

Law and Morality

On the relationship of law and morality

Societies are complex systems, consisting of higher and lower systems, and within this, law and morality form social subsystems;^[1] it is important that there is a strong relationship between them, however, they have different functions. The relationship between law and morality is strong as they are related social phenomenon, they spring from the same root.^[2] We do not have sources, still, we believe that in the early stages of humanity the formation and compliance of rules must have been inevitable in order to survive and stay alive that is, adhering to rules was a vital interest for humans; the precondition of the formation of rules was thinking and communication. It is obvious that in the beginning they adhered to rules without an apparatus, though it changed with the emergence of the division of labour. Together with the formation of the state custom law was settled first, the state made people adhere to highlighted norms and it also applied sanctions if rules were infringed. With the appearance of national institutions social improvement reached a level where law and morality are separated from each other.

Morality and law have common characteristics, the most emphatic characteristic is the normative nature itself. The common characteristic of morality and law is that they form norms and rules.^[3] Both fulfil a basic social need and are the tools of society's improvement; contrary to natural sciences, these two areas are not descriptive but prescriptive, show a prescriptive characteristic. Therefore, the common characteristic of ethical and legal norms is the prescriptive nature.

The determination of these rules refer to the behaviour; what is right and what is wrong, they refer to the future and orientate. They deal with what an act should be, they do not deal with a given state of affairs. What a human behaviour should be like to be legally right and morally right? This question was first imposed by Kant, differentiating between Sein (to be) and Sollen (have to). Sein can be true or false,

[1] Further subsystems are education, health care or the complex system of cultural institutions.

[2] Földesi, 2009, 10.

[3] Op. cit.

while Sollen can be right or wrong but it can never be true or false.^[4] Another common characteristic of law and morality is the circle of rights and obligations. There are two types of obligations: a) the positive norm: it tells you what you have to do; b) the negative norm: that is, the prohibitions. The circle of rights consists of what is allowed, such as what kind of rights a person living in a country has, on the other hand, prohibitions are quite obvious, a simple example is the prohibition of drinking alcohol under the age of eighteen; this latter one is not only legally but at the same time morally prohibited. Morality is mainly connected to obligations, however, in the 20th century we also talk about moral rights that is, human rights.^[5] Legal and moral rules are inevitable for the operation of society, without them anarchy would emerge, so the most significant common characteristic of these two subsystems are rules.

Based on the above mentioned we can see that the most definite form of manifestation of law and morality is norm, still, we cannot say that their resemblance is not shown in anything else. The relation to norms is equally important, such as, whether members of society can identify with the norms or not, and it is mainly connected to the efficiency of norms. Norms are efficient if they are coherent and lack contradiction, they also have to provide guidance with regards to moral behaviour. In connection with law and morality we can talk about norm systems, where there is a hierarchical system among different norms; there are basic norms under which other norms are situated, such as in the case of law the constitution is on the top of the hierarchy. With this thought we have arrived to dealing with the area which marks the differences between law and morality, as these two systems have significant differences.

When dealing with systems of moral norm, we cannot name a single institution which marks the top of the hierarchy, as we have already seen it in the case of law. Therefore, law and morality apart from one another, their difference starts with the historical detachment and law becomes independent with the emergence of the state.^[6]

Therefore, the first difference is connected to their formation. We can observe the orderly formation of law and its institutions. We can exactly define the time when a given legal norm was formed, came into force and until what time it was in effect. In the case of morality it is impossible as we cannot calculate when a given norm was formed. We cannot name the time when the Ten Commandments were created. Therefore, law is predictable, which simultaneously means safety for citizens of a given state as it guarantees the practice of rights.^[7] In opposition, moral safety cannot be ensured by anything, it does not have institutions; adhering to moral rules only depends on people. If we are morally insulted, we

[4] Kant, 1995.

[5] The Universal Declaration of Human Rights was accepted in 1948.

[6] Földesi, 2009, 12.

[7] Op. cit.

cannot turn to any kind of institution to have remedy.^[8]

Moreover, another important difference is how they think about the definition of sin. Law expresses that there is no sin without punishment and there is no punishment without legislature: *nullum crimen nulla poena, sine lege*. It is not so obvious according to morality, morality does not define what sin is and what kind of punishment may be given for a certain sin. Morality is very diverse when it comes to defining sin, as sin was considered differently in the middle ages and it is considered differently nowadays. Therefore, the most important difference between law and morality is in variety. Every state has only one effective law. State interest only allows one law and every state protects its own law; states can have more moralities though, people can choose from more opportunities.^[9] It is possible to follow a moral norm on religious or secular bases. Morality is various, law is not.

