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## The Role of Ethics and Morality in Law: Similarities and Differences

HAXHI XHEMAJLI\*

### ABSTRACT

The aim of this paper is to analyze the relationship between the complimentary concepts of ethics, morality, and law. To a certain extent, these related concepts share some common features. Ethics as a discipline is concerned with what is morally good and bad, and right or wrong, while morality deals with standards and rules of good conduct in society, and law, as a cognitive process, regulates social life through the promulgated rules crafted by a legitimate authority. But how are the differences or similarities between these interrelated concepts expressed? First, the main difference between law and morality appears in the mode of expression. Morality is expressed through the conduct of the individual and his relationship with others, whereas the law applies to the external behavior of individuals in their relation to one another as citizens. Morality is in some way an integral part of law, and every legal system, and to that extent is inseparable from it. Second, although ethics and morality are often used interchangeably, the difference between them, as we will examine further, is more than a matter of terminology, as the terms clarify the relationship of individual values to those within the social and legal order. Finally, regarding legal ethics, the importance of this discipline lies in shaping lawyers' behavior and professional conduct that are principles they should conform to as members of both the social and legal communities.

**Keywords:** Ethics, morality, law, legal ethics, professional conduct.

### 1. INTRODUCTION

The topic that will be advanced in this paper is to examine concepts that are often "used synonymously, and sometimes distinguished, but in varying ways."<sup>1</sup> This paper will argue that the terms "*ethics*" and "*ethical*" do not explicitly refer to the realm of moral philosophy but the field of legal ethics.<sup>2</sup>

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1. LISA G. LERMAN & PHILIP. G. SCHRAG, ETHICAL PROBLEMS IN THE PRACTICE OF LAW 3 (2d ed. 2008).

2. *Id.* at 4.

Accordingly, ethics will be given due consideration in relation to morality as a notion used to dictate what is right and wrong in human conduct.<sup>3</sup> Thus, for the purpose of this work, we will direct this discussion in understanding legal ethics, morality, and law as interrelated and, in recent times, controversial, topics.<sup>4</sup> But, before we advance our idea, it is necessary to give a short explanation of the concept of law as a system of norms: law is the “normative order regulating human conduct in a specific way.”<sup>5</sup> We must go back to two of the most profound thinkers of classical English positivism, Bentham and Austin, to gain a better insight into this.<sup>6</sup> In Bentham’s definition, law encapsulates not only general laws enacted by legislatures; it encapsulates judicial, administrative decisions, and even domestic orders.<sup>7</sup>

The content of the law and all laws obviously enshrine in their substance a certain level of command, prohibition, or permission toward some form of conduct. In *Lloyd’s Introduction to Jurisprudence*, Michael Freeman explains that for legal philosopher John Austin, “law is clearly portrayed as an artificial creation of human society.”<sup>8</sup> As Freeman further explains, “the fundamental aim of the law is to rectify the moral deficiencies associated with the circumstances of legality.”<sup>9</sup> Hence, legal norms properly adopted by an authority become part of a particular legal system. To this end, and in recognition of this principle, Lon L. Fuller has clearly enumerated eight *sine qua non* for an effective legal system: the laws issued from such a source must be promulgated, intelligible, prospective, non-contradictory, general, avoid impossible demands and frequent change, and official actions must be congruent with promulgated rules.<sup>10</sup> While the function of law is to regulate social life,<sup>11</sup> H.L.A. Hart suggests that “legal rules cannot be expected to provide for every factual situation that may arise.”<sup>12</sup> Besides this fact, it is highly desirable that a promulgated norm should produce the required effects in practice regardless of social, economic, and technological developments.<sup>13</sup>

It is also important to explain the meaning of ethics. Ethics as a general concept is called moral philosophy: the discipline concerned with what is

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3. *Morality*, MERRIAM-WEBSTER DICTIONARY (11th ed. 2020).

4. LERMAN & SCHRAG, *supra* note 1, at 3-4.

5. Ahmad Faud Faizi, *Pure Theory of Law* 8 (2017-2019) (unpublished LLM thesis, Jamia Millia Islamia Faculty of Law) (reviewing HANS Kelsen, *THE PURE THEORY OF LAW* (1934)). See also M.D.A. FREEMAN, *LLOYD’S INTRODUCTION TO JURISPRUDENCE* 252 (9th ed. 2014).

