

The Essential Values in Professional Legal Ethics

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ABSTRACT: The purpose of the present approach is to highlight the priorities that professionals in the legal field are desirable to possess when carrying out their activities. Moral conscience, legal conscience, and compliance with moral norms are the priorities that a practitioner in the legal professions, especially in the judicial professions, must have. As fundamental values in their activity, ethics, morals, and legal awareness represent the advantage for professionals in the legal field. In this article, we will reveal the ways of reporting to the fundamental values of the ethics of the legal professions of those involved in legal and judicial activity.

KEYWORDS: moral, professional integrity, moral values, professional ethics, legality

General considerations

More than other professions, legal professions require the involvement of moral value in carrying out the activities that determine them by valuing moral conscience and legal conscience. To carry out legal activities, and especially judicial activities, the professional must prioritize the factual truth in counterbalance with the legal truth. The professional of the legal professions must be endemically troubled by the application of the spirit of the law above the letter of the law and, when in doubt about the decisions to be made, appeal to moral conscience and judicious professional consultations with other professionals to confirm or refute their own decisions.

Moral integrity is an attribute of fairness and justice. Honesty and judicial morality are the components of integrity. A professional must always act honorably, not only in performing legal/judicial duties, and in a manner appropriate to his judicial position, not be involved in fraud, deceit or forgery, but to be good and virtuous in conduct and character. There are no grades for integrity, it is absolute or lacking. In the judicial environment, integrity is more than a virtue, it is a necessity.

The ideal of integrity is easy to state in general concepts. *"To solve a legal issue, you must first know the general principles, in addition to the way of interpreting the old texts, which can only be learned from books. Judgment cannot be made empirically"* (Ciobanu 2017). Integrity is difficult, however, and it may even be inappropriate to define it in specific terms. Conduct's effect on community perception largely depends on its standards, which may vary in space and time. If conduct can diminish prestige and respect in the minds of people, it must be avoided.

But how can we decide whether an act of a legal professional is moral or immoral, and what factors must we refer to if we want to do research in this regard? The right research is not about the morality or immorality of an act according to religious or ethical beliefs, nor about its acceptability or unacceptability according to community standards (which can lead to the arbitrary and inconstant imposition of a narrow morality), it is how the act reflects on the central components of the professional's ability to perform his mandated function: fairness, independence and respect for the public, and on the community's perception of how he is up to the task (Thomas 1988, 7).

Judicial environment trust is based not only on the competence and professionalism of its members, but also on their integrity and moral probity. From the perspective of the public, the magistrate (for example) has not only taken a sacrament to serve the ideals of justice and truth on

which the rule of law and the foundation of democracy are built, but he has also promised to embody them. Consequently, personal qualities, conduct and public image which the magistrate projects, affect the judicial system as a whole, and thus the people's confidence in justice (The Supreme Court of Justice of Romania - Decision no. 1/1995 Collection of practice, 2005, 77). However, reason is not always infallible in matters of moral judgment, because it is subject to error, no matter how logical its arguments may seem. Thus, what the evolutionists claim regarding consciousness, does not mean it is correct, in their point of view consciousness is only a late acquisition of man, that it would be exclusively the result of the evolution of society and the influence that the social environment had on the individual, i.e., it would be something learned. There is a part of consciousness that is born and a part that is formed later, through the evolution of society and through education. Otherwise, we would not be able to explain the existence of moral conscience acts in social environments or in societies very hostile to them, in degrading, promiscuous environments.

