

On the Relationship between Law and Morality

-- From the Perspective of "Evil Law is Illegal or Evil Law is Also Law"

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Abstract: The relationship between law and morality is a controversial issue. The natural law school thinks that law must conform to morality, and puts forward bad law as illegal. The positive law school thinks that there is no necessary connection between law and morality, and law is independent, and puts forward bad law as well. This paper intends to study the viewpoints of natural law school and positive law school on this issue -- "Bad law is illegal or bad law is also law", and puts forward some views on this issue.

Keywords: Natural Law School; Positive Law School; Law; Morality.

1. Introduction

Law and morality are the important guarantee for the orderly and harmonious development of human civilized society. The discussion on the relationship between them has lasted for hundreds and thousands of years in the history of law. The relationship between law and morality has always been the focus of controversy between the natural law school and the positive law school. The disagreement between them can be summarized as "whether bad law is illegal or bad law is also law". In this paper, the natural law school and the positivist law school on the relationship between law and morality are studied, based on Marxist class theory, to explore the relationship between law and morality.

2. Natural Law School -- "Bad Law is Illegal"

The School of Natural Law has a long history. They all adhere to the principle that laws must be moral, and non-moral laws are not laws. According to their different understandings of this principle, the school of Natural law can be divided into ancient natural law, divine natural law, classical natural law and new natural law.

2.1. Ancient Natural Law

Ancient natural law originated from ancient Greece. For ancient Greek scholars, everything between heaven and earth has established rules, which is the inherent rationality of nature. This reason is the law, namely the "natural law". Cicero pointed out that justice is the inherent nature of nature, nature is the source of justice, and "justice comes from nature" [1] Morality is justice, which is a series of objective existence identified by reason. As for the relationship between law and morality, the school of natural law believes that law and morality should be closely linked, and law must conform to moral norms. If law does not conform to moral norms, it is not law. Only the laws that conform to the moral norms are just laws, which can be binding on people and believed by the people, while those that do not conform to the moral norms are evil laws. Cicero believed that above all the real laws made by all nations, there is a higher natural law, which is

eternal and applicable to all nations. Natural law is more effective than positive law, and the function of natural law is to support just acts and prohibit improper acts. The purpose of natural law is to realize the rationality and justice of natural law itself, safeguard the security of people, safeguard the happiness of the country and human beings. Therefore, in order to justice, the law must be consistent with the morality that represents justice, injustice is evil, and evil law cannot become law.

2.2. Divine Natural Law

In the Middle Ages, due to the influence of religion, natural law evolved into theological natural law, natural reason was replaced by God's divinity, natural law is the law that human beings control their actions according to the wisdom of God, reflecting the moral requirements of religion. The real law is the embodiment of natural law, so it must also conform to the moral requirements of religion. What does not conform to the requirements of religious morality is evil, and it is not law.

2.3. Classical Natural Law

The classical school of natural law in the 17th and 18th centuries, based on the theory of natural rights and social contract, regarded the reason represented by natural law as human reason, rather than ancient natural reason or religious divine reason, human reason forbids people to do improper things, while natural rights are equal natural rights that we have in the state of nature. This kind of natural right needs to be maintained by human reason. This kind of human reason for good and evil, justice and so on a series of judgments is morality. Hobbes proposed that law is based on the theory of social contract. In order to survive in the real world, each of us can make it possible to implement our natural rights, and each of us transfers some rights to form the state, the public right subject. The law is the embodiment of the will of the state, and the state is to safeguard the natural rights of human beings, and the maintenance of natural rights is consistent with human rationality, so the law also needs to conform to human rationality, and morality is the rational judgment of human beings. If the law and morality are inconsistent, then it is an immoral law, and it is not a real law.

2.4. New Natural Law

The new natural law school, which arose in the 20th century, insists that the law must conform to the moral norm, but they are different from the natural law school's previous views. The new natural law school mainly discusses the relationship between morality and law from two perspectives, one is the influence of morality on the legal effect. Fuller believes that law is the cause that makes human behavior belong to the rule of rules, and people need to obey the good law [2]. Morality is divided into morality outside the law and morality within the law, morality outside the law is public morality, morality within the law is inherent in the law itself, if the law does not conform to the inherent morality of the law, then this kind of law is not good law, it does not need to obey. The other is to demonstrate the correctness of law by virtue of morality. Alexi believes that law needs to make "correctness claim", and when the norm of law cannot make "correctness claim", it will become invalid or lose its legal nature. This kind of "correctness claim" has two meanings, one is the meaning of differentiation [3]. The other is the meaning of quality. When this kind of "correctness claim" is put forward, but it is not realized, the norm is a defective legal norm, and its validity is affected. He argues that legal correctness is moral correctness. Therefore, there is a necessary connection between law and morality.

3. Positivist Law School -- "Bad Law is Also Law"

The positivist school of law believes that law has nothing to do with morality, and the negation of morality does not lead to the non-existence of law. The school of positivist law is founded by Austin, the English who proposed the doctrine of legal command in the 19th century, and its current representatives are Kelson, who proposed pure jurisprudence, and Hart, who proposed the new analytical school.

