

SPECIAL COMMUNICATION

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Law, Ethical Codes, and the Report of the CSSP Survey on Ethics Policies

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ABSTRACT: Recently, the Council of Scientific Society Presidents (CSSP) collected data from its member organizations regarding codes of ethics. To better understand why such a survey would be undertaken, this paper begins by examining what is meant by ethics and highlights some distinctions between law and ethics. It then discusses codes of ethics, stressing their purposes and functions. Finally, it looks at the results of the CSSP survey and evaluates how various organizations formulate and implement their codes.

KEYWORDS: forensic science, ethics, law, Council of Scientific Society Presidents ethics survey

Law and Ethics

The relationship between morality and law will be addressed in this section of the paper. The term “ethics” is derived from the Greek word “ethos,” which means the character or custom of a people. It refers to the expected practices of a community and its individual members. The “ought” sphere of ethics is defined as comprising those normative judgments about social conduct involving significant matters of good and evil for individuals in society. Morality consists of the most basic rules of society and in the Greek sense moral laws are normative in that they specify what a person *ought to do or should do* in specific circumstances. Moral laws specify prescribed courses of conduct. One of the most important questions of morality is what is right or obligatory to do. In other words, moral judgments are judgments about the rightness of action.

Morality and law are neither identical nor entirely separate. It is generally regarded that law is largely a subset of morality. Some moral requirements can be enacted into law, but not all moral requirements can or ought to be. In regard to moral matters, the sphere of morality is wider than the sphere of law since law comprises those specific moral norms to which a society attaches its most severe sanctions and penalties including fines and imprisonment.

Legal theory has always concerned itself with the nature of morality. Two classical conceptions of law are put forward by Saint Thomas Aquinas (1225–74), who was a prominent proponent of the natural law tradition within jurisprudence and John Austin (1790–1859), who helped to establish legal positivism.

The moral theory of St. Thomas Aquinas is based on the work of Aristotle, who insisted that morality specifies the rules for the behavior of the individual within society (4). Therefore, there appears to be a natural connection with law. Aristotle and St. Thomas Aquinas ask what sort of person ought one be or what sort of life the individual ought to live. For them, living a life of virtue was the only event truly within human control. Virtue is a habit and is acquired through practice. Everyone, then, can become a virtuous person and live a virtuous life. Aristotle was particularly concerned with the community and how one lives a virtuous life within the city-state. He stated “he who would duly inquire about the best form of a state ought first to determine which is the most eligible life” (4). His emphasis was on living a good life. The good life could be explained in objective terms and could be defined by the community. This notion of the relation between the good life and the community is one that is not emphasized in some modern philosophical theories. Ethicists such as St. Thomas Aquinas and Aristotle place their focus on the agent or individual and that person’s relationship to the community in which the individual resides. How does this then work out in Aquinas’s legal theory?

Aquinas states in his “Treatise on Law” that: “Law is nothing else than an ordinance of reason for the common good, promulgated by him who has care of the community” (3). Thomas Aquinas assumes that those who make laws establish laws that serve the common good. However, Aquinas is not naive and recognizes that law does not necessarily always serve the common good. He recognizes that his characterization of law as an ordinance of reason for the common good does not automatically apply to laws that are framed by human beings, i.e., human law. Human law can be either just or unjust, . . . the force of a law depends on the extent of justice . . . according to the rule of reason. But the first rule of reason is the law of nature . . . Consequently, every human law has just so much of the nature of law as it is derived from the law of nature. But if in any point it departs from the law of nature, it is no longer a law but a perversion of law” (3). Human laws are just when they “serve the common good, distribute burdens fairly, show no disrespect to God, and do not exceed the law maker’s authority” (17). When human law fails to fulfill these requirements, it is unjust and consequently does not bind in conscience. One is bound only to

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obey just laws, not those that are unjust. Human law does not automatically merit respect but its legitimate claim to obedience depends on moral considerations that are independent of law.