6. Pragalbh Bhardwaj & Rishi Raj, *Legal Positivism: An Analysis of Austin and Bentham*, 1(6) INTL. J. OF L. & LEGAL JURIS. STUD. 1, 6-9 (2014).

7. FREEMAN, *supra* note 5, at 200.

8. *Id.* at 204.

9. *Id.* at 334.

10. LON L. FULLER, *THE MORALITY OF LAW* 39 (1964).

11. GEOFFREY SAMUEL, *EPISTEMOLOGY AND METHOD IN LAW* 33 (2003).

12. FREEMAN, *supra* note 5, at 326.

13. *Id.* at 326-27.

morally good and bad, and right or wrong.<sup>14</sup> This means the term is also applied to any system or theory of moral values and principles.<sup>15</sup> As a branch of philosophy, ethics delves into human morality and appraises human actions.<sup>16</sup> As Gagari Chakrabarti and Tapas Chatterjea explain in their article “Ethics and Deviations in Decision-making,” “The notions of philosophical ethics are based on rational, secular foundations that consider human well-being or human satisfaction as the ultimate objective.”<sup>17</sup> In contrast to the philosophical ethical approach which prioritizes social wellness, term legal ethics entails understanding “principles of conduct that members of the profession are expected to observe in the practice of law.”<sup>18</sup> In their book discussing the conflict between the ethical concern for justice in the legal profession and the fact that lawyers fulfil these ethical concerns throughout their careers, Donald Nicolson and Julian Webb explain that professional legal ethics could be found in more than two meanings.<sup>19</sup> They argue that legal ethics may be a philosophical approach for virtues, such as “morality” and “justice,” or that legal ethics may instead be a descriptive term for how people react to such dilemmas.<sup>20</sup>

The field of legal ethics, or professional responsibility as it is often called, appears to consist of an immense accumulation of rules.<sup>21</sup> In fact, a professor from Yale described the field as “increasingly rule-bound.”<sup>22</sup> It is likewise possible that the increasing number of ethical rules in the legal profession means that the rules will become more complicated.<sup>23</sup> Legal ethics, then, may not only be considered the individualized standards people hold regarding moral conflicts, but it may also be the rules themselves which govern the legal profession.<sup>24</sup> Finally, legal ethics plays a significant role in ensuring that the conduct of lawyers meets the requirement of a fit and proper person and

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14. *Moral Philosophy*, ETHICS UNWRAPPED, <https://ethicsunwrapped.utexas.edu/glossary/moral-philosophy> (last visited Oct. 27, 2021).

15. *Id.*

16. *Id.*

17. GAGARI CHAKRABARTI & TAPAS CHATTERJEA, ETHICS AND DEVIATIONS IN DECISION-MAKING: AN APPLIED STUDY 17 (2020).

18. LERMAN & SCHRAG, *supra* note 1, at 4 (citing *Legal Ethics*, ENCYCLOPEDIA BRITANNICA, <http://www.britannica.com/eb/article-9106474> (last visited Jan. 10, 2008)).

19. DONALD NICOLSON & JULIAN WEBB, PROFESSIONAL LEGAL ETHICS: CRITICAL INTERROGATIONS 4 (1999).

20. *Id.*

21. Anthony T. Kronman, *The Law as a Profession*, in ETHICS IN PRACTICE: LAWYERS’ ROLES, RESPONSIBILITIES, REGULATION 29 (Deborah L. Rhode ed., 2000).

22. *Id.*

23. *Id.*

24. Robert W. Gordon, *Why Lawyers Can’t Just Be Hired Guns*, in ETHICS IN PRACTICE: LAWYERS’ ROLES, RESPONSIBILITIES, AND REGULATION 43 (Deborah L. Rhode ed., 2000).

protects the public from unprofessional and unethical lawyers.<sup>25</sup> Hence, legal ethics may be a personal yardstick for developing one's moral character while additionally operating to help lawyers meet the professional qualifications of fitness for practice.