3.1. Theory of Legal Command

According to Austin's theory of legal command, law is the command of the sovereign, which is the command that compulsorily binds a person or some people [4]. This kind of order is formulated for the members of society. He believes that law is the order representing the coercive force, and the obligation formed after the order is produced and the punishment for non-performance of the obligation, which is the core element of the constitution of law. While moral norms do not have the ability of coercive norms, morality cannot become an order, so morality and law have no relationship, so he proposed that "bad laws are also laws". Even if the law violates morality, it does not affect its existence.

3.2. Pure Jurisprudence

Kelson's pure jurisprudence aims to study the structure of law itself, rather than politics, economics, morality, etc. He believed that law should not be mixed with morality and other factors. Morality is justice, and justice is easy to be affected by subjective will, leading to the uncertainty of its content, which will affect the objectivity of law. Therefore, it is necessary to distinguish law and morality, so that morality does not exist in the concept of law. In terms of legal effect, he believes that one legal norm is effective because it is authorized by another legal norm, and the effect of the other legal norm is derived from the previous legal norm, and goes

back infinitely to the "basic norm", that is, the ultimate norm [5]. This precludes the effect of morality on legal effect, resulting in an immoral law being effective as long as it can obtain its effect from a higher legal norm.

3.3. New Analytical Jurisprudence

Hart's new analytical jurisprudence holds that law is the order of human beings, and there is no necessary connection between morality and morality. Morality and law are both ways to control society. Morality has certain influence on law, but this influence is usually in the aspect of legal stability. He divided legal rules into primary rules and secondary rules, the former establishing obligations and the latter conferring powers. There are three kinds of secondary rules: "rules of recognition," "rules of change," and "rules of judgment"[6]. Among them, the meaning of "rule of recognition" is to determine whether a certain rule has the effect of law. He is different from Kelson in that the basic norm is preset, while the existence of the rule of recognition is a matter of fact [7]. To solve the problem of the source of the effect of law through the "recognition rule", without the need of morality, this distinguishes the effect of law from whether the law conforms to morality, and the law does not need to be ethical.

4. Class Distinguishes the Relationship between Law and Morality

As an important guarantee of social order, whether the relationship between law and morality is illegal or illegal, we need to judge according to reality. Class is an unavoidable topic in the real society, and we should distinguish different relationships between law and morality through class.

4.1. The Definition of Law and Morality

Laws are enacted or recognized by the state and enforced by the state force. They have certain binding force and coercive force [8]. It is a code of conduct with universal applicability used to maintain social order. It is established by the ruling class of a country in order to better safeguard its own interests and to better enable the ruling class to survive. Morality is people's views on the issues of good and evil, justice and injustice, is a kind of public and universally recognized inner belief on these issues, is the spiritual outlook of a society, is the most direct reflection of nature and human rationality.

4.2. Evil Law under Class Distinction

The purpose of law is to better govern by the ruling class. According to different objects of regulation, law can be divided into laws outside the ruling class and laws inside the ruling class.

The law outside the ruling class is the law of the ruling class over the ruled class, and the rule is the control of a group of people over the body and property of another group of people. This kind of control is unjust and immoral in essence. Therefore, for the law outside the ruling class, even if it is unjust, it is effective, namely, evil law and law, because the birth of this kind of law is for immoral purposes.

The law inside the ruling class is the law for the members of the ruling class. In this regard, we will discuss the circumstances under which the law is born. Individuals are fragile in this world. Each of us is born with natural rights, and the most important purpose of natural rights is to survive. In order to survive, each of us takes part of his own rights to

form an existence higher than us. This recognition is so that our own right to existence can be effectively exercised. Thus, we form collectives, and collectives grow larger and larger to become states. The State first makes laws in order to create an order in which our survival interests are preserved. Each of us is a member of the ruling class of the State which we have formed to protect our interests. So, in order to better safeguard our survival interests, as the ruling class, we need to abide by the rules of law and order.

According to different contents, morality can be divided into the main morality involving natural rights such as equality and freedom, and the secondary morality such as honesty and trustworthiness and not hurting others. Some rights are our natural rights. If the content of the law does not conform to the main morality, because the law within the ruling class is effective in order to protect our natural rights, so the law which does not conform to the natural rights is not recognized, it is an invalid evil law, and this evil law is not a law. If it involves those unnatural rights, If the content of the law does not conform to the secondary morality, it depends on whether it is for the protection of our overall order, that is, for our natural rights, if it is, then the law which does not conform to the secondary morality is valid, if not, then because the secondary morality serves as a guarantee for the maintenance of social order, for the protection of our natural rights, A law that does not conform to the secondary morals is a violation of the social order, and therefore the law is invalid. That is to say, when a law does not conform to secondary morals and is not conducive to natural rights, such bad law is illegal, and when it is conducive to natural rights, such bad law is also law.

5. Conclusion

Law and morality are the main means to maintain social

order. There are different views on the relationship between them according to different ideological theories. The natural law school thinks that law and morality cannot be completely separated. Morality is the support of law, and law is the guarantee of morality. The school of positive analysis believes that law is independent and has no necessary relation with morality. We need to understand the nature of law and morality, and properly handle the relationship between them according to the real society. We should not generalize about evil laws, so as to better maintain social order, promote social development and realize people's happiness.

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