

Unity and Contradictions Between Law and Morality in British and Ukrainian Proceedings

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Abstract

Law and morality are closely interconnected in the regulation of social relations, shaping both legal awareness and social behaviour. In different legal systems, this relationship is manifested through legislation, case law and ethical standards that influence legal decision-making. This study examines how moral principles interact with legal norms in UK and Ukrainian litigation, using a comprehensive methodological approach that includes dialectical, comparative, historical and formal legal analysis. The study highlights how moral and legal dilemmas in judicial decisions affect public trust and perceptions of justice, particularly in cases involving corruption, political influence and human rights. By identifying these problems, the study suggests legal interventions, such as the introduction of *amicus curiae* mechanisms, strengthening judicial ethics and moral reasoning in judicial decisions, which can better align judicial processes with the values and expectations of the community. This article contributes to the field of legal community engagement by suggesting practical strategies for bridging the gap between formal legal systems and the lived experience of communities. It is particularly relevant to practitioners, policy makers and judicial educators who seek to promote socially responsible justice systems that empower marginalised groups and foster public trust in the rule of law.

KEYWORDS *Legal consciousness of judges, Court, Law enforcement, Law, Morality, Justice*

Introduction

As social phenomena, morality, and law have historically and traditionally been associated with the processes of organizing, regulating, and ordering interpersonal relationships; they work together to develop and put into practice effective mechanisms of social interaction that are specifically designed to maximize and rationalize the processes of identifying social actors. Under the influence of the growing importance of the regulatory potential of normative systems of law and morality, social ideas of society about the originality of nature and the purpose of law and morality are actualized; the effectiveness and limits of the influence of these regulators in the form of remuneration, compensation,

sanctions and other forms of recognition of the results of regulatory regulation of public relations are revealed.¹

The interpenetration of the unique, innate characteristics that define the regulatory systems of each of these social regulators reflects the close interaction of morality and law in the complex processes of such regulation. As a result, a qualitatively different phenomenon arises, which is confirmed and acquires practical significance. This phenomenon was recognized by science as a moral and legal influence that improves the work of a comprehensive regulatory system. Morality and law are social phenomena that reflect ethical and legal reality, the knowledge and assessment of which is expressed primarily in the legally significant behaviour of members of a certain society. This is because morality and law have a common social basis and are important tools for maintaining a balance of the interests of individuals, social groups, and society as a whole.

Since judges base their decisions not only on the law but also on moral standards, professional ethics, and social expectations, the question of how morality and legal norms interact in judicial procedures is relevant for all legal systems. Moral considerations are taken into account through case law and the principles of justice in the United Kingdom, which is part of the Anglo-American legal system.² Moral norms are usually incorporated into laws and legal concepts in Ukraine, a country with a legal system based on continental law. Regardless of the different methods, a balance between morality and law is necessary in any legal system to guarantee justice and public confidence in the court.

Several scientists have investigated similar questions in particular Golubov examines the impact of moral and ethical norms on criminal proceedings, emphasizing their role in strengthening confidence in the

¹ N. Lytvyn et al., "Enforcement of Court Decisions as a Social Guarantee of Protection of Citizens' Rights and Freedoms," *Prawo i Wiedz* 39 (2022): 80–102.

² N.M. Zayed et al., "Human Resource Skill Adjustment in Service Sector: Predicting Dynamic Capability in Post COVID-19 Work Environment," *Journal of Risk and Financial Management* 15, no. 9 (2022).

court and ensuring the integrity of judges.³ Zvonkov explores the relationship between law and morality in modern conditions, highlighting their unity, difference, interaction, and contradiction, as well as the significance of the dynamics of development in a sociocultural context.⁴ Zaborovskiy et al. explore the relationship between law and morality in advocacy, emphasizing their combination and the importance of moral foundations for the profession.⁵

Vasylenko explores the historical and genetic causes of the emergence of English equity law, defining its role as a complement to common law.⁶ The author identifies the main factors of the development of this institution and its influence on the adaptation of the legal system to new social needs. A study of the interaction of morality and law shows that they mutually support each other in regulating social relations. Zheldubovsky studies how Morality influences the formation of ethical laws, and how law ensures their implementation, although there are differences between them: morality determines the ideas of good and evil, and law - order and social equality.⁷

The purpose of the study is to analyse the relationship between the norms of law and morality in the legal proceedings of Great Britain and Ukraine, to identify the main problematic aspects of this relationship, as well as to find ways to solve them, taking into account the British experience. The study provides for consideration of the prospects for the development of law enforcement in Ukraine to achieve greater harmonization between the norms of law and morality, in particular by strengthening the role of

³ A.Ye. Golubov, "The Role of Moral and Ethical Norms in the Activities of the Court in Criminal Proceedings," *Legal Journal of Donbas* 4 (2024): 79–83.

⁴ Ye.Ye. Zvonkov, "On the Issue of the Relationship between Law and Morality: The Modern Context," *State and Law. Legal and Political Sciences* 89 (2021): 55–67.