## 2. ETHICS, MORALITY AND LAW: THE INTERRELATED CONCEPTS

In this section, we will start by providing an etymological dimension to the two concepts discussed, ethics and morality, and show that these terms stemmed from the same root by looking back to the origins in ancient Greece and Rome. Ethos, which was the original term to indicate one's "custom or habit," gave way to "*ethicos*."<sup>26</sup> While *ethicos* was designed as the "equivalent" of the Roman term "*moralis*," Chakrabarti and Chatterjea argue that the words were not completely identical, as morality relates to group conduct and ethics typically relates to personal or individualized conduct.<sup>27</sup> It is, however, important to note that ethical decisions have various consequences, outcomes, and personal implications.<sup>28</sup> While ethics and morals might seem to be synonymous terms, the difference is that ethics relates to individual standards, while morality relates to social conduct.<sup>29</sup>

As explained, law can be defined as a compilation of general and abstract rules of conduct sanctioned by public authority in a manner to achieve an order to human interaction that is the most favorable to the common good.<sup>30</sup> In relating the law and morality, authors and philosophers such as Jürgen Habermas connect "the relationship between law and morality as inseparable."<sup>31</sup> Because Habermas believed that legal principles are necessarily related to morality, he wrote that there was a complementary relationship between law and morality.<sup>32</sup> Both law and morality deal with approximately the same problem: "ordering interpersonal relationships through justified norms."<sup>33</sup> To include lessons from antagonistic traditions about the law and morality, such as legal positivism and natural law, would be to create disparities as to what extent moral consideration should be

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25. Christoffel Hendrik van Zyl, IV & Jo-Mari Visser, *Legal Ethics, Rules of Conduct and the Moral Compass – Considerations from a Law Student's Perspective*, 19 POTCHEFSTROOM ELEC. L. J. 1, 6 (2016).

26. CHAKRABARTI & CHATTERJEA, *supra* note 17, at 16.

27. *Id.*

28. *Id.*

29. P. Vasantha Kumar, *An Analysis of Law vs. Ethics and Morals in a Changing Society* 3 (2020) (unpublished Ph.D. research paper, University of Madras, Department of Legal Studies).

30. *See supra* Introduction.

31. Willy Moka-Mubelo, *Reconciling Law and Morality in Human Rights Discourse, Beyond the Habermasian Account of Human Rights* 104 (2015) (unpublished Ph.D. dissertation, Boston College).

32. *Id.* (citing Peter Bal, *Discourse Ethics and Human Rights in Criminal Procedure*, 20(4) PHIL. & SOC. CRITICISM 73 (1994)).

33. Moka-Mubelo, *supra* note 31, at 83.

infused in the content of the law in order to acquire the condition of legal validity.<sup>34</sup>

However, when considering theories such as legal positivism and natural law, questions may exist as to how the law operates within such theories.<sup>35</sup> For proponents of the natural law theory, and for one like Habermas, it appears if law and morality cannot be separated.<sup>36</sup> Along this line, Ronald Dworkin affirms that law and morality are not two separate systems because he treats law as a part of a political morality.<sup>37</sup>

According to natural law theory, then, morality necessarily impacts society's understanding of the legal system.<sup>38</sup> Contrarily, legal positivism theory recognizes that legal interpretation does not necessarily conform to good moral reasoning and can deliver conclusions about what the law is that represents it as significantly morally defective.<sup>39</sup> Likewise, from the perspective of Hart, there is no necessary connection between law and morality; law and morality can be separated and can be distinct.<sup>40</sup> Considering this, legal positivism regards law and morality primarily as systems of norms and as bodies of rules and principles that can be formulated as propositions.<sup>41</sup> Willy Moka-Mubelo argues that morality functions in the legal system as a "code[] of conduct" for those "rational beings" who would follow the code and implement it in every area of society.<sup>42</sup> But what is law's primary function in this respect? Law is the primary factor in the influencing moral standards, especially when considering its use of force.<sup>43</sup> While the law may be understood as an official guideline which may not be modified

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34. *Id.* at 102.

35. *Id.* at 86 (quoting Jürgen Habermas, *Introduction to the Seminar on Jürgen Habermas's Discourse Theory*, 12(4) *Ratio Juris* 330 (1999)).

