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# Does Law Impose a Certain Code of Morality? Examples from Medical and Nursing Practice and Health Policy

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*Abstract*— **The fact that dictates of law and those of morality will often coincide is widely acceptable. However, the question whether law exists or should exist to impose one particular code of morality or not may receive many different responses. Following these two concepts over different cases and scenes in the health care sector leads to the conclusion that this question could not receive a curt answer. Law should be parallel to human morality to an extent. But, morality has a subjective dimension. The common content of morality within a community is the basis for the community's legal framework. Even when law does not impose morality directly, it may refer to morality indirectly, referring for example to morals or to morality, to good faith, to bona fide and the like. Arguments and examples in this article establish the opinion that law is asked to apply morality to an extent, but this should not be used to supplant communal norms, cultural or religious beliefs, mainly when these sides of morality are not contrary to the universally common morality.**

*Index Terms*—**law, medicine, morality, nursing.**

## I. Introduction

The fact that dictates of law and those of morality will often coincide is widely acceptable [1] - [4]. However, the question whether law exists or should exist to impose one particular code of morality or not may receive many different responses. Law should be parallel to human morality to an extent. But, morality has a subjective dimension. It may vary in different people because of differences in experiences, values, culture etc. It could be considered as an element of each personality. The common content of morality within a community is the basis for the community's legal framework. Even when law does not impose morality directly it may refer to morality indirectly, referring for example to morals or to morality[5], to good faith[6], to bona fide[7] and the like. Arguments and examples in this article establish the opinion that law is asked to apply morality to an extent, but this should not be used to supplant communal norms, cultural or religious beliefs and the like, mainly when these sides of morality are not contrary to the universally common morality.

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## II. Law and Morality

### A. A symbiotic relationship

The coincidence between the dictates of law and morality is not surprising since "legal and ethical standards often develop within the same historical, social, cultural and philosophical climates" [1]. Law is totally interwoven with human morality. Duff has described the relationship between law and morality as "symbiotic" [2], while Mason and Laurie claim that there could not be any dispute about legal rules, without an inevitable discussion of moral rules[3]. Hall [4] denies that there is a complete coincidence between law and ethics or morality. According to her, law is a minimum morality.

On the one hand, whatever law should be, law applied in our daily life is a human creation, which most times comes to protect common morality, shared common belief, common sense, religious belief, general moral norms, universal "goods" or "right", "natural justice" and the like. According to Allan law-making procedures are infused with moral values, so that there is a necessary connection between law and morality[8]. The aspect that morality forms the law to an extent is also shared by Ahronhein et al who refer to the law as a source of information on morality because "the law is by and large reasonable in its methods and it represents an accumulation of human experience with a wide range of cases and problems" [9]. According to Hall [4], in a democracy, law enforces only those values shared by the majority of people, but even in autocratic regimes law is in its most part in accordance with people's morality, otherwise any inconsistency between law and morality would lead, sooner or later, to an overthrow of the regime.

On the other hand, thinking of what the law should be, "in an ideal world, law would be based on shared values of a people; law would be the basic ethic that all agree upon, written and forced" [4]. Those who adopt socially conservative views would agree that morality should be protected by the law. Others would disagree claiming that law should confine individual liberty only to prevent harm to another person. To respond to this aspect it would be helpful to wonder what "harm" is and why it has been considered so important that individual liberty should be sacrificed to prevent it. The only possible answer to this question is that avoiding doing harm to others is a basic common demand of the whole society. It is a moral norm that binds almost all people in all places. It is what Beauchamp and Childress call "general morality" or "common morality" or "universal

morality". It consists of basic moral standards, responsibilities, rights and the like, widely accepted [10]. Let's think of the case that doing harm to others is a morally accepted action. For example, in ancient Sparta shortly after birth, if the child was considered to be disabled or weak it was left on the wild slopes of Mount Taygetos, to die [11]. In this case, there was not any law prohibiting this practice because this was a morally acceptable practice these days. Even if such a law would have been enacted, it would have remained inactive having provoked reactions, or it would have been applied by force.

### B. *Are laws always moral?*

However, not any law is moral. There could also be an immoral law; or a law could be considered as both moral and immoral at the same time. The existence of an immoral law, which means that it conflicts with common morality, could lead to a gradual change of common morality. So, it could be claimed that not only morality has a prominent role in the configuration of law, but also law could be the means to modify human's morality and by extension, humans' behaviour. Law sometimes tries to enforce human behaviour so as to prevent the involved person's harm and not only the violation of a third's person's morality. While some people may label such a law as immoral, others would claim that such a law is moral because in this way human rights such as physical integrity are protected.

Yet, I am wondering if it is moral, vested legal and moral rights to bring about obligations. For example, the obligation for safety belts limits personal liberty in order to protect the individual's health and safety. The speed limits of vehicles diminish individuals' freedom of choice and action in order to protect both individual and collective health and safety. In fact, the morality in the above cases is not enough to ensure the values of health and life. In the second example, the law imposing the speed limits is morally acceptable as it protects other members of the society too and not only the person involved. However, in the first example, it is difficult to judge whether such an obligation is moral or not, as the only obvious impact on the society is the care that may have to be provided for persons who recklessly harmed themselves.