⁵ V.V. Zaborovskiy, V.V. Manziuk, and I.I. Kopcha, "The Correlation of the Categories 'Law' and 'Morality' in the Context of Legal Practice," *Scientific Bulletin of Uzhhorod University: Series: Law* 2, no. 77 (2023): 270–75.

⁶ A.O. Vasylenko, "The Phenomenon of Equity Law in the Judicial Practice of Great Britain: Theoretical and Historical Genesis," *Modern Scientific Journal* 6, no. 4 (2024): 52–58.

⁷ Ya.O. Zheldubovsky, "The Interaction of Morality and Law in Society," in *Proceedings of the All-Ukrainian Scientific Conference of Students and Postgraduates* (Sumy: Sumy National Agrarian University, 2022).

judicial ethics, expanding opportunities for taking into account moral aspects in court decisions and introducing mechanisms that will ensure justice by public expectations.

This study not only examines the theoretical relationship between law and morality in the UK and Ukraine, but also highlights the practical implications of their divergence for public confidence in the justice system. By analysing the moral and legal dilemmas in high-profile court cases and their public impact, the article demonstrates how legal interventions, including reforms of judicial ethics and the strengthening of moral reasoning in the judicial process, can serve as tools to address social distrust and disenfranchisement.

Methods

This study employs four main methods of legal research: doctrinal analysis, comparative legal method, formal legal analysis, and case study approach. They were chosen to provide a focused but multidimensional study of the interaction between legal and moral norms in litigation in the UK and Ukraine, taking into account the impact on public trust and community engagement.

The doctrinal method was used to analyse legal texts, codes of judicial ethics and constitutional provisions relating to the role of morality in legal reasoning. In particular, the Law of Ukraine “On the Judiciary and the Status of Judges”,⁸ the Code of Judicial Ethics⁹ and case law on the presumption of innocence and access to justice were reviewed. In the UK context, the materials included principles from common law precedents, such as Case of R v Brown Lucas Jaggard Laskey Carter (Conjoined

⁸ Verkhovna Rada of Ukraine, “Law of Ukraine No. 1402-VIII “On the Judiciary and the Status of Judges,” 2016, <https://zakon.rada.gov.ua/laws/show/1402-19#Text>.

⁹ XX Regular Congress of Judges of Ukraine, Decision of 18.09.2024 “On Approval of the Code of Judicial Ethics,” 2024, <https://zakon.rada.gov.ua/rada/show/n0001415-24#Text>

Appeals)¹⁰ and Case of Lloyd's Bank Ltd v Bundy¹¹, which relate to moral reasoning in judicial decisions.

Using a comparative method, the study compares the Anglo-American (UK) and continental (Ukrainian) legal traditions, focusing on how each system integrates public morality into legal decision-making. This comparison aims to identify best practices that could be taken into account for legal reforms in transitional justice systems such as Ukraine's. The formal legal method helped to interpret the legal meaning of key normative categories such as justice, judicial discretion and moral grounds, and how they are institutionally codified or left to judicial interpretation.

In addition, a case study approach was applied to analyse selected high-profile court decisions from 2014 to 2023 in Ukraine (e.g. cases related to the Revolution of Dignity, corruption trials and public controversies concerning judicial discretion). These cases were identified through public legal databases (reyestr.court.gov.ua for Ukraine and BAILII for the UK), media reports and academic commentary. The analysis focused not only on the legal reasoning, but also on the social reaction to the verdicts, especially where community moral expectations clashed with formal legal outcomes. Together, these methods allow for an integrated assessment of how legal systems can reconcile formal legality with ethical legitimacy to promote greater public trust and community-based justice.

¹⁰ House of Lords, "Case of R v Brown Lucas Jaggard Laskey Carter (Conjoined Appeals)," UKHL J0311-3, 1993, <https://vlex.co.uk/vid/r-v-brown-lucas-793895881>

¹¹ Court of Appeal (Civil Division), "Case of Lloyd's Bank Ltd v Bundy," EWCA Civ J0730-4, 1974, <https://vlex.co.uk/vid/lloyd-s-bank-ltd-792548525>

Results and Discussion

I. Theoretical Distinctions and Interdependence of Law and Morality

Morality (lat. *mores* = custom) is a set of rules, values, and standards of behaviour that represent the concepts of good and evil, good and evil, justice and injustice. Group and individual morality are different. People are carriers of individual morality, and their conscience guarantees compliance with its rules. A specific group of individuals (professional business, ethnic group, religious denomination, certain community, etc.) is the bearer of group morality, and public opinion and individual moral consciousness ensure compliance with its rules. We can also discuss especially global morality based on universal values. The purpose of morality and law is to ensure that people live in society in harmony with each other. However, they evolved into autonomous social regulators when the mononoms of primitive society underwent differentiation. To distinguish between morality and law, you can use such standards.¹²

1. By origin: laws are official and, as a rule, mandatory, while morality is spontaneously established during public life and has an unofficial character.

