

Legal Principles, Legal Values and Legal Norms: are they the same or different?

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Abstract

Legal principles, legal values, and legal norms are essentially part of the same notion. Often in legal literature, legal principles are considered to be legal norms, general legal norms, legal values etc. In fact, legal principles are just legal norms that different from the latter are legal norms of general application that ignore specific legal facts. They can be considered as basic norms that represent the general consensus on basic society understandings. As such they are also kinds of default rules of behavior. From this perspective, the legal principles are rules of human behavior that used to be considered as just, before the law started being written. Thus, legal values would be considered a more general legal norms vis-à-vis legal principles and legal norms. Nonetheless, the coexistence of these three notions shows the complexity of their correlation and gives us an initial idea on what we will go through in our attempt to perform a comparative analysis between them.

Key words: legal principles, legal values, legal norms, comparativism, cognitive complexity.

1. Introduction

The importance of legal principles as one of the most important sources of law is well recognized and emphasized in the legal theory. Nevertheless, the notion of legal principle remains still disputable and for many is not still clear. Indeed, the notions of legal principle, legal value, general legal norm and legal norm are very confounding notions for many. In addition, classifying legal principles and making the comparative analysis between these notions in an attempt to reach a conclusion on reasonable notions includes different levels of cognitive complexity. Thus, the main purpose of this paper will be to analyze the notions of legal principle, legal value, and legal norm from a comparative point of view.

2. Legal principles

The presence of principles among the normative resources used by the law has long been perceived by legal doctrine and even explicitly stated in legislation.¹ The notion of

¹ JOAQUÍN R.-TOUBES MUÑIZ. "Legal Principles and Legal Theory". *Ratio Juris*. Vol. 10 No. 3 September 1997 (267–87). Black-

general principles of law has become familiar in continental legal theory as one of the sources of law, either formally listed as such, or substantively present in promulgated law, or both.² The definition of a legal principle is very difficult, since principles sometimes are considered to be legal norms, sometimes to be general legal norms, sometimes are be considered as standards upon which legal rules should be based. Any attempt to define the notion of a legal principle involves a lot of analysis and issues to be considered before reaching any definition. However, the easiest way to define a legal principle or a legal notion is by understanding first the linguistic meaning of the word or the expression. In our case, the linguistic meaning of the word principle as a noun would be, “*A fundamental truth; a comprehensive law or doctrine, from which others are derived, or on which others are founded; a general truth; an elementary proposition; a maxim; an axiom; a postulate; The collectivity of moral or ethical standards or judgments; A basic truth, law, or assumption; A settled rule of action; a governing law of conduct; The collectivity of moral or ethical standards or judgments.*”³ From this point of view a legal principle is defined as a prevailing standard or set of standards of behavior or judgment assumed to be just standards of behavior for a society or for the entire humanity. Moreover, a legal principle would be understood also as basic norm from which derive other norms. Just like Kelzen described the Constitution as the basic norm, in fact the Constitution would be defined also as a body of legal principles that define the content and the form of all other legal norms. This idea is similar to definition of the Joseph Raz (1972, 824 n4) that classifies legal principles and legal rules as *general legal norms*, allowing for the existence both of particular legal norms and of other legal standards that are not norms (because they do not guide behavior directly).⁴ Regardless of any minor difference, we should keep in mind that both legal rules and legal principles are legal norms, since both provide standardized manners of behavior for subjects of law. The sole possible difference would be the nature of the norm of behavior they provide. In case of legal principle, the norm has a general nature and serves as a generalized standard of judgment for undetermined number of cases that imply the application of the general norm. Meantime, in case of legal rule, the norm of behavior is applicable just in well defined circumstances or relationships and can not serve a generalization standard of judgment. Thus, legal principles are just legal norms, but different from legal rules, principle are norms of general application

well Publishers Ltd 1997, 108 Cowley Road, Oxford OX4 1JF, UK and 350 Main Street, Malden, MA 02148, USA, pp 267.

