

# Ethics, morality, law

If ethics is a conscious search for good and morality is a sum of ideas about the good already found (i.e. known), moreover, a sum of ideas confirmed by the unwritten consent of a given society, then *law* is a system of norms regulating the actions of people (their groups, organizations) in their mutual relations in such a way as determined by the *will of the legislator*.

Ethics, morality, and law have a common *attention to what should be*, but they perceive this goal differently, or in an ever narrowing manner. **Ethics is directed towards the good about oneself, which is never given once and for all, but must be constantly sought for, or constantly verify the found.** *Morality* is directed towards the *good that is governed by social consensus*, i.e. general agreement. However, this is not quite the same as the *good about oneself that ethics considers*. The *"goodness" of morality has already been found and proven, at least that's how society judges (albeit sometimes wrongly)*. **Right, on the other hand, is the most modest: it is concerned only with such a good, the achievement of which is necessary to preserve the function of the formal organization, which is primarily the state (but also other formal organizations).** **Law is about order, i.e. an internally consistent system of rules that regulates various activities, many of which are of little interest to morality, let alone ethics.**

## Standards

*What is supposed to be* and what matters in each of these three areas are **norms** (norm = a statement that something is supposed to be). Each of them therefore represents a world of standards. However, we all navigate differently. In the world of ethics, we orient ourselves with our searching conscience (which is materially identical to what the German philosopher Immanuel KANT called *practical reason*). *In the world of morality, we orient ourselves with our conscience, which preserves what has already been found and at the same time is socially accepted and traditional.* *In the world of law, we orient ourselves according to the law.*

Again we encounter the *'ambiguity of conscience'*: another aspect of it comes to the fore in ethics, another in morality. In some situations we will perceive the relationship between the two aspects as a tension, even as a conflict, in others the difference between them will be unimportant. In these situations - but only in these - can *ethics and morality* be considered synonymous. This is the case, for example, when we compare the *domain of conscience*, i.e. ethics and morality on the one hand, and the *domain of the law* or the legal order on the other. As decisive and acting beings, we perceive the norms of conscience as internal, while the norms of law (laws) as external.

The competence of the conscience is always directly proportional to its awakening and enlightenment. E.g. less claim is placed on the conscience of a twelve-year-old than on the conscience of a thirty-year-old; we expect a higher bioethical responsibility from a doctor than from an uninformed patient, etc. This conditionality is what the saying *ignorance makes no sin means*. *On the other hand, the duty imposed on us from outside by law must be known. If someone wants to drive a motor vehicle (run a business, own a firearm, etc.), he is also obliged to know the relevant legal norms governing this activity, so that he can follow them. This is what the saying "ignorance of the law does not excuse" means.*

Some legal standards are identical to moral standards or ethical ones, e.g. *thou shalt not steal*. However, there are moral (ethical) norms that are not included in the legal system, e.g. *thou shalt not lie*. *The source of law is state power, which has no means of ascertaining truth and lies and is therefore unable to enforce truthfulness (with the sole exception of witness testimony in court).* *If the state power established such an institution, it would turn into an intolerable despotism.* - *On the other hand, there are a number of legal norms that are not moral norms, e.g. numerous procedural norms regulating the sequence of legal acts, or delimiting norms that set a certain limit (age, property, etc.). These may even be different in different countries.*

This "out-of-levelness of morality (or ethics) and law" can sometimes have grotesque consequences. E.g. a regular marriage may be found to be legally invalid years later, if it turns out that the official officiating did not fulfill certain necessary requirements, etc. However, the state power consistently insists on the validity of its legal order, and it is not for its own sake: legal inconsistency can cause legal chaos, which then leads to severe malfunctions in the functioning of the state system, even its disruption. In this indirect sense, all legal norms, even morally (ethically) neutral ones, have their own moral (ethical) justification. E.g. the relevant ordinance mandates driving on the right, overtaking on the left, etc. It could also be the other way around (such as in Great Britain). However, if this is the case, the relevant norm is also morally binding, because not respecting it endangers human lives.