2. By the sphere of regulation: morality covers all aspects of human existence, including interpersonal communication (friendship, love); therefore, only the most important interactions of public importance should be regulated by law.

3. By way of expression: the law is transmitted through normative actions and other legally recognized sources, while morality is included in

¹² D.V. Trots, "Implementation of European-Style Administrative Proceedings in Ukraine," in *Issues of Legal System Reform*, ed. L.M. Jurak (Lutsk: Zavzhdy Poruch, 2023), 91–93.

traditions, conventions, rituals, religious commandments, folklore, etc. Several moral systems may simultaneously exist in society, but law exists only as a single accepted set of standards.

4. By the degree of detail: morality, unlike legal norms, consists of broad guidelines of behaviour, rather than specific, detailed rules. For example, the "golden rule of morality," which is found in most ancient and modern ethical systems, states that you must treat others as you want to be treated, without specifying the exact types of behaviour that are expected of you.

5. By coercion: public opinion and the individual's inner sense that such behaviour is right ensure the fidelity of morality, while public disapproval and remorse are punishments for violating moral principles. On the contrary, the government enforces the law by coercion, and violation of the law entails legal liability in addition to the penalties listed earlier.¹³

Although morality and law are different social regulators, they work in tandem to achieve a common goal. Most legal standards reflect public morality; for example, the Christian commandments "thou shalt not kill" and "thou shalt not steal" have legal and moral equivalents. On the contrary, the origin of the Ukrainian term crime indicates that any misconduct is often considered immoral.¹⁴ However, legal standards often contradict the requirements of one or more value systems in modern countries where many moral systems coexist (for example, Christian and atheistic morality).

Such moral and legal dilemmas arise, for example, when it comes to issues related to the disposal of one's own body, such as euthanasia, organ transplantation, abortion, drug testing on patients, reproductive

¹³ V. Hudz, "Expert Conclusion as a Key Source of Evidence in Cases of Corruption Offenses by Officials," *Legal Horizons* 22, no. 3 (2024): 34–45.

¹⁴ K. Kussainov et al., "Anti-Corruption Management Mechanisms and the Construction of a Security Landscape in the Financial Sector of the EU Economic System against the Background of Challenges to European Integration: Implications for Artificial Intelligence Technologies," *Economic Affairs (New Delhi)* 68, no. 1 (2023): 509–21.

technologies, genetic engineering, etc. As a regulator based on universal morality based on universal values, the right relies on resolving conflicts between different forms of morality, rather than a conflict between morality and law. International human rights law, which is mainly based on respect for human dignity, is the place where the latter is presented most clearly. The enforcement process also involves the interaction of morality and law.¹⁵ Therefore, such moral and value concepts as insulting personal dignity, unfair competition, low motives, etc., are often found in legal norms and are associated with specific legal consequences. When bringing a person to justice for certain offenses, the motive and purpose of which are their mandatory or additional signs and affect their qualifications, as well as when the court decides cases of deprivation of parental rights, sentencing, etc., the moral factor is essential, and sometimes decisive.¹⁶

The fact that law sets the limits of human moral freedom and serves as a prerequisite for its manifestation in society is another way of influencing the right to morality. One of the most difficult questions in this context is determining which moral norms should be covered by legal norms and which should not. In other words, can the state decide what is ethically acceptable behaviour? Accordingly, proponents of legal moralizing (such as Devlin) believe that when it comes to the interests of society as a whole, law can be used to maintain public morality, since society will disintegrate if its members do not accept basic moral principles. Examples of such moral education of citizens are the legislative prohibition of homosexuality, prostitution, pornography, and abortion, which until the 1950s almost all over the world were considered crimes and entailed criminal liability.¹⁷

¹⁵ A.Ye. Golubov, "The Role of Moral and Ethical Norms in the Activities of the Court in Criminal Proceedings," *Legal Journal of Donbas* 4 (2024): 79–83.

¹⁶ A.O. Khudaverdova, *Legal Norms and Moral Norms as Regulators of Military Personnel Behavior* (Lviv: Lviv State University of Internal Affairs, 2022), 366.

¹⁷ O. Babikov et al., "Ensuring Procedural Guarantees and the Right to a Fair Trial during the Examination of Motions to Conduct Covert Investigations," *Via Inveniendi et Iudicandi* 18, no. 2 (2023): 95–111.

