Interdependence Of Law And Morality

Laws are ‘a command issued from sovereign power to an inferior and enforced by coercion.’ (John Austin) The sovereign power is Parliament or judges, and laws are mandatory. By contrast, morals are ‘a set of beliefs, principles and standards of behaviour’ (Phil Harris) which come mainly from religion, family, friends and education, but aren’t mandatory. Sanctions from laws are more definite, including fines and prison, but vary for morals: a person may feel guilty or be shunned by their peers. The development of morals usually takes generations but the development of law varies: if a relevant case arises judges can change or develop the law almost instantly as in R v Dica, but Parliamentary statutes may take years to be enacted. The law can lead to changes in morals by making things more acceptable and equally changes in morals can lead to legal changes through pressure groups for example, but it remains debatable to what extent the law should reflect morality.

Primarily law and morality coincide and changes in some areas of morality have been reflected by changes in the law. This is demonstrated in society’s increasing acceptance of homosexuality which resulted in the Sexual Offences Act 1967 and recently the Marriage (Same Sex Couples) Act 2013. Common law has also changed following shifts in morals: the case of R v. R made marital rape illegal when the law recognised the change in status of women in society. Similarly, the law has shaped morality in areas such as abortion. When the Abortion Act was passed in 1967 society was generally against abortion and those who had them were often shunned. Conversely, abortion is now considered socially acceptable by many to the point where information on abortion is freely advertised in the media. Yet although the law can influence morality and vice versa, the two are unlikely to ever fully correspond. Due to the subjective nature of morals the law will never exactly coincide with what every citizen believes. For example, a Muslim group wanted honour killings to be recognised as being ?a defence? to murder but the law refusing to accept this.

Yet law and morality can be considered separate in many ways. For instance there are some aspects of the law which were created with no bearing on morals. It is not immoral to unknowingly sell a lottery ticket to an under 16 year old, ?Harrow LBC v Shah ?and yet it is illegal. There are also a number of widely-held moral beliefs which do not come into the law. Cheating on your partner is not an offence and will not be taken into account for the defence of loss of control under ?S55(6)(c) ?Coroners and Justice Act 2009 ?unless a Clinton ?argument can be raised.. Furthermore the general rule on omissions which does not create any liability unless a duty to act arises, eg ?R v Pittwood?, goes against many people’s moral code.

Although the law for the main part reflects morality, controversy arises over whether it should, due to the difficulties involved. Emile Durkheim highlighted the issue of living in a pluralist society as there cannot be a shared moral code. Which viewpoint does the law follow so as not to alienate proportions of society. As society becomes increasingly diverse it is not possible for the law to reflect everyone’s morals, as shown by ?Gillick which displeased a number of parents. Furthermore when both Parliament and judges make law, are they representing society’s morals. In theory Parliament is elected and answerable to the people and therefore represent the majority view. However looking at the makeup of the Cabinet in power, it is clear that a high percentage of Cabinet ministers have been privately educated and/or attended

Oxford or Cambridge universities- raising the question as to whether they truly represent the general population. Perhaps even more noteworthy is the fact that judges are unelected and may make case law based on their own morality, as in ?R v Brown ?when the fact that the defendants were engaging in homosexual activity may have impacted on the court decision, particularly when compared to the similar case of ?R v Wilson. Additionally, medical and technological advancements mean some laws must be imposed before society has formed a moral opinion, as in ?RCN v DHSS or more three parent families. Waiting for such an opinion would delay the development of some crucial advancements.

Over centuries academics have disagreed on whether law should reflect morality. Natural law theorists believe that the law should reflect morals because morals are supremely important. Whilst Aristotle believed this natural law came from The laws of nature, for example survival of the fittest, St Thomas Aquinas believed this ‘natural law’ came from divine law. Conversely, positivists believe that law and morality should be kept completely separate. Instead of basing laws on morals, Jeremy Bentham believed in the ‘utility principle’, deciding laws on the basis of what would bring the greatest good to the greatest number. The issue gained prominence in the 1950’s with the Hart/Devlin debate, which stemmed from the suggestion of relaxing laws on homosexuality and prostitution in the Wolfenden report. Professor Hart, a positivist, believed there should be a minimal connection between law and morality and that only a ‘minimum content of natural law’ with regard to protecting people and property should exist. The Mill’s idea that the law should not intervene in the private lives of others, apart from to prevent ‘harm’ to others is on the face of it an attractive one but what amounts to harm - physical, mental, financial, and who are ‘others’? Does this include for example a foetus? This would be open to much interpretation. This is because the enforcement of morals is unnecessary as society cannot have a shared morality thus the law can never fully emulate morality. He asserted it would prevent the development of morality because enshrining morals within law confirms the validity of the moral viewpoint therefore people would feel obliged to stick with outdated or ‘wrong’ viewpoints. Additionally, Hart believed legally forcing people to do something they believe is immoral infringes liberty so is morally unacceptable. In contrast natural law theorist Lord Devlin believed society has a shared morality and it’s the laws duty to enforce this, arguing that otherwise our common morality would disappear - if something isn’t illegal society will find it acceptable so moral standards will diminish - and society would disintegrate. This shared morality is judged on the ‘right-minded person’ in the jury box, who theoretically represents the majority of society. However, basing morality on the majority fails to account for the minority thus the notion of a ‘shared morality’ is ultimately flawed. However the ‘Mills principle of harm’ does bring the two opposite views much closer together than would first seem.

To conclude, on the whole the law should reflect morality to condemn acts accepted as basic wrongs, such as murder. However in relation to more controversial issues such as abortion, euthanasia and pornography, the difficulties in first ascertaining what the ‘common morality’ is, the risk of Ministers and Judges being influenced by their own morals and the inability to satisfy everyone’s moral codes mean that there is a high risk of certain groups in society feeling alienated by the law. If this happens non-compliance leading to the law being undermined may follow.