36. David O. Brink, *Legal Interpretation and Morality*, in, *OBJECTIVITY IN LAW AND MORALS* 54 (Brian Leiter ed., 2001)

37. FREEMAN, *supra* note 5, at 609-610.

38. Brink, *supra* note 36, at 54.

39. *Id.* at 55 (suggesting that, "Legal Positivist thinks that the existence of valid law is a matter of institutional fact and that laws can be distinguished from other social norms by virtue of their pedigree. . . . Natural Lawyer[s], by contrast, [think] that the existence of valid law is a matter of acceptable moral principle and identifies the law with the demands of political morality. . .").

40. WIBREN VAN DER BURG, *THE DYNAMICS OF LAW AND MORALITY: A PLURALIST ACCOUNT OF LEGAL INTERACTIONISM* 66 (2014) (Burg, however, distinguishes at least three different meanings of morality in the discussion on law and morality, as follows: "(1) social or positive morality: the morality actually accepted and shared by a certain social group; (2) ideal or critical morality (or normative ethical theory): the general moral standards used in the criticism of social morality which may be elaborated in a normative theory of morality as it ought to be; and, (3) ideal or critical law (or normative legal theory): the general standards used in the criticism of positive law which may be elaborated upon in a normative theory of law as it ought to be.").

41. Brink, *supra* note 36, at 54.

42. Moka-Mubelo, *supra* note 31, at 109.

43. *Id.* at 82.

by personal or moral beliefs,<sup>44</sup> it may also be the very system which dictates the development of moralistic conventions and indeed has been influenced by traditional or religious ideologies.<sup>45</sup>

Additionally, M.D.A. Freeman wrote, Lord Devlin, a famous English judge, “argued that there is a public morality which provides the cement of any human society, and that the law, he suggested especially criminal law, must regard it as a primary function to maintain this public morality.”<sup>46</sup> Normally, when one engages in conduct which conflicts with general principles of morality, someone may be punished, though not by a formal legal group with any actual or legal power.<sup>47</sup> To the contrary, the legal system imposes binding standards over individuals who have to follow the law or face legal repercussions.<sup>48</sup> This may lead to the general belief that law and morality differ in certain aspects.<sup>49</sup>

As Moka-Mubelo notes, how people express their understanding of morality and the law identifies the key distinction between the 2 concepts; that is, people practice morality to develop interpersonal relationships, and they abide by the law to maintain order in society according to established legal rules.<sup>50</sup> He continues, “Law, however, has a structure that gives primacy to entitlements and morality points to individuals’ obligations towards one another.”<sup>51</sup> Despite the difference between the two concepts, others believe that morality and law cannot be separated because, as mentioned previously, morality has in some ways dictated the development of the law.<sup>52</sup>

Therefore, “in the argument about the connection between law and morality, morality is to be understood as a persuasive source of law and not as its authoritative source.”<sup>53</sup> In the same way, Tony Honoré makes an additional argument that “[t]he connection between law and critical morality is necessary in that it is not contingent” and is rather ever-present.<sup>54</sup> This relationship is so important that “the proposed interpretation of every law in every legal system can legally be challenged on the ground that it is not morally defensible, whether the challenge succeeds or fails in a particular

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44. JÜRGEN HABERMAS, THE TANNER LECTURES ON HUMAN VALUES DELIVERED AT HARVARD UNIVERSITY: LAW AND MORALITY 222-23 (Kenneth Baynes trans., 1986).

45. FREEMAN, *supra* note 5, at 882.

46. *Id.* at 344.

47. PETER CANE, RESPONSIBILITY IN LAW AND MORALITY 11 (2002).

48. *Id.*

49. *Id.*

50. Moka-Mubelo, *supra* note 31, at 74.

51. *Id.*

52. FREEMAN, *supra*, note 5, at 18; Moka-Mubelo, *supra* note 31, at 76.

53. *Id.*

54. Tony Honoré, *The Necessary Connection Between Law and Morality*, 22 OXF. J. LEG. STUD. 494 (2002).

instance.”<sup>55</sup> Law, therefore, is a normative order, embedded in a practice of legality.<sup>56</sup>