However, supporters of legal moralizing limit the moral freedom of a person only when it poses a threat to the integrity of society, and not when it is denied at all. Legal liberalism, on the other hand, argues that the law should provide the greatest amount of moral freedom, since any moral police undermines the identity of people as agents of development, leading to stagnation and death. Thus, Mill argues that a person's personal freedom can be limited only in order to protect another person; their own immorality cannot serve as a valid excuse for legislative action, if it does not lead to non-fulfilment of duties, for example, repayment of debt.¹⁸

Nowadays, the debate on the acceptability of the moral police continues, and the problem of legislative regulation of the sphere of morality finds a different solution in every society. Although morality and law always seem to be closely related, the question of whether this connection is mandatory remains a matter of debate and is determined by the type of beliefs that a person has regarding the nature of law (legal knowledge). Therefore, supporters of the theory of natural law (legal naturalism, non-positivism) emphasize the requirement of the relationship between law and morality, while supporters of legal positivism reject the possibility of such a connection. The first method demonstrates the pure doctrine of law" of Kelsen, who argues that the rule of law should and can exist independently of other normative systems, such as politics, religion, and morality.¹⁹

The Radbruch method is an illustration of the opposite point of view. It states that legislation cannot be considered legal if it contradicts the basic principles of justice. According to this view, Nazi laws, for example, were not only bad legislation but also lawless, since they deliberately denied legal equality as their basis and ignored human dignity. Non-positivism and the idea that morality and law should be linked were the dominant reactions to

¹⁸ V.O. Kroitor, "The Court as a Subject of Judicial Lawmaking in Civil Proceedings of Ukraine," *Analytical and Comparative Jurisprudence* 2 (2023): 375–79.

¹⁹ *Ibid.*

twentieth-century experiences of injustice. However, both strategies are still applicable and the debate over this is still ongoing.²⁰

II. Moral Standards in Law Enforcement and Judicial Processes

The relationship between the norms of law and morality in legal proceedings is a complex and multidimensional issue that directly affects the quality of justice and public confidence in the judicial system. The application of moral standards in law enforcement is one concrete example of how morality and law are interrelated. The implementation of the adopted legal standards has currently the main issue since 1992 to the present and can be considered a time of active legislative activity in Ukraine. The application of the rules of law should be understood as the powers and organizational activities of authorized state bodies, organizations, and officials, carried out in a procedural manner and consisting of the implementation of the rules of law by making legal decisions on specific subjects on specific issues.²¹

The traditional way of enforcing the law, the trial also serves as a barometer of the moral well-being and level of civilization of society. Since the principles of law form the basis of the entire legal system of the state and permeate all norms of law, a complete law enforcement process cannot take place outside them, even if there is a rule of law that can be the basis for resolving the case. The Court considers litigation both legally and with a deep awareness of the dominant moral and ethical points of view in a particular culture (based on the ideals of justice, equality, freedom, and humanism).²²

²⁰ M.P. Kurilo and D.M. Yasynok, "Legislative Gaps and Judicial Lawmaking: The Interrelation of Concepts," *Current Issues of Domestic Jurisprudence* 2 (2022): 77–82.

²¹ Y.Y. Nizovtsev, A.M. Lyseiuk, and M. Kelman, "From Self-Affirmation to National Security Threat: Analyzing Ukraine's Foreign Experience in Countering Cyberattacks," *Revista Científica General José María Córdova* 20, no. 38 (2022): 355–70.

²² *Ibid.*

The idea of the rule of law makes sense only if it is considered as a set of rules of decency, rules of conduct adopted by society and based on historically established standards of social ethics, and not just a set of standards established by the state. For example, the observance of moral norms enshrined in the law, and the prohibition of capricious behaviour constitute the moral aspect of the concept of legality. The expression of the concept of legality in all spheres of justice is the actual provision of the rights and freedoms of citizens. Due process, in turn, must conform to the concept of justice. The basic and broad category of morality and law is justice. However, the definition of its concept and content is still debatable.²³

The principle of publicity also has an ethical direction, because a closed trial is inherently inhumane. The law provides for the possibility of considering the case behind closed doors. The new Criminal Procedural Code of Ukraine establishes that the investigating judge can make an appropriate decision, if the accused is a minor, the court considers a case of a crime against sexual freedom and sexual inviolability of a person, information about the personal and family life of a person or circumstances that degrade his dignity, must be closed, the safety of persons involved in criminal proceedings must be ensured, and an open court hearing may result in the disclosure of information protected by law (Article 27).²⁴

The basis of the presumption of innocence is the understanding of the value, dignity, and respect of the person. Two conditions of the above principle - the interpretation of uncertainty in favour of the accused and the release of the accused from the burden of proving his innocence - clearly demonstrate the moral components. As a result, the more general assumption of human honesty serves as the basis for the presumption of innocence. The availability of justice is a primary requirement of his morality. The problem of ensuring free and equitable access to justice for

²³ A.O. Vasylenko, "The Phenomenon of Equity Law in the Judicial Practice of Great Britain: Theoretical and Historical Genesis," *Modern Scientific Journal* 6, no. 4 (2024): 52–58.

