The Use Of Law As Morality

As we prepare to take a look at the relationship between law and morality, it was good to review some material found in the early part of the textbook, Contemporary Criminal Law. The review prepares a basis for understanding what law is, which first of all means we have to understand what defines a crime. With a clear understanding of crime, then we may have a better opportunity to analyze morality and law. As mentioned, crime is an act that may result in an arrest, trial and possibly incarceration or in just punishment. Normally, we see a crime as something that is not acceptable by society. However, in certain locations or jurisdictions, unusual events or actions result in crimes. These crimes may only be considered a crime in a certain jurisdiction. When considering law and morality, these types of crimes may be hard pressed to have come from analysis or comparison to what we consider immoral. On the contrast, certain acts or crimes that are more universal and obviously against what is expected from society, we may consider that act being immoral as well, i.e., designating it as a crime led to it being considered immoral versus it initially being considered immoral and later being considered a crime. In fact, moral expectations could have driven the act to become a crime, but as we will discuss in the following pages, a certain crime, when carried out may be considered immoral. Herein lies the dialogue and dilemma in which we will hope to become enlightened by scholarly interpretations.

Working to distinguish the tie between law and morality often leads to similar reading, regardless of the author or type of study. In the study by Vogel and Fradella, the often-accepted challenge is determining whether a person will react and explain their morals as they relate to their personal lives. Even more interesting in their study, was the fact that it focused on people within a narrow age group, college age participants. To provide the study some validity and parity, the participants were taken from colleges and universities from various places throughout the United States. At first thought, this study can be thought of as solid from the standpoint of evaluating similar participants, who should possibly share the same thoughts about morality and law. However, one may consider a study of comparing morality and law a biased study if it only targets only a small width of age. The biggest challenge deals with honesty and determining what is sincere and honest response, not trending from peer pressure that is not uncommon to college students. Subject matter for the focus of Vogel and Fradella was relative to the age of the participants, which should allow solid answers for comparing morality and law. For instance, the studies included three types of drug offences, three victimless sex offences, and three criminal traffic offences, of which most any college student may likely be subjected to. With regards to honesty, the participants seem to answer in a way that is very comparable with most every study analyzed. People will clearly explain or tell you that certain behaviours are immoral. They will also tell you that law should penalize certain behaviours. However, empirical data has shown that regardless of what a person says about morality and law, their behaviour doesn’t always follow the same pattern. With the study mentioned above, it may be easy to expect students to say one thing and do another, due to a limited level of maturity. The separation of person’s thoughts or beliefs versus their actions can be referred to as moral hypocrisy. This dilemma is not limited to one particular study, but represents a wider concept of though and practices, as moral hypocrisy represents the person that believes a certain way, but doesn’t act upon their beliefs. People can use moral hypocrisy to achieve certain self-interest, but now sacrifice their beliefs “unless they’re caught.” As long as someone can say they uphold a

certain morality about a subject, then they make themselves presentable as a good person with good morals, even though the practice may be unlawful. The problem comes, when someone gets caught doing something illegal or not accepted as a good practice of morality. With Vogel and Fradella's study of college students, not unlike most people would be, the students seem to accept a certain risk of practising immoral behaviour and even breaking the law, even when the chances of getting caught were considered low. At times, in certain situations, the risk or the benefit from separating morality from law seem to be worth the risk. For example, if someone can do better on an exam by cheating, then it is perceived as being an accepted behaviour because many of their peers do the same. It is often about how an individual will be perceived by others. Though this does not set concrete rules for comparing morality to law, it does continue to set a principle practice as a person must determine what is important to them and how they will act morally relative to something being legal or illegal. If a person can accept the repercussion of being caught, then they may sacrifice good moral practices to achieve what they want, even when it is illegal. These kinds of practices clearly separate morality from law, but is it really separated? If we are discussing immoral practices relative to law, then we are clearly emphasizing that law and morality go together. At times, it is simply the individual's actions that allow for a measure of morality to law. Vogel and Fradella made a valuable point in their study when they shared that people either perceive something as immoral and thought the act should be illegal, but still practices the behaviour. In stark contrast, some believe that certain things were immoral and should be considered illegal and ultimately did not participate in those activities.

Another way to compare morality and law is to look closely at the words associated with the behaviour. Not unlike any other type of communication, word choice is very critical in written and verbal communication. In comparison of what is not right, for example, a certain behaviour or action may be permitted. Barbosa and Jimenez Leal approached the use of certain words to describe if moral judgment was passed more accordingly. For example, the words blame, wrongness, and vermicibility may be considered as synonyms and used accordingly. It was also interesting to note that their study similarly focused on the moral and legal interpretation of certain acts, with these interpretations acting to stand as separate moral and legal issues. When something is presented a certain way, the resulting interpretation and application of moral judgment on the action stems largely on how the information is presented. If something is stressed as being immoral or a really bad act, then it may be perceived and understood to be immoral and the act should result in lawful punishment. Interestingly enough, Barbosa and Jimenez Leal referenced results from studies indicating that word effects do not change the analysis of moral judgment. The concern arises as to how you can let morality drive what is legal, because morality is widely accepted as what is considered right or wrong within a norm. This is up to subjective interpretation.

Not to say we are moving to a "lighter side," but the "chicken or egg theory" can often be applied to the study of morality and law. We may ask, why do we need laws to create or enforce certain moral behaviours? We may also ask why should moral behaviour and moral expectations drive the creation of law? It would seem very simple to understand that moral principles have been emplaced long before moral written law was established. No matter what the culture, mankind has traditional sought to keep order within its realm. Each culture has the ability to pass down moral standards for conduct with reasonable expectations. The tie of morality and law quickly comes into play when you realize that laws are needed to support or protect good moral behaviour.

