

Law and morality

Law



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Law and Morality Sir John Salmond described the law as 'the body of principles recognised and applied by the state in the administration of justice'. They are a set of rules and boundaries that are established by authorities which must be obeyed, otherwise, a sanction may be given.

Morals are beliefs, values and principles that are set by society or part of a society, determining what is right and wrong. Phil Harris stated that they are "standards of behaviour".

Unlike legal rules, compliance with moral rules is voluntary, that are often informally enforced through social or domestic pressure. Law and morals are both normative; they specify what should ideally be done and mark the boundaries between acceptable and unacceptable conduct. However, the ways in which they both do this are different: laws are codes of conduct which a superior power has decided should be compulsory. They are formally enforced by appointed authorities and relate to all members of society.

One example is the 'smokingban' which was introduced by the Smoke-Free (Premises and Enforcement) Regulations 2007 and more recently the proposed change to the legislation regarding same-sex marriage under the Marriage (Same Sex Couples) Bill, which previously meant that gay marriage was prohibited. Morals can be seen as a set of values which are not enforced by law. They define how one ought to act not how one must act and whilst they are not subject to moral enforcement, they can be informally imposed.

There are significant differences between moral rules and legal rules; whereas Laws can be introduced almost immediately by Parliament or the Courts, morals tend not to be backed by legal sanctions and are often

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reinforced by social pressures; such as family and friends. They can have powerful influences on people's behaviour, and develop over many years; often heavily embedded in religious and social history. Compliance with moral rules is voluntary and there are often no formal punishments.

Today we live in a diverse society which has meant that as morals have developed: they have become pluralistic and between individuals or social groups opinions on moral codes now vary. Within Christianity, acts such as abortion and euthanasia are strongly opposed, while other religious groups may not deem these as wrong. Similarly, in Hindu and Muslim communities arranged marriages are encouraged whilst in non-religious communities these are disfavoured.

Furthermore, legal rules can enforce strict liability, such as the requirement of wearing a seatbelt in a car or not exceeding a speed limit, whereas moral rules cannot- they can only be broken voluntarily. Legal and moral codes can coincide; law can often be seen reinforcing and seeking to uphold our moral values. For example, Lord Atkin's 'neighbour principle', which is the basis of the tort of negligence and is thought to have derived from the biblical command to 'love thy neighbour' which is also believed to mean do not harm thy neighbour.

However, this can be seen as a major problem as morals will consistently change over time, to reflect a change in attitudes, and the law must attempt to keep up in these situations. An example of this can be seen in *R v R* (1991), which changed the law, so that rape within marriage became a crime. It was viewed that the wife was legally seen as almost the property of the husband, via the marriage agreement. This view was morally

outdated and wrong, yet the law was very slow in adapting this moral view. Another example of how moral change has led to legal change is the case of Diane Blood. Mrs Blood's husband died from meningitis.

They had been trying to start a family and she arranged for sperm to be extracted from him. Following his death she attempted to use the sperm to become pregnant, but this was banned under the Human Fertilisation and Embryology Act. She won the right to have the insemination carried out abroad. Under UK law their births had to be registered with a blank where their father's name should have been. This was held to be incompatible with the human right to private and family life and the law has since been changed. With actions like theft and murder, they are classed as 'wrong' both morally and legally.

But for crimes such as parking violations they are not seen as immoral, whilst immoral acts such as adultery are not a criminal offence under UK law. If laws enforce morals, then we are faced with the problem that what one person considers immoral, another might not, making it harder to decide which viewpoint it should sanction. This is established in the case of Gillick, where Mrs Gillick sought a declaration that what she saw as an immoral activity (contraceptive advice and treatment available to girls under the age of consent) was illegal regarding its immorality.

There was a conflict, as some saw this as immoral (as it would encourage underage sex) whilst others felt that it was moral (as underage sex would occur anyway, but this would help prevent unwanted pregnancies). This shows that if such conflict can arise between law and morality, then the two cannot be viewed as equal. There are further disputes that the law should

respond to the changing moral attitudes on euthanasia; the British Social Attitudes Survey 2007 found that 80% of people are in favour of legalising it and despite this, there has been no further change.

There are various theories on what the relationship of law and morals should be. The first theory is natural law, which is based on morality. This states that there is a higher law to which laws must conform and one should disregard an immoral law, unless doing so would lead to social unrest. Another theory is positivism, which holds a more scientific view of the law and states that if legislation has been correctly made it should be obeyed even if it is immoral. The Hart/Devlin Debate followed the publication of the Wolfenden report in 1957.

Lord Devlin was a prominent judge and a supporter of natural law whereas the academic Professor Hart was a positivist. The report recommended the legalisation of prostitution and homosexuality 'should not intervene in the private lives of citizens or seek to enforce any particular pattern of behaviour further than necessary' to protect others. Hart, who was influenced by the earlier theories of John Stewart Mill, supported the report's approach, stating that legal enforcement of morals was unnecessary as it interferes with individual liberty.