²⁴ Verkhovna Rada of Ukraine, "Criminal Procedural Code of Ukraine," 2012, <https://zakon.rada.gov.ua/laws/show/4651-17#Text>

both individuals and legal entities is constantly at the centre of the attention of states and international organizations.²⁵

The proclaimed values of justice are proof of the democracy of society. The most important elements of the principle of free access to justice are as follows: to ensure a sufficient number of courts and judges, to make the judicial process simpler and clearer, to ensure the provision of qualified legal assistance by professional lawyers, and to ensure access of low-income groups to free justice. When someone goes to court, their ability to pay court fees often directly affects their access to justice. The availability of justice cannot be considered normal if its size is clearly too large for most people seeking protection in court, or unreasonably expensive compared to the cost of the claim. Moral restrictions imposed on those who perform procedural tasks, as well as ethical principles of legislation, establish the moral essence of the trial. The effectiveness of the judiciary depends more on the moral qualities of the staff than on perfect legislation.

Therefore, special importance in the judicial system acquires the character of a judge, namely such moral qualities as honesty, diligence, conscience, responsibility, and justice. Given the laws of Ukraine on the judicial system and the status of judges, as well as on the Constitutional Court of Ukraine, it becomes clear that the legislator does not require domestic judges to possess or be a person of high moral qualities. So, justice can be unjust. There are some sad facts about judges who receive bribes, and their number is growing every year.²⁶

The internal culture of judges, commitment to professional ethics, understanding of moral norms, and conscience are more important factors in determining the fairness of their sentences than their material condition.

²⁵ Y. Leheza et al., "The Essence of the Principles of Ukrainian Law in Modern Jurisprudence," *Revista Juridica Portucalense* 32 (2023): 342–63.

²⁶ M.V. Logvinova, *Family Courts vs Judges for Family Law Cases: The Experience of Great Britain as a Tool for Reform Trends in Ukraine*, in *Current Problems of Exercising and Protecting Family Rights and Interests: Challenges of War* (Khmelnyskyi: Leonid Yuzkov Khmelnyskyi University of Management and Law, 2024), 69–70.

In addition, it should be noted that the section of the Law of Ukraine No. 1402-VIII “On the Judiciary and the Status of Judges” defines the obligation of a current judge to comply with the standards of judicial ethics (paragraph 2 of part 4 of article 54).²⁷ Because of the way their legal systems have evolved over time, the UK and Ukraine have different ways of dealing with moral and legal issues in judicial practice. Common law, which is the foundation of the United Kingdom, relies heavily on judicial precedent. Judicial discretion and the custom of applying the reasonable person criterion to evaluate behaviour are the two ways in which moral standards are incorporated into the system. Although moral standards are reflected in legislative acts and judicial ethics in Ukraine, which follow the continental legal tradition, their actual implementation often prevents problems with law enforcement and the influence of the political environment.²⁸

III. Comparative Judicial Practice: Great Britain and Ukraine

The UK judicial system consists of several levels of courts, including magistrates' courts, county courts, the Crown Court, and the Court of Appeal. The judges of these courts often use the concepts of justice and reasonableness, so moral principles are important. For example, courts evaluate the moral qualities of the parties, their intentions, and social environment in addition to the formal provisions of the law in cases involving defamation or breach of contract. The case of *M'Alister or Donoghue (Pauper) v Stevenson*, which laid the foundation for the modern view of the duty of care and the moral duty of producers to consumers, is one of the most notable examples.²⁹ The court ruled that the manufacturer

²⁷ Verkhovna Rada of Ukraine, “Law of Ukraine No. 1402-VIII “On the Judiciary and the Status of Judges,” 2016, <https://zakon.rada.gov.ua/laws/show/1402-19#Text>.

²⁸ V.M. Vovk, “The Court and Judicial Proceedings through the Prism of Mentality Theory,” *Analytical and Comparative Jurisprudence* 2 (2023): 421–25.

²⁹ House of Lords, “Case of *M'Alister or Donoghue (Pauper) v Stevenson*,” UKHL J0526-1, 1932, <https://vlex.co.uk/vid/m-alister-or-donoghue-793218917>

must take into account both legal and ethical obligations, since failure to ensure product safety can lead to harm to customers.³⁰

In Ukrainian judicial practice, moral norms are often considered through the prism of obligations established by law. For example, the Code of Judicial Ethics obliges judges to adhere to moral and ethical principles, but actual circumstances often show that these principles are not respected.³¹ The Supreme Court of Ukraine tries to ensure the unity of judicial practice, but due to imperfection of legislative wording, political pressure and different approaches to the interpretation of moral principles, judges often make contradictory decisions.

One of the most resonant examples of taking into account moral norms in judicial practice are cases related to the Revolution of Dignity. In particular, in 2014, the Verkhovna Rada adopted the Law of Ukraine No. 743-VII “On Preventing the Persecution and Punishment of Persons in Connection with Events that Took Place during Peaceful Assemblies...”.³² The courts also had problems with its implementation, since it demanded a distinction between moral and legal responsibility of those who supported or opposed the protests. For example, despite the fact that there was a norm that exempted protesters from liability, some judges found them guilty of riots in the case of amnesty for participants in the events on the Independence Square.³³

The case of judges who made illegal decisions during Euromaidan is another illustrative example. The High Council of Justice checked the

³⁰ O. Marchenko, “The Universality of Human Rights as an Aggregation of Law and Morality,” *Scientific Bulletin of Dnipro State University of Internal Affairs* 3 (2024): 28–38.