Though actions are a large part of the evaluations, some of the most concrete simple statements of law and morality are captured by H.L.A. Hart's comparison and contrast of terms, which are simple in nature. Practical reasoning is often considered when linking morality to law. The comparison and contrast of terms such as "moral and morality" are compared to "immoral and immorality." These types of comparisons serve at the very core of understanding the correlation between law and morality, which is determining what is right or what is wrong. Hart also references the very basic comparison of morality and law. In a thought application, we can consider something that is legal, however it still may not be considered moral. Likewise, something that has good moral standing may be illegal. In some respects, it is truly hard to separate the core terms of law and morality, with Cane making this point well.

Taking the comparison of law and morality to a higher level of thought, we can consider morality as it relates to principles and practices of people's rights. We do know that their freedom as humans should be granted without question. As we will note in other places, Herbert Hart's works are very recognized. At the time of his famous lecture as Professor of Jurisprudence, he produced an article related to Giorgio Del Vecchio's book on justice. Hart smartly sought out additional works to help him make his point and explanations. Though he himself had joined the ranks of great legal minds, he went as far as to compare the concept of justice and the relationship between law and morality. This is mentioned because he was critical of his own work and what he termed as being a censorship. Hart clearly stated that it is a moral right for men to be free. Unless it was related to being an equal right, adult human beings can make choices relative to their freedom and liberty. One of the most important statements, and it being from a highly respected source, Mr. Hart states that justice; fairness, rights, and obligation occupy the morality he was targeting. Hart's essay overall, was about more rights and the realization that moral rights depended on what were perceived as natural right to equal freedom.

Does law improve morality? This is a much different perspective than we have analyzed up to this point. Green considers law being different from morality. With law, we don't get to choose what our law requires of us, reducing the individual choice of what is allowed or not allowed. Our legislature chooses this in making statutes; courts choose in making rulings. Law can surprise us, however, we can always fix law. Law may not always be easily fixed or changed. With laws we have exact, or at least most of the time, exact procedures or rules to follow. We may say, that laws are written in black and white. Though at often times, the courts must make decisions about the validity of the law, which may call for judicial interpretation. We have general powers of amendment and repeal that work to correct unintentionally created laws or laws that have been determined to be inadequate or create a burden. Law is always subject to deliberate choice. Everyone acknowledges that changes in social morality can change the law. Social morality also reaches the law through judicial decisions. Can law bring changes in morality? Law cannot change morality except by changing social facts, which, together with principles of ideal morality, justify positive norms. Law often attempts to shape social morality especially through criminalization. Certain laws will uphold the norms of the land. As long as the norms and law have an opportunity to work in harmony, there is less likelihood for problems for those that live under the law. Not to sound in conflict, law can certainly maintain or mould morality relative to what the people expect and/or are willing to accept.

The structure of law and morality typically consists of rules with general applicability, which we perceive to have special importance in our lives and help to provide us with personal mandates that can operate irrespective of the consequences. "Both purport to provide us with reasons to

act that can override other compelling ones that arise from personal interest. Both also contain a special normative vocabulary— including terms like 'ought,' 'duty,' 'obligation,' 'excuse,' 'right,' and the like'—the terms of which are essentially contestable and irreducible in meaning to any descriptive statements of natural fact." Regardless of how we explain the situation in sophisticated terms, it often comes down to having a comfortable understanding of what you expect between morality and law. (Kar, 2006)

Though not extensive in length, Alexander M. Capron makes some very informative and interesting comparisons of morality and law and how it is considered in the United States. Immediately, Capron makes it clear in his opening that America's greatest strength is found in its law. However, on the contrary, law can be a detriment to the country when it is tied to ethics. Capron's mention of the term "you can't legislate morality," is explained throughout his study. His subject matter makes an excellent comparison between the thought of law in some European countries in comparison to the United States. If something is not mentioned or has not resulted in the creation of law, then some European countries take that as a morally forbidden practice. However, it seems that in our country, when something is silent, then it means it's acceptable to do or practice. Often, when something should be perceived as needing to stay out of law, then it can be left up to choice, more specifically, private choice. Capron makes a good point when he shares that we do not see the need to analyze private choice relative to morals. Capron also referenced Daniel Callahan's essay, which in turn referenced comments from almost two hundred years ago by Alexis de Tocqueville. These comments were related to political issues not being resolved easily, with the end result being judicial issues. Perhaps the most pronouncing statement to come from Callahan was the myth that "you can't legislate morality." Interestingly enough, this is not the only time we have seen this quote used. If we allow our courts to criminalize certain behaviours, then it may be easily determined that morality is enforcing law or attempting to bring legislation to do so. The balance between morality and law is a never-ending argument or topic that will never come with an unblemished consensus. Callahan cannot be denied as being on point when he states that a country is founded on its laws and the stability they present.

Once again, the relationship of law and morality can be analyzed from an infinite number of perspectives, often relating to which drives which? Regardless of the result from any study, the underlying observation or baseline connection is that law and morality must harmonize within the realm of a people's expectations. Certain behaviour or acts are expected to come with potential consequences (if illegal). These acts are most likely considered immoral acts as well, especially within the society that holds the act as illegal by law. Additionally, it goes without saying that certain acts may be immoral, and accepted as immoral, but are not of a nature that will place them in law. We will never end our search for the perfect balance between law and morality!

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