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Judicial Rulings Suspected Based on Political Considerations

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Abstract

In the analytical account of the points of contact between law and morals the matter is put as if there were three or four restricted areas in which exceptionally such contact may take place.

Keywords: Legal standard; Judicial justice; Analogical development; Juristic desire; Spurious interpretation

Introduction

As it was put, occasionally it may happen that a case arises for which there is no applicable legal precept and the court must work one out for the case from the legal materials at hand by a certain traditional technique of analogical development of the precedents. Occasionally, too, it may happen that an authoritatively established legal precept is so ill-expressed that genuine interpretation becomes necessary. In that process it may happen that as a last resort the court must pass upon the relative merit of the several possible interpretations from an ethical standpoint [1]. Also, in those exceptional cases for which ordinary legal remedies are not adequate, a court of equity may have a certain margin of power to go upon the moral aspects of the case in granting or denying extraordinary relief. In a few matters there are mixed questions of law and fact where the trier of fact, in adjusting a legal standard to the facts of a particular case, may find opportunity for an incidental moral judgement. Finally, a few matters of administration must be left more or less to the court's personal sense of what is right. All this looks as if in its everyday course judicial justice was quite divorced from ideas of right and moral justice, with intrusion of morals into the legal domain only in a residuum of cases for which adequate legal provision had not been made, or in which an administrative element still lingered in the courts instead of being committed to the executive. But this plausible explanation represents juristic desire for a certain, uniform, predictable justice much more than it represents the judicial process in action [2]. In our appellate tribunals the difficulty that brings the cause up for review is usually that legal rules and legal conceptions have to be applied by analogy to causes that depart from the type for which the precept was devised or given shape. Such departures vary infinitely. Hence choice from among competing analogies and choice from among competing modes of analogical development is the staple of judicial opinions. The line between genuine and spurious interpretation can be drawn only for typical cases.

They shade into one another, and a wide zone between them is the field in which a great part of appellate decision must take place.

Discussion

Likewise the extraordinary relief given by courts of equity has become the everyday form of justice for large classes of controversies and legislation has been adding new classes. Moreover, transition to an urban industrial society has called increasingly for administrative justice and tribunals with flexible procedure and wide powers of discretionary action have been set up everywhere in increasing number [3]. In truth, there are continual points of contact with morals at every turn in the ordinary course of the judicial process. A theory which ignores them, or pictures them as few and of little significance, is not a theory of the actual law in action. Morals are more than potential material for the legislative law-maker. Ethics can serve us more than as a critique of proposed measures of law making as they are presented to the legislator. To that extent the analytical jurist was wrong. But in another respect, and to a certain extent, he was right. When we have found a moral principal, we cannot stop at that. We have more to do than formulate it in a legal rule. We must ask how far it has to do with things that may be governed by legal rules. We must ask how far legal machinery of rule and remedy is adapted to the claims which it recognizes and would secure. We must ask how far, if we formulate a precept in terms of our moral principle, it may be made effective in action. Even more we must consider how far it is possible to give the moral principle legal recognition and legal efficacy by judicial decision or juristic reasoning, on the basis of the received legal materials and with the received legal technique, without impairing the general security by unsettling the legal system as a whole. As the fifteenth-century lawyer said in the Year Books, some things are for the law of the land, and some things are for the chancellor, and some things are between a man and his confessor. If there are two forms or modes of social control, each covering much of the same ground, yet each having ground that is peculiarly its own, what determines the boundary between them? Is it a distinction in subject matter or in application of legal precepts, on the one hand, and moral principles, on the other, or is it both? Analytical jurists maintain that it is both. In the last century they insisted much on the distinction in respect of subject matter and on the distinction in respect of application [4]. With respect to subject matter, it is said that morals have to do with thought and feeling, while the law has to do only with acts; that in ethics we aim at perfecting the individual character of men, while law seeks only to regulate the relations of individuals with each other and with the state. It is said that morals look to what is behind acts. Rather than to acts as such. Law, on the other hand, looks to acts and only to thoughts and feelings so far as they indicate the character of acts and determine the threat to the general security which they involve. The act with malice or dolus is more anti-social than the one with mere stupidity or a slow reaction time behind it. Hence, for example, the criminal law calls for a guilty mind. But in a crowded community where mechanical agencies of danger to the general security are in everyday use, and many sorts of business activity incidentally involve potential injury to society, thoughtlessness and want of care, or stupidity, or even neglect to supervise one's agent at his peril, may be as anti-social as a

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guilty mind, and so a group of legal offenses may develop which take no account of intent. Next, it is said that as between external and internal observance of the dictates of morals the law has to do with the former only [5]. Thou shalt not covet thy neighbour's ox is a moral rule. But unless the covetousness takes outward form, e.g., in larceny, the law does not and indeed cannot deal with it. Not that the law necessarily and wholly closes its eyes to the internal. But law operates through sanctions; through punishment, substitution redress, specific redress, or forcible prevention. Hence it must have something tangible upon which to go. The story of the schoolmaster who said, Boys be pure in heart or I'll flog you, is in point. Purity in speech and act is the most the penalty of flogging can insure. Because of the practical limitations involved in application and administration, this point made by the analytical jurist is well taken. The lawmaker must have in mind these practical limitations and must not suppose that he can bring about an ideal moral order by law if only he can hit upon the appropriate moral principles and develop them properly by legislation. But nineteenth-century jurists were inclined to carry this too far and to ignore moral considerations merely as such-to ignore those which the law can and should take into account and to assume that they might do so simply on the ground of the distinction between the legal and the moral [6]. Because it is impracticable to make the moral duty of gratitude into a legal duty, it does not follow that the law is to deal only with affirmative action and not seek to enforce tangible moral duties not involving affirmative action even though affirmative action is practicable [7]. For example, take the case of damage to one which is clearly attributable to wilful and morally inexcusable inaction of another. Suppose a case where there is no relation between the two except that they are both human beings. If the one is drowning and the other is at hand and sees a rope and a life belt in reach and is inert, if he sits on the bank and smokes when he could act without the least danger, the law has refused to impose liability [8]. The law does not compel active benevolence between man and man. It is left to one's conscience whether he will be the Good Samaritan or not. Again, he who fails to act may assert some claim which must be weighed against the claim of him whom he failed to help. In the Good Samaritan case the priest and the Levite may have had good cause to fear robbers if they tarried on the way and were not at the inn before sunset. Also it may often be difficult to say upon whom the legal duty of being the Good Samaritan shall devolve. If a woman has a fit in a bank, does the duty fall upon the bank as a corporation or on the bank officers and employees present, as individuals, or on the bystanders Or, take the case where a man was severely injured, without, fault of the employees of a railroad company, while attempting to cross ahead of a moving car pushed by an engine [9]. Why should the moral duty of being good Samaritans fall upon the employees as servants of the company rather than upon them as individuals? But the case of an athletic young man with a rope and life belt at hand who sits on a bench in a park along a river bank and sees a child drown, does not present these difficulties. Yet the law makes no distinction. Practical difficulties are not always or necessarily in the way. In the case put there is nothing intrinsic in the moral principle which should prevent legal recognition of it and the working out of appropriate legal rules to give it effect [10].

Conclusion

Indeed, a cautious movement in this direction is to be seen in recent American decisions. In most of the cases there was a relation-husband and wife, employer and employee, or carrier and passenger.

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Conflict of Interest

None

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