³¹ XX Regular Congress of Judges of Ukraine, Decision of 18.09.2024 “On Approval of the Code of Judicial Ethics,” 2024, <https://zakon.rada.gov.ua/rada/show/n0001415-24#Text>

³² Verkhovna Rada of Ukraine, Law of Ukraine No. 743-VII “On Preventing the Persecution and Punishment of Persons in Connection with Events that Took Place during Peaceful Assemblies, and Recognising Some Laws of Ukraine as Invalid,” 2014, <https://zakon.rada.gov.ua/laws/show/743-18#Text>

³³ D.M. Yasynok, “Judicial Lawmaking as a Way to Overcome Legislative Gaps and an Exceptional Legal Problem in the Law Enforcement Process of Civil Proceedings in Ukraine,” *Kyiv Journal of Law* 1 (2023): 100–6.

disciplinary liability of judges who were deliberately mistaken in their decisions regarding Maidan activists in 2021. Legal and moral norms may contradict, as judicial practice shows: although decisions were made officially in accordance with the legislation in force at that time, society perceived them as unethical and unfair.³⁴ When assessing cases of defamation, and protection of honour and dignity, in addition to political ones, moral standards are taken into account. For example, in the case of former Prosecutor General Yuriy Lutsenko against journalist Oleksandr Dubinsky, the courts had to assess not only the moral justification of the statements but also their compliance with the law. Similar circumstances arose in the publication of compromising documents about prominent people and politicians, which forced the courts to find a balance between the moral and ethical consequences of disseminated information and the right to free expression.³⁵

Cases involving corruption and the ethics of officials are also noteworthy. Thus, the public was outraged by the sudden "illness" of Roman Nasirov in court and his attempts to evade responsibility in the case of the former head of the SFS, who was accused of abuse of office. In this case, the courts had to evaluate both the moral behaviour of the official and the legal signs of the crime, which had a significant impact on the attitude of citizens to justice in Ukraine.³⁶ Because judges make decisions that can have a great moral impact on society, their legal knowledge is crucial. The judiciary must maintain a sense of justice that is shaped by moral norms, in addition to enforcing the law. Particularly important in this situation are the education, values and ability of judges to apply the law in a manner consistent with their language and spirit.

³⁴ I.O. Patalakha, "Judicial Guarantees of Human Rights in the Constitutional Acts of Great Britain," *Scientific Bulletin of Uzhhorod National University. Series: Law* 1, no. 85 (2024): 220–24.

³⁵ *Ibid.*

³⁶ V.V. Zaborovskiy, V.V. Manziuk, and I.I. Kopcha, "The Correlation of the Categories 'Law' and 'Morality' in the Context of Legal Practice," *Scientific Bulletin of Uzhhorod University: Series: Law* 2, no. 77 (2023): 270–75.

Judges in the UK have considerable discretion in how they apply moral standards and interpret the law. This means that they can use their own concept of justice, taking into account public moral beliefs, in addition to the formal requirements of the law, defining punishment. Even if there is free permission to cause bodily harm, the judges in the Case of *R v Brown Lucas Jaggard Laskey Carter* (Conjoined Appeals) decided that participants could not avoid criminal liability, since such actions contradict the norms of public morality.³⁷ The British legal system recognizes the existence of higher moral standards, which are important in interpreting the law, as this decision shows.³⁸ In addition, if one of the parties abuses its position or advantage, even a legally binding contract may be invalidated under the idea of unfair contracts, which is contained in English law. In the Case of *Lloyd's Bank Ltd v Bundy*, the court found the mortgage agreement invalid because the bank used its powers to force an elderly man to sign it.³⁹ This is an illustration of how moral considerations are taken into account by the British courts, which protect the parties even in cases where the agreement is legally binding.

Judges in Ukraine often adhere to an official legal framework, which can lead to sentences that fall short of society's expectations. This is especially evident when it comes to corruption and illicit enrichment. In accordance with the current legislation, to establish the fact of illegal enrichment, it is necessary to provide indisputable evidence that the income of the official significantly exceeds the legal income. However, history shows that politicians often use clever strategies to hide assets to avoid punishment. For example, the court found that the discrepancies between the official income and expenses of Volodymyr Omelyan are not enough to establish the fact of illegal enrichment in the case of the former Minister of

³⁷ House of Lords, "Case of *R v Brown Lucas Jaggard Laskey Carter* (Conjoined Appeals)," UKHL J0311-3, 1993, <https://vlex.co.uk/vid/r-v-brown-lucas-793895881>

³⁸ T.P. Popovych, "The Correlation of Law and Duty: Moral and Ethical Principles," *Scientific Bulletin of Uzhhorod University: Series: Law* 2, no. 80 (2023): 426–31.

