

Ethics and Law — The Role of Legal Ethics Course in the Formation of Future Romanian Juridical Professionals

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ABSTRACT: Morality has connotations and implications in all spheres of personal life and social life. One of these spheres in which morality should be present is the justice system, from which there is the expectation to be a defender of human rights and fundamental freedoms and to make justice. In order to achieve this goal, law professionals must act morally and responsibly, and the laws of a state must integrate the morality in their text and transpose moral principles into practice. A role in the formation of the moral personality of a lawyer is his education, education that must also address the moral dimension. One of the courses addressing this moral dimension is Legal Ethics prepares the student to integrate personal ethics with professional ethics. The purpose of this article is to present the importance of integrating into the School of Law curriculum of the Legal Ethics course and a possible approach to ethics in relation to the law.

KEY WORDS: morality, legal ethics, school of law, juridical professionals

It's been over 9 years since I was invited to teach a course at the Law School of Titu Maiorescu University in Bucharest, Romania. As a result of this

invitation, after a time of reflection and analysis of possible options, I presented the proposal for introducing a new course called Ethics, which soon became a Legal Ethics course. I personally had the honor and opportunity to built up this course from the foundation and to see year after year, the increasing interest of students in this subject, thus demolishing any prejudices that this generation is disinterested in moral issues.

The Legal Ethics and Curriculum of the Law Schools

Why a course of legal ethics among School of Law courses? The starting point was that ethics, and especially legal ethics, is a contemporary necessity resulting both from observing the social realities and from the official documents issued by the national and international institutions about Romania. The EU's recent reports on the legal system in Romania highlight not only systemic errors but also projections of deviant personal and professional ethics. A deeper diagnosis leads to the conclusion that this, the legal system, is nothing more than a projection of a society in great need of moral reform. The most conducive framework for the cultivation of moral values, besides the existing traditional institutions, the family and the Church, is the education system. The Society for Justice, following the realization of the project entitled Legal System in Romania — Independent Report, notes that “The subjects taught and didactic materials used in most faculties of law were not adapted to the new socio-economic and political changes through which Romanian society has passed over the last decade, nor to the requirements imposed by them. Important issues such as European human rights protection, material Community law, logic and legal psychology, legal ethics, Legal Informatics and using the Internet and databases for research, and so on, are missing from the curriculum of the majority of law schools in Romania” (Sojust, 2006).

At this time, more specific the 2008-2009 academic year, when just a few Romanian Schools of Law have updated their curriculum in order to integrate the disciplines mentioned above, I made a proposal to introduce the course of Legal Ethics in the curriculum at the School of Law of Titu Maiorescu University. Until this academic year, according to judge Danilet,

the positioning of the Legal Ethics in the curriculum of Romanian Schools of Law was as follows: “The School of Law from Babeş-Bolyai University, Cluj-Napoca, is the only one that provides for the compulsory teaching of the Legal Ethics course. The Schools of Law from the following universities have an optional course of legal ethics: Lower Danube, Constantin Brâncuşi, Nicolae Titulescu, Tibiscus” (Danilet 2006, 12).

The University of Bucharest, in 2008, included in the curriculum of the Faculty of Law compulsory discipline, Organization and Ethics of Legal Professions, a course offered to students in the first year. The situation was not much different at the professional organizations which offer the licenses for the juridical professions and also provide ongoing training in the profession.

The National Institute of Magistracy, the postgraduate institution that prepares magistrates, has not had for a long time the legal ethics among the requirements for admission to the training program that takes place over a period of 2 years, although the law require that “recruiting magistrates is done based on competition, on the basis of professional competence, skills, and good repute” (Law No.303/2004). Later Legal Ethics was included among the requirements for the admission examination (Decision no. 1045/2015) at the National Institute of Magistracy, in the form of an interview.

Regarding the curricula of the National Institute of Magistracy, they appear to have introduced ethics as a discipline of study under the title Ethics and Judicial Organization at the same time (CSM 2006, 49) as introducing Ethics as part of the admission interview.