However, Peter Cane expressed concern regarding the definite connection between the two concepts, as appeals to morality could dictate the development of the law, even though morality and law are different with regards to actual authority.<sup>57</sup> Thus, even if one can recognize the distinction between law and morality, it is just as true that law implicitly derives its authority from moral codes of conduct, and morality stems from generally accepted principles relating to “equality of respect, solidarity, and the common good.”<sup>58</sup> If notions of morality develop throughout changing human connections,<sup>59</sup> and morality can be directly attributed to the formation of authoritative legal systems, then it is uncertain, as Joseph Raz notes, whether laws could be invalidated for failure to conform to moral principles.<sup>60</sup>

### 3. THE ETHICS OF LAWYERS

As noted in the previous discussion about the importance of ethics and to reiterate “[e]thics is about what we should or ought to do per se, either because the action in question is intrinsically good or bad or because it is a means to achieving a goal or purpose that is intrinsically good or valuable.”<sup>61</sup> Thus, ethics is that branch of philosophy that tries to understand, explain, interpret, and guide moral decision-making and action. Besides that, ethics is a “moral philosophy” which considers morality’s impact on a profession such as the practice of law.<sup>62</sup> Legal ethics, then, requires a lawyer to conform to particular professional fitness requirements so that those “unethical” lawyers do not negatively impact the profession.<sup>63</sup>

Because ethics generally combines morality and rule-making into one concept, legal ethics by definition would likewise require lawyers to follow

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55. *Id.* He further argues that the necessary connection between law and morality is a “connection with morality as a persuasive, not an authoritative source of law.” *Id.* p. 493.

56. CANE, *supra* note 47, at 13-14.

57. *Id.* at 16.

58. STEVEN DARWALL, MORALITY, AUTHORITY AND LAW: ESSAYS IN SECOND-PERSONAL ETHICS I 172 (2013); Moka-Mubelo, *supra* note 31, at 67.

59. *Id.* at 68.

60. JOSEPH RAZ, ETHICS IN THE PUBLIC DOMAIN, ESSAYS IN THE MORALITY OF LAW AND POLITICS 210 (rev. ed. 1995). Raz further states the three thesis with clear implications concerning the relation between law and morality, that are: (1) The source thesis: All law is sourced based; (2) The incorporation thesis: All law is either sourced-based or entailed by source-based law; and (3) The coherence thesis: The law consists of source-based law together with the morally soundest justification of source-based law. RAZ, *supra*, 210-211.

61. MICHAEL HEAD & SCOTT MANN, LAW IN PERSPECTIVE: ETHICS, SOCIETY AND CRITICAL THINKING 139 (2005).

62. Alexander Boldizar & Outi Korhonen, *Ethics, Morals and International Law*, 10 EUR. J. INT’L L. 279 (1999).

63. Hendrik van Zyl, IV & Visser, *supra* note 25, at 6.



certain moral codes.<sup>64</sup> As Kenneth Kipnis writes, “Legal ethics as an area of ethical and jurisprudential inquiry, asks what principles lawyers must conform to, what ideals they must strive to achieve,” and what professional conduct to follow.<sup>65</sup> Generally, “The most important factor in determining ethical behavior is perhaps the individual’s perception and internalizations of the concepts of morality and ethics and the process by which such awareness is formed, shaped, modified or discarded over one’s lifetime.”<sup>66</sup> In this line, then, legal ethics entails principles of conduct that members of the profession are expected to observe in the practice of law.<sup>67</sup> Moreover, “[t]hese principles of conduct are an outgrowth of the development of the legal profession itself” because lawyers, in exercising their professional duties, must submit themselves to principles of professional conduct.<sup>68</sup> Professional conduct can be considered as the ethical principles which impact the legal profession, and because ethics is so closely related to a lawyer’s professional success, the rules themselves are necessarily part of the profession itself.<sup>69</sup> In Australia for instance, “these rules and regulations can be found in the legal practice or legal profession statutes, in the various professional associations’ self-regulatory professional conduct and practice rules, and in the way the general law . . . apply to lawyers and their relationships with clients.”<sup>70</sup> In recent times, rules of legal ethics have evolved considerably.<sup>71</sup> This means that “these rules are today more numerous and detailed than they were [earlier], but the culture in which they are set, and are meant to express, is thought by many lawyers to be weakened and in danger of collapse.”<sup>72</sup>