³⁹ Court of Appeal (Civil Division), "Case of *Lloyd's Bank Ltd v Bundy*," EWCA Civ J0730-4, 1974, <https://vlex.co.uk/vid/lloyd-s-bank-ltd-792548525>

Infrastructure. This decision caused a public outcry since although from a legal point of view there was not enough evidence, from a moral position, society perceived the actions of the official as a violation of the principles of integrity.⁴⁰

The recordings of conversations with the head of the District Administrative Court of Kyiv Pavlo Vovk were also made public, which revealed massive corruption and manipulation in court decisions. However, due to legal nuances that avoided responsibility, criminal proceedings moved slowly even with this information. This illustrates the problem of formalism in Ukrainian justice: rigid standards of evidence often prevent courts from convicting, even if society morally believes in the guilt of a person.⁴¹

Another example is the case of ex-people's deputy Sergei Pashinsky, who was accused of shooting after an accident. The court found Pashinsky's actions qualified as a necessary defence, and he was released from punishment, although the victim received serious bodily injuries. Although this decision was based on formal signs of self-defence, it caused great public outrage, since many people believed that an influential politician received the powers of a judge.⁴² Therefore, the primary problem of Ukrainian justice is the advantage of a formal interpretation of the law, which ignores moral and ethical considerations. As a result, even if court decisions are legally justified, society may consider them unfair. Expanding judicial discretion on the application of moral principles and strengthening the training of judges in ethical standards - both principles have been in force in the UK for a long time - could be the solution to this difficult situation.

⁴⁰ Ye.Ye. Zvonkov, "On the Issue of the Relationship between Law and Morality: The Modern Context," *State and Law. Legal and Political Sciences* 89 (2021): 55–67.

⁴¹ V. Seredyuk, "Constructive Interpretation of Legal Norms in the Paradigm of Legal Constructivism," *Bulletin of the National University 'Lviv Polytechnic.' Series: Legal Sciences* 4, no. 36 (2022): 71–76.

⁴² L.I. Sopilnyk et al., "Judicial Security through the Prism of European Standards," *Scientific Notes of Lviv University of Business and Law* 38 (2023): 542–48.

IV. Law, Morality, and Judicial Discretion: Risks and Opportunities for Reform

Since judges base their decisions not only on the law but also on moral standards, professional ethics, and social expectations, the question of how morality and legal norms interact in judicial procedures is relevant for all legal systems. This problem is especially relevant in Ukraine given the evolution of the legal system and the growing public confidence in the judicial system. Although the positivist view underlying Ukrainian law holds that adherence to the rules is paramount, judicial decisions often have strong moral overtones.

The Anglo-American legal system, which includes the United Kingdom, relies heavily on case law, which considers moral considerations through judicial practice and concepts of justice. Moral norms are usually incorporated into laws and legal concepts in Ukraine, a country with a legal system based on continental law. However, in judicial practice, the moral concept of justice and legal formality often contradict. In the UK, the mechanism of judicial discretion actively takes into account moral considerations. Judges can apply the law more flexibly in accordance with the concept of fairness and integrity, which corrects the shortcomings of formal law. Judges in Ukraine have little discretion, which can lead to a formal decision-making process. At the same time, courts often consider moral aspects in criminal cases, such as the actions of the accused or sincere remorse, which affects the release from punishment.⁴³

While judicial discretion allows for moral considerations in law enforcement, it also creates risks of inconsistent case law and moral relativism. An over-reliance on the individual moral judgement of a judge can lead to similar cases being handled differently depending on personal beliefs or social context. In countries with a low level of trust in the judiciary, such as Ukraine, such unpredictability only deepens citizens' doubts about

⁴³ Ya.O. Zheldubovsky, "The Interaction of Morality and Law in Society," in *Proceedings of the All-Ukrainian Scientific Conference of Students and Postgraduates* (Sumy: Sumy National Agrarian University, 2022).

the fairness of justice. Without sufficient safeguards such as clear standards of judicial ethics, mandatory argumentation of moral references, and the practice of following precedents - the expansion of discretion can create conditions for abuse or moral selectivity, which contradicts the principle of equality before the law.

One of the possible ways to solve the problem is to introduce the institute of "friends of the court" (*amicus curiae*), independent experts who provide the court with substantiated moral and ethical conclusions in a particular case. In the UK, this practice is successfully used, in particular in cases of human rights and corruption crimes. In contrast to the British model of flexible judicial discretion, the legal systems of Germany and France demonstrate a more structured approach to the integration of moral norms. In Germany, for example, judges apply morally relevant constitutional principles (such as human dignity) within a stable doctrine that creates predictable and consistent case law. The French legal system uses the concepts of *ordre public* and *bonnes mœurs*, but their interpretation is anchored in established practice and administrative control. This approach allows the moral element to be taken into account without losing legal certainty. For Ukraine, this indicates the need not only to expand discretion, but also to introduce institutions that would ensure its legal certainty, such as specialised ethics councils, strengthening the role of the Supreme Court in shaping the unity of practice, or a quasi-precedent system. In Ukraine, this would allow taking into account the moral aspects of the judicial process without the risk of subjectivity or manipulation.

