

CONTEMPORARY SOCIETY AND ITS NORMATIVE SYSTEMS

D. Zapletalová, J. Tuza

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Abstract

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Every human behavior is under the influence of many factors, for example, personal preconditions, ambitions, education, in addition to certain time and the environment in which human beings live and work. From the social point of view, the first place in the regulation of behaviour is occupied by the normative regulatory systems. The contemporary time and society are often denominated as postmodern or postindustrial. Among others, there are crisis of various kind, first of all the crisis of traditional value systems reflected in the crisis of moral and law, which is connected with the current period. In this article, we analyse contemporary society, its characteristic features, in addition to comparison with the earlier period called modern or industrial. Both these periods have some characteristic elements which are mutually antagonistic. However, they have something in common at the same time. Apart from that, both societies have met a crisis. Moreover, there were changes in values and regulatory systems during these periods. With respect to the value systems, it is obvious that they have undergone fundamental changes which society has to settle up. Furthermore, it is necessary to assume a certain position when considering moral and legal aspects.

society, normative systems, law, morality, social values

Increasingly, we see the opinions that rational decision-making is not rational already and that morality ceases to be unifying force of society in addition to be belittled and its nature, enforceability and very existence is underestimated. Decision-making is not 'reflection of the values and needs of society' but it is essentially forced by constant influence of individuals and social groups through ubiquitous media. Rational thinking of individual is actually manipulated by others who know to treat with modern possibilities well and thoughtfully. We are talking about a crisis of values and morality, or even rejection and questioning traditions, social values, and morality. The criticism is also directed against the law which is often not current, sometimes too complicated, and thus ineffective due to the rapidly evolving society. "We often

speak directly about the crisis of law that allegedly interferes with its creation, application, and role in society. Even the voices resound that the end of rule of law has come ..."¹

Everything suggests that contemporary society is confronted with the economic crisis in addition to the moral crisis. What is the cause of *the crisis of morality*? Is it the crisis indeed, or just a shift of moral values and rules of the spectrum to another evaluation or to other regulatory systems?

The end of the 20th century and the beginning of the 21st century have brought many significant changes in society. It is associated with new problems which have had to be solved. Therefore, the traditional morality and social values have been affected, or more precisely, the perception of morality and its observance. Moreover, new issues

1 MARŠÁLEK, P., 2008: *Právo a společnost*. Praha: Nakladatelství Auditorium s.r.o., p. 12.

(new social relationships, new opportunities, and, however, new dangers) have occurred. The society must get used to them and give attitude to them. Among other things, scientific and technical progress is increasing, which is quite beneficial, but on the other hand, it results in the consumer society that threatens their own civilization. Environmental problems become the issues of pressing importance, an anonymous society without close social ties has been created in towns, the family is experiencing a crisis, and crime is rampant everywhere.²

This created the new form of criminality that have not been described, named, or penalized in the existing law as well as in morals. Increasingly, we meet with scepticism in relation to forecasting of finding ways of dealing with an effective regulation of developing social relations. New opportunities were brought with reassessment of traditional attitudes. Moreover, the value systems of individuals and social groups have been changed. The society often tolerate the matters that were considered as immoral previously, and *vice versa* – some moral values (such as honour, truthfulness, courage, honesty, modesty ...) have been replaced to another place in the value system, and they have attracted only secondary importance in moral evaluation.

The biggest sceptics speak about the disintegration of morality as a whole and about zero moral order. However, they continue by claiming that it is possible to observe how the moral chaos begin gradually be structured, in addition to the creation of new moral vision.³

More moderate critics of the current moral state of society take a guarded stand to the views about the crisis of morality; they assess the current status more like 'twilight of morality' which does not represent its nullification but only a transformation.⁴

Other very common critic's attitude asks with the contempt: What is morality? And then they answer to themselves, that nothing. They admit that it could be important and influence the behaviour assessment, provided only that it would be uniform, or at least if its rules had been accurately defined. Proponents of this attitude and its ilk claim that if morality has not a single form such as law, then it is not possible to be respected, or to enforce its compliance. This method of assessing the morality represents numerous efforts to '*juridicate*' morality. Therefore, this is a denial of autonomy among normative systems and a sublimation of morality into the system of legal norms.