The last few years have demonstrated that „the lack of ethics courses in university curricula often prevents law graduates from identifying and becoming aware of the pressure factors and conflicts of interest that they willingly or unwillingly encounter in practice” (Sojust 2006). Besides this motivation to respond to an educational goal, the course of Legal Ethics aims not only to be a presence in the curriculum but rather to promote, through its content, a certain type of ethics, transformational ethics both at a personal and a professional level, rooted in the Christian values. The intention is to publish a book which will organize and updates the content of Legal Ethics notes which I taught over to the students from the School of Law Titu Maiorescu University starting in the spring of 2009.

I am grateful to the president of Titu Maiorescu University and leadership of the School of Law for giving me the opportunity to create and teach this course to the students. For all these nine years I want to thank the generations of students with whom I discussed interesting topics in ethics and I would like that all of them to integrate ethical values, ethics rooted in biblical principles, in their personal lives and in their professional activity. The legal system in Romania can only be changed by people who are changed, and also through laws that reflect the principles of the absolute ethics of the Old and New Testament.

Legal Ethics and Legal Sciences

Although most studies on the concept of ethics begin with the use of the term in ancient Greek, history forces us to make a much greater leap and look at the significance of this concept as it appears to the Semitic peoples and the Jewish people. The book of the Jewish people is the Torah, a section that is part of the Old Testament Bible today, and this was written in Aramaic and mostly in Hebrew, the so-called Classical Hebrew. A research on this reference text leads to the following conclusion: "There is no abstract, comprehensive concept in the Bible that is parallel to the modern concept of "ethics". The term later in Hebrew refers to "ethics," but in the Bible only indicates the educational function performed by the father (Proverbs of Solomon 1: 8)" (Jewish Virtual Library 2016).

This does not invalidate the presence of ethics in the content of the Torah, and then from the content of the Bible. Professor Gherman states that "the term closest to this moral domain would be *derek* with the meaning of life's way" (Gherman 2012,13). The concept of the pathway, having also a figurative meaning, refers to walking, way, way of being, a way of life. In this sense, ethics is defined by praxis, mean "good practice acquired through long practice; experience, routine (DEX 2009), a new concept for a Jewish philosophy of life. For a Jew to know translates into doing, and not doing what is good leads to the conclusion that that person does not know. Thus, theoretical knowledge becomes useless if the practice is in contradiction with it. In other words, ethics is not just a philosophical "path", it is a "practical"

way, a way to live, “a system that sets standards of fair conduct” (Strong 2002, 68). This system of conduct is not established by experience, but experience, translated into conduct, is a reflection of ethical standards.

In classical Greek, the concept of ethics is more obvious than the Hebrew language, but divergent views on terminology have emerged. All scholars agree that the ethical term comes from the Greek *ethos*, but some professors of moral theology make a difference between the *ethos* (ἠθος) written with eta and the *ethos* (εθος) written with epsilon, arguing that “the ethical term comes from the Greek word ἠθος (and not εθος as some say), ἠθιχη” (Mladin 2003, 6). The arguments behind this distinction are the preference expressed by the Greek poet Homer for the *ethos* (ἠθος), and for him he had the primordial meaning of “dwelling people and animals as well as homeland.” Subsequently, in Greek thought, the term “received the meaning of something in the interior, such as, for example, the conception or the character of someone or a way of acting” (Mladin 2003, 6).

Compared to the discourse encountered in the Greek world, the *ethos*, along with *pathos* and *logos*, gave a structure or organization of Greek rhetoric. Passion or *pathos*, as well as the existence of content, were not sufficient for the effectiveness of a speech. Simply put, using popular language to be moral means to have “spine”, to have a character. Starting from the word *ethos* in its sense of character, Aristotle, the great philosopher of ancient Greece, created the ethical adjective to elucidate a specific class of human qualities, which he called ethical virtues. These virtues represent faculties, characteristics of the character and temperament of man, which are also called spiritual qualities. The other term in Greek in relation to the concept of ethics is the *ethos*, but it is written with epsilon (εθος). It resembles “the morals or the morals of a social group, for example, that of a people” (Mladin 2003, 7). By moral (especially used in the plural) we understand “natural or acquired skills, good or bad; lifestyle, private habits” (Șeineanu 1929). A careful observation of the etymology of the two terms used in Greek – ἠθος and εθος – leads to the conclusion that both refer to the same field of personal and social life, namely ethics, the first emphasizing more on the internal ethics forum, the second external forum, more precisely the projection of character in behavior. In fact, the linguistic researchers “state that both words – ἠθος