As Christine Parker and Adrian Evans note, “Lawyers’ ethics in the legal profession is dominated by legalism.”<sup>73</sup> In a way, ethics operates as a type of law because lawyers have to follow ethical rules in this profession.<sup>74</sup> To be ethical, a lawyer must give, as David Luban notes, “advice,” to clients in such an unbiased and honest manner that he acts like a judge would, particularly because both the lawyer and judge are expected pursue “justice” through their

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64. *Id.*

65. Kenneth Kipnis, *Ethics and the Professional Responsibility of Lawyers*, 10 J. BUS. ETHICS 569, 573 (1991).

66. CHAKRABARTI & CHATTERJEA, *supra* note 17, at 16.

67. William P. Alford, *Legal Ethics*, BRITANNICA, <https://www.britannica.com/topic/legal-ethics> (last visited Oct. 29, 2021).

68. LERMAN & SCHRAG, *supra* note 1, at 4; CHRISTINE PARKER & ADRIAN EVANS, *INSIDE LAWYERS’ ETHICS* 3 (2007).

69. *Id.*

70. *Id.*

71. Kronman, *supra* note 21, at 32.

72. *Id.* at 30.

73. CHRISTINE PARKER & ADRIAN EVANS, *INSIDE LAWYERS’ ETHICS* 4 (2007).

74. *Id.* at 4.

positions.<sup>75</sup> Nicolson and Webb likewise argue a lawyer's job is especially hard because he is expected to act professionally and ethically, both to potential and current clients and to coworkers and employers, specifically to achieve "truth, justice, and the public interest."<sup>76</sup> Thus, lawyers behaving ethically in the practice of law need to combine their own personal ethics with professional conduct rules and social ethical considerations.<sup>77</sup>

As Parker and Evans explain,

Responsible lawyers see the practice of law as a public profession in which lawyers have a mediating function, between the client and the law. They certainly advocate for clients' interests, but they also represent the law to their clients and help clients comply with the law. Responsible lawyering is often to be found among those lawyers who help plan business strategies for clients in such a way that the clients' affairs are in tune with the overall regulatory environment of the business.<sup>78</sup>

Essentially, a lawyer must employ his own understanding of the law and ethical considerations in order to properly serve his clients, and he must also know which standards of conduct are strictly imposed and which ones are "discretionary."<sup>79</sup> Lawyers, therefore, must necessarily internalize ethical rules due to their duties of loyalty to their clients, a duty which forms a key aspect of their professional responsibility.<sup>80</sup>

Moreover, lawyers have an added difficulty of representing clients and claims which are contrary to the "public good."<sup>81</sup> While lawyers have a responsibility to advocate for their clients, they should be aware that some of their clients' interests may be contrary to the public good.<sup>82</sup> That struggle proves what "is implied by the claim that every lawyer is an officer of the court, and the law a public calling," which is "the first of the four features of law practice that explains its standing as a profession."<sup>83</sup>

Although many individuals become lawyers because they want to help others or prevent others from being hurt, they may later become disillusioned when they have to overact for their client or even advocate for a belief they do not share; a lawyer must act in such a way because they have superior

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75. DAVID LUBAN, *LEGAL ETHICS AND HUMAN DIGNITY* 154 (2007).

76. NICOLSON & WEBB, *supra* note 19, at 61, 164.

77. PARKER & EVANS, *supra* note 73, at 3.

78. *Id.* at 25.

79. LERMAN & SCHRAG, *supra* note 1, at 6.

80. ADRIAN EVANS, *ASSESSING LAWYERS' ETHICS: A PRACTITIONERS' GUIDE* 59 (2011).

81. Kronman, *supra* note 21, at 32.

82. *Id.*

83. *Id.*

knowledge of the law and must implement it to represent their clients' interests.<sup>84</sup> One method of benefiting a lawyer in this dilemma is to consider four "ethical types," which a lawyer may use as they advocate for their client, without implicating their personal beliefs during representation.<sup>85</sup> There are four interrelating ethical types: (1) the responsible lawyer; (2) ethics of care; (3) zealous advocacy; and (4) moral activism.<sup>86</sup> A lawyer who recognizes himself in one of these categories likewise knows the impacts of ethics on the legal system in general.<sup>87</sup>