Where are the causes of the crisis (or dusk) of morality? What has brought contemporary

society, which is often referred to as postmodern, in crisis situations (whether from the aspect of law, economics, or morality)?

METHODS AND DISCUSSION

The twentieth century was marked by several world events that were important milestones in the development of human society and its approach to values and normative systems. The First World War brought new modern weapons that killed incredibly a lot of people who did not know why fight and kill. The collapse of the monarchy and formation of new states with their own power and legislation followed.

The horrors of World War II brought the harshest experience to humanity; blind obedience and devotion to the perverse ideology got rid a part of human population of moral inhibitions. This resulted not only to death of so far unprecedented number of people but also to the denial of human dignity as the natural right of every man. Science has been misused in favour of war. The world had to deal with war consequences in some way. New discussion on human rights and values were open. However, there were also a new division of Europe, the promotion of new moral values, and the denial of some traditional values, all in the spirit of *socialist morality* in countries that belonged to the so-called *socialist bloc*. People, who have been forced upon obedience in the spirit of socialist legality and some re-conceived morality, whom many basic rights and freedoms were denied, longed especially for freedom in many ways.

The disintegration of the socialist bloc connected with the effort to implement coveted freedoms was another important milestone. At the same time, discussions about new human rights and new opportunities came forward again, together with the issues coming forefront of the interest of human society.

"The US-Hungarian history theorist John Lucacs says that the twentieth century rested on a certain authority, but itself was very unproductive in the field of seeking social values. It is necessary to realize, that man is not a being torn by emotions and instincts but it is a reasonable being. I would say that a step to rationality should be the step to the future."⁵

Humanity does not struggle with crisis of all kinds for the first time. The current economic crisis is quite different, however, it can be compared with the great crisis which began in late 20th of the last century and preceded the rise of fascism. It was a period called modern, with its modern society and its modern

2 Ibidem, p. 12 an.

3 PÍTHA, P.: *Morální problém současné doby*. [cit. 11.3.11]. Available at: [www http://www.etickeforumcr.cz/main/stranky.php?rec=76](http://www.etickeforumcr.cz/main/stranky.php?rec=76).

4 HODOVSKÝ, I.: *Soumrak morálky? Ke změnám etické odpovědnosti*. [cit. 16.3.11]. Available at: [www http://www.ped.muni.cz/wphil/clenove/hodovsky/texty/soumrak.html](http://www.ped.muni.cz/wphil/clenove/hodovsky/texty/soumrak.html).

5 From the interview with Dominik Duka, published in *Profit* in 23 August 2010. [cit. 16.03.11] Available at [www http://www.dominikduka.cz/royhovory/konzumni-spolecnost-nemuze....](http://www.dominikduka.cz/royhovory/konzumni-spolecnost-nemuze...)

problems. Modern era is associated especially with industrialization, democratization, urbanization, individualization and decadence in the arts, but also with new ideologies and generalization of market.⁶

However, the modern period cannot be precisely defined in terms *from-to*. Nevertheless, it is usually claimed that *modern* society has replaced the *traditional* one around the period where there was a significant liberation of people from physical work through the development and differentiation through science and technical inventions. The modern period is associated with the *emergence of ideologies that attempt to find one single concept of truth*. Moreover, *freedom of man* is promoted in addition to new directions in the search for a relationship of normative regulatory systems. The concept of the so-called modern state which is the predecessor of the rule of law, whose idea is older than the idea of modern state, is realized.

Access to education in the modern period was associated with the concepts of *freedom of man, which is a prerequisite for a dignified life*. The central theme in law (besides codification processes) is represented by *fundamental human rights and freedoms* which should ensure the highest protection of the values that are recognized by majority of society.

However, the aforementioned crisis that befell countries with developed industry and modern society has occurred. This paper is not aimed at an analysis of all the causes of the crisis. The intention is merely to capture the fundamental differences in addition to the common features of both societies and their crisis. Tomáš Baťa said in the 20th of the last century that it was primarily *the crisis of moral values*.⁷

Currently, many representatives of various scientific disciplines say that the current economic crisis is primarily a moral crisis too. Hence, we find the first common feature of the aforementioned

crisis, which is the crisis (or at least questioning or ignorance) of morality and traditional value systems.