ἡ ἐθικός – would have the same stem (sedhos or svadha)”(Mladin 2003, 7). In Latin, the term ethics was simply translated by the great philosopher of ancient Rome Cicero, but keeping the meaning he had in Greek. Cicero wrote about moral philosophy by understanding the same sphere of knowledge that Aristotle called ethics. The term resulting from translation is the adjective *moralis*, which is derived from the *mos-moris* noun meaning custom (Mladin 2003, 7). *Mores* indicate the habits, behavioral patterns that one can observe in a culture or in a particular society. Besides this notion of *moralism*, the concept of *philosophia moralis* emerged, a concept used for the first time by the Roman stoic philosopher, Seneca (Rotaru 2005, 204).

Thus, ethical and moral, two different terms, complement each other with their individual meanings, not being isolated in their field of application, only publicly or only privately, but together contributing to the theoretical and practical construction of a life philosophy anchored in moral principles.

Equally important for our study are the concepts of justice, just and unjustly reported on the behavior of people in service, in society or in their own family. Here we do not refer exclusively to the idea of justice or to the idea of a judicial institution, but rather to what is right, that is, according to the truth, to social reality at one point. His just opposite leads us to the idea of unjust, incorrect, illegitimate, unacceptable, unfair, unlawful, immoral, and so on. The name of justice derives from the Latin *justus* who, according to law, in his / her turn comes from *jus / juris* which mean *justice*. The original meaning of *jus* is religious, having the connotation of sacrifice, engagement through a sacred formula.

Legal ethics is a branch of legal science, being treated as an independent science; a system of moral norms applied to the legal activity. In particular, the moral norms are investigated and coded in their standards of conduct. Ethics is a scientific discipline because within it two categories of problems are elucidated: a) Theoretical - nature and moral essence; b) Practical – the principles and norms by which man should lead in life. Legal ethics contribute to the systematization, analysis, and explanation of the moral phenomenon in its entire complexity by studying structures and character development, the internal and external connections of various moral phenomena as well as causal factors and moral progress. In the legal sciences there are subsystems such as: a) Historical legal sciences; b) Legal branch sciences; c)

Supplementary legal sciences. Supplementary legal sciences or helping legal sciences, though not part of the legal system of law, are indispensable to legal phenomena and to the application of legal norms, like forensics, criminology, judicial statistics, logic and legal rhetoric, legal medicine, ethics and so on.

A paradigm of legal ethics

Based on my personal research, the objective of legal ethics is to study the personal ethics, professional ethics and legal ethics, as well as the relationships between them. The legal ethical model I propose includes the study of personal ethics, the study of professional ethics, also called professional deontology, as well as the study of the ethical aspect of legal norms. So I define legal ethics is a branch of the legal sciences that study the personal and professional conduct of a jurist in order to acquire and maintain the respect and confidence of society, as well as manifesting preoccupation for the ethics of legal norms.

Maintaining balanced focus on these three issues offers the following advantages: a) Ensure a holistic approach to ethics by avoiding behavioral dichotomy; b) avoiding, increasing corruptibility at different levels of society; c) conferring personal and professional authenticity; d) elaboration of morally well-founded legal norms and contributing to the preservation and promotion of ethics in society.

The three areas of the study of legal ethics are on the one hand both in a relationship of mutual conditioning, each of which contributes to the existence of the other and in a complementarity relationship in that each adds dimensions and supports the development of the other.

In conclusion, legal ethics is a discipline that should not be missed in the curriculum of the future jurist. The healthiest model of legal ethics should not first address the activity of jurist, but the person of the jurist. Also, about the relation between justice and morality, according to Mircea Djuvara “the most important feature of law and morality is the one that determines the specificity of these two sciences in relation to other social sciences: ethical and legal normative. Both moral and legal rules are normative rules that apply prescriptively to social reality” (Djuvara 1995, 320).

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