1. The Law ("Norma Agendi") – Right ("Facultas Agendi") Comparison

Despite the affirmation of those which, like Kelsen, uphold that the most relevant element of the legal system is the legal norm, the concept of law as a legal norm does not adhere to any sense of the word law; but only to law as "norma agendi." There does, however, exist the differentiation between law in the objective sense and the subjective sense, this being one of the classic differentiations in classic General Theory of Law.

It is traditionally said that law is the set of norms which regulate conduct ("norma agendi"). Unlike this, right would be the subject’s power to act, protected by the norm ("facultas agendi").

These two concepts of law are totally heterogeneous: one is rule and the other is the ability to act. Notwithstanding, these have traditionally been considered as two species of one same genus, with the establishment of a connection between both. It is said that one has the right to act or behave in a certain way, or a right in order to obtain certain behaviour, because the law grants the subject a subjective right and, in a correlative manner, imposes a series of obligations and duties. Law and right are configured as two sides of the same coin; you cannot have one without the other.

On many occasions it is preferable to speak, instead of law and right, of law in the objective sense and in the subjective sense, specifically in order to be able to highlight the fact that neither of the two concepts or meanings precedes the other. There would be logic simultaneity in both. Law and right would be the same legal reality, but understood in two different senses. In this respect, Bierling says that law and right are nothing other than two ways of thinking about the same legal content. In this way, right shall be the content of the law when it is considered from the viewpoint of the subjects who must experience and carry it out, and law the same reality, but from the perspective of the one who is unrelated to the particular and personal ups and downs of the subjects and includes the norms which are the object of his conduct.

We could exemplify the above by referring to property rights. As law, it would be established by the norms of the Civil Code which regulates it. As a
right, it would consist of attributions to the subject of the group of abilities (use, employment, free availability, etc.) inherent in the concept.

If we continue the logic arising from the differentiation between law and right, we find ourselves before the concept of obligation, as the reverse of right. An obligation corresponds to all rights. The obligation, be this a duty or bond, just like with rights (as an authority or power), is law from the moment in which it is experienced by the subjects. Obligations and rights belong to the subjective dimension of law. This issue is concerned with correlative legal situations: whilst the norm attributes some with a right, it imposes certain obligations upon others. If rights are the subjective aspect or moment of law (the law experienced by the subjects), a correlative obligation corresponds to this moment or aspect. The obligation would therefore also be “subjectivation” of law, or law as experienced by the subjects.

The notion of law, as “ought to be,” is to be criticised at the end of this chapter. This idea is found on Kelsen and on many contemporary legal experts, who consider it to be one of the central concepts in the legal system. However, it is unusual to explain this as a raison d’être, but rather as general knowledge, in contemporary doctrine. The legal expert would usually say that we must behave in a certain manner because the legislator, state or law wishes it. But acting in this manner not only fails to explain exactly what the raison d’être is, but also fails to clarify why one should follow the behaviour prescribed by the norm. The reality is that when we say that norms are binding rules of conduct belonging to the world of the ought-to-be, as opposed to the being, neither what the norms are, nor the elements which compose them are explained.

So it may seem that the norms, rights, duties or obligations, are special entities, not empirical, that is, they are entities which are not verifiable in outside reality, in physical reality. Generally, theories of contemporary law admit that a norm is not fully identified with the behaviours intended to observe it, that a right is not completely adapted to the de facto power of its owner, and that there is also no absolute identity between an obligation and the behaviour of the obliged subject.

Therefore, some current of legal thought, such as iusnaturalism, has arrived at consideration of norms, rights and legal duties, as entities subsisting on an ideal or transcendent reality, regardless of the de facto reality. Neo-empiricist currents are opposed to iusnaturalism (for example, the Scandinavian Realism of Ross or Olivecrona, or Analytical Jurisprudence), which see ideal notions as permanent obstacles for those who wish to clarify legal discourse. However, even these authors consider these concepts to be useful for the purpose of implementing the task of law’s social control. These neo-empiricists believe that law would have less force if these undetermined legal concepts were not included in legal experts’ discourse.

Such concepts are accused of lacking empirical reference, of being unable to be defined in terms of experience. Modern legal theory gives them