² The Austrian Civil Code of 1811 preceded the current trend, stating that “when the case remains doubtful, it must be decided according to the principles of natural law” (cf. Del Vecchio 1956, 4). Cf. Peces-Barba (1987) on article 1.1 of the Spanish Constitution [1978], which declares that Spain endorses liberty, justice, equality, and political pluralism as “higher values” of its legal order. As cited by JOAQUÍN R.-TOUBES MUÑIZ. “Legal Principles and Legal Theory”. *Ratio Juris*. Vol. 10 No. 3 September 1997 (267–87). Blackwell Publishers Ltd 1997, 108 Cowley Road, Oxford OX4 1JF, UK and 350 Main Street, Malden, MA 02148, USA, pp 267.

³ The People’s Dictionary. Available at: <http://www.dictionary.co.uk/browse.aspx?word=principle>.

⁴ As cited by JOAQUÍN R.-TOUBES MUÑIZ. “Legal Principles and Legal Theory”. *Ratio Juris*. Vol. 10 No. 3 September 1997 (267–87). Blackwell Publishers Ltd 1997, 108 Cowley Road, Oxford OX4 1JF, UK and 350 Main Street, Malden, MA 02148, USA, pp 270.

that do not take into account specific legal facts.⁵ By being a kind of basic norms, the legal principles represent the general consensus on basic society understandings. They are a kind of default rules of behavior that cannot be changed by a just ad hoc decision of any state body, but solely through a generally taken decision that would not be against the reason. From this perspective, the legal principles are rules of human behavior that used to be considered as just before the law started being written. These rules of behavior that we consider today as principles were so important for humanity at the time when the human beings started writing the law that was not considered necessary to write them down, since they were all well memorized in people's mind and they still continue to be learned and considered by humanity as legal maxims through people's collective memory.

2.1 Types of legal principles

What is interesting to underline in regard to legal principles, is the fact that legal principles are almost the same in all legal systems of the world. This shows the very true nature of a legal principle as universal legal maxims. At the end, the human idea on justice and law is universal since it derives primarily from human reason. Classification of legal principles is quite difficult since as we mentioned above, the principles are norms of general nature as such by being general norms is very difficult to make any classification of legal principles based on rational factors or characteristics. One of the first distinctions can be made based on the nature of rule that a legal principle proclaims. According to this criterion, legal principles could be classified as substantive legal principles providing a substantive norm of behavior and procedural legal principles. Example of these principles would be: *Ignorantia legis neminem excusat* "the ignorance of the law does not excuse" vis-à-vis *Actori incumbit onus probandi* "The burden of proof lies on the plaintiff". Another distinction can be made into: International law legal principles and domestic law legal principles. Although, international law legal principles are merely those recognized in domestic law⁶, yet there are some legal principles that are applicable or at least are used only in international law. Meantime, based on different levels of cognitive complexity, legal principles can be classified into:

1. Basic legal principles. These principles represent general or common widely accepted understandings of people on law as just (*jus*) and law as *lex*. One of the basic legal principles is "proportionality". This principle embodies in itself the basic standard for delivering justice since it defines the basic criterion to judge upon a conflict of rights, what is at the end the true function of the justice system.

⁵ See Klaus Gunther. As cited by JOAQUÍN R.-TOUBES MUÑIZ. "Legal Principles and Legal Theory". *Ratio Juris*. Vol. 13 No. 3 September 2000 (294±304) Blackwell Publishers Ltd 1997, 108 Cowley Road, Oxford OX4 1JF, UK and 350 Main Street, Malden, MA 02148, USA, pp 299.

⁶ Fabián O. Raimondo. "General Principles of Law as Applied by International Criminal Courts and Tribunals" *The Law and Practice of International Courts and Tribunals* 6 (2007) 393–406, Koninklijke Brill NV, Leiden, 2007, pp 394.

The principle of proportionality is a key principle also for the international law where the doctrine of proportionality is one of the key judgment standards.