Moral conscience

There are many opinions and even acceptances regarding moral conscience. About this subject, Juvenalis stated that *"it is a hidden whip that strikes the soul like an executioner, a witness of the iniquity that dwells in the heart day and night"* (Mladin 1979, 170); Socrates spoke of an inner daimon - a kind of divinity - through which he knew, was warned if what he was doing was good or not: *"(...) I have something divine inside me, a spirit (...). This spirit has been planted in me since I was a child and it appears to me as a voice and, as soon as it shows itself, it prevents me from what I intend to do, but it never prevents me from doing anything (...)"* (Plato 1997, 38); Aristotle sees in consciousness the characteristic element that distinguishes man from animals: *"this is the particular difference between man and animals, that only they carry within them the feeling of good and bad, of right and wrong and all the like"* (Aristotle 1924, 22); Cicero says, regarding the conscience: *"everyone is horrified by the evil thoughts and rebukes of conscience. These are unsleeping, inner rages for sinners"* (Pro. Rosc. 24, 67 – Scriban 1923, 224); The apostle Paul also says that *"the work of law is written in their hearts, because their conscience and their thoughts bear witness to this, either blaming or exonerating each other"* (Romans 2: 15). Therefore, in this conception, what the conscience approves of is good and what the conscience condemns is bad. This does not mean that, in essence, moral consciousness is an instinct, as Rousseau believed, because consciousness is not totally innate, like instinct; consciousness is not immediately perfect in its function, like instinct, but it is perfectible and educable; consciousness is not immutable in all respects, as evidenced by its historical variations; consciousness is not infallible (Iordăchescu 1939, 85). Moreover, not any person's conscience can be such a "measuring tool" of good and evil, but only the conscience of honest people, of those who have cultivated the values of good, justice, equity, etc. Otherwise, for others, conscience can also be a "false witness", approving acts contrary to morality.

Kant considered that moral norms are still a creation of consciousness, which he identifies with practical reason: *"pure consciousness is practical in itself and gives man a universal law that we call the moral law"* (Kant 1788, 31). Most thinkers did not agree with this claim of Kant, that moral law is a creation of consciousness, nor with the claim that the origin of consciousness is purely rational. Conscience plays the role of "judge" rather than that of "legislator" of the moral law, and the judge cannot be a legislator at the same time, but he judges on the basis of laws that do not belong to him, but are given by someone else. Conscience is only a witness to the existence of these moral laws, which have their source elsewhere than in human reason. As has been said, if

there were no conscience, there would be no bridge between law and deed; every time we should look for the law to investigate whether we should do a deed or not, while in this way, conscience tells us immediately if a deed is good or not (Mladin 1979, 171). So, regarding moral conscience, it should be specified that it is not exclusively the result of reason, but reason, feeling and will contribute to its formation, which is, all the powers of the human soul. Rationality justifies the necessity and usefulness of a moral action, the heart comes to life and urges you to carry it out, but the obstacles that must be overcome are large and difficult and require you to give up certain old habits, therefore only a strong will helps you to overcome these difficulties and it ensures the realization of morality (Bunea 2010, 64).

One of the roles of ethical codes in the field of legal professions is to contribute to the prevention and removal of situations that could generate corruption in the judicial system. Corruption is not seen necessarily as regarding the commission of corruption offences, but as any conduct that could result in the obtaining of any undue advantage by the person carrying out his activity within the judicial system, therefore, a so-called corruption moral. From this perspective, any interference between the official's activity and the obtaining of an advantage for a person, other than within the legal and normal framework, could be seen as acts of moral corruption (for example, favoring a friend of the judge in submitting administrative requests to the court by avoiding by him of the state in turn of the archive).

It could be said that the danger of moral corruption in the judicial system comes from the cultivation and maintenance of unethical relationships between the personnel of the judicial system and third parties, rather than from the temptations to which the former would be subjected due to frustrations. That is why, to avoid corruption, it is also very important to draw up some rules of conduct regarding the limits within which these relationships between justice officials and third parties can take place. From a criminal point of view, the rules of conduct are already regulated and fall under the competence of the criminal investigation bodies, being the most serious forms of corruption, but in order to prevent them, it is necessary to eliminate the ways and possibilities to get here. A very effective way of removing these possibilities to reach the acts of corruption regulated by the criminal law is the creation of internal mechanisms to control compliance by magistrates and auxiliary staff with professional ethics.