As mentioned, the contemporary society is often described as *postmodern* or *post-industrial*.⁸

There is an effort to overcome or even to destroy modernism in the concept of post-modernism.⁹ How a certain era and its character can be destroyed? Rather, the point is that the society moves into another phase accompanied with many changes; thus, the previous one is replaced.

Postmodernism is characterized by a *plurality of views*, view on history as a process of gradual overcoming of the earlier phases. It is a reaction to modernism; it is directed in the opposite direction: it rejects the concept of one truth, distrust of the general truths and ideologies recognized in modern are reflected in philosophy. "Pluralism is undoubtedly good because it prevents the foundation of concentration camps and gulags. But in the context of postmodern plurality, it is an issue. If the radical postmodernism says that there is no truth, no value, and that man has the freedom to do what he wants, we are in the society where man is wolf to man".¹⁰ It can be considered as very precise picture of the so called *post-modern plurality*.

In the field of human rights, *progressive universalization and expansion into new areas of social relations* is typical; here, the law faces extraordinary complex and basic issues affecting the very essence of human life and reproduction of the entire human population. On the other hand, *morality loses its general validity*, and in the development of modern law, current trends are characterized as the process of 'de-moralizing' and 're-moralizing' of the content of law. In essence, it is a challenge of the universalistic, general, a criticism of big theories and their leading representatives.¹¹

Industrial production was replaced by *services*. Computer technology and the latest scientific

6 The word 'modern' (lat. *modernus*, current, new) is used as synonym of enlightenment, progress, reason, and freedom. Traditionally, it is used in different contexts and in everyday life in terms of current and new. This is also a very general term for a variety of artistic, philosophical, and religious currents which are generally defined against a previous and older. In a broader sense, it is designation for the European (Western) modern times, or even the newer part. *Moderna*. Wikipedia: Open encyclopaedia. Available at [www <http://cs.wikipedia.org/w/index.php?title=Moderna&oldid=4533695>](http://cs.wikipedia.org/w/index.php?title=Moderna&oldid=4533695) [cit.20.02.10].

7 From the interview with Dominik Duka, published in *Profit* in 23 August 2010. [cit. 16.03.11] Available at [www http://www.dominikduka.cz/royhovory/konzumni-spolecnost-nemuze....](http://www.dominikduka.cz/royhovory/konzumni-spolecnost-nemuze....)

8 Firstly, it is important to stress that a clear definition or characterization of the so-called modern and post-modern times (in this aspect society as well) is hard to find. Respectively, there are many different definitions. It is also necessary to take into account that the definition of modern and post-modern times cannot be understood as a scientifically substantiated definition of particular historical phases in the history of mankind, for which we can determine the exact time frame. Therefore, this period is defined by certain characteristic, associate with the social environment, social relations, values, the culture, art, and the level of science and technology as well. Hence, social changes are primarily the means through which the definition of modern and post-modern periods; they arise from the manner of life, from living conditions and living standards of society as a whole, or some social groups that are meaningful for assessing significance. These changes and the way of life form opinions, attitudes, and social relations, including the way of their regulation.

9 JANČO, M.: Správa o práve (Postmoderný náčrt). In: *Právnik*, 2009, č. 12, p. 1251 an.

10 From the interview with Dominik Duka, published in *Profit* in 23 August 2010. [cit. 16.03.11] Available at [www http://www.dominikduka.cz/royhovory/konzumni-spolecnost-nemuze....](http://www.dominikduka.cz/royhovory/konzumni-spolecnost-nemuze....)

11 MACHALOVÁ, T., 2008: Právo a morálka. In: *Teorie práva*. Plzeň: Aleš Čeněk, s.r.o., p. 77 an.

discoveries (from nuclear physics to genetic engineering) is introduced in all areas of life – production, administration, infrastructure, medicine, education, and the personal life of each individual.¹²

