

INTRODUCTION TO LAW

Lesson 7

UNDERSTANDING THE RIGHT



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The topics

- The meaning of the right
- The expression of the right through law
- The right and economics
- The right and politics
- The right and morality
- The right and legal conscience

The meaning of the right

➤ The term "right" is used in two ways:

in the objective sense as the set of rules of conduct, the legal norms regulating different social relations,

in the subjective sense, as an entitlement that the citizen enjoys.

The connection between the two sides of the right is related to the fact that the citizen can enjoy subjective rights when they are recognized by legal norms, i.e. by objective rights.

Is the right a product of people's will?

- Many disciplines of law have treated the subjective side of the right starting with constitutional law. While the theory of law treats the objective side of the right.
- But the right is also seen **as a product of the will of the people by juridical science**. So the right comes from the general will of society.
- Several authors (Hegel, Groci, Spinoza) consider **the will of the whole society as the source of law**.
- But legal norms do not include the whole society, given that there will always be interests affected by the issuing of any norm.



The right and the will expressed in it

In relation to the right and the will expressed in it, there are:

1. the will of the individual
2. the will of society
3. the will of the state.

How is the will of the individual conditioned?

- Some authors have adhered to the thesis that **the will is conditioned by abstract factors such as human nature, the spirit of the people, moral principles**, etc.
- Authors of a later period, starting with Marx and Engels emphasize the dependence of law on economic relations.

The will of the individual

- The individual's will is not always of legal importance.
- The will of the individual has legal significance at the moment of establishing a legal relationship, **(in the case of a will/testament, in the case of a marriage, etc.)**
- But when the individual writes a letter to friend, then we are not in front of a legal relationship.
- In this case the will of the individual does not have legal effects.

The expression of the will of the individual

- The will of man is expressed by both **actions** and **inactions**, and the right relates to the actions of the individual, not to the way of thinking.
- **Inaction** is failure to do anything that might provide a solution to a problem.
- The law generally forces man to act in a certain way, not to think in a certain way. The law may impose penalties for unlawful acts not for unlawful thoughts.
- The punishment for thinking in a certain way has been in the communist regime, where people were convicted for agitation and propaganda.

Different theories regarding the will (the conscience)

- The action of people in society **is not without a conscious purpose**.
- **The human feature is the ability to act consciously** and this ability enables the legal regulation of human behavior.
- If a man did not act consciously, then the legal regulation of his conduct would not make sense.
- For this reason, the mentally irresponsible person is outside the realm of legal responsibility.

Individual's will versus class' will

- The right is not an expression of individual will.
- The political struggle within each country shows that **law is not an expression of the will of the whole society.**
- Other authors see it as an expression of class will, or an expression of the will of the ruling class (Marx).
- **Class' will is considered as a general will expressing the typical interests of all persons belonging to this class.**

Individual's will versus class' will

- But not every expression of the will of the class is equivalent to the right.
- The will of the ruling class can be expressed through:
 - ☐ the mass media,
 - ☐ the press,
 - ☐ manifestations,
 - ☐ written works, etc.
- **These expressions of will are not part of the law.**

The will of state and the will of ruling class

- Only when the will is expressed **in legal norms sanctioned by the state**, there is the expression of the objective form of the right and state's will at the same time.

The will of state and the will of ruling class

Does the state's will comply with the will of the ruling class?

- 1. **Not every will of the ruling class is a state will.**
- 2. The state's will cannot be the same as the subjective intentions of the ruling class, because **the content of the state's will expressed in the law is related to the ratio of classes and political forces in a country.**
- Often the ruling party **recognizes various concessions** (leshime) made to other social forces to avoid conflicts, or to reach compromises acceptable to all parties.

What is law?

- The main question that must be answered in any introduction to law deals with **the nature of law**.
- The law is multifaceted and arguably it has been in a flux over the years. In the current age of globalization and Europeanization, it is changing at a high speed. It is therefore not possible to give a short definition of law.
- What is possible however, is to mention a few characteristics of law.

Characteristics of law

➤ Rules

A substantial part of law exists ***in the form of rules.***

These rules do not only specify how people should behave such as:

“do not steal” or “pay taxes”,

but they also contain definitions of terms, create competences, and much more.

Characteristics of law

Ex 1:

An example of a rule that gives a definition can be found in **Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination**, which defines “racial discrimination” as “... any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”

Characteristics of law

Ex. 2:

Article 37, Section 1 of the *International Covenant on Civil and Political Rights* provides an example of a rule that creates a competence for the Secretary-General of the United Nations.