2. Composite Legal Principles: Comparativism⁷ - Comparativism is a composite legal principle because it requires a higher level “chunking” of previously acquired legal knowledge and is also “portable” because it carries across various jurisdictions, doctrines and legal professions. Comparativism can be used as an *ex-post* move to buttress a legal conclusion that is reached through classic doctrinal reasoning. In summary, comparativism is a composite principle because it requires a second degree of “chunking” of legal knowledge.⁸
3. Complex Legal Principles: Arbitrage⁹ - Arbitrage is a complex legal principle because it requires a yet higher degree of “chunking” of legal knowledge than the principles studied above are probably used less frequently and by more expert legal thinkers. As with the principles studies above, arbitrage is “portable” because it is common across jurisdictions, doctrines and legal professions.¹⁰

Another distinction between legal principles can be done based on their theoretical and legal important in terms of legal prevalence or legal principles hierarchy. As I mentioned above, legal principles are simply legal norms, since the norms are the basic element of a legal system. All the other elements are derivatives of legal norms. As such, legal principle within themselves can be further classified into different categories based on their hierarchical order. From this perspective, the constitutional principles as the basic principles of the entire system of legal principles are the fundamental source of other principles. Such principles are known also as basic legal principle, since they are the basic general norms upon which is built the entire legal system. Constitutional principles are the most important legal principles because they define the content and the meaning of all other legal norms, including constitutional norms. Since constitutional principles are also the source for the rest of constitutional norms they can be interpreted and understood just in the context and in the light of the Constitutional main principles. In second order are classified the ordinary legal principles. However, from this point of view just as legal norms or laws are in this sense extensions of basic norm or the Constitution (norms), legal principle are also extensions of constitutional principles.

Nonetheless, we should also underline that the idea to classify legal principles is a recent in world’s jurisprudence and does not imply at least for the moment any real value as a daily used approach, but rather can be generally used as a powerful tool in legal reasoning.

⁷ Turgut Cankorel. “Cognitive classification of legal principles: A new approach to international legal training”. *Ankara Law Review* Vol. 5 No. 2 (Winter 2008), pp. 184.

⁸ *Ibid*, pp 184.

⁹ *Ibid*, pp 188.

¹⁰ *Ibid*.

2.2 The practical use of legal principles

Legal principles are one of the most useful legal sources not from the perspective of the high rates of their use as legal source, but rather because of their important role as generalization standards used to reason upon the validity of other written sources such as laws and subordinate laws. Moreover, legal principles are the only available source of law for judges when dealing with relationships not regulated by any positive written law. Since at Ancient Rome, judges were not allowed to deny delivering justice based on the argument that there was no law regulating the relationship in dispute. Even in today's domestic modern legislations is foreseen that the court cannot refuse to consider and make a decision on cases that presented to it for consideration on the ground of lack of law, it being incomplete, contradictory or unclear.¹¹ In addition in the area of International Law and international justice system, principles have a great importance one of the main primary sources of law as well as peremptory norms of general international law. General Principles of law recognized by civilized nations¹² constitute in most of cases peremptory norms of general international law known as *jus cogens*. These norms according to the Vienna Convention on the Law of Treaties Article 53, serve as standards for assessing the validity of an international treaty, which is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.¹³ The application of legal principle along with legal norms or in absence of legal norm is decided by courts *ex aequo et bono*.¹⁴

2.3 Fundamental Human Rights as legal principles

Human Rights known also as fundamental rights are natural rights that nature has given to all human beings and are inseparable, undividable and inalienable from human beings. Human rights are vital, necessary and indispensable to a modern society, which without them would be unable to function and can not be developed.¹⁵ Human society would have no guarantees that individuals who gave up their natural rights would continue to enjoy their rights in the organization that they created, called the state, without determining their rights and obligations between them and the state, but also between each other.¹⁶ Indeed, the dominant notion of Human Rights relies on the theory of natural rights: human rights are indivisible rights on individuals, based on

¹¹ See Article 1, of the Civil Procedure Code of the Republic of Albania.