John Austin takes a different approach to legal theory since he is primarily concerned with laying the groundwork for legal training. Austin provides a theory about the nature of rules that are supposed to regulate human behavior. He understands these rules to provide the foundation for obligation. "He, first of all, distinguishes laws that are meant to describe regularities in the natural world from laws that are meant to guide the behavior of individuals who are capable of modifying their own conduct accordingly. Austin then divides the latter into three realms: Divine law, positive law and positive morality" (11). Divine law consists of those rules laid down for human beings by God. Positive law is produced by legitimate civil authority and positive morality and includes some guidelines that are neither formally expressed nor enforced but are supportable by custom or convention. While there are differences between the two classical theories, there are some similarities. Both Thomas Aquinas and Austin believe that human law is fallible and they share a traditional theory about the foundation of moral judgments. These judgments are founded on Divine law, which provides the basis for morality, thereby indicating that moral judgments need not be arbitrary.

Law interacts with morality, but while there is interaction, there are differences and a separation between the two. Law is shaped by values, especially those values held by those who frame the laws. Law in turn has an impact on moral attitudes, for example, its enforcement tends to reinforce the values it reflects. While law may reflect prevailing moral opinion, it does not necessarily reflect sound moral principles. The idea that morality and law are connected is expressed in the claim that an unjust law is no law at all. This claim is associated with the traditional ideas of natural law. The requirements of moral obligation are such that the law cannot encompass or enforce all of it. The separation of law and morality reflects a recognition of the differences between the two. "The separation of law and morality is not solely a result of the stringent process of definition. This separation is mandatory if we are to preserve both the clarity of the concept of law, on the one hand, and the purity of moral obligations on the other. There is the constant danger that if the association of law will become the substitute for our moral standards; and if the law is our moral standard, we have lost the possibility of a moral criticism of the law" (13). If a close relationship can be found between law and morality then one can legitimately say that law is a moral phenomenon and that the legal order rests on the moral order. But it must be recognized that there are significant differences between law and morality as well. One difference that has been pointed out is that law commands, while in morality one chooses to act. There is a different type of force behind each. In morality, one reacts to the force of conscience and persuasion by deliberation and a conscious decision to obey or disobey. The final decision in the moral realm is personal choice about whether to conform or not to the moral law. The command of law is intimately connected with the organized structure of society's system of punitive consequences. As Stumpf points out, the moral law is something from which one chooses to draw rules of behavior provided that these moral precepts are sufficiently clear and ". . . while men do from time to time deliberate over whether they will obey the law, neither the substance of the law nor its obligatoriness is in doubt. The legal command at once signifies what should be done and what will happen if it isn't done. In this sense, then, the law commands, whereas in morality we are persuaded. This certainly represents a fundamental difference between law and morality—the difference

between external compulsion and internal affirmation of an obligation" (13). Another difference between morality and law is that law is general and abstract whereas morality is concrete and personal. Law treats all persons the same, which renders law impersonal and abstract. Law deals in terms of rules, not people, while morality stresses obligations not to rules, but to persons. This is not to say that moral rules cannot at times be abstract. An individual may obey the moral rules out of concern for the rule. "Morality has its own way of being general, of abstracting certain stable structures from human nature and assuming that these qualities will be present whenever human beings are present. The very notion of person implies certain determinate characteristics, which at once identify a moral agent and at the same time prescribe his obligation. Moral obligation assumes the stability and the primacy of certain human characteristics, and it is possible to speak of these in general terms (for example, "worth," "dignity," "equality," "freedom," and "rights") without speaking of any person in particular" (13). Therefore, both legal and moral rules envision a human nature, are general in formulation, and are abstract in that they rise above particular persons.

Laws are binding in a particular time and place, whereas moral rules are without boundaries. That is to say that legal obligations have a limited scope while moral obligations do not. "The premise of moral obligation, therefore, is that whenever human beings confront each other, certain moral obligations will always be present, as, for example, to be honest, to refrain from taking what belongs to another, and to refrain from injuring another person. Exceptions to those obligations are, of course, easily conceivable, but there is virtually universal expectation that these rules will be respected between men" (13). There is no such universality attached to any civil law.

Law is concerned with external conduct whereas morality deals with internal motive. Law is concerned with minimum moral standards while morality envisions a truly good or ideal life. Law provides the structure in which persons can live with reasonable assurances that promises will be kept, property protected, and violence minimized. The scope of law changes era to era and seems to increase as a society becomes more aware of how human beings ought to live.