Lawyers are expected to advocate their client's interests with as much zeal as possible but must remain within the bounds of the law. A lawyer, in other words, is responsible for making the law work in their client's favor in a fair and just way. The responsibilities of advocacy are tempered by the duty to ensure integrity of and compliance with the spirit of the law; these help to ensure that issues are not decided on purely procedural or formal grounds but rather based on substantive merits.<sup>88</sup> Regarding moral activism, as Parker and Evans point out, lawyers should take advantage of their position to improve justice in the two following ways:

- (1) public interest lawyering and law reform activities to improve access to justice and change the law and legal institutions to make the law more substantively in, say, public interest; and
- (2) client counselling to seek to persuade clients of the moral thing to do or to withdraw if client wants something else.<sup>89</sup>

Finally, as to the ethics of care, the goal of the lawyer-client relationship should be the moral worth and goodness of both the lawyer and their clients, or at least the nurturing of the relationships and community.<sup>90</sup> Ethics of care are more concerned with personal and relational ethics by focusing on lawyers' responsibilities to people, communities, and relationships.<sup>91</sup>

Consider this, lawyers have the duty to obey the law, but they, of course, strive for the best performance in enforcing the law while practicing law. However, while a lawyer is not to favor any particular law, a lawyer who goes against the law will, in all likelihood, be considered an unfit member of the legal profession.<sup>92</sup> Moreover, lawyers must not partake in conduct, whether

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84. NICOLSON & WEBB, *supra* note 19, at 178; PARKER & EVANS, *supra* note 73, at 14.

85. EVANS, *supra* note 80, at 73.

86. *Id.* at 74.

87. *Id.* at 75.

88. PARKER & EVANS, *supra* note 73, at 23.

89. *Id.*

90. *Id.*

91. *Id.* at 31.

92. GEOFF MONAHAN & DAVID HIPSLEY, PROFESSIONAL CONDUCT: LEGAL ETHICS 11 (2d ed. 2007).

professional or otherwise, that is illegal, not honest, may otherwise bring the profession into disrepute, or which is prejudicial to the administration of justice.<sup>93</sup> Lawyers have a duty to give advice as to the meaning and operation of law and to provide proper advice in furtherance of the client's interests within the terms of that client's retainer. Giving advice is a duty that arises out of the relationship between a lawyer and their client. Additionally, even where a lawyer is acting as a professional adviser and not as an entrepreneur, they must not knowingly give advice to a client that assists the client in an illegal purpose.<sup>94</sup>

The intention of any legal system is to provide justice; therefore, lawyers should be concerned with providing justice. Lawyers, through legal practice, should try to change people, institutions, and the law to make them conform to more general ideals of social and political justice as well.<sup>95</sup> Ethics, as a study of the right actions and what is understood from the discussion above, shows that the right action is based on duties, which in recent times have their roots in the juridical order by aiming to bind and create a sense of community and sociability<sup>96</sup> in the legal profession. In addition, lawyers engage with clients and are loyal to their clients; thus, elements of legal ethics are quintessentially personal, require responsibility, and, therefore, hold lawyers accountable.<sup>97</sup> Likewise, lawyers have several sets of professional obligations; these include, but are not limited to the obligation to serve the client's interests, collective ethics, and also the obligation to keep client confidences, and to advocate in the most ethical and professional manner.

Finally, it is essential that lawyers, while conducting their professional capabilities, consider their primary duty towards their clients, third parties, justice, and equality. Whether upholding their clients' best interests, needs and desires, or making the law work in as fair and just a way as possible, they must always bear in mind and enforce the principles of the professional legal ethics and not engage in behaviors that are deemed professionally unacceptable.