In the context of the development of new *communication technologies*, new possibilities of gathering information are created; it is talked about an information explosion which covers all area of human activity and knowledge. In order to be successful in contemporary society which is also known as the so called 'knowledge society' or 'society of knowledge', one should be able to take advantage of new opportunities, which include unprecedented access to different information. "At the first sight, it might be seen that the purported dream of Enlightenment of a completely educated people is finally filled in thoroughly informed society. However, the second view on the current state of knowledge is a great disappointment".¹³ Because it is possible to find out about everything and everyone almost anything, the impression is, that everyone understand everything and do not require systematic training that is provided on a scientific level. Even the results of scientific research are available on the Internet, most TV stations broadcast programs to popularize science and make available information about scientific disciplines, new scientific methods, and technologies to the general public. But is it really the mediation of *knowledge* which is equivalent to the real and systematic education? This is certainly questionable; more realistic view is that the opinion that basically certain *conglomerate which can be quickly achieved, quickly learned, and easily forgotten* opened to the public is created.¹⁴

However, the development of science and new technologies (particularly biotechnologies) also represents a new and serious threat to mankind and its future. This applies to the technologies which allow direct intervention into the nature of man and nature, which is one part. Such technologies are beneficial to mankind only to a certain extent. Therefore it is extremely important to give a clear opinion to them on the level of all normative systems in addition to define exact boundaries for research and its application.

"Science is becoming a direct productive force and the importance of physical work is reduced in favour of mental work. However, significant changes are not diagnosed only in the economy. The decomposition of principles and ideals, upon which

a modern society stood, is often reminded."¹⁵ It is also significant, that the excellent scientific outputs of certain man do not tell anything about his moral status.¹⁶

In the sense of superiority of the categorical imperative, contemporary science and the application of its results should be heading in this direction. Real society of knowledge (knowledge society) must be able both to produce knowledge and to absorb them and to use to its advantage; while the line between efficient 'exploitation' and 'abusing' them is very thin. "The moral quality of knowledge is manifested by its use which may interfere with certain moral principles – for example, when the short-term benefits of technology caused some long-term damage."¹⁷

Also thanks to *globalization* and *European integration*, normative systems go through different unifying reforms deviating from certain traditions and cultures of each country, often at the expense of quality. Our society is faced with globalization which brings with new global challenges, forcing global solutions. However, the process of globalization weakens the power of society normative systems, making the restoration of normative power of morality difficult. Due to globalization, the traditional law, tied to a specific state and national legislative power, is getting to some *crisis*.

Large and completely new possibilities were brought with the development of technologies and changes in society life organization. In the context of these new issues, new problems have occurred; these problems were not able to be solved by traditional morality and other normative systems for the one reason: *they did not know the problems*.

In order to *maintain health reason* in addition to maintain respect for the rules (without which anyone might do everything regardless of others in the society, which might lead to social self-destruction), it must be admitted that the traditional morals and values must be preserved and respected. However, it is vital to admit the substitution of moral values by the new ones or by the changed views. The original moral points of views queering the intentions and appealing to conscience are seen to be inappropriate in the atmosphere of dynamics of daily striving for something that is currently evaluated positively and after what most people want.¹⁸

Despite of this, or especially because this, it is necessary to pay an attention to individual problems and issues of moral values and principles. It is

12 KLIMEŠ, L., 2005.: *Slovník cizích slov*. Praha: SPN – pedagogické nakladatelství, a.s., p. 289.

13 LIESSMANN, K., P., 2008: *Teorie vzdělanosti. Omyly společnosti vědění*. Praha: ACADEMIA, p. 9 an.

14 Ibidem, p. 10.

15 MARŠÁLEK, P., 2008: *Právo a společnost*. Praha: Auditorium, p. 99.

16 Ibidem, p. 99 an.

17 Ibidem

18 HODOVSKÝ, I.: *Soumrak morálky? Ke změnám etické odpovědnosti*. [cit. 16.3.11]. Available at WWW <http://www.ped.muni.cz/wphil/clenove/hodovsky/texty/soumrak.html>.

desirable to remember the basic human values again; although they (like the society itself) may change, but their existence is unquestionable.

What are social normative systems?

Since ancient times, people create the rules of coexistence which reflect their current needs and culture. However, they are also the result of long-term development of social relationships, they express the respect for certain values and traditions, the perception of the difference between the right and the wrong. The aim of rules of coexistence (normative systems) is to achieve certain order and justice – both in terms of subjective perception by individuals and in terms of general objective evaluation by the whole society. Through these rules, human society protects values which are considered as more or less substantive for the maintaining of its own existence.