Ethical standards of judges should be significantly strengthened by introducing effective systems of control and responsibility for violation of moral and ethical standards in order to harmonize law and morality in Ukrainian judicial procedures. Part of the evolution of judicial education should be a comprehensive test of morality, ethics, and society's view of justice. This will help future judges make decisions that take into account moral considerations in addition to formal legal requirements. To prevent

legal ambiguity and ensure that moral considerations are consistently taken into account in court decisions, it is also important to create a system of case law.

Despite the importance of moral considerations for the public legitimacy of justice, excessive moralisation of the judiciary poses a threat to the rule of law. If judges start replacing legal arguments with moral assessments, justice can become an instrument of ideological or ideological pressure. The imposition of a single moral system in a pluralistic society is particularly dangerous, as it can lead to discrimination against minorities or human rights violations. Moralisation also increases the risk of politicisation of court decisions, when morality becomes a cover for political expediency. In this context, it is important to maintain a balance: morality should be an element of public dialogue and part of the lawmaking process, but not a means of judicial activism that substitutes law for one's own conscience.

It is also necessary to create a system for assessing actions that deviate from the norms of public morality, with the possibility of attracting impartial specialists who can express a reasoned opinion. Maintaining the openness of the judicial process will allow the public to exercise control over the moral and ethical aspects of judicial procedures, and therefore increase public confidence in the legal system. Effective methods of balancing law and morality in Ukraine will be created on the basis of foreign experience, in particular the British practice of self-regulation of judges and the application of the concept of justice and good faith.⁴⁴

In litigation, the UK and Ukraine often take different positions on the interaction of morality and law. In Britain, judicial discretion and case law are used to incorporate moral concepts, allowing for flexible evaluation of society's development. In Ukraine, official legislative norms play an important role in determining morality, which can complicate practical

⁴⁴ H.P. Timchenko and Yu.O. Kotvyakovskiy, "On the Issue of Judicial Lawmaking in Civil Proceedings," *Analytical and Comparative Jurisprudence* 2 (2022): 101–5.

implementation. Increasing the openness of court decisions, improving judicial education, and introducing effective foreign experience can all help Ukraine achieve its goal of reconciliation of morality and law. In line with the principles of engaging the legal community, this study suggests the introduction of civic oversight initiatives and public ethics forums to bridge the gap between judicial decisions and public moral expectations. State legal education programmes for judges and communities can also promote mutual understanding and help to align judicial practice with citizens' moral experiences.

Conclusion

Justice is unattainable without taking into account moral principles, professional ethics and public expectations. While most legal systems seek to balance these dimensions, the extent to which judges are allowed to apply moral considerations varies. In the Anglo-American legal tradition, as represented by the United Kingdom, case law and judicial discretion allow courts to adapt legal norms to evolving moral standards. In contrast, Ukraine's continental system emphasises legal formalism, which often limits the consideration of ethical factors, even when social consensus requires it. The British experience demonstrates how institutional mechanisms, such as judicial training in moral reasoning, a strong tradition of case law, and the integration of societal values through the *amicus curiae* process, can bridge the gap between legality and legitimacy. Ukrainian courts, by comparison, have difficulty dealing with cases where the strict application of the law is at odds with the moral expectations of society, leading to perceptions of injustice and a breakdown in public trust. To address this problem, Ukraine could introduce specific legislative and institutional reforms, namely: create a formal mechanism for *amicus curiae* participation in cases involving significant moral or ethical issues; establish a centralised advisory council on judicial ethics to guide the application of

moral standards within the legal framework; amend the Law on the Judiciary and the Status of Judges to provide greater discretion in interpreting the law based on the principles of justice and public interest; develop a quasi-precedent-setting system in the Supreme Court to ensure consistency and clarity in the use of moral considerations in court decisions; include mandatory training in ethics, public morality and community engagement in judicial education programmes. These steps can help to align legal system of Ukraine with both European standards and the needs of its citizens, contributing to a model of justice that is not only legal but also perceived by the public as fair and legitimate. In addition, this study paves the way for future empirical research, including: content analysis of court decisions containing moral reasoning in different regions of Ukraine; surveys and focus groups assessing public trust in court outcomes and perceptions of moral justice; and comparative studies of how other civil law countries integrate public morality into legal decision-making without compromising legal certainty. By integrating public moral expectations into judicial reasoning, while maintaining legal clarity and predictability, Ukraine can enhance both the legitimacy and social function of its judiciary. This study contributes to the engagement of the legal community by outlining practical tools to improve the moral competence of the judiciary and enhance equal access to justice for all segments of society.

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