Adults should have the opportunity to decide to risk their life by not fastening their seat belts. But this choice should be a conscious decision to expose themselves to danger and not a decision owed to imprudence or to ignorance of the danger. But what about children and adults who are disqualified to make a decision? A law which would impose such an obligation only to these people could be characterised as prejudicial, because according to our common morality, disqualified people should not have more obligations than the others. Moreover, it is not morally acceptable to give another adult the power to make the decision to expose, without any reason, a disqualified person to danger. Besides, an adult's behaviour forms a pattern for children who will follow one's lead. So this law becomes also a means for modifying the morality of a population.

Another example of a law which also modifies the morality is the law concerning smoking. The restrictions of smoking in public places try to protect people from passive smoking, but it could be claimed that mainly they attempt to modify population's behaviours towards smoking. Setting smoking within a socially unacceptable framework, they deprive it of the moral status, facilitating people to quit smoking.

### C. *Common morality and human rights*

Coming back to the question whether law should exist to impose one particular code of morality or not, there should be a distinction between "common morality", which consists of norms that most persons accept, and moral norms or values acceptable from different communal, cultural, religious, professional, or other groups. Nowadays, in modern societies, the main core of common morality is human rights, expressed mainly as protection of any side of human personality, freedom and self-determination. While law has to ensure that any kind of morality should be respected (as this is a basic principle of our common morality), this is not enough referring to common morality which should be the basis of the law. "It would not be correct to say that every moral obligation involves a legal duty; but every legal duty is founded on a moral obligation." [3], [12]. Common morality should be the compass to the creation of new legislation, because law is intended to ensure the prevalence of the right. But "the right" may have different meanings for each one of us. It could be only defined on the basis of what morality is for the overwhelming majority of the society's members.

The following examples indicate that law is determined by common morality. Common morality decrees the human rights of self-determination, free will and respect to human personality. In any case law, including codes for medical practice, should respect these rights. This is the reason why any medical action should require the patient's informed consent. However, in medical cases things are not always so clear. For example, psychiatric patients often have suicidal tendencies. Suicide is a possible consequence of diseases like depression and schizophrenia. Hardly anybody would claim that a health professional should respect the will of such a patient to commit suicide because in fact this intention is not a choice but a result of the illness. Respectively, it is not acceptable, a health professional to leave a patient with cardiac insufficiency to die without medical care and proper treatment. On the other hand, in some cases, a person's life is in danger because of their own conscious choice, as for example when they go on a hunger strike. In this case, the questions are whether it is moral or not and whether it should be legal or not for a health professional to feed them. Law should respect the way one chooses to claim their rights, even if their life is in danger. The respect to a person's conscious choices is a demand of both our common morality and law. Even if this principle is different from the health professional's moral beliefs, they have to respect it. So, this is an example of incorporating a principle of common morality into law.

## III. Contradictory Moral Values: Examples in the Health Care Sector

The main question is when moral norms and values of

several groups differ from each other in a way that respecting one's group morality means infringing upon the morality of the other, or, as Mason and Laurie claim, when there is a conflict of individual interests [3]. This is quite common mainly nowadays, as modern societies are intercultural. In each situation, first of all, all different moral norms potentially involved should be identified [1]. Law is required to balance such situations, providing priority to the respect of common morality. Yet, sometimes there is not a moral norm which is the predominant one in the society. In these cases, lack of law provision concerning these matters, would mean that subjects would be free to make decisions according to their own morality. "In some cases, this may be what society actually wants but, in others, it will not represent the communal position, which also deserves protection" [3].

When there is a contrariety of a people's moral values, there is a subtle point of law. For example, it is debatable whether it is morally acceptable for people to have the right to assisted suicide. Some people believe that law should prohibit such a practice, while others claim that it is a human and moral right based on the right of self-determination. In the *R.(on the application of Pretty) v DPP* case in UK, P, who was terminally ill, applied for judicial review of the DPP's refusal to give an undertaking not to prosecute her husband were he to assist in her death. P wished to be spared the indignity and suffering associated with her disease but lacked the physical capacity to take her own life. The court refused the application, mentioning inter alia that the right to life and the preservation of the dignity of life did not confer a right to die with dignity and that the protection of human life was a legitimate social aim which justified interference with the rights to respect for private life and freedom of thought and conscience [13]. This decision may be considered as acceptable, because the opposite one would lead to an uncontrolled increase of unjustifiable assisted suicides. B. Mahendra claims that this High Court's decision is correct because he believes that hard cases can make bad law. **"**It is for this reason that the watchful business of the relevant organs of the State—Parliament and the judiciary—ought to safeguard the well being of those who come within the protection of the law—especially in states of such desperation—and to ensure that the plight of those in these situations is not made any worse by law-making driven by emotion, however heartfelt. Mrs Pretty's case is a tragic one. But, in giving its support for the view taken by the DPP in this matter, the court has come to a decision which is the only right and proper one to make" [14]. Yet, it could be claimed that this is not the right decision because in this case there are two opposite currents of public opinion. As I have already mentioned, law should reflect what the society's common morality referring to this field is. So, when in a case like the one mentioned above even the exponents of the opposite opinion accept that it is a "tragic one", then law should be flexible and admit exceptions under determined requirements, so as to respect different moral beliefs and so as to be closer to what the majority of people consider as moral.