#### 4. CONCLUSION

Throughout the discussion in this paper, the goal was to highlight important insights into the quite separate but interwoven concepts of ethics,

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93. *Id.* at 12

94. *Id.* at 15

95. PARKER & EVANS, *supra* note 73, at 29.

96. ELENA LOIZIDOU, JUDITH BUTLER: ETHICS, LAW, POLITICS 50 (2007).

97. EVANS, *supra* note 80, at 59. More concretely, Lerman and Schrag assert that Lawyers are the agents of their clients who, in turn, are considered principals "the people in charge." Additionally, lawyers owe other duties to clients as well, such as the duty to protect confidence, the duty to avoid conflict of interests, and the duty to charge reasonable fees. *See* LERMAN & SCHRAG, *supra* note 1, at 276.

morality, and law. These interchangeable concepts in their substance have necessarily common features: ethics is a discipline concerned with morally good and bad and right or wrong,<sup>98</sup> while morality, on the other hand, discerns the standards and rules of good conduct in society.<sup>99</sup> Prior to developing the paper's idea further, a short introduction was given as to the meaning of the law - as an abstract rule encompassing levels of command, prohibition, or permission toward some form of conduct.<sup>100</sup> Further, in accordance with the paper's topic, legal ethics, the professional responsibility of lawyers, and morality were given due consideration. Therefore, it has been established that the field of legal ethics consists of an immense accumulation of rules which are designed to ensure that the conduct of lawyers meets the requirements of the legal profession in the practice of law and the relationship with their clients.<sup>101</sup>

However, since many use the terms ethics and morals interchangeably, this article highlighted scholarship to demonstrate that the terms are rather distinguishable; while morality played a part in the development of the legal system, ethics provides an individualized code of conduct lawyers may use in their professional lives.<sup>102</sup> Moreover, the law is an authoritative source of conduct for lawyers, while morality's power is only predicated on one's personal standards based on social interactions.<sup>103</sup> Considering law is highly institutionalized and morality is not, this paper demonstrates that there are certain obvious differences between the way legal and moral concepts of responsibility are developed. Despite these key differences, however, the fact that morality has affected the formation of the legal system indicates an inherent connection between morality and the law.<sup>104</sup>

During the discussion of legal ethics, or professional conduct of lawyers, initially, the paper started by explaining the importance of this discipline in shaping the lawyers' behavior and in pursuing their professional conduct as members of the of social and legal community.<sup>105</sup> Legal ethics, as an area of ethical and jurisprudential inquiry, stipulates the principles, professional responsibilities, and conduct to which a lawyer must conform.<sup>106</sup> It has been further demonstrated that professional conduct constitutes the law of lawyering through the published rules and regulations that apply to lawyers and legal profession. Individuals usually become lawyers to promote

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98. MORAL PHILOSOPHY, *supra* note 14.

99. *See supra* p. 5.

100. *See supra* pp. 1, 3.

101. Gordon, *supra* note 24.

102. FREEMAN, *supra* note 5, at 18.

103. *See also* CANE, *supra* note 47, at 11.

104. FREEMAN, *supra* note 5, at 18.

105. NICOLSON & WEBB, *supra* note 19, at 178; PARKER & EVANS, *supra* note 73, at 14.

106. Kipnis, *supra* note 65, at 573.

morality or to prevent harm to groups and individuals.<sup>107</sup> In order to maintain such commitment, they have to develop a certain level of responsibility.

To further understand the lawyers' duties regarding their professional legal ethics, due consideration was given to the categorization of four interrelating ethical types: (1) the responsible lawyer; (2) ethics of care; (3) zealous advocacy; and (4) moral activism.<sup>108</sup> To understand these ethical types, it has been discussed that only the lawyers who can consciously determine one of the four ethical approaches mentioned above will be likely to understand their own preferences and can additionally understand ethics more fully.<sup>109</sup>

Furthermore, a lawyer is responsible for making the law work in as fair and as just a way as possible to further their client's interests. Because lawyers develop relationships with their clients and have a duty of loyalty to them, they must not only understand professional and legal rules to better serve the client in their legal issues, but they must also perform these responsibilities in a manner which conforms to ethical rules of professionalism, such as maintaining confidentiality.<sup>110</sup> In order to uphold the principles of a lawyer's professional ethics, each lawyer must have their own convictions about what it means to deliver justice under different circumstances and seek out ways to professionally act on those convictions.

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107. NICOLSON & WEBB, *supra* note 19, at 178; PARKER & EVANS, *supra* note 73, at 14.

108. EVANS, *supra* note 80, at 59.

109. *Id.*

110. PARKER & EVANS, *supra* note 73, at 23.