He believed that law and morals should be separate and the state should not intervene to restrict the freedom of individuals. Mill stated that one should not have to follow society's morals; they should be free to act as they wish, provided their acts do not harm others and Hart only added to this so that their acts also do not harm themselves. Devlin, on the other hand, was strongly opposed to the report on a natural law approach. He felt that society

had a certain moral standard, which the law had a duty to support, as society would disintegrate without a common morality and this morality should be protected by the law.

In this debate Devlin stated " individual liberty could only flourish in a stable society; disintegration of our society through lack of shared morality would, therefore, threaten individual freedom". This highlights his beliefs that law and morality are inseparable and the law should in fact intervene in order to support morality. Jeremy Bentham, a philosopher and jurist, rejected natural law theories as ' nonsense upon stilts' and concluded that the validity of law does not depend on whether it is good or bad.

Ideally, the law should aim to provide the greatest happiness for the greatest number of people, but even if it doesn't, it may still be a valid law. He added that what the law is and what it should be are different issues. Contrary to Bentham, Aristotle a 4th century Greek philosopher based his ideas on the laws of nature. He stated that ethics is all about learning to be a ' good person' and you should not do anything wrong unless there is a very good reason to do so. These views have been perceived as a ' balancing exercise' as it is necessary to determine the correct way to behave by weighing up the benefits against the consequences.

The Wolfendon Report supported Professor Hart's view that law and morality should be separate, however, various cases decided since the report show that judges are imposing their moral views in their judgements, such as in the case of R v Brown and Others, the defendants had willingly consented to sado-masochistic practices. Despite that this act was chosen, they were prosecuted and convictions were upheld based on public policy to defend the

morality of society. The law is therefore seen to attempt to uphold what it considers to be public morality, even if some may dispute the correctness of that moral code.

This is a contrast to the case of *R v Wilson*, at her request the defendant branded his initials on his wife with a hot knife. The scars led to him being charged with ABH S47. COA held his conduct amounted to "tattooing" and that it was not in the public interest to impose a criminal sanction, still showing that the public and their moral views still influence our law. The differing approaches in these cases clearly show that judges are letting their own moral values affect their judgements. The courts often find themselves at the centre of hugely difficult moral decisions involving life and death.

They are often forced to decide between individual rights and moral codes. Diane Pretty contracted motor neuron disease and was confined to a wheel chair. She required no treatment to keep her alive, but had great difficulty talking, eating and sleeping. She was concerned that her husband would be convicted of a serious criminal offence if he helped to end her life and sought the permission of the court for active euthanasia. The courts reluctantly refused her request. This relates to euthanasia which can be seen as both morally and legally wrong, reinforcing the idea that certain views in society share the same moral and legal opinion. On the other hand, only a year later it was decided that 'Miss B', who was suffering from a terminal illness and receiving medical treatment keeping her alive, had the right to refuse to continue with the treatment. This was allowed as it amounted to passive euthanasia which is legally acceptable. Society considers it wrong to take the life of another human being and these two cases reflect this moral viewpoint.

In the case of *Re A* (2000), Siamese twins who had their major organs conjoined were both at risk of dying.

However, separation of the twins would have led to the death of one of them. The parents were against the operation and wanted to put the girls fate in the hands of God. The courts however, intervened and decided the operation should go ahead; it was considered a successful operation if one girl survived while her weaker sister died. This follows Bentham's views that overall more people would benefit if the operation were to go ahead, although this has caused controversy over which individuals moral code should have applied to the situation.

The influence of both Hart and Devlin has continued into more recent cases further fuelling the debate as to whether law should enforce moral values or not. In *Shaw v DPP* the influence of Devlin was seen in the decision with the court describing the ' fundamental purpose of the law, to conserve not only the safety and order, but also the moral welfare of the state. ' This was also seen in *Knulier v DPP* which raised the issue of outraging public decency.

Hart has had influence on the infamous Sexual Offences Act 1967 as well as reforms in legislation such as the Obscene Publications Act 1968 and the Divorce Law Reform Act 1969. A substantial body of English law is based on moral rules: there is a close relationship between law and morals, as the law does uphold moral values: the existence of laws that serve to defend basic values, such as laws against murder, rape and fraud prove that the two can work together. They both influence each other to a certain extent with the highly moral Ten Commandments being the basis for the UK legal systems most fundamentally important laws.

On the other hand, alcohol or smoking restrictions do not reflect a moral code as they have no negative effect on other people. The extent to which law should be influenced by morality remains topical, as mentioned before with laws regarding same-sex marriage and euthanasia. While it can be argued that a significant section of society has come to adopt the view taken by Professor Hart, there nevertheless remains a widely shared belief that weakening of the moral basis of the law is dangerous.