## Contradiction of legality and morality

However, this statement is called into question by the possibility that the state (and therefore its legal system) pursues an immoral goal. E.g. many norms of the legal system of a totalitarian state are in conflict with conscience, i.e. with morality (or ethics). This example can be used to demonstrate - in the words of Immanuel KANT - the **non-identity of legality and morality**. And not only non-identity, but this time also **contradiction**. The term "morality" has not caught on in our country, although it is relevant in this meaning context. Therefore, the non-

identity and mutual tension of legality and legitimacy are spoken of more often, although "legitimacy" here does not capture the essence of the contradiction that KANT had in mind: the contradiction between what is externally imposed (commanded or prohibited) or permitted by law, and what what my conscience tells me

Responsibility to conscience is a burden; conscience does not always speak clearly to us; unlike conscience, the right has an external guarantor, the state power, which enforces its effectiveness by force. For these reasons, which are psychological in nature, we tend to *prefer legality over morality*, in other words: to follow the legal norm rather than our own conscience, even where both norms are in obvious conflict. This strategic decision, which also has moral relevance, results from the so-called regressive tendencies of the human personality (see chap. 4 and 5), in this case from the permanent temptation to choose a path that is less expensive or less risky.

We succumb to this temptation in a situation of *conflict of two "loyalties"*, when we prefer a system of norms that is not more correct, but more subjectively acceptable. Mostly it is a purposeful suspension (temporary invalidation) of morality in favor of the technological rules of a certain human action. This is what they mean, for example, by sayings such as "business is business", "war is war", etc., behind which there is an attempt to define an area where there is no need to pay attention to moral or ethical standards.

A preference for legality over morality can also manifest itself in the mind of a particular doctor who is not willing to meet the demands of medical ethics (due to their complexity, difficulty, etc.) and therefore only accepts the binding nature of legal norms. This attitude sometimes leads to a fundamental misunderstanding, when **medical ethics is considered only a more sophisticated ("more luxurious", i.e. less binding) form of health legislation.**

## Alibism

These action strategies, motivated by an effort to free oneself from personal responsibility and protect oneself by external authority or by a norm imposed from the outside, they are called *alibism* (the term is derived from *alibi*, which is evidence of someone's absence at the scene of the crime). The alibist outwardly pretends the moral correctness of his actions, but his most important motivation is the effort to avoid unpleasant interpersonal, administrative, legal, etc. conflicts. He prefers the law to conscience and takes advantage of the fact that the law cannot regulate all problematic situations, if each of them is unique in its own way . The *alibist doctor* is primarily trying not to help the patient, but to ensure that nothing can be blamed on him, so that he has an *alibi* (as a rule, he pays more attention to document management than to his patients).

**Medical alibism is a strategy that can result from an individual decision, but can also be forced by social change. While the doctor-patient relationship was largely bureaucratized in a totalitarian society, in a liberal society it is commercialized and eventually juridized:** only one of its dimensions comes to the fore, namely the contractual nature of this relationship. Both the doctor and the patient are then only parties to a legal contract, and more serious problems that arise within its framework are resolved by the court (this tendency is most pronounced in the USA). Doctors insure themselves against the possible threat of alibi.

## Summary

A **Norm** is a statement of what should be. What should be in the relationship between man and thing is explained by technological instructions, which are also called standards. Ethical, moral and legal norms tell about what should be in the relationship between people.

'*The source of ethical and moral standards* is conscience. *The source of legal norms* is the will of the legislator. Regarding the content of norms, morality (or ethics) and law overlap only partially. The intention of law is the functioning of an organized society, especially the state. Therefore, legal norms are also morally binding in an indirect sense.

'*Legality* is the conformity of the conduct with the legal order. The non-identity of law and morality (or morality) establishes the tension between legality and morality. For example, if the legislator pursues an immoral goal, a conflict arises between law and conscience.

**Moral responsibility** is a heavier burden than legal responsibility. Hence the constant temptation to prioritize legality over morality. Emphasis on legality can be used as an alibi to hide the effort to escape moral responsibility (similarly, legality can be suspended in view of brute force).

'*Juridization* is the reduction of an interpersonal (or intergroup) relationship to its legal dimension.

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