¹² See Article 38 of the Statute of the International Court of Justice.

¹³ See Article 53 of the Vienna Convention on the Law of Treaties.

¹⁴ Supra Note 26.

¹⁵ Jordan Daci. "Te Drejtat e Njeriut". Botimi II. Erik, Tirane 2008, pp 35.

¹⁶ Ibid.

their nature as human beings (moral persons), they protect these potential attributes and holdings that are essential for a worthy life of human beings. In other words, human rights are the rights that someone enjoys just by being a man. Therefore, they imply strong moral 'prima facie' obligations, even beyond the borders of the state."¹⁷ From another point of view, Professor Curtis F.J. Doebbler, defines human rights as "the main requests that individuals make to their own government, whose legitimacy is often based on its ability to provide a proper answer to these requests."¹⁸ Meantime, from the perspective of jurisprudence and legal history, human rights could be defined also as the basic and the very first legal norms that were ever produced by human beings at the time of state creation. Thus, Human Rights as the very fundamental norms of original social contract can be considered as the basic source of other legal norms. As a consequence of the universal value of human rights as universal judgment standards on the validity of state legitimacy and also on the state law, fundamental human rights can be considered also as legal principle *inter alia*, because they impose to individuals and government general standardized behavior manners in an identical way as the legal principle impose general standardized meanings and understandings to other legal norms.

3. Legal values as legal principles

Three of the main legal values of a legal system are order, justice and freedom.¹⁹ The order represents the social peace between the members of human society, guaranteed by norms of behavior imposed by what known as law. Thus, the order could be identified also with the notion of rule of law, since in a given society the order will prevail as long as the law will be enforced, because by enforcing the law, people behave according to generalized standard manners, and in addition the enforcement of law guarantees to people also justice and better preserves their freedom that would be threaten by the irresponsibility of people who disobey the law. The justice is what Latin People called *jus*, as such, justice can be secured and delivered only by the law as a *lex* or a written *jus*. Cicero argued in His *De Legibus* that *an understanding of law should not be derived from the formal source of legal rules, such as statute, enacted by the popular assemblies, or the edicts of magistrates. These rules are but one aspect of universal justice, which is to be found in the nature of man. Natural reason which is fixed and developed in human mind and common to all men, whatever their cultural background, commands what ought to be done and forbids what should not be done.*²⁰ In one hand the law is the one who limits the natural freedom of man,

¹⁷ P.I.O.O.M., Alex P.Schmid. "Research on Gross Human Rights Violation". P.I.O.O.M. P.Leiden 1989, pp 6.

¹⁸ Curtis F.J. Doebbler. "International Human Rights Law: cases and Materials". CDP, special printing. United States of America 2003, pp 6.

¹⁹ Peter Stein, John Shand. Legal Values in Western Society. Edinburg University Press. Available at <http://law.hku.hk/lawgovtsociety/stein.pdf>. Accessed on December 17, 2010.

²⁰ 1.4-6 As cited by Peter Stein, John Shand in. Legal Values in Western Society. Edinburg University Press. Available at <http://law.hku.hk/lawgovtsociety/stein.pdf>. Accessed on December 17, 2010

since it imposes norms of behavior that imply to man the obligations to do something, not to do something or to leave up to his will what to do; on the other hand the is also the social tool of control that better preserves the freedom of a man, since without the law, man would lose his freedom, because of the other men interferences or as a result of conflict between his freedom and others freedoms. The equilibrium that maintains an acceptable human justice between men freedoms is guaranteed only via and by law. In addition, we should be aware that there are also more legal values that what are present in world's legal systems. In fact, most of legal values are humanity universal values and therefore they have the same value in all legal systems regardless of differences among them. Nevertheless, taking into account that legal values are some kinds of general, basic and framework norms upon which a legal system is built, the legal values would be nothing more or less that what we have already presented as legal principles. In fact, legal values of a legal system can be indentified also with the main characteristics of a legal system, as such they outline the foundations of a legal system and thus, they are at the same time legal principles.

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