To sum up, there is an intersection between morality and law but not an identity. Stumpf identifies three major characteristics of law. First, law is a body of rules fashioned for the purpose of regulating human behavior. In the making of these rules there is dependence on a conception of morality. Second, law is enforced by the coercive power of the state but this power is not the "essence" of law since this force is only in conjunction with a rule. Finally, law is directed toward ends that society is trying to achieve.

In the next section of this paper, codes of ethics will be discussed, which will more explicitly illustrate this relationship between morality and law.

Ethical Codes

In most professional societies, codes of ethics are established to guide their members' behavior, and those who enter that profession agree, at least implicitly, to follow their professional codes. These codes are concerned both with legal and moral behavior and the content of these codes covers more than what is legally expected of its members and extends to role-specific obligations as well. Members of these societies have individual, professional, and societal obligations and codes should address all of these aspects.

By providing general performance standards, professional codes clarify for individual members what is expected ethical behavior.

The code of ethics of the American Academy of Forensic Sciences (AAFS), for example, asserts that each member “shall refrain from providing any material misrepresentation of education, training, experience or area of expertise (1). Codes also set the framework from which members formulate more specific judgments. For instance the AAFS code states that every AAFS member shall refrain from exercising professional or personal conduct adverse to the best interests and purposes of the Academy (1). This statement guides individuals in making decisions on how to act rather than proscribes specific acts.

In addition to providing guidance to individual members, codes of ethics are also established to protect the professions. The earliest codes of ethics of the American Medical Association, for example, were set up to distinguish qualified physicians from quacks (5). These codes were meant to monitor and promote the profession by setting standards that would grant it status and prestige. We find, for instance, in the 1847 AMA code such statements as, “He should, therefore, observe strictly, such laws as are instituted for the government of its members;—should avoid all contumelious and sarcastic remarks relative to the faculty, as a body; and while, by unwearied diligence, he resorts to every honorable means of enriching the science, he should entertain a due respect for his seniors, who have, by their labours, brought it to the elevated condition in which he finds it” (10). Although the language was updated in later revisions of the code, there was still an emphasis on promoting the profession in the best light and respecting senior practitioners, stating that members “should honor the fraternity as a body; should endeavor to promote the science and art of medicine, and should entertain a due respect for those seniors who, by their labors, have contributed to its advancement” (10).

Codes of ethics also function to maintain harmony within professional groups, and adjudicate disputes among members. It is this internal control of members’ ethical behavior that enables the profession to monitor itself, rather than have outside agencies address ethical breaches. The preamble of the American Bar Association code, for example, states: “. . . to the extent that lawyers meet the obligations of their professional calling, the occasion for government regulation is obviated. Self-regulation also helps maintain the legal profession’s independence from government domination” (2).

Society has granted privileges to professions, such as the ability to license their members, and professions can maintain their privileged status only so long as the public has confidence in them. Professions exist to serve the well-being of society, and there must always be a balance between the profession’s interests and the interests of the larger community, otherwise the profession loses its credibility.

Some codes offer very specific guidelines as to how to serve this larger community. The ABA code for example, stresses that “a lawyer should render public interest legal service” (2), the International Council of Nurses’ International Code of Nursing Ethics states: “. . . a nurse should participate and share responsibility with other health professions in promoting efforts to meet the health needs of public—local, state, national and international” (9); and the National Association of Social Workers’ Code of Ethics states “. . . the social worker should assist the profession in making social services available to the general public” (12).

In order for codes to be effective, however, they need to be explained and enforced. Members need to understand what the code requires and be aware that if they breach the code, consequences will follow. If codes are not actively stressed and enforced they are of little value because their power, as with law, lies in the external control of a person’s behavior and not on the individual’s internal

intention. Although codes of ethics cover a field of ethical concern broader than law, nevertheless they are limited because they address only specific work-related issues and are cautious in defining specific behavior.

Results of the CSSP Survey on Member Organizations Ethics Policies

In an effort to examine how well scientific societies promulgate and enforce their codes of ethics, the Council of Scientific Society Presidents (CSSP)—an organization of presidents, presidents-elect, and recent past presidents of about 60 scientific federations and societies whose combined memberships numbers well over 1.4 million scientists and science educators—began collecting ethics information from its member organizations and in May 1994 began an evaluation of that information.