However, it is interesting whether morality affects law or not. Law needs justification: justifying the correctness of law is based on morality. It has two types: theological and natural law. Morality affects law through lawmaking. On the contrary, law does not affect morality.

We have to note that it is a general requirement of modern law that it has to be ethically established, it must not be in contradiction with moral principles. In a democratic state citizens can validate their disapproval in connection with an effective rule through several political and legal institutions, based on moral reasons they can initiate a referendum in order to withdraw a certain rule. Governments themselves are also able to take moral reasons into considerations and hence govern a not so effective regulation.^[10]

It is also worth talking about the relationship of morality and economy. Primarily they differ from each other, economy cannot form norms and rules, while morality can. Still, morality affects economy. Religion demanded the full compliance of morality, therefore, morality will obviously affect economy, such as the prohibition of usury was based on religious reasons. According to Aristotle, the morality of economy is inevitable, public interest requires this: right is what serves the public interest.^[11] According to him, economy also affects morality: for example he explained the institution of slavery with this.^[12] It is the interest of slaves that the head of the household leads them, the subordinate relationship for them is advantageous and useful, therefore they do not find it morally wrong. According to the principles of Christianity, the morality of economy is much more

[8] In fact, the role of church can be named as the protector of morality, but actually in our everyday lives we cannot turn to any institution if we are morally insulted, we can only turn to the person, office who/which morally hurt us, however, remedy is unsure.

[9] Földesi, 2009, 14.

[10] A good example of this is the regulation on the protection of animals, or laws on the protection of the environment.

[11] Aristotle, Politics, 1256a.

[12] Aristotle, Politics, 1256a.

important as it requires people to act morally in all fields of life. The strong relationship of economy and morality can be effectively shown on the example of Protestantism. The Protestant ethics became popular among Protestant people in the 16th century, it had a huge effect on the economy as well, as according to their principles Christian people can only be moral if they live and act in a puritan way. The study of Protestant ethics was done by Max Weber, realizing that the interference of morality and economy is indisputable. ^[13] Max Weber was primarily an economist and sociologist, studying what consequences it had if morality expended on economy, moreover, if moral principles prevailed in the economy. In his most well-known work entitled *The Protestant Ethic and the Spirit of Capitalism* he wrote that morality is important, moreover, useful for the economy; he regarded the Calvinist doctrines as fundamental among the rules of life skills, and according to him, those who practice the Protestant ethics caused an economic boom, an economic turn that is, the capitalism with their strict work ethic and with requiring honesty with regards to customers. The Protestant religion made entrepreneurs to work on such moral norms of their enterprise which adhere to the requirements of the modern world, in order to get profit. This had a quite palpable result, which result is the decent economy and trade. The fair and ethic economy was accompanied with good fame, really resulting in profit, it was really useful to stick to the formed moral norms as moral norms shall not be followed in themselves but also due to economic interests. Defining and adhering to moral norms was not only significant in order to get profit but they also meant a value in themselves.

As a summary we can say that it is hard to draw a line between law and morality as they have much in common in reality; these two areas develop next to each other and have an effect on each other. All legal norms contain a moral element, the legislature of European states strongly reflects the Christian principles, morality is an important legitimating tool of acts. Law has similar effects on morality, however, tracking this is way more complicated, a good example could be acts putting tolerance in the foreground, which acts are formed in modern states in order to protect the minority.

SPECIAL LITERATURE

- Arisztotelész (1984): *Politika* (Politics), Ford. Szabó Miklós, Gondolat, Budapest.
- Deli, Gergely (2013): *A jó erkölcsökről* (On good morals), Medium, Budapest.
- Földesi, Tamás (2009): *Etika* (Ethics), Rejtjel, Budapest.
- MacIntyre, Alasdair (1998): *A Short History of Ethics*, Routledge, London.
- Kant, Immanuel (1999): *A tiszta ész kritikája* (Critique of pure reason), ford. Kis János, Ictus, Szeged.
- Max Weber (2005): *The Protestant Ethic and the Spirit of Capitalism*, Translated by Talcott Parsons, Routledge, London.

[13] Földesi, 2009, 22.