Law is determined by common morality in all fields of our daily life. Nevertheless, it is impossible for legal regulations to cover all aspects of professional activities. So the decision-making in nursing practice and the relevant nursing responsibility cannot be provided by law. The basis of the nurses' decision-making is to do their best for the patients. This is a basic principle of our morality mainly incorporated in professional codes of practice as for example the Code of Professional Conduct for Nurses, Midwives and Health Visitors in UK [15], [16]. Such law provisions which are general principles refer indirectly to scientific rules and moral norms. These rules are not legally but ethically determined. So, the nursing decision has to comply with the good scientific and technical practice. A nurse has the right to decide and to act, but their decision is restricted by the law, the scientific framework and morality. "The professional who practices according to the standards of his or her field, who makes a good-faith effort to understand the law, and, as conscience permits, to comply with it, should have little fear of liability" [9].

Besides, making a medical or a nursing decision may be very difficult, as in many cases, a health professional's moral values conflict with those of a patient', or with a health professional's duties. Sometimes, health professionals have to resolve this conflict of values. The health professional's value to protect the patient's health and life might conflict with their own value of honouring the patients' choices or their right to make such choices. However, "professional guidelines and codes of ethics provide direction for this type of value conflict" [1]. For example, in the UK case presented below, a doctor was judged as liable because he had graded his own moral value to preserve life and his professional value to prevent harm as more important than the patient's religious moral values not to receive any blood products and the both law's and common morality's principle to respect the patients' moral beliefs. "P, aged 57 and a Jehovah's Witness, was seriously injured. He carried a card stating that no blood was to be administered under any circumstances. The doctor administered blood transfusions which he considered necessary to preserve P's life. Held, that the doctor was liable in battery where he treated a patient knowing that the adult patient did not consent" [17]. In this case the doctor stretched the law which entitles every person with the right to have their bodily integrity protected against invasion by others in order to be consistent with their moral value to save the patient's life. "The seriousness with which the law views any invasion of physical integrity is based on the strong moral conviction that everyone has the right of self – determination with regard to his body" [3]. So, this case forms an example of a law that comes to impose the moral principle of respecting the patient's choices, concerning their treatment.

## IV. MORALITY DOES NOT REMAIN THE SAME OVER TIME

Nevertheless, the remarkable advances in science have brought new ethical dilemmas in all fields of our daily life that law has to deal with. The debate about morality issues is usually followed by changes in the law. For example, several years ago abortion was not morally acceptable, thus it was not legally acceptable, too. Nowadays, in most modern societies there is a shift in human beliefs and abortion is not always an immoral action according to «common morality». This change of moral beliefs predominant in the society has also

been incorporated into law. So, eventually abortion may be under some circumstances a legal action, morally acceptable to the majority of the society. According to J. K. Hall, human behaviour determines ethics and finally ethics lead to new law. When certain behaviour is considered as essentially moral in a way that everyone should be keep to that behaviour, people enact laws to enforce such ethical behaviour [4].

Another interesting example is referred in J. K. Hall's book. German nurses were censured at the Nuremberg trials for administering barbiturates to mentally retarded children, who finally died of it. At the time this practice was in accordance with the doctor's orders and considered legal as there was not any law prohibiting it. Yet, finally it was acknowledged that such a practice was not ethical for the majority of the community and in the end not even held legal [4], [18]. In this case, lack of law did not protect different moral beliefs (such as those of these nurses), but led to the overriding of common morality's orders.

## V. CONCLUSION

To sum up, law is a human creation which is intended to apply the morality of the overwhelming majority. A basic principle of our common morality is the respect of the right of self-determination. This means that common morality and consequently the law protect all different codes of morality. There are differences in people's moral beliefs due to different culture, religion, experiences etc. All different moral norms should be respected provided that respecting them does not lead to infringement upon basic principles of our common morality, such as human rights. Nowadays, that science and technology are advancing so rapidly, law has to deal with more complicated ethical dilemmas than in the past. When there is not a prevalent moral belief about an issue, there is a subtle point of law. In this case, law should respect all different moral values by giving priority to freedom or by determining the requirements of the law for permitting a doubtful moral practice, because sometimes, a generally "immoral" practice for some people could be "moral" for them under some other circumstances. In addition, our morality does not remain stable over the years. Law should follow changes in people's moral beliefs. Montesquieu in his book "The spirit of laws" claims that we should not dissociate laws from the circumstances in which they are enacted. He adds that the legislature should respect the spirit of the nation, when it is not contrary to the regime; for we do nothing so well as when we act with freedom, and follow the bent of our natural genius [19].

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