazdi believes that scope of ethics can correspond with that of law in many cases, but is has two dignities;

1-It taken from correct intention that enters the scope of ethics i.e. it finds ethical value.

2- That we say such an action is not sin and legally is not forbidden, it certainly enters the scope of law. Therefore, this is possible that many actions of legal materials correspond with ethics in terms of scope, but their dignities are different. The most fundamental and important difference between ethics and law in one hand and between legal and ethical cases on the other hand are their difference in purpose. Both ethics and law have considered main and secondary purpose for themselves so that every action that provides those purposes is desirable and every action that deviates from those purposes is bad and outcast. Therefore, actions and deeds of humans based on their relation with those purpose are considered as desirable and valuable or indecent. In other word, their desirability is preferred, conditioned and mediatory i.e. since they provide desirable and interested purpose of each of these two scopes, are desirable. Of course, undesirability of these actions follows the same trend i.e. those actions do not generate desirable purpose in ethics or law or even prevent the achievement of these purposes. Therefore, those actions reject and view as anti- value [Hosseini, 2003, 65]. Now according to this fact that ethics and law consider purposes for themselves, the most important difference between them results from this point. The purpose of legal cases is to provide worldly interests of members of a society. These cases try to defend the life, asset and freedom of individuals against transgressors via available tools. But the purpose of ethics is beyond this. Since in the first place ethical statements and commandments want to decorate humans with virtues and eradicate viciousness. In religious – Islamic point of view, the purpose of ethics is to provide material and spiritual prosperity of humans. A prosperity that is obtained by nearness to god and human deserves it. Mesbah Yazdi in this regard states that ethical value of voluntary action of human is subject to an effect that action has in achieving human to true perfection. He states that this perfection is prosperity. Morteza Mtahari believed that all goodness and badness's represent the relation of thing with its perfection i.e. if action and trait to be in the direction of true growth and evolution, that action and trait will be good for that entity. On the other hand, if an action or trait prevents perfection, it will be bad. According to above points, what is useful for human evolution is good for human and what is harmful is bad and indecent (Hosseini, 2003, 66). Of course, this is possible that ethics provides the purpose of law and considers material interests of individuals or law considers some of the purposes of ethics. However, the purpose of ethics is one thing and the purpose of law and legal statements is another things. Based on this interference, the writer of article of "law and ethics" in encyclopedia of philosophy writes that law should institutionalize habit of good behavior among humans and try to reinforce a society in which people encourage to follow valuable life and purposes. Another point is that introduction of nearness to god and achieving worldly and heavenly prosperity as the purpose of ethics is based on our religious Islamic approach. Therefore, there might be other ethical schools that determine other purposes for ethics such as ethical utilitarian school that determine providing the maximum profit for the greatest number of individual as the purpose of ethics or hedonist school that determines pleasure as the purpose of ethics. On the other hand, it is possible that these purposes to be united with the purposes of law and both follow one purpose. Therefore, this difference between ethics and law is a difference that at least our point of view and similar approaches impose and perhaps other schools do not have this difference and seek single purpose with law. Human behavior divides into social and personal behaviors. In personal behaviors, only actor is influenced by action and the action of actor does not influence other person. However, social behaviors have social effects. Now it appears that legal rules only deal with collective and social behaviors of human. Even if a command is issued about a personal behavior in some cases, we can easily see that the issue of this command is due to the social dimension of that action, whereas ethical rules include both personal and collective behaviors and even traits of humans based on a definition that presented in the beginning of discussion. Therefore, ethics has a broader scope than law (Rezaee, 2012,19). Another difference between ethics and law is that legal rules have the capability of being restricted by ethical rules, while we never expect that ethics to be restricted by law. In other words, one of the criteria of codification and approval of legal rules is that they do not contradict ethical rules directly. Of course, this has exceptions. For example, is violation of an ethical command leads to less losses than its execution and this difference to be significant, it is likely legal command can resist ethical command and discard it. It seems this discussion requires more investigation. Therefore, detail description of this matter will preset elsewhere.

These cases are the most important differences of ethics and law. Of course, they disappear in some cases and they are more significant in other cases. However, we can refer to them as differences between ethics and law (Alavi Tabar, 2011, 26).

Conclusion

- 1- Key to success of noted law is correspondence with natural law;
 - 2- Enacted divine law is dominant among religious persons;
 - 3- Source and origin of law is religion and reason;
 - 4- Social and personal ethical consider worldly and heavenly prosperity;
 - 5- Law uses ethical data in all cases or some cases. We can say that ethics is one of the foundations of law. The rules are consistent with society that results from governing ethics of society.
- In addition, a law is relevant in Islam that is monotheistic, consistent with social order and tries to provide heavenly bliss.

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