Legal consciousness

There are authors, especially lawyers, for whom the ethical or moral aspect in the application of the law is included in the concept of legal conscience; it is considered that the central elements of the legal consciousness would be the idea and the feeling of justice of a class and that the positive law would also emanate from it, i.e. the normative acts adopted by the legislator (Sibana in Copoeru and Szabo, coord. 2019, 194). Regarding this last statement, reality shows many laws that do not seem to be drawn up from the idea of justice, but from a momentary conjuncture or from the interest of a limited category moral conscience in the law field. Legal conscience has not been talked about for a very long time, but its nature and the issues raised are the same as those of moral conscience. It developed along with state and the law evolution, starting with the primitive tribes, when morality was applicable only between the members of the same tribe, until now, when it goes beyond the borders of states, nationalities, religions, etc. Thus, it was said that, in peoples more advanced civilization, the social unity is greater, the nation takes the place of the tribe, therefore, the circle of people who should not be harmed also widens and in this way the teaching gains more and more ground, that debts to fellow men they are universal debts, without restrictions of country or race (Bunea 2010, 80).

Throughout this evolution of society, moral conscience accompanied the process of drafting laws and their application. As it has been said, there is no doubt that the formulas of positive laws come from outside, they constitute the end of a legislative work that takes place outside; however, they have roots and above all an admirable soil in moral consciousness (Mersch 1927, 93). This is a useful tool both for the judge and for other legal professionals and for all people also results from what was said by J.J. Rousseau about conscience: *“at the bottom of souls there is an innate principle of justice and virtue, on the basis of which, against our highest propositions, we judge our actions and those of others as good or bad. This principle is called consciousness”* (Rousseau 1973, 149).

If other participants in the trial are more interested in obtaining an advantageous solution for them than a just one, and because of this they do not hear very clearly the voice of conscience that tells them what is just and what is not, the judge cannot stifle its voice, letting himself seduced by orators. Thus, Eschine (314 BC) in a lecture against Ktesiphon, says that if the judge is moved by the speech of the orator, *“then the oath he made before exercising the office follows him, and torments him”*, showing that in Greece many judges committed suicide, being reprimanded by their conscience for the unjust sentences they gave (Bunea 2010, 48).

It is endemically subjected to assaults that try to deceive it, whether they come from within the individual or from outside. This is even more true in the case of the judge. As has been said, *“but if conscience commands the judge this distributive justice which consists in giving to each what is his due, how hard is this task amid the passions that are in motion before his tribunal, and then again will conscience come to him help; he will give his opinion without favor, without distinction of persons or interests; he will not come under any of these particular views which rob the equality of the law which he is bound to give to all without distinction; he will always force himself to show himself free of prejudices, devoid of passion, because only by this is he considered worthy of judging others; he will give his opinion, but without haste and after an expensive research because a decision made in haste often [is] followed by repentance; he will remember that the one who judges endangers more than the one who is being judged”* (Aman 2007, 59).

Are moral norms mandatory?

For an act to be considered moral, an external action of man channeled towards good and his subjective participation in this action is necessary. Since moral act is the result of human action, it should be clarified whether it is mandatory or not. Could we speak of the existence of moral laws, as we speak of physical laws or as we speak of legal laws? Sometimes it has been stated that morality is incompatible with the notion of law because it inherently presupposes the free will of the one who acts. If he did the moral deed under compulsion, as happens with those who respect legal laws, then it would no longer be a moral act. In addition, in the field of morality there are situations in which one must deviate from a certain rule considered moral (for example, from the rule not to lie). However, if it were a law, it would always act in the same way and such derogations would not be allowed.

It has been argued (Mladin 1979, 138-139) that laws in the moral field are, as well, but they do not have the same meaning as the notion of law in the field of physics. Moral laws have three characteristics: constancy, necessity and universality, just like physical laws, but unlike the latter, moral laws may lack the expected effect, because their fulfillment also depends on human will.