Rules of conduct are the work of man, or of the society; they are different, they have varying degrees of binding, depending on what kind of rules it is. To promote the values and order in society, several regulatory instruments serve; they differ in various aspects and different levels. Normative systems are divided primarily in those that have *value* meaning (such as law, morality, religion), and those that have *technical* nature (for example, rules of etiquette, rituals, and ceremonies, spelling rules, technical standards).¹⁹ “The essence of normativity is that each standard is prospective in nature, which is that it provides something that has to be.”²⁰

Traditionally, *law, morality and religion* are regarded as the main normative systems in legal science. They differ from each other but they often overlap and meet; their meaning is different and it is subject to historical development, place, culture, and traditions.

In the individual national legal systems, different normative systems may mingle and interact as well. They often come into conflict from which there is a certain tension among standards and whole systems, which can be transferred inward and thereby complicate the regulation of social relations which are their object. Hence, *finding the optimal set of the normatives* is in the interest of effective regulation of social relations. Law and morality have the most points of a contact; they often differ from each other, their content may be different, yet they continually meet, intertwined, and mutually depend.

In order to clarify the mutual relationship and a cross of the most important normative systems, there were various theories in history of legal and philosophical thinking; it can be said that even

today there is not unified view on these questions in jurisprudence. The overwhelming consensus exists such as *the law differs from other normative systems particularly by being purposefully created by state power, by being universally binding under the threat of sanctions enshrined in law, and regardless of the moral sentiment, religion, and belief.*

There is a rule for all regulators that for the violation of standards of behaviour is set *sanction*, i.e. certain penalty which should be experienced as repressive by an individual, and as negative consequence of failure to comply with the rules. Penalties affect everyone penalized not only repressively but also preventively for the case of further violations of certain rules. Preventive functions are met through individual sanctions against other members of society as well.

The law as one normative system is characterized by the ensuring of its obedience and sanctioning by state power. Therefore, the state power is what distinguishes the normative legal system from non-legal normative systems – from the moment of creation, through coercion and sanctions.

What are social values?

Values are interdisciplinary in nature and they are conceiving variously in different theories. In law, the values recognized by the majority of the society are mostly expressed in legal principles and the principles underlying the regulation of specific legal relationships. They are considered as a kind of standard, the most important rules. “If values reflect general social reality, principles reflect concentrated justice of law.”²¹

Values are closely connected with the needs of individuals and society. There are distinguished three levels of value systems; they should be understood in their mutual interaction:

- individual values,
- group values,
- social values.²²

Each society or social group is characterized by certain typical values that represent their goals and the subject of interest. However, values are not immutable; they have dynamic and variable character.

Therefore, values in the society are very relative like legal and other society norms. The values expressed in legal norms should be based on moral values, but it does not mean that all moral or ethically justified values have to be contained in the law. This is related to the relationship between morality and law as a distinctive normative systems operating in the society.

19 GERLOCH, A., 2004: *Teorie práva*. Plzeň: Aleš Čeněk, s. r. o., 2004, p. 29.

20 Ibidem, p. 28.

21 HARVÁNEK, J. et al., 2008: *Teorie práva*. Plzeň: Nakladatelství Aleš Čeněk s. r. o., p. 79 an.

22 URBANOVÁ, M., VEČEŘA, M. et al., 2004: *Ženská delikvence. Teoreticko-empirická studie k problému právních postojů a hodnotových delikvencí žen*. Brno: MU v Brně, p. 67 an.

Relationship between law and morality

Based on the numerous attempts to define the concepts of morality, law, and their mutual relationship, *it is possible to say that the law should work so that not to be contrary to morality*, because the law is formed purposefully (except of customary law) with the intention to regulate social relations as the society at a given historical era and living conditions currently require, with the intention to transform these relationships into the legal ones, regulated by universally binding norms. Even during the law-making, the creation is based on certain traditions and culture, on knowledge of society needs, recognized values, in addition to knowledge of aims which should be achieved through the norms. Therefore, legal norms should respect generally accepted morality in the society, i.e. what is considered as right, and *vice versa*, it should be penalized, what is considered as wrong by the society. However, it is not always: moral norms apply even where the law does not work through its norms, and *vice versa*, the law very often does not sanction downright amoral behaviour. *Hence, it is the truth that all legal norms have no moral qualities.*