It states, in connection with the Human Rights Committee: “The Secretary General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.”

Types of rules

Society is governed not only by legal rules but also other types of rules.

Such rules belong to:

- **a religion** (for instance, the Ten Commandments of the Bible),
- **etiquette** (for example, “Eat with a knife and fork”), and
- **special organizations** such as student associations (for example, “Every member is to perform bar service twice a month”).

Distinguishing laws from other rules

- **One characteristic that distinguishes legal rules from other rules** is that the former are normally enforced by collective means and in particular by organs of the state, while this is not true for the latter.
- Moreover, legal sanctions have very **specific sanctions**, such as imprisonment, fines, compensation of damage, etc., while the sanctions of nonlegal rules are less specific.

Distinguishing laws from other rules

Example:

- Someone who has committed a crime will be punished, and this punishment is brought by state organs such as the police and prosecution.
- On the other hand, from a moral point of view it is wrong to lie. And although liars may be liable to informal and private sanctions such as reproach and avoidance, they will rarely be sanctioned by collective means.

Positive law

Another characteristic that distinguishes law from other normative systems is that, by far, most legal rules are created by state agencies, such as parliaments, courts, and administrative bodies.

As we will see, this has not always been the case, but at present most laws are explicitly created (or, in legal terms, “laid down”).

A law that has been laid down is called positive law. The word “*positive*” in this connection is derived from the Latin *positus*, which means “*laid down*.”

Legal rules can also be repealed, which is not possible in the case of, for example, moral rules.

The analyzes of the right and its definition

- **1. The right is a set of legal norms or rules of conduct.**
- But not every rule of conduct constitutes the right, for example: moral rules; religious rules, etc.
- **2. Legal norms are rules of conduct that have been enforced by the state.**
- Rules of conduct are **either imposed or sanctioned** by the state.
The establishment of a rule of conduct is related to the legitimization of traditions and customs by the state.

The analyzes of the right and its definition

- 3. The state apart from establishing legal norms also ensures that these norms are enforced by taking measures against offenders. This feature makes legal norms distinct from those of morality.
- 4. The legal norms can never be one-sided, they generally reflect the interests of a large part of the population, otherwise their lifespan would be short.
- The right is a set of norms that regulate social life in a given country and are characterized by the existence of sanctions that guarantee their implementation.

The right and economics

- **Economic relations in the society are highly related to the law and legislation of a country.**
- The way, how the economy of a specific society is built, is crucial to the legal system set up in that society.
- The connection between the two systems is mutual.
- Law preserves and legitimizes the economic relations that exist in a given society, and on the other hand, the economy itself determines the overall framework for building the system of law.

The right and economics

- We can say that law is determined by economic relations but they are not the only influencing factor.
- In a given society there are other factors that influence the formation of law, such as **political, social, moral, religious factors**, and so on.

The impact of the right on economy

The impact of the right on economy is expressed in various ways that are conditioned by different periods of development of society and the state.

- There are groups of lawyers who **deny the link between law and economics**. According to them, law is based on general principles that are independent of the economy and economic relations in production.
- Another stream does not deny the right-economy relation **but the right has a central role** in this relationship.
- But reality has shown that **economic developments precede legislative changes**.
- Example: Albania, after liberation, took measures for the general collectivization of society.

Collectivization of society (Albania)

- The first Albanian communist government in the period of 1945-1946, undertook a radical agrarian reform for the expropriation of large and medium-sized landowners, including lands owned by the state, foreign capital or those owned by religious institutions, and their distribution in favor of the poor and landless peasants.
- But before the land allotment was well completed, the Albanian Communist Party announced its basic long-term platform for agriculture, emphasizing "the need for socialist transformation of agriculture based on the collectivization of small producers and the **creation of large state farms**."
- The collectivization of agriculture should also serve to apply the theory of centralized planning in agriculture, which was incompatible with the structure of small private and individual producers.

The balance between the right and economy

- The state promotes changes in the economy and realizes these changes through the enactment of legal norms. In this context, it seems as if the right comes before the changes of economic developments.
- But the issuance of these legal norms comes as a demand of economic development of the society.
- Otherwise, if we issue legal norms contrary to the rules of the economic "game", **then we would face economic disasters in society.**
- It should be emphasized that the relationship between law and the economy must be balanced in order to give space to economic developments as well as people and society's change.