Secondly, another difference between the two categories of laws is that, unlike physical laws, in the moral domain the effects of observing or not observing them are not always equal to the causes. Small causes can have big consequences, they have serious, significant reactions that

cannot be predicted: for example, a word or a small gesture can give rise to big things (Mladin 1979, 139). Indeed, this statement is also valid in the field of ethics of legal professions, where an ethical act on the part of a legal professional can give rise to unexpected reactions in a litigant, just as it is also possible vice versa, as an immoral act of his, not included in on his account, to give rise to unforeseen effects on a moral or even legal level.

However, the term “law” does not seem to be the most appropriate when we refer to morality, given that it comes from the verb “*ligare*”, which would be translated as “to bind, to owe, to oblige”, and moral obligations are rather associated with the optional nature of their fulfillment, and not with an obligation. This diminishing of the mandatory character of moral duty appeared later, however, with relativism in the moral domain. In ancient times, moral duties were seen as mandatory as legal ones, for a long time no distinction was even made between positive and moral laws. Even today, there are many opinions that consider moral laws to be mandatory. They justify this support through the existence of a close link between moral law and duty, considering that moral law has a practical role of ensuring good in society. Thus, the fundamental characteristic of moral law can be characterized by not constituting a truth intended for contemplation, but constitutes a truth that insists imperatively to regulate our activity, that is, to be put into practice. The instrument by which moral law presents itself for fulfillment is the moral conscience. Through moral consciousness, moral laws take on a practical psychological aspect. In an opinion expressed “*the psychological form that the moral law takes, as an expression of the good in the human conscience, constitutes the duty*” (Bunea 2010, 110). Thus, moral law imposes, through moral conscience, a duty on individuals, and not a faculty to act in accordance with morality. This duty exists in man from a psychological need to do good, and not from a fear of punishment (of public opprobrium) or from a utilitarian calculation of the benefits resulting from this good. Therefore, in the interest of mental health, the moral conscience must work in accordance with the objective moral law, promoting the virtues even when no one is present, or no gain would result from it. Therefore, in this view, moral laws are mandatory, and their non-compliance would attract psychological “sanctions” to the person who violated them.

The answer to the question *whether moral laws are mandatory or not* is closely related to the question of the source of moral laws. What is the “authority” that made the moral laws? For some, moral principles are the result of a social convention, people establishing over time which behaviors are ethical or moral and which are not. Here, however, things are very unclear, because there are no unanimous opinions on only a few behaviors, as far as their immoral character is concerned.

Increasingly promoted in the current era is cultural relativism, whose watchword is tolerance. In this view, a clear judgment cannot be made on the moral or immoral behavior of a person, in the absence of rational norms (the principle of necessary rationality), and the violation of moral laws by a person cannot attract a sanction. For others, moral principles they do not come from the outside of man or from society, but from inside him, from the soul area. The man who acts immorally feels that his act is against morality, even though no one has ever told him so, and even though there is no code, written or unwritten, to regulate his behavior. Here things are even more uncertain, relative to the judgment of a person's moral or immoral behavior, because each person has his own moral standard. That is why it has been said that a principle of meta-ethics should be found, which stands above all the subjective or objective ethical theories that have been developed over time. In religious societies, this principle is represented by divinity (God is the source of moral laws). In non-religious societies, he was sought in reason (reason is the source of moral laws). Such a principle would also allow finding a unanimously accepted sanction for violating moral norms.

Conclusions

“Whoever deals with characters is not allowed knowing his own - otherwise, he has no way of knowing anything. And whoever wants to amuse humanity with something useful like this, he must first be sure himself that he first benefited from it. Because, in this regard, it is right to say that wisdom and clemency must begin with ourselves” (Anthony Ashley-Cooper, Earl of Shaftesbury).

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