This was a follow-up on the three resolutions adopted by the CSSP at their May 1992 meeting at which they recommended that scientific societies should (6):

1. Develop mechanisms to educate members regarding standards of research practice, the ethical conduct and reporting of science, and the traditions, value, and paradigms of the discipline;
2. Identify ways in which professional societies can and should complement and sustain institutions in assuring the fundamental elements of due process; and
3. Support and protect both members who, in good faith, raise allegations of misconduct and members who have been determined through due process to have been wrongly accused of misconduct.

Based on these resolutions, the CSSP Ethics in Science Committee sent a brief survey to each member society in which they asked the following questions (7):

1. Does your Society have a code of ethics or ethical guidelines or requirements as part of your constitution, by-laws, or publication policy? If not, are you developing any and with regard to what topics?
2. If your Society does have a code, how are members made aware of its contents?
3. Does your Society have an ethics officer or office with responsibility to receive and act on allegations of unethical conduct?
4. Does your Society have sanctions that it can impose if a member is found to have acted unethically?
5. Does your Society publish a newsletter? A peer-reviewed journal? Books?
6. Do your members work with humans as clients? As research subjects?
7. Do your members work with animals as research subjects?

Information was received from 62 organizations, including four umbrella groups (8). Thirty-six, or 58%, of these professional societies have some written ethics policies. An additional eight societies, or 13%, had draft policies under consideration or had begun a process of developing statements about one or more ethics issues.

In marked contrast to this significant level of activity in developing ethics policies in general, only eight societies have designated a committee or official to investigate allegations of unethical conduct and have sanctions that can be imposed if a member is found to act unethically. The AAFS is one of those eight societies. Six additional societies have a committee or official, but no sanc-

tions, while four more have only some means for imposing sanctions. Therefore, less than one-third of the societies have any enforcement dimension in their written ethics policies.

These policies vary in length from the one-sentence statement of the American Psychological Society to the 32-page Code of Conduct published by the American Psychological Association. The American Psychological Society Ethics Statement reads as follows:

The Board of Directors expects ASP members to adhere to all relevant codes of ethical behavior and legal and regulatory requirements.

Interestingly, they advised in their answer to Question 2 of the preliminary survey regarding members being made aware of their code's contents, that their code is made available on an as-requested basis. The American Psychological Association code includes extensive coverage of a wide range of issues including traditional topics such as privacy and confidentiality to issues of more recent concern, such as advertising for professional services.

There are pros and cons to both long and short codes. One of the most obvious is, of course, the more specific you are, the more room there is for loopholes. The AAFS Ethics Code is very broad, which is probably necessary because of its diverse membership, but it adequately covers the topic *and* allows its ethics committee to deal more with substance than form. The AAFS also has a task force to review the code and make any recommendations for improvement.

The majority of ethics statements are one page or less in length. A few deal with only one or two issues, such as authorship policies for society journals or a general statement of a responsibility to society at large. Some societies issue formal certificates which state a code of conduct. Other groups reproduce society policies about such topics as authorship guidelines in some or all issues of society publications.

These data do suggest that while societies have begun to consider and act upon their perceived role in the debate on ethics in science, many of them limit their policies to very general statements. The absence of any statement on discrimination or harassment in almost two thirds of the policies seems to be a significant omission given the profile that these issues have at academic institutions and corporate centers. It is suspected that at least some organizations are reviewing these issues now.

Many organizations had either no ethics code or basically superficial codes with no enforcement and sanction procedures; some or-

ganizations did not want ethics codes in order to avoid trouble or lawsuits, and expected other safeguards in society (whatever they may be) to take care of any problems.

The CSSP Committee hopes to publish the complete text of all of the ethics policy statements that were obtained (8). That publication will also provide sample components of ethics policy statements that can be excerpted and used by those organizations which are developing or modifying their policies. Copies of this document will be available from CSSP as soon as they are completed. The CSSP is also advising members who have web pages to add their ethics code or statement to their web page. For the future, we will be considering how cyberspace will affect or impact what we have already considered.

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