Mission Critical: Be Careful Before You Buy Chickens in MA: Malum In Se and Malum Prohibitum

Mass General Law Chapter 272 Section 80D states the following:

“No person shall sell, offer for sale, barter, or give away as premiums living baby chickens, ducklings, or other fowl under two months of age; violation of which will result in a fine of not more than one hundred dollars.”

Notwithstanding the enumerations of the first statement, such a sale, barter, or other exchange is permitted if 1) the person(s) acquiring the birds is a breeder buying for commercial use; and 2) that the birds are sold past the first day of May in quantities of two dozen or more; or 3) if those birds are to be used for education in schools.

I’m fairly certain that most people, myself included, could at some point be found guilty of violating this statute or, more likely, another such statute which we may not know about but are still beholden to. Yet I’m sure that this alone does not make us bad people. I don’t bring this up to attenuate ignorance as a defense. Rather, this is a beautiful example of malum prohibitum: something which is prevented by virtue of statute.

We’ll assume two premises here, which I know are not necessarily absolute:

1. The act of exchanging fowl is not inherently unethical, i.e. this law is not necessarily founded out of a moral.

2. An act such as murder, which is unethical, is also illegal; therefore, the law is based in some sort of moral and is illegal for no sake other than morality; murder being illegal, as a result, is malum in se.
Given these, the difference between the respective mala are clear. Malum in se, contrary to its twin, is something which is evil or unethical in of itself, regardless of statute. Think of examples of these scenarios:

1. Something which you believe to be wrong, which is enabled by law
2. Something which you believe to be right, which is prevented by law

If you can think of any case that fits these, then you are inherently also positing in that instance that morals, or perhaps different morals, should dictate law. This is what I argue. Not for the regulation of assorted birds, but for a consideration of whether morals dictate laws or laws dictate morals — and in what cases.

References:

Mass. Gen. Laws ch. 270 §80D

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