Three modes of law operation over economics

There are three modes of law operation over the economics:

- 1. The law operates **in the same direction** with the economy and consequently the development of society is normal;
- 2. The law acts **in the opposite direction** to the economy and the law and the economy will fail;
- 3. The law **can play a contradictory role** sometimes in support to the economy, and sometimes not. This third way will go in one of the two ways above.

Law and politics

- It is a universally accepted fact that politics and law are interconnected.

The state, as the largest political organization in society:

→ **defines the right**, that is, the system of binding legal norms in a given society

→ **ensures their implementation.**

The state issues legal norms and gives legal content to the rules of conduct.

The state itself, its organization, structure, powers of the organs, relations of these organs with the citizens are regulated by legal norms.

Law and politics

- ➡ The state expresses its political content through law.
- ➡ **Politics is closely related to law** because every political action is translated into legal provision and every political measure is supported by laws and other sub-legal acts.
- ➡ But politics is not equivalent to the right, politics has its ideological part, and the right/law in politics makes the latter more accessible.

Legal norms and the political content

- There are cases where **the political content of legal norms is clearly distinct**.
- But there are other norms that are **technical** and define ways or procedures to achieve a definite result.
- Although at first glance those norms seem "dry", they as well have a political context.
- **For example**: the state through a set of norms in the field of education will legitimize the creation and development of private education;
- Or the case of determining the rights of the defendant in the investigative process.

The politics beyond law

- The relationship between politics and law is connected to the policy that the state develops.
- But politics has a wider content.
- **Political activities** are developed by political parties, various political associations and political forces that are not in power.
- Politics also relates to the **various compromises** done between the opposing political forces.

Law and morality

- Historically the right has been linked to social conscience, where moral and religious influences have been significant.
- **Religion has played an important role in law as well as important influence.**
- Religion played the greatest role in the middle Ages.
- The role of religion has declined significantly today, but there are still places where religion continues to play a role in the country's politics and in the relevant legal system in force.

Law and morality

- **There are times when the state is totally subjected to religious norms, such as Iran's case.**
- But even in developed countries there are cases where religious norms play a role equivalent to the law, e.g. the case where a marriage bond is recognized equally both by law and religion.

The common elements of the right and morality

The right and morality have points in common as well as their distinctions.

- 1. Both of them during their implementation are based on the **conscience** of the citizens. But they also rely on the **coercion** method. But the method of coercion differs because coercion measures in legal norms are taken by the state, while in moral norms coercion is carried out by social opinion, through boycott, reproach etc.
- 2. Legal norms derive from constitutions, mandatory laws, which are **written acts**, while moral norms are **unwritten**.

The common elements of the right and morality

- **3. The right in a society is one**, while **morality is uniquely conceived in different ways** by different social groups.

One of the main functions of the law is to guide behaviour, by telling people what to do or not to do in the form of prohibiting and prescribing acts.

Morality primarily sets standards through which we can evaluate behaviour as “good,” “not so good,” or simply “bad.” Good and bad come in degrees: better or worse. From the legal point of view, a particular act is either permitted or not, without such grey areas.

The common elements of the right and morality

- 4. **Legal norms are sanctioned by the state** while moral norms are set by society itself, public opinion.

Another difference between law and morality is **that being legal is a precondition for rules that are to be enforced by state organs;** moral principles are not enforced in that way.

The common elements of the right and morality

- 5. **Many of the legal norms are at the same time moral norms, but not all legal norms have moral content.** The norms that determine the manner in which a record or notarial act is compiled are not related to morality.
- 6. Morality regulates a series of relationships that are outside the scope of law. Whereas the law regulates those relations which are of **particular importance to the state.**

So it is clear that law and morality partly overlap each other.

Law and legal conscience

- Whenever legal acts are issued, at the time of their implementation, **the state bears no responsibility for their non-recognition by the citizens.**
- Citizens cannot escape legal liability in the absence of knowledge of the legal norm.

Law and legal conscience

- But despite the recognition of the legal norm, the **way this norm is implemented is different and it depends on the legal conscience.**
- Citizens' attitude towards a norm is different; they may consider it as right to apply or not, and this depends on how the norm is perceived in people's consciousness.
- Legal consciousness is the totality of views and opinions of people expressing their attitude towards law and order.