Unlike the law, morality acts as a pluralistic system, internally structured, up to the level of each individual; unlike the law, the obedience of moral norms is not connected with state coercion, but the action of the authority of public opinion.²³ Morality assesses whether the behaviour of an individual or groups supports or harms others; its compliance is associated with positive evaluation and acceptance by a particular social group or with the sense of pure conscience in terms of an individual. On the contrary, its violation is associated with rejection, condemnation, or exclusion from the society; or with a sense of guilt and bad conscience in terms of the subject.

CONCLUSIONS

The change of society entails the change of morality and law, and *vice versa*, changes of morality and law cause changes of society relationships; the society is formed and developed through the changes. However, both normative systems are separate, they are able to *live their own life*, but both are dependent on the society which produced them and which is regulated by them. The law is perceived and defined by different law schools; there are various conceptions of law.

According to the theory of *legal positivism*, man is the law creator – legislator who is responsible for its content. However, the law is not able to contain

a man and human society (all society relationships and situations) in a complex way. The law regulates only as *forum externum* (external manifestation of man).

Positive legal approach considers as the law only what is set forth by the state power in applicable legal norms. It denies the possibility of cognition of the “right” law; morality is perceived as entirely independent on the law, and *vice versa*. Morality creates a general framework of life forms and institutions; it is reflected in the behaviour of people as individuals within the frame of one society or its level. There are more (often very different) moral values and rules in each society. Each member of the society evaluates his behaviour and the behaviour of others in terms of personal moral beliefs. Morality and moral principles may be quite indifferent for the law; the law may have any content.

During the era after the World War II, even advocates of positive legal theories admitted certain *minimum of natural law* in the law, especially in the context of the content and protection of basic human rights and freedoms. One of the most important representatives of legal positivism of 20th century, H. L. A. Hart, pointed out the need to set forth certain minimal moral principles not only during the law-making but also in its application, especially in judicial decisions. As a positivist, he emphasizes the idea of justice in the law. Under him, there are several multiple relationships, which cannot be affected, between the law and moral. Hart concludes that even positive law leads to morality and justice; when interpreting the law, it is necessary to proceed from the fact that the interpreted legal rules are created under certain idea of justice in order to take into account established and moral principles recognized by certain society.²⁴

Ronald Dworkin is one of the most significant representatives of *nature law school* of 20th century. In his work, he emphasized the importance of jurisprudence (legal science); as its main task is considered searching for the answer to the question *what the law should be*. Another task of jurisprudence is to connect theory of morality with theory of law, which should lead to the achievement of justice. Dworkin also emphasizes the judicial decision that has to apply both law and principles of morality. Only so it is possible to achieve a fair decision. According to Dworkin, principles represent what is considered as right and fair by the majority of society; principles are the mean of achieving justice.²⁵ As mentioned in the preceding text, in the Czech legal order, social values are contained mainly in legal principles.

23 MADAR, Z. *et al.*, 2002: *Slovník českého práva*. Praha: Linde, 3rd edition, p. 749.

24 HART, H. L. A.: *Pojem právo*.

25 DWORKIN, R. M.: *Když se práva berou vážně*.

SUMMARY

Although the moral principles and norms are formed rather long time, it is possible to evaluate a new situation more flexibly from the moral point rather than from the legal point. For every situation in the life of both individual and the whole society, it is possible nearly immediately to take an evaluative position from the point of moral; any long formal process is not necessary. However, it is not possible react to new situation and a phenomenon in the society with legal instruments flexibly and immediately; moreover, it is not always useful and meaningful. *In other words: legal form of regulation is enforced by conflicts in interpersonal relationships which already exist, or can be expected, and when the link to custom, tradition, or belief is not the sufficient solution.*

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Address

JUDr. Dana Zapletalová, Ph.D., Mgr. Jiří Tuza, Ph.D., Ústav práva a humanitních věd, Mendelova univerzita v Brně, Zemědělská 1, 613 00 Brno, Česká republika, e-mail: dana.zapletalova.uphv@mendelu.cz, tuza@mendelu.cz

